

REFINITIV




# DELTA REPORT

## 10-Q

DOMO - DOMO, INC.

10-Q - JULY 31, 2024 COMPARED TO 10-Q - APRIL 30, 2024

The following comparison report has been automatically generated

TOTAL DELTAS	2500
 CHANGES	235
 DELETIONS	908
 ADDITIONS	1357

UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION

WASHINGTON, D.C. 20549

Form 10-Q

(Mark One)

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

For the quarterly period ended April 30, 2024 July 31, 2024

OR

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

For transition period from to .

Commission File Number 001-38553.

DOMO, INC.

(Exact Name of Registrant as Specified in its Charter)

Delaware

(State or Other Jurisdiction of Incorporation or Organization)

27-3687433

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

802 East 1050 South  
American Fork, UT 84003

(Address of principal executive offices, including zip code)

(801) 899-1000

(Registrant's telephone number, including area code)

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

Title of each class	Trading symbol(s)	Name of each exchange on which registered
Class B Common Stock, par value \$0.001 per share	DOMO	The Nasdaq Global Market

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

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

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

Large accelerated filer

☐ Accelerated filer
☒

Non-accelerated filer

☐ Smaller reporting company
☐

Emerging growth company

☐

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

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

As of 

June 3, 2024

September 3, 2024

 there were approximately 3,263,659 shares of the registrant's Class A common stock and 

34,911,044

35,367,207

 shares of the registrant's Class B common stock outstanding.

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SUMMARY RISK FACTORS

Our business is subject to numerous risks and uncertainties, as described further in the section of this report captioned “[Risk Factors](#),” which may cause us not to realize the full benefits of our strengths or may cause us to be unable to successfully execute all or part of our strategy. Some of the most significant challenges and risks include the following:

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REFINITIV

- we have a history of losses, and we may not be able to generate sufficient revenue to achieve or maintain profitability in the future;
- we have been growing and expect to continue to invest in our growth for the foreseeable future, and if we fail to manage this growth effectively, our business and operating results will be adversely affected;
- our ability to raise capital in the future may be limited, and if we fail to raise capital when needed in the future, we could be prevented from growing or could be forced to delay or eliminate product development efforts or other operations;
- adverse events or perceptions affecting the financial services industry could adversely affect our operating results, financial condition and prospects;
- if we are unable to attract new customers in a manner that is cost-effective, our revenue growth could be slower than we expect and our business may be harmed;
- if customers do not renew their contracts with us or reduce their use of our platform, our revenue will decline and our operating results and financial condition may be adversely affected;
- if customers do not expand their use of our platform or adopt additional use cases, our growth prospects, operating results and financial condition may be adversely affected;
- we face intense competition, and we may not be able to compete effectively, which could reduce demand for our platform and adversely affect our business, growth, revenue and market share;
- if our or our customers' access to data becomes limited, our business, results of operations and financial condition may be adversely affected;
- if we fail to effectively align, develop and expand our sales and marketing capabilities with our new pricing structure and increase sales efficiency, our ability to increase our customer base and increase acceptance of our platform could be harmed;
- we have experienced management and board turnover, which creates uncertainties and could harm our business;
- we are subject to governmental laws, regulation and other legal obligations, particularly those related to privacy, data protection and information security, and any actual or perceived failure to comply with such obligations could impair our efforts to maintain and expand our customer base, causing our growth to be limited and harming our business;

- if our network, application, or computer systems are breached or unauthorized access to customer data or other sensitive data is otherwise obtained, our platform may be perceived as insecure and we may lose existing customers or fail to attract new customers, operations may be disrupted if systems or data become unavailable, our reputation may be damaged and we may incur significant remediation costs or liabilities, including regulatory fines for violation of compliance requirements;
- third-party claims that we are infringing or otherwise violating the intellectual property rights of others, whether successful or not, could subject us to costly and time-consuming litigation or require us to obtain expensive licenses, and our business could be harmed;
- the success of our business depends in part on our ability to protect and enforce our intellectual property rights;
- the dual class structure of our common stock has the effect of concentrating voting control with Joshua G. James, our founder and chief executive officer, which will limit your ability to influence the outcome of important transactions, including a change in control; and
- economic uncertainties or downturns could materially adversely affect our business.

## PART I. FINANCIAL INFORMATION

### Item 1. Financial Statements (unaudited)

**Domo, Inc.**  
**Condensed Consolidated Balance Sheets**  
*(in thousands, except per share amounts)*  
*(unaudited)*

	As of January 31, 2024	As of April 30, 2024	As of January 31, 2024	As of July 31, 2024
<b>Assets</b>	<b>Assets</b>			
Current assets:	Current assets:			
Current assets:				
Cash, cash equivalents, and restricted cash				
Cash, cash equivalents, and restricted cash				
Cash, cash equivalents, and restricted cash				
Accounts receivable, net of allowances of \$3,711 and \$2,384 as of January 31, 2024 and April 30, 2024, respectively				
Accounts receivable, net of allowances of \$3,711 and \$2,384 as of January 31, 2024 and April 30, 2024, respectively				
Accounts receivable, net of allowances of \$3,711 and \$2,384 as of January 31, 2024 and April 30, 2024, respectively				
Accounts receivable, net of allowances of \$3,711 and \$2,204 as of January 31, 2024 and July 31, 2024, respectively				
Accounts receivable, net of allowances of \$3,711 and \$2,204 as of January 31, 2024 and July 31, 2024, respectively				
Accounts receivable, net of allowances of \$3,711 and \$2,204 as of January 31, 2024 and July 31, 2024, respectively				
Contract acquisition costs, net				
Prepaid expenses and other current assets				
Total current assets				
Property and equipment, net				
Right-of-use assets				
Contract acquisition costs, noncurrent, net				
Intangible assets, net				
Goodwill				
Other assets				
Total assets				
<b>Liabilities and stockholders' deficit</b>	<b>Liabilities and stockholders' deficit</b>			
Current liabilities:	Current liabilities:			
Current liabilities:				
Current liabilities:				
Accounts payable				
Accounts payable				
Accounts payable				
Accrued expenses and other current liabilities				
Lease liabilities				
Deferred revenue				
Total current liabilities				

Lease liabilities, noncurrent			
Deferred revenue, noncurrent			
Other liabilities, noncurrent			
Long-term debt			
Total liabilities			
	Commitments and contingencies (Note 12)	Commitments and contingencies (Note 12)	
Commitments and contingencies (Note 12)			
Stockholders' deficit:			
Preferred stock, \$0.001 par value per share; 10,000 shares authorized as of January 31, 2024 and April 30, 2024; no shares issued and outstanding as of January 31, 2024 and April 30, 2024			
Preferred stock, \$0.001 par value per share; 10,000 shares authorized as of January 31, 2024 and April 30, 2024; no shares issued and outstanding as of January 31, 2024 and April 30, 2024			
Preferred stock, \$0.001 par value per share; 10,000 shares authorized as of January 31, 2024 and April 30, 2024; no shares issued and outstanding as of January 31, 2024 and April 30, 2024			
Class A common stock, \$0.001 par value per share; 3,264 shares authorized as of January 31, 2024 and April 30, 2024; 3,264 shares issued and outstanding as of January 31, 2024 and April 30, 2024			
Class B common stock, \$0.001 par value per share; 500,000 shares authorized as of January 31, 2024 and April 30, 2024; 33,656 and 34,911 shares issued and outstanding as of January 31, 2024 and April 30, 2024, respectively			
Preferred stock, \$0.001 par value per share; 10,000 shares authorized as of January 31, 2024 and July 31, 2024; no shares issued and outstanding as of January 31, 2024 and July 31, 2024			
Preferred stock, \$0.001 par value per share; 10,000 shares authorized as of January 31, 2024 and July 31, 2024; no shares issued and outstanding as of January 31, 2024 and July 31, 2024			
Preferred stock, \$0.001 par value per share; 10,000 shares authorized as of January 31, 2024 and July 31, 2024; no shares issued and outstanding as of January 31, 2024 and July 31, 2024			
Class A common stock, \$0.001 par value per share; 3,264 shares authorized as of January 31, 2024 and July 31, 2024; 3,264 shares issued and outstanding as of January 31, 2024 and July 31, 2024			
Class B common stock, \$0.001 par value per share; 500,000 shares authorized as of January 31, 2024 and July 31, 2024; 33,656 and 35,367 shares issued and outstanding as of January 31, 2024 and July 31, 2024, respectively			
Additional paid-in capital			
Accumulated other comprehensive loss			
Accumulated deficit			
Total stockholders' deficit			
Total liabilities and stockholders' deficit			

See accompanying notes to condensed consolidated financial statements.

Domo, Inc.							
Condensed Consolidated Statements of Operations							
(in thousands, except per share amounts)							
(unaudited)							
	Three Months Ended April 30,		Three Months Ended July 31,		Six Months Ended July 31,		
	2023	2024	2023	2024	2023	2024	
Revenue:	Revenue:						
Subscription							
Subscription							
Subscription							
Professional services and other							
Total revenue							

Cost of revenue:
Subscription
Subscription
Subscription
Professional services and other
Total cost of revenue
Gross profit
Operating expenses:
Sales and marketing
Sales and marketing
Sales and marketing
Research and development
General and administrative
Total operating expenses
Loss from operations
Other expense, net
Loss before income taxes
Provision for income taxes
Net loss
Net loss per share, basic and diluted
Weighted-average number of shares used in computing net loss per share, basic and diluted

See accompanying notes to condensed consolidated financial statements.

Domo, Inc.						
Condensed Consolidated Statements of Comprehensive Loss						
(in thousands)						
(unaudited)						
	Three Months Ended April 30,		Three Months Ended July 31,		Six Months Ended July 31,	
	2023	2024	2023	2024	2023	2024
Net loss						
Foreign currency translation adjustments						
Comprehensive loss						
Comprehensive loss						
Comprehensive loss						

See accompanying notes to condensed consolidated financial statements.

Domo, Inc.	
Condensed Consolidated Statements of Stockholders' Deficit	
(in thousands, except share amounts)	
(unaudited)	
	Three Months Ended April 30, 2023

	Class A Common Stock		Class B Common Stock		Accumulated			Total
	Shares	Amount	Shares	Amount	Additional	Other	Accumulated	
					Paid-in Capital	Comprehensive (Loss) Income	Deficit	Stockholders' Deficit
Balance as of January 31, 2023	3,263,659	\$ 3	31,572,826	\$ 32	\$ 1,183,921	\$ (322)	\$ (1,330,034)	\$ (146,400)
Vesting of restricted stock units	—	—	704,314	—	—	—	—	—
Issuance of common stock under employee stock purchase plan	—	—	169,801	—	2,032	—	—	2,032
Stock-based compensation expense	—	—	—	—	17,422	—	—	17,422
Other comprehensive income	—	—	—	—	—	180	—	180
Net loss	—	—	—	—	—	—	(24,403)	(24,403)
Balance as of April 30, 2023	3,263,659	\$ 3	32,446,941	\$ 32	\$ 1,203,375	\$ (142)	\$ (1,354,437)	\$ (151,169)

	Three Months Ended April 30, 2024						Six Months Ended July 31, 2023					
Class A Common Stock	Class A Common Stock	Class B Common Stock	Additional Paid-in Capital	Accumulated Other Comprehensive Loss	Accumulated Deficit	Total Stockholders' Deficit	Class A Common Stock	Class B Common Stock	Additional Paid-in Capital	Accumulated Other Comprehensive (Loss) Income	Accumulated Deficit	Total Stockholders' Deficit
Shares												
Balance as of January 31, 2024												
Balance as of January 31, 2024												
Balance as of January 31, 2024												
Balance as of January 31, 2023												
Balance as of January 31, 2023												
Balance as of January 31, 2023												
Vesting of restricted stock units												
Vesting of restricted stock units												
Vesting of restricted stock units												
Issuance of common stock under employee stock purchase plan												
Stock-based compensation expense												
Stock-based compensation expense												
Stock-based compensation expense												
Other comprehensive loss												
Other comprehensive income												
Net loss												
Balance as of April 30, 2024												
Balance as of April 30, 2023												



Vesting of restricted stock units
Exercise of stock options
Exercise of stock options
Exercise of stock options
Stock-based compensation expense
Other comprehensive income
Net loss
Balance as of July 31, 2023

See accompanying notes to condensed consolidated financial statements.

**Domo, Inc.**

**Condensed Consolidated Statements of Stockholders' Deficit (Continued)**

*(in thousands, except share amounts)*

*(unaudited)*

	Six Months Ended July 31, 2024							
					Accumulated			Total Stockholders'
	Class A Common Stock		Class B Common Stock		Additional	Other	Accumulated	
	Shares	Amount	Shares	Amount	Paid-in Capital	Comprehensive (Loss) Income	Deficit	
Balance as of January 31, 2024	3,263,659	\$ 3	33,655,756	\$ 34	\$ 1,252,200	\$ (180)	\$ (1,405,603)	\$ (153,546)
Vesting of restricted stock units	—	—	1,111,795	1	—	—	—	1
Issuance of common stock under employee stock purchase plan	—	—	143,206	—	1,121	—	—	1,121
Stock-based compensation expense	—	—	—	—	15,196	—	—	15,196
Other comprehensive loss	—	—	—	—	—	(246)	—	(246)
Net loss	—	—	—	—	—	—	(26,007)	(26,007)
Balance as of April 30, 2024	3,263,659	3	34,910,757	35	1,268,517	(426)	(1,431,610)	(163,481)
Vesting of restricted stock units	—	—	486,654	—	—	—	—	—
Shares repurchased for tax withholdings on vesting of restricted stock	—	—	(30,204)	—	(208)	—	—	(208)
Stock-based compensation expense	—	—	—	—	16,472	—	—	16,472
Other comprehensive income	—	—	—	—	—	346	—	346
Net loss	—	—	—	—	—	—	(19,490)	(19,490)
Balance as of July 31, 2024	3,263,659	\$ 3	35,367,207	\$ 35	\$ 1,284,781	\$ (80)	\$ (1,451,100)	\$ (166,361)

See accompanying notes to condensed consolidated financial statements.

**Domo, Inc.**

**Condensed Consolidated Statements of Cash Flows**

(in thousands)

(unaudited)

	Three Months Ended April 30,		Six Months Ended July 31,	
	2023	2023	2024	2024
<b>Cash flows from operating activities</b>				
Net loss				
Net loss				
Net loss				
Adjustments to reconcile net loss to net cash provided by operating activities:				
Adjustments to reconcile net loss to net cash provided by (used in) operating activities:				
Depreciation and amortization				
Depreciation and amortization				
Depreciation and amortization				
Non-cash lease expense				
Amortization of contract acquisition costs				
Stock-based compensation expense				
Remeasurement of warrant liability				
Other, net				
Change in operating assets and liabilities:				
Accounts receivable, net				
Accounts receivable, net				
Accounts receivable, net				
Contract acquisition costs				
Prepaid expenses and other				
Accounts payable				
Operating lease liabilities				
Accrued expenses and other liabilities				
Deferred revenue				
Net cash provided by operating activities				
Net cash provided by (used in) operating activities				
<b>Cash flows from investing activities</b>				
Purchases of property and equipment				
Purchases of property and equipment				
Purchases of property and equipment				
Purchases of intangible assets				
Purchases of intangible assets				
Purchases of intangible assets				
Net cash used in investing activities				
Net cash used in investing activities				
Net cash used in investing activities				
<b>Cash flows from financing activities</b>				
Proceeds from shares issued in connection with employee stock purchase plan				
Proceeds from shares issued in connection with employee stock purchase plan				

Proceeds from shares issued in connection with employee stock purchase plan
Shares repurchased for tax withholdings on vesting of restricted stock
Proceeds from short-term payable financing
Proceeds from short-term payable financing
Proceeds from short-term payable financing
Proceeds from exercise of stock options
Proceeds from exercise of stock options
Proceeds from exercise of stock options
Net cash provided by financing activities
Net cash provided by financing activities
Net cash provided by financing activities
Effect of exchange rate changes on cash, cash equivalents, and restricted cash
Net (decrease) increase in cash, cash equivalents, and restricted cash
Net decrease in cash, cash equivalents, and restricted cash
Cash, cash equivalents, and restricted cash at beginning of period
Cash, cash equivalents, and restricted cash at end of period
<b>Supplemental disclosures of cash flow information</b>
Cash paid for income taxes, net of refunds
Cash paid for income taxes, net of refunds
Cash paid for income taxes, net of refunds
Cash paid for interest
<b>Non-cash investing and financing activities</b>
Operating lease right-of-use assets obtained for lease liabilities
Operating lease right-of-use assets obtained for lease liabilities
Operating lease right-of-use assets obtained for lease liabilities
Purchases of property and equipment included in accounts payable and lease liabilities
Stock-based compensation capitalized as internal-use software
Issuance of warrants in connection with credit facility
Issuance of warrants in connection with credit facility
Issuance of warrants in connection with credit facility

See accompanying notes to condensed consolidated financial statements.

**Domo, Inc.**

## **Notes to Condensed Consolidated Financial Statements**

*(unaudited)*

### **1. Overview and Basis of Presentation**

#### ***Description of Business and Basis of Presentation***

Domo, Inc. (the Company) provides a cloud-based platform that digitally connects everyone from the CEO to the frontline employee with all the data, systems and people in an organization, giving them access to real-time data and insights and allowing them to put data to work for everyone so

they can multiply their impact on the business. The Company is incorporated in Delaware. The Company's headquarters is located in American Fork, Utah and the Company has subsidiaries in the United Kingdom, Australia, Japan, Hong Kong, Singapore, New Zealand, Canada, and India.

The accompanying unaudited condensed consolidated financial statements, which include the accounts of the Company and its wholly owned subsidiaries, have been prepared in conformity with accounting principles generally accepted in the United States of America (GAAP). All intercompany balances and transactions have been eliminated in consolidation. The Company's fiscal year ends on January 31.

#### **Unaudited Condensed Consolidated Financial Statements**

The accompanying condensed consolidated balance sheet as of April 30, 2024 July 31, 2024, and the condensed consolidated statements of operations, comprehensive loss, and stockholders' deficit for the three and six months ended July 31, 2023 and 2024 and condensed consolidated statements of cash flows for the three six months ended April 30, 2023 July 31, 2023 and 2024 are unaudited. The unaudited condensed consolidated financial statements have been prepared on a basis consistent with the annual consolidated financial statements and, in the opinion of management, reflect all adjustments necessary to state fairly the Company's financial position as of April 30, 2024 and July 31, 2024, its results of operations for the three and six months ended July 31, 2023 and 2024 and condensed consolidated statements of cash flows for the three six months ended April 30, 2023 July 31, 2023 and 2024. The financial data and the other financial information disclosed in the notes to these condensed consolidated financial statements related to the three-month and six-month periods are also unaudited. The results of operations for the three and six months ended April 30, 2024 July 31, 2024 are not necessarily indicative of the results to be expected for the fiscal year ending January 31, 2025 or for any other future year or interim period.

The unaudited condensed consolidated financial statements should be read in conjunction with the audited consolidated financial statements and the related notes thereto as of and for the year ended January 31, 2024, included in the Company's Annual Report on Form 10-K.

#### **Use of Estimates**

The preparation of the condensed consolidated financial statements in conformity with GAAP requires management to make estimates, judgments and assumptions that affect the amounts reported in the condensed consolidated financial statements and the accompanying notes. The Company bases its estimates on historical experience and on other assumptions that its management believes are reasonable under the circumstances. Actual results could differ from those estimates. The Company's estimates and judgments include the determination of standalone selling prices for the Company's services, which are used to determine revenue recognition for arrangements with multiple performance obligations; the amortization period for deferred contract acquisition costs; valuation of the Company's stock-based compensation and related service period; useful lives of fixed assets; the fair value of warrants; capitalization and estimated useful life of internal-use software; the incremental borrowing rate used to calculate the present value of capitalized leases; evaluation for impairment of long-lived and intangible assets including goodwill; and the allowance for doubtful accounts and expected credit losses.

#### **Foreign Currency**

The functional currencies of the Company's foreign subsidiaries are the respective local currencies. The cumulative effect of translation adjustments arising from the use of differing exchange rates from period to period is included in

**Domo, Inc.**

#### **Notes to Condensed Consolidated Financial Statements (Continued)**

*(unaudited)*

#### **1. Overview and Basis of Presentation (Continued)**

accumulated other comprehensive income within the condensed consolidated balance sheets. Changes in the cumulative foreign translation adjustment are reported in the condensed consolidated statements of stockholders' deficit and the condensed consolidated statements of comprehensive loss. Transactions denominated in currencies other than the functional currency are remeasured at the end of the period and when the related receivable or payable is settled, which may result in transaction gains or losses. Foreign currency transaction gains and losses are included in other expense, net in the condensed

**Domo, Inc.**

#### **Notes to Condensed Consolidated Financial Statements (Continued)**

(unaudited)

## 1. Overview and Basis of Presentation (Continued)

consolidated statements of operations. All assets and liabilities denominated in a foreign currency are translated into U.S. dollars at the exchange rate on the balance sheet date. Revenue and expenses are translated at the average exchange rate during the period, and equity balances are translated using historical exchange rates.

### Segment Information

The Company operates as one operating segment. The Company's chief operating decision maker is its chief executive officer, who reviews financial information presented on a consolidated basis for purposes of making operating decisions, assessing financial performance and allocating resources.

## 2. Summary of Significant Accounting Policies

### Cash, Cash Equivalents, and Restricted Cash

Cash and cash equivalents consist of cash on hand, money market funds and highly liquid investments purchased with an original maturity date of 90 days or less from the date of purchase. The fair value of cash equivalents approximated their carrying value as of January 31, 2024 and April 30, 2024 July 31, 2024. Restricted cash relates to an outstanding letter of credit established in conjunction with an amendment to an existing lease agreement.

### Accounts Receivable

Accounts receivable are recorded at the invoiced amount (net of allowance), do not require collateral, and do not bear interest. The Company's payment terms generally provide that customers pay within 30 days of the invoice date.

The Company maintains an allowance for doubtful accounts and expected credit losses for amounts the Company does not expect to collect. In establishing the required allowance, management considers historical losses, current market conditions, customers' financial condition and credit quality, the age of the receivables, and current payment patterns. Account balances are written off against the allowance after all means of collection have been exhausted and the potential for recovery is considered remote.

### Contract Acquisition Costs

Contract acquisition costs, net are stated at cost net of accumulated amortization and primarily consist of deferred sales commissions, which are considered incremental and recoverable costs of obtaining a contract with a customer. Contract acquisition costs for initial contracts are deferred and then amortized on a straight-line basis over the period of benefit, which the Company has determined to be approximately four years. The period of benefit is determined by taking into consideration contractual terms, expected customer life, changes in the Company's technology and other factors. Contract acquisition costs for renewal contracts are not commensurate with contract acquisition costs for initial contracts and are recorded as expense when incurred if the period of benefit is one year or less. If the period of benefit is greater than one year, costs are deferred and then amortized on a straight-line basis over the period of benefit, which the Company has determined to be two years. Contract acquisition costs related to professional services and other performance obligations with a period of benefit of one year or less are recorded as expense when incurred. Amortization of contract acquisition costs is included in sales and marketing expenses in the accompanying condensed consolidated statements of operations.

Amortization expense related to contract acquisition costs was \$4.6 million \$4.4 million and \$4.3 million \$4.4 million for the three months ended April 30, 2023 July 31, 2023 and 2024, respectively, and \$9.0 million and \$8.7 million for the six months ended July 31, 2023 and 2024, respectively. There was no impairment charge in relation to contract acquisition costs for the periods presented.

Domo, Inc.

## Notes to Condensed Consolidated Financial Statements (Continued)

(unaudited)

## 2. Summary of Significant Accounting Policies (Continued)

### Property and Equipment, Net

Property and equipment, net, are stated at cost less accumulated depreciation. Depreciation is calculated using the straight-line method over the estimated useful lives of the assets or over the related lease terms (if shorter). Repairs and maintenance costs are expensed as incurred.

**Domo, Inc.**

**Notes to Condensed Consolidated Financial Statements (Continued)**

*(unaudited)*

**2. Summary of Significant Accounting Policies (Continued)**

The estimated useful lives of property and equipment are as follows:

Computer equipment and software	2-3 years
Furniture, vehicles and office equipment	3 years
Leasehold improvements	Shorter of remaining lease term or estimated useful life

**Leases**

At the inception of a contract, the Company determines whether the contract is or contains a lease. Leases with a term greater than one year are recognized on the balance sheet as right-of-use (ROU) assets and lease liabilities. The Company has elected the short-term leases practical expedient which allows any leases with a term of 12 months or less to be considered short-term and thus not have an ROU asset or lease liability recognized on the balance sheet.

ROU assets represent the Company's right to use an underlying asset for the lease term and lease liabilities represent the obligation to make lease payments arising from the lease. Operating lease ROU assets and operating lease liabilities are recognized based on the present value of the future minimum lease payments over the lease term at commencement date. As these leases do not provide an implicit rate, the Company uses its incremental borrowing rate based on the information available at commencement date in determining the present value of lease payments. The incremental borrowing rate is the rate incurred to borrow on a collateralized basis over a similar term and amount equal to the lease payments in a similar economic environment. The operating lease ROU asset also includes any lease payments made in advance of lease expense and excludes lease incentives and initial direct costs incurred. Certain lease terms include options to terminate or extend the lease for periods of one to three years. The Company does not include these optional periods in its minimum lease terms or in the determination of the ROU assets and lease liabilities associated with these leases unless the options are reasonably certain to be exercised. Lease expense for minimum lease payments is recognized on a straight-line basis over the lease term. ROU assets are subject to evaluation for impairment or disposal on a basis consistent with other long-lived assets.

The Company has lease agreements with lease and non-lease components which the Company has elected to account for as a single lease component. On the lease commencement date, the Company establishes assets and liabilities for the present value of estimated future costs to retire long-lived assets at the termination or expiration of a lease. Such assets are depreciated over the lease term to operating expense.

**Capitalized Internal-Use Software Costs**

The Company capitalizes certain costs related to development of its platform incurred during the application development stage. Costs related to preliminary project activities and post-implementation activities are expensed as incurred. Maintenance and training costs are also expensed as incurred. Capitalized costs are included in property and equipment.

Capitalized internal-use software is amortized generally as subscription cost of revenue, with a smaller portion related to operations amortized as research and development within operating expenses. All capitalized internal-use software is amortized on a straight-line basis over its estimated useful life, which is generally three years. Management evaluates the useful lives of these assets on an annual basis and tests for impairment whenever events or changes in circumstances occur that could impact the recoverability of these assets.

**Goodwill and Intangible Assets**

Goodwill represents the excess of the purchase price in a business combination over the fair value of net tangible and intangible assets acquired. Goodwill and indefinite-lived intangible assets are not amortized, but rather tested for impairment at least annually on November 1 or more often if and when circumstances indicate that the carrying value may not be recoverable. Finite-lived intangible assets are amortized over their useful lives.

**Domo, Inc.**

**Notes to Condensed Consolidated Financial Statements (Continued)**

(unaudited)

**2. Summary of Significant Accounting Policies (Continued)**

Goodwill is tested for impairment based on reporting units. The Company periodically reevaluates the business and has determined that it continues to operate in one segment, which is also considered the sole reporting unit. Therefore, goodwill is tested for impairment at the consolidated level.

**Domo, Inc.**

**Notes to Condensed Consolidated Financial Statements (Continued)**

(unaudited)

**2. Summary of Significant Accounting Policies (Continued)**

The Company reviews its long-lived assets, including property and equipment, finite-lived intangible assets, and ROU assets for impairment whenever an event or change in facts and circumstances indicates that their carrying amounts may not be recoverable. Recoverability of these assets is measured by comparing the carrying amount to the estimated undiscounted future cash flows expected to be generated. If the carrying amount exceeds the undiscounted cash flows, the assets are determined to be impaired and an impairment charge is recognized as the amount by which the carrying amount exceeds fair value.

There was no goodwill acquired and no impairment charges for goodwill during the periods presented.

**Revenue Recognition**

The Company derives revenue primarily from subscription revenue, which consists of subscription-based agreements and, to a lesser extent, consumption-based agreements for its cloud-based platform. The Company also sells professional services. Revenue is recognized when control of these services is transferred to customers in an amount that reflects the consideration to which the Company expects to be entitled to in exchange for those services, net of sales taxes.

For sales through channel partners, the Company considers the channel partner to be the end customer for the purposes of revenue recognition as the Company's contractual relationships with channel partners do not depend on the sale of the Company's services to their customers and payment from the channel partner is not contingent on receiving payment from their customers. The Company's contractual relationships with channel partners do not allow returns, rebates, or price concessions.

Pricing is generally fixed at contract inception and therefore, the Company's contracts do not contain a significant amount of variable consideration.

Revenue recognition is determined through the following steps:

- Identification of the contract, or contracts, with a customer
- Identification of the performance obligations in the contract
- Determination of the transaction price
- Allocation of the transaction price to the performance obligations in the contract
- Recognition of revenue when, or as, performance obligations are satisfied

**Subscription Revenue**

Revenue from subscription-based agreements primarily consists of fees paid by customers to access the Company's cloud-based platform, including support services. The majority of the Company's subscription-based agreements have multi-year contractual terms and a smaller percentage have annual contractual terms. Revenue is recognized ratably over the related contractual term beginning on the date that the platform is made available to a customer. Access to the platform represents a series of distinct services as the Company continually provides access to and fulfills its obligation to the end customer over the subscription term. The series of distinct services represents a single performance obligation that is satisfied over time. The Company recognizes revenue ratably because the customer receives and consumes the benefits of the platform throughout the contract period. The Company's contracts are generally non-cancelable. Consumption-based agreements utilize a **tiered-pricing** **tiered pricing** structure for an

annual purchase commitment based upon an estimated volume of usage. Revenue from the annual purchase commitment in consumption-based contracts is also recognized ratably over the related contractual term of the contract. Amounts for the annual purchase commitments do not **carry over** beyond each annual commitment period.

## **Domo, Inc.**

### **Notes to Condensed Consolidated Financial Statements (Continued)**

*(unaudited)*

#### **2. Summary of Significant Accounting Policies (Continued)**

##### *Professional Services and Other Revenue*

Professional services revenue consists of implementation services sold with new subscriptions as well as professional services sold separately. Other revenue includes training and education. Professional services arrangements are billed in

## **Domo, Inc.**

### **Notes to Condensed Consolidated Financial Statements (Continued)**

*(unaudited)*

#### **2. Summary of Significant Accounting Policies (Continued)**

advance, and revenue from these arrangements is recognized as the services are provided, generally based on hours incurred. Training and education revenue is also recognized as the services are provided.

##### *Contracts with Multiple Performance Obligations*

Most of the Company's contracts with new customers contain multiple performance obligations, generally consisting of subscriptions and professional services. For these contracts, individual performance obligations are accounted for separately if they are distinct. The transaction price is allocated to the separate performance obligations on a relative standalone selling price basis. Standalone selling prices are determined based on historical standalone selling prices, taking into consideration overall pricing objectives, market conditions and other factors, including contract value, customer demographics, platform tier, and the number and types of users within the contract.

##### **Deferred Revenue**

The Company's contracts are typically billed annually in advance. Deferred revenue includes amounts collected or billed in excess of revenue recognized. Deferred revenue is recognized as revenue as the related performance obligations are satisfied. Deferred revenue that will be recognized during the succeeding twelve-month period is recorded as a current liability and the remaining portion is recorded as a noncurrent liability.

##### **Cost of Revenue**

Cost of subscription revenue consists primarily of third-party hosting services and data center capacity; employee-related costs directly associated with cloud infrastructure and customer support personnel, including salaries, benefits, bonuses and stock-based compensation; amortization expense associated with capitalized software development costs; depreciation expense associated with computer equipment and software; certain fees paid to various third parties for the use of their technology and services; and allocated overhead. Allocated overhead includes items such as information technology infrastructure, rent, and employee benefit costs.

Cost of professional services and other revenue consists primarily of employee-related costs associated with these services, including stock-based compensation; third-party consultant fees; and allocated overhead.

##### **Advertising Costs**

Advertising costs are expensed as incurred. Advertising expense was **\$3.0 million** **\$3.3 million** and **\$2.4 million** **\$2.3 million** for the three months ended **April 30, 2023** **July 31, 2023** and 2024, respectively, and **\$6.3 million** and **\$4.7 million** for the six months ended **July 31, 2023** and 2024, respectively.

##### **Research and Development**



Research and development expenses consist primarily of employee-related costs for the design and development of the Company's platform, contractor costs to supplement staff levels, third-party web services, consulting services, and allocated overhead. Research and development expenses, other than software development costs qualifying for capitalization, are expensed as incurred.

#### **Stock-Based Compensation**

The Company has granted stock-based awards, consisting of stock options and restricted stock units, to its employees, certain consultants and certain members of its board of directors. The Company records stock-based compensation based on the grant date fair value of the awards, which include stock options and restricted stock units, and recognizes the fair value of those awards as expense using the straight-line method over the requisite service period of the award.

**Domo, Inc.**

#### **Notes to Condensed Consolidated Financial Statements (Continued)**

*(unaudited)*

#### **2. Summary of Significant Accounting Policies (Continued)**

For restricted stock units that contain market conditions, the Company recognizes stock-based compensation based on the estimated grant date fair value of market condition awards using a Monte Carlo simulation, and the awards are expensed over the service period using an accelerated attribution method.

Stock-based compensation expense related to purchase rights issued under the 2018 Employee Stock Purchase Plan, as amended (ESPP) is based on the Black-Scholes option-pricing model fair value of the estimated number of awards as of the

**Domo, Inc.**

#### **Notes to Condensed Consolidated Financial Statements (Continued)**

*(unaudited)*

#### **2. Summary of Significant Accounting Policies (Continued)**

beginning of the offering period. Stock-based compensation expense is recognized using the straight-line method over the offering period.

#### **Income Taxes**

The Company accounts for income taxes in accordance with the liability method of accounting for income taxes. Under this method, the Company recognizes a liability or asset for the deferred income tax consequences of all temporary differences between the tax basis of assets and liabilities and their reported amounts in the condensed consolidated financial statements that will result in taxable or deductible amounts in future years when the reported amounts of the assets and liabilities are recovered or settled. These deferred income tax assets or liabilities are measured using the enacted tax rates that will be in effect when the differences are expected to affect taxable income.

Valuation allowances are provided when it is more-likely-than-not that some or all of the deferred income tax assets may not be realized. In assessing the need for a valuation allowance, the Company has considered its historical levels of income, expectations of future taxable income and ongoing tax planning strategies. Because of the uncertainty of the realization of its deferred tax assets, the Company has a full valuation allowance for domestic net deferred tax assets, including net operating loss carryforwards, and tax credits related primarily to research and development. Realization of its deferred tax assets is dependent primarily upon future U.S. taxable income.

Tax positions are recognized in the condensed consolidated financial statements when it is more-likely-than-not the position will be sustained upon examination by the tax authorities. The Company's policy for recording interest and penalties related to income taxes, including uncertain tax positions, is to record such items as a component of the provision for income taxes.

#### **Concentrations of Credit Risk and Significant Customers**

Financial instruments that potentially subject the Company to concentrations of credit risk consist primarily of cash, cash equivalents, restricted cash, and accounts receivable. Cash denominated in currencies other than the United States dollar represented 28% and 22% 21% of total cash, cash equivalents, and restricted cash as of January 31, 2024 and April 30, 2024 July 31, 2024, respectively.

The Company maintains its cash accounts with financial institutions where, at times, deposits exceed federal insured limits. The Company may invest its excess cash in money market funds, certificates of deposit, or in short-term investments consisting of highly-rated debt securities.

No single customer accounted for more than 10% of revenue for the three and six months ended April 30, 2023 July 31, 2023 and 2024 or more than 10% of accounts receivable as of January 31, 2024 and April 30, 2024 July 31, 2024.

The Company is primarily dependent upon third parties in order to meet the uptime and performance requirements of its customers. Any disruption of or interference with the Company's use of these third parties would impact operations.

**Net Loss per Share**

The Company computes net loss per share using the two-class method required for multiple classes of common stock and participating securities. The rights, including the liquidation and dividend rights, of the Class A common stock and Class B common stock are substantially identical, other than voting rights. Accordingly, the Class A common stock and Class B common stock share equally in the Company's net losses.

Domo, Inc.

Notes to Condensed Consolidated Financial Statements (Continued)

(unaudited)

2. Summary of Significant Accounting Policies (Continued)

Basic net loss per share is computed by dividing net loss by the weighted-average number of shares of common stock outstanding during the period. Diluted net loss per share is computed by dividing net loss attributable to common stockholders by the weighted-average number of shares of common stock outstanding during the period increased by common shares that could be issued upon conversion or exercise of other outstanding securities to the extent those additional common shares would be dilutive. The dilutive effect of potentially dilutive securities is reflected in diluted net loss per share by application of the treasury stock method. During periods when the Company is in a net loss position, basic net loss per share is the same as diluted net loss per share as the effects of potentially dilutive securities are anti-dilutive.

Domo, Inc.

Notes to Condensed Consolidated Financial Statements (Continued)

(unaudited)

2. Summary of Significant Accounting Policies (Continued)

Recent Accounting Pronouncements Pronouncements

In November 2023, the FASB issued ASU No. 2023-07, *Segment Reporting (Topic 280): Improvements to Reportable Segment Disclosures*, which requires additional operating segment disclosures in annual and interim consolidated financial statements. For public business entities, this ASU is effective for fiscal years beginning after December 15, 2023 and for interim periods beginning after December 15, 2024 on a retrospective basis, with early adoption permitted. The Company is currently evaluating the impact of adopting ASU 2023-07.

In December 2023, the FASB issued ASU No. 2023-09, *Income Taxes (Topic 740): Improvements to Income Tax Disclosures*, which requires disclosures of disaggregated income taxes paid and the effective tax rate reconciliation. For public business entities, this ASU is effective for fiscal years beginning after December 15, 2024 on a retrospective or prospective basis. The Company is currently evaluating the impact of adopting ASU 2023-09.

3. Cash, Cash Equivalents, and Restricted Cash

The amortized cost and estimated fair value of the Company's cash, and cash equivalents, and restricted cash as of January 31, 2024 and April 30, 2024 July 31, 2024 were as follows (in thousands):

January 31, 2024			
Amortized Cost	Unrealized Gain	Unrealized Loss	Estimated Fair Value

Cash	\$	45,297	\$	—	\$	—	\$	45,297
Cash equivalents:								
Money market funds		11,942		—		—		11,942
Restricted cash <sup>(1)</sup>		3,700		—		—		3,700
Total cash, cash equivalents, and restricted cash	\$	60,939	\$	—	\$	—	\$	60,939

	April 30, 2024					July 31, 2024				
	Amortized Cost	Amortized Cost	Unrealized Gain	Unrealized Loss	Estimated Fair Value	Amortized Cost	Unrealized Gain	Unrealized Loss	Estimated Fair Value	
Cash										
Cash equivalents:										
Money market funds										
Money market funds										
Money market funds										
Restricted cash <sup>(1)</sup>										
Restricted cash <sup>(1)</sup>										
Restricted cash <sup>(1)</sup>										
Total cash, cash equivalents, and restricted cash										

(1) Related to an outstanding letter of credit. See Footnote 12 "Commitments and Contingencies" for further details regarding this letter of credit.

Domo, Inc.

Notes to Condensed Consolidated Financial Statements (Continued)

(unaudited)

4. Fair Value Measurements

Assets Measured at Fair Value on a Recurring Basis

Financial instruments recorded at fair value in the financial statements are categorized as follows:

- Level 1: Observable inputs that reflect quoted prices for identical assets or liabilities in active markets.
- Level 2: Observable inputs, other than Level 1 prices, such as quoted prices for similar assets or liabilities, quoted prices in markets that are not active or other inputs that are observable or can be corroborated by observable market data for substantially the full term of the assets or liabilities.

Domo, Inc.

Notes to Condensed Consolidated Financial Statements (Continued)

(unaudited)

4. Fair Value Measurements (Continued)

- Level 3: Unobservable inputs reflecting management's assumptions incorporated in valuation techniques used to determine fair value. These assumptions are required to be consistent with market participant assumptions that are reasonably available.

The following tables summarize the assets measured at fair value on a recurring basis as of January 31, 2024 and April 30, 2024 July 31, 2024 by level within the fair value hierarchy (in thousands):

	January 31, 2024			
	Level 1	Level 2	Level 3	Total
Cash equivalents:				
Money market funds	\$ 11,942	\$ —	\$ —	\$ 11,942
Total cash equivalents	\$ 11,942	\$ —	\$ —	\$ 11,942

	April 30, 2024					July 31, 2024				
	Level 1	Level 1	Level 2	Level 3	Total	Level 1	Level 2	Level 3	Total	
Cash equivalents:										
Money market funds										
Money market funds										
Money market funds										
Total cash equivalents										
Total cash equivalents										
Total cash equivalents										
Financial liability:										
Financial liability:										
Financial liability:										
Warrants										
Warrants										
Warrants										

Level 3 instruments consisted of a liability related to warrants to purchase Class B common stock, which were issued in connection with the credit facility. See Note 11 "Debt" for further details surrounding this issuance. The warrant liability was recorded at fair value upon issuance and is remeasured at each subsequent quarterly period end date as long as the warrants are outstanding. Generally, increases (decreases) in the fair value of the underlying stock and estimated term would result in a directionally similar impact to the fair value measurement, and are recognized in other income (expense), net in the condensed consolidated statements of operations.

The changes in the fair value of the warrant liability were as follows (in thousands):

Balance as of January 31, 2024	\$	—
Issuance of Class B common stock warrants		2,222
DecreaseChange in fair value of Class B common stock warrants		(566) (423)
Balance as of April 30, 2024 July 31, 2024	\$	1,656 1,799

The value of the warrant liabilities are estimated using the Black-Scholes option-pricing model with the following assumptions:

Domo, Inc.

Notes to Condensed Consolidated Financial Statements (Continued)

(unaudited)

4. Fair Value Measurements (Continued)

	Three months ended April 30, 2024	Six months ended July 31, 2024
Expected stock price volatility	73%	72% - 79%
Expected term	3.8	3.6 - 4.0 years
Risk-free interest rate	4.36%	4.04% - 4.80%
Expected dividend yield	—	

During the three and six months ended April 30, 2024, July 31, 2023 and 2024, the Company had no transfers between levels of the fair value hierarchy of its assets and liabilities measured at fair value.

## Domo, Inc.

### Notes to Condensed Consolidated Financial Statements (Continued)

(unaudited)

#### 4. Fair Value Measurements (Continued)

##### Fair Value of Other Financial Instruments

The carrying amounts of certain financial instruments, including cash held in banks, accounts receivable, accounts payable, accrued liabilities, and other liabilities approximate fair value due to their short-term maturities and are excluded from the fair value tables above.

#### 5. Property and Equipment

Property and equipment, net consisted of the following (in thousands):

	As of January 31, 2024	As of January 31, 2023	As of April 30, 2024	As of January 31, 2024	As of July 31, 2024
				2024	
Capitalized internal-use software development costs	\$55,018	\$57,014	\$ 55,018	\$ 59,522	
Computer equipment and software	1,997	1,985	1,997	2,021	
Leasehold improvements	3,949	4,273	3,949	4,352	
Furniture, vehicles and office equipment	1,158	1,636	1,158	1,739	
	62,122	62,122	64,908	62,122	67,634
Less accumulated depreciation and amortization					
	\$	\$ 27,003	\$ 27,240	\$ 27,003	\$ 27,195

Depreciation and amortization expense related to property and equipment was \$1.5 million \$1.6 million and \$2.2 million \$2.4 million for the three months ended April 30, 2023 July 31, 2023 and 2024, respectively, and \$3.1 million and \$4.6 million for the six months ended July 31, 2023 and 2024, respectively.

The Company capitalized \$2.6 million \$2.8 million and \$2.1 million \$2.6 million in software development costs during the three months ended April 30, 2023 July 31, 2023 and 2024, respectively, and \$5.4 million and \$4.7 million during the six months ended July 31, 2023 and 2024, respectively. Amortization of capitalized software development costs was \$1.3 million and \$1.8 million \$2.0 million for the three months ended April 30, 2023 July 31, 2023 and 2024, respectively.

## 6. Intangible Assets

Intangible assets consisted of the following (in thousands):

	As of January 31, 2024	As of April 30, 2024
Intellectual property excluding patents	\$ 2,484	\$ 2,437
Patents	950	950
	3,434	3,387
Less accumulated amortization	(694)	(837)
	<u>\$ 2,740</u>	<u>\$ 2,550</u>

Amortization expense related to intangible assets was \$20,000 respectively, and \$0.1 million \$2.6 million and \$3.8 million for the three six months ended April 30, 2023 July 31, 2023 and 2024, respectively. The patents were acquired and are being amortized over a weighted-average remaining useful life of approximately 3.0 years. Intellectual property excluding patents is being amortized over a remaining useful life of 4.8 years.

Domo, Inc.

## Notes to Condensed Consolidated Financial Statements (Continued)

(unaudited)

## 6. Intangible Assets

Intangible assets consisted of the following (in thousands):

	As of January 31, 2024	As of July 31, 2024
Intellectual property excluding patents	\$ 2,484	\$ 2,437
Patents	950	950
	3,434	3,387
Less accumulated amortization	(694)	(978)
	<u>\$ 2,740</u>	<u>\$ 2,409</u>

Amortization expense related to intangible assets was \$20,000 and \$0.1 million for the three months ended July 31, 2023 and 2024, respectively, and \$40,000 and \$0.3 million for the six months ended July 31, 2023 and 2024. The patents were acquired and are being amortized over a weighted-average remaining useful life of approximately 2.8 years. Intellectual property excluding patents is being amortized over a remaining useful life of 4.5 years.

## 7. Accrued Expenses and Other Current Liabilities

Accrued expenses and other current liabilities consisted of the following (in thousands):

	As of January 31, 2024	As of April 30, 2024
Accrued expenses	\$ 16,284	\$ 20,357
Accrued payroll and benefits	4,541	3,583

Accrued commissions	4,677	3,071
Accrued bonus	8,057	2,548
Accrued payroll taxes	2,475	2,240
Employee stock purchase plan liability	1,826	1,782
Sales and other taxes payable	1,339	610
Other accrued liabilities	4,231	6,948
	<u>\$ 43,430</u>	<u>\$ 41,139</u>

	As of January 31, 2024	As of July 31, 2024
Accrued expenses	\$ 16,284	\$ 15,908
Accrued bonus	8,057	4,787
Accrued commissions	4,677	4,207
Accrued payroll and benefits	4,541	4,187
Accrued payroll taxes	2,475	2,793
Employee stock purchase plan liability	1,826	1,507
Sales and other taxes payable	1,339	897
Other accrued liabilities	4,231	4,718
	<u>\$ 43,430</u>	<u>\$ 39,004</u>

## 8. Leases

The Company leases office space under non-cancelable operating leases with various expiration dates through 2027. These leases require monthly lease payments that may be subject to annual increases throughout the lease term.

Components of lease expense are summarized as follows (in thousands):

		Three Months Ended April 30,							
		2023	2024						
		Three Months Ended July 31,		Six Months Ended July 31,					
		2023	2024	2023	2024				
Operating lease expense									
Short-term lease expense									
Total lease expense	Total lease expense	<u>\$ 1,899</u>	<u>\$ 1,780</u>	Total lease expense	<u>\$ 1,923</u>	<u>\$ 1,748</u>	<u>\$3,822</u>	<u>\$3,528</u>	

Lease term and discount rate information are summarized as follows:

	As of April 30, 2024
Weighted average remaining lease term (years)	2.9
Weighted average discount rate	10.7%

Domo, Inc.

Notes to Condensed Consolidated Financial Statements (Continued)

(unaudited)

8. Leases (Continued)

	As of July 31, 2024
Weighted average remaining lease term (years)	2.6
Weighted average discount rate	10.7%

Maturities of lease liabilities as of April 30, 2024 July 31, 2024 were as follows (in thousands):

Year Ending January 31:			
2025 <sup>(1)</sup>			
2025 <sup>(1)</sup>			
2025 <sup>(1)</sup>		\$ 4,984	\$ 3,460
2026	2026	6,042	5,888
2027	2027	5,417	5,417
2028	2028	1,797	1,797
Total lease payments	Total lease payments	18,240	16,562
Less imputed interest			
Present value of lease liabilities	Present value of lease liabilities	\$ 15,704	\$ 14,707

(1) Net of \$0.2 million of tenant improvements which are expected to be utilized in fiscal 2025.

Cash paid for operating leases was \$1.7 million \$1.8 million and \$1.7 million \$1.6 million during the three months ended April 30, 2023 July 31, 2023 and 2024, respectively, and \$3.5 million and \$3.3 million during the six months ended July 31, 2023 and 2024, respectively, and was included in net cash used in operating activities in the condensed consolidated statements of cash flows.

The Company has entered into sublease agreements with various expiration dates through 2027. Under these agreements, the Company expects to receive sublease income of approximately \$6.0 million \$5.5 million as of April 30, 2024 July 31, 2024. Sublease income was \$0.4 million and \$0.2 million for \$0.4 million during the three months ended April 30, 2023 July 31, 2023 and 2024, 2024, respectively. Sublease income was \$0.9 million and \$0.6 million during the six months ended July 31, 2023 and 2024, respectively.

9. Deferred Revenue and Performance Obligations

Deferred Revenue

Significant changes in the Company's deferred revenue balance for the three six months ended April 30, 2024 July 31, 2024 were as follows (in thousands):

Balance as of January 31, 2024	\$ 187,986
Revenue recognized that was included in the deferred revenue balance at the beginning of the period	(67,508) (120,148)
Increase due to billings excluding amounts recognized as revenue during the period	52,901 95,760
Balance as of April 30, 2024 July 31, 2024	\$ 173,379 163,598

Transaction Price Allocated to Remaining Performance Obligations

Transaction price allocated to remaining performance obligations represents the remaining amount of revenue the Company expects to recognize from existing non-cancelable contracts, whether billed or unbilled. As of April 30, 2024 July 31, 2024, approximately \$329.2 million \$343.0 million of



revenue was expected to be recognized from remaining performance obligations for subscription contracts. The Company expects to recognize approximately \$215.7 million \$211.4 million of this amount during the twelve months following April 30, 2024 July 31, 2024, with the balance recognized thereafter. As of April 30, 2024 July 31, 2024, approximately \$17.1 million \$15.9 million of revenue was expected to be recognized from remaining performance obligations for professional services and other contracts, \$14.8 million \$14.0 million of which is expected to be recognized during the twelve months following April 30, 2024 July 31, 2024, and the balance recognized thereafter.

Domo, Inc.  
Notes to Condensed Consolidated Financial Statements (Continued)  
(unaudited)

10. Geographic Information

Revenue by geographic area is determined by the billing address of the customer. The following table sets forth revenue by geographic area (in thousands):

	Three Months Ended		Three Months Ended				Six Months Ended					
	April 30,		July 31,				July 31,					
	2023	2024	2023		2024		2023		2024			
United States												
International												
International												
International												
Total												
Percentage of revenue by geographic area:												
United States												
United States												
United States	79	%	80	%	79	%	80	%	79	%	80	%
International												
International												
International	21	%	20	%								

Other than the United States, no other individual country exceeded 10% of total revenue for the three and six months ended April 30, 2023 July 31, 2023 and 2024. As of April 30, 2024 July 31, 2024, substantially all of the Company's property and equipment was located in the United States.

11. Debt

Credit Facility

The Company has a credit facility that permits up to \$100.0 million in term loan borrowings, all of which had been drawn as of April 30, 2024 July 31, 2024. The credit facility is secured by substantially all of the Company's assets.

In February 2024, the Company entered into an amendment to the credit facility which extended the maturity date for the outstanding loan from April 1, 2025 to April 1, 2026 and made certain modifications to the financial covenants. In conjunction with this amendment, the Company issued fully-vested warrants to purchase Class B common stock. See Note 13 "Stockholders' Deficit" for further details regarding Class B common stock warrants. Warrants issued in connection with the credit facility were recorded as an increase to other accrued liabilities with a corresponding increase to debt issuance costs. Related interest expense is recognized in other expense, net in the condensed consolidated statements of operations using the effective interest method.

The credit facility requires interest-only payments on a portion of the accrued interest until the maturity date. This payable portion of the interest accrues on the outstanding principal of the term loan and is due in cash on a monthly basis, which, as of April 30, 2024 July 31, 2024, accrued at a floating rate equal to the greater of (1) 7.0% and (2) Adjusted Term SOFR plus 5.5% per year. Adjusted Term SOFR is defined as the greater of (a) 0.0% and (b) Term SOFR plus 0.26161%. In the event that SOFR is unavailable, interest will accrue at a floating rate equal to the greater of (1) 7.0% and (2) the Alternate Base Rate plus 2.75% per year. The Alternate Base Rate is defined as the greatest of (a) the Prime Rate (b) Federal Funds Effective Rate plus 0.5% and (c) Adjusted Term SOFR. The Federal Funds Effective rate is defined as the rate published by the Federal Reserve System as the overnight rate, or, if such rate is not so published, the average of the quotations for the day for such transaction received by Administrative Agent from three Federal funds brokers. As of April 30, 2024 July 31, 2024, the interest rate was approximately 11.1%. In addition to the 11.1% interest rate, a fixed rate equal to 2.5% per year accrues on the outstanding principal of the term loan. This capitalized portion of the interest is added to the principal amount of the outstanding term loan on a monthly basis and is due upon maturity. During the three months ended April 30, 2023 July 31, 2023 and 2024, \$0.7 million and \$0.7 million of interest was capitalized, respectively, and \$1.4 million and \$1.4 million of interest was capitalized during the six months ended July 31, 2023 and 2024, respectively.

The credit facility requires a closing fee of \$7.0 million to be paid on the earliest of (1) the date the term loan is prepaid, (2) the term loan maturity date, which is April 1, 2026, and (3) the date the term loan becomes due and payable. Additionally, the Company entered into an amendment in August 2020 that included an amendment fee of \$5.0 million, which accrues interest at a rate of 9.5% per year and is due upon maturity. Due to the long-term nature of these fees, they were recorded at present value as an increase to other liabilities, noncurrent and an increase to debt issuance costs. These liabilities will be

## Domo, Inc.

### Notes to Condensed Consolidated Financial Statements (Continued)

(unaudited)

#### 11. Debt (Continued)

present value as an increase to other liabilities, noncurrent and an increase to debt issuance costs. These liabilities will be accreted to their full value over the term of the loan, with such accretion recorded as interest expense in other expense, net in the condensed consolidated statements of operations. Debt issuance costs are presented as an offset to the outstanding principal balance of the term loans loan on the condensed consolidated balance sheets and are being amortized as interest expense in other expense, net in the condensed consolidated statements of operations over the term of the loan using the effective interest rate method.

The balances in long-term debt consisted of the following (in thousands):

	As of January 31,	As of January 31,	As of April 30,	As of January 31,	As of July 31,
				2024	
Principal					
Less: unamortized debt issuance costs					
Net carrying amount					

The credit facility contains customary conditions to borrowing, events of default and covenants, including covenants that restrict the Company's ability to dispose of assets, make material changes to the nature, control or location of the business, merge with or acquire other entities, incur indebtedness or encumbrances, make distributions to holders of the Company's capital stock, make certain investments or enter into transactions with affiliates. In addition, the Company is required to comply with a minimum annualized recurring revenue financial covenant, tested quarterly. The credit facility defines annualized recurring revenue as four times the Company's aggregate revenue for the immediately preceding quarter (net of recurring discounts and discounts for periods greater than one year) less the annual contract value of any customer contracts pursuant to which the Company was advised during such quarter would not be renewed at the end of the current term plus the annual contract value of existing customer contract increases during such quarter. The Company is also required to comply with a minimum trailing 12-month consolidated EBITDA (as defined by the credit facility) covenant, which is tested quarterly, and adhere to a \$15.0 million monthly minimum liquidity covenant. Noncompliance with these covenants, or the occurrence of certain other events specified in the credit facility, could result in an event of default under the loan agreement. If an event of default has occurred and the Company is unable to obtain a waiver, any outstanding principal, interest and fees could become immediately due and payable. The Company was in compliance with the covenant terms of the credit facility on January 31, 2024 and April 30, 2024 July 31, 2024.

The Company incurred interest expense of \$4.5 million \$4.8 million and \$4.7 million \$4.9 million for the three months ended April 30, 2023 July 31, 2023 and 2024, respectively, and \$9.3 million and \$9.6 million for the six months ended July 31, 2023 and 2024, respectively.

#### **Short-term Payable Financing**

In July 2024, the Company entered into a short-term payable financing agreement pursuant to which the counterparty assumes responsibility for payables for approximately 30-60 days to designated suppliers at the discretion of the Company. As of July 31, 2024, there are \$2.8 million outstanding obligations related to these structure payables. During the six months ended July 31, 2024, no interest expense was recognized related to this agreement.

## **12. Commitments and Contingencies**

### **Litigation**

Liabilities for loss contingencies arising from claims, assessments, litigation, fines, and penalties and other sources are recorded when it is probable that a liability has been incurred and the amount can be reasonably estimated. Legal costs incurred in connection with loss contingencies are expensed as incurred.

The Company is involved in legal proceedings from time to time arising in the normal course of business. Management believes that the outcome of these proceedings will not have a material impact on the Company's financial condition, results of operations, or liquidity.

**Domo, Inc.**

### **Notes to Condensed Consolidated Financial Statements (Continued)**

*(unaudited)*

## **12. Commitments and Contingencies (Continued)**

### **Warranties and Indemnification**

The Company's subscription services are generally warranted to perform materially in accordance with the terms of the applicable customer service order under normal use and circumstances. Additionally, the Company's arrangements generally include provisions for indemnifying customers against liabilities if its subscription services infringe a third party's intellectual property rights. Furthermore, the Company may also incur liabilities if it breaches the security or confidentiality obligations in its arrangements. To date, the Company has not incurred significant costs and has not accrued a liability in the accompanying condensed consolidated financial statements as a result of these obligations.

**Domo, Inc.**

### **Notes to Condensed Consolidated Financial Statements (Continued)**

*(unaudited)*

## **12. Commitments and Contingencies (Continued)**

The Company has entered into service-level agreements with some of its customers defining levels of uptime reliability and performance and permitting those customers to receive credits for prepaid amounts related to unused subscription services if the Company fails to meet certain of the defined service levels. In very limited instances, the Company allows customers to early terminate their agreements if the Company repeatedly or significantly fails to meet those levels. If the Company repeatedly or significantly fails to meet contracted upon service levels, a contract may require a refund of prepaid unused subscription fees. To date, the Company has not experienced any significant failures to meet defined levels of uptime reliability and performance as set forth in its agreements and, as a result, the Company has not accrued any liabilities related to these agreements in the condensed consolidated financial statements.

### **Letter of Credit**

In conjunction with a September 2022 amendment to an existing lease agreement, the Company provided a \$3.7 million letter of credit to secure the Company's obligations to pay the landlord for the cost of improvements in excess of the landlord's contribution. No draws have been made on the letter of credit. The letter of credit renewed in September 2023 and expires December 2024. The amount underlying such letter of credit is reflected as

restricted cash under cash, cash equivalents, and restricted cash in the Company's condensed consolidated balance sheets as of April 30, 2024 July 31, 2024.

#### **Other Purchase Commitments**

The Company has also entered into certain non-cancelable contractual commitments related to cloud infrastructure services in the ordinary course of business. There have been no material changes in these commitments as disclosed in the Annual Report on Form 10-K.

### **13. Stockholders' Deficit**

#### **Preferred Stock**

The Company's Board of Directors has the authority, without further action by the Company's stockholders, to issue up to 10,000,000 shares of preferred stock in one or more series and to fix the rights, preferences, and privileges thereof, including voting rights. As of January 31, 2024 and April 30, 2024 July 31, 2024, no shares of preferred stock were issued and outstanding.

#### **Common Stock**

The Company has two classes of common stock, Class A and Class B. Each share of Class A common stock is entitled to 40 votes per share and is convertible at any time into one share of Class B common stock. Each share of Class A common stock will convert automatically into one share of Class B common stock upon any transfer, whether or not for value. Each share of Class B common stock is entitled to one vote per share. Holders of 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 or the Company's certificate of incorporation. Subject to preferences that may be applicable to any then-outstanding preferred stock, holders of Class A common stock and Class B common stock are entitled to receive dividends, if any, as may be declared by the Company's board of directors.

At January 31, 2024 and April 30, 2024 July 31, 2024, there were 3,263,659 shares of Class A common stock authorized, issued and outstanding.

#### **Domo, Inc.**

#### **Notes to Condensed Consolidated Financial Statements (Continued)**

(unaudited)

### **13. Stockholders' Deficit (Continued)**

At January 31, 2024 and April 30, 2024 July 31, 2024, there were 500,000,000 shares of Class B common stock authorized. At January 31, 2024 and April 30, 2024 July 31, 2024, there were 33,655,756 and 34,910,757 35,367,207 shares of Class B common stock issued and outstanding, respectively.

#### **Class B Common Stock Warrants**

In connection with a line of credit signed in July 2016, the Company issued warrants to purchase shares of Class B common stock. As of April 30, 2024 July 31, 2024, there were 3,333 shares of Class B common stock subject to issuance under outstanding warrants, which are exercisable at \$34.35 per share.

#### **Domo, Inc.**

#### **Notes to Condensed Consolidated Financial Statements (Continued)**

(unaudited)

### **13. Stockholders' Deficit (Continued)**

In connection with the credit facility, the Company issued warrants to purchase shares of Class B common stock. As of April 30, 2024 July 31, 2024, there were 189,036 shares of Class B common stock subject to issuance under outstanding warrants, which are exercisable at \$0.01 per share.

### **14. Equity Incentive Plans**

In April 2011, the Company established the 2011 Equity Incentive Plan (2011 Plan), which was amended in September 2011 to provide for the issuance of stock options and other stock-based awards. In June 2018, the Company adopted the 2018 Equity Incentive Plan (2018 Plan). The 2018 Plan provides for the grant of incentive and nonstatutory stock options, restricted stock, RSUs, stock appreciation rights, performance units, and performance shares to employees, consultants, and members of the Company's board of directors.

The number of shares available for issuance under the 2018 Plan includes an annual increase on the first day of each fiscal year equal to the least of: (1) 3,500,000 shares; (2) 5% of the outstanding shares of Class A and Class B common stock as of the last day of the immediately preceding fiscal year; and (3) such other amount as the Company's board of directors may determine no later than the last day of the immediately preceding year. During the **three** **six** months ended **April 30, 2024** **July 31, 2024**, the number of shares available for grant under the 2018 Plan was increased by 1,845,970 shares. As of **April 30, 2024** **July 31, 2024**, there were **4,613,392** **3,041,608** shares available for grant under the 2018 Plan.

In connection with the IPO, the 2011 Plan was terminated. With the establishment of the 2018 Plan, the Company no longer grants equity-based awards under the 2011 Plan and any shares that expire, terminate, are forfeited or repurchased by the Company, or are withheld by the Company to cover tax withholding obligations, under the 2011 Plan, will become available for future grant under the 2018 Plan.

The Company recognized stock-based compensation expense related to its equity incentive plans as follows (in thousands):

	Three Months Ended April 30,	
	2023	2024
Cost of revenue:		
Subscription	\$ 618	\$ 798
Professional services and other	479	333
Sales and marketing	6,730	5,314
Research and development	4,975	4,422
General and administrative	3,508	3,084
Interest expense	162	191
Total	<u>\$ 16,472</u>	<u>\$ 14,142</u>

	Three Months Ended July 31,		Six Months Ended July 31,	
	2023	2024	2023	2024
Cost of revenue:				
Subscription	\$ 670	\$ 807	\$ 1,288	\$ 1,605
Professional services and other	473	314	952	647
Sales and marketing	6,166	5,170	12,896	10,484
Research and development	4,618	4,069	9,593	8,491
General and administrative	2,960	5,911	6,468	8,995
Other expense, net	173	202	335	393
Total	<u>\$ 15,060</u>	<u>\$ 16,473</u>	<u>\$ 31,532</u>	<u>\$ 30,615</u>

## Domo, Inc.

### Notes to Condensed Consolidated Financial Statements (Continued)

(unaudited)

#### 14. Equity Incentive Plans (Continued)

##### Stock Options

Stock options typically vest over a four-year period and have a term of ten years from the date of grant. There were no stock options granted during the three and six months ended April 30, 2023 July 31, 2023 and April 30, 2024 the three and six months ended July 31, 2024.

The following table sets forth the outstanding common stock options and related activity for the three six months ended April 30, 2024 July 31, 2024:

	Shares	Shares	Weighted-			Shares	Weighted-		
	Subject to Outstanding Options	Subject to Outstanding Options	Average Exercise Price per Share			Subject to Outstanding Options	Average Exercise Price per Share		
				Weighted-Average Remaining Contractual Term (years)	Aggregate Intrinsic Value (in thousands)			Weighted- Average Remaining Contractual Term (years)	Aggregate Intrinsic Value (in thousands)
Outstanding as of January 31, 2024									
Expired									
Expired									
Expired									
Outstanding as of April 30, 2024									
Outstanding as of April 30, 2024									
Outstanding as of April 30, 2024									
Outstanding as of July 31, 2024									
Outstanding as of July 31, 2024									
Outstanding as of July 31, 2024									

The aggregate intrinsic value of options exercised was \$0 million during \$0.0 million for the three and six months ended April 30, 2023, and there July 31, 2023. No options were no options exercised during the three and six months ended April 30, 2024 July 31, 2024.

The intrinsic value represents the excess of the market closing price of the Company's common stock on the date of exercise over the exercise price of each option. The intrinsic value of options as of April 30, 2024 July 31, 2024 is based on the market closing price of the Company's Class B common stock on that date.

As of April 30, 2024 July 31, 2024, all outstanding stock options were vested and exercisable and stock-based compensation expense related to all outstanding stock options has been recognized.

### Restricted Stock Units

Restricted stock units (RSUs) granted under the Plan primarily vest and settle upon the satisfaction of a service-based condition. The service-based condition for these awards is generally satisfied over three or four years with a cliff vesting period of one or two years and quarterly vesting thereafter. RSUs include performance-based restricted stock units (PSUs), which are subject to a market condition and settle upon the satisfaction of a service-based condition. Disclosures related to RSU activity include the impact of PSUs.

The following table sets forth the outstanding RSUs and related activity for the three six months ended April 30, 2024 July 31, 2024:

	Number of Shares	Weighted- Average Grant
		Date Fair Value
Outstanding as of January 31, 2024	4,726,290	\$ 25.61
Granted	2,835,754	7.93
Vested	(1,598,449)	24.98
Canceled	(238,929)	28.16

Outstanding as of July 31, 2024	5,724,666	\$	17.70
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	Number of Shares		Weighted- Average Grant Date Fair Value
Outstanding as of January 31, 2024	4,726,290	\$	25.61
Granted	441,694		10.54
Vested	(1,111,795)		22.32
Canceled	(64,061)		49.03
Outstanding as of April 30, 2024	3,992,128	\$	25.25

As of April 30, 2024 July 31, 2024, there was \$87.1 million \$89.4 million of unrecognized stock-based compensation expense related to outstanding RSUs which is expected to be recognized over a weighted-average period of 2.1 2.3 years.

## Domo, Inc.

### Notes to Condensed Consolidated Financial Statements (Continued)

(unaudited)

#### 14. Equity Incentive Plans (Continued)

##### Employee Stock Purchase Plan

In June 2018, the Company's board of directors adopted the ESPP. The number of shares of Class B common stock available for issuance under the ESPP increases on the first day of each fiscal year equal to the least of: (1) 1,050,000 shares of Class B common stock, (2) 1.5% of the outstanding shares of Class A and Class B common stock of the Company on the last day of the immediately preceding fiscal year, and (3) such other amount as the administrator of the ESPP may determine on or before the last day of the immediately preceding year. During the three six months ended April 30, 2024 July 31, 2024, the number of shares available under the ESPP was increased by 553,791 shares. As of April 30, 2024 July 31, 2024, there were 601,136 shares available under the ESPP.

The ESPP generally provides for consecutive overlapping 12-month offering periods comprising two six-month purchase periods. The offering periods are scheduled to start on the first trading day on or after April 1 and October 1 of each year. The ESPP is intended to qualify as a tax-qualified plan under Section 423 of the Internal Revenue Code and permits participants to elect to purchase shares of Class B common stock through payroll deductions of up to 25% of their eligible compensation. Under the ESPP, a participant may purchase a maximum of 300 shares during each purchase period.

Amounts deducted and accumulated by the participant will be used to purchase shares of Class B common stock at the end of each purchase period. The purchase price of the shares will be 85% of the lower of the fair market value of Class B common stock on the first trading day of each offering period or the fair market value of Class B common stock on the applicable exercise date. If the fair market value of a share of Class B common stock on the exercise date of an offering period is less than it was on the first trading day of that offering period, participants automatically will be withdrawn from that offering period following their purchase of shares on the exercise date and will be re-enrolled in a new offering period. Participants may end their participation at any time during an offering period and will be paid their accrued contributions that have not yet been used to purchase shares of Class B common stock. Participation ends automatically upon termination of employment.

As of April 30, 2024 July 31, 2024, a total of approximately 328,820 311,090 shares were issuable to employees based on estimated shares available and contribution elections made under the ESPP. Estimated shares available were estimated assuming that the plan will be increased by an amount approximating 1.5% of shares outstanding as of January 31, 2025. As of April 30, 2024 July 31, 2024, total unrecognized stock-based compensation related to the ESPP was \$0.9 million \$0.5 million, which is expected to be recognized over a weighted-average period of 0.8 0.5 years.

#### 15. Income Taxes

The Company calculated the year-to-date income tax provision by applying the estimated annual effective tax rate to the year-to-date pre-tax income for each applicable jurisdiction and adjusted for discrete tax items in the period. The Company's tax expense was \$0.2 \$0.3 million and \$0.1 \$0.3 million for the three months ended April 30, 2023 July 31, 2023 and 2024, respectively, and \$0.5 million and \$0.4 million for the six months ended July 31, 2023 and 2024, respectively. The income tax for these periods was primarily attributable to foreign and state taxes.

For the periods presented, the difference between the U.S. statutory rate and the Company's effective tax rate is primarily due to the full valuation allowance on its U.S. tax assets. The effective tax rate is also impacted by earnings realized in foreign jurisdictions.

## 16. Net Loss Per Share

The Company computes net loss per share using the two-class method required for multiple classes of common stock and participating securities. The rights, including the liquidation and dividend rights, of the Class A common stock and Class B common stock are substantially identical, other than voting rights. Accordingly, the Class A common stock and Class B common stock share equally in the Company's net losses.

### Domo, Inc.

#### Notes to Condensed Consolidated Financial Statements (Continued)

(unaudited)

## 16. Net Loss Per Share (Continued)

The following table sets forth the calculation of basic and diluted net loss per share during the periods presented (in thousands, except per share amounts):

	Three Months Ended April 30,			
	2023		2024	
	Class A	Class B	Class A	Class B
Numerator:				
Net loss	\$ (2,261)	\$ (22,142)	\$ (2,265)	\$ (23,742)
Denominator:				
Weighted-average number of shares used in computing net loss per share, basic and diluted	3,264	31,958	3,264	34,218
Net loss per share, basic and diluted	\$ (0.69)	\$ (0.69)	\$ (0.69)	\$ (0.69)

### Domo, Inc.

#### Notes to Condensed Consolidated Financial Statements (Continued)

(unaudited)

## 16. Net Loss Per Share (Continued)

	Three Months Ended July 31,			
	2023		2024	
	Class A	Class B	Class A	Class B
Numerator:				
Net loss	\$ (1,462)	\$ (14,606)	\$ (1,657)	\$ (17,833)
Denominator:				
Weighted-average number of shares used in computing net loss per share, basic and diluted	3,264	32,620	3,264	35,125
Net loss per share, basic and diluted	\$ (0.45)	\$ (0.45)	\$ (0.51)	\$ (0.51)

Six Months Ended July 31,



	2023		2024	
	Class A	Class B	Class A	Class B
Numerator:				
Net loss	\$ (3,715)	\$ (36,756)	\$ (3,914)	\$ (41,583)
Denominator:				
Weighted-average number of shares used in computing net loss per share, basic and diluted	3,264	32,294	3,264	34,679
Net loss per share, basic and diluted	<u>\$ (1.14)</u>	<u>\$ (1.14)</u>	<u>\$ (1.20)</u>	<u>\$ (1.20)</u>

Since the Company was in a loss position for all periods presented, basic net loss per share is the same as diluted net loss per share for all periods as the inclusion of all potential common shares outstanding would have been anti-dilutive. The weighted-average impact of potentially dilutive securities that were not included in the diluted per share calculations because they would be anti-dilutive was as follows (in thousands):

	Three Months Ended April 30,		Three Months Ended July 31,		Six Months Ended July 31,			
	2023		2023	2024	2023	2024	2023	2024
Options to purchase common stock								
Options to purchase common stock								
Options to purchase common stock								
Restricted stock units								
Employee stock purchase program								
Common stock warrants								
							72	
							260	

## 17. Subsequent Events

In August 2024, the Company entered into an amendment to the credit facility to, among other things, (1) refinance certain credit extensions, (2) extend the maturity date of the outstanding loans, (3) revise interest amounts payable in cash and payable in kind, and (4) modify the financial covenants.

