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**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION**  
Washington, D.C. 20549

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**FORM 10-Q**

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(Mark One)

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

For the quarterly period ended July 31, 2024  
OR

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

For the transition period from to  
Commission File Number: 001-40601

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**Couchbase, Inc.**

(Exact name of registrant as specified in its charter)

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**Delaware**  
(State or other jurisdiction of  
incorporation or organization)

**26-3576987**  
(I.R.S. Employer  
Identification No.)

**3250 Olcott Street**  
**Santa Clara, California 95054**  
(Address of principal executive offices and Zip Code)  
**(650) 417-7500**  
(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 |
|---|-------------------|---|
| Common stock, par value \$0.00001 per share | BASE              | Nasdaq Global Select 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 | <input type="checkbox"/> | Accelerated filer         | <input checked="" type="checkbox"/> |
| Non-accelerated filer   | <input type="checkbox"/> | Smaller reporting company | <input type="checkbox"/>            |
|                         |                          | Emerging growth company   | <input checked="" type="checkbox"/> |

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

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

As of August 30, 2024, the registrant had 51,324,327 shares of common stock outstanding.

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### Special Note Regarding Forward-Looking Statements

This Quarterly Report on Form 10-Q contains forward-looking statements within the meaning of the federal securities laws, which statements involve substantial risks and uncertainties. Forward-looking statements generally relate to future plans or events, management's expectations and opinions or our future financial or operating performance, intentions, designs, expectations or objectives. In some cases, you can identify forward-looking statements because they contain words such as "may," "will," "should," "expect," "plan," "anticipate," "could," "would," "intend," "target," "project," "forecast," "contemplate," "believe," "estimate," "predict," "seek," "pursue," "potential" or "continue" or the negative of these words or other similar terms or expressions that concern our expectations, strategy, plans or intentions. Forward-looking statements contained in this Quarterly Report on Form 10-Q include, but are not limited to, statements about our expectations regarding:

- our future financial performance, including our expectations regarding our revenue, cost of revenue, operating expenses, period of benefit for deferred commissions, our ability to determine reserves and our ability to achieve and maintain future profitability;
- the sufficiency of our cash, cash equivalents and short-term investments to meet our liquidity needs;
- the demand for our products and services or for data management solutions in general;
- our ability to attract and retain customers and partners;
- our ability to develop new products and features and bring them to market in a timely manner and make enhancements to our offerings, as well as market acceptance of new products and features;
- our expectations regarding future developments with respect to Couchbase Capella, our fully-managed database-as-a-service ("DBaaS") offering;
- our ability to compete with existing and new competitors in existing and new markets and offerings;
- macroeconomic conditions, foreign exchange as well as financial and credit markets fluctuations, inflation concerns, capital markets volatility and recessionary fears, on our business and results of operations;
- our expectations regarding the effects of existing and developing laws, rules, regulations and other legal obligations, including with respect to taxation and data privacy and security;
- our ability to manage risk associated with our business;
- our expectations regarding new and evolving markets, as well as the impact of artificial intelligence ("AI") in business, including development of Capella iQ, our generative AI-powered developer's coding assistant built into Couchbase Capella;
- our ability to maintain, develop and protect our brand;
- our ability, and our customers' and our third-party service providers' ability, to maintain the security and availability to each of our technological and physical infrastructures;
- our expectations and management of future growth;
- our expectations concerning relationships with third parties;
- our ability to obtain, maintain, defend and enforce our intellectual property;
- our use of third-party open source software in our solutions and the availability of portions of our source code on an open source basis;
- our ability to successfully acquire and integrate companies and assets; and
- the increased expenses associated with being a public company.

We caution you that the foregoing list may not contain all of the forward-looking statements made in this Quarterly Report on Form 10-Q. You should not rely upon forward-looking statements as predictions of future events.

We have based the forward-looking statements contained in this Quarterly Report on Form 10-Q primarily on our current expectations and projections about future events and trends that we believe may affect our business, financial condition, results of operations and prospects. The outcome of the events described in these forward-looking statements is subject to risks, assumptions, uncertainties and other factors, including those described in the section titled “Risk Factors” and elsewhere in this Quarterly Report on Form 10-Q. Moreover, we operate in a very competitive and rapidly changing environment. New risks and uncertainties emerge from time to time, and it is not possible for us to predict all risks and uncertainties that could have an impact on the forward-looking statements contained in this Quarterly Report on Form 10-Q. We cannot assure you that the results, events and circumstances reflected in the forward-looking statements will be achieved or occur, and actual results, events or circumstances could differ materially from those described in the forward-looking statements.

The forward-looking statements made in this Quarterly Report on Form 10-Q relate only to events as of the date on which the statements are made. We undertake no obligation to update any forward-looking statements made in this Quarterly Report on Form 10-Q to reflect events or circumstances after the date of this Quarterly Report on Form 10-Q or to reflect new information or the occurrence of unanticipated events, except as required by law. We may not actually achieve the plans, intentions or expectations disclosed in our forward-looking statements and you should not place undue reliance on our forward-looking statements. Our forward-looking statements do not reflect the potential impact of any future acquisitions, mergers, dispositions, joint ventures or investments we may make.

In addition, statements that “we believe” and similar statements reflect our beliefs and opinions on the relevant subject. These statements are based upon information available to us as of the date of this Quarterly Report on Form 10-Q, and while we believe such information forms a reasonable basis for such statements, such information may be limited or incomplete, and our statements should not be read to indicate that we have conducted an exhaustive inquiry into, or review of, all potentially available relevant information. These statements are inherently uncertain, and you are cautioned not to unduly rely upon these statements.

You should read this Quarterly Report on Form 10-Q and the documents that we reference in this Quarterly Report on Form 10-Q and have filed as exhibits to this Quarterly Report on Form 10-Q with the understanding that our actual future results, levels of activity, performance and achievements may be different from what we expect. We qualify all of our forward-looking statements by these cautionary statements.

### **Risk Factor Summary**

Our business is subject to significant risks and uncertainties that make an investment in us speculative and risky. Below we summarize what we believe are the principal risk factors, but these risks are not the only ones we face. You should carefully review and consider the full discussion of our risk factors below this summary, together with the other information in this Quarterly Report on Form 10-Q. If any of the following risks or if any of those listed elsewhere in this Quarterly Report on Form 10-Q actually occur, our business, reputation, financial condition, results of operations, revenue and future prospects could be seriously harmed. Additional risks and uncertainties that we are unaware of, or that we currently believe are not material, may also become important factors that adversely affect our business.

- We have a history of net losses, may not achieve or maintain profitability in the future and may not continue to grow on pace with historical rates.
- We face intense competition and if we are unable to compete effectively, our business, financial condition and results of operations would be adversely affected.
- We may fail to cost-effectively acquire new customers or obtain renewals, upgrades or expansions from our existing customers, which would adversely affect our business, financial condition and results of operations.
- The market for our products and services is highly competitive and evolving, and our future success depends on the growth and expansion of this market.
- If we fail to innovate in response to changing customer needs, new technologies or other market requirements, our business, financial condition and results of operations could be harmed.
- We have a limited operating history, which makes it difficult to predict our future results of operations.
- Our future results of operations and key business metrics may fluctuate significantly, and if we fail to meet the expectations of analysts or investors, the market price of our common stock and the value of your investment could decline substantially.
- We recognize a significant portion of revenue from subscriptions over the term of the relevant subscription period, and as a result, downturns or upturns in sales are not immediately reflected in full in our results of operations.
- We depend on our sales force, and we may fail to attract, retain, motivate or train our sales force, which could adversely affect our business, financial condition and results of operations.
- Our sales strategy to target larger enterprises involves risks that may not be present or that are present to a lesser extent with respect to smaller enterprises, such as long and unpredictable sales cycles and sales efforts that require considerable time and expense, particularly in the current macroeconomic environment.
- If we are not able to maintain and enhance our brand, especially among enterprise architects, application developers and other key functions that support them, our business and results of operations may be adversely affected.
- Real or perceived errors, failures or bugs in our products or interruptions or performance problems associated with our technology and infrastructure could adversely affect our growth prospects, business, financial condition and results of operations.
- Our ability to maintain and increase sales with our existing customers depends, in part, on the quality of our customer support, and our failure to offer high-quality support would harm our reputation and adversely affect our business and results of operations.
- We track certain key business metrics with internal systems and tools and do not independently verify such metrics. Certain of these metrics are subject to inherent challenges in measurement, and any real or perceived inaccuracies in such metrics may adversely affect our business and reputation.
- Our company culture has contributed to our success and if we cannot maintain this culture as we grow, our business could be harmed.

- We may be unable to make acquisitions and investments or successfully integrate acquired companies and assets into our business, and our acquisitions and investments may not meet our expectations, any of which could adversely affect our business, financial condition and results of operations.
- Use of AI, including in our products and services, combined with an uncertain regulatory environment, may result in reputational harm, liability, or other adverse consequences to our business.
- Our business could be adversely affected by economic downturns.
- If we are unable to maintain successful relationships with our partners, our business, financial condition and results of operations could be harmed.
- Certain estimates and information we refer to publicly are based on information from third-party sources and we do not independently verify the accuracy or completeness of the data contained in such sources or the methodologies for collecting such data, and any real or perceived inaccuracies in such estimates and information may harm our reputation and adversely affect our business.
- Our use of third-party open source software in our solutions, the availability of core portions of our source code on an open source or source available basis and contributions to our open source projects could negatively affect our ability to sell our products and provide our services, subject us to possible litigation and allow third parties to access and use software and technology that we use in our business, all of which could adversely affect our business and results of operations.
- Our distribution and licensing model could negatively affect our ability to monetize and protect our intellectual property rights.
- Because of the rights accorded to third parties under open source licenses, there may be fewer technology barriers to entry in the markets in which we compete, and it may be relatively easy for new and existing competitors, some of whom may have greater resources than we have, to compete with us.
- We could incur substantial costs in obtaining, maintaining, protecting, defending and enforcing our intellectual property rights and any failure to obtain, maintain, protect, defend or enforce our intellectual property rights could reduce the value of our software and brand.
- We have been and may in the future become subject to intellectual property disputes which may be costly to defend, subject us to significant liability, require us to pay significant damages and limit our ability to use certain technologies.
- If our security measures, or those of our service providers or customers, are breached or unauthorized parties otherwise obtain access to our or our customers' data or software, our products and services may be perceived as not being secure, customers may reduce or terminate their use of our products and services and we may face claims, litigation, regulatory investigations, significant liability and reputational damage.
- A portion of our revenue is generated by sales to heavily regulated organizations, which are subject to a number of challenges and risks.
- The concentration of ownership of our outstanding common stock will limit your ability to influence the outcome of important transactions, including a change in control.

**Part I – Financial Information****Item 1. Financial Statements (unaudited)**

**COUCHBASE, INC.**  
**CONDENSED CONSOLIDATED BALANCE SHEETS**  
*(unaudited)*  
*(in thousands, except share and per share amounts)*

|   | As of<br>July 31, 2024 | As of<br>January 31, 2024 |
|---|------------------------|---------------------------|
| <b>Assets</b>   |                        |                           |
| Current assets  |                        |                           |
| Cash and cash equivalents   | \$ 62,607              | \$ 41,351                 |
| Short-term investments  | 93,526                 | 112,281                   |
| Accounts receivable, net  | 31,263                 | 44,848                    |
| Deferred commissions  | 13,187                 | 15,421                    |
| Prepaid expenses and other current assets   | 10,092                 | 10,385                    |
| Total current assets  | 210,675                | 224,286                   |
| Property and equipment, net   | 7,053                  | 5,327                     |
| Operating lease right-of-use assets   | 3,497                  | 4,848                     |
| Deferred commissions, noncurrent  | 13,603                 | 11,400                    |
| Other assets  | 1,119                  | 1,891                     |
| Total assets  | \$ 235,947             | \$ 247,752                |
| <b>Liabilities and Stockholders' Equity</b>   |                        |                           |
| Current liabilities   |                        |                           |
| Accounts payable  | \$ 5,031               | \$ 4,865                  |
| Accrued compensation and benefits   | 14,123                 | 18,116                    |
| Other accrued expenses  | 3,373                  | 4,581                     |
| Operating lease liabilities   | 2,670                  | 3,208                     |
| Deferred revenue  | 81,906                 | 81,736                    |
| Total current liabilities   | 107,103                | 112,506                   |
| Operating lease liabilities, noncurrent   | 1,170                  | 2,078                     |
| Deferred revenue, noncurrent  | 1,031                  | 2,747                     |
| Total liabilities   | 109,304                | 117,331                   |
| Commitments and contingencies (Note 9)  |                        |                           |
| Stockholders' equity  |                        |                           |
| Preferred stock, \$0.00001 par value; 200,000,000 shares authorized as of July 31, 2024 and January 31, 2024; zero shares issued outstanding as of July 31, 2024 and January 31, 2024                                       | —                      | —                         |
| Common stock, \$0.00001 par value; 1,000,000,000 shares authorized as of July 31, 2024 and January 31, 2024; 51,283,093 and 49,079,876 shares issued and outstanding as of July 31, 2024 and January 31, 2024, respectively | —                      | —                         |
| Additional paid-in capital  | 658,165                | 621,024                   |
| Accumulated other comprehensive income  | 27                     | 56                        |
| Accumulated deficit   | (531,549)              | (490,659)                 |
| Total stockholders' equity  | 126,643                | 130,421                   |
| Total liabilities and stockholders' equity  | \$ 235,947             | \$ 247,752                |

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

**COUCHBASE, INC.**  
**CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS**  
*(unaudited)*  
*(in thousands, except per share amounts)*

|   | Three Months Ended July 31, |             | Six Months Ended July 31, |             |
|---|-----------------------------|-------------|---------------------------|-------------|
|   | 2024                        | 2023        | 2024                      | 2023        |
| <b>Revenue:</b>   |                             |             |                           |             |
| License   | \$ 5,242                    | \$ 4,798    | \$ 12,101                 | \$ 9,741    |
| Support and other   | 44,051                      | 36,156      | 86,230                    | 69,755      |
| Total subscription revenue  | 49,293                      | 40,954      | 98,331                    | 79,496      |
| Services  | 2,296                       | 2,185       | 4,585                     | 4,639       |
| Total revenue   | 51,589                      | 43,139      | 102,916                   | 84,135      |
| <b>Cost of revenue:</b>   |                             |             |                           |             |
| Subscription  | 4,455                       | 3,845       | 8,412                     | 7,518       |
| Services  | 2,008                       | 2,064       | 3,733                     | 4,313       |
| Total cost of revenue   | 6,463                       | 5,909       | 12,145                    | 11,831      |
| Gross profit  | 45,126                      | 37,230      | 90,771                    | 72,304      |
| <b>Operating expenses:</b>  |                             |             |                           |             |
| Research and development  | 17,370                      | 16,292      | 35,217                    | 31,675      |
| Sales and marketing   | 36,168                      | 32,348      | 73,923                    | 64,901      |
| General and administrative  | 12,636                      | 10,459      | 25,219                    | 20,084      |
| Restructuring   | —                           | —           | —                         | 46          |
| Total operating expenses  | 66,174                      | 59,099      | 134,359                   | 116,706     |
| Loss from operations  | (21,048)                    | (21,869)    | (43,588)                  | (44,402)    |
| Interest expense  | (29)                        | (18)        | (29)                      | (43)        |
| Other income, net   | 1,741                       | 1,255       | 3,272                     | 2,688       |
| Loss before income taxes  | (19,336)                    | (20,632)    | (40,345)                  | (41,757)    |
| Provision for income taxes  | 559                         | 19          | 545                       | 769         |
| Net loss  | \$ (19,895)                 | \$ (20,651) | \$ (40,890)               | \$ (42,526) |
| Net loss per share, basic and diluted   | \$ (0.39)                   | \$ (0.44)   | \$ (0.81)                 | \$ (0.92)   |
| Weighted-average shares used in computing net loss per share, basic and diluted | 50,822                      | 46,714      | 50,311                    | 46,285      |

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



**COUCHBASE, INC.**  
**CONDENSED CONSOLIDATED STATEMENTS OF COMPREHENSIVE LOSS**  
*(unaudited)*  
*(in thousands)*

|  | Three Months Ended July 31, |                    | Six Months Ended July 31, |                    |
|--|-----------------------------|--------------------|---------------------------|--------------------|
|  | 2024                        | 2023               | 2024                      | 2023               |
| Net loss   | \$ (19,895)                 | \$ (20,651)        | \$ (40,890)               | \$ (42,526)        |
| Other comprehensive loss:                                |                             |                    |                           |                    |
| Net unrealized (losses) gains on investments, net of tax | 242                         | 189                | (29)                      | 506                |
| Total comprehensive loss                                 | <u>\$ (19,653)</u>          | <u>\$ (20,462)</u> | <u>\$ (40,919)</u>        | <u>\$ (42,020)</u> |

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

**COUCHBASE, INC.**  
**CONDENSED CONSOLIDATED STATEMENTS OF STOCKHOLDERS' EQUITY**  
*(unaudited)*  
*(in thousands, except shares)*

|   | Common Stock      |             | Additional<br>Paid-In<br>Capital | Accumulated<br>Other<br>Comprehensive<br>Income<br>(Loss) | Accumulated<br>Deficit | Total<br>Stockholders'<br>Equity<br>(Deficit) |
|---|-------------------|-------------|----------------------------------|---|------------------------|---|
|   | Shares            | Amount      |                                  |   |                        |   |
| <b>Balance as of April 30, 2024</b>                     | 50,220,260        | \$ —        | \$ 640,931                       | \$ (215)  | \$ (511,654)           | \$ 129,062                                    |
| Issuance of common stock upon exercise of stock options | 136,338           | —           | 842                              | —   | —                      | 842   |
| Vesting of restricted stock units                       | 926,495           | —           | —                                | —   | —                      | —   |
| Stock-based compensation                                | —                 | —           | 16,392                           | —   | —                      | 16,392  |
| Net unrealized gains on investments                     | —                 | —           | —                                | 242   | —                      | 242   |
| Net loss  | —                 | —           | —                                | —   | (19,895)               | (19,895)                                      |
| <b>Balance as of July 31, 2024</b>                      | <b>51,283,093</b> | <b>\$ —</b> | <b>\$ 658,165</b>                | <b>\$ 27</b>  | <b>\$ (531,549)</b>    | <b>\$ 126,643</b>                             |

|   | Common Stock      |             | Additional<br>Paid-In<br>Capital | Accumulated<br>Other<br>Comprehensive<br>Income<br>(Loss) | Accumulated<br>Deficit | Total<br>Stockholders'<br>Equity<br>(Deficit) |
|---|-------------------|-------------|----------------------------------|---|------------------------|---|
|   | Shares            | Amount      |                                  |   |                        |   |
| <b>Balance as of April 30, 2023</b>                     | 46,155,499        | \$ —        | \$ 573,791                       | \$ (490)  | \$ (432,351)           | 140,950                                       |
| Issuance of common stock upon exercise of stock options | 378,175           | —           | 2,733                            | —   | —                      | 2,733   |
| Vesting of restricted stock units                       | 530,240           | —           | —                                | —   | —                      | —   |
| Stock-based compensation                                | —                 | —           | 12,321                           | —   | —                      | 12,321  |
| Net unrealized gains on investments                     | —                 | —           | —                                | 189   | —                      | 189   |
| Net loss  | —                 | —           | —                                | —   | (20,651)               | (20,651)                                      |
| <b>Balance as of July 31, 2023</b>                      | <b>47,063,914</b> | <b>\$ —</b> | <b>\$ 588,845</b>                | <b>\$ (301)</b>   | <b>\$ (453,002)</b>    | <b>\$ 135,542</b>                             |

|  | Common Stock      |             | Additional<br>Paid-In<br>Capital | Accumulated<br>Other<br>Comprehensive<br>Income<br>(Loss) | Accumulated<br>Deficit | Total<br>Stockholders'<br>Equity<br>(Deficit) |
|--|-------------------|-------------|----------------------------------|---|------------------------|---|
|  | Shares            | Amount      |                                  |   |                        |   |
| <b>Balance as of January 31, 2024</b>                                    | 49,079,876        | \$ —        | \$ 621,024                       | \$ 56   | \$ (490,659)           | \$ 130,421                                    |
| Issuance of common stock upon exercise of stock options                  | 542,393           | —           | 4,136                            | —   | —                      | 4,136   |
| Issuance of common stock in connection with employee stock purchase plan | 123,778           | —           | 1,795                            | —   | —                      | 1,795   |
| Vesting of restricted stock units  | 1,537,046         | —           | —                                | —   | —                      | —   |
| Stock-based compensation   | —                 | —           | 31,210                           | —   | —                      | 31,210  |
| Net unrealized losses on investments                                     | —                 | —           | —                                | (29)  | —                      | (29)  |
| Net loss   | —                 | —           | —                                | —   | (40,890)               | (40,890)                                      |
| <b>Balance as of July 31, 2024</b>                                       | <b>51,283,093</b> | <b>\$ —</b> | <b>\$ 658,165</b>                | <b>\$ 27</b>  | <b>\$ (531,549)</b>    | <b>\$ 126,643</b>                             |

|  | Common Stock      |             | Additional<br>Paid-In<br>Capital | Accumulated<br>Other<br>Comprehensive<br>Income<br>(Loss) | Accumulated<br>Deficit | Total<br>Stockholders'<br>Equity |
|--|-------------------|-------------|----------------------------------|---|------------------------|----------------------------------|
|  | Shares            | Amount      |                                  |   |                        |                                  |
| <b>Balance as of January 31, 2023</b>                                    | 45,432,029        | \$ —        | \$ 561,547                       | \$ (807)  | \$ (410,476)           | \$ 150,264                       |
| Issuance of common stock upon exercise of stock options                  | 767,552           | —           | 4,650                            | —   | —                      | 4,650                            |
| Issuance of common stock in connection with employee stock purchase plan | 74,113            | —           | 847                              | —   | —                      | 847                              |
| Vesting of restricted stock units  | 790,220           | —           | —                                | —   | —                      | —                                |
| Stock-based compensation   | —                 | —           | 21,801                           | —   | —                      | 21,801                           |
| Net unrealized gains on investments                                      | —                 | —           | —                                | 506   | —                      | 506                              |
| Net loss   | —                 | —           | —                                | —   | (42,526)               | (42,526)                         |
| <b>Balance as of July 31, 2023</b>                                       | <b>47,063,914</b> | <b>\$ —</b> | <b>\$ 588,845</b>                | <b>\$ (301)</b>   | <b>\$ (453,002)</b>    | <b>\$ 135,542</b>                |

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

**COUCHBASE, INC.**  
**CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS**  
*(unaudited)*  
*(in thousands)*

|  | Six Months Ended July 31, |             |
|--|---------------------------|-------------|
|  | 2024                      | 2023        |
| <b>Cash flows from operating activities</b>                                    |                           |             |
| Net loss   | \$ (40,890)               | \$ (42,526) |
| Adjustments to reconcile net loss to net cash used in operating activities     |                           |             |
| Depreciation and amortization  | 763                       | 1,635       |
| Stock-based compensation, net of amounts capitalized                           | 30,783                    | 21,393      |
| Amortization of deferred commissions   | 8,280                     | 9,242       |
| Non-cash lease expense   | 1,530                     | 1,548       |
| Foreign currency transaction losses  | 291                       | 165         |
| Other  | (1,413)                   | (1,776)     |
| Changes in operating assets and liabilities                                    |                           |             |
| Accounts receivable  | 13,295                    | 7,537       |
| Deferred commissions   | (8,249)                   | (9,146)     |
| Prepaid expenses and other assets  | 443                       | (118)       |
| Accounts payable   | 146                       | 1,745       |
| Accrued compensation and benefits  | (3,991)                   | (1,754)     |
| Other accrued expenses   | (1,107)                   | (1,871)     |
| Operating lease liabilities  | (1,625)                   | (1,723)     |
| Deferred revenue   | (1,547)                   | 7,949       |
| Net cash used in operating activities  | (3,291)                   | (7,700)     |
| <b>Cash flows from investing activities</b>                                    |                           |             |
| Purchases of short-term investments  | (37,805)                  | (64,315)    |
| Maturities of short-term investments   | 58,144                    | 70,120      |
| Additions to property and equipment  | (2,062)                   | (2,359)     |
| Net cash provided by investing activities                                      | 18,277                    | 3,446       |
| <b>Cash flows from financing activities</b>                                    |                           |             |
| Proceeds from exercise of stock options  | 4,136                     | 4,650       |
| Proceeds from issuance of common stock under ESPP                              | 1,795                     | 847         |
| Net cash provided by financing activities                                      | 5,931                     | 5,497       |
| Effect of exchange rate changes on cash, cash equivalents and restricted cash  | (204)                     | (252)       |
| Net increase in cash, cash equivalents and restricted cash                     | 20,713                    | 991         |
| <b>Cash, cash equivalents and restricted cash</b>                              |                           |             |
| Beginning of period  | 41,894                    | 40,989      |
| End of period  | \$ 62,607                 | \$ 41,980   |
| Cash and cash equivalents  | \$ 62,607                 | \$ 41,437   |
| Restricted cash included in other assets                                       | —                         | 543         |
| Total cash, cash equivalents and restricted cash                               | \$ 62,607                 | \$ 41,980   |
| <b>Supplemental disclosures of cash activities</b>                             |                           |             |
| Cash paid for income taxes   | \$ 1,140                  | \$ 410      |
| Cash paid for interest   | \$ 9                      | \$ 43       |
| <b>Non-cash investing and financing activities:</b>                            |                           |             |
| Stock-based compensation capitalized as internal-use software costs            | \$ 427                    | \$ 408      |
| Net change in unrealized gains or losses on available-for-sale debt securities | \$ (29)                   | \$ 506      |

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

**COUCHBASE, INC.**  
**NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS**  
*(unaudited)*

**1. Description of Business**

Couchbase, Inc. provides a leading cloud database platform for modern applications. Couchbase was incorporated in the State of Delaware in 2008 and is headquartered in Santa Clara, California. In these notes to the unaudited condensed consolidated financial statements, the “Company,” “Couchbase,” “we,” “us” and “our” refers to Couchbase, Inc. and its subsidiaries on a consolidated basis.

**2. Basis of Presentation and Summary of Significant Accounting Policies**

**Basis of Presentation**

The Company’s unaudited condensed consolidated financial statements and accompanying notes have been prepared in conformity with accounting principles generally accepted in the United States of America (“GAAP”) and applicable rules and regulations of the Securities and Exchange Commission (“SEC”), regarding interim financial reporting. As permitted under those rules, certain footnotes or other financial information that are normally required by GAAP have been condensed or omitted, and accordingly the balance sheet as of January 31, 2024, and related disclosures, have been derived from the audited consolidated financial statements at that date but do not include all the information required by GAAP for complete consolidated financial statements. These unaudited condensed consolidated financial statements have been prepared on the same basis as the Company’s annual consolidated financial statements and, in the opinion of management, reflect all adjustments (consisting of only normal recurring adjustments) that are necessary for the fair statement of the Company’s condensed consolidated financial information. The results of operations for the three and six months ended July 31, 2024, are not necessarily indicative of the results to be expected for the year ending January 31, 2025, or for any other interim period or for any other future year.

The accompanying unaudited condensed consolidated financial statements should be read in conjunction with the audited consolidated financial statements and the related notes contained in the Company’s Annual Report on Form 10-K for the year ended January 31, 2024, as filed with the SEC on March 26, 2024.

**Fiscal Year**

The Company’s fiscal year ends on January 31. Unless otherwise stated, references to year in these condensed consolidated financial statements relate to fiscal year rather than calendar year.

**Principles of Consolidation**

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

**Use of Estimates**

The preparation of the condensed consolidated financial statements in conformity with GAAP requires management to make estimates and assumptions that affect the amounts stated in the financial statements and accompanying notes. Such estimates include, but are not limited to, standalone selling prices for each distinct performance obligation, capitalized internal-use software costs, expected period of benefit for deferred commissions, valuation of stock-based awards, the determination of allowance for credit losses, the incremental borrowing rate used to measure operating lease liabilities, and accounting for income taxes. The Company bases its estimates on historical experience and assumptions that management considers reasonable.

The Company assesses these estimates on a regular basis; however, actual results could differ from these estimates. Estimates and assumptions about future events and their effects, including the impact of macroeconomic conditions such as inflation and foreign exchange fluctuations, cannot be determined with certainty and therefore require increased judgment. These estimates and assumptions may change in future periods and will be recognized in the condensed consolidated financial statements as new events occur and additional information becomes known. To the extent the Company’s actual results differ materially from those estimates and assumptions, the Company’s future financial statements could be affected.

## Significant Accounting Policies

There have been no material changes to the Company's significant accounting policies described in the Company's Annual Report on Form 10-K for the fiscal year ended January 31, 2024, that have had a material impact on its condensed consolidated financial statements and related notes.

### *Deferred Commissions*

The Company capitalizes certain sales commissions, including related payroll taxes, earned by the Company's sales force, which are considered to be incremental costs that would not be incurred absent of the contract. On an annual basis, the Company assesses the expected period of benefit by taking into consideration its customer contracts, its technology and duration of customer relationships. Based on our most recent assessment, the Company determined the expected period of benefit for incremental costs of customer contracts should be increased from three to four years. This change in accounting estimate was effective February 1, 2024 and is accounted for prospectively in the Company's unaudited condensed consolidated financial statements. Commissions for renewal contracts are not commensurate with the commission paid for initial acquisition of a contract and are amortized based over the related contractual renewal period. This change in the period of benefit did not have a material impact to our unaudited condensed consolidated financial statements.

## Concentration of Credit Risk

Financial instruments that potentially subject the Company to credit risk primarily consist of cash, cash equivalents, restricted cash, short-term investments and accounts receivable. The Company maintains its cash and cash equivalents, restricted cash and short-term investments with high-quality financial institutions. Cash equivalents consist of money market funds which are invested through financial institutions in the United States ("U.S."). Deposits, including those held in foreign branches of global banks, may exceed the amount of insurance provided on such deposits. The Company has not experienced any losses on these deposits.

For its accounts receivable, the Company is exposed to credit risk in the event of nonpayment by customers to the extent of the amounts recorded on the consolidated balance sheet. Generally, credit risk with respect to accounts receivable is diversified due to the number of entities comprising the Company's customer base and their dispersion across different geographies and industries. The Company performs ongoing credit evaluations on certain customers and generally does not require collateral on accounts receivable. The Company maintains an allowance for credit losses and historically bad debts have not been material.

No customer accounted for 10% or more of total revenue for the three and six months ended July 31, 2024 and 2023. One customer accounted for approximately 18% of gross accounts receivable as of July 31, 2024. No customer accounted for 10% or more of gross accounts receivable as of January 31, 2024.

## Recent Accounting Pronouncements

### *Recently Adopted Accounting Pronouncements*

There were no significant changes to the Company's significant accounting policies disclosed in "Note 2 – Basis of Presentation and Summary of Significant Accounting Policies" of the Company's Annual Report.

### *Recently Issued Accounting Pronouncements*

In November 2023, the FASB issued ASU No. 2023-07, *Segment Reporting (Topic 280): Improvements to Reportable Segment Disclosures* ("ASU 2023-07"), which is intended to improve reportable segment disclosure requirements. ASU 2023-07 expands segment disclosures by requiring disclosure of significant segment expenses that are regularly provided to the chief operating decision maker and included within each reported measure of segment profit or loss, an amount and description of its composition for other segment items, and interim disclosures of a reportable segment's profit or loss and assets. Additionally, the amendments require disclosure of the title and position of the CODM and an explanation of how the CODM uses the reported measure(s) of segment profit or loss in assessing segment performance and deciding how to allocate resources. All disclosure requirements of ASU 2023-07 are required for all entities including entities with a single reportable segment. This ASU is effective for fiscal years beginning after December 15, 2023, and interim periods within fiscal years beginning after December 15, 2024. Early adoption is permitted. The Company is in the process of evaluating the impact of the adoption on its consolidated financial statements and related disclosures.

In December 2023, the FASB issued ASU No. 2023-09, *Income Taxes (Topic 740): Improvements to Income Tax Disclosures* ("ASU 2023-09"), which requires companies to disclose additional information about income taxes, primarily their rate reconciliation information and income taxes paid. The new guidance requires companies to disclose in their rate

reconciliation table additional categories of information about federal, state and foreign income taxes and to provide more details about the reconciling items in some categories if the items meet a quantitative threshold. Additionally, companies will be required to disclose annually income taxes paid (net of refunds received) disaggregated by federal (national), state and foreign taxes and to disaggregate the information by jurisdiction based on a quantitative threshold. The guidance is effective for fiscal years beginning after December 15, 2024. Early adoption is permitted. The Company is currently evaluating the impact of ASU 2023-09 on its consolidated financial statements and related disclosures.

Under the Jumpstart Our Business Startups Act (the “JOBS Act”), the Company meets the definition of an emerging growth company and can delay adopting new or revised accounting standards issued after the enactment of the JOBS Act until such time as those standards apply to private companies. The Company has elected to use this extended transition period for complying with new or revised accounting standards that have different effective dates for public and private companies until the Company is no longer an emerging growth company or until the Company affirmatively and irrevocably opts out of the extended transition period. The Company currently expects that we will no longer be an emerging growth company as of January 31, 2025.

### 3. Cash Equivalents and Short-Term Investments

The following tables summarize the Company’s cash equivalents and short-term investments (in thousands):

|                                     | As of July 31, 2024    |                        |                         |                      |
|-------------------------------------|------------------------|------------------------|-------------------------|----------------------|
|                                     | Amortized Cost         | Gross Unrealized Gains | Gross Unrealized Losses | Estimated Fair Value |
| <b>Cash Equivalents</b>             |                        |                        |                         |                      |
| Money market funds                  | \$ 38,757              | \$ —                   | \$ —                    | \$ 38,757            |
| Total cash equivalents              | 38,757                 | —                      | —                       | 38,757               |
| <b>Short-Term Investments</b>       |                        |                        |                         |                      |
| U.S. government treasury securities | 60,190                 | 46                     | (26)                    | 60,210               |
| Corporate debt securities           | 24,335                 | 29                     | (18)                    | 24,346               |
| Commercial paper                    | 4,975                  | —                      | —                       | 4,975                |
| U.S. government agency securities   | 3,999                  | —                      | (4)                     | 3,995                |
| Total short-term investments        | 93,499                 | 75                     | (48)                    | 93,526               |
| Total                               | \$ 132,256             | \$ 75                  | \$ (48)                 | \$ 132,283           |
|                                     |                        |                        |                         |                      |
|                                     | As of January 31, 2024 |                        |                         |                      |
|                                     | Amortized Cost         | Gross Unrealized Gains | Gross Unrealized Losses | Estimated Fair Value |
| <b>Cash Equivalents</b>             |                        |                        |                         |                      |
| Money market funds                  | \$ 32,895              | \$ —                   | \$ —                    | \$ 32,895            |
| Total cash equivalents              | 32,895                 | —                      | —                       | 32,895               |
| <b>Short-Term Investments</b>       |                        |                        |                         |                      |
| U.S. government treasury securities | 85,525                 | 58                     | (7)                     | 85,576               |
| Corporate debt securities           | 13,712                 | 14                     | (1)                     | 13,725               |
| Commercial paper                    | 4,845                  | —                      | —                       | 4,845                |
| U.S. government agency securities   | 7,999                  | —                      | (8)                     | 7,991                |
| Asset-backed securities             | 144                    | —                      | —                       | 144                  |
| Total short-term investments        | 112,225                | 72                     | (16)                    | 112,281              |
| Total                               | \$ 145,120             | \$ 72                  | \$ (16)                 | \$ 145,176           |

During the three and six months ended July 31, 2024 and 2023, the Company did not reclassify any amounts to earnings from accumulated other comprehensive income (loss) related to unrealized gains or losses in other income (expense), net in the condensed consolidated statements of operations.

As of July 31, 2024, the Company’s short-term investments consisted of \$76.7 million and \$16.8 million with a contractual maturity date of less than one year and greater than one year, respectively. As of January 31, 2024, the

Company's short-term investments consisted of \$97.6 million and \$14.7 million with a contractual maturity of less than one year and greater than one year, respectively.

The Company's gross unrealized losses and fair values for short-term investments that were in an unrealized loss position as of July 31, 2024 and January 31, 2024 aggregated by investment category and the length of time that individual securities have been in a continuous loss position were as follows (in thousands):

|                                     | As of July 31, 2024 |            |                      |            |                   |            |
|-------------------------------------|---------------------|------------|----------------------|------------|-------------------|------------|
|                                     | Less Than 12 Months |            | 12 Months or Greater |            | Total             |            |
|                                     | Unrealized Losses   | Fair Value | Unrealized Losses    | Fair Value | Unrealized Losses | Fair Value |
| U.S. government treasury securities | \$ (26)             | \$ 32,624  | \$ —                 | \$ —       | \$ (26)           | \$ 32,624  |
| Corporate debt securities           | (18)                | 9,904      | —                    | —          | (18)              | 9,904      |
| U.S. government agency securities   | (2)                 | 1,995      | (2)                  | 1,999      | (4)               | 3,994      |
| Total                               | \$ (46)             | \$ 44,523  | \$ (2)               | \$ 1,999   | \$ (48)           | \$ 46,522  |

  

|                                     | As of January 31, 2024 |            |                      |            |                   |            |
|-------------------------------------|------------------------|------------|----------------------|------------|-------------------|------------|
|                                     | Less Than 12 Months    |            | 12 Months or Greater |            | Total             |            |
|                                     | Unrealized Losses      | Fair Value | Unrealized Losses    | Fair Value | Unrealized Losses | Fair Value |
| U.S. government treasury securities | \$ (7)                 | \$ 22,746  | \$ —                 | \$ —       | \$ (7)            | \$ 22,746  |
| Corporate debt securities           | (1)                    | 5,008      | —                    | —          | (1)               | 5,008      |
| U.S. government agency securities   | (8)                    | 7,991      | —                    | —          | (8)               | 7,991      |
| Asset-backed securities             | —                      | —          | —                    | 144        | —                 | 144        |
| Total                               | \$ (16)                | \$ 35,745  | \$ —                 | \$ 144     | \$ (16)           | \$ 35,889  |

As of July 31, 2024, the Company had 10 short-term investments in an unrealized loss position. As of January 31, 2024, the Company had 13 short-term investments in an unrealized loss position. As of July 31, 2024, the Company determined that the declines in the market value of its investment portfolio were not driven by credit related factors. During the three and six months ended July 31, 2024, there were no credit or non-credit related impairment charges recorded by the Company.

#### 4. Fair Value Measurements

The Company accounts for certain of its financial assets and liabilities at fair value. Fair value is defined as the price that would be received to sell an asset or paid to transfer a liability (an exit price) in an orderly transaction between market participants at the reporting date. The accounting guidance establishes a three-tiered hierarchy, which prioritizes the inputs used in the valuation methodologies in measuring fair value as follows:

Level 1: Observable inputs, such as quoted prices in active markets for identical assets or liabilities.

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.

Level 3: Unobservable inputs that are supported by little or no market activity and that are significant to the fair value of the assets or liabilities.

The carrying amounts reflected on the condensed consolidated balance sheets for cash equivalents, accounts receivable, accounts payable and accrued liabilities approximate fair value due to the short maturities of those instruments.



The following tables present the fair value hierarchy for the Company's assets measured at fair value on a recurring basis (in thousands):

|                                     | As of July 31, 2024    |            |            |
|-------------------------------------|------------------------|------------|------------|
|                                     | Level 1                | Level 2    | Total      |
| <b>Cash Equivalents</b>             |                        |            |            |
| Money market funds                  | \$ 38,757              | \$ —       | \$ 38,757  |
| Total cash equivalents              | 38,757                 | —          | 38,757     |
| <b>Short-Term Investments</b>       |                        |            |            |
| U.S. government treasury securities | —                      | 60,210     | 60,210     |
| Corporate debt securities           | —                      | 24,346     | 24,346     |
| Commercial paper                    | —                      | 4,975      | 4,975      |
| U.S. government agency securities   | —                      | 3,995      | 3,995      |
| Total short-term investments        | —                      | 93,526     | 93,526     |
| Total                               | \$ 38,757              | \$ 93,526  | \$ 132,283 |
|                                     |                        |            |            |
|                                     | As of January 31, 2024 |            |            |
|                                     | Level 1                | Level 2    | Total      |
| <b>Cash Equivalents</b>             |                        |            |            |
| Money market funds                  | \$ 32,895              | \$ —       | \$ 32,895  |
| Total cash equivalents              | 32,895                 | —          | 32,895     |
| <b>Short-Term Investments</b>       |                        |            |            |
| U.S. government treasury securities | —                      | 85,576     | 85,576     |
| Corporate debt securities           | —                      | 13,725     | 13,725     |
| Commercial paper                    | —                      | 4,845      | 4,845      |
| U.S. government agency securities   | —                      | 7,991      | 7,991      |
| Asset-backed securities             | —                      | 144        | 144        |
| Total short-term investments        | —                      | 112,281    | 112,281    |
| Total                               | \$ 32,895              | \$ 112,281 | \$ 145,176 |

The Company classifies its money market funds within Level 1 of the fair value hierarchy because they are valued based on quoted market prices in active markets. The Company classifies its U.S. government agency securities, asset-backed securities, commercial paper, U.S. government treasury securities, and corporate debt securities within Level 2 because they are valued using inputs other than quoted prices which are directly or indirectly observable in the market, including readily available pricing sources for the identical underlying security which may not be actively traded.

## 5. Balance Sheet Components

### Prepaid Expenses and Other Current Assets

Prepaid expenses and other current assets consisted of the following (in thousands):

|   | As of July 31,<br>2024 | As of January 31,<br>2024 |
|---|------------------------|---------------------------|
| Prepaid expenses                                | \$ 4,032               | \$ 4,793                  |
| Prepaid software                                | 4,616                  | 4,429                     |
| Other current assets                            | 1,444                  | 1,163                     |
| Total prepaid expenses and other current assets | \$ 10,092              | \$ 10,385                 |

## Property and Equipment, Net

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

|  | As of July 31,<br>2024 | As of January 31,<br>2024 |
|--|------------------------|---------------------------|
| Computer equipment   | \$ 3,744               | \$ 3,736                  |
| Furniture and fixtures                                     | 454                    | 418                       |
| Capitalized internal-use software                          | 8,743                  | 8,743                     |
| Leasehold improvements                                     | 1,903                  | 1,903                     |
| Construction in progress—capitalized internal-use software | 5,017                  | 2,571                     |
| Total gross property and equipment                         | 19,861                 | 17,371                    |
| Accumulated depreciation and amortization                  | (12,808)               | (12,044)                  |
| Total property and equipment, net                          | \$ 7,053               | \$ 5,327                  |

Depreciation and amortization expense was \$0.4 million and \$0.7 million for the three months ended July 31, 2024 and 2023, respectively, and \$0.8 million and \$1.6 million for the six months ended July 31, 2024 and 2023, respectively. Included in these amounts were the amortization of capitalized internal-use software development costs of \$0.3 million and \$0.5 million for the three months ended July 31, 2024 and 2023, respectively, and \$0.5 million and \$1.2 million for the six months ended July 31, 2024 and 2023, respectively.

## Accrued Compensation and Benefits

Accrued compensation and benefits consisted of the following (in thousands):

|   | As of July 31,<br>2024 | As of January 31,<br>2024 |
|---|------------------------|---------------------------|
| Accrued bonus                           | \$ 5,485               | \$ 7,056                  |
| Accrued commissions                     | 3,339                  | 4,852                     |
| Accrued payroll and benefits            | 3,481                  | 4,690                     |
| Employee contributions under the ESPP   | 1,818                  | 1,518                     |
| Total accrued compensation and benefits | \$ 14,123              | \$ 18,116                 |

## Other Accrued Liabilities

Other accrued liabilities consisted of the following (in thousands):

|                                   | As of July 31,<br>2024 | As of January 31,<br>2024 |
|-----------------------------------|------------------------|---------------------------|
| Accrued professional fees         | \$ 984                 | \$ 1,190                  |
| Sales and value added tax payable | 345                    | 517                       |
| Income taxes payable              | 157                    | 173                       |
| Other                             | 1,887                  | 2,701                     |
| Total other accrued liabilities   | \$ 3,373               | \$ 4,581                  |

## 6. Deferred Revenue and Remaining Performance Obligations

The following table presents the deferred revenue balances (in thousands):

|                              | As of July 31,<br>2024 | As of January 31,<br>2024 |
|------------------------------|------------------------|---------------------------|
| Deferred revenue, current    | \$ 81,906              | \$ 81,736                 |
| Deferred revenue, noncurrent | 1,031                  | 2,747                     |
| Total deferred revenue       | \$ 82,937              | \$ 84,483                 |

Changes in the deferred revenue balances during the six months ended July 31, 2024 and 2023 were as follows (in thousands):

|   | Six Months Ended July 31, |                  |
|---|---------------------------|------------------|
|   | 2024                      | 2023             |
| Beginning balance   | \$ 84,483                 | \$ 74,991        |
| Performance obligations satisfied during the period that were included in the deferred revenue balance at the beginning of the year | (59,189)                  | (49,726)         |
| Increases due to invoicing prior to satisfaction of performance obligations   | 57,643                    | 57,675           |
| Ending balance  | <u>\$ 82,937</u>          | <u>\$ 82,940</u> |

Remaining performance obligations (“RPOs”) represent the amount of contracted future revenue that has not yet been recognized, including both deferred revenue and non-cancelable contracted amounts that will be invoiced and recognized as revenue in future periods.

As of July 31, 2024, the Company’s RPOs were \$215.8 million. The Company expects to recognize revenue of \$136.2 million of these remaining performance obligations over the next twelve months with the remaining balances recognized thereafter.

## 7. Debt

### *Loan and Security Agreement*

On February 7, 2024, the Company entered into a loan and security agreement with MUFG Bank, Ltd., as lender, for a three-year senior secured revolving loan facility of up to \$25.0 million, including a letter of credit sublimit of up to \$5.0 million, with an original maturity date on February 7, 2027 and an uncommitted accordion feature that provides up to \$25.0 million of additional borrowing capacity (the “Credit Facility”). Borrowings under the Credit Facility accrue interest at a floating per annum rate based on secured overnight financing rate (“SOFR”), plus 3.0% for the applicable interest rate period. Accrued interest on the Credit Facility will be paid at the end of the applicable interest rate period, but at least every three months. The Company is also obligated to pay other customary fees and expenses, including an unused revolving line facility fee of 0.25% per annum of the average daily unused portion of the Credit Facility.

Under the Credit Facility, the Company is subject to a minimum consolidated adjusted EBITDA covenant, tested quarterly. The Credit Facility also contains certain customary affirmative and negative covenants as well as customary events of default, subject to certain exceptions, including restrictions on the ability of the Company and its subsidiaries to, among other things, incur debt, grant liens, make acquisitions, suffer changes in control, make investments, make certain dividends or distributions, repurchase or redeem stock, dispose of or transfer assets, and enter into transactions with affiliates, in each case, subject to customary and other agreed limitations and exceptions. As of July 31, 2024, the Company has an outstanding letter of credit of \$0.5 million against the \$5.0 million sublimit in connection with a lease arrangement.

The Company did not have any debt outstanding under the Credit Facility as of July 31, 2024 and was in compliance with the financial covenants associated with the Credit Facility as of July 31, 2024.

## 8. Leases

The Company leases facilities under non-cancelable operating leases, primarily for rent of office space. As of July 31, 2024, the Company's leases have various expiration dates through November 2027, some of which include options to extend the leases for up to three years. The Company does not have any finance leases.

The components of lease costs were as follows (in thousands):

|                       | Three Months Ended July 31, |        | Six Months Ended July 31, |          |
|-----------------------|-----------------------------|--------|---------------------------|----------|
|                       | 2024                        | 2023   | 2024                      | 2023     |
| Operating lease costs | \$ 765                      | \$ 776 | \$ 1,530                  | \$ 1,548 |
| Variable lease costs  | \$ 164                      | \$ 200 | \$ 321                    | \$ 346   |

Short-term lease costs were immaterial during the three and six months ended July 31, 2024 and 2023.

The following table presents supplemental cash flow information related to leases (in thousands):

|   | Six Months Ended July 31, |          |
|---|---------------------------|----------|
|   | 2024                      | 2023     |
| Cash paid for amounts included in the measurement of lease liabilities: |                           |          |
| Operating cash outflows from operating leases                           | \$ 1,625                  | \$ 1,694 |
| Right-of-use assets obtained in exchange for lease obligations:         |                           |          |
| Operating leases  | \$ 81                     | \$ 130   |

The following table presents supplemental balance sheet information related to operating leases (in thousands, except for lease term and discount rate):

|   | July 31, 2024 | January 31, 2024 |
|---|---------------|------------------|
| Operating lease right-of-use assets     | \$ 3,497      | \$ 4,848         |
| Operating lease liabilities             | \$ 2,670      | \$ 3,208         |
| Operating lease liabilities, noncurrent | 1,170         | 2,078            |
| Total operating lease liabilities       | \$ 3,840      | \$ 5,286         |
| Weighted-average remaining lease term   | 1.7 years     | 2.0 years        |
| Weighted-average discount rate          | 4.5 %         | 4.4 %            |

As of July 31, 2024, remaining maturities of operating lease liabilities were as follows (in thousands):

| Period                     | Operating Leases |
|----------------------------|------------------|
| Remaining for Fiscal 2025  | \$ 1,727         |
| Fiscal 2026                | 1,550            |
| Fiscal 2027                | 465              |
| Fiscal 2028                | 245              |
| Fiscal 2029 and thereafter | —                |
| Total lease payments       | 3,987            |
| Less: imputed interest     | (147)            |
| Total                      | \$ 3,840         |

## 9. Commitments and Contingencies

### Other Contractual Commitments

Other contractual commitments relate to third-party cloud infrastructure agreements and subscription arrangements.

There were no material contractual commitments that were entered into during the three and six months ended July 31, 2024 that were outside the ordinary course of business.

### Legal Matters

From time to time, the Company may be a party to various legal matters, threatened claims, or proceedings in the normal course of business. Legal fees and other costs associated with such actions are expensed as incurred. The Company assesses, in conjunction with its legal counsel, the need to record a liability for litigation and contingencies. Legal accruals are recorded when and if it is determined that a loss related to a certain matter is both probable and reasonably estimable. The Company is not currently a party to any legal proceedings that, if determined adversely to it, would, in management's opinion, have a material and adverse effect on the Company's financial condition, results of operations, or cash flows.

### Indemnification Agreements

In the ordinary course of business, the Company enters into agreements of varying scope and terms pursuant to which the Company agrees to indemnify customers, vendors, lessors and other business partners with respect to certain matters, including, but not limited to, losses arising out of the breach of such agreements, services to be provided by the Company or from intellectual property infringement claims made by third parties. Additionally, the Company entered into

indemnification agreements with the Company's directors and officers that require the Company, among other things, to indemnify them against certain liabilities that may arise from their services as a director or executive officer in any capacity as the Company's director, trustee, general partner, managing member, officer, employee, agent or fiduciary or with respect to any employee benefit plans. The Company has not incurred material costs to defend lawsuits or settle claims related to these indemnification agreements nor are we aware of any such claims that could reasonably be expected to incur material costs.

## 10. Stockholders' Equity and Employee Incentive Plans

### *Redeemable Convertible Preferred Stock*

As of July 31, 2024, there were no shares of redeemable convertible preferred stock issued and outstanding.

The Company's Amended and Restated Certificate of Incorporation authorizes the issuance of 200,000,000 shares of undesignated preferred stock with a par value of \$0.00001 per share with rights and preferences, including voting rights, designated from time to time by the board of directors.

### *Common Stock*

The Company's Amended and Restated Certificate of Incorporation authorized the Company to issue 1,000,000,000 shares of common stock at a par value of \$0.00001 as of July 31, 2024 and January 31, 2024.

Each share of common stock is entitled to one vote. The holders of common stock are also entitled to receive dividends whenever funds are legally available and when and if declared by the board of directors, subject to the prior rights of holders of all classes of stock outstanding. As of July 31, 2024 and January 31, 2024, no dividends had been declared.

As of July 31, 2024, the Company has reserved common stock for future issuance as follows:

|  | <b>Number of Shares</b> |
|--|-------------------------|
| Stock options outstanding                                    | 5,277,912               |
| Restricted stock units issued and outstanding                | 4,973,476               |
| Remaining shares available for issuance under the 2021 Plan  | 3,652,938               |
| Shares available for issuance under the 2023 Inducement Plan | 949,003                 |
| ESPP   | 1,606,656               |
| Common stock warrants  | 105,350                 |
| <b>Total</b>   | <b>16,565,335</b>       |

### *Common Stock Warrants*

In April, 2019, the Company issued warrants in connection with a term loan agreement with a certain lender to purchase 105,350 shares of the Company's common stock at \$7.48 per share, exercisable over 10 years. As of July 31, 2024, all warrants were outstanding and exercisable.

