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**As filed with the Securities and Exchange Commission on January 12, 2018.**

**Registration Statement No. 333-**

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

# FORM S-1

**REGISTRATION STATEMENT**
**UNDER**
**THE SECURITIES ACT OF 1933**

# CARDLYTICS, INC.

(Exact name of registrant as specified in its charter)

| **Delaware** | **7370** | **26-3039436** |
|---|---|---|
| (State or other jurisdiction of incorporation or organization) | (Primary Standard Industrial Classification Code Number) | (I.R.S. Employer Identification Number) |

**675 Ponce de Leon Avenue NE, Suite 6000**
**Atlanta, Georgia 30308**
**(888) 798-5802**
(Address, including zip code, and telephone number, including area code, of registrant's principal executive offices)

**Scott D. Grimes**
**Lynne M. Laube**
**Cardlytics, Inc.**
**675 Ponce de Leon Avenue NE, Suite 6000**
**Atlanta, Georgia 30308**
**(888) 798-5802**
(Name, address, including zip code, and telephone number, including area code, of agent for service)

**Copies to:**

| **Nicole C. Brookshire**<br>**Eric C. Jensen**<br>**Richard C. Segal**<br>**Cooley LLP**<br>**500 Boylston Street**<br>**Boston, Massachusetts 02116**<br>**(617) 937-2300** | **Kirk L. Somers**<br>**Cardlytics, Inc.**<br>**675 Ponce de Leon Avenue NE, Suite 6000**<br>**Atlanta, Georgia 30308**<br>**(888) 798-5802** | **Robert V. Gunderson, Jr.**<br>**Glen R. Van Ligten**<br>**Heidi E. Mayon**<br>**Gunderson Dettmer Stough Villeneuve**<br>**Franklin & Hachigian, LLP**<br>**1200 Seaport Boulevard**<br>**Redwood City, California 94063**<br>**(650) 321-2400** |
|---|---|---|

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

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

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

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

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

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

Large Accelerated Filer ☐ Accelerated Filer ☐ Non-accelerated Filer ☒ Smaller Reporting Company ☐ Emerging Growth Company ☒

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 7(a)(2)(B) of the Securities Act. ☐

**CALCULATION OF REGISTRATION FEE**

| **Title of Securities Being Registered** | **Proposed Maximum Aggregate Offering Price(1)(2)** | **Amount of Registration Fee** |
|---|---|---|
| Common Stock, $0.0001 par value per share | $75,000,000 | $9,338 |

(1) In accordance with Rule 457(o) under the Securities Act of 1933, as amended, the number of shares being registered and the proposed maximum offering price per share are not included in this table.

(2) Estimated solely for purposes of computing the amount of the registration fee pursuant to Rule 457(o) under the Securities Act of 1933, as amended. Includes the offering price of shares that the underwriters have the option to purchase to cover over-allotments, if any.

**The registrant hereby amends this Registration Statement on such date or dates as may be necessary to delay its effective date until the registrant shall file a further amendment that specifically states that this Registration Statement shall thereafter become effective in accordance with Section 8(a) of the Securities Act of 1933, as amended, or until the Registration Statement shall become effective on such date as the Securities and Exchange Commission, acting pursuant to said Section 8(a), may determine.**

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The information in this prospectus is not complete and may be changed. We may not sell these securities until the registration statement filed with the Securities and Exchange Commission is effective. This prospectus is not an offer to sell these securities and we are not soliciting offers to buy these securities in any state where the offer or sale is not permitted.

SUBJECT TO COMPLETION, DATED JANUARY 12, 2018

PRELIMINARY PROSPECTUS

# Shares


## Common Stock

We are selling shares of common stock.

Prior to this offering, there has been no public market for our common stock. The initial public offering price of our common stock is expected to be between $ and $ per share. We have applied to list our common stock on the Nasdaq Global Market under the symbol "CDLX."

We are an "emerging growth company" as defined under the U.S. federal securities laws and, as such, may elect to comply with certain reduced public company reporting requirements for this and future filings. See "Prospectus Summary—Implications of Being an Emerging Growth Company."

The underwriters have an option to purchase a maximum of additional shares from us solely to cover over-allotments of shares.

**Investing in our common stock involves risks. See "Risk Factors" beginning on page 18.**

| | Price to Public | Underwriting Discounts and Commissions(1) | Proceeds to Cardlytics, Inc. |
|---|---|---|---|
| Per Share | $ | $ | $ |
| Total | $ | $ | $ |

(1) See "Underwriting" beginning on page 160 for additional information regarding underwriting compensation.

**Neither the Securities and Exchange Commission nor any state securities commission has approved or disapproved of these securities or determined if this prospectus is truthful or complete. Any representation to the contrary is a criminal offense.**

**BofA Merrill Lynch** **J.P. Morgan**

**Wells Fargo Securities** **SunTrust Robinson Humphrey**

**Raymond James** **KeyBanc Capital Markets**

The date of this prospectus is , 2018

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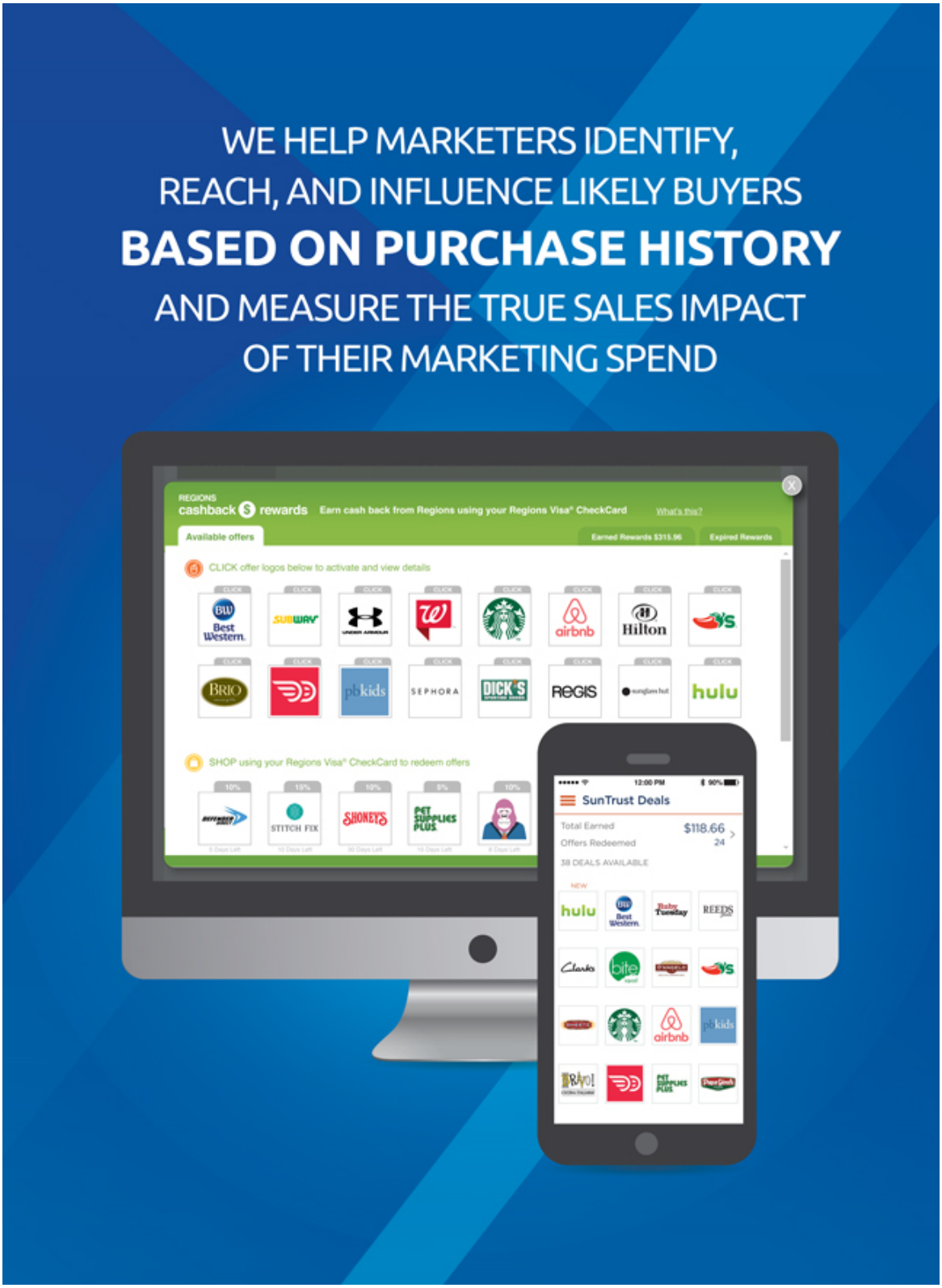

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You should rely only on the information contained in this document and any free writing prospectus we provide to you. We have not and the underwriters have not authorized anyone to provide any information or to make any representations other than those contained in this prospectus or in any free writing prospectuses we have prepared. We take no responsibility for, and can provide no assurance as to the reliability of, any other information that others may give you. This prospectus is an offer to sell only the shares offered hereby, but only under circumstances and in jurisdictions where it is lawful to do so. The information contained in this prospectus is current only as of its date.

For investors outside the United States: We have not and the underwriters have not done anything that would permit this offering, or possession or distribution of this prospectus in any jurisdiction where action for that purpose is required, other than in the United States. Persons outside the United States who come into possession of this prospectus must inform themselves about, and observe any restrictions relating to, the offering of the shares of common stock and the distribution of this prospectus outside of the United States.

## DEALER PROSPECTUS DELIVERY OBLIGATION

Through and including , 2018 (25 days after the date of this prospectus), all dealers that effect transactions in our common stock, whether or not participating in this offering, may be required to deliver a prospectus. This is in addition to the dealer's obligation to deliver a prospectus when acting as an underwriter and with respect to unsold allotments or subscriptions.

## PROSPECTUS SUMMARY

*This summary highlights information contained elsewhere in this prospectus and does not contain all of the information that you should consider in making your investment decision. Before investing in our common stock, you should carefully read this entire prospectus, including our consolidated financial statements and the related notes and the information set forth under the sections titled "Risk Factors," "Special Note Regarding Forward-Looking Statements," and "Management's Discussion and Analysis of Financial Condition and Results of Operations," in each case included in this prospectus. Unless the context otherwise requires, we use the terms "Cardlytics," "company," "our," "us," and "we" in this prospectus to refer to Cardlytics, Inc. and, where appropriate, our consolidated subsidiaries.*

## CARDLYTICS, INC.

### Overview

Cardlytics makes marketing more relevant and measurable through our purchase intelligence platform. With purchase data from more than 2,000 financial institutions, we have a secure view into where and when consumers are spending their money. By applying advanced analytics to this massive aggregation of purchase data, we make it actionable, helping marketers identify, reach and influence likely buyers at scale, and measure the true sales impact of their marketing spend. This collection of debit, credit, ACH, and bill pay data represented approximately $1.3 trillion in U.S. consumer spend in 2016. In 2016, our platform analyzed over 18.0 billion online and in-store transactions across more than 94.0 million accounts in the United States, representing one in five debit and credit card swipes in the United States.

Our founders understood the value of purchase data and have devoted nearly a decade to engineering a purchase intelligence platform. As former bankers, they recognized that banks and credit unions, which we refer to as financial institutions, or FIs, enable and collect the different types of electronic payments (e.g., debit, credit, bill pay) consumers and businesses use. This was especially crucial as electronic payments were becoming an increasing portion of all consumer spending. With this data distributed across approximately 10,000 FIs in the United States alone, it would need to be aggregated and standardized to provide effective foundational data for marketing technology and analytics. Given their deep insight into FIs' rigorous security, privacy and regulatory concerns, our founders were well positioned to partner with FIs and architected our platform with their requirements in mind. Today, our platform leverages machine learning and a robust set of algorithms to ingest, process and analyze trillions of dollars of raw purchase data from tens of millions of accounts. As of September 30, 2017, we were a partner to 2,041 FIs, including Bank of America, National Association, or Bank of America; PNC Bank, National Association; Lloyds TSB Bank plc, or Lloyds; and Santander UK plc. Additionally, in the first quarter of 2018, we plan to launch a pilot implementation of Cardlytics Direct with Wells Fargo & Company, or Wells Fargo, directed at Wells Fargo customers located in Miami, Florida, Charlotte, North Carolina and San Francisco, California.

As the amount of revenue that we can generate from marketers with respect to Cardlytics Direct is primarily a function of the number of active users on our FI partners' digital banking platforms, we believe that the number of monthly active users, or FI MAUs, of any FI partner is indicative of our level of dependence on such FI partner. During 2016 and the nine months ended September 30, 2017, our largest FI partner, Bank of America, contributed approximately 47% and 51% of our total FI MAUs. Lloyds, our largest FI partner in the United Kingdom, contributed approximately 10% and 9% of our total FI MAUs in 2016 and the nine months ended September 30, 2017, respectively. As of September 30, 2017, we had direct contractual relationships with 17 of our FI partners, while our other FI partners became part of our network through bank processors and digital banking providers, such as Digital Insight Corporation, a subsidiary of NCR Corporation, or Digital Insight. Digital Insight contributed approximately 13% and 11% of our total FI MAUs in 2016 and the nine months ended September 30, 2017, respectively.

Our platform helps solve fundamental problems for marketers. Marketers increasingly have access to data on the purchase behavior of their customers in their own stores and websites. However, they lack insight into their customers' purchase behavior outside of their stores and websites, as well as the purchase behavior of individuals who are not yet customers. The reality is, no matter how robust their own customer data, marketers only see a small portion of their customers' overall spend—both within and across categories. As a result, it is very difficult for businesses to focus their marketing investments on the most valuable customers. Marketers are also challenged to measure the performance of their marketing. This issue is particularly acute with respect to measuring the impact of marketing on in-store sales, where approximately 92% of consumer spending occurs, according to 2016 U.S. Census data. We believe purchase intelligence is the next disruptive opportunity in marketing and can comprehensively address these challenges. Our purchase intelligence platform is designed to enable marketers to identify, reach and influence likely buyers at scale, and precisely measure how marketing drives sales by "closing the loop"—both online and in-store. We have strong relationships with leading marketers across a variety of industries, including 20 of the top 25 U.S. restaurant chains based on the Nation's Restaurant News 2016 ranking, 23 of the top 50 U.S. retailers based on the National Retail Federation 2016 ranking, as well as three of the five largest U.S. cable and satellite television providers and three of the four largest U.S. wireless carriers based on 2016 U.S. subscriber counts.

We have proven the power of purchase intelligence with our proprietary native advertising channel, Cardlytics Direct. Approximately 83%, 87% and 92% of our revenue in 2015, 2016 and the nine months ended September 30, 2017, respectively, was derived from sales of Cardlytics Direct. We have created a powerful, highly captive native advertising channel that reaches customers when they are thinking about their finances. By consolidating the largely untapped, high growth digital banking channels of more than 2,000 FIs, Cardlytics Direct enables marketers to reach consumers across these FIs through their online and mobile banking accounts, and increasingly through email and various real-time notifications. Using our purchase intelligence, our platform predicts where FI customers are likely to shop next and then presents them with offers to save money in these categories at a time when they are thinking of their finances. Since Cardlytics Direct reaches consumers in a trusted, uncluttered digital environment, we believe we see higher engagement in our channel. On average, bank customers in our channel logged into their mobile banking accounts 7.7 times per month in 2016. Customers are at least nine times more likely to engage with our marketers' advertisements as compared to worldwide display digital advertisement click rates, as reported by eMarketer in December 2016. Cardlytics Direct offers compelling benefits to both marketers and FIs:

- ***Benefits to Marketers.*** By leveraging Cardlytics Direct, marketers are able to understand who the most valuable customers are in their category and how effectively they are competing for those customers. Marketers grow their business by reaching customers through trusted banking channels and providing precisely tailored marketing to bring new customers to their business and to get current customers to spend more. In our Cardlytics Direct channel, we deliver strong, guaranteed return on advertising spend, or ROAS. For every dollar marketers spent in our Cardlytics Direct channel in the United States in 2016, they generated an ROAS of approximately $30. We calculate ROAS by measuring the consumers to whom a Cardlytics Direct marketing incentive was shown via such consumer's online or mobile banking application or email and who subsequently made an online or in-store purchase from the applicable marketer during the campaign period, regardless of whether such consumer redeemed the incentive, as compared to the amount the marketer spent with us on the campaign.

- ***Benefits to FIs***. Cardlytics Direct allows customers of our FI partners to receive personalized cash back offers. Since our company's inception, our FIs' customers have earned approximately $232 million in aggregate cash back incentives. We believe that these savings drove higher customer retention for our FI partners, as well as increased card spend, engagement, and loyalty for our FI partners in 2016. For the nine months ended September 30, 2017, our FI partners had 53.7 million FI MAUs. Based on aggregated data from approximately 10,000 randomly-selected customers of three of our 10 largest FIs,

we calculated that monthly customer attrition was 17% lower on average among redeeming credit and debit card customers over the six-month period following a customer's first redemption in 2016 as compared to average monthly customer attrition over the same comparison period for non-redeeming customers. In conducting this analysis, we deemed customers who do not have active spend in the applicable account within a given month to have attrited. We also calculated that the monthly card spend increased by 11% on average over the six-month period following a customer's first redemption in 2016 as compared to the monthly average from the preceding three-month period. In contrast, the monthly card spend of non-redeeming customers over the same comparison periods increased by only 2% on average. Since we share a portion of the revenue that we generate from marketers with FIs, we provide an attractive incremental earnings opportunity. We also enable our FI partners to create competitively differentiated offerings that reinforce their broader strategic goals, including marketing their own products with the same precision targeting available to marketers.

We are extending the power of our platform beyond Cardlytics Direct. As we built scale, we recognized a significant opportunity to extend the impact of our purchase intelligence platform, which we refer to as our Other Platform Solutions. For example, we use purchase intelligence to help marketers measure the impact of marketing campaigns outside of the Cardlytics Direct channel on in-store and online sales. As we have in the past, we plan to continue to work in close collaboration with our FI partners to develop new purchase intelligence based analytic solutions.

We have experienced rapid growth in our revenue since inception. Our revenue, which excludes consumer incentives, was $53.8 million, $77.6 million and $112.8 million, for 2014, 2015 and 2016, respectively, representing a compound annual growth rate of 44.8%. Our revenue for the nine months ended September 30, 2017 was $91.1 million. For 2014, 2015, 2016 and the nine months ended September 30, 2017, our net loss was $38.9 million, $40.6 million, $75.7 million and $15.6 million, respectively. Our historical losses have been driven by our substantial investments in our platform and infrastructure, which we believe will enable us to expand the use of our platform by both FIs and marketers. In 2016, our net loss included a $25.9 million one-time non-cash charge related to the termination of our U.K. agreement with Aimia EMEA Limited and a $10.9 million non-cash charge related to the issuance and change in fair value of convertible promissory notes.

**Industry Background**

***Recent Disruptions in the Marketing Industry***

The fundamental imperative for marketers is to determine how, when, and where to spend marketing dollars effectively and to measure the efficacy of, and return on, their marketing investments. In the past 20 years, there have been a series of disruptive innovations impacting how marketers reach and influence likely buyers. The rise of internet-enabled online advertising drastically accelerated the pace of innovation across the marketing landscape. As the internet became mainstream, search-driven advertising brought the ability to more precisely connect marketing to consumer intent. The advent of social media provided marketers with a greater opportunity for consumer engagement and a wealth of additional data about consumer preferences. Each of these innovations has made digital marketing increasingly more effective and efficient than traditional media. As a result, digital media spending is expected to reach $202 billion in 2017, an increase of approximately 13% from $178 billion in 2016, according to MAGNA Global. However, like television and other traditional forms of advertising, these new forms of digital advertising still fail to provide marketers with visibility into whether an advertisement ultimately resulted in an in-store purchase. This information gap is particularly acute since approximately 92% of consumer spending continues to occur in-store. Marketers remain unable to close the last mile and comprehensively understand how marketing impacts actual in-store and online consumer purchases.

***Challenges to Efficient and Effective Marketing***

The fundamental challenges faced by marketers include:

- ***Imprecise Targeting Across Media Channels***. Targeting based only on online behavior and demographic and behavioral data fails to capture important differences among consumers who may appear to be similar on the surface, but actually have drastically different interests and purchasing patterns.

- ***Inability to Measure Efficacy and Ensure ROAS***. Marketers are under immense pressure to show that their investments are creating value for their organizations. However, due to the fact that substantially all retail purchasing continues to occur in-store, it is difficult to calculate ROAS accurately because marketers cannot comprehensively connect online or offline marketing campaigns to in-store purchases.

- ***Narrow View of Existing and Potential Customers***. Marketers today increasingly have access to data on the purchase behavior of their customers in their stores and on their websites. However, they lack insight into these customers' overall purchasing patterns outside of their stores and websites and the purchasing behavior of other likely buyers who are not yet customers.

***Purchase Intelligence: The Next Disruptive Opportunity***

We believe that purchase intelligence is the next disruptive opportunity in marketing. Aggregated consumer spending data analyzed with advanced analytics has the potential to make all marketing more relevant and measurable if it can be effectively analyzed and leveraged to help predict and measure future buying behavior, both in-store and online.

***Massive and Fragmented Source of Purchase Data and Consumer Connectivity***

We believe that FIs are a crucial source of purchase data and have a valuable, direct touchpoint with consumers. Over the past decade, the volume of consumer purchase data held by FIs has significantly increased. Today, more than 70% of U.S. consumer payments are electronic—debit card, credit card, ACH or bill pay—and this percentage is projected to continue to increase, according to The Nilson Report's 2016 findings. These electronic transactions produce an immense amount of consumer purchase data, which can provide valuable insights on where and when consumers choose to shop, how frequently they shop at a particular store, and how much they spend within and across retail categories. More importantly, nearly 60% of electronic spending is in the form of debit and other non-credit transactions, and growth of these types of transactions is expected to be significant through 2020, according to The Nilson Report.

For purchase intelligence to be actionable, purchase data must be connected to the consumer through electronic touchpoints. FIs have uniquely reliable consumer touchpoints. Instead of walking into a branch, over 70% of consumers in 2015 managed some or all of their banking via digital channels, according to a 2016 survey by the Federal Reserve Bank. FIs' touchpoints do not face the same issues as other digital channels. Consumers interact with FIs via authenticated online or mobile applications that are protected with state-of-the-art security.

***Market Forces in the Banking Industry***

While FIs play an important role in securely maintaining purchase data, market forces have only recently aligned to create incentives for FIs to leverage this data for the benefit of marketers. FIs operate in an increasingly regulated and competitive environment. Further, the rising popularity of alternative banking solutions and the emergence of non-banking players in the areas of lending and electronic payments increasingly threaten to

disintermediate traditional FIs from their customers. These trends have keenly focused FIs on finding ways to engage customers and strengthen customer loyalty. Despite these incentives, FIs typically lack the specialized technological expertise, scale and visibility outside of their own customer bases to analyze and effectively leverage purchase data. As such, although purchase data from any single FI and access to that institution's customer base may be very useful to marketers, aggregated purchase data across a meaningful portion of the fragmented banking landscape from a variety of electronic payment channels holds significantly greater value.

***Challenges to Effective Purchase Data Aggregation***

The challenges to effective aggregation of purchase data include:

- ***Lack of Scale***. Purchase data resides with approximately 10,000 FIs in the United States alone. To understand a consumer's spending, marketers require an expansive view across the payment landscape, including debit card, credit card, bill pay and ACH, that no single FI is able to provide.