In connection with the amendment, the Company issued to the lenders warrants to purchase an aggregate of 1,022,918 shares of the Company's Class B common stock, at an exercise price of \$0.01 per share (the "Warrants"). The Warrants

**Domo, Inc.**

## Notes to Condensed Consolidated Financial Statements (Continued)

(unaudited)

## 17. Subsequent Events (Continued)

expire on August 19, 2028 (the "Expiration Date"). The lenders may (1) exercise the Warrants at any time prior to the Expiration Date pursuant to the terms of the Warrants for the number of shares of Class B common stock purchased upon such exercise or (2) in lieu of exercising such Warrant, convert the Warrants, in whole or in part, into the number of shares of Class B common stock pursuant to the terms of the Warrants prior to the Expiration Date. The Company also paid and subsequently refinanced the \$7.0 million closing fee related to the credit facility that came due, resulting in no net impact to the Company's cash balance.

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

*This discussion contains certain forward-looking statements within the meaning of Section 27A of the Securities Act of 1933, as amended, and Section 21E of the Securities Exchange Act of 1934, as amended. Statements containing words such as "may," "believe," "could," "will," "seek," "depends," "anticipate," "expect," "intend," "plan," "project," "projections," "business outlook," "estimate," or similar expressions constitute forward-looking statements. You should read these statements carefully because they discuss future expectations, contain projections of future results of operations or financial condition or state other "forward-looking" information. These statements relate to our future plans, objectives, expectations, intentions and financial performance and the assumptions that underlie these statements. They include, but are not limited to, statements about:*

- our ability to attract new customers and retain and expand our relationships with existing customers;
- our future financial performance, including our expectations regarding our revenue, cost of revenue, gross profit, operating expenses, key metrics, ability to generate cash flow and ability to achieve and maintain future profitability;
- the potential impact on our business transitioning to a consumption-based pricing model;
- the anticipated trends, market opportunity, growth rates and challenges in our business and in the business intelligence software market;
- the efficacy of our sales and marketing efforts;
- our ability to compete successfully in competitive markets;
- our ability to respond to and capitalize on rapid technological changes;
- our expectations and management of future growth;
- our ability to enter new markets and manage our expansion efforts, particularly internationally;
- our ability to develop new product features;
- our ability to attract and retain key employees and qualified technical and sales personnel;
- our ability to effectively and efficiently protect our brand;
- our ability to timely scale and adapt our infrastructure;
- the effect of general economic and market conditions on our business;
- our ability to protect our customers' data and proprietary information;
- our ability to maintain, protect, and enhance our intellectual property and not infringe upon others' intellectual property; and
- our ability to comply with all governmental laws, regulations and other legal obligations.

*Our actual results may differ materially from those contained in or implied by any forward-looking statements. Factors that could cause or contribute to these differences include those discussed below and elsewhere in this report, including those factors discussed in Part II, Item 1A (Risk Factors).*

*In light of the significant uncertainties and risks inherent in these forward-looking statements, you should not regard these statements as a representation or warranty by us or anyone else that we will achieve our objectives or plans in any specified time frame, or at all, or as predictions of future events. Moreover, neither we nor any other person assumes responsibility for the accuracy and completeness of the forward-looking statements. We undertake no obligation to publicly update any forward-looking statements, whether as a result of new information, future events or otherwise, except as required by law.*

### Overview

We founded Domo in 2010 with the vision of digitally connecting everyone within the enterprise with real-time, rich, relevant data and then enabling all employees to collaborate and act on that data. We realized that many organizations were unable to access the massive amounts of data that they were collecting in siloed cloud applications and on-premise databases. Furthermore, even for organizations that were capable of accessing their data, the process for doing so was time-consuming, costly, and often resulted in the data being out-of-date by the time it reached decision makers. The delivery format, including alert functionality, and devices were not adequate for the connected and real-time mobile workforce. Based on these observations, it was apparent that all organizations, regardless of size or industry, were failing to unlock the power of all of their people, data, and systems. To address these challenges, we provide a modern cloud-based data experience platform that digitally connects everyone at an organization

— from the CEO to frontline employees — with all the people, data, and systems in an organization, giving them access to real-time data and insights and allowing them to put data to work for everyone so they can multiply their impact on the business.

Historically, we have offered our platform to our customers as a subscription-based service. Subscription fees are based upon the chosen Domo package which includes tier-based platform capabilities, or usage. Business leaders, department heads and managers are the typical initial subscribers to our platform, deploying Domo to solve a business problem or to enable departmental access. Over time, as customers recognize the value of our platform, we engage with CIOs and other executives to facilitate broad enterprise adoption.

Our consumption-based service offering continues to expand. Customers of our consumption-based service have an annual purchase commitment based on an estimated volume of usage, utilizing a tiered pricing structure. ~~We~~ Whether it is a consumption-based agreement or an enterprise-wide subscription-based agreement (ELAs) with unlimited users and a data cap, we believe this model could increase customer adoption and allow us to better land, expand, and retain customers over the long term, and thereby have a positive impact on sales and marketing productivity. We also believe ~~this has~~ these have potential to remove many of the barriers ~~to of~~ adoption and better align our pricing to the value delivered to our customers. ~~In As of~~ the end of our ~~current most recent~~ fiscal quarter, approximately 30% ~~more than~~ 45% of our subscription annual recurring revenue ~~was~~ (ARR) is on consumption-based agreements or ELAs, and we expect this percentage to increase in future periods. However, we have limited experience with consumption-based agreements and changes in our pricing and subscription models subject us to a number of uncertainties.

As of ~~April 30, 2024~~ July 31, 2024, ~~64%~~ 65% of our customers were under multi-year contracts on a dollar-weighted basis, compared to 66% of customers as of January 31, 2024. The high percentage revenue from multi-year contracts, among both new and existing customers, has enhanced the predictability of our subscription revenue. We typically invoice our customers annually in advance for subscriptions to our platform.

Remaining performance obligations (RPO) represents the remaining amount of revenue we expect to recognize from existing non-cancelable contracts, whether billed or unbilled. As of ~~April 30, 2023~~ July 31, 2023 and 2024, total RPO was ~~\$356.7 million~~ \$357.6 million and ~~\$346.3 million~~ \$358.9 million, respectively. The amount of RPO expected to be recognized as revenue in the next twelve months was ~~\$237.5 million~~ \$232.1 million and ~~\$230.5 million~~ \$225.4 million as of ~~April 30, 2023~~ July 31, 2023 and 2024, respectively.

We had total revenue of ~~\$79.5 million~~ \$79.7 million and ~~\$80.1 million~~ \$78.4 million for the three months ended ~~April 30, 2023~~ July 31, 2023 and 2024, respectively, reflecting a year-over-year ~~increase~~ decrease of ~~1%~~ 2%. For the ~~three~~ six months ended ~~April 30, 2023~~ July 31, 2023 and 2024, we had total revenue of \$159.1 million and \$158.5 million, respectively. For the six months ended July 31, 2023 and 2024, no single customer accounted for more than 10% of our total revenue, nor did any single organization when accounting for multiple subsidiaries or divisions which may have been invoiced separately. Revenue from customers with billing addresses in the United States comprised 79% and 80% of our total revenue for the three months ended ~~April 30, 2023~~ July 31, 2023 and 2024, respectively.

Notwithstanding our ongoing shift to a consumption-based pricing model, we expect our revenue to be negatively impacted in the near term, due in part to the effects of the macroeconomic environment which has elongated the software sales cycle, increased deal scrutiny, and made renewal discussions more challenging. These factors have had a greater impact on our enterprise customers as evidenced by our declining enterprise revenue, and we expect it to continue to decline in the near term. In response to these dynamics, we have taken and intend to continue to take steps to better align our sales team and focus on controlling costs, which we expect will result in improved margins, sustained positive cash flow and efficient growth in the long term.

We have incurred significant net losses since our inception, including net losses of ~~\$24.4 million~~ \$16.1 million and ~~\$26.0 million~~ \$19.5 million for the three months ended ~~April 30, 2023~~ July 31, 2023 and 2024, respectively, and had an accumulated deficit of ~~\$1,431.6 million~~ \$1,451.1 million at ~~April 30, 2024~~ July 31, 2024. We expect to incur losses for the foreseeable future and may not be able to achieve or sustain profitability.

## Impact of Macroeconomic Conditions

Prevailing macroeconomic conditions have impacted, and may continue to impact, our business and those of our customers in a manner that we may not be able to quantify or isolate from other drivers of our performance. Ongoing concerns about the health of the U.S. and global economies may cause certain of our current and potential customers to reduce or delay technology spending or seek payment or other concessions from us, all of which us. These conditions, along with the ongoing uncertainty in the SaaS sector, may materially and negatively impact our operating results, financial condition and prospects. The United States has been experiencing historically elevated rates of inflation. The recent inflationary environment may cause us to incur higher operating costs that we may not be able to recoup through the pricing of our platform, and may further contribute to reduced or delayed technology spend by our customers in an effort to mitigate their own rising costs.

## Factors Affecting Performance

### **Continue to Attract New Customers**

We believe that our ability to expand our customer base is an important indicator of market penetration, the growth of our business, and future business opportunities. We define a customer at the end of any particular quarter as an entity that generated revenue greater than \$2,500 during that quarter. In situations where an organization has multiple subsidiaries or divisions, each entity that is invoiced at a separate billing address is treated as a separate customer. In cases where customers purchase through a reseller, each end customer is counted separately. We define enterprise customers as companies with over \$1 billion in revenue, and companies with less than \$1 billion in revenue are corporate customers. In order to maintain comparability, companies who become customers with revenue below \$1 billion and subsequently exceed that threshold are considered enterprise customers for all periods presented.

As of April 30, 2024 July 31, 2024, we had over 2,600 customers. For the three months ended April 30, 2023 and 2024, our enterprise Enterprise customers accounted for 49% and 47% 46% of our revenue for both the three and six months ended July 31, 2023 and 2024, respectively. To drive growth among both our enterprise and corporate customers, we intend to further develop our partner ecosystem by establishing agreements with more software resellers, systems integrators and other partners to provide broader customer and geographic coverage. We believe we are underpenetrated in the overall market and have significant opportunity to expand our customer base over time.

### **Customer Upsell and Retention**

We employ a land, expand, and retain sales model, and our performance depends on our ability to retain customers and expand the use of our platform at existing customers over time. It currently takes multiple years for our customers to fully embrace the power of our platform. We are still in the early stages of expanding within many of our customers. Under consumption-based pricing, our customers have access to enterprise-wide licenses, which allow for increased discoverability across the entire customer organization. We believe that as customers continue to deploy greater volumes and sources of data for multiple use cases under our consumption-based pricing model, the unique features of our platform can address the needs of everyone within their organization. We are still in the early stages of expanding within many of our customers.

We have invested in platform capabilities and online support resources that allow our customers to expand the use of our platform in a self-guided manner. Our professional services, customer support and customer success functions also support our sales force by helping customers to successfully deploy our platform and implement additional use cases. In addition, we believe our partner ecosystem will become increasingly important over time. We work closely with our customers to drive increased engagement with our platform by identifying new use cases through our customer success teams, as well as in-platform, self-guided experiences. We actively engage with our customers to assess whether they are satisfied and fully realizing the benefits of our platform. While these efforts often require a substantial commitment and upfront costs, we believe our investment in product, customer support, customer success and professional services will create opportunities to expand our customer relationships over time.

Our ability to drive growth and generate incremental revenue depends heavily on our ability to retain our customers and increase their usage of our platform. With that objective in mind, we allocate our customer success and customer support resources to align with maximizing the retention and expansion of our subscription revenue.

An important metric that we use to evaluate our performance in retaining customers is gross retention rate. We calculate our gross retention rate by taking the dollar amount of annual contract value (ACV) that renews in a given period divided by the ACV that was up for renewal in that same period. The ACV of multi-year contracts is also considered in the calculation based on the period in which the annual anniversary of the contract falls. Our trailing twelve month gross retention rate was 88% and 84% as of April 30, 2023 July 31, 2023 and 2024, respectively. However, during the three months ended July 31, 2024 we saw a sequential improvement in gross retention, and for our consumption-based cohort, our gross retention is greater than 90%.

Our gross retention declined in part due to macroeconomic conditions, challenging renewals from customers with COVID-19 use cases of our platform, and one large non-renewal during the three months ended April 30, 2024. As we continue to expand our partner ecosystem and develop methods to encourage wider and more strategic adoptions, we expect that customer retention will increase over the long term. Our ability to successfully upsell and the impact of cancellations may vary from period to period. The extent of this variability depends on a number of factors including the size and timing of upsells and cancellations relative to the initial subscriptions.

### **Sales and Marketing Efficiency**

We are focused on increasing the efficiency of our sales force and marketing activities by enhancing account targeting, messaging, field sales operations and sales training in order to accelerate the adoption of our platform. Our sales strategy depends on our ability to continue to attract and retain top talent, to increase our pipeline of business, and to enhance sales productivity. We focus on productivity per quota-carrying sales representative and the time it takes our sales representatives to reach full productivity.

We manage our pipeline by sales representative to ensure sufficient coverage of our sales targets. Our ability to manage our sales productivity and pipeline are important factors to the success of our business. We have taken steps to better align our sales and marketing spending and headcount to efficiently grow and attract new customers.

Sales and marketing expense as a percentage of total revenue was 54% 52% for the three months ended April 30, 2023 July 31, 2023 compared to 53% 47% for the three months ended April 30, 2024 July 31, 2024.

#### Leverage Research and Development Investments for Future Growth

We plan to continue to make investments in areas of our business to continue to expand our platform functionality. This may include investing in machine learning algorithms, predictive analytics, and other artificial intelligence technologies to create alerts, detect anomalies, optimize queries, and suggest areas of interest to help people focus on what matters most. These investments may also include extending the functionality and effectiveness of our platform through improvements to the Domo Appstore and developer toolkits, which enable customers and partners to quickly build and deploy custom applications. The amount of new investments as a percentage of revenue required to achieve our plans is expected to increase slightly in the near term then remain consistent in the near long term.

Research and development expense as a percentage of total revenue was 29% 26% for the three months ended April 30, 2023 July 31, 2023 compared to 28% for the three months ended April 30, 2024 July 31, 2024.

#### Key Business Metric

##### Billings

Billings represent our total revenue plus the change in deferred revenue in a period. Billings reflect sales to new customers plus subscription renewals and upsells to existing customers, and represent amounts invoiced for subscription, support and professional services. We typically invoice our customers annually in advance for subscriptions to our platform. Because we generate most of our revenue from customers who are invoiced on an annual basis and have a wide range of annual contract values, we may experience variability due to typical enterprise buying patterns and timing of large initial contracts, renewals and upsells.

The following table sets forth our billings for the three and six months ended April 30, 2023 July 31, 2023 and 2024:

	Three Months Ended April 30,	
	2023	2024
Billings (in thousands)	\$ 70,299	\$ 65,496

	Three Months Ended July 31,		Six Months Ended July 31,	
	2023	2024	2023	2024
Billings (in thousands)	\$ 70,563	\$ 68,626	\$ 140,862	\$ 134,122

#### Components of Results of Operations

##### Revenue

We derive our revenue primarily from subscription revenue, which consists of subscription-based agreements and, to a lesser extent, consumption-based agreements for our cloud-based platform. We also sell professional services.

Revenue from subscription-based agreements is a function of customers, platform tier, number of users, price per user, and transaction and data volumes. Revenue is recognized ratably over the related contractual term beginning on the date that the platform is made available to a customer. We recognize revenue ratably because the customer receives and consumes the benefits of the platform throughout the contract period. Consumption-based agreements utilize a tiered pricing structure for an annual purchase commitment based upon an estimated volume of usage. Revenue from the annual purchase commitment in consumption-based contracts is also recognized ratably over the related contractual term of the contract. Amounts for the annual purchase commitments do not carry over beyond each annual commitment period.

Professional services and other revenue primarily consists of implementation services sold with new subscriptions, as well as professional services sold separately, including training and education. Professional services are generally billed in advance and revenue from these arrangements is recognized as the services are performed. Our professional services engagements typically span from a few weeks to several months.

##### Cost of Revenue

Cost of subscription revenue consists primarily of third-party hosting services and data center capacity; salaries, benefits, bonuses and stock-based compensation, or employee-related costs, directly associated with cloud infrastructure and customer support personnel; amortization expense associated with capitalized software development costs; depreciation expense associated with computer equipment and software; certain fees paid to various third parties for the use of their technology and services; and allocated overhead. Allocated overhead includes items such as information technology infrastructure, rent, and certain employee benefit costs.

Cost of professional services and other revenue consists primarily of employee-related costs directly associated with these services, third-party consultant fees, and allocated overhead.

### **Operating Expenses**

**Sales and Marketing. Marketing.** Sales and marketing expenses consist primarily of employee-related costs directly associated with our sales and marketing staff and commissions. Other sales and marketing costs include digital marketing programs and promotional events to promote our brand, including Domopalooza, our annual user conference, as well as tradeshows, advertising and allocated overhead. Contract acquisition costs, including sales commissions, are deferred and then amortized on a straight-line basis over the period of benefit, which we have determined to be approximately four years for initial contracts. Contract acquisition costs related to renewal contracts and professional services are recorded as expense when incurred if the period of benefit is one year or less. If the period of benefit is greater than one year, costs are deferred and then amortized on a straight-line basis over the period of benefit, which we have determined to be two years.

**Research and Development. Development.** Research and development expenses consist primarily of employee-related costs for the design and development of our platform, contractor costs to supplement staff levels, third-party web services, consulting services, and allocated overhead. Our cycle of frequent updates has facilitated rapid innovation and the introduction of new product features throughout our history. We capitalize certain software development costs that are attributable to developing new features and adding incremental functionality to our platform, and amortize such costs as costs of subscription revenue over the estimated life of the new feature or incremental functionality, which is generally three years.

**General and Administrative.** General and administrative expenses consist of employee-related costs for executive, finance, legal, human resources, recruiting and administrative personnel; professional fees for external legal, accounting, recruiting and other consulting services; and allocated overhead costs.

### **Other Expense, Net**

Other expense, net consists primarily of interest expense related to long-term debt. It also includes the effect of exchange rates on foreign currency transaction gains and losses foreign currency gains and losses upon remeasurement of intercompany balances, and interest income. The transactional impacts of foreign currency are recorded as foreign currency losses (gains) in the condensed consolidated statements of operations.

### **Income Taxes**

Income taxes consists primarily of income taxes related to foreign and state jurisdictions in which we conduct business. Because of the uncertainty of the realization of the deferred tax assets, we have a full valuation allowance for domestic net deferred tax assets, including net operating loss carryforwards and tax credits related primarily to research and development.

## **Results of Operations**

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

	Three Months Ended April 30,	
	2023	2024
	(in thousands)	
Revenue:		
Subscription	\$ 71,090	\$ 72,110
Professional services and other	8,368	7,993
Total revenue	79,458	80,103
Cost of revenue:		
Subscription <sup>(1)</sup>	10,612	12,775
Professional services and other <sup>(1)</sup>	7,957	7,939
Total cost of revenue	18,569	20,714

Gross profit	60,889	59,389
Operating expenses:		
Sales and marketing <sup>(1)(3)</sup>	43,162	42,219
Research and development <sup>(1)</sup>	23,435	22,719
General and administrative <sup>(1)(2)(3)</sup>	14,001	15,901
Total operating expenses	80,598	80,839
Loss from operations	(19,709)	(21,450)
Other expense, net <sup>(1)(4)</sup>	(4,495)	(4,431)
Loss before income taxes	(24,204)	(25,881)
Provision for income taxes	199	126
Net loss	\$ (24,403)	\$ (26,007)

	Three Months Ended July 31,		Six Months Ended July 31,	
	2023	2024	2023	2024
Revenue:	(in thousands)			
Subscription	\$ 71,211	\$ 70,921	\$ 142,301	\$ 143,031
Professional services and other	8,461	7,486	16,829	15,479
Total revenue	79,672	78,407	159,130	158,510
Cost of revenue:				
Subscription <sup>(1)</sup>	11,453	13,301	22,065	26,076
Professional services and other <sup>(1)</sup>	7,637	6,823	15,594	14,762
Total cost of revenue	19,090	20,124	37,659	40,838
Gross profit	60,582	58,283	121,471	117,672
Operating expenses:				
Sales and marketing <sup>(1)(3)</sup>	41,040	36,627	84,202	78,846
Research and development <sup>(1)</sup>	20,767	21,969	44,202	44,688
General and administrative <sup>(1)(2)(3)</sup>	9,378	14,174	23,379	30,075
Total operating expenses	71,185	72,770	151,783	153,609
Loss from operations	(10,603)	(14,487)	(30,312)	(35,937)
Other expense, net <sup>(1)(4)</sup>	(5,124)	(4,752)	(9,619)	(9,183)
Loss before income taxes	(15,727)	(19,239)	(39,931)	(45,120)
Provision for income taxes	341	251	540	377
Net loss	\$ (16,068)	\$ (19,490)	\$ (40,471)	\$ (45,497)

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

	Three Months Ended April 30,	
	2023	2024
Cost of revenue:	(in thousands)	
Subscription	\$ 618	\$ 798
Professional services and other	479	333
Sales and marketing	6,730	5,314
Research and development	4,975	4,422
General and administrative	3,508	3,084



Other expense, net		162	191
Total	\$	16,472	\$ 14,142

	Three Months Ended July 31,		Six Months Ended July 31,	
	2023	2024	2023	2024
Cost of revenue:	(in thousands)			
Subscription	\$ 670	\$ 807	\$ 1,288	\$ 1,605
Professional services and other	473	314	952	647
Sales and marketing	6,166	5,170	12,896	10,484
Research and development	4,618	4,069	9,593	8,491
General and administrative	2,960	5,911	6,468	8,995
Other expense, net	173	202	335	393
Total	\$ 15,060	\$ 16,473	\$ 31,532	\$ 30,615

(2) Includes amortization of certain intangible assets of \$20,000 and \$0.1 million \$142,000 for the three months ended April 30, 2023 July 31, 2023 and 2024, respectively, and \$40,000 and \$284,000 for the six months ended July 31, 2023 and 2024, respectively.

(3) Includes executive officer severance as follows:

	Three Months Ended July 31,		Six Months Ended July 31,	
	Three Months Ended April 30,	2023	2024	2023 2024
	2023	2024		
	(in thousands)			
	(in thousands)			
	(in thousands)			

Sales and marketing

General and administrative

Total executive officer severance

(4) Includes remeasurement of warrant liability of \$0.6 million \$0.1 million and \$(0.4) million for the three and six months ended April 30, 2024 July 31, 2024.

	Three Months Ended April 30,		Three Months Ended July 31,		Six Months Ended July 31,	
	2023	2024	2023	2024	2023	2024
Revenue:						
Subscription						
Subscription						
Subscription	89 %	90 %	89 %	90 %	89 %	90 %
Professional services and other						
Total revenue						
Cost of revenue:						
Subscription						
Subscription						
Subscription						
Professional services and other						
Total cost of revenue						
Gross margin						



Operating expenses:

Sales and marketing										
Sales and marketing										
Sales and marketing										
Research and development										
General and administrative										
Total operating expenses										
Loss from operations										
Other expense, net										
Loss before income taxes										
Provision for income taxes										
Net loss	Net loss	(31)	%	(33)	%	Net loss	(19)	%	(24)	%
							(25)	%		(29)%

Discussion of the Three Months Ended April 30, 2023 July 31, 2023 and 2024

Revenue

	2023	2024	\$ Change	% Change	2023	2024	\$ Change	% Change
Revenue:								
Revenue:								
Revenue:								
Subscription								
Subscription								
Subscription	\$ 71,090	\$ 72,110	\$ 1,020	1	\$ 71,211	\$ 70,921	\$ (290)	—
Professional services and other								
Total revenue								
Percentage of revenue:								
Subscription								
Subscription								
Subscription								
Professional services and other								
Professional services and other								
Professional services and other								
Total								
Total								
Total								

The increase decrease in subscription revenue was primarily due to a \$5.0 million \$4.5 million net decrease from existing customers, partially offset by a \$4.2 million increase from new customers offset by a net \$4.0 million decrease from existing customers. Our total customer count increased 1% remained flat from April 30, 2023 July 31, 2023 to April 30, 2024 July 31, 2024. For the purpose purposes of this comparison, new customers are defined as those added since the end of the prior year quarter. quarter, and revenue from existing customers is presented net of churn. The decrease in professional services and other revenue was primarily due to a higher amount lower volume of revenue recognized from the delivery of custom apps billable hours delivered during the three months ended April 30, 2023 July 31, 2024. Due to the decline in gross retention, we expect revenue to decrease in the near term.

Cost of Revenue, Gross Profit and Gross Margin

	2023	2024	\$ Change	% Change	2023	2024	\$ Change	% Change
Cost of revenue:								
Cost of revenue:								
Cost of revenue:								
Subscription								
Subscription								
Subscription	\$ 10,612	\$ 12,775	\$ 2,163	20	\$ 11,453	\$ 13,301	\$ 1,848	16
Professional services and other								
Total cost of revenue								
Gross profit								
Gross margin:								
Subscription								
Subscription								
Subscription								
Professional services and other								
Professional services and other								
Professional services and other								
Total gross margin								
Total gross margin								
Total gross margin								

The increase in subscription cost of subscription revenue was primarily due to a \$1.3 million \$1.1 million increase in our third-party web hosting services and a \$0.6 million increase in amortization of related to capitalized software development costs, costs, which increased by \$0.6 million.

Professional The decrease in professional services and other cost of revenue remained flat, was primarily due to a \$0.5 million decrease in employee-related costs and a \$0.3 million decrease in outsourced services.

Subscription gross margin declined decreased primarily due to a decline in revenue growth and increased costs related to third-party web hosting services as a result of increased customer data usage. We As we continue to shift more of our customer base to consumption-based pricing, we expect subscription gross margin to decrease stabilize in the near term and increase in the long term we expect it to increase and stabilize. term.

Services gross margin declined primarily due to a higher amount lower volume of revenue recognized from the delivery of custom apps during the three months ended April 30, 2023, billable hours delivered. We expect the gross margin for professional services to fluctuate from period to period due to changes in the proportion of services provided by third-party consultants, seasonality, and timing of projects with higher differing margins.

### Operating Expenses

	2023	2024	\$ Change	% Change	2023	2024	\$ Change	% Change
Operating expenses:								
Operating expenses:								
Operating expenses:								
Sales and marketing								
Sales and marketing								
Sales and marketing	\$ 43,162	\$ 42,219	\$ (943)	(2)	\$ 41,040	\$ 36,627	\$ (4,413)	(11)
Research and development								
General and administrative								
Total operating expenses								

Percentage of revenue:

Sales and marketing
Sales and marketing
Sales and marketing
Research and development
Research and development
Research and development
General and administrative
General and administrative
General and administrative

Sales and marketing expenses decreased primarily due to a \$3.1 million \$3.5 million decrease in employee-related costs. This was partially offset by a \$2.3 million increase in marketing expense, primarily costs, driven by our annual user conference. Sales lower headcount, and a \$0.4 million decrease in travel expense. Our sales and marketing expense as a percentage of revenue decreased from 54% in the three months ended April 30, 2023 52% to 53% in the three months ended April 30, 2024 47%. Due to our annual user conference and other seasonal expenses, sales and marketing expense is typically higher in the first fiscal quarter than in other quarters. We expect sales and marketing expense as a percentage of revenue to decrease in the long term.

Research and development expenses decreased increased primarily due to a \$0.6 million decrease \$0.8 million increase in contract labor. Research employee-related costs. Capitalized software decreased by \$0.4 million, which increases expense. Our research and development expense costs increased as a percentage of revenue decreased from 29% in the three months ended April 30, 2023 26% to 28% in the three months ended April 30, 2024. We expect research and development expense as a percentage of revenue to increase slightly in the near term and remain consistent in the long term.

General and administrative expenses increased primarily due to a \$4.6 million \$2.5 million increase in professional and legal fees, partially related to the amendment to the credit facility. This increase was partially offset by a \$1.9 million decrease in employee-related costs, driven by stock-based compensation. Additionally, professional and legal fees increased by \$2.5 million, primarily due to a \$1.3 million decrease in executive severance expense. General \$2.4 million insurance reimbursement for legal fees that was realized during the three months ended July 31, 2023. Our general and administrative expenses increased as a percentage of revenue increased from 19% in the three months ended April 30, 2023 11% to 20% in the three months ended April 30 2024. In the near term, we expect general and administrative expense as a percentage of revenue to fluctuate from period to period. 17%.

Other Expense, Net

	Three Months Ended April 30,			
	2023	2024	\$ Change	% Change
	(in thousands)			
Other expense, net	\$ (4,495)	\$ (4,431)	\$ 64	(1)%

	Three Months Ended July 31,			
	2023	2024	\$ Change	% Change
	(in thousands)			
Other expense, net	\$ (5,124)	\$ (4,752)	\$ 372	7 %

Other expense, net remained relatively flat, decreased primarily due to a \$0.4 million decrease in expense related to changes in foreign exchange rates and higher balances of cash denominated in currencies other than the functional currency. We expect interest expense to increase modestly in the near term due to an increasing principal balance and anticipated higher market interest rates. balance. We expect foreign currency gains and losses could become more pronounced due to current market volatility.

Income Taxes

Three Months Ended April 30,
------------------------------

	2023	2024	\$ Change	% Change
	(in thousands)			
Provision for income taxes	\$ 199	\$ 126	\$ (73)	(37)%

	Three Months Ended July 31,		\$ Change	% Change
	2023	2024		
	(in thousands)			
Provision for income taxes	\$ 341	\$ 251	\$ (90)	(26)%

Income taxes decreased primarily due to adjustments related to filing certain decreased state tax returns, expense during the three months ended July 31, 2024. In the long term, we expect income tax expense to increase in conjunction with higher taxable income from our international subsidiaries.

## Discussion of the Six Months Ended July 31, 2023 and 2024

### Revenue

	Six Months Ended July 31,		\$ Change	% Change
	2023	2024		
	(in thousands)			
Revenue:				
Subscription	\$ 142,301	\$ 143,031	\$ 730	1 %
Professional services and other	16,829	15,479	(1,350)	(8)
Total revenue	<u>\$ 159,130</u>	<u>\$ 158,510</u>	<u>\$ (620)</u>	—
Percentage of revenue:				
Subscription	89 %	90 %		
Professional services and other	11	10		
Total	<u>100 %</u>	<u>100 %</u>		

The increase in subscription revenue was primarily due to a \$3.0 million increase from new customers, partially offset by a \$2.3 million net decrease from existing customers. Our total customer count remained relatively flat from July 31, 2023 to July 31, 2024. For the purposes of this comparison, new customers are defined as those added since the end of the prior year quarter, and revenue from existing customers is presented net of churn. The decrease in professional services and other revenue was primarily due to a lower volume of billable hours delivered during the six months ended July 31, 2024.

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

	Six Months Ended July 31,		\$ Change	% Change
	2023	2024		
	(in thousands)			
Cost of revenue:				
Subscription	\$ 22,065	\$ 26,076	\$ 4,011	18 %
Professional services and other	15,594	14,762	(832)	(5)
Total cost of revenue	<u>\$ 37,659</u>	<u>\$ 40,838</u>	<u>\$ 3,179</u>	8
Gross profit	<u>\$ 121,471</u>	<u>\$ 117,672</u>	<u>\$ (3,799)</u>	(3)
Gross margin:				

Subscription	84 %	82 %
Professional services and other	7	5
Total gross margin	76	74

The increase in cost of subscription revenue was due in part to a \$2.4 million increase in expense related to third-party web hosting services. Amortization related to capitalized software development costs increased by \$1.2 million.

Cost of professional services and other revenue decreased primarily due to a \$1.0 million decrease in employee-related costs.

Subscription gross margin decreased primarily due to a decline in revenue growth and increased costs related to third-party web hosting services as a result of increased customer data usage. Professional services and other gross margin declined primarily due to a lower volume of billable hours delivered during the six months ended July 31, 2024.

### Operating Expenses

	Six Months Ended July 31,			
	2023	2024	\$ Change	% Change
	(in thousands)			
Operating expenses:				
Sales and marketing	\$ 84,202	\$ 78,846	\$ (5,356)	(6)%
Research and development	44,202	44,688	486	1
General and administrative	23,379	30,075	6,696	29
Total operating expenses	<u>\$ 151,783</u>	<u>\$ 153,609</u>	<u>\$ 1,826</u>	1
Percentage of revenue:				
Sales and marketing	53 %	50 %		
Research and development	28	28		
General and administrative	14	19		

Sales and marketing expenses decreased primarily due to a \$6.6 million decrease in employee-related costs, driven by lower headcount.

Research and development expenses increased primarily due to a \$0.9 million increase in employee-related costs and a \$0.6 million decrease in capitalized software, which increases expense. These were partially offset by a \$1.1 million decrease in contract labor.

General and administrative expenses increased primarily due to a \$7.1 million increase in professional and legal fees. This was primarily due to a \$2.4 million insurance reimbursement for legal fees that was realized during the six months ended July 31, 2023 plus increased costs related to the amendment to the credit facility that occurred during the six months ended July 31, 2024.

### Other Expense, Net

	Six Months Ended July 31,			
			\$ Change	% Change
	2023	2024		
	(in thousands)			
Other expense, net	\$ (9,619)	\$ (9,183)	\$ 436	5 %

Other expense, net decreased primarily due to a \$0.6 million decrease in expense related to changes in foreign exchange rates and higher balances of cash denominated in currencies other than the functional currency.

### Income Taxes

	Six Months Ended July 31,		\$ Change	% Change
	2023	2024		
	(in thousands)			

Provision for income taxes	\$	540	\$	377	\$	(163)	(30)%
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Income taxes decreased due to certain tax filings and decreased state tax expense during the six months ended July 31, 2024.

## Liquidity and Capital Resources

As of April 30, 2024 July 31, 2024, we had \$61.2 million \$55.7 million of cash, cash equivalents, and restricted cash which were held for working capital purposes, of which \$3.7 million was restricted cash. Our cash and cash equivalents consist primarily of cash, money market funds, and certificates of deposit. We have a \$100 million credit facility, all of which had been drawn as of April 30, 2024 July 31, 2024.

Since inception, we have financed operations primarily from cash collected from customers for our subscriptions and services, periodic sales of convertible preferred stock, our initial public offering and to a lesser extent, debt financing. Our principal uses of cash have consisted of employee-related costs, marketing programs and events, payments related to hosting our cloud-based platform and purchases of short-term investments.

We believe our existing cash and cash equivalents will be sufficient to meet our projected operating requirements for at least the next 12 months. Over the longer term, we plan to continue investing in, among other things, growth opportunities, product development, and sales and marketing. If available funds are insufficient to fund our future activities or execute on our strategy, we may raise additional capital through equity, equity-linked and debt financing, to the extent such funding sources are available. Alternatively, we may be required to reduce expenses to manage liquidity; however, any such reductions could adversely impact our business and competitive position. Our future capital requirements will depend on many factors, including our growth rate; the level of investments we make in product development, sales and marketing activities and other investments to support the growth of our business; the continuing market acceptance of our platform; and customer retention rates, and may increase materially from those currently planned. If we raise additional funds through the incurrence of indebtedness, such indebtedness likely would have rights that are senior to holders of our equity securities and could contain covenants that restrict operations in the same or similar manner as our credit facility. Any additional equity financing likely would be dilutive to existing stockholders. We cannot assure you that any additional financing will be available to us on acceptable terms, or at all.

Moreover, we may not be able to access a portion of our existing cash and cash equivalents due to conditions adversely affecting the financial institutions with which we do business, including limited liquidity, insolvency or receivership. Any such conditions could imperil our ability to access our existing cash and cash equivalents and could have a material adverse effect on our business and financial condition. For additional information, see the section of this report captioned "Risk Factors—Risks Related to Our Financial Position and Capital Needs—Adverse events or perceptions affecting the financial services industry could adversely affect our operating results, financial condition and prospects."

Although we are not currently a party to any agreement or letter of intent with respect to potential investments in, or acquisitions of, complementary businesses, services or technologies, we may enter into these types of arrangements in the future, which could also require us to seek additional equity financing, incur indebtedness, or use cash resources. We have no present understandings, commitments or agreements to enter into any such acquisitions. We do not have any special purpose entities and we do not engage in off-balance sheet financing arrangements.

### Credit Facility

The credit facility permits us to incur up to \$100 million in term loan borrowings, all of which had been drawn as of April 30, 2024 July 31, 2024. The credit facility is secured by substantially all of our assets.

In February 2024, we entered into an amendment to the credit facility which extended the maturity date for the outstanding loan from April 1, 2025 to April 1, 2026 and made certain modifications to the financial covenants. In conjunction with this amendment, we issued 189,036 fully-vested warrants to purchase Class B common stock.

The As of July 31, 2024, the term loan maturity date is was April 1, 2026 and has the term loan had a closing fee of \$7.0 million. Additionally, we entered into an amendment in August 2020 that included an amendment fee of \$5.0 million, which accrues interest at a rate of 9.5% per year and is due upon maturity. The credit facility requires interest-only payments on a portion of the accrued interest until the maturity date. This payable portion of the interest that accrues on the outstanding principal of the term loan is due in cash on a monthly basis, which, as of April 30, 2024 July 31, 2024, accrued at a floating rate equal to the greater of (1) 7.0% and (2) Adjusted Term SOFR plus 5.5% per year. As of July 31, 2024, Adjusted Term SOFR is defined as the greater of (a) 0.0% and (b) Term SOFR plus 0.26161%. In the event that SOFR is unavailable, interest will accrue at a floating rate equal to the greater of (1) 7.0% and (2) the Alternate Base Rate plus 2.75% per year. The Alternate Base Rate is defined as the greatest of (a) the Prime Rate (b) Federal Funds Effective Rate plus 0.5% and (c) Adjusted Term SOFR. The Federal Funds Effective rate is defined as the rate published by the Federal Reserve System as the overnight rate, or, if such rate is not so published, the average of the quotations for the day for such transaction received by Administrative Agent from three Federal funds brokers. As of April 30, 2024 July 31, 2024, the interest rate was approximately 11.1%. In, and in addition to the 11.1% interest rate, a fixed rate equal to 2.5% per year accrues on the outstanding principal of the term loan. This capitalized portion of the interest is added to the principal amount of the outstanding term loan on a monthly basis and is due upon maturity.

In August 2024, we entered into an amendment to the credit facility (the “Second Amendment”), which among other things, refinanced certain credit extensions. Pursuant to the Second Amendment, the term loan maturity date was extended to August 19, 2028. Following the Second Amendment, interest that accrues on the outstanding principal of the term loan is due monthly and is based on a floating rate equal to three-month term SOFR (with a floor of 2.5%) plus 3.0% per year. As of the date of the Second Amendment, the interest rate was 8.1%, and in addition to the 8.1% interest rate, a fixed rate equal to 5.0% per year accrues on the outstanding principal of the term loan. This capitalized interest is added to the principal amount of the outstanding term loan on a monthly basis and is due upon maturity. In conjunction with this Second Amendment, we issued 1,022,918 fully-vested warrants to purchase Class B common stock. We also paid and subsequently refinanced the \$7.0 million closing fee related to the credit facility that came due, resulting in no net impact to our cash balance.

The credit facility contains customary conditions to borrowing, events of default and covenants, including covenants that restrict our ability to dispose of assets, make material changes to the nature, control or location of the business, merge with or acquire other entities, incur indebtedness or encumbrances, make distributions to holders of our capital stock, make certain investments or enter into transactions with affiliates. In addition, we are required to comply with a minimum annualized recurring revenue financial covenant, tested quarterly. The credit facility defines annualized recurring revenue as four times our aggregate revenue for the immediately preceding quarter (net of recurring discounts and discounts for periods greater than one year) less the annual contract value of any customer contracts pursuant to which we were advised during such quarter would not be renewed at the end of the current term plus the annual contract value of existing customer contract increases during such quarter. We are also required to comply with a minimum trailing 12-month consolidated EBITDA (as defined by the credit facility) covenant, which is tested quarterly, and adhere to a \$15.0 million monthly minimum liquidity covenant. Pursuant to the Second Amendment, covenant levels for such minimum annualized recurring revenue financial covenant and such minimum consolidated EBITDA covenant were revised, and the minimum liquidity covenant was modified to a \$25.0 million monthly minimum liquidity covenant. Noncompliance with these covenants, or the occurrence of certain other events specified in the credit facility, could result in an event of default under the loan agreement. If an event of default has occurred and we are unable to obtain a waiver, any outstanding principal, interest and fees could become immediately due and payable. We were in compliance with the covenant terms of the credit facility on January 31, 2024 and April 30, 2024 July 31, 2024.

Historical Cash Flow Trends

	Three Months Ended April			Six Months Ended	
	30,			July 31,	
	2023	2023	2024	2023	2024
		(in thousands)			
		(in thousands)			
		(in thousands)			
Net cash provided by operating activities					
Net cash provided by (used in) operating activities					
Net cash used in investing activities					
Net cash provided by financing activities					

Operating Activities

Our operating activities have consisted primarily of payments received from our customers, cash we invest in our personnel, timing and amounts we use to fund marketing programs and events to expand our customer base, and the costs to provide our cloud-based platform and related outsourced professional services to our customers.

Net cash provided by operating activities during the three six months ended April 30, 2023 July 31, 2023 consisted of cash collected from customers of \$93.6 million \$169.7 million exceeding the cash outflows of \$92.8 million \$168.2 million. Significant components of cash outflows included \$53.8 million \$96.4 million for personnel costs and \$18.0 million \$35.1 million for marketing programs and events, third-party costs to provide our platform and outsourced professional services.

Net cash provided by used in operating activities during the three six months ended April 30, 2024 July 31, 2024 consisted of cash outflows of \$160.6 million exceeding the \$156.3 million collected from customers of \$87.8 million exceeding the cash outflows of \$85.9 million customers. Significant components of cash outflows included \$49.6 million \$89.9 million for personnel costs and \$16.6 million \$32.5 million for marketing programs and events, third-party costs to provide our platform and outsourced professional services.

Investing Activities

Our investing activities have consisted primarily of property and equipment purchases, which included capitalized development costs related to internal-use software.



Net cash used in investing activities during the three six months ended April 30, 2023 July 31, 2023 consisted primarily of \$2.1 million \$4.4 million of capitalized development costs related to internal-use software and \$1.5 million \$2.1 million of purchased property and equipment.

Net cash used in investing activities during the three six months ended April 30, 2024 July 31, 2024 consisted primarily of 1.6 million \$3.5 million of capitalized development costs related to internal-use software and \$0.9 million \$1.2 million of purchased property and equipment.

### **Financing Activities**

Our financing activities have consisted primarily of proceeds received from our employee stock purchase plan and to a lesser extent, stock option exercises, exercises, net change in short-term payable financing, and outflows used to repurchase shares for tax withholdings on vesting of restricted stock.

Net cash provided by financing activities for the three six months ended April 30, 2023 July 31, 2023 consisted primarily of \$2.0 million of proceeds from shares issued in connection with our employee stock purchase plan.

Net cash provided by financing activities for the three six months ended April 30, 2024 July 31, 2024 consisted primarily of \$2.8 million of proceeds from short-term payable financing, \$1.1 million of proceeds from shares issued in connection with our employee stock purchase plan, plan, offset by \$0.2 million used to repurchase shares for tax withholdings on vesting of restricted stock.

### **Contractual Obligations and Commitments**

Our principal commitments consist of long-term debt, obligations under operating leases for office space, and non-cancelable contracts for cloud infrastructure services. There have been no material changes in our contractual obligations and commitments, as disclosed in our Annual Report on Form 10-K.

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

We prepare our condensed consolidated financial statements in accordance with generally accepted accounting principles in the United States or GAAP. (GAAP). The preparation of these condensed consolidated financial statements requires us to make estimates and assumptions that are inherently uncertain and that affect the reported amounts of assets, liabilities, revenue, costs and expenses, and related disclosures. To the extent that there are material differences between these estimates and actual results, our financial condition or results of operations would be affected. We base our estimates on past experience and other assumptions that we believe are reasonable under the circumstances, and we evaluate these estimates on an ongoing basis. Critical accounting policies and estimates are those that we consider critical to understanding our historical and future performance, as these policies relate to the more significant areas involving management's judgments and estimates.

There have been no material changes to our critical accounting policies and estimates as previously disclosed in our Annual Report on Form 10-K. See "Note 2—Summary of Significant Accounting Policies" of our condensed consolidated financial statements included elsewhere in this Quarterly Report on Form 10-Q for more information regarding our significant accounting policies.

### **Recent Accounting Pronouncements**

See "Note 2—Summary of Significant Accounting Policies" of our condensed consolidated financial statements included elsewhere in this Quarterly Report on Form 10-Q for more information regarding recent accounting pronouncements.

## **Item 3. Quantitative and Qualitative Disclosures about Market Risk**

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

### **Interest Rate Risk**

As of April 30, 2024 July 31, 2024, we had \$61.2 million \$55.7 million of cash, cash equivalents, and restricted cash, which were held for working capital purposes, of which \$3.7 million was restricted cash. This letter of credit was subsequently released in August 2024. Our cash and cash equivalents consist primarily of cash, money market funds, and certificates of deposit. We do not enter into investments for trading or speculative purposes. Due to the short-term nature of these instruments, we believe that we do not have any material exposure to changes in the fair value of our investment portfolio as a result of changes in interest rates. Decreases in interest rates, however, would reduce future interest income.

We have a credit facility that permits us to incur up to \$100 million in term loan borrowings, all of which had been drawn as of April 30, 2024 July 31, 2024. During the three months ended April 30, 2024, the The term loan maturity date was April 1, 2025 matures on April 1, 2026. A portion of the



interest that accrues on outstanding principal of the term loan is payable in cash on a monthly basis, which portion accrues at a floating rate equal to the greater of (1) 7.0% and (2) Adjusted Term SOFR plus 5.5% per year. In the event that SOFR is unavailable, interest will accrue at a floating rate equal to the greater of (1) 7.0% and (2) the Alternate Base Rate plus 2.75% per year. As of April 30, 2024 July 31, 2024, the interest rate was approximately 11.1%. In addition to the 11.1% interest rate, a fixed rate equal to 2.5% per year accrues on the outstanding principal of the term loan and is added to the principal amount of the outstanding term loan on a monthly basis.

In August 2024, we entered into the Second Amendment, which among other things, refinanced certain credit extensions. Pursuant to the Second Amendment, the term loan maturity date was extended to August 19, 2028. Following the Second Amendment, interest that accrues on the outstanding principal of the term loan is due monthly and is based on a floating rate equal to three-month term SOFR (with a floor of 2.5%) plus 3.0% per year. As of the date of the Second Amendment, the interest rate was 8.1%, and in addition to the 8.1% interest rate, a fixed rate equal to 5.0% per year accrues on the outstanding principal of the term loan. This capitalized interest is added to the principal amount of the outstanding term loan on a monthly basis and is due upon maturity. In conjunction with this Second Amendment, we issued 1,022,918 fully-vested warrants to purchase Class B common stock. We also paid and subsequently refinanced the \$7.0 million closing fee related to the credit facility that came due, resulting in no net impact to our cash balance.

Interest rate risk also reflects our exposure to movements in interest rates associated with our borrowings. At April 30, 2024 July 31, 2024, we had total debt outstanding with a carrying amount of \$114.1 million \$115.2 million, which approximates fair value. A hypothetical change in interest rates of 100 basis points after April 30, 2024 July 31, 2024 would not have a material impact on the fair value of our outstanding debt, even at the borrowing limit, or in the returns on our cash.

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

Due to our international operations, we have foreign currency risks related to revenue and operating expenses denominated in currencies other than the U.S. dollar, primarily the Japanese Yen, British Pound Sterling, and the Australian Dollar. Our subscriptions and services contracts are primarily denominated in the local currency of the customer making the purchase. In addition, a portion of operating expenses are incurred outside the United States and are denominated in foreign currencies. Changes in the relative value of the U.S. dollar to other currencies may negatively affect revenue and other operating results as expressed in U.S. dollars. We do not believe that an immediate 10% increase or decrease in the relative value of the U.S. dollar to other currencies would have a material effect on operating results.

We have experienced and will continue to experience fluctuations in net loss as a result of transaction gains or losses related to remeasuring certain current asset and current liability balances that are denominated in currencies other than the functional currency of the entities in which they are recorded. We have not engaged in the hedging of foreign currency transactions to date. We are considering the costs and benefits of initiating such a program and may in the future hedge balances and transactions denominated in currencies other than the U.S. dollar as we expand international operations.

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

We do not believe that inflation has had a material effect on our business, financial condition or results of operations to date. For example, our subscription contracts often contain pricing terms that are tied to the Consumer Price Index (CPI), and our pricing policy for renewals not tied to CPI is designed to approximate changes in CPI. If our costs were to become subject to significant inflationary pressure, we may not be able to fully offset these higher costs with price increases. Our inability or failure to do so could adversely affect our business, financial condition and results of operations.

### **Item 4. Controls and Procedures**

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

Our management, with the participation of our principal executive officer and principal financial officer, has evaluated the effectiveness of our disclosure controls and procedures (as defined in Rules 13a-15(e) and 15d-15(e) under the Securities Exchange Act of 1934, as amended (the Exchange Act)), as of the end of the period covered by this Quarterly Report on Form 10-Q. Based on such evaluation, our principal executive officer and principal financial officer have concluded that as of such date, our disclosure controls and procedures were effective at a reasonable assurance level.

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

There was no change in our internal control over financial reporting (as defined in Rules 13a-15(f) and 15d-15(f) under the Exchange Act) that occurred during the period covered by this Quarterly Report on Form 10-Q that has materially affected, or is reasonably likely to materially affect, our internal control over financial reporting.

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

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

## PART II. OTHER INFORMATION

### Item 1. Legal Proceedings

The Company is involved in legal proceedings from time to time arising in the normal course of business. Management believes that the outcome of these proceedings will not have a material impact on the Company's financial condition, results of operations, or liquidity. See "Note 12—Commitments and Contingencies" of our condensed consolidated financial statements included elsewhere in this Quarterly Report on Form 10-Q for more information regarding our legal proceedings.

### Item 1A. Risk Factors

*You should carefully consider the following risk factors, in addition to the other information contained in this report, including the section of this report captioned "Management's Discussion and Analysis of Financial Condition and Results of Operations" and our financial statements and related notes. If any of the events described in the following risk factors or the risks described elsewhere in this report occurs, our business, operating results and financial condition could be seriously harmed. This report also contains forward-looking statements that involve risks and uncertainties. Our actual results could differ materially from those anticipated in the forward-looking statements as a result of factors that are described below and elsewhere in this report.*

#### Risks Related to Our Financial Position and Capital Needs

**We have a history of losses, and we may not be able to generate sufficient revenue to achieve or maintain profitability in the future.**

We incurred net losses of \$24.4 million \$40.5 million and \$26.0 million \$45.5 million for the three six months ended April 30, 2023 July 31, 2023 and 2024, respectively, and had an accumulated deficit of \$1,431.6 million \$1,451.1 million at April 30, 2024 July 31, 2024. We may not be able to generate sufficient revenue to achieve or sustain profitability. We expect to continue to incur losses for the foreseeable future and we expect costs to increase in future periods as we expend substantial financial and other resources on, among other things:

- sales and marketing, including any expansion of our direct sales organization, which will require time before these investments generate sales results;
- technology and data center infrastructure, enhancements to cloud architecture, improved disaster recovery protection, increasing data security, compliance and operations expenses;
- data center costs as customers increase the amount of data that is available to our platform and usage on our platform;
- other software development, including enhancements and modifications related to our platform;
- international expansion in an effort to increase our customer base and sales;
- general and administration, including significantly increasing expenses in accounting and legal related to the increase in the sophistication and resources required for public company compliance and other work arising from the growth and maturity of the company;
- competing with other companies, custom development efforts and open source initiatives that are currently in, or may in the future enter, the markets in which we compete;
- maintaining high customer satisfaction and ensuring quality and timely releases of platform enhancements and applications;
- developing our indirect sales channels and strategic partner network;

- maintaining the quality of our cloud and data center infrastructure to minimize latency when using our platform;
- increasing market awareness of our platform and enhancing our brand;
- maintaining compliance with applicable governmental regulations and other legal obligations, including those related to intellectual property and international sales; and
- attracting and retaining top talent in a competitive market.

These expenditures may not result in additional revenue or the growth of our business. If we fail to continue to grow revenue or to achieve or sustain profitability, the market price of our Class B common stock could be adversely affected.

***We have been growing and expect to continue to invest in our growth for the foreseeable future. If we fail to manage this growth effectively, our business and operating results will be adversely affected.***

We intend to continue to grow our business. If we cannot adequately train new employees, including our direct sales force, or if new employees are not as productive as quickly as we would like, sales may decrease or customers may lose confidence in the knowledge and capability of our employees. In addition, we may make direct investments in our international business, and increase the number of employees outside the United States. We must successfully manage growth to achieve our objectives. Although our business has experienced significant growth in the past, we cannot provide any assurance that our business will continue to grow at any particular rate, or at all.

Our ability to effectively manage the growth of our business will depend on a number of factors, including our ability to do the following:

- effectively recruit, integrate, train and motivate new employees and make them productive, including our direct sales force, while retaining existing employees, maintaining the beneficial aspects of our corporate culture and effectively executing our business plan;
- attract new customers, and retain and increase usage by existing customers;
- recruit and successfully leverage channel partners and app developers;
- successfully enhance our platform;
- continue to improve our operational, financial and management controls;
- protect and further develop strategic assets, including intellectual property rights; and
- manage market expectations and other challenges associated with operating as a public company.

These activities will require significant financial resources and allocation of valuable management and employee resources, and growth will continue to place significant demands on management and our operational and financial infrastructure.

Our future financial performance and ability to execute our business plan will depend, in part, on our ability to effectively manage any future growth. There are no guarantees we will be able to do so. In particular, any failure to successfully implement systems enhancements and improvements will likely negatively impact our ability to manage our expected growth, ensure uninterrupted operation of key business systems and comply with the rules and regulations that are applicable to public reporting companies. Moreover, if we do not effectively manage the growth of our business and operations, the quality of our platform could suffer, which could negatively affect our brand, operating results and business.

***Our ability to raise capital in the future may be limited, and if we fail to raise capital when needed in the future, we could be prevented from growing or could be forced to delay or eliminate product development efforts or other operations.***

Our business and operations may consume resources faster than we anticipate. We have incurred cumulative and recurring losses from operations since inception and had an accumulated deficit of **\$1,431.6 million** **\$1,451.1 million** as of **April 30, 2024** **July 31, 2024**. We have also experienced negative or close to breakeven cash flows from operating activities, including cash provided by operating activities of **\$0.8 million** **\$1.5 million** and **\$1.9 million** cash used in operating activities of **\$4.3 million** for the **three** **six** months ended **April 30, 2023** **July 31, 2023** and 2024, respectively. As of **April 30, 2024** **July 31, 2024**, we had **\$61.2 million** **\$55.7 million** of cash, cash equivalents, and restricted cash which were held for working capital purposes, of which **\$3.7 million** was restricted cash. Additionally, no amounts were available to draw under our credit facility.

We may need to raise additional funds to invest in growth opportunities, to continue product development and sales and marketing efforts, and for other purposes. Additional financing may not be available on favorable terms, if at all. If adequate funds are not available on acceptable terms, we may be unable to meet our obligations, invest in future growth opportunities, or continue operations at anticipated levels, which could harm our business and operating results. In addition, current and future debt instruments may impose restrictions on our ability to dispose of property, make changes in our

business, engage in mergers or acquisitions, incur additional indebtedness, and make investments and distributions. Furthermore, if we issue additional equity securities, stockholders will experience dilution, and the new equity securities could have rights senior to those of our common stock. Because our decision to issue securities in any future offering will depend on market conditions and other factors beyond our control, we cannot predict or estimate the amount, timing or nature of any such future offerings. As a result, stockholders bear the risk that future securities offerings reduce the market price of our Class B common stock and dilute their interest.

***Future operating results and key metrics may fluctuate significantly due to a wide range of factors, which makes our future results difficult to predict.***

Our operating results and key metrics could vary significantly from quarter to quarter as a result of various factors, some of which are outside of our control, including:

- the expansion of our customer base;
- the size, duration and terms of our contracts with both existing and new customers;
- the introduction of products and product enhancements by competitors, and changes in pricing for products offered by us or our competitors;
- customers delaying purchasing decisions in anticipation of new products or product enhancements by us or our competitors or otherwise;
- changes in customers' budgets;
- seasonal variations in our sales, which have generally historically been highest in our fourth fiscal quarter and lowest in the first fiscal quarter;
- the timing of satisfying revenue recognition criteria, particularly with regard to large transactions;
- the amount and timing of payment for expenses, including infrastructure costs to deliver our platform, research and development, sales and marketing expenses, employee benefit and stock-based compensation expenses and costs related to Domopalooza, our annual user conference that occurs in our first fiscal quarter;
- costs related to the hiring, training and maintenance of our direct sales force;
- the timing and growth of our business, in particular through the hiring of new employees and international expansion; and
- general economic and political conditions, both domestically and internationally, including the impacts of pandemics or other catastrophic events, military conflicts (including the Russian invasion of Ukraine and hostilities between Israel and Hamas), inflation, and adverse impacts to the financial service services industry, as well as economic conditions specifically affecting industries in which our customers operate.

Any one of these or other factors discussed elsewhere in this report may result in fluctuations in our operating results, meaning that quarter-to-quarter comparisons may not necessarily be indicative of our future performance.

***Because we recognize revenue from subscriptions ratably over the terms of our subscription agreements, near-term changes in sales may not be reflected immediately in our operating results.***

We offer our platform primarily through subscription agreements, which typically vary in length between one and three years, and may in many cases be subject to automatic renewal or renewal only at a customer's discretion. We generally invoice our customers in annual installments at the beginning of each year in the subscription period. Amounts that have been invoiced are initially recorded as deferred revenue and are recognized ratably over the subscription period. As a result, most of the revenue that we report in each period is derived from the recognition of deferred revenue relating to subscriptions entered into during previous periods. A decline in new or renewed subscriptions in any one quarter is not likely to have a material impact on results for that quarter. However, declines would negatively affect revenue and deferred revenue balances in future periods, and the effect of significant downturns in sales and market acceptance of our platform, and potential changes in our rate of renewals, may not be fully reflected in our results of operations until future periods. Our subscription model also makes it difficult for us to rapidly increase our total revenue through additional sales in any period, as revenue from new customers is recognized over the applicable subscription term. We may be unable to adjust our cost structure to reflect the changes in revenue. In addition, a significant majority of our costs are expensed as incurred, while revenue is generally recognized over the life of the customer agreement. As a result, increased growth in the number of our customers could result in our recognition of more costs than revenue in the earlier periods of the terms of our agreements.

***The length, cost and uncertainty associated with sales cycles for enterprise customers may result in fluctuations in our operating results and our failure to achieve the expectations of investors.***

Our sales efforts to enterprise customers, which we define as companies with over \$1 billion in revenue, face long sales cycles, complex customer requirements, substantial upfront sales costs, and a relatively low and difficult to predict volume of sales on a quarter-by-quarter basis. This makes it

difficult to predict with certainty our sales and related operating performance in any given period. Our sales cycle for new enterprise customers varies from approximately six months to multiple years. Customers often undertake a prolonged evaluation of our platform, including assessing their own readiness, scoping the professional services involved, and comparing our platform to products offered by competitors and their ability to solve the problem internally. Events may occur during this period that affect the size or timing of a purchase or even cause cancellations, which may lead to greater unpredictability in our business and operating results. Moreover, customers often begin to use our platform on a limited basis with no guarantee that they will expand their use of our platform widely enough across their organization to justify the costs of our sales efforts. We may also face unexpected implementation challenges with enterprise customers or more complicated installations of our platform. It may be difficult to deploy our platform if the customer has unexpected database, hardware or software technology issues.

Adherence to our financial plan in part depends on managing the mix of customers, the rate at which customers increase their use of our platform within their organizations, the number of use cases they employ, and the timing and amount of upsells, all of which affect annual contract value. Our financial performance and the predictability of our quarterly financial results may be harmed by failures to secure the higher value enterprise agreements in a timely manner or at all, or changes in the volume of transactions overall, compared to our forecasts, and depends in large part on the successful execution of our direct sales team. The predictability of billings may be adversely impacted by fluctuations in the proportion of contracts that are not billed annually in advance.

Additionally, our quarterly sales cycles are generally more heavily weighted toward the end of the quarter with an increased volume of sales in the last few weeks and days of the quarter. This impacts the timing of recognized revenue and billings, cash collections and delivery of professional services. Furthermore, the concentration of contract negotiations in the last few weeks and days of the quarter could require us to expend more in the form of compensation for additional sales, legal and finance employees and contractors. Compression of sales activity to the end of the quarter also greatly increases the likelihood that sales cycles will extend beyond the quarter in which they are forecasted to close for some sizeable transactions, which will harm forecasting accuracy and adversely impact billings and new customer acquisition and renewal metrics for the quarter in which they are forecasted to close.

***Increased sales to customers outside the United States or paid for in currency other than the U.S. dollar exposes us to potential currency exchange losses.***

As our international sales and operations increase, so too will the number and significance of transactions, including intercompany transactions, occurring in currencies other than the U.S. dollar. In addition, our international subsidiaries may accumulate assets and liabilities that are denominated in currencies other than the U.S. dollar, which is the functional reporting currency of these entities. Accordingly, changes in the value of foreign currencies relative to the U.S. dollar can affect our revenue and operating results due to foreign currency gains and losses that are reflected in our earnings. We do not currently maintain a program to hedge transactional exposures in foreign currencies. However, in the future, we may 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. Moreover, the use of hedging instruments may introduce additional risks if we are unable to structure effective hedges with such instruments.

***Our credit facility contains restrictive and financial covenants that may limit our operating flexibility.***

Our credit facility contains restrictive covenants that limit our ability to, among other things, transfer or dispose of assets, merge with other companies or consummate certain changes of control, acquire other companies, open new offices that contain a material amount of assets, pay dividends, incur additional indebtedness and liens and enter into new businesses. We therefore may not be able to engage in any of the foregoing transactions unless we obtain the consent of the lender or terminate the credit facility, which may limit our operating flexibility. In addition, our credit facility is secured by all of our assets, including our intellectual property, and requires us to satisfy certain financial covenants. If we do not meet the financial covenants as specified in the credit facility, we may require forbearance or relief from our financial covenant violations from Blackrock BlackRock or be required to arrange alternative financing.

There is no guarantee that we will be able to generate sufficient cash flow or sales to meet these financial covenants or pay the principal and interest on any such debt. Furthermore, there is no guarantee that future working capital, borrowings or equity financing will be available to repay or refinance any such debt. A breach of any of these covenants or the occurrence of certain other events (including a material adverse effect) specified in the credit facility and/or the related collateral documents could result in an event of default under the loan agreement. If an event of default has occurred and is continuing, BlackRock could elect to declare all amounts outstanding under the credit facility immediately due and payable. If we are unable to repay those amounts, BlackRock could foreclose on the collateral granted to them to secure such indebtedness. If BlackRock accelerates the repayment of borrowings, if any, we may not have sufficient funds to repay our existing debt.

Our ability to meet the financial covenants could be affected by events beyond our control. Any inability to make scheduled payments or meet the financial covenants on our credit facility would adversely affect our business.

***We may be subject to additional obligations to collect and remit sales tax and other taxes, and we may be subject to tax liability for past transactions, which could harm our business.***

We do not collect sales and use, value added and similar taxes in all jurisdictions in which we have sales, based on our belief that such taxes are not applicable in certain jurisdictions. State, local and foreign jurisdictions have differing rules and regulations governing sales, use, value added and other taxes, and these rules and regulations are subject to varying interpretations that may change over time. In particular, the applicability of such taxes on subscriptions to our platform in various jurisdictions is unclear. Further, rules regarding tax nexus are complex and vary significantly across state, local and foreign jurisdictions. As a result, we could face the possibility of audits that could result in tax assessments, including associated interest and penalties. A successful assertion that we should be collecting additional sales, use, value added or other taxes in those jurisdictions where we have not historically done so could result in substantial tax liabilities and related penalties for past transactions, discourage customers from purchasing our application or otherwise harm our business and operating results. In addition, we are required to withhold and timely remit payroll-related taxes for which we are also subject to the possibility of audits that could result in tax assessments, including associated interest and penalties.

***Changes in tax laws or regulations that are applied adversely to us or our customers could increase the costs of our platform and adversely impact our business.***

New income, sales, use or other tax laws, statutes, rules, regulations or ordinances could be enacted at any time, which could affect the tax treatment of our (and our subsidiaries') domestic and foreign financial results. Any new taxes could adversely affect our domestic and international business operations, and our business and financial performance. Further, existing tax laws, statutes, rules, regulations or ordinances could be interpreted, changed, modified or applied adversely to us. For example, the Tax Cuts & Jobs Act of 2017 eliminated the ability to deduct research and development expenditures currently and instead requires taxpayers to capitalize and amortize those expenditures over five or fifteen years. **However, recently proposed tax legislation, if enacted, would restore the ability to deduct currently domestic research and development expenditures through 2025 and would retroactively restore this benefit for 2022 and 2023.** Further, the Inflation Reduction Act of 2022 introduced a non-deductible excise tax of 1% on the value of certain share repurchases by publicly traded corporations, which may increase the costs to us of any share repurchases.

In addition, taxation of cloud-based software is constantly evolving as many state and local jurisdictions consider the taxability of software services provided remotely. These events could require us or our customers to pay additional tax amounts on a prospective or retroactive basis, as well as require us or our customers to pay fines or penalties and interest for past amounts deemed to be due. If we raise our prices to offset the costs of these changes, existing and potential future customers may elect not to continue to use or purchase subscriptions to our platform in the future. Additionally, new, modified or newly interpreted or applied tax laws could increase our customers' and our compliance, operating and other costs, as well as the costs of our platform. Any or all of these events could harm our business and operating results.

***We are a multinational organization faced with increasingly complex tax issues in many jurisdictions, and we could be obligated to pay additional taxes in various jurisdictions.***

As a multinational organization, we are subject to taxation in several jurisdictions around the world with increasingly complex tax laws, the application of which can be uncertain, and significant judgment and estimates are required in determining our provision for income taxes. Our tax expense may be impacted if our intercompany transactions, which are required to be computed on an arm's-length basis, are challenged and successfully disputed by tax authorities. Our policies governing transfer pricing may be determined to be inadequate and could result in additional tax assessments. The amount of taxes we pay in these jurisdictions could increase substantially as a result of changes in the applicable tax principles, including increased tax rates, new tax laws or revised interpretations of existing tax laws and precedents, which could harm our liquidity and operating results. In addition, the authorities in these jurisdictions could review our tax returns and impose additional tax, interest and penalties, and the authorities could claim that various withholding requirements or other taxes apply to us or our subsidiaries or assert that benefits of tax treaties are not available to us or our subsidiaries, any of which could adversely affect our operating results.

Further, many countries and the Organization for Economic Cooperation and Development have proposed to reallocate some portion of profits of large multinational companies to markets where sales arise, known as "Pillar One," as well as enact a global minimum tax rate of at least 15% for multinationals with global revenue exceeding certain thresholds, known as "Pillar Two," and many countries have adopted or intend to adopt these proposals. Changes to these and other areas in relation to international tax reform, including future actions taken by foreign governments could increase uncertainty and may adversely affect our tax rate and operating results in future years.

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

As of January 31, 2024, we had net operating loss (NOL) carryforwards for federal and state income tax purposes of approximately \$1,178.3 million and \$1,352.8 million, respectively, which may be available to offset taxable income in the future. The federal NOLs will begin to expire in various years beginning in 2032 if not utilized. The state NOLs will expire depending on the various rules in the state jurisdictions in which we operate. A lack of future taxable income could adversely affect our ability to utilize these NOLs before they expire.

In general, under Section 382 of the Internal Revenue Code of 1986, as amended, (the Code), a corporation that undergoes an "ownership change" (as defined under Section 382 of the Code and applicable Treasury Regulations) is subject to limitations on its ability to utilize its pre-ownership change NOLs to offset its future taxable income. An ownership change under Section 382 of the Code could affect our ability to utilize the NOLs to offset our income. Furthermore, our ability to utilize NOLs of companies that we have acquired or may acquire in the future may be subject to limitations. We have



historically contracted third parties to perform a Section 382 analysis to evaluate limitations on our NOLs due to ownership changes, with the most recent analysis being through January 31, 2023. There is also a risk that due to regulatory changes, such as suspensions on the use of NOLs or other unforeseen reasons, our existing NOLs could expire or otherwise be unavailable to reduce future income tax liabilities for federal and state tax purposes. Limitations may also apply under state law. For these example, recently enacted California legislation limits the use of state NOL carryforwards for tax years beginning on or after January 1, 2024 and before January 1, 2027. As a result of this legislation or other unforeseen reasons, we may not be able to utilize a material portion some or all of our NOLs, NOL carryforwards, even if we attain profitability, which could potentially result in increased future tax liability to us and could adversely affect our operating results and financial condition. profitability.

***Adverse events or perceptions affecting the financial services industry could adversely affect our operating results, financial condition and prospects.***

Limited liquidity, defaults, non-performance or other adverse developments affecting financial institutions or parties with which we do business, or perceptions regarding these or similar risks, have in the past and may in the future lead to market-wide liquidity problems. Such developments, and their effects on the broader financial system, could result in a variety of material and adverse impacts on our business operations and financial conditions, including, but not limited to:

- delayed access to deposits or other financial assets or the uninsured loss of deposits or other financial assets;
- loss of access to revolving existing credit facilities or other working capital sources or the inability to refund, roll over or extend the maturity of, or enter into new credit facilities or other working capital resources;
- potential or actual breach of obligations, including U.S. federal and state wage laws and contracts that may require us to maintain letters or credit or other credit support arrangements; and
- termination of cash management arrangements or delays in accessing or actual loss of funds subject to cash management arrangements.

For example, on March 10, 2023, Silicon Valley Bank (SVB) was closed and placed in receivership and subsequently, additional financial institutions have been placed into receivership. Prior to SVB's closure, we had approximately \$12.4 million in deposit accounts with SVB and an additional \$18.3 million subject to SVB sweep account arrangements (with amounts held in custodial accounts with third-party financial institutions). As a result of U.S. government intervention, we subsequently regained access to our accounts at SVB, and Silicon Valley Bridge Bank has assumed SVB's obligations to honor our standby letter of credit. However, there remains significant uncertainty surrounding the impact of these bank closures on the broader financial system. Moreover, there is no guarantee that the U.S. government will intervene to provide access to uninsured funds in the future in the event of the failure of other financial institutions, or that they would do so in a timely fashion. In such an event, parties with which we have commercial agreements, including customers and suppliers, may be unable to satisfy their obligations to, or enter into new commercial arrangements with us.

Concerns regarding the U.S. or international financial systems could impact the availability and cost of financing, thereby making it more difficult for us to acquire financing on acceptable terms or at all. In addition, instability in the financial services industry could spur a deterioration in the macroeconomic environment and dampen demand for our products.

Any of these risks could materially impact our operating results, liquidity, financial condition and prospects.

**Risks Related to Our Relationships with Customers and Third Parties**

***If we are unable to attract new customers in a manner that is cost-effective, our revenue growth could be slower than we expect and our business may be harmed.***

To increase our revenue, we must add new customers. Demand for our platform is affected by a number of factors, many of which are beyond our control, such as continued market acceptance of our platform for existing and new use cases, the timing of development and release of new applications and features, technological change, growth or contraction in our addressable market, and accessibility across mobile devices, operating systems, and applications, and macroeconomic changes, including the impact of public health epidemics or pandemics, on the demand for technology solutions like ours. In addition, if competitors introduce lower cost or differentiated products or services that are perceived to compete with our features, our ability to sell our features based on factors such as pricing, technology and functionality could be impaired. As a result, we may be unable to attract new customers at rates or on terms that would be favorable or comparable to prior periods, which could negatively affect the growth of our revenue.

Even if we do attract customers, the cost of new customer acquisition may prove so high as to prevent us from achieving or sustaining profitability. We recognize subscription revenue ratably over the term of the subscription period. In general, customer acquisition costs and other upfront costs associated with new customers are much higher in the first year than the aggregate revenue we recognize from those new customers in the first year. As a result, the profitability of a customer to our business in any particular period depends in part upon how long a customer has been a subscriber and the degree to which it has expanded its usage of our platform. Additionally, we intend to continue to hire additional sales personnel to grow our domestic and international operations. If our sales and marketing efforts do not result in substantial increases in revenue, our business, results of operations, and financial condition may be adversely affected.