### *Stock Options*

The following table summarizes stock option activity under the 2008 Equity Incentive Plan (the "2008 Plan"), 2018 Equity Incentive Plan (the "2018 Plan"), 2021 Equity Incentive Plan (the "2021 Plan") and 2023 Inducement Equity

Incentive Plan (the “2023 Inducement Plan”), collectively (the “Stock Plans”) for the six months ended July 31, 2024 (aggregate intrinsic value in thousands):

|   | Options Outstanding |                                 | Weighted-Average Contractual Term | Aggregate Intrinsic Value |
|---|---------------------|---------------------------------|-----------------------------------|---------------------------|
|   | Number of Options   | Weighted-Average Exercise Price |                                   |                           |
| <b>Balances as of January 31, 2024</b>                  | 5,889,938           | \$ 10.38                        | 4.84                              | \$ 86,742                 |
| Options exercised                                       | (542,393)           | \$ 7.63                         |                                   |                           |
| Options cancelled                                       | (69,633)            | \$ 24.13                        |                                   |                           |
| <b>Balances as of July 31, 2024</b>                     | <u>5,277,912</u>    | \$ 10.48                        | 4.35                              | \$ 50,236                 |
| Options vested and expected to vest as of July 31, 2024 | 5,277,912           | \$ 10.48                        | 4.35                              | \$ 50,236                 |
| Options vested and exercisable as of July 31, 2024      | 5,063,441           | \$ 9.97                         | 4.25                              | \$ 50,200                 |

No stock options were granted during the six months ended July 31, 2024 and 2023.

The aggregate intrinsic value of options exercised during the three months ended July 31, 2024 and 2023 was \$1.9 million and \$4.5 million, respectively, and \$10.0 million and \$8.7 million during the six months ended July 31, 2024 and 2023, respectively. Aggregate intrinsic value represents the difference between the exercise price of the options and the estimated fair value of the Company’s common stock.

The Company recognized stock-based compensation expense related to stock options of \$1.2 million and \$1.2 million during the three months ended July 31, 2024 and 2023, respectively, and \$2.1 million and \$2.4 million during the six months ended July 31, 2024 and 2023, respectively.

As of July 31, 2024, there was \$1.8 million of unrecognized stock-based compensation expense related to unvested stock options, which is expected to be recognized over a weighted-average period of 0.6 years.

#### **Service-Based RSUs**

During the year ended January 31, 2022, the Company began granting restricted stock units (“RSUs”) to its employees which have service-based vesting conditions. The service-based vesting condition for these awards is generally satisfied by rendering continuous service over two to four years, depending on the award, during which time the grants will vest either quarterly or after a one-year cliff with quarterly vesting thereafter.

The following table is a summary of service-based RSU activity for the six months ended July 31, 2024:

|  | RSUs Outstanding |  |
|--|------------------|--|
|  | Number of RSUs   | Weighted Average Grant Date Fair Value Per Share |
| <b>Balances as of January 31, 2024</b> | 3,909,920        | \$ 17.56   |
| RSUs granted                           | 1,854,529        | \$ 27.30   |
| RSUs vested                            | (1,261,848)      | \$ 19.10   |
| RSUs forfeited                         | (278,727)        | \$ 19.04   |
| <b>Balances as of July 31, 2024</b>    | <u>4,223,874</u> | \$ 21.28   |

The aggregate fair value of the RSU awards granted was \$2.7 million and \$4.3 million during the three months ended July 31, 2024 and 2023, respectively, and \$50.6 million and \$43.6 million during the six months ended July 31, 2024 and 2023, respectively. This represents the fair value of the common stock on the date the service-based vesting awards were granted.

We recognized \$13.3 million and \$8.5 million in stock-based compensation expense related to service vesting-based RSUs during the three months ended July 31, 2024 and 2023, respectively, and \$25.0 million and \$15.4 million during the six months ended July 31, 2024 and 2023, respectively. As of July 31, 2024, there was \$80.1 million of unrecognized compensation expense related to service-based RSUs expected to be recognized over a weighted-average vesting period of 1.6 years.

### **Performance-based and Market-based Awards**

#### **Performance-based Awards**

We recognized a total of \$1.0 million and \$1.7 million in stock-based compensation expense related to performance-based RSUs (“PSUs”) during the three months ended July 31, 2024 and 2023, respectively, and \$2.2 million and \$2.5 million during the six months ended July 31, 2024 and 2023, respectively. As of July 31, 2024, there were 644,002 awards outstanding and a total of \$3.7 million of unrecognized compensation expense related to PSUs expected to be recognized over an average vesting period of 1.5 years.

#### **Market-based Awards**

The Company recognized a total of \$0.1 million and \$0.4 million in stock-based compensation expense related to market-based awards during the three months ended July 31, 2024 and 2023, respectively, and \$0.4 million and \$0.5 million during the six months ended July 31, 2024 and 2023, respectively. There were 79,200 awards vested during the six months ended July 31, 2024. As of July 31, 2024, there were 105,600 awards outstanding and a total of \$0.3 million of unrecognized compensation expense related to market-based RSUs expected to be recognized over an average vesting period of 0.6 years.

#### **Determination of Fair Value**

The Company estimates the fair value of purchase rights issued to employees under the ESPP using the Black-Scholes option-pricing model, which is dependent upon several variables, such as the fair value of the Company’s common stock, the expected option term, expected volatility of the Company’s stock price over the expected term, expected risk-free interest rate over the expected option term, and expected dividend yield.

The fair value of employee stock purchase rights for the offering period under the 2021 ESPP was determined on the date of grant using the Black-Scholes option-pricing model with the following weighted-average assumptions:

|                                      | Six Months Ended July 31, |        |
|--------------------------------------|---------------------------|--------|
|                                      | 2024                      | 2023   |
| <b>Employee Stock Purchase Plan:</b> |                           |        |
| Expected term (in years)             | 1.2                       | 0.8    |
| Expected volatility                  | 60.1 %                    | 66.9 % |
| Risk-free interest rate              | 5.0 %                     | 4.8 %  |
| Dividend yield                       | —                         | —      |

The Company recognized stock-based compensation expense related to the ESPP of \$0.4 million and \$0.3 million for the three months ended July 31, 2024 and 2023, respectively, and \$1.0 million and \$0.7 million for the six months ended July 31, 2024 and 2023, respectively. As of July 31, 2024, \$1.8 million of unrecognized stock-based compensation expense related to the ESPP is expected to be recognized over a weighted-average vesting period of 0.9 years.

During the six months ended July 31, 2024, 123,778 shares of common stock were issued under the ESPP.

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

Stock-based compensation expense, net of amounts capitalized was as follows (in thousands):

|   | Three Months Ended July 31, |                  | Six Months Ended July 31, |                  |
|---|-----------------------------|------------------|---------------------------|------------------|
|   | 2024                        | 2023             | 2024                      | 2023             |
| Cost of revenue—subscription                  | \$ 301                      | \$ 236           | \$ 567                    | \$ 429           |
| Cost of revenue—services                      | 109                         | 149              | 250                       | 294              |
| Research and development                      | 4,214                       | 3,614            | 8,207                     | 6,382            |
| Sales and marketing                           | 6,162                       | 4,032            | 11,385                    | 7,273            |
| General and administrative                    | 5,370                       | 4,086            | 10,374                    | 7,014            |
| Restructuring                                 | —                           | —                | —                         | 1                |
| <b>Total stock-based compensation expense</b> | <b>\$ 16,156</b>            | <b>\$ 12,117</b> | <b>\$ 30,783</b>          | <b>\$ 21,393</b> |

## 11. Income Taxes

Accounting for income taxes for interim periods generally requires the provision for income taxes to be determined by applying an estimate of the annual effective tax rate for the full fiscal year to income or loss before income taxes, adjusted for discrete items, if any, for the reporting period. The Company updates its estimate of the annual effective tax rate each quarter and records a cumulative adjustment in such period.

The Company recorded \$0.6 million of income tax expense for the three months ended July 31, 2024, an immaterial amount for the three months ended July 31, 2023, and \$0.5 million and \$0.8 million for the six months ended July 31, 2024 and 2023, respectively. Income tax expense consists primarily of income taxes in foreign jurisdictions in which the Company conducts business. Due to the Company's history of losses in the U.S., a full valuation allowance on the Company's domestic deferred tax assets, including net operating loss carryforwards, research and development tax credits, capitalized research and development, and other book versus tax differences was maintained. The Company has deferred tax attributes for stock-based compensation and fixed assets in the United Kingdom, and has not recorded a valuation allowance on the deferred tax attributes as of July 31, 2024. The Company will continue to evaluate for any future developments.

## 12. Geographic Information

The following table depicts the disaggregation of revenue by geographic area based on the billing address of the customers (in thousands):

|               | Three Months Ended July 31, |           | Six Months Ended July 31, |           |
|---------------|-----------------------------|-----------|---------------------------|-----------|
|               | 2024                        | 2023      | 2024                      | 2023      |
| United States | \$ 34,002                   | \$ 27,060 | \$ 68,684                 | \$ 53,052 |
| International | 17,587                      | 16,079    | 34,232                    | 31,083    |
| Total         | \$ 51,589                   | \$ 43,139 | \$ 102,916                | \$ 84,135 |

No individual foreign country contributed 10% or more of total revenue for the three and six months ended July 31, 2024 and 2023.

As of July 31, 2024 and January 31, 2024, the majority of the Company's long-lived assets, including operating lease ROU assets, were located in the United States.

## 13. Net Loss per Share

Basic net loss per share attributable to the Company's common stockholders is computed by dividing the net loss attributable to the Company's common stockholders by the weighted-average number of shares of common stock outstanding during the period. Diluted net loss per share is the same as basic net loss per share for all years presented because the effects of potentially dilutive items were anti-dilutive given the Company's net loss position in each period presented.

The following table presents the calculation of basic and diluted net loss per share attributable to common stockholders (in thousands, except per share data):

|   | Three Months Ended July 31, |             | Six Months Ended July 31, |             |
|---|-----------------------------|-------------|---------------------------|-------------|
|   | 2024                        | 2023        | 2024                      | 2023        |
| Numerator   |                             |             |                           |             |
| Net loss  | \$ (19,895)                 | \$ (20,651) | \$ (40,890)               | \$ (42,526) |
| Denominator   |                             |             |                           |             |
| Weighted-average shares used in computing net loss per share, basic and diluted | 50,822                      | 46,714      | 50,311                    | 46,285      |
| Net loss per share, basic and diluted   | \$ (0.39)                   | \$ (0.44)   | \$ (0.81)                 | \$ (0.92)   |



The following potentially dilutive securities were excluded from the computation of diluted net loss per share for the periods presented because the impact of including them would have been anti-dilutive (in thousands):

|   | As of July 31, |        |
|---|----------------|--------|
|   | 2024           | 2023   |
| Stock options                                 | 5,278          | 6,961  |
| RSUs  | 4,899          | 6,084  |
| Employee stock purchase rights under the ESPP | 151            | 113    |
| Common stock warrants                         | 105            | 105    |
| Total   | 10,433         | 13,263 |

#### 14. Subsequent Events

On August 1, 2024, the Company entered into a lease agreement by and between the Company and SR Winchester, LLC (the "One Santana Lease") The One Santana Lease is anticipated to commence in February 2025, or such earlier date as the Company begins occupancy of the leased space for its business operations. The term of the One Santana Lease is 91 months from the commencement date. The Company has the right to extend the term of the One Santana Lease for an additional seven years at the then-prevailing market rate. The Company expects to start making recurring rental payments under the lease in the third quarter of fiscal 2026. The total future minimum lease payments related to the One Santa Lease is approximately \$8.6 million. Additionally, the Company will participate in the construction of the office space, which will be reimbursed by the landlord through a tenant improvement allowance of approximately \$3.9 million. We expect this new leased facility will be held as our new headquarters following the expiration of our current lease for the facility in Santa Clara, California in March 2025. In connection with the One Santana Lease, the Company has an outstanding letter of credit of \$0.9 million against its \$5.0 million sublimit from its Credit Facility, which is described in Note 7.

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

*You should read the following discussion and analysis of our financial condition and results of operations together with our condensed consolidated financial statements and the related notes and other financial information included elsewhere in this Quarterly Report on Form 10-Q. Some of the information contained in this discussion and analysis or set forth elsewhere in this Quarterly Report on Form 10-Q, including information with respect to our plans and strategy for our business, includes forward-looking statements that involve risks and uncertainties. You should review the sections titled "Special Note Regarding Forward-Looking Statements" and "Risk Factors" for a discussion of forward-looking statements and important factors that could cause actual results to differ materially from the results described in or implied by the forward-looking statements contained in the following discussion and analysis. The last day of our fiscal year is January 31. Our fiscal quarters end on April 30, July 31, October 31 and January 31. Our fiscal years ended January 31, 2023, 2024 and 2025 are referred to herein as fiscal 2023, fiscal 2024 and fiscal 2025, respectively.*

### Overview

Couchbase provides a leading cloud database platform for modern applications. Our mission is to simplify how developers and architects develop, deploy and consume modern applications that span cloud, edge and everything in between. Enterprises rely on Couchbase to cost-effectively power the core applications their businesses depend on with the highest performance, reliability, scalability and versatility requirements for which there is no tolerance for disruption or downtime. Any compromise of these requirements could cause these applications to fail—stopping or delaying package delivery for shipping companies, interrupting reservations for travel companies or causing product shortages in stores for retailers.

Our database is versatile and works in multiple configurations, from fully-managed cloud to multi- or hybrid-cloud, to on-premises environments, and beyond the edge. We have architected our database to fuse the trusted strengths of relational databases with the flexibility, performance and scale of many NoSQL systems, across the cloud. Our database platform serves the needs of both enterprise architects and application developers. Combined with our performance at scale, we believe this power enables customers to run their most important applications with the effectiveness they require, with the efficiency they desire and in the modern infrastructure environments they demand.

With nearly every aspect of our lives being transformed by digital innovation, enterprises are charged with building applications that enable delightful and meaningful customer experiences. Enterprises are increasingly reliant on applications, which in turn rely on databases to store, retrieve and operationalize data into action. Today, applications are operating at a scale, speed and dynamism unheard of just a decade ago. There is an increasing diversity of application types, modalities and delivery and consumption models, and the volume, velocity and variety of data on which they rely is growing at an exponential rate. Looking forward, there is potential for AI to drastically transform business and the nature of modern applications as a whole. Consequently, the demand on enterprises and their databases is growing exponentially.

While legacy database technologies were built to the highest performance and reliability requirements of their generation, they are approaching the limits for which they were designed. The underlying architecture of these technologies has not changed significantly, while the requirements of the applications they need to support are changing dramatically, especially with the emergence of generative AI which relies heavily on real-time data. Legacy database technologies are buckling under the pressure of digital transformation, as they were not built to update and respond in microseconds, enable rich, customized user experiences and perform without latency.

We designed Couchbase to give enterprises a database for the modern cloud world. Our platform combines the best capabilities of a relational database, like SQL transactions and ACID guarantees, with the flexibility and scalability of a NoSQL database. This allows enterprises to confidently accelerate strategic initiatives such as more quickly moving business-critical applications into the cloud, improving application flexibility and increasing developer agility. For our customers, we facilitate a seamless transition from legacy relational databases to our modern cloud database platform resulting in better application scalability, user experience and security at the pace that works for them. We believe our unique architecture is also well-suited to power AI applications which require exceptionally high performance and scalability. We deliver this cloud database platform both as a customer-managed product and as a fully-managed DBaaS that is managed by Couchbase. Our DBaaS, called Couchbase Capella, supports a broad set of use cases, reducing a customer's need to buy, deploy and manage additional databases or supporting technologies.

We sell our platform through our direct sales force and our ecosystem of partners. Our platform is broadly accessible to a wide range of enterprises, as well as governments and organizations. We have customers in a range of industries, including retail and e-commerce, travel and hospitality, financial services and insurance, software and technology, gaming, media and entertainment and industrials. We focus our selling efforts on the largest global enterprises with the most complex data requirements, and we have cloud-based, fully managed offerings for enterprises looking for a turnkey version of our platform.

We have achieved significant growth over our operating history. For the six months ended July 31, 2024 and 2023, our revenue was \$102.9 million and \$84.1 million, respectively, representing period-over-period growth rate of 22%. As of July 31, 2024 and 2023, our annual recurring revenue (“ARR”) was \$214.0 million and \$180.7 million, respectively, representing period-over-period growth of 18%. For the six months ended July 31, 2024 and 2023, our net loss was \$40.9 million and \$42.5 million, respectively, as we continued to invest in the growth of our business to capture the massive opportunity that we believe is available to us.

## **Our Business Model**

We generate the substantial majority of our revenue from sales of subscriptions, which accounted for 96% and 94% of our total revenue for the six months ended July 31, 2024 and 2023, respectively. We derive a substantial majority of our subscription revenue from the Enterprise Edition of Couchbase Server and Couchbase Mobile. Couchbase Server is generally licensed per node, which we define as an instance of Couchbase running on a server. Our subscription pricing is based on the computing power and memory per instance, as well as the chosen service level. We offer three different support levels: the Platinum level offers 24/7 support and the shortest response time of 30 minutes; the Gold level offers 24/7 support with a response time of 2 hours; and the Silver level offers 7am-5pm local time support, 5 days a week. These response times are for incidents of the highest severity level, which we identify as level P1. The initial response time for levels P2 and P3 incidents, which are less severe, are longer.

We also derive subscription revenue from our DBaaS offering. Our DBaaS offering, called Couchbase Capella, is sold on a consumption basis, which removes the need to license different node types separately. Couchbase Capella pricing delivers superior customer flexibility relative to other Cloud Service Providers (“CSPs”) as on-demand pricing allows customers to pay only for what they use based on hourly pricing and the credits purchased through our annual credit model expire only at the end of a 12-month period, rather than ratably throughout the year. We also provide automatic conversion to on-demand consumption when annual credits expire or are exhausted. Couchbase Capella credits can be purchased upfront to provide cost savings with volume discounts available based on credit quantity. We offer three pricing levels for Couchbase Capella, based on the support response time.

The non-cancelable term of our subscription arrangements typically ranges from one to three years but may be longer or shorter in limited circumstances and is typically billed annually in advance. The timing and billing of large, multi-year contracts can create variability in revenue and deferred revenue between periods.

We also generate revenue from services, which represented 4% and 6% of our total revenue for the six months ended July 31, 2024 and 2023, respectively. Our services revenue is derived from our professional services related to the implementation or configuration of our platform and training. We have invested in building our services organization because we believe it plays an important role in customer success, ensuring that our customers fulfill their digital transformation agendas while leveraging our platform, accelerating our customers’ realization of the full benefits of our platform and driving increased adoption of our platform.

Our go-to-market strategy is focused on organizations that are modernizing existing applications or building net new applications. As an example, for large enterprises recognized as leaders in their respective industries, this could mean attempting to solve complicated business problems by digitally transforming their operations. For mid-size companies to start ups, this could be building a new product or service that seeks to disrupt an established market. As a result, Couchbase powers a wide variety of applications across a broad array of industries, from some of the largest and most complex enterprise applications worldwide to the next generation of personalized dynamic apps. Through our highly instrumented “sell-to” go-to-market motion, we have built a direct sales organization that understands the strategic needs of enterprises as well as a marketing organization that emphasizes our enablement of digital transformation through our no-compromises approach to performance, resiliency, scalability, agility and total cost of ownership (“TCO”) savings.

We complement our “sell-to” go-to-market motion with a “buy-from” go-to-market motion, which is focused on targeting the application developer community to drive adoption of our platform. To accomplish this, we have and plan to continue to invest in Couchbase Capella. We also offer free Community Editions of some of our products, which are free trials of our Enterprise Edition of Couchbase Server and Couchbase Capella products and a web browser-based demonstration version of Couchbase Server to further accelerate application developer adoption. We believe these offerings lead to future purchases of our paid products. While our Community Edition includes the core functionality of Couchbase Server, it is not suited for mission-critical deployments, as it offers only limited functionality around the scaled performance and security that enterprises require and no direct customer support from Couchbase.

We also continuously grow and cultivate our cloud provider partner and technology provider ecosystem. A significant portion of our revenue in the six months ended July 31, 2024 and 2023 was attributable to our partner ecosystem.

We employ a land-and-expand model centered around our platform offerings, which have a rapid time to production and time to value for our customers, and our sales and customer success organizations, which proactively guide customers to realize strategic and transformative use cases and drive greater adoption of our platform and services. Our marketing organization is focused on building our brand reputation and awareness. Our marketing initiatives drive awareness and demand for Couchbase products, starting at the top of the sales funnel with trial experiences. As part of these efforts, we offer application developers robust educational resources including a robust and growing community to help them learn more about our platform, including access to on-demand instructional webinars.

### **Impact of Macroeconomic Conditions**

Current macroeconomic conditions, including recessionary fears, inflation concerns, financial and credit market fluctuations and volatility in the capital markets as well as other geopolitical developments, have impacted and may continue to impact business spending and the economy as a whole. We continue to see deal cycles that are consistent with previous quarters, along with an elevation in degree of budget scrutiny, slower than expected product migrations, lower than expected expansions, and customers electing to buy in smaller increments. Additionally, effects from foreign exchange fluctuations have impacted and may continue to impact our results of operations.

The effects of these macroeconomic conditions on our business and operations remains highly uncertain, and it is not possible for us to predict the duration and extent to which they will affect our business, future results of operations, and financial condition. See the section titled “Risk Factors” for further discussion of these challenges and risks.

### **Factors Affecting Our Performance**

#### ***Continuing to Acquire New Customers***

We grow our subscription revenue by acquiring new customers. The size of our customer base may vary from period to period for several reasons, including the length of our sales cycle, the effectiveness of our sales and marketing efforts, enterprise application development cycles and the corresponding adoption rates of modern applications that require database solutions like ours. Additionally, our revenue has and will vary as new customers purchase our products due to the fact that we recognize a portion of such subscription revenue upfront. As digital transformation continues to accelerate, we believe that Couchbase Capella will become increasingly popular as a result of its compelling pricing model, ease of operation, lower TCO, time to market and flexibility. We will continue to offer Couchbase Capella and provide flexible, highly available and differentiated economical options to capture new customers.

#### ***Continuing to Expand Within Existing Customers***

A significant part of our growth has been, and we expect will continue to be, driven by expansion within our existing customer base. Growth of our revenue from our existing customers results from increases in the scale of their deployment for existing use cases, or when customers utilize our platform to address new use cases. In addition, our professional services organization helps customers deploy new use cases and optimize their existing implementations. Our revenue from our subscription offerings varies depending on the scale and performance requirements of our customers’ deployments. We are focusing on growing our subscription revenue, particularly from enterprises, while delivering professional services and training to support this growth. We have been successful in expanding our existing customers’ adoption of our platform as demonstrated by our dollar-based net retention rate of over 115% in the past eight quarters.

Our dollar-based net retention rate for any period equals the simple arithmetic average of our quarterly dollar-based net retention rate for the four quarters ending with the most recent fiscal quarter. To calculate our dollar-based net retention rate for a given quarter, we start with the ARR (“Base ARR”) attributable to our customers (“Base Customers”) as of the end of the same quarter of the prior fiscal year. We then determine the ARR attributable to the Base Customers as of the end of the most recent quarter and divide that amount by the Base ARR.

### ***Continuing to Invest in Growth***

We expect to continue to invest in our offerings, personnel, geographic presence and infrastructure in order to drive future growth, as well as to pursue adjacent opportunities. We expend research and development resources to drive innovation in our proprietary software to constantly improve the functionality and performance of our platform and to increase the deployment models available to our customers. We anticipate continuing to increase our headcount to ensure that our product development organization drives improvements in our product offerings, our sales and marketing organization can maximize opportunities for growing our business and revenue and our general and administrative organization efficiently supports the growth of our business as well as our effective operation as a public company.

### **Key Business Metrics**

#### ***Annual Recurring Revenue***

We define ARR as of a given date as the annualized recurring revenue that we would contractually receive from our customers in the month ending 12 months following such date. Based on historical experience with customers, we assume all contracts will be renewed at the same levels unless we receive notification of non-renewal and are no longer in negotiations prior to the measurement date. For Capella products, ARR in a customer's initial year is calculated as the greater of: (i) initial year contract revenue as described above or (ii) annualized prior 90 days of actual consumption; and ARR for subsequent years is calculated with method (ii). ARR excludes services revenue.

Prior to fiscal 2025, ARR excluded on-demand revenue and, for Capella products in a customer's initial year, ARR was calculated solely on the basis of initial year contract revenue. The reason for these changes is to better reflect ARR where usage rates or timing of purchases may be uneven and to better align with how ARR is used to measure the performance of the business. ARR for prior periods has not been adjusted to reflect this change as it is not material to any period previously presented.

ARR should be viewed independently of revenue, and does not represent our revenue under GAAP on an annualized basis, as it is an operating metric that can be impacted by contract start and end dates and renewal dates. ARR is not intended to be a replacement for forecasts of revenue. Although we seek to increase ARR as part of our strategy of targeting large enterprise customers, this metric may fluctuate from period to period based on our ability to acquire new customers, expand within our existing customers and consumption dynamics. We believe that ARR is an important indicator of the growth and performance of our business.

As of July 31, 2024, ARR for Couchbase Capella products was approximately \$28.9 million.

|     | <b>As of July 31,</b> |             |
|-----|-----------------------|-------------|
|     | <b>2024</b>           | <b>2023</b> |
|     | <i>(in millions)</i>  |             |
| ARR | \$ 214.0              | \$ 180.7    |

#### ***Customers***

We calculate our total number of customers, which also includes customers of Couchbase Capella, at the end of each period. Each customer account that has, or that is contractually identified by a partner in, an active subscription contract with us or with which we are negotiating a renewal contract at the end of a given period is included in the calculation of total customer count, and the Couchbase Capella customer count includes customers who have a subscription of Couchbase Capella. Beginning in fiscal 2025, customers who used our products through an on-demand arrangement are included in the calculation of total customer count. The reason for this change is to align with our revised ARR methodology. As of July 31, 2024, we had 273 Couchbase Capella customers. Each party with which we enter into a subscription contract is considered a unique customer and, in some cases, a single organization may be counted as more than one customer. Our customer count is subject to adjustments for acquisitions, consolidations, spin-offs and other market activity. We believe that our number of customers is an important indicator of the growth of our business and future revenue trends.

|           | <b>As of July 31,</b> |             |
|-----------|-----------------------|-------------|
|           | <b>2024</b>           | <b>2023</b> |
| Customers | 869                   | 691         |

## Non-GAAP Financial Measures

In addition to our financial information presented in accordance with GAAP, we believe certain non-GAAP financial measures are useful to investors in evaluating our operating performance. We use certain non-GAAP financial measures, collectively, to evaluate our ongoing operations and for internal planning and forecasting purposes. We believe that non-GAAP financial measures, when taken together with the corresponding GAAP financial measures, may be helpful to investors because they provide consistency and comparability with past financial performance and meaningful supplemental information regarding our performance by excluding certain items that may not be indicative of our business, results of operations or outlook. Non-GAAP financial measures are presented for supplemental informational purposes only, have limitations as analytical tools and should not be considered in isolation or as a substitute for financial information presented in accordance with GAAP and may be different from similarly-titled non-GAAP financial measures used by other companies. In addition, other companies, including companies in our industry, may calculate similarly-titled non-GAAP financial measures differently or may use other measures to evaluate their performance, all of which could reduce the usefulness of our non-GAAP financial measures as tools for comparison. Investors are encouraged to review the related GAAP financial measures and the reconciliation of these non-GAAP financial measures to their most directly comparable GAAP financial measures, and not to rely on any single financial measure to evaluate our business.

We define the non-GAAP financial measures below as their respective GAAP measures, excluding expenses related to stock-based compensation expense, employer payroll taxes on employee stock transactions, restructuring charges and impairment of capitalized internal-use software. We use these non-GAAP financial measures in conjunction with GAAP measures to assess our performance, including in the preparation of our annual operating budget and quarterly forecasts, to evaluate the effectiveness of our business strategies and to communicate with our board of directors concerning our financial performance.

For the fourth quarter of fiscal 2024, we have excluded the impairment of capitalized internal-use software, a non-cash operating expense, from our non-GAAP results as it is not reflective of ongoing operating results. This impairment charge related to certain previously capitalized internal-use software that we determined would no longer be placed into service. Prior period non-GAAP financial measures have not been adjusted to reflect this change as we did not incur impairment of capitalized internal-use software in any prior period presented.

### *Non-GAAP Gross Profit and Non-GAAP Gross Margin*

We define non-GAAP gross profit and non-GAAP gross margin as gross profit and gross margin, respectively, excluding stock-based compensation expense and employer taxes on employee stock transactions. We use non-GAAP gross profit and non-GAAP gross margin in conjunction with GAAP financial measures to assess our performance, including in the preparation of our annual operating budget and quarterly forecasts, to evaluate the effectiveness of our business strategies and to communicate with our board of directors concerning our financial performance.

|  | Three Months Ended July 31,   |           | Six Months Ended July 31, |           |
|--|-------------------------------|-----------|---------------------------|-----------|
|  | 2024                          | 2023      | 2024                      | 2023      |
|  | <i>(dollars in thousands)</i> |           |                           |           |
| Total revenue                                      | \$ 51,589                     | \$ 43,139 | \$ 102,916                | \$ 84,135 |
| Gross profit                                       | \$ 45,126                     | \$ 37,230 | \$ 90,771                 | \$ 72,304 |
| Add: Stock-based compensation expense              | 410                           | 385       | 817                       | 723       |
| Add: Employer taxes on employee stock transactions | 28                            | 21        | 98                        | 31        |
| Non-GAAP gross profit                              | \$ 45,564                     | \$ 37,636 | \$ 91,686                 | \$ 73,058 |
| Gross margin                                       | 87.5%                         | 86.3%     | 88.2%                     | 85.9%     |
| Non-GAAP gross margin                              | 88.3%                         | 87.2%     | 89.1%                     | 86.8%     |

### Non-GAAP Operating Loss and Non-GAAP Operating Margin

We define non-GAAP operating loss and non-GAAP operating margin as loss from operations and operating margin, respectively, excluding stock-based compensation expense, employer payroll taxes on employee stock transactions, restructuring charges and impairment of capitalized internal-use software. We use non-GAAP operating loss and non-GAAP operating margin in conjunction with GAAP measures to assess our performance, including in the preparation of our annual operating budget and quarterly forecasts, to evaluate the effectiveness of our business strategies and to communicate with our board of directors concerning our financial performance.

|  | Three Months Ended July 31,   |             | Six Months Ended July 31, |             |
|--|-------------------------------|-------------|---------------------------|-------------|
|  | 2024                          | 2023        | 2024                      | 2023        |
|  | <i>(dollars in thousands)</i> |             |                           |             |
| Total revenue                                      | \$ 51,589                     | \$ 43,139   | \$ 102,916                | \$ 84,135   |
| Loss from operations                               | \$ (21,048)                   | \$ (21,869) | \$ (43,588)               | \$ (44,402) |
| Add: Stock-based compensation expense              | 16,156                        | 12,117      | 30,783                    | 21,392      |
| Add: Employer taxes on employee stock transactions | 791                           | 533         | 2,007                     | 800         |
| Add: Restructuring <sup>(1)</sup>                  | —                             | —           | —                         | 46          |
| Non-GAAP operating loss                            | \$ (4,101)                    | \$ (9,219)  | \$ (10,798)               | \$ (22,164) |
| Operating margin                                   | (41)%                         | (51)%       | (42)%                     | (53)%       |
| Non-GAAP operating margin                          | (8)%                          | (21)%       | (10)%                     | (26)%       |

<sup>(1)</sup> For the six months ended July 31, 2023, an immaterial amount of stock-based compensation expense related to restructuring charges was included in the restructuring expense line.

### Non-GAAP Net Loss and Non-GAAP Net Loss Per Share

We define non-GAAP net loss attributable to common stockholders as net loss attributable to common stockholders, excluding stock-based compensation expense, employer payroll taxes on employee stock transactions and restructuring charges. We use non-GAAP net loss attributable to common stockholders and non-GAAP net loss per share attributable to common stockholders in conjunction with GAAP measures to assess our performance, including in the preparation of our annual operating budget and quarterly forecasts, to evaluate the effectiveness of our business strategies and to communicate with our board of directors concerning our financial performance.

|  | Three Months Ended July 31,                  |             | Six Months Ended July 31, |             |
|--|--|-------------|---------------------------|-------------|
|  | 2024   | 2023        | 2024                      | 2023        |
|  | <i>(in thousands, except per share data)</i> |             |                           |             |
| Net loss   | \$ (19,895)                                  | \$ (20,651) | \$ (40,890)               | \$ (42,526) |
| Add: Stock-based compensation expense                  | 16,156                                       | 12,117      | 30,783                    | 21,392      |
| Add: Employer taxes on employee stock transactions     | 791  | 533         | 2,007                     | 800         |
| Add: Restructuring <sup>(1)</sup>                      | —  | —           | —                         | 46          |
| Non-GAAP net loss                                      | \$ (2,948)                                   | \$ (8,001)  | \$ (8,100)                | \$ (20,288) |
| GAAP net loss per share                                | \$ (0.39)                                    | \$ (0.44)   | \$ (0.81)                 | \$ (0.92)   |
| Non-GAAP net loss per share                            | \$ (0.06)                                    | \$ (0.17)   | \$ (0.16)                 | \$ (0.44)   |
| Weighted average shares outstanding, basic and diluted | 50,822                                       | 46,714      | 50,311                    | 46,285      |

(1) For the six months ended July 31, 2023, an immaterial amount of stock-based compensation expense related to restructuring charges was included in the restructuring expense line.

### Free Cash Flow

We define free cash flow as cash used in operating activities less additions to property and equipment, which includes capitalized internal-use software costs. We believe free cash flow is a useful indicator of liquidity that provides our management, board of directors and investors with information about our future ability to generate or use cash to enhance the strength of our balance sheet and further invest in our business and pursue potential strategic initiatives.

|   | Three Months Ended July 31, |            | Six Months Ended July 31, |             |
|---|-----------------------------|------------|---------------------------|-------------|
|   | 2024                        | 2023       | 2024                      | 2023        |
|   | <i>( in thousands )</i>     |            |                           |             |
| Net cash used in operating activities               | \$ (4,850)                  | \$ (519)   | \$ (3,291)                | \$ (7,700)  |
| Less: Additions to property and equipment           | (1,067)                     | (1,071)    | (2,062)                   | (2,359)     |
| Free cash flow                                      | \$ (5,917)                  | \$ (1,590) | \$ (5,353)                | \$ (10,059) |
| Net cash provided by (used in) investing activities | \$ 14,582                   | \$ (6,868) | \$ 18,277                 | \$ 3,446    |
| Net cash provided by financing activities           | \$ 842                      | \$ 2,733   | \$ 5,931                  | \$ 5,497    |

### Components of Results of Operations

#### Revenue

We derive revenue from sales of subscriptions and services. Our subscription revenue is primarily derived from: (1) term-based software licenses sold in conjunction with post-contract support (“PCS” or “Support”) and (2) a consumption-based DBaaS offering. PCS bundled with software licenses includes internet, email and phone support, bug fixes and the right to receive unspecified software updates and upgrades released when and if available during the subscription term. The software license is presented as “License.” PCS and DBaaS revenue are presented as “Support and other” in our condensed consolidated statements of operations. License revenue is recognized upon transfer when our customer has received access to our software. The PCS is recognized ratably over the term of the arrangement beginning on the date when access to the subscription is made available to the customer and represents a substantial majority of our revenue. The DBaaS revenue is recognized on a consumption basis. The non-cancelable term of our subscription arrangements typically ranges from one to three years but may be longer or shorter in limited circumstances.

Our services revenue is derived from our professional services for the implementation or configuration of our platform and training. Services revenue is recognized over time based on input measures for professional services and upon delivery for training.

We expect our revenue may vary from period to period based on, among other things, the timing and size of new subscriptions, the proportion of term license contracts that commence within the period, the rate of customer renewals and expansions, the length of sales cycles and timing, delivery of professional services and training and fluctuations in customer consumption of our DBaaS offering.

#### Cost of Revenue

Cost of subscription revenue primarily consists of personnel-related costs associated with our customer support organization, including salaries, bonuses, benefits and stock-based compensation, expenses associated with software and subscription services dedicated for use by our customer support organization, third-party cloud infrastructure expenses, amortization of costs associated with capitalized internal-use software related to our DBaaS offering and allocated overhead. There is no cost of revenue associated with our license revenue. We expect our cost of subscription revenue to increase in absolute dollars as our subscription revenue increases and as we continue to amortize capitalized internal-use software costs related to our DBaaS offering.

Cost of services revenue primarily consists of personnel-related costs associated with our professional services and training organization, including salaries, bonuses, benefits and stock-based compensation, costs of contracted third-party partners for professional services, expenses associated with software and subscription services dedicated for use by our professional services and training organization, travel-related expenses and allocated overhead. We expect our cost of services revenue to fluctuate from period to period depending on the timing and delivery of professional services and training.



### ***Gross Profit and Gross Margin***

Our gross profit and gross margin have been and will continue to be affected by various factors, including the average sales price of our subscriptions and services, the mix of subscriptions and services we sell and the associated revenue, the mix of geographies into which we sell and transaction volume growth. We expect our gross profit and gross margin to fluctuate in the near term depending on the interplay of these factors, and to the extent the revenue from our DBaaS offering increases as a percentage of total revenue, we expect our gross margin will decline over time.

### ***Operating Expenses***

Our operating expenses consist of research and development, sales and marketing, general and administrative and restructuring expenses. Personnel-related costs are the most significant component of operating expenses and consist of salaries, bonuses, benefits, sales commissions and stock-based compensation expenses.

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

Research and development expenses consist primarily of personnel-related costs, expenses associated with software and subscription services dedicated for use by our research and development organization, depreciation and amortization of property and equipment and allocated overhead. We expect that our research and development expenses will increase in absolute dollars as we continue to invest in the features and functionalities of our platform. We expect research and development expenses to fluctuate as a percentage of revenue in the near term, but to decrease as a percentage of revenue over the long term as we achieve greater scale in our business.

#### ***Sales and Marketing***

Sales and marketing expenses consist primarily of personnel-related costs, expenses associated with software and subscription services dedicated for use by our sales and marketing organization, costs of general marketing and promotional activities, amortization of deferred commissions, fees for professional services related to sales and marketing, travel-related expenses and allocated overhead. We expect that our sales and marketing expenses will increase in absolute dollars as we continue to expand our sales and marketing efforts to attract new customers and deepen our engagement with existing customers. We expect sales and marketing expenses to fluctuate as a percentage of revenue in the near term as we continue to invest in growing the reach of our platform through our sales and marketing efforts, but to decrease as a percentage of revenue over the long term as we achieve greater scale in our business.

#### ***General and Administrative***

General and administrative expenses consist primarily of personnel-related costs associated with our finance, legal, human resources and other administrative personnel. In addition, general and administrative expenses include non-personnel costs, such as fees for professional services such as external legal, accounting and other professional services, expenses associated with software and subscription services dedicated for use by our general and administrative organization, certain taxes other than income taxes and allocated overhead. We expect that our general and administrative expenses will increase in absolute dollars as we continue to invest in the growth of our business and operate as a publicly-traded company. We expect general and administrative expenses to fluctuate as a percentage of revenue in the near term, but to decrease as a percentage of revenue over the long term as we achieve greater scale in our business.

#### ***Restructuring***

Restructuring expenses primarily consist of efforts we have undertaken to improve operational efficiency. Restructuring activities include employee severance and related costs and stock-based compensation expense from modifications of vested awards granted to certain employees impacted by our restructuring plan, which was completed during fiscal year 2024.

### ***Interest Expense***

Interest expense consists primarily of unused Credit Facility fees.

### ***Other Income (Expense), Net***

Other income (expense), net consists primarily of foreign currency gains and losses related to the impact of transactions denominated in a foreign currency and interest income.

### ***Provision (benefit) for Income Taxes***

Provision for income taxes consists primarily of income taxes in certain foreign jurisdictions in which we conduct business. We recorded a full valuation allowance against our U.S. deferred tax assets as we have determined that it is not more likely than not that the deferred tax assets will be realized. The cash tax expenses are impacted by each jurisdiction's individual tax rates, laws on the timing of recognition of income and deductions and availability of NOLs and tax credits. Our effective tax rate could be adversely affected to the extent earnings are lower than anticipated in countries that have lower statutory rates and higher than anticipated in countries that have higher statutory rates.

### **Results of Operations**

The following table sets forth our condensed consolidated statements of operations for the periods indicated (in thousands):

|   | Three Months Ended July 31, |                    | Six Months Ended July 31, |                    |
|---|-----------------------------|--------------------|---------------------------|--------------------|
|   | 2024                        | 2023               | 2024                      | 2023               |
| <b>Revenue:</b>                           |                             |                    |                           |                    |
| License                                   | \$ 5,242                    | \$ 4,798           | \$ 12,101                 | \$ 9,741           |
| Support and other                         | 44,051                      | 36,156             | 86,230                    | 69,755             |
| Total subscription revenue                | 49,293                      | 40,954             | 98,331                    | 79,496             |
| Services                                  | 2,296                       | 2,185              | 4,585                     | 4,639              |
| Total revenue                             | 51,589                      | 43,139             | 102,916                   | 84,135             |
| <b>Cost of revenue:</b>                   |                             |                    |                           |                    |
| Subscription <sup>(1)</sup>               | 4,455                       | 3,845              | 8,412                     | 7,518              |
| Services <sup>(1)</sup>                   | 2,008                       | 2,064              | 3,733                     | 4,313              |
| Total cost of revenue                     | 6,463                       | 5,909              | 12,145                    | 11,831             |
| Gross profit                              | 45,126                      | 37,230             | 90,771                    | 72,304             |
| <b>Operating expenses:</b>                |                             |                    |                           |                    |
| Research and development <sup>(1)</sup>   | 17,370                      | 16,292             | 35,217                    | 31,675             |
| Sales and marketing <sup>(1)</sup>        | 36,168                      | 32,348             | 73,923                    | 64,901             |
| General and administrative <sup>(1)</sup> | 12,636                      | 10,459             | 25,219                    | 20,084             |
| Restructuring <sup>(1)</sup>              | —                           | —                  | —                         | 46                 |
| Total operating expenses                  | 66,174                      | 59,099             | 134,359                   | 116,706            |
| Loss from operations                      | (21,048)                    | (21,869)           | (43,588)                  | (44,402)           |
| Interest expense                          | (29)                        | (18)               | (29)                      | (43)               |
| Other income, net                         | 1,741                       | 1,255              | 3,272                     | 2,688              |
| Loss before income taxes                  | (19,336)                    | (20,632)           | (40,345)                  | (41,757)           |
| Provision for income taxes                | 559                         | 19                 | 545                       | 769                |
| Net loss                                  | <u>\$ (19,895)</u>          | <u>\$ (20,651)</u> | <u>\$ (40,890)</u>        | <u>\$ (42,526)</u> |

<sup>(1)</sup> Includes stock-based compensation expense as follows:

|  | Three Months Ended July 31, |           | Six Months Ended July 31, |           |
|--|-----------------------------|-----------|---------------------------|-----------|
|  | 2024                        | 2023      | 2024                      | 2023      |
|  | <i>(in thousands)</i>       |           |                           |           |
| Cost of revenue—subscription           | \$ 301                      | \$ 236    | \$ 567                    | \$ 429    |
| Cost of revenue—services               | 109                         | 149       | 250                       | 294       |
| Research and development               | 4,214                       | 3,614     | 8,207                     | 6,382     |
| Sales and marketing                    | 6,162                       | 4,032     | 11,385                    | 7,273     |
| General and administrative             | 5,370                       | 4,086     | 10,374                    | 7,014     |
| Restructuring                          | —                           | —         | —                         | 1         |
| Total stock-based compensation expense | \$ 16,156                   | \$ 12,117 | \$ 30,783                 | \$ 21,393 |

The following table sets forth our condensed consolidated statements of operations data expressed as a percentage of revenue:

|                            | Three Months Ended July 31, |       | Six Months Ended July 31, |       |
|----------------------------|-----------------------------|-------|---------------------------|-------|
|                            | 2024                        | 2023  | 2024                      | 2023  |
| <b>Revenue:</b>            |                             |       |                           |       |
| License                    | 10 %                        | 11 %  | 12 %                      | 12 %  |
| Support and other          | 85                          | 84    | 84                        | 83    |
| Total subscription revenue | 96                          | 95    | 96                        | 94    |
| Services                   | 4                           | 5     | 4                         | 6     |
| Total revenue              | 100                         | 100   | 100                       | 100   |
| <b>Cost of revenue:</b>    |                             |       |                           |       |
| Subscription               | 9                           | 9     | 8                         | 9     |
| Services                   | 4                           | 5     | 4                         | 5     |
| Total cost of revenue      | 13                          | 14    | 12                        | 14    |
| Gross profit               | 87                          | 86    | 88                        | 86    |
| <b>Operating expenses:</b> |                             |       |                           |       |
| Research and development   | 34                          | 38    | 34                        | 38    |
| Sales and marketing        | 70                          | 75    | 72                        | 77    |
| General and administrative | 24                          | 24    | 25                        | 24    |
| Restructuring              | —                           | —     | —                         | *     |
| Total operating expenses   | 128                         | 137   | 131                       | 139   |
| Loss from operations       | (41)                        | (51)  | (42)                      | (53)  |
| Interest expense           | *                           | *     | *                         | *     |
| Other income, net          | 3                           | 3     | 3                         | 3     |
| Loss before income taxes   | (37)                        | (48)  | (39)                      | (50)  |
| Provision for income taxes | 1                           | *     | 1                         | 1     |
| Net loss                   | (39)%                       | (48)% | (40)%                     | (51)% |

\* Represents less than 1%

Note: Certain figures may not sum due to rounding.

**Comparison of Three and Six Months Ended July 31, 2024 and 2023**
**Revenue**

|                            | Three Months Ended July 31, |           | \$ Change | % Change | Six Months Ended July 31, |           | \$ Change | % Change |
|----------------------------|-----------------------------|-----------|-----------|----------|---------------------------|-----------|-----------|----------|
|                            | 2024                        | 2023      |           |          | 2024                      | 2023      |           |          |
|                            | (dollars in thousands)      |           |           |          | (dollars in thousands)    |           |           |          |
| <b>Revenue</b>             |                             |           |           |          |                           |           |           |          |
| License                    | \$ 5,242                    | \$ 4,798  | \$ 444    | 9 %      | \$ 12,101                 | \$ 9,741  | \$ 2,360  | 24 %     |
| Support and other          | 44,051                      | 36,156    | 7,895     | 22 %     | 86,230                    | 69,755    | 16,475    | 24 %     |
| Total subscription revenue | 49,293                      | 40,954    | 8,339     | 20 %     | 98,331                    | 79,496    | 18,835    | 24 %     |
| Services                   | 2,296                       | 2,185     | 111       | 5 %      | 4,585                     | 4,639     | (54)      | (1)%     |
| Total revenue              | \$ 51,589                   | \$ 43,139 | \$ 8,450  | 20 %     | \$ 102,916                | \$ 84,135 | \$ 18,781 | 22 %     |

Subscription revenue increased by \$8.3 million, or 20%, during the three months ended July 31, 2024 compared to the three months ended July 31, 2023. The increase in subscription revenue was primarily driven by growth in revenue from existing customers. Approximately 96% of the increase in revenue was attributable to growth from existing customers. The remaining increase was attributable to new customers as we increased our customer base from 691 customers as of July 31, 2023 to 869 customers as of July 31, 2024.

Subscription revenue increased by \$18.8 million, or 24%, during the six months ended July 31, 2024 compared to the six months ended July 31, 2023. Approximately 98% of the increase in revenue was attributable to growth from existing customers.

Services revenue increased by \$0.1 million, or 5%, during the three months ended July 31, 2024 compared to the three months ended July 31, 2023 primarily due to an increase in delivery of professional service hours.

Services revenue remained relatively flat during the six months ended July 31, 2024 compared to the six months ended July 31, 2023 as the number of professional service hours delivered was consistent with the same period last year.

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

|                           | Three Months Ended July 31, |           | \$ Change | % Change | Six Months Ended July 31, |           | \$ Change | % Change |
|---------------------------|-----------------------------|-----------|-----------|----------|---------------------------|-----------|-----------|----------|
|                           | 2024                        | 2023      |           |          | 2024                      | 2023      |           |          |
|                           | (dollars in thousands)      |           |           |          | (dollars in thousands)    |           |           |          |
| <b>Cost of revenue:</b>   |                             |           |           |          |                           |           |           |          |
| Subscription              | \$ 4,455                    | \$ 3,845  | \$ 610    | 16 %     | \$ 8,412                  | \$ 7,518  | \$ 894    | 12 %     |
| Services                  | 2,008                       | 2,064     | (56)      | (3)%     | 3,733                     | 4,313     | (580)     | (13)%    |
| Total cost of revenue     | \$ 6,463                    | \$ 5,909  | \$ 554    | 9 %      | \$ 12,145                 | \$ 11,831 | \$ 314    | 3 %      |
| Gross profit              | \$ 45,126                   | \$ 37,230 |           |          | \$ 90,771                 | \$ 72,304 |           |          |
| Gross margin              | 87.5 %                      | 86.3 %    |           |          | 88.2 %                    | 85.9 %    |           |          |
| Headcount (at period end) | 62                          | 73        |           |          | 62                        | 73        |           |          |

Cost of subscription revenue increased by \$0.6 million, or 16%, during the three months ended July 31, 2024 compared to the three months ended July 31, 2023. This change was primarily due to an increase of \$0.7 million related to the computing infrastructure costs associated with increasing usage from Couchbase Capella.

Cost of subscription revenue increased by \$0.9 million, or 12%, during the six months ended July 31, 2024 compared to the six months ended July 31, 2023. This change was primarily due to an increase of \$1.3 million related to the computing infrastructure costs associated with Couchbase Capella.

Cost of services revenue decreased by an immaterial amount during the three months ended July 31, 2024 compared to the three months ended July 31, 2023.

Cost of services revenue decreased by \$0.6 million, or 13%, during the six months ended July 31, 2024 compared to the six months ended July 31, 2023. This was primarily due to a decrease of \$0.5 million in personnel-related costs due to lower headcount.

Gross margin increased during the three and six months ended July 31, 2024 compared to the three and six months ended July 31, 2023 primarily due to changes in the mix of subscription and services revenue.

### Research and Development

|                           | Three Months Ended July 31,   |           |           |          | Six Months Ended July 31,     |           |           |          |
|---------------------------|-------------------------------|-----------|-----------|----------|-------------------------------|-----------|-----------|----------|
|                           | 2024                          | 2023      | \$ Change | % Change | 2024                          | 2023      | \$ Change | % Change |
|                           | <i>(dollars in thousands)</i> |           |           |          | <i>(dollars in thousands)</i> |           |           |          |
| Research and development  | \$ 17,370                     | \$ 16,292 | \$ 1,078  | 7 %      | \$ 35,217                     | \$ 31,675 | \$ 3,542  | 11 %     |
| Percentage of revenue     | 34 %                          | 38 %      |           |          | 34 %                          | 38 %      |           |          |
| Headcount (at period end) | 307                           | 298       |           |          | 307                           | 298       |           |          |

Research and development increased by \$1.1 million, or 7%, during the three months ended July 31, 2024 compared to the three months ended July 31, 2023. This change was primarily due to an increase of \$1.5 million in personnel-related costs driven by headcount growth and higher stock-based compensation related to our RSUs.

Research and development increased by \$3.5 million, or 11%, during the six months ended July 31, 2024 compared to the six months ended July 31, 2023. This change was primarily due to an increase of \$4.3 million in personnel-related costs driven by headcount growth and higher stock-based compensation related to our RSUs, partially offset by a decrease of \$0.6 million due to improved business efficiency.

### Sales and Marketing

|                           | Three Months Ended July 31,   |           |           |          | Six Months Ended July 31,     |           |           |          |
|---------------------------|-------------------------------|-----------|-----------|----------|-------------------------------|-----------|-----------|----------|
|                           | 2024                          | 2023      | \$ Change | % Change | 2024                          | 2023      | \$ Change | % Change |
|                           | <i>(dollars in thousands)</i> |           |           |          | <i>(dollars in thousands)</i> |           |           |          |
| Sales and marketing       | \$ 36,168                     | \$ 32,348 | \$ 3,820  | 12 %     | \$ 73,923                     | \$ 64,901 | \$ 9,022  | 14 %     |
| Percentage of revenue     | 70 %                          | 75 %      |           |          | 72 %                          | 77 %      |           |          |
| Headcount (at period end) | 357                           | 348       |           |          | 357                           | 348       |           |          |

Sales and marketing increased by \$3.8 million, or 12%, during the three months ended July 31, 2024 compared to the three months ended July 31, 2023. This increase was primarily due to an increase of \$3.0 million in personnel-related costs driven by headcount growth and higher stock-based compensation related to our RSUs and an increase of \$0.6 million in third-party professional services.