- ***Fragmented Touchpoints***. As with purchase data, FI digital touchpoints are spread across thousands of disparate institutions. Further, FIs generally lack the technology to connect purchase data to their customers' online, mobile and television presences.

- ***Privacy and Regulatory Concerns***. FIs are highly regulated and are under strict obligations to safeguard their customers' personal data. To be viable, any data aggregation strategy must navigate the complex privacy and regulatory compliance concerns and obligations of FIs.

- ***Need to Create Uniformity Across Complex and Varied Data Sets***. Each FI captures and retains data differently and the underlying data is itself dynamic. As a result, sophisticated algorithms and analytics are required to make the complex web of purchase data meaningful and actionable for marketers.

To unlock the value of the FIs' purchase data, we believe that there is a significant need for a trusted third party to serve as the nexus for purchase data aggregation and analytics.

**Market Opportunity**

Our platform solves fundamental problems for the marketing industry by utilizing proprietary purchase intelligence. The native bank advertising market was estimated to be approximately $11 billion in the United States in 2016, according to Frost & Sullivan in a study commissioned by us.

We believe that Cardlytics Direct is a leading native bank advertising solution addressing this market.

**Key Benefits of Our Platform**

We make marketing more relevant and measurable through our purchase intelligence platform while simultaneously driving customer engagement and loyalty for FIs.

Key benefits to marketers:

- ***Comprehensive View of Consumer Behavior***. We leverage the power of our platform to provide marketers with valuable insights into the preferences of their actual or potential customers both within and outside the context of a marketing campaign. We build on the insight marketers have today—how their customers are spending in their own stores and websites—with our insight into how their customers are spending elsewhere.

- ***Precise Targeting in a Captive Channel***. With access to consumers' aggregate purchase data at particular FIs, not just their spending with a single marketer, we enable marketers to identify, reach and influence likely buyers in the highly captive native bank advertising channel. With our purchase intelligence, marketers can reach the right consumer, at the right time, in this channel with a relevant message.

- ***Accurate Measurement of Marketing's Impact on Sales.*** We measure the impact of marketing efforts by analyzing actual purchase data—both online and in-store. This enables us to determine the actual return on advertising spend from marketing campaigns within and outside Cardlytics Direct and helps marketers optimize ongoing and future campaigns.

- ***Compelling Return on Advertising Spend***. For every dollar marketers spent in our Cardlytics Direct channel in the United States in 2016, they generated an ROAS of approximately $30.

Key benefits to FIs:

- ***Cash Back Incentives to FI Customers***. Cardlytics Direct allows customers of our FI partners to receive personalized offers and cash back rewards. Our FIs' customers have earned approximately $232 million in aggregate cash back incentives to date, and we believe that these savings drive increased customer engagement and loyalty.

- ***Higher Customer Retention and Brand Loyalty***. We believe FIs on our platform see reduced account attrition rates. Based on aggregated data from approximately 10,000 randomly-selected customers of three of our 10 largest FIs, we calculated that monthly customer attrition was 17% lower on average among redeeming credit and debit card customers over the six-month period following a customer's first redemption in 2016 as compared to average monthly customer attrition over the same comparison period for non-redeeming customers. See page 2 above for further information on this calculation.

- ***Increased Card Spend and Engagement***. Our platform provides FIs with a cash-back program that incentivizes their customers to use their cards more frequently. Based on aggregated data from approximately 10,000 randomly-selected customers of three of our 10 largest FIs, we calculated that monthly card spend increased by 11% on average over the six-month period following a customer's first redemption in 2016 as compared to the monthly average from the preceding three-month period. In contrast, the monthly card spend of non-redeeming customers over the same comparison periods increased by only 2% on average.

- ***New Economics to FIs***. Because we share a portion of the revenue that we generate from marketers with FIs, we also provide FIs with an attractive incremental revenue opportunity.

- ***Support for FI Marketing and Business Initiatives***. We believe that we enable our FI partners to create competitively differentiated offerings that reinforce their broader strategic goals, including marketing their own products—such as mortgages, car loans or 529 plans—directly to customers with the same precision targeting available to marketers.

**Competitive Strengths**

We make marketing more relevant and measurable through our purchase intelligence platform. We believe that the following strengths provide us with competitive advantages:

- ***Deeply Embedded with FIs***. We have partnered with over 2,000 FIs and no FI partner with which we contract directly has unilaterally terminated its use of our platform.

- ***Our Proprietary Consumer Touchpoints***. With all of our FI partners, we enable marketers to reach consumers in a captive, largely untapped and digitally engaging environment, when they are thinking about their finances.

- ***Massive Reach Informed by Purchase Intelligence***. Our platform aggregated and analyzed approximately $1.3 trillion in U.S. purchase data in 2016 across stores, retail categories and geographies, both online and in-store, representing over 18.0 billion transactions across more than 94.0 million accounts in the United States. These types of transactions represented approximately 40% of all U.S. consumer spending in 2016, based on a 2016 study from The Nilson Report.

- ***Significant Scale with Marketers and Compelling ROAS***. We work with companies across a variety of industries. By serving these marketers at scale, we have developed deep insight into consumer behavior, which has allowed us to optimize how we reach and influence likely buyers. For every dollar marketers spent in our Cardlytics Direct channel in the United States in 2016, they generated an average of approximately $30 of ROAS.

- ***Powerful, Self-Reinforcing Network Effects***. We see significant network effects within Cardlytics Direct. By adding new marketers and increasing the potential incentives provided to our FIs' customers, we are able to increase engagement within our FIs' digital banking channels. This, in turn, attracts more FIs to our platform, adding to our scale, and making our platform more valuable to marketers.

- ***Ability to Improve Marketing***. Consumers spend 92% of their purchase dollars in physical stores and digital marketers have long sought efficient and effective ways to understand online-to-offline attribution. We enable marketers to leverage purchase intelligence to better understand their customers and potential customers. In addition to reaching consumers through our proprietary Cardlytics Direct channel, we use purchase intelligence to help marketers measure the impact of marketing campaigns outside of the Cardlytics Direct channel on in-store and online sales.

- ***Proprietary Technology Architecture and Advanced Analytics Capabilities***. We have designed our purchase intelligence platform to protect highly sensitive first-party data. Our proprietary, distributed architecture helps facilitate both the effective delivery of our solutions and the protection of our FI customers' personally identifiable information, or PII. No PII is shared by the FIs with Cardlytics.

- ***World-Class Management Team with Unique Combination of Backgrounds and Experiences***. Our team's extensive experience across banking, technology and marketing is invaluable in our ability to forge relationships with financial and marketing partners, and understand the technical complexities inherent in building a platform that is transforming and disrupting the marketing industry.

**Our Growth Strategies**

The principal components of our strategy include the following:

- ***Grow Our Cardlytics Direct Business with Marketers***. We intend to continue to expand our sales and marketing efforts to grow our Cardlytics Direct business with existing marketers and attract new brands, retailers and service providers.

- ***Drive Growth through Existing FI Partners***. We intend to drive revenue growth by continuing to increase customer adoption and improve the effectiveness of FIs' digital channels.

- ***Expand our Network of FI Partners***. We will continue to focus on growing our network of FI partners by integrating directly with large regional and national banks and by reselling our solution through financial processors and payment networks.

- ***Grow Our Platform Through Integrations with Partners***. We intend to continue to partner with other media platforms, marketing technology providers and marketing agencies that can utilize our platform to serve a broad array of customers.

- ***Continue to Innovate and Evolve Our Platform***. As we continue to grow our data asset and enhance our platform, we are developing new solutions and increasingly sophisticated analytical capabilities.

**Selected Risks Affecting Our Business**

Our business is subject to numerous risks and uncertainties, including those highlighted in the section titled "Risk Factors" immediately following this prospectus summary. These risks include, among others, the following:

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

- We are dependent upon our Cardlytics Direct solution.

- We are substantially reliant on Bank of America and a limited number of other FI partners.

- We do not have direct contractual relationships with a substantial majority of our FI partners, which became part of our network through bank processors and digital banking providers.

- Our quarterly operating results may vary from period to period, which could result in our failure to meet expectations with respect to operating results and cause the trading price of our stock to decline.

- We have a short operating history, which makes it difficult to evaluate our future prospects and may increase the risk that we will not be successful.

- Our future success will depend, in part, on our ability to expand demand for our Other Platform Solutions, which are dependent upon our FI partners allowing us to utilize their purchase data for such solutions.

- Our business could be adversely affected if marketers or their agencies are not satisfied with our solutions or our systems and infrastructure fail to meet their needs.

- We generally do not have long-term commitments from marketers, and if we are unable to retain and increase sales of our solutions to marketers and their agencies or attract new marketers and their agencies, our business, financial condition and operating results would be adversely affected.

- We operate in an emerging industry and future demand and market acceptance for our solutions is uncertain.

- The market in which we participate is competitive and we may not be able to compete successfully with our current or future competitors.

- Regulatory, legislative or self-regulatory developments regarding internet privacy matters could adversely affect our ability to conduct our business.

- Assertions by third parties of infringement or other violations by us of their intellectual property rights, whether or not correct, could result in significant costs and harm our business, financial condition and operating results.

- Our existing directors, executive officers and holders of 5% or more of our outstanding common stock, together with their affiliates, will beneficially own % of the voting power of our outstanding capital stock after the completion of this offering, assuming an initial public offering price of $ per share, the midpoint of the price range set forth on the cover page of this prospectus. This concentration of ownership may prevent new investors from influencing significant corporate decisions.

**Corporate Information**

Cardlytics, Inc. was initially incorporated under the laws of the State of Delaware in June 2008.

Our principal executive offices are located at 675 Ponce de Leon Avenue NE, Suite 6000, Atlanta, Georgia 30308. Our telephone number is (888) 798-5802. Our website address is www.cardlytics.com. The information contained on, or that can be accessed through, our website is not incorporated by reference into this prospectus, and you should not consider any information contained on, or that can be accessed through, our website as part of this prospectus or in deciding whether to purchase our common stock.

"Cardlytics," the Cardlytics logo and other trademarks or service marks of Cardlytics, Inc. appearing in this prospectus are the property of Cardlytics, Inc. This prospectus contains additional trade names, trademarks and service marks of others, which are the property of their respective owners. Solely for convenience, trademarks and trade names referred to in this prospectus may appear without the ® or TM symbols.

**Implications of Being an Emerging Growth Company**

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

- a requirement to have only two years of audited financial statements and only two years of related selected financial data and management's discussion and analysis of financial condition and results of operations disclosure;
- an exemption from the auditor attestation requirement in the assessment of our internal control over financial reporting pursuant to the Sarbanes-Oxley Act of 2002, or the Sarbanes-Oxley Act;
- an exemption from new or revised financial accounting standards until they would apply to private companies and from compliance with any new requirements adopted by the Public Company Accounting Oversight Board requiring mandatory audit firm rotation;
- reduced disclosure about the emerging growth company's executive compensation arrangements; and
- no requirement to seek nonbinding advisory votes on executive compensation or golden parachute arrangements.

We may take advantage of some or all these provisions until we are no longer an emerging growth company. We will remain an emerging growth company until the earlier to occur of (1) the last day of the fiscal year (a) following the fifth anniversary of the completion of this offering, (b) in which we have total annual gross revenues of at least $1.07 billion or (c) in which we are deemed to be a "large accelerated filer," under the rules of the U.S. Securities and Exchange Commission, or SEC, which means the market value of our common stock that is held by non-affiliates exceeds $700 million as of the prior June 30th, and (2) the date on which we have issued more than $1.0 billion in non-convertible debt during the prior three-year period.

We have elected to take advantage of the extended transition period to comply with new or revised accounting standards and to adopt certain of the reduced disclosure requirements available to emerging growth companies. As a result of the accounting standards election, we will not be subject to the same implementation timing for new or revised accounting standards as other public companies that are not emerging growth companies which may make comparison of our financials to those of other public companies more difficult. We have also elected to adopt certain of the reduced disclosure requirements available to emerging growth companies. As a result of these elections, the information that we provide in this prospectus may be different than the information you may receive from other public companies in which you hold equity interests. In addition, it is possible that some investors will find our common stock less attractive as a result of these elections, which may result in a less active trading market for our common stock and higher volatility in our stock price.

**The Offering**

| | |
|---|---|
| Common stock offered by Cardlytics | shares |
| Total common stock to be outstanding after this offering | shares |
| Over-allotment option offered by Cardlytics | shares |
| Use of proceeds | We estimate that we will receive net proceeds of approximately $ million, assuming an initial public offering price of $ per share, the midpoint of the price range set forth on the cover page of this prospectus, after deducting the underwriter discounts and commissions and estimated offering expenses payable by us. The principal purposes of this offering are to increase our financial flexibility, create a public market for our common stock, and facilitate our future access to the capital markets. We expect to use the net proceeds of this offering for working capital and other general corporate purposes. We may use a portion of the proceeds from this offering for acquisitions or strategic investments in complementary businesses or technologies, although we do not currently have any plans for any such acquisitions or investments. These expectations are subject to change. See "Use of Proceeds" for additional information. |
| Risk factors | See "Risk Factors" and the other information included in this prospectus for a discussion of factors you should carefully consider before deciding to invest in our common stock. |
| Proposed Nasdaq Global Market Symbol | "CDLX" |

The number of shares of our common stock that will be outstanding after this offering is based on shares of common stock outstanding as of September 30, 2017, and excludes:

- 10,130,793 shares of common stock issuable upon the exercise of options outstanding as of September 30, 2017, at a weighted-average exercise price of $4.61 per share;
- 440,616 shares of redeemable convertible preferred stock issuable upon the exercise of warrants outstanding as of September 30, 2017, at a weighted average exercise price of $3.04 per share, which warrants will become exercisable for shares of common stock upon the completion of this offering;
- 2,401,945 shares of common stock issuable upon the exercise of warrants outstanding as of September 30, 2017, at a weighted-average exercise price of $2.03 per share;
- 2,577,465 shares of common stock issuable upon the exercise of performance-based warrants outstanding as of September 30, 2017, with milestones that will be deemed to be achieved upon completion of this offering and with an exercise price of $5.91 per share;
- shares of common stock issuable upon exercise of warrants issued in connection with

our Series G preferred stock financing outstanding as of September 30, 2017, at an exercise price of $0.0001 per share, with the actual number of shares issuable upon exercise of such warrants being equal to the product obtained by multiplying 1,385,358 by a fraction, the numerator of which is the difference between $17.2379 and the volume weighted average closing price of our common stock over the 30 trading days (or such lesser number of days as our common stock has been traded on the Nasdaq Global Market) prior to the date on which such warrants become exercisable and the denominator of which is such volume weighted average closing price, which warrants are exercisable upon the earlier to occur of the date (i) 180 days following the date of this prospectus and (ii) 10 days prior to a sale of our company;

- 1,188,092 shares of common stock reserved for issuance under our 2008 Stock Plan, which shares will cease to be available for issuance at the time our 2018 Equity Incentive Plan becomes effective;

- shares of our common stock reserved for future issuance pursuant to our 2018 Equity Incentive Plan, which will become effective prior to the completion of this offering and will include provisions that automatically increase the number of shares of common stock reserved for issuance thereunder each year; and

- shares of common stock reserved for future issuance under our 2018 Employee Stock Purchase Plan, which will become effective prior to the completion of this offering and will include provisions that automatically increase the number of shares of common stock reserved for issuance thereunder each year.

Unless otherwise indicated, this prospectus reflects and assumes the following:

- the conversion of all of our outstanding shares of our redeemable convertible preferred stock into an aggregate of 42,573,435 shares of our common stock immediately prior to the closing of this offering;

- the issuance of 149,679 shares of common stock to certain of our executive officers and key employees upon the automatic settlement of outstanding restricted securities units, which are referred to in this prospectus as the Management Conversion Shares;

- the filing and effectiveness of our amended and restated certificate of incorporation in Delaware and the adoption of our amended and restated bylaws, each of which will occur immediately prior to the completion of this offering;

- no exercise of outstanding options or warrants after September 30, 2017;

- no exercise by the underwriters of their over-allotment option to purchase additional shares of our common stock; and

- a one-for- reverse stock split of our common stock effected on .

**Summary Consolidated Financial and Other Data**

We derived the summary consolidated statements of operations data for the years ended December 31, 2015 and 2016 from our audited consolidated financial statements included elsewhere in this prospectus. We derived the summary consolidated statements of operations data for the nine months ended September 30, 2016 and 2017 and the summary consolidated balance sheet as of September 30, 2017 from the unaudited consolidated financial statements included elsewhere in this prospectus. We have prepared the unaudited consolidated financial statements on the same basis as the audited consolidated financial statements, and the unaudited financial data include, in our opinion, all adjustments, consisting only of normal recurring adjustments that we consider necessary for a fair presentation of our consolidated financial position and results of operations for these periods. Our historical results are not necessarily indicative of the results to be expected in the future and our operating results for the nine months ended September 30, 2017 are not necessarily indicative of the results that may be expected for the entire year ending December 31, 2017.

When you read this summary consolidated financial data, it is important that you read it together with the historical consolidated financial statements and related notes to those statements, as well as "Selected Consolidated Financial Data" and "Management's Discussion and Analysis of Financial Condition and Results of Operations," included elsewhere in this prospectus.

| | Year Ended December 31, | | Nine Months Ended September 30, | |
|---|---|---|---|---|
| | 2015 | 2016 | 2016 | 2017 |
| | (in thousands, except per share data) | | | |
| **Condensed Consolidated Statement of Operations:** | | | | |
| Revenue | $ 77,634 | $ 112,821 | $ 76,400 | $ 91,099 |
| Costs and expenses: | | | | |
| FI Share and other third-party costs | 47,691 | 66,285 | 44,986 | 50,886 |
| Delivery costs(1) | 4,803 | 6,127 | 4,729 | 5,095 |
| Sales and marketing expense(1) | 32,784 | 31,261 | 22,850 | 23,454 |
| Research and development expense(1) | 11,604 | 13,902 | 11,101 | 9,527 |
| General and administrative expense(1) | 18,197 | 21,355 | 16,240 | 14,738 |
| Depreciation and amortization expense | 2,194 | 4,219 | 3,432 | 2,303 |
| Termination of U.K. agreement expense | — | 25,904 | 25,904 | — |
| Total costs and expenses | 117,273 | 169,053 | 129,242 | 106,003 |
| Operating loss | (39,639) | (56,232) | (52,842) | (14,904) |
| Interest expense, net | (1,484) | (6,170) | (3,623) | (6,427) |
| Change in fair value of warrant liability | 914 | (32) | 639 | (412) |
| Change in fair value of convertible promissory notes | — | (786) | (819) | (1,244) |
| Change in fair value of convertible promissory notes—related parties | — | (10,091) | (10,280) | 6,213 |
| Other income (expense), net | (432) | (2,385) | (1,726) | 1,189 |
| Loss before income taxes | (40,641) | (75,696) | (68,651) | (15,585) |
| Income tax benefit | 16 | — | — | — |
| Net loss | $ (40,625) | $ (75,696) | $ (68,651) | $ (15,585) |
| Adjustments to the carrying value of redeemable convertible preferred stock | (1,001) | (982) | (741) | (5,383) |
| Net loss attributable to common stockholders | $ (41,626) | $ (76,678) | $ (69,392) | $ (20,968) |
| Net loss per share attributable to common stockholders, basic and diluted(2) | $ (4.98) | $ (8.12) | $ (7.58) | $ (1.67) |
| Weighted-average common shares outstanding, basic and diluted | 8,363 | 9,446 | 9,150 | 12,559 |
| Pro forma per share attributable to common stockholders, basic and diluted(3) | | $ | | $ |
| Pro forma weighted-average common shares outstanding, basic and diluted(3) | | | | |

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

| | Year Ended December 31, | | Nine Months Ended September 30, | |
|---|---|---|---|---|
| | 2015 | 2016 | 2016 | 2017 |
| | (in thousands) | | | |
| Stock-based compensation expense: | | | | |
| Delivery costs | $ 97 | $ 96 | $ 68 | $ 146 |
| Sales and marketing expense | 1,015 | 1,153 | 826 | 1,390 |
| Research and development expense | 386 | 574 | 419 | 691 |
| General and administrative expense | 955 | 1,624 | 928 | 1,480 |
| Total stock-based compensation expense | $ 2,453 | $ 3,447 | $ 2,241 | $ 3,707 |

(2) See note (14) to our consolidated financial statements appearing elsewhere in this prospectus for further details on the calculation of basic and diluted net loss per share attributable to common stockholders.

(3) Pro forma basic and diluted net loss per share represents pro forma net loss divided by the pro forma weighted-average shares of common stock outstanding. The pro forma net loss per share for the year ended December 31, 2016 and the nine months ended September 30, 2017 assumes (1) the automatic conversion of all outstanding shares of redeemable convertible preferred stock outstanding as of December 31, 2016 and September 30, 2017, respectively, into common stock immediately prior to the closing of this offering and (2) the issuance of 149,679 Management Conversion Shares in full satisfaction of our obligations to certain of our executive officers and key employees pursuant to outstanding restricted securities units. See note (14) to our consolidated financial statements appearing elsewhere in this prospectus for further details on the calculation of pro forma net loss per share attributable to common stockholders.

| | As of September 30, 2017 | | |
|---|---|---|---|
| | Actual | Pro forma(1) | Pro forma as adjusted(2)(3) |
| | | (in thousands) | |
| **Consolidated Balance Sheet Data:** | | | |
| Cash and cash equivalents | $ 28,186 | $ | $ |
| Accounts receivable, net | 38,060 | | |
| Working capital(4) | 37,963 | | |
| Total assets | 93,415 | | |
| Total debt | 55,513 | | |
| Total liabilities | 102,587 | | |
| Redeemable convertible preferred stock | 196,077 | — | |
| Warrant liability | 10,061 | — | |
| Additional paid-in capital | 57,979 | | |
| Accumulated deficit | (264,389) | | |
| Total stockholders' (deficit) equity | (205,249) | | |

(1) Pro forma consolidated balance sheet data reflects (1) the automatic conversion of all outstanding shares of redeemable convertible preferred stock outstanding as of September 30, 2017 into common stock immediately prior to the closing of this offering, (2) the reclassification to stockholders' (deficit) equity of our redeemable convertible preferred stock warrant liability in connection with the conversion of our outstanding redeemable convertible preferred stock warrants into common stock warrants, (3) the issuance of 149,679 Management Conversion Shares in full satisfaction of our obligations to certain of our executive officers and key employees pursuant to outstanding restricted securities units and (4) the impact of the vesting, upon the completion of this offering, of outstanding performance-based warrants to purchase shares of our common stock held by certain of our FI partners.

(2) Pro forma as adjusted consolidated balance sheet data reflects (1) the pro forma items described immediately above and (2) our sale of shares of common stock in this offering at an assumed initial public offering price of $ per share, the midpoint of the price range set forth on the cover page of this prospectus, after deducting underwriting discounts and commissions and estimated offering expenses payable by us.

(3) Pro forma as adjusted consolidated balance sheet data is illustrative only and will change based on the actual initial public offering price and other terms of this offering determined at pricing. Each $1.00 increase or decrease in the assumed initial public offering price of $ per share, the midpoint of the price range set forth on the cover page of this prospectus, would increase or decrease pro forma as adjusted cash and cash equivalents, total assets and total stockholders' (deficit) equity by approximately $ million, assuming that the number of shares offered by us, as set forth on the cover page of this prospectus, remains the same, and after deducting underwriting discounts and commissions payable by us. We may also increase or decrease the number of shares we are offering. A 1,000,000 share increase or decrease in the number of shares offered by us would increase or decrease pro forma as adjusted cash and cash equivalents, total assets and total stockholders' (deficit) equity by approximately $ million, assuming that the assumed initial price to public remains the same, and after deducting underwriting discounts and commissions payable by us.