***If customers do not renew their contracts with us or reduce their use of our platform, our revenue will decline and our operating results and financial condition may be adversely affected.***

The initial terms of our customer contracts typically vary in length between one and three years, and our customers have no obligation to renew their subscriptions after the expiration of their initial subscription periods. In some cases, the contracts automatically renew (with each party having the option to elect not to renew), but in circumstances where that is not the case, our customers may unilaterally elect not to renew, may seek to renew for lower subscription amounts or for shorter contract lengths, or may choose to renew for the same or fewer applications over time. A majority of our annual recurring revenue is up for renewal during the fiscal year ending January 31, 2025. Our renewal rates may decline or fluctuate as a result of a number of factors, including leadership changes within our customers resulting in loss of sponsorship, limited customer resources, pricing changes by us or competitors, customer satisfaction with our platform and related applications, the acquisition of customers by other companies, procurement or budgetary decisions, and deteriorating general economic conditions, including as a result of public health epidemics or pandemics. To the extent our customer base continues to grow, renewals and additional subscriptions by renewing customers will become an increasingly important part of our results. If our customers do not renew their subscriptions, or decrease the amount they spend with us, revenue will decline and our business will be harmed.

***If customers do not expand their use of our platform or adopt additional use cases, our growth prospects, operating results and financial condition may be adversely affected.***

Our future success depends on our ability to increase the deployment of our platform within and across our existing customers and future customers. Many of our customers initially deploy our platform to specific groups or departments within their organization or for a limited number of use cases. Our growth prospects depend on our ability to persuade customers to expand their use of our platform to additional groups, departments and use cases across their organization.

Historically, we have made significant investments in research and development to build our platform and to offer enterprise customers the features and functionality that they require.

If our future operating results are significantly below the expectations of investors, it could harm the market price of our Class B common stock.

***The loss of one or more of our key customers, or a failure to renew our subscription agreements with one or more of our key customers, could negatively affect our ability to market our platform.***

We rely on our reputation and recommendations from key customers in order to promote subscriptions to our platform. The loss of, or failure to renew by, any of our key customers could have a significant effect on our revenue, reputation and our ability to obtain new customers. In addition, acquisitions of our customers could lead to cancellation of such customers' contracts, thereby reducing the number of our existing and potential customers.

***If we are unable to develop and maintain successful relationships with channel partners, our business, operating results, and financial condition could be adversely affected.***

To date, we have been primarily dependent on our direct sales force to sell subscriptions to our platform. Although we have developed relationships with some channel partners, such as referral partners, resellers, and integration partners, these channels have resulted in limited revenue historically. We believe that continued growth in our business is dependent upon identifying, developing, and maintaining strategic relationships with additional channel partners that can drive substantial revenue. If we fail to identify additional channel partners in a timely and cost-effective manner, or at all, or are unable to assist our current and future channel partners in independently selling and deploying our products, our business, results of operations, and financial condition could be adversely affected. Typically, agreements with channel partners are non-exclusive, meaning our channel partners may offer customers the products of several different companies, including products that compete with our platform. They may also cease marketing our platform with limited or no notice and with little or no penalty. Additionally, customer retention and expansion attributable to customers acquired through our channel partners may differ significantly from customers acquired through our direct sales efforts. If our channel partners do not effectively market and sell our products, or fail to meet the needs of our customers, our reputation and ability to grow our business may also be adversely affected.

Sales by channel partners are more likely than direct sales to involve collectability concerns. In particular, sales by our channel partners into developing markets, and accordingly, variations in the mix between revenue attributable to sales by channel partners and revenue attributable to direct sales, may result in fluctuations in our operating results.

***We rely upon data centers and other systems and technologies provided by third parties, and technology systems and electronic networks supplied and managed by third parties, to operate our business and interruptions or performance problems with these systems, technologies and networks may adversely affect our business and operating results.***

We rely on data centers and other technologies and services provided by third parties in order to manage our cloud-based infrastructure and operate our business. If any of these services becomes unavailable or otherwise is unable to serve our requirements due to extended outages,



interruptions, facility closure, or because it is no longer available on commercially reasonable terms, expenses could increase, our ability to manage finances could be interrupted and our operations otherwise could be disrupted or otherwise impacted until appropriate substitute services, if available, are identified, obtained, and implemented.

We do not control, or in some cases have limited control over, the operation of the data center facilities we use, and they are vulnerable to damage or interruption from earthquakes, floods, fires, power loss, telecommunications failures and similar events. They may also be subject to break-ins, sabotage, intentional acts of vandalism and similar misconduct, to adverse events caused by operator error, and to interruptions, data loss or corruption, and other performance problems due to various factors, including introductions of new capabilities, technology errors, infrastructure changes, distributed denial of service attacks, or other security related incidents. For instance, in December 2017, researchers identified significant CPU architecture vulnerabilities commonly known as "Spectre" and "Meltdown" that have required software updates and patches, including for providers of public cloud services, to mitigate such vulnerabilities and such updates and patches have required servers to be offline and potentially slow their performance. We may not be able to rapidly switch to new data centers or move customers from one data center to another in the event of any adverse event. Despite precautions taken at these facilities, the occurrence of a natural disaster, an act of terrorism or other act of malfeasance, a decision to close the facilities without adequate notice or other unanticipated problems at these facilities could result in lengthy interruptions in our service and the loss or corruption of, or unauthorized access to or acquisition of, customer data.

In addition, if we do not accurately predict our infrastructure capacity requirements, customers could experience service shortfalls. The provisioning of additional cloud hosting capacity and data center infrastructure requires lead time. As we continue to add data centers, restructure our data management plans, and increase capacity in existing and future data centers, we may be required to move or transfer our data and customers' data. Despite precautions taken during such processes and procedures, any unsuccessful data transfers may impair customers' use of our platform, and we may experience costs or downtime in connection with the transfer of data to other facilities, which may lead to, among other things, customer dissatisfaction and non-renewals. The owners of our data center facilities 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 to new data center facilities, and we may incur significant costs and possible service interruption in connection with doing so.

Our ability to provide services and solutions to customers also depends on our ability to communicate with customers through the public internet and electronic networks that are owned and operated by third parties. In addition, in order to provide services on-demand and promptly, our computer equipment and network servers must be functional 24 hours per day, which requires access to telecommunications facilities managed by third parties and the availability of electricity, which we do not control. A severe disruption of one or more of these networks or facilities, including as a result of utility or third-party system interruptions, could impair our ability to process information and provide services to our customers.

Any unavailability of, or failure to meet our requirements by, third-party data centers or other third-party technologies or services, or any disruption of the internet or the third-party networks or facilities that we rely upon, could impede our ability to provide services to customers, harm our reputation, result in a loss of customers, cause us to issue refunds or service credits to customers, subject us to potential liabilities, result in contract terminations, and adversely affect our renewal rates. Any of these circumstances could adversely affect our business and operating results.

***Contractual disputes with our customers could be costly, time-consuming and harm our reputation.***

Our business is contract intensive and we are party to contracts with our customers all over the world. Our contracts can contain a variety of terms, including service levels, security obligations, indemnification and regulatory requirements. Contract terms may not always be standardized across our customers and can be subject to differing interpretations, which could result in disputes with our customers from time to time. If our customers notify us of an alleged contract breach or otherwise dispute any provision under our contracts, the resolution of such disputes in a manner adverse to our interests could negatively affect our operating results.

Additionally, if customers fail to pay us under the terms of our agreements, we may be adversely affected both from the inability to collect amounts due and the cost of enforcing the terms of our contracts, including litigation. The risk of such negative effects increases with the term length of our customer arrangements. Furthermore, some of our customers may seek bankruptcy protection or other similar relief and fail to pay amounts due to us, or pay those amounts more slowly, either of which could adversely affect our operating results, financial position and cash flow.

**Risks Related to Our Products and Solutions**

***We face intense competition, and we may not be able to compete effectively, which could reduce demand for our platform and adversely affect our business, growth, revenue and market share.***

The market for our platform is intensely and increasingly competitive and subject to rapidly changing technology and evolving standards. In addition, many companies in our target market are offering, or may soon offer, products and services that may compete with our platform. Furthermore, many potential customers have made significant investments in legacy software systems and may be unwilling to invest in new solutions.

Our current primary competitors generally fall into the following categories:

- large software companies, including suppliers of traditional business intelligence products that provide one or more capabilities that are competitive with our products, such as Microsoft Corporation, Oracle Corporation, SAP AG and IBM;
- business analytics software companies, such as Tableau Software, Inc., Qlik Technologies, Looker Data Sciences, Inc., Sisense, Inc., and Tibco Software, Inc.; and
- SaaS-based products or cloud-based analytics providers such as salesforce.com, Inc. and Infor, Inc.

We expect competition to increase as other established and emerging companies enter the markets in which we compete, as customer requirements evolve and as new products and technologies are introduced. For example, salesforce.com, Inc. acquired Tableau Software, Inc. in August 2019 and Alphabet Inc. acquired Looker Data Sciences, Inc. in February 2020.

Many competitors, particularly the large software companies named above, have longer operating histories, significantly greater financial, technical, research and development, marketing, distribution, professional services or other resources and greater name recognition than we do. In addition, many competitors have strong relationships with current and potential customers, channel partners and development partners and extensive knowledge of markets in which we compete. As a result, they may be able to respond more quickly to new or emerging technologies and changes in customer requirements, for example by devoting greater resources to the development, promotion and sale of their products than we do.

Moreover, many of these competitors may bundle their data management and analytics products into larger deals or maintenance renewals, often at significant discounts or at no charge. Increased competition may lead to price cuts, alternative pricing structures or the introduction of products available for free or a nominal price, fewer customer orders, reduced gross margins, longer sales cycles and loss of market share. We may not be able to compete successfully against current and future competitors, and our business, operating results and financial condition will be harmed if we fail to meet these competitive pressures. Even if we are successful in acquiring and retaining customers, those customers may continue to use our competitors' products in addition to our products.

Our ability to compete successfully depends on a number of factors, both within and outside of our control. Some of these factors include ease and speed of platform deployment and use, accessibility across mobile devices, operating systems, and applications, discovery and visualization capabilities, analytical and statistical capabilities, performance and scalability, the quality of our data security infrastructure, the quality and reliability of our customer service and support, total cost of ownership, return on investment and brand recognition. Any failure by us to compete successfully in any one of these or other areas may reduce the demand for our platform, as well as adversely affect our business, operating results and financial condition.

Moreover, current and future competitors may also make strategic acquisitions or establish cooperative relationships among themselves or with others. By doing so, these competitors may increase their ability to meet the needs of customers. These relationships may limit our ability to sell or certify our platform through specific distributors, technology providers, database companies and distribution channels and allow competitors to rapidly gain significant market share. These developments could limit our ability to obtain revenue from existing and new customers. If we are unable to compete successfully against competitors, our business, operating results and financial condition would be harmed.

***We continue to evolve our subscription and pricing models and changes could adversely affect our operating results.***

Our pricing and subscription models have evolved over time, and will continue to evolve in the future. We have started to introduce consumption-based pricing, which is pricing based upon the use of our platform, for certain of our customers. We have limited experience with determining the optimal pricing for our consumption-based contracts. Revenue recognized for certain customers may be negatively impacted due to our new consumption-based pricing model. For example, certain customers may end up using less data than originally contemplated in their initial consumption-based contract resulting in lower net retention in future years. The success of our pricing model transition is subject to numerous variables, including, but not limited to, customer demand, renewal and expansion rates, our ability to further develop and scale infrastructure, the ability of our sales force to successfully execute new sales strategies, tax and accounting implications, pricing, and our costs. Moreover, changes in our pricing and subscription models subject us to a number of uncertainties, including our ability to plan for and model future growth and make accurate projections regarding our future performance. Changes to our pricing and subscription models may also expose to unexpected or unintended effects, including increased user dissatisfaction, reputational harm and difficulty obtaining or retaining customers. Further, large customers, which are the focus of our direct sales efforts, may demand greater price discounts. In an inflationary environment, our costs may increase and we may not be able to adjust our pricing models accordingly, which could adversely impact our financial performance.

As we expand internationally, we also must determine the appropriate price to enable us to compete effectively internationally. In addition, if the mix of features we sell changes, then we may need to, or choose to, revise our pricing. As a result, in the future we may be required to reduce our prices or offer shorter contract durations, which could adversely affect our revenue, gross margin, profitability, financial condition and cash flow.

In addition, our competitors may offer different subscription or pricing models, which may be more attractive to potential customers. We may be required to adjust our subscription or pricing models in response to these changes, which could adversely affect our financial performance.

***If we fail to adapt and respond effectively to rapidly changing technology, evolving industry standards and changing customer needs or requirements, our solutions may become less competitive.***

Our success depends on our customers' willingness to adopt and use our platform, including on their smartphone or mobile device, as well as our ability to adapt and enhance our platform. To attract new customers and increase revenue from existing customers, we need to continue to enhance and improve our platform, to meet customer needs at prices that customers are willing to pay. Such efforts will require adding new features, expanding related applications and responding to technological advancements, which will increase our research and development costs. If we are unable to develop solutions that address customers' needs, or enhance and improve our platform in a timely manner, we may not be able to increase or maintain market acceptance of our platform.

Further, we may make changes to our platform that customers do not find useful. We may also discontinue certain features, begin to charge for certain features that are currently free or increase fees for any features or usage of our platform. We may also face unexpected problems or challenges in connection with new applications or feature introductions. Enhancements and changes to our platform could fail to attain sufficient market acceptance for many reasons, including:

- failure to predict market demand accurately in terms of platform functionality and capability or to supply features that meets this demand in a timely fashion;
- inability to operate effectively with the technologies, systems or applications of existing or potential customers;
- defects, errors or failures;
- negative publicity about their performance or effectiveness;
- delays in releasing new enhancements and additional features to our platform to the market;
- the introduction or anticipated introduction of competing products;
- an ineffective sales force;
- poor business conditions for our end-customers, causing them to delay purchases;
- challenges with customer adoption and use of our platform on mobile devices or problems encountered in developing or supporting enhancements to our mobile applications; and
- the reluctance of customers to purchase subscriptions to software incorporating open source software.

Because our platform is designed to operate on and with a variety of systems, we will need to continuously modify and enhance our platform to keep pace with changes in technology, and we may fail to do so.

In addition, issues in the use of artificial intelligence in our platform may result in reputational harm or liability. Domo's suite of data science leverages machine learning algorithms, predictive analytics, and other artificial intelligence technologies to identify trends, anomalies and correlations, provide alerts and initiate business processes. Artificial intelligence presents risks and challenges that could affect its adoption, and therefore our business. Artificial intelligence algorithms may be flawed. Datasets may be insufficient or contain biased information. Artificial intelligence technologies that we make use of may produce or create outputs that appear correct but are factually inaccurate or otherwise flawed. Inappropriate or controversial data practices by us or others could impair the acceptance of artificial intelligence solutions. These deficiencies could undermine the decisions, predictions, or analysis artificial intelligence applications produce, subjecting us to competitive harm, legal liability, and brand or reputational harm. Additionally, artificial intelligence technologies are complex and rapidly evolving, and we face significant competition from other companies as well as evolving legal and regulatory landscapes. Laws and regulations applicable to artificial intelligence continue to develop and may be inconsistent from jurisdiction to jurisdiction. For example, the E.U. has proposed an Artificial Intelligence Act that, if finalized, would prohibit certain artificial intelligence applications and systems and impose additional requirements on the use of certain applications or systems. The use of artificial intelligence technologies in our platform may result in new or enhanced governmental or regulatory scrutiny, new or modified laws or regulations, claims, demands, and litigation, confidentiality, privacy, data protection, or security risks, ethical concerns, or other complications that could adversely affect our business, financial condition, results of operations and prospects. Uncertainty around new and emerging artificial intelligence technologies may require additional investment in the development and maintenance of proprietary datasets and machine learning models, development of new approaches and processes to provide attribution or remuneration to creators of training

data, and development of appropriate protections, safeguards, and policies for handling the processing of data with artificial intelligence technologies, which may be costly and could impact our expenses.

Our platform also provides real-time write-back capabilities to customer environments, including to IoT products and services. The development of the internet of things (IoT), presents security, privacy and execution risks. Many IoT devices have limited interfaces and ability to be updated or patched. IoT solutions may collect large amounts of data, and our handling of IoT data may not satisfy customers or regulatory requirements. IoT scenarios may increasingly affect personal health and safety. If IoT solutions that include our technologies do not work as intended, violate the law, or harm individuals or businesses, we may be subject to legal claims or enforcement actions. These risks, if realized, may increase our costs, damage our reputation or brand, or negatively impact our business and operating results.

Moreover, many competitors expend a considerably greater amount of funds on their research and development programs, and those that do not may be acquired by larger companies that would allocate greater resources to competitors' research and development programs. If we fail to maintain adequate research and development resources or compete effectively with the research and development programs of competitors, our business could be harmed. Our ability to grow is also subject to the risk of future disruptive technologies. If new technologies emerge that are able to deliver business intelligence solutions at lower prices, more efficiently, more conveniently or more securely, such technologies could adversely affect our ability to compete.

***We may not timely and effectively scale our existing technology, including our computing architecture, to meet the performance and other requirements placed on our systems, which could increase expenditures unexpectedly and create risk of outages and other performance and quality of service issues for our customers.***

Our future growth and renewal rates depend on our ability to meet customers' expectations with respect to the speed, reliability and other performance attributes of our platform, and to meet the expanding needs of customers as their use of our platform grows. The number of users, the amount and complexity of data ingested, created, transferred, processed and stored by us, the number of locations where our platform is being accessed, and the number of processes and systems managed by us on behalf of these customers, among other factors, separately and combined, can have an effect on the performance of our platform. In order to ensure that we meet the performance and other requirements of customers, we continue to make significant investments to develop and implement new technologies in our platform and infrastructure operations. These technologies, which include database, application and server advancements, revised network and hosting strategies, and automation, are often advanced, complex, and sometimes broad in scope and untested through industry-wide usage. We may not be successful in developing or implementing these technologies. To the extent that we do not develop offerings and scale our operations in a manner that maintains performance as our customers expand their use, our business and operating results may be harmed.

We may not accurately assess the capital and operational expenditures required to successfully fulfill our objectives and our financial performance may be harmed as a result. Further, we may make mistakes in the technical execution of these efforts to improve our platform, which may affect our customers. Issues that may arise include performance, data loss or corruption, outages, and other issues that could give rise to customer satisfaction issues, loss of business, and harm to our reputation. If any of these were to occur there would be a negative and potentially significant impact to our financial performance. Lastly, our ability to generate new applications, and improve our current solutions may be limited if and to the extent resources are necessarily allocated to address issues related to the performance of existing solutions.

***If we fail to meet our service level commitments, our business, results of operations and financial condition could be adversely affected.***

Our subscription agreements with many of our customers, including most of our top customers, provide certain service level commitments. If we are unable to meet the stated service level commitments or suffer extended periods of downtime that exceed the periods allowed under our subscription agreements, we may be obligated to provide these customers with service credits, or we could face subscription terminations, which could significantly impact our revenue. Any extended service outages could also adversely affect our reputation, which would also impact our future revenue and operating results.

Our customers depend on our customer support organization to resolve technical issues relating to our platform. We may be unable to respond quickly enough to accommodate short-term increases in customer demand for support services. Increased customer demand for these services, without corresponding revenue, could increase costs and adversely affect our operating results. In addition, our sales process is highly dependent on the ease of use of our services, on our reputation and on positive recommendations from our existing customers. Any failure to maintain high-quality customer support, or a market perception that we do not maintain high-quality support, could adversely affect our reputation and our ability to sell our services to existing and prospective customers.

***If our or our customers' access to data becomes limited, our business, results of operations and financial condition may be adversely affected.***

The success of our platform is dependent in large part on our customers' ability to access data maintained on third party software and service platforms. Generally, we do not have agreements in place with these third parties that guarantee access to their platforms, and any agreements that we do have in place with these third parties are typically terminable for convenience by the third party. If these third parties restrict or prevent our ability to integrate our platform with their software or platform, including but not limited to, by limiting the functionality of our data connectors, our ability to access

the data maintained on their systems or the speed at which such data is delivered, customers' ability to access their relevant data in a timely manner may be limited, and our business and operating results may be adversely affected.

***Our business depends on continued and unimpeded access to the internet and mobile networks.***

Our customers who access our platform and services through mobile devices, such as smartphones, laptops and tablet computers, must have a high-speed internet connection to use our services. Currently, this access is provided by telecommunications companies and internet access service providers that have significant and increasing market power in the broadband and internet access marketplace. In the absence of government regulation, these providers could take measures that affect their customers' ability to use our products and services, such as degrading the quality of the data packets we transmit over their lines, giving our packets low priority, giving other packets higher priority than ours, blocking our packets entirely, or attempting to charge their customers more for using our platform and services. To the extent that internet service providers implement usage-based pricing, including meaningful bandwidth caps, or otherwise try to monetize access to their networks, we could incur greater operating expenses and customer acquisition and retention could be negatively impacted. Furthermore, to the extent network operators were to create tiers of internet access service and either charge us for or prohibit our services from being available to our customers through these tiers, our business could be negatively impacted.

On February 26, 2015, the Federal Communications Commission (the FCC) reclassified broadband internet access services in the United States as a telecommunications service subject to some elements of common carrier regulation, including the obligation to provide service on just and reasonable terms, and adopted specific net neutrality rules prohibiting the blocking, throttling or "paid prioritization" of content or services. However, in December 2017, the FCC once again classified broadband internet access service as an unregulated information service and repealed the specific rules against blocking, throttling or "paid prioritization" of content or services. It retained a rule requiring internet service providers to disclose their practices to consumers, entrepreneurs and the FCC. A number of parties have already stated they would appeal this order and it is possible Congress may adopt legislation restoring some net neutrality requirements. The elimination of net neutrality rules and any changes to the rules could affect the market for broadband internet access service in a way that impacts our business, for example, if internet access providers begin to limit the bandwidth and speed for the transmission of data from independent software vendors.

***Incorrect or improper implementation or use of our platform could result in customer dissatisfaction and negatively affect our business, results of operations, financial condition, and growth prospects.***

Our platform is deployed in a wide variety of technology environments. Increasingly, our platform has been deployed in large scale, complex technology environments, and we believe our future success will depend on our ability to increase sales of our platform for use in such deployments. We must often assist our customers in achieving successful implementations of our platform, which we do through our professional services organization. The time required to implement our platform can vary. For complex deployments, implementation can take multiple months. If our customers are unable to implement our platform successfully, or unable to do so in a timely manner, customer perceptions of our platform may be harmed, our reputation and brand may suffer, and customers may choose to cease usage of our platform or not expand their use of our platform. Our customers and third-party partners may need training in the proper use of and the variety of benefits that can be derived from our platform to maximize its benefits. If our platform is not effectively implemented or used correctly or as intended, or if we fail to adequately train customers on how to efficiently and effectively use our platform, our customers may not be able to achieve satisfactory outcomes. This could result in negative publicity and legal claims against us, which may cause us to generate fewer sales to new customers and reductions in renewals or expansions of the use of our platform with existing customers, any of which would harm our business and results of operations.

***Our use of "open source" software could negatively affect our ability to offer our platform and subject us to possible litigation.***

Our platform uses "open source" software that we, in some cases, have obtained from third parties. Open source software is generally freely accessible, usable and modifiable, and is made available to the general public on an "as-is" basis under the terms of a non-negotiable license. Use and distribution of open source software may entail greater risks than use of third-party commercial software. Open source licensors generally do not provide warranties or other contractual protections regarding infringement claims or other claims relating to violation of intellectual property rights or the quality of the software. In addition, certain open source licenses, like the GNU Affero General Public License, may require us to offer for no cost the components of our platform that incorporate the open source software, to make available source code for modifications or derivative works we create by incorporating or using the open source software, or to license our modifications or derivative works under the terms of the particular open source license. If we are required, under the terms of an open source license, to release our proprietary source code to the public, competitors could create similar products with lower development effort and time, which ultimately could result in a loss of sales for us.

We may also face claims alleging noncompliance with open source license terms or infringement, misappropriation or other violation of open source technology. These claims could result in litigation or require us to purchase a costly license, devote additional research and development resources to re-engineer our platform, discontinue the sale of our products if re-engineering could not be accomplished on a timely or cost-effective basis, or make generally available our proprietary code in source code form, any of which would have a negative effect on our business and operating results, including being enjoined from the offering of the components of our platform that contained the open source software. We could also be subject to lawsuits by



parties claiming ownership of what we believe to be open source software. Litigation could be costly for us to defend, have a negative effect on our operating results and financial condition and require us to devote additional research and development resources to re-engineer our platform.

Although we monitor our use of open source software and try to ensure that none is used in a manner that would subject our platform to unintended conditions, few courts have interpreted open source licenses, and there is a risk that these licenses could be construed in a way that could impose unanticipated conditions or restrictions on our ability to commercialize our platform. We cannot guarantee that we have incorporated open source software in our platform in a manner that will not subject us to liability, or in a manner that is consistent with our current policies and procedures.

### **Risks Related to Our Personnel and Operations**

***If we fail to effectively align, develop and expand our sales and marketing capabilities with our new pricing structure and increase sales efficiency, our ability to increase our customer base and increase acceptance of our platform could be harmed.***

To increase the number of customers and increase the market acceptance of our platform, we will need to align and expand our sales and marketing operations, including our domestic and international sales force, with our new pricing structure and increase sales efficiency. We are aligning our cost structure to better reflect significant product and business model innovation with the expectation that go-to-market operations in our new consumption-based business model will be more efficient and require less investment. We will continue to dedicate significant resources to sales and marketing programs. We believe that there is significant competition for direct sales personnel with the sales skills and technical knowledge that we require. Our ability to achieve significant revenue growth in the future will depend, in large part, on our success in recruiting, training and retaining a sufficient number of direct sales personnel and sales leadership. New hires require significant training and time before they achieve full productivity, particularly in new sales territories. Recent hires and planned hires may not become as productive as quickly as we would like, changes in sales leadership could adversely affect our existing sales personnel, and we may be unable to hire or retain sufficient numbers of qualified individuals in the future in the markets where we do business. The effectiveness of our sales and marketing has also varied over time and, together with the effectiveness of any partners or resellers we may engage, may vary in the future. Our business and operating results may be harmed if our efforts do not generate a correspondingly significant increase in revenue. We may not achieve revenue growth from expanding our sales force if we are unable to hire, develop and retain talented sales personnel, if our new sales personnel are unable to achieve desired productivity levels in a reasonable period of time, or if our sales and marketing programs are not effective. In particular, we may in the future need to further adjust our go-to-market cost structure and target metrics, particularly as they relate to how we structure, effect, and compensate our direct sales personnel to become more efficient and effective at selling under a consumption-based business model. Any adjustments in compensation structure could negatively affect the productivity of our direct sales personnel, and there is no assurance that we will be able to successfully implement the adjustments in a timely or cost-effective manner, or that we will be able to realize all or any of the expected benefits from such adjustments.

***We may be subject to litigation in the future, which will require significant management attention, could result in significant legal expenses and may result in unfavorable outcomes, all or any of which could adversely affect our operating results, harm our reputation or otherwise negatively impact our business.***

We may in the future become subject to litigation or claims arising in or outside the ordinary course of business that could negatively affect our business operations and financial condition, including securities class actions and shareholder derivative actions, both of which are typically expensive to defend.

The outcome of any litigation, regardless of its merits, is inherently uncertain. Any claims and lawsuits, and the disposition of such claims and lawsuits, could be time-consuming and expensive to resolve, divert management attention and resources, and lead to attempts on the part of other parties to pursue similar claims. Any adverse determination related to litigation could adversely affect our operating results, harm our reputation or otherwise negatively impact our business. In addition, depending on the nature and timing of any such dispute, a resolution of a legal matter could materially affect our future operating results, our cash flows or both.

***We have experienced management and board turnover, which creates uncertainties and could harm our business.***

In March 2023, we announced John Mellor's resignation and the re-appointment of Joshua G. James as our chief executive officer. In December 2022, we announced the resignation of Bruce Felt as our chief financial officer and, in March 2023, the appointment of David Jolley to replace Mr. Felt. In January 2023, we announced the resignation of Catherine Wong as our chief operating officer and executive vice president of engineering and the appointment of Daren Thayne to succeed Ms. Wong as executive vice president of engineering. Mr. Thayne assumed the responsibilities of Ms. Wong in addition to his previous responsibilities. In addition, we recently have experienced significant changes in the composition of our board of directors, and more could occur in the future. In February 2023, we announced the resignation of Laurence "Jay" Brown, Jr., Dana Evan and Joy Driscoll Durling as our directors. In March 2023, we announced the appointment of Dan Strong and Renée Soto to our board of directors to fill the open vacancies. Changes to strategic or operating goals, which can often times occur with the appointment of new executives and directors, can create uncertainty, may negatively impact our ability to execute quickly and effectively, and may ultimately be unsuccessful. In addition, executive leadership and director transition periods are often difficult as the new executives and directors gain more detailed knowledge of our operations, and friction can result from changes in strategy and management style. Management and board turnover inherently causes some loss of institutional knowledge, which can negatively affect strategy and execution. In addition, to the extent we experience additional management turnover, competition for top management is

high and it may take months to find a candidate that meets our requirements. If we are unable to attract and retain qualified management personnel, our business could suffer.

***If we are unable to attract, integrate and retain additional qualified personnel, including top technical talent, our business could be adversely affected.***

Future success depends in part on our ability to identify, attract, integrate and retain highly skilled technical, managerial, sales and other personnel. We face intense competition for qualified individuals from numerous other companies, including other software and technology companies, many of whom have greater financial and other resources than we do. These companies also may provide more diverse opportunities and better chances for career advancement. Some of these characteristics may be more appealing to high-quality candidates than those we have to offer. In addition, new hires often require significant training and, in many cases, take significant time before they achieve full productivity. We may incur significant costs to attract and retain qualified personnel, including significant expenditures related to salaries and benefits and compensation expenses related to equity awards, and we may lose new employees to competitors or other companies before we realize the benefit of our investment in recruiting and training them. Moreover, new employees may not be or become as productive as we expect, as we may face challenges in adequately or appropriately integrating them into our workforce and culture. As we move into new geographies, we will need to attract and recruit skilled personnel in those areas and may face additional challenges in attracting, integrating and retaining international employees. If we are unable to attract, integrate and retain suitably qualified individuals who are capable of meeting our growing technical, operational and managerial requirements, on a timely basis or at all, our business will be adversely affected.

Volatility or lack of positive performance in our stock price may also affect our ability to attract and retain our key employees. Employees may be more likely to leave us if the shares they own or the shares underlying their vested options have significantly appreciated in value relative to the original purchase prices of the shares or the exercise prices of the options, or, conversely, if the exercise prices of the options that they hold are significantly above the market price of our common stock. If we are unable to appropriately incentivize and retain our employees through equity compensation, or if we need to increase our compensation expenses in order to appropriately incentivize and retain our employees, our business, operating results, financial condition and cash flows would be adversely affected and the ownership of existing shareholders would be diluted.

***If we fail to offer high-quality professional services and support, our business and reputation may suffer.***

High-quality professional services and support, including training, implementation and consulting services, are important for the successful marketing, sale and use of our platform and for the renewal of subscriptions by existing customers. Professional services may be provided by us or by a third-party partner. The importance of high-quality professional services and support will increase as we expand our business and pursue new customers. If we or our third-party partners do not provide effective ongoing support, our ability to retain and expand use of our platform and related applications to existing customers may suffer, and our reputation with existing or potential customers may be harmed.

We continue to pursue strategies to reduce the amount of professional services required for a customer to begin to use and gain value from our platform, lower the overall costs of professional service fees to our customers, and improve the gross margin of our professional services business. If we are unable to successfully accomplish these objectives, our operating results, including our profit margins, may be harmed.

***Catastrophic events may disrupt our business and impair our ability to provide our platform to customers, resulting in costs for remediation, customer dissatisfaction, and other business or financial losses.***

Our operations depend, in part, on our ability to protect our facilities against damage or interruption from natural disasters, power or telecommunications failures, criminal acts and similar events. Despite precautions taken at our facilities, the occurrence of a natural disaster, epidemic or pandemic (such as the COVID-19 pandemic), an act of terrorism, vandalism or sabotage, spikes in usage volume or other unanticipated problems at a facility could result in lengthy interruptions in the availability of our platform. Even with current and planned disaster recovery arrangements, our business could be harmed. Also, in the event of damage or interruption, our insurance policies may not adequately compensate us for any losses that we may incur. These factors in turn could further reduce revenue, subject us to liability and cause us to issue credits or cause customers to fail to renew their subscriptions, any of which could harm our business.

***Our long-term growth depends in part on being able to expand internationally on a profitable basis.***

Historically, we have generated a substantial majority of our revenue from customers inside the United States. For example, approximately 79% and 80% of our total revenue for the **three** **six** months ended **April 30, 2023** **July 31, 2023** and 2024, respectively, was derived from sales within the United States. We have begun to expand internationally and plan to continue to expand our international operations as part of our growth strategy. Expanding our international operations will subject us to a variety of risks and challenges, including:

- the need to make significant investments in people, solutions and infrastructure, typically well in advance of revenue generation;
- the need to localize and adapt our application for specific countries, including translation into foreign languages and associated expenses;
- potential changes in public or customer sentiment regarding cloud-based services or the ability of non-local enterprises to provide adequate data protection, particularly in the European Union, or the E.U.;

- technical or latency issues in delivering our platform;
- dependence on certain third parties, including resellers with whom we do not have extensive experience;
- the lack of reference customers and other marketing assets in regional markets that are new or developing for us, as well as other adaptations in our market generation efforts that we may be slow to identify and implement;
- unexpected changes in regulatory requirements, taxes or trade laws;
- differing labor regulations, especially in the E.U., where labor laws are generally more advantageous to employees as compared to the United States, including deemed hourly wage and overtime regulations in these locations;
- challenges inherent in efficiently managing an increased number of employees over large geographic distances, including the need to implement appropriate systems, policies, benefits and compliance programs;
- difficulties in maintaining our company culture with a dispersed and distant workforce;
- difficulties in managing a business in new markets with diverse cultures, languages, customs, legal systems, alternative dispute systems and regulatory systems;
- currency exchange rate fluctuations and the resulting effect on our revenue and expenses, and the cost and risk of entering into hedging transactions if we choose to do so in the future;
- limitations on our ability to reinvest earnings from operations in one country to fund the capital needs of our operations in other countries;
- limited or insufficient intellectual property protection, or the risk that our products may conflict with, infringe or otherwise violate foreign intellectual property;
- political instability, terrorist activities or military conflicts (including Russia's Russia's invasion of Ukraine and hostilities between Israel and Hamas);
- requirements to comply with foreign privacy, information security, and data protection laws and regulations and the risks and costs of noncompliance;
- likelihood of potential or actual violations of domestic and international anticorruption laws, such as the U.S. Foreign Corrupt Practices Act (the FCPA) and the U.K. Bribery Act, or of U.S. and international export control and sanctions regulations, which likelihood may increase with an increase of sales or operations in foreign jurisdictions and operations in certain industries;
- requirements to comply with U.S. export control and economic sanctions laws and regulations and other restrictions on international trade;
- likelihood that the United States and other governments and their agencies impose sanctions and embargoes on certain countries, their governments and designated parties, which may prohibit the export of certain technology, products, and services to such persons;
- adverse tax burdens and foreign exchange controls that could make it difficult to repatriate earnings and cash should we desire to do so; and
- our ability to recruit and engage local channel and implementation partners.

Any of these risks could adversely affect our international operations, reduce our international revenue or increase our operating costs, adversely affecting our business, operating results and financial condition and growth prospects. Our limited experience operating our business in certain geographies outside of the United States increases the risk that recent and any potential future expansion efforts will not be successful. If substantial time and resources invested to expand our international operations do not result in a successful outcome, our operating results and business will suffer.

In addition, compliance with laws and regulations applicable to our international operations increases the cost of doing business in foreign jurisdictions. We may be unable to keep current with changes in government requirements as they change from time to time. Failure to comply with these regulations could have adverse effects on our business. In addition, in many foreign countries it is common for others to engage in business practices that are prohibited by our internal policies and procedures or U.S. laws and regulations applicable to us. There can be no assurance that all of our employees, contractors, and agents will comply with the formal policies we will implement, or applicable laws and regulations. Violations of laws or key control policies by our employees, contractors, channel partners or agents could result in delays in revenue recognition, financial reporting misstatements, fines, penalties, or the prohibition of the importation or exportation of our software and services and could have a material adverse effect on our business and operating results.



Some of our business partners also have international operations and are subject to the risks described above. Even if we are able to successfully manage the risks of international operations, our business may be adversely affected if our business partners are not able to successfully manage these risks.

***Future changes in the regulations and laws of the United States, or those of the international markets in which we do business, could harm our business.***

We are subject to general business regulations and laws, as well as regulations and laws specifically governing the internet and software, in the United States as well as the international markets in which we do business. These regulations and laws may cover employment, taxation, privacy, data security, data protection, pricing, content, copyrights and other intellectual property, mobile communications, electronic contracts and other communications, consumer protection, unencumbered internet access to our services, the design and operation of websites, and the characteristics and quality of software and services. It is possible changes to these regulations and laws, as well as compliance challenges related to the complexity of multiple, conflicting and changing sets of applicable regulations and laws, may impact our sales, operations, and future growth.

***Future acquisitions could disrupt our business and adversely affect our operating results, financial condition and cash flows.***

We may make acquisitions that could be material to our business, operating results, financial condition and cash flows. Our ability as an organization to successfully acquire and integrate technologies or businesses is unproven. Acquisitions involve many risks, including the following:

- an acquisition may negatively affect our operating results, financial condition or cash flows because it may require us to incur charges or assume substantial debt or other liabilities, may cause adverse tax consequences or unfavorable accounting treatment, may expose us to claims and disputes by third parties, including intellectual property claims and disputes, or may not generate sufficient financial return to offset additional costs and expenses related to the acquisition;
- we may encounter difficulties or unforeseen expenditures in integrating the business, technologies, products, personnel or operations of any company that we acquire, particularly if key personnel of the acquired company decide not to work for us;
- an acquisition may disrupt our ongoing business, divert resources, increase our expenses and distract our management;
- an acquisition may result in a delay or reduction of customer purchases for both us and the company we acquired due to customer uncertainty about continuity and effectiveness of service from either company;
- we may encounter difficulties in, or may be unable to, successfully sell any acquired products;
- an acquisition may involve the entry into geographic or business markets in which we have little or no prior experience or where competitors have stronger market positions;
- the potential strain on our financial and managerial controls and reporting systems and procedures;
- potential known and unknown liabilities associated with an acquired company;
- if we incur debt to fund such acquisitions, such debt may subject us to material restrictions on our ability to conduct our business as well as financial maintenance covenants;
- the risk of impairment charges related to potential write-downs of acquired assets or goodwill in future acquisitions;
- to the extent that we issue a significant amount of equity or convertible debt securities in connection with future acquisitions, existing stockholders may be diluted and earnings per share may decrease; and
- managing the varying intellectual property protection strategies and other activities of an acquired company.

We may not succeed in addressing these or other risks or any other problems encountered in connection with the integration of any acquired business. The inability to integrate successfully the business, technologies, products, personnel or operations of any acquired business, or any significant delay in achieving integration, could have a material adverse effect on our business, operating results, financial condition and cash flows.

***Governmental export or import controls could limit our ability to compete in foreign markets and subject us to liability if we violate them.***

Our software is subject to U.S. export controls, and we incorporate encryption technology into our platform. These products and the underlying technology may be exported only with the required export authorizations, including by license, a license exception or other appropriate government

authorizations. U.S. export controls may require submission of a product classification and annual or semi-annual reports. Governmental regulation of encryption technology and regulation of imports or exports of encryption products, or our failure to obtain required import or export authorization for our platform, when applicable, could harm our international sales and adversely affect our revenue. Compliance with applicable regulatory requirements regarding the export of our platform, including with respect to new releases of our platform, may create delays in the introduction of our product releases in international markets, prevent customers with international operations from deploying our platform or, in some cases, prevent the export of our platform to some countries altogether. Furthermore, U.S. export control laws and economic sanctions prohibit the shipment of certain products and services to countries, governments and persons targeted by U.S. sanctions. If we fail to comply with export and import regulations and such economic sanctions, we may be fined or other penalties could be imposed, including a denial of certain export privileges. Moreover, any new export or import restrictions, new legislation or shifting approaches in the enforcement or scope of existing regulations, or in the countries, persons or technologies targeted by such regulations, could result in decreased use of our platform by, or in our decreased ability to export or sell subscriptions to our platform to, existing or potential customers with international operations. Any decreased use of our platform or limitation on our ability to export or sell subscriptions to our platform would likely adversely affect our business, financial condition and operating results.

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

We are subject to the FCPA, the U.K. Bribery Act and other anti-corruption, anti-bribery and anti-money laundering laws in various jurisdictions both domestic and abroad. Anti-corruption, anti-bribery, and anti-money laundering laws have been enforced aggressively in recent years and are interpreted broadly and generally prohibit companies and their directors, officers, employees and agents from promising, authorizing, making or offering improper payments or other benefits to government officials and others in the private sector. Such laws apply to our agents/third parties, and we leverage third parties, including channel partners, to sell subscriptions to our platform and conduct our business abroad. We and our third-party intermediaries may have direct or indirect interactions with officials and employees of government agencies or state-owned or affiliated entities and may be held liable for the corrupt or other illegal activities of these third-party business partners and intermediaries, our employees, representatives, contractors, channel partners, and agents, even if we do not explicitly authorize such activities. While we have policies and procedures to address compliance with such laws, we cannot assure you that all of our employees and agents will not take actions in violation of our policies and applicable law, for which we may be ultimately held responsible. Any violation of the FCPA or other applicable anti-bribery, anti-corruption laws, and anti-money laundering laws could result in whistleblower complaints, adverse media coverage, investigations, loss of export privileges, severe criminal or civil sanctions, a significant diversion of management's resources and attention or suspension or debarment from U.S. government contracts, all of which may have a material adverse effect on our reputation, business, operating results and prospects.

#### **Risks Related to Privacy and Cybersecurity**

***We are subject to governmental laws, regulation and other legal obligations, particularly those related to privacy, data protection and information security, and any actual or perceived failure to comply with such obligations could impair our efforts to maintain and expand our customer base, causing our growth to be limited and harming our business.***

We receive, store, and otherwise process personal information and other data from and about customers and other individuals in addition to our employees and service providers. Our handling of data is subject to a variety of laws and regulations, including regulation by various government agencies, such as the U.S. Federal Trade Commission (the FTC) and various state, local, and foreign agencies. Our data handling also is subject to contractual obligations and may be alleged or deemed to be subject to industry standards, including certain industry standards that we undertake to comply with.

In the United States, various laws and regulations apply to the collection, disclosure, and other processing of certain types of data, including with respect to security measures used to protect such data. Additionally, the FTC and many state attorneys general are interpreting federal and state consumer protection laws as imposing standards for the collection, use, dissemination, security, and other processing of data. The laws and regulations relating to privacy and data security are evolving, can be subject to significant change, and may result in ever-increasing regulatory and public scrutiny and escalating levels of enforcement and sanctions. For example, California in 2018 enacted the California Consumer Privacy Act (CCPA),

which went into effect on January 1, 2020. The CCPA requires covered companies to, among other things, provide disclosures to California consumers and afford such consumers new abilities to opt-out of certain sales of personal information. Additionally, the California Privacy Rights Act (CPRA) was approved by California voters in the November 3, 2020 election. The CPRA amends and expands the CCPA in numerous respects, including by expanding the CCPA's private right of action. The CPRA created additional obligations relating to consumer data beginning on January 1, 2022, and became effective January 1, 2023. Following enactment of the CCPA, many other states have adopted or considered privacy legislation, many of which are comprehensive laws similar to the CCPA and CPRA. For example, Virginia, Colorado, Utah, and Connecticut have adopted such legislation that became effective in 2023, Texas, Montana, Oregon, and Florida have adopted such legislation that becomes has or will become effective in 2024, Delaware, Iowa, Maryland, Minnesota, Nebraska, New Hampshire, New Jersey, Nebraska, and Tennessee have adopted such legislation that will become effective in 2025, and Indiana, has Kentucky, and Rhode Island have adopted such legislation that will become effective in 2026. Broad federal privacy legislation has also been proposed. Additionally, states have adopted other laws and regulations relating to privacy and information security, such as Washington's My Health, My Data Act, which includes a private right of action. These and other new and evolving laws and regulations relating

to privacy in the U.S. could increase our potential liability and adversely affect our business. Aspects of these laws and regulations and their interpretation and enforcement remain uncertain. We cannot fully predict the impact of these or other new and evolving laws and regulations relating to privacy and information security on our business or operations, but they may require us to modify our data processing practices and policies and to incur substantial costs and expenses in an effort to comply.

In addition, several foreign countries and governmental bodies, including the E.U., as well as the United Kingdom, Australia, Brazil, **the People's Republic of China (the PRC)**, India, and Japan, where we maintain offices or other operational presences, have laws and regulations dealing with the handling and processing of personal data obtained from their residents, which in certain cases are more restrictive than those in the United States. Laws and regulations in these jurisdictions apply broadly to the collection, use, storage, security, disclosure, and other processing of various types of data, including data that identifies or may be used to identify an individual. Such laws and regulations may be modified or subject to new or different interpretations, and new laws and regulations may be enacted in the future. Within the E.U., in May 2018, a far-reaching regulation governing data and privacy practices called the General Data Protection Regulation (GDPR) became effective. The GDPR includes stringent operational requirements for processors and controllers of personal data and imposes significant penalties for noncompliance of up to the greater of €20 million or 4% of global annual revenues. Complying with the GDPR, the CCPA, and other laws and regulations governing privacy, data protection, and information security may cause us to incur substantial operational costs or require us to modify our data handling practices. Actual or alleged noncompliance could result in proceedings against us by governmental entities or others (including a private right of action for affected individuals in certain instances) and substantial penalties, fines, and other liabilities, and may otherwise adversely impact our business, financial condition, and operating results.

Further, the United Kingdom has enacted a Data Protection Act and a version of the GDPR referred to as the UK GDPR that, collectively, substantially implement the GDPR in the United Kingdom and provide for penalties of up to the greater of £17.5 million and 4% of total annual revenue. Uncertainty remains, however, regarding aspects of data protection in the United Kingdom in the medium to long term, and the United Kingdom is contemplating new data protection legislation. On June 28, 2021, the European Commission announced a decision of "adequacy" concluding that the United Kingdom ensures an equivalent level of data protection to the GDPR, which provides some relief regarding the legality of continued personal data flows from the European Economic Area to the United Kingdom. This adequacy determination must be renewed after four years, however, and may be modified or revoked in the interim. Further, United Kingdom data protection law imposes restrictions on personal data transfers to the U.S., similar to those imposed by the GDPR, and the United Kingdom's Information Commissioner's Office issued new standard contractual clauses, effective March 21, 2022, that are required to be implemented.

We previously were certified under the E.U.-U.S. Privacy Shield and the Swiss-U.S. Privacy Shield with respect to our transfer of certain personal data from the E.U. and Switzerland to the United States. The E.U.-U.S. Privacy Shield framework and the use of E.U. Standard Contractual Clauses (the SCCs) to protect data exports between the E.U. and the U.S. have been subject to legal challenges in the E.U., and on July 16, 2020, the Court of Justice of the European Union (the CJEU), Europe's highest court, held in the "Schrems II" case that the E.U.-U.S. Privacy Shield was invalid, and imposed additional obligations in connection with the use of the SCCs. The Swiss data protection and information commissioner concluded that the Swiss-U.S. Privacy Shield was invalid on similar grounds in September 2020. The European Commission issued new SCCs on June 4, 2021, addressing aspects of the CJEU's opinion in the Schrems II case, which were required to be implemented. The European Commission and United States agreed in principle in March 2022 to a new EU-U.S. Data Privacy Framework (DPF), which would permit transfers of personal data from the E.U. to the U.S., by participating entities. The European Commission adopted an adequacy decision with respect to the DPF in July 2023, allowing for the DPF to be implemented and available for companies to use to legitimize transfers of personal data from the E.U. to the U.S. We have self-certified to the DPF, the Swiss-U.S. Data Privacy Framework, and the UK Extension to the DPF. **Each The DPF has faced legal challenge, and each** of these frameworks may be subject to legal **challenge, challenge in the future**. Additionally, the European Commission's adequacy decision regarding the DPF provides that it will be subject to future reviews and may be subject to suspension, amendment, repeal, or limitations to its scope by the European Commission. We and many other companies may need to implement different or additional measures to establish or maintain legitimate means for the transfer and receipt of personal data from the E.U., Switzerland, and the United Kingdom to the U.S., and we may, in addition to other impacts, be required to engage in additional contractual negotiations and experience additional costs associated with increased compliance burdens, and we and our customers face the potential for regulators to apply different standards to the transfer of personal data from the E.U., Switzerland and the United Kingdom to the U.S., and to block or require additional measures taken with respect to certain data flows from the E.U., Switzerland, and the United Kingdom to the U.S. We and our customers may face a risk of enforcement actions by data protection authorities in the E.U. and other jurisdictions relating to personal data transfers. Any such enforcement actions could result in substantial costs and diversion of resources, distract management and technical personnel and negatively affect our business, operating results, and financial condition. We may be at risk of experiencing reluctance or refusal of European or multi-national customers to use our solutions and being subject to regulatory action or incurring penalties. Any of these developments may have an adverse effect on our business.

Other jurisdictions have adopted laws and regulations addressing privacy, data protection, and information security, many of which share similarities with the GDPR. For example, Law no. 13.709/2018 of Brazil, the Lei Geral de Proteção de Dados Pessoais (LGPD) entered into effect in 2020, authorizing a private right of action for violations. Penalties include fines of up to 2% of the organization's revenue in Brazil in the previous year or 50 million Brazilian reais. The LGPD applies to businesses (both inside and outside Brazil) that process the personal data of users who are located in Brazil. The LGPD provides users with similar rights as the GDPR regarding their data. Additionally, the Personal Information Protection Law (PIPL) of

the **PRC People's Republic of China (PRC)** was adopted and went into effect in 2021. The PIPL shares similarities with the GDPR, including extraterritorial application, data minimization, data localization, and purpose limitation requirements, and obligations to provide certain notices and rights to PRC citizens. The PIPL allows for fines of up to 50 million renminbi or 5% of a covered company's revenue in the prior year.

Additionally, we may be or become subject to data localization laws mandating that data collected in a foreign country be processed only within that country. These or other laws relating to privacy or data protection could require us to expand data storage facilities in foreign jurisdictions or to obtain new local data storage in such countries. The expenditures this would require, as well as costs of compliance generally, could harm our financial condition. The regulatory environment applicable to the collection, use, and other processing of personal data of residents of the E.U., United Kingdom, Switzerland, Brazil, the PRC, and other foreign jurisdictions, and our actions taken in response, may cause us to be required to undertake additional contractual negotiations, modify policies and procedures, and otherwise to assume additional liabilities or incur additional costs, and could result in our business, operating results, and financial condition being harmed.

We enter into business associate agreements with our customers who require them in order to comply with the Health Insurance Portability and Accountability Act (HIPAA) and the Health Information Technology for Economic and Clinical Health Act, and therefore we are directly subject to certain provisions of HIPAA applicable to business associates. We may collect and process protected health information as part of our designated service, which may subject us to a number of data protection, security, privacy, and other government- and industry-specific requirements. In addition, if we are unable to comply with our obligations relating to the protection and processing of protected health information, we could be found to have breached our contracts with customers with whom we have a business associate relationship. Noncompliance with laws and regulations relating to privacy and security of personal information, including HIPAA, or with contractual obligations, including under any business associate agreement, may lead to significant fines, civil and criminal penalties, and other liabilities. The U.S. Department of Health and Human Services (HHS) audits the compliance of business associates and enforces HIPAA privacy and security standards. HHS enforcement activity has increased in recent years and HHS has signaled its intent to continue this trend. In addition to HHS, state attorneys general are authorized to bring civil actions seeking either injunctions or damages to the extent violations implicate the privacy of state residents.

Federal, state, and foreign laws, regulations, and other actual or asserted obligations relating to privacy, data protection, or information security may be interpreted and applied in manners that are, or are alleged to be, inconsistent with our practices. Any failure or perceived failure by us to comply with federal, state, or foreign laws, regulations, policies, legal or contractual obligations, industry standards, regulatory guidance or other actual or asserted obligations relating to privacy, data protection, information security, marketing, or consumer communications may result in governmental investigations and enforcement actions, claims, demands, and litigation by private entities, fines, penalties, and other liabilities, harm to our reputation and adverse publicity, and could cause our customers and partners to lose trust in us, which could materially affect our business, operating results, and financial condition. We expect that there will continue to be new laws, regulations, industry standards and other actual and asserted obligations relating to privacy, data protection, marketing, consumer

communications, and information security proposed and enacted or otherwise implemented in the United States, the E.U., and

other jurisdictions, and we cannot fully predict the impact such future laws, regulations, standards, and obligations may have on our business. Future laws, regulations, standards, and other actual or asserted obligations, or any changed interpretation of existing laws or regulations could impair our ability to develop and market new features and maintain and grow our customer base and increase revenue. Future restrictions on the collection, use, sharing, disclosure, or other processing of data could require us to incur additional costs or modify our platform, possibly in a material manner, which we may be unable to achieve in a commercially reasonable manner or at all, and which could limit our ability to develop new features.

In addition to the privacy and data protection regulations described above, our business is also subject to contractual obligations to maintain compliance with leading security frameworks and standards such as AICPA's SOC 1 and SOC 2; International Organization for Standardization (ISO) and the International Electrotechnical Commission (IEC) standards for ISO 27001 and ISO 27018; HITRUST Alliance's HITRUST CSF; and Texas Department of Information Resources' TX-RAMP certification. Annually, we also perform an internal/self-analysis of our adherence to the requirements stated in Australian Cyber Security Center (ASCS)'s IRAP framework and UK's National Cyber Security Centre's Cyber Essentials. Any failure or perceived failure by us to comply with these contractual obligations, industry standards, regulatory guidance or other actual or asserted obligations relating to privacy, data protection and information security may result in loss of certification, governmental investigations and enforcement actions, claims, demands, and litigation by private entities, fines, penalties, and other liabilities, harm to our reputation and adverse publicity, and could cause our customers and partners to lose trust in us, which could materially affect our business, operating results, and financial condition.

***If our network, application, or computer systems are breached or unauthorized access to customer data or other sensitive data is otherwise obtained, our platform may be perceived as insecure and we may lose existing customers or fail to attract new customers, operations may be disrupted if systems or data become unavailable, our reputation may be damaged and we may incur significant remediation costs or liabilities, including regulatory fines for violation of compliance requirements.***

As a provider of cloud services, our operations involve the storage and transmission of our customers' sensitive and proprietary information, and we also collect, store, transmit, and otherwise process large amounts of sensitive corporate, personal, and other information relating to our business and operations, including intellectual property, proprietary business information, and other confidential information. Cyber-attacks and other malicious internet-based activity continue to increase generally, and cloud-based platform providers of software and services have been targeted. Many of our employees work remotely at least part of the time, which may pose additional data security risks. Within cloud service delivery organizations, there is an increased threat from both targeted and non-targeted activities. These activities may originate from threat actor groups with various motivations, including cyber espionage, financial or ideological motivations. We may also face numerous types of attacks, including financial attacks in the form of ransomware/cyber extortion, fraud, misappropriation of resources (such as, for instance, cryptocurrency mining operations using Domo resources), and malicious attacks such as distributed denial of service with the intention to cause extended period of service downtime, which could prevent customers from accessing our products and services. Attackers may, in addition to other motivations, seek to render unavailable, destroy, modify, or access without authorization the various types of data we store or otherwise process, including our own data, our customers' data generally, or data of specific customers. Our employees and contractors who have access to company data as well as customer personal information and/or customer data could be a victim of social engineering tactics such as phishing and business email compromise, which could further lead to malware and/or ransomware being installed on our company assets and which could cause a potential compromise of systems and information. In addition, as we host our platform on third party cloud hosting services offered by the leading cloud hosting providers, any misconfiguration in the cloud due to our own unintentional error or lack of understanding, or any exploitation of vulnerabilities on those cloud hosting providers' technology, could lead to unauthorized access, misuse, acquisition, disclosure, loss, alteration, destruction, or other processing of our and our customers' data, including confidential, sensitive, and other information about individuals.

We engage third-party service providers to store and otherwise process some of our and our customers' data, including personal, confidential, sensitive, and other information relating to individuals. Our service providers may also be the targets of cyberattacks and other malicious activity. While we have established a formal third party security risk assessment process to address security risks for our company relating to our key third party service providers, our ability to monitor our service providers' security measures is limited, and, in any event, third parties may be able to circumvent those security measures or our own security measures, resulting in unavailability of or unauthorized access to, misuse, acquisition, disclosure, loss, alteration, destruction, or other processing of our and our customers' data, including confidential, sensitive, and other information about individuals. We also use and rely on several open source libraries and packages, and certain libraries and packages while developing our product and if such libraries or packages are vulnerable and are exploited, our ability to address such vulnerabilities in a timely manner may be limited and may result in disruptions to our platform or operations and in unavailability of or unauthorized access to, misuse, acquisition, disclosure, loss, alteration, destruction, or other processing of our and our customers' data, including confidential, sensitive, and other information about individuals. Occasionally, we also deploy code generated by artificial intelligence (AI) tools and improper or inadequate vetting of AI-generated code for any security related vulnerabilities may result in exploitation of such vulnerabilities leading to disruption, unauthorized access to our infrastructure, our confidential data or our customers' data.

Additionally, there have been and may continue to be significant supply chain cyber-attacks generally, and our third-party service providers (and business partners) may be targeted or impacted by such attacks. We cannot guarantee that our systems and networks or those of our vendors or service providers have not been compromised or that they do not contain exploitable defects or bugs that could result in a breach or compromise of or disruption to our systems and networks or the systems and networks of third parties that support us and our services. Malicious actors may be able to circumvent those security measures, resulting in unavailability of, unauthorized access to, misuse, disclosure, loss, unavailability, destruction, or other processing of our and our customers' data, including sensitive and personal information. We and our service providers may also face difficulties or delays in identifying, remediating, and otherwise responding to cyberattacks and other security breaches and incidents. Because the techniques used and vulnerabilities exploited to obtain unauthorized access or to sabotage systems change frequently and generally are not identified until they are launched against a target, we may be unable to anticipate these techniques or vulnerabilities or implement adequate preventative measures. We may also experience security breaches and incidents that remain undetected for an extended period.

Enterprise use of generative artificial intelligence (GenAI) technologies may result in access to and processing of sensitive information, intellectual property, source code, trade secrets, and other data, through direct user input or the API, including customer or private information and confidential information. Sending confidential and private data outside of our own servers could trigger legal and compliance exposure, as well as risks of information exposure, including unauthorized acquisition, use, or other processing. Such exposure can result from contractual (for example, with customers) or regulatory obligations (such as CCPA, GDPR, HIPAA). Furthermore, if the GenAI platform's own systems and infrastructure are not secure, data breaches or incidents may occur and lead to the exposure of sensitive information such as customer data, financial information, and proprietary business information, or it may be believed or asserted that one or more of these has occurred. Threat actors could also use GenAI for malicious purposes, increasing the frequency of their attacks and the complexity level some are currently capable of, e.g. phishing attacks, fraud, social engineering, and other possible malicious use, such as with writing malware. Code generated by GenAI could potentially be used and deployed without a proper security audit or code review to find vulnerable or malicious components. This could cause widespread deployment of vulnerable code within the organization systems.



In addition, insider threats pose significant risks to our business, potentially compromising the confidentiality, integrity, and availability of customer data and the overall reputation of the organization. As employees or trusted individuals have authorized access to sensitive systems and customer information, malicious insiders may intentionally abuse their privileges, leading to actual or perceived data breaches or incidents, intellectual property theft or misappropriation, or unauthorized access to, or use of, systems or data. Additionally, insiders may inadvertently access, use, expose, or otherwise process confidential, personal, or otherwise critical information, or engage in unauthorized access to or use of company devices, networks, systems, or other resources, due to error, negligence, lack of awareness, or otherwise. We have suffered certain of these incidents in the past and expect that they will occur in the future.

From time to time, third parties have published, and may publish, unauthorized websites that give a false impression of being official Domo websites. Purveyors of these unauthorized websites may deceive job applicants, potential customers, and other third parties into believing they are interacting with us and may, among other things, collect and misuse their personal information or purport to charge them money in connection with submitting a job application, or performing a task pertaining to the Domo application, such as testing the application to optimize performance. These activities may disrupt our sales, human resources, and other functions, significantly harm our brand, reputation and market position, and result in claims, demands, inquiries, and potential liabilities.

Any security breach, security incident, or similar event impacting our platform, our networks or systems, or any systems or networks of our service providers, whether as a result of third-party action, insider attacks, employee or service provider error or malfeasance, phishing or smishing attacks, ransomware or other malware, social engineering, or otherwise, could result in unauthorized access to or use of our platform, disruptions to our platform or other aspects of our operations, the loss, alteration or unavailability of, or unauthorized access to or acquisition or other processing of, data or intellectual property of ourselves or our customers. Additionally, any such breach or incident, or unauthorized use of company resources, or any perception that any such event has occurred, may result in a loss of business, severe reputational or brand damage adversely affecting customer, partner, or investor confidence, regulatory investigations, demands, and orders, litigation or other claims, demands, or proceedings by governmental authorities or private parties, indemnity obligations, damages for contract breach,

penalties for violation of applicable laws, regulations, or contractual obligations, and significant costs for remediation that may include liability for stolen assets or information and repair of system damage that may have been caused, incentives offered to customers or other business partners in an effort to maintain business relationships after a breach, incident, or other event, and other liabilities, as well as harm to our sales efforts and expansion into existing and new markets.

We could be required to expend significant capital and other resources to alleviate problems caused by such actual or perceived security breaches, incidents, or other events and to remediate our systems, we could be exposed to a risk of loss, litigation or regulatory action and possible liability, and our ability to operate our business may be impaired. Additionally, actual, potential, or anticipated attacks, security breaches or incidents, or other events, may cause us to incur increasing costs, including costs to deploy additional personnel and protection technologies, train employees and engage third-party experts and consultants.

Due to political and macroeconomic uncertainty and military actions associated with geopolitical events such as Russia's invasion of Ukraine and hostilities between Israel and Hamas, we and our third-party service providers may be vulnerable to a heightened risk of cybersecurity attacks, phishing attacks, viruses, malware, ransomware, hacking, distributed denial of service, or similar breaches and incidents from nation-state and affiliated actors, including attacks that could materially disrupt our systems, operations, and platform. In addition, if the security measures of our customers are compromised, even without any actual compromise of our platform or systems or any networks or systems of our service providers, we may face negative publicity or reputational harm if customers or others incorrectly attribute the blame for such security breaches or other incidents to us, our platform, our systems or networks, or those of our service providers. Similarly, we may face reputational harm if any security breach or incident is caused by or otherwise attributed to our employees, vendors, or service providers as a result of inadvertent error, malfeasance, an insider attack, or otherwise. If customers or partners believe that our platform does not provide adequate security for the storage of personal or other sensitive information or its transmission over the internet, our business will be harmed. Customers' concerns about security or privacy may deter them from using our platform for activities that involve personal or other sensitive information.

Our insurance covering certain security and privacy damages and claim expenses may not be sufficient to compensate for all liability. Although we maintain insurance for liabilities incurred as a result of certain matters relating to privacy and information security, we cannot be certain that our coverage will be adequate for liabilities actually incurred, that insurance will continue to be available to us on economically reasonable terms, or at all, or that any insurer will not deny coverage as to any future claim. The successful assertion of one or more large claims against us that exceed available insurance coverage, or the occurrence of changes in our insurance policies, including premium increases or the imposition of large deductible or co-insurance requirements, could have a material adverse effect on our business, including our financial condition, operating results, and reputation.

Additionally, with data security a critical competitive factor in our industry, we make public statements in our privacy policies, on our website, and elsewhere describing the security of our platform. Should any of these statements be untrue, become untrue, or be perceived to be untrue, even if

through circumstances beyond our reasonable control, we may face claims, including claims of unfair or deceptive trade practices, and related investigations, enforcement actions or other proceedings, brought by the FTC, state, local, or foreign regulators, and private litigants, which may result in fines, penalties, and other liabilities, and which may have a material adverse effect on our business, including our financial condition, operating results, and reputation.

***Real or perceived errors, failures, or bugs in our platform could adversely affect our operating results and growth prospects.***

We update our platform on a frequent basis. Despite efforts to test our updates, errors, failures or bugs may not be found in our platform until after it is deployed to our customers. We have discovered and expect we will continue to discover errors, failures and bugs in our platform and anticipate that certain of these errors, failures and bugs will only be discovered and remediated after deployment to customers. Real or perceived errors, failures or bugs in our platform could result in negative publicity, government inquiries, loss of or delay in market acceptance of our platform, loss of competitive position, or claims by customers for losses sustained by them. In such an event, we may be required, or may choose, for customer relations or other reasons, to expend additional resources in order to help correct the problem.

We implement bug fixes and upgrades as part of our regular system maintenance, which may lead to system downtime. Even if we are able to implement the bug fixes and upgrades in a timely manner, any history of inaccuracies in the data we collect for our customers, or the loss, damage, unauthorized access to or acquisition of, or inadvertent release or exposure of confidential or other sensitive data could cause our reputation to be harmed and result in claims against us, and customers may elect not to purchase or renew their agreements with us or we may incur increased insurance costs. The costs associated with any material defects or errors in our software or other performance problems may be substantial and could harm our operating results.

***Interruptions or performance problems associated with our technology and infrastructure may adversely affect our business and operating results.***

Our continued growth depends in part on the ability of existing and potential customers to access our platform at any time. We have experienced, and may in the future experience, disruptions, outages, and other performance problems due to a variety of factors, including infrastructure changes, introductions of new capabilities, human or technology errors, distributed denial of service attacks, or other security related incidents. In some instances, we may not be able to identify the cause or causes of these performance problems within an acceptable period of time. It may become increasingly difficult to maintain and improve our performance, especially during peak usage times and as our platform becomes more complex and user traffic increases. If our platform is unavailable or if users are unable to access our platform within a reasonable amount of time, or at all, our business will be harmed.

We also rely on SaaS and other technologies from third parties in order to operate critical functions of our business. To the extent that our third-party service providers experience outages, disruptions, or other performance problems, or to the extent we do not effectively address capacity constraints, upgrade our systems as needed, and continually develop our technology and network architecture to accommodate actual and anticipated changes in technology, our business and operating results may be adversely affected. In addition, if our agreements with third-party software or services vendors are not renewed or the third-party software or services become obsolete, fail to function properly, are incompatible with future versions of our products or services, are defective or otherwise fail to address our needs, there is no assurance that we would be able to replace the functionality provided by the third-party software or services with software or services from alternative providers.

We have taken steps to increase redundancy in our platform and infrastructure and have plans in place to mitigate events that could disrupt our platform's service. However, there can be no assurance that these efforts would protect against interruptions or performance problems.

**Risks Related to Our Intellectual Property**

***Our business is highly dependent upon our brand recognition and reputation, and the failure to maintain or enhance our brand recognition or reputation would likely adversely affect our business and operating results.***

We believe that maintaining and enhancing the Domo brand identity and our reputation are critical to our relationships with customers and channel partners and to our ability to attract new customers and channel partners. We also believe that the importance of our brand recognition and reputation will continue to increase as competition in our market continues to develop. Our success in this area will depend on a wide range of factors, some of which are beyond our control, including the following:

- the efficacy of our marketing efforts;
- our ability to maintain a high-quality, innovative and error- and bug-free platform;
- our ability to obtain new customers and retain and increase usage by existing customers;
- our ability to maintain high customer satisfaction;

- the quality and perceived value of our platform;
- our ability to obtain, maintain and enforce trademarks and other indicia of origin that are valuable to our brand;
- our ability to successfully differentiate our platform from competitors' products;
- actions of competitors and other third parties;
- our ability to provide customer support and professional services;
- any actual or perceived security breach or data loss, or misuse or perceived misuse of our platform;
- positive or negative publicity;
- interruptions, delays or attacks on our platform;
- challenges with customer adoption and use of our platform on mobile devices or problems encountered in developing or supporting enhancements to our mobile applications; and
- litigation or regulatory related developments.

If our brand promotion activities are not successful, our operating results and growth may be harmed.

Independent industry analysts often provide reviews of our platform, as well as competitors' products, and perception of our platform in the marketplace may be significantly influenced by these reviews. If these reviews are negative, or less positive as compared to those of competitors' products and services, our brand may be adversely affected.

Furthermore, negative publicity, whether or not justified, relating to events or activities attributed to us, our current or former employees, partners or others associated with any of these parties, may tarnish our reputation and reduce the value of our brand. Damage to our reputation and loss of brand equity may reduce demand for our platform, make it difficult for us to attract and retain employees, and have an adverse effect on our business, operating results and financial condition. Moreover, any attempts to rebuild our reputation and restore the value of our brand may be costly and time consuming, and such efforts may not ultimately be successful.

***Third-party claims that we are infringing or otherwise violating the intellectual property rights of others, whether successful or not, could subject us to costly and time-consuming litigation or require us to obtain expensive licenses, and our business could be harmed.***

The technology industry is characterized by the existence of a large number of patents, copyrights, trademarks, trade secrets and other intellectual property rights. Companies in the technology industry must often defend against litigation claims based on allegations of infringement or other violations of intellectual property rights. Third parties, including our competitors, may own patents or other intellectual property rights that cover aspects of our technology or business methods and may assert patent or other intellectual property rights against us and others in the industry. Moreover, in recent years, individuals and groups that are non-practicing entities, commonly referred to as "patent trolls," have purchased patents and other intellectual property assets for the purpose of making claims of infringement or other violation of intellectual property rights in order to extract settlements. From time to time, we have received and may receive in the future threatening letters, notices or "invitations to license," or may be the subject of claims that our technology and business operations infringe or otherwise violate the intellectual property rights of others. Responding to such claims, regardless of their merit, can be time consuming, costly to defend in litigation, divert management's attention and resources, damage our reputation and brand and cause us to incur significant expenses. Claims of intellectual property infringement or other violations of intellectual property rights might require us to stop using technology found to infringe or violate a third party's rights, redesign our platform, which could require significant effort and expense and cause delays of releases, enter into costly settlement or license agreements or pay costly damage awards, or face a temporary or permanent injunction prohibiting us from marketing or selling our platform. If we cannot or do not license the infringed or otherwise violated technology on commercially reasonable terms or at all, or substitute similar technology from another source, we could be forced to limit or stop selling our platform, we may not be able to meet our obligations to customers under our customer contracts, revenue and operating results could be adversely impacted, and we may be unable to compete effectively. Even if we are successful in defending against allegations of intellectual property infringement, litigation may be costly and may divert the time and other resources of our management. Additionally, customers may not purchase our platform if they are concerned that they may infringe or otherwise violate third-party intellectual property rights. The occurrence of any of these events may harm our business.

***Indemnity provisions in various agreements potentially expose us to substantial liability for intellectual property infringement and other losses.***

Our agreements with customers and other third parties may include indemnification provisions under which we agree to indemnify them for losses suffered or incurred as a result of claims of intellectual property infringement or other violations of intellectual property rights, damages caused by us to property or persons, or other liabilities relating to or arising from our software, services or other contractual obligations. Large indemnity payments could



harm our business, results of operations and financial condition. Any dispute with a customer with respect to such obligations could have adverse effects on our relationship with that customer and other existing customers and new customers and harm our business and results of operations.

***The success of our business depends in part on our ability to protect and enforce our intellectual property rights.***

Our success is dependent, in part, upon protecting our proprietary technology. As of **April 30, 2024** **July 31, 2024**, we had 100 issued U.S. patents covering our technology and four patent applications pending for examination in the United States. Our issued patents, and any patents issued in the future, may not provide us with any competitive advantages or may be challenged by third parties, and our patent applications may never be granted. Additionally, the process of obtaining patent protection is expensive and time-consuming, and we may not be able to prosecute all necessary or desirable patent applications at a reasonable cost or in a timely manner. Even if issued, there can be no assurance that these patents will adequately protect our intellectual property, as the legal standards relating to the validity, enforceability and scope of protection of patent and other intellectual property rights are uncertain.