Sales and marketing increased by \$9.0 million, or 14%, during the six months ended July 31, 2024 compared to the six months ended July 31, 2023. This increase was primarily due to an increase of \$8.0 million in personnel-related costs, driven by headcount growth and higher stock-based compensation related to our RSUs and an increase of \$0.7 million in third-party professional services.

### General and Administrative

|                            | Three Months Ended July 31,   |           |           |          | Six Months Ended July 31,     |           |           |          |
|----------------------------|-------------------------------|-----------|-----------|----------|-------------------------------|-----------|-----------|----------|
|                            | 2024                          | 2023      | \$ Change | % Change | 2024                          | 2023      | \$ Change | % Change |
|                            | <i>(dollars in thousands)</i> |           |           |          | <i>(dollars in thousands)</i> |           |           |          |
| General and administrative | \$ 12,636                     | \$ 10,459 | \$ 2,177  | 21 %     | \$ 25,219                     | \$ 20,084 | \$ 5,135  | 26 %     |
| Percentage of revenue      | 24 %                          | 24 %      |           |          | 25 %                          | 24 %      |           |          |
| Headcount (at period end)  | 86                            | 68        |           |          | 86                            | 68        |           |          |

General and administrative increased by \$2.2 million, or 21%, during the three months ended July 31, 2024 compared to the three months ended July 31, 2023. This increase was primarily due to an increase of \$2.2 million in personnel-related costs driven by headcount growth and higher stock-based compensation related to our RSUs.

General and administrative increased by \$5.1 million, or 26%, during the six months ended July 31, 2024 compared to the six months ended July 31, 2023. This increase was primarily due to an increase of \$5.0 million in personnel-related costs driven by headcount growth and higher stock-based compensation related to our RSUs.

### Interest Expense

|                  | Three Months Ended July 31,   |         |           |          | Six Months Ended July 31,     |         |           |          |
|------------------|-------------------------------|---------|-----------|----------|-------------------------------|---------|-----------|----------|
|                  | 2024                          | 2023    | \$ Change | % Change | 2024                          | 2023    | \$ Change | % Change |
|                  | <i>(dollars in thousands)</i> |         |           |          | <i>(dollars in thousands)</i> |         |           |          |
| Interest expense | \$ (29)                       | \$ (18) | \$ (11)   | 61 %     | \$ (29)                       | \$ (43) | \$ 14     | (33)%    |

The changes in interest expense during the three and six months ended July 31, 2024 and 2023 were not material.

### Other Income, Net

|                   | Three Months Ended July 31,   |          |           |          | Six Months Ended July 31,     |          |           |          |
|-------------------|-------------------------------|----------|-----------|----------|-------------------------------|----------|-----------|----------|
|                   | 2024                          | 2023     | \$ Change | % Change | 2024                          | 2023     | \$ Change | % Change |
|                   | <i>(dollars in thousands)</i> |          |           |          | <i>(dollars in thousands)</i> |          |           |          |
| Other income, net | \$ 1,741                      | \$ 1,255 | \$ 486    | 39 %     | \$ 3,272                      | \$ 2,688 | \$ 584    | 22 %     |

Other income, net fluctuated by \$0.5 million during the three months ended July 31, 2024 compared to the three months ended July 31, 2023 primarily due to higher yields on securities and, to a lesser extent, a decrease in foreign currency losses due to fluctuations in exchange rates.

Other income, net fluctuated by \$0.6 million during the six months ended July 31, 2024 compared to the six months ended July 31, 2023 primarily due to higher yields on securities.

### Provision for Income Taxes

|                            | Three Months Ended July 31,   |             |           |          | Six Months Ended July 31,     |             |           |          |
|----------------------------|-------------------------------|-------------|-----------|----------|-------------------------------|-------------|-----------|----------|
|                            | 2024                          | 2023        | \$ Change | % Change | 2024                          | 2023        | \$ Change | % Change |
|                            | <i>(dollars in thousands)</i> |             |           |          | <i>(dollars in thousands)</i> |             |           |          |
| Loss before income taxes   | \$ (19,336)                   | \$ (20,632) | \$ 1,296  | (6)%     | \$ (40,345)                   | \$ (41,757) | \$ 1,412  | (3)%     |
| Provision for income taxes | 559                           | 19          | \$ 540    | 2842 %   | 545                           | 769         | \$ (224)  | (29)%    |
| Effective tax rate         | (2.9)%                        | (0.1)%      |           |          | (1.4)%                        | (1.8)%      |           |          |

The change in provision for income taxes for the three and six months ended July 31, 2024 compared with the same periods last year was primarily driven by the mix of income in foreign jurisdictions and foreign excess tax benefits related to stock-based compensation expense.

### Liquidity and Capital Resources

We have financed our operations through subscription revenue from customers accessing our platform and services revenue, and in July 2021, we completed our IPO with net proceeds totaling \$214.9 million. We have incurred losses and generated negative cash flows from operations for the last several years, including fiscal 2023 and 2024 and the six months ended July 31, 2024. As of July 31, 2024, we had an accumulated deficit of \$531.5 million.

As of July 31, 2024, we had \$156.1 million in cash, cash equivalents and short-term investments. We maintain our cash and cash equivalents, restricted cash and short-term investments with high-quality financial institutions. For more information, see "Concentration of Credit Risk" in Note 2 of our notes to the condensed consolidated financial statements. We believe our existing cash, cash equivalents and short-term investments, our total available borrowing capacity under the Credit Facility with MUFG Bank, Ltd., which is described in Note 7 of our notes to the condensed consolidated financial statements, and cash provided by sales of subscriptions to our platform and sales of our services will be sufficient to meet our projected operating requirements and cash expenditures for at least the next 12 months. As a result of our revenue growth plans, both domestically and internationally, we expect that losses and negative cash flows from operations may continue in the future. Our future capital requirements will depend on many factors, including our subscription revenue

growth rate, subscription renewals, billing timing and frequency, the timing and extent of spending to support development efforts, the expansion of sales and marketing activities, the introduction of new and enhanced platform features and functionality and the continued market adoption of our platform. We may in the future pursue acquisitions of businesses, technologies, assets and talent.

We may be required to seek additional equity or debt financing. In the event that additional financing is required from outside sources, we may not be able to raise it on terms acceptable to us or at all. If we are unable to raise additional capital or generate cash flows necessary to expand our operations and invest in new technologies, our competitive position could weaken, and our business, financial condition and results of operations could be adversely affected.

We typically invoice our subscription customers annually in advance. Therefore, a substantial source of our cash is from such prepayments, which are included on our condensed consolidated balance sheets as deferred revenue. Deferred revenue consists of billed fees for our subscriptions, prior to satisfying the criteria for revenue recognition, which are subsequently recognized as revenue in accordance with our revenue recognition policy. As of July 31, 2024, remaining performance obligations, including both deferred revenue and non-cancelable contracted amounts, were \$215.8 million. We expect to recognize revenue of \$136.2 million on these remaining performance obligations over the next 12 months, with the remaining balance recognized thereafter.

## Cash Flows

The following table shows a summary of our cash flows for the periods presented:

|                                 | Six Months Ended July 31, |            |
|---------------------------------|---------------------------|------------|
|                                 | 2024                      | 2023       |
|                                 | <i>(in thousands)</i>     |            |
| Net cash provided by (used in): |                           |            |
| Operating activities            | \$ (3,291)                | \$ (7,700) |
| Investing activities            | \$ 18,277                 | \$ 3,446   |
| Financing activities            | \$ 5,931                  | \$ 5,497   |

### *Operating Activities*

Cash used in operating activities for the six months ended July 31, 2024 of \$3.3 million primarily consisted of our net loss of \$40.9 million, adjusted for non-cash charges of \$40.2 million and net cash outflows of \$2.6 million from changes in our operating assets and liabilities. The primary drivers of the changes in operating assets and liabilities include a \$13.3 million decrease in accounts receivable related to collections and timing of billings offset by a \$8.2 million increase in deferred commissions related to increased sales during the period, a \$4.0 million decrease in accrued compensation primarily due to timing of bonus and commissions payments, a \$1.6 million decrease in lease liabilities driven by monthly rental payments for operating leases, a \$1.5 million decrease in deferred revenue due to timing of billings, and a \$1.1 million decrease in accrued expenses and other liabilities due to the timing of accruals and payments.

Cash used in operating activities for the six months ended July 31, 2023 of \$7.7 million primarily consisted of our net loss of \$42.5 million, adjusted for non-cash charges of \$32.2 million and net cash inflows of \$2.6 million from changes in our operating assets and liabilities. The primary drivers of the changes in operating assets and liabilities include a \$7.9 million increase in deferred revenue due to timing of billings, a \$7.5 million decrease in accounts receivable related to timing of billings and collections, and a \$1.7 million increase in accounts payable due to timing of payments. These changes were partially offset by a \$9.1 million increase in deferred commissions related to increased sales during the period, a \$1.9 million decrease in accrued expenses and other liabilities due to the timing of accruals and payments, a \$1.8 million decrease in accrued compensation primarily due to timing of bonus and commissions payments, and a \$1.7 million decrease in lease liabilities driven by monthly rental payments for operating leases.

### *Investing Activities*

Cash provided by investing activities for the six months ended July 31, 2024 of \$18.3 million consisted of maturities of short-term investments net of purchases of \$20.3 million and additions to property and equipment of approximately \$2.0 million.

Cash provided by investing activities for the six months ended July 31, 2023 of \$3.4 million consisted of maturities of short-term investments net of purchases of \$5.8 million and additions to property and equipment of \$2.4 million.

### ***Financing Activities***

Cash provided by financing activities for the six months ended July 31, 2024 of \$5.9 million was primarily due to \$4.1 million in proceeds from the issuance of common stock upon exercises of stock options, and \$1.8 million in proceeds from the issuance of common stock under our Employee Stock Purchase Plan ("ESPP").

Cash provided by financing activities for the six months ended July 31, 2023 of \$5.5 million was primarily due to \$4.7 million in proceeds from the issuance of common stock upon exercises of stock options, and \$0.8 million in proceeds from the issuance of common stock under our ESPP.

### **Contractual Obligations and Commitments**

Our contractual obligations consist of purchase obligations and operating lease commitments. Purchase obligations include agreements to purchase goods or services that are enforceable and legally binding on us and that specify all significant terms, including fixed or minimum quantities to be purchased; fixed, minimum or variable price provisions and the approximate timing of the transaction. These obligations relate to third-party cloud infrastructure agreements and subscription arrangements. Our operating lease commitments relate primarily to our office facilities.

For further information on our commitments and contingencies, refer to Note 9 in our unaudited condensed consolidated financial statements contained within this Quarterly Report on Form 10-Q. There has been no material change in our contractual obligations and commitments other than in the ordinary course of business since our fiscal year ended January 31, 2024, except as discussed in Note 14 - Subsequent Events. See our Annual Report on Form 10-K for the fiscal year ended January 31, 2024, which was filed with the SEC on March 26, 2024, for additional information regarding our contractual obligations.

### **Indemnification Agreements**

In the ordinary course of business, we enter into agreements of varying scope and terms pursuant to which we agree to indemnify customers, vendors, lessors and other business partners with respect to certain matters, including, but not limited to, losses arising out of the breach of such agreements, services to be provided by us or from intellectual property infringement claims made by third parties. Additionally, we entered into indemnification agreements with our directors and officers that require us, among other things, to indemnify them against certain liabilities that may arise by reason of their status or service as directors or officers. To date, no demands have been made upon us to provide indemnification under such agreements, and there are no claims that we are aware of that could reasonably be expected to have a material effect on our financial condition, results of operations or cash flows.

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

Our condensed consolidated financial statements and the related notes thereto included elsewhere in this Quarterly Report on Form 10-Q are prepared in accordance with U.S. generally accepted accounting principles. The preparation of condensed consolidated financial statements also requires us to make estimates and assumptions that affect the reported amounts of assets, liabilities, revenue, costs and expenses, and related disclosures. We base our estimates on historical experience and on various other assumptions that we believe to be reasonable under the circumstances. Actual results could differ significantly from the estimates made by management. To the extent that there are differences between our estimates and actual results, our future financial statement presentation, financial condition, results of operations, and cash flows will be affected.

There have been no significant changes to our critical accounting policies and estimates as compared to those described in "Management's Discussion and Analysis of Financial Condition and Results of Operations" set forth in our Annual Report on Form 10-K for the fiscal year ended January 31, 2024, which was filed with the SEC on March 26, 2024.

### **Recent Accounting Pronouncements**

See Note 2 to our condensed consolidated financial statements included in Part I, Item 1 of this Quarterly Report on Form 10-Q for a discussion of recent accounting pronouncements.



### **JOBS Act Accounting Election**

We are an “emerging growth company,” as defined in the JOBS Act. The JOBS Act provides that an “emerging growth company” can take advantage of an extended transition period for complying with new or revised accounting standards. This provision allows an “emerging growth company” to delay the adoption of some accounting standards until those standards would otherwise apply to private companies. We have elected to use the extended transition period under the JOBS Act until the earlier of the date we (i) are no longer an “emerging growth company” or (ii) affirmatively and irrevocably opt out of the extended transition period provided in the JOBS Act. As a result, our financial statements may not be comparable to companies that comply with new or revised accounting pronouncements as of public company effective dates. We currently expect that we will no longer be an emerging growth company as of January 31, 2025.

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

We are exposed to market risks in the ordinary course of our business. Market risk represents the risk of loss that may impact our financial position due to adverse changes in financial market prices and rates. Our market risk exposure is primarily the result of fluctuations in interest rates and foreign currency exchange rates.

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

Our cash, cash equivalents and short-term investments primarily consist of highly liquid investments in money market funds, U.S. government treasury securities, commercial paper, U.S. government agency securities, corporate debt securities, and asset-backed securities. As of July 31, 2024, we had cash and cash equivalents of \$62.6 million and short-term investments of \$93.5 million. We do not enter into investments for trading or speculative purposes. Our investments are exposed to market risk due to fluctuations in interest rates, which may affect our interest income and the fair value of our investments. However, due to the short-term nature of our investment portfolio, we do not believe an immediate 10% increase or decrease in interest rates would have a material effect on our results of operations and cash flows. We therefore do not expect our results of operations or cash flows to be materially affected by a sudden change in market interest rates.

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

The functional currency of our foreign subsidiaries is the U.S. Dollar. Accordingly, each foreign subsidiary remeasures monetary assets and liabilities at period-end exchange rates, while nonmonetary items are remeasured at historical rates. Revenue and expense items are remeasured at the exchange rates in effect on the day the transaction occurred, except for those expenses related to non-monetary assets and liabilities, which are remeasured at historical exchange rates. Remeasurement adjustments are recognized in other income (expense), net in our condensed consolidated statement of operations.

The volatility of exchange rates depends on many factors that we cannot forecast with reliable accuracy. We have experienced and will continue to experience fluctuations in foreign exchange gains (losses) related to changes in foreign currency exchange rates. In the event our foreign currency denominated assets, liabilities, revenue or expenses increase, our results of operations and cash flows may be more greatly affected by fluctuations in the exchange rates of the currencies in which we do business. We have not engaged in the hedging of foreign currency transactions to date, although we may choose to do so in the future.

As of July 31, 2024, a hypothetical 10% change in the relative value of the U.S. Dollar to other currencies would not have a material impact on our results of operations and cash flows.

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

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

Our management, with the participation of our Chief Executive Officer and Chief Financial Officer, has evaluated the effectiveness of our disclosure controls and procedures as of the end of the period covered by this Quarterly Report on Form 10-Q. The term “disclosure controls and procedures,” as defined in Rules 13a-15(e) and 15d-15(e) under the Securities Exchange Act of 1934 (the “Exchange Act”), means controls and other procedures of a company that are designed to ensure that information required to be disclosed by a company in the reports that it files or submits under the Exchange Act is recorded, processed, summarized, and reported within the time periods specified in the rules and forms of the Securities and Exchange Commission (the “SEC”). Disclosure controls and procedures include, without limitation, controls and procedures designed to provide reasonable assurance that information required to be disclosed by a company in the reports that it files or submits under the Exchange Act is accumulated and communicated to the company’s management, including its principal executive and principal financial officers, or persons performing similar functions, as appropriate to allow timely decisions regarding required disclosure.

Based on such evaluation, our Chief Executive Officer and Chief Financial Officer concluded that, as of the end of the period covered by this Quarterly Report on Form 10-Q, our disclosure controls and procedures were effective at the reasonable assurance level.

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

There were no changes in our internal control over financial reporting identified in connection with the evaluation required by paragraph (d) of Exchange Act Rules 13a-15 or 15d-15 that occurred during the three months ended July 31, 2024 that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

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

Our management, including our Chief Executive Officer and Chief Financial Officer, believes that our disclosure controls and procedures and internal control over financial reporting are designed to provide reasonable assurance of achieving their objectives and are effective at the reasonable assurance level. However, management does not expect that our disclosure controls and procedures or our internal control over financial reporting will prevent or detect all errors and all fraud. A control system, no matter how well conceived and operated, can provide only reasonable, not absolute, assurance that the objectives of the control system are met. 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, within the company have been detected. The design of any system of controls also is based in part upon certain assumptions about the likelihood of future events, and there can be no assurance that any design will succeed in achieving its stated goals under all potential future conditions. Over time, controls may become inadequate because of changes in conditions, or the degree of compliance with the policies or procedures may deteriorate. Because of the inherent limitations in a cost-effective control system, misstatements due to error or fraud may occur and not be detected.

## Part II Other Information

### Item 1. Legal Proceedings

From time to time, we may be subject to legal proceedings and claims that arise in the ordinary course of business, as well as governmental and other regulatory investigations and proceedings. In addition, third parties may from time to time assert claims against us in the form of letters and other communications. We are not currently a party to any legal proceedings that, if determined adversely to us, would, in our opinion, have a material and adverse effect on our business, financial condition, results of operations or cash flows. Future litigation may be necessary to defend ourselves, our partners and our customers, to determine the scope, enforceability and validity of third-party intellectual property and proprietary rights or to establish our intellectual property and proprietary rights. The results of any current or future litigation cannot be predicted with certainty and there can be no assurances that favorable outcomes will be obtained, and regardless of the outcome, litigation can have an adverse impact on us because of defense and settlement costs, diversion of management attention and resources and other factors.

### Item 1A. Risk Factors

*You should carefully consider the risks and uncertainties described below, together with all of the other information in this Quarterly Report on Form 10-Q, including our consolidated financial statements and related notes and the section titled "Management's Discussion and Analysis of Financial Condition and Results of Operations." Our business, financial condition, results of operations or prospects could also be harmed by risks and uncertainties not currently known to us or that we currently do not believe are material. If any of the risks actually occur, our business, financial condition, results of operations and prospects could be adversely affected. In that event, the market price of our common stock could decline, and you could lose part or all of your investment. The last day of our fiscal year is January 31. Our fiscal years ended January 31, 2023 and 2024 are referred to herein as fiscal 2023 and fiscal 2024, respectively.*

#### Risks Related to Our Industry and Business

***We have a history of net losses and may not achieve or maintain profitability in the future.***

We have incurred net losses since our inception, and we expect to continue to incur net losses in the future. We incurred net losses of \$80.2 million, \$68.5 million, \$40.9 million and \$42.5 million for fiscal 2024, fiscal 2023 and the six months ended July 31, 2024 and 2023, respectively. As of July 31, 2024, we had an accumulated deficit of \$531.5 million. We intend to continue investing significant resources to further develop our platform, and expand our sales, marketing, operations and infrastructure, both domestically and internationally. Any failure to increase our revenue sufficiently at a rate that exceeds the rate of increase in our investments and other expenses could prevent us from achieving or maintaining profitability.

***We may not continue to grow on pace with historical rates.***

Our historical revenue, revenue growth, key business metrics or key business metrics growth should not be considered indicative of our future performance. Our revenue was \$180.0 million, \$154.8 million, \$102.9 million and \$84.1 million for fiscal 2024, fiscal 2023 and the six months ended July 31, 2024 and 2023, respectively. Our revenue growth rate has fluctuated in prior periods, and we expect our revenue growth rate to continue to fluctuate. Our revenue growth rate may be impacted by a number of factors, including slowing adoption of or demand for our products and services, increasing competition, decreasing growth of our overall market, changes to technology or our failure to capitalize on growth opportunities, among others.

***If we fail to manage our growth effectively, our brand, business, financial condition and results of operations could be adversely affected.***

We have experienced strong growth in our employee headcount, geographic reach and operations, and we expect to continue to grow in the future. Managing our growth effectively and integrating new employees, technologies and acquisitions into our existing business will require us to continue expanding our operational and financial infrastructure while maintaining the beneficial aspects of our culture. Continued growth could challenge our ability to develop and improve our operational, financial and management controls, enhance our reporting systems and procedures, recruit, train and retain highly skilled personnel, maintain customer satisfaction and manage our costs and operating expenses. Further, as our customers adopt our products and services for an increasing number of use cases, we have had to support more complex commercial relationships. We must continue to improve and expand our information technology (“IT”), and financial infrastructure, operating and administrative systems and relationships with various partners and other third parties. In addition, we operate globally and have established numerous international subsidiaries. Plans to continue doing so will place additional demands on our resources and operations. If we do not manage the growth of our business and operations effectively, the quality of our products and services and the efficiency of our operations could suffer. This could impair our ability to attract new customers, retain existing customers and expand their use of our products and services, any of which could adversely affect our brand, business, financial condition and results of operations.

***We face intense competition and if we are unable to compete effectively, our business, financial condition and results of operations would be adversely affected.***

The database software market in which we operate is competitive and characterized by rapid changes in technology, customer requirements and industry standards and frequent introductions of new products and services. Many established businesses aggressively compete against us and have offerings with functionalities similar to those of our products and services. These competing offerings may also be complementary with ours and customers often deploy our platform alongside a competitor’s product.

We primarily compete with established legacy database providers, such as Oracle, IBM and Microsoft, providers of NoSQL database offerings, such as MongoDB, and cloud infrastructure providers with database functionalities, such as Amazon, Microsoft and Google. In the future, other large software and internet companies with substantial resources, customers and brand power may also seek to enter our market. We would expect competition to increase with the entry of new companies and the introduction of innovative technologies.

Many of our existing and potential competitors have or could have, substantial competitive advantages, including but not limited to:

- greater name recognition and longer operating histories;
- broader distribution and established relationships with partners, customers and application developer communities;
- greater financial resources for sales and marketing, acquisitions and entering into strategic partnerships;
- competitive pricing and greater professional services and customer support resources;
- lower labor, research and development costs; and
- more mature intellectual property rights portfolios.

If we fail to compete effectively with respect to any of these competitive advantages, we may weaken our competitive position, fail to attract new customers or lose or fail to renew existing customers, which could adversely affect our business, financial condition and results of operations.

We expect competition to increase with the entry of new companies and the introduction of innovative technologies. Potential customers may believe that substitute technologies or ancillary solutions that address narrower segments overall are adequate for their needs. Further, we have made portions of our source code available on an open source and source available basis and face risks if others compete effectively using our code. Additionally, some of our current or potential competitors have made or could make acquisitions of businesses or establish cooperative relationships, among themselves or with others, that may allow them to offer more directly competitive and comprehensive offerings than were previously offered and adapt more quickly to new technologies and customer needs, devote greater resources to the promotion or sale of their products, initiate or withstand substantial price competition, take advantage of other opportunities more readily or develop and expand their offerings, including those that may incorporate AI, more quickly than we do. If we are unable to anticipate or effectively react to competitive challenges, our business, financial condition and results of operations could be adversely affected.

*We may fail to cost-effectively acquire new customers or obtain renewals, upgrades or expansions from our existing customers, which would adversely affect our business, financial condition and results of operations.*

Attracting and retaining sales and marketing personnel, developing partner relationships and raising awareness of our platform, including leveraging Community Edition and free trials, are critical for customer acquisition, and failure to cost-effectively acquire new customers could negatively impact our growth.

Our success depends, in part, on retaining existing customers through subscription renewals and expanding relationships, including broadening customers' use cases within our products and adopting additional Couchbase products and services. The non-cancelable term of our subscriptions are typically one to three years but may be longer or shorter in limited circumstances, and renewals or upgrades are not guaranteed. In addition, renewals might not have a similar contract period or differ in price, terms or capacity, or customers may decide to otherwise downgrade their subscriptions. For example, the impact of the macroeconomic environment has caused, and may in the future continue to cause, certain customers to request concessions including extended payment terms or better pricing, increased customer churn, a lengthening of our sales cycles with prospective customers, a delay of planned projects or expansions and reduced contract values with certain prospective and existing customers. Retention may fluctuate due to factors including our customers' satisfaction with our products and services, our licensing models, the prices, features or perceived value of competing offerings, changes to our offerings or general economic conditions, among other things.

Additionally, our success depends, in part, on our determination of which product features to include in the free versus paid versions of our products including the timing of when to incorporate Enterprise Edition features into our Community Edition products. Any failure on our part to determine the correct balance and timing may adversely affect our business. Existing or potential customers may determine that the functionality of our free versions is sufficient for their needs and as a result may not convert from the use of our free trials to a paid product or downgrade from our paid products. Further, users of our Enterprise Edition of Couchbase Server and Couchbase Mobile products may violate our license terms by using our product without paying for a required subscription or by exceeding their subscription entitlements, and we may not always be able to determine when this occurs or enforce our license terms.

In addition, expanding our customer base in new industry verticals depends on effective organization, focus and training of our sales and marketing personnel, efficient pricing and product strategies and educating the enterprise architects and application developers in such industries about the benefits and features of our products and services. Inadequate returns on sales and marketing efforts and investments may harm our business.

***The market for our products and services is highly competitive and evolving, and our future success depends on the growth and expansion of this market.***

It is uncertain whether the market for our products and services will continue to grow, how rapidly it will grow, or whether our products and services will be more widely adopted. Our success will depend, in part, on market acceptance and the widespread adoption of our products and services as an alternative to legacy or other offerings and the selection of our products and services over competing offerings that may have similar functionality. Technologies related to database offerings are still evolving and we cannot predict market acceptance of our products and services or the development of other competing offerings based on entirely new technologies. For example, we derive a substantial majority of our revenue from subscriptions for, and services related to Enterprise Edition of Couchbase Server and Couchbase Mobile. Demand for our platform is affected by a number of factors, many of which are beyond our control, including continued market acceptance by existing customers and potential customers, the ability to expand the product for different use cases, the timing of development and releases of new offerings by our competitors, technological change and the growth or contraction in the market in which we compete. It is possible that customer adoption of our new products, such as Couchbase Capella, may replace a portion of customer spend on our existing products. If the market for database solutions, and for NoSQL database solutions in particular, does not continue to grow as expected, or if we are unable to continue to efficiently and effectively respond to the rapidly evolving trends and meet the demands of our customers, achieve more widespread market awareness and adoption of our products and services or otherwise manage the risks associated with the introduction of new products and services, our competitive position would weaken and our business, financial condition, results of operations and prospects would be adversely affected.

***If we fail to innovate in response to changing customer needs, new technologies or other market requirements, our business, financial condition and results of operations could be harmed.***

Our ability to attract new customers and expand our relationship with our existing customers depends, in part, on our ability to continue to enhance and improve our products and services, introduce compelling new features, address additional use cases and develop features that reflect the constantly evolving nature of technology, regulations, and our customers' needs. The success of any new or enhanced product or service features depends on several factors, including our anticipation of market changes and market demand, timely completion and delivery, adequate quality testing, integration with existing technologies and applications and competitive pricing. If our investments in new products and services, including Couchbase Capella, are not successful, our business, financial condition and results of operations would be adversely affected.

In addition, because our products and services are designed to operate with a variety of systems, applications, data and devices, we will need to continuously modify and enhance our products and services to keep pace with changes in such systems. We may not be successful in developing these modifications and enhancements. The addition of new features and solutions to our products and services may increase our research and development expenses, compliance, personnel, security, infrastructure and other expenses. We have adopted new features and may introduce others in the future, which may not be introduced in a timely or cost-effective manner or may not achieve the market acceptance necessary to generate sufficient revenue to justify the related research and development and other related expenses. It is difficult to predict customer adoption of new features. Such uncertainty limits our ability to forecast our future results of operations and subjects us to a number of challenges, including our ability to plan for and model future growth. If we are unable to manage the risks associated with the development of new products and features, our business would be adversely affected. If new technologies emerge that enable others to deliver competitive products and services at lower prices, more efficiently, more conveniently or more securely, such technologies could adversely impact our ability to compete effectively.

Generally, our professional services and training revenues have grown as our subscription revenue has grown. We believe our investment in services facilitates the adoption of our products. However, Couchbase Capella contains a service component and Couchbase Capella customers may not require standalone services at the same rate as for our Enterprise Edition of Couchbase Server and Couchbase Mobile offerings. As a result, as customers migrate to Couchbase Capella, it is not clear if revenue from our services business will continue to grow at rates consistent with prior periods. Further, professional services and training may be seen as ancillary to our core product offerings. To the extent customers reduce spending due to macroeconomic conditions, customers may opt out of services, which may harm our results of operations.

***We have a limited operating history, which makes it difficult to predict our future results of operations.***

We were formed in 2011 with the merger of Membase, Inc. and CouchOne, Inc. Since our formation, we have frequently expanded our product features and services and evolved our pricing methodologies. Our limited operating history and our evolving business make it difficult to evaluate our future prospects and the risks and challenges we may encounter. These risks and challenges include, among other things, our ability to manage our costs, accurately forecast revenue, gain new customers, retain or expand existing customers, introduce successful products, services and features and compete effectively.

If we fail to address the risks and challenges that we face, including those above as well as those described elsewhere in this “Risk Factors” section, our business, financial condition, results of operations, key business metrics and prospects could be adversely affected. Further, because we have limited historical financial data and operate in a rapidly evolving market, any predictions about our future revenue and expenses may not be as accurate as they would be if we had a longer operating history or operated in a more predictable market. We have encountered in the past, and will encounter in the future, risks and uncertainties frequently experienced by growing companies with limited operating histories in rapidly changing industries. If our assumptions regarding these risks and uncertainties, which we use to plan and operate our business, are incorrect or change, or if we do not address these risks successfully, our results of operations could differ materially from our expectations and our business, financial condition and results of operations could be adversely affected.

***Our future results of operations and key business metrics may fluctuate significantly, and if we fail to meet the expectations of analysts or investors, the market price of our common stock and the value of your investment could decline substantially.***

Our results of operations and key business metrics may fluctuate from period to period as a result of a number of factors, many of which are outside of our control and may be difficult to predict, including:

- market acceptance and demand for our products and services, including new products and services;
- the quality and level of our execution of our business strategy and operating plan;
- the effectiveness of our sales and marketing programs;
- the length of our sales cycle, including the timing of renewals;
- our ability to attract new customers, particularly large enterprises;
- our ability to retain customers and expand their adoption of our products and services, particularly our largest customers;
- our ability to successfully expand internationally and penetrate key markets;
- a failure to maintain the level of service uptime and performance required by our customers with certain of our products;
- technological changes and the timing and success of new or enhanced product features by us or our competitors or any other change in the competitive landscape of our market;
- our product mix and the revenue recognition related to such products;
- changes in the average contract term or the timing of revenue recognition, any of which may impact implied growth rates;
- changes to our packaging and licensing models, which may impact the timing and amount of revenue recognized;
- increases in and the timing of operating expenses that we may incur to grow our operations and to remain competitive;
- pricing pressure as a result of competition or otherwise;
- seasonal buying patterns;
- the implementation of cost-saving activities, extra layers of scrutiny and approval, and customers electing to buy in smaller increments as a result of macroeconomic conditions;
- the impact and costs related to the acquisition and integration of businesses, talent, technologies or intellectual property rights;
- an inability to enforce our licenses associated with our products;

- our ability to successfully hire and retain employees and key members of our management team;
- changes in the legislative, litigation or regulatory environment; and
- general economic conditions in either domestic or international markets, including geopolitical uncertainty and instability, as well as the effects of foreign exchange fluctuations.

Any one or more of the factors above may result in significant fluctuations in our results of operations. We also intend to continue to invest significantly to grow our business in the near future. In addition, we generally experience seasonality based on when we enter into agreements with customers, and our quarterly results of operations generally fluctuate from quarter to quarter depending on customer buying habits. This seasonality is reflected to a lesser extent, and sometimes is not immediately apparent, in revenue, due to the fact that a substantial portion of our subscription revenue is recognized ratably over the term of the subscription, which typically ranges from one to three years. We expect that seasonality will continue to affect our results of operations in the future. The variability of our results of operations or other operating estimates could result in our failure to meet our expectations or those of securities analysts or investors; if so, the market price of our common stock could decline, and we could face costly lawsuits, including securities class action suits.

***We recognize a significant portion of revenue from subscriptions over the term of the relevant subscription period, and as a result, downturns or upturns in sales are not immediately reflected in full in our results of operations.***

Subscription revenue accounts for a significant portion of our revenue, comprising 96% and 94% of total revenue for the six months ended July 31, 2024 and 2023, respectively.

Sales of new or renewal subscriptions may fluctuate as a result of a number of factors, including customers satisfaction, pricing, the prices of competitors' products and reductions in our customers' spending levels or fluctuations in customer usage of consumption-based offerings. If sales decline or if consumption-based customers consume Couchbase Capella at a slower rate than expected, our total revenue and revenue growth rate may decline.

Under most of our contracts, we recognize a portion of subscription revenue upon transfer of the software license to the customer and the larger remainder of the transaction price ratably over the term of the arrangement. See Note 2 to our consolidated financial statements included elsewhere in this Quarterly Report on Form 10-Q for more information. As we significantly rely on subscription revenue, a significant portion of the revenue that we report in each period will be derived from the recognition of deferred revenue relating to agreements entered into in prior periods. Consequently, a decline in new sales or renewals in any one period and any downturn in sales, demand or market acceptance for our products may not be immediately reflected in our results of operations for such period but in future periods. Our subscription-based products also make it difficult to rapidly increase our revenue through additional sales in any period, as a significant portion of such revenue from customers will be recognized over the term of the applicable agreement.

Further, we intend to increase our investment in research and development, sales and marketing and general and administrative functions and other areas to grow our business. These costs are generally expensed as incurred in contrast to our revenue. Accordingly, we may recognize the costs associated with such increased investments earlier than some of the anticipated benefits and the return on these investments may be lower, or may develop more slowly, than we expect, which could adversely affect our financial condition and results of operations.

***We depend on our sales force, and we may fail to attract, retain, motivate or train our sales force, which could adversely affect our business, financial condition and results of operations.***

Our sales force obtains new customers and drives additional sales to existing customers. Our hiring, training and retention efforts have been, and may further be, hindered as a result of the intense competition for talent. New hires require significant training and may take significant time before they achieve full productivity, and our remote and online onboarding and training processes may be less effective or efficient than in-person training and take longer. Further, hiring sales personnel in new countries requires additional set up and upfront costs that we may not recover if the sales personnel fail to achieve full productivity. If we are unable to attract, retain, motivate and train sufficient numbers of effective sales personnel, our sales personnel do not reach significant levels of productivity in a timely manner or our sales personnel are not successful in bringing potential customers into the pipeline, converting them into new customers or increasing sales to our existing customer base, our business, financial condition and results of operations would be adversely affected.

***Our sales strategy to target larger enterprises involves risks that may not be present or that are present to a lesser extent with respect to smaller enterprises, such as long and unpredictable sales cycles and sales efforts that require considerable time and expense, particularly in the current macroeconomic environment.***

Sales to large customers involve risks that may not be present or that are present to a lesser extent with sales to smaller customers, such as longer and unpredictable sales cycles, more complex customer requirements and processes,



substantial upfront sales costs and less predictability in completing some of our sales. These risks may be enhanced in the current macroeconomic environment. A number of factors influence the length and variability of our sales cycles, including the need to educate potential customers about the uses and benefits of our products and services, the discretionary nature of purchasing and budget cycles and the competitive nature of evaluation and purchasing approval processes and the size of the customer. For example, large customers often require proof of concept deployments, free trials or begin to deploy our products on a limited basis but nevertheless negotiate pricing discounts, which all increase our upfront investment in the sales effort with no guarantee that sales to these customers will justify our substantial upfront investment. Large customer sales have, in some cases, occurred in periods subsequent to those we anticipated, or have not occurred at all, the result of which could affect our cash flows and results of operations for that fiscal period and for future periods.

***If we are not able to maintain and enhance our brand, especially among enterprise architects, application developers and other key functions that support them, our business and results of operations may be adversely affected.***

We believe that maintaining and enhancing our brand and our reputation as a leader in the market for database solutions is critical to our relationship with our existing customers and partners and our ability to attract new customers and partners. The successful promotion of our brand will depend on a number of factors, including our marketing efforts, our ability to foster awareness among enterprise architects, application developers and other key functions that support them, our ability to continue to develop high-quality products and services, our ability to successfully differentiate our products and services from those of our competitors, our ability to maintain the reputation of our products and services for data security and our ability to obtain, maintain, protect, defend and enforce our intellectual property and proprietary rights. Our brand promotion activities may not be successful or yield increased revenue. In addition, independent industry analysts often provide reports of our products and services, as well as the offerings of our competitors, and perception of our products and services in the marketplace may be significantly influenced by these reports. Negative reports, or reports that are less positive as compared to those of our competitors, may adversely affect our reputation and brand. Additionally, the performance of our partners may affect our reputation and brand if customers do not have a positive experience with our partners.

Our registered or unregistered trademarks or trade names may be challenged, infringed, circumvented or declared generic or determined to be infringing on other marks and our competitors may adopt trade names or trademarks similar to ours leading to market confusion. If we are otherwise unable to establish name recognition based on our trademarks and trade names, then we may not be able to compete effectively and our business may be adversely affected. The maintenance and promotion of our brand requires us to make substantial expenditures, yet may not generate customer awareness or yield increased revenue, and even if they do, any increase in revenue from such brand promotion initiatives may not offset the increased expenses we incur. If so, we may have reduced pricing power relative to our competitors, which could materially and adversely affect our business, financial condition and results of operations.

***Real or perceived errors, failures or bugs in our products or interruptions or performance problems associated with our technology and infrastructure could adversely affect our growth prospects, business, financial condition and results of operations.***

Our products are complex, and therefore, undetected errors, failures or bugs have occurred in the past and may occur in the future. Our products are used in IT environments with different operating systems, system management software, applications, devices, databases, servers, storage, middleware, custom and third-party applications and equipment and networking configurations. This diversity increases the likelihood of errors or failures in the IT environments into which our products are deployed. Additionally, we rely upon third-party cloud hosting infrastructure providers to host our cloud offering. Despite testing by us, real or perceived errors, failures or bugs in our customer solutions, software or technology or the technology or software we license from third parties, including open source software, may not be found until our customers use our products. This could result in negative publicity, security related incidents such as data breaches, data loss, unavailability or corruption, loss of or delay in market acceptance of our products, harm to our brand, weakening of our competitive position or complaints or claims by customers for losses sustained by them or our failure to meet the stated service level commitments in our customer agreements. In such an event, we may be required, or may choose, for customer relations or other reasons, to expend significant additional resources in order to help correct the problem. Any errors, failures or bugs in our products could impair our ability to attract new customers, retain existing customers or expand their use of our products, any of which could adversely affect our business, financial condition and results of operations.

For certain of our products, our success depends, in part, on the ability of our existing customers and potential customers to access such products at any time and within an acceptable amount of time. We may experience service disruptions, outages, capacity constraints and other performance problems due to a variety of factors, including infrastructure changes or failures, human or software errors, malicious acts, terrorism, denial of service attacks or other

security related incidents or capacity constraints. In some instances, we may not be able to identify or remedy 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 products and customer implementations become more complex. If our products are unavailable or if our customers are unable to access our products within a reasonable amount of time or at all, or if other performance problems occur, we may experience a loss of customers, lost or delayed market acceptance of our platform and services, delays in payment to us by customers, injury to our reputation and brand, legal claims against us and the diversion of our resources. The foregoing risks associated with any outage or service disruptions are magnified by the fact that our platform is typically used by our customers to support mission-critical applications. In addition, to the extent that 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, financial condition and results of operations could be adversely affected.

Some of our customer contracts contain service level commitments, which contain specifications regarding response times for support, performance of our products and availability of our services. Any failure of or disruption to our infrastructure could impact the performance of our products and the availability of services to customers. If we are unable to meet our stated service level commitments or if we suffer extended periods of poor performance or unavailability of our products or services, we may be contractually obligated to provide affected customers with service credits or potentially face contract termination with refunds of prepaid amounts related to unused subscriptions. If we suffer performance issues or downtime that exceeds the service level commitments under our contracts with our customers, our business, financial condition and results of operations could be adversely affected.

***Our ability to maintain and increase sales with our existing customers depends, in part, on the quality of our customer support, and our failure to offer high-quality support would harm our reputation and adversely affect our business and results of operations.***

Our ability to provide effective support is vital to our business as our products are often utilized by our customers for mission-critical applications and are often integrated with and dependent on other core technologies, which factors also increase the complexity and challenge of providing support. If we do not succeed in helping our customers quickly resolve issues or provide effective ongoing education related to our products, our reputation could be harmed, and our existing customers may not renew or expand their use of our products. To the extent that we are unsuccessful in hiring, training and retaining adequate customer support personnel, our ability to provide adequate and timely support to our customers and our customers' satisfaction with our products, would be adversely affected. Our failure to provide and maintain high-quality customer support would harm our reputation and brand and adversely affect our business, financial condition and results of operations.

***Our international operations and planned continued international expansion subject us to additional costs and risks, which could adversely affect our business, financial condition and results of operations.***

Our continued success and our growth strategy depend, in part, on our planned continued international expansion. We are continuing to adapt to and develop strategies to address international markets, but such efforts may not be successful and are subject to a number of risks, including, without limitation:

- greater difficulty in enforcing contracts and managing collections in countries where our recourse may be more limited, as well as longer collection periods;
- higher costs of doing business internationally, including costs incurred in establishing and maintaining office space and equipment for our international operations;
- differing labor regulations, especially in the European Union ("EU") where labor laws may be and often are more favorable to employees;
- challenges inherent to efficiently recruiting and retaining talented and capable employees in foreign countries and maintaining our company culture and employee programs across all of our offices;
- fluctuations in exchange rates between the U.S. Dollar and foreign currencies in markets where we do business;
- management communication and integration problems resulting from language and cultural differences and geographic dispersion;
- costs associated with language localization of our products and services;
- risks associated with trade restrictions and foreign legal requirements, including any importation, certification and localization of our products and services that may be required in foreign countries;

- greater risk of unexpected changes in regulatory requirements, tariffs and tax laws, trade laws, export quotas, customs duties, treaties and other trade restrictions;
- costs of compliance with foreign laws and regulations and the risks and costs of non-compliance with such laws and regulations, including, but not limited to laws and regulations governing our corporate governance, product licenses, data privacy, data protection and data security regulations, particularly in the EU;
- compliance with anti-bribery laws, including, without limitation, the U.S. Foreign Corrupt Practices Act of 1977, as amended (the “FCPA”), the U.S. Travel Act and the United Kingdom Bribery Act 2010, violations of which could lead to significant fines, penalties and collateral consequences for us;
- risks relating to the implementation of exchange controls, including restrictions promulgated by the Office of Foreign Assets Control (“OFAC”) and other similar trade protection regulations and measures;
- heightened risk of unfair or corrupt business practices in certain geographies and of improper or fraudulent sales arrangements that may impact our financial condition and result in restatements of, or irregularities in, financial statements;
- the uncertainty of protection for intellectual property rights in some countries, particularly, those countries where we operate through a professional employer organization and do not have a direct contractual relationship with our service providers in such countries;
- exposure to regional or global public health issues and restrictions on travel or other measures undertaken by governments in response;
- general economic and political conditions in these foreign markets, including inflation concerns, rising interest rates, political and economic instability in some countries, such as the Hamas-Israel or Russia-Ukraine conflicts, and any related political or economic response and counter responses or otherwise by various global actors or general effect on the global economy;
- foreign exchange controls or tax regulations that might prevent us from repatriating cash earned outside the U.S.; and
- double taxation of our international earnings and potentially adverse tax consequences due to changes in the tax laws of the U.S. or the foreign jurisdictions in which we operate.

If we are unable to address these or other problems encountered in connection with our international operations and expansion, our operations may be negatively impacted. Some of our business partners also have international operations and are subject to the risks described above. These and other factors could harm our ability to generate revenue outside of the U.S. and, consequently, adversely affect our business.

In addition, compliance with evolving foreign regulations may increase operational costs. Failure to comply with these laws and regulations could have adverse effects on our business. 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. regulations applicable to us. Although we have implemented policies and procedures designed to ensure compliance with these laws and policies, there can be no assurance that all of our employees, contractors, partners and third-party service providers will comply with these laws and policies. Violations of laws or key control policies by our employees, contractors, partners or third-party service providers could result in delays in revenue recognition, financial reporting misstatements, fines, penalties or the prohibition of the importation or exportation of our products and services and could have an adverse effect on our business, financial condition and results of operations.

***We track certain key business metrics with internal systems and tools and do not independently verify such metrics. Certain of these metrics are subject to inherent challenges in measurement, and any real or perceived inaccuracies in such metrics may adversely affect our business and reputation.***

We track certain metrics, including ARR, dollar-based net retention rate and number of customers, with internal systems and tools that are not independently verified by any third party and which may differ from estimates or similar metrics published by third parties due to differences in sources, methodologies or the assumptions on which we rely. Our internal systems and tools have a number of limitations, and our methodologies for tracking these metrics may change over time, which could result in unexpected changes to our metrics, including the metrics we publicly disclose. In addition, our ARR and dollar-based net retention rate calculations assume our customers will renew unless we receive notification of non-renewal and are no longer in negotiations prior to a measurement date, and will not increase or reduce, their subscriptions for our platform and services. If these assumptions are incorrect, our actual ARR and dollar-based net retention rate may differ significantly from the metrics presented in this Quarterly Report on Form 10-Q. If the internal systems and tools we use to track these metrics undercount or overcount performance or contain algorithmic or other technical errors, the data we report may not be accurate. While these numbers are based on what we believe to be reasonable estimates of our metrics for the applicable period of measurement, there are inherent challenges in measuring these metrics. Limitations or errors with respect to the data or how we measure data may affect our understanding of certain details of our business, which could affect our long-term strategies. If our key business metrics are not accurate representations of our business, if investors do not perceive our key business metrics to be accurate or if we discover material inaccuracies with respect to these figures, we expect that our business, reputation, financial condition and results of operations would be adversely affected.

***We depend on our management team and other highly skilled personnel, and we may fail to attract, retain, motivate or integrate highly skilled personnel, which could adversely affect our business, financial condition and results of operations.***

We depend on the continued contributions of our management team, key employees and other highly skilled personnel. Most of our management team and key employees are at-will employees, which means they may terminate their relationship with us at any time. We are also substantially dependent on the continued service of our existing engineering personnel because of the complexity of our products. The competition for top management, engineering talent and other highly skilled personnel is high, and the loss of their services or delays in hiring required personnel, particularly within our research and development and engineering organizations, could adversely affect our business, financial condition and results of operations.

Our future success also depends, in part, on continuing to attract and retain highly skilled personnel. Competition for these personnel in the San Francisco Bay Area, where our headquarters are located, and in other locations, is intense, and our industry faces significant competition for skilled personnel.

Additionally, the former employers of our new employees have, and in the future may assert that our new employees or we have breached legal obligations, which may be time-consuming, distracting to management and may divert our resources. Current and potential personnel also often consider the value of equity awards they receive in connection with their employment, and if the perceived value of our equity awards declines relative to those of our competitors, our ability to attract and retain highly skilled personnel may be harmed. If we fail to attract and integrate new personnel or retain and motivate our current personnel, our business, financial condition and results of operations could be adversely affected.

***Our company culture has contributed to our success and if we cannot maintain this culture as we grow, our business could be harmed.***

We believe that our company culture, which promotes being valued and creating value, has been critical to our success. We face a number of challenges that may affect our ability to sustain our corporate culture, including:

- ability to identify, attract, reward and retain people in leadership positions in our organization who share and further our culture, values and mission;
- the increasing size and geographic diversity of our workforce;
- the continued challenges of a rapidly-evolving industry; and
- the integration of new personnel and businesses from acquisitions.

If we are not able to maintain our culture, our business could be adversely affected.

***We may require additional capital, which may not be available on terms acceptable to us, or at all.***

Historically, we have funded our operations and capital expenditures primarily through equity issuances, debt instruments and cash generated from our operations. To support our growing business, we must have sufficient capital to continue to make significant investments in our products and services. If we raise additional funds through the issuance of equity, equity-linked or debt securities, those securities may have rights, preferences or privileges senior to those of our common stock, and our existing stockholders may experience dilution. Any debt financing secured by us in the future could involve restrictive covenants relating to our capital-raising activities and other financial and operational matters, which may make it more difficult for us to obtain additional capital and to pursue business opportunities.

We evaluate financing opportunities from time to time, and our ability to obtain financing will depend on, among other things, our development efforts, business plans and operating performance and the condition of the capital markets at the time we seek financing. We cannot be certain that additional financing will be available to us on favorable terms, or at all. If we are unable to obtain adequate financing or financing on terms satisfactory to us, when we require it, our ability to grow and to respond to business challenges could be significantly limited and our business could be adversely affected.

***Future debt obligations could materially and adversely affect our business, financial condition or results of operations.***

We maintain a revolving line of credit (the “Credit Facility”) with MUFG Bank Ltd. (“MUFG”). Our ability to pay interest and repay the principal for any indebtedness, and maintain compliance with covenants as part of our agreement with MUFG, is dependent upon our ability to manage our business operations, generate sufficient cash flows to service such debt and the other factors discussed in this “Risk Factors” section.

In the event we draw on the Credit Facility or otherwise incur indebtedness, our debt obligations could adversely impact us. For example, these obligations could:

- require us to use a large portion of our cash flow to pay principal and interest on debt, which will reduce the amount of cash flow available to fund working capital, capital expenditures, acquisitions, research and development expenditures and other business activities;
- limit our future ability to raise funds for capital expenditures, strategic acquisitions or business opportunities, research and development and other general corporate requirements;
- restrict our ability to incur additional indebtedness and to create or incur certain liens;
- increase our vulnerability to adverse economic and industry conditions; and
- increase our exposure to interest rate risk from variable rate indebtedness.

There can be no assurance that we will be able to manage any of these risks successfully.

We may also need to refinance a portion of any of our outstanding indebtedness as it matures. There is a risk that we may not be able to refinance existing debt, including the Credit Facility, or that the terms may not be as favorable as the terms of our existing indebtedness. Furthermore, if prevailing interest rates or other factors at the time of refinancing result in higher interest rates upon refinancing, then the interest expense relating to that refinanced indebtedness would increase.

***We may be unable to make acquisitions and investments or successfully integrate acquired companies and assets into our business, and our acquisitions and investments may not meet our expectations, any of which could adversely affect our business, financial condition and results of operations.***

We may in the future acquire or invest in businesses, offerings, technologies or talent that we believe could complement or expand our products and services, enhance our technical capabilities or otherwise offer growth opportunities. However, we may not be able to fully realize the anticipated benefits of such acquisitions or investments due to inherent risks, including, without limitation:

- unanticipated costs or liabilities associated with the acquisition, including claims related to the acquired company, its offerings or technology, or potential violations of applicable law or industry rules and regulations, arising from prior or ongoing acts or omissions by the acquired businesses that are not discovered by due diligence during the acquisition process;
- incurrence of acquisition-related expenses, including those related to identifying, investigating and pursuing suitable acquisitions, whether or not they are consummated, which would be recognized as a current period expense;
- inability to generate sufficient revenue to offset acquisition or investment costs;

- inability to maintain relationships with customers and partners of the acquired business;
- challenges with incorporating acquired technology and rights into our products and services and maintaining quality and security standards consistent with our brand;
- inability to identify security vulnerabilities in acquired technology prior to integration with our technology and products and services;
- inability to achieve anticipated synergies or unanticipated difficulty with integration into our corporate culture;
- delays in customer purchases due to uncertainty related to any acquisition;
- the need to integrate or implement additional controls, procedures and policies;
- challenges caused by distance, language and cultural differences;
- harm to our existing business relationships with partners and customers as a result of the acquisition;
- potential loss of key employees;
- use of resources that are needed in other parts of our business and diversion of management and employee resources; and
- inability to recognize acquired deferred revenue in accordance with our revenue recognition policies.