(4) We define working capital as current assets less current liabilities. See our consolidated financial statements included elsewhere in this prospectus for further details regarding our current assets and current liabilities.

**Non-GAAP Measures and Other Performance Metrics**

We regularly monitor a number of financial and operating metrics in order to measure our current performance and estimate our future performance. For a description of how we calculate these financial and operating metrics as well as their uses, see "Management's Discussion and Analysis of Financial Condition and Results of Operations—Other Metrics."

| | Year Ended December 31, | | Nine Months Ended September 30, | |
|---|---|---|---|---|
| | 2015 | 2016 | 2016 | 2017 |
| | (in thousands, except ARPU) (in dollars, except MAU) | | | |
| FI monthly active users (FI MAU)(1) | 38,957 | 43,927 | 42,733 | 53,694 |
| Average revenue per user (ARPU)(2) | 1.65 | 2.23 | 1.54 | 1.56 |
| Adjusted contribution(3) | 29,943 | 46,536 | 31,414 | 40,213 |
| Adjusted EBITDA(4) | (34,774) | (17,046) | (16,884) | (7,665) |

(1) We define FI monthly active users, or FI MAUs, as unique customers of our FI partners that logged in and visited the online or mobile banking applications of, or opened an email from, our FI partners during a monthly period. We then calculate a monthly average of FI MAUs for the periods presented above. We believe that FI MAUs is an indicator of our and our FI partners' ability to drive engagement with Cardlytics Direct and is reflective of the marketing base that we offer to marketers through Cardlytics Direct.

(2) We define average revenue per user, or ARPU, as the total GAAP Cardlytics Direct revenue generated in the applicable period, divided by the average number of FI MAUs in the applicable period. We believe that ARPU is an indicator of the value of our relationships with our FI partners with respect to Cardlytics Direct.

(3) Adjusted contribution represents our revenue less our FI Share and other third-party costs. We review adjusted contribution for internal management purposes and believe that the elimination of our primary cost of revenue, FI Share and other third-party costs, can provide a useful measure for period-to-period comparisons of our core business. More specifically, we report our revenue gross of FI Share and other third-party costs, but net of any consumer incentives that we pay to our FIs' customers. Adjusted contribution is not a measure calculated in accordance with GAAP. We believe that adjusted contribution provides useful information to investors and others in understanding and evaluating our results of operations in the same manner as our management and board of directors. Nevertheless, our use of adjusted contribution has limitations as an analytical tool, and you should not consider it in isolation or as a substitute for analysis of our financial results as reported under GAAP. See note (15) to our consolidated financial statements appearing elsewhere in this prospectus for further details on our use of adjusted contribution in our financial reporting and operating segments. Other companies, including companies in our industry that have similar business arrangements, may address the impact of FI Share and other third-party costs differently. You should consider adjusted contribution alongside our other GAAP financial results. The following table presents a reconciliation of adjusted contribution to revenue, the most directly comparable GAAP measure, for each of the periods indicated:

| | Year Ended December 31, | | Nine Months Ended September 30, | |
|---|---|---|---|---|
| | 2015 | 2016 | 2016 | 2017 |
| | (in thousands) | | | |
| Revenue | $ 77,634 | $ 112,821 | $ 76,400 | $ 91,099 |
| Minus: FI Share and other third-party costs | 47,691 | 66,285 | 44,986 | 50,886 |
| Adjusted contribution | $ 29,943 | $ 46,536 | $ 31,414 | $ 40,213 |

(4) Adjusted EBITDA represents our net loss before income tax benefit; interest expense, net; depreciation and amortization; stock-based compensation expense; change in fair value of warrant liability; change in fair value of convertible promissory notes; foreign currency (gain) loss; loss on extinguishment of debt; costs associated with financing events; restructuring costs; amortization and impairment of deferred FI implementation costs; and termination of U.K. agreement expense. We do not consider these excluded items to be indicative of our core operating performance. The items that are non-cash include change in fair value of warrant liability, change in fair value of convertible promissory notes, foreign currency (gain) loss, amortization of FI implementation costs, depreciation and amortization expense and stock-based compensation expense. Adjusted EBITDA is a key measure used by management to understand and evaluate our core operating performance and trends and to generate future operating plans, make strategic decisions regarding the allocation of capital and invest in initiatives that are focused on cultivating new markets for our solutions. In particular, the exclusion of certain expenses in calculating adjusted EBITDA facilitates comparisons of our operating performance on a period-to-period basis. Adjusted EBITDA is not a measure calculated in accordance with GAAP.

We believe that adjusted EBITDA provides useful information to investors and others in understanding and evaluating our operating results in the same manner as our management and board of directors. Nevertheless, use of adjusted EBITDA has limitations as an analytical tool, and you should not consider it in isolation or as a substitute for analysis of our financial results as reported under GAAP. Some of these limitations

are: (1) adjusted EBITDA does not reflect changes in, or cash requirements for, our working capital needs; (2) adjusted EBITDA does not reflect the potentially dilutive impact of stock-based compensation; (3) adjusted EBITDA does not reflect tax payments or receipts that may represent a reduction or increase in cash available to us and (4) other companies, including companies in our industry, may calculate adjusted EBITDA or similarly titled measures differently, which reduces the usefulness of the metric as a comparative measure. Because of these and other limitations, you should consider adjusted EBITDA alongside our net loss and other GAAP financial results. The following table presents a reconciliation of adjusted EBITDA to net loss, the most directly comparable GAAP measure, for each of the periods indicated:

| | Year Ended December 31, | | Nine Months Ended September 30, | |
|---|---|---|---|---|
| | 2015 | 2016 | 2016 | 2017 |
| | (in thousands) | | | |
| Net loss | $ (40,625) | $ (75,696) | $ (68,651) | $ (15,585) |
| Plus: | | | | |
| Income tax benefit | (16) | — | — | — |
| Interest expense, net | 1,484 | 6,170 | 3,623 | 6,427 |
| Depreciation and amortization | 2,194 | 4,219 | 3,432 | 2,303 |
| Stock-based compensation expense | 2,453 | 3,447 | 2,241 | 3,707 |
| Change in fair value of warrant liability | (914) | 32 | (639) | 412 |
| Change in fair value of convertible promissory notes | — | 10,877 | 11,099 | (4,969) |
| Foreign currency (gain) loss | 440 | 1,926 | 1,270 | (1,200) |
| Loss on extinguishment of debt | — | 462 | 462 | — |
| Costs associated with financing events | — | 2,632 | 2,632 | 129 |
| Restructuring costs | — | 1,291 | 1,284 | — |
| Amortization and impairment of deferred FI implementation costs | 210 | 1,690 | 499 | 1,110 |
| Termination of U.K. agreement expense | — | 25,904 | 25,904 | — |
| Adjusted EBITDA | $ (34,774) | $ (17,046) | $ (16,844) | $ (7,665) |

## RISK FACTORS

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

### Risks Related to Our Business and Industry

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

Our revenue increased by 45% from $77.6 million in 2015 to $112.8 million in 2016 and 19% from $76.4 million in the nine months ended September 30, 2016 to $91.1 million in the nine months ended September 30, 2017. We may not be able to sustain revenue growth consistent with our recent history or at all. You should not consider our revenue growth in recent periods as indicative of our future performance. As we grow our business, we expect our revenue growth rates to slow in future periods due to a number of factors, which may include slowing demand for our solutions, increasing competition, decreasing growth of our overall market, our inability to engage and retain a sufficient number of marketers or banks and credit unions, which we refer to as financial institutions or FIs, or our failure, for any reason, to capitalize on growth opportunities. If we are unable to maintain consistent revenue or revenue growth, our stock price could be volatile, and it may be difficult for us to achieve and maintain profitability.

***We are dependent upon our Cardlytics Direct solution.***

We have historically derived substantially all of our revenue from our Cardlytics Direct solution, our proprietary native bank advertising channel, and expect to continue to derive substantially all of our future revenue from sales of Cardlytics Direct for the foreseeable future. Approximately 83%, 87% and 92% of our revenue in 2015, 2016 and the nine months ended September 30, 2017, respectively, was derived from sales of Cardlytics Direct. Revenue from our Other Platform Solutions, where we use purchase intelligence outside of the native bank advertising channel, was approximately $13.2 million, $15.0 million and $7.5 million in 2015, 2016 and the nine months ended September 30, 2017, respectively. Substantially all of our total Other Platform Solutions revenue in each of these periods was derived from sales of our Other Platform Solutions delivered as a managed service, which we discontinued as of July 31, 2017. Given that we are now focusing our efforts on more nascent Other Platform Solutions, we do not expect to generate substantial revenue from Other Platform Solutions for the foreseeable future. Accordingly, our total revenue may decline in future periods if we are unable to generate sufficient offsetting revenue from sales of Cardlytics Direct. Our operating results could also suffer due to:

- lack of continued participation by FI partners in our FI network or our failure to attract new FI partners;
- failure by our FI partners to increase engagement with our solutions within their customer bases, improve their customers' user experience, increase customer awareness, leverage additional customer outreach channels like email or otherwise promote our incentive programs on their websites and mobile applications, including by making the programs difficult to access or otherwise diminishing their prominence;
- our failure to offer compelling incentives to our FIs' customers;
- any decline in demand for our Cardlytics Direct solution by marketers or their agencies;
- the introduction by competitors of products and technologies that serve as a replacement or substitute for, or represent an improvement over, Cardlytics Direct;

- FIs developing their own technology to support purchase intelligence marketing or other incentive programs;
- technological innovations or new standards that our Cardlytics Direct solution does not address; and
- sensitivity to current or future prices offered by us or competing solutions.

In addition, we are required to pay consumers incentives with respect to a majority of our Cardlytics Direct marketing campaigns regardless of whether the amount of such consumer incentives exceeds the amount of billings that we are paid by the applicable marketer. Further, we are often required to pay such consumers incentives before we receive payment from the applicable marketer. Accordingly, to the extent that the amount of consumer incentives that we are required to pay materially exceeds the billings that we receive or we encounter any significant failure to ultimately collect payment, our business, financial condition and operating results could be adversely affected.

If we are unable to grow our revenue from sales of our other solutions or if we fail to increase sales of our Cardlytics Direct solution, our business and operating results would be harmed.

***We are substantially dependent on Bank of America, National Association, or Bank of America, and a limited number of other FI partners.***

Our business is substantially dependent on Bank of America and a limited number of other FI partners. We require participation from our FI partners in Cardlytics Direct and access to their purchase data in order to offer our solutions to marketers and their agencies. We must have FI partners with a sufficient number of customers and levels of customer engagement to ensure that we have robust purchase data and marketing space to support a broad array of incentive programs for marketers. As the amount of revenue that we can generate from marketers with respect to Cardlytics Direct is primarily a function of the number of active users on our FI partners' digital banking platforms, we believe that the number of monthly active users, or FI MAUs, of any FI partner is indicative of our level of dependence on such FI partner. During 2015, 2016 and the nine months ended September 30, 2017, our largest FI partner, Bank of America, contributed approximately 50%, 47% and 51% of our total FI MAUs, respectively. Lloyds TSB Bank plc, or Lloyds, our largest FI partner in the United Kingdom, contributed approximately 9%, 10% and 9% of our total FI MAUs in 2015, 2016 and the nine months ended September 30, 2017, respectively. Digital Insight Corporation, a subsidiary of NCR Corporation, or Digital Insight, contributed approximately 15%, 13% and 11% of our total FI MAUs in 2015, 2016 and the nine months ended September 30, 2017, respectively. We anticipate that Bank of America, Lloyds and Digital Insight will contribute a significant portion of our total FI MAUs for the foreseeable future.

In addition, we pay our FI partners an FI Share, which is a negotiated and fixed percentage of our billings to marketers less any consumer incentives that we pay to the FIs' customers and certain third-party data costs. During 2015, 2016 and the nine months ended September 30, 2017, Bank of America accounted for 63%, 64% and 63% of the total FI Share we paid to all FIs, respectively. Lloyds accounted for 11%, 10% and 11% of the total FI Share we paid to all FIs in 2015, 2016 and the nine months ended September 30, 2017, respectively, and Digital Insight accounted for approximately 10%, 9% and 7% of the total FI Share we paid to all FIs in 2015, 2016 and the nine months ended September 30, 2017, respectively. We anticipate that Bank of America, Lloyds and Digital Insight will continue to receive a significant portion of our FI Share for the foreseeable future and the loss of Bank of America, Lloyds, Digital Insight or any other significant FI partner would significantly harm our business, results of operations and financial conditions.

Our agreements with a substantial majority of our FI partners, including Bank of America, Lloyds and Digital Insight have three to five year terms but are terminable by the FI partner on 90 days or less prior notice. If an FI partner terminates its agreement with us, we would lose that FI as a source of purchase data and online banking customers. In addition, even if our FI partners continued to work with us relating to Cardlytics Direct, our FI partners generally have the ability to cease providing us purchase data or limit the way in which we may

potentially use their data outside of the Cardlytics Direct channel at any time since our contracts with our partners do not include any binding commitments to continue to provide purchase data to us for use outside their respective native bank advertising channel. Our FI partners may elect to withhold from us or limit the use of their purchase data for many reasons, including:

- a change in the business strategy;
- if there is a competitive reason to do so;
- if new technical requirements arise;
- consumer concern over use of purchase data;
- if they choose to develop and use in-house solutions or use a competitive solution in lieu of our solutions; and
- if legislation is passed restricting the dissemination, or our use, of the data that is currently provided to us or if judicial interpretations result in similar limitations.

To the extent that we breach or are alleged to have breached the terms of our agreement with any FI partner, or a disagreement arises with an FI partner regarding the interpretation of our contractual arrangements, which has occurred in the past with respect to Bank of America (although Bank of America granted us a waiver) and may occur again in the future, such FI partner may be more likely to cease providing us data or to terminate its agreement with us. The loss of Bank of America, Lloyds, Digital Insight or any other significant FI partner would significantly harm our business, results of operations and financial conditions.

***We do not have direct contractual relationships with a substantial majority of our FI partners.***

As of September 30, 2017, we had a network of 2,041 FI partners, but only had direct contractual relationships with 17 of these FI partners. Our other FI partners became part of our network through bank processors and digital banking providers, such as Digital Insight and Fidelity Information Services, LLC, or FIS. While FI partners that were part of our network through our relationships with Digital Insight and FIS contributed approximately 12% of our total number of FI MAUs for the nine months ended September 30, 2017, these indirect FI partners represented substantially all of our total FI partners as of September 30, 2017. These indirect FI partners may terminate their relationships with these bank processors or digital banking providers, thereby indirectly terminating their relationships with us, independent of the actual or perceived value of our solutions to them.

***Wells Fargo is planning to test a pilot of Cardlytics Direct in certain cities and may not elect to fully implement Cardlytics Direct on a national basis or at all.***

In the first quarter of 2018, we plan to launch a pilot of Cardlytics Direct with Wells Fargo & Company, or Wells Fargo, directed at Wells Fargo customers located only in Miami, Florida, Charlotte, North Carolina and San Francisco, California. The pilot will be a test of an implementation that is limited to emailing offers to Wells Fargo customers in these cities and making those offers available in the Wells Fargo Wallet application. Since this will only be a test, Wells Fargo may not elect to implement Cardlytics Direct throughout the entire United States or at all. If Wells Fargo does not elect to launch Cardlytics Direct on a national basis, our business, financial condition and operating results could be harmed. Further, if Wells Fargo decides on a full roll-out of Cardlytics Direct, the timing cannot be predicted.

***We have a significant amount of debt, which may affect our ability to operate our business and secure additional financing in the future.***

As of September 30, 2017, our total indebtedness was approximately $55.5 million. In July 2016, we entered into a credit agreement, or the Term Loan, with National Electrical Benefit Fund as lender and Columbia Partners, L.L.C as investment manager. In September 2016, we entered into a loan and security agreement, or the Line of Credit, with Ally Bank and Pacific Western Bank. As of September 30, 2017 there was approximately $32.1 million and $24.5 million outstanding under the Term Loan and the Line of Credit, respectively.

Our Term Loan and our Line of Credit, or collectively, the Credit Facilities, are secured by substantially all of our assets. Our Credit Facilities require us, and any debt instruments we may enter into in the future may require us, to comply with various covenants that limit our ability to, among other things:

- dispose of assets;
- complete mergers or acquisitions;
- incur or guarantee indebtedness;
- sell or encumber certain assets;
- pay dividends or make other distributions to holders of our capital stock, including by way of certain stock buybacks;
- make specified investments;
- engage in different lines of business;
- change certain key management personnel; and
- engage in certain transactions with our affiliates.

We are also required under the Credit Facilities to satisfy and maintain specified financial ratios and other financial condition tests. Our ability to meet those financial ratios and tests can be affected by events beyond our control and we may not meet those ratios and tests. These covenants may make it difficult to operate our business. A failure by us to comply with the covenants or financial ratios contained in our Credit Facilities could result in an event of default, which could adversely affect our ability to respond to changes in our business and manage our operations. Upon the occurrence of an event of default, including the occurrence of a material adverse change, the lenders could elect to declare all amounts outstanding to be due and payable and exercise other remedies as set forth in our Credit Facilities. If the indebtedness under our Credit Facilities were to be accelerated, our future financial condition could be materially adversely affected.

We may incur additional indebtedness in the future. The instruments governing such indebtedness could contain provisions that are as, or more, restrictive than our existing debt instruments. If we are unable to repay, refinance or restructure our indebtedness when payment is due, the lenders could proceed against any collateral granted to them to secure such indebtedness or force us into bankruptcy or liquidation.

***If we fail to generate sufficient revenue to offset our contractual commitments to FIs, our business, results of operations and financial conditions could be harmed.***

We have a minimum FI Share commitment with a certain FI partner totaling $10.0 million over a 12-month period following completion of certain milestones. In 2017, we paid certain of our FI partners an aggregate of

approximately $2.6 million related to 2016 FI Share commitments in excess of the amount of FI Share otherwise payable to such FI partners in the absence of such commitments, and it is possible that we may be required to fund similar shortfalls in future periods. In certain cases, we are also responsible for funding certain development costs for user interface enhancements and implementation costs on behalf of FIs. Such development and implementation cost commitments total $12.1 million in 2017 and $9.3 million in 2018. These agreements allow for a total $4.4 million, $5.0 million and $5.0 million to be reimbursed to us through future reductions to FI Share over the course of 2017, 2018 and 2019, respectively. To the extent that we are unable to generate revenue from marketers sufficient to offset these FI Share commitments and other obligations, our business, results of operations and financial conditions could be harmed.

***If we fail to attract new FI partners or maintain our relationships with bank processors and digital banking providers, we may not be able to sufficiently grow our revenue, which could significantly harm our business, results of operations and financial condition.***

Our ability to grow our revenue depends on our ability to attract new FI partners. A significant percentage of consumer credit and debit card spending is concentrated with the 15 largest FIs in the United States, four of which are currently part of our FI network, while the balance of card spending is spread across thousands of smaller FIs. Accordingly, our ability to efficiently grow our revenue will specifically depend on our ability to establish relationships with the large FIs that are not currently part of our network and to maintain our relationships with the large FIs that are currently part of our network. In addition, we must continue to maintain our relationships with our existing bank processor and digital banking provider partners and attract new such partners because these partners aggregate smaller FIs into our network. We have in the past and may in the future be unsuccessful in attempts to establish and maintain relationships with large FIs, bank processors and digital banking providers. If we are unable to attract new FI partners, maintain our relationships with our existing bank processor and digital banking provider partners or attract new bank processor and digital provider partners, our business, results of operations and financial condition would be significantly harmed and we may fail to capture a material portion of the native bank advertising market opportunity.

***Our quarterly operating results may vary from period to period, which could result in our failure to meet expectations with respect to operating results and cause the trading price of our stock to decline.***

Our operating results have historically fluctuated and our future operating results may vary significantly from quarter to quarter due to a variety of factors, many of which are beyond our control. Period-to-period comparisons of our operating results should not be relied upon as an indication of our future performance. Given our relatively short operating history and the rapidly evolving purchase intelligence industry, our historical operating results may not be useful in predicting our future operating results.

Factors that may impact our quarterly operating results include the factors set forth in this “Risk Factors” section, as well as the following:

- our ability to attract and retain marketers, FI partners, bank processors and digital banking providers;
- the amount and timing of operating costs and capital expenditures related to the operations and expansion of our business, particularly with respect to our efforts to attract new FI partners to our network;
- the revenue mix between Cardlytics Direct and Other Platform Solutions, as well as between revenue generated from our operations in the United States and United Kingdom;
- changes in the economic prospects of marketers, the industries or verticals that we primarily serve, or the economy generally, which could alter marketers’ spending priorities or budgets;

- the termination or alteration of relationships with our FI partners in a manner that impacts ongoing or future marketing campaigns;
- the amount and timing of expenses required to grow our business, including the timing of our payments of FI Share and FI Share commitments as compared to the timing of our receipt of payments from our marketers;
- changes in demand for our solutions or similar solutions;
- seasonal trends in the marketing industry, including concentration of marketer spend in the fourth quarter of the calendar year and declines in marketer spend in the first quarter of the calendar year;
- competitive market position, including changes in the pricing policies of our competitors;
- exposure related to our international operations and foreign currency exchange rates;
- expenses associated with items such as litigation, regulatory changes, cyber-attacks or security breaches;
- the introduction of new technologies, products or solution offerings by competitors; and
- costs related to acquisitions of other businesses or technologies.

Each factor above or discussed elsewhere in this prospectus or the cumulative effect of some of these factors may result in fluctuations in our operating results. This variability and unpredictability could result in our failure to meet expectations with respect to operating results, or those of securities analysts or investors, for a particular period. If we fail to meet or exceed expectations for our operating results for these or any other reasons, the market price of our stock could fall and we could face costly lawsuits, including securities class action suits.

***We have a short operating history, which makes it difficult to evaluate our future prospects and may increase the risk that we will not be successful.***

We have a relatively short operating history, which limits our ability to forecast our future operating results and subjects us to a number of uncertainties, including with respect to our ability to plan for and model future growth. We have encountered and will continue to encounter risks and uncertainties frequently experienced by growing companies in developing industries. If our assumptions regarding these uncertainties, which we use to manage our business, are incorrect or change in response to changes in our markets, or if we do not address these risks successfully, our operating and financial results could differ materially from our expectations, our business could suffer and our stock price could decline. Any success that we may experience in the future will depend in large part on our ability to, among other things:

- maintain and expand our network of FI partners, bank processors and digital banking providers;
- build and maintain long-term relationships with marketers and their agencies;
- develop and offer competitive solutions that meet the evolving needs of marketers;
- expand our relationships with FI partners to enable us to use their purchase data for new solutions;
- improve the performance and capabilities of our solutions;
- successfully expand our business;

- successfully compete with other companies that are currently in, or may in the future enter, the markets for our solutions;
- increase market awareness of our solutions and enhance our brand;
- continue to develop, and increase market adoption of, our Other Platform Solutions;
- manage increased operating expenses as we continue to invest in our infrastructure to scale our business and operate as a public company; and
- attract, hire, train, integrate and retain qualified and motivated employees.