Any patents that are issued may subsequently be invalidated or otherwise limited, allowing other companies to develop offerings that compete with ours, which could adversely affect our competitive business position, business prospects and financial condition. In addition, issuance of a patent does not guarantee that we have a right to practice the patented invention. Patent applications in the United States are typically not published until 18 months after filing or, in some cases, not at all, and publications of discoveries in industry-related literature lag behind actual discoveries. We cannot be certain that we were the first to use the inventions claimed in our issued patents or pending patent applications or otherwise used in our platform, that we were the first to file for protection in our patent applications, or that third parties do not have blocking patents that could be used to prevent us from marketing or practicing our patented technology. Effective patent, trademark, copyright and trade secret protection may not be available to us in every country in which our platform is available. The laws of some foreign countries may not be as protective of intellectual property rights as those in the United States (in particular, some foreign jurisdictions do not permit patent protection for software), and mechanisms for enforcement of intellectual property rights may be inadequate. Additional uncertainty may result from changes to intellectual property legislation enacted in the United States, including the America Invents Act, and other national governments and from interpretations of the intellectual property laws of the United States and other countries by applicable courts and agencies. Accordingly, despite our efforts, we may be unable to prevent third parties from infringing upon or misappropriating our intellectual property.

Although we generally enter into confidentiality and invention assignment agreements with our employees and consultants that have access to material confidential information and enter into confidentiality agreements with our customers and the parties with whom we have strategic relationships and business alliances, no assurance can be given that these agreements will be effective in controlling access to and distribution of our platform and propriety information or prevent reverse engineering. Further, these agreements may not prevent competitors from independently developing technologies that are substantially equivalent or superior to our platform, and we may be unable to prevent this competition. **In addition, from time to time, we have engaged consultants and developers located outside of the United States to assist with the development of our technology and intellectual property. Each jurisdiction has different rules regarding the language and procedures required to effectively assign to us certain intellectual property rights, and we may not have effectively implemented such language and procedures in each jurisdiction on every occasion, which may also limit our ability to perfect and protect our technology and intellectual property rights.**

Unauthorized use of our intellectual property may have already occurred or may occur in the future. We may be required to spend significant resources to monitor and protect our intellectual property rights. Litigation may be necessary in the future to enforce our intellectual property rights. Such litigation could be costly, time consuming and distracting to management and could result in the impairment or loss of portions of our intellectual property. Furthermore, efforts to enforce our intellectual property rights may be met with defenses, counterclaims and countersuits attacking the validity and enforceability of our intellectual property rights. We may not prevail in any lawsuits that we initiate. Any litigation, whether or not resolved in our favor, could subject us to substantial costs, divert resources and the attention of management and technical personnel from our business and adversely affect our business. Our inability to protect our proprietary technology against unauthorized copying or use, as well as any costly litigation, could delay further sales or the implementation of our platform, impair the functionality of our platform, delay introductions of new features or enhancements, result in our substituting inferior or more costly technologies into our platform, or injure our reputation.

We may initiate claims or litigation against third parties for infringement or other violation of our proprietary rights or to establish the validity of our proprietary rights. Litigation also puts our patents at risk of being invalidated or interpreted narrowly and our patent applications at risk of not issuing. Additionally, we may provoke third parties to assert counterclaims against us. We may not prevail in any lawsuits that we initiate, and the damages or other remedies awarded, if any, may not be commercially viable. Any litigation, whether or not it is resolved in our favor, could result in significant expense to us and divert the efforts of our technical and management personnel, which may adversely affect our business, operating results, financial condition and cash flows.

**Risks Related to Our Corporate Governance**

***The dual class structure of our common stock has the effect of concentrating voting control with Joshua G. James, our founder and chief executive officer, which will limit your ability to influence the outcome of important transactions, including a change in control.***

Our Class A common stock has 40 votes per share, and our Class B common stock has one vote per share. Joshua G. James, our founder and chief executive officer, beneficially owns all of our outstanding shares of Class A common stock through Cocolalla, LLC, of which he is the managing member, and as of April 30, 2024 July 31, 2024, beneficially controlled approximately 80% of the voting power of our outstanding capital stock and therefore is able to control all matters submitted to our stockholders for approval. Mr. James may have interests that differ from yours and may vote in a way with which you disagree and which may be adverse to your interests. This concentrated control may have the effect of delaying, preventing or deterring a change in control of our company, could deprive our stockholders of an opportunity to receive a premium for their capital stock as part of a sale of our company and might ultimately affect the market price of our Class B common stock.

Future transfers by the holder of Class A common stock will generally result in those shares converting into shares of Class B common stock, subject to limited exceptions, such as certain transfers effected for estate planning or charitable purposes. Mr. James has informed us he and Cocolalla, LLC have entered into arrangements under which he has pledged all of such shares to secure a loan with a financial institution. If these shares were to be sold or otherwise transferred upon default of the underlying loan, the market price of our Class B common stock could decline or be volatile. For additional information, see the section of this report captioned “—Other Risks Related to Ownership of Our Class B Common Stock—Future sales of our Class B common stock in the public market could cause our stock price to fall.”

***We are a “controlled company” within the meaning of Nasdaq rules, and as a result may choose to rely on exemptions from certain corporate governance requirements.***

We qualify as a “controlled company” under the corporate governance rules of The Nasdaq Stock Market because our founder and chief executive officer, and entities beneficially owned by him, control more than fifty percent of the voting power of our outstanding common stock. Although, as of the date of this report, the composition of our board of directors and its committees currently complies with applicable corporate governance rules of The Nasdaq Stock Market, we have previously, and may in the future rely, on the foregoing exemptions provided to controlled companies under the corporate governance rules of The Nasdaq Stock Market. If we, in the future, rely on these “controlled company” exemptions, we may not have a majority of independent directors on our board of directors, an entirely independent nominating and corporate governance committee, an entirely independent compensation committee or perform annual performance evaluations of the nominating and corporate governance and compensation committees unless and until such time as we are required to do so. Accordingly, you may not have the same protections afforded to stockholders of companies that are subject to all of these corporate governance requirements. If we cease to be a “controlled company” and our shares continue to be listed on The Nasdaq Global Market, we will be required to comply with these provisions within the applicable transition periods.

***We cannot predict the impact our dual class structure may have on our stock price or our business.***

We cannot predict whether our dual class structure, combined with the concentrated control of our stockholders who held our capital stock prior to the completion of our initial public offering, including our executive officers, employees and directors and their affiliates, will result in a lower or more volatile market price of our Class B common stock or in adverse publicity or other adverse consequences. For example, certain index providers have announced restrictions on including companies with multiple-class share structures in certain of their indexes. In July 2017, FTSE Russell announced that it plans to require new constituents of its indexes to have greater than 5% of the company's company's voting rights in the hands of public stockholders, and S&P Dow Jones announced that it will no longer admit companies with multiple-class share structures to certain of its indexes. Because of our dual class structure, we will likely be excluded from these indexes and we cannot assure you that other stock indexes will not take similar actions. Given the sustained flow of investment funds into passive strategies that seek to track certain indexes, exclusion from stock indexes would likely preclude investment by many of these funds and could make our Class B common stock less attractive to other investors. As a result, the market price of our Class B common stock could be adversely affected.

## **Risks Related to Our Financial Reporting and Disclosure**

***Our reported financial results may be harmed by changes in the accounting principles generally accepted in the United States.***

Generally accepted accounting principles in the United States are subject to interpretation by the Financial Accounting Standards Board, the Securities and Exchange Commission (the SEC) and various bodies formed to promulgate and interpret appropriate accounting principles. A change in these principles or interpretations could have a significant effect on our reported financial results, and may even affect the reporting of transactions completed before the announcement or effectiveness of a change. Other companies in our industry may apply these accounting principles differently than we do, adversely affecting the comparability of our financial statements.

***We have incurred and will continue to incur increased costs by being a public company, including costs to maintain adequate internal control over our financial and management systems.***

As a public company, we have incurred and will continue to incur significant legal, accounting and other expenses that we did not incur as a private company, including costs associated with public company reporting requirements.

We have also incurred and will continue to incur costs associated with corporate governance requirements, including requirements of the SEC and The Nasdaq Stock Market. We expect these rules and regulations to increase our legal and financial compliance costs and to make some activities more time-consuming and costly. We also expect these rules and regulations may make it more difficult and more expensive for us to obtain director and officer liability insurance, and we may be required to accept reduced policy limits and coverage or incur substantially higher costs to obtain the same or similar coverage. As a result, we may have more difficulty attracting and retaining qualified individuals to serve on our board of directors or as executive officers. We are currently evaluating and monitoring developments with respect to these rules, and we cannot predict or estimate the additional costs we may incur or the timing of such costs.

The Sarbanes-Oxley Act requires, among other things, that we assess the effectiveness of our internal control over financial reporting annually and the effectiveness of our disclosure controls and procedures quarterly. In particular, Section 404 of the Sarbanes-Oxley Act (Section 404) requires us to perform system and process evaluation and testing of our internal controls over financial reporting to allow management to report on, and our independent registered public accounting firm potentially to attest to, the effectiveness of our internal controls over financial reporting. Our compliance with applicable provisions of Section 404 will require that we incur substantial accounting expense and expend significant management time on compliance-related issues as we implement additional corporate governance practices and comply with reporting requirements. Moreover, if we are not able to comply with the requirements of Section 404 applicable to us in a timely manner, or if we or our independent registered public accounting firm identifies deficiencies in our internal control over financial reporting that are deemed to be material weaknesses, the market price of our stock could decline and we could be subject to sanctions or investigations by the SEC or other regulatory authorities, which would require additional financial and management resources.

#### **Other Risks Related to Ownership of Our Class B Common Stock**

***The market price of our Class B common stock may be volatile, and the value of your investment could decline significantly.***

The trading price of our Class B common stock may be highly volatile and could be subject to wide fluctuations in response to various factors, some of which are beyond our control. The following factors, in addition to other risks described in this report, may have a significant effect on our Class B common stock price:

- actual or anticipated fluctuations in revenue and other operating results, including as a result of the addition or loss of any number of customers;
- announcements by us or competitors of significant technical innovations, acquisitions, strategic partnerships, joint ventures or capital commitments;
- the financial projections we may provide to the public, any changes in these projections or our failure to meet these projections;
- failure of securities analysts to initiate or maintain coverage of us, changes in ratings, key metrics and financial estimates and the publication of other news by any securities analysts who follow our company, or our failure to meet these analyst estimates or the expectations of investors;
- changes in operating performance and stock market valuations of cloud-based software or other technology companies, or those in our industry in particular;
- the size of our public float;
- price and volume fluctuations in the trading of our Class B common stock and in the overall stock market, including as a result of trends in the economy as a whole or in the technology industry;
- new laws or regulations or new interpretations of existing laws or regulations applicable to our business or industry, including those relating to data privacy and data security;
- lawsuits threatened or filed against us for claims relating to intellectual property, employment issues or otherwise;
- actual or perceived data breach or data loss, or misuse or perceived misuse of our platform;
- changes in our board of directors or management;
- short sales, hedging and other derivative transactions involving our Class B common stock;
- sales of large blocks of our common stock including sales by our executive officers, directors and significant stockholders; and
- other events or factors, including those resulting from war, incidents of terrorism, public health epidemics or pandemics, bank failures, changes in general economic, industry and market conditions and trends, natural disasters or responses to any of these events or factors that may affect

our operations.

In addition, the stock market in general, and the market for technology companies in particular, has experienced extreme price and volume fluctuations that have often been unrelated or disproportionate to the operating performance of those companies. Broad market and industry factors may seriously affect our stock price, regardless of our actual operating performance. In addition, in the past, securities class action litigation has often been instituted against companies whose stock prices have declined, especially following periods of volatility in the overall market. Securities class action litigation, if instituted against us, could result in substantial costs and a diversion of our management's attention and resources.

***If securities or industry analysts do not publish research reports about our business, or if they issue an adverse opinion about our business, our stock price and trading volume could decline.***

The trading market for our Class B common stock and customer demand for our platform is influenced by the research and reports that securities and industry analysts publish about us or our business. If one or more of the analysts who cover us do not publish positive reports about our company, platform and value proposition, do not view us as a market leader, or cease or fail to regularly publish reports on us, our stock price or trading volume would likely decline. In addition, industry analysts may influence current and potential customers; if any of the foregoing were to occur, customer demand for our platform, operating results and prospects may be adversely impacted. Further, we are transitioning to a consumption-based business model and to the extent that analysts fail to appreciate the benefits of such a model, misinterpret key performance indicators associated with such a model or continue to focus on metrics unduly associated with a subscription-based model, our stock price and trading volume may decline or our business may suffer.

***Future sales of our Class B common stock in the public market could cause our stock price to fall.***

Our stock price could decline as a result of sales of a large number of shares or the perception that these sales could occur. These sales, or the possibility that these sales may occur, also might make it more difficult for us to sell equity securities in the future at a time and at a price that we deem appropriate.

We register the offer and sale of all shares of common stock that we may issue under our equity compensation plans; as a result, these shares can generally be freely sold in the public market upon issuance, subject to compliance with applicable securities laws. Additionally, "sell-to-cover" transactions are utilized in connection with the vesting and settlement of restricted stock units so that shares of our common stock are sold on behalf of our employees in an amount sufficient to cover the tax withholding obligations associated with these awards. As a result of these transactions, a significant number of shares of our stock may be sold over a limited time period in connection with significant vesting events.

Further, we have been advised that Mr. James has pledged the shares of Class A common stock and Class B common stock beneficially owned by him to secure a loan with a financial institution, which loan has or will have various requirements to repay all or a portion of the loan upon the occurrence of various events, including when the price of the Class B common stock goes below certain specified levels. Mr. James has indicated that (1) he has substantial assets other than shares of our common stock and (2) if repayment of the loan is triggered there is a cure period to sell assets or restructure the loan. Although Mr. James has indicated his intention to sell other assets if necessary, shares of our common stock may need to be sold to meet these repayment requirements. Upon a default under such loan following any applicable cure period, the lender could sell the pledged shares into the market without limitation on volume or manner of sale. Sales of such shares to reduce the loan balance or by the lender upon foreclosure are likely to adversely affect our stock price. Mr. James has also indicated to us that he may in the future from time to time refinance such indebtedness, enter into derivative transactions based on the value of our Class B common stock, dispose of shares of common stock, otherwise monetize shares of his common stock and/or engage in other transactions relating to shares of our common stock and/or other securities of the company. Any of these activities may adversely affect the price of our common stock. Mr. James has also indicated that he intends to (1) continue to beneficially own a majority of the Class A common stock that he currently beneficially owns and (2) continue to control at least a majority of the voting power of our company.

In addition, in the future, we may issue additional shares of Class B common stock or other equity or debt securities convertible into common stock in connection with a financing, acquisition, litigation settlement, employee arrangement or otherwise. Any such issuance could result in substantial dilution to our existing stockholders and could cause our stock price to decline.

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

Provisions of our certificate of incorporation and bylaws may delay or discourage transactions involving an actual or potential change in our control or change in our management, including transactions in which stockholders might otherwise receive a premium for their shares, or transactions that our stockholders might otherwise deem to be in their best interests. These provisions include the following:

- our dual-class common stock structure, which provides our holders of Class A common stock with the ability to significantly influence the outcome of matters requiring stockholder approval, even if they own significantly less than a majority of the shares of our outstanding Class A common stock and Class B common stock;

- when the outstanding shares of Class A common stock represent less than a majority of the total combined voting power of our Class A and Class B common stock, or the voting threshold date, our board of directors will be classified into three classes of directors with staggered three-year terms, and directors will only be able to be removed from office for cause;
- our amended and restated bylaws provide that, following the voting threshold date, approval of stockholders holding two-thirds of our outstanding voting power voting as a single class will be required for stockholders to amend or adopt any provision of our bylaws;
- our stockholders are able to take action by written consent for any matter until the voting threshold date;
- following the voting threshold date, vacancies on our board of directors will be able to be filled only by our board of directors and not by stockholders;
- only the chairman of our board of directors, chief executive officer, a majority of our board of directors or, until the voting threshold date, a stockholder (or group of stockholders) holding at least 50% of the combined voting power of our Class A and Class B common stock are authorized to call a special meeting of stockholders;
- certain litigation against us can only be brought in Delaware;
- our amended and restated certificate of incorporation authorizes undesignated preferred stock, the terms of which may be established and shares of which may be issued, without the approval of the holders of common stock; and
- advance notice procedures apply for stockholders to nominate candidates for election as directors or to bring matters before an annual meeting of stockholders.

In addition, because we are incorporated in Delaware, we are governed by the provisions of Section 203 of the Delaware General Corporation Law, which generally prohibits a Delaware corporation from engaging in any of a broad range of business combinations with any “interested” stockholder for a period of three years following the date on which the stockholder became an “interested” stockholder.

***Our amended and restated bylaws designate a state or federal court located within the State of Delaware as the exclusive forum for substantially all disputes between us and our stockholders, which could limit our stockholders’ ability to choose the judicial forum for disputes with us or our directors, officers, or employees.***

Our amended and restated bylaws provide that, unless we consent in writing to the selection of an alternative forum, the sole and exclusive forum for (1) any derivative action or proceeding brought on our behalf, (2) any action asserting a claim of breach of a fiduciary duty owed by any of our directors, officers, or other employees to us or our stockholders, (3) any action arising pursuant to any provision of the Delaware General Corporation Law, or the certificate of incorporation or the amended and restated bylaws, (4) any action to interpret, apply, enforce, or determine the validity of our certificate of incorporation or bylaws or (5) other action asserting a claim that is governed by the internal affairs doctrine shall be the Court of Chancery of the State of Delaware (or, if the Court of Chancery does not have jurisdiction, another state court in Delaware or the federal district court for the District of Delaware), in all cases subject to the court having jurisdiction over indispensable parties named as defendants.

Any person or entity purchasing, holding or otherwise acquiring any interest in any of our securities shall be deemed to have notice of and consented to this provision. This exclusive-forum provision may limit a stockholder’s ability to bring a claim in a judicial forum of its choosing for disputes with us or our directors, officers, or other employees, which may discourage lawsuits against us and our directors, officers, and other employees. If a court were to find this exclusive-forum provision in our amended and restated bylaws to be inapplicable or unenforceable in an action, we may incur additional costs associated with resolving the dispute in other jurisdictions, which could harm our results of operations.

## **General Risk Factors**

***Economic uncertainties or downturns could materially adversely affect our business.***

Current or future economic uncertainties or downturns could adversely affect our business and operating results. Negative general macroeconomic conditions in both in the United States and abroad, including conditions resulting from changes in gross domestic product growth, financial and credit market fluctuations, rising inflation, a recession, political deadlock, natural catastrophes, pandemics, military conflict (including the Russian invasion of Ukraine and hostilities between Israel and Hamas) and terrorist attacks, whether in the United States, Europe, the Asia Pacific region or elsewhere, could cause a decrease in business investments, including corporate spending on business intelligence software in general and negatively affect the rate of growth of our business.

General worldwide economic conditions may experience significant downturns and may be unstable. These conditions make it extremely difficult for our customers and us to forecast and plan future business activities accurately, and they could cause customers to reevaluate their decisions to subscribe to our platform, which could delay and lengthen our sales cycles or result in cancellations of planned purchases. Furthermore, during

challenging economic times customers may tighten their budgets and face issues in gaining timely access to sufficient credit, which could result in an impairment of their ability to make timely payments to us. In turn, we may be required to increase our allowance for doubtful accounts, which would adversely affect our financial results.

For example, during 2021, the United States experienced an inflation rate of over 7%, according to data from the U.S. Department of Labor, significantly higher than recent norms. If inflation rates remain elevated or increase further, our expenses and operating costs are likely to increase. Inflation may also result in higher interest rates and otherwise adversely impact the macroeconomic environment, which in turn could adversely impact our customers and their ability or willingness to spend on our platform. Additionally, in recent periods the U.S. has experienced a labor shortage, which has contributed to an environment of escalating wages and salaries, which may also adversely affect our expenses and operating costs.

To the extent subscriptions to our platform are perceived by customers and potential customers to be discretionary, our revenue may be disproportionately affected by delays or reductions in general information technology spending. Also, customers may choose to develop in-house software as an alternative to using our platform. Moreover, competitors may respond to market conditions by lowering prices and attempting to lure away our customers. In addition, the increased pace of consolidation in certain industries may result in reduced overall spending on our platform.

We cannot predict the timing, strength or duration of any economic slowdown, instability or recovery, generally or within any particular industry. If the economic conditions of the general economy or industries in which we operate do not improve, or worsen from present levels, our business, operating results, financial condition and cash flows could be adversely affected.

Item 5. Other Information

Securities Trading Plans of Directors and Executive Officers.

During our last fiscal quarter, no director or officer, as defined in Rule 16a-1(f), adopted or terminated a “Rule 10b5-1 trading arrangement” or a “non-Rule 10b5-1 trading arrangement,” each as defined in Regulation S-K Item 408.

Item 6. Exhibits

Incorporated by Reference													
Exhibit Number	Exhibit Number												
Exhibit Number	Exhibit Number												
Exhibit Number	Description	Form	File No.	Exhibit	Date	Filed Herewith	Description	Form	File No.	Exhibit	Date	Filed Herewith	
3.1	3.1	<a href="#">Amended and Restated Certificate of Incorporation.</a>	8-K	001-38553	3.1	July 3, 2023							
3.2													
3.2													
3.2													
4.1													
4.1													

4.1	<a href="#">Form of Warrant to Purchase Stock, dated as of February 17, 2024</a>	X	<a href="#">Form of Warrant to Purchase Stock, dated as of August 19, 2024.</a>	X
10.1#	<a href="#">First Amendment to the Amended and Restated Loan and Security Agreement, dated as of February 17, 2024, by and between Domo, Inc., a Delaware corporation, Domo, Inc., a Utah corporation, the lenders that are party thereto from time to time (collectively, the “Lenders”), Obsidian Agency Services Inc., as collateral agent for the Lenders, and Wilmington Trust, National Association, as administrative agent for the Lenders</a>	X		



10.1	<a href="#"><u>Second</u></a> <a href="#"><u>Amendment</u></a> <a href="#"><u>to Amended</u></a> <a href="#"><u>and Restated</u></a> <a href="#"><u>Loan and</u></a> <a href="#"><u>Security</u></a> <a href="#"><u>Agreement</u></a> <a href="#"><u>and Lender</u></a> <a href="#"><u>Joinder,</u></a> <a href="#"><u>dated as of</u></a> <a href="#"><u>August 19,</u></a> <a href="#"><u>2024, by and</u></a> <a href="#"><u>among</u></a> <a href="#"><u>Domo, Inc., a</u></a> <a href="#"><u>Delaware</u></a> <a href="#"><u>corporation,</u></a> <a href="#"><u>Domo, Inc., a</u></a> <a href="#"><u>Utah</u></a> <a href="#"><u>corporation,</u></a> <a href="#"><u>the lenders</u></a> <a href="#"><u>that are</u></a> <a href="#"><u>parties</u></a> <a href="#"><u>thereto from</u></a> <a href="#"><u>time to time</u></a> <a href="#"><u>(collectively,</u></a> <a href="#"><u>the</u></a> <a href="#"><u>"Lenders").</u></a> <a href="#"><u>Obsidian</u></a> <a href="#"><u>Agency</u></a> <a href="#"><u>Services Inc.,</u></a> <a href="#"><u>as collateral</u></a> <a href="#"><u>agent for the</u></a> <a href="#"><u>Lenders, and</u></a> <a href="#"><u>Wilmington</u></a> <a href="#"><u>Trust,</u></a> <a href="#"><u>National</u></a> <a href="#"><u>Association,</u></a> <a href="#"><u>as</u></a> <a href="#"><u>administrative</u></a> <a href="#"><u>agent for the</u></a> <a href="#"><u>Lenders</u></a>	X
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31.1	31.1	<a href="#">Certification of Principal Executive Officer Pursuant to Rules 13a-14(a) and 15d-14(a) under the Securities Exchange Act of 1934, as Adopted Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.</a>		X 31.1	<a href="#">Certification of Principal Executive Officer Pursuant to Rules 13a-14(a) and 15d-14(a) under the Securities Exchange Act of 1934, as Adopted Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.</a>		X
31.2	31.2	<a href="#">Certification of Principal Financial Officer Pursuant to Rules 13a-14(a) and 15d-14(a) under the Securities Exchange Act of 1934, as Adopted Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.</a>		X 31.2	<a href="#">Certification of Principal Financial Officer Pursuant to Rules 13a-14(a) and 15d-14(a) under the Securities Exchange Act of 1934, as Adopted Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.</a>		X

32.1*	32.1*	<a href="#">Certification of Principal Executive Officer and Principal Financial Officer Pursuant to 18 U.S.C. Section 1350, as Adopted Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.</a>		X	32.1*	<a href="#">Certification of Principal Executive Officer and Principal Financial Officer Pursuant to 18 U.S.C. Section 1350, as Adopted Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.</a>		X
101.INS	101.INS	Inline XBRL Instance Document		X	101.INS	Inline XBRL Instance Document		X
101.SCH	101.SCH	Inline XBRL Taxonomy Extension Schema Document		X	101.SCH	Inline XBRL Taxonomy Extension Schema Document		X
101.CAL	101.CAL	Inline XBRL Taxonomy Extension Calculation Linkbase Document		X	101.CAL	Inline XBRL Taxonomy Extension Calculation Linkbase Document		X
101.DEF	101.DEF	Inline XBRL Taxonomy Extension Definition Linkbase Document		X	101.DEF	Inline XBRL Taxonomy Extension Definition Linkbase Document		X
101.LAB	101.LAB	Inline XBRL Taxonomy Extension Label Linkbase Document		X	101.LAB	Inline XBRL Taxonomy Extension Label Linkbase Document		X
101.PRE	101.PRE	Inline XBRL Taxonomy Extension Presentation Linkbase Document		X	101.PRE	Inline XBRL Taxonomy Extension Presentation Linkbase Document		X

104	104	Cover Page Interactive Data File (formatted as Inline XBRL and contained in Exhibit 101)		X 104	Cover Page Interactive Data File (formatted as Inline XBRL and contained in Exhibit 101)		X
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# Certain portions of this exhibit (indicated by "[\*\*\*]") have been omitted in accordance with Item 601(b)(10) of Regulation S-K because the omitted information is not material and the Company customarily and actually treats such omitted information as private or confidential.

\* The certifications attached as Exhibit 32.1 that accompany this Quarterly Report on Form 10-Q are not deemed filed with the Securities and Exchange Commission and are not to be incorporated by reference into any filing of Domo, Inc. under the Securities Act of 1933, as amended, or the Securities Exchange Act of 1934, as amended, whether made before or after the date of this Form 10-Q, irrespective of any general incorporation language contained in such filing.

SIGNATURES

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

DOMO, INC.

Date: June 6, 2024 September 5, 2024

By: /s/ David Jolley  
David Jolley  
Chief Financial Officer  
(Principal Financial and Accounting Officer)

Exhibit 4.1

THE OFFER AND SALE OF THIS WARRANT AND THE SHARES OF CLASS B COMMON STOCK ISSUABLE UPON EXERCISE HEREOF HAVE NOT BEEN REGISTERED UNDER THE ACT, OR THE SECURITIES LAWS OF ANY STATE AND, EXCEPT AND PURSUANT TO THE PROVISIONS OF SECTION 6 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 REASONABLY SATISFACTORY TO THE ISSUER OF THIS WARRANT, SUCH OFFER, SALE OR TRANSFER, PLEDGE OR HYPOTHECATION IS EXEMPT FROM REGISTRATION.

### FORM OF WARRANT TO PURCHASE STOCK

This Warrant to Purchase Stock ("**Warrant**") is issued by Domo, Inc., a Delaware corporation (the "**Company**") as of **February 17, 2024** **August 19, 2024** (the "**Issuance Date**") and certifies that, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, \_\_\_\_\_ ("**Holder**") is entitled to purchase that number of fully paid and non-assessable shares of Stock equal to the Warrant Number at a purchase price per share equal to the Exercise Price, subject to the provisions and upon the terms and conditions set forth in this Warrant. Capitalized terms used but not defined herein shall have the meaning provided in the Credit Agreement.

#### SECTION 1. **Exercise.**

1.1. **Method of Exercise.** Holder may exercise this Warrant at any time by delivering, in accordance with Section 7.14, 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 Section 1.2, Holder shall also deliver to the Company a check or wire transfer (to an account designated by the Company) for the aggregate Exercise Price for the Stock being purchased.

1.2. **Net Issuance Right.** In lieu of exercising this Warrant by check or wire transfer as specified in Section 1.1, Holder may from time to time convert this Warrant, in whole or in part, into a number of shares of Stock as is computed using the following formula:

$$X = \frac{Y(A-B)}{A}$$

A

where:

X = the number of shares of Stock to be issued to Holder pursuant to this Section 1.2.

Y = the number of shares of Stock covered by this Warrant in respect of which the net issue election is made pursuant to this Section 1.2.

- A = the Fair Market Value (as determined pursuant to Section 1.3) of one share of Stock, as determined at the time the net issue election is made pursuant to this Section 1.2.
- B = the Exercise Price in effect under this Warrant at the time the net issue election is made pursuant to this Section 1.2.

1.3. Fair Market Value. If, at the time of any exercise or conversion of this Warrant or at any other applicable time of determination, (a) the Stock is traded in a Trading Market, then the Fair Market Value of a share of Stock shall be the (i) the Trading Price of the Stock on the Trading Day immediately preceding the date of the applicable Notice of Exercise if such Notice of Exercise is (1) both executed and delivered pursuant to Section 1.2 hereof on a day that is not a Trading Day or (2) both executed and delivered on a Trading Day prior to the closing of “regular trading hours” (as defined in Rule 600(b)(64) of Regulation NMS promulgated under the federal securities laws) on such Trading Day, or (ii) the Trading Price of the Stock on the date of the applicable Notice of Exercise if the date of such Exercise Notice is a Trading Day and such Notice of Exercise is both executed and delivered after the close of “regular trading hours” on such Trading Day, and (b) the Stock is not traded in a Trading Market (including in the event of any determination in connection with an Acquisition), then the Board of Directors of the Company shall determine the Fair Market Value of each share of Stock in its reasonable good faith judgment, based on relevant facts and circumstances at the time of such determination (provided however, that if the value of a share of Stock is to be determined in connection with an Acquisition, the fair market value shall be deemed to be the value of the total consideration per share of Stock to be received by the holders thereof at the closing of the Acquisition, as determined in accordance with this Section 1.3), which Fair Market Value determination (unless made in connection with an Acquisition) shall be subject to approval by Holder; provided that, if the Company’s Board of Directors and Holder are unable to agree on the Fair Market Value of one share of Stock within a reasonable period of time (not to exceed 30 days), such Fair Market Value shall be determined by a nationally recognized investment bank, accounting or valuation firm engaged by the Company and approved by Holder. The determination of such firm shall be final and conclusive, and the fees and expenses of such valuation firm shall be borne fifty percent by Holder and fifty percent by the Company.

1.4. Delivery of Certificate. The rights under this Warrant shall be deemed to have been exercised and the shares of Stock issuable upon such exercise shall be deemed to have been issued immediately prior to the close of business on the date this Warrant is exercised in accordance with its terms, and the Person entitled to receive the shares of Stock issuable upon such exercise shall be treated for all purposes as the holder of record of such shares of Stock as of the close of business on such date. Promptly, but in no event later than the earlier of (i) two (2) Business Days and (ii) the Standard Settlement Period after Holder exercises or converts this Warrant and, if applicable, the Company receives payment of the aggregate Exercise Price with respect of the portion of the Stock underlying this Warrant that is being exercised, the Company

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shall deliver to Holder certificates or make appropriate book entries for the Stock acquired and/or other property to be delivered in connection with such exercise or conversion; provided, however, if the Stock is then traded in a public market, the Company may provide electronic evidence from its transfer agent of such issuance in book entry. If this Warrant has not been

fully exercised or converted and has not expired, the Company shall also deliver a statement setting forth the number of shares of Stock that remain available for exercise under the Warrant.

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, on 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. Beneficial Ownership Limitations. The Company shall not effect any exercise of this Warrant, and a Holder shall not have the right to exercise any portion of this Warrant, pursuant to Section 1 or otherwise, to the extent that after giving effect to such issuance after exercise as set forth on the applicable Notice of Exercise, the Holder (together with the Holder's Affiliates, and any other Persons acting as a group together with the Holder or any of the Holder's Affiliates (such Persons, "Attribution Parties")), would beneficially own in excess of the Beneficial Ownership Limitation (as defined below). For purposes of the foregoing sentence, the number of shares of Stock beneficially owned by the Holder and its Affiliates and Attribution Parties shall include the number of shares of Stock issuable upon exercise of this Warrant with respect to which such determination is being made, but shall exclude the number of shares of Stock which would be issuable upon (i) exercise of the remaining, nonexercised portion of this Warrant beneficially owned by the Holder or any of its Affiliates or Attribution Parties and (ii) exercise or conversion of the unexercised or nonconverted portion of any other securities of the Company (including, without limitation, any other Stock Equivalents) subject to a limitation on conversion or exercise analogous to the limitation contained herein beneficially owned by the Holder or any of its Affiliates or Attribution Parties. Except as set forth in the preceding sentence, for purposes of this Section 1.6, beneficial ownership shall be calculated in accordance with Section 13(d) of the Exchange Act and the rules and regulations promulgated thereunder, it being acknowledged by the Holder that the Company is not representing to the Holder that such calculation is in compliance with Section 13(d) of the Exchange Act and the Holder is solely responsible for any schedules required to be filed in accordance therewith and the calculations required under this Section 1.6. To the extent that the limitation contained in this Section 1.6 applies, the determination of whether this Warrant is exercisable (in relation to other securities owned by the Holder together with any Affiliates and Attribution Parties) and of which portion of this Warrant is exercisable shall be in the sole discretion of the Holder, and the submission of a Notice of Exercise shall be deemed to be the Holder's determination of whether this Warrant is exercisable (in relation to other securities owned by the Holder together with any Affiliates and Attribution Parties) and of which portion of this Warrant is exercisable, in each case subject to the Beneficial Ownership Limitation, and the Company shall have no obligation to verify or confirm the accuracy of such determination. In addition, a determination as to any group status as contemplated above shall be determined in accordance with Section 13(d) of the Exchange Act

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and the rules and regulations promulgated thereunder. For purposes of this Section 1.6, in determining the number of outstanding shares of Stock, a Holder may rely on the number of outstanding shares of Stock as reflected in (A) the Company's most recent periodic or annual report filed with the U.S. Securities and Exchange Commission (the "Commission"), as the case may be, (B) a more recent public announcement by the Company or (C) a more recent written notice by the Company or the transfer agent of the Company setting forth the number of shares of Stock outstanding. Upon the written or



oral request of a Holder, the Company shall within one Trading Day confirm orally and in writing to the Holder the number of shares of Stock then outstanding. In any case, the number of outstanding shares of Stock shall be determined after giving effect to the conversion or exercise of securities of the Company, including this Warrant, by the Holder or its Affiliates or Attribution Parties since the date as of which such number of outstanding shares of Stock was reported. The “Beneficial Ownership Limitation” shall be 19.99% of the number of shares of Stock outstanding immediately after giving effect to the issuance of the Stock issuable upon exercise of this Warrant. The Holder, upon notice to the Company, which notice, at the option of the Holder, may be irrevocable (an “Irrevocable BOL Notice”), may (a) decrease the Beneficial Ownership Limitation provisions of this Section 1.6 to reflect a Beneficial Ownership Limitation of 4.99% or 9.99%, at the Holder’s election, or (b) following any decrease of the Beneficial Ownership Limitation that is not made pursuant to an Irrevocable BOL Notice, may increase the Beneficial Ownership Limitation provisions of this Section 1.6, provided that the Beneficial Ownership Limitation in no event exceeds 19.99% of the number of shares of Stock outstanding immediately after giving effect to the issuance of shares of Stock upon exercise of this Warrant held by the Holder and the provisions of this Section 1.6 shall continue to apply. Any increase in the Beneficial Ownership Limitation in accordance with the foregoing clause (b) will not be effective until the 61<sup>st</sup> day after such notice is delivered to the Company. The provisions of this Section 1.6 shall be construed and implemented in a manner otherwise than in strict conformity with the terms of this Section 1.6 to correct this Section 1.6 (or any portion hereof) which may be defective or inconsistent with the intended Beneficial Ownership Limitation herein contained or to make changes or supplements necessary or desirable to properly give effect to such limitation. The limitations contained in this Section 1.6 shall apply to a successor holder of this Warrant. This provision shall not restrict the number of shares of Stock which the holder of this Warrant may receive or beneficially own in order to determine the amount of securities or other consideration that such Holder may receive in the event of a Fundamental Transaction.

## **SECTION 2. Adjustments To The Stock and Exercise Price.**

2.1. Stock Dividends, Splits, Etc. If the Company declares or pays a dividend on the outstanding shares of Stock payable in Class B Common Stock, other securities or other property, then upon exercise of this Warrant, for each share of Stock acquired, Holder shall receive, without cost to Holder, the total number and kind of securities or property to which Holder would have been entitled had Holder owned the Stock of record as of the date the dividend occurred. If the Company subdivides the outstanding shares of Stock by reclassification, split-up or otherwise into a greater number of shares, then the number of shares of Stock issuable on exercise of this Warrant shall be increased in proportion to such increase in the outstanding shares of Stock. If the outstanding shares of Stock are combined or consolidated,

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by reclassification, reverse stock split or otherwise, into a lesser number of shares, then the number of shares of Stock issuable on exercise of this Warrant shall be decreased in proportion to such decrease in outstanding shares of Stock. Whenever the number of shares of Stock purchasable upon the exercise of this Warrant is adjusted as provided in this Section 2.1, each of the Exercise Price and the Initial Fair Market Value shall be adjusted (to the nearest cent) by multiplying the Exercise Price and Initial Fair Market Value, respectively, immediately prior to such adjustment by a fraction (a) the numerator of which shall be the number of shares of Stock purchasable upon the exercise of this Warrant immediately prior to such adjustment, and (b) the denominator of which shall be the number of shares of Stock so purchasable immediately thereafter.

The provisions of this Section 2.1 shall similarly apply to successive subdivisions, combinations, consolidations or other applicable events.

2.2. Reclassification, Exchange, Combinations or Substitution. Subject to Section 2.3, on any reclassification, exchange, substitution, or other event or transaction that results in a change to the Stock, including any merger or consolidation of the Company with or into another entity, any compulsory share exchange affecting the Stock or conversion of the Company as another entity or other exchange of all of the outstanding shares of the Stock for other securities or property, or in the case of any sale or conveyance of the assets or other property of the Company as an entirety or substantially as an entirety, 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 Stock if this Warrant had been exercised immediately before

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such reclassification, exchange, substitution, or other event or transaction (the “**Alternate Consideration**”); provided that, if holders of Stock are given any choice as to the securities, cash or property to be received in such reclassification, exchange, substitution or other event or transaction, then Holder shall be given the same choice as to the Alternate Consideration it receives upon any exercise of this Warrant following such reclassification, exchange, substitution or other event or transaction. The Company or the Successor Entity (as defined below) shall promptly issue to Holder a certificate pursuant to Section 2.6 hereof setting forth the number, class and series or other designation 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 or transaction that results in a change of the number and/or class of securities issuable upon the exercise or conversion of this Warrant. The provisions of this Section 2.2 shall similarly apply to successive reclassifications, exchanges, substitutions, or other events or transactions.

2.3. Certain Acquisitions. Notwithstanding anything in Section 2.2 or otherwise in this Warrant to the contrary, in the event of any Acquisition in which (a) the Fair Market Value of one share of Stock as determined in accordance with Section 1.3 above would be less than the Initial Fair Market Value or (b) the consideration per share of Stock payable in such Acquisition does not consist solely of cash, solely of Marketable Securities or of a combination of cash and Marketable Securities, the Company or the Successor Entity shall, at Holder's option, exercisable at any time concurrently with, or within 30 days after, the consummation of the Acquisition (or, if later, the date of the public announcement of the Acquisition), purchase this Warrant from Holder by paying to Holder an amount in cash equal to the product of (i) the number of shares of Stock that remain available for exercise under this Warrant at such time (prior to giving effect to

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such Acquisition), *multiplied by* (ii) the greater of (A) the Initial Fair Market Value and (B) the Fair Market Value of the total consideration per share of Stock to be received by the holders thereof at the closing of such Acquisition, as determined in accordance with Section 1.3 (the “**Cash Purchase Amount**”). The payment of the Cash Purchase Amount will be made by wire transfer of immediately available funds within five Trading Days of Holder’s election (or, if later, on the date of consummation of the Acquisition). The provisions of this Section 2.3 shall similarly apply to successive Acquisitions.

2.4. No Impairment; Successor Entity. The Company shall not, by amendment of the Charter or through a reorganization, transfer of assets, consolidation, merger, dissolution, issue, or sale of securities or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms to be observed or performed under this Warrant by the Company, but shall at all times in good faith assist in carrying out of all the provisions of this Section 2 and in taking all such action as may be necessary or appropriate to protect Holder’s rights under this Section against impairment. The Company shall use commercially reasonable efforts to cause any successor or acquiring entity (the “**Successor Entity**”) in any reclassification, exchange, substitution, or other event or transaction, including any Acquisition, in which the Company is not the survivor (a “**Fundamental Transaction**”) to assume in writing all of the obligations of the Company under this Warrant in accordance with the provisions of this Section 2 pursuant to written agreements in form and substance reasonably satisfactory to

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Holder and shall, at the option of Holder, deliver to Holder in exchange for this Warrant a security of the Successor Entity evidenced by a written instrument substantially similar in form and substance to this Warrant which is exercisable for a corresponding number of shares of the new securities or other property of such Successor Entity (or its parent entity) for which this Warrant shall have become exercisable in accordance with this Section 2 and otherwise in accordance with the terms hereof. Upon the occurrence of any such Fundamental Transaction, the Successor Entity shall succeed to, and be substituted for (so that from and after the date of such Fundamental Transaction, the provisions of this Warrant referring to the “Company” shall refer instead to the Successor Entity), and may exercise every right and power of the Company and shall assume all of the obligations of the Company under this Warrant with the same effect as if such Successor Entity had been named as the Company herein.

2.5. Fractional Shares. No fractional shares of Stock shall be issuable upon exercise or conversion of the Warrant and the number of shares of Stock 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 in cash the amount computed by multiplying the fractional interest by the Fair Market Value of a full share of Stock as determined in accordance with Section 1.3.

2.6. Certificate as to Adjustments. Upon each adjustment of the Exercise Price, Stock and/or number of shares of Stock subject to this Warrant, 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 a duly authorized 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 Exercise Price, Stock and number of shares of Stock subject

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to this Warrant in effect upon the date thereof and the series of adjustments leading to such Exercise Price, Stock and number of shares of Stock.

### **SECTION 3. REPRESENTATIONS, WARRANTIES AND COVENANTS OF THE COMPANY.**

3.1. Representations and Warranties. The Company represents, warrants and covenants to the Holder as follows:

(a) The Company is duly authorized to issue this Warrant and has obtained all necessary board and stockholder consents necessary in order for the proper issuance of this Warrant.

(b) The issuance of this Warrant and the rights granted hereunder do not (i) conflict with or give rise to a breach of the Company's Charter or any other agreement, judgment or other obligations binding on the Company, or (ii) violate any applicable laws, including without limitation, laws relating to the offer and sale of securities.

(c) This Warrant has been duly executed and delivered by the Company and constitutes a legal, valid and binding obligation of the Company enforceable against the Company in accordance with its terms, subject to applicable bankruptcy, insolvency,

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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.

(d) All shares of Stock which may be issued upon the exercise of the purchase right represented by this Warrant, and all securities, if any, issuable upon conversion of Stock, shall, when issued, sold and delivered in accordance with the terms and for the consideration set forth in this Warrant, 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 securities laws.

(e) The Company has reserved and will keep available for issuance upon exercise of the Warrant the maximum number of shares of Stock that could possibly be issued on exercise of the Warrant from time to time outstanding, and any securities, if any, into which such shares are convertible.

3.2. Notice of Certain Events. If the Company proposes at any time (a) to declare any dividend or distribution upon the outstanding shares of Stock, whether in cash, property, stock, or other securities and whether or not a regular cash dividend (other than securities for which adjustment is made pursuant to Section 2 hereof); (b) to offer for subscription or sale pro rata to all of the holders of the outstanding shares of Stock any additional shares of any other class or series of the Company's stock (other than pursuant to contractual rights); (c) to effect any reclassification, reorganization or recapitalization of the shares of Stock; or (d) to effect an Acquisition or to liquidate, dissolve or wind up; 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

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which the holders of shares of Stock will be entitled thereto) or for determining rights to vote, if any, in respect of the matters referred to in (a) and (b) above; and (2) in the case of the matters referred to in (c) and (d) above at least 10 days prior written notice of the date when the same will take place (and specifying the date on which the holders of shares of Stock will be entitled to exchange their shares for the securities or other property deliverable upon the occurrence of such event).

3.3. Certain Information. Upon request of Holder at any time when the Company is either not current with its reporting requirements or subject to the reporting requirements under the Securities and Exchange Act of 1934, as amended, the Company shall promptly deliver to such Holder the information set forth in Appendix 3, provided however, that the rights set forth in this Section 3.3 shall not be transferable in connection with any transfer of this Warrant to a direct competitor of the Company.

#### **SECTION 4. REPRESENTATIONS, WARRANTIES OF THE HOLDER.**

4.1. Representations and Warranties. The Holder represents and warrants to and covenants and agrees with the Company as follows:

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(a) 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 of Stock.

(b) 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.

(c) Investment Experience. Holder understands that the acquisition 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.

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(d) Accredited Investor Status. Holder is an "accredited investor" within the meaning of Regulation D promulgated under the Act.

(e) The Act. Holder understands that the sale and issuance of this Warrant and the shares of Stock 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 the Holder's investment intent as expressed herein. Holder understands that this Warrant and the shares of Stock issuable upon 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. Holder is aware of the provisions of Rule 144 promulgated under the Act.

(f) Independent Tax Advice. Holder has reviewed with its own tax advisors the U.S. federal, state and local and non-U.S. tax consequences of this investment and the transactions contemplated by this Warrant and the Credit Agreement. With respect to such tax consequences, Holder relies solely on any such advisors and not on any advice from the Company or any of its agents, written or oral. Holder understands that it (and

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not the Company) shall be responsible for its own tax liability that may arise as a result of this investment.

4.2. No Stockholder Rights. Without limiting any provision in this Warrant, Holder agrees that it will not have any rights as a stockholder of the Company until the exercise of this Warrant.

4.3. No "Bad Actor" Disqualification. Neither (i) the Holder, (ii) any of its directors, executive officers, other officers that may serve as a director or officer of any company in which it invests, general partners or managing members, nor (iii) any beneficial owner of any of the Company's voting equity securities (in accordance with Rule 506(d) of the Securities Act) held by the Holder is subject to any of the "bad actor" disqualifications described in Rule 506(d)(1)(i) through (viii) under the Securities Act, except as set forth in Rule 506(d)(2)(ii) or (iii) or (d)(3) under the Securities Act and disclosed, reasonably in advance of the acceptance of this Warrant, in writing in reasonable detail to the Company.

## SECTION 5. DEFINITIONS.

5.1. Defined Terms. The following capitalized terms shall have the meanings provided:

(a) Acquisition means any transaction or series of related transactions involving (i) any consolidation or merger or other corporate reorganization of the Company or the issuance or transfer of the Company's voting securities where either (A) the Company is not the surviving entity (other than a merger, consolidation or corporate reorganization effected exclusively to change the Company's domicile or type of entity), or (B) the stockholders of the Company immediately prior to such transaction or series of related transactions do not hold at least 50% of the voting securities immediately after such

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transaction or series of related transactions or (ii) the sale, lease, exclusive license, or other disposition of all or substantially all of the assets of the Company or the Co-Borrower (other than, in the case of the Co-Borrower, to another wholly-owned subsidiary of the Company).

(b) Act means the Securities Act of 1933, as amended.

(c) Charter means the Company's certificate of incorporation as filed in its jurisdiction of organization, as may be amended or amended and restated from time to time.



(d) Class B Common Stock means the Company's Class B Common Stock, par value \$0.001 per share, or such securities into which the Company's Class B Common Stock are exchanged or converted.

(e) Common Stock means any class of the Company's equity securities designated in the Charter as common stock, such as Class A Common Stock or Class B Common Stock.

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(f) Credit Agreement means that certain Amended and Restated Loan and Security Agreement by and between Holder, Company and the other parties thereto dated as of the December 5, 2017 August 8, 2023, as such agreement may be amended, restated, supplemented, amended and restated or otherwise modified from time to time.

(g) Exercise Price means, as of the date this Warrant is exercised or converted, \$0.01, adjusted for stock splits and combinations.

(h) Expiration Date means February 17, 2028 August 19, 2028.

(i) Holder shall have the meaning provided in the first paragraph of this Warrant, as may be modified by Section 7.4 of this Warrant.

(j) Holder Entities shall have the meaning provided in Section 7.13 of this Warrant.

(k) Initial Fair Market Value means \$10.58 \$7.82.

(l) Issuance Date shall have the meaning provided in the first paragraph of this Warrant.

(m) 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 applicable Equity Interests of the issuer that would be received by Holder in connection with the applicable Acquisition were Holder to exercise this Warrant on or prior to the closing thereof is then traded in a Trading Market, (iii) the average daily market value of such securities traded in the Trading Market for the preceding 30 Trading Day period exceeds \$3 million and (iv)

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following the closing of such Acquisition, Holder would not be restricted from publicly reselling re-selling all of the issuer's shares and/or other securities or applicable Equity Interests 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 arises solely under federal or state securities laws, rules or regulations.

(n) Principal Market means the primary U.S. national securities exchange on which the Stock is then listed, or, if the Stock is not then listed on such an exchange, on the primary other market (if any) on which the Stock is then traded.

(o) Standard Settlement Period means the standard settlement period, expressed in a number of Trading Days, on the Principal Market with respect to the Stock as in effect on any date of exercise of this Warrant.

(p) Stock means Class B Common Stock (or other security issuable upon the exercise hereof).

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(q) Stock Equivalents means any securities of the Company or the Subsidiaries which would entitle the holder thereof to acquire at any time shares of Stock, including, without limitation, any debt, common or preferred equity, right, option, warrant or other instrument that is at any time convertible into or exercisable or exchangeable for, or otherwise entitles the holder thereof to receive, shares of Stock.

(r) Subsidiary shall have the meaning provided in the Credit Agreement.

(s) Trading Day means any day on which the Stock is traded on the Principal Market (or, with respect to any other security, on which such security is traded on a Trading Market), provided that “Trading Day” shall not include any day on which the Stock (or such applicable security) is scheduled to trade on such exchange or market for less than 4.5 hours or any day that the Stock (or such applicable security) is suspended from trading during the final hour of trading on such exchange or market (or if such exchange or market does not designate in advance the closing time of trading on such exchange or market, then during the hour ending at 4:00:00 p.m., New York time) unless such day is otherwise designated as a Trading Day in writing by Holder and agreed to by the Company.

(t) Trading Market means a nationally recognized securities exchange, inter-dealer quotation system or over the counter market.

(u) Trading Price means, for any security as of any date, as applicable (1) the VWAP of such security on the Principal Market on such date, (2) if VWAP is not available, the last closing trade price for such security on the Principal Market, as reported by Bloomberg, or, if the Principal Market begins to operate on an extended hours basis and does not designate the closing trade price, then the last trade price of such security prior to 4:00:00 p.m., New York time, as reported by Bloomberg, or, if the Principal Market is not the principal securities exchange or trading market for such security, the last trade

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price of such security on the principal securities exchange or trading market where such security is listed or traded as reported by Bloomberg, or (3) if the foregoing do not apply, the last trade price of such security in the over-the-counter market on the electronic bulletin board for such security as reported by Bloomberg, or (4) if no last trade price is reported for such security by Bloomberg, the average of the ask prices of any market makers for such security as reported in the “pink sheets” by Pink Sheets LLC. If the Trading Price cannot be calculated for a security on a particular date on any of the foregoing bases, the Trading Price of such security on such date shall be the fair market value as determined by the Board of Directors of the Company in its good faith judgment based on relevant facts and circumstances at the time of such determination in a commercially reasonable manner. All such determinations to be appropriately adjusted for any stock dividend, stock split, stock combination or other similar transaction during the applicable calculation period.

(u) (v) VWAP means, for any security as of any date, the per share volume-weighted average price as displayed under the heading “Bloomberg VWAP” on the applicable Bloomberg page for the Stock, in respect of the period from the scheduled open of trading until the scheduled close of trading of the primary trading session on such trading day (or if such volume-weighted average price is unavailable, the market value of one share of the Stock on such trading day reasonably determined, using a volume-weighted average method, by a nationally recognized independent investment banking firm retained for this purpose by the Company). The “VWAP” will be determined without

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regard to after-hours trading or any other trading outside of the regular trading session trading hours.

(v) (w) Warrant shall have the meaning provided in the first paragraph of this agreement.

(w) (x) Warrant Number means \_\_\_\_\_, adjusted for stock splits and combinations.

(x) Warrant Stock shall have the meaning provided in Section 6.1 of this Warrant.

## SECTION 6. REGISTRATION REQUIREMENTS

6.1. Registration Rights. On Holder's written demand made at any time prior to the date four months after the Issuance Date, the Company shall (a) file a registration statement for the resale of the Class B Common Stock underlying this Warrant so that Holder may resell such Class B Common Stock without restrictions or limitations imposed by Rule 144 of the Act, and (b) use its best efforts to have such registration statement declared effective within 60 days after request for registration is made (the “**Registration Deadline**”). Failure of such registration statement to be declared effective by the Registration Deadline shall be a material default under this Warrant, but by way of clarification and without limitation, is not an Event of Default or breach under the Credit Agreement. No failure or breach by the Company under this Section 6.1 gives rise to any damages, termination or acceleration rights under the Credit Agreement. Provided that the Class B Common Stock underlying this Warrant can be sold pursuant to Rule 144 of the Act or another available exemption under the Act, in either case without restrictions or limitations, the Company shall have no obligation to maintain any registration statement for the

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resale of the Class B Common Stock underlying this Warrant at any time starting six months after the Issuance Date.

## **SECTION 7. MISCELLANEOUS.**

7.1. Term. This Warrant is exercisable, in whole or in part, as to that number of shares of Stock equal to the Warrant Number at any time and from time to time on or before midnight Pacific time on the Expiration Date.

7.2. Legends. The shares of Stock (and the securities issuable, directly or indirectly, upon conversion of Stock, if any) shall be imprinted with a legend in substantially the following form:

THE SALE AND ISSUANCE OF SHARES ISSUABLE HEREUNDER HAVE NOT BEEN REGISTERED UNDER THE ACT, OR THE SECURITIES LAWS OF ANY STATE AND, 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 REASONABLY SATISFACTORY TO THE ISSUER OF THESE SECURITIES, SUCH OFFER, SALE OR TRANSFER, PLEDGE OR HYPOTHECATION IS EXEMPT FROM REGISTRATION. NO OPINION OF COUNSEL SHALL BE REQUIRED IF THE TRANSFER IS TO AN AFFILIATE OF HOLDER, PROVIDED THAT ANY SUCH TRANSFEREE IS AN

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**"ACCREDITED** **"ACCREDITED** INVESTOR" AS DEFINED IN REGULATION D PROMULGATED UNDER THE ACT.

Such legend shall be removed and the Company shall, or shall instruct its transfer agent to, issue a certificate without such legend or any other legend to the holder of such shares (i) if such shares are sold or transferred pursuant to an effective registration statement under the Act covering the resale of such shares by the holder thereof, (ii) if such shares are sold or transferred pursuant to Rule 144 under the Act, (iii) if such shares are eligible for resale without any restrictions under Rule 144 under the Act, or (iv) upon the request of such holder if such request is accompanied (at such holder's expense) by a written opinion of counsel reasonably satisfactory to the Company that registration is not required under the Act or any applicable state securities laws for the resale of the shares of Stock purchased upon exercise of this Warrant. The removal of such restrictive legend from any certificates representing the shares of Stock purchased upon exercise of this Warrant is predicated upon the Company's reliance that the holder of such shares would sell, transfer, assign, pledge, hypothecate or otherwise dispose of such shares pursuant to either the registration requirements of the Act, including any applicable

prospectus delivery requirements, or an exemption therefrom, and that if such shares are sold pursuant to a registration statement, they will be sold in compliance with the plan of distribution set forth therein.

7.3. Compliance with Securities Laws on Transfer. This Warrant and the shares of Stock issuable upon exercise of this Warrant (and the securities issuable, directly or indirectly, upon conversion of Stock, if any) may not be transferred or assigned in whole or in part without

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compliance with applicable federal and state securities laws by the transferor and the transferee (including, without limitation, the delivery of a legal opinion 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 transferee is an 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 or another exemption under applicable securities laws.

7.4. Transfer Procedure. Subject to the provisions of Section 7.3 and upon providing the Company with written notice in substantially the form as provided in Appendix 2 hereto and countersigned by the proposed transferee, Holder and any subsequent Holder may transfer all or part of this Warrant or the shares of Stock issuable upon exercise of this Warrant (or the securities issuable directly or indirectly, upon conversion of Stock, if any) to any transferee so long as such transferee agrees to be bound by the terms and conditions of this Warrant, provided, however, in connection with any such transfer, any subsequent Holder will give the Company notice of the portion of the Warrant being transferred with the name, address and taxpayer identification number, if any, of the transferee and Holder will surrender this Warrant (if an original of this Warrant was delivered to Holder) to the Company for reissuance to the transferee(s) (and Holder if applicable).

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7.5. 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.

7.6. Attorney's 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.

7.7. Automatic Conversion upon Expiration. In the event that, upon the Expiration Date, the Fair Market Value of one share of Stock (or other security issuable upon the exercise hereof) as determined in accordance with Section 1.3 above is greater than the Exercise Price in effect on such date, then this Warrant shall automatically be deemed on and as of such date to be converted pursuant to Section 1.2 above as to all shares of Stock (or such other securities) for which it shall not previously have been exercised or converted that may be acquired hereunder, and the Company shall promptly deliver a certificate representing the shares of Stock (or such other securities) issued upon such conversion to Holder in accordance with Section 1.4.

7.8. Counterparts. This Warrant may be executed in counterparts and by facsimile (e.g., PDF), all of which together shall constitute one and the same agreement.

7.9. Choice Of Law, Venue, Jury Trial Waiver.

(a) Governing Law. THIS WARRANT SHALL BE CONSTRUED IN ACCORDANCE WITH AND GOVERNED BY THE LAWS OF THE STATE OF NEW YORK; provided, however, that nothing in this Warrant shall be deemed to operate to

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preclude Holder from bringing suit or taking other legal action in any other jurisdiction in connection with the Credit Agreement. The Company irrevocably and unconditionally submits, for itself and its property, to the exclusive jurisdiction of any New York State court or Federal court of the United States of America sitting in the Borough of Manhattan in New York City, and any appellate court from any thereof, in any action or proceeding arising out of or relating to this Warrant, or for recognition or enforcement of any judgment, and the Company irrevocably and unconditionally agrees that all claims in respect of any such action or proceeding may be heard and determined in such New York State or, to the extent permitted by law, in such Federal court. The Company 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. The Company 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 Warrant in any New York State or Federal court. The Company 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. The Company irrevocably consents to service of process in accordance with, Section 7.14 of this Warrant and that service so made shall be deemed completed upon the earlier to occur of the Company's actual receipt thereof or three (3) Business Days after deposit in the U.S. mails, proper

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postage prepaid. Nothing in this Warrant will affect the right of any party to this Warrant to serve process in any other manner permitted by law.

**(b) Waiver of Jury Trial.** TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE COMPANY AND HOLDER EACH WAIVE THEIR RIGHT TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION ARISING OUT OF OR BASED UPON THIS WARRANT OR ANY CONTEMPLATED TRANSACTION, INCLUDING CONTRACT, TORT, BREACH OF DUTY AND ALL OTHER CLAIMS. THIS WAIVER IS A MATERIAL INDUCEMENT FOR BOTH PARTIES TO ENTER INTO THIS AGREEMENT. EACH PARTY HAS REVIEWED THIS WAIVER WITH ITS COUNSEL.

7.10. Time of Essence. Time is of the essence for the performance of all obligations in this Warrant.

7.11. Severability of Provisions. Each provision of this Warrant is severable from every other provision in determining the enforceability of any provision.

7.12. Amendments in Writing; Waiver; Integration. No purported amendment or modification of this Warrant, or waiver, discharge or termination of any obligation under this Warrant, shall be enforceable or admissible unless, and only to the extent, expressly set forth in a writing signed by the party against which enforcement or admission is sought. Without limiting the generality of the foregoing, no oral promise or statement, nor any action, inaction, delay, failure to require performance or course of conduct shall operate as, or evidence, an amendment, supplement or waiver or have any other effect on this Warrant. Any waiver granted shall be limited to the specific circumstance expressly described in it, and shall not apply to any

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subsequent or other circumstance, whether similar or dissimilar, or give rise to, or evidence, any obligation or commitment to grant any further waiver. This Warrant represents the entire agreement about this subject matter and supersedes prior negotiations or agreements, including any commitment letter or term sheet and modifications thereto, whether or not formally signed. All prior agreements, understandings, representations, warranties, and negotiations between the parties about the subject matter of this Warrant merge into this Warrant.

7.13. Confidentiality. In handling any confidential information provided pursuant to this Warrant, Holder shall exercise the same degree of care that it exercises for its own proprietary information, and shall not use such information other than to monitor or value such its investment in the Company or disclose such information, provided that disclosure of such information may be made: (a) to Holder's Subsidiaries or Affiliates (such Subsidiaries and Affiliates, together with Holder, collectively, "**Holder Entities**"); (b) to prospective transferees or purchasers of any interest in the Warrant or Credit Extensions (provided, however, that any prospective transferee or purchaser shall have entered into an agreement containing provisions substantially the same as those in this Section 7.13); (c) as required by law, regulation, subpoena, or other order; (d) to Holder



Entities' regulators or as otherwise required in connection with Holder Entities' examination or audit; (e) as Holder considers appropriate in exercising remedies under this Warrant; and (f) to Holder Entities' third-party service providers so long as such service providers have executed a confidentiality agreement with one or more of the Holder

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Entities with terms no less restrictive than those contained herein. Confidential information does not include information that is either: (i) in the public domain or in any Holder Entity's possession when disclosed to Holder, or becomes part of the public domain after disclosure to Holder (in each case, through no fault of any of the Holder Entities); or (ii) disclosed to any Holder Entity by a third party if such Holder Entity does not know that the third party is prohibited from disclosing the information.

7.14. Notices. 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, sent by fax or email, as follows:

if to the Company, to it at 802 East 1050 South, American Fork, UT 84003, Attention: Alexis Coll, Chief Legal Officer (email: [\*\*\*]), with a copy (which shall not constitute notice) to Wilson, Sonsini Goodrich & Rosati, 701 Fifth Avenue, Suite 5100, Seattle, WA 98104, Attention: Patrick J. Schultheis (email: [\*\*\*]);

if to Holder, to it at \_\_\_\_\_;

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 if delivered by hand or overnight courier service or sent by fax or email, or on the date 5 Business Days after dispatch by certified or registered mail if mailed, in each case delivered, sent or mailed (properly addressed) to such party as provided in this Section 7.14 or in accordance with the latest unrevoked direction from such party given in accordance with this Section 7.14.

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7.15. Tax Matters. The issuance of this Warrant, and any and all payments in respect of this Warrant, shall be made without deduction or withholding for any Taxes, except as required by applicable law. If any applicable law requires the deduction or withholding of any Tax in connection with the issuance of this Warrant, or from any payment in respect of this Warrant, then the Company shall 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 the sum payable by the Company shall

be increased as necessary so that after such deduction or withholding has been made (including such deductions and withholdings for Taxes applicable to additional sums payable hereunder) the Holder receives an amount equal to the sum it would have received had no such deduction or withholding for Taxes been made. The Company shall indemnify the Holder, within 10 days after demand therefor, for the full amount of any Taxes (including Taxes imposed or asserted on or attributable to amounts payable under this hereunder) imposed with respect to the issuance of this Warrant or in respect of payments in respect of this Warrant that are payable or paid by Holder or required to be withheld or deducted from a payment to Holder 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 Company by Holder shall be conclusive absent manifest error.

7.16. No Third Party Beneficiaries. No Person other than a party to this Warrant shall have any rights under this Warrant.

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7.17. Electronic Execution of Documents. The words “execution,” “signed,” “signature” and words of like import in any Loan Document 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 and enforceability as a manually executed signature or the use of a paper-based recordkeeping systems, as the case may be, to the extent and as provided for in any applicable law, including, without limitation, any state law based on the Uniform Electronic Transactions Act.

7.18. Captions. The headings used in this Agreement are for convenience only and shall not affect the interpretation of this Agreement.

7.19. Construction of Agreement. The parties mutually acknowledge that they and their attorneys have participated in the preparation and negotiation of this Agreement. In cases of uncertainty this Agreement shall be construed without regard to which of the parties caused the uncertainty to exist.

*[Remainder of page left blank intentionally]*

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IN WITNESS WHEREOF, the parties have caused this Warrant to be executed and delivered as of the Issuance Date.

“COMPANY”

Domo, Inc.

\_\_\_\_\_  
Name:  
Title:

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“HOLDER”

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Address:

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Appendix 1

**NOTICE OF EXERCISE**

1. Holder elects to exercise the Warrant to Purchase Stock dated \_\_\_\_\_ and initially issued to \_\_\_\_\_ (the “**Warrant**”) to purchase \_\_\_\_\_ shares of Class B Common Stock of Domo, Inc. pursuant to Section 1.1 of the Warrant, and tenders payment of the purchase price of the shares in full. The undersigned represents and warrants that the aforesaid shares of capital stock are being acquired in compliance with applicable federal and state securities law.

[or]

1. Holder elects to exercise the Warrant dated \_\_\_\_\_ and initially issued to \_\_\_\_\_ (the “**Warrant**”), to purchase \_\_\_\_\_ Class B Common Stock of Domo, Inc. pursuant to Section 1.2 of the Warrant, and tenders \_\_\_\_\_ shares of Stock available under the Warrant as payment in full.

[Strike paragraph that does not apply.]

2. Capitalized terms used but not defined herein shall have the meaning provided in the Warrant.
3. Please issue a certificate or certificates representing the shares of Stock in the name specified below:

\_\_\_\_\_

Holder’s Name

\_\_\_\_\_

\_\_\_\_\_

(Address)

HOLDER:

\_\_\_\_\_

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

(Date): \_\_\_\_\_

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## Appendix 2

### NOTICE OF TRANSFER

(To be signed only upon transfer of Warrant)

FOR VALUE RECEIVED, the undersigned hereby sells, assigns and transfers unto \_\_\_\_\_ the right represented by the attached Warrant to purchase Stock of \_\_\_\_\_ (the "**Company**") to which the attached Warrant relates, and appoints \_\_\_\_\_ as attorney in fact to transfer such right on the books of the Company, with full power of substitution in the premises.

Dated: \_\_\_\_\_

\_\_\_\_\_  
(Signature must conform in all respects to name of Holder as specified on the face of the Warrant)

Address:

#### Acknowledgement and Acceptance:

The undersigned transferee of the Warrant hereby accepts the transfer of the Warrant and agrees to be bound by the Warrant as if it were the original Holder thereof.

[insert name of transferee]

\_\_\_\_\_  
Name:

Title:

Tax Payer Identification Number:

Address:

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## Appendix 3

### INFORMATION RIGHTS

The Company will furnish electronically to Holder:

As soon as practicable after the end of each fiscal year of the Company, and in any event within one hundred twenty (120) days after the end of each fiscal year of the Company, a consolidated balance sheet of the Company and its subsidiaries as of the end of such fiscal year, and consolidated statements of income and cash flows of the Company and its subsidiaries for such fiscal year, each prepared in accordance with U.S. generally accepted accounting principles consistently applied and certified by independent public accountants of nationally recognized standing selected by the Company.

As soon as practicable after the end of each of the first, second, third and fourth quarterly accounting periods in each fiscal year of the Company, and in any event within forty-five (45) days after the end of each of the first, second, third and fourth quarterly accounting periods in each fiscal year of the Company, an unaudited consolidated balance sheet of the Company and its subsidiaries, as of the end of each such quarterly period, and unaudited consolidated statements of income and cash flows of the Company and its subsidiaries, for such period, prepared in accordance with U.S. generally accepted accounting principles consistently applied, subject to changes resulting from normal year-end audit adjustments.

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Exhibit 10.1

CERTAIN CONFIDENTIAL INFORMATION, MARKED BY [\*\*\*], HAS BEEN EXCLUDED FROM THIS EXHIBIT BECAUSE (I) IT IS NOT MATERIAL AND (II) THE REGISTRANT CUSTOMARILY AND ACTUALLY TREATS THE INFORMATION AS PRIVATE AND CONFIDENTIAL.

#### FIRST SECOND AMENDMENT TO AMENDED AND RESTATED LOAN AND SECURITY AGREEMENT AND LENDER JOINDER

This FIRST SECOND AMENDMENT TO AMENDED AND RESTATED LOAN AND SECURITY AGREEMENT AND LENDER JOINDER, dated as of February 17, 2024 August 19, 2024 (this “**Amendment**”), is entered into by and among Domo, Inc., a Delaware corporation (“**Parent**” and, in such capacity, “**Borrower**”), Domo, Inc., a Utah corporation (“**Domo Utah**” and, in such capacity, “**Co-Borrower**”), the Lenders (as defined below), Obsidian Agency Services, Inc., a California corporation, as collateral agent for the Lenders (in such capacity, the “**Collateral Agent**”), and Wilmington Trust, National Association, as

administrative agent for the Lenders (in such capacity, including any successor thereto, the “**Administrative Agent**” and together with the Collateral Agent, the “**Agents**” and, individually, an “**Agent**”).

WHEREAS Borrower, Co-Borrower, Collateral Agent, the lenders party thereto from time to time (the “**Existing Lenders**”) and the Administrative Agent are parties to that certain Amended and Restated Loan and Security Agreement, dated as of August 8, 2023 as amended by that certain First Amendment to Amended and Restated Loan and Security Agreement, dated as of February 17, 2024, and as otherwise further amended, restated, supplemented or modified and in effect immediately prior to the First Second Amendment Effective Date (as defined below), the “**Existing Loan and Security Agreement**” and, the Existing Loan and Security Agreement as modified by this Amendment, the “**Loan and Security Agreement**”);

WHEREAS Borrower has requested that the Additional Lenders, and the Additional Lenders wish to, join the Loan and Security Agreement as “Lenders” thereunder and make the Second Amendment Term Loans to Borrower under the Loan and Security Agreement; and

WHEREAS, on the Second Amendment Effective Date, (a) first, all Credit Extensions (as defined in the Existing Loan and Security Agreement) of each Exiting Lender, together with all accrued and unpaid interest thereon, and such Exiting Lender's ratable portion of the Amendment Fee (as defined in the Existing Credit Agreement), shall be voluntarily prepaid and satisfied in full on a non-pro rata basis with cash from the balance sheet of Borrower pursuant to Section 6(g) of this Amendment and (b) second, (i) the Additional Lenders shall make the Second Amendment Term Loans to Borrower under the Loan and Security Agreement, (ii) the Initial Term Loans of the Existing Lenders other than the Exiting Lenders (the “**Converting Lenders**”) shall automatically be deemed to have converted into Second Amendment Term Loans and (iii) each such Converting Lender's ratable portion of the Amendment Fee shall automatically be deemed to have converted into a ratable portion of the Second Amendment PIK Fee.

WHEREAS Borrower and the Lenders wish to amend the Existing Loan and Security Agreement in certain respects as set forth herein;

NOW, THEREFORE, in consideration of the mutual agreements herein contained and other good and valuable consideration, the sufficiency and receipt of which are hereby acknowledged, the parties agree as follows:

Section 1. Definitions. Except as otherwise defined in this Amendment, terms defined in the Loan and Security Agreement are used herein as defined therein.

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Section 2. Amendment. Subject to the satisfaction of the conditions precedent set forth in Section 56 of this Amendment, but effective as of the date hereof:

(a) The Existing Loan and Security Agreement is hereby amended as set forth in Annex B hereto (stricken text shall be deleted from the Existing Loan and Security Agreement (indicated textually in the same manner as the following example: ~~stricken-text~~) and double-underlined text shall be added to the Existing Loan and Security Agreement (indicated textually in the same manner as the following examples: double-underlined text)).



(b) Schedule 1.2 to the Existing Loan and Security Agreement is hereby amended and restated in its entirety with Schedule 1.2 attached hereto as Annex C.

(c) Exhibit B of C to the Existing Loan and Security Agreement is hereby amended and restated in its entirety with such Exhibit B C attached hereto as Annex C D.

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(e) The parties hereto acknowledge and agree that, notwithstanding anything to the contrary in the Existing Loan and Security Agreement or in this Amendment, the only conditions precedent to the Credit Extensions made on the Second Amendment Effective Date (the “**Second Amendment Term Loans**”) shall be those conditions set forth in Section 6 of this Amendment and Section 2.2 of the Loan and Security Agreement. Notwithstanding anything to the contrary contained in this Amendment or the Existing Loan and Security Agreement, (i) the Initial Term Loans of the Converting Lenders shall automatically be deemed to have converted into Second Amendment Term Loans and (ii) each such Converting Lender's portion of the Amendment Fee shall automatically be deemed to have converted into an equal amount of the Second Amendment PIK Fee, in each case, without any further action by each such Converting Lender.