Acquisitions also require the use of substantial portions of our available cash or the incurrence of debt to consummate the acquisition. Each of these could adversely affect our financial condition or the market price of our common stock. The sale of equity or issuance of equity-linked debt to finance any future acquisitions could result in dilution to our stockholders. The use of cash to finance any future acquisitions may limit other potential uses of our cash, including the retirement of outstanding indebtedness. The incurrence of indebtedness would result in increased fixed obligations and could also include covenants or other restrictions that would impede our ability to manage our operations. We may have to delay or forego a substantial acquisition if we cannot obtain the necessary financing to complete such acquisition in a timely manner or on favorable terms. Any of the foregoing could adversely affect our business, financial condition and results of operations.

***Use of AI, including in our products and services, combined with an uncertain regulatory environment, may result in reputational harm, liability, or other adverse consequences to our business.***

We are developing and have launched new product features that use AI technologies, including, for example, Capella iQ, our generative AI-powered developer's coding assistant built into Couchbase Capella. AI technologies are complex and rapidly evolving, and we face significant competition from other companies as well as an evolving regulatory landscape. We may be unsuccessful in developing, integrating or maintaining product features using AI technologies that gain market traction, or in doing so in a cost-effective manner. The introduction of AI into our products, or the use of our products as part of AI technologies and applications, may result in new or enhanced governmental or regulatory scrutiny, litigation, intellectual property risks, confidentiality or security risks, ethical concerns or other complications that could harm our business, reputation or financial condition. New or modified legal and regulatory developments regulating AI such as the EU AI Act can impact the incorporation of AI technologies into our offerings and business, and any actual or perceived failure by us to comply with any such legal and regulatory developments or other actual or asserted obligations may lead to significant fines, penalties, regulatory investigations, lawsuits, significant costs for remediation, damage to our reputation or other liabilities.

Further, our use of AI tools and technologies may require additional investment and development of appropriate protections and safeguards for handling the use of our data, including customer data processed by us, with AI technologies in our product offerings or our tools. AI may create content that appears correct but is inaccurate or flawed, which may expose us to brand or reputational harm, competitive harm or legal liability if we, our customers or others rely on or use this flawed content to their detriment.

***Our business could be adversely affected by economic downturns.***

Prolonged economic uncertainties or downturns could adversely affect our business, financial condition and results of operations and key business metrics. Negative conditions in the general economy in either the U.S. or abroad, including inflation and rising interest rate concerns, conditions resulting from financial and credit market fluctuations, changes in economic policy, trade uncertainty including changes in tariffs, sanctions, international treaties and other trade restrictions, the occurrence of a natural disaster, global public health crisis or armed conflicts, could continue to cause a decrease in corporate spending on IT offerings in general and negatively affect the growth of our business. We cannot

predict the timing, strength or duration of any economic slowdown, instability or recovery, generally or within any particular industry or geography.

These conditions could make it extremely difficult for our customers and us to forecast and plan future business activities accurately and could cause our customers to reevaluate their decision to purchase our products and services, which could delay and lengthen our sales cycles or result in cancellations of planned purchases. In the current macroeconomic environment, we continue to see deal cycles that are consistent with previous quarters, along with an elevation in degree of budget scrutiny, slower than expected product migrations, lower than expected expansions, and customers electing to buy in smaller increments. Further, during challenging economic times, our customers may face issues in gaining timely access to sufficient credit, which could result in an impairment of their ability to make timely payments to us, if at all. If that were to occur, we may be required to increase our allowance for credit losses, which would adversely affect our results of operations.

A substantial downturn in any of the industries in which our customers operate may cause firms to react to worsening conditions by reducing their capital expenditures in general or by specifically reducing their spending on IT offerings. Customers in these industries may delay or cancel projects or seek to lower their costs by renegotiating vendor contracts. To the extent subscriptions to our products or expenditures on our services are perceived by existing customers or potential customers to be discretionary, our revenue may be disproportionately affected by delays or reductions in general IT spending.

***We face fluctuations in currency exchange rates, which could adversely affect our financial condition and results of operations.***

To the extent we continue to expand internationally, we will become more exposed to fluctuations in currency exchange rates. The strengthening of the U.S. Dollar relative to foreign currencies increases the real cost of our products and services for our customers outside of the U.S. which could lead to the lengthening of our sales cycles or reduced demand for our products and services. Additionally, increased international sales may result in foreign currency denominated sales, increasing our foreign currency risk. Moreover, such continued expansion would increase operating expenses incurred outside the U.S. and denominated in foreign currencies. To date, we have not entered into any hedging transactions in an effort to reduce our exposure to foreign currency exchange risk. While we may decide to enter into hedging transactions in the future, the availability and effectiveness of these hedging transactions may be limited and we may not be able to successfully hedge our exposure, which could adversely affect our financial condition and results of operations.

***Our business could be adversely affected by pandemics, natural disasters, political crises or other unexpected events.***

A significant natural disaster, such as an earthquake, fire, hurricane, tornado or flood, or a significant power outage or telecommunications failure, could disrupt our operations, mobile networks, the internet or the operations of our third-party service and technology providers. In particular, our corporate headquarters are located in the San Francisco Bay Area, a region known for seismic activity and wildfires. In addition, any unforeseen public health crises, political crises, such as terrorist attacks, war and other political instability or other catastrophic events, whether in the U.S. or abroad, including the Hamas-Israel and Russia-Ukraine conflicts and any related political or economic response and counter responses or otherwise by various global actors or general effect on the global economy, can continue to adversely affect our operations or the economy as a whole. The impact of any natural disaster, act of terrorism or other disruption to us or our third-party providers' abilities could result in decreased demand for our products and services or a delay in the provision of our products and services or could negatively impact consumer and business spending in the impacted regions or globally depending on the severity, any of which would adversely affect our business, financial condition and results of operations. All of the aforementioned risks would be further increased if our disaster recovery plans prove to be inadequate.

### **Risks Related to Our Dependence on Third Parties**

***If we are unable to maintain successful relationships with our partners, our business, financial condition and results of operations could be harmed.***

We employ a go-to-market business model whereby a portion of our revenue is generated by sales through or with our partners, including CSPs, independent software vendors, systems integrators, technology partners, original equipment manufacturers, marketplaces, managed service providers and resellers, that further expand the reach of our direct sales force into additional geographies, sectors, industries and channels. We have entered, and intend to continue to enter, into reseller relationships in certain international markets where we do not have a local presence. We provide certain partners with specific training and programs to assist them in selling our products and services, but our efforts to provide training and build relationships may be ineffective. In addition, if our partners are unsuccessful in marketing and selling our products and services, it would limit our planned expansion into certain geographies, sectors, industries and channels. If we are unable to develop and maintain effective sales incentive programs for our partners, we may not be able to successfully incentivize these partners to sell our products and services to customers.

Some of our partners may also market, sell and support offerings that are competitive with ours, may devote more resources to the marketing, sales and support of such competitive offerings, may have incentives to promote our competitors' offerings to the detriment of our own or may cease selling our products and services altogether. Our partners could also subject us to lawsuits, potential liability and reputational harm if, for example, any of our partners misrepresents the functionality of our products and services to customers, violate laws or violate our or their corporate policies. Our ability to achieve revenue growth in the future will depend, in part, on our success in maintaining successful relationships with our partners, identifying additional partners and training our partners to independently sell our products and services. Any shortcomings of the foregoing by us or our partners could adversely affect our business, financial condition, results of operations and growth prospects.

***We rely on third-party service providers for many aspects of our business, and any failure to maintain these relationships could harm our business.***

Our success depends, in part, on our relationships with third-party service providers, including providers of cloud hosting infrastructure, customer relationship management systems, financial reporting systems, human resource management systems, credit card processing platforms, marketing automation systems, payroll processing systems and data centers, among others. In particular, cloud hosting infrastructure is becoming increasingly important as customers adopt Couchbase Capella. If any of these third parties experience difficulty meeting our requirements or standards, become unavailable due to extended outages or interruptions, temporarily or permanently cease operations, face financial distress or other business disruptions or increase their fees, or if our relationships with any of these providers deteriorate or if any of the agreements we have entered into with such third parties are terminated or not renewed without adequate transition arrangements, or if we are unsuccessful in managing or negotiating cost-effective relationships with them, we could suffer increased costs and delays in our ability to provide customers with our products and services, our ability to manage our finances could be interrupted, receipt of payments from customers may be delayed, our ability to generate and manage sales leads could be weakened or our business operations could be disrupted. Any of such disruptions may adversely affect our business, financial condition, results of operations or cash flows until we replace such providers or develop replacement technology or operations.

***Certain estimates and information we refer to publicly are based on information from third-party sources and we do not independently verify the accuracy or completeness of the data contained in such sources or the methodologies for collecting such data, and any real or perceived inaccuracies in such estimates and information may harm our reputation and adversely affect our business.***

Certain estimates and information we refer to publicly, including general expectations concerning our industry and the market in which we operate and market size, are based to some extent on information provided by third-party providers. This information involves a number of assumptions and limitations, and although we believe the information from such third-party sources is reliable, we have not independently verified the accuracy or completeness of the data contained in such third-party sources or the methodologies for collecting such data. If investors do not perceive such data or methodologies to be accurate, or if we discover limitations or material inaccuracies with respect to such data or methodologies, our reputation, financial condition and results of operations could be adversely affected.



## Risks Related to Our Open Source and Intellectual Property

***Our use of third-party open source software in our solutions, the availability of core portions of our source code on an open source or source available basis and contributions to our open source projects could negatively affect our ability to sell our products and provide our services, subject us to possible litigation and allow third parties to access and use software and technology that we use in our business, all of which could adversely affect our business and results of operations.***

Our products include software that is licensed to us by third parties under “open source” licenses. Use and distribution of open source software may entail greater risks than use of third-party commercial software, because open source projects may have vulnerabilities and architectural instabilities, and also because open source licensors generally provide their software on an “as-is” basis and do not provide support, warranties, indemnification or other contractual protections regarding infringement claims or the quality of the code even though our customers may insist on such protections in our contracts with them. We have historically elected to make core portions of our source code available on an open source basis to facilitate adoption as well as collaboration and participation from our application developer communities. However, we may not be successful in this strategy, and our move toward source-available licensing, as well as the continued availability of our source code, may enable others to compete more effectively against us. In addition, the public availability of the source code for such software may make it easier for others to compromise our products. We expect to continue to incorporate such open source software in our products and allow core portions of our source code to be available on an open source or source-available basis in the future.

Although most of our code is developed in-house, we also receive a limited amount of contributions from our open source developer communities. We require third parties who provide contributions to us to assign ownership of all intellectual property rights in their contributions to us, or provide us with a perpetual license to their works, and represent that their contributions are original works and that they are entitled to assign or license these rights to us. However, we cannot be sure that we can use all contributions without obtaining additional licenses from third parties, and may be subject to intellectual property infringement or misappropriation claims as a result of our use of these contributions.

Some open source licenses contain requirements that we make available source code for modifications or derivative works we create based upon the type of open source software we use, or grant other licenses to our intellectual property. We seek to ensure that our closed-source proprietary software is not combined with, and does not incorporate, open source software in ways that would require the release of the source code of our closed-source proprietary software to the public. However, we cannot ensure that our processes for controlling our use of open source software in our products will be effective. If we are held to have failed to comply with the terms of applicable licenses or our current policies and procedures or otherwise combine our closed-source proprietary software with open source software in a certain manner, we could, under certain open source licenses, be required to release the source code of our closed-source proprietary software to the public at no cost under the terms of applicable open source licenses. This would allow our competitors to create similar offerings with lower development effort and time and ultimately could result in a loss of our competitive advantages.

Additionally, the terms of many open source licenses have not been interpreted by U.S. or foreign courts, and these licenses could be construed in a way that could impose unanticipated conditions or restrictions on our ability to provide or distribute our products. From time to time, there have been claims challenging the ownership of open source software against companies that incorporate open source software into their products, and the licensors of such open source software provide no warranties or indemnities with respect to such claims. As a result, we and our customers could be subject to lawsuits by parties claiming ownership of what we believe to be open source software. If an author or other third party that distributes such open source software were to allege that we had not complied with applicable license conditions, or if we are required to defend a customer in the event of such a claim, we could be required to incur significant legal expenses defending against such allegations. If we are unable to successfully defend against such allegations, we could be subject to significant damages or other liability, including being enjoined from the sale of our products and services. We could also be required to seek licenses from third parties to continue providing our products on terms that are not economically feasible, re-engineer our products, discontinue or delay the provision of our products if re-engineering cannot be accomplished on a timely basis or make generally available, in source code form, our proprietary code. Any of the foregoing would adversely affect our business, financial condition and results of operations.

***Our distribution and licensing model could negatively affect our ability to monetize and protect our intellectual property rights.***

Many of our products are available for free on the internet, including a substantial portion of our source code on open source or source available terms. Also, we may have limited or no direct visibility into who may be using our software or to what extent or purpose, so our ability to detect violations of our product licenses is extremely limited. If we

are unable to manage the risks related to our licensing and distribution model, our business could be adversely affected. Additionally, we have adopted BSL 1.1, a source-available license for certain of our publicly available source code. We believe BSL 1.1 enables us to fairly and transparently control commercialization of our source code, however such licensing strategy may not prevent misuse of our source code. Additionally, BSL 1.1 is not an open source license, which may negatively impact adoption of the source code, reduce our brand and product awareness and negatively impact our ability to compete.

***Because of the rights accorded to third parties under open source licenses, there may be fewer technology barriers to entry in the markets in which we compete and it may be relatively easy for new and existing competitors, some of whom may have greater resources than we have, to compete with us.***

Open source software license terms generally allow liberal modifications and distribution of the code. We have historically elected to make core portions of our source code available on an open source basis. The continued availability of our source code, notwithstanding our move toward source-available licensing, among other things, may enable others to develop new software products or services that are competitive to ours without the same degree of overhead and lead time required by us, particularly if customers do not value the differentiation of our proprietary components. It is possible for new and existing competitors, including those with greater resources than ours, to develop their own open source software or hybrid proprietary and open source software offerings. In addition, some competitors make open source software available for free download or use or may position competing open source software as a loss leader. We cannot guarantee that we will be able to compete successfully against current and future competitors or that competitive pressure or the availability of open source software will not result in price reductions, reduced revenue and gross margins and loss of market share, any one of which could adversely affect our business. Our use of open source software may also limit our ability to assert certain of our intellectual property and proprietary rights against third parties, including competitors, who access or use software or technology that we have contributed to such open source projects.

***We could incur substantial costs in obtaining, maintaining, protecting, defending and enforcing our intellectual property rights and any failure to obtain, maintain, protect, defend or enforce our intellectual property rights could reduce the value of our software and brand.***

Our success depends, in part, upon our ability to obtain, maintain, protect, defend and enforce our intellectual property rights, including our proprietary technology, know-how and our brand. We rely on a combination of patents, copyrights, trademarks, service marks, trade secret laws, other intellectual property laws, confidentiality procedures and contractual provisions in an effort to establish and protect our proprietary rights. However, the steps we take to obtain, maintain, protect, enforce and defend our intellectual property rights may be inadequate if, for example, we are unable to enforce our rights or if we do not detect unauthorized use of our intellectual property, and as a result our competitors might gain access to our proprietary technology and develop and commercialize similar or substantially identical products, services or technologies, and our business, financial condition, results of operations or prospects could be adversely affected. We hold a number of issued patents and have filed patent applications both in the U.S. and in foreign jurisdictions. There can be no assurance that our patent applications will result in issued patents, or will result in issued patents in a timely manner.

Even if we continue to seek patent protection in the future, we may be unable to obtain or maintain patent protection for our technology. In addition, any patents issued or licensed to us in the future may not provide us with competitive advantages, or may be successfully challenged by third parties. In addition, defending our intellectual property rights might entail significant expenses. Any of our patents, trademarks or other intellectual property rights that we have or may obtain may be challenged or circumvented by others or invalidated or deemed unenforceable in the U.S. or in foreign jurisdictions. Others may infringe on our patents, trademarks or other intellectual property rights, independently develop similar, substantially identical or superior offerings, duplicate any of our offerings or design around our patents or other intellectual property rights or use information that we regard as proprietary to create products and services that compete with ours. Further, legal standards relating to the validity, enforceability and scope of protection of intellectual property rights are uncertain. Various courts, including the U.S. Supreme Court, have rendered decisions that affect the scope of patentability of certain inventions or discoveries relating to software and business methods. These decisions state, among other things, that a patent claim that recites an abstract idea, natural phenomenon or law of nature are not themselves patentable. Precisely what constitutes a law of nature or abstract idea is uncertain, and it is possible that certain aspects of our technology could be considered abstract ideas. Accordingly, the evolving case law in the U.S. may adversely affect our ability to obtain patents and may facilitate third-party challenges to any future owned or licensed patents. As we expand our international activities, our exposure to unauthorized copying and use of our services and platform capabilities and proprietary information will likely increase. Intellectual property protection may not be available to us in every country in which our services are available, or the laws of or mechanisms for enforcement in some foreign countries may not be as protective of intellectual property rights as those in the U.S. Policing unauthorized use of our technologies, trade secrets

and intellectual property may thus be difficult, expensive and time-consuming. Accordingly, despite our efforts, we may be unable to prevent third parties from infringing upon, misappropriating or otherwise violating our intellectual property rights.

In addition, we have made core portions of our own software available under open source or source-available licenses, and we include third-party open source software in our products. We have also occasionally contributed source code to open source projects. Because the source code for any software we distribute under open source or source-available licenses or contribute to open source projects is publicly available, our ability to protect our intellectual property rights with respect to such source code may be limited or lost entirely.

We protect and rely, in part, on trade secrets, proprietary know-how and other confidential information to maintain our competitive position. While we generally enter into confidentiality and invention assignment agreements with our employees and consultants and enter into confidentiality agreements with other third parties, including suppliers, vendors and the parties with whom we have strategic relationships and business alliances, the assignment of intellectual property rights may not be self-executing or may be breached, and we may be forced to bring claims against third parties, or defend claims that they may bring against us, to determine the ownership of what we regard as our intellectual property. Additionally, we cannot guarantee that we have entered into such agreements with each party that has or may have created or developed intellectual property on our behalf or had access to our proprietary information, know-how or trade secrets. We cannot guarantee that these agreements will be effective in controlling access to, distribution, use, misuse, misappropriation, reverse engineering or disclosure of our proprietary information, know-how and trade secrets. Further, these agreements may not prevent our competitors or partners from independently developing offerings that are substantially equivalent or superior to ours. We may not have adequate remedies for any breach of these agreements. Further, we have experienced and may in the future experience unauthorized access of our proprietary source code, confidential information and know-how. We have and may in the future initiate litigation regarding trade secret misappropriation, but enforcing a claim that a party illegally disclosed or misappropriated a trade secret or know-how is difficult, expensive and time-consuming, and the outcome is unpredictable. In addition, some courts in and outside the U.S. are less willing or unwilling to protect trade secrets and know-how.

We may be required to spend significant resources in order to monitor and protect our intellectual property rights, and some violations may be difficult or impossible to detect. Any litigation to protect and enforce our intellectual property rights could be costly, time-consuming and distracting to management, and could result in the impairment or loss of portions of our intellectual property. Our efforts to enforce our intellectual property rights may be met with defenses, counterclaims and countersuits attacking the validity and enforceability of our intellectual property rights that, if successful, could cost us valuable intellectual property rights. Our inability to protect our intellectual property and proprietary technology against unauthorized copying or use, as well as any costly litigation or diversion of our management's attention and resources, could impair the functionality of our products, delay introductions of enhancements to our products, result in our substituting inferior or more costly technologies into our products or harm our reputation and brand. In addition, we may be required to license additional technology from third parties to develop and market new product features, which may not be on commercially reasonable terms, or at all, and would adversely affect our ability to compete.

***We have been and may in the future become subject to intellectual property disputes which may be costly to defend, subject us to significant liability, require us to pay significant damages and limit our ability to use certain technologies.***

We have been and may in the future become subject to intellectual property disputes. Our success depends, in part, on our ability to develop and commercialize our products and services without infringing, misappropriating or otherwise violating the intellectual property rights of third parties. However, we may not be aware if our products are infringing, misappropriating or otherwise violating third-party intellectual property rights, and such third parties may bring claims alleging such infringement, misappropriation or violation. Further, we have faced and may in the future face claims from third parties claiming ownership of, or demanding release of, the software or derivative works that we have developed, including works using third-party open source software, which could include our proprietary source code, or otherwise seeking to enforce the terms of the applicable open source license. In addition, certain companies and rights holders seek to enforce and monetize patents or other intellectual property rights they own, have purchased or otherwise obtained. Many potential litigants, including some of our competitors and patent-holding companies, have the ability to dedicate substantial resources to assert their intellectual property rights and to defend claims that may be brought against them.

Certain of our agreements with our customers and other third parties include indemnification provisions under which we agree to indemnify or otherwise be liable to them for losses suffered or incurred as a result of claims of infringement, misappropriation or other violation of intellectual property rights. Any claim of infringement by a third party, even those without merit, against us or for which we are required to provide indemnification, are time consuming, could cause us to incur substantial costs defending against the claim, could distract our management from our business and could require us to cease use of such intellectual property. Further, because of the substantial amount of discovery required in connection with intellectual property litigation, we risk compromising our confidential information during this type of litigation. We may be required to make substantial payments for legal fees, settlement fees, damages (including treble damages and attorneys' fees if we are found to have willfully infringed a party's rights), royalties or other fees in connection with a claimant securing a judgment against us and we may be subject to an injunction or other restrictions that cause us to cease selling or using products or services that incorporate the intellectual property rights that we allegedly infringe, misappropriate or violate, including subscriptions to our products. We may also agree to a settlement that prevents us from distributing our products or a portion thereof, any of which could adversely affect our business, financial condition and results of operations.

With respect to any intellectual property rights claim, we may have to seek out a license to continue operations found to be in violation of such rights, which may not be available on favorable or commercially reasonable terms and may significantly increase our operating expenses. Some licenses may be non-exclusive, and therefore our competitors may have access to the same technology licensed to us. If a third party does not offer us a license to its intellectual property on commercially reasonable terms, or at all, we may be required to develop alternative, non-infringing technology, which could require significant time (during which we would be unable to continue to offer our affected product features), effort and expense and may ultimately not be successful. Any of these events would adversely affect our business, financial condition and results of operations.

Even if the claims do not result in litigation or are resolved in our favor, these claims and the time and resources necessary to resolve them, could divert the resources of our management. Moreover, there could be public announcements of the results of hearings, motions or other interim proceedings or developments, and if securities analysts or investors perceive these results to be negative, it would have a substantial adverse effect on our business, results of operations or the market price of our common stock. We expect that the occurrence of infringement claims is likely to grow as the market for platform and services grows. Accordingly, our exposure to damages resulting from infringement claims could increase and this could further exhaust our financial and management resources.

### **Risks Related to Our Legal and Regulatory Environment**

***Our business is subject to a wide range of laws and regulations, many of which are evolving, and failure to comply with such laws and regulations could harm our business, financial condition and results of operations.***

Our business is subject to regulation by various federal, state, local and foreign governmental agencies, including for data privacy and cybersecurity laws and regulations, intellectual property, employment and labor laws, workplace safety, consumer protection laws, anti-bribery laws, import and export controls, immigration laws, federal securities laws and tax laws and regulations. Further, emerging tools and technologies we may utilize in our products and services, like AI, may become subject to regulation under new laws or new applications of existing laws. In certain foreign jurisdictions, these regulatory requirements may be more stringent than in the U.S. These laws and regulations impose added costs on our business, noncompliance with which could subject us to:

- investigations, enforcement actions, orders and sanctions;
- mandatory changes to our products and services;
- disgorgement of profits, fines and damages;
- civil and criminal penalties or injunctions;
- claims for damages by our customers or partners;
- termination of contracts;
- loss of intellectual property rights; and
- temporary or permanent debarment from sales to heavily regulated organizations and governments.

If any governmental sanctions are imposed, enforcement actions are taken, or if we do not prevail in any possible civil or criminal litigation, our business, financial condition and results of operations could be adversely affected. In addition, responding to any action will likely result in a significant diversion of management's attention and resources and an increase in professional fees.

In addition, we must comply with laws and regulations relating to the formation, administration and performance of contracts with customers in heavily regulated industries and the public sector, including U.S. federal, state and local governmental organizations when selling our product to them directly or through partners, which affect how we and our partners do business with such customers. Failure to comply with these requirements by either us or our partners could subject us to investigations, fines, suspension or debarment from future government or other contracting opportunities and other penalties, which would adversely affect our business, financial condition, results of operations and growth prospects.

***If our security measures, or those of our service providers or customers, are breached or unauthorized parties otherwise obtain access to our or our customers' data or software, our products and services may be perceived as not being secure, customers may reduce or terminate their use of our products and services and we may face claims, litigation, regulatory investigations, significant liability and reputational damage.***

We collect, use, store and transmit or otherwise process data as part of our business operations, including personal data in and across multiple jurisdictions. We also use third-party service providers to collect, use, store, transmit, maintain and otherwise process such information. Increasingly, threats from computer malware, ransomware, viruses, social engineering (including phishing attacks), denial of service, application programming interface attacks or other attacks, employee theft or misuse and general hacking have become more prevalent in our industry and our customers' industries. Any of these security incidents could result in unauthorized access or damage to, or disablement, encryption, use, disclosure, modification, destruction, loss or other processing of, our data or customer data (including personal data), software or systems or disrupt our ability to provide our products and services. Any actual or perceived security incident could interrupt our operations, harm our reputation and brand, result in significant remediation and cybersecurity protection costs (including deploying additional personnel and modifying or enhancing our protection technologies and investigating and remediating any information security vulnerabilities), result in lost revenue, lead to regulatory investigations and orders, litigation, disputes, indemnity obligations, damages for breach of contract, penalties for violations of law or regulation and other legal risks, increase our insurance premiums, result in any other financial exposure, lead to loss of customer confidence in us or decreased use of our products and services and otherwise adversely affect our reputation, competitiveness, business, financial condition and results of operations.

We have taken steps to protect the data on our systems and offerings, but our security measures or those of our customers or third-party service providers could be insufficient and breached as a result of third-party action, employee or user errors, technological limitations, defects or vulnerabilities in our systems or offerings or those of our third-party service providers, malfeasance, fraud or malice on the part of employees or third parties, including state-sponsored organizations with significant financial and technological resources, or from failure in technological resources, failure to comply with policies or otherwise. We have experienced and may continue to experience security incidents and attacks of varying types and degrees, including instances where our third-party providers have been impacted by a supply-chain attack and instances where there has been exposure and unauthorized use of credentials of our personnel. In addition, we have identified and been required to remediate or mitigate vulnerabilities in our code and in third-party code. We could be impacted by these and other security incidents and vulnerabilities in the future, and our internal controls and operations regarding security may not be effective in eliminating the risk of compromise of our systems, data and software. Additionally, with our employees and many employees of our third-party service providers working remotely, we may be exposed to increased risks of security breaches or incidents. For example, we have seen an increase in phishing attempts and spam emails over time and it is possible this trend will continue. Also, in connection with geopolitical events and conflicts such as the Hamas-Israel and Russia-Ukraine conflicts, we and our third-party service providers may be vulnerable to a heightened risk of cybersecurity attacks, phishing attacks, viruses, malware, ransomware, hacking or similar breaches or incidents.

There can be no assurance that any security measures that we or our customers or third-party service providers have implemented will be effective against current or future security threats. We have developed systems and processes to protect the integrity, confidentiality, availability and security of our systems, data and software, but our security measures or those of our customers or third-party service providers could fail and result in unauthorized access or damage to, or disablement, encryption, use, disclosure, modification, destruction or loss of, such systems, data and software. Through contractual provisions and third-party risk management processes, we take steps to require that our third-party providers and their subcontractors protect our data, but we cannot ensure the security measures they take will be sufficient to protect our data. A vulnerability in a third-party provider's or a customer's software or systems, a failure of our customers' or third-party providers' safeguards, policies or procedures or a breach or incident of or impacting a customer's or third-party provider's software or systems could result in the compromise of the confidentiality, integrity or availability of our offerings or systems, or our customers' data. Further, security breach techniques are varied and continue to evolve, including through the use of AI to launch more automated, targeted, sophisticated and coordinated attacks, and these attacks may not be detected until after an incident has occurred. We may be unable to implement adequate preventative measures, anticipate, prevent or detect attempted security breaches or other security incidents or react in a timely manner.

We have contractual and other obligations to notify customers, regulators, impacted individuals or others of certain security incidents. We have made such notifications in the past and may be required to do so in the future. Such disclosures or the failure to comply with relevant requirements could lead to adverse consequences. Any security breach or incident that we or our third-party service providers experience, or the perception that one has occurred, could result in a loss of revenue or customer confidence in the security of our products and services, lead to negative publicity or otherwise harm our reputation and brand, reduce the demand for our products and services, disrupt normal business operations, divert management's attention and resources, require us to spend material resources to investigate, correct existing or prevent future security breaches and incidents (including deploying additional personnel and modifying or enhancing our protection technologies and investigating and remediating any information security vulnerabilities), increase our insurance premiums or expose us to legal liabilities, including claims, litigation, regulatory enforcement and orders, disputes, investigations, indemnity obligations, damages for contract breach, penalties and significant costs for remediation, any of which could adversely affect our results of operations. In addition, our remediation efforts may not be successful. We cannot ensure that any limitation of liability provisions in our customer, partner, vendor and other contracts would be enforceable or adequate with respect to any security lapse or breach or other security incident or protect us from any liabilities or damages with respect to any particular claim. These risks will increase as we continue to grow and evolve our offerings to collect, host, store, transmit, and otherwise process increasing volumes of data.

Further, if a security incident or breach occurs with respect to us or a competitor or third-party service provider, our customers and potential customers may lose trust in the security of our products or services or database software generally, which could adversely impact our ability to retain existing customers or attract new customers, which could adversely affect our business, financial condition and results of operations.

Moreover, our insurance coverage, subject to applicable deductibles, may not be adequate for liabilities incurred or cover any indemnification claims against us relating to any security incident or breach or an insurer may deny or exclude from coverage certain types of claims. In the future, we may not be able to secure insurance for such matters on commercially reasonable terms, or at all. The successful assertion of one or more 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 adversely affect our business, financial condition and results of operations.

***If we are not able to comply with, or are perceived to not comply with U.S. and foreign laws, rules, regulations, industry standards, contractual obligations and other requirements relating to data protection, information security and privacy, our business, financial condition and results of operations could be harmed.***

We are subject to a variety of federal, state, local and international laws, rules and regulations, as well as industry standards, internal and external privacy policies and contractual obligations, relating to the collection, use, retention, security, disclosure, transfer, storage and other processing of personal information and other data. The regulatory framework governing these matters worldwide is rapidly evolving and is likely to remain uncertain for the foreseeable future, and it is possible that these or other actual or asserted obligations may be interpreted and applied in manners inconsistent between jurisdictions and in conflict with other rules or our practices. Any actual or perceived failure by us, our suppliers or other third parties with whom we do business to comply with laws, regulations, contractual obligations, or other actual or asserted obligations could result in proceedings against us by governmental entities or others. In many jurisdictions, including the U.S., enforcement actions and consequences for noncompliance are rising. Further, we have had and may in the future receive assertions of noncompliance by private actors. Such assertions may result in fines, investigations or settlement costs. In addition, security advocates and industry groups have regularly proposed, and may propose in the future, self-regulatory standards with which we must legally comply or that contractually apply to us. If we fail to follow these standards even if no personal information is compromised, we may incur significant fines or experience a significant increase in costs.

Internationally, virtually every jurisdiction in which we operate has established its own data security and privacy legal framework with which we or our customers must comply, including but not limited to the United Kingdom ("UK"), Switzerland and the EU. The EU has adopted the General Data Protection Regulation ("GDPR"), which went into effect in May 2018, and together with national legislation, regulations and guidelines of the EU member states, contains numerous requirements relating to the processing of personal data of EU data subjects, including the increased jurisdictional reach of the European Commission ("EC") and more robust compliance obligations. Among other requirements, the GDPR regulates transfers of personal data subject to the GDPR to third countries that have not been found to provide adequate protection to such personal data. The GDPR also introduced numerous data processing and notification requirements and increased fines. In particular, under the GDPR, fines of up to 20 million euros or 4% of the annual global revenue of the noncompliant company, whichever is greater, could be imposed for violations of certain of the GDPR's requirements. Such penalties are in addition to any civil litigation claims by customers and data subjects.

While we have taken steps to mitigate the impact on us with respect to transfers of personal data, the efficacy and longevity of transfer mechanisms upon which we rely remains uncertain. We have in the past and may in the future be required to take additional steps to legitimize any personal data transfers impacted by legal or regulatory developments and be subject to increasing costs of compliance and limitations on our customers and us. More generally, we may find it necessary or desirable to modify our personal data handling practices, and the outcomes of legal challenges relating to cross-border personal data transfer may serve as a basis for our personal data handling practices, or those of our customers and vendors, to continue to be challenged, which may adversely affect our business.

The UK has adopted a version of the GDPR (combining the GDPR and the Data Protection Act 2018), exposing us to two parallel regimes, each of which potentially authorizes similar fines and other potentially divergent enforcement actions. Furthermore, there will be increasing scope for divergence in application, interpretation and enforcement of data protection law between the UK and the European Economic Area. We continue to monitor and review the impact of any resulting changes to EU or UK law that could affect our operations. We may incur liabilities, expenses, costs and other operational losses under the GDPR and data protection laws of the applicable EU member states and the UK in connection with any measures we take to comply with them. Other countries have also passed or are considering passing laws requiring local data residency or restricting the international transfer of personal data.

In addition, domestic data privacy laws continue to evolve and could require us to modify our data processing practices and policies and expose us to further regulatory or operational burdens. For example, the California Consumer Privacy Act (“CCPA”) took effect in January 2020 and was subsequently modified by the California Privacy Rights Act (“CPRA”). The CCPA imposes obligations on companies that process California residents’ personal information, including an obligation to provide certain new disclosures to such residents and creates new consumer rights. The CCPA provides for civil penalties for violations, as well as a private right of action for certain data breaches that result in the loss of personal information. This private right of action may increase the likelihood of, and risks associated with, data breach litigation. The CPRA also created a new state agency vested with authority to implement and enforce the CCPA and the CPRA.

Additionally, numerous other states have enacted privacy laws that have gone or will go into effect in the near future. While these new privacy laws may share similarities with each other, as well as with the CPRA and CCPA, they differ in many ways and we must comply with each if our operations fall within their scopes. Similar laws have been proposed in other states and at the federal level, and certain states have enacted other privacy-focused legislation such as Washington’s enactment of the My Health, My Data Act, which provides for a private right of action. All of these developments reflect a trend toward more stringent privacy legislation in the U.S. We expect that this increase in legislation and regulatory scrutiny will continue to add additional complexity, variation in requirements, restrictions and potential legal risk, require additional investment of resources in compliance programs, impact strategies and the availability of previously useful data and could result in increased compliance costs or changes in business practices and policies.

Additionally, in connection with Couchbase Capella, we may receive higher volumes of data, including sensitive and regulated data, which may require us to comply with additional legal or regulatory requirements. For example, we may store and process protected health information on behalf of our customers, which may subject us to a number of data protection, security and privacy requirements under our contracts and under the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”) and other laws and regulations. We may sign business associate agreements with certain of our customers and be directly subject to provisions of HIPAA applicable to business associates, as well as additional contractual requirements. We may also be subject to additional data protection, security and privacy requirements relating to cardholder data, including the Payment Card Industry Data Security Standard. Increased customer adoption of Couchbase Capella may result in further increases in such requirements. If we are, or are perceived to be, unable to maintain the privacy and security of such sensitive and regulated data, we could be subject to claims and demands by private parties, investigations and other proceedings by regulatory authorities, and significant fines, civil and criminal penalties and other liabilities.

Complying with these laws, regulations, contractual or other obligations relating to privacy, security, data protection, transfer or localization and information security may require us to modify our products and services, incur substantial operational costs, modify our data practices and policies and restrict our business operations. Any actual or perceived failure by us to comply with these laws, regulations or other actual or asserted obligations may lead to significant fines, penalties, regulatory investigations, lawsuits, significant costs for remediation, damage to our reputation or other liabilities. The interpretation and application of many privacy, security, and data protection laws, regulations and standards are uncertain, and it is possible that these laws and regulations may be interpreted and applied in a manner that is inconsistent with our data management practices or the features of our services and platform capabilities. If so, in addition to the possibility of fines, lawsuits, regulatory enforcement or orders, investigations, and other proceedings, imprisonment of company officials and public censure, other claims and penalties, significant costs for remediation and damage to our reputation, we could be required to fundamentally change our business activities and practices or modify our services and platform capabilities, any of which could require significant additional expense and have an adverse effect on our business,

including impacting our ability to innovate, delaying our product development roadmap and adversely affecting our relationships with customers and our ability to compete. We may be unable to make such changes and modifications in a commercially reasonable manner, or at all, and our ability to develop new product features and services could be limited.

In addition to government activity, privacy advocacy and other industry groups have established or may establish self-regulatory standards that may place additional burdens on our ability to provide our products and services. Our customers expect us to meet certain voluntary certification and other standards established by third parties. If we are unable to maintain these certifications or meet these standards, it could adversely affect our ability to attract new customers or continue providing our services to certain customers and could harm our business. Further, the uncertain and shifting regulatory environment may cause concerns regarding privacy, data protection or security, and may cause our customers to resist providing data that could improve our products and services, or limit the use and adoption of our products and services.

These laws, regulations, rules, industry standards and contractual or other obligations relating to privacy, security, data protection, transfers or localization and information security could require us to take on more onerous obligations in our contracts, restrict our ability to store, transfer and otherwise process data or, in some cases, impact our ability to offer our products and services, to reach existing and potential customers or to derive insights from customer data. The costs of compliance with, and other burdens imposed by, these laws, regulations, standards and obligations, or any inability to adequately address privacy, data protection or security-related concerns, even if unfounded, may limit the use and adoption of our products and services, reduce overall demand for our products and services, make it more difficult to meet expectations from or commitments to customers, impact our reputation or slow the pace at which we close sales transactions, any of which could harm our business, financial condition and results of operations.

***Any future litigation against us could be costly and time-consuming to defend.***

In addition to litigation regarding intellectual property, employment, governmental and regulatory investigations, and other claims discussed above, from time to time, we may become involved in various legal proceedings relating to matters incidental to the ordinary course of our business, including commercial, product liability, class action, whistleblower and other litigation, claims and proceedings. Such proceedings can be time-consuming and difficult to estimate, divert management's attention and resources, cause us to incur significant expenses or liability, require us to change our business practices or adversely affect our business, financial condition and results of operations. Because of the potential risks, expenses and uncertainties of litigation, we may, from time to time, settle disputes, even where we have meritorious claims or defenses. In addition, we cannot be sure that our existing insurance coverage for errors and omissions will be adequate or available or continue to be available on acceptable terms.

***Indemnity provisions in various agreements to which we are party potentially expose us to substantial liability for intellectual property infringement, misappropriation or other violation and other losses.***

Our agreements with our customers, partners and other third parties may include capped or uncapped indemnification provisions, which may survive termination or expiration of the applicable agreement and under which we agree to indemnify or otherwise be liable to them for losses suffered or incurred from claims of infringement, misappropriation or violation of intellectual property rights, data breaches, damages or other liabilities caused by us, or relating to or arising from our products and services, our acts or omissions under such agreements or other contractual obligations. Large indemnity payments could harm our business, financial condition and results of operations. Although we attempt to contractually limit indemnity obligations, we are not always successful and may still incur substantial liability related to such claims and we may be required to halt certain functions of our products or services. Moreover, even claims that ultimately are unsuccessful could result in expenses in litigation, divert management's time and other resources and harm our business and reputation.

In addition, although we carry general liability insurance, our insurance against this liability may not be adequate to cover a potential claim, and such coverage may not be available to us on acceptable terms, or at all. Any dispute with respect to such obligations could have adverse effects on our relationship with customers, channel parties or other third parties or other existing or potential customers, harm our reputation or reduce demand for our products and services.



***A portion of our revenue is generated by sales to heavily regulated organizations, which are subject to a number of challenges and risks.***

We provide our products and services to heavily regulated organizations, and at times to federal, state and local governments and non-U.S. governments directly and through our partners. Selling to these entities can be highly competitive, expensive and time-consuming, often requiring significant upfront time and expense without any assurance of sales. For instance, highly regulated entities and government customers often require contract terms that differ from our standard arrangements, impose complex compliance requirements, require preferential pricing or “most favored nation” terms and conditions or are otherwise time-consuming and expensive to satisfy. If we undertake to meet special standards or requirements and do not meet them, we could be subject to increased liability. Even if we do meet them, the additional costs associated with providing our services to such customers could harm our financial condition and results of operations.

We have been and are increasingly doing more business in heavily regulated industries. Customers in these industries, may be required to comply with more stringent regulations in connection with subscribing to and implementing our products and services. In addition, regulatory agencies may impose requirements toward third-party vendors generally, or to us in particular, that we may not be able to, or may not choose to, meet. Any changes in the underlying regulatory conditions that affect these types of customers could harm our ability to efficiently provide our products and services to them and to grow or maintain our customer base. Moreover, customers in these heavily regulated areas often have a right to conduct audits of our systems, products and practices. If one or more of such customers determine that some aspect of our business does not meet contractual or regulatory requirements, we may be limited in our ability to continue or expand our business. Each of these difficulties could adversely affect our business and results of operations.

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

We are subject to the FCPA, the U.S. domestic bribery statute contained in 18 U.S.C. § 201 and the U.S. Travel Act and other anti-bribery and anti-money laundering laws in countries outside of the U.S. where we conduct our activities. Anti-corruption and anti-bribery laws have been enforced aggressively recently and are interpreted broadly to generally prohibit companies, their employees, agents, representatives, partners and third-party intermediaries from authorizing, offering or providing, directly or indirectly, improper payments or benefits to recipients in the public or private sector.

We may have direct or indirect interactions with officials and employees of government agencies or state-owned or affiliated entities through third parties that sell our products and services and conduct our business abroad or through our employees, agents, representatives, partners and third-party intermediaries. We may be held liable for their corrupt or other illegal activities even if we do not explicitly authorize such activities. These laws also require that we keep accurate books and records and maintain internal controls and compliance procedures designed to prevent any such actions. While we have policies and procedures designed to address compliance with such laws, we cannot ensure that none of our employees, agents, representatives, partners or third-party intermediaries will take actions in violation of our policies and applicable law, for which we may be ultimately held responsible.

Any allegations or violation of the FCPA or other applicable anti-bribery, anti-corruption and anti-money laundering laws could result in whistleblower complaints, sanctions, settlements, prosecution, enforcement actions, fines, damages, adverse media coverage, investigations, loss of export privileges, severe criminal or civil sanctions or suspension or debarment from federal contracts. Responding to any investigation or action will likely result in a materially significant diversion of management’s attention and resources and significant defense costs and other professional fees. In addition, the U.S. government may seek to hold us liable for successor liability for FCPA violations committed by companies in which we invest or that we acquire. As a general matter, any of the foregoing could harm our reputation, business, financial condition and results of operations.

***We are subject to governmental export control, trade sanctions and import controls that could impair our ability to compete in international markets or subject us to liability if we violate the controls.***

Certain of our business activities are subject to the U.S. export control laws and regulations, including the Export Administration Regulations (the “EAR”) and the U.S. trade and economic sanctions maintained by the U.S. Department of Treasury’s OFAC as well as the U.S. import laws and regulations. The U.S. export control laws and economic sanctions prohibit the export, re-export and in-country transfer of our offerings, including software and services, to certain U.S. embargoed or sanctioned countries and territories, governments and persons, as well as for prohibited end-uses. Further, we incorporate encryption functionality into certain of our products. As a result, we submit reports about certain of our products to the U.S. Department of Commerce’s Bureau of Industry and Security to ensure that our exports, re-exports and transfers are in accordance with the EAR. Also, in certain cases, it is possible that a license may be required to export or re-export our products to certain countries and end-users. Obtaining the necessary export license for a particular sale or offering may be time-consuming or unfeasible and may result in the delay or loss of sales opportunities. In addition, various countries regulate the import of certain encryption technology, including through import permit and license requirements, and have enacted laws that could limit our ability to distribute or our customers’ ability to implement our products in those countries.

If we do not comply with such U.S. export controls, economic sanctions and import laws and regulations or other similar laws, we could be subject to both civil and criminal penalties, including substantial fines, possible incarceration for employees and managers for willful violations and the possible loss of our export or import privileges. We take precautions designed to ensure that we and our partners comply with all relevant export control, sanctions and import laws and regulations, but we cannot ensure that our measures will always succeed since such laws and regulations are very detailed and technical.

In addition, changes in our products or services or changes in export and import regulations in various countries may create delays in the introduction of our products and services into international markets, prevent the deployment of our products and services globally or, in some cases, prevent or delay the export or import of our products and services to certain countries, governments or persons altogether. Any change in export or import laws or regulations, economic sanctions or related legislation, or in their scope or targets, could result in decreased use of our products and services by or in our decreased ability to export or sell our products and services to, existing or potential end-customers with international operations. Any of the foregoing would adversely affect our business, financial condition and results of operations.

***Our international operations may subject us to greater than anticipated tax liabilities.***

Our corporate structure and associated transfer pricing policies contemplate future growth in international markets and consider the functions, risks and assets of the various entities involved in intercompany transactions, the amount of taxes we pay in different jurisdictions, including the U.S., our international business activities, changes in tax rates, new or revised tax laws or interpretations of existing tax laws and policies and our ability to operate our business in a manner consistent with our corporate structure and intercompany agreements. The relevant taxing authorities may challenge our methodologies for pricing intercompany transactions pursuant to intercompany arrangements or disagree with our determinations as to the income and expenses attributable to specific jurisdictions. If such a disagreement were to occur, and our position were not sustained, we could be required to pay additional taxes, interest and penalties, which could result in one-time tax charges, higher effective tax rates, reduced cash flows and lower overall profitability of our operations. Our financial statements could fail to reflect adequate reserves to cover such a contingency.

***Changes in tax laws could materially affect our financial condition, results of operations and cash flows.***

The tax regimes we are subject to or operate under, including income and non-income taxes, are unsettled and may be subject to significant change. For example, the Inflation Reduction Act of 2022 imposes a 15% minimum tax for large corporations on global adjusted financial statement income for tax years beginning after December 31, 2022, and a 1% excise tax on certain share repurchases occurring after December 31, 2022. We do not currently expect that the IRA will have a material impact on our income tax liability, but will continue to monitor this change in future periods. We are unable to predict what changes to the tax laws of the U.S. and other jurisdictions may be proposed or enacted in the future or what effect such changes would have on our business. Any significant increase in our future effective tax rate could have a material adverse impact on our business, financial condition, results of operations, or cash flows.

There is also a high level of uncertainty in today’s tax environment stemming from both global initiatives put forth by the Organisation for Economic Co-operation and Development (the “OECD”) and unilateral measures being implemented by various countries such as Pillar Two and the global minimum tax. If these proposals are passed, it is likely that we will have to pay higher income taxes in countries where such rules are applicable.

As we expand the scale of our international business activities, any changes in the U.S. or foreign taxation of such activities may increase our worldwide effective tax rate and harm our business, financial condition and results of operations. Such changes may also apply retroactively to our historical operations and result in taxes greater than the amounts estimated and recorded in our financial statements.

***Our ability to use our net operating losses may be limited.***

As of January 31, 2024, we had federal and state net operating losses (“NOLs”) of \$335.6 million and \$193.2 million, respectively, which may be available to offset taxable income in the future. A lack of future taxable income would adversely affect our ability to utilize these NOLs before they expire. Unused U.S. federal NOLs for taxable years beginning before January 1, 2018, may be carried forward to offset future taxable income, if any, until such unused NOLs expire. Under the Tax Cuts and Jobs Act, U.S. federal NOLs arising in tax years beginning after December 31, 2017 can be carried forward indefinitely, but the deductibility of such U.S. federal NOLs is limited to 80% of current year taxable income.

Of our U.S. federal NOLs, \$166.9 million may be carried forward indefinitely with utilization limited to 80% of taxable income. The remaining \$168.7 million will begin to expire in 2028. Our state NOLs carryforwards begin to expire in 2026.

Under Section 382 of the Internal Revenue Code of 1986, as amended, if a corporation undergoes an “ownership change,” the corporation’s ability to use its pre-change NOLs to offset its post-change income may be limited. In general, an “ownership change” will occur if there is a cumulative change in our ownership by “5-percent shareholders” that exceeds 50 percentage points over a rolling three-year period. Similar rules may apply under state tax laws. Subsequent ownership changes and changes to the U.S. tax rules in respect of the utilization of NOLs may further affect the limitation in future years.

There is also a risk that due to U.S. federal or state regulatory changes, such as suspensions on the use of NOLs, our existing NOLs could expire or otherwise be unavailable to offset future income tax liabilities.

***Adverse outcomes in tax audits or changes in our effective tax rate or tax liability may have an adverse effect on our results of operations.***

We are, and expect to continue to be, subject to review and audit by the U.S. Internal Revenue Service and other tax authorities in various domestic and foreign jurisdictions. As a result, we may receive assessments in multiple jurisdictions on various tax-related assertions. Taxing authorities have made inquiries of us and may in the future investigate or challenge our tax positions and methodologies on various matters, including our positions regarding the collection of sales and use taxes and the jurisdictions in which we are subject to taxes, which could expose us to additional taxes. We assess the likelihood of adverse outcomes resulting from any ongoing tax examinations to determine the adequacy of our provision for income taxes. These assessments can require considerable judgments and estimates. The calculation of our tax liabilities involves uncertainties in the application of complex tax laws and regulations in a variety of jurisdictions. There can be no assurance that our tax positions and methodologies or calculation of our tax liabilities are accurate or that the outcomes from tax examinations will not have an adverse effect on our financial condition and results of operations. A difference in the ultimate resolution of tax uncertainties from what is currently estimated could adversely affect our financial condition and results of operations.

***Taxing authorities may successfully assert that we should have collected or in the future should collect sales and use, value added or similar taxes and we could be subject to liability with respect to past or future sales, which could adversely affect our results of operations.***

We collect sales tax in a number of jurisdictions. Sales and use, value added and similar tax laws and rates vary greatly by jurisdiction. Certain jurisdictions in which we do not collect such taxes may assert that such taxes are applicable, which could result in tax assessments, penalties and interest, and we may be required to collect such taxes in the future. Such tax assessments, penalties, interest or future requirements would adversely affect our financial condition and results of operations.

***Our reported financial results may be adversely affected by changes in accounting principles generally accepted in the U.S.***

Generally accepted accounting principles in the U.S. (“GAAP”) are subject to interpretation by the Financial Accounting Standards Board, the SEC and other various bodies formed to promulgate and interpret appropriate accounting principles. Changes in accounting principles applicable to us, or varying interpretations of current accounting principles, in particular with respect to revenue recognition, could have a significant effect on our reported results of operations and could affect the reporting of transactions completed before the announcement of the change. Further, any difficulties in the implementation of changes in accounting principles, including the ability to modify our accounting systems, could cause us

to fail to meet our financial reporting obligations, which could result in regulatory discipline and harm investors' confidence in us.

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

The preparation of financial statements in conformity with GAAP requires management to make estimates and assumptions that affect the amounts reported in our financial statements and accompanying notes. We base our estimates on historical experience and on various other assumptions that we believe to be reasonable under the circumstances, as described in the section titled "Management's Discussion and Analysis of Financial Condition and Results of Operations." The results of these estimates form the basis for making judgments about the recognition and measurement of certain assets and liabilities and revenue and expenses that is not readily apparent from other sources. Our accounting policies that involve judgment include standalone selling prices for each distinct performance obligation, capitalized internal-use software costs, expected period of benefit for deferred commissions, valuation of our common stock prior to our IPO, valuation of stock-based awards, determination of allowance for credit losses, incremental borrowing rate used to measure operating lease liabilities, and accounting for income taxes. If our assumptions change or if actual circumstances differ from those in our assumptions, our results of operations could be adversely affected or fall below the expectations of securities analysts and investors, resulting in a decline in the market price of our common stock.