***Any failure of our FI partners to effectively deliver and promote the online incentive programs that comprise our Cardlytics Direct solution could materially and adversely affect our business.***

We have spent the last several years and significant resources building out technology integrations with our FI partners to facilitate the delivery of incentive programs to our FIs' customers and measuring those customers subsequent in-store or online spending. We are also reliant on our network of FI partners to promote their online incentive programs, increase customer awareness and leverage additional customer outreach channels like email, all of which can increase customer engagement, as well as expand our network of FI partners. We believe that key factors in the success and effectiveness of an incentive program are the following: the level of accessibility and prominence of the program on the FI partners' website and mobile applications, as well as the user interface through which a customer is presented with marketing content. In certain cases, we have little control over the prominence of the incentive program and design of the user interface that our FI partners choose to use. To the extent that our FI partners deemphasize incentive programs, make incentive programs difficult to locate on their website and/or mobile applications and/or fail to provide a user interface that is appealing to FI customers, FI customers may be less likely to purchase the products or solutions that are featured in incentive programs, which could negatively impact the amount of fees that we are able to charge our marketer customers in connection with marketing campaigns, and, therefore, our revenue. In addition, a failure by FIs to properly deliver or sufficiently promote marketing campaigns would reduce the efficacy of our solutions and impair our ability to attract and retain marketers and their agencies. As a result, the revenue we generate from our Cardlytics Direct solution may be adversely affected, which would materially and adversely affect our business, financial condition and results of operations.

***We derive a material portion of our revenue from a limited number of marketers, and the loss of one or more of these marketers could adversely impact our business, results of operations and financial conditions.***

Our marketer base is concentrated with our top five marketers representing 23% of revenue for both 2015 and 2016 and 24% of revenue for the nine months ended September 30, 2017. We do not have long-term commitments from most of these marketers. If we were to lose one or more of our significant marketers, our revenue may significantly decline. In addition, revenue from significant marketers may vary from period-to-period depending on the timing or volume of marketing spend. The loss of one or more of our significant marketers could adversely affect our business, results of operations and financial conditions.

Further, our top five marketers represented 27%, 21% and 25% of accounts receivable as of December 31, 2015 and 2016 and September 30, 2017, respectively. Accordingly, our credit risk is concentrated among a limited number of marketers and the failure of any significant marketer to satisfy its obligations to us, on a timely basis or at all, could adversely affect our business, results of operations and financial conditions.

***Our future success may depend, in part, on our ability to expand demand for our Other Platform Solutions, which are dependent upon our FI partners allowing us to utilize their purchase data for such solutions.***

We recently introduced our Other Platform Solutions that leverage our purchase intelligence platform. Revenue from our Other Platform Solutions was approximately $13.2 million, $15.0 million and $7.5 million in 2015,

2016 and the nine months ended September 30, 2017, respectively. Substantially all of our total Other Platform Solutions revenue in each of these periods was derived from sales of our Other Platform Solutions delivered as a managed service, which we discontinued as of July 31, 2017. Given that we are now focusing our efforts on more nascent Other Platform Solutions, we do not expect to generate substantial revenue from Other Platform Solutions for the foreseeable future. In addition, it is uncertain whether our Other Platform Solutions will gain market acceptance in the near term or at all and, accordingly, whether we will ultimately realize any return on our investment. Any factor adversely affecting sales of our Other Platform Solutions, including market acceptance, competition, performance and reliability, reputation and economic and market conditions, could harm our business, results of operations and financial conditions.

Further, each of our Other Platform Solutions is dependent upon our FI partners allowing us to utilize their purchase data for these solutions. We currently have the right to sell analytics using purchase data from only four of our FI partners outside the banking channel, which four FIs do not include Bank of America. In addition, we have the right to use aggregated Bank of America purchase data combined with aggregated data from other FIs to create summary analytics. If we lose access to any such data for any such uses from these FI partners or do not gain similar access to purchase data from additional FI partners, our ability to sell our Other Platform Solutions would be adversely affected.

We have invested substantial resources in the development and marketing of these solutions. Further, our experience in providing analytics solutions is limited, and if we are unable to effectively gather, process,
analyze and disseminate relevant information, sales of our Other Platform Solutions may suffer. Any failure to grow sales of our Other Platform Solutions could harm our business, financial condition and operating results.

***Our business could be adversely affected if marketers or their agencies are not satisfied with our solutions or our systems and infrastructure fail to meet their needs.***

We derive nearly all of our revenue from marketers and their agencies. Accordingly, our business depends on our ability to satisfy marketers and their agencies with respect to their marketing needs. With respect to Cardlytics Direct, we rely on our Offer Management System, or OMS, to facilitate the creation of marketing campaigns and evaluate the results of campaigns, and our Offer Placement System, or OPS, to track impressions, engagement, activation and redemptions and to target consumers and present offers. Any failure of, or delays in the performance of, our systems, including without limitation our OMS or OPS, could cause service interruptions or impaired system performance. Such failures in our systems could also cause us to over-run on campaigns, thus committing us to a higher amount of consumer incentives than our marketers approved, which would negatively affect the profitability of the affected campaigns. If sustained or repeated, these performance issues could reduce the attractiveness of our solutions to new and existing marketers and cause existing marketers to reduce or cease using our solutions, which could adversely affect our business, financial condition or operating results. In addition, negative publicity resulting from issues related to our marketer relationships, regardless of accuracy, may damage our business by adversely affecting our ability to attract new marketers or marketing agencies and maintain and expand our relationships with existing marketers.

If the use of our solutions increases, or if marketers or FI partners demand more advanced features from our solutions, we will need to devote additional resources to improving our solutions, and we also may need to expand our technical infrastructure at a more rapid pace than we have in the past. This would involve purchasing or leasing data center capacity and equipment, upgrading our technology and infrastructure and introducing new or enhanced solutions. It may take a significant amount of time to plan, develop and test changes to our infrastructure, and we may not be able to accurately forecast demand or predict the results we will realize from such improvements. There are inherent risks associated with changing, upgrading, improving and expanding our technical infrastructure. Any failure of our solutions to operate effectively with future infrastructure and technologies could reduce the demand for our solutions, resulting in marketer or FI partner dissatisfaction and harm to our business. Also, any expansion of our infrastructure would likely require that we appropriately scale our internal business systems and services organization, including without limitation implementation and support services, to serve our growing marketer base.

If we are unable to respond to these changes or fully and effectively implement them in a cost-effective and timely manner, our solutions may become ineffective, we may lose marketers and/or FI partners, and our business, financial condition and operating results may be negatively impacted.

***We generally do not have long-term commitments from marketers, and if we are unable to retain and increase sales of our solutions to marketers and their agencies or attract new marketers and their agencies, our business, financial condition and operating results would be adversely affected.***

Most marketers do business with us by placing insertion orders for particular marketing campaigns, either directly or through marketing agencies that act on their behalf. We generally do not have any commitment from a marketer beyond the campaign governed by a particular insertion order, and we frequently must compete to win further business from a marketer. Our insertion orders may also be cancelled by marketers or their marketing agencies prior to the completion of the campaign; provided that marketers or their agencies are required to pay us for services performed prior to cancellation. As a result, our success is dependent upon our ability to outperform our competitors and win repeat business from existing marketers, while continually expanding the number of marketers for which we provide services. To maintain and increase our revenue, we must encourage existing marketers and their agencies to increase their use of our solutions and add new marketers. Many marketers and marketing agencies, however, have only just begun using our solutions for a limited number of marketing campaigns, and our future revenue growth will depend heavily on these marketers and marketing agencies expanding their use of our solutions across campaigns and otherwise increasing their spending with us. Even if we are successful in convincing marketers and their agencies to use our solutions, it may take several months or years for them to meaningfully increase the amount that they spend with us. Further, larger marketers with multiple brands typically have individual marketing budgets and marketing decision makers for each of their brands, and we may not be able to leverage our success in securing a portion of the marketing budget of one or more of a marketer's brands into additional business with other brands. Moreover, marketers may place internal limits on the allocation of their marketing budgets to digital marketing, to particular campaigns, to a particular provider or for other reasons. In addition, we are reliant on our FI network to have sufficient marketing inventory within Cardlytics Direct to place the full volume of advertisements contracted for by our marketers and their agencies. Any failure to meet these demands may hamper the growth of our business and the attractiveness of our solutions.

Our ability to retain and increase sales of our solutions and attract new marketers and their agencies may be adversely affected by competitive offerings or marketing methods that are lower priced or perceived as more effective than our solutions. Larger marketers may themselves have a substantial amount of purchase data and they may also seek to augment their own purchase data with additional purchase, impression and/or demographic data acquired from third-party data providers, which may allow them to develop, individually or with partners, internal targeting and measurement capabilities.

Because we do not have long-term agreements with our marketers or their agencies, we may not be able to accurately predict future revenue streams, and we cannot guarantee that our current marketers will continue to use our solutions, or that we will be able to replace departing marketers with new marketers that provide us with comparable revenue. If we are unable to retain and increase sales of our solutions to existing marketers and their agencies or attract new marketers and their agencies for any of the reasons above or for other reasons, our business, financial condition and operating results would be adversely affected.

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

We have incurred net losses since inception and expect to incur net losses in the future. We incurred net losses of $38.9 million, $40.6 million, $75.7 million and $15.6 million in 2014, 2015, 2016 and the nine months ended September 30, 2017, respectively. As of September 30, 2017, we had an accumulated deficit of $264.4 million. We have never achieved profitability on an annual or quarterly basis and we do not know if we will be able to achieve or sustain profitability. Although our revenue has increased substantially in recent periods, we also do not expect to maintain this rate of revenue growth. We plan to continue to invest in our research and development

and sales and marketing efforts, and we anticipate that our operating expenses will continue to increase as we scale our business and expand our operations. We also expect our general and administrative expense to increase as a result of our growth and our preparation to become, and operate as, a public company. Our ability to achieve and sustain profitability is based on numerous factors, many of which are beyond our control. We may never be able to generate sufficient revenue to achieve or sustain profitability.

***Bringing new FI partners into our network can require considerable time and expense and can be long and unpredictable.***

Our FI partners and FI partner prospects engage in highly regulated businesses, are often slow to adopt technological innovation and have rigorous standards with respect to providing third parties, like us, with access to their data. Our operating results depend in part on expanding our FI partner network to maintain and enhance the scale of our solutions. The length of time that it takes to add an FI partner to our network, from initial evaluation to integration into our network, varies substantially from FI to FI and may take several years. Our sales and integration cycle with respect to our FI partners is long and unpredictable, requires considerable time and expense and may not ultimately be successful. It is difficult to predict exactly when, or even if, a new FI partner will join our network and we may not generate revenue from a new FI partner in the same period as we incurred the costs associated with acquiring such FI partner, or at all. Once an FI partner has agreed to work with us, it may take a lengthy period of time for the implementation of our solutions to be prioritized and integrated into the FI partner's infrastructure. Because a substantial portion of our expenses are relatively fixed in the short term, our operating results will suffer if revenue falls below our expectations in a particular quarter, which could cause the price of our stock to decline. Ultimately, if additions to our FI network are not realized in the time period expected or not realized at all, or if an FI partner terminates its agreement with us, our business, financial condition and operating results could be adversely affected.

***We operate in an emerging industry and future demand and market acceptance for our solutions is uncertain.***

We believe that our future success will depend in large part on the growth, if any, in the market for purchase intelligence. Utilization of consumer purchase data to inform marketing is an emerging industry and future demand and market acceptance for this type of marketing is uncertain. If the market for purchase intelligence does not continue to develop or develops more slowly than we expect, our business, financial condition and operating results could be harmed.

***The market in which we participate is competitive and we may not be able to compete successfully with our current or future competitors.***

The market for purchase intelligence is nascent and we believe that there is no one company with which we compete directly across our range of solutions. With respect to Cardlytics Direct, we believe that we are the only company that enables marketing through FI channels at scale. With respect to our Other Platform Solutions, we compete with a number of established companies, as well as numerous emerging market entrants. In the future, we may face competition from online retailers, credit card companies, established enterprise software companies, advertising and marketing agencies, digital publishers and mobile pay providers with access to a substantial amount of consumer purchase data. While we may successfully partner with a wide range of companies that are to some extent currently competitive to us, these companies may become more competitive to us in the future. As we introduce new solutions, as our existing solutions evolve and as other companies introduce new products and solutions, we are likely to face additional competition.

Some of our actual and potential competitors may have advantages over us, such as longer operating histories, significantly greater financial, technical, marketing or other resources, stronger brand and recognition, larger intellectual property portfolios and broader global distribution and presence. In addition, our industry is evolving rapidly and is becoming increasingly competitive. Larger and more established companies may focus on purchase intelligence marketing and could directly compete with us. Smaller companies could also launch new products and services that we do not offer and that could gain market acceptance quickly.

Our competitors may be able to respond more quickly and effectively than we can to new or changing opportunities, technologies, standards or customer requirements. Larger competitors are also often in a better position to withstand any significant reduction in capital spending, and will therefore not be as susceptible to economic downturns. In addition, current or potential competitors may be acquired by third parties with greater available resources. As a result of such relationships and acquisitions, our current or potential competitors might be able to adapt more quickly to new technologies and customer needs, devote greater resources to the promotion or sale of their products and services, initiate or withstand substantial price competition, take advantage of other opportunities more readily or develop and expand their product and service offerings more quickly than we do. For all of these reasons, we may not be able to compete successfully against our current or future competitors.

***If we fail to identify and respond effectively to rapidly changing technology and industry needs, our solutions may become less competitive or obsolete.***

Our future success depends on our ability to adapt and innovate. To attract, retain and increase new marketers and FI partners, we will need to expand and enhance our solutions to meet changing needs, add functionality and address technological advancements. If we are unable to adapt our solutions to evolving trends in the marketing industry, if we are unable to properly identify and prioritize appropriate solution development projects or if we fail to develop and effectively market new solutions, such as our nascent Other Platform Solutions, or enhance existing solutions to address the needs of existing and new marketers and FI partners, we may not be able to achieve or maintain adequate market acceptance and penetration of our solutions, and our solutions may become less competitive or obsolete.

In addition, new, more effective or less costly technologies may emerge that use data sources that we do not have access to, that use entirely different analytical methodologies than we do or that use other indicators of purchases by consumers. If existing and new marketers and their agencies perceive greater value in alternative technologies or data sources, our ability to compete for marketers and their agencies could be materially and adversely affected.

***Our future success will depend, in part, on our ability to expand into new industry verticals.***

We have historically generated a substantial majority of our revenue from marketers in the restaurant, brick and mortar retail, telecommunications and cable industries, and have recently entered new verticals such as hospitality and travel, and believe that our future success will depend, in part, on our ability to expand adoption of our solutions in new industry verticals. As we market to a wider group of potential marketers and their agencies, we will need to adapt our marketing strategies to meet the concerns and expectations of customers in these new industry verticals. Our success in expanding sales of our solutions to marketers in new industry verticals will depend on a variety of factors, including our ability to:

- tailor our solutions so that they that are attractive to businesses in such industries;
- hire personnel with relevant industry-vertical experience to lead sales and services teams; and
- develop sufficient expertise in such industries so that we can provide effective and meaningful marketing programs and analytics.

If we are unable to successfully market our solutions to appeal to marketers and their agencies in new industries, we may not be able to achieve our growth or business objectives.

***A breach of the security of our systems could result in a third party's entry into our FI partners' systems, which would be detrimental to our business, financial condition and operating results.***

We leverage our FI partners' purchase data and infrastructures to deliver our solutions. We do not currently receive any personally identifiable information, or PII, from our FI partners, although we may obtain PII in the

future as our business evolves. However, because of the interconnected nature of our infrastructure with that of our FI partners, there is a risk that third parties may attempt to gain access to our FI partners' systems through our systems for the purpose of stealing data or disrupting our or their respective operations. In turn, we may be a more visible target for cyber-attacks and/or physical breaches of our databases or data centers, and we may in the future suffer from such attacks or breaches.

Current or future criminal capabilities, discovery of existing or new vulnerabilities in our systems and attempts to exploit those vulnerabilities or other developments may compromise or breach the technology protecting our systems. In the event that our protection efforts are unsuccessful and our systems are compromised such that a third party gains entry to our or any of our FI partners' systems, we could suffer substantial harm. A security breach could result in operation disruptions that impair our ability to meet our marketers' requirements, which could result in decreased revenue. Also, our reputation could suffer irreparable harm, causing our current and prospective marketers and FI partners to decline to use our solutions in the future. Further, we could be forced to expend significant financial and operational resources in response to a security breach, including repairing system damage, increasing cyber security protection costs by deploying additional personnel and protection technologies and litigating and resolving legal claims, all of which could divert resources and the attention of our management and key personnel away from our business operations. In any event, a breach of the security of our systems or data could materially harm our business, financial condition and operating results.

***A number of factors could impair our ability to collect the significant amounts of data that we use to deliver our solutions.***

Our ability to collect and use data may be restricted or prevented by a number of other factors, including:

- the failure of our network or software systems, or the network or software systems of our FI partners;
- decisions by our FI partners to restrict our ability to collect data from them (which decision they may make at their discretion) or to refuse to implement the mechanisms that we request to ensure compliance with our legal obligations or technical requirements;
- decisions by our FI partners to limit our ability to use their purchase data outside of the applicable banking channel;
- decisions by our FIs' customers to opt out of the incentive program or to use technology, such as browser settings, that reduces our ability to deliver relevant advertisements;
- interruptions, failures or defects in our or our FI partners' data collection, mining, analysis and storage systems;
- changes in regulations impacting the collection and use of data, including the use of cookies;
- changes in browser or device functionality and settings, and other new technologies, which impact our FI partners' ability to collect and/or share data about their customers; and
- changes in international laws, rules, regulations and industry standards or increased enforcement of international laws, rules, regulations, and industry standards.

Any of the above-described limitations on our ability to successfully collect, utilize and leverage data could also materially impair the optimal performance of our solutions and severely limit our ability to target consumer, which would harm our business, financial condition and operating results.

***The efficacy of some of our solutions depends upon third-party data providers.***

We rely on several third parties to assist us in matching our anonymized identifiers, which we call Cardlytics IDs, with third-party identifiers to recognize the digital presence of our FIs' customers outside the FI channel. This matching process enables us to use purchase intelligence to measure in-store and online campaign sales impact or provide marketers with valuable visibility into the behaviors of current or prospective customers both within and outside the context of their marketing efforts. If any of these key data providers were to withdraw or withhold their identifiers from us, our ability to provide our Other Platform Solutions could be adversely affected. Replacements for these third-party identifiers may not be available in a timely manner or under economically beneficial terms, or at all.

***Defects, errors or delays in our solutions could harm our reputation, which would harm our operating results.***

The technology underlying our solutions may contain material defects or errors that can adversely affect our ability to operate our business and cause significant harm to our reputation. This risk is compounded by the complexity of the technology underlying our solutions and the large amounts of data that we leverage and process. In addition, with regard to our Cardlytics Direct solution, if we are unable to attribute incentives to our FIs' customers in a timely manner, our FI partners may limit or discontinue their use of our solutions. Any such error, failure, malfunction, disruption or delay could result in damage to our reputation and could harm our business, financial condition and operating results.

***Significant system disruptions or loss of data center capacity could adversely affect our business, financial condition and operating results.***

Our business is heavily dependent upon highly complex data processing capabilities. We contract with our primary third-party data center, located in Atlanta, Georgia, and our redundancy data center, located in Suwanee, Georgia, pursuant to agreements that expire on December 31, 2020, subject to earlier termination upon material breach and a failure to cure. If for any reason our arrangements with our third-party data centers are terminated, or if we are unable to renew our agreements on commercially reasonable terms, we may be required to transfer that portion of our operations to new data center facilities, and we may incur significant costs and possible service interruption in connection with doing so. Further, protection of our third-party data centers against damage or interruption from fire, flood, tornadoes, power loss, telecommunications or equipment failure or other disasters and events beyond our control is important to our continued success. Any damage to, or failure of, the systems of the data centers that we utilize, or of our own equipment located within such data centers, could result in interruptions to the availability or functionality of our solutions. In addition, the failure of the data centers that we utilize to meet our capacity requirements could result in interruptions in the availability or functionality of our solutions or impede our ability to scale our operations. Any damage to the data centers that we utilize, or to our own equipment located within such data centers, that causes loss of capacity or otherwise causes interruptions in our operations could materially adversely affect our ability to quickly and effectively respond to our marketers' or FI partners' requirements, which could result in loss of their confidence, adversely impact our ability to attract new marketers and/or FI partners and force us to expend significant resources. The occurrence of any such events could adversely affect our business, financial condition and operating results.

***Seasonal fluctuations in marketing activity could adversely affect our cash flows.***

We expect our revenue, operating results, cash flows from operations and other key operating and performance metrics to vary from quarter to quarter in part due to the seasonal nature of our marketers' spending on digital marketing campaigns. For example, many marketers tend to devote a significant portion of their budgets to the fourth quarter of the calendar year to coincide with consumer holiday spending and to reduce spend in the first quarter of the calendar year. Seasonality could have a material impact on our revenue, operating results, cash flow from operations and other key operating and performance metrics from period to period.

***Our international sales and operations subject us to additional risks that can adversely affect our business, operating results and financial condition.***

In each of 2015 and 2016, we derived 11% of our revenue outside the United States. In the nine months ended September 30, 2017, 12% of our revenue was derived outside the United States. We may continue to expand our international operations as part of our growth strategy. While we have an office in the United Kingdom, substantially all of our operations are located in the United States. Our ability to convince marketers to expand their use of our solutions or renew their agreements with us is directly correlated to our direct engagement with such marketers or their agencies. To the extent that we are unable to engage with non-U.S. marketers and agencies effectively with our limited sales force capacity, we may be unable to grow sales to existing marketers to the same degree we have experienced in the United States.

Our international operations subject us to a variety of risks and challenges, including:

- localization of our solutions, including adaptation for local practices;
- increased management, travel, infrastructure and legal compliance costs associated with having international operations;
- fluctuations in currency exchange rates and related effect on our operating results;
- longer payment cycles and difficulties in collecting accounts receivable or satisfying revenue recognition criteria, especially in emerging markets;
- increased financial accounting and reporting burdens and complexities;
- general economic conditions in each country or region;
- economic uncertainty around the world;
- compliance with foreign laws and regulations and the risks and costs of non-compliance with such laws and regulations;
- compliance with U.S. laws and regulations for foreign operations, including the Foreign Corrupt Practices Act, the U.K. Bribery Act, import and export control laws, tariffs, trade barriers, economic sanctions and other regulatory or contractual limitations on our ability to sell our software in certain foreign markets, and the risks and costs of non-compliance;
- heightened risks of unfair or corrupt business practices in certain geographies and of improper or fraudulent sales arrangements that may impact financial results and result in restatements of financial statements and irregularities in financial statements;
- difficulties in repatriating or transferring funds from or converting currencies in certain countries;
- cultural differences inhibiting foreign employees from adopting our corporate culture;
- reduced protection for intellectual property rights in some countries and practical difficulties of enforcing rights abroad; and
- compliance with the laws of foreign taxing jurisdictions and overlapping of different tax regimes.

Any of these risks could adversely affect our international operations, reduce our international revenues or increase our operating costs, adversely affecting our business, financial condition and operating results.

***If we do not manage our growth effectively, the quality of our solutions may suffer, and our business, financial condition and operating results may be negatively affected.***

The recent, rapid growth in our business has placed, and is expected to continue to place, a significant strain on our managerial, administrative, operational and financial resources, as well as our infrastructure. We rely heavily on information technology, or IT, systems to manage critical functions such as data storage, data processing, matching and retrieval, revenue recognition, budgeting, forecasting and financial reporting. To manage our growth effectively, we must continue to improve and expand our infrastructure, including our IT, financial and administrative systems and controls. In particular, we may need to significantly expand our IT infrastructure as the amount of data we store and transmit increases over time, which will require that we both utilize existing IT products and adopt new technologies. If we are not able to scale our IT infrastructure in a cost-effective and secure manner, our ability to offer competitive solutions will be harmed and our business, financial condition and operating results may suffer.