Section 3. Reaffirmation. Each Loan Party (a) acknowledges and consents to all of the terms and conditions of this Amendment, (b) agrees that this Amendment and any documents executed in connection herewith do not operate to reduce or discharge such Loan Party's obligations under the Security Documents and the other Loan Documents other than the principal repayments contemplated by Section 8(h), and (c) agrees that this Amendment and any documents executed in connection herewith shall not impair or otherwise adversely affect any of the guarantees or Liens provided or granted pursuant to the Loan Documents. Each Security Document, each other Loan Document and all guarantees, pledges, grants, security interests and other agreements thereunder shall continue to be in full force and effect and each Loan Party reaffirms each Security Document, each other Loan Document and all guarantees, pledges, grants, security interests and other agreements thereunder.

Section 4. Representations and Warranties. To induce the Administrative Agent, the Collateral Agent and the Lenders to enter into this Amendment, each Loan Party represents and warrants to the Administrative Agent, the Collateral Agent and the Lenders, as to itself and each of its subsidiaries, that:

(a) Each Loan Party has the requisite power and authority and has taken all necessary organizational action to authorize the execution, delivery and performance of this Amendment and the performance of the Loan and Security Agreement. This Amendment has been duly executed and delivered by such Loan Party and each of this Amendment and the Loan and Security Agreement constitutes the legal, valid and binding obligation of each such Loan Party, enforceable in accordance with its terms, except as enforcement may be limited by equitable principles or by bankruptcy, insolvency, reorganization, moratorium, or similar laws relating to or limiting creditors' rights generally.

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(b) The execution and delivery by each Loan Party of this Amendment and the performance by each Loan Party of this Amendment and the performance by Borrower of the Loan and Security Agreement do not (i) require any action, consent or approval of, registration or filing with or any other action by any Governmental Authority that has not been obtained, (ii) violate any provision of law, statute, rule or regulation, or of the certificate or articles of incorporation or other constitutive documents or by-laws of any Loan Party, (iii) conflict with, result in a breach of or constitute (alone or with notice or lapse of time or both) a default under, or give rise to any right to accelerate or to require the prepayment, repurchase or redemption of any obligation under any such material indenture, agreement or other instrument to which a Loan Party is a party, or (iv) result in or require the creation or imposition of any Lien upon or with respect to any property now owned or hereafter acquired by any Loan Party (other than the Liens created under the Loan Documents).

(c) The representations and warranties set forth in Section 4 of the Loan and Security Agreement, and in each of the other Loan Documents, are true and correct in all material respects on the date hereof as if made on and as of the date hereof (or, if any such representation or warranty is expressly stated to have been made as of a specific date, such representation or warranty shall be true and correct as of such specific date), and as if each reference in said Section 4 to “this Agreement” included reference to this Amendment.

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(d) There exists no Default or Event of Default.

Section 5. Second Amendment Term Loans; Lender Joinder; Second Amendment PIK Fee.

(a) Subject to the terms and conditions of this Amendment and the other Loan Documents, and in reliance upon the representations and warranties set forth in this Amendment and the other Loan Documents, each Person party hereto as an “Additional Lender” (each, an “**Additional Lender**” and, collectively, the “**Additional Lenders**”) and each Converting Lender agrees to make Credit Extensions of the Term Loan to Borrower (the “**Second Amendment Term Loans**”) in accordance with, and subject to the terms and conditions of, the Loan and Security Agreement (including Section 1.2 of the Loan and Security Agreement) in an amount not to exceed such Lender’s Commitments, as set forth on Schedule 1.2 to the Loan and Security Agreement (as such schedule is amended by this Amendment upon the occurrence of the Second Amendment Effective Date); provided that the Second Amendment Term Loan Commitments of the Converting Lenders shall be deemed to have been satisfied by conversion of each such Converting Lender’s Initial Term Loans into Second Amendment Term Loans pursuant to Section 2(e) of this Amendment and the Converting Lenders shall have no further obligation to fund such Second Amendment Term Loan Commitments.

(b) Each Loan Party agrees to pay to each Additional Lender and each Converting Lender the Second Amendment PIK Fee in accordance with, and subject to the terms and conditions of, the Loan and Security Agreement (including Section 1.5 of the Loan and Security Agreement) in the amount set forth opposite such Lender’s name, as set forth on Schedule 1.2 to the Loan and Security Agreement (as such schedule is amended by this Amendment upon the occurrence of the Second Amendment Effective Date), as such Second Amendment PIK Fee shall increase by accrual and capitalization of interest pursuant to the Loan and Security Agreement.

(c) By executing and delivering this Amendment, upon the occurrence of the Second Amendment Effective Date, each Additional Lender hereby becomes a party to the Loan and Security Agreement as a “Lender” thereunder and, without limiting the generality of the foregoing, hereby (i) expressly assumes all obligations and liabilities of a “Lender”

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thereunder, (ii) agrees to be bound by the terms of the Loan and Security Agreement and the other Loan Documents as a “Lender”, (iii) appoints and authorizes Agents to take such action as agents on its behalf and to exercise such powers under the Loan Documents as are delegated to Agents by the terms thereof, together with such powers as are reasonably incidental thereto; (iv) acknowledges and agrees that Agents are and shall be entitled to all of the indemnifications, exculpations and other rights and protections set forth in the Loan and Security Agreement and the other Loan Documents (including, without limitation, those set forth in Section 12 of the Loan and Security Agreement, and such Additional Lender shall be obligated as a Lender under such Section 12) and (v) agrees that it will perform in accordance with their terms all the obligations which by the terms of the Loan and Security Agreement and other Loan Documents are required to be performed by it as a Lender.

(d) Each Loan Party hereby acknowledges, agrees and confirms that each Additional Lender shall be a party to the Loan and Security Agreement as a “Lender” for all purposes of the Loan and Security Agreement and the other Loan Documents and shall have all of the rights and obligations of a Lender under the Loan and Security Agreement and the other Loan Documents.

**Section 6. Conditions Precedent.** This Amendment shall become effective upon satisfaction of the following conditions (the first date on which all of the following conditions have been satisfied or waived by the applicable Lenders party hereto being referred to herein as the **“First Second Amendment Effective Date”**):

(a) The Administrative Agent shall have received counterparts of this Amendment executed by Borrower, Co-Borrower, the Administrative Agent, the Collateral Agent and the all Existing Lenders (including each Existing Lender) and all Additional Lenders.

(b) The representations and warranties set forth in this Amendment shall be true and correct in all material respects on the First Second Amendment Effective Date.

(c) No Default or Event of Default shall have occurred and be continuing as of the First Second Amendment Effective Date.

(d) The Administrative Agent and the Lenders shall have received, each of the following in form and substance reasonably satisfactory to the Administrative Agent and the Lenders:

(i) a favorable written opinion of Wilson Sonsini Goodrich & Rosati, counsel to the Borrower (A) dated the Second Amendment Effective Date, (B) addressed to Agents and the Lenders, and (C) covering such matters relating to the Loan Parties, this Amendment, the other Loan Documents and the transactions described herein as Agents or the Lenders shall reasonably request;

(ii) certificates duly executed by the secretary of Borrower and Co-Borrower either (A) each Loan Party attaching approved Borrowing Resolutions, a current Certificate of Incorporation (or equivalent document), Bylaws (or equivalent document) and a recent good standing certificate from the jurisdiction of Borrower's and Co-Borrower's such Loan Party's organization, and certifying as to the incumbency and specimen signature of each officer executing any Loan Document or (B) (x) certifying that the certificate delivered by such secretary on August 8, 2023 and each attachment (other than the good standing certificate) thereto are true, correct and complete as of the First Amendment Effective Date and (y) attaching a good standing certificate from the jurisdiction of Borrower's and Co-Borrower's organization thereto; Document;

(ii) (iii) a certificate, dated as of the First Second Amendment Effective Date and signed by a Responsible Officer of Borrower, (A) confirming compliance with the conditions precedent set forth in paragraphs (b), and (c) and (e) of this Section and (B) certifying that each of the Loan Parties is solvent; and

(iii)

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(iv) an updated Perfection Certificate in form and substance reasonably satisfactory to the Lenders; and

(v) that certain letter agreement, dated as of the First Second Amendment Effective Date, among Borrower, Co-Borrower and each holder of the New Warrants (as defined below).

(e) The Prior to giving effect to the borrowing of the Second Amendment Term Loans on the Second Amendment Effective Date, the Unrestricted Cash of the Loan Parties deposited in Pledged Accounts located in the United States of America shall equal or exceed \$15,000,000 \$25,000,000 on the First Second Amendment Effective Date.

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(f) Borrower shall have issued new Warrants to certain Affiliates of the Lenders in the form of Warrant to Purchase Stock attached hereto as Annex A, executed by Borrower and each applicable Lender (the "New Warrants").

(g) The Substantially concurrently with the Second Amendment Effective Date, Borrower shall have (i) voluntarily prepaid and satisfied in full all Credit Extensions (as defined in the Existing Loan and Security Agreement) of each Exiting Lender, together with all accrued and unpaid interest accrued thereon, on a non-pro rata basis with cash from the balance sheet of Borrower, (ii) paid the Amendment Fee to the Administrative Agent, for the benefit of the Secured Parties, in full in cash; provided that the obligations of the Loan Parties to pay the portions of the Amendment Fee of the Converting Lenders shall be deemed to have been satisfied by conversion of each such Converting Lender's portion of the Amendment

Fee into Second Amendment PIK Fee pursuant to Section 2(e) of this Amendment and as set forth on Schedule 1.2 to the Loan and Security Agreement (as such schedule is amended by this Amendment upon the occurrence of the Second Amendment Effective Date) and (iii) provided evidence of each of the foregoing reasonably satisfactory to Collateral Agent.

(h) Administrative Agent, Collateral Agent and the Lenders shall have received all fees, Agent Expenses, Lender Expenses and other amounts due and payable on or prior to the First Second Amendment Effective Date, including, to the extent invoiced, reimbursement or payment of all out-of-pocket expenses required under any Loan Document.

Section 6.7. Closing Fee. Within three Business Days following the Second Amendment Effective Date (or such later date as approved in writing by the Administrative Agent (acting at the direction of the Lenders) and the Lenders in their sole discretion, the "**Closing Fee Payment Date**"), (a) the Borrower shall pay the Closing Fee in full and in cash to the applicable Exiting Lenders and Converting Lenders and (b) the Administrative Agent and the Lenders shall have received reasonably satisfactory evidence thereof.

#### Section 8. Release; Covenant Not to Sue.

(a) Each Loan Party absolutely, unconditionally and irrevocably releases, remises and forever discharges the Administrative Agent, the Collateral Agent, the Lenders and each of their respective successors and assigns, and each of their respective present and former shareholders, affiliates, subsidiaries, directors, officers, attorneys, employees, agents and other representatives (collectively, the "**Releasees**"), from all claims, demands or causes of action of any kind, whether arising in law or equity or under contract or tort or under any state or federal law or otherwise, which any Loan Party or any of its successors, assigns or other legal representatives has had, now has or has made claim to have against any Releasee by reason of any act, omission, or cause arising on or prior to the date hereof (collectively, "**Claims**"), whether such Claims are matured or unmatured or known or unknown. Each Loan Party, on

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behalf of itself and its successors, assigns, heirs, and other legal representatives, hereby absolutely, unconditionally and irrevocably covenants in favor of each Releasee that it will not sue (at law, in equity, in any regulatory proceeding or otherwise) any Releasee on the basis of any Claim released, remised and discharged pursuant to this Section. If any Loan Party or any of its successors, assigns, heirs or other legal representatives violates the foregoing covenant, each Loan Party agrees to pay, on a joint and several basis, in addition to such other damages as any Releasee may sustain as a result of such violation, all attorneys' fees and costs reasonably incurred by any Releasee as a result of such violation.

(b) Each Loan Party acknowledges and agrees that the release set forth above may be pleaded as a full and complete defense and may be used as a basis for an injunction against any action, suit or other proceeding which may be instituted or attempted in breach of the provisions of such release.

#### Section 7.9. Miscellaneous.

(a) Each Loan Party, jointly and severally, agrees to reimburse the Administrative Agent, the Collateral Agent, the Lenders and their respective Affiliates, on the First Second Amendment Effective Date, for all reasonable out-of-pocket fees and expenses (including reasonable attorneys' fees and expenses) incurred by the Administrative Agent, the Collateral Agent, the Lenders or such Affiliates in connection with the preparation, negotiation, execution, administration and delivery of this Amendment and the documents delivered in connection herewith.

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(b) References in the Existing Loan and Security Agreement to "this Agreement" (and indirect references such as "hereunder", "hereby", "herein" and "hereof") and references to the Existing Loan and Security Agreement in other Loan Documents shall in each case be deemed to be references to the Loan and Security Agreement as amended hereby.

(c) This Amendment shall constitute a Loan Document for purposes of the Loan and Security Agreement and the other Loan Documents, and except as specifically modified by this Amendment, the Loan and Security Agreement and the other Loan Documents shall remain unchanged and shall remain in full force and effect and are hereby ratified and confirmed.

(d) The execution, delivery and performance of this Amendment shall not constitute a forbearance, waiver, consent or amendment of any other provision of, or operate as a forbearance or waiver of any right, power or remedy of the Administrative Agent, the Collateral Agent or any Lender under the Loan and Security Agreement or any of the other Loan Documents, all of which are ratified and reaffirmed in all respects and shall continue in full force and effect. This Amendment does not constitute a novation of rights, obligations and liabilities of the respective parties existing under the Loan Documents.

(e) This Amendment shall be governed by, and construed in accordance with, the law of the State of New York.

(f) This Amendment may be executed in counterparts (and by different parties hereto in different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. Delivery of an executed counterpart of a signature page of this Amendment in electronic format shall be effective as delivery of a manually executed counterpart of this Amendment. Each party hereto agrees and acknowledges that (i) the transaction consisting of this Amendment may be conducted by electronic means, (ii) it is such party's intent that, if such party signs this Amendment using an

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electronic signature, it is signing, adopting and accepting this Amendment and that signing this Amendment using an electronic signature is the legal equivalent of having placed its handwritten signature on this Amendment on paper and (iii) it is being provided with an electronic or paper copy of this Amendment in a usable format.

(g) This Amendment, the Loan and Security Agreement and the other Loan Documents represent the final agreement between the parties hereto and thereto and may not be contradicted by evidence of prior, contemporaneous or subsequent oral agreements of the parties.

(h) Each of TCP Enhanced Yield Funding I, LLC, Tennenbaum Energy Opportunities Fund, LP, TCP DLF VIII-L Funding LP and TCP Direct Lending Fund VIII, LLC (each, an “**Exiting Lender**”) is a party hereto solely for purposes of consenting to the amendments set forth in Section 2 and providing the direction contained in this Section 9. All Credit Extensions (as defined in the Existing Loan and Security Agreement) of each Exiting Lender, together with all accrued and unpaid interest thereon, and each Exiting Lender’s ratable portion of the Amendment Fee shall be voluntarily prepaid and satisfied in full on a non-pro rata basis with cash from the balance sheet of Borrower pursuant to Section 6(g) of this Amendment, and after such voluntary prepayment and the payment of the Closing Fee contemplated by Section 7, such Exiting Lender shall no longer be a “Lender” under the Loan and Security Agreement. Each party hereto acknowledges and agrees to such voluntary prepayment.

(i) By their execution hereof, the Lenders hereby direct **the** Administrative Agent to execute and deliver this Amendment.

*[Signature Pages Follow]*

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IN WITNESS WHEREOF, the parties hereto have caused this Amendment to the Loan and Security Agreement to be duly executed and delivered as of the day and year first above written.

DOMO, INC., a Delaware corporation, as  
Borrower

By

/s/ David Jolley

Name: David Jolley

Title: Chief Financial Officer



DOMO, INC., a Utah corporation, as a Loan  
Party

By

/s/ David Jolley

Name: David Jolley

Title: Chief Financial Officer and  
Treasurer

Signature Page to ~~First~~ Second Amendment

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WILMINGTON TRUST, NATIONAL  
ASSOCIATION, as Administrative  
Agent

by

/s/ Joseph B. Feil Jessica A.  
Jankiewicz

Name: Joseph B. Feil Jessica A.  
Jankiewicz

Title: Vice President

OBSIDIAN AGENCY SERVICES, INC.,  
as Collateral Agent

by

/s/ Phil Tseng

Name: Phil Tseng

Title: Managing Director

Signature Page to ~~First~~ Second Amendment

EXISTING LENDERS:

**SPECIAL VALUE CONTINUATION PARTNERS, LLC**  
**TCPFC FUNDING I, LLC**  
**TCPFC FUNDING II, LLC**  
**TCP DIRECT LENDING FUND VIII-A, LLC**  
**TENNENBAUM ENERGY OPPORTUNITIES**  
**CO, LLC**  
**as Lenders**

On behalf of each of the above entities:

By: **Tennenbaum Capital Partners, TENNENBAUM CAPITAL PARTNERS, LLC**

Its: Investment Manager

By: /s/ Phil Tseng

by

/s/ Phil Tseng

Name: Phil Tseng

Name: Phil Tseng

Title:

Managing  
Director

**BLACKROCK DLF IX 2019-G CLO, LLC**  
**as Lender**

By: BlackRock Capital Investment Advisors, LLC

Its: Collateral Manager

By: /s/ Phil Tseng

by

/s/ Phil Tseng

Name: Phil Tseng

Name: Phil Tseng

Title:

Managing  
Director

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**TCP Enhanced Yield Funding ENHANCED YIELD FUNDING I, LLC  
as Lender**

By: Tennenbaum Enhanced Yield Operating I,  
LLC  
Its: Sole Member

By: Tennenbaum Capital Partners, LLC  
Its: Investment Manager

By: /s/ Phil Tseng  
Name: Phil Tseng  
Title: Managing Director

by

/s/ Phil Tseng  
Name: Phil Tseng  
Title: Managing Director

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**TCP DLF VIII-L FUNDING, LP  
as Lender**

By: TCP DLF VIII-L GP, LLC  
Its: General Partner

By: TCP DLF VIII ICAV,  
an umbrella type Irish collective asset management vehicle acting solely for and on  
behalf of its sub-fund

By: Tennenbaum Capital Partners, LLC  
Its: Investment Manager acting as attorney-in-fact

By: /s/ Phil Tseng  
Name: Phil Tseng  
Title: Managing Director

**TCP DLF VIII ICAV,**  
an umbrella type Irish collective asset management vehicle acting solely for and on  
behalf of its sub-fund

**TCP Direct Lending Fund VIII-U**  
**(Ireland)**

By: Tennenbaum Capital Partners, LLC  
Its: Investment Manager acting as attorney-in-fact

By: /s/ Phil Tseng

by

/s/ Phil Tseng

Name: Phil Tseng

Name: Phil Tseng

Title:  
Managing  
Director

Signature Page to ~~First~~ Second Amendment

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**EXITING LENDERS:**

**TENNENBAUM ENERGY OPPORTUNITIES**  
**CO, LLC**

On behalf of each of the above entities:

By: TENNENBAUM CAPITAL PARTNERS, LLC  
Its: Investment Manager

By: /s/ Phil Tseng  
Name: Phil Tseng  
Title: Managing Director

**TCP ENHANCED YIELD FUNDING I, LLC**  
By: Tennenbaum Enhanced Yield Operating I,  
LLC  
Its: Sole Member  
By: Tennenbaum Capital Partners, LLC

Its: Investment Manager

By: /s/ Phil Tseng

Name: Phil Tseng

Title: Managing Director

**TCP DLF VIII-L FUNDING, LP**

By: TCP DLF VIII-L GP, LLC

Its: General Partner

By: TCP DLF VIII ICAV,

an umbrella type Irish collective asset management vehicle acting solely for and on behalf of its sub-fund

By: Tennenbaum Capital Partners, LLC

Its: Investment Manager acting as attorney-in-fact

By: /s/ Phil Tseng

Name: Phil Tseng

Title: Managing Director

*Signature Page to Second Amendment*

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*Signature Page to Second Amendment*

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**TCP DLF VIII ICAV,**

an umbrella type Irish collective asset management vehicle acting solely for and on behalf of its sub-fund

**TCP Direct Lending Fund VIII-U**

**(Ireland)**

**as Lender**

By: Tennenbaum Capital Partners, LLC

Its: Investment Manager acting as attorney-in-fact

By: /s/ Phil Tseng

by

/s/ Phil Tseng

Name: Phil Tseng

Name: Phil Tseng

Title:

Managing  
Director

Signature Page to ~~First~~ Second Amendment

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**ADDITIONAL LENDERS:**

**TENNENBAUM SENIOR LOAN FUND II, LP**

On behalf of each of the above entities:

By: TENNENBAUM CAPITAL PARTNERS, LLC

Its: Investment Manager

By: /s/ Phil Tseng

Name: Phil Tseng

Title: Managing Director

**BLACKROCK DLF IX CLO 2021-1, LLC**

**BLACKROCK DLF IX CLO 2021-2, LLC**

**BLACKROCK DLF X CLO 2022-1, LLC**

By: BlackRock Capital Investment Advisors, LLC

Its: Collateral Manager

By: /s/ Phil Tseng

Name: Phil Tseng

Title: Managing Director

**BLACKROCK DLF IX ICAV,**

an umbrella type Irish collective asset management vehicle acting solely for and on  
behalf of its sub-  
fund

**BLACKROCK DIRECT LENDING  
FUND IX-U (IRELAND)**

By: BlackRock Capital Investment  
Advisors, LLC  
Its: Investment Manager acting as attorney-in-fact

By: /s/ Phil Tseng  
Name: Phil Tseng  
Title: Managing Director

*Signature Page to Second Amendment*

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**BLACKROCK DIRECT LENDING FUND IX-U (LUXEMBOURG) SCSP**

By: BlackRock Capital Investment Advisors, LLC,  
Its: Manager

By: /s/ Phil Tseng  
Name: Phil Tseng  
Title: Managing Director

**BLACKROCK DLF IX-L CLO, LP**

By: BlackRock Capital Investment Advisors, LLC  
Its: Investment Manager

By: /s/ Phil Tseng  
Name: Phil Tseng  
Title: Managing Director

**BLACKROCK DIRECT LENDING FUND X-U (LUXEMBOURG) SCSP**

By: BlackRock Capital Investment Advisors, LLC,  
Its: Investment Manager

By: /s/ Phil Tseng  
Name: Phil Tseng  
Title: Managing Director

**BLACKROCK MT. LASSEN SENIOR LOAN FUND XII, LLC**



By: BlackRock Capital Investment Advisors, LLC,  
as its Collateral Manager

By: /s/ Phil Tseng  
Name: Phil Tseng  
Title: Managing Director

*Signature Page to Second Amendment*

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**BLACKROCK DLF IX ICAV,**  
an umbrella type Irish collective asset management vehicle acting solely for and on  
behalf of its sub-  
fund

**BLACKROCK DIRECT LENDING  
FUND IX-L (IRELAND)**

By: BlackRock Capital Investment  
Advisors, LLC  
Its: Investment Manager acting as attorney-in-fact

By: /s/ Phil Tseng  
Name: Phil Tseng  
Title: Managing Director  
*Signature Page to Second Amendment*

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## **ANNEX A**

Form of New Warrant

[see attached]

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THE OFFER AND SALE OF THIS WARRANT AND THE SHARES OF CLASS B COMMON STOCK ISSUABLE UPON EXERCISE HEREOF HAVE NOT BEEN REGISTERED UNDER THE ACT, OR THE SECURITIES LAWS OF ANY STATE AND, EXCEPT AND PURSUANT TO THE PROVISIONS OF SECTION 6 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 REASONABLY SATISFACTORY TO THE ISSUER OF THIS WARRANT, SUCH OFFER, SALE OR TRANSFER, PLEDGE OR HYPOTHECATION IS EXEMPT FROM REGISTRATION.

### WARRANT TO PURCHASE STOCK

This Warrant to Purchase Stock ("**Warrant**") is issued by Domo, Inc., a Delaware corporation (the "**Company**") as of February 17, 2024 August 19, 2024 (the "**Issuance Date**") and certifies that, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, \_\_\_\_\_ ("**Holder**") is entitled to purchase that number of fully paid and non-assessable shares of Stock equal to the Warrant Number at a purchase price per share equal to the Exercise Price, subject to the provisions and upon the terms and conditions set forth in this Warrant. Capitalized terms used but not defined herein shall have the meaning provided in the Credit Agreement.

#### SECTION 1. Exercise.

1.1. Method of Exercise. Holder may exercise this Warrant at any time by delivering, in accordance with Section 7.14, 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 Section 1.2, Holder shall also deliver to the Company a check or wire transfer (to an account designated by the Company) for the aggregate Exercise Price for the Stock being purchased.

1.2. Net Issuance Right. In lieu of exercising this Warrant by check or wire transfer as specified in Section 1.1, Holder may from time to time convert this Warrant, in whole or in part, into a number of shares of Stock as is computed using the following formula:

$$X = \frac{Y(A-B)}{A}$$

A

where:

X = the number of shares of Stock to be issued to Holder pursuant to this Section 1.2.

Y = the number of shares of Stock covered by this Warrant in respect of which the net issue election is made pursuant to this Section 1.2.

- A = the Fair Market Value (as determined pursuant to Section 1.3) of one share of Stock, as determined at the time the net issue election is made pursuant to this Section 1.2.
- B = the Exercise Price in effect under this Warrant at the time the net issue election is made pursuant to this Section 1.2.

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1.3. Fair Market Value. If, at the time of any exercise or conversion of this Warrant or at any other applicable time of determination, (a) the Stock is traded in a Trading Market, then the Fair Market Value of a share of Stock shall be the (i) the Trading Price of the Stock on the Trading Day immediately preceding the date of the applicable Notice of Exercise if such Notice of Exercise is (1) both executed and delivered pursuant to Section 1.2 hereof on a day that is not a Trading Day or (2) both executed and delivered on a Trading Day prior to the closing of “regular trading hours” (as defined in Rule 600(b)(64) of Regulation NMS promulgated under the federal securities laws) on such Trading Day, or (ii) the Trading Price of the Stock on the date of the applicable Notice of Exercise if the date of such Exercise Notice is a Trading Day and such Notice of Exercise is both executed and delivered after the close of “regular trading hours” on such Trading Day, and (b) the Stock is not traded in a Trading Market (including in the event of any determination in connection with an Acquisition), then the Board of Directors of the Company shall determine the Fair Market Value of each share of Stock in its reasonable good faith judgment, based on relevant facts and circumstances at the time of such determination (provided however, that if the value of a share of Stock is to be determined in connection with an Acquisition, the fair market value shall be deemed to be the value of the total consideration per share of Stock to be received by the holders thereof at the closing of the Acquisition, as determined in accordance with this Section 1.3), which Fair Market Value determination (unless made in connection with an Acquisition) shall be subject to approval by Holder; provided that, if the Company’s Board of Directors and Holder are unable to agree on the Fair Market Value of one share of Stock within a reasonable period of time (not to exceed 30 days), such Fair Market Value shall be determined by a nationally recognized investment bank, accounting or valuation firm engaged by the Company and approved by Holder. The determination of such firm shall be final and conclusive, and the fees and expenses of such valuation firm shall be borne fifty percent by Holder and fifty percent by the Company.

1.4. Delivery of Certificate. The rights under this Warrant shall be deemed to have been exercised and the shares of Stock issuable upon such exercise shall be deemed to have been issued immediately prior to the close of business on the date this Warrant is exercised in accordance with its terms, and the Person entitled to receive the shares of Stock issuable upon such exercise shall be treated for all purposes as the holder of record of such shares of Stock as of the close of business on such date. Promptly, but in no event later than the earlier of (i) two (2) Business Days and (ii) the Standard Settlement Period after Holder exercises or converts this Warrant and, if applicable, the Company receives payment of the aggregate Exercise Price with respect of the portion of the Stock underlying this Warrant that is being exercised, the Company

Warrant – Domo

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shall deliver to Holder certificates or make appropriate book entries for the Stock acquired and/or other property to be delivered in connection with such exercise or conversion; provided, however, if the Stock is then traded in a public market, the Company may provide electronic evidence from its transfer agent of such issuance in book entry. If this Warrant has not been fully exercised or converted and has not expired, the Company shall also deliver a statement setting forth the number of shares of Stock that remain available for exercise under the Warrant.

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, on 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. Beneficial Ownership Limitations. The Company shall not effect any exercise of this Warrant, and a Holder shall not have the right to exercise any portion of this Warrant, pursuant to Section 1 or otherwise, to the extent that after giving effect to such issuance after exercise as set forth on the applicable Notice of Exercise, the Holder (together with the Holder's Affiliates, and any other Persons acting as a group together with the Holder or any of the

Warrant – Domo

Holder's Affiliates (such Persons, "Attribution Parties")), would beneficially own in excess of the Beneficial Ownership Limitation (as defined below). For purposes of the foregoing sentence, the number of shares of Stock beneficially owned by the Holder and its Affiliates and Attribution Parties shall include the number of shares of Stock issuable upon exercise of this Warrant with respect to which such determination is being made, but shall exclude the number of shares of Stock which would be issuable upon (i) exercise of the remaining, nonexercised portion of this Warrant beneficially owned by the Holder or any of its Affiliates or Attribution Parties and (ii) exercise or conversion of the unexercised or nonconverted portion of any other securities of the Company (including, without limitation, any other Stock Equivalents) subject to a limitation on conversion or exercise analogous to the limitation contained herein beneficially owned by the Holder or any of its Affiliates or Attribution Parties. Except as set forth in the preceding sentence, for purposes of this Section 1.6, beneficial ownership shall be calculated in accordance with Section 13(d) of the Exchange Act and the rules and regulations promulgated thereunder, it being acknowledged by the Holder that the Company is not representing to the Holder that such calculation is in compliance with Section 13(d) of the Exchange Act and the Holder is solely responsible for any schedules required to be filed in accordance therewith and the calculations required under this Section 1.6. To the extent that the limitation contained in this Section 1.6 applies, the determination of whether this Warrant is exercisable (in relation to other securities owned by the Holder together with any Affiliates and Attribution Parties) and of which portion of this Warrant is exercisable shall be in the sole discretion of the Holder, and the submission of a Notice of Exercise shall be deemed to be the Holder's determination of whether this Warrant is exercisable (in relation to other securities owned by the Holder together with any Affiliates and

Attribution Parties) and of which portion of this Warrant is exercisable, in each case subject to the Beneficial Ownership Limitation, and the Company shall have no obligation to verify or confirm the accuracy of such determination. In addition, a determination as to any group status as contemplated above shall be determined in accordance with Section 13(d) of the Exchange Act and the rules and regulations promulgated thereunder. For purposes of this Section 1.6, in determining the number of outstanding shares of Stock, a Holder may rely on the number of outstanding shares of Stock as reflected in (A) the Company's most recent periodic or annual report filed with the U.S. Securities and Exchange Commission (the "Commission"), as the case may be, (B) a more recent public announcement by the Company or (C) a more recent written notice by the Company or the transfer agent of the Company setting forth the number of shares of Stock outstanding. Upon the written or oral request of a Holder, the Company shall within one Trading Day confirm orally and in writing to the Holder the number of shares of Stock then outstanding. In any case, the number of outstanding shares of Stock shall be determined after giving effect to the conversion or exercise of securities of the Company, including this Warrant, by the Holder or its Affiliates or Attribution Parties since the date as of which such number of outstanding shares of Stock was reported. The "Beneficial Ownership Limitation" shall be 19.99% of the number of shares of Stock outstanding immediately after giving effect to the issuance of the Stock issuable upon exercise of this Warrant. The Holder, upon notice to the Company, which notice, at the option of the Holder, may be irrevocable (an "Irrevocable BOL Notice"), may (a) decrease the Beneficial Ownership Limitation provisions of this Section 1.6 to reflect a Beneficial Ownership Limitation of 4.99% or 9.99%, at the Holder's election, or (b) following any decrease of the Beneficial Ownership Limitation that is not made pursuant to an Irrevocable BOL Notice, may increase the Beneficial Ownership Limitation provisions of this Section 1.6, provided that the Beneficial Ownership Limitation in no event exceeds 19.99% of the number of shares of Stock outstanding immediately after giving effect to the issuance of shares of Stock upon exercise of this Warrant held by the Holder and the provisions of this Section 1.6 shall continue to apply. Any increase in the Beneficial Ownership Limitation in accordance with the foregoing clause (b) will not be effective until the 61<sup>st</sup> day after such notice is delivered to the Company. The provisions of this Section 1.6 shall be construed and implemented in a manner otherwise than in strict conformity with the terms of this Section 1.6 to correct this Section 1.6 (or any portion hereof) which may be defective or inconsistent with the

Warrant – Domo

intended Beneficial Ownership Limitation herein contained or to make changes or supplements necessary or desirable to properly give effect to such limitation. The limitations contained in this Section 1.6 shall apply to a successor holder of this Warrant. This provision shall not restrict the number of shares of Stock which the holder of this Warrant may receive or beneficially own in order to determine the amount of securities or other consideration that such Holder may receive in the event of a Fundamental Transaction.

## **SECTION 2. Adjustments To The Stock and Exercise Price.**

2.1. Stock Dividends, Splits, Etc. If the Company declares or pays a dividend on the outstanding shares of Stock payable in Class B Common Stock, other securities or other property, then upon exercise of this Warrant, for each share of Stock acquired, Holder shall receive, without cost to Holder, the total number and kind of securities or property to which Holder would have been entitled had Holder owned the Stock of record as of the date the dividend occurred. If the Company subdivides the outstanding shares of Stock by reclassification, split-up or otherwise into a greater number of shares, then the number of shares of Stock issuable on exercise of this Warrant shall be increased in proportion to such increase in the

outstanding shares of Stock. If the outstanding shares of Stock are combined or consolidated, by reclassification, reverse stock split or otherwise, into a lesser number of shares, then the number of shares of Stock issuable on exercise of this Warrant shall be decreased in proportion to such decrease in outstanding shares of Stock. Whenever the number of shares of Stock purchasable upon the exercise of this Warrant is adjusted as provided in this Section 2.1, each of the Exercise Price and the Initial Fair Market Value shall be adjusted (to the nearest cent) by multiplying the Exercise Price and Initial Fair Market Value, respectively, immediately prior to such adjustment by a fraction (a) the numerator of which shall be the number of shares of Stock purchasable upon the exercise of this Warrant immediately prior to such adjustment, and (b) the denominator of which shall be the number of shares of Stock so purchasable immediately thereafter. The provisions of this Section 2.1 shall similarly apply to successive subdivisions, combinations, consolidations or other applicable events.

2.2. Reclassification, Exchange, Combinations or Substitution. Subject to Section 2.3, on any reclassification, exchange, substitution, or other event or transaction that results in a change to the Stock, including any merger or consolidation of the Company with or into another entity, any compulsory share exchange affecting the Stock or conversion of the Company as another entity or other exchange of all of the outstanding shares of the Stock for other securities or property, or in the case of any sale or conveyance of the assets or other property of the Company as an entirety or substantially as an entirety, 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 Stock if this Warrant had been exercised immediately before

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such reclassification, exchange, substitution, or other event or transaction (the “**Alternate Consideration**”); provided that, if holders of Stock are given any choice as to the securities, cash or property to be received in such reclassification, exchange, substitution or other event or transaction, then Holder shall be given the same choice as to the Alternate Consideration it receives upon any exercise of this Warrant following such reclassification, exchange, substitution or other event or transaction. The Company or the Successor Entity (as defined below) shall promptly issue to Holder a certificate pursuant to Section 2.6 hereof setting forth the number, class and series or other designation 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 or transaction that results in a change of the number and/or class of securities issuable upon the exercise or conversion of this Warrant. The provisions of this Section 2.2 shall similarly apply to successive reclassifications, exchanges, substitutions, or other events or transactions.

2.3. Certain Acquisitions. Notwithstanding anything in Section 2.2 or otherwise in this Warrant to the contrary, in the event of any Acquisition in which (a) the Fair Market Value

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of one share of Stock as determined in accordance with Section 1.3 above would be less than the Initial Fair Market Value or (b) the consideration per share of Stock payable in such Acquisition does not consist solely of cash, solely of Marketable Securities or of a combination of cash and Marketable Securities, the Company or the Successor Entity shall, at Holder's option, exercisable at any time concurrently with, or within 30 days after, the consummation of the Acquisition (or, if later, the date of the public announcement of the Acquisition), purchase this Warrant from Holder by paying to Holder an amount in cash equal to the product of (i) the number of shares of Stock that remain available for exercise under this Warrant at such time (prior to giving effect to such Acquisition), *multiplied by* (ii) the greater of (A) the Initial Fair Market Value and (B) the Fair Market Value of the total consideration per share of Stock to be received by the holders thereof at the closing of such Acquisition, as determined in accordance with Section 1.3 (the "**Cash Purchase Amount**"). The payment of the Cash Purchase Amount will be made by wire transfer of immediately available funds within five Trading Days of Holder's election (or, if later, on the date of consummation of the Acquisition). The provisions of this Section 2.3 shall similarly apply to successive Acquisitions.

2.4. No Impairment; Successor Entity. The Company shall not, by amendment of the Charter or through a reorganization, transfer of assets, consolidation, merger, dissolution, issue, or sale of securities or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms to be observed or performed under this Warrant by the Company, but shall at all times in good faith assist in carrying out of all the provisions of this Section 2 and in taking all such action as may be necessary or appropriate to protect Holder's rights under this Section against impairment. The Company shall use commercially reasonable efforts to cause any successor or acquiring entity (the "**Successor Entity**") in any reclassification, exchange, substitution, or other event or transaction, including any Acquisition, in which the Company is not the survivor (a "**Fundamental Transaction**") to assume in writing all of the obligations of the Company under this Warrant in accordance with the provisions of this Section 2 pursuant to written agreements in form and substance reasonably satisfactory to Holder and shall, at the option of Holder, deliver to Holder in exchange for this Warrant a

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security of the Successor Entity evidenced by a written instrument substantially similar in form and substance to this Warrant which is exercisable for a corresponding number of shares of the new securities or other property of such Successor Entity (or its parent entity) for which this Warrant shall have become exercisable in accordance with this Section 2 and otherwise in accordance with the terms hereof. Upon the occurrence of any such Fundamental Transaction, the Successor Entity shall succeed to, and be substituted for (so that from and after the date of such Fundamental Transaction, the provisions of this Warrant referring to the "Company" shall refer instead to the Successor Entity), and may exercise every right and power of the Company and shall assume all of the obligations of the Company under this Warrant with the same effect as if such Successor Entity had been named as the Company herein.

2.5. Fractional Shares. No fractional shares of Stock shall be issuable upon exercise or conversion of the Warrant and the number of shares of Stock 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 in cash the amount computed by multiplying the fractional interest by the Fair Market Value of a full share of Stock as determined in accordance with Section 1.3.

2.6. Certificate as to Adjustments. Upon each adjustment of the Exercise Price, Stock and/or number of shares of Stock subject to this Warrant, 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 a duly authorized 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 Exercise Price, Stock and number of shares of Stock subject

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to this Warrant in effect upon the date thereof and the series of adjustments leading to such Exercise Price, Stock and number of shares of Stock.

### **SECTION 3. REPRESENTATIONS, WARRANTIES AND COVENANTS OF THE COMPANY.**

3.1. Representations and Warranties. The Company represents, warrants and covenants to the Holder as follows:

(a) The Company is duly authorized to issue this Warrant and has obtained all necessary board and stockholder consents necessary in order for the proper issuance of this Warrant.

(b) The issuance of this Warrant and the rights granted hereunder do not (i) conflict with or give rise to a breach of the Company's Charter or any other agreement, judgment or other obligations binding on the Company, or (ii) violate any applicable laws, including without limitation, laws relating to the offer and sale of securities.

(c) This Warrant has been duly executed and delivered by the Company and constitutes a legal, valid and binding obligation of the Company enforceable against the Company in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium or other laws affecting creditors' rights generally and subject

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to general principles of equity, regardless of whether considered in a proceeding in equity or at law.

(d) All shares of Stock which may be issued upon the exercise of the purchase right represented by this Warrant, and all securities, if any, issuable upon conversion of Stock, shall, when issued, sold and delivered in accordance with the terms and for the consideration set forth in this Warrant, 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 securities laws.

(e) The Company has reserved and will keep available for issuance upon exercise of the Warrant the maximum number of shares of Stock that could possibly be issued on exercise of the Warrant from time to time outstanding, and any securities, if any, into which such shares are convertible.

3.2. Notice of Certain Events. If the Company proposes at any time (a) to declare any dividend or distribution upon the outstanding shares of Stock, whether in cash, property, stock, or other securities and whether or not a regular cash dividend (other than securities for which adjustment is made pursuant to Section 2 hereof); (b) to offer for subscription or sale pro rata to all of the holders of the outstanding shares of Stock any additional shares of any other class or series of the Company's stock (other than pursuant to contractual rights); (c) to effect any reclassification, reorganization or recapitalization of the shares of Stock; or (d) to effect an Acquisition or to liquidate, dissolve or wind up; 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 shares of Stock will be entitled thereto) or for determining rights to vote, if any, in respect of the matters referred to in (a) and (b) above; and (2) in the case of the matters referred to in (c) and (d) above at least 10 days prior written notice of the date when the same will take place (and specifying the date on which the holders of shares of Stock will be entitled to exchange their shares for the securities or other property deliverable upon the occurrence of such event).

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3.3. Certain Information. Upon request of Holder at any time when the Company is either not current with its reporting requirements or subject to the reporting requirements under the Securities and Exchange Act of 1934, as amended, the Company shall promptly deliver to such Holder the information set forth in Appendix 3, provided however, that the rights set forth in this Section 3.3 shall not be transferable in connection with any transfer of this Warrant to a direct competitor of the Company.

#### **SECTION 4. REPRESENTATIONS, WARRANTIES OF THE HOLDER.**

4.1. Representations and Warranties. The Holder represents and warrants to and covenants and agrees with the Company as follows:

(a) 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

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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 of Stock.

(b) 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.

(c) Investment Experience. Holder understands that the acquisition 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.

(d) Accredited Investor Status. Holder is an "accredited investor" within the meaning of Regulation D promulgated under the Act.

(e) The Act. Holder understands that the sale and issuance of this Warrant and the shares of Stock 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 the Holder's investment intent as expressed herein. Holder understands that this Warrant and the shares of Stock issuable upon 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. Holder is aware of the provisions of Rule 144 promulgated under the Act.

(f) Independent Tax Advice. Holder has reviewed with its own tax advisors the U.S. federal, state and local and non-U.S. tax consequences of this investment and the transactions contemplated by this Warrant and the Credit Agreement. With respect to

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such tax consequences, Holder relies solely on any such advisors and not on any advice from the Company or any of its agents, written or oral. Holder understands that it (and not the Company) shall be responsible for its own tax liability

that may arise as a result of this investment.

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4.2. No Stockholder Rights. Without limiting any provision in this Warrant, Holder agrees that it will not have any rights as a stockholder of the Company until the exercise of this Warrant.

4.3. No “Bad Actor” Disqualification. Neither (i) the Holder, (ii) any of its directors, executive officers, other officers that may serve as a director or officer of any company in which it invests, general partners or managing members, nor (iii) any beneficial owner of any of the Company’s voting equity securities (in accordance with Rule 506(d) of the Securities Act) held by the Holder is subject to any of the “bad actor” disqualifications described in Rule 506(d)(1)(i) through (viii) under the Securities Act, except as set forth in Rule 506(d)(2)(ii) or (iii) or (d)(3) under the Securities Act and disclosed, reasonably in advance of the acceptance of this Warrant, in writing in reasonable detail to the Company.

## SECTION 5. DEFINITIONS.

5.1. Defined Terms. The following capitalized terms shall have the meanings provided:

(a) Acquisition means any transaction or series of related transactions involving (i) any consolidation or merger or other corporate reorganization of the Company or the issuance or transfer of the Company’s voting securities where either (A) the Company is not the surviving entity (other than a merger, consolidation or corporate reorganization effected exclusively to change the Company’s domicile or type of entity), or (B) the stockholders of the Company immediately prior to such transaction or series of related transactions do not hold at least 50% of the voting securities immediately after such transaction or series of related transactions or (ii) the sale, lease, exclusive license, or other disposition of all or substantially all of the assets of the Company or the Co-Borrower (other than, in the case of the Co-Borrower, to another wholly-owned subsidiary of the Company).

(b) Act means the Securities Act of 1933, as amended.

(c) Charter means the Company’s certificate of incorporation as filed in its jurisdiction of organization, as may be amended or amended and restated from time to time.

(d) Class B Common Stock means the Company’s Class B Common Stock, par value \$0.001 per share, or such securities into which the Company’s Class B Common Stock are exchanged or converted.

(e) Common Stock means any class of the Company’s equity securities designated in the Charter as common stock, such as Class A Common Stock or Class B Common Stock.

(f) Credit Agreement means that certain Amended and Restated Loan and Security Agreement by and between Holder, Company and the other parties thereto dated as of the December 5,

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2017, August 8, 2023, as such agreement may be amended, restated, supplemented, amended and restated or otherwise modified from time to time.

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(g) Exercise Price means, as of the date this Warrant is exercised or converted, \$0.01, adjusted for stock splits and combinations.

(h) Expiration Date means February 17, 2028 August 19, 2028.

(i) Holder shall have the meaning provided in the first paragraph of this Warrant, as may be modified by Section 7.4 of this Warrant.

(j) Holder Entities shall have the meaning provided in Section 7.13 of this Warrant.

(k) Initial Fair Market Value means \$10.58. \$7.82.

(l) Issuance Date shall have the meaning provided in the first paragraph of this Warrant.

(m) 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 applicable Equity Interests of the issuer that would be received by Holder in connection with the applicable Acquisition were Holder to exercise this Warrant on or prior to the closing thereof is then traded in a Trading Market, (iii) the average daily market value of such securities traded in the Trading Market for the preceding 30 Trading Day period exceeds \$3 million and (iv) following the closing of such Acquisition, Holder would not be restricted from publicly reselling re-selling all of the issuer's shares and/or other securities or applicable Equity Interests 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 arises solely under federal or state securities laws, rules or regulations.

(n) Principal Market means the primary U.S. national securities exchange on which the Stock is then listed, or, if the Stock is not then listed on such an exchange, on the primary other market (if any) on which the Stock is then traded.

(o) Standard Settlement Period means the standard settlement period, expressed in a number of Trading Days, on the Principal Market with respect to the Stock as in effect on any date of exercise of this Warrant.

(p) Stock means Class B Common Stock (or other security issuable upon the exercise hereof).

(q) Stock Equivalents means any securities of the Company or the Subsidiaries which would entitle the holder thereof to acquire at any time shares of Stock, including, without limitation, any debt, common or preferred equity, right, option, warrant or other instrument that is at any time convertible into or exercisable or exchangeable for, or otherwise entitles the holder thereof to receive, shares of Stock.

(r) Subsidiary shall have the meaning provided in the Credit Agreement.

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(r) (s) Trading Day means any day on which the Stock is traded on the Principal Market (or, with respect to any other security, on which such security is traded on a Trading Market), provided that “Trading Day” shall not include any day on which the Stock (or such applicable security) is scheduled to trade on such exchange or market for less than 4.5 hours or any day that the Stock (or such applicable security) is suspended from trading during the final hour of trading on such exchange or market (or if such exchange

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or market does not designate in advance the closing time of trading on such exchange or market, then during the hour ending at 4:00:00 p.m., New York time) unless such day is otherwise designated as a Trading Day in writing by Holder and agreed to by the Company.

(s) (t) Trading Market means a nationally recognized securities exchange, inter-dealer quotation system or over the counter market.

(t) (u) Trading Price means, for any security as of any date, as applicable (1) the VWAP of such security on the Principal Market on such date, (2) if VWAP is not available, the last closing trade price for such security on the Principal Market, as reported by Bloomberg, or, if the Principal Market begins to operate on an extended hours basis and does not designate the closing trade price, then the last trade price of such security prior to 4:00:00 p.m., New York time, as reported by Bloomberg, or, if the Principal Market is not the principal securities exchange or trading market for such security, the last trade price of such security on the principal securities exchange or trading market where such security is listed or traded as reported by Bloomberg, or (3) if the foregoing do not apply, the last trade price of such security in the over-the-counter market on the electronic bulletin board for such security as reported by Bloomberg, or (4) if no last trade price is reported for such security by Bloomberg, the average of the ask prices of any market makers for such security as reported in the “pink sheets” by Pink Sheets LLC. If the Trading Price cannot be calculated for a security on a particular date on any of the foregoing bases, the Trading Price of such security on such date shall be the fair market value as determined by the Board of Directors of the Company in its good faith judgment based on relevant facts and

circumstances at the time of such determination in a commercially reasonable manner. All such determinations to be appropriately adjusted for any stock dividend, stock split, stock combination or other similar transaction during the applicable calculation period.

~~(u)~~ ~~(v)~~ VWAP means, for any security as of any date, the per share volume-weighted average price as displayed under the heading “Bloomberg VWAP” on the applicable Bloomberg page for the Stock, in respect of the period from the scheduled open of trading until the scheduled close of trading of the primary trading session on such trading day (or if such volume-weighted average price is unavailable, the market value of one share of the Stock on such trading day reasonably determined, using a volume-weighted average method, by a nationally recognized independent investment banking firm retained for this purpose by the Company). The “VWAP” will be determined without regard to after-hours trading or any other trading outside of the regular trading session trading hours.

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~~(v)~~ ~~(w)~~ Warrant shall have the meaning provided in the first paragraph of this agreement.

~~(w)~~ ~~(x)~~ Warrant Number means \_\_\_\_\_, adjusted for stock splits and combinations.

~~(x)~~ Warrant Stock shall have the meaning provided in Section 6.1 of this Warrant.

## SECTION 6. REGISTRATION REQUIREMENTS

6.1. Registration Rights. On Holder's written demand made at any time prior to the date four months after the Issuance Date, the Company shall (a) file a registration statement for the resale of the Class B Common Stock underlying this Warrant so that Holder may resell such Class B Common Stock without restrictions or limitations imposed by Rule 144 of the Act, and (b) use its best efforts to have such registration statement declared effective within 60 days after request for registration is made (the “**Registration Deadline**”). Failure of such registration statement to be declared effective by the Registration Deadline shall be a material default under this Warrant, but by way of clarification and without limitation, is not an Event of Default or breach under the Credit Agreement. No failure or breach by the Company under this Section 6.1

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gives rise to any damages, termination or acceleration rights under the Credit Agreement. Provided that the Class B Common Stock underlying this Warrant can be sold pursuant to Rule 144 of the Act or another available exemption under the Act, in either case without restrictions or limitations, the Company shall have no obligation to maintain any registration statement for the resale of the Class B Common Stock underlying this Warrant at any time starting six months after the Issuance Date.

## SECTION 7. MISCELLANEOUS.

7.1. Term. This Warrant is exercisable, in whole or in part, as to that number of shares of Stock equal to the Warrant Number at any time and from time to time on or before midnight Pacific time on the Expiration Date.

7.2. Legends. The shares of Stock (and the securities issuable, directly or indirectly, upon conversion of Stock, if any) shall be imprinted with a legend in substantially the following form:

THE SALE AND ISSUANCE OF SHARES ISSUABLE HEREUNDER HAVE NOT BEEN REGISTERED UNDER THE ACT, OR THE SECURITIES LAWS OF ANY STATE AND, 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 REASONABLY SATISFACTORY TO THE ISSUER OF THESE SECURITIES, SUCH OFFER, SALE OR TRANSFER, PLEDGE OR HYPOTHECATION IS EXEMPT FROM REGISTRATION. NO OPINION OF COUNSEL SHALL BE REQUIRED IF THE TRANSFER IS TO AN AFFILIATE OF HOLDER, PROVIDED THAT ANY SUCH TRANSFEREE IS AN "ACCREDITED INVESTOR" AS DEFINED IN REGULATION D PROMULGATED UNDER THE ACT.

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Such legend shall be removed and the Company shall, or shall instruct its transfer agent to, issue a certificate without such legend or any other legend to the holder of such shares (i) if such shares are sold or transferred pursuant to an effective registration statement under the Act covering the resale of such shares by the holder thereof, (ii) if such shares are sold or transferred pursuant to Rule 144 under the Act, (iii) if such shares are eligible for resale without any restrictions under Rule 144 under the Act, or (iv) upon the request of such holder if such request is accompanied (at such holder's expense) by a written opinion of counsel reasonably satisfactory to the Company that registration is not required under the Act or any applicable state securities laws for the resale of the shares of Stock purchased upon exercise of this Warrant. The removal of such restrictive legend from any certificates representing the shares of Stock purchased upon exercise of this Warrant is predicated upon the Company's reliance that the holder of such shares would sell, transfer, assign, pledge, hypothecate or otherwise dispose of such shares pursuant to either the registration requirements of the Act, including any applicable prospectus delivery requirements, or an exemption therefrom, and that if such shares are sold pursuant to a registration statement, they will be sold in compliance with the plan of distribution set forth therein.

7.3. Compliance with Securities Laws on Transfer. This Warrant and the shares of Stock issuable upon exercise of this Warrant (and the securities issuable, directly or indirectly, upon conversion of Stock, 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 a legal opinion 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 transferee is an Affiliate of Holder, provided that any such

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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 or another exemption under applicable securities laws.

7.4. Transfer Procedure. Subject to the provisions of Section 7.3 and upon providing the Company with written notice in substantially the form as provided in Appendix 2 hereto and countersigned by the proposed transferee, Holder and any subsequent Holder may transfer all or part of this Warrant or the shares of Stock issuable upon exercise of this Warrant (or the securities issuable directly or indirectly, upon conversion of Stock, if any) to any transferee so long as such transferee agrees to be bound by the terms and conditions of this Warrant, provided, however, in connection with any such transfer, any subsequent Holder will give the Company notice of the portion of the Warrant being transferred with the name, address and taxpayer identification number, if any, of the transferee and Holder will surrender this Warrant (if an original of this Warrant was delivered to Holder) to the Company for reissuance to the transferee(s) (and Holder if applicable).

7.5. 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.

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7.6. Attorney's 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.

7.7. Automatic Conversion upon Expiration. In the event that, upon the Expiration Date, the Fair Market Value of one share of Stock (or other security issuable upon the exercise hereof) as determined in accordance with Section 1.3 above is greater than the Exercise Price in effect on such date, then this Warrant shall automatically be deemed on and as of such date to be converted pursuant to Section 1.2 above as to all shares of Stock (or such other securities) for which it shall not previously have been exercised or converted that may be acquired hereunder, and the Company shall promptly deliver a certificate representing the shares of Stock (or such other securities) issued upon such conversion to Holder in accordance with Section 1.4.

7.8. Counterparts. This Warrant may be executed in counterparts and by facsimile (e.g., PDF), all of which together shall constitute one and the same agreement.

7.9. Choice Of Law, Venue. Jury Trial Waiver.

(a) Governing Law. THIS WARRANT SHALL BE CONSTRUED IN ACCORDANCE WITH AND GOVERNED BY THE LAWS OF THE STATE OF NEW YORK; provided, however, that nothing in this Warrant shall be deemed to operate to preclude Holder from bringing suit or taking other legal action in any other jurisdiction in connection with the Credit Agreement. The Company irrevocably and unconditionally submits, for itself and its property, to the exclusive jurisdiction of any New York State court or Federal court of the United States of America sitting in the Borough of Manhattan in New York City, and any appellate court from any thereof, in any action or proceeding arising out of or relating to this Warrant, or for recognition or enforcement of any judgment, and the Company irrevocably and unconditionally agrees that all claims in respect of any such action or proceeding may be heard and determined in such New York State or, to the extent permitted by law, in such Federal court. The Company 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. The Company irrevocably and unconditionally waives, to the fullest extent it

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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 Warrant in any New York State or Federal court. The Company 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. The Company irrevocably consents to service of process in accordance with, Section 7.14 of this Warrant and that service so made shall be deemed completed upon the earlier to occur of the Company's actual receipt thereof or three (3) Business Days after deposit in the U.S. mails, proper postage prepaid. Nothing in this Warrant will affect the right of any party to this Warrant to serve process in any other manner permitted by law.

**(b) Waiver of Jury Trial. TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE COMPANY AND HOLDER EACH WAIVE THEIR**

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**RIGHT TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION ARISING OUT OF OR BASED UPON THIS WARRANT OR ANY CONTEMPLATED TRANSACTION, INCLUDING CONTRACT, TORT, BREACH OF DUTY AND ALL OTHER CLAIMS. THIS WAIVER IS A MATERIAL INDUCEMENT FOR BOTH PARTIES TO ENTER INTO THIS AGREEMENT. EACH PARTY HAS REVIEWED THIS WAIVER WITH ITS COUNSEL.**

7.10. Time of Essence. Time is of the essence for the performance of all obligations in this Warrant.

7.11. Severability of Provisions. Each provision of this Warrant is severable from every other provision in determining the enforceability of any provision.

7.12. Amendments in Writing; Waiver; Integration. No purported amendment or modification of this Warrant, or waiver, discharge or termination of any obligation under this Warrant, shall be enforceable or admissible unless, and only to the extent, expressly set forth in a writing signed by the party against which enforcement or admission is sought. Without limiting the generality of the foregoing, no oral promise or statement, nor any action, inaction, delay, failure to require performance or course of conduct shall operate as, or evidence, an amendment, supplement or waiver or have any other effect on this Warrant. Any waiver granted shall be limited to the specific circumstance expressly described in it, and shall not apply to any subsequent or other circumstance, whether similar or dissimilar, or give rise to, or evidence, any obligation or commitment to grant any further waiver. This Warrant represents the entire agreement about this subject matter and supersedes prior negotiations or agreements, including any commitment letter or term sheet and modifications thereto, whether or not formally signed. All prior agreements, understandings, representations, warranties, and negotiations between the parties about the subject matter of this Warrant merge into this Warrant.

7.13. Confidentiality. In handling any confidential information provided pursuant to this Warrant, Holder shall exercise the same degree of care that it exercises for its own proprietary information, and shall not use such information other than to monitor or value such its investment in the Company or disclose such information, provided that disclosure of such information may be made: (a) to Holder's Subsidiaries or Affiliates (such Subsidiaries and Affiliates, together with Holder, collectively, "**Holder Entities**"); (b) to prospective transferees or purchasers of any interest in the Warrant or Credit Extensions (provided, however, that any prospective transferee or purchaser shall have entered into an agreement containing provisions substantially the same as those in this Section 7.13); (c) as required by law, regulation, subpoena, or other order; (d) to Holder Entities' regulators or as otherwise required in connection with Holder Entities' examination or audit; (e) as Holder considers appropriate in exercising remedies under this Warrant; and (f) to Holder Entities' third-party service providers so long as such service providers have executed a confidentiality agreement with one or more of the Holder Entities with terms no less restrictive than those contained herein. Confidential information does

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not include information that is either: (i) in the public domain or in any Holder Entity's possession when disclosed to Holder, or becomes part of the public domain after disclosure to Holder (in each case, through no fault of any of the Holder Entities); or (ii) disclosed to any

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Holder Entity by a third party if such Holder Entity does not know that the third party is prohibited from disclosing the information.

7.14. Notices. 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, sent by fax or email, as follows:

if to the Company, to it at 802 East 1050 South, American Fork, UT 84003, Attention: Alexis Coll, Chief Legal Officer (email: [\*\*\*]), with a copy (which shall not constitute notice) to Wilson, Sonsini Goodrich & Rosati, 701 Fifth Avenue, Suite 5100, Seattle, WA 98104, Attention: Patrick J. Schultheis (email: [\*\*\*]);

if to Holder, to it at [REDACTED]; [REDACTED];

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 if delivered by hand or overnight courier service or sent by fax or email, or on the date 5 Business Days after dispatch by certified or registered mail if mailed, in each case delivered, sent or mailed (properly addressed) to such party as provided in this Section 7.14 or in accordance with the latest unrevoked direction from such party given in accordance with this Section 7.14.

7.15. Tax Matters. The issuance of this Warrant, and any and all payments in respect of this Warrant, shall be made without deduction or withholding for any Taxes, except as required by applicable law. If any applicable law requires the deduction or withholding of any Tax in connection with the issuance of this Warrant, or from any payment in respect of this Warrant, then the Company shall 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 the sum payable by the Company shall be increased as necessary so that after such deduction or withholding has been made (including such deductions and withholdings for Taxes applicable to additional sums payable hereunder) the Holder receives an amount equal to the sum it would have received had no such deduction or withholding for Taxes been made. The Company shall indemnify the Holder, within 10 days after demand therefor, for the full amount of any Taxes (including Taxes imposed or asserted on or attributable to amounts payable under this hereunder) imposed with respect to the issuance of this Warrant or in respect of payments in respect of this Warrant that are payable or paid by Holder or required to be withheld or deducted from a payment to Holder 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 Company by Holder shall be conclusive absent manifest error.

7.16. No Third Party Beneficiaries. No Person other than a party to this Warrant shall have any rights under this Warrant.

7.17. Electronic Execution of Documents. The words "execution," "signed," "signature" and words of like import in any Loan Document 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 and enforceability as a manually executed signature or the use of a paper-based recordkeeping systems, as the case may be, to the extent and as provided in any

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applicable law, including, without limitation, any state law based on the Uniform Electronic Transactions Act.

7.18. Captions. The headings used in this Agreement are for convenience only and shall not affect the interpretation of this Agreement.

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7.19. Construction of Agreement. The parties mutually acknowledge that they and their attorneys have participated in the preparation and negotiation of this Agreement. In cases of uncertainty this Agreement shall be construed without regard to which of the parties caused the uncertainty to exist.

*[Remainder of page left blank intentionally]*

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IN WITNESS WHEREOF, the parties have caused this Warrant to be executed and delivered as of the Issuance Date.

“COMPANY”

**Domo, Inc.**

\_\_\_\_\_  
Name:

Title:

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“HOLDER”

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Address: \_\_\_\_\_

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## Appendix 1

### **NOTICE OF EXERCISE**

1. Holder elects to exercise the Warrant to Purchase Stock dated \_\_\_\_\_ and initially issued to \_\_\_\_\_ (the “**Warrant**”) to purchase \_\_\_\_\_ shares of Class B Common Stock of Domo, Inc. pursuant to Section 1.1 of the Warrant, and tenders payment of the purchase price of the shares in full. The undersigned represents and warrants that the aforesaid shares of capital stock are being acquired in compliance with applicable federal and state securities law.

[or]

1. Holder elects to exercise the Warrant dated \_\_\_\_\_ and initially issued to \_\_\_\_\_ (the “**Warrant**”), to purchase \_\_\_\_\_ Class B Common Stock of Domo, Inc. pursuant to Section 1.2 of the Warrant, and tenders \_\_\_\_\_ shares of Stock available under the Warrant as payment in full.

[Strike paragraph that does not apply.]

2. Capitalized terms used but not defined herein shall have the meaning provided in the Warrant.

3. Please issue a certificate or certificates representing the shares of Stock in the name specified below:

\_\_\_\_\_  
Holder’s Name

\_\_\_\_\_  
(Address)

HOLDER:

By:

Name:

Title:

(Date):

Appendix 2

NOTICE OF TRANSFER

(To be signed only upon transfer of Warrant)

FOR VALUE RECEIVED, the undersigned hereby sells, assigns and transfers unto \_\_\_\_\_ the right represented by the attached Warrant to purchase Stock of \_\_\_\_\_ (the "**Company**") to which the attached Warrant relates, and appoints \_\_\_\_\_ as attorney in fact to transfer such right on the books of the Company, with full power of substitution in the premises.

Dated: \_\_\_\_\_

\_\_\_\_\_  
(Signature must conform in all respects to name of Holder as specified on the face of the Warrant)

Address:

**Acknowledgement and Acceptance:**

The undersigned transferee of the Warrant hereby accepts the transfer of the Warrant and agrees to be bound by the Warrant as if it were the original Holder thereof.

[insert name of transferee]

\_\_\_\_\_  
Name:

Title:

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Tax Payer Identification Number:

Address:

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## Appendix 3

### INFORMATION RIGHTS

The Company will furnish electronically to Holder:

As soon as practicable after the end of each fiscal year of the Company, and in any event within one hundred twenty (120) days after the end of each fiscal year of the Company, a consolidated balance sheet of the Company and its subsidiaries as of the end of such fiscal year, and consolidated statements of income and cash flows of the Company and its subsidiaries for such fiscal year, each prepared in accordance with U.S. generally accepted accounting principles consistently applied and certified by independent public accountants of nationally recognized standing selected by the Company.

As soon as practicable after the end of each of the first, second, third and fourth quarterly accounting periods in each fiscal year of the Company, and in any event within forty-five (45) days after the end of each of the first, second, third and fourth quarterly accounting periods in each fiscal year of the Company, an unaudited consolidated balance sheet of the Company and its subsidiaries, as of the end of each such quarterly period, and unaudited consolidated statements of income and cash flows of the Company and its subsidiaries, for such period, prepared in accordance with U.S. generally accepted accounting principles consistently applied, subject to changes resulting from normal year-end audit adjustments.

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### ANNEX B

Amended Loan and Security Agreement

[see attached]

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*Conformed through the First Amendment, dated as of April 17, 2018*  
*Conformed through the Second Amendment, dated as of August 8, 2018*  
*Conformed through the Third Amendment, dated as of January 4, 2019*  
*Conformed through the Fourth Amendment, dated as of August 7, 2020*

Conformed through the Omnibus Amendment and Restatement and Limited Waiver,  
dated as of August 8, 2023

Conformed through First Amendment to Amended and Restated Loan and Security Agreement,  
dated as of February 17, 2024 February 17, 2024

Conformed through Second Amendment to Amended and Restated Loan and Security Agreement and Lender Joinder,  
dated as of August 19, 2024

## AMENDED AND RESTATED LOAN AND SECURITY AGREEMENT

**THIS AMENDED AND RESTATED LOAN AND SECURITY AGREEMENT** (this “**Agreement**”) dated as of August 8, 2023 (the “**Restatement Date**”), is entered into by and among Domo, Inc., a Delaware corporation (“**Parent**” and, in such capacity, “**Borrower**”), Domo, Inc., a Utah corporation (“**Domo Utah**” and, in such capacity, “**Co-Borrower**” as defined in the Utah Joinder), each Lender (as defined in Section 14 14), Wilmington Trust, National Association, as administrative agent for Lenders (in such capacity, “**Administrative Agent**”) and Obsidian Agency Services, Inc., a California corporation, as collateral agent for the Lenders (in such capacity, “**Collateral Agent**”), and provides the terms on which Lenders shall lend to Borrower and Borrower shall repay Lenders.

WHEREAS, on the Restatement Date, Borrower, Co-Borrower, Lenders (as defined in the Original Loan Agreement), Administrative Agent and Collateral Agent ~~(as defined in the Original Loan Agreement) entered into~~ amended and restated that certain Loan and Security Agreement, dated as of December 5, 2017 (as amended by that certain First Amendment to Loan and Security Agreement and Pledge Agreement, dated as of April 17, 2018, as further amended by that certain Second Amendment to Loan and Security Agreement, dated as of August 8, 2018, as further amended by that certain Third Amendment to Loan and Security Agreement, dated as of January 4, 2019, as further amended by that certain Fourth Amendment to Loan and Security Agreement, dated as of August 7, 2020, and as otherwise further amended, restated, supplemented or modified and in effect immediately prior to the Restatement Date, the “**Original Loan Agreement**”), ~~pursuant to which Lenders (as defined in the Original Loan Agreement) have extended to Borrower the Term Loan (as defined below) below) on the terms and conditions set forth in the Original Loan~~ in the form of this Agreement; and

~~WHEREAS Borrower, Lenders party hereto, Administrative Agent and Collateral Agent now desire to amend and restate the Original Loan Agreement to document the terms and conditions set forth in this Agreement; Agreement;~~

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

### SECTION 1. LOAN AND TERMS OF PAYMENT

**1.1. Promise to Pay.** Borrower hereby unconditionally promises to pay to Administrative Agent, for the benefit of Lenders and Agents, the outstanding principal amount of all Credit Extensions, all accrued and unpaid interest thereon and all other Obligations as and when due in accordance with this Agreement. Co-Borrower hereby agrees, pursuant to the Utah Joinder, that it is jointly and severally liable, hereunder and under the other Loan Documents, in consideration of the financial accommodations to be provided by Lenders under this Agreement, for the mutual benefit, directly and indirectly, of each of Borrower and Co-Borrower, and in consideration of the undertakings of Borrower, to accept joint and several liability for the Obligations. Co-Borrower agrees that each reference to “Borrower” in this Agreement shall be deemed to be a reference to Co-Borrower except with respect to those provisions set forth in Section 2 to the Utah Joinder.

deemed to be a reference to Co-Borrower except with respect to those provisions set forth in Section 2 to the Utah Joinder.

## 1.2. Term Loan.

(a) Availability. Subject to the terms and conditions of this Agreement, each Lender agrees, severally and not jointly, to make Credit Extensions under the Term Loan to Borrower in proportion to such Lender's applicable Term Loan Commitment in accordance with Schedule 1.2, and Borrower agrees to request (i) on the Effective Date a Credit Extension for at least \$50,000,000 ~~of (the "Initial Term Loan. After the initial draw Loans")~~ and (ii) on the Second Amendment Effective Date for at least \$125,317,859.30 (the "Second Amendment Term Loans"). After the making of the Initial Term Loans on the Effective Date and through and including April 30, 2018, and subject to (i) ~~(ix)~~ the terms and conditions of this Agreement, and ~~(ii) (iv)~~ delivery of the Retention Report to Collateral Agent, Borrower may request a single additional Credit Extension for the remaining unborrowed amount of the Term Loan; provided that no Lender shall be required to make any Credit Extension from and after the Restatement Date. Date other than the Second Amendment Term Loans. After repayment or prepayment, Credit Extensions made under the Term Loan may not be reborrowed. Under no circumstances shall a Lender be required to (A) make Credit Extensions in excess of the commitment amount listed next to such Lender's name on Schedule 1.2, or (B) make a Credit Extension after April 30, 2018 other than the Second Amendment Term Loans.

(b) Repayment. Each Credit Extension made under the Term Loan shall not require scheduled principal payments and shall be "interest-only" until the Term Loan Maturity Date, with interest calculated as set forth in Section 1.3. The outstanding principal amount of each Credit Extension, and any accrued and unpaid interest thereon, shall be due and payable in full on the Term Loan Maturity Date. Any Obligations remaining outstanding on the Term Loan Maturity Date shall be due and payable in full on the Term Loan Maturity Date.

(c) Prepayment.

(i) Mandatory Prepayment Upon Acceleration. If repayment of the Term Loan is accelerated after the occurrence and during the continuance of an Event of Default, Borrower shall immediately pay to Administrative Agent for the benefit of Lenders and Agents (or, solely in the case of Agent Expenses, to the applicable Agent to whom such Agent Expenses are outstanding) an amount equal to the sum of (a) all outstanding principal with respect to the Term Loan (including, for the avoidance of doubt, any ~~interest~~ PIK Interest capitalized and added to principal pursuant to the terms herein), plus, without duplication for any ~~capitalized interest~~ PIK Interest, all accrued and unpaid interest thereon, (b) ~~the Prepayment Fee, if any, (c) (e) the Closing Fee (less any portion of such Closing Fee already paid pursuant to Section 1.2(c)(ii) hereof)~~ hereof, (c) [reserved], (d) the Amendment Fee, ~~and (e) (e) if any, (e) the Second Amendment PIK Fee and (f)~~ without duplication, all other sums, including Lender Expenses and Agent Expenses, if any, that shall have become due and payable hereunder in connection with the Term Loan, including interest at the Default Rate with respect to any past due amounts.

(ii) Voluntary Prepayment. After January 4, 2020, Borrower shall have the option to prepay all, or any part, of the Term Loan at any time provided Borrower (i) delivers written notice to Administrative Agent of its election to prepay the Term Loan at least five (5)

written notice to Administrative Agent of its election to prepay the Term Loan at least five (5) Business Days prior to such prepayment, and (ii) pays, on the date of such prepayment (a) all or such part of the outstanding principal (including, for the avoidance of doubt, any ~~interest~~ PIK Interest capitalized and added to principal pursuant to the terms herein) with respect to the Term Loan set forth in its notice, plus all accrued and unpaid interest thereon, (b) ~~the Prepayment Fee, (c) the Closing Fee (or pro rata portion if less than the full amount of the outstanding Term Loan is repaid)~~ [reserved], (c) [reserved], (d) the Amendment Fee (or pro rata portion if less than the full amount of the outstanding Term Loan is repaid), ~~and (e) (e) the Second Amendment PIK Fee (or pro rata portion if less than the full amount of the outstanding Term Loan is repaid)~~ and (f) without duplication, all other sums, including Lender Expenses and Agent Expenses, if any, that shall have become due and payable hereunder in connection with the Term Loan, including interest at the Default Rate with respect to any past due amounts. For the avoidance of doubt, Borrower shall not be allowed to voluntarily prepay any part of the Term Loan prior to January 4, 2020, without Collateral Agent's prior written consent.