***We are obligated to maintain proper and effective internal control over financial reporting, and any failure to maintain the adequacy of these internal controls may adversely affect investor confidence in our company and, as a result, the value of our common stock.***

We are subject to the reporting requirements of the Exchange Act, the Sarbanes-Oxley Act of 2002 (the "Sarbanes-Oxley Act"), and the listing standards of the Nasdaq Global Select Market. Our management and other personnel devote a substantial amount of time to comply with these requirements. Moreover, these laws, regulations and standards are subject to varying interpretations and revisions. Such changes could result in continuing uncertainty regarding compliance matters and higher legal and financial costs. We continue to invest resources to comply with evolving laws, regulations and standards, which may result in increased general and administrative expenses and a diversion of management's time and attention. If our compliance efforts differ from the activities intended by regulatory or governing bodies due to ambiguities related to their application and practice, regulatory authorities may initiate legal proceedings against us and our business may be adversely affected.

The Sarbanes-Oxley Act requires, among other things, that we maintain effective disclosure controls and procedures and internal control over financial reporting. We are continuing to refine and improve our disclosure controls, internal controls and other procedures to ensure disclosures required in SEC filings are timely recorded, processed, summarized and reported and that disclosures under the Exchange Act are accumulated and communicated to our principal executive and financial officers. We have expended, and anticipate that we will continue to expend, significant resources to maintain and improve the effectiveness of our disclosure controls and procedures and internal control over financial reporting.

Our current controls and any new controls that we develop may become inadequate because of changes in the conditions in our business, including increased complexity resulting from any international expansion. Further, weaknesses in our disclosure controls or our internal control over financial reporting may be discovered in the future. Any failure or difficulties to develop, maintain, implement or improve effective controls could harm our results of operations or cause us to fail to meet our reporting obligations and may result in a restatement of our financial statements for prior periods. Any failure to implement and maintain effective internal control over financial reporting could also adversely affect the results of periodic management evaluations and annual independent registered public accounting firm attestation reports regarding the effectiveness of our internal control over financial reporting that we will eventually be required to include in our periodic reports that will be filed with the SEC. Any of the foregoing could have an adverse effect on our business, financial condition and results of operations and could cause investors to lose confidence in our reported financial and other information, which would likely adversely affect the market price of our common stock. In addition, if we are unable to continue to meet these requirements, we may not be able to remain listed on the Nasdaq Global Select Market.

Our independent registered public accounting firm will be required to formally attest to the effectiveness of our internal control over financial reporting when we are no longer an "emerging growth company." We currently expect that we will no longer be an emerging growth company as of January 31, 2025. At such time, our independent registered public accounting firm may issue a report that is adverse in the event it is not satisfied with the level at which our internal control over financial reporting is documented, designed or operating.

## **Risks Related to Ownership of Our Common Stock and Governance Matters**

### ***Operating as a public company has and will require us to incur substantial costs and will require substantial management attention.***

As a public company, we incur substantial legal, accounting and other expenses that we did not incur as a private company. Compliance with the rules and regulations of the Exchange Act, the applicable requirements of the Sarbanes-Oxley Act, the Dodd-Frank Wall Street Reform and Consumer Protection Act, the rules and regulations of the SEC and the listing standards of the Nasdaq Global Select Market have increased and may further increase our legal and financial compliance costs, and increase demand on our systems, particularly after we are no longer an “emerging growth company.” We currently expect that we will no longer be an emerging growth company as of January 31, 2025. In addition, as a public company, we may be subject to stockholder activism, which can lead to additional substantial costs, distract management and impact the manner in which we operate our business in unanticipated ways. As a result of disclosure of information in filings required of a public company, our business and financial condition become more visible, which may result in threatened or actual litigation, including by competitors.

There is also an increasing focus from regulators, certain investors, and other stakeholders concerning environmental, social and governance (“ESG”) matters. Our actual or perceived failure to achieve some or all of our ESG-related initiatives, goals, or commitments or maintain ESG practices that meet evolving stakeholder expectations or regulatory requirements could harm our reputation, adversely impact our ability to attract and retain employees or customers, and expose us to increased scrutiny from ESG-focused investors, regulatory authorities, and others, or subject us to liabilities, which may further adversely impact our business, financial condition, or results of operations.

Our management team may not successfully or efficiently manage the significant regulatory oversight and reporting obligations under the federal or state securities laws and the continuous scrutiny of securities analysts and investors. These obligations and constituents require significant attention from our senior management and could divert their attention away from the day-to-day management of our business, which could adversely affect our business, financial condition and results of operations.

### ***We are an “emerging growth company” and the reduced disclosure requirements applicable to emerging growth companies may make our common stock less attractive to investors.***

We are an “emerging growth company,” as defined in the JOBS Act, and we intend to take advantage of certain available exemptions, including not being required to comply with the auditor attestation requirements of Section 404 of the Sarbanes-Oxley Act, reduced disclosure obligations regarding executive compensation in our periodic reports and proxy statements and exemptions from the requirements of holding a nonbinding advisory vote on executive compensation and stockholder approval of any golden parachute payments not previously approved. In addition, we have elected to take advantage of the extended transition period under the JOBS Act to delay adoption of new or revised accounting pronouncements applicable to public companies until such pronouncements are made applicable to private companies. Any difficulties in implementing these pronouncements could cause failure to meet our financial reporting obligations, regulatory discipline or harm investor confidence. We may take advantage of these exemptions for so long as we are an “emerging growth company,” which could be for as long as five full fiscal years following the completion of our IPO. If some investors find our common stock less attractive as a result, there may be a less active trading market and a more volatile market price for our common stock. We currently expect that we will no longer be an emerging growth company as of January 31, 2025.

### ***The concentration of ownership of our outstanding common stock will limit your ability to influence the outcome of important transactions, including a change in control.***

Our executive officers, directors and our stockholders who own 5% or more of our outstanding common stock and their affiliates, in the aggregate, beneficially own a substantial portion of the outstanding shares of our common stock. As a result, these stockholders, if acting together, will be able to influence or control matters requiring stockholders' approval, including the election of directors and the approval of mergers, acquisitions or other extraordinary transactions and may vote in a way with which you disagree and which may be adverse to your interests. This concentration of ownership may have the effect of delaying, preventing or deterring a change in control of our company, could deprive our stockholders of an opportunity to receive a premium for their common stock as part of a sale of our company, and might ultimately affect the market price of our common stock.

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

The market price of our common stock may continue to be volatile and subject to fluctuations in response to various factors, some of which are beyond our control. These fluctuations could cause you to lose all or part of your investment in our common stock and include the following:

- price and volume fluctuations and investor confidence in the overall stock market and in technology stocks or those in our industry in particular;
- sales or short selling of our common stock or related derivative securities;
- failure of securities analysts to maintain coverage of us or publish inaccurate or unfavorable research about our business, changes in financial estimates by securities analysts or our failure to meet these estimates or the expectations of investors;
- any changes in the financial projections we may provide to the public or our failure to meet those projections;
- announcements by us or our competitors of new offerings or platform features and market acceptance of such new offerings or platform features;
- the public's reaction to our press releases, other public announcements and SEC filings;
- rumors and market speculation in our industry, whether or not involving us;
- actual or anticipated changes or fluctuations in our results of operations or key business metrics;
- actual or anticipated developments in our business, our competitors' businesses or the competitive landscape generally;
- announced or completed acquisitions of businesses, offerings or technologies by us or our competitors;
- developments or disputes concerning our intellectual property or other proprietary rights;
- litigation involving us, our industry, or both, or investigations by regulators into our operations or those of our competitors, or securities class action litigation against us;
- new laws, regulations, rules or industry standards or new interpretations of existing laws, regulations, rules or industry standards applicable to our business;
- changes in accounting standards, policies, guidelines, interpretations or principles;
- any significant change in our management; and
- general economic conditions and slow or negative growth of our markets and other geopolitical developments.

Stock markets in general, and the markets for technology stocks in particular, have previously experienced and may in the future experience extreme volatility, including as a result of global economic conditions. Furthermore, the market price of our common stock may be adversely affected by third parties, such as short sellers, trying to drive down the price of our common stock. These broad market and industry factors may seriously harm the market price of our common stock, regardless of our operating performance.

***Sales of substantial amounts of shares of our common stock in the public market, or the perception that such sales might occur, could cause the market price of our common stock to decline or impair our ability to raise capital through the sale of additional equity securities.***

If our stockholders sell, or the market perceives that our stockholders intend to sell, a substantial number of shares of our common stock in the public market, the market price of our common stock could decline and our ability to raise capital through the sale of additional equity securities could be impaired. Many of our existing equity holders have substantial unrecognized gains on the value of the equity they hold, and may take, or attempt to take, steps to sell, directly or indirectly, their shares or otherwise secure the value of their unrecognized gains on those shares.

In addition, certain of our stockholders are entitled, under our investors' rights agreement, to require us to register their shares for public sale in the U.S. Sales of our common stock pursuant to registration rights may make it more difficult for us to sell equity securities in the future at an appropriate time. These sales also could cause the market price of our common stock to fall and make it more difficult for you to sell our common stock.

***The issuance of additional stock in connection with financings, acquisitions, investments, our equity compensation plans or otherwise will dilute all other stockholders.***

Subject to applicable rules and regulations and our amended and restated certificate of incorporation, we may issue additional common stock or securities convertible into common stock from time to time in connection with a financing, acquisition, investment, our equity compensation plans or otherwise. Any such issuance could result in substantial dilution to our existing stockholders and cause the market price of our common stock to decline.

***Delaware law and provisions in our amended and restated certificate of incorporation and amended and restated bylaws could make a merger, tender offer or proxy contest difficult, thereby depressing the market price of our common stock.***

Our status as a Delaware corporation and the anti-takeover provisions of the Delaware General Corporation Law may discourage, delay or prevent a change in control by prohibiting us from engaging in a business combination with an interested stockholder for a period of three years after the date of the transaction in which the person became an interested stockholder, regardless of the potential benefit to our existing stockholders. In addition, our amended and restated certificate of incorporation and amended and restated bylaws contain provisions that may make the acquisition of our company more difficult, including the following:

- 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;
- certain amendments to our amended and restated certificate of incorporation will require the approval of at least 2/3 of our then-outstanding common stock;
- our stockholders will only be able to take action at a meeting of stockholders and not by written consent;
- our amended and restated certificate of incorporation will not provide for cumulative voting;
- vacancies on our board of directors will be able to be filled only by our board of directors and not by stockholders;
- a special meeting of our stockholders may only be called by the chairperson of our board of directors, our Chief Executive Officer or a majority of our board of directors;
- 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 further action by our stockholders; and
- advance notice procedures apply for stockholders to nominate candidates for election as directors or to bring matters before an annual meeting of stockholders.

These provisions, alone or together, could discourage, delay or prevent a transaction involving a change in control of our company. These provisions could also discourage proxy contests, election of stockholders' director nominees and other corporate actions our stockholders may desire, any of which, under certain circumstances, could limit the opportunity for our stockholders to receive a premium as part of a sale of our company and could also affect the price of our common stock in a change of control.

***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, to the fullest extent permitted by law, the sole and exclusive forum for (i) any derivative action or proceeding brought on our behalf, (ii) any action asserting a claim of breach of a fiduciary duty owed by any of our directors, officers or other employees to us or our stockholders, (iii) any action arising pursuant to any provision of the Delaware General Corporation Law, our amended and restated certificate of incorporation or our amended and restated bylaws or (iv) any 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, the federal district court for the District of Delaware), in all cases subject to the court having jurisdiction over indispensable parties named as defendants.

Section 22 of the Securities Act of 1933, as amended (the "Securities Act"), creates concurrent jurisdiction for federal and state courts over all such Securities Act actions. Accordingly, both state and federal courts have jurisdiction to entertain such claims. To prevent having to litigate claims in multiple jurisdictions and the threat of inconsistent or contrary

rulings by different courts, among other considerations, our amended and restated bylaws further provide that the federal district courts of the U.S. will be the exclusive forum for resolving any complaints asserting a cause of action arising under the Securities Act. We note, however, that investors cannot waive compliance with the federal securities laws and the rules and regulations thereunder, and that there is uncertainty as to whether a court would enforce this exclusive forum provision. If a court were to find either exclusive-forum provision in our amended and restated bylaws to be inapplicable or unenforceable in an action, we may incur additional costs associated with resolving the dispute in other jurisdictions, which could harm our results of operations.

***If securities or industry analysts do not publish research or publish inaccurate or unfavorable research about us, our business or our market, or if they change their recommendations regarding our common stock adversely, the market price and trading volume of our common stock could decline.***

The trading market for our common stock depends, in part, on the research and reports that securities or industry analysts publish about us, our business, our market or our competitors. The analysts' estimates are based upon their own opinions and are often different from our estimates or expectations. If any of the analysts who cover us change their recommendation regarding our common stock adversely, provide more favorable relative recommendations about our competitors or publish inaccurate or unfavorable research about our business, the market price of our common stock would likely decline. If few securities analysts commence coverage of us, or if one or more of these analysts cease coverage of us or fail to publish reports on us regularly, we could lose visibility in the financial markets and demand for our securities could decrease, which could cause the market price and trading volume of our common stock to decline.

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

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



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

**Unregistered Sales of Equity Securities**

None.

**Use of Proceeds**

On July 26, 2021, we completed our IPO. The offer and sale of the shares in the IPO were registered under the Securities Act pursuant to a registration statement on Form S-1 (File No. 333-257205), which was declared effective by the SEC on July 21, 2021. There has been no material change in the use of the IPO proceeds as described in our final prospectus filed with the SEC on July 22, 2021, pursuant to Rule 424(b) of the Securities Act and other periodic reports previously filed with the SEC.

**Item 3. Defaults Upon Senior Securities**

None.

**Item 4. Mine Safety Disclosures**

Not Applicable.

**Item 5. Other Information**

**Securities Trading Plans of Directors and Executive Officers**

On June 27, 2024 during our last fiscal quarter, William R. Carey, Vice President and Chief Accounting Officer and officer as defined in Rule 16a-1(f), adopted a “Rule 10b5-1 trading arrangement” as defined in Regulation S-K Item 408. The trading arrangement provides for the sale from time to time of an aggregate of up to 64,573 shares of our common stock. This figure includes an estimate of the number of shares to be acquired under our ESPP that may be sold under the trading arrangement. However, the actual number of shares that will be acquired through the ESPP may vary, and the actual amount that may be sold under the trading arrangement may be less based on tax withholding. The trading arrangement is intended to satisfy the affirmative defense in Rule 10b5-1(c). The duration of the trading arrangement is until September 30, 2025, or earlier if all transactions under the trading arrangement are completed.

No other directors or officers, as defined in Rule 16a-1(f), adopted, modified and/or terminated a “Rule 10b5-1 trading arrangement” or a “non-Rule 10b5-1 trading arrangement,” as defined in Regulation S-K Item 408, during the last fiscal quarter.

**Item 6. Exhibits**

| <b>Exhibit Number</b> | <b>Description</b>   | <b>Form</b> | <b>File No.</b> | <b>Exhibit</b> | <b>Filing Date</b> | <b>Filed Herewith</b> |
|-----------------------|--|-------------|-----------------|----------------|--------------------|-----------------------|
| 10.1*                 | <a href="#">Amended Outside Director Compensation Policy</a>   |             |                 |                |                    | X                     |
| 10.2 <sup>#</sup>     | <a href="#">Office Lease Agreement by and between the registrant and SR WINCHESTER, LLC, dated as of August 1, 2024</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                  | <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 <sup>†</sup>     | <a href="#">Certifications 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               | Inline XBRL Instance Document - the instance document does not appear in the Interactive Data File because its XBRL tags are embedded within the Inline XBRL document.   |             |                 |                |                    | X                     |
| 101.SCH               | Inline XBRL Taxonomy Extension Schema Document.  |             |                 |                |                    | X                     |
| 101.CAL               | Inline XBRL Taxonomy Extension Calculation Linkbase Document.  |             |                 |                |                    | X                     |
| 101.DEF               | Inline XBRL Taxonomy Extension Definition Linkbase Document.   |             |                 |                |                    | X                     |
| 101.LAB               | Inline XBRL Taxonomy Extension Label Linkbase Document.  |             |                 |                |                    | X                     |
| 101.PRE               | Inline XBRL Taxonomy Extension Presentation Linkbase Document.   |             |                 |                |                    | X                     |
| 104                   | Cover Page Interactive Data File (formatted as inline XBRL and contained in Exhibits 101) - the cover page interactive data is embedded within the Inline XBRL document or included within the Exhibit 101 attachments.  |             |                 |                |                    | X                     |
| *                     | Indicates management contract or compensatory plan.  |             |                 |                |                    |                       |
| †                     | The certifications attached as Exhibit 32.1 that accompanies this Quarterly Report on Form 10-Q are deemed furnished and not filed with the SEC and are not to be incorporated by reference into any filing of Couchbase, 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 Quarterly Report on Form 10-Q, irrespective of any general incorporation language contained in such filing. |             |                 |                |                    |                       |
| +                     | Certain portions of the Office Lease Agreement have been omitted to preserve the confidentiality of such information. The Company will furnish copies of any such information to the SEC upon request.   |             |                 |                |                    |                       |
| #                     | The schedules to the Office Lease Agreement have been omitted from this filing pursuant to Item 601(a)(5) of Regulation S-K. The Company will furnish copies of any such schedules to the SEC upon request.  |             |                 |                |                    |                       |



COUCHBASE, INC.

OUTSIDE DIRECTOR COMPENSATION POLICY

Adopted and approved by the Board of Directors on May 19, 2021

Couchbase, Inc. (the “Company”) believes that providing cash and equity compensation to its members of the Board of Directors (the “Board,” and members of the Board, the “Directors”) represents an effective tool to attract, retain and reward Directors who are not employees of the Company (the “Outside Directors”). This Outside Director Compensation Policy (the “Policy”) is intended to formalize the Company’s policy regarding the compensation to its Outside Directors. Unless otherwise defined herein, capitalized terms used in this Policy will have the meaning given to such terms in the Company’s 2021 Equity Incentive Plan (the “Plan”), or if the Plan is no longer in place, the meaning given to such terms or any similar terms in the equity plan then in place. Each Outside Director will be solely responsible for any tax obligations incurred by such Outside Director as a result of the equity and cash payments such Outside Director receives under this Policy.

Subject to Section 8 of this Policy, this Policy was effective as of the Registration Date (such date, the “Effective Date”). This Policy was most recently amended and restated by the Board effective August 1, 2024.

1. Cash Compensation.

*Annual Cash Retainer*

Each Outside Director will be paid an annual cash retainer of \$35,000. There are no per-meeting attendance fees for attending Board meetings. This cash compensation will be paid quarterly in arrears on a prorated basis.

*Committee Annual Cash Retainer*

Effective as of the Effective Date, each Outside Director who serves as the chair of the Board, the lead Outside Director, or the chair or a member of a committee of the Board, as applicable, listed below will be eligible to earn additional annual cash fees (paid quarterly in arrears on a prorated basis) as follows:

|                                   |          |
|-----------------------------------|----------|
| Chair of the Board:               | \$20,000 |
| Lead Independent Director:        | \$17,000 |
| Chair of Audit Committee:         | \$20,000 |
| Member of Audit Committee:        | \$10,000 |
| Chair of Compensation Committee:  | \$14,000 |
| Member of Compensation Committee: | \$6,000  |
| Chair of Nominating Committee:    | \$8,000  |
| Member of Nominating Committee:   | \$4,000  |

For clarity, each Outside Director who serves as the chair of a committee shall receive only the additional annual cash fee as the chair of the committee, and not the additional annual cash fee as a member of the committee.

### *Election to Receive Cash Retainers in Restricted Stock Units*

Each Outside Director may elect to receive his or her cash retainers in the form of fully vested restricted stock units. An electing Outside Director will be granted a quarterly fully-vested restricted stock unit award (the “Quarterly Retainer Award”) having a Value (as defined below) equal to the quarterly portion of the annual cash retainer and/or any committee annual cash retainer that the Outside Director would have received absent an election, rounded down to the nearest whole share. For each electing Outside Director, the Quarterly Retainer Award will automatically be granted quarterly following each applicable fiscal quarter on the first trading day on or after each of March 15, June 15, September 15 and December 15. The Company will solicit elections in an open window for insider trading purposes. An election shall auto-renew unless the Outside Director revokes the election. Each election must remain in place for a minimum of a full fiscal year.

2. Equity Compensation. Outside Directors will be eligible to receive all types of Awards (except Incentive Stock Options) under the Plan (or the applicable equity plan in place at the time of grant), including discretionary Awards not covered under this Policy. All grants of Awards to Outside Directors pursuant to Section 2 of this Policy will be automatic and nondiscretionary, except as otherwise provided herein, and will be made in accordance with the following provisions:

(a) No Discretion. No person will have any discretion to select which Outside Directors will be granted any Awards under this Policy or to determine the number of Shares to be covered by such Awards.

(b) Initial Award. Each individual who first becomes an Outside Director following the Effective Date will be granted an award of restricted stock units (an “Initial Award”) covering a number of Shares having a Value of \$350,000, rounded down to the nearest whole Share. The Initial Award will be automatically granted on the first trading date on or after the date on which such individual first becomes an Outside Director (the “Start Date”), whether through election by the stockholders of the Company or appointment by the Board to fill a vacancy. If an individual was a member of the Board and also an employee, becoming an Outside Director due to termination of employment will not entitle the Outside Director to an Initial Award.

Subject to Section 3 of this Policy, each Initial Award will vest as to 1/3 of the Shares subject to the Initial Award on each anniversary of the date the applicable Outside Director’s service as an Outside Director commenced, in each case subject to the Outside Director continuing to be a Service Provider through the applicable vesting date.

(c) Reserved.

(d) Annual Award. On the date of each annual meeting of the Company’s stockholders following the Effective Date (each, an “Annual Meeting”), each Outside Director who has continuously served a minimum of 3 months’ service on the Board as of the date of such Annual Meeting will be automatically granted an award of restricted stock units (an “Annual Award”) covering a number of Shares having a Value of \$175,000, rounded down to the nearest whole Share.

Subject to Section 3 of this Policy, each Annual Award will vest on the earlier of (i) the one-year anniversary of the date the Annual Award is granted or (ii) the day prior to the date of the Annual Meeting next following the date the Annual Award is granted, in each case, subject to the Outside Director continuing to be a Service Provider through the applicable vesting date.

(e) Value. For purposes of this Policy, “Value” means the average of the closing trading price of the Company’s common stock for the 30 calendar days ending the day prior to the date of grant.

(f) Deferral. Outside Directors will be permitted to defer the settlement of Awards granted under this Section 2 in accordance with a deferral election made in accordance with Section 409A.

3. Change in Control. In the event of a Change in Control, each Outside Director’s Awards accelerate.

4. Limitations. Any cash compensation and Awards granted to an Outside Director shall be subject to the limits provided in Section 11 of the Plan.

5. Travel Expenses. Each Outside Director’s reasonable, customary and documented travel expenses to Board or Board committee meetings will be reimbursed by the Company.

6. Additional Provisions. All provisions of the Plan not inconsistent with this Policy will apply to Awards granted to Outside Directors.

7. Section 409A. In no event will cash compensation or expense reimbursement payments under this Policy be paid after the later of (i) 15th day of the 3rd month following the end of the Company’s fiscal year in which the compensation is earned or expenses are incurred, as applicable, or (ii) 15th day of the 3rd month following the end of the calendar year in which the compensation is earned or expenses are incurred, as applicable, in compliance with the “short-term deferral” exception under Section 409A of the Internal Revenue Code of 1986, as amended, and the final regulations and guidance thereunder, as may be amended from time to time (together, “Section 409A”). It is the intent of this Policy that this Policy and all payments hereunder be exempt from or otherwise comply with the requirements of Section 409A so that none of the compensation to be provided hereunder will be subject to the additional tax imposed under Section 409A, and any ambiguities or ambiguous terms herein will be interpreted to be so exempt or comply. In no event will the Company reimburse an Outside Director for any taxes imposed or other costs incurred as a result of Section 409A.

8. Revisions. The Board may amend, alter, suspend or terminate this Policy at any time and for any reason. No amendment, alteration, suspension or termination of this Policy will materially impair the rights of an Outside Director with respect to compensation that already has been paid or awarded, unless otherwise mutually agreed between the Outside Director and the Company. Termination of this Policy will not affect the Board’s or the Compensation Committee’s ability to exercise the powers granted to it under the Plan with respect to Awards granted under the Plan pursuant to this Policy prior to the date of such termination.

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.

**ONE SANTANA WEST**

**OFFICE LEASE AGREEMENT**

**BETWEEN**

**SR WINCHESTER, LLC, LANDLORD**

**AND**

**COUCHBASE, INC., TENANT**

**DATE: AUGUST 1, 2024**

## OFFICE LEASE AGREEMENT

THIS OFFICE LEASE AGREEMENT (this “**Lease**”) is made this 1st day of August, 2024 (the “**Effective Date**”), by and between SR WINCHESTER, LLC, a Delaware limited liability company, by its managing member, STREET RETAIL, INC., a Maryland corporation (“**Landlord**”), and COUCHBASE, INC., a Delaware limited liability company (“**Tenant**”).

IN CONSIDERATION of the payments of rents and other charges provided for herein and the covenants and conditions hereinafter set forth, Landlord and Tenant hereby covenant and agree as follows:

### ARTICLE 1

#### REFERENCE PROVISIONS, DEFINITIONS AND EXHIBITS

As used in this Lease, the following terms shall have the meanings set forth in Sections 1.01 and 1.02 below.

#### **Section 1.1.** Reference Provisions.

A. **Leased Premises:** That portion of the Building described in Section 1.01.K, containing approximately 23,684 square feet of Floor Area and consisting of that portion of the first (1<sup>st</sup>) floor depicted on Exhibit A-2 attached hereto.

B. **Term:** Commencing on the Term Commencement Date and continuing for ninety-one (91) months, subject to extension pursuant to Exhibit F hereto.

C. **Delivery Date:** Subject to the terms, conditions and adjustments set forth in Section 9.01 below, the date of delivery of the Leased Premises (the “**Delivery Date**”) shall be the date Landlord delivers to Tenant (x) possession of the Leased Premises with the Landlord Work Substantially Complete (as defined in Exhibit B hereto), and (y) a non-disturbance agreement (the “**Ground Lessor Non-Disturbance Agreement**”) in the form of Exhibit J hereto executed by Landlord and Ground Lessor (as defined below) (collectively, the “**Delivery Condition**”). It is estimated that the Delivery Date will occur no later than September 1, 2024 (the “**Anticipated Delivery Date**”).

D. **Term Commencement Date:** The date (the “**Term Commencement Date**”) which is the earlier of (i) Tenant’s occupancy of any portion of the Premises for purposes of regular, ongoing business operations, or (ii) February 1, 2025 (the “**Outside Term Commencement Date**”). If the Delivery Date has not occurred on or before the Anticipated Delivery Date, then the Outside Term Commencement Date set forth in subsection (ii) above shall be extended by one day for each day after the Anticipated Delivery Date that Landlord fails to satisfy the Delivery Condition and cause the Delivery Date to occur. If the Landlord Door Installation (as defined in Exhibit B-1 hereto) has not been Substantially Completed on or before the Door Completion Date (as defined in Exhibit B hereto), then the Outside Term Commencement Date set forth in subsection (ii) above shall be extended by one day for each day after the Door Completion Date that Landlord fails to Substantially Complete the Door Installation.

E. **Rent Commencement Date:** The Term Commencement Date.

F. **Termination Date:** The date that is (i) the last day of the Term, or (ii) any earlier date on which this Lease is terminated in accordance with the provisions hereof.

G. **Minimum Rent:**

| <u>Lease Months:</u> | <u>Monthly Minimum Rent Per Square Foot of Floor Area:</u> | <u>Monthly Minimum Rent:</u> | <u>Annual Minimum Rent:</u> |
|----------------------|--|------------------------------|-----------------------------|
| 1-12*                | \$3.95*  | \$71,100*                    | \$ 853,200*                 |
| 13-24                | \$4.07   | \$96,393.88                  | \$ 1,156,726.56             |
| 25-36                | \$4.19   | \$99,235.96                  | \$ 1,190,831.52             |



|       |        |              |                 |
|-------|--------|--------------|-----------------|
| 37-48 | \$4.32 | \$102,314.88 | \$ 1,227,778.56 |
| 49-60 | \$4.45 | \$105,393.80 | \$ 1,264,725.60 |
| 61-72 | \$4.58 | \$108,472.72 | \$ 1,301,672.64 |
| 73-84 | \$4.72 | \$111,788.48 | \$ 1,341,461.76 |
| 85-91 | \$4.86 | \$115,104.24 | \$ 1,381,250.88 |

\*The parties hereby acknowledge and agree that during Lease months 1-12, Minimum Monthly Rent shall be payable with respect to only 18,000 square feet of Floor Area. Notwithstanding the foregoing, Minimum Rent shall be abated during the first seven (7) full calendar months of the initial Lease Year following the Rent Commencement Date (the “**Abatement Period**”). Notwithstanding such abatement of Minimum Rent, all other sums due under this Lease including, without limitation, Tenant’s Share of Operating Costs and Taxes (as defined below), shall be payable as provided in this Lease from and after the Rent Commencement Date; provided however, that during Lease months 1-12, Tenant’s Share of Operating Costs and Taxes shall be based upon 18,000 square feet of Floor Area. The amount of Minimum Rent conditionally abated for the Abatement Period (which Landlord and Tenant hereby agree shall in no event exceed the aggregate total of Six Hundred Fifty-Four Thousand Eight Hundred Sixty-Two and 60/100ths Dollars (\$654,862.60)), shall be referred to herein as the “**Abated Minimum Rent**”. If at any time during the initial Term of the Lease a Default (as defined below) by Tenant occurs and this Lease is terminated as a result thereof, then the Abated Minimum Rent shall immediately become void, and Tenant shall promptly pay to Landlord, in addition to all other amounts due to Landlord under this Lease, the unamortized amount of the Abated Minimum Rent (which amount shall be amortized on a straight-line basis without interest over the initial Term of the Lease).

H. Security Deposit: The sum of Eight Hundred Sixty-Six Thousand Eight Hundred Thirty-Four and 40/100 Dollars (\$866,834.40).

I. Rent Payments: Except to the extent Tenant is required to make such payments electronically in the manner set forth in Section 5.01 of this Lease, Rent payments due herein shall be made payable to Landlord at the following address:

SR Winchester, LLC  
c/o Federal Realty Investment Trust  
P.O. Box 846073  
Los Angeles, CA 90084-6073

J. Notice Addresses:

TO LANDLORD:

SR Winchester, LLC  
c/o Federal Realty Investment Trust  
909 Rose Avenue, Suite 200  
North Bethesda, MD 20852  
Attention: Legal Department

TO TENANT:

Prior to the Term Commencement Date:

Couchbase, Inc.  
3250 Olcott St.  
Santa Clara, CA 95054  
Attention: Legal

With a copy to:

Wilson Sonsini Goodrich & Rosati  
650 Page Mill Road  
Palo Alto, CA 94304  
Attn: Sean M. Wilkinson

Following the Term Commencement Date:  
Couchbase, Inc.  
3155 Olsen Drive  
San Jose, CA 95117  
Attention: Legal

With a copy to:

Wilson Sonsini Goodrich & Rosati  
650 Page Mill Road  
Palo Alto, CA 94304  
Attn: Sean M. Wilkinson

K. Building: That certain building located at 1 Santana West - 3155 Olsen Drive, San Jose, California and marked as the "Building" on **Exhibit A-1**, including two (2) subterranean floors (the "**Tower Parking Garage**") containing approximately three hundred fifty (350) parking spaces, a bicycle storage room and certain other improvements. The Building contains approximately 365,968 square feet of Floor Area.

L. Parking Spaces: 3 parking spaces per 1,000 square feet of Floor Area (i.e., 71 spaces), approximately 0.8 parking spaces per 1,000 square feet of Floor Area (i.e., initially, 19 spaces) of which shall be located on the Tower Parking Garage and 2.2 parking spaces per 1,000 square feet of Floor Area (i.e., initially, 52 spaces) of which shall be located in the certain parking garage marked as "**Common Parking Garage**" on **Exhibit A-1** (the "**Common Parking Garage**"), all of which shall be provided at no additional charge to Tenant during the term of this Lease, including any extension of the term (including for any Option Period).

M. Renewal Options: See **Exhibit E**.

N. Prepaid Rent: Contemporaneously with Tenant's execution and delivery of this Lease, Tenant shall pay Landlord one (1) month of the monthly Minimum Rent chargeable hereunder during the first Lease Year, which shall be applied to the Minimum Rent due for the eighth (8<sup>th</sup>) month of first Lease Year, and the Security Deposit.

O. Schedules and Exhibits: The schedules and exhibits listed below are attached to this Lease and are hereby incorporated in and made a part of this Lease.

- Exhibit A-1 Site Plan
- Exhibit A-2 Leased Premises
- Exhibit B Work Agreement
- Exhibit C Rules and Regulations
- Exhibit D Rules for Tenant's Contractors
- Exhibit E Rooftop Rules and Regulations
- Exhibit F Options To Extend
- Exhibit G Tenant's Approved Signage Locations
- Exhibit H Office Tenant Sign Criteria
- Exhibit I Form of Letter of Credit
- Exhibit J Form of Ground Lessor Non-Disturbance Agreement
- Exhibit K Ground Lessor Retained Property

**Section 1.2. Definitions.** In addition to the definitions set forth in Section 1.01, above, the following additional defined terms shall apply to the interpretation of this Lease.

- A. **Additional Rent:** All sums payable by Tenant to Landlord under this Lease, other than Minimum Rent.
- B. **Building Hours:** 7:00 a.m. until 6:00 p.m. on weekdays (excluding holidays) and from 8:00 a.m. until 1:00 p.m. on Saturdays (excluding holidays).
- C. **Business Day:** Monday through Friday other than holidays observed by the State of California or the United States Federal Government.
- D. **Common Areas:** (i) Any existing or future improvements, equipment, areas and/or spaces utilized for "Common Areas" in and around the Project and the Leased Premises which are for the non-exclusive, common and joint use or benefit of Landlord, Tenant and other tenants, occupants and users of the Project, as reasonably determined by Landlord, and (ii) the Parking Garage. The Common Areas include, without limitation and to the extent located outside of the Leased Premises, walkways; roofs; drains, gutters and downspouts; patio and seating areas; landscaped areas; utility and other building systems and/or maintenance areas, including equipment storage; and parking areas, drive aisles, and the parking islands within the Parking Garage. For the avoidance of doubt, the Common Areas exclude the outdoor terraces/decks on the 2<sup>nd</sup>, 7<sup>th</sup> and 8<sup>th</sup> floors of the Building (each a "**Outdoor Deck**" and, collectively, the "**Outdoor Decks**").
- E. **Floor Area:** When used with respect to the Leased Premises, the number of square feet set forth in Section 1.01.A, above. The Floor Area of the Leased Premises was calculated by Landlord's architect based on the Building Plans whereby the Floor Area of the Building excludes the Outdoor Decks.
- F. **Interest:** A rate per annum of the lesser of (i) ten percent (10%), or (ii) the maximum permitted by law.
- G. **Lease Year:** Each twelve (12) month period beginning with the Term Commencement Date, and each anniversary thereof, if the Term Commencement Date occurs on the first day of a month. If the Term Commencement Date occurs on a day other than the first day of a month, then the first Lease Year shall begin on the Term Commencement Date and shall terminate on the last day of the twelfth (12<sup>th</sup>) full calendar month after the Term Commencement Date. Each subsequent Lease Year shall commence on the date immediately following the last day of the preceding Lease Year and shall continue for a period of twelve (12) full calendar months, except that the last Lease Year of the Term shall terminate on the date this Lease expires or is otherwise terminated.
- H. **Operating Year:** Each calendar year or part thereof during the Term of this Lease or any renewal thereof, or at Landlord's option, any other twelve (12) month period or part thereof designated by Landlord in its reasonable discretion.
- I. **Parking Hours:** 7:00 a.m. until 5:00 p.m. on each Business Day during the Term (for the Parking Garage).

- J. Partial Lease Year: Any period during the Term which is less than a full Lease Year.
- K. Person: Any individual, firm, partnership, association, corporation, limited liability company, or any other legal entity.
- L. Project: That certain project known as Santana West located in San Jose, California and comprised of the Building, the portions of the Common Areas exclusively serving the Building, and the Common Parking Garage.
- M. Rent: Minimum Rent plus Additional Rent.
- N. Tenant's Share: A proportion determined as follows: (a) with respect to the calculation of Operating Costs (including Insurance Costs, as defined below), except as provided in Section 6.03 with respect to Cost Pools, 6.47%, which represents a fraction, the numerator of which is the Floor Area of the Leased Premises and the denominator of which is the total Floor Area of the Building; and (b) with respect to the cost of providing the services described in Sections 7.01.E and 7.01.F to the Parking Garage and the cost of cleaning, sweeping, trash removal, resurfacing and restriping of or in the Parking Garage and other general upkeep of (1) the Tower Parking Garage, Tenant's Operating Cost Share shall be 6.47%, and (2) of the Common Parking Garage, Tenant's Operating Cost Share shall be 3.71% (i.e., 6.47% of 57.36%). Notwithstanding the foregoing, during Lease months 1-12, Tenant's Share shall be determined based on a Floor Area of the Leased Premises equal to 18,000 square feet, thus during Lease months 1-12 only, Tenant's Share of Operating Costs and Taxes and the Tower Parking Garage shall be 4.92% and Tenant's Share of the Common Parking Garage shall be 2.82%. Except as provided in Section 6.03 with respect to Cost Pools, Tenant's Share and Tenant's Tax Share (defined below) shall be deemed the amounts set forth above and shall not be subject to modification during the Term or any extension thereof.
- O. Tenant's Tax Share: 6.47%, which represents a fraction, the numerator of which is the Floor Area of the Leased Premises and the denominator of which is the total Floor Area of the Building.
- P. Tenant Work Allowance: See Exhibit B.

**ARTICLE 2**

LEASED PREMISES

Landlord demises and leases to Tenant, and Tenant leases and takes from Landlord, the Leased Premises together with the right to use, for ingress to and egress from the Leased Premises and for all other purposes consistent with the design, function, and operation thereof, in common with others, the Common Areas. Except as expressly set forth to the contrary in this Lease, including, without limitation the exterior sign rights provided herein, Landlord has (i) the exclusive right to use the exterior faces of all perimeter walls of the Building, the roof and all air space above the Building, and (ii) the right (along with Tenant) to install, maintain, use, repair and replace pipes, ducts, cables, conduits, plumbing, vents, utility lines and wires to, in, through, above and below the Leased Premises (provided, that, the same do not interfere with Tenant's installations therein) and other parts of the Building.

The parties acknowledge that this Lease is a sublease which shall, at all times during the Term, be subject and subordinate to the terms, covenants and conditions of that certain Ground Lease dated as of March 14, 2014 as amended from time to time (as amended, the "**Ground Lease**"), by and between Winchester Investments, LLC, a California limited liability company ("**Ground Lessor**"), as landlord, and Landlord, as tenant (the "**Ground Lease**") and to all matters to which the Ground Lease is subject and subordinate. Tenant acknowledges and agrees that it has received a copy of the Ground Lease prior to the date hereof. Landlord agrees not to take any action or perform any act or fail to perform any act which would result in the violation or breach of any of the covenants, agreements, terms, or obligations under the Ground Lease on the part of the Landlord as tenant thereunder. Except as otherwise set forth in the Ground Lessor Non-Disturbance Agreement, this Lease shall automatically expire on or prior to the expiration or earlier termination of the Ground Lease, and Ground Lessor shall have no

obligation to Tenant under this Lease. As between the parties hereto only, in the event of a conflict between the terms of the Ground Lease and the terms of this Lease, then the terms of this Lease shall control. Landlord shall not take any actions under the Ground Lease that would unreasonably interfere with Tenant's rights or obligations hereunder. As an inducement to Tenant to enter into this Lease, Landlord represents and warrants that the Ground Lease is in full force and effect, and there exists no default under the Ground Lease.

### ARTICLE 3

#### TERM

##### **Section 3.1.** Term.

A. The Term shall commence on the Term Commencement Date specified in Section 1.01.D above, and shall be for the period of time specified in Section 1.01.B above, and expire on the Termination Date specified in Section 1.01.F above. Notwithstanding the foregoing, all obligations of the parties, as set forth in this Lease, shall be binding as of the date hereof.

##### **Section 3.2.** End of Term.

This Lease shall terminate on the Termination Date without the necessity of Notice from either Landlord or Tenant. Upon the Termination Date, Tenant shall quit and surrender to Landlord the Leased Premises broom-clean, in the order and condition received and thereafter improved (subject to the requirement that Tenant remove Specialized Leasehold Improvements as set forth in Section 9.05, below), ordinary wear and tear, condemnation, Hazardous Substances (defined below), and damage that Tenant is not expressly obligated hereunder to repair excepted, and shall surrender to Landlord all keys and access cards, if applicable, to or for the Leased Premises. In addition, Tenant shall remove Tenant's Property (as defined below) in accordance with and subject to the provisions of Section 9.06 hereof (the foregoing, collectively, the "**Required Condition**").

##### **Section 3.3.** Holding Over.

A. Tenant agrees that it will not occupy or retain or allow occupancy or retention by any subtenant of possession of the Leased Premises at any time after the Termination Date. If Tenant fails to vacate the Leased Premises and deliver Landlord possession of the Leased Premises in the Required Condition on the Termination Date, then Landlord shall have the benefit of all provisions of law respecting the speedy recovery of possession of the Leased Premises (whether by summary proceedings or otherwise). In addition to and not in limitation of the foregoing, occupancy subsequent to the Termination Date ("**Holdover Occupancy**") shall be a tenancy at sufferance. Holdover Occupancy shall be subject to all terms, covenants, and conditions of this Lease (including those requiring payment of Additional Rent), except that the Minimum Rent for each day that Tenant holds over ("**Holdover Minimum Rent**") shall be equal to one and one-half (1-1/2) times the per diem Minimum Rent payable in the last Lease Year, and any right or option to extend or renew the Lease or to lease any other space or Leased Premises in the Building or Project shall be void and of no effect.

B. Subject to the terms hereof, Landlord shall also be entitled to recover all damages, including lost business profits and loss opportunity regarding any prospective tenant(s) for the Leased Premises, suffered by Landlord as a result of Tenant's Holdover Occupancy. Tenant acknowledges and agrees that Landlord may undertake a renovation or redevelopment of the Leased Premises or Building and/or lease the Leased Premises (in whole or in part) to another tenant immediately after the Termination Date and that any breach or other violation of the provisions of this Section 3.03 may result in material damages to Landlord (including without limitation, any damages to Landlord in connection with renovation or redevelopment activities or its reletting of the Leased Premises or any part thereof). Further, Tenant agrees to indemnify, hold harmless and defend Landlord for, from and against any and all claims, causes of action, suits, proceedings, demands, damages, losses, liabilities, expenses and costs (including, without limitation, reasonable experts', consultants', attorneys' and court fees and costs) suffered or incurred by Landlord as a result of Tenant's Holdover Occupancy. For the sake of clarity, nothing in this Subsection B shall limit Tenant's obligation to pay any Holdover Minimum Rent during any Holdover Occupancy or constitute Landlord's consent to any Holdover Occupancy. The preceding indemnification and hold harmless shall survive the Termination Date and any Holdover Occupancy.

## ARTICLE 4

### USE AND OPERATION OF THE LEASED PREMISES

#### Section 4.1. Intentionally Deleted.

#### Section 4.2. Use.

A. Tenant shall use the Leased Premises solely for general office, administration, research and development, sales and marketing and reasonably ancillary legal uses consistent with all recorded matters and in conformity with municipal zoning requirements of the City of San Jose, California; other applicable statutes, laws, rules, orders, regulations and ordinances (collectively, “**Laws**”); and the Operating Standard (as defined in Section 6.03.B, below) (the “**Permitted Use**”), and for no other purpose. Tenant shall comply with all Laws affecting the Leased Premises or relating to the use, occupancy or alteration thereof and all the orders or reasonable recommendations of any insurance underwriters, and safety engineers as may from time to time be consulted by Landlord. Without limiting the terms and conditions of Section 6.03.B, below, in addition, if Landlord makes any alteration to any part of the Building or Project in order to comply with any requirement of any Laws applicable to Tenant’s particular use of the Leased Premises (and not office use of the Leased Premises, generally), then Tenant shall reimburse Landlord within thirty (30) days after demand (which demand will include a reasonable substantiation of the cost of the relevant improvements and the reason such improvements are necessary), for the actual out of pocket cost thereof. Tenant acknowledges and agrees that Tenant is solely responsible for determining if its business complies with the applicable zoning regulations, and that Landlord makes no representation (explicit or implied) concerning such zoning regulations. Notwithstanding the foregoing, or anything to the contrary contained herein, in the event there is a Law that requires a repair, alteration or improvement to the Leased Premises, Tenant shall be obligated to comply with the same at its sole cost and expense only if such compliance is necessitated by (i) Tenant’s improper acts or omissions (when there is a duty to act), (ii) negligence, (iii) specific manner of use of the Leased Premises, in contradistinction to general office use, and (iv) Tenant Work or Tenant’s Alterations (as defined below). In no event shall Tenant be required to perform alterations to cause areas outside of the Premises to comply with any Laws, except to the extent necessitated by Tenant’s Alteration(s) in such outside areas or particular manner of use or operation of such outside areas or Leased Premises.

B. Tenant shall, at its sole expense: (i) keep the portions of the Leased Premises that Tenant is obligated to maintain under this Lease in the order and condition received, and thereafter improved, consistent with the operation of a Class A institutional quality office building that is part of a mixed use project (the “**Operating Standard**”); (ii) pay before delinquency any and all taxes, assessments and public charges levied, assessed or imposed upon Tenant’s business, upon the leasehold estate created by this Lease or upon Tenant’s fixtures, furnishings or equipment installed in the Leased Premises by Tenant; (iii) not use or permit or suffer the use of any portion of the Leased Premises for any unlawful purpose; (iv) not use the plumbing facilities for any purpose other than that for which they were constructed, or dispose of any foreign substances therein; (v) not place a load on any floor exceeding the floor load per square foot which such floor was designed to carry in accordance with the plans and specifications of the Building, and not install, operate or maintain in the Leased Premises any heavy item of equipment except in such manner as to achieve a proper distribution of weight; (vi) not strip, overload, damage or deface the Leased Premises, or the hallways, stairways, elevators of the Building, the Subterranean Parking Levels, the Parking Garage, the Common Areas or the fixtures therein or used therewith, nor permit any hole to be made in any of the same (except for holes made in connection with alterations and installations otherwise permitted hereunder which are patched or repaired); (vii) not move any furniture or equipment into or out of the Leased Premises except at such reasonable times and in such manner as Landlord may from time to time reasonably designate; (viii) not install or operate in the Leased Premises any electrical heating, air conditioning or refrigeration equipment, or other equipment not shown on approved plans which will increase the amount of electricity required for use of the Leased Premises as general office space (other than ordinary office equipment such as personal computers, printers, copiers and the like), without first obtaining the written consent of Landlord, which will not be unreasonably withheld, conditioned, or delayed; and (ix) not install any other equipment of any kind or nature which will or may necessitate any changes, replacements or

additions to, or in the use of, the water, heating, plumbing, air conditioning or electrical systems of the Leased Premises or the Building, without first obtaining the written consent of Landlord, which will not be unreasonably withheld, conditioned, or delayed.

C. In addition to and not in limitation of the other restrictions on use of the Leased Premises set forth in this Section 4.02, Tenant hereby agrees that the following uses of the Leased Premises shall not be considered permitted: (1) any use of the Leased Premises by an organization or Person enjoying sovereign or diplomatic immunity (the foregoing will not be deemed to prohibit invitees who are representatives or officials of any U.S., state or foreign government); (2) any use of the Leased Premises by or for an employment agency or bureau (other than Tenant's normal recruitment activities); (3) any use of the Leased Premises for classroom purposes; (4) any use of the Leased Premises by or for any user which distributes governmental or other payments, benefits or information to Persons who are required to personally appear at the Leased Premises to collect such benefits; (5) any laboratory use that requires the handling of Hazardous Substances (as defined below); (6) any medical use involving the treatment of patients or handling of medical waste and/or Hazardous Substances in the Building, other than employee first aid; (7) retail sales of merchandise to members of the public; (8) any use that interferes with, injures or unreasonably annoys other occupants of the Project; (9) any use that constitutes a nuisance; (10) any use that involves the presence, use, release or discharge of Hazardous Substances; provided, however, that Tenant may handle, store, use and dispose of products containing small quantities of Hazardous Substances for general office purposes (such as toner for copiers and standard cleaning solvents and chemicals found in office cleaning supplies and reasonable quantities of other substances that Tenant may store as required to fulfill Tenant's maintenance obligations under this Lease), to the extent customary and necessary for the Permitted Use of the Leased Premises, so long as Tenant always handles, stores, uses, and disposes of any such Hazardous Substances in a safe and lawful manner and does not allow such Hazardous Substances to contaminate the Leased Premises, Building, or Project or surrounding land or environment; (11) any use that could reasonably be expected to have a material adverse effect on the utility, use, appearance or value of the Building, the Project, or any portion thereof; and (12) any other use of the Leased Premises by any user that is not otherwise permitted in this Lease and will attract a volume, frequency or type of visitor or employee to the Leased Premises which is not consistent with the Operating Standard, or that will in any way impose an excessive demand or use on the facilities or services of the Leased Premises or the Building.

#### **Section 4.3. Signs and Advertising.**

Tenant shall not inscribe, paint, affix, or otherwise display any sign, advertisement or notice on any part of the outside of the Leased Premises, other than signs permitted hereunder; provided, however, that Tenant shall be entitled: (i) so long as Tenant is leasing the entire Leased Premises, to install, at Tenant's sole cost and expense, an exterior sign on the level 1 east façade exterior of the Building substantially as depicted on Exhibit G as the "**Exterior Sign**"; and (ii) to install standard suite entry signage at the entrance to the Leased Premises, and a name plate designating Tenant on the main directory for the Building on the first floor of the Building, to be affixed by Landlord at Tenant's sole cost and expense. All such signs shall be reasonably acceptable to Landlord, comply with Landlord's office sign criteria attached hereto as Exhibit H (the "**Office Building Sign Criteria**") and all other matters contained in the public records, including any applicable Laws. The material, typeface, graphic format and proportions of Tenant's signage, as well as the precise location of such signage and method of installation, shall be subject to Landlord's approval, which shall not be unreasonably withheld, conditioned, or delayed. Nothing contained herein shall obviate the need for Tenant to obtain any necessary approvals and permits for such signage from the City of San Jose (the "**City**"), which permits and approvals Tenant shall obtain at Tenant's sole cost. The failure of Tenant to obtain such approvals shall not release Tenant from any of its obligations under this Lease. Tenant, at its sole expense, shall maintain Tenant's signs in accordance with the Operating Standard during the Term. Tenant, at its sole cost and expense, shall remove all such signs by the expiration or any earlier termination of this Lease. Such installations and removals shall be made in such manner as to avoid injury to or defacement of the Building and any improvements contained therein and the monument, and Tenant shall reasonably repair any injury or defacement, to an appearance consistent with the Operating Standard, ordinary wear and tear (including, without limitation, discoloration caused by such installation or removal), excepted. At such time that Tenant, a

Permitted Transferee or another Transferee by assignment or sublease approved by Landlord no longer leases the Leased Premises, Tenant's right to maintain the foregoing signage shall terminate within thirty (30) days after Landlord provides Notice of the failure of the foregoing condition. If any of Tenant's signs, advertisements or notices are painted, affixed, or otherwise displayed without the prior written approval of Landlord and not in compliance with the foregoing, then, without limiting Landlord's other rights hereunder, Landlord shall have the right after ten (10) Business Days prior Notice to Tenant, to remove the same, and Tenant shall be liable for any and all costs and expenses incurred by Landlord in such removal.

## ARTICLE 5

### RENT

#### **Section 5.1.** Rent Payable.

A. Commencing on the Rent Commencement Date, Tenant shall pay all Rent owing from time to time to Landlord, without prior Notice or demand and without offset, deduction or counterclaim whatsoever, in the amounts, at the rates and times set forth herein, in the manner set forth in this Section 5.01.A. Tenant shall (i) promptly execute any and all commercially reasonable agreements and authorizations, and supply any and all information reasonably necessary, to authorize Landlord to initiate debit entries ("**Auto-Debit Transfers**") from Tenant's account to Landlord for such portions of Rent due under this Lease as Landlord may elect to be paid by Auto-Debit Transfer; and (ii) take all actions necessary on Tenant's part to insure that any and all such payments will be received by the Landlord by the dates due as specified in this Lease. Except for the first month's Rent and Security Deposit, Landlord initially elects that Minimum Rent and Tenant's Share of Operating Costs and Taxes shall be paid by Auto-Debit Transfer. Landlord may change any election to cause Rent or any portion thereof to be paid by Auto-Debit Transfer by giving Notice to Tenant at least thirty (30) days prior to the effective date of any change. All payments of Rent not made by Auto-Debit Transfer shall be made at the place set forth in Section 1.01.I or as Landlord may otherwise designate by Notice to Tenant at least thirty (30) days prior to the effective date of any change.