We must also continue to manage our employees, operations, finances, research and development and capital investments efficiently. Our productivity and the quality of our solutions may be adversely affected if we do not integrate and train our new employees quickly and effectively or if we fail to appropriately coordinate across our executive, research and development, technology, service development, analytics, finance, human resources, marketing, sales, operations and customer support teams. If we continue our rapid growth, we will incur additional expenses, and our growth may continue to place a strain on our resources, infrastructure and ability to maintain the quality of our solutions. If we do not adapt to meet these evolving challenges, or if the current and future members of our management team do not effectively manage our growth, the quality of our solutions may suffer and our corporate culture may be harmed. Failure to manage our future growth effectively could cause our business to suffer, which, in turn, could have an adverse impact on our business, financial condition and operating results.

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

We are undergoing rapid growth. As of September 30, 2017, we had 337 employees. We intend to further expand our overall headcount and operations, with no assurance that we will be able to do so while effectively maintaining our corporate culture. We believe our corporate culture is one of our fundamental strengths as it enables us to attract and retain top talent and deliver superior results for our customers. As we grow and change, we may find it difficult to preserve our corporate culture, which could reduce our ability to innovate and operate effectively. In turn, the failure to preserve our culture could negatively affect our ability to attract, recruit, integrate and retain employees, continue to perform at current levels and effectively execute our business strategy.

***We are dependent on the continued services and performance of our senior management and other key personnel, the loss of any of whom could adversely affect our business.***

Our future success depends in large part on the continued contributions of our senior management and other key personnel, including our two founders, Scott Grimes, our Chief Executive Officer, and Lynne Laube, our Chief Operating Officer. In particular, the leadership of key management personnel is critical to the successful management of our company, the development of our solutions and our strategic direction. We do not maintain “key person” insurance for any member of our senior management team or any of our other key employees. Our senior management and key personnel are all employed on an at-will basis, which means that they could terminate their employment with us at any time, for any reason and without notice. The loss of any of our key management personnel could significantly delay or prevent the achievement of our development and strategic objectives and adversely affect our business.

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

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

***If we do not effectively grow and train our sales team, we may be unable to add new marketers or increase sales to our existing marketers and our business will be adversely affected.***

We continue to be substantially dependent on our sales team to obtain new marketers and to drive sales with respect to our existing marketers. We believe that the characteristics and skills of the best salespeople for our solutions are still being defined, as our market is relatively new. Further, we believe that there is, and will continue to be, significant competition for sales personnel with the skills and technical knowledge that we require. Our ability to achieve significant revenue growth will depend, in large part, on our success in recruiting, training, integrating and retaining sufficient numbers of sales personnel to support our growth. New hires require significant training and it may take significant time before they achieve full productivity. Our recent hires and planned hires may not become productive as quickly as we expect, and we may be unable to hire or retain sufficient numbers of qualified individuals in the markets where we do business or plan to do business. In addition, as we continue to grow rapidly, a large percentage of our sales team will be new to our company and our solutions. If we are unable to hire and train sufficient numbers of effective sales personnel, or the sales personnel are not successful in obtaining new marketers or increasing sales to our existing marketers, our business will be adversely affected.

***The market data and forecasts included in this prospectus may prove to be inaccurate, and even if the markets in which we compete achieve the forecasted growth, we cannot assure you that our business will grow at similar rates, or at all.***

The market data and forecasts included in this prospectus, including the data and forecasts published by eMarketer, Kantar Media, The Nilson Report, Frost & Sullivan, MAGNA Global and CMO Council, among others, and our internal estimates and research are subject to significant uncertainty and are based on assumptions and estimates that may not prove to be accurate. If the forecasts of market growth or anticipated spending prove to be inaccurate, our business and growth prospects could be adversely affected. Even if the forecasted growth occurs, our business may not grow at a similar rate, or at all. Our future growth is subject to many factors, including our ability to successfully implement our business strategy, which itself is subject to many risks and uncertainties. The reports described in this prospectus speak as of their respective publication dates and the opinions expressed in such reports are subject to change. Accordingly, potential investors in our common stock are urged not to put undue reliance on such forecasts and market data.

***If currency exchange rates fluctuate substantially in the future, the results of our operations could be adversely affected.***

Due to our international operations, we may be exposed to the effects of fluctuations in currency exchange rates. We generate revenue and incur expenses for employee compensation and other operating expenses at our U.K. office in the local currency. Fluctuations in the exchange rates between the U.S. dollar and the British pound could result in the dollar equivalent of such revenue and expenses being lower, which could have a negative net impact on our reported operating results. Although we may in the future decide to undertake foreign exchange hedging transactions to cover a portion of our foreign currency exchange exposure, we currently do not hedge our exposure to foreign currency exchange risks.

***Our business may be subject to additional obligations to collect and remit sales tax and other taxes, and we may be subject to tax liability for past sales. Any successful action by state, local or other authorities to collect additional or past sales tax could adversely harm our business.***

We are subject to federal, state and local taxes in the United States and similar taxes in foreign jurisdictions. Significant judgment is required in evaluating our tax positions and our worldwide provision for taxes. During the ordinary course of business, there are many activities and transactions for which the ultimate tax determination is uncertain. We may be audited in various jurisdictions, and such jurisdictions may assess additional taxes against us. Although we believe that our tax estimates are reasonable, the final determination of any tax audits or litigation could be materially different from our historical tax provisions and accruals, which could have a material adverse effect on our operating results or cash flows in the period or periods for which a determination is made.

We do not collect sales or other similar taxes in certain states and many of the states do not apply sales or similar taxes to certain of our solutions. State, local and foreign taxing jurisdictions have differing rules and regulations governing sales and use taxes, and these rules and regulations are subject to varying interpretations that may change over time. In particular, the applicability of sales taxes to our solutions in various jurisdictions is unclear. We review these rules and regulations periodically and, when we believe we are subject to sales and use taxes in a particular state, we may voluntarily engage state tax authorities to determine how to comply with their rules and regulations. A successful assertion by one or more states, including states for which we have not accrued tax liability, requiring us to collect sales or other taxes with respect to sales of our solutions could result in substantial tax liabilities for past transactions, including interest and penalties, discourage customers from purchasing our solutions or otherwise harm our business, financial condition and operating results.

***Determining our income tax rate is complex and subject to uncertainty.***

The computation of provision for income tax is complex, as it is based on the laws of numerous taxing jurisdictions and requires significant judgment on the application of complicated rules governing accounting for tax provisions under GAAP. Provision for income tax for interim quarters is based on a forecast of our U.S. and non-U.S. effective tax rates for the year, which includes forward looking financial projections, including the expectations of profit and loss by jurisdiction, and contains numerous assumptions. Various items cannot be accurately forecasted and future events may be treated as discrete to the period in which they occur. Our provision for income tax can be materially impacted, for example, by the geographical mix of our profits and losses, changes in our business, such as internal restructuring and acquisitions, changes in tax laws and accounting guidance and other regulatory, legislative or judicial developments, tax audit determinations, changes in our uncertain tax positions, changes in our intent and capacity to permanently reinvest foreign earnings, changes to our transfer pricing practices, tax deductions attributed to equity compensation and changes in our need for a valuation allowance for deferred tax assets. For these reasons, our actual income taxes may be materially different than our provision for income tax.

***Our use of our net operating loss carryforwards may be limited and such carryforwards may expire unutilized or underutilized.***

We may be limited in the portion of our net operating loss carryforwards that we can use in the future to offset taxable income for U.S. federal and state income tax purposes. As of December 31, 2016, we had U.S. federal and state net operating loss carryforwards, or NOLs, of $198.4 million and $59.9 million, respectively, which expire in various years beginning in 2028. If we do not earn sufficient taxable income in the future, our NOLs may expire unutilized or underutilized. In addition, under Section 382 of the Internal Revenue Code of 1986, as amended, or the Code, a corporation that undergoes an "ownership change" is subject to limitations on its ability to utilize its existing NOLs to offset future taxable income. We may have experienced "ownership changes" under Section 382 of the Code in the past, and subsequent changes in ownership of our stock, including by reason of this or future offerings, as well as other changes that may be outside of our control, could result in future ownership changes under Section 382 of the Code. If we are or become subject to limitations on our use of NOLs under Section 382 of the Code, our NOLs could expire unutilized or underutilized, even if we earn taxable income against which our NOLs could otherwise be offset. Our NOLs may also be impaired under similar provisions of state law. We have recorded a full valuation allowance related to our NOLs in our financial statements and other net deferred tax assets due to the uncertainty of the ultimate realization of the future benefits of those assets.

***Comprehensive tax reform bills could adversely affect our business and financial condition.***

The U.S. government recently enacted comprehensive tax legislation that includes significant changes to the taxation of business entities. These changes include, among others, (i) a permanent reduction to the corporate income tax rate, (ii) a partial limitation on the deductibility of business interest expense, (iii) a shift of the U.S. taxation of multinational corporations from a tax on worldwide income to a territorial system (along with certain rules designed to prevent erosion of the U.S. income tax base) and (iv) a one-time tax on accumulated offshore earnings held in cash and illiquid assets, with the latter taxed at a lower rate. Notwithstanding the reduction in the corporate income tax rate, the overall impact of this tax reform is uncertain, and our business and financial condition could be adversely affected. This prospectus does not discuss any such tax legislation or the manner in which it might affect purchasers of our common stock. We urge our stockholders to consult with their legal and tax advisors with respect to any such legislation and the potential tax consequences of investing in our common stock.

***Unfavorable conditions in the global economy or the vertical markets we serve could limit our ability to grow our business and negatively affect our operating results.***

General worldwide economic conditions have experienced significant instability in recent years. These conditions make it extremely difficult for marketers and us to accurately forecast and plan future business activities, and could cause marketers to reduce or delay their marketing spending. Historically, economic downturns have resulted in overall reductions in marketing spending. If macroeconomic conditions deteriorate or are characterized by uncertainty or volatility, marketers may curtail or freeze spending on marketing in general and for services such as ours specifically.

In addition, our business may be materially and adversely affected by weak economic conditions in the specific vertical markets that we serve. We have historically generated a substantial majority of our revenue from marketers in the restaurant, brick and mortar retail, telecommunications and cable industries. We cannot predict the timing, strength or duration of any economic slowdown or recovery. In addition, even if the overall economy is robust, we cannot assure you that the market for services such as ours will experience growth or that we will experience growth.

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

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

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

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

***Natural or man-made disasters and other similar events may significantly disrupt our business, and negatively impact our business, financial condition and operating results.***

A significant portion of our employee base, operating facilities and infrastructure are centralized in Atlanta, Georgia. Any of our facilities may be harmed or rendered inoperable by natural or man-made disasters, including earthquakes, tornadoes, hurricanes, wildfires, floods, nuclear disasters, acts of terrorism or other criminal activities, infectious disease outbreaks and power outages, which may render it difficult or impossible for us to operate our business for some period of time. Our facilities would likely be costly to repair or replace, and any such efforts would likely require substantial time. Any disruptions in our operations could negatively impact our business, financial condition and operating results, and harm our reputation. In addition, we may not carry business insurance or may not carry sufficient business insurance to compensate for losses that may occur. Any such losses or damages could have a material adverse effect on our business, financial condition and operating results. In addition, the facilities of significant marketers, FI partners or third-party data providers may be harmed or rendered inoperable by such natural or man-made disasters, which may cause disruptions, difficulties or material adverse effects on our business.

***We may require additional capital to support growth, and such capital might not be available on terms acceptable to us, if at all, which may in turn hamper our growth and adversely affect our business.***

We intend to continue to make investments to support our business growth and may require additional funds to respond to business challenges, including the need to develop new solutions or enhance our solutions, improve our operating infrastructure or acquire complementary businesses and technologies. Accordingly, we may need to engage in equity, equity-linked or debt financings to secure additional funds. If we raise additional funds through future issuances of equity or equity-linked securities, including convertible debt securities, our existing stockholders could suffer significant dilution, and any new equity securities that we issue could have rights, preferences and privileges superior to those of holders of our common stock. Any debt financing that we secure in the future could involve restrictive covenants relating to our capital-raising activities and other financial and operational matters, including the ability to pay dividends or repurchase shares of our capital stock. This may make it more difficult for us to obtain additional capital, to pursue business opportunities, including potential acquisitions, or to return capital to our stockholders. We also may not be able to obtain additional financing on terms favorable to us, if at all. If we are unable to obtain adequate financing or financing on terms satisfactory to us when we require it, our ability to continue to support our business growth, service our indebtedness and respond to business challenges could be significantly impaired, and our business may be adversely affected.

***If we are not able to maintain and enhance our brand, our business, financial condition and operating results may be adversely affected.***

We believe that developing and maintaining awareness of the Cardlytics brand in a cost-effective manner is critical to achieving widespread acceptance of our existing solutions and future solutions and is an important element in attracting new marketers and FI partners. Furthermore, we believe that the importance of brand recognition will increase as competition in our market increases. Successful promotion of our brand will depend largely on the effectiveness of our marketing efforts and on our ability to deliver valuable solutions for our marketers, their agencies and our FI partners. In the past, our efforts to build our brand have involved significant expense. Brand promotion activities may not yield increased revenue, and even if they do, any increased revenue may not offset the expenses that we incurred in building our brand. If we fail to successfully promote and maintain our brand, or incur substantial expenses in an unsuccessful attempt to promote and maintain our brand, we may fail to attract enough new marketers or FI partners or retain our existing marketer or FI partners and our business could suffer.

**Risks Related to Regulatory and Intellectual Property Matters**

***Regulatory, legislative or self-regulatory developments regarding internet privacy matters could adversely affect our ability to conduct our business.***

We, our FI partners and our marketers are subject to a number of domestic and international laws and regulations that apply to online services and the internet generally. These laws, rules and regulations address a range of issues including data privacy and cyber security, and restrictions or technological requirements regarding the collection, use, storage, protection, retention or transfer of data.

In the United States, the rules and regulations to which we, directly or contractually through our FI partners, or our marketers may be subject include those promulgated under the authority of the Federal Trade Commission, the Electronic Communications Privacy Act, Computer Fraud and Abuse Act, Health Insurance Portability and Accountability Act, the Gramm-Leach-Bliley Act and state cyber security and breach notification laws, as well as regulator enforcement positions and expectations reflected in federal and state regulatory actions, settlements, consent decrees and guidance documents. Internationally, virtually every jurisdiction in which we operate has established its own data security and privacy legal frameworks with which we, directly or contractually through our FI partners, or our marketers may be required to comply, including the Data Protection Directive established in the European Union. Further, many federal, state and foreign government bodies and agencies have introduced, and are currently considering, additional laws and regulations. If passed, we will likely incur additional expenses and costs associated with complying with such laws. The costs of compliance with, and other burdens imposed by, the laws, rules, regulations and policies that are applicable to the businesses of our FI partners or marketers may limit the use and adoption of, and reduce the overall demand for, our solutions.

These existing and proposed laws, regulations and industry standards can be costly to comply with and can delay or impede the development of new solutions, result in negative publicity and reputational harm, increase our operating costs, require significant management time and attention, increase our risk of non-compliance and subject us to claims or other remedies, including fines or demands that we modify or cease existing business practices.

***Legislation and regulation of online businesses, including privacy and data protection regimes, is expansive, not clearly defined and rapidly evolving. Such regulation could create unexpected costs, subject us to enforcement actions for compliance failures, or restrict portions of our business or cause us to change our business model.***

Government regulation and industry standards may increase the costs of doing business online. Federal, state, municipal and foreign governments and agencies have adopted and could in the future adopt, modify, apply or enforce laws, policies, regulations and standards covering user privacy, data security, technologies such as cookies that are used to collect, store and/or process data, online marketing, the use of data to inform marketing, the taxation of products and services, unfair and deceptive practices, and the collection (including the collection of information), use, processing, transfer, storage and/or disclosure of data associated with unique individual internet users.

Although we have not collected or retained data that is traditionally considered PII under U.S. law, such as names, email addresses, addresses, phone numbers, social security numbers, credit card numbers, financial data or health data, we typically do collect and store IP addresses and other device identifiers, which are or may be considered personal data in some jurisdictions or otherwise may be the subject of legislation or regulation. Furthermore, we may elect to use PII in the future for our current solutions or solutions we may introduce. In addition, certain U.S. laws impose requirements on the collection and use of information from or about users or their devices. Other existing laws may in the future be revised, or new laws may be passed, to impose more stringent requirements on the use of identifiers to collect user information, including information of the type that we collect. Changes in regulations could affect the type of data that we may collect; restrict our ability to use

identifiers to collect information, and, thus, affect our ability to actually collect that information; the costs of doing business online, and, therefore, the demand for our solutions; the ability to expand or operate our business; and harm our business.

In particular, there has been increasing public and regulatory concern and public scrutiny about the use of PII. Because the interpretation and application of privacy and data protection laws are still uncertain, it is possible that these laws may be interpreted and applied in a manner that is inconsistent with our existing data management practices or our solutions or that the definition of "PII" is expanded in the future. If this is the case, in addition to the possibility of fines, lawsuits and other claims, we could be required to fundamentally change our business activities and practices or modify our solutions, which could have a material adverse effect on our business, financial condition or operating results. Any inability to adequately address privacy concerns, even if unfounded, or comply with applicable privacy or data protection laws, regulations, policies or standards could result in additional cost and liability to us; damage our reputation; affect our ability to attract new marketers and FI partners and maintain relationships with our existing marketers and FI partners; and adversely affect our business, financial condition or operating results. Privacy and security concerns, whether valid or not, may inhibit market adoption of our solutions.

U.S. and non-U.S. regulators also may implement "Do-Not-Track" legislation, particularly if the industry does not implement a standard. Effective January 1, 2014, the California Governor signed into law an amendment to the California Online Privacy Protection Act of 2003. Such amendment requires operators of commercial websites and online service providers, under certain circumstances, to disclose in their privacy policies how such operators and providers respond to browser "do not track" signals.

Some of our activities may also be subject to the laws of foreign jurisdictions, whether or not we are established or based in such jurisdictions. Within the European Union, or EU, where we currently have an active presence in the United Kingdom, Directive 2009/136/EC, commonly referred to as the "Cookie Directive," directs EU member states to ensure that accessing information on an internet user's computer, such as through a cookie, is allowed only if the internet user has given his or her consent. In response, some member states have implemented legislation requiring entities to obtain the user's consent before placing cookies for targeted marketing purposes.

In the United Kingdom, for example, the Privacy and Electronic Communications Regulations 2011, or PECR, implement the requirements of Directive 2009/136/EC (which amended Directive 2002/58/EC), which is known as the ePrivacy Directive. The PECR regulates various types of electronic direct marketing that use cookies and similar technologies. The PECR also imposes sector-specific breach reporting requirements, but only as applicable to providers of particular public electronic communications services. Additional EU member state laws of this type may follow.

We may be required to, or otherwise may determine that it is advisable to, develop or obtain additional tools and technologies to compensate for a potential lack of cookie data. Even if we are able to do so, such additional tools may be subject to further regulation, time consuming to develop or costly to obtain, and less effective than our current use of cookies. In addition, certain information, such as IP addresses as collected and used by us may constitute "personal data" in certain non-U.S. jurisdictions, including in the United Kingdom, and therefore certain of our activities could be subject to EU laws applicable to the processing and use of personal data.

More generally, the regulatory framework for online services and data privacy and security issues worldwide can vary substantially from jurisdiction to jurisdiction, is rapidly evolving and is likely to remain uncertain for the foreseeable future. Many federal, state and foreign government bodies and agencies have adopted or are considering adopting laws, rules, regulations and standards regarding the collection, use, storage and disclosure of information, web browsing and geolocation data collection and data analytics. Interpretation of these laws, rules and regulations and their application to our solutions in the U.S. and foreign jurisdictions is ongoing and cannot be fully determined at this time.

In addition, the regulatory environment for the collection and use of consumer data by marketers is evolving in the United States and internationally and is currently a self-regulatory framework, which relies on market participants to ensure self-compliance. The voluntary nature of this self-regulatory framework may change.

The United States and foreign governments have enacted, considered or are considering legislation or regulations that could significantly restrict industry participants' ability to collect, augment, analyze, use and share anonymous data, such as by regulating the level of consumer notice and consent required before a company can place cookies or other tracking technologies. A number of existing bills are pending in the U.S. Congress that contain provisions that would regulate how companies can use cookies and other tracking technologies to collect and utilize user information.

In addition to government regulation, privacy advocates and industry groups may propose new and different self-regulatory standards that either legally or contractually apply to us. We may also be subject to claims of liability or responsibility for the actions of third parties with whom we interact or upon whom we rely in relation to various solutions, including but not limited to our marketers and their agencies and our FI partners. If this were to occur, in addition to the possibility of fines, lawsuits and other claims, we could be required to fundamentally change our business activities and practices or modify our solutions, which could have an adverse effect on our business. Any inability to adequately address privacy and security concerns, even if unfounded, or comply with applicable privacy or data protection laws, regulations and policies, could result in additional cost and liability to us, damage our reputation, inhibit sales and adversely affect our business.

In addition, if we were to gain knowledge that we inadvertently received PII from our FI partners, our failure to comply with applicable laws and regulations, or to protect personal data, could result in enforcement action against us, including fines, imprisonment of our officers and public censure, claims for damages by consumers and other affected individuals, damage to our reputation and loss of goodwill, any of which could have a material adverse impact on our operations, financial performance and business. Even the perception of privacy or security concerns, whether or not valid, may harm our reputation and inhibit adoption of our solution by current and future marketers and marketing agencies.

***If the use of matching technologies, such as cookies, pixels and device identifiers, is rejected by internet users, restricted or otherwise subject to unfavorable terms, such as by non-governmental entities, our performance may decline and we may lose customers and revenue.***

Our solutions may use matching technologies, such as cookies, pixels and device identifiers, to match the Cardlytics IDs we have assigned to our FIs' customers with their digital presence outside of the FI partners' websites and mobile applications. Our matching technologies may sometimes be "third-party cookies" because they are placed on individual browsers when internet users visit a website that is not part of the Cardlytics.com domain. These matching technologies are placed through an internet browser on an internet user's computer and correspond with a data set that we retain on our servers. Our matching technologies only record anonymized information and the date that the matching technology was last refreshed. When our matching technologies are present and a user is exposed to marketing content targeted or deployed with our solutions, we are able to gain insight into that user's interaction with the marketing content. If our access to matching technology data is reduced, our ability to conduct our business in the current manner may be affected and thus undermine the effectiveness of our solutions.

Internet users may easily block and/or delete cookies (e.g., through their browsers or "ad blocking" software). The most commonly used internet browsers allow internet users to modify their browser settings to prevent cookies from being accepted by their browsers, or are set to block third-party cookies by default. If more browser manufacturers and internet users adopt these settings or delete their cookies more frequently than they currently do, our business could be negatively affected. Some government regulators and privacy advocates have suggested creating a "Do Not Track" standard that would allow internet users to express a preference, independent of cookie settings in their browser, not to have website browsing recorded. If internet users adopt a

"Do Not Track" browser setting and the standard either gets imposed by state or federal legislation or agreed upon by standard-setting groups, it may curtail or prohibit us from using non-personal data as we currently do. This could hinder growth of marketing on the internet generally, and cause us to change our business practices and adversely affect our business, financial condition and operating results.

In addition, browser manufacturers could replace cookies with their own product and require us to negotiate and pay them for use of such product to record information about internet users' interactions with our marketers, which may not be available on commercially reasonable terms, or at all.

***Failure to protect our proprietary technology and intellectual property rights could substantially harm our business, financial condition and operating results.***

Our future success and competitive position depend in part on our ability to protect our intellectual property and proprietary technologies. To safeguard these rights, we rely on a combination of patent, trademark, copyright and trade secret laws and contractual protections in the United States and other jurisdictions, all of which provide only limited protection and may not now or in the future provide us with a competitive advantage.