### 1.3. Payment of Interest on the Credit Extensions

- (a) Computation of Interest. Interest on the Credit Extensions and all fees payable hereunder shall be computed on the basis of a 360-day year and the actual number of days elapsed in the period during which such interest accrues. In computing interest on any Credit Extension, the date of the making of such Credit Extension shall be included and the date of payment shall be excluded; provided, however, that if any Credit Extension is repaid on the same day on which it is made, such day shall be included in computing interest on such Credit Extension.
- (b) Credit Extensions. Subject to Section 1.8, each Credit Extension shall bear interest on the outstanding principal amount thereof from the date when made, continued or converted until paid in full at ~~(+) a rate per annum, on any given day, equal to Adjusted Term SOFR for the applicable Interest Period plus 8.00% (the "Term Loan Interest Rate"); provided that at all times after which Collateral Agent has delivered notice of a Benchmark Unavailability Period, the Term Loan Interest Rate, and (ii) means~~ the Term Loan PIK Interest Rate ~~(until, (until, for the avoidance of doubt, such interest is capitalized and added to principal amount of the applicable Credit Extension pursuant to the terms herein); Interest Alternate Base Rate. Any change in the Term Loan Interest Rate due to a change in Adjusted Term SOFR shall be effective from and including the effective day of such change in Adjusted Term SOFR. On each Interest Payment Date, interest~~ charged at the Term Loan Interest Rate shall be paid in ~~Cash in arrears on each Interest Payment Date. Date. Interest charged at the Term Loan PIK Interest Rate shall be assessed in arrears~~ arrears in the following manner: (i) a portion of the interest accrued equal to 5.00% per annum shall be capitalized and added to the principal balance of each Credit Extension ~~on each ("PIK Interest Payment Date, Date")~~ and (ii) the remainder shall be paid in cash. Accrued and unpaid interest charged at the Term Loan Interest Rate, and any ~~interest charged at the Term Loan PIK Interest Rate and~~ added to the principal balance of any Credit Extension, shall also be paid on the date of any prepayment or repayment of any Credit Extension pursuant to this Agreement for the portion of any Credit Extension so

prepaid or repaid and accrued and unpaid interest, regardless of type, shall be paid upon payment (including prepayment) in full thereof.

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(c) Default Interest. At Collateral Agent's election (with respect to which written notice will be provided by Collateral Agent to Administrative Agent, Borrower and Lenders), upon the occurrence and during the continuation of an Event of Default, which election can be retroactive to the date of the Event of Default, and subject to the limitation in Section 13.3

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herein, Obligations shall bear interest at five percent (5.00%) above the Term Loan Interest Rate effective immediately before the Event of Default (the “**Default Rate**”). Without limiting the generality of the foregoing, upon the curing or waiver of any Event of Default, the interest applicable to the Obligations shall revert to the interest applicable immediately prior to the occurrence of such Event of Default. Fees and expenses which are required to be paid by Borrower pursuant to the Loan Documents (including, without limitation, Lender Expenses and Agent Expenses) but are not paid when due shall bear interest until paid at the Default Rate measured from the Term Loan Interest Rate. Payment or acceptance of the increased interest provided in this Section 1.3(c) is not a permitted alternative to timely payment and shall not constitute a waiver of any Event of Default or otherwise prejudice or limit any rights or remedies of Agents or Lender.

(d) Interest Rate Determination. The applicable Prime Rate or Adjusted Term SOFR for each Interest Period or day within an Interest Period, as the case may be, shall be determined by Administrative Agent, and such determination shall be conclusive absent manifest error.

**1.4. Method of Payment.** Unless otherwise approved by Collateral Agent in its reasonable discretion, all payments to be made by Borrower under any of the Loan Documents shall be made by same day wire transfer to Administrative Agent for the benefit of Lenders and Agents in accordance with the wire transfer instructions as provided in writing by Administrative Agent, as may be updated in writing from time to time by Administrative Agent. Notwithstanding the foregoing, Borrower authorizes Collateral Agent to process payment of all Obligations by debiting Borrower's account as provided in the ACH Debit Consent, and notice shall be provided to Borrower and Administrative Agent should any payment be processed.

**1.5. Fees.**

- (a) Commitment Fee. Borrower shall pay the Commitment Fee on the Effective Date, which fee shall be non-refundable and deemed fully earned on the Effective Date. Lenders may deduct the Commitment Fee from the initial Credit Extension.
- (b) ~~Prepayment Fee. Borrower shall pay the Prepayment Fee, if and when due hereunder, hereunder~~ [Reserved].
- (c) Lender Expenses. Borrower shall pay all Lender Expenses (including reasonable attorneys' fees and expenses for documentation and negotiation of the Loan Documents not to exceed \$100,000 prior to the Effective Date) incurred through and after the Effective Date, on demand. Lender may deduct Lender Expenses from any Credit Extension.
- (d) Origination Fee. Borrower has paid the Origination Fee, which fee is deemed fully earned when paid, and shall be used to offset Lender Expenses relating to diligence and other expenses (other than attorneys' fees and expenses) incurred prior to the Effective Date.

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other expenses (other than attorneys' fees and expenses) incurred prior to the Effective Date.

- (e) Closing Fee. Borrower shall pay the Closing Fee at to the ~~earliest of (i) the date the Term Loan is prepaid, provided however, if the prepayment is for less than the full amount of the Term Loan, the Closing Fee shall be prorated based on the principal amount of the Term Loan that is prepaid, (ii) the Term Loan Maturity Date, and (iii) the date the Term Loan becomes due and payable, which fee shall be deemed fully earned on the~~ applicable Exiting Lenders and Converting Lenders within three Business Days of the Second Amendment Effective Date ~~notwithstanding its receipt at a different time, time.~~
- (f) Modification Fee. Borrower shall pay the Modification Fee at the earliest of (i) the closing of an Acquisition, and (ii) December 4, 2027, provided however, if Parent completes its Initial Public Offering before either such date, then Borrower shall no longer have any obligation to pay the Modification Fee. The parties hereto acknowledge and agree that Parent completed its Initial Public Offering on July 3, 2018 and Borrower does not have an obligation to pay the Modification Fee.

(g). Amendment Fee. The Amendment Fee shall bear interest on the outstanding amount thereof at the Amendment Fee PIK Interest Rate from the Fourth Amendment Effective Date until paid in full. Interest charged on the Amendment Fee shall be added to increase the balance of such Amendment Fee on each Interest Payment Date. Borrower shall pay the Amendment Fee, together with interest accrued thereon at the Amendment Fee PIK Interest Rate and added to the principal balance of the Amendment Fee on each Interest Payment Date, in full in cash on the Second Amendment Effective Date; provided that the obligations of the Loan Parties to pay the portions of the Amendment Fee of the Converting Lenders shall be deemed to have been satisfied by conversion of each such Converting Lender's portion of the Amendment Fee into an equal amount of the Second Amendment PIK Fee pursuant to Section 2(e) of the Second Amendment and as set forth on Schedule 1.2 to this Agreement (as such schedule is amended by the Second Amendment upon the occurrence of the Second Amendment Effective Date), which fee shall be deemed fully earned on the Fourth Amendment Effective Date notwithstanding its receipt at a different time.

(h). ~~(g)~~ Second Amendment PIK Fee. The Second Amendment PIK Fee shall bear interest on the outstanding amount thereof at the Amendment Fee PIK Interest Rate from the ~~Fourth~~Second Amendment Effective Date until paid in full. Interest charged on the Second Amendment PIK Fee shall be added to increase the balance of such Second Amendment PIK Fee on each Interest Payment Date. Borrower shall pay the Second Amendment PIK Fee, together with interest accrued thereon at the Amendment Fee PIK Interest Rate and added to the principal balance of the Second Amendment PIK Fee on each Interest Payment Date, at the earliest of (i) the date the Term Loan is prepaid, provided however, if the prepayment is for less than the full amount of the Term Loan, the Second Amendment PIK Fee and accrued and unpaid interest shall be prorated based on the principal amount of the Term Loan that is prepaid, (ii) the Term Loan Maturity Date, and (iii) the date the Term Loan becomes due and payable, which fee shall be deemed fully earned on the ~~Fourth~~Second Amendment Effective Date notwithstanding its receipt at a different time.

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**1.6. Payments; Application of Payments.** All payments (including prepayments) to be made by Borrower under any Loan Document shall be made in immediately available funds in U.S. Dollars, without setoff or counterclaim, before 12:00 p.m. California time on the date when due. Payments of principal and/or interest received after 12:00 p.m. California time may be considered received at the opening of business on the next Business Day. When a payment is due on a day that is not a Business Day, the payment shall be due the next Business Day, and additional fees or interest, as applicable, shall continue to accrue until paid. The order and method of application of funds with respect to principal, interest and fees owed shall be made in the sole discretion of Collateral Agent, and Collateral Agent shall promptly advise Administrative Agent in writing thereof.

**1.7. Promissory Notes.** Notwithstanding anything to the contrary contained in this Agreement, Notes shall only be delivered to Lenders on request of Collateral Agent. No failure of Agents or any Lender to request or obtain a Note evidencing the Credit Extensions to Borrower shall affect or in any manner impair the obligations of Borrower to pay the Credit



Extensions (and all related Obligations) incurred by Borrower that would otherwise be evidenced thereby in accordance with the requirements of this Agreement, and shall not in any way affect the security or guaranties therefor provided pursuant to the Loan Documents. At any time when Collateral Agent requests the delivery of a Note to evidence any of the Credit Extensions, Borrower shall promptly execute and deliver to Collateral Agent for further distribution to the applicable Lender the requested Note in the appropriate amount or amounts to evidence such Credit Extensions.

**1.8. Alternate Rate of Interest.** (a) Notwithstanding anything herein to the contrary, in the event Collateral Agent shall have determined that Adjusted Term SOFR will not adequately and fairly reflect the cost to the majority of Lenders of making or maintaining SOFR Loans during such Interest Period, or that reasonable means do not exist for ascertaining Adjusted Term SOFR, Collateral Agent shall, as soon as practicable thereafter, give written or e-mail notice of such determination to Borrower, Administrative Agent and Lenders. In the event of any such determination (which shall not, in itself, cause a Benchmark Replacement to occur), until Collateral Agent shall have advised Borrower, Administrative Agent and Lenders that the circumstances giving rise to such notice no longer exist, any request by Borrower for a Credit Extension pursuant to Section 1.2 and 2.4 shall be deemed to be a request for a Credit Extension at the Term Loan Alternate Base Rate. Each determination by Collateral Agent under this Section shall be conclusive absent manifest error.

(a) (i) Notwithstanding anything to the contrary herein or in any other Loan Document, upon the occurrence of a Benchmark Transition Event, Administrative Agent (at the direction of Collateral Agent) and Borrower may amend this Agreement to replace the then-current Benchmark with a Benchmark Replacement. Any such amendment with respect to a Benchmark Transition Event will become effective at 5:00 p.m., California time, on the fifth Business Day after Collateral Agent has posted such proposed amendment to all Lenders and Borrower. No replacement of the then-current Benchmark with a Benchmark Replacement pursuant to this clause (b) shall occur prior to the applicable Benchmark Transition Start Date.



(ii) In connection with the use, administration, adoption or implementation of a Benchmark Replacement, Administrative Agent (at the direction of Collateral Agent) shall have the right to make Benchmark Replacement Conforming Changes in consultation with Borrower from time to time and, notwithstanding anything to the contrary herein or in any other Loan Document, any amendments implementing such Benchmark Replacement Conforming Changes will become effective without any further action or consent of any other party to this Agreement.

(iii) Collateral Agent shall promptly notify Borrower, Administrative Agent and Lenders of (A) any occurrence of a Benchmark Transition Event and its related Benchmark Replacement Date and Benchmark Transition Start Date, (B) the

implementation of any Benchmark Replacement, (C) the effectiveness of any Benchmark Replacement Conforming Changes and (D) (x) the removal or reinstatement of any tenor of a Benchmark pursuant to clause (iv) below and (y) the commencement or conclusion of any Benchmark Unavailability Period. Any determination, decision or election that may be made by Collateral Agent or Lenders pursuant to this Section 1.8(b), including any determination with respect to a tenor, rate or adjustment or of the occurrence or non-occurrence of an event, circumstance or date and any decision to take or refrain from taking any action, will be conclusive and binding absent manifest error and may be made in its or their sole discretion and without consent from any other party hereto, except, in each case, as expressly required pursuant to this Section 1.8(b).

(iv) Notwithstanding anything to the contrary herein or in any other Loan Document, at any time (including in connection with the implementation of a Benchmark Replacement), (x) if the then-current Benchmark is a term rate (including Term SOFR Reference Rate) and either (A) any tenor for such Benchmark is not displayed on a screen or other information service that publishes such rate from time to time as selected by Administrative Agent (at the direction of Collateral Agent) in its reasonable discretion or (B) the regulatory supervisor for the administrator of such Benchmark has provided a public statement or publication of information announcing that any tenor for such Benchmark is not or will not be representative, then Administrative Agent (at the direction of Collateral Agent) may modify the definition of “Interest Period” (or any similar or analogous definition) for any Benchmark settings at or after such time to remove such unavailable or non-representative tenor and (y) if a tenor that was removed pursuant to clause (x) above either (A) is subsequently displayed on a screen or information service for a Benchmark (including a Benchmark Replacement) or (B) is not, or is no longer, subject to an announcement that it is not or will not be representative for a Benchmark (including a Benchmark Replacement), then Administrative Agent (at the direction of Collateral Agent) may modify the

definition of “Interest Period” (or any similar or analogous definition) for all Benchmark settings at or after such time to reinstate such previously removed tenor.

**1.9. Pro Rata Treatment.** Except as otherwise provided in this Agreement, Administrative Agent agrees that promptly after its receipt of each payment from or on behalf of Borrower in respect of any Obligations hereunder, Administrative Agent shall distribute such

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payment to Lenders entitled thereto (other than any Lender that has consented in writing to waive its pro rata share of any such payment) on a pro rata basis among Lenders in accordance with their respective Pro Rata ~~Percentage~~. ~~Percentage~~; provided that Borrower shall be permitted to voluntarily prepay the Credit Extensions of the Exiting Lenders (as defined in the Second Amendment) on a non-pro rata basis on the Second Amendment Effective Date as contemplated by Section 6(g) of the Second Amendment (the “Second Amendment Voluntary Prepayment”).

**1.10. Ratable Sharing.** Each Lender agrees that if it shall, through the exercise of a right of banker's lien, setoff or counterclaim against Borrower or any other Loan Party, or pursuant to a secured claim under Section 506 of the Bankruptcy Code or other security or

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interest arising from, or in lieu of, such secured claim, received by such Lender under any applicable Bankruptcy Law, or by any other means (but excluding any sale or participation of its Loan to a Person other than Borrower or an Affiliate thereof, which shall be included), obtain payment (voluntary or involuntary) in respect of any principal of or interest on any Credit Extension as a result of which the unpaid principal portion of its Credit Extensions shall be proportionately less than the unpaid

principal portion of the Credit Extensions of any other Lender, it shall (a) notify Collateral Agent and Administrative Agent of such fact and (b) be deemed simultaneously to have purchased from such other Lender at face value, and shall promptly pay to such other Lender the purchase price for, a participation in the Credit Extensions of such other Lender, so that the aggregate unpaid principal amount of the Credit Extensions and participations held by each Lender shall be in the same proportion to the aggregate unpaid principal amount of all Credit Extensions then outstanding as the principal amount of its Credit Extensions prior to such exercise of banker's lien, setoff or counterclaim or other event was to the principal amount of all Credit Extensions outstanding prior to such exercise of banker's lien, setoff or counterclaim or other event; provided, however, that if any such purchase or purchases or adjustments shall be made pursuant to this Section 1.10 and the payment giving rise thereto shall thereafter be recovered, such purchase or purchases or adjustments shall be rescinded to the extent of such recovery and the purchase price or prices or adjustment restored without ~~interest.~~ interest; provided, further, that the Borrower shall be permitted to make the Second Amendment Voluntary Prepayment on a non-pro rata basis. The Loan Parties expressly consent to the foregoing arrangements and agree that any Lender holding a participation in the Term Loan deemed to have been so purchased may exercise any and all rights of banker's lien, setoff or counterclaim or other event with respect to any and all moneys owing by the Loan Parties to such Lender by reason thereof as fully as if such Lender had made a Term Loan directly to Borrower in the amount of such participation.

#### **1.11. Taxes.**

(a) 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. If any applicable law (as determined in the good faith discretion of the applicable withholding agent) requires the deduction or withholding of any Tax from any such payment by a Loan Party or Administrative 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

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Loan Party shall be increased as necessary so that after such deduction or withholding for Indemnified Taxes has been made (including such deductions and withholdings for Indemnified Taxes applicable to additional sums payable under this Section) the applicable Recipient receives an amount equal to the sum it would have received had no such deduction or withholding for Indemnified Taxes been made.

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- (b) Borrower shall, or shall cause each of the Loan Parties to, timely pay to the relevant Governmental Authority in accordance with applicable law, or at the option of Administrative Agent timely reimburse it for the payment of, any Other Taxes.
- (c) The Loan Parties shall jointly and severally indemnify each Recipient, within 10 days after demand therefor, for the full amount of any Indemnified Taxes (including Indemnified Taxes imposed or asserted on or attributable to amounts payable under this Section) payable or paid by such Recipient or required to be withheld or deducted from a payment to such Recipient and any reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to Borrower by Administrative Agent or a Lender shall be conclusive absent manifest error.
- (d) Each Lender shall severally indemnify Administrative Agent, within 10 days after demand therefor, for (i) any Indemnified Taxes attributable to such Lender (but only to the extent that Administrative Agent has not already been indemnified by any of the Loan Parties 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 13.1(f) 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 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 Administrative Agent shall be conclusive absent manifest error. Each Lender hereby authorizes 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 Administrative Agent to Lender from any other source against any amount due to Administrative Agent under this paragraph (d).
- (e) As soon as practicable after any payment of Taxes by any Loan Party to a Governmental Authority pursuant to this Section 1.11, Borrower shall, or shall cause the Loan Party to, deliver to 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 Administrative Agent.
- (f) (i) Any Lender that is entitled to an exemption from or reduction of withholding Tax with respect to payments under any Loan Document shall deliver to Borrower and Administrative Agent, at the time or times prescribed by applicable law, or as

reasonably requested by Borrower or Administrative Agent such properly completed and executed documentation prescribed by applicable law or as reasonably requested by Borrower or 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 Borrower or Administrative Agent, shall deliver such other documentation prescribed by applicable law or reasonably requested by Borrower or Administrative Agent as will enable Borrower or Administrative Agent to determine whether or not such Lender is subject to backup withholding or information reporting requirements.

(ii) Without limiting the generality of the foregoing, any Lender shall, to the extent it is legally entitled to do so, deliver to Borrower and Administrative Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Lender becomes a Lender under this Agreement (and from time to time thereafter upon the request of Borrower or Administrative Agent), whichever of the following is applicable:

- (A) any Lender that is a U.S. Person shall deliver to Borrower and Administrative Agent on or prior to the date on which such Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of Borrower or 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 deliver to Borrower and Administrative Agent 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 Borrower or Administrative Agent) whichever of the following is applicable:
  - i. 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 or W-8BEN-E 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 or W-8BEN-E 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;
  - ii. executed originals of IRS Form W-8ECI;

- iii. in the case of a Foreign Lender claiming the benefits of the exemption for portfolio interest under Section 881(c) of the IRC, (x) a certificate substantially in the form of

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Exhibit I-1 to the effect that (A) such Foreign Lender is not a “bank” within the meaning of Section 881(c)(3)(A) of the IRC, a “10 percent shareholder” of Borrower within the meaning of Section 881(c)(3)(B) of the IRC, or a “controlled foreign corporation” described in Section 881(c)(3)(C) of the IRC and (B) the interest payments in question are not effectively connected with a U.S. trade or business conducted by such Foreign Lender (a “**U.S. Tax Compliance Certificate**”) and (y) executed originals of IRS Form W-8BEN or W-8BEN-E;

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- iv. to the extent a Foreign Lender is not the beneficial owner (for example, where the Foreign Lender is a partnership or participating Lender granting a typical participation), executed originals of IRS Form W-8IMY, accompanied by an IRS Form W-8ECI, IRS Form W-8BEN or W-8BEN-E, a U.S. Tax Compliance Certificate substantially in the form of Exhibit I-2 or Exhibit I-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 not a participating Lender) 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 I-4 on behalf of each such direct and indirect partner; or
- v. 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 Borrower or Administrative Agent to determine the withholding or deduction required to be made.

- iii. 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 IRC, as applicable), such Lender shall deliver to Borrower and Administrative Agent at the time or times prescribed by law and at such time or times reasonably requested by Borrower or Administrative Agent such documentation prescribed by applicable law (including as prescribed by Section 1471(b)(3)(C)(i) of the IRC) and such additional documentation

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reasonably requested by Borrower or Administrative Agent as may be necessary for Borrower and 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 (iii), "FATCA" shall include any amendments made to FATCA after the date of this Agreement.

Each Lender agrees that if any form or certification it previously delivered expires or becomes obsolete or inaccurate in any respect, it shall promptly update such form or certification or promptly notify Borrower and Administrative Agent in writing of its legal inability to do so.

- (g). If Administrative Agent or any Lender 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 1.11](#) (including by the payment of additional amounts pursuant to this [Section 1.11](#)), it shall pay to the indemnifying party an amount equal to such refund (but only to the extent of indemnity payments made under this Section with respect to the Taxes giving rise to such refund), net of all out-of-pocket expenses (including Taxes) of such indemnified party and without interest (other

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(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 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 giving rise to such refund had never been paid.

- (h). Nothing contained in this Section 1.11 shall require any Lender (or any transferee or assignee) or Administrative Agent to make available any of its Tax Returns or any other information that it reasonably deems to be confidential or proprietary.
- (i). Borrower and Lenders acknowledge and agree that the Loans and the Warrants are part of an investment unit within the meaning of Section 1273(c)(2) of the Code. Borrower and Lenders further agree, as between them, that the fair market value of the Warrants shall be ~~agreed by Borrower and Lenders as soon as possible after February 17, 2024~~ \$8,000,000 and that, pursuant to U.S. Treasury Regulations Section 1.1273-2(h), a portion of the issue price of the investment unit equal to such agreed fair market value will be allocable to the Warrants and the balance shall be allocable to the Loans. Borrower and Lenders agree to prepare their U.S. federal

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income tax returns in a manner consistent with the foregoing unless otherwise required by a change in law after the date hereof, a closing agreement with an applicable Tax authority, or a final judgment of a court of competent jurisdiction.

- (j). Notwithstanding anything to the contrary herein, Borrower, Co-Borrower and Lenders acknowledge and agree that no payments made pursuant to Loan Documents are fees for services performed by Lenders or any of their agents. Borrower, Co-Borrower and Lenders agree to prepare their U.S. federal income tax returns in a manner consistent with the foregoing unless otherwise required by a change in law after the date hereof, a closing agreement with an applicable Tax authority, or a final judgment of a court of competent jurisdiction.

## **SECTION 2. CONDITIONS OF CREDIT EXTENSIONS**



**2.1. Conditions Precedent to Initial Credit Extension.** Each Lender's obligation to make the initial Credit Extension on the Effective Date was subject to the condition precedent that Collateral Agent and Administrative Agent shall have received, in form and substance satisfactory to Collateral Agent and Administrative Agent, such documents, and evidence of completion of such other matters, as Collateral Agent may reasonably deem necessary or appropriate, including, without limitation:

- (a) duly executed signatures to the Loan Documents;

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- (b) duly executed certificate from Borrower and any Joining Party's secretary containing approved Borrowing Resolutions, current Certificate of Incorporation (or equivalent document), Bylaws and a good standing certificate from the jurisdiction of Borrower's and any Joining Party's formation as well as any state where they maintain a business presence, and certifying as to the incumbency and specimen signature of each officer executing any Loan Document;
- (c) any other documentation Collateral Agent or Administrative Agent (at the direction or with the consent of the Required Lenders) reasonably requests;
- (d) all documentation and other information which Agents or Lenders reasonably request with respect to Borrower in order to comply with their ongoing obligations under applicable "know your customer" and anti-money laundering rules and regulations, including the USA PATRIOT ACT, including an IRS Form W-9 or applicable tax forms; and

(e) payment of the Origination Fee (which has been paid), Commitment Fee, and Lender Expenses;

and

- (f) a payoff letter from Silicon Valley Bank for certain secured Indebtedness of Borrower.

**2.2. Conditions Precedent to all Credit Extensions.** Each Lender's obligations to make each Credit Extension, including the initial Credit Extension, is subject to the following conditions precedent:

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- (a) timely receipt of a completed Notice of Borrowing;
- (b) the representations and warranties in this Agreement shall be true, accurate, and complete on the date of the Notice of Borrowing and on the Funding Date of each Credit Extension, provided, however, that those representations and warranties expressly referring to a specific date shall be true, accurate and complete as of such date, and no Event of Default shall have occurred and be continuing or result from the Credit Extension. Each Credit Extension is Borrower's representation and warranty on that date that the representations and warranties in this Agreement remain true, accurate, and complete, provided, however, that those representations and warranties expressly referring to a specific date shall be true, accurate and complete as of such date; and
- (c) in Collateral Agent's reasonable discretion, there has not been any material impairment in the Collateral, general affairs, management, results of operation, financial condition or the prospect of repayment of the Obligations.

**2.3. Covenant to Deliver.** Borrower agrees to deliver to Lenders and the Agents each item required to be delivered to Lender or the respective Agent under this Agreement as a condition precedent to any Credit Extension. Borrower expressly agrees that a Credit Extension made prior to the receipt by Lender or the Agents of any such item shall not constitute a waiver by Lender or the Agents of Borrower's obligation to deliver such item, and the making of any Credit Extension in the absence of a required item shall be in Lender's sole discretion, subject to the consent of the Agents.

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**2.4. Procedure for the Borrowing of Credit Extensions.** Subject to the prior satisfaction of all other applicable conditions to the making of a Credit Extension set forth in this Agreement, a Credit Extension shall be made upon Borrower's irrevocable written notice delivered to Administrative Agent in the form of a completed Notice of Borrowing executed by a Responsible Officer of Borrower or without instructions at the direction of Collateral Agent or the Required Lenders if the Credit Extensions are necessary to meet Obligations which have become due. Such Notice of Borrowing must be received by Administrative Agent prior to 12:00 p.m. California time at least three (3) Business Days prior to the requested Funding Date, provided that the Notice of Borrowing for the Credit Extension to be made on the Effective Date may be provided on the Effective Date. Administrative Agent shall promptly notify each Lender of its Pro Rata Share of a Credit Extension and each Lender shall deliver its Pro Rata Percentage of such Credit Extension to Administrative Agent, by wire transfer in immediately available funds, no later than 12:00 pm California time on the Borrowing Date. Upon written confirmation from Lenders that the terms and conditions set forth in Section 2 have been satisfied and receipt of all requested Loan funds, Administrative Agent

shall transfer such funds to Borrower by wire transfer in immediately available funds to the account or accounts designated in writing to Administrative Agent by Borrower (either in the Notice of Borrowing or in a separate flow of

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funds memorandum provided to Administrative Agent on or before the Funding Date or Effective Date, as applicable). No Credit Extensions shall be deemed made to Borrower, and no interest shall accrue on any such Credit Extension, until the related funds have been deposited in the account specified in the applicable Notice of Borrowing.

### SECTION 3. CREATION OF SECURITY INTEREST

**3.1. Grant of Security Interest.** Borrower hereby grants, pledges, collaterally assigns and conveys to Collateral Agent, for the benefit of Agents and Lenders, to secure the payment and performance in full of all of the Obligations, a continuing security interest in ~~and pledges to Collateral Agent, for the benefit of Agents and Lenders,~~ all right, title and interest in and to the Collateral, wherever located, whether now owned or hereafter acquired or arising, and all proceeds and products thereof. If Collateral Agent determines that the perfection of its security interest in any Collateral requires the recordation or filing of documentation ~~other than a financing statement,~~ Borrower shall promptly execute such additional documentation upon presentation. If Collateral Agent determines that the perfection of its security interest in any Collateral requires the possession or control of such Collateral, Borrower shall, subject to Section 3.3, promptly deliver such Collateral to Collateral Agent or enter into a control agreement satisfactory to Collateral Agent to establish such control.

**3.2. Priority of Security Interest.** Borrower represents, warrants, and covenants that the security interest granted herein is and shall at all times continue to be a first priority perfected security interest in the Collateral (subject only to Permitted Liens described in Subsections (b)-(c) of the definition of Permitted Liens that may have superior priority to Collateral Agent's Lien under this Agreement). If Borrower shall acquire a commercial tort claim in an amount greater than Two Hundred Fifty Thousand Dollars (\$250,000), Borrower shall promptly notify Collateral Agent in a writing signed by Borrower of the general details thereof and upon request grant to Collateral Agent in such writing a security interest therein and in the proceeds thereof,

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all upon the terms of this Agreement, with such writing to be in form and substance reasonably satisfactory to Collateral Agent.

**3.3. Termination.** If this Agreement is terminated, Collateral Agent's Lien on the Collateral shall continue until the Obligations (other than inchoate indemnity obligations) are satisfied in full. When the Obligations (other than inchoate indemnity obligations) are satisfied in full, and at such time, Collateral Agent shall, at Borrower's sole cost and expense, terminate ~~its~~the security interest in the Collateral ~~and all rights therein shall revert to Borrower~~, and Collateral Agent shall, at Borrower's sole cost and expense, execute such documentation and take such further action as may be reasonably necessary to ~~make effective the termination contemplated by this~~ Section 3.3 terminate the security interest granted herein. If at any time after such termination or Collateral Agent's release of its security interest granted herein any Collateral or other property an Agent or a Lender receives in satisfaction of the Obligations is recovered, disgorged, set aside or otherwise avoided, or is subject to recovery, disgorgement, being set aside or avoided (whether through a formal court proceeding or otherwise) by or to Borrower, a bankruptcy trustee, a receiver or similar representative, then this Agreement and any other Loan Documents as Collateral Agent

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may elect shall be deemed revived, reinstated and in full force and effect as if the original termination did not occur, and Collateral Agent's security interest and all other rights in the Collateral shall be deemed in full force and effect until the full and final repayment of all Obligations (other than inchoate indemnity obligations) in cash.

**3.4. Authorization to File Financing Statements.** Borrower hereby authorizes Collateral Agent (or its designee) to file financing statements, without notice to Borrower, with all appropriate jurisdictions to perfect or protect the Agents' and Lenders' interest or rights hereunder, including a notice that any disposition of the Collateral, by either Borrower or any other Person, shall be deemed to violate Agents' and Lenders' rights under the Code. Such financing statements may indicate the Collateral as "all assets of the Debtor" or words of similar effect, or as being of an equal or lesser scope, or with greater detail all in Collateral Agent's discretion. Each Loan Party also ratifies its authorization for Collateral Agent (and its designees) to file in any relevant jurisdiction any initial financing statements ~~or~~, continuation statements or other amendments thereto if filed prior to the Restatement Date.

## SECTION 4. REPRESENTATIONS AND WARRANTIES

Borrower represents and warrants as follows:

### 4.1. Due Organization, Authorization; Power and Authority; Enforceability.

(a) Borrower is and each of its Subsidiaries are duly existing and in good standing (to the extent applicable with respect to any Foreign Subsidiary) as a Registered Organization in their jurisdiction of formation and are qualified and licensed to do business and are in good standing in any jurisdiction in which the conduct of its business or its ownership of property requires that it be qualified except where the failure to do so could not reasonably be expected to have a Material Adverse Effect. In connection with this Agreement, Borrower and each Loan Party has delivered to Collateral Agent a completed and signed certificate entitled “**Perfection Certificate**” and collectively, the “**Perfection Certificates**.” Borrower represents and warrants to Lenders and Agents, as of the Restatement Date, as of the date that each Compliance Certificate is to be delivered and

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as of the date each Compliance Certificate is delivered, that (i) Borrower and each Subsidiary’s exact legal name and address is as indicated in Section 4.1(a) of the Perfection Certificates; (ii) Borrower and each Subsidiary is an organization of the type and is organized in the jurisdiction set forth in Section 4.1(a) of the Perfection Certificates; (iii) Section 4.1(a) of the Perfection Certificates accurately sets forth Borrower and each Subsidiary’s organizational identification number or accurately states that there is none; (iv) Section 4.1(a) of the Perfection Certificates accurately sets forth the names (legal and “doing business as”), jurisdiction of formation, organizational structure or type, and organizational number assigned by its jurisdiction that Borrower and each Loan Party used for the past five (5) years; and (v) all other information set forth on the Perfection Certificates is accurate and complete (it being understood that (A) if any information contained in the Perfection Certificates changes after the Restatement Date and if that information relates to a Subsection of this Section 4 which

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specifically allows for information in the Perfection Certificates to be updated after the Restatement Date, Borrower and each Loan Party, as applicable, shall update such information in Borrower's next timely delivered Compliance Certificate, (B) if any information contained in the Perfection Certificates changes after the Restatement Date due to a Permitted Acquisition or Permitted Strategic Investment, Borrower and each Loan Party, as applicable, shall be permitted to update such information by delivery of a written notice to Collateral Agent in Borrower's next timely delivered Compliance Certificate and (C) that in each case any such update shall be effective only to update changes and not to correct errors). Borrower shall not be deemed in breach or default under this Agreement during the time between the date such information changes and the timely delivery to Collateral Agent of such updates. After the Restatement Date, Borrower and any Loan Party may update any information under Section 4.1(a) of the Perfection Certificates by delivery of a written notice to Collateral Agent.

- (b) The execution, delivery and performance by Borrower and each other Loan Party of the Loan Documents to which they are a party have been duly authorized, and do not (i) conflict with Borrower's or any Loan Party's organizational documents, (ii) contravene, conflict with, constitute a default under or violate any material Requirement of Law, (iii) contravene, conflict or violate any applicable order, writ, judgment, injunction, decree, determination or award of any Governmental Authority by which Borrower or any of its Subsidiaries or any of their property or assets may be bound, (iv) require any action by, filing, registration, or qualification with, or Governmental Approval from, any Governmental Authority (except such Governmental Approvals which have already been obtained and are in full force and effect) or (v) constitute an event of default under any material agreement by which Borrower or any Subsidiary is bound.

(c) This Agreement has been duly executed and delivered by Borrower and constitutes, and each other Loan Document when executed and delivered by each Loan Party party thereto will constitute, a legal, valid and binding obligation of such Loan Party enforceable against such Loan Party in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium or other laws affecting creditors' rights generally and subject to general principles of equity, regardless of whether considered in a proceeding in equity or at law.

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#### 4.2. Collateral.

- (a) Except as disclosed in the Perfection Certificates, Borrower has good title to, has rights in, and the power to Dispose of each item of the Collateral upon which it purports to grant a Lien hereunder, free and clear of any and all Liens except Permitted Liens. Borrower has no Pledged Accounts other than the Pledged Accounts (i) described in Section 4.2(a) of the Perfection Certificates (which may be amended to add or remove Pledged Accounts as provided by Section 4.1(a) (v)) delivered to Lenders and Collateral Agent in connection herewith, or (ii) of which Borrower has given Lenders and Collateral Agent notice and taken such actions as are

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necessary to give Collateral Agent a perfected security interest therein. Borrower's Accounts and those of its Subsidiaries are *bona fide*, existing obligations of the Account Debtors.

- (b) The Collateral is not in the possession of any third party bailee (such as a warehouse) except as otherwise provided in Section 4.2(b) of the Perfection Certificates, which may be amended to add or remove bailees as provided by Section 4.1(a)(v), above or as permitted pursuant to Section 6.3. Other than moveable items of personal property such as laptop computers having an aggregate book value of not more than \$250,000, none of the components of the Collateral shall be maintained at locations other than as provided in Section 4.2(b) and Schedule H of the Perfection Certificates, which may be amended to add or remove bailees and real property locations as provided by Section 4.1(a)(v), above or as permitted pursuant to Section 6.3.
- (c) To the extent that Inventory exists, all Borrower's and its Subsidiaries' Inventory is in all material respects of good and marketable quality, free from defect (other than defects that do not prevent satisfaction of the standard requirements for delivery and acceptance of such Inventory and except for obsolete, damaged, defective or slow-moving items that have been written off or written down to fair market value or for which adequate reserves have been established).
- (d) Section 4.2(d) of the Perfection Certificates lists all registered Intellectual Property owned by Borrower and its Subsidiaries (other than over-the-counter software and other non-customized mass market licenses that are commercially available to the public), and may be updated to add or remove Intellectual Property as provided by Section 4.1(a)(v), above. Borrower is the sole owner of the Intellectual Property which it owns or purports to own except for (i) non-exclusive licenses granted to its customers in the ordinary course of business, (ii) Permitted Exclusive Licenses, (iii) over-the-counter software and other non-customized mass market licenses that are commercially available to the public, (iv) material Intellectual Property licensed to Borrower or its Subsidiaries and noted on the Perfection Certificates and (v) in connection with Permitted Liens. Except as specifically noted in Section 4.2(d) of the Perfection Certificates, each Loan Party has the full right and authority to Dispose of its Intellectual Property, and each of its Subsidiaries has the full right and authority to Dispose of its Intellectual Property. Except as specifically noted in Section 4.2(d) of the Perfection Certificates, each material Patent and Trademark which Borrower or any of its Subsidiaries own or purport to own (except to the extent no longer deemed material to the conduct of the business of Borrower or its Subsidiaries in the good faith judgement of Borrower) is valid and enforceable, and no

part of such Intellectual Property has been judged invalid or unenforceable by a court of competent jurisdiction, in whole or in part except to the extent it could not reasonably be expected to have a Material Adverse Effect. Neither Borrower nor any of its Subsidiaries is in breach of any agreement related to their material Intellectual Property, and no claim has been made in writing that any part of such Intellectual Property violates the rights of any third party, in each case, except to the extent it could not reasonably be expected to have a Material Adverse Effect.

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- (e) Except as noted in Section 4.2(e) of the Perfection Certificates, neither Borrower nor any of its Subsidiaries are a party to, or bound by, any Restricted License. Section 4.2(e) of the Perfection Certificates may be updated as provided by Section 4.1(a)(v), above.
- (f) Except as noted in Section 4.2(f) of the Perfection Certificates, Borrower's ownership interests in the entities listed in Section 4.2(f) of the Perfection Certificates are uncertificated, and shall not be certificated unless Borrower and each of the entities listed in Section 4.2(f) of the Perfection Certificates comply with Section 6.12, below. Section 4.2(f) of the Perfection Certificates may be updated as provided by Section 4.1(a)(v), above.

**4.3. Accounts.** Other than as listed in Section 4.3 of the Perfection Certificates, on the Restatement Date, Borrower has no knowledge of any actual or imminent Insolvency Proceeding of any Account Debtor.

**4.4. Litigation; Governmental Action.** There are no actions or proceedings pending or, to the knowledge of the Responsible Officers, threatened in writing against Borrower or any of its Subsidiaries that could reasonably be expected to have a Material Adverse Effect.

**4.5. Financial Statements; Financial Condition.** All consolidated financial statements for Borrower and any of its Subsidiaries delivered to Lenders and Collateral Agent fairly present in all material respects Borrower's consolidated financial condition and Borrower's consolidated results of operations (other than, in the case of unaudited financial statements, the absence of footnotes and normal year-end adjustments) for the periods presented. There has not been any material deterioration in Borrower's consolidated financial condition since the date of the most recent financial statements submitted to Lenders and Collateral Agent. There are no loans to Borrower's or any of its Subsidiaries' employees or directors, and there are no loans from such employees and directors to Borrower or any of its Subsidiaries other than unreimbursed expenses occurring in the ordinary course of business or as otherwise permitted under this Agreement. Parent's and each of its subsidiaries' fiscal year ends on January 31.



**4.6. Material Adverse Change; Solvency.** As of each Funding Date, no Material Adverse Change has occurred since the date of the most recent financial statements submitted to Lenders and/or Collateral Agent (whether as required by this Agreement or otherwise provided) or is reasonably expected to occur. Borrower and its Subsidiaries, taken as a whole, are not Insolvent.

**4.7. Regulatory Compliance.** Borrower is not an “investment company” or a company “controlled” by an “investment company” under the Investment Company Act of 1940, as amended. Borrower is not engaged as one of its important activities in extending credit for

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margin stock (under Regulations X, T and U of the Federal Reserve Board of Governors). Borrower has complied in all material respects with the Federal Fair Labor Standards Act. Neither Borrower nor any of its Subsidiaries is a “holding company” or an “affiliate” of a “holding company” or a “subsidiary company” of a “holding company” as each term is defined

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and used in the Public Utility Holding Company Act of 2005. Borrower has not violated any laws, ordinances or rules, the violation of which could reasonably be expected to result in liability in excess of Two Million Five Hundred Thousand Dollars (\$2,500,000). None of Borrower’s or any of its Subsidiaries’ properties or assets has been used by Borrower or any Subsidiary or, to the best of Borrower’s knowledge, by previous Persons, in disposing, producing, storing, treating, or transporting any hazardous substance other than in material compliance with applicable laws. Borrower and each of its Subsidiaries have obtained all consents, approvals and authorizations of, made all declarations or filings with, and given all notices to, all Government Authorities that are necessary to continue their respective businesses as currently conducted.

**4.8. Investments.** Borrower and its Subsidiaries do not own any Equity Interests except for Permitted Investments.

**4.9. Tax Returns and Payments; Pension Contributions.** Subject to the following sentence, Borrower and its Subsidiaries have timely filed all required Tax Returns and reports, and have timely paid all foreign, federal, state and local Taxes, assessments, deposits and contributions owed, in each case where such liability is in excess of \$250,000. Borrower may, and may allow its Subsidiaries to, defer payment of any contested Taxes, provided that Borrower or its Subsidiaries, as applicable, (a) in good faith contests its obligation to pay the Taxes by appropriate proceedings promptly and diligently instituted and conducted, (b) notifies Collateral Agent in writing of the commencement of, and any material development in, the proceedings, (c) posts bonds or takes any other steps required to prevent the governmental authority levying such contested Taxes from obtaining a Lien upon any of the Collateral that is other than a "Permitted Lien", in each case, subject to the immediately preceding sentence. Borrower is unaware of any claims or adjustments proposed for any of Borrower's or its Subsidiaries' prior tax years which could result in additional Taxes in excess of \$250,000 becoming due and payable. Borrower and its Subsidiaries have paid all amounts necessary, if any, to fund all present pension, profit sharing and deferred compensation plans in accordance with their terms, and neither Borrower nor any of its Subsidiaries have withdrawn from participation in, and have not permitted partial or complete termination of, or permitted the occurrence of any other event with respect to, any such plan which could reasonably be expected to result in any material liability of Borrower or any of its Subsidiaries, including any material liability to the Pension Benefit Guaranty Corporation or its successors or any other governmental agency.

**4.10. Use of Proceeds.** Borrower shall use the proceeds of the Credit Extensions (i) to refinance existing Indebtedness, (ii) as working capital and other general corporate purposes and (iii) to fund its general business requirements and not for personal, family, household or agricultural purposes.

**4.11. Full Disclosure.** No written representation, warranty or other statement of Borrower or any of its Subsidiaries in any certificate or written statement given to Lenders and Agents, or any of them, when taken as a whole, as of the date such representation, warranty, or

Agents, or any of them, when taken as a whole, as of the date such representation, warranty, or other statement was made, taken together with all such written certificates and written statements given to Lenders and Agents, or any of them, contains any untrue statement of a material fact or omits to state a material fact necessary to make the statements contained in the certificates or statements not misleading (it being recognized by Lenders and Agents that projections and forecasts provided by Borrower or its Subsidiaries in good faith and based upon reasonable assumptions are not viewed as a guarantee of financial results and that actual results during the period or periods covered by such projections and forecasts may differ from the projected or forecasted results). All projections and forecasts Borrower or any Subsidiary provides to Lenders and Agents,

or any of them, shall be provided in good faith and based on the most current information available to Borrower or such Subsidiary at the time of the delivery thereof to Lenders and Agents, or any of them.

**4.12. Capitalization and Organization.** As of the Restatement Date, the capitalization of Borrower and its Subsidiaries is as set forth in Section 4.12(a) of the Perfection Certificates. The organizational structure of Borrower and its Subsidiaries is as set forth in Section 4.12(b) of the Perfection Certificates, which may be amended as provided by Section 4.1(a)(v). As of the Restatement Date, each of Parent's Subsidiaries (other than Domo Utah) qualifies as an Immaterial Foreign Subsidiary.

**4.13. Sanctioned Persons.** None of Borrower or any Subsidiary nor, to the knowledge of Borrower, any director, officer, agent, employee or Affiliate of Borrower or any Subsidiary is, or is owned or controlled by Persons that are: (i) the subject of any U.S. sanctions administered or enforced by the Office of Foreign Assets Control of the U.S. Department of Treasury ("**OFAC**") or the U.S. Department of State (collectively, "**Sanctions**") or (ii) located, organized or resident in a country or territory that is the subject of Sanctions (any such Persons in the foregoing clauses (i) and (ii), "**Sanctioned Persons**"); and Borrower, its Subsidiaries and their respective directors, officers and employees and, to the knowledge of Borrower, the agents of Borrower and their Subsidiaries, are in compliance with all applicable Sanctions in all material respects. Borrower will not directly or indirectly use the proceeds of any Credit Extension or otherwise make available such proceeds to any Person, or in any country or territory, that, at the time of such financing, is the subject of Sanctions or (ii) in any other manner that would result in a violation of Sanctions by any Person.

**4.14. Foreign Assets Control Regulations, Etc.**

- (a) Neither the borrowing of any Credit Extension by Borrower hereunder nor its use thereof will violate (i) the United States Trading with the Enemy Act, as amended, (ii) any of the foreign assets control regulations of the United States Treasury Department (31 CFR, Subtitle B, Chapter V, as amended) or any enabling legislation or executive order relating thereto, (iii) Executive Order No. 13,224, 66 Fed Reg 49,079 (2001), issued by the President of the United States (Executive Order Blocking Property and Prohibiting Transactions with Persons

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Who Commit, Threaten to Commit or Support Terrorism) (the "**Terrorism Order**"), (iv) USA PATRIOT ACT, or (v) USA FREEDOM ACT.

- (b) Each of Borrower and the Subsidiaries and their respective directors, officers, agents, employees and any Person acting for or on behalf of Borrower or any Subsidiary, has complied with, and will comply with, the U.S. Foreign Corrupt Practices Act, as amended

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from time to time (the “**FCPA**”), and any other applicable anti-bribery or anti-corruption law, and it and they have not made, offered, promised or authorized, and will not make, offer, promise or authorize, whether directly or indirectly, any payment, of anything of value to a Government Official while knowing or having a reasonable belief that all or some portion will be used for the purpose of: (a) influencing any act, decision or failure to act by a Government Official in his or her official capacity, (b) inducing a Government Official to use his or her influence with a government or instrumentality to affect any act or decision of such government or entity or (c) securing an improper advantage, in each case in order to obtain, retain or direct business.

- (c) No Loan Party (i) is or will become a “blocked person” as described in [Section 1.01](#) of the Terrorism Order or (ii) engages or will engage in any dealings or transactions, or is otherwise associated, with any such blocked person.
- (d) Each of the Loan Parties and its Affiliates are in compliance, in all material respects, with the USA PATRIOT ACT and the USA FREEDOM ACT.

**4.15. Definition of “knowledge.”** For purposes of the Loan Documents, whenever a representation or warranty is made to Borrower’s knowledge or awareness, to the “best of” Borrower’s knowledge, or with a similar qualification, knowledge or awareness means the actual knowledge, after reasonable investigation, of the Responsible Officers.

## **SECTION 5. AFFIRMATIVE COVENANTS**

Until all Obligations (other than inchoate indemnity obligations) have been satisfied in full and Lenders are under no further obligation to make Credit Extensions hereunder, Borrower shall comply with each of the covenants in this [Section 5.5](#):

**5.1. Government Compliance.** Borrower shall maintain its and all its Subsidiaries’ legal existence and good standing (to the extent applicable) in their respective jurisdictions of formation and maintain qualification in each jurisdiction which requires such qualification to be maintained, except that Borrower’s Subsidiaries may be dissolved, liquidated or merged with another Person to the extent permitted by [Section 6.4](#). Borrower shall comply, and have each Subsidiary comply, with all laws, ordinances and regulations to which it is subject, noncompliance with which could reasonably be expected to have a Material Adverse Effect.

**5.2. Financial Statements, Reports, Certificates.** Borrower shall deliver the following items to Collateral Agent:

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(a) [Reserved];

(b) Quarterly Financial Statements. As soon as available, but no later than forty-five (45) days after the last day of each quarter, ~~(excluding the fiscal quarter corresponding to the end of Parent's fiscal year)~~, a company prepared consolidated balance sheet, cash flow statement, trended profit and loss statement non-GAAP with notes and comparative profit and loss statement non-GAAP with notes covering Borrower's consolidated operations for such quarter setting forth in each case in comparative form the figures for the previous fiscal year, certified by a Responsible Officer;

(c) Annual Audited Financial Statements. As soon as available, but no later than one hundred eighty (180) days after the last day of Parent's fiscal year, audited consolidated

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balance sheet, income statement and related statements of operations, stockholders' equity and cash flows as of the end of and for such year, setting forth in each case in comparative form the figures for the previous fiscal year and in a form reasonably acceptable to Collateral Agent, together with an unqualified opinion (other than a qualification with respect to "going concern" for Parent's fiscal year ending January 31, 2018) on the financial statements from an independent certified public accounting firm reasonably acceptable to Collateral Agent to the effect that such consolidated financial statements present fairly in all material respects the financial condition and results of operations of Parent and its consolidated Subsidiaries on a consolidated basis in accordance with GAAP consistently applied, together with a customary "management discussion and analysis" section if otherwise provided by Parent's auditors ("**Annual Audited Financial Statements**");

(d) Compliance Certificate. Together with the financial statements delivered pursuant to Section 5.2(b) and Section 5.2(c), a duly completed Compliance Certificate signed by a Responsible Officer, certifying that as of the end of such reporting period, Borrower was in full compliance with all of the terms and conditions of this Agreement, and setting forth such other information as Collateral Agent shall reasonably request;

(e) Operating Budget. Prior to an Initial Public Offering, as soon as available, but no later than sixty (60) days after the last day of Parent's fiscal year, a Board-approved operating budget for Parent and its Subsidiaries (which shall include projected revenue and net cash flows) prepared and adopted in good faith as to the then current calendar year (the "**Approved Budget**").

(f) Legal Action Notice. A prompt report (but in any event within three (3) Business Days after the service of process with respect thereto on Borrower or any of its Subsidiaries) of any legal actions pending or threatened in writing against Borrower or any of its Subsidiaries that could reasonably be expected to have a Material Adverse Effect;

(g) Intellectual Property Notice. On each Compliance Certificate required to be delivered under Section 5.2(d), written notice of (i) any material change in the composition of

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Borrower's or any of its Subsidiaries' Intellectual Property, but excluding changes to source code, operating manuals and the like made in the ordinary course of business, (ii) the registration of any new Copyright or Trademark, or the filing of any Patent, including any subsequent ownership right of Borrower or any of its Subsidiaries' in or to any registered Copyright, Patent or Trademark not shown in the Perfection Certificates or the IP Security Agreement, and (iii) Borrower's knowledge of any event that could reasonably be expected to materially and adversely affect the value of its or any of its Subsidiaries' Intellectual Property;

(h) Board/Stockholder Information. At all times prior to an Initial Public Offering, at substantially the same time as delivered to members of the Board or Parent's stockholders generally, as applicable, Parent shall deliver to Collateral Agent a copy of all such materials so provided, but, excluding attorney-client privileged communications or work product, trade secrets, information which may raise a conflict of interest with Agents or Lenders, and other confidential compensation communications; and

(i) Other Information. Borrower's budgets, sales projections, operating plan and other information within thirty (30) days following Collateral Agent's written request

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therefor, provided however, if such information relates to a Permitted Acquisition or a Permitted Strategic Investment, such information (to the extent available) shall be provided within three (3) Business Days of such request.

After an Initial Public Offering, documents required to be delivered pursuant to this [Section 5.2](#) (to the extent any such documents are included in materials otherwise filed with the SEC) may be delivered electronically and if so, shall be deemed to have been delivered on the date on which Borrower emails Collateral Agent a link to such documents to the email addresses specified in [Section 10\(iii\)](#).

### **5.3. Notification of Noncompliance.**

- (a) Borrower shall notify Collateral Agent and Administrative Agent in writing within two (2) Business Days of having knowledge (i) that it is not in compliance with any of its obligations under any of the Loan Documents, or (ii) of the occurrence of any Event of Default.
- (b) If any information contained in the Perfection Certificates changes after the Restatement Date and if that information relates to a subsection of [Section 4](#) which specifically allows for information in the Perfection Certificates to be updated after the Restatement Date, Borrower shall update such information in Borrower's next due Compliance Certificate.
- (c) If any subsection of [Section 4](#) is no longer true, accurate and complete and such subsection does not specifically authorize Borrower to update such subsection, Borrower shall indicate how such subsection is no longer true, accurate and complete in Borrower's next due Compliance Certificate. Borrower shall not be deemed in breach due to any such subsection

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of [Section 4](#) no longer being true, accurate and complete during the time between the date such information changes and the date Borrower's current Compliance Certificate is due.

**5.4. Taxes; Pensions.** Borrower shall timely file, and cause each of its Subsidiaries to timely file, all required Tax Returns and reports and timely pay, and cause each of its Subsidiaries to timely pay, all foreign, federal, state and all other Taxes, assessments, deposits and contributions owed by Borrower and each of its Subsidiaries, in each case except as permitted pursuant to the terms of [Section 4.9](#) hereof, and shall deliver to Collateral Agent, on demand, appropriate certificates attesting to such payments, and pay all amounts necessary to fund all present pension, profit sharing and deferred compensation plans in accordance with their terms.

**5.5. Management Rights; Access to Collateral; Books and Records.** Borrower's Board, officers, key employees and independent accountants shall meet with Lenders or Collateral Agent and their representatives from time to time and upon reasonable notice and during normal business hours for the purpose of consulting with, rendering recommendations to the management of Borrower and its Subsidiaries or obtaining information regarding their operations, activities and prospects and expressing its views thereon, provided that after the Initial Public Offering, non-employee members of the Board shall not be required for any such meetings. Borrower shall consider in good faith the recommendations of Lender and Collateral Agent in connection with the matters on which it is consulted as described above, recognizing

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that the ultimate discretion with respect to all such matters shall be retained by Borrower, its Subsidiaries and their management. At reasonable times and during normal business hours, on seven (7) Business Days' notice (provided no notice is required if an Event of Default has occurred and is continuing), Collateral Agent or its agents, shall have the right to inspect the Collateral, to audit and copy Borrower's Books, and to conduct field audits of Borrower and any Subsidiary. Such inspections and audits shall be conducted no more often than once every twelve (12) months unless an Event of Default has occurred and is continuing, provided that an initial field audit may be conducted within the first forty-five (45) days following the Effective Date without constituting the annual audit. The foregoing inspections and audits shall be at Borrower's reasonable expense.

**5.6. Insurance.** Borrower shall keep its business and the Collateral insured for risks and in amounts standard for companies in Borrower's industry and location and as Collateral Agent may reasonably request. Insurance policies shall be in a form, with companies, and in amounts that are reasonably satisfactory to Collateral Agent. All property policies shall have a lender's loss payable endorsement showing Collateral Agent as lender loss payee and waive subrogation against Collateral Agent and shall provide that the insurer must give Collateral Agent at least thirty (30) days' notice before canceling, amending, or declining to renew its policy (other than with respect to nonpayment of premium, for which ten (10) days' notice shall be required). All liability policies shall show, or have endorsements showing, Collateral Agent as an additional insured with a waiver of subrogation rights, and all such policies (or the loss

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payable and additional insured endorsements) shall provide that the insurer shall give Collateral Agent at least thirty (30) days' notice before canceling, amending, or declining to renew its policy. At Collateral Agent's request, Borrower shall deliver certified copies of policies and evidence of all premium payments (other than with respect to nonpayment of premium, for which ten (10) days' notice shall be required). If no Event of Default has occurred and is continuing, proceeds payable under



any policy shall be payable to Borrower to repair or replace the property that is the subject of the loss or otherwise to acquire assets useful in Borrower's business. After the occurrence and during the continuance of an Event of Default, proceeds payable under any policy shall, at Collateral Agent's option, be payable to Administrative Agent on account of the Obligations. If Borrower fails to obtain insurance as required under this Section 5.6 or to pay any amount or furnish any required proof of payment to third persons, either Administrative Agent (at the direction or with the consent of the Required Lenders) or Collateral Agent may make all or part of such payment or obtain such insurance policies required in this Section 5.6, and either Administrative Agent (at the direction or with the consent of the Required Lenders) or Collateral Agent may take any action under the policies as it deems prudent. Borrower shall have until fifteen (15) Business Days after the Effective Date to provide the endorsements required in this Section 5.6.

**5.7. Pledged Accounts.** Borrower's and each Loan Party's Pledged Accounts shall at all times be subject to a Control Agreement, provided however, that the Control Agreement for Borrower's Account maintained at Treasury Brokerage, LLC, account number TC15080, shall not be required until fifteen (15) days following the Effective Date, provided that until such Control Agreement is in place, no amount of any Credit Extension may be deposited into such Account. If the depository institution party to a Control Agreement notifies Borrower or

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Collateral Agent that the depository institution intends to close any Pledged Account or terminate any Control Agreement:

- (a) Borrower or such Loan Party shall thereafter allow for the withdrawal of funds from such affected Pledged Account only in the ordinary course of business unless (i) Collateral Agent otherwise consents in writing, or (ii) such withdrawal is in order to deposit such funds into a Pledged Account subject to a Control Agreement; and
- (b) At any time prior to Borrower having transferred the funds in the affected Pledged Account to another Pledged Account subject to a Control Agreement, Collateral Agent may instruct such depository institution to disburse funds in such Pledged Account to Collateral Agent for the purpose of allowing Collateral Agent to maintain its first priority, perfected security interest over the funds in such Pledged Account, and unless an Event of Default occurs and is continuing, once Borrower has available a Pledged Account subject to a Control Agreement, Collateral Agent shall disburse such funds to such Pledged Account.

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(c) As of the Restatement Date, all of each Loan Party's Pledged Accounts are subject to a Control Agreement.

#### **5.8. Protection and Registration of Intellectual Property Rights.**

(a) Borrower shall: (i) protect, defend and maintain the validity and enforceability of Borrower's Intellectual Property that is material to its business or the business of any of its Subsidiaries; (ii) promptly advise Collateral Agent in writing of infringements of Borrower's material Intellectual Property of which Borrower has knowledge; and (iii) not allow any Intellectual Property material to Borrower's business to be abandoned, forfeited or dedicated to the public without Collateral Agent's written consent.

(b) Borrower shall cause each of its Subsidiaries to: (i) protect, defend and maintain the validity and enforceability of such Subsidiary's Intellectual Property that is necessary in or material to its business or the business of Borrower or any Subsidiary; (ii) promptly advise Collateral Agent in writing of material infringements of such Subsidiary's Intellectual Property of which Borrower and such Subsidiary have knowledge; and (iii) not allow any Intellectual Property material to such Subsidiary's business to be abandoned, forfeited or dedicated to the public without Collateral Agent's written consent.

(c) If Borrower or any Loan Party (i) obtains any Patent, registered Trademark, registered Copyright, registered mask work, or any pending application for any of the foregoing, as owner, or (ii) apply for any Patent or the registration of any Trademark, then Borrower or such Loan Party shall provide written notice thereof to Collateral Agent in accordance with Section 5.2(g), and Borrower or such Loan Party shall execute such intellectual property security agreements and other documents and take such other actions as Collateral Agent shall reasonably request in its good faith business judgment to perfect and maintain a first priority perfected security interest in favor of Collateral Agent in such property.

(d) Borrower shall provide written notice to Collateral Agent on the Compliance Certificate next delivered after entering or becoming bound by any Restricted License (other than over-the-counter software and other non-customized mass market licenses

that are commercially available to the public). Borrower shall take such steps as Collateral Agent reasonably requests to obtain the consent of, or waiver by, any person whose consent or waiver is necessary for (i) any Restricted License to be deemed "Collateral" and for Collateral Agent to have a security interest in it that might otherwise be restricted or prohibited by law or by the terms of any such Restricted License, whether now existing or entered into in the future, and (ii) Collateral Agent to have the ability in the event of a liquidation of any Collateral to dispose of such Collateral in accordance with Lenders' and Agents' rights and remedies under this Agreement and the other Loan Documents.

**5.9. Further Assurances; Defense of Title.** Borrower shall (a) execute any further instruments and take further action as Collateral Agent reasonably requests to perfect or continue

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Collateral Agent's Lien in the Collateral or to effect the purposes of this Agreement and (b) defend, and cause each other Loan Party to defend, its title or interest in or to the Collateral against any and all Liens (other than any Lien created or expressly permitted by the Loan Documents), however arising, of all Persons whomsoever.

**5.10. Creation/Acquisition of Subsidiaries.** Notwithstanding and without limiting any restrictions contained herein or remedies available to Agents or Lenders, in the event Borrower or any Subsidiary creates or acquires any Subsidiary, Borrower and such Subsidiary shall promptly notify Collateral Agent of the creation or acquisition of such new Subsidiary. At Collateral Agent's request, in its sole discretion, Borrower or such Subsidiary if it is also a Loan Party shall take all such action as may be reasonably required by Collateral Agent to cause each such created or acquired Subsidiary other than an Immaterial Foreign Subsidiary to become a Joining Party under the Loan Documents and grant a continuing pledge and security interest in and to substantially all of its assets (i.e., to the same extent that Parent has granted hereunder under the definition of "Collateral"), ~~provided that the pledge of Equity Interests of an Immaterial Foreign Subsidiary shall be limited to sixty five percent (65%) of the total Equity Interests entitled to vote (within the meaning of Treasury Regulations Section 1.956-2(c)(2)) of such Immaterial Foreign Subsidiary.~~ **Subsidiary.** For any Subsidiary created ~~other than an Immaterial Foreign Subsidiary,~~ Borrower shall (a) grant and pledge, or cause to be granted and pledged, to Collateral Agent a perfected security interest in one hundred percent (100%) of the Equity Interests of each such Subsidiary, and (b) procure the issuer's agreement to follow Collateral Agent's instructions regarding any Disposition of such securities, such agreement to be in form and substance satisfactory to Collateral Agent, and (c) notify Administrative Agent in writing of such new Subsidiary and provide Administrative Agent with all documentation and other information which Administrative Agent may reasonably request with respect to any new Subsidiary that becomes a Joining Party 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, including an IRS Form W-9 or applicable tax forms. If ~~such new Subsidiary is a Foreign Subsidiary and the pledge of 100% of such new Subsidiary's Equity Interests and the execution of a Joinder Agreement would result in material adverse tax consequences to Parent or such new Subsidiary, then such new Subsidiary shall not be required to sign a Joinder Agreement and the pledge of Equity Interests shall be reduced to sixty five percent (65%) of the Equity Interests entitled to vote (within the meaning of~~

~~Treasury Regulations Section 1.956-2(c)(2)), and if such new Subsidiary has signed a Joinder Agreement, Collateral Agent shall release it from that Joinder Agreement along with a release Equity~~

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~~Interests so that the pledge of such new Subsidiary's Equity Interests shall equal sixty five percent (65%) of the Equity Interests entitled to vote (within the meaning of Treasury Regulations Section 1.956-2(c)(2)). If an entity which at one time was an Immaterial Foreign Subsidiary no longer qualifies as an Immaterial Foreign Subsidiary, unless Borrower will suffer material adverse tax consequences, such Immaterial Foreign Subsidiary shall upon Collateral Agent's request promptly become a Joining Party under the Loan Documents and grant a~~

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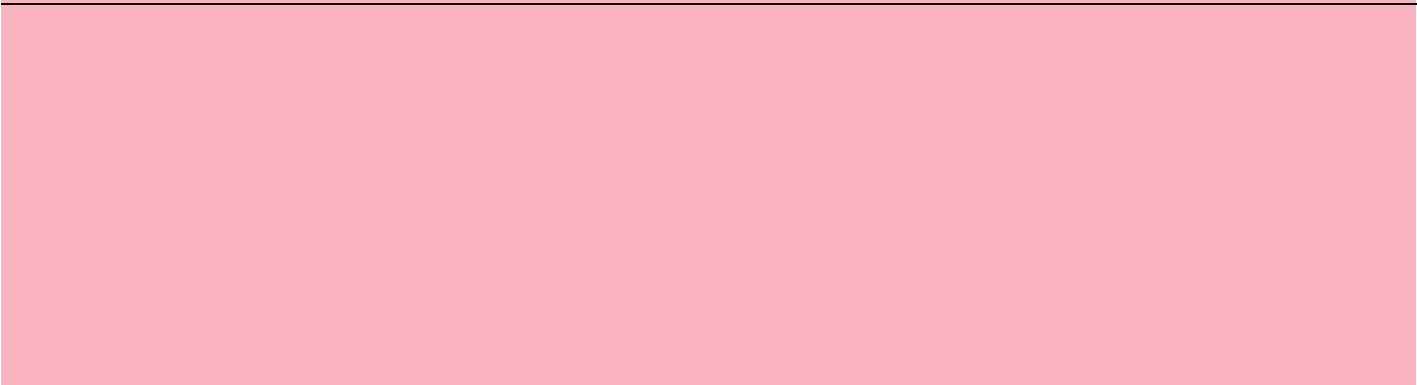
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continuing pledge and security interest in and to substantially all of its assets (i.e., to the same extent that Parent has granted hereunder under the definition of "Collateral"), 100% of the Equity Interests of such entity owned by any Loan Party shall be required to be pledged as additional Collateral, and Borrower or such Loan Party shall procure the issuer's agreement to follow Collateral Agent's instructions regarding any Disposition of such securities, such agreement to be in form and substance satisfactory to Collateral Agent. ~~If after an Immaterial Foreign Subsidiary has become a Loan Party and either Parent or such Subsidiary would incur material adverse tax consequences as a result of such Subsidiary being a Loan Party that would be avoided is such Subsidiary were not a Loan Party, then Collateral Agent shall release such Subsidiary from its Joinder Agreement along with a release of such Subsidiary's Equity Interests so that the pledge of such Subsidiary's Equity Interests shall equal sixty five percent (65%) of the Equity Interests entitled to vote (within the meaning of Treasury Regulations Section 1.956-2(c)(2)).~~ As of the Restatement Date, Domo Utah shall have executed a Joinder Agreement pledging all of its Collateral in favor of Collateral Agent on behalf of Agents and Lenders.

5.11. Financial Covenant.

(a) ~~Debt Ratio~~ Minimum ARR. Loan Parties' ~~Debt Ratio shall not~~ Annualized Recurring Revenue shall equal or exceed the amount listed below for the time period provided below, measured as of the last day of the applicable time period:

Fiscal Quarter Ending	Annualized Recurring Revenue
4/30/2024	\$[***]
7/31/2024	\$[***]
10/31/2024	\$[***]
1/31/2025	\$[***]
4/30/2025	\$[***]
7/31/2025	\$[***]
10/31/2025	\$[***]
1/31/2026	\$[***]
4/30/2026	\$[***]
7/31/2026	\$[***]
10/31/2026	\$[***]



Fiscal Quarter Ending	<del>10/31/2018</del>	<del>1/31/2019 and 4/30/2019</del>	<del>7/31/2019 and 10/31/2019</del>	<del>1/31/2020 and 4/30/2020</del>	<del>7/31/2020 and 10/31/2020</del>	<del>1/31/2021 and 4/30/2021</del>	<del>7/31/2021 and 10/31/2021</del>	<del>1/31/2022 and 4/30/2022</del>	<del>7/31/2022 and 10/31/2022</del>	<del>1/31/2023</del> <u>1/31/2026 and at the end of each fiscal quarter thereafter</u> through the Term Loan Maturity Date	<u>\$[***]</u>
Debt Ratio	0.900	0.850	0.800	0.750	0.625	0.600	0.575	0.550	0.525	0.500	
<u>1/31/2027</u>						<u>\$[***]</u>					
<u>4/30/2027</u>						<u>\$[***]</u>					
<u>7/31/2027</u>						<u>\$[***]</u>					
<u>10/31/2027</u>						<u>\$[***]</u>					
<del>1/31/2026</del> <u>1/31/2028</u> and at the end of each fiscal quarter thereafter through the Term Loan Maturity Date						<u>\$[***]</u>					

Evidence of compliance with this Subsection 5.11(a), reasonably acceptable to Collateral Agent shall be provided along with the Compliance Certificate delivered pursuant to Section 5.2(d) for the applicable period.

(b) Liquidity. ~~At all times while the Positive Cash Flow Condition has not been satisfied,~~ Loan Parties must maintain, on a consolidated basis and measured as of the last day of the applicable month, Unrestricted Cash of at least ~~Ten~~Fifteen Million Dollars

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~~(\$10,000,000 15,000,000)~~15,000,000 25,000,000, with such Unrestricted Cash deposited in Pledged Accounts located in the United States of ~~America~~America.

(c)Minimum Consolidated EBITDA, EBITDA, Loan Parties’ Consolidated EBITDA shall equal or exceed the amount listed below for any period of four consecutive fiscal quarters ending on any date provided below (beginning with the fiscal quarter ending July 31, 2024), measured as of the last day of the applicable fiscal quarter; quarter:

Fiscal Quarter Ending	Consolidated EBITDA
7/31/2024	\$[***]
10/31/2024	\$[***]
1/31/2025	\$[***]
4/30/2025	\$[***]
7/31/2025	\$[***]
10/31/2025	\$[***]
1/31/2026	\$[***]
4/30/2026	\$[***]
7/31/2026	\$[***]
10/31/2026	\$[***]
1/31/2027	\$[***]
4/30/2027	\$[***]
7/31/2027	\$[***]

10/31/2027	\$[***]
<del>1/31/2026</del> 1/31/2028 and at the end of each fiscal quarter thereafter through the Term Loan Maturity Date	\$[***]

Evidence of compliance with this Subsection 5.11(c) reasonably acceptable to Collateral Agent shall be provided along with the Compliance Certificate delivered pursuant to Section 5.2(d), for the applicable period.

5.12. Observer Rights.

(a) Prior to an Initial Public Offering, Collateral Agent shall have the right to have a single representative attend all meetings of the Board, as an observer without the right to vote (the “Observer”). Initially, the Observer shall be John Doyle.

Observer shall be provided written notice (which may be via email) of all regular or special meetings of the Board at the same time as provided to all directors. Parent shall concurrently provide Observer with copies of all notices, minutes, consents and other materials it provides to any member of the Board or any committee thereof, provided that any materials protected from discovery by the attorney-client privilege or the attorney work product privilege, any materials necessary or advisable in the good faith determination of the Board to avoid a conflict of interest between Borrowers, on the one hand, and Agents and Lenders, on the other hand, confidential compensation information and any trade secrets may be excluded. All Confidential Information provided to Observer pursuant to this [Section 5.12](#) shall be subject to the confidentiality obligations under [Section 13.11](#).

(b) In addition to any other rights or remedies to which Collateral Agent may be entitled, Borrower agrees to and will indemnify and hold harmless Agents, Lenders, Observer, their Affiliates and all of their respective successors, assigns, officers, directors, employees, attorneys, and agents from and against any and all losses, claims, obligations, liabilities, deficiencies,

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diminutions in value, penalties, causes of action, damages, costs, and expenses (including, without limitation, costs of investigation and defense, reasonable attorneys' fees and expenses) that they, or any of them, may suffer, incur, or be responsible for, arising or resulting from the exercise of rights pursuant to [Section 5.12\(a\)](#) and/or service or status as an "Observer"; provided that Borrower will not be required to reimburse Observer for out-of-pocket expenses incurred by Observer in connection with Observer's attendance at any meetings of Parent's Board.

**5.13. Post-Restatement Requirements.** Borrower shall, and shall cause each other Loan Party to, satisfy the requirements set forth on Schedule 5.13 in the time periods set forth in said Schedule. The parties acknowledge and agree that notwithstanding anything herein to the contrary, all conditions, representations, warranties and covenants of the Loan Documents with respect to the taking of such actions are qualified by the noncompletion of such actions until such time as they are completed or required to be completed in accordance with this [Section 5.13](#). [5.13](#).