B. If Tenant fails to make any payment of Rent by the date such Rent is due, Tenant shall pay Landlord a late payment charge equal to five percent (5%) of the delinquent amount of such payment of Rent. Payment of such late charge shall not excuse or waive the late payment of Rent. Tenant acknowledges and agrees that such late charge is a reasonable estimate of the damages Landlord may incur as a result of Tenant's late payment of Rent, and that it would be impracticable or extremely difficult to determine Landlord's actual damages. Notwithstanding the foregoing, before assessing a late charge for the first time in any twelve (12) month period, Landlord shall provide Tenant written notice of the delinquency, and shall waive such late charge if Tenant pays such delinquency within five (5) days thereafter.

C. If Landlord receives two (2) or more checks from Tenant that are dishonored by Tenant's bank, Tenant shall pay Landlord any bank service charges resulting from dishonored checks, plus Five Hundred Dollars (\$500.00) for each dishonored check as compensation to Landlord for the additional cost of processing such check.

D. Any payment by Tenant of less than the total Rent due shall be treated as a payment on account. Acceptance of any check bearing an endorsement, or accompanied by a letter stating, that such amount constitutes "payment in full" (or terms of similar import) shall not be an accord and satisfaction or a novation, and such statement shall be given no effect. Landlord may accept any check without prejudice to any rights or remedies which Landlord may have against Tenant.

E. For any portion of a calendar month at the beginning of the Term, Tenant shall pay in advance the pro-rated amount of the Rent for each day included in such portion of the month.

#### **Section 5.2.** Payment of Minimum Rent.

Tenant shall pay Landlord the Minimum Rent set forth in Section 1.01.G, above, in equal monthly installments, in advance, commencing on the Rent Commencement Date, subject only to the express abatement rights provided in this Lease (including, without limitation, Section



1.01.G, above), and on the first day of each calendar month thereafter throughout the Term. An amount equal to the Prepaid Minimum Rent shall be paid in advance in accordance with Section 1.01.N, above, and credited toward the first payment of Minimum Rent due hereunder.

## ARTICLE 6

### COMMON AREAS

#### **Section 6.1.** Use of Common Areas.

During the Term, Tenant shall have a non-exclusive license to use the Common Areas for ingress to and egress from the Leased Premises and for all other purposes consistent with the design, function and operation thereof, and the non-exclusive right to use any portion of the Common Areas designated for parking, including, without limitation, the Tower Parking Garage and the Common Parking Garage, subject to (i) the exclusive control and management of Landlord and the rights of Landlord, which shall be exercised in accordance with the Operating Standard, and (ii) to the extent of any such Common Areas are shared with other tenants, the rights of other tenants. Tenant shall comply with the Rules attached hereto as **Exhibit C** and such other reasonable and non-discriminatory rules and regulations as Landlord may prescribe regarding use of the Leased Premises, the Building, Tower Parking Garage, Common Parking Garage, and/or Common Areas; provided, however, that such rules and regulations shall be consistent with the Operating Standard. Tenant shall not use the Common Areas for any sales or display purposes, or for any purpose which would impede or create hazardous conditions for the flow of pedestrian or other traffic. The Common Areas shall at all times be subject to the exclusive control and management of Landlord, which Landlord shall exercise in accordance with the Operating Standard.

#### **Section 6.2.** Management and Operation of Common Areas.

Landlord shall operate, repair, equip and maintain the Common Areas in a manner consistent with the Operating Standard and shall have the exclusive right and authority to employ and discharge personnel with respect thereto (provided Landlord will endeavor to respond, subject to Landlord's customary employment practices and applicable employment Laws, to any reasonable complaints of Tenant regarding the behavior of specific personnel who interact with Tenant or its employees or invitees). Without limiting the foregoing, so long as such use is consistent with the Operating Standard and does not unreasonably interfere with Tenant's use of the Leased Premises or Tenant's parking or signage rights, Landlord may (i) use the Common Areas from time to time for short term promotions, exhibits and displays, outdoor seating, food facilities and any other use which tends to benefit the Project, or any part thereof that are consistent with the Operating Standard; (ii) grant the temporary right to conduct sales in the Common Areas; (iii) erect, remove and lease kiosks, planters, pools, sculptures and other improvements within the Common Areas; (iv) enter into, modify and terminate easements and other agreements pertaining to the use and maintenance of the Project, or any part thereof that do not materially and adversely affect access to the Leased Premises pursuant to the entrances to the Building or the use of the Leased Premises for the Permitted Use or Tenant's parking rights, or the visibility of Tenant's Exterior Signs; (v) construct, maintain, operate, replace and remove lighting, equipment, and signs on all or any part of the Common Areas; (vi) provide security personnel for the Tower Parking Garage, Common Parking Garage, and/or other Common Areas; and (vii) subject to Tenant's express parking rights hereunder, restrict parking in the Tower Parking Garage and Common Parking Garage. Subject to Tenant's express parking rights in Section 13.01 hereof, Landlord reserves the right at any time and from time to time to change or alter the location, layout, nature or arrangement of the Common Areas or any portion thereof, so long as such changes do not unreasonably interfere with access to the Leased Premises via the entrances to the Building or the use of the Leased Premises for the Permitted Use or any of Tenant's other rights or obligations hereunder. Landlord shall have the right to close temporarily all or any portion of the Common Areas to such extent as may, in the reasonable opinion of Landlord, be necessary for repairs, replacements or maintenance to the Common Areas, provided such repairs, replacements or maintenance are performed expeditiously and in such a manner so as not to deprive Tenant of access to the Leased Premises and Landlord otherwise uses reasonable efforts to minimize any interference with access to the Leased Premises via the entrances to the Building, or use of the Leased Premises for the Permitted Use, and Tenant's parking and signage rights, and are made in good faith and not with the intent to interfere with the visibility of Tenant's signs. Any diminution or shutting off of light, air or view by any

structure which may be erected by an unrelated third-party on lands adjacent to or in the vicinity of the Building and any immaterial diminution or shutting off of light, air or view by Landlord (provided that the parties hereby deem any diminution of light resulting from development of a building in the location designated on the Site Plan as “Future Building” and “Two Santana West” as immaterial for this purpose) shall in no way affect this Lease or impose any liability on Landlord.

**Section 6.3.** Tenant’s Share of Operating Costs and Taxes.

A. For each Operating Year, Tenant shall pay to Landlord, in the manner provided herein, Tenant’s share of Operating Costs and Taxes (“**Tenant’s Share of Operating Costs and Taxes**”). The applicable percentage to be applied to each element of Operating Costs and Taxes will be determined in accordance with Sections 1.02(N) and (O) provided, however, that for the Operating Years during which the Term begins and ends, Tenant’s Share of Operating Costs and Taxes shall be prorated based upon the actual number of days Tenant occupied, or could have occupied based on the Term of this Lease, the Leased Premises during each such Operating Year.

B. Tenant’s Share of Operating Costs and Taxes shall be paid, in advance, without Notice, demand, abatement (except as otherwise specifically provided in this Lease), deduction or set-off, on the first day of each calendar month during the Term, said monthly amounts to be determined on the basis of reasonable estimates prepared by Landlord on an annual basis (each an “**Operating Costs Statement**”) and delivered to Tenant prior to the commencement of each Operating Year. If, however, Landlord fails to furnish any such estimate prior to the commencement of an Operating Year, then (a) until the first day of the month following the month in which such estimate is furnished to Tenant, Tenant shall pay to Landlord on the first day of each month an amount equal to the monthly sum payable by Tenant to Landlord under this Section 6.03 in respect of the last month of the preceding Operating Year; (b) promptly after such estimate is furnished to Tenant, Landlord shall give Notice to Tenant whether the installments of Tenant’s Share of Operating Costs and Taxes paid by Tenant for the current Operating Year have resulted in a deficiency or overpayment compared to payments which would have been paid under such estimate, and Tenant, within thirty (30) days after receipt of such estimate, shall pay any deficiency to Landlord and any overpayment shall at the option of Tenant be credited against future payments required by Tenant, or paid to Tenant within thirty (30) days; and (c) on the first day of the month following the month in which such estimate is furnished to Tenant and monthly thereafter throughout the remainder of the Operating Year, Tenant shall pay to Landlord the monthly payment shown on such estimate. Landlord may at any time or from time to time (but not more than twice per Operating Year) furnish to Tenant a revised estimate of Tenant’s Share of Operating Costs and Taxes for such Operating Year, and in such case, Tenant’s monthly payments shall be adjusted and paid or credited, as the case may be, substantially in the same manner as provided in the preceding sentence. Each Operating Costs Statement provided by Landlord shall be conclusive and binding upon Tenant unless, within ninety (90) days after receipt thereof, Tenant notifies Landlord that it disputes the correctness thereof, specifying those respects in which Tenant claims the Operating Costs Statement to be incorrect. After the expiration of each Operating Year, Landlord shall submit to Tenant a statement showing the determination of Tenant’s Share of Operating Costs and Taxes (the “**Reconciliation Statement**”). If such statement shows that the total of Tenant’s monthly payments pursuant to this Section 6.03 exceed Tenant’s Share of Operating Costs and Taxes, then Landlord will credit such refund to the next payment(s) coming due or, at the election of Tenant, refund such monies to Tenant; provided, however, that no such refund shall be made while Tenant is in Default of any provision of this Lease and such Default shall continue. If such Reconciliation Statement shows that Tenant’s Share of Operating Costs and Taxes exceeded the aggregate of Tenant’s monthly payments pursuant to this Section 6.03 for the applicable Operating Year, then Tenant shall, within thirty (30) days after receiving the statement, pay such deficiency to Landlord. Each Reconciliation Statement provided by Landlord shall be conclusive and binding upon Tenant unless within one hundred twenty (120) days after receipt thereof, Tenant notifies Landlord that it disputes the correctness thereof. Tenant or its agent (which, in either event, shall be an accountant experienced in conducting such audits that is not paid on a contingency basis) shall have the right, during the one hundred twenty (120) day period following delivery of a Reconciliation Statement, at Tenant’s sole cost to review, in Landlord’s offices or in the offices of Landlord’s property manager in the Project or, if Tenant elects to make copies thereof, at any other location, Landlord’s records of Operating Costs and Taxes for

the subject Operating Year during normal business hours and upon at least thirty (30) days prior Notice to Landlord (“**Audit**”). No Audit shall in any way delay or excuse Tenant’s obligation to pay any deficiency referenced in the Reconciliation Statement within the time period stated above. If Tenant does not complete its Audit and object in writing to the Reconciliation Statement within ninety (90) days after receiving access thereto, then such Reconciliation Statement shall be deemed final and binding on Landlord and Tenant. Tenant and its agents shall keep any information gained from its Audit of Landlord’s books and records confidential and shall not disclose any such information to any other party, except (x) as required by applicable Laws, including securities Laws, (y) in any litigation to resolve any disputed amounts with Landlord (provided such disclosure shall be limited to matters relating to such dispute), or (z) as otherwise required by law in response to a court order or legal process; provided, however, that in the event disclosure is required under this clause (z), Tenant shall provide Landlord with prompt notice of any such disclosure requirement so that Landlord may seek an appropriate protective order and/or waive Landlord’s compliance with such requirement. Subject to the foregoing, Landlord may require that Tenant and/or its auditor execute a commercially reasonable non-disclosure agreement prior to making any records available for review. Only one (1) Audit may be performed with respect to each Operating Year. Tenant shall promptly provide Landlord with a full and complete copy of any Audit. If such Audit discloses a liability for a refund by Landlord, then Landlord shall remit such refund to Tenant within thirty (30) days; provided, however, that Landlord shall have the right, without the obligation, to apply all or any portion of such refund to remedy any monetary Default by Tenant occurring hereunder; provided, further, it is expressly covenanted and agreed that such remedy by Landlord shall not be deemed to waive, or release, the monetary Default of Tenant. If such Audit discloses a liability for a payment by Tenant, then Tenant shall remit such payment to Landlord within thirty (30) days. Further, if such Audit establishes (either by agreement with Landlord or determination by the Audit Professionals (as defined below)) that the Reconciliation Statement overstated the total amount owed by Tenant by more than five percent (5%), then Landlord shall be responsible for the reasonable, out-of-pocket expenses paid by Tenant to third parties in connection with such Audit up to Ten Thousand Dollars (\$10,000) per Audit. Except as provided in the preceding sentence, Tenant shall be responsible for all costs and expenses associated with such Audit. Notwithstanding the foregoing, in the event Landlord disputes the findings of the Audit and the parties are unable to resolve such dispute within thirty (30) days, then Landlord and Tenant agree to submit any disputed items to a firm of real estate audit professionals mutually acceptable to Landlord and Tenant (“**Audit Professionals**”) for resolution (as provided below) and any payment or refund shall not become effective until ten (10) day after the determination of the Audit Professionals. If Landlord and Tenant cannot agree on Audit Professionals within fifteen (15) days of the expiration of such thirty (30) day period, then Landlord and Tenant shall each, within ten (10) days of the expiration of such fifteen (15) day period, select one (1) independent firm of Audit Professionals, and such two (2) Audit Professionals shall together select a third Audit Professional, which third firm shall be the Audit Professional who shall resolve the dispute. The third Audit Professional shall be entitled to review all records relating to the disputed items. The determination of the third Audit Professional shall be final and binding upon both Landlord and Tenant and the third Audit Professional’s expenses shall be borne by the party against whom the decision is rendered. Notwithstanding any contrary provision hereof, Tenant may not examine Landlord’s records or dispute any Annual Statement if there is an uncured Default that is continuing, no assignee of Tenant’s interest in this Lease or the Leased Premises shall have the right to review Landlord’s records or dispute any Reconciliation Statement for any period during which such transferee was not in possession of the Leased Premises, and no sublessee of Tenant, except for a Permitted Transferee, shall have the right to review Landlord’s records or dispute any Reconciliation Statement.

C. “**Operating Costs**” means all expenses and costs which Landlord shall pay or become obligated to pay because of or in connection with owning, operating, managing, painting, repairing, insuring and cleaning the Building, the Parking Garage and Project, including without limitation:

(i) a property management fee equal to three percent (3%) of annual Minimum Rent (it being agreed that during the Abatement Period, such property management fee shall be based

on the Minimum Rent shown on the Minimum Rent schedule set forth in Section 1.01, above, without considering the abatement of Minimum Rent during such period);

(ii) the cost of all insurance coverage, including self-insurance, for the Building, the Common Areas and the Parking Garage including but not limited to the costs of premiums for insurance with respect to personal injury, bodily injury, including death, property damage (including, without limitation, coverage for earthquake and flood), business interruption, workmen's compensation insurance covering personnel and such other insurance as Landlord shall deem reasonably necessary and is permitted to maintain under this Lease, which insurance Landlord may maintain under policies covering other properties owned by Landlord in which event the premium shall be reasonably allocated among all properties covered by such insurance (collectively, the "**Insurance Costs**");

(iii) the cost of providing the services described in Sections 7.01 below, except as otherwise expressly provided therein, or unless the service is directly metered or paid to the relevant utility;

(iv) cost of all supplies and materials used, and labor charges incurred, in the operation, maintenance, decoration, repairing and cleaning of the Building, including janitorial service for all Floor Area leased to tenants;

(v) cost of removal of trash, rubbish, garbage and other refuse from the Building as well as removal of ice and snow from the sidewalks on or adjacent to the Building;

(vi) wages, salaries and related expenses of all on-site agents or employees engaged in the operation, maintenance, security and management of the Building; provided, however, the wages, salaries and related expenses of any agents or employees not exclusively engaged in the operation, maintenance, security and management of the Building shall be reasonably apportioned;

(vii) cost of all maintenance and service agreements for the Building and the equipment therein, including, without limitation, alarm service, security service, window cleaning, and elevator maintenance;

(viii) any and all Common Area maintenance, repair or redecoration (including repainting) and exterior and interior landscaping;

(ix) the cost of providing security services to the Project, including, without limitation, a lobby attendant pursuant to Section 7.01.E below;

(x) the cost of performing Landlord's obligations under Section 10.01 below, subject to the exclusions set forth herein, including cost of repairs, replacements and general maintenance to the Building;

(xi) except as otherwise expressly provided herein, all costs of operating any amenities provided to the tenants and occupants of the Building;

(xii) any other cost set forth in this Lease that is expressly states to be included in Operating Costs;

(xiii) Commissioning and certification costs incurred in connection with obtaining and maintaining any LEED or similar certifications for the Project; and

(xiv) any other costs incurred by Landlord in connection with the ownership, management, maintenance, repair and operation of the Leased Premises, Building, Parking Garage and Common Areas except as otherwise expressly provided in this Lease.

Landlord shall have the right, from time to time, to reasonably and equitably allocate any Operating Costs applicable to the Project among different portions or occupants of the Project (the "**Cost Pools**"); provided, however, in no event shall the use of such Cost Pools result in a duplication of Operating Costs and all such allocations will be made in accordance with sound property management practices and in accord with the practices of similar landlords of similar

projects. Such Cost Pools shall be reasonable such that there is no material cross-subsidy or underpayment of Operating Cost contribution by any user in relation to the services consumed by any such user. The Operating Costs allocated to any such Cost Pool shall be allocated and charged to the tenants and occupants within such Cost Pool in an otherwise equitable manner, in Landlord's reasonable discretion.

If for any period during the Term less than ninety-five percent (95%) of the Floor Area of the Building is occupied by tenants, then, in calculating Operating Costs that vary based upon occupancy for such period, Landlord may increase those components of Operating Costs that vary based upon occupancy that Landlord reasonably believes would have been incurred during such period had the Building been ninety-five percent (95%) occupied. In addition, if for any period during the Term any part of the Building is leased to a tenant who, in accordance with the terms of its lease, provides its own cleaning services, electricity, and/or any other services otherwise included in Operating Costs, then Operating Costs for such period shall be increased by the additional costs for cleaning, electricity, and/or such other applicable expenses that Landlord reasonably estimates would have been incurred by Landlord if Landlord had furnished and paid for cleaning and/or such other services for the space occupied by such tenant.

Notwithstanding the foregoing, Operating Costs will in no event include, and Tenant shall in no event have any obligation to perform or to pay directly, or to reimburse Landlord for, all or any portion of the following: (1) costs paid directly by Tenant; (2) depreciation on the Building, and fixtures or equipment therein, except that the cost to acquire equipment used in connection with operating the Building shall be included, to the extent such cost is amortized in the same manner described in subpart (7), below; (3) debt service; (4) rental under any ground or underlying lease including, without limitation, the Ground Lease; (5) interest unless expressly recoverable under this Lease, (6) attorneys' fees and expenses or other costs, including brokers' commissions incurred in connection with lease negotiations or lease disputes with prospective, current or past Building tenants, including the negotiation of letters of intent or leases; (7) the cost of any maintenance, repair, replacement, remediation, improvements, equipment or tools that would be properly classified as capital expenditures under generally accepted accounting principles except that the following capital costs may be included in Operating Costs: (i) costs which are intended to effect economies in the operation or maintenance of the Project, or any portion thereof, or to reduce current or future Operating Costs or to enhance the safety or security of the Project or its occupants, (ii) costs are required to comply with present or anticipated LEED, "green" "recycling" or other conservation programs, (iii) costs that are replacements or modifications of nonstructural items located in the Common Areas required to keep the Common Areas in good order or condition, (iii) costs that are required by Law or insurance requirement and which Law or insurance requirement are not applicable to the Project on the Effective Date, or (iv) costs to replace non-structural items which Landlord is obligated to maintain under this Lease; provided, however, in each instance such capital expenditure shall be amortized over the useful life thereof (as reasonably determined by Landlord in accordance with generally accepted accounting principles), together with interest on the unamortized balance at a rate per annum equal to the actual rate of interest paid by Landlord on funds borrowed for the purpose of constructing or acquiring such capital improvements or capital assets as reasonably documented by Landlord (and if Landlord does not borrow funds for such construction or acquisition, then interest at the rate of one percent (1%) above the prime rate of Wells Fargo Bank, N.A. or such successor national bank selected by Landlord then in force (the "**Imputed Interest Rate**"); provided, further, however, that with respect to capital expenditures referenced in subclause (i), above, Landlord may include as an Operating Cost in any calendar year an amount equal to the amount of reduction of other Operating Costs in such year resulting from such capital expenditure if such amount is greater than the amortization provided above); (8) the cost of decorating, improving for tenant occupancy, painting or redecorating portions of the Building to be demised to tenants; (9) costs of utilities for any tenant's Leased Premises if separately metered, (10) costs incurred in connection with the original construction of the Building or Project or in connection with any major change in the Building or Project that is not made at the request of Tenant, or any change to the Building or Project that is required to correct any violation of law existing on the Rent Commencement Date and not caused by Tenant, or a breach by Landlord of the Lease; (11) costs for which Landlord is entitled to be fully reimbursed by any tenant or occupant of the Building or by insurance by its insurance carrier or any tenant's insurance carrier or by anyone

else; (12) any bad debt loss, rent loss, or reserves for bad debts or rent loss; (13) costs associated with the operation of the business of the partnership or limited liability company or other entity that may from time to time constitute Landlord, as the same are distinguished from the costs of operation of the Building or Project, including accounting and legal matters, costs of defending any lawsuits with any Mortgagee (as defined in Section 14.01, below) (except as the actions of Tenant may be the issue), costs of selling, syndicating, financing, mortgaging or hypothecating any of Landlord's interest in the Building or Project (including, without limitation, attorneys' fees and costs), costs (including, without limitation, attorneys' fees and costs of settlement, judgments and payments in lieu thereof) arising from claims, disputes or potential disputes in connection with potential or actual claims, litigation or arbitrations respecting Landlord and/or the Building; (14) the wages and benefits of any employee who does not devote substantially all of his or her time to the Building or Project, unless such wages and benefits are prorated to reflect time spent by any such employee on maintaining, securing, repairing, operating or managing the Building or Project vis-a-vis the total time spent by any such employee on matters unrelated to such activities, and in any case no wages or benefits of any employee of Landlord above Building manager will be included in Operating Costs; (15) costs paid to Landlord or to affiliates of Landlord for services in the Building or Project to the extent the same materially exceed or would materially exceed the costs for such services if rendered by first class unaffiliated third parties on a competitive basis; (16) costs arising from Landlord's political or charitable contributions; (17) costs for sculpture, paintings or other objects of art; (18) Landlord's general corporate overhead; (19) costs of removal or remediation of Hazardous Substances (except to the extent or treatment, removal or disposal of de minimis amounts of Hazardous Substances common in the operation of an office building project, such as automotive fluid deposits occurring in parking facilities, removal and disposal of clean products, cleansers, office supplies and the like); (20) the cost of rental for items (except when needed in connection with normal repairs and maintenance or keeping permanent systems in operation while repairs are being made) which if purchased, rather than rented, would constitute a capital improvement or expense except to the extent permitted above; (21) expenses directly resulting from defaults by or the gross negligence or willful misconduct of Landlord, its agents, servants or employees; (22) intentionally deleted; (23) penalties, fines and late charges resulting from Landlord's failure to make payments when required under applicable law, unless resulting from the failure of Tenant to pay Rental as and when required herein; and (24) costs arising from latent defects in any portion of the Landlord Work for a period of one (1) year after Substantial Completion of the Landlord Work; (25) costs arising from defects in any portion of the Landlord Work; (26) costs occasioned by casualties or condemnation; (27) expense reserves; (28) any fee, profit or compensation retained by Landlord or its affiliates for management and administration of the Project in excess of the management fee set forth above; and (29) insurance deductibles, self-insured retention, and co-insurance payments in excess of Two Hundred Thousand Dollars (\$200,000.00) per insured event.

D. **"Taxes"** means all governmental or quasi-governmental real estate taxes, fees, charges, impositions and assessments (whether general, special, ordinary, or extraordinary) applicable to the Building and/or Project (including without limitation any assessments or charges by any business improvement district), together with all reasonable costs and fees (including reasonable appraiser, consultant and attorney's fees) incurred by Landlord in any tax contest, appeal or negotiation. "Taxes" shall also include that portion of any ground rent payments made by Landlord that represent the pass-through of real estate taxes from any ground lessor to Landlord and all rent or services taxes and/or so-called "gross receipts" or "receipts" taxes (including, but not limited to, any rent, business license, sales, use or similar taxes) whether or not enacted in addition to, in lieu of or in substitution for any other tax. "Taxes" shall also include any personal property taxes incurred on Landlord's personal property used in connection with the Building. Notwithstanding anything to the contrary herein, "Taxes" shall not include and Tenant shall not be required to pay any portion of any tax or assessment expense or any increase therein, to the extent the same are personal property taxes, inheritance taxes, or franchise taxes levied against the Landlord, and not directly against said property, even though such taxes might become a lien against said property, levied on Landlord's rental income (except for "gross receipts" or "receipts" taxes as set forth above), unless such tax or assessment is imposed in lieu of real property taxes, in excess of the amount which would be payable if such tax or assessment expense were paid in installments over the longest permitted term, attributable

to Landlord's net income, gift, transfer, estate or state taxes, or resulting from the improvement of any of the Project for the sole use of other occupants. If Landlord receives a refund of Taxes for any Lease Year during the Term as result of a reassessment of the Building pursuant to Section 51(a)(2) of the California Revenue and Taxation Code ("Proposition 8"), then Landlord shall credit against subsequent payments of Taxes due hereunder, an amount equal to Tenant's Proportionate Share of Taxes of any such refund, net of any expenses incurred by Landlord in achieving such refund. Nothing contained herein shall require Landlord to seek any reduction in the Building's assessed value pursuant to Proposition 8 or otherwise.

## ARTICLE 7

### SERVICES AND UTILITIES

#### Section 7.1. Services Provided by Landlord.

Landlord shall provide the following facilities and services to Tenant as part of Operating Costs (except as otherwise provided herein), consistent with the Operating Standard:

- A. Access to the Building, Tower Parking Garage, and Common Parking Garage, (subject to the rights of other users of the Parking Garage after the Parking Hours) twenty-four (24) hours per day, seven (7) days per week subject only to closures for casualty or public disturbance;
- B. Normal and usual janitorial services on Business Days (provided, however, that if Tenant may elect, by delivery of not less than thirty (30) days written notice, to take over the obligation to provide such janitorial services within the Premises, at Tenant's sole cost and expense by a service provider reasonably acceptable to Landlord, in which event, upon such takeover by Tenant, Landlord shall no longer be required to provide such services within the Premises and such charges for janitorial services within the Premises and incurred by Tenant shall be deducted from Operating Costs which Tenant is required to pay at its sole cost and expense);
- C. Rest room facilities and necessary lavatory supplies, including running water at the points of supply, as provided for the general use of all tenants in the Building, and routine maintenance, painting, and electric lighting service for all Common Areas of the Building in such manner as Landlord deems reasonable;
- D. Maintenance of electric bulbs and other lighting elements for Building standard light fixtures in the Common Areas and Parking Garage;
- E. Provision of a lobby attendant on Business Days from 6:00 AM through 6:00 PM local time;
- F. During Building Hours, central heating and air conditioning to the Operating Standard. Capacity of Building HVAC system will be sized in accordance with cooling and heating load calculation procedures established by ASHRAE and local climatic conditions, and the HVAC system will comply with state and local building codes. Systems for the introduction of outside air for ventilation shall be designed, maintained and operated to meet or exceed the requirements of ASHRAE Standard 62.1-2007, unless local requirements are more demanding. At a minimum, the system shall provide 1 ton of cooling for every 340 USF and 1.0 CFM per 1 RSF of air circulation capacity, based on a 55°F supply air temperature;
- G. Tenant acknowledges, agrees and covenants that all Tenant lighting within the Premises is required to comply with the prescriptive requirements defined in Table 140.6-C of the 2019 California Energy Code (Title 24 Part 6). Subject to the availability of electricity from Pacific Gas & Electric (or other applicable electrical utilities provider), Landlord shall provide electricity for normal office purposes at all times, including task and task ambient lighting systems, normal office equipment, including, but not limited to, copy machines, computers, terminals, communications and audiovisual equipment, vending machines, and kitchen equipment. Landlord shall furnish to Tenant wattage and electricity up to an amount necessary to operate its business and all equipment of not less than 6.5 watts per usable square foot; and

H. Provision of security services to the Building, Common Areas, Tower Parking Garage, and Common Parking Garage in a manner consistent with those employed by owners of Comparison Buildings (as defined below), including a manned security desk weekdays from 6am–6pm and 24-hour-per-day periodic patrol and CCTV observation service. Landlord will provide Tenant’s employees RF programmable key fobs that will be used to access Building and Building elevators, which Fobs can be programmed to restrict access to different floors based on Tenant’s direction.

**Section 7.2.** Landlord’s Access to Leased Premises.

Landlord shall have access to and reserves the right to inspect, erect, use, connect to, maintain and repair pipes, ducts, conduits, cables, plumbing, vents and wires, and other facilities in, to and through the Leased Premises as and to the extent that Landlord may now or hereafter deem to be reasonably necessary or appropriate for the proper operation and maintenance of the Building or the Parking Garage and the right at all times to transmit water, heat, air conditioning and electric current through such pipes, conduits, cables, plumbing, vents and wires and the right to interrupt the same in the event of an Emergency (as defined below) without eviction of Tenant or abatement of Rent. Any failure by Landlord to furnish the services described in Section 7.01 (or any other services as may be required of Landlord under this Lease) resulting from circumstances beyond Landlord’s reasonable control or from interruption of such services due to repairs or maintenance, shall not render Landlord liable in any respect for damages to either Person or property, nor be construed as an eviction of Tenant, nor cause an abatement of Rent hereunder, nor relieve Tenant from any of its obligations hereunder, unless expressly provided to the contrary in this Lease. If any public utility or governmental body shall require Landlord or Tenant to restrict the consumption of any utility or reduce any service for the Leased Premises or the Building, Landlord and Tenant shall comply with such requirements without any liability on the part of Landlord to Tenant or any other Person or any reduction or adjustment in Rent payable hereunder. Landlord and its agents shall be permitted reasonable access to the Leased Premises for the purpose of installing and servicing systems within the Leased Premises deemed reasonably necessary by Landlord to perform Landlord’s obligations under this Lease, provided that, except in the event of an Emergency, no such work shall unreasonably interfere with the use of the Leased Premises for the Permitted Use or access to the Leased Premises via the entrances to the Building. For purposes of this Lease, an “**Emergency**” shall mean an event that poses an imminent risk to the health or safety of persons or property in the Building or the Project. Landlord and Landlord’s agents, except in the case of emergency, shall provide Tenant with one (1) business day notice prior to entry of the Leased Premises. Any entry by Landlord and Landlord’s agents shall not impair Tenant’s operations more than reasonably necessary, and shall comply with Tenant’s reasonable security measures. Notwithstanding the foregoing, if Tenant is prevented from using, and does not use, the Leased Premises or any material portion thereof as a consequence of a cessation of utilities (i) not caused by Tenant or any of Tenant’s agents, employees, licensees, contractors and subtenants (each, a “**Tenant Party**”) and either within the reasonable control of Landlord to correct or covered by rental interruption insurance then carried by Landlord or (ii) caused by the gross negligence or willful misconduct of Landlord or Landlord’s employees, agents or contractors (each, a “**Utility Cessation Event**”), then Tenant shall give Landlord Notice of such Utility Cessation Event, and if such Utility Cessation Event continues for more than five (5) consecutive Business Days after Landlord’s receipt of such Notice (“**Utility Cessation Abatement Period**”), then the Minimum Rent and Additional Rent shall be abated after expiration of the Utility Cessation Abatement Period and continuing for such time that Tenant continues to be so prevented from using, and does not use, the Leased Premises or any material portion thereof, in the proportion that the rentable area of the Leased Premises that Tenant is prevented from using, and does not use, bears to the total Floor Area of the Leased Premises. Such abatement shall be Tenant’s sole and exclusive remedy at law or in equity for a Utility Cessation Event.

**Section 7.3.** Utilities.

A. If applicable, Tenant shall pay, when due, all charges for water, sewer, electricity, telephone service and other utilities supplied to the Leased Premises (“**Utility Charges**”). Electric utility charges shall be based upon submeter readings. Tenant shall also pay Landlord Tenant’s proportionate share of Utility Charges for any non-separately metered or sub-metered utilities as reasonably determined by Landlord, calculated by Landlord reasonably consistent with the practices of other first class institutional landlords for calculation of such charges.



B. Landlord shall install, at Landlord's expense, a device to measure electricity usage for and in the Leased Premises. Tenant shall pay Landlord electricity charges based upon such readings, plus a reasonable, non-discriminatory service fee of \$9.95 per month (which amount may be adjusted to reflect actual increases in such charges) for reading such device(s), within thirty (30) days after billing. It is the intent of the parties that Utility Charges shall be separate from and in addition to Tenant's Share of Operating Costs.

C. Tenant shall cooperate with Landlord's compliance with all disclosures and information related to energy disclosures required by applicable Laws with respect to the Leased Premises, including, without limitation, those codified and implemented in the California Public Resources Code and California Public Utilities Code, and associated regulations, or under any similar law, statute, regulation or ordinance (collectively the "**Energy Benchmarking Laws**"). Without limiting the foregoing, pursuant to Section 1682(b)(4)(A)(i) of the California Code of Regulations, Tenant hereby grants permission to any energy provider to provide Tenant's applicable energy usage data to Landlord. Notwithstanding anything to the contrary contained in this Lease, Tenant acknowledges and agrees that Landlord shall have the right to disclose the foregoing consent to any energy provider(s) as may be necessary for Landlord to comply with the Energy Benchmarking Laws. Tenant further acknowledges that such information may be submitted by Landlord to the California Energy Commission or other public agency or entity, as required by Energy Benchmarking Laws in effect from time to time.

**Section 7.4. LEED Standard.** Tenant acknowledges and agrees that Landlord has obtained a LEED Gold Core & Shell certification (the "**LEED Certification**"). Notwithstanding anything to the contrary contained herein, Landlord reserves the right to make alterations, additions, improvements, replacements or modifications to the Common Areas and Building systems for the purposes of sustaining and/or maintaining such LEED Certification or any other like designation or rating related to or associated with the conservation of water, energy or any other natural resource, the use of sustainable or renewable energy sources or products, or the energy efficiency of the Building or any portion thereof, so long as such alterations, additions, improvements, replacements or modifications do not have a material, adverse impact upon Tenant's use of the Common Areas, Building or Leased Premises. Tenant hereby covenants and agrees to cooperate with Landlord and on a reasonably prompt basis, with respect to any reasonable requests by or associated in connection with Landlord's efforts to sustain and/or maintain a LEED Certification or any other like designation or rating for the Project (or any part thereof), which cooperation may include, but not be limited to, delivering to Landlord responses to any questionnaires or any other forms or providing any other information related to the Leased Premises or its use, which Landlord may request. Notwithstanding the foregoing, in no event shall Tenant be required to perform any of Tenant's Alterations or the Tenant Work in accordance with LEED standards.

**Section 7.5 Amenities.**

A. During the Term, Tenant and Tenant's employees shall have the non-exclusive use of the "**Santana West Fit Studio**" in the Project subject to the terms and conditions upon which Landlord offers such use rights to other tenants of the Project. Tenant acknowledges that Landlord may elect to change the terms and conditions of use of the Santana West Fit Studio, including implementation of reasonable, non-discriminatory rules, use charges and/or reimbursement of costs on a prorated basis, in Landlord's sole and absolute discretion. Landlord may specifically condition the use of the Santana West Fit Studio by any Person upon such Person's execution of a commercially reasonable written waiver and release holding Landlord and the Landlord's Indemnities harmless from any and all Losses arising from injury to such Person occurring in the Santana West Fit Studio or resulting from the use thereof. Neither Landlord nor any Landlord's Indemnities shall have any liability to Tenant or any if its agents, employees, servants, licensees, contractors and subtenants for any Losses whatsoever arising out of the use of the Santana West Fit Studio.

B. During the Term, Tenant and Tenant's employees shall have the non-exclusive use of the Fit Studio at Santana Row (the "**Santana Row Fit Studio**"), subject to the terms and conditions upon which Landlord offers such use rights to other tenants of the Project and Santana Row. Tenant acknowledges that Landlord may elect to change the terms and conditions of use of the Santana Row Fit Studio, including implementation of reasonable, non-discriminatory rules, in Landlord's sole and absolute discretion. Landlord may specifically condition the use of the Santana Row Fit Studio by any Person upon such Person's execution of a commercially reasonable written waiver and release holding Landlord and the Landlord's Indemnities harmless

from any and all Losses arising from injury to such Person occurring in the Santa Row Fit Studio or resulting from the use thereof. Neither Landlord nor any Landlord's Indemnities shall have any liability to Tenant or any of its agents, employees, servants, licensees, contractors and subtenants for any Losses whatsoever arising out of the use of the Santana Row Fit Studio.

C. The parties acknowledge that the Common Areas include a café for the Building (the "**Café**"). Tenant's use of the Café shall be on a first-come, first-served basis. Use of the Café shall be subject to payment by Tenant's employees and guests of the applicable charges for the food and other items purchased therein. The Café shall initially offer "grab and go" food (e.g., pre-packaged salads, sandwiches and canned and bottled beverages) as well as coffee, tea and smoothies; provided, however, that if more than fifty percent (50%) of the Building is leased and occupied on a regular basis, then Landlord may expand the Café's offerings to include prepared foods. The Café shall also include a board room for meetings that may be reserved by tenants of the Project pursuant to a reservation system and reasonable rules and regulations adopted by Landlord from time to time. Landlord shall initially operate the Café Monday through Friday (excluding non-Business Days) at reasonable hours. All utility and janitorial costs and expenses associated with the Café shall be included in the Operating Costs. Landlord reserves the right to engage an operator (the "**Operator**") to operate the Café. Notwithstanding the foregoing, Landlord shall have the right to alter, suspend and/or terminate the Café upon not less than thirty (30) days prior Notice to Tenant due to low use, as reasonably determined by Landlord.

D. Landlord has installed one hundred eight (108) Charge Point dual EV Stations (each a "**Charging Station**" and, collectively, the "**Charging Stations**"), twenty-two (22) of which are located in the Tower Parking Garage and eighty-six (86) of which are located in the Common Parking Garage. Subject to such reasonable rules and regulations as Landlord may implement from time to time, Tenant shall have the non-exclusive right to use the Charging Stations throughout the Term on a first-come, first-served basis but Landlord makes no representation or warranty that the Charging Stations will be available for the use by Tenant at any time. Landlord reserves the right to modify, replace, and/or upgrade the Charging Stations and the type, manufacturer and characteristics of the Charging Stations shall be determined by Landlord, in Landlord's sole discretion. The cost of operating, maintaining, repairing, modifying, replacing and/or upgrading the Charging Stations may be included in Operating Costs, subject to Section 6.03.C, above.

## ARTICLE 8

### INDEMNITY AND INSURANCE

#### **Section 8.1.** Indemnity.

A. Tenant shall indemnify, defend and hold Landlord, lessors, partners, members and affiliates, and their respective shareholders, partners, members, trustees, agents, representatives, directors, officers, employees and Mortgagee(s) (collectively, "**Landlord's Indemnitees**") harmless from and against all claims, causes of action, suits, proceedings, liabilities, losses, obligations, damages, judgments, penalties, claims, costs, charges and expenses (including, without limitation, reasonable architects', consultants' and attorneys' fees and costs) (collectively, "**Losses**") which may be imposed upon, incurred by, or asserted against any of Landlord's Indemnitees by a third party and arising, directly or indirectly, out of or in connection with (i) Tenant's breach of its obligations under this Lease, or (ii) the acts or omissions of Tenant, its subtenants or the respective agents, contractors, employees, servants or licensees in, on or about the Leased Premises, Building, Parking Garage, Project or Santana Row Fit Studio. Tenant shall not be obligated to indemnify Landlord's Indemnitees against loss, liability, damage, cost or expense arising out of a claim for which Tenant is released from liability pursuant to Section 8.07 below, or a claim to the extent arising out of the violation of this Lease, willful misconduct or negligent acts or omissions of Landlord or its agents, employees or contractors.

B. Landlord shall indemnify, defend and hold Tenant, its partners, officers, shareholders, members, trustees, principals, agents, directors and employees (collectively, "**Tenant's Indemnitees**") harmless from and against all Losses which may be imposed upon, incurred by, or asserted against any of the Tenant's Indemnitees by a third party and arising,

directly or indirectly, out of or in connection with (i) Landlord's breach of its obligations under this Lease, (ii) the gross negligence or willful misconduct of Landlord or its agents, contractors, servants, employees and/or licensees in, on or about the Building, Parking Garage or Project. Landlord shall not be obligated to indemnify Tenant's Indemnitees against loss, liability, damage, cost or expense arising out of a claim for which Landlord is released from liability pursuant to Section 8.07 below, or a claim to the extent arising out of the willful misconduct or negligent acts or omissions of Tenant or its agents, employees or contractors.

**Section 8.2.**            Landlord Not Responsible for Acts of Others.

Landlord shall not be liable to Tenant, nor to those claiming through Tenant, for any loss, theft, injury, liability or damage of, for or to Tenant, Tenant's Indemnitees, Tenant's business and/or the property of Tenant or Tenant's Indemnitees which may result from any of the following unless expressly covered under Section 8.01(B), above: (i) any act, omission, fault or negligence of other tenants, occupants or licensees, their respective agents, employees or contractors, or any other Persons (including occupants of adjoining or contiguous buildings, owners of adjacent or contiguous property, or the public); (ii) the breaking, bursting, backup, stoppage or leaking of electrical or phone/internet cables and wires, or water, gas, sewer, HVAC or steam pipes or ducts serving the Leased Premises and/or the Building; (iii) the reduction or interruption of electrical energy, water, gas and/or any other utilities to the Leased Premises; (iv) water, snow or ice being upon the Building or coming into the Leased Premises; and/or (v) earthquake or other acts of God. Tenant acknowledges that its use of the Leased Premises and the Building is at its own risk, subject to Landlord's indemnity under Section 8.01(B), above.

**Section 8.3.**            Tenant's Insurance.

Commencing on the earlier of the date Landlord delivers possession of the Leased Premises to Tenant in the condition required hereunder or the date Tenant is given earlier access to the Leased Premises, and continuing at all times during the Term thereafter, Tenant shall carry and maintain:

A.     Commercial General Liability (on a current ISO occurrence form or equivalent) with a deductible (which shall not be a self-insured retention) of not more than One Hundred Thousand Dollars (\$100,000.00) (the "**Deductible Cap**"), naming Tenant as the named insured and including Landlord and (at Landlord's request) Landlord's Mortgagee (and managing agent), if any, Landlord's property manager, if any, Federal Realty Investment Trust ("**FRIT**"), if FRIT is not the Landlord under this Lease, and Ground Lessor, as additional insureds, providing an Additional Insured – Managers or Lessors of Leased Premises Endorsement (#CG-20-11-01-96 or equivalent) protecting Tenant and the additional insureds against liability for bodily injury, death and property damage with respect to liability arising out of the ownership, use, occupancy or maintenance of the Leased Premises and all areas appurtenant thereto, with limits not less than per occurrence limit of Two Million Dollars (\$2,000,000.00) and a general aggregate of Five Million Dollars (\$5,000,000.00). If the policy also covers locations other than the Leased Premises, the policy shall include a provision to the effect that the aggregate limit of Four Million Dollars (\$4,000,000.00) shall apply separately at the Leased Premises. These policy limits may be obtained through any combination of primary and excess insurance. If Tenant sells, serves or distributes food in or on the Leased Premises, then such General Liability Insurance shall include products liability with a combined single limit of Two Million Dollars (\$2,000,000.00) per occurrence and an aggregate limit of Two Million Dollars (\$2,000,000.00). In addition, if Tenant hosts a function in or on the Leased Premises or Protected Area where alcoholic beverages are sold or served, then Tenant agrees to obtain, and cause any persons or parties providing services for such function to obtain, commercially reasonable host liquor liability coverage naming Landlord, Landlord's managing agent and those others designated by Landlord as additional insureds and provide Landlord with evidence of the same.

B.     "All Risks" or "Special Causes of Loss Form" property insurance covering all of Tenant's Property, Leasehold Improvements and Specialized Leasehold Improvements (as each are defined in Section 9.05 below), and coverage for those building components for those portions of the Leased Premises that Tenant is responsible to repair pursuant to Section 10.02 below and written for at least the full replacement cost with a deductible of not more than the Deductible Cap.

C. Plate glass insurance covering all plate glass in the Leased Premises. Tenant shall be and remain liable for the repair and restoration of all such plate glass.

D. Comprehensive boiler and machinery coverage, including electrical apparatus, if applicable, with a deductible of not more than Five Thousand Dollars (\$5,000.00).

E. Business interruption, loss of income and extra expense insurance with at least Five Hundred Thousand Dollars (\$500,000.00) of coverage.

F. Worker's compensation insurance and employer's liability insurance with a minimum of One Million Dollars (\$1,000,000.00), and statutory worker's compensation insurance as required by the State of California. Such policy shall provide a waiver of subrogation in favor of Landlord and Landlord's managing agent.

Notwithstanding anything set forth above, all dollar limits specified in this Section 8.03 may be adjusted not more than once every five (5) years of the Term effective not less than sixty (60) days after the date of any proposed increase, to effect (i) economically equivalent insurance coverage, or coverage reasonably deemed necessary in light of then existing circumstances, based on the written recommendations of a reputable insurance consultant retained by Landlord at Landlord's sole cost and the practices of owners of comparable mixed-projects in the area of the Project, provided the written report containing the consultant's recommendation will be provided to Tenant together with any proposed increase in coverage, and/or (ii) the requirements of Landlord's then-Mortgagee, to the extent consistent with subpart (i), above. In addition, consistent with subpart (i), above, in the event Tenant assigns this Lease (other than in connection with a Permitted Transfer (defined below)) to any assignee that has a Net Worth (defined below) that is less than the Net Worth Threshold (defined below), Landlord shall have the right to reduce the Deductible Cap to such amount as Landlord, in its reasonable discretion, deems appropriate.

#### **Section 8.4. Tenant's Contractor's Insurance.**

Tenant shall cause any contractor performing work on the Leased Premises to obtain, carry and maintain, at no expense to Landlord the following coverages with limits not less than indicated: (i) worker's compensation insurance, as required by the State of California and employer's liability with limits not less than Five Hundred Thousand Dollars (\$500,000.00) providing a waiver of subrogation in favor of Landlord, Federal Realty Investment Trust, if FRIT is not the Landlord, Landlord's managing agent (if applicable) and Ground Lessor; (ii) builder's risk insurance with a deductible no greater than Twenty-Five Thousand Dollars (\$25,000.00), in the amount of the full replacement cost of Tenant's Property and Leasehold Improvements; (iii) Commercial General Liability Insurance, including completed operations and contractual liability coverage, providing on an occurrence basis limits not less than Three Million Dollars (\$3,000,000.00) per occurrence and Five Million Dollars (\$5,000,000.00) general aggregate including Landlord, Federal Realty Investment Trust, if FRIT is not the Landlord, Landlord's managing agent (if applicable) and Ground Lessor as additional insureds using the current ISO Additional Insured Endorsement forms CG 20 38 for ongoing operations and CG 20 37 for completed operations or their equivalent providing coverage at least as broad; and (iv) business automobile liability insurance including the ownership, maintenance and operation of the automotive equipment, owned, hired, and non-owned coverage with a combined single limit of not less than One Million Dollars (\$1,000,000.00) for bodily injury and property damage. If the contractor fails to acquire such insurance, Tenant shall provide such insurance (except worker's compensation insurance and employer's liability). These policy limits may be obtained through any combination of primary and excess insurance.

#### **Section 8.5. Policy Requirements.**

Any company writing any insurance which Tenant is required to maintain or cause to be maintained under Sections 8.03 and 8.04 as well as any other insurance pertaining to the Leased Premises or the operation of Tenant's business therein (all such insurance being referred to as "**Tenant's Insurance**") shall at all times be licensed and qualified to do business in the jurisdiction in which the Leased Premises are located and shall have received an A-VII or better rating by the latest edition of A.M. Best's Insurance Rating Service. All of Tenant's Insurance may be carried under a blanket policy covering the Leased Premises and any other location of

Tenant, if (i) the coverage afforded Landlord and any designees of Landlord shall not be reduced or otherwise adversely affected, and (ii) such blanket policy allocates to the properties and liabilities to be insured under this Article VIII an amount not less than the amount of insurance required to be covered pursuant to this Article VIII, so that the proceeds of such insurance shall not be less than the proceeds that would be available if Tenant were insured under a unitary policy. Tenant's and Tenant's contractors Commercial General Liability policies shall name Landlord and/or its designees described in Section 8.03(A), above as additional insured, and Tenant's property insurance policies shall include Landlord and/or its designees as loss payee for Leasehold Improvements and betterments solely with regard to Tenant's negligence. Tenant shall notify Landlord in writing of any potential cancellation or material reduction of Tenant's insurance policies of which Tenant has knowledge at least ten (10) Business Days before any such insurance shall be cancelled. Tenant shall be solely responsible for payment of premiums for all of Tenant's Insurance. Tenant shall deliver to Landlord at least fifteen (15) days prior to the time Tenant's Insurance is first required to be carried by Tenant, and upon renewals within three (3) days from the expiration of the term of any such insurance policy (provided, however, in no event shall Tenant allow any such insurance to lapse at any time during the Term), a certificate of insurance of all policies of Tenant's Insurance. The limits of Tenant's Insurance shall not limit Tenant's liability under the Lease, at law, or in equity. Tenant's Commercial General Liability Insurance shall be primary and non-contributory with respect to Landlord's liability arising out of the act or omission of Tenant, its officers, agents, contractors, employees. If Tenant fails to deposit a certificate of insurance with Landlord (which shows compliance with the provisions of this Article VIII) within three (3) days after Notice from Landlord, Landlord may acquire such insurance, and Tenant shall pay Landlord the amount of the premium applicable thereto within five (5) days following Notice from Landlord.

Neither the insurance requirements set forth in the Lease nor the Landlord's review and approval of any insurer or insurance policy shall be deemed to limit the Tenant's obligations under this Lease or the Tenant's underlying liability in any manner. The insurance requirements herein merely prescribe the minimum amounts and forms of insurance coverage that the Tenant and their contractors are required to carry. Any failure by the Landlord to enforce in a timely manner any of the provisions of the Lease shall not act as a waiver to enforcement of any of such provisions at a later date.

**Section 8.6.**            Increase in Insurance Premiums.

Tenant shall not keep or do anything in the Leased Premises, the Building, the Common Areas (including, without limitation, the Parking Garage) or the Project that will: (i) cause an increase in the rate of any insurance on the Building and/or Project; (ii) violate the terms of any insurance coverage on the Building or Project carried by Landlord or any other tenant; (iii) prevent Landlord from obtaining such policies of insurance acceptable to Landlord or any Mortgagee of the Building; or (iv) violate the rules, regulations or recommendations of Landlord's insurers, loss prevention consultants, safety engineers, the National Fire Protection Association, or any similar body having jurisdiction over the Leased Premises. If Tenant does so, and Tenant does not correct the relevant condition within thirty (30) days after Notice, Tenant shall pay to Landlord upon demand the amount of any increase in any such insurance premium. In determining the cause of any increase in insurance premiums, the schedule or rate of the organization issuing the insurance or rating procedures shall be conclusive evidence of the items and charges which comprise the insurance rates and premiums on such property. Notwithstanding anything to the contrary in the foregoing, Landlord hereby represents to Tenant that general office use and general office furniture, fixtures, equipment, and materials will neither cause an increase in Landlord's insurance premiums or violate the terms of Landlord's insurance coverage; provided, however, that Landlord has no knowledge of and makes no representations, actual or implied, of Tenant's actual use and operations within the Leased Premises.

**Section 8.7.**            Waiver of Right of Recovery.

Notwithstanding anything to the contrary herein, neither Landlord nor Tenant shall be liable to the other party or to any insurance company (by way of subrogation or otherwise) insuring such other party, and the parties hereto release each other and their respective employees, successors, assignees and subtenants from all liability for, loss or damage to the releasing party's building, structure or other tangible property, or any resulting loss of income, or

losses under worker's compensation Laws or benefits, even though such loss or damage might have been occasioned by the negligence of Landlord or Tenant, or their respective managing agents, officers, directors and employees; provided, however, the mutual release contained herein shall not apply to damage to property or loss of income caused by the willful misconduct of the other party or that other party's officers, directors, or employees. This Section 8.07 shall expressly limit and supersede the indemnification to third parties as provided in Section 8.01. The provisions of this Section 8.07 shall apply to any Transferee pursuant to Article XV of this Lease, and the Transferee shall expressly agree in writing to be bound by the provisions of this Section 8.07 (as if such Transferee were Tenant hereunder) for the benefit of Landlord and such Transferee.