As of September 30, 2017, we had three issued patents and 10 patent applications pending relating to our software. We cannot assure you that any patents will issue from any patent applications, that patents that issue from such applications will give us the protection that we seek or that any such patents will not be challenged, invalidated, or circumvented. Any patents that may issue in the future from our pending or future patent applications may not provide sufficiently broad protection and may not be enforceable in actions against alleged infringers. We have registered the "Cardlytics" name and logo in the United States and certain other countries. We have registrations and/or pending applications for additional marks in the United States and other countries; however, we cannot assure you that any future trademark registrations will be issued for pending or future applications or that any registered trademarks will be enforceable or provide adequate protection of our proprietary rights. We also license software from third parties for integration into our products, including open source software and other software available on commercially reasonable terms. We cannot assure you that such third parties will maintain such software or continue to make it available.

In order to protect our unpatented proprietary technologies and processes, we rely on trade secret laws and confidentiality agreements with our employees, consultants, vendors and others. Despite our efforts to protect our proprietary technology and trade secrets, unauthorized parties may attempt to misappropriate, reverse engineer or otherwise obtain and use them. Bank of America also has the right to purchase a license to the source code underlying Cardlytics Direct upon the occurrence of specified events and for a specified fee, which could compromise the proprietary nature of our platform, allow Bank of America to develop in-house solutions and discontinue their use of our solutions and/or allow Bank of America to develop and sell a solution similar to Cardlytics Direct.

In addition, others may independently discover our trade secrets, in which case we would not be able to assert trade secret rights, or develop similar technologies and processes. Further, the contractual provisions that we enter into may not prevent unauthorized use or disclosure of our proprietary technology or intellectual property rights and may not provide an adequate remedy in the event of unauthorized use or disclosure of our proprietary technology or intellectual property rights. Moreover, policing unauthorized use of our technologies, trade secrets and intellectual property is difficult, expensive and time-consuming, particularly in foreign countries where the laws may not be as protective of intellectual property rights as those in the United States and where mechanisms for enforcement of intellectual property rights may be weak. We may be unable to determine the extent of any unauthorized use or infringement of our solutions, technologies or intellectual property rights.

From time to time, legal action by us may be necessary to enforce our patents and other intellectual property rights, to protect our trade secrets, to determine the validity and scope of the intellectual property rights of others or to defend against claims of infringement or invalidity. Such legal action could result in substantial costs and diversion of resources and could negatively affect our business, financial condition and operating results.

***Assertions by third parties of infringement or other violations by us of their intellectual property rights, whether or not correct, could result in significant costs and harm our business, financial condition and operating results.***

Patent and other intellectual property disputes are common in our industry. We have in the past and may in the future be subject to claims alleging that we have misappropriated, misused, or infringed other parties' intellectual property rights. Some companies, including certain of our competitors, own larger numbers of patents, copyrights and trademarks than we do, which they may use to assert claims against us. Third parties may also assert claims of intellectual property rights infringement against our FI partners, whom we are typically required to indemnify. As the numbers of solutions and competitors in our market increases and overlap occurs, claims of infringement, misappropriation and other violations of intellectual property rights may increase. Any claim of infringement, misappropriation or other violation of intellectual property rights by a third party, even those without merit, could cause us to incur substantial costs defending against the claim and could distract our management from our business.

The patent portfolios of our most significant competitors are larger than ours. This disparity may increase the risk that they may sue us for patent infringement and may limit our ability to counterclaim for patent infringement or settle through patent cross-licenses. In addition, future assertions of patent rights by third parties, and any resulting litigation, may involve patent holding companies or other adverse patent owners who have no relevant product revenues and against whom our own patents may therefore provide little or no deterrence or protection. There can be no assurance that we will not be found to infringe or otherwise violate any third-party intellectual property rights or to have done so in the past.

An adverse outcome of a dispute may require us to:

- pay substantial damages, including treble damages, if we are found to have willfully infringed a third party's patents or copyrights;
- cease developing or selling solutions that rely on technology that is alleged to infringe or misappropriate the intellectual property of others;
- expend additional development resources to attempt to redesign our solutions or otherwise develop non-infringing technology, which may not be successful;
- enter into potentially unfavorable royalty or license agreements in order to obtain the right to use necessary technologies or intellectual property rights; and
- indemnify our FI partners and other third parties.

In addition, royalty or licensing agreements, if required or desirable, may be unavailable on terms acceptable to us, or at all, and may require significant royalty payments and other expenditures. Some licenses may also be non-exclusive, and therefore our competitors may have access to the same technology licensed to us. Any of the foregoing events could seriously harm our business, financial condition and operating results.

***Our use of open source software could negatively affect our ability to sell our solutions and subject us to possible litigation.***

We use open source software to deliver our solutions and expect to continue to use open source software in the future. Some of these open source licenses may require that source code subject to the license be made available to the public and that any modifications or derivative works to open source software continue to be licensed under open source licenses. This may require that we make certain proprietary code available under an open source license. We may face claims from others claiming ownership of, or seeking to enforce the license terms applicable to such open source software, including by demanding release of the open source software, derivative works or our proprietary source code that was developed using such software. Few of the licenses applicable to

open source software have been interpreted by courts, and there is a risk that these licenses could be construed in a manner that could impose unanticipated conditions or restrictions on our ability to commercialize our products. These claims could also result in litigation, require us to purchase costly licenses or require us to devote additional research and development resources to change the software underlying our solutions, any of which would have a negative effect on our business, financial condition and operating results and may not be possible in a timely manner. We and our customers may also be subject to suits by parties claiming infringement due to the reliance by our solutions on certain open source software, and such litigation could be costly for us to defend or subject us to an injunction. In addition, if the license terms for the open source code change, we may be forced to re-engineer our software or incur additional costs. Finally, we cannot assure you that we have not incorporated open source software into the software underlying our solutions in a manner that may subject our proprietary software to an open source license that requires disclosure, to customers or the public, of the source code to such proprietary software. In the event that portions of our proprietary technology are determined to be subject to an open source license, we could be required to publicly release portions of our source code, re-engineer all or a portion of our technologies, or otherwise be limited in the licensing of our technologies, each of which could reduce or eliminate the value of our solutions and technologies and materially and adversely affect our ability to sustain and grow our business. Many open source licenses also limit our ability to bring patent infringement lawsuits against open source software that we use without losing our right to use such open source software. Therefore, the use of open source software may limit our ability to bring patent infringement lawsuits, to the extent we ever have any patents that cover open source software that we use.

***We are subject to government regulation, including import, export, economic sanctions and anti-corruption laws and regulations that may expose us to liability and increase our costs.***

Various of our products are subject to U.S. export controls, including the U.S. Department of Commerce's Export Administration Regulations and economic and trade sanctions regulations administered by the U.S. Treasury Department's Office of Foreign Assets Controls. These regulations may limit the export of our products and provision of our solutions outside of the United States, or may require export authorizations, including by license, a license exception or other appropriate government authorizations, including annual or semi-annual reporting and the filing of an encryption registration. Export control and economic sanctions laws may also include prohibitions on the sale or supply of certain of our products to embargoed or sanctioned countries, regions, governments, persons and entities. In addition, various countries regulate the importation of certain products, through import permitting and licensing requirements, and have enacted laws that could limit our ability to distribute our products. The exportation, reexportation, and importation of our products and the provision of solutions, including by our partners, must comply with these laws or else we may be adversely affected, through reputational harm, government investigations, penalties and a denial or curtailment of our ability to export our products or provide solutions. Complying with export control and sanctions laws may be time consuming and may result in the delay or loss of sales opportunities. Although we take precautions to prevent our products from being provided in violation of such laws, our products may have previously been, and could in the future be, provided inadvertently in violation of such laws, despite the precautions we take. If we are found to be in violation of U.S. sanctions or export control laws, it could result in substantial fines and penalties for us and for the individuals working for us. Changes in export or import laws or corresponding sanctions, may delay the introduction and sale of our products in international markets, or, in some cases, prevent the export or import of our products to certain countries, regions, governments, persons or entities altogether, which could adversely affect our business, financial condition and results of operations.

We are also subject to various domestic and international anti-corruption laws, such as the U.S. Foreign Corrupt Practices Act and the U.K. Bribery Act, as well as other similar anti-bribery and anti-kickback laws and regulations. These laws and regulations generally prohibit companies and their employees and intermediaries from authorizing, offering or providing improper payments or benefits to officials and other recipients for improper purposes. We rely on certain third parties to support our sales and regulatory compliance efforts and can be held liable for their corrupt or other illegal activities, even if we do not explicitly authorize or have actual

knowledge of such activities. Although we take precautions to prevent violations of these laws, our exposure for violating these laws increases as our international presence expands and as we increase sales and operations in foreign jurisdictions.

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

***Our stock price may be volatile, and you may lose some or all of your investment.***

The initial public offering price for the shares of our common stock will be determined by negotiations between us and the representatives of the underwriters and may not be indicative of the market price of our common stock following this offering. The market price of our common stock may be highly volatile and may fluctuate substantially as a result of a variety of factors, some of which are related in complex ways, including:

- actual or anticipated fluctuations in our financial condition and operating results;
- variance in our financial performance from expectations of securities analysts or investors;
- changes in the prices of our solutions;
- changes in laws or regulations applicable to our solutions;
- announcements by us or our competitors of significant business developments, acquisitions or new offerings;
- our involvement in litigation;
- our sale of our common stock or other securities in the future;
- changes in senior management or key personnel;
- trading volume of our common stock;
- changes in the anticipated future size and growth rate of our market; and
- general economic, regulatory and market conditions.

Recently, the stock markets have experienced extreme price and volume fluctuations that have affected and continue to affect the market prices of equity securities of many companies. These fluctuations have often been unrelated or disproportionate to the operating performance of those companies. Broad market and industry fluctuations, as well as general economic, political, regulatory and market conditions, may negatively impact the market price of our common stock. If the market price of our common stock after this offering does not exceed the initial public offering price, you may lose some or all of your investment. In the past, companies that have experienced volatility in the market price of their securities have been subject to securities class action litigation. We may be the target of this type of litigation in the future, which could result in substantial costs and divert our management's attention.

***No public market for our common stock currently exists and an active public trading market may not develop or be sustained following this offering.***

No public market for our common stock currently exists. We intend to apply to list our common stock on the Nasdaq Global Market, or Nasdaq, but an active public trading market may not develop following the completion of this offering or, if developed, may not be sustained. The lack of an active market may impair your ability to sell your shares at the time you wish to sell them or at a price that you consider reasonable. The lack of an active market may also reduce the fair value of your shares. An inactive market may also impair our ability to raise

capital to continue to fund operations by selling shares and may impair our ability to acquire other companies or technologies by using our shares as consideration.

***You will experience immediate and substantial dilution in the net tangible book value of the shares of common stock you purchase in this offering.***

The initial public offering price of our common stock will be substantially higher than the pro forma net tangible book value per share of our common stock, as of September 30, 2017, immediately after this offering. Therefore, if you purchase shares of our common stock in this offering, you will suffer immediate dilution of $ per share, or $ per share if the underwriters exercise their over-allotment option in full, in net tangible book value after giving effect to the sale of common stock in this offering at the initial public offering price of $ per share. See "Dilution." If outstanding options or warrants to purchase our common stock are exercised in the future, you will experience additional dilution.

***We may invest or spend the proceeds of this offering in ways with which you may not agree or in ways which may not yield a return.***

We anticipate that the net proceeds from this offering will be used for working capital and other general corporate purposes. We may also use a portion of the net proceeds to acquire complementary businesses, products or technologies. However, we do not have any agreements or commitments for any acquisitions at this time. Our management will have considerable discretion in the application of the net proceeds, and you will not have the opportunity, as part of your investment decision, to assess whether the proceeds are being used effectively. The net proceeds may be invested with a view towards long-term benefits for our stockholders and this may not increase our operating results or market value. The failure by our management to apply these funds effectively may adversely affect the return on your investment.

***We do not intend to pay dividends for the foreseeable future and, as a result, your ability to achieve a return on your investment will depend on appreciation in the price of our common stock.***

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

***Concentration of ownership among our existing directors, executive officers and holders of 5% or more of our outstanding common stock may prevent new investors from influencing significant corporate decisions.***

Following this offering, our directors, executive officers and holders of more than 5% of our common stock, some of whom are represented on our board of directors, together with their affiliates will beneficially own % of the voting power of our outstanding capital stock. As a result, these stockholders will, immediately following this offering, be able to determine the outcome of matters submitted to our stockholders for approval. Some of these persons or entities may have interests that are different from yours, and this ownership could affect the value of your shares of common stock if, for example, these stockholders elect to delay, defer or prevent a change in corporate control, merger, consolidation, takeover or other business combination. This concentration of ownership may also adversely affect the market price of our common stock.

***Future sales of our common stock in the public market could cause our share price to decline.***

After this offering, there will be shares of our common stock outstanding, assuming no exercise of the underwriters' over-allotment option. Sales of a substantial number of shares of our common stock in the public market after this offering, or the perception that these sales might occur, could depress the market price of our

common stock and could impair our ability to raise capital through the sale of additional equity securities. Of our issued and outstanding shares of our common stock, all of the shares sold in this offering will be freely transferable without restrictions or further registration under the Securities Act of 1933, as amended, or the Securities Act, except for any shares acquired by our affiliates, as defined in Rule 144 under the Securities Act. The remaining shares outstanding after this offering will be restricted as a result of securities laws, lock-up agreements or other contractual restrictions that restrict transfers for 180 days after the date of this prospectus.

Additionally, following the completion of this offering, stockholders holding approximately % of our common stock outstanding, will, after the expiration of the lock-up periods specified above, have the right, subject to various conditions and limitations, to include their shares of our common stock in registration statements relating to our securities. If the offer and sale of these shares are registered, they will be freely tradable without restriction under the Securities Act. Shares of common stock sold under such registration statements can be freely sold in the public market. In the event such registration rights are exercised and a large number of shares of common stock are sold in the public market, such sales could reduce the trading price of our common stock. See "Description of Capital Stock—Registration Rights" and "Shares Eligible for Future Sale—Lock-Up Agreements" for a more detailed description of these registration rights and the lock-up period.

We intend to file a registration statement on Form S-8 under the Securities Act to register the total number of shares of our common stock that may be issued under our equity incentive plans. See "Shares Eligible for Future Sale—Form S-8 Registration Statements" for a more detailed description of the shares of common stock that will be available for future sale upon the registration and issuance of such shares, subject to any applicable vesting or lock-up period or other restrictions provided under the terms of the applicable plan and/or the option agreements entered into with the option holders. In addition, in the future we may issue common stock or other securities if we need to raise additional capital. The number of new shares of our common stock issued in connection with raising additional capital could constitute a material portion of the then outstanding shares of our common stock.

***If securities or industry analysts do not publish research or reports about our business, or publish negative reports about our business, our stock price and trading volume could decline.***

The trading market for our common stock will depend, in part, on the research and reports that securities or industry analysts publish about us or our business. We do not have any control over these analysts. If our financial performance fails to meet analyst estimates or one or more of the analysts who cover us downgrade our stock or change their opinion of our business or market value, our share price would likely decline. If one or more of these analysts cease coverage of us or fail to regularly publish reports on us, we could lose visibility in the financial markets, which could cause our share price or trading volume to decline.

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

Generally accepted accounting principles in the United States, or U.S. GAAP, are subject to interpretation by the Financial Accounting Standards Board, or FASB, the U.S. Securities and Exchange Commission, or SEC, and various bodies formed to promulgate and interpret appropriate accounting principles. A change in these principles or interpretations could have a significant effect on our reported financial results, and could affect the reporting of transactions completed before the announcement of a change.

In particular, in May 2014, the FASB issued ASU No. 2014-09, Revenue from Contracts with Customers (Topic 606), which supersedes the revenue recognition requirements in ASC 605, Revenue Recognition. The core principle of ASU 2014-09 is that an entity should recognize revenue to depict the transfer of promised goods or services to customers in an amount that reflects the consideration to which the entity expects to be entitled in exchange for those goods or services. As an "emerging growth company," the Jumpstart our Business Startups Act of 2012, or JOBS Act, allows us to delay adoption of new or revised accounting pronouncements applicable

to public companies until such pronouncements are made applicable to private companies. We have elected to use this extended transition period under the JOBS Act with respect to ASU 2014-09, which will result in ASU 2014-09 becoming applicable to us on January 1, 2019. We are evaluating ASU 2014-09 and have not determined the impact it may have on our financial reporting.

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

We are an "emerging growth company," as defined in the JOBS Act and we may take advantage of certain exemptions from various reporting requirements that are applicable to other public companies that are not "emerging growth companies" including, but not limited to, the auditor attestation requirements of Section 404 of the Sarbanes-Oxley Act, or Section 404, reduced disclosure obligations regarding executive compensation in our periodic reports and proxy statements, and exemptions from the requirements of holding a nonbinding advisory vote on executive compensation and stockholder approval of any golden parachute payments not previously approved. We cannot predict if investors will find our common stock less attractive if we choose to rely on these exemptions. If some investors find our common stock less attractive as a result, there may be a less active trading market for our common stock and our stock price may be more volatile.

As an "emerging growth company," the JOBS Act allows us to delay adoption of new or revised accounting pronouncements applicable to public companies until such pronouncements are made applicable to private companies. We have elected to use this extended transition period under the JOBS Act. As a result, our consolidated financial statements may not be comparable to the financial statements of issuers who are required to comply with the effective dates for new or revised accounting standards that are applicable to public companies, which may make our common stock less attractive to investors.

***We will incur increased costs as a result of operating as a public company, and our management will be required to devote substantial time to compliance with our public company responsibilities and corporate governance practices.***

As a public company, and particularly after we are no longer an "emerging growth company," we will incur significant legal, accounting and other expenses that we did not incur as a private company. The Sarbanes-Oxley Act, the Dodd-Frank Wall Street Reform and Consumer Protection Act, the listing requirements of Nasdaq and other applicable securities rules and regulations impose various requirements on public companies. Our management and other personnel will need to devote a substantial amount of time to compliance with these requirements. Moreover, these rules and regulations will increase our legal and financial compliance costs and will make some activities more time-consuming and costly. For example, we expect that these rules and regulations may make it more difficult and more expensive for us to obtain directors' and officers' liability insurance, which could make it more difficult for us to attract and retain qualified members of our board of directors. We cannot predict or estimate the amount of additional costs we will incur as a public company or the timing of such costs.

***As a result of becoming a public company, we will be obligated to develop and maintain proper and effective internal controls 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 will be required, pursuant to Section 404, to furnish a report by management on, among other things, the effectiveness of our internal control over financial reporting for the first fiscal year beginning after the effective date of this offering. This assessment will need to include disclosure of any material weaknesses identified by our management in our internal control over financial reporting. Our independent registered public accounting firm will not be required to attest to the effectiveness of our internal control over financial reporting until our first annual report required to be filed with the SEC following the date we are no longer an "emerging growth company," as defined in the JOBS Act. We will be required to disclose significant changes made in our internal control procedures on a quarterly basis.

We have commenced the costly and challenging process of compiling the system and processing documentation necessary to perform the evaluation needed to comply with Section 404, and we may not be able to complete our evaluation, testing and any required remediation in a timely fashion. Our compliance with Section 404 will require that we incur substantial accounting expense and expend significant management efforts. We currently do not have an internal audit group, and we may need to hire additional accounting and financial staff with appropriate public company experience and technical accounting knowledge and compile the system and process documentation necessary to perform the evaluation needed to comply with Section 404.

During the evaluation and testing process of our internal controls, if we identify one or more material weaknesses in our internal control over financial reporting, we will be unable to assert that our internal control over financial reporting is effective. We cannot assure you that there will not be material weaknesses or significant deficiencies in our internal control over financial reporting in the future. Any failure to maintain internal control over financial reporting could severely inhibit our ability to accurately report our financial condition and operating results. If we are unable to conclude that our internal control over financial reporting is effective, or if our independent registered public accounting firm determines we have a material weakness or significant deficiency in our internal control over financial reporting, we could lose investor confidence in the accuracy and completeness of our financial reports, the market price of our common stock could decline, and we could be subject to sanctions or investigations by the SEC or other regulatory authorities. Failure to remedy any material weakness in our internal control over financial reporting, or to implement or maintain other effective control systems required of public companies, could also restrict our future access to the capital markets.

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

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

- authorize our board of directors to issue preferred stock without further stockholder action and with voting liquidation, dividend and other rights superior to our common stock;
- require that any action to be taken by our stockholders be effected at a duly called annual or special meeting and not by written consent, and limit the ability of our stockholders to call special meetings;
- establish an advance notice procedure for stockholder proposals to be brought before an annual meeting, including proposed nominations of persons for director nominees;
- establish that our board of directors is divided into three classes, with directors in each class serving three-year staggered terms;
- require the approval of holders of two-thirds of the shares entitled to vote at an election of directors to adopt, amend or repeal our amended and restated bylaws or amend or repeal the provisions of our amended and restated certificate of incorporation regarding the election and removal of directors and the ability of stockholders to take action by written consent or call a special meeting;
- prohibit cumulative voting in the election of directors; and
- provide that vacancies on our board of directors may be filled only by a majority of directors then in office, even though less than a quorum.

These provisions may frustrate or prevent any attempts by our stockholders to replace or remove our current management by making it more difficult for stockholders to replace members of our board of directors, which is responsible for appointing the members of our management. In addition, because we are incorporated in Delaware, we are governed by the provisions of Section 203 of the Delaware General Corporation Law, which generally prohibits a Delaware corporation from engaging in any of a broad range of business combinations with any "interested" stockholder for a period of three years following the date on which the stockholder became an "interested" stockholder. Any of the foregoing provisions could limit the price that investors might be willing to pay in the future for shares of our common stock, and they could deter potential acquirers of our company, thereby reducing the likelihood that you would receive a premium for your shares of our common stock in an acquisition.

***Our amended and restated certificate of incorporation will designate the Court of Chancery of the State of Delaware as the exclusive forum for certain litigation that may be initiated by our stockholders, which could limit our stockholders' ability to obtain a favorable judicial forum for disputes with us.***

Pursuant to our amended and restated certificate of incorporation, as will be in effect upon the completion of this offering, unless we consent in writing to the selection of an alternative forum, the Court of Chancery of the State of Delaware will be the sole and exclusive forum for (1) any derivative action or proceeding brought on our behalf, (2) any action asserting a claim of breach of a fiduciary duty owed by any of our directors, officers or other employees to us or our stockholders, (3) any action asserting a claim arising pursuant to any provision of the Delaware General Corporation Law, our amended and restated certificate of incorporation or our amended and restated bylaws or (4) any action asserting a claim governed by the internal affairs doctrine. Our amended and restated certificate of incorporation will further provide that any person or entity purchasing or otherwise acquiring any interest in shares of our common stock is deemed to have notice of and consented to the foregoing provision. The forum selection clause in our amended and restated certificate of incorporation may limit our stockholders' ability to obtain a favorable judicial forum for disputes with us.