## **SECTION 6. NEGATIVE COVENANTS**

Until all Obligations (other than inchoate indemnity obligations) have been satisfied in full in cash and Lenders are under no further obligation to make Credit Extensions hereunder, Borrower shall comply with each of the covenants in this [Section 6](#):

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**6.1. Dispositions; Negative Pledge.** Borrower shall not Dispose, or permit any of its Subsidiaries to Dispose, of all or any part of its business or property, except for Dispositions (a) of Inventory in the ordinary course of business; (b) of worn-out, damaged, surplus or obsolete Equipment in the ordinary course of business for fair market value; (c) in connection with Permitted Liens and Permitted Investments; (d) of non-exclusive licenses for the use of the property of Borrower or its Subsidiaries (including Intellectual Property) in the ordinary course of business and Permitted Exclusive Licenses for the use of the property of Borrower or its Subsidiaries (including Intellectual Property), (e) of property not material to Borrower's business in an aggregate amount not to exceed (i) Two Hundred Fifty Thousand Dollars (\$250,000) in any fiscal year of Borrower, and (ii) Five Hundred Thousand Dollars (\$500,000) in the aggregate; and (f) made pursuant to a Permitted Receivables Financing. Other than Permitted Liens, Borrower shall not, nor shall Borrower permit any Subsidiary to, grant a security interest in, otherwise pledge or allow any Lien on any assets other than in favor of Collateral Agent. Notwithstanding the foregoing, without Collateral Agent's prior written consent, Borrower shall not pledge or allow any Liens on its Intellectual Property or the Intellectual Property of any Subsidiary other than Permitted Liens.

**6.2. Changes in Business and Ownership.** Borrower shall not (a) engage in or permit any of its Subsidiaries to engage in any business other than the businesses currently engaged in by Borrower and such Subsidiary, as applicable, or reasonably related thereto; (b) liquidate or dissolve (other than the liquidation or dissolution of Subsidiaries that (x) are not Loan Parties or (y) whose assets are transferred to Borrower or another Loan Party at the time of such liquidation or dissolution); or (c) permit to occur any transaction or series of related transactions in which

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the stockholders of Borrower who were not stockholders immediately prior to the first such transaction own or control, directly or indirectly, more than fifty percent (50%) of the voting Equity Interests of Borrower immediately after giving effect to such transaction or related series of such transactions (other than as a result of an Initial Public Offering).

**6.3. Business and Collateral Locations.** Borrower shall not, or permit any Loan Party to, without Collateral Agent's prior written consent: (a) add any new offices or business locations, including warehouses unless such new offices or business locations contain less than Two Million Dollars (\$2,000,000) in Borrower's or such Loan Party's assets or property and are located within the United States, (b) deliver any portion of the Collateral valued, individually or in the aggregate, in excess of

Five Hundred Thousand Dollars (\$500,000) to a bailee at a location other than to a bailee and at a location already disclosed in the Perfection Certificates, or (c) relocate any assets or property that is in the United States to a location outside of the United States, except as permitted by Sections 6.1, 6.2 or 6.7, (d) relocate any assets or property outside of the United States to a different country unless such relocation is to the United States or is otherwise permitted by Sections 6.1, 6.2 or 6.7. Borrower shall not, or permit any Subsidiary to, without providing Collateral Agent at least thirty (30) days prior written notice: (e) change its jurisdiction of organization, (f) change its organizational structure or type, (g) change its legal name, or (h) change any organizational number (if any) assigned by its jurisdiction of organization. The Collateral and its components shall not be held with any third party bailee in amounts less than Five Hundred Thousand Dollars (\$500,000) in order to avoid compliance with the provisions of this Section 6.3 or Section 4.2(b).

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**6.4. Mergers or Acquisitions.** Without the prior written consent of Collateral Agent, Borrower shall not merge or consolidate, or permit any of its Subsidiaries to merge or consolidate, with any other Person, or acquire, or permit any of its Subsidiaries to acquire, all or substantially all of the Equity Interests or property of another Person. Notwithstanding the foregoing, (a) a Subsidiary that is a Loan Party may merge or consolidate into Borrower or a Loan Party, (b) a Subsidiary that is not a Loan Party may merge or consolidate into Borrower, a Loan Party or another Subsidiary and (c) Loan Parties may consummate Permitted Acquisitions provided that Collateral Agent is provided written notice of any Permitted Acquisition not less than ten (10) Business Days before the execution of the documentation underlying the Permitted Acquisition.

**6.5. Indebtedness.** Borrower shall not create, incur, assume, or be liable for any Indebtedness, or permit any Subsidiary to do so, other than Permitted Indebtedness. Borrower shall not pay amounts in settlement of or in connection with any actual or threatened litigation in excess of ~~Ten Million Dollars (\$10,000,000)~~ (\$10,000,000) in the aggregate.

**6.6. Encumbrance.** Except for Permitted Liens, Borrower shall not create, incur, allow, or suffer any Lien on any of its property, or assign or convey any right to receive income, including the sale of any Accounts, or permit any of its Subsidiaries to do so. Except for

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Permitted Liens, Borrower shall not permit any Collateral not to be subject to the first priority security interest granted herein.

**6.7. Distributions; Investments.** Borrower shall not, nor shall it permit any Subsidiary to (a) directly or indirectly make any Investment other than Permitted Investments; or (b) pay any dividends or make any distribution or payment on or in respect of its Equity Interests, or redeem, retire or repurchase any Equity Interests (or any securities or instruments convertible into or exercisable for, or other rights to acquire, directly or indirectly, Equity Interests) from the holders thereof, provided, however, that (i) Borrower may convert any of its convertible securities into other securities pursuant to the terms of such convertible securities or otherwise in exchange thereof and pay any fractional shares in Cash in connection with such conversion (not to exceed \$50,000 in the aggregate), (ii) Borrower may pay dividends solely in Equity Interests of Borrower, (iii) Borrower may repurchase the Equity Interests of Borrower in connection with Permitted Repurchases and (iv) any Subsidiary may pay dividends or make distributions to a Loan Party or, if applicable, a Subsidiary that is its parent entity.

**6.8. Transactions with Affiliates.** Borrower shall not, nor shall it permit any Subsidiary to directly or indirectly enter into or permit to exist any material transaction with any Affiliate of Borrower, except for (a) transactions that are in the ordinary course of Borrower's business, upon fair and reasonable terms that are no less favorable to Borrower than would be obtained in an arm's length transaction with a non-affiliated Person, (b) transactions permitted pursuant to the terms of Section 6.4 hereof, (c) transactions permitted by Section 6.7, Section 6.9 and Permitted Investments, (d) equity financings permitted pursuant to the terms of Section 6.2 hereof and (e) debt financings from Borrower's investors so long as all such Indebtedness is Subordinated Debt.

**6.9. Subordinated Debt.** Borrower shall not, nor shall it permit any Subsidiary to (a) make or permit any payment on any Subordinated Debt, except under the terms of the

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subordination, intercreditor, or other similar agreement to which such Subordinated Debt is subject, or (b) amend any provision in any document relating to the Subordinated Debt which would increase the amount thereof or adversely affect the subordination thereof to Obligations owed to Lenders without Collateral Agent's prior written consent.

**6.10. Compliance.** Borrower shall not, nor shall it permit any Subsidiary to become an "investment company" or a company controlled by an "investment company", under the Investment Company Act of 1940, as amended, or undertake as one of its important activities extending credit to purchase or carry "margin stock" (as defined in Regulation U of the Board of Governors of the Federal Reserve System), or use the proceeds of any Credit Extension for that purpose; fail to meet the

minimum funding requirements of ERISA, permit a “Reportable Event” or “Prohibited Transaction,” as defined in ERISA, to occur; fail to comply with the Federal Fair Labor Standards Act or violate any other law or regulation, if the violation could reasonably be expected to have a Material Adverse Effect, or permit any of its Subsidiaries to do so; withdraw

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or permit any Subsidiary to withdraw from participation in, permit partial or complete termination of, or permit the occurrence of any other event with respect to, any present pension, profit sharing and deferred compensation plan which could reasonably be expected to result in any liability of Borrower, including any liability to the Pension Benefit Guaranty Corporation or its successors or any other governmental agency.

**6.11. Publicity.** Borrower shall not, nor shall it permit any Subsidiary to, directly or indirectly publish, disclose or otherwise use in any public disclosure, advertising material, promotional material, press release or interview, any reference to the name, logo or any trademark of Collateral Agent or any Lender or any of their Affiliates or any reference to this Agreement or the financing evidenced hereby, in any case except as required by applicable law, subpoena or judicial or similar order, in which case Borrower shall endeavor to give Collateral Agent prior written notice of such publication or other disclosure. Each Lender and Borrower hereby authorizes each Lender to publish the name of such Lender and Borrower, the existence of the financing arrangements referenced under this Agreement, the primary purpose and/or structure of those arrangements, the amount of credit extended under each facility, the title and role of each party to this Agreement, and the total amount of the financing evidenced hereby in any “tombstone”, comparable advertisement or press release which such Lender elects to submit for publication. In addition, each Lender and Borrower agrees that each Lender may provide lending industry trade organizations with information necessary and customary for inclusion in league table measurements after the Effective Date.

**6.12. Uncertificated Securities.** Borrower shall not allow any Collateral consisting of uncertificated securities to be certificated without (i) Collateral Agent's prior written consent, such consent not to be unreasonably withheld, conditioned or delayed, and (ii) the prompt execution of a Pledge Agreement satisfactory to Collateral Agent which is signed by Borrower and (to the extent the issuer is a Subsidiary) the issuer of the securities.

**6.13. Foreign Subsidiaries.** Borrower shall not allow its Foreign Subsidiaries that are not Loan Parties to, for greater than five (5) Business Days, maintain Cash, Cash Equivalents or Investment Property, in the aggregate, in excess of Ten Million Dollars (\$10,000,000), provided however, such restrictions shall not apply to Operating Expense Deposits.

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**6.14. Certain Equity Securities.** No Loan Party shall issue any Equity Interest that is a Disqualified Stock.

## **SECTION 7. EVENTS OF DEFAULT**

Any one of the following shall constitute an event of default (an “**Event of Default**”) under this Agreement:

**7.1. Payment Default.** Borrower fails to make any payment as required under the Agreement or any of the other Loan Documents;

**7.2. Covenant Default.**

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(a) Borrower fails or neglects to perform any obligation in Sections 5.2(d), 5.3, 5.4, 5.7, 5.11 or 5.13 or violates any covenant in Section 6; or

(b) Borrower fails or neglects to perform, keep, or observe any other term, provision, condition, covenant or agreement contained in this Agreement or any Loan Documents, and as to any default (other than those specified in this Section 7) under such other term, provision, condition, covenant or agreement that can be cured, has failed to cure the default within ten (10) days after the occurrence thereof (but no Credit Extensions shall be made during such cure period). Cure periods provided under this section shall not apply to covenants set forth in clause (a) above, Section 7.1, Section 7.3 or Section 7.6. 7.6.

**7.3. Investor Abandonment.** Prior to an Initial Public Offering, Collateral Agent has determined, in Collateral Agent's good faith judgment, that it is the intention of Borrower's then current equity investors to not continue to fund, or arrange for the funding of, Borrower and its Subsidiaries in the amounts and on a timeframe reasonably necessary to enable Borrowers to satisfy the Obligations and its other Indebtedness as such becomes due and payable. After an Initial Public Offering, Collateral Agent has determined, in Collateral Agent's good faith judgment, that Borrower is unable to arrange for funding in the amounts and on a timeframe reasonably necessary to enable Borrowers to satisfy the Obligations and its other Indebtedness as such becomes due and payable. Notwithstanding the foregoing in this Section 7.3, in all cases, (a) before an Event of Default may be declared under this Section 7.3, Collateral Agent must first give Parent thirty (30) days advance written notice of its intent to declare an Event of Default under this Section 7.3 so that Borrower can either arrange for funding or provide evidence satisfactory to Collateral Agent (in Collateral Agent's sole discretion) that funding will be available in amounts and on a timeframe reasonably necessary to enable Borrowers to satisfy the Obligations and its other Indebtedness as such becomes

due and payable, or (b) if Borrower obtains equity financing from third-party investors and/or Subordinated Debt sufficient to satisfy the Obligations and such other Indebtedness as such becomes due and payable prior to Collateral Agent's Disposition or foreclosure of any Collateral, no Event of Default will be deemed to have occurred;

#### **7.4. Attachment; Levy; Restraint on Business.**

(a) The service of process seeking to attach, by trustee or similar process, funds of Borrower or of any entity under the control of Borrower (including any Subsidiary), or a notice of lien or levy is filed against Borrower's or a Subsidiary's assets by any government agency, in each case

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in excess of Two Million Five Hundred Thousand Dollars (\$2,500,000), and are not within ten (10) days after the occurrence thereof, removed or rescinded; or

(b) Borrower's (or a Subsidiary's) assets with a value in excess of Two Million Five Hundred Thousand Dollars (\$2,500,000) are attached, seized, levied on, or comes into possession of a trustee or receiver, or any court order enjoins, restrains, or prevents Borrower or any Subsidiary from conducting any part of its business;

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**7.5. Insolvency.** (a) Borrower and its Subsidiaries, taken as a whole, are Insolvent; (b) Borrower or any Subsidiary begins an Insolvency Proceeding; or (c) an Insolvency Proceeding is begun against Borrower or any Subsidiary and not dismissed or stayed within forty-five (45) days (but no Credit Extensions shall be made while any of the conditions described in clauses (b) or (c) exist and/or until any Insolvency Proceeding is dismissed);

**7.6. Other Agreements.** There is, under any agreement to which Borrower, or any Subsidiary, is a party with a third party or parties, any breach or default, whether or not declared, involving Indebtedness in an amount individually or in the aggregate in excess of Two Million Five Hundred Thousand Dollars (\$2,500,000);

**7.7. Judgments.**

- (a) One or more final judgments, orders, or decrees for the payment of money in an amount, individually or in the aggregate, of at least Five Million Dollars (\$5,000,000) (not covered by independent third-party insurance as to which liability has been accepted by such insurance carrier) shall be rendered against Borrower or any Subsidiary and the same are not, within thirty (30) days after the entry thereof, discharged or execution thereof stayed or bonded pending appeal, or such judgments are not discharged prior to the expiration of any such stay (provided that no Credit Extensions shall be made prior to the discharge, stay, or bonding of such judgment, order, or decree); or
- (b) One or more judgments, orders, or decrees for the payment of money in an amount, individually or in the aggregate, of at least ~~Ten Million Dollars (\$10,000,000)~~ ~~(not (\$10,000,000))~~ (not covered by independent third-party insurance as to which liability has been accepted by such insurance carrier) shall be rendered against Borrower or any Subsidiary;

**7.8. Misrepresentations.** Borrower, any Subsidiary or any Person acting for Borrower or any Subsidiary makes any representation, warranty, or other statement now or later in this Agreement, any Loan Document or in any writing delivered to Lenders or Agents, or to induce Lenders or Agents to enter into this Agreement or any Loan Document, and such representation, warranty, or other statement is incorrect in any material respect when made or deemed made; or

**7.9. Subordinated Debt.** Any document, instrument, or agreement evidencing the subordination of any Subordinated Debt shall for any reason be revoked or invalidated or otherwise cease to be in full force and effect (other than pursuant to its terms), any Person shall be in breach thereof or contest in any manner the validity or enforceability thereof or deny that it has any further liability or obligation thereunder, or, except as otherwise provided herein, the Obligations shall for any reason be subordinated or shall not have the priority contemplated by this Agreement.

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## SECTION 8. COLLATERAL AGENT'S RIGHTS AND REMEDIES

**8.1. Rights and Remedies.** While an Event of Default occurs and continues Collateral Agent may, without notice or demand to any party, do any or all of the following:

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- (a) declare all Obligations immediately due and payable (but if an Event of Default described in Section 7.5 occurs, all Obligations are immediately due and payable without any action by Collateral Agent);
  - (b) stop processing any advances of money or extending credit for Borrower's benefit under this Agreement or under any other agreement between Borrower and any Lender without creating any liability on behalf of any Agent or any Lender;
  - (c) settle or adjust disputes and claims directly with Account Debtors for amounts on terms and in any order that Collateral Agent considers advisable, notify any Person owing Borrower money of Collateral Agent's security interest in such funds, and verify the amount of such account;
  - (d) make any payments and do any acts it considers necessary or reasonable to protect the Collateral and/or its security interest in the Collateral. Borrower shall assemble the Collateral if Collateral Agent requests and make it available as Collateral Agent designates. Collateral Agent or its designees may enter premises where the Collateral is located, take and maintain possession of any part of the Collateral, and pay, purchase, contest, or compromise any Lien which appears to be prior or superior to its security interest and pay all expenses incurred. Borrower grants Collateral Agent and its designees a license to enter and occupy any of its premises, without charge, to exercise any of Collateral Agent's rights or remedies;
  - (e) apply to the Obligations any amount held by Lenders and Agents, or any of them, owing to or for the credit of Borrower;
  - (f) ship, reclaim, recover, store, finish, maintain, repair, prepare for sale, advertise for sale, and sell the Collateral. Collateral Agent is hereby granted a non-exclusive, sub-licensable, royalty-free license or other right to use, without charge, Borrower's labels, Patents, Copyrights, mask works, rights of use of any name, trade secrets, trade names, Trademarks, and advertising matter, or any similar property as it pertains to the Collateral, in completing production of, advertising for sale, and selling any Collateral and, in connection with Collateral Agent's exercise of its rights under this Section 8.1, Borrower's rights under all licenses and all franchise agreements inure to Collateral Agent's benefit;
  - (g) deliver a notice of exclusive control, any entitlement order, or other directions or instructions pursuant to any Control Agreement or similar agreements providing control of any Collateral;
  - (h) demand and receive possession of Borrower's Books;
  - (i) make, settle and adjust claims in respect of the Collateral under policies of insurance, endorse the name of any Loan Party on any check, draft, instrument or other item of payment for the proceeds of such policies of insurance and for making all determinations and decisions with respect thereto; and

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(j) exercise all rights and remedies available to Lenders or Agents under the Loan Documents or at law or equity, including all remedies provided under the Code (including disposal of the Collateral pursuant to the terms thereof).

Collateral Agent shall notify Administrative Agent in writing upon undertaking any of the foregoing rights and remedies.

**8.2. Power of Attorney.** Borrower hereby irrevocably appoints Collateral Agent and Administrative Agent as its lawful attorney-in-fact, exercisable upon the occurrence and during the continuance of an Event of Default, to: (a) endorse Borrower's name on any checks or other forms of payment or security; (b) sign Borrower's name on any invoice or bill of lading for any Account or drafts against Account Debtors; (c) settle and adjust disputes and claims about the Accounts directly with Account Debtors, for amounts and on terms Agent determines reasonable; (d) make, settle, and adjust all claims under Borrower's insurance policies; (e) pay, contest or settle any Lien, charge, encumbrance, security interest, and adverse claim in or to the Collateral, or any judgment based thereon, or otherwise take any action to terminate or discharge the same; and (f) make any Disposition of the Collateral into the name of Agent or a third party as the Code permits. Borrower hereby appoints Collateral Agent as its lawful attorney-in-fact to sign Borrower's name on any documents necessary to perfect or continue the perfection of Agent's security interest in the Collateral regardless of whether an Event of Default has occurred until all Obligations (other than inchoate indemnity obligations) have been satisfied in full and Lenders are under no further obligation to make Credit Extensions hereunder. Agents' foregoing appointment as Borrower's attorney in fact, and all of Lender's and Agents' rights and powers, coupled with an interest, are irrevocable until all Obligations (other than inchoate indemnity obligations) have been fully repaid and performed and Lenders' obligation to provide Credit Extensions terminates.

**8.3. Protective Payments.** If Borrower fails to obtain the insurance called for by Section 5.6 or fails to pay any premium thereon or fails to pay any other amount which Borrower is obligated to pay under this Agreement or any other Loan Document, Agents may obtain such insurance or make such payment, and all amounts so paid by Lenders or Agents are Lender Expenses and immediately due and payable, bearing interest at the Default Rate based on the Term Loan Interest Rate if not paid when due, and secured by the Collateral. No payments by Agents or Lenders are deemed an agreement to make similar payments in the future or Agents' or Lender's waiver of any Event of Default.

**8.4. Application of Payments and Proceeds Upon Default.** If an Event of Default has occurred and is continuing, Agents may apply any funds in their possession, whether from payments, proceeds realized as the result of any collection of Accounts or other disposition of the Collateral, or otherwise, to the Obligations in such order as Collateral Agent shall determine in its sole discretion, and Collateral Agent shall promptly advise Administrative Agent in writing thereof. Any surplus shall be paid to Borrower or other Persons legally entitled thereto. Borrower

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shall remain liable to Lenders and Agents for any deficiency. If Collateral Agent, in its good faith business judgment, directly or indirectly enters into a deferred payment or other credit transaction with any purchaser at any sale of Collateral, Collateral Agent shall have the option, exercisable at any time, of either reducing the Obligations by the principal amount of the

purchase price or deferring the reduction of the Obligations until the actual receipt by Administrative Agent of cash therefor.

**8.5. Liability for Collateral.** So long as Collateral Agent complies with reasonable lending practices regarding the safekeeping of the Collateral in Collateral Agent's or Lender's possession or under their control, neither Collateral Agent nor Lender shall be liable or responsible for: (a) the safekeeping of the Collateral; (b) any loss or damage to the Collateral; (c) any diminution in the value of the Collateral; or (d) any act or default of any carrier, warehouseman, bailee, or other Person. In no event shall Administrative Agent be liable or responsible for the safekeeping, loss, damage or diminution in value of the Collateral or any act or default of any other Person with respect to the Collateral. Borrower bears all risk of loss, damage or destruction of the Collateral.

**8.6. No Waiver; Remedies Cumulative.** Agents' or any Lender's failure, at any time or times, to require strict performance by Borrower of any provision of this Agreement or any other Loan Document shall not waive, affect, or diminish any right of Agents or Lender thereafter to demand strict performance and compliance herewith or therewith. No waiver hereunder shall be effective unless signed by the party granting the waiver and then is only effective for the specific instance and purpose for which it is given. Agents' and Lenders' rights and remedies under this Agreement and the other Loan Documents are cumulative. Agents and Lenders have all rights and remedies provided under the Code, by law, or in equity. Agents' or Lenders' exercise of one right or remedy is not an election and shall not preclude either from exercising any other remedy under this Agreement or other remedy available at law or in equity, and Agents' or Lenders' waiver of any Event of Default is not a continuing waiver. Agents' or Lenders' delay in exercising any remedy is not a waiver, election, or acquiescence.

**8.7. Demand Waiver.** Borrower waives demand, notice of default or dishonor, notice of payment and nonpayment, notice of any default, nonpayment at maturity, release, compromise, settlement, extension, or renewal of accounts, documents, instruments, chattel paper, and guarantees held by Agents and Lenders, or any of them, on which Borrower is liable, except when any such notice, demand or any other of the foregoing actions are specifically provided for in this Agreement.

**8.8. No Marshaling or Related Rights.** Borrower waives (a) any suretyship defenses available to it under the Code or any other applicable law, and (b) any right to require Collateral Agent or Lenders to: (i) proceed against any other person; (ii) proceed against or exhaust any security; or (iii) pursue any other remedy. Collateral Agent may exercise or not exercise any right or remedy it has against any Borrower or any security it holds (including the right to

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foreclose by judicial or non-judicial sale) without affecting any Borrower's liability. Notwithstanding any other provision of this Agreement or other related document, Borrower irrevocably waives all rights that it may have at law or in equity (including, without limitation, any law subrogating Borrower to the rights of Collateral Agent or Lenders under this Agreement) to benefit from, or to participate in, any security for the Obligations as a result of any payment made with respect to the Obligations in connection with this Agreement or otherwise. If any payment is made to Borrower in contravention of this Section 8.8, Borrower shall hold such payment in trust for Collateral Agent and such payment shall be promptly delivered to Administrative Agent for application to the Obligations, whether matured or unmatured.

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**8.9 Disposition of Collateral.** (a) During the continuance of an Event of Default, each Loan Party agrees that Collateral Agent shall have the right, subject to the mandatory requirements of applicable law, to sell or otherwise dispose of all or any part of the Collateral at a public or private sale or at any broker's board or on any securities exchange, for cash, upon credit or for future delivery as Collateral Agent shall deem appropriate. Collateral Agent shall be authorized at any such sale (if it deems it advisable to do so) to restrict the prospective bidders or purchasers to Persons who will represent and agree that they are purchasing the Collateral for their own account for investment and not with a view to the distribution or sale thereof, and upon consummation of any such sale Collateral Agent shall have the right to assign, transfer and deliver to the purchaser or purchasers thereof the Collateral so sold. Each such purchaser at any such sale shall hold the property sold absolutely, free from any claim or right on the part of any Loan Party, and each Loan Party hereby waives (to the extent permitted by law) all rights of redemption, stay and appraisal which such Loan Party now has or may at any time in the future have under any rule of law or statute now existing or hereafter enacted.

(b) Collateral Agent shall give each applicable Loan Party ten days' prior written notice (which each Loan Party agrees is reasonable notice within the meaning of Section 9-611 and Section 9-612 of the Code) of Collateral Agent's intention to make any such sale of Collateral. Such notice, in the case of a public sale, shall state the time and place for such sale and, in the case of a sale at a broker's board or on a securities exchange, shall state the board or exchange at which such sale is to be made and the day on which the Collateral, or portion thereof, will first be offered for sale at such board or exchange. Any such public sale shall be held at such time or times within ordinary business hours and at such place or places as Collateral Agent may fix and state in the notice (if any) of such sale. At any such sale, the Collateral, or portion thereof, to be sold may be sold in one lot as an entirety or in separate parcels, as Collateral Agent may (in its sole and absolute discretion) determine. Collateral Agent shall not be obligated to make any such sale of any Collateral if it shall determine not to do so, regardless of the fact that notice of sale of such Collateral shall have been given. Collateral Agent may, without notice or publication, adjourn any public or private sale or cause the same to be adjourned from time to time by announcement at the time and place fixed for sale, and such sale may, without further notice, be made at the time and place to which the same was so

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adjourned. In case any sale of all or any part of the Collateral is made on credit or for future delivery, the Collateral so sold may be retained by Collateral Agent until the sale price is paid by the purchaser or purchasers thereof, but Collateral Agent shall not incur any liability in case any such purchaser or purchasers shall fail to take up and pay for the Collateral so sold and, in case of any such failure, such Collateral may be sold again upon like notice. Collateral Agent, on behalf of itself and Administrative Agent and Lenders, shall have the right to credit bid and purchase for the benefit of Collateral Agent, Administrative Agent and Lenders all or any portion of Collateral at any sale thereof conducted by Collateral Agent under the provisions of the Code, including pursuant to Sections 9-610 or 9-620 of the Code, at any sale thereof conducted under the provisions of the Bankruptcy Code, including Section 363 thereof, or at any other sale or foreclosure conducted by Collateral Agent (whether by judicial action or otherwise) in accordance with applicable law. Such credit bid or purchase may be completed through one or more acquisition vehicles formed by Collateral Agent to make such credit bid or purchase and, in connection therewith, Collateral Agent is authorized, on behalf of itself and Administrative

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Agent and Lenders, to adopt documents providing for the governance of the acquisition vehicle or vehicles, and assign the applicable Obligations to any such acquisition vehicle in exchange for Equity Interests and/or debt issued by the applicable acquisition vehicle (which shall be deemed to be held for the ratable account of the applicable Agents and Lenders on the basis of the Obligations so assigned by each Agent or Lender). Each Lender, by its acceptance of the benefits of this Agreement, hereby agrees, on behalf of itself and each of its Affiliates that is a secured party, that, except as otherwise provided in any Loan Document or with the written consent of Collateral Agent and the Required Lenders, it will not take any enforcement action, accelerate obligations under any of the Loan Documents, or exercise any right that it might otherwise have under applicable law to credit bid at foreclosure sales, Code sales or other similar dispositions of Collateral.

(c) For purposes of this Section 8.9, a written agreement to purchase the Collateral or any portion thereof shall be treated as a sale thereof; Collateral Agent shall be free to carry out such sale pursuant to such agreement and no Loan Party shall be entitled to the return of the Collateral or any portion thereof subject thereto, notwithstanding the fact that after Collateral Agent shall have entered into such an agreement all Events of Default shall have been remedied and the Obligations paid in full and the costs associated with the sale of the Collateral paid in full (in which case the applicable Loan Parties shall be entitled to the excess proceeds of any such sale pursuant to Section 8.9). As an alternative to exercising the power of sale herein conferred upon it during the continuance of an Event of Default, Collateral Agent may proceed by a suit or suits at law or in equity to foreclose this Agreement and to sell the Collateral or any portion thereof pursuant to a judgment or decree of a court or courts having competent jurisdiction or pursuant to a proceeding by a court-appointed receiver. Any sale pursuant to the provisions of this Section 8.9 shall be deemed to conform to the commercially reasonable standards as provided in Section 9-610(b) of the Code.

**8.10 Indemnity, Subrogation and Subordination.** (a) In addition to all such rights of indemnity and subrogation as the Loan Parties may have under applicable law (but subject to Section 8.10(c)), Borrower agrees that (i) in the event a payment shall be made by any Loan Party other than Borrower under this Agreement, Borrower shall indemnify such Loan Party for the full amount of such payment and such Loan Party shall be subrogated to the rights of the Person to whom such payment shall have been made to the extent of such payment and (ii) in the event any assets of any Loan Party shall be sold pursuant to this Agreement or any other Security Document to satisfy in whole or in part a claim of any Agent or Lender, Borrower shall indemnify such Loan Party in an amount equal to the greater of the book value or the fair market value of the assets so sold.

(b) Each Loan Party (a “**Contributing Loan Party**”) agrees (subject to Section 8.10(c)) that, in the event a payment shall be made by any other Loan Party hereunder in respect of any Obligation, or assets of any other Loan Party shall be sold pursuant to any Security Document to satisfy any Obligation, and such other Loan Party (the “**Claiming Loan Party**”) shall not have been fully indemnified by Borrower as provided in Section 8.10(a), the Contributing Loan Party shall indemnify the Claiming Loan Party in an amount equal to (i) the amount of such payment or (ii) the greater of the book value or the fair market value of such assets, as the case may be, in each case multiplied by a fraction of which the numerator shall be

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the net worth of the Contributing Loan Party on the date hereof and the denominator shall be the aggregate net worth of all the Loan Parties on the date hereof (or, in the case of any Loan Party becoming a party hereto pursuant to Section 5.10, the date of the supplement hereto executed and delivered by such Loan Party). Any Contributing Loan Party making any payment to a Claiming Loan Party pursuant to this Section 6.02 shall be subrogated to the rights of such Claiming Loan Party under Section 8.10(a) to the extent of such payment.

(c) Notwithstanding any provision of this Agreement to the contrary, (i) all rights of the Loan Parties under Sections 8.10(a) and (b) and all other rights of indemnity, contribution or subrogation under applicable law or otherwise shall be fully subordinated to, and may be exercised by such Loan Party solely after, the payment in full of the Obligations and (ii) no Loan Party shall exercise any rights of subrogation, contribution, indemnity, reimbursement or other similar rights against (A) Borrower or any other Loan Party (including after payment in full of the Obligations), and each Loan Party shall be deemed to have waived all such rights and remedies, if all or any portion of the Obligations have been satisfied in connection with an exercise of remedies in respect of such Loan Party whether pursuant to the Loan Documents or otherwise or (B) Agents or Lenders or any of their assignees or transferees of the Collateral. No failure on the part of Borrower or any Loan Party to make the payments required by Sections 8.10(a) and (b) (or any other payments required under applicable law or otherwise) shall in any respect limit the obligations and liabilities of any Loan Party with respect to its obligations hereunder, and each Loan Party shall remain liable for the full amount of its obligations hereunder. Borrower and each Loan Party hereby agree that all Debt and other monetary

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obligations owed by it to Borrower or any Subsidiary shall be fully subordinated and junior to the payment in full of the Obligations.

## SECTION 9. RESERVED

## SECTION 10. NOTICES

Notices and other communications provided for herein or any of the other Loan Documents shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail, sent by fax or email, as follows:

- (i) if to Borrower, to it at ~~772 East Utah Valley Drive~~ 802 E 1050 S, American Fork, UT 84003, Attention: Chief Financial Officer (Fax No. 801.805.9501) (~~email: (email: [\*\*\*]); email: [\*\*\*]~~); with a copy to, ~~772 East Utah Valley Drive~~ 802 E 1050 S, American Fork, UT 84003, Attention: ~~General Counsel~~ Chief Legal Officer (Fax No. 801.805.9501) (~~email: (email: [\*\*\*]); email: [\*\*\*]~~);
- (ii) if to Administrative Agent, to it at 1100 North Market Street, Wilmington, DE 19890, Attention: Joseph Feil; (email: [\*\*\*]);
- (iii) if to Collateral Agent, to it at 50 Hudson Yards, New York, NY 10001, Attention: John Doyle (email: [\*\*\*]), with a copy to [\*\*\*];

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- (iv) if to any Lender, the address listed on its signature page to this Agreement, or such other address provided in writing to Borrower and Agents from time to time after the Restatement Date.

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 if delivered by hand or overnight courier service or sent by email or on the date five (5) Business Days after dispatch by certified or registered mail if mailed, in each case delivered, sent or mailed (properly addressed) to such party as provided in this Section 10 or in accordance with the latest unrevoked direction from such party given in accordance with this Section 10. All reports and other information required under Section 5.2 shall be delivered by Borrower by email.

## SECTION 11. CHOICE OF LAW, VENUE, JURY TRIAL WAIVER

**11.1 Governing Law.** THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS (OTHER THAN AS EXPRESSLY SET FORTH IN OTHER LOAN DOCUMENTS) SHALL BE CONSTRUED IN ACCORDANCE WITH AND GOVERNED BY THE LAWS OF THE STATE OF NEW YORK; provided, however, that nothing in this Agreement shall be deemed to operate to preclude Lender from bringing suit or taking other legal action in any other jurisdiction to realize on the Collateral or any other security for the

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Obligations, or to enforce a judgment or other court order in favor of Lender. Each of Holdings and Borrower irrevocably and unconditionally submits, for itself and its property, to the exclusive jurisdiction of any New York State court or Federal court of the United States of America sitting in the Borough of Manhattan in New York City, and any appellate court from any thereof, in any action or proceeding arising out of or relating to this Agreement or the other Loan Documents, or for recognition or enforcement of any judgment, and each of the parties hereto irrevocably and unconditionally agrees that all claims in respect of any such action or proceeding may be heard and determined in such New York State or, to the extent permitted by law, in such Federal court. Each of the parties hereto agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. Nothing in this Agreement shall affect any right that Administrative Agent, Collateral Agent or any Lender may otherwise have to bring any action or proceeding relating to this Agreement or the other Loan Documents against Borrower, Holdings or their respective properties in the courts of any jurisdiction. Each of Holdings and Borrower 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 or the other Loan Documents in any New York State or Federal court. Each of the parties hereto 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. Each party to this Agreement irrevocably consents to service of process in accordance with, Section 10 of this Agreement and that service so made shall be deemed completed upon the earlier to occur of Borrowers', Agents' or Lenders', as applicable, actual receipt thereof or three (3) days after deposit in the U.S. mails, proper postage prepaid. Nothing in this Agreement will affect the right of any party to this Agreement to serve process in any other manner permitted by law.

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**11.2 Waiver of Jury Trial.** TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, BORROWER, AGENTS AND EACH LENDER WAIVE THEIR RIGHT TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION ARISING OUT OF OR BASED UPON THE LOAN DOCUMENTS OR ANY CONTEMPLATED TRANSACTION, INCLUDING CONTRACT, TORT, BREACH OF DUTY AND ALL OTHER CLAIMS. THIS WAIVER IS A MATERIAL INDUCEMENT FOR ALL PARTIES TO ENTER INTO THIS AGREEMENT. EACH PARTY HAS REVIEWED THIS WAIVER WITH ITS COUNSEL.

## **SECTION 12. AGENT PROVISIONS**

**12.1 Appointment.** Each Lender hereby irrevocably appoints Administrative Agent and Collateral Agent as its agent and authorizes Agents to take such actions on its behalf and to exercise such powers as are delegated to such Agent by the terms of the Loan Documents, together with such actions and powers as are reasonably incidental thereto. Without limiting the generality of the foregoing, Collateral Agent is hereby expressly authorized to execute any and

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all documents (including releases) with respect to (i) the Collateral and the rights of Lenders with respect thereto, as contemplated by and in accordance with the provisions of this Agreement and the Security Documents, and (ii) any other subordination agreement with respect to any junior or Subordinated Debt.

**12.2 Dual Capacities.** Each Person serving as Administrative Agent and/or Collateral Agent hereunder which is also a Lender 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 each such Person and its Affiliates may provide debt financing, equity capital or other services (including financial advisory services) to any of the Loan Parties (or any Person engaged in similar business as that engaged in by any of the Loan Parties) as if such Person was not performing the duties specified herein, and may accept fees and other consideration from any of the Loan Parties for services in connection with this Agreement and otherwise without having to account for the same to Lenders.

### **12.3 Limitation of Liability.**

(a) No Agent shall have any duties or obligations except those expressly set forth in the Loan Documents, and the duties of Administrative Agent and each other Agent shall be solely administrative in nature. Without limiting the generality of the foregoing, (i) no Agent shall be subject to any fiduciary or other implied duties, regardless of whether an Event of Default has occurred and is continuing, (ii) no Agent shall have any duty to take any discretionary action or exercise

any discretionary powers, except discretionary rights and powers expressly contemplated hereby that such Agent is instructed in writing to exercise by the Required Lenders (or such other number or percentage of Lenders as shall be necessary under the circumstances as provided in Section 13.7); provided that Administrative 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 Bankruptcy Law, and (iii) except as expressly set forth in the Loan Documents, no Agent shall have any duty to disclose, nor shall it be liable for the failure to disclose, any information relating to Borrower or

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any of the Subsidiaries that is communicated to or obtained by the Person serving as Administrative Agent and/or Collateral Agent or any of its Affiliates or any of its Affiliates in any capacity. No Agent shall be liable for any action taken or not taken by it with the consent or at the request of the Required Lenders (or such other number or percentage of Lenders as shall be necessary under the circumstances as provided in Section 13.7) or in the absence of its own gross negligence or willful misconduct as finally judicially determined by a court of competent jurisdiction. No Agent shall have any liability for any action taken, or error in judgment made, in good faith by it or any of its officers, employees or agents, unless it shall have been negligent in ascertaining the pertinent facts. The permissive rights of the Agents to do things enumerated in this Agreement shall not be construed as a duty, and with respect to such permissive rights, no Agent shall be answerable for other than its gross negligence or willful misconduct. Neither

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any Agent nor any of its respective directors, officers, employees, agents or affiliates shall be responsible for not have any duty to monitor the performance or any action of the Borrower, any other Loan Party, or any of their respective directors,

members, officers, agents, affiliates or employees, nor shall it have any liability in connection with the malfeasance or nonfeasance by such party. No Agent or Lender shall be deemed to have knowledge of any Event of Default unless and until written notice thereof is given to such Agent or such Lender by Borrower, a Joining Party or a Lender, and no Agent or any Lender shall be responsible for or have any duty to ascertain or inquire into (i) any statement, warranty or representation made in or in connection with any Loan Document, (ii) the contents of any certificate, report or other document delivered thereunder or in connection therewith, (iii) the performance or observance of any of the covenants, agreements or other terms or conditions set forth in any Loan Document, (iv) the validity, enforceability, effectiveness or genuineness of any Loan Document or any other agreement, instrument or document, or (v) the satisfaction of any condition set forth in any Loan Document, other than to confirm receipt of items expressly required to be delivered to such Agent or such Lender. Notwithstanding anything to the contrary contained in this Agreement, each Agent shall not be required to take any action that is in its opinion contrary to applicable law or the terms of any of the Loan Documents or that would in its reasonable opinion subject it or any of its officers, employees, or directors to personal liability.

(b) Each Agent shall be entitled to rely upon, and shall not incur any liability for relying upon, any notice, request, certificate, consent, order, judgment, statement, instrument, document or other writing believed by it to be genuine and to have been signed or sent by the proper Person. Each Agent may also 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. Each Agent may consult with legal counsel (who may be counsel for 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.

(c) Each Agent may perform any and all its duties and exercise its rights and powers by or through any one or more sub-agents appointed by it. Each Agent and any such sub-agent may perform any and all its duties and exercise its rights and powers by or through their respective Affiliates. The exculpatory provisions of the preceding paragraphs shall apply to any such sub-agent and to their Affiliates and any such sub-agent, and shall apply to their respective activities in connection with the syndication of the Term Loan as well as activities as

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Agent. No Agent shall be responsible for the negligence or misconduct of any sub-agent except to the extent that a court of competent jurisdiction determines in a final and nonappealable judgment that such Agent acted with gross negligence or willful misconduct in the selection of such sub-agents.

(d) Notwithstanding anything to the contrary set forth herein, Administrative Agent shall not be required to take, or to omit to take, any action hereunder or under the Loan

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Documents unless, upon demand, Administrative Agent receives an indemnification satisfactory to it from Lenders (or, to the extent applicable and acceptable to Administrative Agent, Collateral Agent) against all liabilities, costs and expenses that, by reason of such action or omission, may be imposed on, incurred by or asserted against such Administrative Agent or any of its directors, officers, employees and agents. Nothing in this Agreement shall require any Agent to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties or in the exercise of any of its rights or powers hereunder.

(e) No Agent be responsible or liable for any failure or delay in the performance of its obligations under this Agreement arising out of or caused, directly or indirectly, by circumstances beyond its control, including without limitation, any act or provision of any present or future law or regulation or governmental authority; acts of God; earthquakes; fires; floods; wars; terrorism; civil or military disturbances; sabotage; epidemics; pandemics; riots; interruptions, loss or malfunctions of utilities, computer (hardware or software) or communications service; accidents; labor disputes; acts of civil or military authority or governmental actions; or the unavailability of the Federal Reserve Bank wire or telex or other wire or communication facility.

(f) (i) If any Agent (x) notifies a Lender, or any Person who has received funds on behalf of a Lender (any such Lender or other recipient (and each of their respective successors and assigns), a “**Payment Recipient**”) in writing that such Agent has determined in its reasonable discretion that any funds (as set forth in such notice from Agent) received by such Payment Recipient from Agent or any of its Affiliates were erroneously or mistakenly transmitted to, or otherwise erroneously or mistakenly received by, such Payment Recipient (as a result of a clerical, mechanical or technological error, whether or not known to such Lender or other Payment Recipient on its behalf) (any such funds, whether as a payment, prepayment or repayment of principal, interest, fees, or otherwise, individually and collectively, an “**Erroneous Payment**”) and (y) demands in writing the return of such Erroneous Payment (or a portion thereof), such Payment Recipient shall make commercially reasonable efforts to promptly return to the applicable Agent the amount of any such Erroneous Payment (or portion thereof) as to which such a written demand was made, in same day funds (in the currency so received). A notice from such Agent to any Lender under this Section 12.3(f) shall set forth the facts and circumstances resulting in such Erroneous Payment.

(ii) Without limiting the immediately preceding clause (ai), each Lender or any Person who has received funds on behalf of a Lender (and its successors and assigns), agrees that if it (or a Payment Recipient on its behalf) receives a payment, prepayment or repayment (whether received as a payment, prepayment or repayment of principal, interest, fees or otherwise) from an Agent (or any of its Affiliates) (x) that is in

a different amount than, or on a different date from, that specified in a notice of payment, prepayment or repayment sent by such Agent (or any of its Affiliates) with respect to

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such payment, prepayment or repayment, (y) that was not preceded or accompanied by a notice of payment, prepayment or repayment sent by any Agent (or any of its Affiliates), or (z) that such Lender or other such recipient, otherwise becomes aware was transmitted, or received, in error or by mistake (in whole or in part), then in each such case:

(A) (1) in the case of immediately preceding clauses (x) or (y), an error shall be presumed to have been made (absent written confirmation from Agent to the contrary) or (2) an error has been made (in the case of immediately preceding clause (z)), in each case, with respect to such payment, prepayment or repayment; and

(B) such Lender shall (and shall cause any other recipient that receives funds on its respective behalf to) promptly (and, in all events, within one Business Day of its knowledge of such error) notify Agent of its receipt of such payment, prepayment or repayment, the details thereof (in reasonable detail) and that it is so notifying Agent pursuant to this Section 12.3(f)(ii).

(iii) Each Payment Recipient hereby authorizes each Agent to set off, net and apply any amounts at any time owing to such Payment Recipient under any Loan Document against any amount due such Agent under the immediately preceding clause (i).

(iv) The parties hereto agree that (x) in the event that an Erroneous Payment (or portion thereof) is not recovered from any Payment Recipient (and without limiting any Agent's rights and remedies under this Section 12.3(f), Agent shall be subrogated to all the rights of such Payment Recipient with respect to such amount and (y) an Erroneous Payment shall not pay, prepay, repay, discharge or otherwise satisfy any Obligations owed by the Borrower or any other Loan Party; provided that this Section 12.3(f) shall not be interpreted to increase (or accelerate the due date for), or

have the effect of increasing (or accelerating the due date for), the Obligations of the Borrower relative to the amount (and/or timing for payment) of the Obligations that would have been payable had such Erroneous Payment not been made by Agent; except, in each case, to the extent such Erroneous Payment is, and solely with respect to the amount of such Erroneous Payment that is, comprised of funds of the Borrower or any other Loan Party intended to pay, prepay, repay, discharge or otherwise satisfy any Obligations owed by the Borrower or any other Loan Party. If the amount of any Erroneous Payment is subsequently recovered by any Agent or its Affiliate, such Agent or its Affiliate shall return to the applicable Payment Recipient the proceeds of such Loans.

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(v) Notwithstanding anything to the contrary contained herein, and for the avoidance of doubt, in no event shall the occurrence of an Erroneous Payment (or any rights of any Agent in respect of an Erroneous Payment) result in any Agent becoming, or being deemed to be, a Lender hereunder or the holder of any Loans hereunder.

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(vi) In addition to any rights and remedies of any Agent provided by law, such Agent shall have the right, without prior notice to any Lender, any such notice being expressly waived by such Lender to the extent permitted by applicable law, with respect to any Erroneous Payment for which a demand has been made in accordance with this Section 12.3(f) and which has not been returned to such Agent, to set off and appropriate and apply against such amount any and all deposits (general or special, time or demand, provisional or final but excluding trust accounts), 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 such Agent or any Affiliate, branch or agency thereof to or for the credit or the account of such Lender. Each Agent agrees promptly to notify the Lender after

any such setoff and application made by such Agent; provided that the failure to give such notice shall not affect the validity of such setoff and application.

(vii) Each party's obligations under this Section 12.3(f) shall survive the resignation or replacement of each Agent, the termination of the Commitments and/or the repayment, satisfaction or discharge of all Obligations (or any portion thereof) under any Loan Document.

**12.4 Assignment.** Any Agent may resign at any time by notifying Lenders and Borrower. Upon any such resignation, the Required Lenders shall have the right to appoint a successor. If no successor shall have been so appointed by the Required Lenders and shall have accepted such appointment within 30 days after the retiring Agent gives notice of its resignation, then the retiring Agent may (but shall not be obligated to), on behalf of Lenders, appoint a successor Agent which shall be a bank with an office in California or New York. Upon the acceptance of its appointment as Agent hereunder by a successor, such successor shall succeed to and become vested with all the rights, powers, privileges and duties of the retiring Agent, and the retiring Agent shall be discharged from its duties and obligations hereunder. Borrower shall pay the reasonable fees of a successor Agent. If no successor Agent has accepted appointment as Administrative Agent or Collateral Agent, as applicable by the date 30 days following such Agent's notice of resignation, the retiring Agent's resignation shall nevertheless thereupon become effective and (i) the retiring 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 Collateral Agent on behalf of Lenders under any of the Loan Documents, the retiring Collateral Agent shall continue to hold such collateral security until such time as a successor Collateral Agent is appointed), (ii) except for any indemnity payments owed to the retiring or

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removed Agent, all payments, communications and determinations provided to be made by, to or through Administrative Agent shall instead be made by or to each Lender directly, until such time as the Required Lenders with the consent of Borrower at all times other than during the existence of an Event of Default (which consent of Borrower shall not be unreasonably withheld or delayed) appoint a successor Administrative Agent as provided for above in this Section 12.4 and (iii) and the Required Lenders shall perform all of the duties of such Agent hereunder until such time, if any, as the Required Lenders appoint a successor Agent. After Agent's resignation hereunder, the provisions of this Section 12 and Section 13.2 shall continue in effect for the

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benefit of such retiring Agent, its sub-agents and their respective Related Parties in respect of any actions taken or omitted to be taken by any of them while acting as Agent. Any corporation or association into which any Agent may be converted or merged, or with which it may be consolidated, or to which it may sell or transfer all or substantially all of its corporate trust business and assets as a whole or substantially as a whole, or any corporation or association resulting from any such conversion, sale, merger, consolidation or transfer to which such Agent is a party, will be and become the successor of such Agent under this Agreement and will have and succeed to the rights, powers, benefits, protections, duties, indemnities, immunities and privileges as its predecessor, without the execution or filing of any instrument or paper or the performance of any further act.

**12.5 Exculpation.** Each Lender acknowledges that no Agent has made any representation or warranty to it, and that no act by any Agent hereafter taken, including any consent to and acceptance of any assignment or review of the affairs of any Loan Party or any Affiliate thereof, shall be deemed to constitute any representation or warranty by any Agent to any Lender as to any matter, including whether Agents have disclosed material information in their possession. Each Lender acknowledges that it has, independently and without reliance upon the Agents or any other Lender and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Agreement. Each Lender also acknowledges that it will, independently and without reliance upon Agents or any other Lender and based on such documents and information as it shall from time to time deem appropriate, continue to make its own decisions in taking or not taking action under or based upon this Agreement or any other Loan Document, any related agreement or any document furnished hereunder or thereunder. Except for notices, reports and other documents expressly required to be furnished to Lenders by any Agent herein, such Agent shall not have any duty or responsibility to provide any Lender with any credit or other information concerning the business, prospects, operations, property, financial and other condition or creditworthiness of any of the Loan Parties or any of their respective Affiliates which may come into the possession of any Agent.

**12.6 Authorization.** Each Lender hereby further authorizes Collateral Agent, on behalf of and for the benefit of Lenders, to enter into any of the Security Documents or other Loan Document as secured party and to be Collateral Agent for and representative of Lenders

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thereunder, and each Lender agrees to be bound by the terms of each such document; provided that Collateral Agent shall not (i) enter into or consent to any material amendment, modification, termination or waiver of any provision contained in any such document or (ii) release any Collateral (except as otherwise expressly permitted or required pursuant to the terms of this Agreement or the applicable Security Document or Loan Document), in the case of each of clauses (i) and (ii) without the prior consent of the Required Lenders (or, if required pursuant to Section 13.7, all Lenders and Administrative Agent); provided further, however, that, without further written consent or authorization from Lenders, Collateral Agent may execute any documents or instruments necessary to (a) release any Lien encumbering any item of Collateral that is the subject of a sale or other Disposition of assets permitted by this Agreement or to which the Required Lenders have otherwise consented, (b) release any Joining Party from the Joinder if all of the Equity Interests of such Joining Party are sold or otherwise Disposed of to any Person (other than an Affiliate of a Loan Party) pursuant to a sale or other Disposition

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permitted hereunder or to which the Required Lenders have otherwise consented, or (c) subordinate the Liens of Collateral Agent, on behalf of Lenders, to any Permitted Liens or (d) release all Liens in accordance with Section 3.3.3.3. Anything contained in any of the Loan Documents to the contrary notwithstanding, Borrower, Agents and each Lender hereby agree that (1) no Lender shall have any right individually to realize upon any of the Collateral under or otherwise enforce any Security Document, it being understood and agreed that all powers, rights and remedies under the Security Documents may be exercised solely by Collateral Agent for the benefit of Lenders and Agents in accordance with the terms thereof, and (2) in the event of a foreclosure by either on any of the Collateral pursuant to a public or private sale, either Collateral Agent or any Lender may be the purchaser of any or all of such Collateral at any such sale and Collateral Agent, as agent for and representative of Lenders (but not any Lender or Lenders in its or their respective individual capacities unless the 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 Collateral Agent at such sale. Notwithstanding anything to the contrary herein, each Agent shall be permitted to take any action it is authorized to take under any Loan Document.

**12.7 Bankruptcy.** In case of the pendency of any case or proceeding under any applicable Bankruptcy Law or any other judicial proceeding relative to any Loan Party, Agents (irrespective of whether the principal of any Loan shall then be due and payable as herein expressed or by declaration or otherwise and irrespective of whether Agents shall have made any demand on 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 Term Loan and all other Obligations that are owing

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or unpaid and to file such other documents as may be necessary or advisable in order to have the claims of Lenders and Agents (including any claim for the reasonable compensation, expenses, disbursements and advances of Lenders and Agents and their respective agents and counsel and all other amounts due Lenders and Agents under Section 1.5, Section 5.3 and Section 13.2) allowed in such judicial proceeding; and 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 Administrative Agent and, in the event that Administrative Agent shall consent to the making of such payments directly to Lenders, to pay to Administrative Agent any amount due for the reasonable compensation, expenses, disbursements and advances of any Agent and its agents and counsel, and any other amounts due such Agent;

(b) to collect and receive any monies or other property payable or deliverable on any such claims and to distribute the same;

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(c) solely with respect to Collateral Agent, to consent to, accept or adopt on behalf of any Lender any plan of reorganization, adjustment or composition affecting the Obligations or the rights of any Lender; and

(d) solely with respect to Collateral Agent, to vote in respect of the claim of any Lender in any Insolvency Proceeding.

## SECTION 13. GENERAL PROVISIONS

### 13.1 Successors and Assigns.

(a) Whenever in this Agreement any of the parties hereto is referred to, such reference shall be deemed to include the permitted successors and assigns of such party; and all covenants, promises and agreements by or on behalf of the Loan Parties, Agents or Lenders that are contained in this Agreement shall bind and inure to the benefit of their respective permitted successors and assigns.

(b) No Lender shall make any Disposition of any or all of its interests, rights or obligations under this Agreement (including all or a portion of its Term Loan Commitment and the Loan at the time owing to it) without the prior written consent of Collateral Agent, which consent may be provided or withheld in Collateral Agent's sole discretion. Any approved assignment shall be in an integral multiple of, and not less than, \$1,000,000 (or, if less, the entire remaining amount of such Lender's Commitment or Loan), the parties to such assignment shall execute and deliver to Administrative Agent an Assignment and Acceptance, together with a processing and recordation fee of \$3,500 (provided that only one such fee shall be payable in the case of concurrent assignments to Persons that, after giving effect to such assignments, will be Related Funds), and the assignee, if it shall not be a Lender, shall deliver

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to Administrative Agent an Administrative Questionnaire, all applicable tax forms and all documentation and other information required by regulatory authorities under applicable "know your customer" and anti-money laundering rules and regulations, including, without limitation, the USA PATRIOT Act." Upon acceptance and recording pursuant to paragraph (d) of this Section 13.1, from and after the effective date specified in each Assignment and Acceptance, (A) the assignee thereunder shall be a party hereto and, to the extent of the interest assigned by such Assignment and Acceptance, have the rights and obligations of a Lender under this Agreement and (B) the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Acceptance, be released from its obligations under this Agreement (and, in the case of an Assignment and Acceptance covering all or the remaining portion of an 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 1.11 and Section 13.2).

(c) By executing and delivering an Assignment and Acceptance, the assigning Lender thereunder and the assignee thereunder shall be deemed to confirm to and agree with each other and the other parties hereto as follows: (i) such assigning Lender warrants that it is the legal and beneficial owner of the interest being assigned thereby free and clear of any adverse claim and that its Term Loan Commitment, and the outstanding balance of its Loan, without giving effect to assignments thereof which have not become effective, are as set forth in such Assignment and Acceptance; (ii) except as set forth in (i) above, such assigning Lender makes no representation or warranty and assumes no responsibility with respect to any

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statements, warranties or representations made in or in connection with this Agreement or any other Loan Document, or the execution, legality, validity, enforceability, genuineness, sufficiency or value of this Agreement, any other Loan Document or any other instrument or document furnished pursuant hereto, or the financial condition of Borrower or any Subsidiary or the performance or observance by Borrower or any Subsidiary of any of its obligations under this Agreement, any other Loan Document or any other instrument or document furnished pursuant hereto; (iii) such assignee represents and warrants that it is legally authorized to enter into such Assignment and Acceptance; (iv) such assignee confirms that it has received a copy of this Agreement, together with copies of the most recent financial statements referred to in Section 5.2 and such other documents and information as it has deemed appropriate to make its own credit analysis and decision to enter into such Assignment and Acceptance; (v) such assignee will independently and without reliance upon Administrative Agent, such assigning Lender 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; (vi) such assignee appoints and authorizes each Agent to take such action as Agent on its behalf and to exercise such powers under this Agreement as are delegated to such Agent by the terms hereof, together with such powers as are reasonably incidental thereto; and (vii) such assignee agrees that it will perform in accordance with their terms all the obligations which by the terms of the Loan Documents are required to be performed by it as a Lender.

(d) Administrative Agent shall maintain at one of its offices a copy of each Assignment and Acceptance delivered to it and a register for the recordation of the names and addresses of Lenders, and the Term Loan Commitment of, and principal amount (and stated interest) of the Loan 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 Borrower, Agents and 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 Agents, Borrower and any Lender, at any reasonable time and from time to time upon reasonable prior notice.

(e) Upon its receipt of, and consent to, a duly completed Assignment and Acceptance executed by an assigning Lender and an assignee, an Administrative Questionnaire completed in respect of the assignee (unless the assignee shall already be a Lender hereunder), the processing and recordation fee referred to in paragraph (b) above, if applicable, and the written consent of Collateral Agent to such assignment and any applicable tax forms, Administrative Agent shall accept such Assignment and Acceptance.

(f) If a Lender is allowed to and proceeds with selling a participation of all or part of its rights and obligations under this Agreement, such Lender shall, acting solely for this purpose as an agent of Borrower and Administrative Agent, 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 Loan or other obligations under the Loan Documents (the "**Participant Register**"). 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

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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, Administrative Agent (in its capacity as Administrative Agent) shall have no responsibility for maintaining a Participant Register.

(g) Any Lender or participant may, in connection with any permitted assignment or participation or proposed assignment or participation pursuant to this Section 13.1, disclose to the assignee or participant or proposed assignee or participant any information relating to Borrower furnished to such Lender by or on behalf of Borrower; provided that, prior to any such disclosure of information designated by Borrower as confidential, each such assignee or participant or proposed assignee or participant shall execute an agreement whereby such assignee or participant shall agree (subject to customary exceptions) to preserve the confidentiality of such confidential information on terms no less restrictive than those applicable to Lenders pursuant to Section 13.11.

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(h) No Loan Party shall assign or delegate any of its rights or duties hereunder without the prior written consent of Agents, and any attempted assignment without such consent shall be null and void.

### 13.2 Indemnity.

(a) Each Loan Party agrees to pay all reasonable fees and documented out-of-pocket expenses incurred by the Agents in connection with the preparation and administration of this Agreement and the other Loan Documents or in connection with any amendments, modifications or waivers of the provisions hereof or thereof (whether or not the transactions hereby or thereby contemplated shall be consummated) or incurred by the Agents or any Lender in connection with the enforcement or protection of its rights in connection with this Agreement and the other Loan Documents or in connection with the Credit Extensions made hereunder, including the reasonable and documented out-of-pocket fees, charges and disbursements of counsel limited to (i) Orrick, Herrington & Sutcliffe LLP, (ii) ~~PremierCounsel LLP~~, ~~(iii)~~ external counsel for Agents, and ~~(iv)~~ ~~(vii)~~ in connection with any such enforcement or protection, the fees, charges and disbursements of any other external counsel for Agents or any Lender.

(b) Each Loan Party agrees, jointly and severally, to indemnify each Agent, each Lender and each Related Party of any of the foregoing Persons (each such Person being called an “**Indemnatee**”) against, and to hold each Indemnatee harmless from, any and all losses, claims, damages, liabilities, obligations, penalties, actions, judgments, suits, costs, charges, expenses or disbursements (including Agent Expenses, Lender Expenses and reasonable attorney’s fees and the allocated cost of in-house counsel) of any kind or nature whatsoever incurred by or asserted against any Indemnatee arising out of, in any way connected with, or as a result of (i) the execution, delivery, enforcement or administration of this Agreement or any other Loan Document or any agreement or instrument contemplated thereby, the performance by the parties thereto of their respective obligations thereunder or the consummation of the transactions contemplated thereby (including any syndication of the Loan), (ii) the use of the proceeds of the Loan, (iii) any claim, litigation, investigation or proceeding relating to any of the foregoing (including any case, action or proceeding before any court or other Governmental Authority relating to bankruptcy, reorganization, insolvency, liquidation, dissolution or relief of

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debtors or any appellate proceeding), whether or not any Indemnatee is a party thereto or the plaintiff or defendant thereunder (and regardless of whether such matter is initiated by a third party, a Lender, Borrower, any other Loan Party or any of their respective Affiliates), (iv) the reliance by an Indemnatee on any notice purportedly given by or on behalf of Borrower, or (v) any actual or alleged environmental liability related in any way to any Loan Party, provided that such indemnity shall not, as to any

Indemnitee, be available to the extent that such losses, claims, damages, liabilities or related expenses are determined by a court of competent jurisdiction by final and nonappealable judgment to have resulted primarily from the gross negligence or willful misconduct of such Indemnitee. If any Indemnitee makes any payment with respect to any liability as to which any Loan Party is required to provide indemnity, the Indemnitee making

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such payment is entitled to be immediately reimbursed by the Loan Parties and any of them. The obligations in this Section 13.2 shall survive payment of all other Obligations, the resignation of any Agent and the termination of this Agreement. At the election of any Indemnitee, Borrower shall defend such Indemnitee using legal counsel satisfactory to such Indemnitee in such Person's sole discretion, at the sole cost and expense of Borrower, provided such cost and expense is reasonable.

(c) To the extent that Borrower or any Joining Party fails to pay any amount required to be paid by them under Section 13.2(a) or Section 1.5(c) to Administrative Agent or Collateral Agent, each Lender severally agrees to pay to the applicable Agent such Lender's Pro Rata 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 such Agent in its capacity as such.

(d) To the extent permitted by applicable law, neither Borrower nor any Joining Party shall assert, and each 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, any Loan or the use of the proceeds thereof.

(e) The provisions of this Section 13.2 shall remain operative and in full force and effect regardless of the expiration of the term of this Agreement, the consummation of the transactions contemplated hereby, the repayment of any of the Obligations, the expiration of the Term Loan Commitment, the invalidity or unenforceability of any term or provision of this Agreement or any other Loan Document, or any investigation made by or on behalf of any Agent or any Lender. All amounts due under this Section 13.2 shall be payable on written demand therefor.

**13.3 Maximum Rate.** Notwithstanding anything herein to the contrary, if at any time the interest rate applicable to the Term Loan, together with all fees, charges and other amounts that are treated as interest on such loans under applicable law (collectively the "**Charges**"), shall exceed the maximum lawful rate (the "**Maximum Rate**") that may be contracted for, charged, taken, received or reserved by Lender holding such loans in accordance with applicable law, the rate of interest payable in respect of such loans hereunder, together with all Charges payable in respect thereof, shall be limited to the Maximum Rate and, to the extent lawful, the interest and

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Charges that would have been payable in respect of such loans but were not payable as a result of the operation of this Section 13.3 shall be cumulated and the interest and Charges payable to such Lender in respect of other periods shall be adjusted (but not above the Maximum Rate therefor) until such cumulated amount, together with interest thereon at the Maximum Rate to the date of repayment, shall have been received by such Lender.

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**13.4 Time of Essence.** Time is of the essence for the performance of all Obligations in this Agreement.

**13.5 Severability of Provisions.** Each provision of this Agreement is severable from every other provision in determining the enforceability of any provision.

**13.6 Correction of Loan Documents.** Either Agent may correct patent errors and fill in any blanks in the Loan Documents consistent with the agreement of the parties so long as such Agent provides Borrower with written notice of such correction and allows Borrower at least ten (10) days to object to such correction. In the event of such objection, such correction shall not be made except by an amendment signed by Collateral Agent, Lenders and Borrower.

**13.7 Waivers and Amendments.**

(a) No failure or delay of Administrative Agent, Collateral Agent or any Lender in exercising any power or right hereunder or under any other Loan Document 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 Administrative Agent, Collateral Agent and Lenders hereunder and under the other Loan Documents 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 Borrower or any other Loan Party therefrom shall in any event be effective unless the same shall be permitted by paragraph (b) below, and then such waiver or consent shall be effective only in the specific instance and



for the purpose for which given. No notice or demand on Borrower in any case shall entitle Borrower to any other or further notice or demand in similar or other circumstances.

(b) Neither this Agreement nor any provision hereof may be waived, amended or modified except pursuant to an agreement or agreements in writing entered into by Borrower, Collateral Agent and the Required Lenders with reasonable prior written notice provided to Administrative Agent; provided, however, that no such agreement shall (i) decrease the principal amount of, or extend the maturity of or any scheduled principal payment date or date for the payment of any interest on any Term Loan, or waive or excuse any such payment or any part thereof, or decrease the rate of interest on any Term Loan, without the prior written consent of each Lender directly adversely affected thereby (other than any waiver of any increase in the interest rate applicable to the Loan as a result of the occurrence of an Event of Default), (ii) increase or extend the Term Loan Commitment or decrease or extend the date for payment of any fees of any Lender under Section 1.5 without the prior written consent of such Lender, (iii) amend or modify the provisions of this Section 13.7, or release any Joining Party (other than in connection with the sale or other disposition of such Joining Party in a transaction expressly permitted hereunder) or all or substantially all of the Collateral, without the prior written consent of each Lender, or (iv) reduce the percentage contained in the definition of the term "Required

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of each Lender, or (iv) reduce the percentage contained in the definition of the term "Required Lenders" without the prior written consent of each Lender (it being understood that with the consent of the Required Lenders, additional extensions of credit pursuant to this Agreement may be included in the determination of the Required Lenders on substantially the same basis as the Term Loan Commitments on the date hereof); provided further that no such agreement shall amend, modify or otherwise affect the rights, duties, benefits, privileges, protections, indemnities or immunities of Administrative Agent or Collateral Agent hereunder or under any other Loan Document without the prior written consent of Administrative Agent or Collateral Agent, as applicable.

**13.8 Integration.** The Loan Documents represent the entire agreement about this subject matter and supersede prior negotiations or agreements, including any and all Lender's summary of terms presented to Borrower.

**13.9 Counterparts.** This Agreement may be executed by facsimile or PDF, and in in any number of counterparts and by different parties on separate counterparts, each of which, when executed and delivered, is an original, and all taken together, constitute one Agreement.

**13.10 Survival.** All covenants, representations and warranties made in this Agreement continue in full force until this Agreement has terminated pursuant to its terms and all Obligations (other than inchoate indemnity obligations and any other obligations which, by their terms, are to survive the termination of this Agreement) have been paid in full and satisfied. The obligation of Borrower to indemnify Agents and Lenders shall survive until the statute of limitations with respect to such claim

or cause of action shall have run. Upon such payment as described in the immediately preceding sentence, this Agreement and the other Loan Documents shall terminate and shall be of no further force and effect, provided however, that Section 1.5(c), Section 3.3, Section 9, Section 11, and Section 13 of this Agreement, and all indemnities in favor of Lenders or Agents contained in any of the Loan Documents shall survive such termination subject to the applicable statutes of limitations.

**13.11 Confidentiality.** In handling any Confidential Information of Borrower, Agents and Lenders shall exercise the same degree of care that it exercises for its own proprietary information, but disclosure of information may be made: (a) to Agents' or a Lender's Subsidiaries or Affiliates (provided, however, that such Subsidiary or Affiliate shall have entered into an agreement containing provisions substantially the same as those in this Section 13.11 13.11); (b) to prospective transferees or purchasers of any interest in the Credit Extensions (provided, however, that any prospective transferee or purchaser shall have entered into an agreement containing provisions substantially the same as those in this Section 13.11); (c) as required by law, regulation, subpoena, or other order; (d) to Agents' or a Lender's regulators or as otherwise required in connection with Agents' or a Lender's examination or audit; (e) as any Agent or a Lender considers appropriate in exercising remedies under the Loan Documents; and (f) to third-party service providers of any Agent or Lender so long as such service providers have executed a confidentiality agreement with terms no less restrictive than those contained herein. Confidential

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Information does not include information that is: (i) in the public domain or in any Agent's or Lender's possession when disclosed to any Agent or Lender, or becomes part of the public domain after disclosure to any Agent or Lender (in each case, through no fault of any Agent or Lender); (ii) disclosed to any Agent or Lender by a third party if such Agent or Lender does not

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know that the third party is prohibited from disclosing the information; or (iii) that any Agent or Lender develops independently.

**13.12 Right of Set Off.** Borrower hereby grants to Lender, a right of set off as security for all Obligations, whether now existing or hereafter arising upon and against all deposits, credits, collateral and property, now or hereafter in the possession, custody, safekeeping or control of Lender or any entity under the control of Lender (including a Lender subsidiary) or in transit to any of them. At any time after the occurrence and during the continuance of an Event of Default, without demand or notice, Lender may set off the same or any part thereof and apply the same to any liability or obligation of Borrower even though unmatured and regardless of the adequacy of any other collateral securing the Obligations. ANY AND ALL RIGHTS TO REQUIRE LENDER TO EXERCISE ITS RIGHTS OR REMEDIES WITH RESPECT TO ANY OTHER COLLATERAL WHICH SECURES THE OBLIGATIONS, PRIOR TO EXERCISING ITS RIGHT OF SETOFF WITH RESPECT TO SUCH DEPOSITS, CREDITS OR OTHER PROPERTY OF BORROWER ARE HEREBY KNOWINGLY, VOLUNTARILY AND IRREVOCABLY WAIVED.

**13.13 Electronic Execution of Documents.** The words “execution,” “signed,” “signature” and words of like import in any Loan Document 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 and enforceability as a manually executed signature or the use of a paper-based recordkeeping systems, as the case may be, to the extent and as provided for in any applicable law, including, without limitation, any state law based on the Uniform Electronic Transactions Act.

**13.14 Captions.** The headings used in this Agreement are for convenience only and shall not affect the interpretation of this Agreement.

**13.15 Construction of Agreement.** The parties mutually acknowledge that they and their attorneys have participated in the preparation and negotiation of this Agreement. In cases of uncertainty this Agreement shall be construed without regard to which of the parties caused the uncertainty to exist.

**13.16 Relationship.** The relationship of the parties to this Agreement is determined solely by the provisions of this Agreement. The parties do not intend to create any agency, partnership, joint venture, trust, fiduciary or other relationship with duties or incidents different from those of parties to an arm's-length contract.

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**13.17 Third Parties.** Nothing in this Agreement, whether express or implied, is intended to: (a) confer any benefits, rights or remedies under or by reason of this Agreement on any Person other than the express parties to it and their respective permitted successors and assigns; (b) relieve or discharge the obligation or liability of any Person not an express party to this Agreement; or (c) give any Person not an express party to this Agreement any right of subrogation or action against any party to this Agreement.

**13.18 Patriot Act/Freedom Act.** Lender hereby notifies Borrower and its Subsidiaries that pursuant to the requirements of the USA PATRIOT Act and USA FREEDOM Act, it is required to obtain, verify and record information that identifies Borrower and its Subsidiaries,

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which information includes the name and address of Borrower and its Subsidiaries and other information that will allow Lender to identify Borrower and its Subsidiaries in accordance with the USA PATRIOT Act and the USA FREEDOM Act.

**13.19 Pro Forma Calculations.** (a) All *pro forma* calculations permitted or required to be made by Borrower or any Subsidiary pursuant to this Agreement shall include only those adjustments that would be required on the face of financial statements under Regulation S-X under the Securities Act of 1933, as amended, together with those adjustments that (i) have been certified by a Responsible Officer of Borrower as having been prepared in good faith based upon reasonable assumptions and (ii) are based on reasonably detailed written assumptions reasonably acceptable to the Collateral Agent and (b) notwithstanding anything to the contrary herein, for purposes of calculating Consolidated EBITDA and Recurring Revenue, (i) the Consolidated EBITDA and/or Recurring Revenue of any Acquired Entity acquired by Borrower or any Subsidiary pursuant to a Permitted Acquisition during such period shall be included on a *pro forma* basis for such period (assuming the consummation of such acquisition and the incurrence or assumption of any Indebtedness in connection therewith occurred as of the first day of such period), (ii) the Consolidated EBITDA and/or Recurring Revenue of any Person or line of business sold or otherwise disposed of by Borrower or any Subsidiary during such period shall be excluded for such period (assuming the consummation of such sale or other disposition and the repayment of any Indebtedness in connection therewith occurred as of the first day of such period) and (iii) Consolidated EBITDA and Recurring Revenue for any period shall be calculated as to exclude (without duplication) the effect of any purchase accounting adjustments.