**Section 8.8.**            Landlord's Insurance.

All insurance maintained by Landlord shall be for the sole benefit of Landlord and under Landlord's sole control. Landlord shall maintain throughout the Term (i) "all risk" or "special causes of loss form" property insurance including, at Landlord's election, standard earthquake and flood insurance, insuring the structural components of Building and the Project, to the extent of the full replacement value of such Building (excluding the Leasehold Improvements and Specialized Leasehold Improvements); and (ii) Commercial General Liability Insurance (ISO form or equivalent) covering Landlord's activities in and about the Project. Provided the insurance coverage carried by Landlord pursuant to (i) above shall not be reduced or otherwise adversely affected, all of Landlord's insurance may be carried under a blanket policy covering the Project and any other property owned, leased or operated by Landlord or its affiliates, provided the insurance requirements in this Lease are fulfilled and the insurance coverage is not diminished in any way. The cost of all such insurance premiums is included in Operating Costs. Landlord shall not be obligated to insure, and shall have no responsibility whatsoever for any damage to, any Leasehold Improvements, Specialized Leasehold Improvements or Tenant's Property that Tenant may make, keep or maintain in the Leased Premises during the Term.

**ARTICLE 9**

CONSTRUCTION AND ALTERATIONS

**Section 9.1.**            Condition of Leased Premises Upon Delivery.

Tenant agrees to accept possession of the Leased Premises when the Delivery Condition has been satisfied, subject only to Landlord's express representations and warranties set forth in this Section 9.01. Except for Landlord's express representations and warranties contained in this Lease, neither Landlord nor any agent of Landlord has made any representation or warranty regarding the condition of the Leased Premises, the Building, or the Project, the suitability of the Leased Premises for Tenant's use, or the identity of other tenants or potential tenants of the Project. Landlord represents and warrants that, upon the Delivery Date, the Leased Premises will comply in all material respects with all applicable Laws, including, but not limited to, the Americans With Disability Act and Title 24 (as such Laws are applied and interpreted by the applicable governmental authorities or quasi-governmental authorities as of the date of this Lease) applicable to the condition in which the Leased Premises is being delivered, without regard to any specific use of the Leased Premises or the improvements to be installed by Tenant, (b) the Building systems shall be in good working order and repair. Notwithstanding the foregoing, if, during the Term, Tenant discovers any latent defects, then Landlord shall not be liable to Tenant for any damages, but as Tenant's sole and exclusive remedy, Landlord, at no cost to Tenant, shall perform such work or take such other action as may be necessary to cure such latent defect(s); provided, however, that Landlord shall not be responsible for correcting such latent defect unless and until Landlord receives Notice thereof from Tenant. Landlord will use commercially reasonable efforts to promptly repair such identified latent defects (subject to Landlord's reasonable confirmation that such defects are, in fact, latent defects). Landlord's obligation hereunder does not cover the cost of normal repair, maintenance or replacement expected in light of the specifications of the applicable construction materials and equipment or any repairs necessitated by Tenant's breach of this Lease, or by any act or negligence of Tenant, its agents, employees, assigns, concessionaires, contractors or invitees. For purposes of this paragraph, "**latent defects**" means those material defects in the structural components of the Building or the central or base Building mechanical, electrical and plumbing systems (specifically excluding any Leasehold Improvements and supplemental HVAC system, sprinkler system or any other system exclusively servicing the Leased Premises and installed by Tenant).

**Section 9.2.**            Tenant Improvements.

Landlord and Tenant, at their respective sole cost and expense, agree to provide all improvements to the Building and Leased Premises in accordance with their respective obligations set forth in **Exhibit B**.

**Section 9.3.**            Alterations.

Except with respect to any Tenant Work, which shall be performed pursuant to **Exhibit B**, below, Tenant shall not make or cause to be made any alterations, additions, renovations, improvements or installations in or to the Leased Premises (“**Alterations**”) without Landlord’s prior consent, which such consent may be granted or withheld in Landlord’s reasonable discretion and which consent shall not be unreasonably conditioned or delayed, unless expressly provided herein to the contrary. Tenant shall in no event make or permit to be made any Alterations that materially affect (i) any of the Building Systems, (ii) the structural components of the Building including, without limitation, the roof, (iii) the exterior appearance of the Building or (iv) the Tower Parking Garage or Common Parking Garage (collectively, the “**Restricted Alterations**”), without the prior written consent of Landlord, which may be granted or withheld in Landlord’s sole and absolute discretion. Notwithstanding the foregoing, Tenant may make cosmetic Alterations within the Leased Premises that are not otherwise Restricted Alterations that cost up to Fifty Thousand Dollars (\$50,000.00) in the aggregate annually, as long as such Alterations comply with all applicable Laws, are consistent in appearance with the Operating Standard and such Alterations are removed, and any damage to the Leased Premises repaired as required hereunder, prior to the expiration of the Term; provided, however, that such repair and restoration obligation shall not apply to paint or carpet or other Alterations that are not Specialized Leasehold Improvements (as defined below). If Landlord consents to any such Alterations by Tenant and such Alterations are Restricted Alterations, then Landlord shall have the right (but not the obligation) in its sole discretion to manage or supervise such work and Tenant shall pay to Landlord a reasonable fee to reimburse Landlord for overhead and administrative costs and expenses incurred in connection with the management or supervision of such work by Landlord, not to exceed two percent (2%) of the hard costs of construction of any such Restricted Alterations. If, however, such Alterations are not Restricted Alterations, then Landlord shall have the right (but not the obligation) in its sole discretion to review the plans, specifications and design drawings with respect to such work, and Tenant shall pay to Landlord a reasonable fee to reimburse Landlord for overhead and administrative costs and expenses incurred in connection with such review, not to exceed \$5,000.

**Section 9.4.**            Work Requirements.

All Alterations performed by Tenant in the Leased Premises shall be performed (i) in a workmanlike manner with first-class materials; (ii) by duly qualified or licensed Persons; (iii) without unreasonable interference with, or disruption to, the operations of Landlord or other tenants or occupants of the Building; and (iv) in accordance with (a) plans and specifications approved in writing in advance by Landlord (as to both design and materials) which such approval shall not be unreasonably conditioned or delayed and may be granted or withheld in Landlord’s reasonable discretion, except as otherwise provided in **Section 9.03** above, and (b) all applicable governmental permits, rules and regulations.

**Section 9.5.**            Ownership of Improvements.

All Alterations and Specialized Leasehold Improvements made by Tenant (collectively the “**Leasehold Improvements**”), that are approved (or deemed approved) by Landlord in accordance herewith, shall become property of Landlord upon Tenant’s vacation or abandonment of the Leased Premises and, unless Landlord directs otherwise with respect to Specialized Leasehold Improvements, shall remain upon and be surrendered with the Leased Premises in the condition and repair existing on installation, ordinary wear and tear, casualty, and condemnation, excepted. Notwithstanding the foregoing or anything to the contrary contained in this Lease, Tenant, at its sole cost and expense, shall be required to remove all alterations, additions, renovations, improvements and installations made to the Leased Premises that constitute Specialized Leasehold Improvements and that Landlord has indicated upon approval thereof pursuant to **Section 9.03** above will be required to be removed upon surrender, no later than the Termination Date and repair all damage to the Leased Premises and the Building resulting from such removal; provided, however, in no event shall Landlord require Tenant to remove any

Tenant Work (as defined in **Exhibit B** attached hereto) unless the same are Specialized Leasehold Improvements. For purposes of this Lease, “**Specialized Leasehold Improvements**” shall mean Leasehold Improvements that are not general office improvements; provided, however, that without limitation to the foregoing, in all events the following shall constitute Specialized Leasehold Improvements: raised floor systems; executive bathrooms, showers and similar facilities that are not part of the base Building; interstitial staircases, all supplemental HVAC systems (other than that serving Tenant’s server room), atriums, vaults, generators, rack systems, all built in or embedded artwork that is subject to the Visual Artists Rights Act, and Tenant Security Systems (each as defined below); provided, further, however, that the foregoing shall not constitute Landlord’s consent to the installation of any of the foregoing. All movable goods, inventory, office furniture, equipment, trade fixtures, signs, Tenant Lines, and other movable personal property belonging to Tenant that are not permanently affixed to the Leased Premises (collectively, “**Tenant’s Property**”), shall remain Tenant’s property and shall be removable by Tenant at any time, provided that Tenant repairs any damage to the Leased Premises or the Building caused by the removal of any of Tenant’s Property.

**Section 9.6. Removal of Tenant’s Property.**

Tenant shall remove all of Tenant’s Property (and any Specialized Leasehold Improvements as Landlord may direct, consistent with **Section 9.05**, above) prior to the Termination Date or the termination of Tenant’s right to possession. Tenant shall repair any damage to the remaining Leasehold Improvements, the Leased Premises or any other portion of the Building caused by such removal to a condition reasonably comparable to the condition delivered or the initial condition of the Leasehold Improvements, as applicable, reasonable wear and tear and damage by casualty to be repaired by Landlord excepted. If Tenant fails to timely remove said items, they shall be considered as abandoned and shall become the property of Landlord, or Landlord may remove and dispose of them.

**Section 9.7. Mechanic’s Liens.**

No mechanic’s or other lien shall be allowed against the Building as a result of Tenant’s improvements to the Leased Premises. Tenant shall give Landlord Notice not less than thirty (30) days prior to commencement of any work in, on or about the Leased Premises, and Landlord shall have the right to record and post notices of non-responsibility in or on the Leased Premises. Tenant shall promptly pay all Persons furnishing labor, materials or services with respect to any work performed by Tenant on the Leased Premises. If any mechanic’s or other lien shall be filed against the Leased Premises or the Building by reason of work, labor, services or materials performed or furnished, or alleged to have been performed or furnished, to or for the benefit of Tenant, Tenant shall cause the same to be discharged of record or bonded in the manner required by statute to remove the effect of the relevant lien within ten (10) days subsequent to Notice by Landlord. If Tenant fails to discharge or bond any such lien, Landlord, in addition to all other rights or remedies provided in this Lease, may bond said lien or claim (or payoff said lien or claim if it cannot with reasonable effort be bonded) without inquiring into the validity thereof and all expenses incurred by Landlord in so discharging said lien, including reasonable attorney’s fees, shall be paid by Tenant to Landlord as Additional Rent on ten (10) Business Days demand.

**Section 9.8. Cabling; Rooftop Installations.**

A. All voice, data, video, audio and other low voltage control transport system cabling and/or cable bundles (“**Tenant Lines**”) installed in the Building by Tenant or its contractor shall be (i) in compliance with all applicable Laws and have a composition makeup suited for its environmental use in accordance with NFPA 70/National Electrical Code; (ii) reasonably identifiable as Tenant Lines; (iii) installed in accordance with all EIA/TIA standards and the National Electric Code; and (iv) installed and routed in accordance with a routing plan showing “as built” or “as installed” configurations of cable pathways, outlet identification numbers, locations of all wall, ceiling and floor penetrations, riser cable routing and conduit routing (if applicable), and such other information as Landlord may reasonably request. The routing plan shall be available to Landlord and its agents at the Leased Premises upon request. Upon Landlord’s written request and at Tenant’s sole cost and expense, Tenant shall cause all Tenant Lines (or such Tenant Lines as Landlord shall request) to be removed at the expiration or earlier termination of this Lease; provided, however, if Tenant fails to complete such removal, Landlord, at Landlord’s option, shall have the right within ten (10) Business Days following



Notice, to cause such Tenant Lines to be removed by Landlord's contractors at the expiration or earlier termination of this Lease, and in such event, Tenant shall reimburse Landlord (within thirty (30) days following Landlord's written demand) for all costs and expenses incurred by Landlord in connection therewith, as reasonably demonstrated by Landlord (which obligation shall survive the expiration or earlier termination of this Lease). Tenant and its telecommunications companies, including local exchange telecommunications companies and alternative access vendor services companies, shall have no right of access to and within the Building (including the roof of the Building), for the installation and operation of telecommunications systems, including voice, video, data, Internet, and any other services provided over wire, fiber optic, microwave, wireless, and any other transmission systems ("**Telecommunications Services**"), for part or all of Tenant's telecommunications within the Building and from the Building to any other location without Landlord's prior written consent, not be unreasonably withheld, conditioned, or delayed, provided in all cases such providers will have access to the Minimum Point of Entry ("**MPOE**") of the Building for the purposes of initiating such service. All providers of Telecommunications Services must be on the then-current pre-approved list for the Project, if any, which Landlord shall provide upon request by Tenant, or shall be approved by Landlord in advance, which approval shall not be unreasonably withheld, conditioned, or delayed if Tenant selects a national provider of such services, and shall be required to comply with the rules and regulations of the Building, all applicable Laws, and Landlord's reasonable, nondiscriminatory policies and practices for the Building. Tenant acknowledges that Landlord shall not be required to provide or arrange for any Telecommunications Services and that Landlord shall have no liability to Tenant in connection with the installation, operation or maintenance of Telecommunications Services or any equipment or facilities relating thereto, subject to the indemnity provision hereof. Tenant, at its cost and for its own account, shall be solely responsible for obtaining all Telecommunications Services.

B. Subject to the terms and conditions of this Lease including, without limitation, the Rooftop Rules and Regulations (as defined below), Tenant may during the Term, at no additional charge to Tenant, install, operate, maintain and repair on a location of the roof of the Building designated by Landlord, solely in connection with the conduct of Tenant's business in the Leased Premises, the Rooftop Equipment (as defined below) (collectively, "**Rooftop Installations**"). All costs associated with the design, fabrication, engineering, permitting, installation, screening, maintenance, repair, operation, use and removal of the Rooftop Installations shall be borne solely by Tenant except to the extent that the Rooftop Installations are part of the Tenant Work and are paid for out of the Tenant Work Allowance. For purposes of this Lease, "**Rooftop Equipment**" shall mean (i) telecommunications antennae, microwave dishes and other communications and information technology equipment to serve Tenant's business in the Leased Premises, and (ii) connections for such equipment for electrical wiring to the Building's existing electrical supply and cable (including the Tenant Lines) or similar connections necessary to connect the Rooftop Equipment with Tenant's related equipment located in the Leased Premises.

C. The routes or paths for wiring and connections serving the Rooftop Equipment shall be through the Building's risers, plenums, conduits and shafts, subject to reasonable space limitations and Landlord's reasonable requirements for use of such areas, and in all events subject to Landlord's approval of plans and installation pursuant to other provisions of this Lease (such routes or paths are collectively referred to herein as "**Cable Paths**" and all such electrical and other connections, including the Tenant Lines, are collectively referred to herein as "**Connections**") with respect to any Rooftop Installations installed after the Tenant Work is completed. If the Rooftop Equipment or other Rooftop Installations or Connections, or any part thereof, constitute part of the Tenant Work, then Landlord's approvals or disapprovals above shall be given by Landlord in connection with, and subject to the time periods governing, its approval or disapproval of the Construction Drawings pursuant to the Work Agreement.

D. Without limiting the generality of any other provision hereof, Tenant shall install, maintain, use and operate its Rooftop Equipment in compliance with all applicable Laws and the Rooftop Rules and Regulations attached hereto as **Exhibit E**, and shall not interfere with or otherwise impair the use and operation of any of the following that is operating within the manufacturer's specifications therefor or any license granted in connection therewith: (i) television or radio equipment in or about the Project; (ii) transmitting, receiving or master

television, telecommunications or microwave antennae equipment located in any portion of the Project; or (iii) radio communication system located on any portion of the Project.

E. If roof repairs and/or roof replacements to the Building (the “**Roof Repairs**”) are reasonably necessary at any time, and such roof repairs are conducted by Landlord, Landlord shall give Tenant at least ten (10) Business Days’ prior Notice of the date Landlord intends to commence such Roof Repairs (except that no prior Notice shall be required in the event of an emergency), along with a description of the work scheduled to be performed, where it is scheduled to be performed on the roof, and an estimate of the time frame required for that performance. Tenant shall, at its sole expense, within ten (10) Business Days following receipt of such Notice, remove or relocate the Rooftop Installations on a temporary basis if Landlord reasonably determines such removal or relocation is reasonably necessary or appropriate for the expeditious performance of any Roof Repairs, provided Landlord and Tenant will reasonably cooperate to minimize any interference in service from Rooftop Equipment caused by such relocation or repairs.

F. Notwithstanding anything to the contrary set forth in this Section 9.08 or elsewhere in this Lease, Tenant shall not be entitled to use more than proportionate share of the roof area of the Building designated by Landlord for the installation of such type of equipment, calculated based on the total number of square feet available on the roof for the installation of such equipment, and the proportion of the Floor Area of the Leased Premises to the total Floor Area in the Building.

#### **Section 9.9.**            Tenant Security Systems.

Tenant shall have the right, at Tenant’s sole cost and expense, to install a separate security system for the Leased Premises (“**Tenant Security System**”), provided that any such Tenant Security System shall be subject to Landlord’s reasonable prior review and approval of the plans and specifications for such Tenant Security System in accordance herewith. Tenant shall coordinate the installation and operation of the Tenant Security System with Landlord to assure that the Tenant Security System is compatible with Landlord’s security system and the Building’s systems and equipment and to the extent that Tenant Security System is not compatible with Landlord’s security system and the Building systems equipment, then Tenant shall not be entitled to install or operate said Tenant Security System. The installation, maintenance, use and operation of the Tenant Security System shall comply with all applicable Laws and the terms of the Lease. Tenant shall provide Landlord with key cards or access codes, as applicable to permit Landlord access to the Leased Premises at all times. Tenant acknowledges and agrees that the Tenant’s use of the Tenant Security System and the installation, operation, maintenance and use thereof shall be at Tenant’s sole risk and Landlord shall have no liability whatsoever in connection therewith. On or before the Expiration Date, Tenant shall, at Landlord’s option, remove the Tenant Security System, at Tenant’s cost, in accordance with the terms of this Lease.

### **ARTICLE 10**

#### REPAIRS, MAINTENANCE, AND LANDLORD’S ACCESS

##### **Section 10.1.**            Repairs by Landlord.

Landlord covenants to keep, maintain, manage and operate the Common Areas in manner consistent with the Operating Standard. Subject to the terms of this Lease, Landlord agrees to maintain the roof, the exterior and structural portions of the Building, and the Building mechanical, electrical, HVAC, water, sewer, and plumbing systems (specifically excluding any supplemental HVAC system, sprinkler system or any other system exclusively servicing the Leased Premises and installed by Tenant). The costs incurred by Landlord to perform such repairs, maintenance and replacements shall constitute Operating Costs and shall be reimbursed to Landlord in accordance with Article VI above, subject to the exclusions and limitations therein. Notwithstanding the foregoing, if any such repairs, maintenance or replacements are necessitated by Tenant’s Default under this Lease, or by any act or negligence of Tenant, its agents, employees, assigns, concessionaires, contractors, subcontractors or invitees, Tenant shall reimburse to Landlord the reasonable cost incurred in completing such repairs within thirty (30) days after demand therefor, which demand will be accompanied by a reasonable itemization and invoices to evidence the relevant charges.

**Section 10.2.**           Repairs and Maintenance by Tenant.

A.     Except for the performance of repairs and maintenance that are expressly the responsibility of Landlord under Section 10.01 above, Tenant shall at all times during the Term at Tenant's sole cost and expense maintain the entire Leased Premises, including any Tenant Work, Leasehold Improvements, Alterations or other improvements therein, in a clean, and secure condition consistent with the Operating Standard and promptly make all necessary repairs and replacements with materials and workmanship of the same character, kind and quality as the original, including, without limitation, the repair and replacement of appliances and equipment installed specifically by Tenant such as refrigerators, disposals, computer room, air conditioning, sinks and special plumbing fixtures, special fixtures and bulbs for those fixtures, and any non-standard outlets.

**Section 10.3.**           Inspections, Access and Emergency Repairs by Landlord.

Upon reasonable prior Notice (not less than one (1) Business Day) and without materially adversely affecting Tenant's business within the Leased Premises, Tenant shall permit Landlord to enter all parts of the Leased Premises to inspect the same and to perform its obligations under this Lease, provided no such entry will unreasonably interfere with access to, or use of the Leased Premises and any such entry will comply with Tenant's reasonable security measures. In the event of an Emergency, Landlord may enter the Leased Premises at any time and make such inspection and repairs as Landlord deems necessary.

**Section 10.4.**           California Accessibility Compliance.

Landlord hereby discloses to Tenant, in accordance with California Civil Code Section 1938, and Tenant hereby acknowledges that the Leased Premises have not undergone an inspection by a Certified Access Specialist ("CASp") to determine whether the Leased Premises meet all applicable construction-related accessibility standards pursuant to California Civil Code §55.51 et seq. As required by Section 1938(e) of the California Civil Code, Landlord hereby states as follows: "A Certified Access Specialist (CASp) can inspect the subject Leased Premises and determine whether the subject Leased Premises comply with all of the applicable construction-related accessibility standards under state law. Although state law does not require a CASp inspection of the subject Leased Premises, the commercial property owner or lessor may not prohibit the lessee or tenant from obtaining a CASp inspection of the subject Leased Premises for the occupancy or potential occupancy of the lessee or tenant, if requested by the lessee or tenant. The parties shall mutually agree on the arrangements for the time and manner of the CASp inspection, the payment of the fee for the CASp inspection, and the cost of making any repairs necessary to correct violations of construction-related accessibility standards within the Leased Premises." In furtherance of the foregoing, and notwithstanding anything to the contrary contained in this Lease, Landlord and Tenant hereby agree as follows: (i) any CASp inspection requested by Tenant shall be conducted, at Tenant's sole cost and expense, by a CASp approved in advance by Landlord, subject to Landlord's rules and requirements; (ii) Landlord shall have no obligation to perform any work or repairs identified in any such CASp inspection, unless required to correct a defect in Landlord's Work; (iii) to the extent that any work, repairs, replacements, or Alterations in the Leased Premises are required by the CASp (or otherwise required as a result of any such CASp inspection), and do not arise solely from a failure of Landlord to complete the Base Building Condition, then, at Landlord's election, Tenant shall be required to perform the same at Tenant's sole cost and expense (subject to the terms and conditions of this Lease, including Landlord's right to approve of detailed plans and specifications in advance); provided, however, if Tenant fails to promptly commence and thereafter diligently pursue completion thereof, Landlord shall have the option to perform any or all of the foregoing at Tenant's sole cost and expense (with Tenant to reimburse Landlord upon demand for the costs and expenses incurred by Landlord in performing the same, provided Landlord will use contractors who charge market rates and Tenant will have reasonable approval rights over the cost of such alterations); and (iv) Tenant agrees to keep the information in the CASp Report confidential except as necessary for the Tenant to complete such Alterations or as required by applicable Law.

**ARTICLE 11**

## CASUALTY

### **Section 11.1.**        Fire or Other Casualty.

Tenant shall give prompt Notice to Landlord in case of fire or other casualty (“**Casualty**”) to the Leased Premises or the Building.

### **Section 11.2.**        Right to Terminate.

A.     If (i) the Leased Premises are damaged to the extent of fifty percent (50%) or more of the cost of replacement thereof (i.e., more than fifty percent (50%) of the Floor Area of the Leased Premises immediately before such Casualty is rendered untenable) and Landlord determines that such damage cannot be repaired to the condition required hereunder within two hundred seventy (270) days from the date of such occurrence; or (ii) during the last two (2) Lease Years or in any Partial Lease Year at the end of the Term, the Leased Premises are damaged to the extent of more than twenty-five percent (25%) of the cost of replacement thereof; then (x) Landlord may terminate this Lease by Notice to Tenant within sixty (60) days after the date of the Casualty, subject to Tenant’s rights hereunder to negate such Notice, provided Landlord’s Notice will include reasonable substantiation of Landlord’s cost of repair and the time required to repair. If Landlord so terminates this Lease and Tenant does not negate Landlord’s Notice as provided herein, then the Termination Date shall be the date set forth in the Notice to Tenant, which date shall not be more than ninety (90) days after the giving of said Notice. The “cost of replacement” shall be determined by the company or companies insuring Landlord against the Casualty, or, if there shall be no such determination, by a qualified Person selected by Landlord to determine such “cost of replacement.”

B.     If (i) at any time during the Term of this Lease, the Leased Premises or the Common Areas (to the extent such Common Areas are insured by Landlord and only if Tenant is unable to access the Leased Premises) are damaged and Landlord, in good faith, determines that such damage cannot be repaired within two hundred seventy (270) days from the date of such occurrence, or (ii) during the last two (2) Lease Years or in any Partial Lease Year at the end of the Term either the Leased Premises are damaged to the extent of more than twenty-five percent (25%) of the cost of replacement thereof, or more than fifty percent (50%) of the Floor Area of the Leased Premises immediately before such Casualty is rendered untenable and Landlord, in good faith, determines that such damage cannot be repaired within one hundred eighty (180) days from the date of such occurrence, Tenant may, notwithstanding any right Landlord may have hereunder to elect that this Lease continue, terminate this Lease by giving Landlord sixty (60) days’ prior Notice given within sixty (60) days after the date of the Casualty.

### **Section 11.3.**        Landlord’s Duty to Reconstruct.

Landlord shall repair the Leased Premises (excluding Tenant’s Property, the Leasehold Improvements (including Specialized Leasehold Improvements) and Tenant Work, which shall be Tenant’s obligation to repair, restore or replace) and the Common Areas to a substantially similar condition as existed prior to the Casualty except for modifications required by zoning and building codes and other applicable Laws that do not materially reduce Floor Area. Unless this Lease is terminated as provided in this Article XI, Landlord shall proceed with reasonable diligence and promptness, given the nature of the damage to be repaired, to effect the Landlord’s restoration work, all subject to reasonable delays for insurance adjustments, zoning and building codes, and other applicable Laws then in effect, and Force Majeure. Under no circumstance shall Landlord’s restoration work include repairs and restoration of any Tenant Work, Leasehold Improvements (including Specialized Leasehold Improvements) or Tenant’s Property. Unless this Lease is terminated as provided in this Article XI, if and to the extent that any damaged Tenant Work, Leasehold Improvements (including Specialized Leasehold Improvements) or Tenant’s Property must be removed in order for Landlord to prosecute Landlord’s restoration work or to eliminate any hazard or nuisance resulting from such damaged Tenant Work, Leasehold Improvements (including Specialized Leasehold Improvements) or Tenant’s Property then, after Landlord gives Tenant access for that purpose, Tenant shall proceed with reasonable diligence, given the nature of the work, to remove such damaged Tenant Work, Leasehold Improvements (including Specialized Leasehold Improvements) and/or Tenant’s Property in accordance with applicable Laws, subject to reasonable delays for insurance adjustments and Force Majeure, unless removal is covered by Landlord’s insurance if Landlord removes such items, in which case Landlord shall remove such items.

**Section 11.4. Tenant's Duty to Reconstruct.**

Unless this Lease is terminated as provided in this Article XI, in the event of a Casualty, Tenant shall, to the extent that insurance proceeds are available to Tenant therefor (or would have been available to Tenant had Tenant carried the insurance required to be carried pursuant to this Lease and complied with the terms thereof) restore the Tenant Work, Leasehold Improvements (including Specialized Leasehold Improvements) and Tenant's Property to substantially the same condition existing prior to the Casualty except for modifications required by zoning and building codes and other applicable Laws. Tenant shall proceed with reasonable diligence, given the nature of the work, to effect such restoration in a good and workmanlike manner and in accordance with applicable Laws, subject to Force Majeure. If this Lease is terminated as provided in this Article XI, Tenant, no later than the expiration or sooner termination of this Lease, shall remove the damaged Tenant Work and Leasehold Improvements (including Specialized Leasehold Improvements) and remove Tenant's Property, or, if Tenant so elects, or otherwise fails timely to remove such damaged Tenant Work and Leasehold Improvements, shall deliver insurance proceeds to Landlord sufficient to reimburse Landlord in full for removal of such Tenant Work and Leasehold Improvements within thirty days of invoice therefore.

**Section 11.5. Insurance Proceeds.**

In the event of any damage to the Leased Premises or the Building (or any equipment, furniture, furnishings, trade fixtures or personal property therein) from any Casualty, Landlord shall be entitled to the full proceeds of any insurance coverage carried by Landlord in connection with such loss or damage, and Tenant shall be entitled to the full proceeds of any insurance coverage carried by Tenant in connection with such loss or damage; provided, however, in the event Tenant shall exercise any right to terminate this Lease as a result of a Casualty in accordance with this Article XI, then Tenant shall have the obligation to remit to Landlord, from (and to the extent of) the proceeds of any of Tenant's insurance covering same, an amount equal to the unamortized cost of the Tenant Work Allowance (or other allowances afforded Tenant by Landlord hereunder with respect to construction of improvements to any portion of the damaged Leased Premises) if Landlord advises Tenant that Landlord intends in good faith to restore the Building to substantially the condition and substantially the same use existing prior to such loss or damage.

**Section 11.6. Landlord Not Liable For Business Interruption.**

Notwithstanding any provision in this Lease to the contrary, Landlord shall not be liable for any loss of business, inconvenience or annoyance arising from any repair, restoration or rehabilitation of any portion of the Leased Premises or the Building as a result of any damage from a Casualty; provided that the foregoing shall not be deemed to excuse or otherwise modify Landlord's continuing obligation to perform Landlord's restoration work, all as and to the extent otherwise provided in this Article XI, nor impair Tenant's right to abatement of Rent as provided herein.

**Section 11.7. Rent Abatement.**

Whether or not Landlord or Tenant elect to terminate this Lease under this Article XI, while this Lease shall remain in full force after a Casualty, Tenant shall be entitled to a reduction of Minimum Rent and Tenant's Share of Operating Costs and Taxes in proportion that the Floor Area of the Leased Premises not actually used by Tenant in good faith after the Casualty bears to the total Floor Area of the Leased Premises, during the period beginning with the date such Floor Area becomes untenable and Tenant ceases to use such Floor Area for the normal conduct of its business and ending either thirty (30) days after substantial completion of Landlord's restoration work or on the effective date of any termination, as applicable. For purposes of this Article XI, the term "Substantial Completion" shall have the same meaning as provided in **Exhibit B** with respect to substantial completion of the Landlord Work.

**Section 11.8.** Casualty Prior To Term Commencement Date.

The terms and provisions of this Article XI shall apply to any damage to the Building caused as a result of a Casualty, regardless of whether such damage occurs prior to or after the Term Commencement Date.

**Section 11.9.** Waiver.

This Article XI shall be Tenant's sole and exclusive remedy in the event of damage or destruction to the Leased Premises or the Building. As a material inducement to Landlord entering into this Lease, Tenant hereby waives any rights it may have under Sections 1932, 1933(4), 1941 or 1942 of the Civil Code of California with respect to any destruction of the Leased Premises, Landlord's obligation for tenantability of the Leased Premises and Tenant's right to make repairs and deduct the expenses of such repairs, or under any similar law, statute or ordinance now or hereafter in effect.

**ARTICLE 12**

CONDEMNATION

**Section 12.1.** Taking of Leased Premises.

A. If more than twenty-five percent (25%) of the Floor Area of the Leased Premises shall be appropriated or taken under the power of eminent domain, or conveyance shall be made in anticipation or in lieu thereof ("Taking"), either party may terminate this Lease as of the effective date of the Taking by giving Notice to the other party of such election within thirty (30) days prior to the date of such Taking.

B. If there is a Taking of a portion of the Leased Premises and this Lease is not terminated pursuant to Section 12.01.A, above, then (i) as of the effective date of the Taking, this Lease shall terminate only with respect to the portion of the Leased Premises taken; (ii) after the effective date of the Taking, the Rent shall be reduced by multiplying the same by a fraction, the numerator of which shall be the Floor Area not useable by Tenant after the Taking and the denominator of which shall be the Floor Area of the Leased Premises immediately prior to the Taking; and (iii) as soon as reasonably possible after the effective date of the Taking, Landlord shall, to the extent feasible, restore the remaining portion of the Leased Premises to a complete unit of a similar condition as existed prior to any work performed by Tenant, provided, however, Landlord shall have the right to terminate this Lease if it would be required to expend more on such alteration or restoration work than the condemnation award received and retained by Landlord for the Leased Premises.

**Section 12.2.** Taking of Building.

If there is a Taking of any portion of the Building so as to render, in Landlord's reasonable judgment, the remainder unsuitable for use as an office building, Landlord shall have the right to terminate this Lease upon thirty (30) days' Notice to Tenant. Provided Tenant is not then in Default, Tenant shall receive a proportionate refund from Landlord of any Rent paid in advance by Tenant.

**Section 12.3.** Condemnation Award.

All compensation awarded for a Taking of any part of the Leased Premises (including the Leasehold Improvements) or a Taking of any other part of the Building shall belong to Landlord. Notwithstanding the foregoing, Tenant shall have the right to collect and pursue any award as may be available for moving expenses, Tenant's Work and other Alterations, or Tenant's Property.

**Section 12.4.** Waiver of CCP § 1265.130.

Each party waives the provisions of California Civil Code Procedure Section 1265.130 allowing either party to petition the superior court to terminate this Lease as a result of a partial taking. The rights contained in this Article XII shall be Tenant's sole and exclusive remedy in the event of a Taking. Tenant waives the provisions of Sections 1265.130 and 1265.150 of the California Code of Civil Procedure and the provisions of any successor or other law of like import.

**ARTICLE 13**

## PARKING GARAGE; PARKING RIGHTS & BUILDING AMENITIES

### **Section 13.1. Parking Rights.**

Provided that Tenant, any Permitted Transferee or assignee or sublessee of Tenant approved by Landlord is leasing the entire Leased Premises, Tenant shall have the right to use the number of parking spaces on the Subterranean Parking Levels and in the Parking Garage set forth in Section 1.01(K), above, which right shall include (a) the non-exclusive right to use up to 0.8 parking spaces per 1,000 square feet of Floor Area (i.e., initially, 19 spaces) in the Tower Parking Garage; and (b) the non-exclusive right to use 2.2 parking spaces per 1,000 square feet of Floor Area (i.e., initially, 52 spaces) in the Common Parking Garage; provided, however, that Tenant acknowledges and agrees that (i) the parking spaces in the Parking Garage may be made available to the public after 5:00 p.m. Pacific Time; and (ii) Landlord shall have the right to designate up to one hundred (100) of the parking spaces in the Common Parking Garage as reserved exclusive parking for Ground Lessor and the patrons of the Winchester Mystery House (if applicable, the “**WMH Reserved Parking**”) and to ratably designate parking spaces for use by other tenants of the Building in the Tower Parking Garage and Common Parking Garage. If Tenant or any Permitted Transferee or assignee or sublessee of Tenant approved by Landlord no longer leases the entire Leased Premises originally leased hereunder, then the number of parking spaces allocated to Tenant shall be proportionately reduced based on a fraction the numerator of which is the Floor Area then leased by Tenant and the denominator of which is the Floor Area of the entire Leased Premises. Tenant acknowledges and agrees that (1) neither Tenant nor its employees, business invitees, and permitted sublessees and assignees shall park in the WMH Reserved Parking; (2) the parking spaces in the Subterranean Parking Levels and in the Parking Garage shall be used solely for the parking of passenger vehicles by Tenant and its employees, business invitees, and permitted sublessees and assignees hereunder only; (3) Tenant’s parking passes shall not be assigned or transferred separate and apart from this Lease, or any sublease or license hereunder, and upon the expiration or earlier termination of this Lease, Tenant’s parking rights (including its right to the parking passes) shall immediately terminate; (4) with the exception of the WMH Reserved Parking, if applicable, the parking spaces in the Parking Garage shall be available for use, on a non-exclusive, first come/first served basis; and (5) with the exception of the parking spaces designated for exclusive use by tenants of the Building, the parking spaces in the Tower Parking Garage shall be available for use on a non-exclusive, first come/first served basis. Landlord may reasonably regulate the access to the Tower Parking Garage and Common Parking Garage, including, without limitation, installing such equipment, including gates and card key access, as may be required to regulate access thereto, provided the cost of such gates and access control systems shall be included in Operating Costs, subject to Section 6.03.C, above. Landlord will use commercially reasonable efforts to enforce Tenant’s parking rights hereunder in a manner consistent with Landlord’s enforcement efforts throughout the balance of the Project. Tenant acknowledges and agrees that (A) those areas identified on Exhibit K attached hereto (the “**Ground Lessor Retained Property**”) are for the sole use of Ground Lessor, its affiliates and the patrons of the Winchester Mystery House; (B) neither Tenant nor its employees, business invitees, permitted sublessees or assignees shall park on the Ground Lessor Retained Property or use either side of Olsen Drive for any use other than permitted ingress or egress; and (C) Ground Lessor has the right to institute parking controls on the Ground Lessor Retained Property, including towing of offending vehicles, if Tenant or any employees, business invitees, permitted sublessees or assignees park or otherwise use the Ground Lessor Retained Property or use either side of Olsen Drive for any use other than permitted ingress or egress.

### **Section 13.2. Parking Rules and Conditions.**

Use of the Parking Garage and any other parking facilities of the Project by Tenant, its employees, business invitees, and permitted sublessees and assignees is further subject to the reasonable rules and regulations of Landlord as may be promulgated or amended by Landlord from time to time in Landlord’s reasonable discretion that are not inconsistent with the foregoing.

**Section 13.3. Use of Outdoor Terrace.** So long as Tenant, any Permitted Transferee or other assignee approved by Landlord, is leasing the entire Leased Premises, then Tenant, any such Permitted Transferee or other assignee approved by Landlord and their respective sublessees shall have the exclusive right, at sole cost and expense of each of them, to use such the exterior

outdoor terrace located on Olin Drive on Floor 1 of the Building (the “**Outdoor Terrace**”), subject to and in accordance with all applicable provisions of this Lease. To Landlord’s actual knowledge, the Outdoor Terrace meets all applicable Laws. Possession of the Outdoor Terrace shall be delivered to Tenant in its current as-is condition without any requirements of Landlord to demise or improve the Outdoor Terrace (to meet requirements of applicable Laws or for any other reason), except that Landlord shall install privacy planting along Olin Drive in a manner determined by Landlord and approved by Tenant in its reasonable discretion. Tenant shall be responsible, at Tenant’s sole cost and expense, for obtaining any and all required permits and approvals from governmental agencies and entities having jurisdiction thereof (now or in the future) relating to the use of any of the Outdoor Terrace. Subject to the forgoing, the Outdoor Terrace shall be delivered in its as-is condition. Without limiting other applicable provisions of the Lease: (a) Tenant also shall be responsible, at Tenant’s sole cost and expense, for furnishing, maintaining and replacing any and all tables, chairs and other fixtures, trade fixtures, equipment and personal property that Tenant, in its sole discretion chooses to use in connection with Tenant’s permitted use of the Outdoor Terrace, for securing same during any period of non-use and Landlord shall have no responsibility or liability therefore, or for any damage, vandalism, theft or the like with respect thereto, except for the violation of this Lease, negligence or willful misconduct of Landlord or any of its agents or contractors; and (b) Tenant’s business operations in or about the Outdoor Terrace shall be conducted in compliance with the terms of this Lease and all applicable laws; and (c) Tenant and its employees use the Outdoor Decks consistent with the Operating Standard. Tenant specifically agrees and acknowledges that the boundaries of the Outdoor Terrace as depicted on **Exhibit A-2** attached hereto must be specifically and precisely observed by Tenant so that its personal property is not placed outside of such boundaries, whether by Tenant or its invitees. In furtherance of the foregoing, Tenant agrees to take reasonable measures (including as may requested by Landlord) to enforce such boundaries including, without limitation, the placement of planters or other physical barrier along such boundaries, such barrier to be located wholly within the Outdoor Terrace.

Subject to, and without limiting the foregoing, so long as Tenant and any Permitted Transferee has the exclusive right to use the Outdoor Terrace, then Tenant shall have the right to use any of the Outdoor Terrace for special events (e.g. product launches, company events, client events, job fairs, etc.) (collectively, “**Special Event(s)**”) subject to the following: (i) all Special Events shall be conducted in accordance with all applicable laws, the terms and conditions of this Lease, and in a manner that will not unreasonably disturb or interfere with the other tenants and occupants of the Project; (ii) no Special Event shall be used for the sale, display, marketing, promotion, testing, training or other use that violates the exclusive mercantile rights of any other tenants or occupants in the Building (copies of which Landlord shall provide upon receipt of Tenant’s written request); and (iii) if the Special Event will require additional security, then Tenant shall, at its sole cost and expense, arrange for such additional security measures as reasonably determined by Tenant. Tenant shall insure Tenant’s activities related to any Special Events, shall clean (including the removal of any and all trash and refuse) the Outdoor Terrace both during such Special Event and following the completion of any such Special Event, and shall repair all damage to the Outdoor Terrace resulting from any activities related to such Special Event.

In no event shall Tenant charge any fee, admission charge or other consideration for use of the Outdoor Terrace or use the Outdoor Terrace for any commercial purpose provided, in all cases, Tenant obtains (at its cost and expense) any and all required permits, licenses and certificates for such use. Tenant shall have the right to install tables, chairs, umbrellas and other furniture to facilitate outdoor seating and the use of the Outdoor Terrace. Tenant shall also have the right to install on the Outdoor Terrace, ADA compliant access ramps and planters, landscaping, and sufficient lighting and lighting controls to provide adequate lighting for egress and evening events, and electrical power for incidental use; provided, however, any such installations shall in accordance with all applicable Laws and shall be subject to Landlord's prior written approval as may be required in accordance with the terms set forth in Section 9.03, except the prohibition regarding Alterations that are visible from the outside of the Building shall not apply to alterations and installations by Tenant to the Outdoor Terrace provided that such Alterations are consistent with the Operating Standard.



Tenant shall not place persons or property on the Outdoor Decks in excess of the authorized load permitted thereon based on the design therefor or in excess of the maximum occupancy permitted under applicable Laws; Tenant shall not use loudspeakers or other sound amplification systems or equipment on the Outdoor Terrace that may be unreasonably disturbing to other tenants or occupants of the Building or Project (provided Tenant may have speakers that may create ambient background sounds and music), or create any noise in violation of Laws.

## ARTICLE 14

### SUBORDINATION AND ATTORNMENT

#### **Section 14.1.**            Subordination.

Tenant's rights under this Lease are subordinate to (i) all present and future ground or underlying leases affecting all or any part of the Building including, without limitation, the Ground Lease, and (ii) any easement, license, mortgage, deed of trust or other security instrument now or hereafter affecting the Building (those documents referred to in (i) and (ii) above being collectively referred to as a "**Mortgage**" and the Person or Persons having the benefit of same being collectively referred to as a "**Mortgagee**"). Tenant's subordination provided in this Section 14.01 is self-operative and no further instrument of subordination shall be required; provided, however, (a) any such subordination is conditioned on the Mortgagee's agreement not to disturb Tenant in possession of the Leased Premises after a foreclosure of any Mortgage for so long as there shall be no Default under the Lease and (b) Landlord agrees to use commercially reasonable efforts to obtain a commercially reasonable subordination, non-disturbance and attornment agreement from any future Mortgagee recognizing Tenant's rights under this Lease; provided, however, that Landlord's inability to obtain such an agreement shall neither constitute a default herein or release Tenant from its obligations hereunder. Except for the Ground Lease, Landlord represents and warrants that, as of the date of this Lease, the Leased Premises is not encumbered by any Mortgage or other interest superior to that of Tenant, the termination of which could give rise to a termination of the Lease. On or before the Term Commencement Date, Landlord shall deliver to Tenant a subordination, non-disturbance, and attornment agreement in the form substantially similar to that attached hereto as Exhibit J from the lessor under the Ground Lease.

#### **Section 14.2.**            Attornment.

If any Person succeeds to all or part of Landlord's interest in the Leased Premises, whether by purchase, foreclosure, deed in lieu of foreclosure, power of sale, termination of lease or otherwise, Tenant shall, without charge, attorn to such successor-in-interest upon request from Landlord, provided such successor agrees to recognize this Lease for so long as there is no Default hereunder.

#### **Section 14.3.**            Estoppel Certificate.

Each of Landlord and Tenant, within twenty (20) days after receiving Notice from, and without charge or cost to, the other, shall certify by written instrument to the other or any other Person designated by Landlord or Tenant: (i) that this Lease is in full force and effect and unmodified (or if modified, stating the modification); (ii) the dates, if any, to which each component of the Rent due under this Lease has been paid; (iii) whether Landlord or Tenant, to the knowledge of the certifying party, has failed to perform any covenant, term or condition under this Lease, and the nature of Landlord's or Tenant's failure, if any; and (iv) such other relevant factual information as Landlord or Tenant may reasonably request.

#### **Section 14.4.**            Quiet Enjoyment.

Landlord covenants that it has full right, power and authority to enter into this Lease and that Tenant, upon performing all of Tenant's obligations under this Lease and timely paying all Rent, shall, subject to the terms of this Lease, the Ground Lease and all matters of record affecting the Leased Premises, peaceably and quietly have, hold and enjoy the Leased Premises during the Term without hindrance, ejection or molestation by any Person lawfully claiming by, through or under Landlord.

## ARTICLE 15

## ASSIGNMENT AND SUBLETTING

### **Section 15.1. Landlord's Consent Required.**

A. Tenant, shall not voluntarily or involuntarily, by operation of law or otherwise: (i) transfer, assign, mortgage, encumber, pledge, hypothecate, or assign all or any of its interest in this Lease; or (ii) sublet or permit the Leased Premises, or any part thereof, to be used by others, including, but not limited to, concessionaires or licensees; (iii) except in the case of a Permitted Transfer (as defined in Section 15.03 below), issue new stock (or partnership shares or membership interests), create additional classes of stock (or partnership shares or membership interests), or sell, assign, hypothecate or otherwise transfer the outstanding voting stock (or partnership shares or membership interests) so as to result in a transfer of more than fifty-one percent (51%) of the equity or other ownership interests of original named Tenant hereunder or any Permitted Transferee (each, a “**Change of Control**”), provided, however, that this subsection (iii) shall not be applicable to Tenant if it is a publicly owned corporation whose outstanding voting stock is listed on a national securities exchange (as defined in the Securities Exchange Act of 1934, as amended) or is traded actively in the over-the-counter market, without the prior consent of Landlord, in each instance, which consent Landlord may not unreasonably withhold, condition, or delay, which reasonableness is subject to the provisions set forth in Section 15.01.D and subject to Section 15.03, below. All of the foregoing transactions shall be referred to collectively or singularly as a “**Transfer**”, and the Person to whom Tenant's interest is transferred shall be referred to as a “**Transferee**”.

B. Any Transfer requiring consent hereunder and made without Landlord's consent shall not be binding upon Landlord, shall confer no rights upon any third Person, and shall, subject to Notice and the expiration of any applicable grace period of any kind, constitute a Default by Tenant under this Lease. Acceptance by Landlord of Rent following any Transfer shall not be deemed to be a consent by Landlord to any such Transfer, acceptance of the Transferee as a tenant, release of Tenant from the performance of any covenants herein, or waiver by Landlord of any remedy of Landlord under this Lease, although amounts received shall be credited by Landlord against Tenant's Rent obligations. Consent by Landlord to any one Transfer shall not be a waiver of the requirement for consent to any other Transfer. No reference in this Lease to assignees, concessionaires, subtenants or licensees shall be deemed to be a consent by Landlord to occupancy of the Leased Premises by any such assignee, concessionaire, subtenant or licensee.

C. Landlord's consent to any Transfer shall not operate as a waiver of, or release of Tenant from, Tenant's covenants and obligations hereunder; nor shall the collection or acceptance of Rent or other performance from any Transferee have such effect. Rather, Tenant shall remain fully and primarily liable and obligated under this Lease for the entire Term in the event of any Transfer, and in the event of a Default by the Transferee, Landlord shall be free to pursue Tenant, the Transferee, or both, without prior Notice or demand to either.

D. Landlord reserves the right to withhold its consent to a Transfer if any of the following conditions are applicable and it shall be deemed reasonable for Landlord to deny such consent if any of the following conditions are applicable:

(i) Tenant is in Default of this Lease; or

(ii) The Net Worth (as defined below) of the Transferee immediately prior to the Transfer is insufficient to fulfill the financial obligations arising under the Lease or the relevant sublease, as reasonably determined by Landlord, based on financial information provided by Tenant;

(iii) The inability of Transferee to continue to operate the business conducted in the Leased Premises for general office purposes or the other purposes permitted in this Lease;

(iv) Transferee is an existing tenant in the Project and Landlord has sufficient available space in the Building not subject to Lease to satisfy such proposed subtenant's space requirements; or

(v) The Transferee would be any of the following parties (A) Ernst & Young LLP, (B) Deloitte and Touche LLP, (C) KPMG LLP, (D) BDO Seidman LLP, (E) Grant Thornton LLP, (F) Accenture, (G) McKinsey & Company, (H) Boston Consulting Group (BCG),

(I) Bain & Company, (J) Baker Tilly, (K) Schneider Downs, and (L) Moss Adams, or any entity resulting from a merger or consolidation of any of the forgoing entities or any entity primarily engaged in the delivery of “top-tier” accounting, tax, advisory or related business consulting services.

E. Notwithstanding the foregoing, the following conditions shall apply to any proposed Transfer:

(i) Each and every covenant, condition, or obligation imposed upon Tenant by this Lease and each and every right, remedy, or benefit afforded Landlord by this Lease shall not be impaired or diminished as a result of such Transfer.

(ii) The Tenant to which the Leased Premises were initially leased shall continue to remain liable under this Lease for the performances of all terms, including, but not limited to, payment of Rent due under this Lease.

(iii) The Transferee (if an assignee) must expressly assume in a written instrument delivered and reasonably acceptable by Landlord all the obligations of Tenant under the Lease and (if an assignee or sublessee) must execute Landlord’s commercially reasonable consent document.

(iv) Landlord shall furnish the appropriate documentation in connection with any such Transfer and be entitled to a reasonable administrative fee therefor, as set forth in Section 17.03.

(v) At the time Tenant requests approval of the Transfer, Landlord shall receive the following information in connection with such Transfer: the name of the proposed Transferee, a copy of the financial statement of the proposed Transferee and any guarantor, information regarding the proposed Transferee’s business history and experience and the proposed Transferee’s business plan and projections for the Leased Premises.

(vi) If Landlord consents to a Transfer, as a condition thereto, Tenant shall pay to Landlord monthly, as Additional Rent, at the same time as the monthly installments of Rent are payable hereunder, fifty percent (50%) of any Transfer Premium. The term “**Transfer Premium**” shall mean all rent, additional rent and other consideration paid by such Transferee which either initially or over the term of the Transfer exceeds the Rent or pro rata portion of the Rent, as the case may be, for the applicable space in the case of a subletting, or any amount allocated in writing to the value of the leasehold in the Building, in the case of an assignment, and (a) the actual third party brokers’ commissions paid by Tenant, (b) reasonable attorneys’ fees incurred by Tenant to effect such Transfer, and (c) reasonable tenant improvement costs and rent abatements incurred by Tenant to effect such Transfer (which for avoidance of doubt shall not include any Tenant Work nor Alterations). “Transfer Premium” shall also include, but not be limited to, key money and bonus money paid by Transferee to Tenant in connection with such Transfer. Notwithstanding anything herein to the contrary, this Section 15.01.E(vi) shall not apply to, and no Transfer Premium shall be payable in connection with, any Permitted Transfer (as defined below).

(vii) In the case of a subletting of less than all of the Leased Premises, Tenant, at its sole cost and expense, shall be solely responsible for constructing any and all necessary demising improvements (collectively, the “**Demising Improvements**”); provided, however, that (A) such Demising Improvements shall be constructed in accordance with this Lease, and (B) notwithstanding anything to the contrary contained herein, Tenant shall remove the Demising Improvements and restore the Leased Premises to condition in which it existed prior to the construction thereof upon the earlier of the termination or expiration of the sublease of the Term.

Landlord shall approve or disapprove of such proposed Transfer within fifteen (15) Business Days following receipt of Tenant’s Notice of its intent to Transfer the Lease together with the required information set forth above.

#### Section XV.02. Tenant Remedies.

Notwithstanding anything to the contrary in this Lease, if Tenant claims that Landlord has unreasonably withheld, conditioned, or delayed its consent under this Article XV or otherwise has breached or acted unreasonably under this Article XV, Tenant’s sole remedies shall be declaratory judgment and an injunction for the relief sought, or an action for compensatory monetary damages, and Tenant hereby waives all other remedies, including,

without limitation, any right provided under California Civil Code Section 1995.310 or other applicable Laws to terminate this Lease.