## SPECIAL NOTE REGARDING FORWARD-LOOKING STATEMENTS

This prospectus contains forward-looking statements that involve substantial risks and uncertainties. The forward-looking statements are contained principally in the sections of this prospectus entitled “Prospectus Summary,” “Risk Factors,” “Management’s Discussion and Analysis of Financial Condition and Results of Operations” and “Business,” but are also contained elsewhere in this prospectus. In some cases, you can identify forward-looking statements by the words “anticipate,” “believe,” “continue,” “could,” “estimate,” “expect,” “intend,” “may,” “might,” “objective,” “ongoing,” “plan,” “predict,” “project,” “potential,” “should,” “will,” or “would,” or the negative of these terms, or other comparable terminology intended to identify statements about the future. These statements involve known and unknown risks, uncertainties and other factors that may cause our actual results, levels of activity, performance or achievements to be materially different from the information expressed or implied by these forward-looking statements. These statements are inherently uncertain and investors are cautioned not to unduly rely upon these statements. In addition, statements that “we believe” and similar statements reflect our beliefs and opinions on the relevant subject. The forward-looking statements and opinions contained in this prospectus are based upon information available to us as of the date of this prospectus and, while we believe such information forms a reasonable basis for such statements, such information may be limited or incomplete, and our statements should not be read to indicate that we have conducted an exhaustive inquiry into, or review of, all potentially available relevant information. Forward-looking statements include statements about:

- our ability to continue to add new financial institutions, or FIs, partners and marketers and maintain existing FI partners and marketers;
- with respect to Cardlytics Direct, our ability to increase FI partner customer engagement from new and existing FI partners;
- our ability to maintain and expand our relationships with FI partners to broaden the use of purchase data to our Other Platform Solutions and our ability to sell Other Platform Solutions;
- the effects of increased competition as well as innovations by new and existing competitors in our market;
- our ability to adapt to technological change and effectively enhance, innovate and scale our solutions;
- our ability to effectively manage or sustain our growth and to sustain profitability;
- potential acquisitions and integration of complementary business and technologies;
- our expected use of proceeds;
- our ability to maintain, or strengthen awareness of, our brand;
- perceived or actual integrity, reliability, quality or compatibility problems with our solutions, including related to unscheduled downtime or outages;
- future revenue, hiring plans, expenses, capital expenditures, capital requirements and stock performance;
- our ability to attract and retain qualified employees and key personnel and further expand our overall headcount;
- our ability to grow our business;

- our ability to stay abreast of new or modified laws and regulations that currently apply or become applicable to our business both in the United States and internationally;
- our ability to maintain, protect and enhance our intellectual property;
- costs associated with defending intellectual property infringement and other claims; and
- the future trading prices of our common stock and the impact of securities analysts' reports on these prices.

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

You should refer to the "Risk Factors" section of this prospectus for a discussion of important factors that may cause our actual results to differ materially from those expressed or implied by our forward-looking statements. As a result of these factors, we cannot assure you that the forward-looking statements in this prospectus will prove to be accurate. Furthermore, if our forward-looking statements prove to be inaccurate, the inaccuracy may be material. In light of the significant uncertainties in these forward-looking statements, you should not regard these statements as a representation or warranty by us or any other person that we will achieve our objectives and plans in any specified time frame or at all. We undertake no obligation to publicly update any forward-looking statements, whether as a result of new information, future events or otherwise, except as required by law. The Private Securities Litigation Reform Act of 1995 and Section 27A of the Securities Act of 1933, as amended, or the Securities Act, do not protect any forward-looking statements that we make in connection with this offering.

You should read this prospectus and the documents that we reference in this prospectus and have filed as exhibits to the registration statement, of which this prospectus is a part, completely and with the understanding that our actual future results may be materially different from what we expect. We qualify all of our forward-looking statements by these cautionary statements.

## INDUSTRY AND MARKET DATA

Unless otherwise indicated, information contained in this prospectus concerning our industry and the market in which we operate, including our general expectations and market position, market opportunity and market size is based on information from various sources, including independent industry publications. In presenting this information, we have also made assumptions based on such data and other similar sources, and on our knowledge of, and in our experience to date in, the markets for our solutions. This information involves a number of assumptions and limitations, and you are cautioned not to give undue weight to such estimates. Although neither we nor the underwriters have independently verified the accuracy or completeness of any third-party information, we believe the market position, market opportunity and market size information included in this prospectus is reliable. The industry in which we operate is subject to a high degree of uncertainty and risk due to a variety of factors, including those described in the "Risk Factors" section. These and other factors could cause results to differ materially from those expressed in the estimates made by the independent parties and by us.

Certain information in the text of this prospectus is contained in industry publications or data provided by third parties. The sources of these industry publications and data are provided below:

- eMarketer: Digital Ad Benchmarks Worldwide: CTR and Conversion Rates, by Format and Device, Q3 2016
- MAGNA Global: Global Advertising Forecast, released December 2017
- The CMO Council: The CMO Survey Highlights and Insights Report, released August 2017
- Board of Governors of the Federal Reserve System: Consumers and Mobile Financial Services 2016
- Frost & Sullivan: TAM Analysis – Native Bank Advertising
- The Nilson Report: U.S. Payment Cards, Purchase Volume 2010-2020, issued October 2016
- The Nilson Report: Purchase Transactions on U.S. Consumer Payment Systems, issued December 2016
- The Nilson Report: Top U.S. Credit Card Issuers, issued February 2017
- The Nilson Report: Top 50 U.S. Debit Card Issuers, issued February 2017
- 2016 U.S. Census
- Kantar Media: Database of 200 Leading National Advertisers, released June 2015

## USE OF PROCEEDS

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

Each $1.00 increase or decrease in the assumed initial public offering price of $ per share, the midpoint of the price range set forth on the cover page of this prospectus, would increase or decrease the net proceeds to us from this offering by approximately $ million, assuming that the number of shares offered by us, as set forth on the cover page of this prospectus, remains the same, and after deducting underwriting discounts and commissions payable by us. We may also increase or decrease the number of shares we are offering. A 1,000,000 share increase or decrease in the number of shares offered by us would increase or decrease the net proceeds to us from this offering by approximately $ million, assuming that the assumed initial price to the public remains the same, and after deducting underwriting discounts and commissions payable by us. We do not expect that a change in the initial price to the public or the number of shares by these amounts would have a material effect on uses of the proceeds from this offering, although it may accelerate the time at which we will need to seek additional capital.

The principal purposes of this offering are to increase our financial flexibility, create a public market for our common stock and facilitate our future access to the capital markets. Although we have not yet determined with certainty the manner in which we will allocate the net proceeds of this offering, we expect to use the net proceeds from this offering for working capital and other general corporate purposes. We may also use a portion of the proceeds from this offering for acquisitions or strategic investments in complementary businesses or technologies. We do not currently have any plans for any such acquisitions or investments. We have not allocated specific amounts of net proceeds for any of these purposes.

The expected use of net proceeds from this offering represents our intentions based upon our present plans and business conditions. We cannot predict with certainty all of the particular uses for the proceeds of this offering or the amounts that we will actually spend on the uses set forth above. Accordingly, our management will have significant flexibility in applying the net proceeds of this offering. The timing and amount of our actual expenditures will be based on many factors, including cash flows from operations and the anticipated growth of our business. Pending their use, we intend to invest the net proceeds of this offering in a variety of capital-preservation investments, including short- and intermediate-term, interest-bearing, investment-grade securities.

## DIVIDEND POLICY

We have never declared or paid any dividends on our capital stock. We currently intend to retain all available funds and any future earnings for the operation and expansion of our business and, therefore, we do not anticipate declaring or paying cash dividends in the foreseeable future. The payment of dividends will be at the discretion of our board of directors and will depend on our results of operations, capital requirements, financial condition, prospects, contractual arrangements, any limitations on payment of dividends present in our current and future debt agreements, and other factors that our board of directors may deem relevant. We are subject to covenants under our debt arrangements that place restrictions on our ability to pay dividends.

## CAPITALIZATION

The following table sets forth our cash and cash equivalents and our capitalization as of September 30, 2017:

- on an actual basis;
- on a pro forma basis to reflect (1) the automatic conversion of all shares of redeemable convertible preferred stock outstanding as of September 30, 2017 into shares of common stock immediately prior to the closing of this offering, (2) the reclassification to stockholders' (deficit) equity of our redeemable convertible preferred stock warrant liability in connection with the conversion of our outstanding redeemable convertible preferred stock warrants into common stock warrants, (3) the issuance of 149,679 Management Conversion Shares in full satisfaction of our obligations to certain of our executive officers and key employees pursuant to outstanding restricted securities units, (4) the impact of the vesting, upon the completion of this offering, of outstanding performance-based warrants to purchase shares of our common stock held by certain of our FI partners and (5) the filing of our amended and restated certificate of incorporation, which will become effective immediately prior to the closing of this offering; and
- on a pro forma as adjusted basis to reflect (1) the pro forma items described immediately above and (2) the sale of shares of common stock in this offering at an assumed initial public offering price of $ per share, the midpoint of the price range set forth on the cover page of this prospectus, after deducting underwriting discounts and commissions and estimated offering expenses payable by us.

You should read this table together with "Selected Consolidated Financial Statements," "Management's Discussion and Analysis of Financial Condition and Results of Operations" and our consolidated financial statements and the related notes appearing elsewhere in this prospectus.

| | As of September 30, 2017 | | |
|---|---|---|---|
| | Actual | Pro Forma | Pro Forma As Adjusted(1) |
| | (in thousands, except share and per share data) | | |
| Cash and cash equivalents | $ 28,186 | $ | $ |
| Debt and capital lease obligations—net of current portion | 55,450 | | |
| Redeemable convertible preferred stock, $0.0001 par value per share; 96,131,002 shares authorized, 42,573,435 shares issued and outstanding, actual; no shares authorized, issued or outstanding, pro forma and pro forma as adjusted | 196,077 | — | |
| Warrant liability | 10,061 | — | |
| Stockholders' (deficit) equity: | | | |
| Preferred stock, $0.0001 par value per share; no shares authorized, issued or outstanding, actual; 10,000,000 shares authorized, no shares issued or outstanding, pro forma and pro forma as adjusted | — | — | |
| Common stock, $0.0001 par value per share; 83,000,000 shares authorized, 14,188,698 shares issued and outstanding, actual; shares authorized, shares issued and outstanding, pro forma; shares authorized, shares issued and outstanding, pro forma as adjusted | 1 | | |
| Additional paid-in capital | 57,979 | | |
| Accumulated other comprehensive income | 1,160 | | |
| Accumulated deficit | (264,389) | | |
| Total stockholders' (deficit) equity | (205,249) | | |
| Total capitalization | $ 56,402 | $ | $ |

(1) The pro forma as adjusted information set forth above is illustrative only and will change based on the actual initial public offering price and other terms of this offering determined at pricing. Each $1.00 increase or decrease in the assumed initial public offering price of $ per share, the midpoint of the price range set forth on the cover page of this prospectus, would increase or decrease pro forma as adjusted cash and cash equivalents, additional paid-in capital, total stockholders' (deficit) equity and total capitalization by approximately $ million, assuming that the number of shares offered by us, as set forth on the cover page of this prospectus, remains the same, and after deducting underwriting discounts and commissions payable by us. We may also increase or decrease the number of shares we are offering. A 1,000,000 share increase or decrease in the number of shares offered by us would increase or decrease pro forma as adjusted cash and cash equivalents, additional paid-in capital, total stockholders' (deficit) equity and total capitalization by approximately $ million, assuming that the assumed initial price to public remains the same, and after deducting underwriting discounts and commissions payable by us.

The number of shares of our common stock shown as issued and outstanding on a pro forma as adjusted basis in the table above excludes:

- 10,130,793 shares of common stock issuable upon the exercise of options outstanding as of September 30, 2017, at a weighted-average exercise price of $4.61 per share;
- 440,616 shares of redeemable convertible preferred stock issuable upon the exercise of warrants outstanding as of September 30, 2017, at a weighted average exercise price of $3.04 per share, which warrants will become exercisable for shares of common stock upon the completion of this offering;
- 2,401,945 shares of common stock issuable upon the exercise of warrants outstanding as of September 30, 2017, at a weighted-average exercise price of $2.03 per share;

- 2,577,465 shares of common stock issuable upon the exercise of performance-based warrants outstanding as of September 30, 2017, with milestones that will be deemed to be achieved upon completion of this offering and with an exercise price of $5.91 per share;

- shares of common stock issuable upon exercise of warrants issued in connection with our Series G preferred stock financing outstanding as of September 30, 2017, at an exercise price of $0.0001 per share, with the actual number of shares issuable upon exercise of such warrants being equal to the product obtained by multiplying 1,385,358 by a fraction, the numerator of which is the difference between $17.2379 and the volume weighted average closing price of our common stock over the 30 trading days (or such lesser number of days as our common stock has been traded on the Nasdaq Global Market) prior to the date on which such warrants become exercisable and the denominator of which is such volume weighted average closing price, which warrants are exercisable upon the earlier to occur of the date (i) 180 days following the date of this prospectus and (ii) 10 days prior to a sale of our company;

- 1,188,092 shares of common stock reserved for issuance under our 2008 Stock Plan, which shares will cease to be available for issuance at the time our 2018 Equity Incentive Plan becomes effective;

- shares of our common stock reserved for future issuance pursuant to our 2018 Equity Incentive Plan, which will become effective prior to the completion of this offering and will include provisions that automatically increase the number of shares of common stock reserved for issuance thereunder each year; and

- shares of common stock reserved for future issuance under our 2018 Employee Stock Purchase Plan, which will become effective prior to the completion of this offering and will include provisions that automatically increase the number of shares of common stock reserved for issuance thereunder each year.

## DILUTION

If you invest in our common stock, your interest will be diluted to the extent of the difference between the initial public offering price per share of our common stock and the pro forma as adjusted net tangible book value per share of our common stock immediately after the completion of this offering.

Our historical net tangible book value as of September 30, 2017 was $(216.6) million, or $(15.27) per share of common stock. Our historical net tangible book value per share represents our total tangible assets less our total liabilities and redeemable convertible preferred stock (which is not included within stockholders' deficit), divided by the number of shares of common stock outstanding as of September 30, 2017.

Our pro forma net tangible book value as of September 30, 2017 was $ million, or $ per share of common stock. Pro forma net tangible book value per share represents our total tangible assets less our total liabilities, divided by the number of shares of common stock outstanding as of September 30, 2017, after giving effect to (1) the automatic conversion of all shares of redeemable convertible preferred stock outstanding as of September 30, 2017 into shares of common stock immediately prior to the closing of this offering, (2) the reclassification to stockholders' (deficit) equity of our redeemable convertible preferred stock warrant liability in connection with the conversion of our outstanding redeemable convertible preferred stock warrants into common stock warrants, (3) the issuance of 149,679 Management Conversion Shares in full satisfaction of our obligations to certain of our executive officers and key employees pursuant to outstanding restricted securities units and (4) the impact of the vesting, upon the completion of this offering, of outstanding performance-based warrants to purchase shares of our common stock held by certain of our FI partners.

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

Our pro forma as adjusted net tangible book value as of September 30, 2017 was $ million, or $ per share of common stock. This amount represents an immediate increase in pro forma as adjusted net tangible book value of $ per share to our existing stockholders and an immediate dilution of $ per share to investors participating in this offering. We determine dilution per share to investors participating in this offering by subtracting pro forma as adjusted net tangible book value per share after this offering from the assumed initial public offering price per share paid by investors participating in this offering.

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

| | | |
|---|---|---|
| Assumed initial public offering price per share | | $ |
| Historical net tangible book value per share as of September 30, 2017 | $ (15.27) | |
| Increase per share attributable to the pro forma transactions described above | | |
| Pro forma net tangible book value per share as of September 30, 2017 | | |
| Increase in pro forma net tangible book value per share attributed to new investors purchasing shares from us in this offering | | |
| Pro forma as adjusted net tangible book value per share after giving effect to this offering | | |
| Dilution in pro forma as adjusted net tangible book value per share to new investors in this offering | | $ |

The dilution information discussed above is illustrative only and will change based on the actual initial public offering price and other terms of this offering determined at pricing. Each $1.00 increase or decrease in the assumed initial public offering price of $ per share, the midpoint of the price range set forth on the cover

page of this prospectus, would increase or decrease the pro forma as adjusted net tangible book value per share by $ per share and the dilution per share to investors participating in this offering by $ per share, assuming that the number of shares offered by us, as set forth on the cover page of this prospectus, remains the same and after deducting underwriting discounts and commissions payable by us. We may also increase or decrease the number of shares we are offering. A 1,000,000 share increase in the number of shares offered by us, as set forth on the cover page of this prospectus, would increase the pro forma as adjusted net tangible book value per share by $ and decrease the dilution per share to investors participating in this offering by $ , assuming the assumed initial public offering price of $ per share, the midpoint of the price range set forth on the cover page of this prospectus, remains the same and after deducting underwriting discounts and commissions payable by us. A 1,000,000 share decrease in the number of shares offered by us, as set forth on the cover page of this prospectus, would decrease the pro forma as adjusted net tangible book value per share after this offering by $ and increase the dilution per share to new investors participating in this offering by $ , assuming the assumed initial public offering price of $ per share, the midpoint of the price range set forth on the cover page of this prospectus, remains the same and after deducting underwriting discounts and commissions payable by us. The pro forma as adjusted information discussed above is illustrative only and will adjust based on the actual initial price to public and other terms of this offering determined at pricing.

If the underwriters exercise their over-allotment option in full to purchase an additional shares of our common stock in this offering, the pro forma as adjusted net tangible book value of our common stock would increase to $ per share, representing an immediate increase to existing stockholders of $ per share and an immediate dilution of $ per share to investors participating in this offering.

The following table summarizes as of September 30, 2017, on the pro forma as adjusted basis described above, the number of shares of our common stock, the total consideration and the average price per share (1) paid to us by our existing stockholders, including with respect to the issuance of the Management Conversion Shares and (2) to be paid by investors purchasing our common stock in this offering at an assumed initial public offering price of $ per share, the midpoint of the price range set forth on the cover page of this prospectus, before deducting underwriting discounts and commissions and estimated offering expenses payable by us.

| | Shares Purchased | | Total Consideration | | Weighted-Average Price Per Share |
|---|---|---|---|---|---|
| | Number | Percent | Amount | Percent | |
| Existing stockholders | | % | $ | % | $ |
| New investors | | | | | |
| Total | | 100.0% | $ | 100.0% | $ |

The table and calculations above exclude:

- 10,130,793 shares of common stock issuable upon the exercise of options outstanding as of September 30, 2017, at a weighted-average exercise price of $4.61 per share;
- 440,616 shares of redeemable convertible preferred stock issuable upon the exercise of warrants outstanding as of September 30, 2017, at a weighted average exercise price of $3.04 per share, which warrants will become exercisable for shares of common stock upon the completion of this offering;
- 2,401,945 shares of common stock issuable upon the exercise of warrants outstanding as of September 30, 2017, at a weighted-average exercise price of $2.03 per share;
- 2,577,465 shares of common stock issuable upon the exercise of performance-based warrants outstanding as of September 30, 2017, with milestones that will be deemed to be achieved upon completion of this offering and with an exercise price of $5.91 per share;

- shares of common stock issuable upon exercise of warrants issued in connection with our Series G preferred stock financing outstanding as of September 30, 2017, at an exercise price of $0.0001 per share, with the actual number of shares issuable upon exercise of such warrants being equal to the product obtained by multiplying 1,385,358 by a fraction, the numerator of which is the difference between $17.2379 and the volume weighted average closing price of our common stock over the 30 trading days (or such lesser number of days as our common stock has been traded on the Nasdaq Global Market) prior to the date on which such warrants become exercisable and the denominator of which is such volume weighted average closing price, which warrants are exercisable upon the earlier to occur of the date (i) 180 days following the date of this prospectus and (ii) 10 days prior to a sale of our company;

- 1,188,092 shares of common stock reserved for issuance under our 2008 Stock Plan, which shares will cease to be available for issuance at the time our 2018 Equity Incentive Plan becomes effective;

- shares of our common stock reserved for future issuance pursuant to our 2018 Equity Incentive Plan, which will become effective prior to the completion of this offering and will include provisions that automatically increase the number of shares of common stock reserved for issuance thereunder each year; and

- shares of common stock reserved for future issuance under our 2018 Employee Stock Purchase Plan, which will become effective prior to the completion of this offering and will include provisions that automatically increase the number of shares of common stock reserved for issuance thereunder each year.

To the extent that options or warrants are exercised, new options or other securities are issued under our equity incentive plans or we issue additional shares of common stock in the future, there will be further dilution to investors participating in this offering. In addition, we may choose to raise additional capital because of market conditions or strategic considerations, even if we believe that we have sufficient funds for our current or future operating plans. If we raise additional capital through the sale of equity or convertible debt securities, the issuance of these securities could result in further dilution to our stockholders.

## SELECTED CONSOLIDATED FINANCIAL DATA

We derived the selected consolidated statements of operations data for the years ended December 31, 2015 and 2016 and the selected consolidated balance sheet data as of December 31, 2015 and 2016 from our audited consolidated financial statements included elsewhere in this prospectus. We derived the selected consolidated statements of operations data for the nine months ended September 30, 2016 and 2017 and the selected consolidated balance sheet data as of September 30, 2017 from unaudited consolidated financial statements included elsewhere in this prospectus. We have prepared the unaudited consolidated financial statements on the same basis as the audited consolidated financial statements, and the unaudited financial data include, in our opinion, all adjustments, consisting only of normal recurring adjustments that we consider necessary for a fair presentation of our consolidated financial position and results of operations for these periods. Our historical results are not necessarily indicative of the results to be expected in the future and our operating results for the nine months ended September 30, 2017 are not necessarily indicative of the results that may be expected for the entire year ending December 31, 2017.

When you read this selected consolidated financial data, it is important that you read it together with the historical consolidated financial statements and related notes to those statements, as well as "Management's Discussion and Analysis of Financial Condition and Results of Operations," included elsewhere in this prospectus.

| | Year Ended December 31, | | Nine Months Ended September 30, | |
|---|---|---|---|---|
| | 2015 | 2016 | 2016 | 2017 |
| | (in thousands, except per share data) | | | |
| **Condensed Consolidated Statement of Operations:** | | | | |
| Revenue | $ 77,634 | $ 112,821 | $ 76,400 | $ 91,099 |
| Costs and expenses: | | | | |
| FI Share and other third-party costs | 47,691 | 66,285 | 44,986 | 50,886 |
| Delivery costs(1) | 4,803 | 6,127 | 4,729 | 5,095 |
| Sales and marketing expense(1) | 32,784 | 31,261 | 22,850 | 23,454 |
| Research and development expense(1) | 11,604 | 13,902 | 11,101 | 9,527 |
| General and administrative expense(1) | 18,197 | 21,355 | 16,240 | 14,738 |
| Depreciation and amortization expense | 2,194 | 4,219 | 3,432 | 2,303 |
| Termination of U.K. agreement expense | — | 25,904 | 25,904 | — |
| Total costs and expenses | 117,273 | 169,053 | 129,242 | 106,003 |
| Operating loss | (39,639) | (56,232) | (52,842) | (14,904) |
| Interest expense, net | (1,484) | (6,170) | (3,623) | (6,427) |
| Change in fair value of warrant liability | 914 | (32) | 639 | (412) |
| Change in fair value of convertible promissory notes | — | (786) | (819) | (1,244) |
| Change in fair value of convertible promissory notes—related parties | — | (10,091) | (10,280) | 6,213 |
| Other income (expense), net | (432) | (2,385) | (1,726) | 1,189 |
| Loss before income taxes | (40,641) | (75,696) | (68,651) | (15,585) |
| Income tax benefit | 16 | — | — | — |
| Net loss | $ (40,625) | $ (75,696) | $ (68,651) | $ (15,585) |
| Adjustments to the carrying value of redeemable convertible preferred stock | (1,001) | (982) | (741) | (5,383) |
| Net loss attributable to common stockholders | $ (41,626) | $ (76,678) | $ (69,392) | $ (20,968) |
| Net loss per share attributable to common stockholders, basic and diluted(2) | $ (4.98) | $ (8.12) | $ (7.58) | $ (1.67) |

| | Year Ended December 31, | | Nine Months Ended September 30, | |
|---|---|---|---|---|
| | 2015 | 2016 | 2016 | 2017 |
| | (in thousands, except per share data) | | | |
| Weighted-average common shares outstanding, basic and diluted | 8,363 | 9,446 | 9,150 | 12,559 |
| Pro forma per share attributable to common stockholders, basic and diluted(3) | | $ | | $ |
| Pro forma weighted-average common shares outstanding, basic and diluted(3) | | | | |

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

| | Year Ended December 31, | | Nine Months Ended September 30, | |
|---|---|---|---|---|
| | 2015 | 2016 | 2016 | 2017 |
| | (in thousands) | | | |
| Stock-based compensation expense: | | | | |
| Delivery costs | $ 97 | $ 96 | $ 68 | $ 146 |
| Sales and marketing expense | 1,015 | 1,153 | 826 | 1,390 |
| Research and development expense | 386 | 574 | 419 | 691 |
| General and administrative expense | 955 | 1,624 | 928 | 1,480 |
| Total stock-based compensation expense | $ 2,453 | $ 3,447 | $ 2,241 | $ 3,707 |

(2) See note (14) to our consolidated financial statements appearing elsewhere in this prospectus for further details on the calculation of basic and diluted net loss per share attributable to common stockholders.