## SECTION 14. DEFINITIONS

**14.1 Definitions.** Accounting terms not defined in this Agreement shall be construed following GAAP. Calculations and determinations must be made following GAAP, except with respect to unaudited financial statements and projections (i) for non-compliance with FAS 123R and (ii) for the absence of footnotes and subject to year-end audit adjustments, provided that if at any time any change in GAAP would affect the computation of any financial ratio or covenant requirement set forth in any of the Loan Documents, and either Borrower or Administrative Agent (at the direction of the Required Lenders) shall so request, Borrower and Administrative

Agent (at the direction of the Required Lenders) shall negotiate in good faith to amend such ratio or covenant requirement to preserve the original intent thereof in light of such change in GAAP; provided, further, that until so amended, such ratio or covenant requirement shall continue to be computed in accordance with GAAP prior to such change therein; provided, further, that any obligations of a Person under a lease (whether existing now or entered into in the future) that is not (or would not be) a capital lease obligation under GAAP as in effect on the Effective Date shall not be treated as a capital lease obligation solely as a result of the adoption of changes in GAAP. Capitalized terms not otherwise defined in this Agreement shall have the meanings set forth in this Section 14. All other terms contained in this Agreement, unless otherwise indicated, shall have the meaning provided by the Code to the extent such terms are defined therein. As used in the Loan Documents, the word “shall” is mandatory, the word “may” is permissive, the word “or” is not exclusive, the words “includes” and “including” are not limiting, the singular includes the plural, and numbers denoting amounts that are set off in brackets are negative. As used in this Agreement, the following capitalized terms have the following meanings:

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“**Account**” means any “account” as defined in the Code with such additions to such term as may hereafter be made, and includes, without limitation, all accounts receivable and other sums owing to Borrower.

“**Account Debtor**” means any “account debtor” as defined in the Code with such additions to such term as may hereafter be made.

“**ACH Debit Consent**” means Borrower’s authorization to allow Collateral Agent to debit Borrower’s Account to satisfy the Obligations in substantially the form attached hereto as Exhibit D.

“**Acquisition**” means any transaction or series of related transactions involving any consolidation or merger of Parent or the issuance or transfer of Parent’s voting securities where either (A) Parent is not the surviving entity (other than a merger or consolidation effected exclusively to change Parent’s domicile or type of entity), or (B) the stockholders of Parent immediately prior to such transaction or series of related transactions do not hold at least 50% of the voting securities immediately after such transaction or series of related transactions.

“**Adjusted Cash Flow**” ~~means as of any date of measurement, Borrower’s adjusted cash flow from operations (which, for the avoidance of doubt, excludes the impact of stock-based compensation under Borrower’s employee stock purchase plan and capital expenditures), calculated in the same manner as set forth in Borrower’s quarterly earnings press release, dated June 4, 2020, for its fiscal quarter ended April 30, 2020~~

**“Adjusted Term SOFR”** means for purposes of any calculation, the rate per annum equal to the greater of (a) 0.00% ~~0.002.50%~~ and (b) ~~the sum of (i) Term SOFR for such calculation plus (ii) the Term SOFR Adjustment.~~

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**“Administrative Agent”** is defined in the preamble.

**“Administrative Questionnaire”** means an Administrative Questionnaire in the form of Exhibit G, or such other form as may be supplied from time to time by Administrative Agent.

**“Affiliate”** means, with respect to any Person, each other Person that owns 10% or more of or controls directly or indirectly the Person, any Person that controls or is controlled by or is under common control with the Person, and each of that Person’s senior executive officers, directors, partners and, for any Person that is a limited liability company, that Person’s managers and members.

**“Agent Expenses”** means all reasonable and documented audit fees and expenses, out-of-pocket costs, and expenses (including reasonable and documented out-of-pocket attorneys’ fees and expenses), and reasonable and documented out-of-pocket fees and expenses of accountants, advisors and consultants incurred by Administrative Agent or Collateral Agent (including reasonable and documented out-of-pocket attorneys’ fees and expenses) for preparing, amending, negotiating, administering, defending and enforcing the Loan Documents (including, without limitation, those incurred in connection with appeals or Insolvency Proceedings) or otherwise incurred with respect to Borrower.

**“Agent Indemnitee”** and **“Agent Indemnitees”** are defined in Section 13.2(b).

**“Agents”** mean, collectively, Administrative Agent and Collateral Agent.

**“Agreement”** is defined in the preamble.

**“Alternate Base Rate”** means, for any day, a rate *per annum* equal to the greatest of (a) the Prime Rate in effect on such day, (b) the Federal Funds Effective Rate in effect on such

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day plus ½ of 1.00% and (c) Adjusted Term SOFR applicable for an Interest Period of three months commencing on such day (or if such day is not a Business Day, the immediately preceding Business Day) plus 1.00%. If Administrative Agent shall have determined (which determination shall be conclusive absent manifest error) that it is unable to ascertain the Federal Funds Effective Rate or Adjusted Term SOFR, as the case may be, for any reason, the Alternate Base Rate shall be determined without regard to clause (b) or (c), as applicable, of the preceding sentence until the circumstances giving rise to such inability no longer exist. Any change in the Alternate Base Rate due to a change in the Prime Rate, the Federal Funds Effective Rate or Adjusted Term SOFR shall be effective as of the opening of business on the effective day of such change in the Prime Rate, the Federal Funds Effective Rate or Adjusted Term SOFR, as the case may be.

**“Amendment Fee”** means Five Million Dollars (\$5,000,000).

**“Amendment Fee PIK Interest Rate”** means nine and one-half percent (9.5%) per annum.

**“Annual Audited Financial Statements”** is defined in Section 5.2(c).

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**“Annualized Recurring Revenue”** means, for any given calendar quarter, the amount of Recurring Revenue the Loan Parties receive during such quarter multiplied by 4, **less** the annual contract value of Churned Customer Contracts from the beginning of such quarter until the financial reporting date, **plus** the annual contract value of existing customer contract increases from the beginning of such quarter until the financial reporting date.

**“Approved Budget”** is defined in Section 5.2(e).

**“Assignment and Acceptance”** means an assignment and acceptance entered into by a Lender and a permitted assignee, in the form of Exhibit E or such other form as shall be approved by Administrative Agent.

**“Available Tenor”** means, as of any date of determination and with respect to the then-current Benchmark, as applicable, (a) if such Benchmark is a term rate, any tenor for such Benchmark (or component thereof) that is or may be used for determining the length of an interest period pursuant to this Agreement or (b) otherwise, any payment period for interest calculated with reference to such Benchmark (or component thereof) that is or may be used for determining any frequency of making payments of interest calculated with reference to such Benchmark pursuant to this Agreement, in each case, as of such date and not including, for the avoidance of doubt, any tenor for such Benchmark that is then-removed from the definition of “Interest Period” pursuant to Section 1.8(b).

**“Bankruptcy Code”** means Title 11 of the United States Code, as amended, or any similar federal or state law for the relief of debtors.

**“Bankruptcy Law”** means the Bankruptcy Code or any other foreign, federal or state bankruptcy, insolvency, receivership, creditors’ rights or similar law.

**“Benchmark”** means, initially, the Term SOFR Reference Rate; provided that if a Benchmark Transition Event has occurred with respect to the Term SOFR Reference Rate or the then-current Benchmark, then “Benchmark” means the applicable Benchmark Replacement to

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the extent that such Benchmark Replacement has replaced such prior benchmark rate pursuant to Section 1.8(b).

**“Benchmark Floor”** means the benchmark rate floor provided in this Agreement initially (as of the execution of this Agreement, the modification, amendment or renewal of this Agreement or otherwise) with respect to Term SOFR. As of the Restatement Date the Benchmark Floor is equal to 0.00%.

**“Benchmark Replacement”** means the sum of: (a) the alternate benchmark rate that has been selected by Administrative Agent (at the direction of Collateral Agent) and Borrower giving due consideration to (i) any selection or recommendation of a replacement rate or the mechanism for determining such a rate by the Relevant Governmental Body or (ii) any evolving or then-prevailing market convention for determining a rate of interest as a replacement to the then-current Benchmark for Dollar-denominated syndicated credit facilities and (b) the Benchmark

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Replacement Adjustment; provided that, if the Benchmark Replacement as so determined would be less than the Benchmark Floor on any date of determination, the Benchmark Replacement will be deemed to be the Benchmark Floor for the purposes of this Agreement and the other Loan Documents.



**“Benchmark Replacement Adjustment”** means, with respect to any replacement of the then-current Benchmark with an Unadjusted Benchmark Replacement for each applicable Interest Period, the spread adjustment, or method for calculating or determining such spread adjustment (which may be a positive or a negative value or zero), that has been selected by Administrative Agent (at the direction of Collateral Agent) and Borrower giving due consideration to (a) any selection or recommendation of a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of such Benchmark with the applicable Unadjusted Benchmark Replacement by the Relevant Governmental Body or (b) any evolving or then-prevailing market convention for determining a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of such Benchmark with the applicable Unadjusted Benchmark Replacement for U.S. dollar-denominated syndicated credit facilities at such time.

**“Benchmark Replacement Conforming Changes”** means, with respect to any Benchmark Replacement, any technical, administrative or operational changes (including changes to the definition of “Term Loan Alternate Base Rate”, the definition of “Interest Period”, the definition of “Business Day”, timing and frequency of determining rates and making payments of interest and other administrative matters) that Administrative Agent (at the direction of Collateral Agent) decides in its reasonable discretion and in consultation with Borrower may be appropriate to reflect the adoption and implementation of such Benchmark Replacement and to permit the administration thereof by Administrative Agent in a manner substantially consistent with market practice (or, if Administrative Agent decides that adoption of any portion of such market practice is not administratively feasible or if Administrative Agent determines that no market practice for the administration of the Benchmark Replacement exists, in such other manner of administration as Administrative Agent (at the direction of Collateral Agent) decides is reasonably necessary in connection with the administration of this Agreement and the other Loan Documents).

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**“Benchmark Replacement Date”** means the earlier to occur of the following events with respect to the then-current Benchmark: (a) in the case of clause (a) or (b) of the definition of “Benchmark Transition Event,” the later of (i) the date of the public statement or publication of information referenced therein and (ii) the date on which the administrator of such Benchmark permanently or indefinitely ceases to provide such Benchmark; or (b) in the case of clause (c) of the definition of “Benchmark Transition Event”, the date of the public statement or publication of information referenced therein.

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

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

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

(c) a public statement or publication of information by or on behalf of the regulatory supervisor for the administrator of such Benchmark (or the published component used in the calculation thereof or the regulatory supervisor for the administrator of such Benchmark or such component thereof) announcing that all Available Tenors of such Benchmark are no longer representative.

**“Benchmark Transition Start Date”** means in the case of a Benchmark Transition Event, the earlier of (a) the applicable Benchmark Replacement Date and (b) if such Benchmark Transition Event is a public statement or publication of information of a prospective event, the 90th day prior to the expected date of such event as of such public statement or publication of information (or if the expected date of such prospective event is fewer than 90 days after such statement or publication, the date of such statement or publication).

**“Benchmark Unavailability Period”** means, if a Benchmark Transition Event and its related Benchmark Replacement Date have occurred with respect to the then-current Benchmark and solely to the extent that such Benchmark has not been replaced with a Benchmark Replacement in accordance with Section 1.8(b), the period (a) beginning at the time that such Benchmark Replacement Date has occurred and (b) ending at the time that a Benchmark Replacement has replaced the then-current Benchmark for all purposes hereunder pursuant to Section 1.8(b).

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Replacement has replaced the then-current Benchmark for all purposes hereunder pursuant to Section 1.8(b).

**“Board”** means Parent’s board of directors.

**“Borrower”** is defined in the preamble.

**“Borrower’s Books”** mean all Borrower and each of its Subsidiary’s books and records including ledgers, federal and state Tax Returns, records regarding their assets or liabilities, the Collateral, business operations or financial condition, and all computer programs or storage or any equipment containing such information.

**“Borrowing Resolutions”** mean, with respect to any Person, those resolutions adopted by such Person’s board of directors and delivered by such Person to Administrative Agent approving the Loan Documents to which such Person is a party and the transactions contemplated thereby, together with a certificate executed by its Secretary or other authorized officer on behalf of such Person certifying that (a) such Person has the authority to execute, deliver, and perform its obligations under each of the Loan Documents to which it is a party, (b) that attached as an exhibit to such certificate is a true, correct, and complete copy of the resolutions then in full force and effect authorizing and ratifying the execution, delivery, and performance by such Person of the Loan Documents to which it is a party, (c) the name(s) of the Person(s) authorized to execute the Loan Documents on behalf of such Person, together with a sample of the true signature(s) of such Person(s), and (d) that Agents and Lenders may conclusively rely on such certificate unless and until such Person shall have delivered to them a further certificate canceling or amending such prior certificate.

**“Business Day”** means any day other than (a) a Saturday, Sunday or day on which banks in New York City are authorized or required by law to close and (b) with respect to any calculation of Term SOFR, a day on which the Securities Industry and Financial Markets Association recommends that the fixed income departments of its members be closed for the entire day for purposes of trading in United States government securities.

**“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.

**“Cash Plus Availability”** means Borrower’s and any Loan Party’s Unrestricted Cash subject to a Control Agreement plus (ii) amounts available for borrowing under the Term Loan.

**“Cash” or “Cash Equivalents”** means (a) cash, (b) marketable direct obligations issued or unconditionally guaranteed by the United States or any agency or any State thereof having maturities of not more than one (1) year from the date of acquisition, (c) commercial paper maturing no more than one (1) year after its creation and having the highest rating from either Standard & Poor’s Ratings Group or Moody’s Investors Service, Inc., (d) certificate of deposit,

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time deposits, Eurodollar time deposits or overnight bank deposits having maturities of nine months or less from the date of acquisition issued by any commercial bank organized under the

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laws of the United States or any state thereof having combined capital and surplus of not less than \$250,000,000; (e) money market mutual or similar funds that invest exclusively in assets satisfying the requirements of (a) through (d) of this definitions; or (f) equivalents to the foregoing investments in any foreign jurisdiction in which Borrower or its Subsidiaries conduct business.

“**CFC**” means a “controlled foreign corporation” within the meaning of Section 957(a) of the IRC.

“**Churned Customer Contracts**” mean each of Borrower’s customer’s contracts that (a) Borrower has been advised or otherwise knows will not be renewed at the end of the current term of such contract, or (b) if such customer’s contract with Borrower does not automatically renew at the end of its then current term, Borrower has not been notified by such customer that it is renewing or extending its contract.

“**Claiming Loan Party**” is defined in [Section 8.10\(b\)](#).

“**Closing Fee**” means Seven Million Dollars (\$7,000,000).

“**Code**” means the Uniform Commercial Code, as the same may, from time to time, be enacted and in effect in the State of New York; provided, that, to the extent that the Code is used to define any term herein or in any Loan Document and such term is defined differently in different Articles or Divisions of the Code, the definition of such term contained in Article or Division 9 shall govern; provided further, that in the event that, by reason of mandatory provisions of law, any or all of the attachment, perfection, or priority of, or remedies with respect to, Collateral Agent’s Lien on any Collateral is governed by the Uniform Commercial Code in effect in a jurisdiction other than the State of New York, the term “**Code**” means the Uniform Commercial Code as enacted and in effect in such other jurisdiction solely for purposes of the provisions thereof relating to such attachment, perfection, priority, or remedies and for purposes of definitions relating to such provisions.

“**Collateral**” means any and all properties, rights, title, interest or assets of Borrower described on [Exhibit A](#).

“**Collateral Agent**” is defined in the preamble.

“**Commitment Fee**” means One Million Dollars (\$1,000,000).

“**Commodity Account**” means any “commodity account” as defined in the Code with such additions to such term as may hereafter be made.

“**Compliance Certificate**” means that certain certificate in the form attached hereto as Exhibit B.

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“**Confidential Information**” means, subject to the exclusions provided in Section 13.11, information that is generally not available to the public and either (i) is marked as confidential at the time disclosed, or (ii) should under the circumstances be reasonably expected to be confidential.

“**Consolidated EBITDA**” means, for any period, Consolidated Net Income for such period plus (a) without duplication and to the extent deducted in determining such Consolidated

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Net Income, the sum of (i) consolidated interest expense for such period, (ii) consolidated income tax expense for such period, (iii) all amounts attributable to depreciation and amortization for such period and (iv) any non-cash charges (other than the write-down of current assets) for such period, and minus (b) without duplication (i) all cash payments made during such period on account of reserves, restructuring charges and other non-cash charges added to Consolidated Net Income pursuant to clause (a)(iv) above in a previous period, (ii) any net after tax gain or income from the early extinguishment of Indebtedness, (iii) to the extent included in determining such Consolidated Net Income, any extraordinary gains and all non-cash items of income for such period, all determined on a consolidated basis in accordance with GAAP, (iv) to the extent included in determining Consolidated Net Income, aggregate capitalized software expenditures and (v) to the extent included in determining Consolidated Net Income, aggregate capitalized contract acquisition costs.

“**Consolidated Net Income**” means, for any period, the net income or loss of Borrower and the Subsidiaries for such period determined on a consolidated basis in accordance with GAAP; provided that there shall be excluded (a) the income of

any Subsidiary to the extent that the declaration or payment of dividends or similar distributions by the Subsidiary of that income is not at the time permitted by operation of the terms of its charter or any agreement, instrument, judgment, decree, statute, rule or governmental regulation applicable to such Subsidiary, (b) subject to Section 13.19, the income or loss of any Person accrued prior to the date it becomes a Subsidiary or is merged into or consolidated with Borrower or any Subsidiary or the date that such Person's assets are acquired by Borrower or any Subsidiary, (c) the income of any Person in which any other Person (other than Borrower or a Wholly Owned Subsidiary or any director holding qualifying shares in accordance with applicable law) has a joint interest, except to the extent of the amount of dividends or other distributions actually paid to Borrower or a Wholly Owned Subsidiary by such Person during such period, and (d) any gains attributable to sales of assets out of the ordinary course of business.

**“Contingent Obligation”** means, for any Person, any direct or indirect liability, contingent or not, of that Person for (a) any Indebtedness, lease, dividend, letter of credit or other obligation of another Person such as an obligation, in each case, directly or indirectly guaranteed, endorsed, co-made, discounted or sold with recourse by that Person, or for which that Person is directly or indirectly liable; (b) any obligations for undrawn letters of credit for the account of that Person; and (c) all obligations from any Hedging Agreement, or other agreement or arrangement designated to protect a Person against fluctuation in interest rates, currency

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exchange rates or commodity prices; but “Contingent Obligation” does not include endorsements in the ordinary course of business. The amount of a Contingent Obligation is the stated or determined amount of the primary obligation for which the Contingent Obligation is made or, if not determinable, the maximum reasonably anticipated liability for it determined by the Person in good faith; but the amount may not exceed the maximum of the obligations under any guarantee or other support arrangement; provided that, with respect to clause (c) above, such amount shall be the net amount of such obligations.

**“Contributing Loan Party”** is defined in Section 8.10(b).

**“Control Agreement”** means any control agreement in form and substance satisfactory to Collateral Agent which is entered into among a Loan Party, Collateral Agent and the

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depository institution or intermediary at which such Loan Party maintains a Pledged Account, pursuant to which Collateral Agent obtains control (within the meaning of the Code) over such Pledged Account. For the purposes of any Pledged Account maintained outside of the United States, a debenture, in form and substance satisfactory to Collateral Agent shall be used in place of and shall constitute a “Control Agreement.” If an agreement of a different character than a Control Agreement or debenture is needed to perfect or charge a Pledged Account located outside of the United States, such agreement shall constitute a “Control Agreement.”

“Converting Lenders” shall have the meaning assigned to such term in the Second Amendment.

“Copyrights” mean any and all copyright rights, copyright applications, copyright registrations and like protections in each work or authorship and derivative work thereof, whether published or unpublished and whether or not the same also constitutes a trade secret.

“Credit Extension” means any advance of funds under the Term Loan, including (a) the Initial Term Loans, the Second Amendment Term Loans and each other term loan made available by Lenders to Borrower pursuant to Section 1.2 of this Agreement and (b) any interest added to any Credit Extension as provided in Section 1.3.

~~“, including any Debt Ratio” means Total Debt divided by Annualized Recurring Revenue PIK Interest.~~

“Default Rate” is defined in Section 1.3(c).

“Deposit Account” means any “deposit account” as defined in the Code with such additions to such term as may hereafter be made.

“Disposition” means with respect to any property, any sale, lease, sublease, sale and leaseback, assignment, participation, pledge, grant of security interest, conveyance, transfer, license or other disposition thereof. The terms “Dispose” and “Disposed of” shall have correlative meanings.

“Disqualified Stock” means any Equity Interest that, by its terms (or by the terms of any security into which it is convertible or for which it is exchangeable), or upon the happening of any event, (a) matures (excluding any maturity as the result of an optional redemption by the issuer thereof) or is mandatorily redeemable, pursuant to a sinking fund obligation or otherwise, or is redeemable at the option of the holder thereof, in whole or in part, or requires the payment of any cash dividend or any other scheduled payment constituting a return of capital, in each case

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at any time on or prior to the date that is one year and one day following the last possible Term Loan Maturity Date; or (b) is convertible into or exchangeable (unless at the sole option of the issuer thereof) for (i) debt securities or (ii) any Equity Interest referred to in clause (a) above, in each case at any time on or prior to the date that is one year and one day following the Term Loan Maturity Date.

**“Dollars,” “dollars”** or use of the sign **“\$”** means only lawful money of the United States and not any other currency, regardless of whether that currency uses the **“\$”** sign to denote its currency or may be readily converted into lawful money of the United States.

**“Domestic Subsidiary”** means any Subsidiary of Borrower incorporated or organized under the laws of the United States, or any state or other political subdivision thereof, provided,

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however Domestic Subsidiary shall not include any FSHCO or any Subsidiary owned by a Foreign Subsidiary.

**“Earn-out Obligations”** means obligations consisting of earn-outs related to the enhanced performance of a Person acquired in connection with a Permitted Acquisition and that are not disguised installment payments of the initial purchase price.

**“Effective Date”** means December 5, 2017.

**“Equipment”** means all “equipment” as defined in the Code 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”** mean shares of capital stock, partnership interests, membership interests in a limited liability company, beneficial interests in a trust or other equity interests in any Person, and any option, warrant, convertible debt or other right entitling the holder thereof to purchase or otherwise acquire any such equity interest, provided that in the case of any convertible debt, such convertible debt shall be required to be Subordinated Debt.

**“ERISA”** means the Employee Retirement Income Security Act of 1974, and its regulations.

**“Erroneous Payment”** is defined in Section 12.3(f)(i).

**“Erroneous Payment Subrogation Rights”** is defined in Section 12.3(f)(iv).

**“Event of Default”** is defined in Section 7.

**“Exchange Act”** means the Securities Exchange Act of 1934, as amended.



**“Excluded Taxes”** means any of the following Taxes imposed on or with respect to a Recipient or required to be withheld or deducted from a payment to a Recipient, (a) income or franchise Taxes imposed by the United States of America, or 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,

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(b) any branch profits Taxes imposed by the United States of America, or 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, and (c) in the case of a Foreign Lender, U.S. federal withholding Taxes 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 1.11(f), except in each case 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 Borrower with respect to such withholding Tax pursuant to Section 1.11 and (d) U.S. federal withholding Taxes imposed under FATCA.

**“FATCA Exiting Lenders” shall have the meaning assigned to such term in the Second Amendment.**

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**“FATCA” shall mean** Sections 1471 through 1474 of the IRC, as of the date of this Agreement (or any amended or successor version that is substantively comparable and not materially more onerous to comply with), any current or future regulations promulgated thereunder or official interpretations thereof, any agreements entered into pursuant to Section 1471(b)(1) of the IRC, and any intergovernmental agreement entered into in connection with the implementation of such

Sections of the IRC and any fiscal or regulatory legislation, rules or practices adopted pursuant to such intergovernmental agreement.

“**FCPA**” is defined in Section 4.14.

“**Federal Funds Effective Rate**” means, for any day, the weighted average of the rates on overnight Federal funds transactions with members of the Federal Reserve System, 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 for such transactions received by Administrative Agent from three Federal funds brokers of recognized standing selected by it.

“**Foreign Lender**” means a Lender that is not a U.S. Person.

“**Foreign Subsidiary**” means any Subsidiary of Borrower not incorporated or organized under the laws of the United States, or any state or other political subdivision thereof.

“**Fourth Amendment Effective Date**” means August 7, 2020.

“**FSHCO**” means any Subsidiary substantially all of the assets of which consist of Equity Interests in (or of such Equity Interests and debt obligations owed or treated as owed) CFCs.

“**Funding Date**” means any date on which a Credit Extension is made to or for the account of Borrower which shall be a Business Day.

“**GAAP**” means generally accepted accounting principles for the United States set forth in the opinions and pronouncements of the Accounting Principles Board of the American Institute of Certified Public Accountants and statements and pronouncements of the Financial

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Accounting Standards Board or in such other statements by such other Person as may be approved by a significant segment of the accounting profession, which are applicable to the circumstances as of the date of determination.

“**General Intangibles**” means all “general intangibles” as defined in the Code in effect on the date hereof with such additions to such term as may hereafter be made, and includes without limitation, all Intellectual Property, claims, income and other tax refunds, security and other deposits, payment intangibles, contract rights, options to purchase or sell real or personal property, rights in all litigation presently or hereafter pending (whether in contract, tort or otherwise), insurance policies (including without limitation key man, property damage, and business interruption insurance), payments of insurance and rights to payment of any kind.

“**Governmental Approval**” means 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.

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**“Governmental Authority”** means any nation or government, any state or other political subdivision thereof, any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative functions of or pertaining to government, any securities exchange and any self-regulatory organization.

**“Hedging Agreement”** means any interest rate protection agreement, foreign currency exchange agreement, commodity price protection agreement or other interest or currency exchange rate or commodity price hedging arrangement.

**“Immaterial Foreign Subsidiary”** means any Subsidiary that is not a Domestic Subsidiary whose net asset value (excluding any Operating Expense Deposits) Deposits and excluding any Indebtedness is less than \$7,000,000, where such valuation is calculated using the higher of (i) cost and (ii) book value, provided however, that once a Foreign Subsidiary no longer qualifies as an Immaterial Foreign Subsidiary, it can never again become an Immaterial Foreign Subsidiary.

**“Indebtedness”** of any Person means, without duplication, (a) all obligations of such Person for borrowed money (including interest ~~whether~~ charged at the Term Loan Interest Rate, ~~the Term Loan and any~~ PIK Interest ~~Rate or otherwise~~ otherwise) or with respect to deposits or advances of any kind, (b) all obligations of such Person evidenced by bonds, debentures, notes or similar instruments, (c) all obligations of such Person upon which interest charges are customarily paid, (d) all obligations of such Person under conditional sale or other title retention agreements relating to property or assets purchased by such Person, including any earn-out obligations, (e) all obligations of such Person issued or assumed as the deferred purchase price of property or services (excluding trade accounts payable and accrued obligations incurred in the ordinary course of business and not more than 3 days past due), (f) all Indebtedness of others secured by (or for which the holder of such Indebtedness has an existing right, contingent or otherwise, to be

secured by) any Lien on property owned or acquired by such Person, whether or not the obligations secured thereby have been assumed, (g) all Contingent Obligations of such Person including indebtedness of others, (h) all Capital Lease Obligations and Synthetic Lease Obligations of such Person, (i) all obligations of such Person as an account party in respect of letters of credit, (j) all obligations of such Person in respect of bankers' acceptances, (k) obligations in respect of Disqualified Stock, and (l) all obligations of such Person in respect of any exchange traded or over the counter derivative transaction, including any Hedging Agreement, in each case, whether entered into for hedging or speculative purposes or otherwise. The amount of any Indebtedness of any Person in respect of a Hedging Agreement shall be the amount determined in respect thereof as of the end of the then most recently ended fiscal quarter of such Person, based on the assumption that such Hedging Agreement had terminated at the end of such fiscal quarter. In making such determination, if any agreement relating to such Hedging Agreement provides for the netting of amounts payable by and to such Person thereunder or if any such agreement provides for the simultaneous payment of amounts by and to such Person, then in each such case, the amount of such obligation shall be the net amount so determined, in each case to the extent that such agreement is legally enforceable in Insolvency Proceedings against the applicable counterparty thereof. The Indebtedness of any Person shall include the Indebtedness of any partnership or joint venture in which such Person is a general partner or joint venturer.

**"Indemnatee"** is defined in [Section 13.2\(a\)](#).

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

**"Initial Public Offering"** means the initial underwritten sale or issuance of Borrower's capital stock pursuant to a registration statement filed under the Securities Act of 1933, as amended.

**"Initial Term Loans"** is defined in [Section 1.2\(a\)](#).

**"Insolvency Proceeding"** means any proceeding by or against any Person under the United States Bankruptcy Code, or any other bankruptcy or insolvency law, including assignments for the benefit of creditors, compositions, extensions generally with its creditors, or proceedings seeking reorganization, arrangement, or other relief.

**"Insolvent"** means, with respect to any Person as of any date of determination, that (a) at fair valuations, the sum of such Person's debts (including contingent liabilities) is greater than all of such Person's assets, (b) such Person is engaged or about to engage in a business or transaction for which the remaining assets of such Person are unreasonably small in relation to the business or transaction or for which the property remaining with such Person is an unreasonably small capital, and (c) such Person has incurred, or reasonably believes that it will incur, debts beyond its ability to pay such debts as they generally become due (whether at maturity or otherwise), or (d) such Person is not "solvent" or is "insolvent", as applicable within

the meaning given those terms and similar terms under applicable laws relating to fraudulent transfers and conveyances.

**“Intellectual Property”** means, with regard to any Person, all of such Person's right, title, and interest in and to the following:

- (a) its Copyrights, Trademarks and Patents;
- (b) any and all trade secrets and trade secret rights, including, without limitation, any rights to unpatented inventions, know-how, operating manuals;
- (c) any and all source code;
- (d) any and all design rights which may be available to it;
- (e) any and all claims for damages by way of past, present and future infringement of any of the foregoing, with the right, but not the obligation, to sue for and collect such damages for said use or infringement of the Intellectual Property rights identified above; and
- (f) all amendments, renewals and extensions of any of the Copyrights, Trademarks or Patents.

**“Intellectual Property Licenses”** means any licenses or other similar rights in or with respect to Intellectual Property.

**“Interest Payment Date”** means the first Business Day of each month after the Effective Date.

**“Interest Period”** means, with respect to any SOFR Borrowing, the period commencing on the date of such Credit Extension and ending on the numerically corresponding day (or, if there is no numerically corresponding day, on the last day) in the calendar month that is three months thereafter; provided that (a) if any Interest Period would end on a day other than a Business Day, such Interest Period shall be extended to the next succeeding Business Day unless such next succeeding Business Day would fall in the next calendar month, in which case such Interest Period shall end on the next preceding Business Day, (b) 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 the calendar month at the end of such Interest Period and (c) no Interest Period for any Loan shall extend beyond the maturity date of such Loan. Interest shall accrue from the first day of an Interest Period to the last day of such Interest Period. For purposes hereof, the date of a Credit Extension initially shall be the date on which such Credit Extension is made and thereafter shall be the effective date of the most recent conversion of such Credit Extension.

**“Inventory”** means all “inventory” as defined in the Code in effect on the date hereof with such additions to such term as may hereafter be made, and includes without limitation all

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merchandise, raw materials, parts, supplies, packing and shipping materials, work in process and finished products, including without limitation such inventory as is temporarily out of Borrower’s custody or possession or in transit and including any returned goods and any documents of title representing any of the above.

**“Investment”** means (i) any direct or indirect purchase or other acquisition by Borrower or any of its Subsidiaries of, or of a beneficial interest in, any stocks, bonds, notes, debentures or other obligations or securities of any other Person; (ii) any direct or indirect redemption, retirement, purchase or other acquisition for value, by Borrower or any Subsidiary of Borrower from any Person, of any Equity Interests of such Person; (iii) any direct or indirect loan, advance (other than advances to employees for moving, entertainment and travel expenses, drawing accounts and similar expenditures in the ordinary course of business) or capital contributions by Borrower or any of its Subsidiaries to any other Person, including all indebtedness and accounts receivable from that other Person that are not current assets or did not arise from sales to that other Person in the ordinary course of business, (iv) all investments in any cryptocurrency or blockchain based investment and (v) all investments consisting of any exchange traded or over the counter derivative transaction, including any Hedging Agreement, whether entered into for hedging or speculative purposes or otherwise. The amount of any Investment of the type described in clauses (i), (ii) and (iii) shall be the original cost of such Investment plus the cost of all additions thereto, without any adjustments for increases or decreases in value, or write ups, write downs or write offs with respect to such Investment and after giving effect to any return of capital, repayment or dividends or distributions in respect thereof received in cash with respect to such Investment.

**“IP Security Agreement”** is that certain Amended and Restated Intellectual Property Security Agreement executed and delivered by Borrower and each Joining Party to Collateral

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Agent dated as of the Restatement Date, as such may be amended, restated, supplemented, amended and restated or otherwise modified from time to time.

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

“**Joinder**” means that certain Joinder in substantially the form attached as Exhibit E, hereto.

“**Joining Party**” means any Person signing a Joinder as a “Co-Borrower” (as defined in the Joinder) whereby such Person becomes bound to observe the requirements of this Agreement as provided in the Joinder.

“**Lender(s)**” mean (a) the Persons listed on Schedule 1.2 (other than any such Person that has ceased to be a party hereto) and (b) any Person that has become a party hereto as a Lender.

“**Lender Expenses**” are all reasonable audit fees and expenses, costs, and expenses (including reasonable attorneys’ fees and expenses) and reasonable fees and expenses of accountants, advisors and consultants incurred by a Lender or an Agent (including reasonable

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attorneys’ fees and expenses) for preparing, amending, negotiating, administering, defending and enforcing the Loan Documents and the Warrants (including, without limitation, those incurred in connection with appeals or Insolvency Proceedings) or otherwise incurred with respect to Borrower.

“**Lien**” means a claim, mortgage, deed of trust, levy, charge, pledge, security interest or other encumbrance of any kind, whether voluntarily incurred or arising by operation of law or otherwise against any property.

“**Loan**” means the Term Loan.

**“Loan Documents”** means, collectively, this Agreement, the Security Documents, the Omnibus Amendment and Restatement, the Successor Agency Agreement, the ACH Debit Consent, each Note, each Warrant and any other present or future agreement between Borrower and/or any Joining Party and/or for the benefit of Lenders and/or Agents, as all such may be amended, restated, supplemented, amended and restated or otherwise modified from time to time, *provided* that no Warrant will be treated as a Loan Document for purposes of Section 1.11.1.11.

**“Loan Parties”** mean Borrower, any Joining Party and any guarantor of such entities’ obligations under the Loan Documents.

**“Loan Party”** means any of the Loan Parties.

**“Material Adverse Change”** means any circumstance, occurrence, fact, condition (financial or otherwise) or change (including a change in applicable law, event, development or effect) that, individually or in the aggregate, has had, or is reasonably likely to have, in the opinion of Collateral Agent or the Required Lenders, acting reasonably, a Material Adverse Effect.

**“Material Adverse Effect”** means (i) a material adverse effect (or a series of adverse effects, none of which is material in and of itself but which, cumulatively, result in a material adverse effect) on the business, operations, affairs, performance, properties, revenues, assets, liabilities (including contingent liabilities), obligations, capitalization, results of operations (financial

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(financial or otherwise), cash flows or condition (financial or otherwise) of Borrower and its Subsidiaries, taken as a whole, (ii) any material impairment of any Loan Party’s ability to exercise its rights or perform any of its obligations under this Agreement or any of the Security Documents or (iii) any prejudice to, restriction on or rendering unenforceable or ineffective, any obligation under this Agreement or any of the Security Documents or any Lien over all or any material portion of the Collateral or any right intended or purported to be granted under or pursuant to any of the Loan Documents to or for the benefit of Agents or Lenders. The final determination as to whether a Material Adverse Effect has occurred will be made by either Collateral Agent or the Required Lenders acting reasonably.

**“Modification Fee”** means Two Million Dollars (\$2,000,000).

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“**Note**” means for a Term Loan, the Note attached in substantially the form attached hereto as Exhibit E.

“**Notice of Borrowing**” means a written notice given by Borrower to Administrative Agent in accordance with Section 2.4, substantially in the form of Exhibit C, with appropriate insertions.

“**Obligations**” are each Loan Party’s obligations to pay when due any debts, principal, interest, Origination Fee, Commitment Fee, Lender Expenses, ~~Prepayment Fee, if any,~~ Closing Fee, Agent Expenses, Modification Fee, Amendment Fee, the Second Amendment PIK Fee and other amounts such Person owes Lender now or later, whether under this Agreement, the Loan Documents or otherwise, and including interest accruing after Insolvency Proceedings begin, and debts, liabilities, or obligations of such Person assigned to Lender, and to perform each Loan Party’s duties under the Loan Documents (other than any such obligations arising under the Warrant).

“**OFAC**” is defined in Section 4.13.

“**Omnibus Amendment and Restatement**” means that certain Omnibus Amendment and Limited Waiver, dated as of the Restatement Date, by and among Parent, Domo Utah, the Lenders, Collateral Agent and Administrative Agent.

“**Operating Expense Deposits**” mean Cash provided by Parent to its Immaterial Foreign Subsidiaries to fund such Subsidiaries’ then currently due operating expenses, including payroll, payroll taxes and other employee wage and benefits payments.

“**Other Taxes**” means all present or future stamp, court or documentary, intangible, recording, filing or similar Taxes that arise from any payment made under, from the execution, delivery, performance, enforcement or registration of, from the receipt or perfection of a security interest under, or otherwise with respect to, any Loan Document.

“**Origination Fee**” means a payment in the amount of One Hundred Fifty Dollars (\$150,000) due from Borrower to Lenders to initiate Lenders’ due diligence process.

“**Participant Register**” is defined in Section 13.1(f).

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**“Patents”** means all patents, patent applications and like protections including without limitation improvements, divisions, continuations, renewals, reissues, extensions and continuations-in-part of the same.

**“Payment Recipient”** is defined in Section 12.3(f)(i).

**“Perfection Certificate”** is defined in Section 4.1(a).

**“Permitted Acquisition”** means: any merger or consolidation or acquisition of all or substantially all of the capital stock or property of another Person, (referred to herein as the **“Acquired Entity”**), including the creation and capitalization of a Subsidiary in connection with such acquisition, in which: (a) the Board has approved such acquisition, (b) the Person so

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acquired is in the same or a similar line of business as Parent or a business reasonably related thereto, (c) the acquisition is non-hostile, (d) Parent is the sole surviving legal entity or any acquired Subsidiary is directly or indirectly owned by Parent and such entity (other than an Immaterial Foreign Subsidiary) becomes a Loan Party (in accordance with Section 5.10 5.10) hereunder within five Business Days after the closing of such transaction (or such longer period of time as agreed to in writing by Collateral Agent), (e) both before and after giving effect to such transactions, the Loan Parties have at least Fifty Million Dollars (\$50,000,000) of Cash Plus Availability, (f) the total cost of all such mergers, consolidations or acquisitions in any given calendar year does not exceed (i) ~~Ten~~ Five Million Dollars (~~\$10,000,000~~ ~~10,000,000~~ 5,000,000) in Cash (including without limitation any convertible debt and Cash payments for Earn-Out Obligations); provided that any brokers fees and other legal fees and expenses in connection with such mergers, consolidations or acquisitions do not exceed One Million Dollars (\$1,000,000) in Cash in any calendar year), and (ii) Fifty Million Dollars (\$50,000,000) in Equity Interests (but excluding any convertible debt); and (g) no Event of Default shall have occurred and be continuing either before consummation of such merger, consolidation or acquisition or after giving effect to such merger, consolidation or acquisition.

**“Permitted Exclusive Licenses”** mean exclusive licenses of Intellectual Property as to territory only and as to discreet geographical areas outside of the United States which are granted in the ordinary course of Borrower's business provided that each such license is for value pursuant to arms-length terms and is for less than 24 months, including renewals.

**“Permitted Indebtedness”** means:

- (a) Indebtedness to Lenders under this Agreement and the other Loan Documents;
- (b) Indebtedness existing on the Restatement Date and shown on the Perfection Certificates;
- (c) Subordinated Debt;
- (d) unsecured Indebtedness to trade creditors and Indebtedness pursuant to credit cards, in each case, incurred in the ordinary course of business;
- (e) intracompany Indebtedness constituting a “Permitted Investment” under clause (b) of such term;

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- (f) Indebtedness incurred as a result of endorsing negotiable instruments received in the ordinary course of business;
- (g) Indebtedness secured by Liens permitted under clauses (a) and (c) of the definition of “Permitted Liens” hereunder;
- (h) Indebtedness secured by deposits to secure the performance of bids, trade contracts (other than for borrowed money), leases, statutory obligations, surety and appeal bonds, performance bonds and other obligations of a like nature incurred in the

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ordinary course of business not to exceed an aggregate of \$500,000 at any time outstanding;

- (i) Indebtedness incurred pursuant to Hedging Agreements;
- (j) obligations under software lease arrangements that are required to be capitalized under GAAP;
- (k) guaranties of Permitted Indebtedness of any Loan Party;
- (l) Earn-out Obligations;
- (m) reimbursement obligations in connection with letters of credit that are secured by Cash and issued on behalf of Borrower or a Subsidiary thereof in an amount not to exceed an aggregate of \$4,300,000 at any time outstanding;
- (n) Indebtedness incurred in connection with the financing of insurance premiums on an unsecured basis or secured solely by the insurance policies financed and proceeds thereof and not to any other property or assets;
- (o) Permitted Receivables Financing; and

(p) extensions, refinancings, modifications, amendments and restatements of any items of Permitted Indebtedness (a) through (n) above, provided that the principal amount thereof is not increased or the terms thereof are not modified to impose more burdensome terms upon Borrower or its Subsidiary, as the case may be.

**“Permitted Investments”** mean:

- (a) Investments (including, without limitation, in Subsidiaries) existing on the Restatement Date and shown on the Perfection Certificates;
- (b) Investments (i) in any Loan Party, (ii) by any Loan Party in any non-Loan Party not to exceed \$500,000 in the aggregate per fiscal year, and (iii) by any non-Loan Party to any other non-Loan Party;
- (c) Investments consisting of Cash or Cash Equivalents;
- (d) extensions of trade credit in the ordinary course of business;
- (e) Investments in the ordinary course of business consisting of endorsements of negotiable instruments for collection or deposit;

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- (f) Investments received in settlement of amounts due to Borrower or any Subsidiary effected in the ordinary course of business or owing to Borrower or any Subsidiary as a result of Insolvency Proceedings involving an Account Debtor;
- (g) Investments consisting of deposit and securities accounts in which Agent has a perfected security interest to the extent required under Section 5.7.5.7;

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- (h) Investments accepted in connection with Dispositions permitted by Section 6.1, 6.1;
- (i) Permitted Acquisitions, including Investments consisting of the creation of a Subsidiary for the purpose of consummating a merger transaction permitted by Section 6.4 of this Agreement, which is otherwise a Permitted Investment;
- (j) Operating Expense Deposits; and Permitted Strategic Investments.

**“Permitted Liens” mean:**

- (a) Liens existing on the Restatement Date and shown on the Perfection Certificates or arising under this Agreement and the other Loan Documents;
- (b) Liens for unpaid Taxes, fees, assessments or other government charges or levies, either (i) not past due or (ii) do not have priority over Collateral Agent’s Liens and are being contested in good faith and for which Borrower maintains adequate reserves on Borrower’s Books, provided that no notice of any such Lien has been filed or recorded under the IRC and the Treasury Regulations adopted thereunder;
- (c) purchase money Liens or capital leases (i) on Equipment and related software acquired or held by Borrower after the Restatement Date which is incurred for financing the acquisition of the Equipment and related software securing no more than \$500,000 in the aggregate which remains outstanding, or (ii) existing on Equipment and related software when acquired prior to the Restatement Date, if the Lien is confined to the property and improvements and the proceeds of the Equipment and related software;
- (d) Liens incurred in the extension, renewal or refinancing of the indebtedness secured by Liens described in (a) through (c), 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;
- (e) leases or subleases of real property granted in the ordinary course of 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 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 Collateral Agent a security interest therein;
- (f) licenses of Intellectual Property permitted under Section 6.1;

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Amended and Restated Loan and Security Agreement Section 6.1 — ; Domo, Inc.

- (g) Liens in favor of other financial institutions arising in connection with customary charges relating to Borrower’s Deposit Accounts and/or Securities Accounts held at such institutions, provided that Borrower is in compliance with

- (h) carriers', warehousemen's, landlord's, mechanics', materialmen's, repairmen's or other like Liens arising in the ordinary course of business where the underlying debt giving rise to such Liens is not overdue;
- (i) pledges or deposits in connection with workers' compensation, unemployment insurance and other social security legislation;
- (j) deposits to secure the performance of bids, trade contracts (other than for borrowed money), leases (other than capital leases), statutory obligations, surety and appeal bonds, performance bonds and other obligations of a like nature incurred in the ordinary course of business not to exceed an aggregate of \$500,000 at any time outstanding;
- (k) Liens in connection with Subordinated Debt;
- (l) (i) Liens on Cash securing obligations permitted under clause (m) of the definition of Permitted Indebtedness and (ii) security deposits in connection with real property leases, the combination of (i) and (ii) in an aggregate amount not to exceed \$4,300,000 at any time;
- (m) judgment Liens that do not constitute an Event of Default under Section 7.7; 7.7;
- (n) Liens on Accounts in favor of First Corporate Solutions incurred in connection with the Permitted Receivables Financing; and
- (o) Liens on insurance proceeds securing the payment of financed insurance premiums that are promptly paid on or before the date they become due (provided that such Liens extend only to such insurance proceeds and not to any other property or assets).

**"Permitted Receivables Financing"** means Indebtedness of the Loan Parties secured by Liens on Accounts, which Accounts have a fair market value not exceeding \$6,000,000 in the aggregate for the term of this Agreement.

**"Permitted Repurchase"** means repurchases of a Borrower's capital stock in an amount not to exceed \$10,000,000 in the aggregate provided no Event of Default shall have occurred and be continuing either before or after giving effect to such Permitted Repurchase.

**"Permitted Strategic Investment"** means any minority Investment in a Person by a Loan Party, in which: (a) no Event of Default shall have occurred and be continuing either before consummation of such Investment or after giving effect to such Investment, (b) Parent demonstrates pro-forma compliance with the financial covenant set forth in Section 5.11, (c) Loan Parties maintain a minimum of \$50,000,000 in Cash Plus Availability both before and after giving effect to such Investment (d) the Board has approved the Investment, (e) no Investment shall exceed \$2,500,000 per Parent's fiscal year, and the aggregate amount of all such Investments shall not exceed \$5,000,000 per Parent's fiscal year, and (f) ~~Collateral Agent is given not less than ten (10) Business Days advance written notice of the proposed Permitted~~

given not less than ten (10) Business Days advance ~~Strategic~~ the Required Lenders shall have provided their prior written notice consent in their sole discretion to any such Investment (or series of the proposed Permitted Strategic Investment, Investments) in excess of \$1,000,000.

“**Person**” means any individual, sole proprietorship, partnership, limited liability company, joint venture, company, trust, unincorporated organization, association, corporation, institution, public benefit corporation, firm, joint stock company, estate, entity or government agency.

“**PIK Interest**” is defined in Section 1.3(b).

“**Pledge Agreements**” mean, collectively, any local law pledge agreement relating to the Equity Interests or evidence of Indebtedness of any Subsidiary owned directly or indirectly by a Loan Party to the extent necessary or useful to perfect Collateral Agent's security interest therein under applicable laws.

“**Pledged Account**” means any Deposit Account, Securities Account or Commodity Account or other similar account even though it may not precisely fit the definition of a Deposit Account, Securities Account or a Commodity Account; provided that “Pledged Account” shall not include (i) any Deposit Account exclusively used for payroll, payroll taxes and other employee wage and benefits payments to or for the benefit of a Loan Party's employees provided that at no time shall such Deposit Account contain an amount in excess of the amount needed to fund the then currently due payroll, payroll taxes or other employee wage and benefit payments or (ii) cash collateral accounts permitted pursuant to clause (m) ~~(m)~~ of the definition of Permitted Liens.

~~“**Positive Cash Flow Condition Prepayment**” means Agent has confirmed its receipt of evidence from Borrower, satisfactory to Agent in its reasonable discretion, that in any trailing six month period, Borrower has achieved Borrower's Adjusted Cash Flow, measured as of the last day of the applicable month, is greater than zero.~~

~~“**Prepayment Fee**” means a payment equal to the amount of the Term Loan and Amendment Fee being prepaid (for the avoidance of doubt, including any capitalized interest on the Term Loan and Amendment Fee that has been added to principal) multiplied by the Prepayment Percentage.~~

~~“**Prepayment Percentage**” means (i) three percent (3.0%) of the Term Loan amount and Amendment Fee amount, each case prepaid on or after January 4, 2020 but prior to January 4, 2021; (ii) two percent (2.0%) of the Term Loan amount and Amendment Fee amount, in each case, prepaid on or after January 4, 2021 but prior to January 4, 2022; (iii) one percent (1.0%) of the Term Loan amount and Amendment Fee amount, in each case, prepaid on or after January 4, 2022 but prior to the October 1, 2022; and (iv) zero percent (0.0%) of the Term Loan amount and Amendment Fee amount, in each case, prepaid on or after October 1, 2022.~~

**“Prime Rate”** means, for any day, the rate of interest in effect for such day that is identified and normally published by The Wall Street Journal as the “Prime Rate” (or, if more than one rate is published as the Prime Rate, then the highest of such rates), with any change in

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Prime Rate to become effective as of the date the rate of interest which is so identified as the “Prime Rate” is different from that published on the preceding Business Day. If The Wall Street Journal no longer reports the Prime Rate, or if the Prime Rate no longer exists, or Administrative Agent (at the direction of Collateral Agent) determines in good faith that the rate so reported no longer accurately reflects an accurate determination of the prevailing Prime Rate, then Administrative Agent (at the direction of Collateral Agent) may select a reasonably comparable index or source to use as the basis for the Prime Rate.

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**“Pro Rata Percentage”** means, with respect to any Lender, a percentage equal to a fraction, the numerator of which is such Lender’s Term Loan Commitment and the denominator of which is the aggregate of the Term Loan Commitments of all Lenders.

**“Recipient”** means (a) Administrative Agent, (b) Collateral Agent, and (c) any Lender, as applicable.

**“Recurring Revenue”** means, for any given period, the aggregate revenue, net of any discounts, that the Loan Parties’ receive from written subscription agreements that are either (i) recurring or automatically renewing in nature, or (ii) originally for a term of at least one (1) year, which revenues are calculated on a basis consistent with the financial statements delivered to Lenders prior to the Effective Date.

**“Register”** is defined in Section 13.1(d).



**“Registered Organization”** means any “registered organization” as defined in the Code with such additions to such term as may hereafter be made.

**“Related Fund”** means, with respect to any Lender that is a fund or commingled investment vehicle that invests in bank loans, any other fund that invests in bank loans and is managed or advised by the same investment advisor as such Lender or by an Affiliate of such investment advisor.

**“Related Parties”** means, with respect to any specified Person, such Person’s Affiliates and the respective directors, trustees, officers, employees, agents and advisors of such Person and such Person’s Affiliates.

**“Relevant Governmental Body”** means the Term SOFR Administrator, the Federal Reserve Board or the Federal Reserve Bank of New York, or a committee officially endorsed or convened by the Federal Reserve Board or the Federal Reserve Bank of New York or any successor thereto.

**“Reportable Event”** means any of the events set forth in Section 4043(c) of ERISA, other than events for which the 30 day notice period has been waived.

**“Required Lenders”** means, at any time, Lenders having funded Credit Extensions and having Term Loan Commitments representing more than 50% of the sum of all Credit Extensions and Term Loan Commitments at such time.

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Amended and Restated Loan and Security Agreement — Domo, Inc.

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**“Requirement of Law”** means as to any Person, the organizational or governing documents of such Person, and any law (statutory or common), 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 Chief Executive Officer, President, Chief Financial Officer and Treasurer of Borrower.

**“Restricted License”** is any material license agreement with respect to which Borrower is the licensee (a) that prohibits or otherwise restricts Borrower from granting a security interest in Borrower’s interest in such license agreement or any other property subject to such license

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agreement, or (b) for which a default under or termination of which could interfere with Collateral Agent's right to sell any Collateral. "Restricted Licenses" shall not include off-the-shelf software and services, open source code, application programming interfaces (APIs) and/or other Intellectual Property that are made commercially available under shrinkwrap or clickwrap licenses, online terms of service or use, or similar agreements.

**"Retention Report"** means a report prepared by an independent third party acceptable to Parent and Collateral Agent that analyzes the retention rate of Borrower's customers, which report is delivered to Collateral Agent not more than fifteen (15) days prior to Borrower's delivery of its Notice of Borrowing for the Credit Extension to be provided pursuant to the second sentence of [Section 1.2\(a\)](#).

**"Sanctioned Persons"** is defined in [Section 4.13](#).

**"Sanctions"** is defined in [Section 4.13](#).

**"SEC"** means the Securities and Exchange Commission or any other similar or successor agency of the United States federal government administering the Securities Act.

**"Second Amendment"** means that certain [Second Amendment to Amended and Restated Loan and Security Agreement and Lender Joinder, dated as of the Second Amendment Effective Date, among Borrower, Co-Borrower, Lenders, Collateral Agent and Administrative Agent](#).

**"Second Amendment Effective Date"** means [August 19, 2024](#).

**"Second Amendment PIK Fee"** means [\\$7,329,177.93](#).

**"Second Amendment Term Loans"** is defined in [Section 1.2\(a\)](#).

**"Second Amendment Voluntary Prepayment"** is defined in [Section 1.9](#).

**"Securities Account"** means any "securities account" as defined in the Code with such additions to such term as may hereafter be made.

**"Securities Act"** means the Securities Act of 1933, as amended, or any similar United States Federal statute, and the rules and regulations of the SEC thereunder, all as the same shall be in effect from time to time.

**"Security Documents"** mean the Pledge Agreements, Perfection Certificates, IP Security Agreement, any Joinder, any Control Agreement, any Subordination Agreement and each of the security agreements and other instruments and documents executed and delivered pursuant to any of the foregoing or in connection with [Section 5.8](#).

**"SOFR"** means, with respect to any day, the secured overnight financing rate as administered by the SOFR Administrator.

**“SOFR Administrator”** means the Federal Reserve Bank of New York (or a successor administrator of the secured overnight financing rate).

**“SOFR Borrowing”** means, as to any Credit Extension, the SOFR Loans comprising such Credit Extension.

**“SOFR Loan”** means a Loan that bears interest at a rate based on Adjusted Term SOFR.

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Amended and Restated Loan and Security Agreement — Domo, Inc.

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**“Subordination Agreement”** means any subordination, intercreditor, or other similar agreement in form and substance satisfactory to Collateral Agent entered into between Collateral Agent and the other creditor, on terms acceptable to Collateral Agent whereby a Person subordinates the Indebtedness of any Loan Party to such Person to the Indebtedness of any Loan Party to Collateral Agent and/or Lenders.

**“Subordinated Debt”** means indebtedness subject to a Subordination Agreement.

**“Subsidiary”** means, 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 the context otherwise requires, each reference to a Subsidiary herein shall be a reference to a Subsidiary of Borrower.

**“Synthetic Lease Obligations”** means, as to any Person, an amount equal to the capitalized amount of the remaining lease payments under any synthetic lease that would appear on a balance sheet of such Person in accordance with GAAP if such obligations were accounted for as Capital Lease Obligations.

**“Tax Returns”** mean all returns, declarations, reports, schedules, forms or information return or statement of, or with respect to, Taxes filed or required to be filed with any Governmental Authority or depository.

**“Taxes”** mean any and 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.

**“Term Loan”** means the Initial Term Loans, the Second Amendment Term Loans and each other term ~~loans~~ loan made available by Lenders to Borrower pursuant to Section 1.2 of the this Agreement, which amount shall not exceed ~~One Hundred Million Dollars (\$ Dollars (\$100,000,000))~~ \$125,317,859.30 plus any PIK Interest accrued and capitalized thereon after the Second Amendment Effective Date.

“**Term Loan Alternate Base Rate**” means, for any day, the greater of (a) 7.00% and (b) a fluctuating rate of interest per annum equal to the Alternate Base Rate in effect on such day plus 2.75%. Any change in the Term Loan Alternate Base Rate due to a change in the Prime Rate, the Federal Funds Effective Rate or Adjusted Term SOFR shall be effective from and

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Amended and Restated Loan and Security Agreement — Domo, Inc.

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including the opening of business on the effective day of such change in the Prime Rate, the Federal Funds Effective Rate or Adjusted Term SOFR, as the case may be.

“**Term Loan Commitment**” means with respect to each Term Loan Lender, the ~~commitment~~commitments of such Lender to make Credit Extensions under the Term Loan hereunder as set forth on Schedule 1.2 directly below the ~~column~~columns entitled “Term Initial Term Loan Commitment,” and “Second Amendment Term Loan Commitment” or in the Assignment and Acceptance pursuant to which such Lender assumed its Term Loan Commitment, in all cases as the same may be reduced, terminated or adjusted as provided in the Agreement. The aggregate

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Amended and Restated Loan and Security Agreement — Domo, Inc.

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amount of Lenders’ Term Loan Commitments ~~is One Hundred Million Dollars (\$100,000,000)~~shall not exceed \$125,317,859.30.

“**Term Loan Lender**” mean each Lender with a Term Loan Commitment or with outstanding Term Loan.

“**Term Loan Interest Rate**” ~~means, for any given day, the greater of (a) 7.00% and (b) a fluctuating rate of interest per annum equal to Adjusted Term SOFR plus 5.50%; provided that at all times after which Collateral Agent has delivered notice of a Benchmark Unavailability Period, the Term Loan Interest Rate means the Term Loan Alternate Base Rate. Any change in~~

~~the Term Loan Interest Rate due to a change in Adjusted Term SOFR shall be effective from and including the effective day of such change in Adjusted Term SOFR. is defined in Section 1.3(b).~~

**"Term Loan Maturity Date"** means, for all Credit Extensions, ~~April 1 2025~~ August 19, 2026 ~~2028~~.

~~**"Term Loan PIK Interest Rate"** means two and one half percent (2.5%) per annum.~~

**"Term SOFR"** means, for any calculation with respect to a SOFR Loan, the Term SOFR Reference Rate for the applicable Interest Period on the day (such day, the **"Periodic Term SOFR Determination Day"**) that is two Business Days prior to the first day of such period, as such rate is published by the Term SOFR Administrator; provided that if as of 5:00 p.m., New York City time, on any Periodic Term SOFR Determination Day the Term SOFR Reference Rate for the applicable tenor has not been published by the Term SOFR Administrator and a Benchmark Replacement Date with respect to the Term SOFR Reference Rate has not occurred, then Term SOFR will be the Term SOFR Reference Rate for such tenor as published by the Term SOFR Administrator on the first preceding Business Day for which such Term SOFR Reference Rate for such tenor was published by the Term SOFR Administrator so long as such first preceding Business Day is not more than three Business Days prior to such Periodic Term SOFR Determination Day.

~~**"Term SOFR Adjustment"** means, for any calculation with respect to a SOFR Loan, 0.26161%.~~

**"Term SOFR Administrator"** means CME Group Benchmark Administration Limited (or a successor administrator of the Term SOFR Reference Rate selected by Administrative Agent and the Required Lenders in their reasonable discretion).

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Amended and Restated Loan and Security Agreement — Domo, Inc.

**"Term SOFR Reference Rate"** means the forward-looking term rate based on SOFR.

**"Terrorism Order"** is defined in Section 4.14.

~~**"Total Debt"** means, for any given fiscal quarter, \$100,000,000.~~

**"Trademarks"** means any trademark and servicemark rights, whether registered or not, applications to register and registrations of the same and like protections, and the entire goodwill of the business of a Person connected with and symbolized by such trademarks.

**"Unadjusted Benchmark Replacement"** means the Benchmark Replacement, excluding the related Benchmark Replacement Adjustment.

**"Unrestricted Cash"** of any Person, ~~shall mean~~ means Cash or Cash Equivalents of such Person, (a) that are not, and are not required to be, designated as "restricted" on the financial

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Amended and Restated Loan and Security Agreement — Domo, Inc.

statements of such Person, (b) that are not contractually required, and have not been contractually committed by such Person, to be used for a specific purpose, (c) that are not subject to (i) any provision of law, statute, rule or regulation, (ii) any provision of the organizational documents of such Person, (iii) any order of any Governmental Authority or (iv) any contractual restriction (including the terms of any Equity Interests), in each case of (i) through (iv), preventing such Cash or Cash Equivalents from being applied to the payment of the Obligations, (d) in which no Person other than Collateral Agent has a Lien other than Permitted Liens as set forth in subsection (h) of the definition of Permitted Liens, and (e) that are held in a Deposit Account or Securities Account, as applicable, in which Collateral Agent has a valid and enforceable security interest, perfected by “control” (within the meaning of the applicable Code), but in all cases shall be reduced by the amount of such Person’s Indebtedness which is more than three (3) Business Days overdue.

“**USA FREEDOM Act**” means The Uniting and Strengthening America by Fulfilling Rights and Ending Eavesdropping, Dragnet-collection and Online Monitoring (USA FREEDOM ACT) Act of 2015, Public Law 114-23 (June 2, 2015), as may be amended.

“**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 may be amended.

“**U.S. Person**” means any Person that is a “United States Person” as defined in Section 7701(a)(30) of the IRC.

“**Utah Joinder**” means that certain Joinder, dated as of the Restatement Date, among Co-Borrower, Administrative Agent and Collateral Agent.

“**Warrant**” means ~~the~~any warrant to purchase Borrower’s preferred or common stock ~~Borrower issues to each~~issued to any Lender, ~~on the Effective Date~~, as each such ~~Warrants~~Warrant may be amended, restated, supplemented, amended and restated or otherwise modified from time to time.

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Amended and Restated Loan and Security Agreement – Domo, Inc.

“**Wholly Owned Subsidiary**” of any Person ~~shall mean~~means a subsidiary of such Person of which securities (except for (x) directors’ qualifying shares and (y) shares issued to foreign nationals to the extent required by applicable law) or other

ownership interests representing 100.0% of the Equity Interests are, at the time any determination is being made, owned, controlled or held by such Person or one or more wholly owned Subsidiaries of such Person or by such Person and one or more wholly owned Subsidiaries of such Person.

*[Signature page follows.]*

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Amended and Restated Loan and Security Agreement — Domo, Inc.

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**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be executed as of the Effective Date.

**LENDER:**

**Special Value Continuation Partners, LP  
Tennenbaum Enhanced Yield Funding I, LLC  
Tennenbaum Energy Opportunities Co, LLC  
TCP Direct Lending Fund VIII-U, LLC  
TCP Direct Lending Fund VIII-A, LLC  
TCP DLF VIII-L Funding, LP  
TCP Funding II, LLC  
TCPC Funding I, LLC  
Each as Lenders**

**On behalf of each of the above entities:**

**By: Tennenbaum Capital Partners, LLC**

**Its: Investment Manager**

By:

Name:

Title:

**LENDER:**

**BlackRock DLF IX 2019-G CLO, LLC  
as Lender**

By:

Name:  
Title:

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COLLATERAL AGENT:

**Obsidian Agency Services, Inc.,** as Collateral Agent

By:  
Name:  
Title:

ADMINISTRATIVE AGENT:

**Wilmington Trust, National Association,** as Administrative Agent

By:  
Name:  
Title:



Amended and Restated Loan and Security Agreement — Domo, Inc.

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**BORROWER:**

**Domo, Inc.**, a Delaware corporation

By:

Name:

Title:

**Domo, Inc.**, a Utah corporation

By:

Name:

Title:

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Amended and Restated Loan and Security Agreement — Domo, Inc.

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**ANNEX C**

**SCHEDULE 1.2**

**LENDERS AND TERM LOAN COMMITMENTS**

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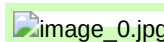
**ANNEX D**

Amended Exhibit **B** C to Loan and Security Agreement

[see attached]

**EXHIBIT **B** C**

**COMPLIANCE CERTIFICATE FORM OF NOTICE OF BORROWING**

 , 202\_\_

TO: Wilmington Trust, National Association.

FROM:

DATE: 1100 North Market Street

Wilmington, DE 19890

Attn: Domo, Inc. Loan Administrator

Phone: 302-636-6466

(I) Email: jfeil@wilmingtontrust.com The undersigned authorized officer of

RE: Domo, Inc., a Delaware corporation

(“**Borrower**”), certifies that under the terms Reference is made to Amended and conditions of the Amended Restated Loan and Security Agreement, ~~among Borrower, Collateral Agent, Administrative Agent and Lenders dated as of 2017~~ (dated as of August 8, 2023 (as amended by that certain First Amendment to Amended and Restated Loan and Security Agreement, dated as of February 17, 2024, as further amended by that certain Second Amendment to Amended and Restated Loan and Security Agreement and Lender Joinder, dated as of August 19, 2024, and as otherwise further amended, restated, supplemented or modified from time to time, the “Agreement”); among Borrower, Domo, Inc., a Utah corporation (“Co-Borrower”), Wilmington Trust, National Association, as administrative agent for Lenders (in such capacity, “**Administrative Agent**”) and Obsidian Agency Services, Inc., a California corporation, as collateral agent for the Lenders (in such capacity, “**Collateral Agent**”). Capitalized terms used herein and not otherwise defined herein are used herein as defined in the Credit Agreement.

(II) Borrower hereby gives you notice, irrevocably, pursuant to Section 2.4 of the Credit Agreement that it hereby requests a borrowing (the “**Proposed Borrowing**”) under the Credit Agreement and, in connection therewith, sets forth below the information relating to the Proposed Borrowing as required by Section 2.4 of the Credit Agreement:

- a. The date of the Proposed Borrowing is \_\_, 20\_\_ (the “**Funding Date**”).
- b. The aggregate principal amount of the Proposed Borrowing is \$ \_\_, and is to be made under the Term Loan[ as a Second Amendment Term Loan].

c. The proceeds are to be funded [as set forth on the funds flow memorandum attached hereto as Exhibit A][to the following account:

Bank Name:

Bank Address:

Account Number:

ABA Number:

Account Name: ]

The undersigned, being the Chief Financial Officer of Borrower, is after due inquiry hereby certifies that the following statements are true on the date hereof, shall be true on the Funding Date, both before and after giving effect to the Proposed Borrowing and any other Loan to be made on or before the Funding Date:

(i) (a) Loan Parties are in complete compliance for as of the period ending with all required covenants except as noted below; (2b) there are no Events of Default; (3c) all Funding Date, the representations and warranties contained in the Credit Agreement and in the other Loan Documents are true and correct in all respects on this date except that those and as of the Funding Date to the same extent as though made on and as of the Funding Date (or to the extent such representations and warranties expressly referring specifically relate to a specific specified date shall be true, accurate on and complete as of such date; (4d) Borrower, and each of its Subsidiaries, has timely filed all required Tax Returns and reports, and Borrower has timely paid all foreign, federal, state and local Taxes, assessments, deposits and contributions owed by Borrower or any of its Subsidiaries except as otherwise permitted pursuant to the terms of Section 4.9 of the Agreement; and (5e) no Liens have been levied or claims made against Borrower or any of its Subsidiaries relating to unpaid employee payroll or benefits of which Borrower has not previously provided written notification to Collateral Agent. specified date);

(III) (ii) [Include the following if this ~~is~~ compliance certificate is delivered for a quarterly ~~Reporting Period ending October 31, 2018 or later~~ Borrower's Debt Ratio for the quarter reporting period] (a) Loan Parties' Annualized Recurring Revenue for the fiscal quarter ended was equal to , with supporting financial statements and calculations provided herewith.

~~ending as of the Reporting Period was~~ (b) Loan Parties' Consolidated EBITDA for Funding Date, no event has occurred and is continuing or would result from the period of four consecutive fiscal quarters ending on the last day consummation of the fiscal quarter ended was , with supporting financial statements Proposed Borrowing that would constitute a Default or an Event of Default; and calculations provided herewith.

Attached are (iii) as of the required documents Funding Date, no injunction or other restraining order has been issued and no hearing to cause an injunction or other restraining order to be issued is pending or noticed with respect to any action, suit or proceeding seeking to enjoin or otherwise prevent the consummation of, or to recover any damages or obtain relief as a result of, the transactions contemplated by the Credit Agreement or the making of the Proposed Borrowing or the making of a Credit Extension under the Credit Agreement.

Delivery of an executed counterpart of this Notice of Borrowing by email or other electronic means shall be effective as delivery of an original executed counterpart of this Notice of Borrowing.

[Remainder of page intentionally left blank]

Domo, Inc., calculations and other evidence a Delaware corporation supporting the certification, including supporting documentation underlying, demonstrating compliance with Section 5.11. The undersigned certifies that all the financial statements delivered with this Compliance Certificate have been prepared in accordance with GAAP consistently applied from one period to the next except as explained in an accompanying letter or, in the case of monthly or quarterly financial statements, the absence of footnotes and normal year-end adjustments. The undersigned acknowledges that no borrowings may be requested at any time or date of determination that Borrower is not in compliance with any of the terms of the Agreement, and that compliance is determined not just at the date this certificate is delivered. Capitalized terms used but not otherwise defined herein shall have the meanings given them in the Agreement.

By:  
Name:  
Title:

Please indicate compliance status by circling Yes/No under “Complies” column.

Reporting Covenant	Required	Complies
Monthly financial statements	Monthly within 30 days	Yes No
Quarterly financial statements	Quarterly within 45 days	Yes No
Annual financial statement (CPA Audited)	FYE within 180 days	Yes No
Prior to an IPO, Board approved Operating Budget	FYE within 60 days after the end of the year	Yes No
The following space should be used to list:		

- Intellectual Property registered (or a registration application submitted) after the Effective Date and which has not yet been listed on a previous Compliance Certificate, or any other permitted updates to the Perfection Certificates; ~~and~~
- any material change in the composition of (i) Borrower's or any of its Subsidiaries' Intellectual Property, (ii) the registration of any copyright, including any subsequent ownership right of Borrower or any of its Subsidiaries' in or to any registered copyright, patent or trademark not shown in the Perfection Certificates, and (iii) Borrower's knowledge of an event that could reasonably be expected to materially and adversely affect the value of its or any of its Subsidiaries' Intellectual Property; ~~and~~
- Entry into, or becoming bound by, any Restricted License (other than over-the-counter software and other non-customized mass market licenses that are commercially available to the public).

(if no registrations or updates, state "None")

The following are the exceptions with respect to the certification above: (If no exceptions exist, state "No exceptions to note."  
The listing of an exception does not excuse non-compliance.)

To the extent required, attached is an updated Perfection Certificate pursuant to Section 4 of the Loan Agreement.

Date: ~~Borrower~~ DOMO, INC.

Name:

Title: See attached.]]

Exhibit 31.1

**CERTIFICATION PURSUANT TO  
RULES 13a-14(a) AND 15d-14(a) UNDER THE SECURITIES EXCHANGE ACT OF 1934,  
AS ADOPTED PURSUANT TO SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002**

I, Joshua G. James, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of Domo, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

(a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

(b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

(c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

(d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

(a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

(b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: June 6, 2024 September 5, 2024

/s/ Joshua G. James  
Joshua G. James  
Chief Executive Officer  
(Principal Executive Officer)

Exhibit 31.2

**CERTIFICATION PURSUANT TO  
RULES 13a-14(a) AND 15d-14(a) UNDER THE SECURITIES EXCHANGE ACT OF 1934,  
AS ADOPTED PURSUANT TO SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002**

I, David Jolley, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of Domo, Inc.;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

(a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

(b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

(c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

(d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

(a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

(b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: June 6, 2024 September 5, 2024

/s/ David Jolley

David Jolley

Chief Financial Officer

(Principal Accounting and Financial Officer)

Exhibit 32.1

**CERTIFICATION PURSUANT TO  
18 U.S.C. SECTION 1350, AS ADOPTED PURSUANT TO  
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

In connection with the filing of the Quarterly Report on Form 10-Q for the fiscal quarter ended April 30, 2024 July 31, 2024, as filed with the Securities and Exchange Commission on the date hereof (the "Report") by Domo, Inc. (the "Company"), Joshua G. James, as the Chief Executive Officer of the Company, and David Jolley, as the Chief Financial Officer of the Company, each hereby certifies pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that, to the best of his knowledge:

1. the Report fully complies with the requirements of Section 13(a) or Section 15(d) of the Securities Exchange Act of 1934; and
2. the information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: June 6, 2024 September 5, 2024

/s/ Joshua G. James

Joshua G. Games

Chief Executive Officer (Principal Executive Officer)

/s/ David Jolley

David Jolley

Chief Financial Officer (Principal Accounting and Financial Officer)

This certification accompanies the Report to which it relates, is not deemed filed with the Securities and Exchange Commission and is not to be incorporated by reference into any filing of Domo, Inc. under the Securities Act of 1933, as amended, or the Securities Exchange Act of 1934, as amended (whether made before or after the date of the Report), irrespective of any general incorporation language contained in such filing.

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