**Section 15.2.** Intentionally Omitted.

**Section 15.3.** Landlord Consent Not Required.

Notwithstanding anything to the contrary contained in this Article XV, as long as no Default by Tenant has then occurred and is continuing, Tenant may (A) undergo a Change of Control, or (B) assign this Lease or sublet any portion of the Leased Premises (hereinafter collectively referred to as a “**Permitted Transfer**”) to (i) an affiliate of Tenant (an entity which is controlled by, controls, or is under common control with, Tenant), (ii) any successor entity to Tenant by way of merger, consolidation or other non-bankruptcy corporate reorganization, (iii) an entity which acquires all or substantially all of Tenant’s assets or stock, or (iv) any entity resulting from a spin-off or roll-up of any former, current and/or future division or group of Tenant (collectively, “**Permitted Transferees**,” and, individually, a “**Permitted Transferee**”); provided that (a) at least ten (10) Business Days prior to the Transfer (or three (3) Business Days after the Transfer if prior notice of such Transfer is prevented by applicable Laws or confidentiality restrictions), Tenant notifies Landlord of such Transfer, and supplies Landlord with any documents or information reasonably requested by Landlord regarding such Transfer or Permitted Transferee, including, but not limited to, copies of any sublease or instrument of assignment and copies of documents establishing to the reasonable satisfaction of Landlord that the transaction in question is one permitted under this Section 15.03; (b) if the transaction is an assignment, or acquisition of all or substantially all of the assets of Tenant, promptly after the Permitted Transfer, Tenant furnishes Landlord with a written document executed by the proposed Permitted Transferee in which, in the case of an assignment, such entity assumes all of Tenant’s obligations under this Lease thereafter to be performed, and, in the case of a sublease, such entity agrees to sublease the applicable space subject to this Lease; (c) in the case of an assignment pursuant to clauses (A) or (B)(ii), (iii) or (iv) above, if Tenant ceases to exist, the successor entity must have a net worth (computed in accordance with generally accepted accounting principles, except that intangible assets such as goodwill, patents, copyrights, and trademarks shall be excluded in the calculation (“**Net Worth**”)) at the time of the Transfer of no less than the lesser of (i) One Hundred Fifty Million Dollars (\$150,000,000.00), and (ii) the Net Worth of Tenant immediately prior to the Transfer (the “**Net Worth Requirement**”); (d) any such proposed Transfer is not, whether in a single transaction or in a series of transactions, entered into as a subterfuge to evade the obligations and restrictions relating to Transfers set forth in this Article 15; and (e) the Tenant to which the Leased Premises were initially leased shall continue to remain liable under this Lease for the performances of all terms, including, but not limited to, payment of Rent due under this Lease. “**Control**,” as used in this Section 15.03, shall mean the ownership, directly or indirectly, of at least fifty-one percent (51%) of the voting securities of, or possession of the right to vote, in the ordinary direction of its affairs, of at least fifty-one percent (51%) of the voting interest in, any person or entity.

**ARTICLE 16**

DEFAULT AND REMEDIES

**Section 16.1.** Default.

Each of the following events shall constitute a default (“**Default**”) by Tenant under this Lease: (i) Tenant’s failure to pay, or make available as required by this Lease, any Rent (including, without limitation, the Prepaid Minimum Rent and Security Deposit) by the date such Rent is due; (ii) if Tenant breaches or fails to observe or perform any term, condition or covenant of this Lease, other than those involving the payment of Rent or the timely delivery by Tenant of an estoppel certificate, documents in connection with a Transfer or insurance certificates, and such breach or failure is not cured within thirty (30) days after Tenant’s receipt of Notice thereof, unless such condition cannot reasonably be cured within such thirty (30) days, in which case Tenant must commence such cure within said thirty (30) days and diligently pursue said cure to its completion (provided, however, if such breach or failure creates a hazard, public nuisance or dangerous situation, said thirty (30) day grace period shall be reduced to forty-eight (48) hours after Tenant’s receipt of Notice); (iii) Tenant’s failure to timely deliver an estoppel certificate, a document in connection with a Transfer or any insurance certificate and such failure continues

for five (5) Business Days after Tenant's receipt of Notice thereof; or (iv) if Tenant fails to carry and maintain the insurance required by this Lease and such failure continues for five (5) Business Days after Tenant's receipt of Notice thereof. Notwithstanding anything to the contrary contained herein, if the Default can be cured by the payment of money, Tenant shall, except as hereinafter provided, have five (5) Business Days after Notice from Landlord to cure the Default.

**Section 16.2. Remedies and Damages.**

A. If a Default described in Section 16.01, above, occurs, Landlord shall have all the rights and remedies provided in this Section 16.02, in addition to all other rights and remedies available under this Lease or provided at law or in equity.

B. Landlord may, upon Notice to Tenant, terminate this Lease. If this Lease and Tenant's right to possession under this Lease are at any time terminated under this Section 16.02 or otherwise, Tenant shall immediately surrender and deliver the Leased Premises peaceably to Landlord. If Tenant fails to do so, Landlord shall be entitled to re-enter, without process and without Notice (any Notice to quit or of re-entry being hereby expressly waived), using such force as may be necessary, and, alternatively, Landlord shall have the benefit of all provisions of law respecting the speedy recovery of possession of the Leased Premises (whether by summary proceedings or otherwise).

C. Landlord may also perform, on behalf and at the expense of Tenant, any obligation of Tenant under this Lease which Tenant fails to perform, the cost of which (together with an administrative fee of ten percent (10%) to cover Landlord's overhead in connection therewith) shall be paid by Tenant to Landlord within five (5) Business Days after demand therefor. In performing any obligations of Tenant, Landlord shall incur no liability for any loss or damage that may accrue to Tenant, the Leased Premises or Tenant's Property by reason thereof, except if caused by Landlord's willful and malicious act. The performance by Landlord of any such obligation shall not constitute a release or waiver of any of Tenant's obligations under this Lease.

D. Upon termination of this Lease and of Tenant's right to possession under this Lease, Landlord may at any time and from time to time relet all or any part of the Leased Premises for the account of Tenant or otherwise, at such rentals and upon such terms and conditions as Landlord shall deem appropriate. Landlord shall receive and collect the rents therefor, applying the same first to the payment of such expenses as Landlord may incur in recovering possession of the Leased Premises, including legal expenses and attorneys' fees, in placing the Leased Premises in good order and condition and in preparing or altering the same for re-rental; second, to the payment of such expenses, commissions and charges as may be incurred by or on behalf of Landlord in connection with the reletting of the Leased Premises; and third, to the fulfillment of the covenants of Tenant under this Lease, including the various covenants to pay Rent. Any such reletting may be for such term(s) as Landlord elects. Thereafter, Tenant shall pay Landlord until the end of the Term of this Lease the equivalent of the amount of all the Rent and all other sums required to be paid by Tenant, less the net avails of such reletting, if any, on the dates such Rent and other sums above specified are due. In any event, Landlord shall not be liable for, nor shall Tenant's obligations hereunder be diminished by reason of, any failure by Landlord to relet the Leased Premises or any failure by Landlord to collect any sums due upon such reletting.

E. In addition to all other remedies provided in this Lease and at law, if there occurs a Default by Tenant, in addition to any other remedies available to Landlord at law or in equity, Landlord may terminate this Lease and all rights of Tenant hereunder by Notice to Tenant, in which event Tenant shall immediately surrender the Leased Premises to Landlord. In the event that Landlord shall elect to so terminate this Lease, then Landlord may recover from Tenant:

(i) The worth at the time of award of any unpaid rent which had been earned at the time of such termination; plus

(ii) The worth at the time of award of the amount by which the unpaid rent which would have been earned after termination until the time of award exceeds the amount of such rental loss that Tenant proves could have been reasonably avoided; plus

(iii) The worth at the time of award of the amount by which the unpaid rent for the balance of the Lease Term after the time of award exceeds the amount of such rental loss that Tenant proves could have been reasonably avoided; plus

(iv) Any other amount necessary to compensate Landlord for all the detriment proximately caused by Tenant's failure to perform its obligations under this Lease or which in the ordinary course of events would likely result therefrom, specifically including, but not limited to, brokerage commissions and advertising expenses incurred (to the extent allocable to the remaining Term), expenses of remodeling the Leased Premises or any portion thereof for a new tenant, whether for the same or a different use, and any special concessions made to obtain a new tenant, and the unamortized balance of such reimbursements paid by Landlord to Tenant pursuant to Section 17.31 below; and

(v) At Landlord's election, such other amounts in addition to or in lieu of the foregoing as may be permitted from time to time by applicable law.

As used in subsections (i) and (ii) above, the "worth at the time of award" is computed by allowing interest at the Interest Rate. As used in subsection (iii) above, the "worth at the time of award" is computed by discounting such amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of award plus one percent (1%).

Efforts by Landlord to mitigate damages caused by Tenant's Default or breach of this Lease shall not waive Landlord's right to recover damages under this Section. If termination of this Lease is obtained through an unlawful detainer action, Landlord shall have the right to recover in such proceeding the unpaid rent and damages as are recoverable thereon, or Landlord may reserve the right to recover all or any part thereof in a separate suit for such rent and/or damages.

F. At Landlord's option and in addition to all other remedies provided in this Lease and at law, if there occurs a Default, Landlord may elect to continue this Lease and Tenant's right to possession in effect under California Civil Code Section 1951.4 after Tenant's breach or Default and recover the rent as it becomes due. Landlord and Tenant agree that the limitations on assignment and subletting set forth in Article XV in this Lease are reasonable. Acts of maintenance or preservation, efforts to relet the Leased Premises or the appointment of a receiver to protect Landlord's interest under this Lease, shall not constitute a termination of Tenant's right to possession.

**Section 16.3. Remedies Cumulative.**

No reference to any specific right or remedy in this Lease shall preclude Landlord from exercising any other right, from having any other remedy, or from maintaining any action to which it may otherwise be entitled under this Lease, at law or in equity.

**Section 16.4. Waiver.**

A. Landlord shall not be deemed to have waived any provision of this Lease, or the breach of any such provision, unless specifically waived by Landlord in a writing executed by an authorized officer of Landlord. No waiver of a breach shall be deemed to be a waiver of any subsequent breach of the same provision, or of the provision itself, or of any other provision.

B. Tenant hereby expressly waives any and all rights of redemption and any and all rights to relief from forfeiture which would otherwise be granted or available to Tenant under any present or future statutes, rules or case law.

C. If Landlord fails to perform any of its obligations under this Lease and (except in case of emergency posing an immediate threat to persons or property, in which case no prior notice shall be required) fails to cure such default within thirty (30) days after written notice from Tenant specifying the nature of such default where such default could reasonably be cured within said thirty (30) day period, or fails to commence such cure within said thirty (30) day period and thereafter continuously with due diligence prosecute such cure to completion where such default could not reasonably be cured within said thirty (30) day period, then Tenant may deliver written notice to Landlord of Tenant's intent to cure such default, and if Landlord fails to complete such cure within ten (10) Business Days of such additional written notice, then Tenant

may cure such default and Landlord shall reimburse Tenant for out-of-pocket third party costs incurred by Tenant in completing such cure within thirty (30) days of Tenant's delivery of invoice therefore (which shall include reasonable evidence of such costs so incurred), and if Landlord fails timely to reimburse such amount, then Tenant may offset such amounts due an owing against monthly payments of Minimum Rent as such become due and payable until reimbursed in full, provided that Tenant shall not offset more than fifty percent (50%) of any such individual monthly Minimum Rent payment. Notwithstanding anything to the contrary contained in this Lease, Tenant waives the right to make repairs at Landlord's expense under Sections 1941 and 1942 of the California Civil Code and all other Laws now or hereafter in effect. Furthermore, Tenant hereby waives the provisions of California Civil Code Sections 1932(2) and 1933(4) and the provisions of any successor or other law of like import.

## **ARTICLE 17**

### **MISCELLANEOUS PROVISIONS**

#### **Section 17.1.           Notices.**

A. Whenever any demand, request, approval, consent or Notice (singularly and collectively, "**Notice**") shall or may be given by one party to the other, such Notice shall be in writing and addressed to the parties at their respective addresses as set forth in Section 1.01.J, above, and served by (i) hand, (ii) a nationally recognized overnight express courier, or (iii) registered or certified mail return receipt requested. The date the Notice is received shall be the date of service of Notice. If an addressee refuses to accept delivery, however, then Notice shall be deemed to have been served on either (i) the date hand delivery is refused, (ii) the next business day after the Notice was sent in the case of attempted delivery by overnight courier, or (iii) five (5) Business Days after mailing the Notice in the case of registered or certified mail. Either party may, at any time, change its Notice address by giving the other party Notice, in accordance with the above, stating the change and setting forth the new address.

B. If any Mortgagee shall notify Tenant that it is the holder of a Mortgage affecting the Leased Premises, no Notice thereafter sent by Tenant to Landlord exercising its remedies hereunder shall be effective unless and until a copy of the same shall also be sent to such Mortgagee, in the manner prescribed in this Section 17.01, to the address as such Mortgagee shall designate.

#### **Section 17.2.           Recording.**

Neither this Lease nor a memorandum thereof shall be recorded without the prior written consent of Landlord.

#### **Section 17.3.           Interest and Administrative Costs.**

A. If (i) Tenant fails to make any payment under this Lease when due, or (ii) Landlord incurs any costs or expenses in performing any obligation of Tenant or as a result of Tenant's Default under this Lease, then Tenant shall pay, within five (5) Business Days after demand, such costs and/or expenses plus Interest from the date such payment was due or from the date Landlord incurs such costs or expenses relating to the performance of any such obligation or Tenant's Default.

B. If (i) Landlord fails to make any payment under this Lease when due, or (ii) Tenant incurs any costs or expenses in performing any obligation of Landlord or as a result of Landlord's Default under this Lease, then Landlord shall pay, within five (5) Business Days after demand, such costs and/or expenses plus Interest from the date such payment was due or from the date Tenant incurs such costs or expenses relating to the performance of any such obligation or Landlord's Default.

C. If Tenant requests that Landlord review and/or execute any documents in connection with any Transfer, Tenant shall pay to Landlord, upon demand, as an administrative fee for the review and/or execution thereof, all actual out-of-pocket costs and expenses, including reasonable attorney's fees incurred by Landlord and/or Landlord's agent, not to exceed \$3,000 in the aggregate, per request.

**Section 17.4.**            Legal Expenses.

If Landlord or Tenant institutes any suit against the other in connection with the enforcement of their respective rights under this Lease, the violation of any term of this Lease, the declaration of their rights hereunder, or the protection of Landlord's or Tenant's interests under this Lease, the non-prevailing party shall reimburse the prevailing party for its reasonable expenses incurred as a result thereof including court costs and attorneys' fees within five (5) Business Days after demand therefor. Notwithstanding the foregoing, if Landlord files any legal action for collection of Rent or any eviction proceedings, whether summary or otherwise, for the non-payment of Rent, and Tenant pays such Rent prior to the rendering of any judgment, the Landlord shall be entitled to collect, and Tenant shall pay, all court filing fees and the reasonable fees of Landlord's attorneys. Notwithstanding the entry of any judgment related to this Lease, this Section 17.04 shall not be merged with such judgment, but shall survive the entry of such judgment and shall continue to be binding and conclusive on the parties for all time. Post-judgment attorneys' fees and costs related to the enforcement of any such judgment shall be recoverable in the same or a separate action.

**Section 17.5.**            Successors and Assigns.

This Lease and the covenants and conditions herein contained shall inure to the benefit of and be binding upon Landlord and Tenant, and their respective permitted successors and assigns. Upon any sale or other transfer by Landlord of its interest in the Leased Premises, Landlord shall be relieved of any obligations under this Lease occurring subsequent to such sale or other transfer, to the extent the same are assumed by the transferee.

**Section 17.6.**            Limitation on Right of Recovery Against Landlord; Transfer of Landlord's Interest.

No shareholder, member, trustee, partner, director, officer, employee, representative or agent of Landlord shall be personally liable in respect of any covenant, condition or provision of this Lease. If Landlord breaches or defaults in any of its obligations in this Lease, Tenant shall look solely to the amount of the equity of the Landlord in the Building and any sale and insurance proceeds arising therefrom for satisfaction of Tenant's remedies. Further, Tenant acknowledges that Landlord has the right to transfer all or any portion of its interest in the Leased Premises, Building and/or this Lease. Tenant expressly agrees that in the event of any such transfer, Landlord shall automatically be released from all liability under this Lease arising after the date of any such transfer and Tenant agrees to look solely to such transferee for the performance of Landlord's obligations hereunder after the date of such transfer, except as provided in Section 17.07, below. Any transferee shall agree to perform Landlord's obligations hereunder arising or accruing after the date of such transfer, including, without limitation, the right to a return of the Security Deposit. A ground lease or similar long term lease by Landlord of the entire Building, of which the Leased Premises are a part, shall be deemed a sale within the meaning of this Section 17.06. Tenant agrees to attorn to such new owner provided such new owner does not disturb Tenant's use, occupancy or quiet enjoyment of the Leased Premises so long as Tenant is not in Default of this Lease. In no event shall Landlord or Tenant be responsible for consequential damages (e.g., lost profits, provided that the foregoing shall not limit Landlord remedies pursuant to Civil Code Section 1951.2 as set forth in Section 15.02.E above), punitive damages or any damages other than direct, actual and compensatory damages incurred by Landlord or Tenant.

**Section 17.7.**            Security Deposit; Letter of Credit.

A.     Security Deposit. Unless Tenant elects to deliver a Letter of Credit pursuant to Section 17.07.B, below, contemporaneously with Tenant's execution and delivery of this Lease, Tenant shall deposit with Landlord, for Landlord's general account, the Security Deposit set forth in Section 1.01.H hereof as security for the performance of each and every term, covenant, agreement and condition of this Lease to be performed by Tenant. Following a Default, Landlord may use, apply on Tenant's behalf or retain (without liability for interest) during the Term all or any part of the Security Deposit to the extent required for the payment of any Rent which may be owed hereunder which is not paid when due, or for any sum which Landlord may expend to cure any Default of Tenant. In this regard, Tenant hereby waives any restriction on the uses to which the Security Deposit may be applied as contained in Section 1950.71 of the California Civil Code and/or any successor statute. After each application from the Security



Deposit, Tenant shall, within five (5) Business Days after of Notice from Landlord, restore said deposit to the amount set forth in Section 1.01.H hereof. The use, application or retention of the Security Deposit by Landlord shall not be deemed a limitation on Landlord's recovery in any case, or a waiver by Landlord of any Default, nor shall it prevent Landlord from exercising any other right or remedy for a Default by Tenant. Landlord shall not be deemed a trustee of the Security Deposit. Landlord may use the Security Deposit in Landlord's ordinary business and shall not be required to segregate it from Landlord's general accounts. Tenant shall not be entitled to any interest on the Security Deposit. If Landlord transfers the Building during the Term, Landlord may pay the Security Deposit to any subsequent owner in conformity with the provisions of Section 1950.7 of the California Civil Code and/or any successor statute, in which event the transferring landlord shall be released from all liability for the return of the Security Deposit. Tenant specifically grants to Landlord (and Tenant hereby waives the provisions of California Civil Code Section 1950.7 to the contrary) a period of thirty (30) days following the later of (i) the Termination Date, and (ii) when Tenant surrenders possession of the Leased Premises to Landlord in accordance with the terms of this Lease within which to inspect the Leased Premises, make required restorations and repairs, receive and verify workmen's billings therefor, and prepare a final accounting with respect to the Security Deposit and return any unused portion. In no event shall the Security Deposit or any portion thereof, be considered prepaid rent.

B. Letter of Credit.

1. In lieu of a Security Deposit, Tenant shall have the right to deliver to Landlord, as protection for the full and faithful performance by Tenant of all of its obligations under this Lease and for all losses and damages Landlord may suffer (or that Landlord reasonably estimates it may suffer) as a result of any breach or default by Tenant under this Lease, an irrevocable and unconditional negotiable standby Letter of Credit ("**Letter of Credit**"), in the form attached to this Lease as Exhibit I and containing the terms required in this provision, payable via facsimile or in the cities of Washington, D.C. or San Jose, California, running in favor of Landlord and issued by a solvent, nationally recognized bank with a rating of (i) "A" or better by Moody's Investors Service, (ii) "A-" or better by Standard & Poor's Rating Service, or its successor; or (iii) "A-" or better by Fitch Ratings, in the amount of the Eight Hundred Sixty-Six Thousand Eight Hundred Thirty-Four and 40/100ths Dollars (\$866,834.40) ("**Letter of Credit Amount**"). Tenant shall deliver the Letter of Credit to Landlord no later than five (5) Business Days after the mutual execution and delivery of this Lease. Tenant shall pay all expenses, points, or fees incurred by Tenant in obtaining the Letter of Credit. The Letter of Credit shall (1) be "callable" at sight, irrevocable, and unconditional; (2) be maintained in effect, whether through renewal or extension, for the period from the Lease Commencement Date and continuing until the date ("**Letter of Credit Expiration Date**") that is thirty (30) days after the expiration of the Term, and Tenant shall deliver a new Letter of Credit or certificate of renewal or extension to Landlord at least thirty (30) days before the expiration of the Letter of Credit then held by Landlord, without any action whatsoever on the part of Landlord; (3) be fully assignable by Landlord, its successors, and assigns; (4) permit partial draws and multiple presentations and drawings; (5) be honored by the bank issuing the same ("**Issuing Bank**") regardless of whether Tenant disputes Landlord's right to draw on the Letter of Credit; and (6) be otherwise subject to Uniform Customs and Practice for Documentary Credits, International Chamber of Commerce Publication No. 600 (UCP600) or International Standby Practices-ISP98, International Chamber of Commerce Publication No. 590 (1998). In addition, the form and terms of the Letter of Credit and the Issuing Bank shall be acceptable to Landlord, in Landlord's reasonable discretion. Notwithstanding anything to the contrary herein, Landlord hereby approves MUFJ as the Issuing Bank. Landlord, or its then managing agent, shall have the right to draw down an amount up to the face amount of the Letter of Credit if any of the following shall have occurred or be applicable: (1) a Default has occurred and such amount is due to Landlord under the terms and conditions of this Lease; (2) Tenant has filed a voluntary petition under any chapter of the U.S. Bankruptcy Code or any similar state law (collectively, "**Bankruptcy Code**"); (3) Tenant has assigned any or all of its assets to creditors in accordance with any federal or state Laws; (4) an involuntary petition has been filed against Tenant under any chapter of the Bankruptcy Code; or (5) the Issuing Bank has notified Landlord that the Letter of Credit will not be renewed or extended through the Letter of Credit Expiration Date and a replacement Letter of Credit has not been provided as required hereunder.

2. The Letter of Credit shall also provide that Landlord, its successors, and assigns, may, at any time and without notice to Tenant and without first obtaining Tenant's consent, transfer (one or more times) all or any portion of its interest in and to the Letter of Credit to another party, person, or entity, regardless of whether such transfer is separate from or a part of the assignment by Landlord of its rights and interests in and to this Lease. In the event of a transfer of Landlord's interest in the Leased Premises, Landlord shall transfer the Letter of Credit, in whole or in part, to the transferee and Landlord shall then, without any further agreement between the parties, be released by Tenant from all liability therefor, and it is agreed that the provisions of this Article shall apply to every transfer or assignment of the whole or any portion of the Letter of Credit to a new landlord. In connection with any such transfer of the Letter of Credit by Landlord, Tenant shall, at Tenant's sole cost and expense, execute and submit to the Issuing Bank such applications, documents, and instruments as may be necessary to effectuate such transfer, and Tenant shall be responsible for paying the Issuing Bank's transfer and processing fees in connection with any such transfer.

3. If, as a result of Landlord drawing on the Letter of Credit, the amount of the Letter of Credit shall be less than the Letter of Credit Amount, Tenant shall, within five (5) Business Days after the drawdown by Landlord, provide Landlord with additional letter(s) of credit or cash in an amount equal to the deficiency, and any such additional letter(s) of credit shall comply with all of the provisions of this Section 17.07.B. If Tenant fails to comply with this requirement, despite anything to the contrary contained in this Lease, the same shall constitute a default by Tenant.

4. Tenant covenants and warrants that it will neither assign nor encumber the Letter of Credit or any part of it and that neither Landlord nor its successors or assigns will be bound by any such assignment, encumbrance, attempted assignment, or attempted encumbrance. Without limiting the generality of the foregoing, if the Letter of Credit expires earlier than the Letter of Credit Expiration Date, Landlord will accept a renewal of the letter of credit (such renewal letter of credit to be in effect and delivered to Landlord, as applicable, not later than thirty (30) days before the expiration of the Letter of Credit), which shall be irrevocable and automatically renewable as required in Section 17.07.B.1 above through the Letter of Credit Expiration Date on the same terms as the expiring Letter of Credit or such other terms as may be acceptable to Landlord in its reasonable discretion. However, if the Letter of Credit is not timely renewed, or if Tenant fails to maintain the Letter of Credit in the amount and in accordance with the terms set forth above, Landlord shall have the right to present the Letter of Credit to the Issuing Bank in accordance with the terms hereof, and the proceeds of the Letter of Credit may be applied by Landlord pursuant to Section 17.07.A, above. Any unused proceeds shall constitute the property of Landlord and need not be segregated from Landlord's other assets. Landlord agrees to pay to Tenant on or before the Letter of Credit Expiration Date the amount of any proceeds of the Letter of Credit received by Landlord and not (1) applied against any Rent payable by Tenant under this Lease that was not paid when due or (2) used to pay for any losses and damages suffered by Landlord (or reasonably estimated by Landlord that it will suffer) as a result of any breach or default by Tenant under this Lease; provided, however, that if before the Letter of Credit Expiration Date a voluntary petition under the Bankruptcy Code is filed by Tenant, or an involuntary petition is filed against Tenant by any of Tenant's creditors, then Landlord shall not be obligated to make such payment in the amount of the unused Letter of Credit proceeds until either (x) all preference issues relating to payments under this Lease have been resolved in such bankruptcy or reorganization case or (y) such bankruptcy or reorganization case has been dismissed.

5. Tenant acknowledges and agrees that Landlord is entering into this Lease in material reliance on the ability of Landlord to draw on the Letter of Credit on the occurrence of any breach or default on the part of Tenant under this Lease. If Tenant shall Default under this Lease, Landlord may, but without obligation to do so, and without additional notice to Tenant, draw on the Letter of Credit, in part or in whole, to cure any breach or default of Tenant and to compensate Landlord for any and all damages of any kind or nature sustained or which Landlord reasonably estimates that it will sustain resulting from Tenant's breach or default, including any damages that accrue upon termination of the Lease under the Lease and/or California Civil Code §1951.2 or any similar provision. Landlord's use, application, or retention of any proceeds of the Letter of Credit, or any portion of it, shall not prevent Landlord from

exercising any other right or remedy provided by this Lease or by any applicable law, it being intended that Landlord shall not first be required to proceed against the Letter of Credit, and shall not operate as a limitation on any recovery to which Landlord may otherwise be entitled. Tenant agrees not to interfere in any way with payment to Landlord of the proceeds of the Letter of Credit, either before or following a draw by Landlord of any portion of the Letter of Credit, regardless of whether any dispute exists between Tenant and Landlord as to Landlord's right to draw on the Letter of Credit. No condition or term of this Lease shall be deemed to render the Letter of Credit conditional to justify the issuer of the Letter of Credit in failing to honor a draw on such Letter of Credit in a timely manner. Tenant agrees and acknowledges that (1) the Letter of Credit constitutes a separate and independent contract between Landlord and the Issuing Bank; (2) Tenant is not a third party beneficiary of such contract; (3) Tenant has no property interest whatsoever in the Letter of Credit or the proceeds of it; and (4) if Tenant becomes a debtor under any chapter of the Bankruptcy Code, neither Tenant, any trustee, nor Tenant's bankruptcy estate shall have any right to restrict or limit Landlord's claim or rights to the Letter of Credit or the proceeds of it by application of 11 USC §502(b)(6) or otherwise.

6. Tenant may, from time to time, replace any existing Letter of Credit with a new Letter of Credit if the new Letter of Credit: (1) becomes effective at least thirty (30) days before expiration of the Letter of Credit that it replaces; (2) is in the required Letter of Credit amount; (3) is issued by a Letter of Credit bank reasonably acceptable to Landlord; and (4) otherwise complies with the requirements of this Section 17.07.B.

7. Landlord and Tenant acknowledge and agree that in no event or circumstance shall the Letter of Credit or any renewal or proceeds of it be (1) deemed to be or treated as a "security deposit" within the meaning of California Civil Code §1950.7, (2) subject to the terms of §1950.7, (3) intended to serve as a "security deposit" within the meaning of §1950.7, or (4) limit Landlord's remedies hereunder. Landlord and Tenant (x) confirm that the Letter of Credit is not intended to serve as a security deposit and §1950.7 and any and all other Laws applicable to security deposits in the commercial context ("**Security Deposit Laws**") shall have no applicability or relevancy to the Letter of Credit and (y) waive any and all rights, duties, and obligations either party may now or in the future have relating to or arising from the Security Deposit Laws.

8. Notwithstanding the foregoing or anything to the contrary contained herein, if at any time during the Term, Landlord determines that (i) the Issuing Bank is closed for any reason, whether by the Federal Deposit Insurance Corporation ("**FDIC**"), by any other governmental authority, or otherwise, or (ii) the Issuing Bank fails to meet any of the following three ratings standards as to its unsecured and senior, long-term debt obligations (not supported by third party credit enhancement): (a) "A" or better by Moody's Investors Service, or its successor, (b) "A-" or better by Standard & Poor's Rating Service, or its successor; or (c) "A-" or better by Fitch Ratings, or its successor, or (c) the Issuing Bank is no longer considered to be well capitalized under the "Prompt Corrective Action" rules of the FDIC (as disclosed by the Issuing Bank's Report of Condition and Income (commonly known as the "**Call Report**") or otherwise), or (d) the Issuing Bank has been placed into receivership by the FDIC, or has entered into any other form of regulatory or governmental receivership, conservatorship or other similar regulatory or governmental proceeding, or is otherwise declared insolvent or downgraded below investment grade by the FDIC or other governmental authority (any of the foregoing, an "**Issuing Bank Credit Event**"), then, within thirty (30) calendar days following Landlord's notice to Tenant, Tenant shall deliver to Landlord cash or a new Letter of Credit meeting the terms of this Section issued by an Issuing Bank meeting Landlord's credit rating standards set forth above and otherwise reasonably acceptable to Landlord, in which event, Landlord shall return to Tenant the previously held Letter of Credit. If Tenant fails to timely deliver such replacement Letter of Credit to Landlord, such failure shall be deemed a default by Tenant under this Lease, without the necessity of additional notice or the passage of additional grace periods, entitling Landlord to draw upon the Letter of Credit.

C. Burndown. If, as of the thirty-second (32<sup>nd</sup>) month of the Lease Term, and each anniversary thereof (such date, and each such anniversary thereof, being referred to herein as a "Reduction Date"), no Default by Tenant has occurred, the Security Deposit, or the face amount of the Letter of Credit if Tenant has delivered a Letter of Credit pursuant to Section 17.07(B).

above, shall be reduced by One Hundred Forty Three Thousand Fifty-One and 36/100 Dollars (\$143,051.36) on each Reduction Date. Provided Tenant is entitled to a reduction as provided above, then within thirty (30) days after the applicable Reduction Date, Tenant may request, in writing, that Landlord deliver (i) that portion of the Security Deposit in such reduction amount, or (ii) if Tenant has delivered a Letter of Credit pursuant to Section 17.07(B) above, a written authorization of the applicable reduction to the Issuing Bank, which authorization shall be delivered within fifteen (15) days following receipt of Tenant's written request, and Tenant shall then have thirty (30) days following delivery of such authorization by Landlord to deliver Landlord a replacement Letter of Credit or certificate of amendment to the then existing Letter of Credit conforming in all respects to the requirements of Section 17.07(B) and otherwise in form and substance acceptable to Landlord, in the applicable face amount as of such Reduction Date.

D. Additional Provisions. Notwithstanding anything to the contrary herein, in the event that Landlord draws upon the Letter of Credit (i) solely due to Tenant's failure to renew the Letter of Credit at least thirty (30) days before its expiration such failure to renew shall not constitute a default hereunder and (ii) Tenant shall at any time thereafter be entitled to provide Landlord with a replacement Letter of Credit that satisfies the requirements hereunder, at which time Landlord shall return the cash proceeds of the original Letter of Credit drawn by Landlord. In the event Landlord improperly draws upon the Letter of Credit or misapplies the Letter of Credit proceeds, Tenant shall have the right to offset such amounts against rent.

**Section 17.8. Entire Agreement; No Representations; Modification.**

This Lease is intended by the parties to be a final expression of their agreement and as a complete and exclusive statement of the terms thereof. All prior negotiations, considerations and representations between the parties (oral or written) are incorporated herein. No course of prior dealings between the parties or their officers, employees, agents or affiliates shall be relevant or admissible to supplement, explain or vary any of the terms of this Lease. No representations, understandings, agreements, warranties or promises with respect to the Leased Premises or the Building, or with respect to past, present or future tenancies, rents, expenses, operations, or any other matter, have been made or relied upon in the making of this Lease, other than those specifically set forth herein. This Lease may only be modified, or a term thereof waived, by a writing signed by an authorized officer of Landlord and Tenant expressly setting forth said modification or waiver.

**Section 17.9. Severability.**

If any term or provision of this Lease, or the application thereof to any Person or circumstance, shall be invalid or unenforceable, the remainder of this Lease, or the application of such term or provision to Persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Lease shall be valid and be enforced to the fullest extent permitted by law.

**Section 17.10. Joint and Several Liability.**

If two or more Persons shall sign this Lease as Tenant, the liability of each such Person to pay the Rent and perform all other obligations hereunder shall be deemed to be joint and several, and all Notices, payments and agreements given or made by, with or to any one of such Persons shall be deemed to have been given or made by, with or to all of them. In like manner, if Tenant shall be a partnership or other legal entity, the partners or members of which are, by virtue of any applicable law, rule, or regulation, subject to personal liability, the liability of each such partner or member under this Lease shall be joint and several and each such partner or member shall be fully obligated hereunder and bound hereby as if each such partner or member had personally signed this Lease.

**Section 17.11. Broker's Commission.**

Other than Newmark, representing Landlord, and Cushman and Wakefield, representing Tenant (collectively, "**Broker**"), Landlord and Tenant each warrants and represents to the other that no broker, finder or agent has acted for or on its behalf in connection with the negotiation, execution or procurement of this Lease. Except for the Broker and subject to the next sentence, Landlord and Tenant each agrees to indemnify and hold the other harmless from and against all liabilities, obligations and damages arising, directly or indirectly, out of or in connection with a

claim from a broker, finder or agent with respect to this Lease or the negotiation thereof, including costs and attorneys' fees incurred in the defense of any claim made by a broker alleging to have performed services on behalf of the indemnifying party. Landlord agrees to pay Broker a commission with respect to this Lease in accordance with a separate written agreement between Landlord and Broker.

**Section 17.12.**            No Option; Irrevocable Offer.

The submission of this Lease by Landlord, its broker, agent or representative, for examination or execution by Tenant, does not constitute an option or offer to lease the Leased Premises upon the terms and conditions contained herein or a reservation of the Leased Premises in favor of Tenant; it being intended hereby that notwithstanding the preparation of space plans and/or tenant improvements plans, etc., and/or the expenditure by Tenant of time and/or money while engaged in negotiations in anticipation of it becoming the Tenant under this Lease, or Tenant's forbearing pursuit of other leasing opportunities, or even Tenant's execution of this Lease and submission of same to Landlord, that this Lease shall become effective and binding upon Landlord only upon the execution hereof by Landlord and its delivery of a fully executed counterpart hereof to Tenant. No exception to the foregoing disclaimer is intended, nor shall any be implied, from expressions of Landlord's willingness to negotiate with respect to any of the terms and conditions contained herein.

**Section 17.13.**            Inability to Perform.

Except for the payment of monetary obligations, in any case where either party hereto is required to do any act, and the performance of such act is prevented, delayed or stopped due to any of the following ("Force Majeure"): acts of God or nature, war, terrorism, civil commotion, fire, flood or other Casualty, labor difficulties (provided each party shall use commercially reasonable efforts to resolve such labor difficulties), shortages of labor or materials or equipment, government regulations, delay by government or regulatory agencies with respect to approval or permit process, unusually severe weather or other reasonably unforeseeable circumstances not within the control of the party or its agents delayed in performing work or doing acts required under the terms of this Lease, the time for performance of such act (whether designated by a fixed date, a fixed time or a "reasonable time") shall be deemed to be extended by the period of such prevention, delay or stoppage. Notwithstanding anything contained in this Lease to the contrary, if either party is unable to perform or delayed in performing any of its obligations under this Lease to the extent due to a foregoing event, such party shall not be in default under this Lease; provided, however, that nothing contained in this Section shall (i) extend the time at which Tenant is entitled to terminate this Lease pursuant to any express termination right under this Lease, or (ii) permit Tenant to holdover in the Leased Premises after the Termination Date. It shall be a condition of the right to claim an extension of time or other consequence as a result of any of the foregoing events that the party seeking such extension or consequence shall notify the other party thereof, specifying the nature and (to the extent known) the estimated length thereof. If such Notice is given later than five (5) Business Days after the notifying party first has actual knowledge of the existence of the event, then the event occurring during the period commencing on such fifth (5th) Business Day and ending on the date of such Notice, shall be disregarded and deemed not to have occurred.

**Section 17.14.**            Survival.

Occurrence of the Termination Date shall not relieve Tenant from its obligations accruing prior to the expiration of the Term. All such obligations shall survive termination of this Lease.

**Section 17.15.**            Corporate Tenants.

If Tenant is not an individual, Tenant hereby covenant(s) and warrant(s) that: (i) Tenant is duly formed, qualified to do business and in good standing in the State of California; and (ii) the individual(s) executing this Lease on behalf of Tenant are duly authorized by such Person to execute and deliver this Lease on behalf of Tenant. Tenant shall remain qualified to do business and in good standing in the State of California throughout the Term.

**Section 17.16.**            Construction of Certain Terms.

The term "including" shall mean in all cases "including, without limitation." Wherever Tenant is required to perform any act hereunder, such party shall do so at its sole cost and expense, unless expressly provided otherwise. All payments to Landlord, other than Minimum

Rent, whether as reimbursement or otherwise, shall be deemed to be Additional Rent, regardless of whether denominated as “**Additional Rent**.” The parties acknowledge that this Lease has been agreed to by both the parties, that both Landlord and Tenant have consulted with attorneys with respect to the terms of this Lease and that no presumption shall be created against Landlord because Landlord drafted this Lease.

**Section 17.17.**            Showing of Leased Premises.

Subject to Section 7.02, above, Landlord may enter upon the Leased Premises for purposes of showing the Leased Premises to Mortgagees, prospective Mortgagees, insurers, prospective insurers, investors, underwriters, and purchasers and prospective purchasers at any time during the Term and to prospective tenants during the last twelve (12) months of the Term, subject to execution of a reasonable and customary nondisclosure agreement by any person other than Landlord having access to the Leased Premises, and after providing at least two (2) Business Days’ Notice. Notwithstanding the foregoing, if any Mortgagee, prospective Mortgagee, insurer or prospective insurer refuses to execute a nondisclosure agreement, then such Mortgagee, prospective Mortgagee, insurer or prospective insurer shall nevertheless be permitted to access the Leased Premises for purposes of completing customary underwriting activities (i.e., seismic and property condition reports) in the Leased Premises.

**Section 17.18.**            Relationship of Parties.

This Lease shall not create any relationship between the parties other than that of Landlord and Tenant.

**Section 17.19.**            Rule Against Perpetuities.

Notwithstanding any provision in this Lease to the contrary, if the Term has not commenced within twenty-one (21) years after the date of this Lease, this Lease shall automatically terminate on the twenty-first (<sup>21</sup>st) anniversary of the date of this Lease. The sole purpose of this provision is to avoid any possible interpretation of this Lease as violating the Rule Against Perpetuities, or any other rule of law or equity concerning restraints on alienation.

**Section 17.20.**            Choice of Law.

This Lease shall be construed, and all disputes, claims, and questions arising hereunder shall be determined in accordance with the laws of the State of California without reference to its choice of law principles.

**Section 17.21.**            Choice of Forum.

Any action involving a dispute relating in any manner to this Lease, the relationship of Landlord/Tenant, the use or occupancy of the Leased Premises, and/or any claim of injury or damage shall be filed and adjudicated solely in the state or federal courts of the jurisdiction in which the Leased Premises are located.

**Section 17.22.**            Hazardous Substances.

No Hazardous Substances (as hereafter defined) shall be used, generated, stored, treated, released, disposed or otherwise managed by or on behalf of Tenant or any invitee at the Leased Premises or the Building with the exception of appropriate amounts of office and cleaning products customarily and lawfully used in conjunction with an office use and/or any materials used in connection with any maintenance required to be performed by Tenant hereunder. Tenant shall immediately notify Landlord upon discovery of any Hazardous Substance release affecting the Leased Premises and, at Landlord’s option, commence and thereafter diligently pursue remediation to Landlord’s satisfaction or reimburse Landlord’s costs of investigation or remediation of any release of Hazardous Substances arising from any act or omission of Tenant, its employees, agents, contractors or invitees within five (5) Business Days after demand therefor. Subject to Section 7.02, above, Tenant shall cooperate with Landlord and provide access to the Leased Premises from time to time for inspections and assessments of environmental conditions and shall remove all Hazardous Substances released by Tenant from the Leased Premises upon expiration or termination of the Lease. Tenant agrees to indemnify, defend and hold Landlord and Landlord’s Indemnitees harmless from and against all Losses which may be imposed upon, incurred by or asserted against Landlord or Landlord’s Indemnitees by a third party and arising, directly or indirectly, out of or in connection with the presence of

Hazardous Substances at or affecting the Building due to any act or failure to act of Tenant, its agents, servants, employees or contractors.

Landlord warrants to Tenant that, to Landlord's actual knowledge and except as disclosed in writing to Tenant, as of the Delivery Date, the Leased Premises will not contain any asbestos or asbestos-containing materials in quantities that violate any applicable Laws in effect on the Delivery Date. Landlord shall, at Landlord's sole cost, comply with all applicable Laws relating to the investigation, monitoring, disposal, remediation and/or removal of Hazardous Substances in violation of any applicable Laws except for which Tenant is responsible pursuant to the terms hereof including, without limitation, those (a) present in the Leased Premises prior to the Commencement Date except to the extent brought thereon by Tenant or any of Tenant's employees, assignees, subtenants, agents, contractors and representatives ("**Pre-Existing Hazardous Substances**"), or (b) brought, used, generated, emitted or disposed of by Landlord in the Leased Premises ("**Landlord Hazardous Materials**"). Further, if any Hazardous Substances are released in the Leased Premises by a Person other than Landlord, Landlord's Indemnities, Tenant or any of Tenant's or any of Tenant's employees, assignees, subtenants, agents, contractors and representatives, then Landlord shall not be in breach hereof or liable to Tenant for damages but Landlord, at its sole cost, shall use commercially reasonable efforts to cause such Person to investigate, monitor, dispose, remediate and/or remove such Hazardous Substances to the extent required by applicable Laws. Subject to the terms and conditions of this Lease, Landlord agrees to indemnify, defend and hold Tenant harmless from and against all Losses which may be imposed upon, incurred by or asserted against Tenant by a third party and arising solely and directly out of any Pre-Existing Hazardous Substances or any Landlord Hazardous Materials.

As used herein, "**Hazardous Substances**" shall mean (i) hazardous or toxic substances, wastes, materials, pollutants and contaminants which are included in or regulated by any federal, state or local law, regulation, rule or ordinance, including CERCLA, Superfund Amendments and Reauthorization Act of 1986, the Resource Conservation and Recovery Act, and the Toxic Substances Control Act, as any of the foregoing may be amended from time to time, (ii) petroleum products, (iii) halogenated and non-halogenated solvents, and (iv) all other regulated chemicals, materials and solutions which, alone or in combination with other substances, are potentially harmful to the environment, public health or safety or natural resources.

**Section 17.23.**        OFAC Certification.

Tenant certifies that: (i) it is not acting, directly or indirectly, for or on behalf of any Person, group entity, or nation named by any Executive Order or the United States Treasury Department as a terrorist, "**Specially Designated National and Blocked Person**," or other banned or blocked Person, entity, nation, or transaction pursuant to any law, order, rule or regulation that is enforced or administered by the Office of Foreign Assets Control; and (ii) it is not engaging in, instigating or facilitating this transaction, directly or indirectly, on behalf of any such Person, group, entity, or nation.

Tenant hereby agrees to defend, indemnify, and hold harmless Landlord from and against any and all claims, damages, losses, risks, liabilities, and expenses (including attorneys' fees and costs) arising from or related to any breach of the foregoing certification.

**Section 17.24.**        Time is of the Essence.

Time is of the essence with respect to each and every obligation of Tenant arising under this Lease.

**Section 17.25.**        Counterparts; Electronic Signature.

This Lease and any amendments hereto may be executed in counterparts with the same effect as if the parties had executed one instrument, and each such counterpart shall constitute an original of this Lease. Further, the parties hereto consent and agree that this Lease, any amendment hereto and/or any notice to be delivered in accordance herewith may be signed and/or transmitted by electronic mail of a .PDF document and/or using electronic signature technology (e.g., DocuSign or similar electronic signature technology), and that such signed electronic record shall be valid and effective to bind the party so signing as a paper copy bearing such party's hand-written signature. The parties further consent and agree that (a) to the extent a

party signs this Lease using such electronic signature technology, by clicking “Sign” is signing this Lease electronically, and (b) the electronic signatures appearing on this Lease, shall be treated, for purposes of validity, enforceability and admissibility, the same as hand-written signatures.

**Section 17.26.**            Confidentiality.

Tenant and Landlord each acknowledges that the contents of this Lease and any related documents are confidential information. Tenant and Landlord each shall keep and maintain such information strictly confidential and shall not disclose such confidential information to any person or entity; provided, however, each such party may disclose the terms and conditions of this Lease if required by law (including without limitation, as deemed necessary or desirable in connection with its status as a public traded company or a subsidiary of a publicly traded company) or court order or in connection with any effort or action to enforce or interpret the terms of this Lease, and to its attorneys, insurance consultants or providers, accountants, employees, auditors, and existing or prospective financial partners, investors, purchasers or lenders provided same are advised by such party of the confidential nature of such terms and conditions as well as to its brokers or other real estate advisors, appraisers, contractors, architects or engineers in connection with the negotiation, administration, or performance of or the exercise of any rights of such party under this Lease, and to any prospective transferees of any or all of such party’s interest in this Lease or the Leased Premises.

**Section 17.27.**            Future Development.

A. Tenant understands and agrees that Landlord is, will or may be engaged in the design, development, demolition, construction and leasing activities in connection with additional development of the Project and the Common Areas within areas adjacent to or near the Leased Premises and that these activities may result in, among other things, the creation of temporary periods of noise, vibrations, dust, lights, and odors. Tenant acknowledges that it has received notification of these activities. In addition to Landlord’s rights set forth elsewhere in this Lease, Tenant covenants and agrees that Landlord shall have the right, in the nature of an easement, to subject the Leased Premises and areas adjacent to or near to the Leased Premises to such temporary nuisances during such activities. Notwithstanding the foregoing, Landlord shall use its reasonable efforts to minimize any interference with or disruption of Tenant’s business in the Leased Premises and, subject to the foregoing, neither Landlord nor its related entities or affiliates shall be liable to Tenant for any inconvenience or disruption resulting from such construction nor shall any such inconvenience serve as the basis for any abatement in Rent. Tenant further agrees that Tenant shall take no action to limit or delay Landlord’s activities in connection with the design, development, demolition, construction or leasing of such areas in the Project.

B. Landlord reserves the right to subdivide all or a portion of the Project so long as the same does not materially interfere with Tenant’s use of or access to the Leased Premises or Tenant’s parking or signage rights hereunder. Tenant agrees to execute and deliver, upon demand by Landlord and in the form requested by Landlord, any additional documents needed to conform this Lease to the circumstances resulting from a subdivision and any all maps, reciprocal easement agreements or other instruments, documents, and agreements in connection therewith, so long as the same does not materially increase Tenant’s obligations or materially decrease Tenant’s rights under this Lease. Notwithstanding anything to the contrary set forth in this Lease, the separate ownership of any buildings and/or Common Area by an entity other than Landlord shall not affect the calculation of Operating Costs, Insurance Costs or Taxes or Tenant’s payment of Tenant’s Share of any Operating Costs, Insurance Costs or Taxes.

**Section 17.28.**            Approvals and Expenditures.

Whenever this Lease requires an approval, consent, determination or judgment by either Landlord or Tenant, unless another standard is expressly set forth, such approval, consent, determination or judgment and any conditions imposed thereby shall be reasonable and shall not be unreasonably withheld or delayed. Any expenditure by a party permitted or required under this Lease, for which such party demands reimbursement from the other party, shall be limited to



the fair market value of the goods and services involved, shall be reasonably incurred, and shall be substantiated by documentary evidence available for inspection and review by the other party.

[Remainder Of Page Intentionally Left Blank; Signature Page To Follow.]

**SIGNATURE PAGE TO  
OFFICE LEASE AGREEMENT  
BETWEEN  
SR WINCHESTER, LLC  
AND  
COUCHBASE, INC.**

IN WITNESS WHEREOF, the parties hereto intending to be legally bound hereby have executed this Lease under their respective hands and seals as of the day and year first above written.

LANDLORD:

**SR WINCHESTER, LLC,**  
a Delaware limited liability company

By: Street Retail, LLC,  
a Maryland limited liability company  
Its: Sole Member

By: /s/ ROBYN SARRAT  
Name: Robyn Sarrat  
Title: Vice President, Legal Leasing

TENANT:

**COUCHBASE, INC.,**  
a Delaware corporation

By: /s/ GREG HENRY  
Name: Greg Henry  
Title: Senior Vice President & Chief Financial Officer

EXHIBIT A-1

SITE PLAN

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EXHIBIT A-2

LEASED PREMISES AND OUTDOOR TERRACE

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EXHIBIT B  
WORK AGREEMENT

[\*\*\*]

EXHIBIT C  
RULES AND REGULATIONS

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EXHIBIT D

RULES FOR TENANT'S CONTRACTORS

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EXHIBIT E  
ROOFTOP RULES AND REGULATIONS

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EXHIBIT F  
OPTIONS TO EXTEND

\*\*\*

EXHIBIT G

TENANT'S APPROVED SIGNAGE LOCATIONS

[\*\*\*]

EXHIBIT H

OFFICE TENANT SIGNAGE CRITERIA

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EXHIBIT I

FORM OF LETTER OF CREDIT

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EXHIBIT J

FORM OF GROUND LESSOR NON-DISTURBANCE AGREEMENT

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EXHIBIT K  
GROUND LESSOR RETAINED PROPERTY

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**CERTIFICATION OF PERIODIC REPORT UNDER  
SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002**

I, Matthew M. Cain, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of Couchbase, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
  - (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: September 5, 2024

By: \_\_\_\_\_  
Name: Matthew M. Cain  
Title: Chair, President and Chief Executive Officer  
*(Principal Executive Officer)*

**CERTIFICATION OF PERIODIC REPORT UNDER  
SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002**

I, Greg Henry, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of Couchbase, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
  - (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: September 5, 2024

By: \_\_\_\_\_ /s/ GREG HENRY  
Name: Greg Henry  
Title: Senior Vice President and Chief Financial Officer  
(Principal Financial Officer)



**CERTIFICATIONS 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**

I, Matthew M. Cain, certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that the Quarterly Report on Form 10-Q of Couchbase, Inc. for the period ended July 31, 2024 fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended, and that the information contained in such Quarterly Report on Form 10-Q fairly presents, in all material respects, the financial condition and results of operations of Couchbase, Inc.

Date: September 5, 2024

By:

/s/ MATTHEW M. CAIN

Name:

Matthew M. Cain

Title:

Chair, President and Chief Executive Officer  
*(Principal Executive Officer)*

I, Greg Henry, certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that the Quarterly Report on Form 10-Q of Couchbase, Inc. for the period ended July 31, 2024 fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended, and that the information contained in such Quarterly Report on Form 10-Q fairly presents, in all material respects, the financial condition and results of operations of Couchbase, Inc.

Date: September 5, 2024

By:

/s/ GREG HENRY

Name:

Greg Henry

Title:

Senior Vice President and Chief Financial Officer  
*(Principal Financial Officer)*