(3) Pro forma basic and diluted net loss per share represents pro forma net loss divided by the pro forma weighted-average shares of common stock outstanding. The pro forma net loss per share for the year ended December 31, 2016 and the nine months ended September 30, 2017 assumes (1) the automatic conversion of all outstanding shares of redeemable convertible preferred stock outstanding as of December 31, 2016 and September 30, 2017, respectively, into common stock immediately prior to the closing of this offering and (2) the issuance of 149,679 Management Conversion Shares in full satisfaction of our obligations to certain of our executive officers and key employees pursuant to outstanding restricted securities units. See note (14) to our consolidated financial statements appearing elsewhere in this prospectus for further details on the calculation of pro forma net loss per share attributable to common stockholders.

| | As of December 31, | | As of September 30, |
|---|---|---|---|
| | 2015 | 2016 | 2017 |
| | (in thousands) | | |
| **Consolidated Balance Sheet Data:** | | | |
| Cash and cash equivalents | $ 27,323 | $ 22,838 | $ 28,186 |
| Accounts receivable, net | 37,410 | 42,042 | 38,060 |
| Working capital(1) | 817 | 28,720 | 37,963 |
| Total assets | 82,290 | 86,859 | 93,415 |
| Total debt | 32,262 | 111,899 | 55,513 |
| Total liabilities | 84,390 | 157,672 | 102,587 |
| Redeemable convertible preferred stock | 160,061 | 146,022 | 196,077 |
| Warrant liability | 2,942 | 2,197 | 10,061 |
| Additional paid-in capital | 10,363 | 29,866 | 57,979 |
| Accumulated deficit | (173,108) | (248,804) | (264,389) |
| Total stockholders' deficit | (162,161) | (216,835) | (205,249) |

(1) We define working capital as current assets less current liabilities. See our consolidated financial statements included elsewhere in this prospectus for further details regarding our current assets and current liabilities.

## 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 consolidated financial statements and the related notes and other financial information included elsewhere in this prospectus. Some of the information contained in this discussion and analysis or set forth elsewhere in this prospectus, 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 "Risk Factors" section of this prospectus for a discussion of 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.*

### Overview

Cardlytics makes marketing more relevant and measurable through our purchase intelligence platform. With purchase data from more than 2,000 financial institutions, we have a secure view into where and when consumers are spending their money. By applying advanced analytics to this massive aggregation of purchase data, we make it actionable, helping marketers identify, reach and influence likely buyers at scale, and measure the true sales impact of their marketing spend. This collection of debit, credit, ACH, and bill pay data represented approximately $1.3 trillion in U.S. consumer spend in 2016. In 2016, our platform analyzed over 18.0 billion online and in-store transactions across more than 94.0 million accounts in the United States, representing one in five debit and credit card swipes in the United States.

We were founded in 2008 with the vision to transform commerce with purchase intelligence. Our first solution was Cardlytics Direct, our proprietary native bank advertising channel. Cardlytics Direct enables marketers to reach consumers through their trusted and frequently visited online and mobile banking channels. We have historically derived substantially all of our revenue from sales of Cardlytics Direct. For 2015, 2016 and the nine months ended September 30, 2017, our Cardlytics Direct revenue was $64.4 million, $97.8 million and $83.6 million, respectively. We designed our Other Platform Solutions to further leverage our intelligence platform and the massive, growing and actionable foundational data asset that we amassed with Cardlytics Direct. For 2015, 2016 and the nine months ended September 30, 2017, our Other Platform Solutions revenue was $13.2 million, $15.0 million and $7.5 million, respectively. Substantially all of our total Other Platform Solutions revenue in each of these periods was derived from sales of our Other Platform Solutions delivered as a managed service, which we discontinued as of July 31, 2017. Given that we are now focusing our efforts on more nascent Other Platform Solutions, we do not expect to generate substantial revenue from Other Platform Solutions for the foreseeable future.

Our partnerships with FIs provide us with access to their purchase data and online banking customers, which we leverage to deliver our solutions to marketers. From our inception through 2012, we focused our efforts on relationships with a few trusted FIs as we developed Cardlytics Direct. As our platform became more robust, we increased our FIs partnerships from 349 as of December 31, 2012 to 2,041 as of September 30, 2017 and grew key FI relationships, including with Bank of America, National Association, or Bank of America, PNC Bank, National Association, or PNC, and Lloyds TSB Bank plc, or Lloyds. Additionally, in the first quarter of 2018, we plan to launch a pilot implementation of Cardlytics Direct with Wells Fargo & Company, or Wells Fargo, directed at Wells Fargo customers located in Miami, Florida, Charlotte, North Carolina and San Francisco, California. We pay our FI partners an FI Share, which is a negotiated and fixed percentage of our billings to marketers less any consumer incentives that we pay to the FIs' customers and certain third-party data costs. We have a minimum FI Share commitment with a certain FI partner totaling $10.0 million over a 12-month period following completion of certain milestones. As the amount of revenue that we can generate from marketers with respect to Cardlytics Direct is primarily a function of the number of active users on our FI partners' digital banking platforms, we believe that the number of monthly active users, or FI MAUs, contributed by any FI partner is indicative of our level of dependence on such FI partner. During 2015, 2016 and the nine months ended

September 30, 2017, our largest FI partner, Bank of America, contributed approximately 50%, 47% and 51% of our total FI MAUs, respectively. Lloyds, our largest FI partner in the United Kingdom, contributed approximately 9%, 10% and 9% of our total FI MAUs in 2015, 2016 and the nine months ended September 30, 2017, respectively. Digital Insight Corporation, a subsidiary of NCR Corporation, or Digital Insight, contributed approximately 15%, 13% and 11% of our total FI MAUs in 2015, 2016 and the nine months ended September 30, 2017, respectively.

We sell our solutions pursuant to agreements that state the terms of the arrangement, the agreed-upon fee and, with respect to Cardlytics Direct, the fixed period of time the offers will be available to FI customers. Since we began selling Cardlytics Direct in 2012, our marketers' spending with us has grown significantly. For example, marketers who first worked with us in 2012 spent 8.1 times their initial calendar year spend on Cardlytics Direct in 2016, marketers who first worked with us in 2013 spent 3.2 times their initial calendar year spend on Cardlytics Direct in 2016, marketers who first worked with us in 2014 spent 2.4 times their initial calendar year spend on Cardlytics Direct in 2016, and marketers who first worked with us in 2015 spent 1.8 times their initial calendar year spend on Cardlytics Direct in 2016. We work with leading marketers across a variety of industries, including 20 of the top 25 U.S. restaurant chains based on the Nation's Restaurant News 2016 ranking, 23 of the top 50 U.S. retailers based on the National Retail Federation 2016 ranking, as well as three of the five largest U.S. cable and satellite television providers and three of the four largest U.S. wireless carriers based on 2016 U.S. subscriber counts.

We have experienced rapid growth in our revenue since inception. Our revenue, which excludes consumer incentives, was $53.8 million, $77.6 million and $112.8 million, for 2014, 2015 and 2016, respectively, representing a compound annual growth rate of 44.8%. Our revenue for the nine months ended September 30, 2017 was $91.1 million. For 2014, 2015, 2016 and the nine months ended September 30, 2017, our net loss was $38.9 million, $40.6 million, $75.7 million and $15.6 million, respectively. Our historical losses have been driven by our substantial investments in our platform and infrastructure, which we believe will enable us to expand the use of our platform by both FIs and marketers. In 2016, our net loss included a $25.9 million one-time non-cash charge related to the termination of our U.K. agreement with Aimia EMEA Limited and a $10.9 million non-cash charge related to the issuance and change in fair value of convertible promissory notes. In both 2015 and 2016, we derived 11% of our revenue outside the United States. In the nine months ended September 30, 2017, 12% of our revenue was derived outside the United States.

**Our Business Model**

Substantially all of our revenue is derived from our proprietary native banking channel, Cardlytics Direct. We also generate revenue from the sale of our Other Platform Solutions.

***Cardlytics Direct***

Our Cardlytics Direct solution is our proprietary native bank advertising channel that enables marketers to reach consumers through their trusted and frequently visited online and mobile banking channels. Working with a marketer, we design a campaign that targets customers based on their purchase history. The consumer is offered an incentive to make a purchase from the marketer within a specified period. We use a portion of the fees that we collect from marketers to provide these consumer incentives to our FIs' customers after they make qualifying purchases, which we refer to as Consumer Incentives. Leveraging our powerful predictive analytics, we are able to create compelling Consumer Incentives that have the potential to increase return on advertising spend for marketers. We also pay our FI partners an FI Share. We have generated substantially all of our revenue from sales of Cardlytics Direct since inception.

We price Cardlytics Direct marketing in two primary ways: (1) Cost per Served Sale, or CPS, and (2) Cost per Redemption, or CPR. In both 2015 and 2016, CPS represented 67% of our revenue from Cardlytics Direct.

We developed our pricing models with the needs of marketers in mind. Given our ability to measure the actual performance of Cardlytics Direct in driving sales, we are able to offer marketers performance-based pricing

models where they only pay us based on actual sales influenced by marketing through our native bank channel. These pricing models are designed to ensure that marketers realize an actual return on their advertising spend with us.

- ***CPS***. Our primary and fastest growing pricing model is CPS, which we created to meet the media buying preferences of marketers. We generate revenue by charging a percentage, which we refer to as the CPS Rate, of all purchases from the marketer by consumers (1) who are served marketing and (2) subsequently make a purchase from the marketer during the campaign period, regardless of whether consumers select the marketing and thereby become eligible to earn the applicable Consumer Incentive. We set CPS Rates for marketers based on our expectation of the marketer's return on spend for the relevant campaign. Additionally, we set the amount of the Consumer Incentives payable for each campaign based on our estimation of our ability to drive incremental sales for the marketer. We seek to optimize the level of Consumer Incentives to retain a greater portion of billings. However, if the amount of Consumer Incentives exceeds the amount of billings that we are paid by the applicable marketer we are still responsible for paying the total Consumer Incentive. This has occurred infrequently and has been immaterial in amount for each of the periods presented.

- ***CPR***. Our initial pricing model is CPR, where marketers specify and fund the Consumer Incentive and pay us a separate negotiated, fixed marketing fee, or the CPR Fee, for each purchase that we generate. We generate revenue if the consumer (1) is served marketing, (2) selects the marketing and thereby becomes eligible to earn the applicable Consumer Incentive and (3) makes a qualifying purchase from the marketer during the campaign period. We set the CPR Fee for marketers based on our estimation of the marketers' return on spend for the relevant campaign. The CPR Fee is either a percentage of qualifying purchases or a flat amount.

***Other Platform Solutions***

We also generate revenue from our Other Platform Solutions offerings. Our Other Platform Solutions enable marketers and marketing service providers to leverage the power of purchase intelligence outside the bank channel. For example, we use purchase intelligence to help marketers measure the impact of marketing campaigns outside of the Cardlytics Direct channel on in-store and online sales. To the extent that we use purchase intelligence derived from a specific FI customer's anonymized purchase data in the delivery of our Other Platform Solutions, we pay the applicable FI an FI Share calculated based on the relative contribution of the data provided by the FI to the overall delivery of the solutions. Revenue from our Other Platform Solutions was $13.2 million, $15.0 million and $7.5 million in 2015, 2016 and the nine months ended September 30, 2017, respectively. In order to test the efficacy of our Other Platform Solutions, we historically used programmatic vendors to run marketing campaigns outside of the Cardlytics Direct channel, and thereby delivered our Other Platform Solutions primarily as a managed service. This allowed us to gain valuable expertise in leveraging our purchase intelligence outside the banking channel. With regard to delivery of our Other Platform Solutions as a managed service, we charged marketers a fee based on the number of impressions that we delivered for their marketing campaign, calculated on a cost per thousand impressions, or CPM, basis. Substantially all of our total Other Platform Solutions revenue in each of 2015, 2016 and the nine months ended September 30, 2017 was derived from sales of our Other Platform Solutions delivered as a managed service, which we discontinued as of July 31, 2017. Given that we are now focusing our efforts on more nascent Other Platform Solutions, we do not expect to generate substantial revenue from Other Platform Solutions for the foreseeable future, and we expect our overall Other Platforms Solutions revenue to decline in future periods compared to prior periods. Accordingly, our total revenue may decline in future periods if we are unable to generate sufficient offsetting revenue from sales of Cardlytics Direct.

Our revenue recognition policies for Cardlytics Direct and Other Platform Solutions are discussed in more detail under "Critical Accounting Policies."

**Key Factors Affecting Our Performance**

Our historical financial performance has been, and we expect our financial performance in the future will be, primarily driven by the following factors:

- ***Ability to Drive Additional Revenue from Cardlytics Direct***. The revenue that we generate through our proprietary native bank advertising channels from each of our FI partners varies. This variance is typically a result of how long the program has been active, the user interface for the program and the FI's efforts to promote the program. We continually work with FIs to improve their customers' user experience, increase customer awareness, and leverage additional customer outreach channels like email. However, in certain cases, we may have little control over the design of the user interface that our FI partners choose to use or the extent to which they promote our solution to their customers. To the extent that our FI partners fail to increase engagement with our solutions within their customer bases, we may be unable to attract and retain marketers or their agencies and our revenue would suffer.

- ***Ability to Increase Spend from Existing Marketers and Acquire New Marketers***. Our performance depends on our ability to continue to increase adoption of our solutions within our existing marketer base and attract new marketers that invest meaningfully in marketing through our solutions. Our ability to increase adoption among existing marketers is particularly important in light of our land-and-expand business model. We believe that we have the opportunity to expand our marketer base with a focus on attracting new brands, retailers, service providers and new categories of marketers that will invest significantly in the use of purchase intelligence. We believe that we also have the opportunity to increase adoption of our solutions across our existing marketers. In order to expand and further penetrate our marketer base, we have made, and plan to continue to make, investments in expanding our direct sales teams and indirect sales channels, and increasing our brand awareness. However, our ability to continue to grow our marketer base is dependent upon our ability to compete within the evolving markets in which we participate.

- ***Ability to Expand our FI Partner Network***. Our ability to maintain and grow our revenue is contingent upon maintaining and expanding our relationships with our FI partners. Given our substantial investments to date in our intelligence platform and infrastructure, we believe that we will be able to add FIs to our network with modest incremental investment. Each new FI partner increases the size of our data asset, increasing the value of our solutions to both marketers and FIs that are already part of our network. Accordingly, we are focused on the continued expansion of our FI network to ensure that we have robust purchase data to support a broad array of incentive programs with respect to our Cardlytics Direct solution and to enrich our Other Platform Solutions. However, our sales and integration cycle with respect to our FI partners can be costly and long, and it is difficult to predict if or when we will be successful in generating revenue from a new FI relationship.

- ***Ability to Integrate our Platform with Partners***. We believe that we can improve the value proposition for marketers through the use of purchase intelligence. We intend to continue to partner with other media platforms, marketing technology providers, and marketing agencies that can utilize our platform to serve a broad array of customers. To facilitate these partnerships, we intend to focus on continued technological integration of our platform with those of complementary market participants. To the extent that we are unable to significantly expand our relationships with key market participants that can drive adoption of our Other Platform Solutions, we may be unable to grow our revenue from our Other Platform Solutions.

- ***Ability to Innovate and Evolve Our Platform.*** As we continue to grow our data asset and enhance our platform, we are developing new solutions and increasingly sophisticated analytical capabilities. Our future performance is significantly dependent on the investments that we make in our research and development efforts and in our ability to continue to innovate, improve functionality, and introduce new

features and solutions that are compelling to our marketers and FIs. We intend to continue to invest in our platform, including by hiring top technical talent and focusing on core technology innovation.

**Non-GAAP Measures and Other Performance Metrics**

We regularly monitor a number of financial and operating metrics in order to measure our current performance and estimate our future performance. Our business metrics may be calculated in a manner different than similar business metrics used by other companies.

| | Year Ended December 31, | | Nine Months Ended September 30, | |
|---|---|---|---|---|
| | 2015 | 2016 | 2016 | 2017 |
| | (in thousands, except ARPU) (in dollars, except MAU) | | | |
| FI monthly active users (FI MAU) | 38,957 | 43,927 | 42,733 | 53,694 |
| Average revenue per user (ARPU) | 1.65 | 2.23 | 1.54 | 1.56 |
| Adjusted contribution | 29,943 | 46,536 | 31,414 | 40,213 |
| Adjusted EBITDA | (34,774) | (17,046) | (16,844) | (7,665) |

***Monthly Active Users***

We define FI monthly active users, or FI MAUs, as unique customers of our FI partners that logged in and visited the online or mobile banking applications of, or opened an email from, our FI partners during a monthly period. We then calculate a monthly average of these FI MAUs for the periods presented. We believe that FI MAUs is an indicator of our and our FI partners' ability to drive engagement with Cardlytics Direct and is reflective of the marketing base that we offer to marketers through Cardlytics Direct.

***Average Revenue per User***

We define average revenue per user, or ARPU, as the total GAAP Cardlytics Direct revenue generated in the applicable period, divided by the average number of FI MAUs in the applicable period. We believe that ARPU is an indicator of the value of our relationships with our FI partners with respect to Cardlytics Direct.

***Adjusted Contribution***

Adjusted contribution represents our revenue less our FI Share and other third-party costs. We review adjusted contribution for internal management purposes and believe that the elimination of our primary cost of revenue, FI Share and other third-party costs, can provide a useful measure for period-to-period comparisons of our core business. More specifically, we report our revenue gross of FI Share and other third-party costs, but net of any consumer incentives that we pay to our FIs' customers. Adjusted contribution is not a measure calculated in accordance with GAAP. We believe that adjusted contribution provides useful information to investors and others in understanding and evaluating our results of operations in the same manner as our management and board of directors. Nevertheless, our use of adjusted contribution has limitations as an analytical tool, and you should not consider it in isolation or as a substitute for analysis of our financial results as reported under GAAP. Other companies, including companies in our industry that have similar business arrangements, may address the impact of FI Share and other third-party costs differently. See note (15) to our consolidated financial statements appearing elsewhere in this prospectus for further details on our adjusted contribution by segment. See note (3) to the table contained in "Summary Consolidated Financial and Other Data—Non-GAAP Measures and Other Performance Metrics" for a reconciliation of adjusted contribution to revenue, the most directly comparable financial measure calculated and presented in accordance with GAAP for 2015 and 2016 and the nine months ended September 30, 2016 and 2017, and a discussion of the limitations of adjusted contribution.

***Adjusted EBITDA***

Adjusted EBITDA represents our net loss before income tax benefit; interest expense, net; depreciation and amortization; stock-based compensation expense; change in fair value of warrant liability; change in fair value of convertible promissory notes; foreign currency (gain) loss; loss on extinguishment of debt; costs associated with financing events; restructuring costs; amortization and impairment of deferred FI implementation costs; and termination of U.K. agreement expense. We do not consider these excluded items to be indicative of our core operating performance. The items that are non-cash include change in fair value of warrant liability, change in fair value of convertible promissory notes, foreign currency (gain) loss, amortization of FI implementation costs, depreciation and amortization expense and stock-based compensation expense. Adjusted EBITDA is a key measure used by management to understand and evaluate our core operating performance and trends and to generate future operating plans, make strategic decisions regarding the allocation of capital and invest in initiatives that are focused on cultivating new markets for our solution. In particular, the exclusion of certain expenses in calculating adjusted EBITDA facilitates comparisons of our operating performance on a period-to-period basis. Adjusted EBITDA is not a measure calculated in accordance with GAAP. See note (4) to the table contained in “Summary Consolidated Financial and Other Data—Non-GAAP Measures and Other Performance Metrics” for a reconciliation of adjusted EBITDA to net loss, the most directly comparable financial measure calculated and presented in accordance with GAAP for 2015 and 2016 and the nine months ended September 30, 2016 and 2017, and a discussion of the limitations of adjusted EBITDA.

**Segment Information**

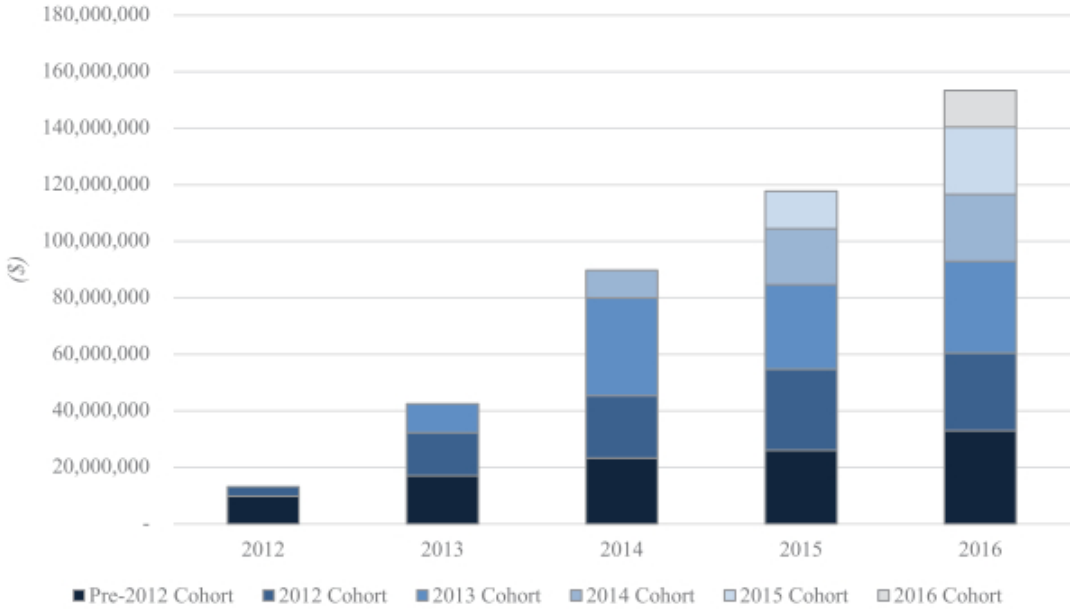
We have two reportable segments: Cardlytics Direct and Other Platform Solutions, as determined by the information that both our Chief Executive Officer and President and Chief Operating Officer, who we consider our chief operating decision makers, use to make strategic goals and operating decisions. Our Cardlytics Direct segment represents our proprietary native bank advertising channel. Our Other Platform Solutions segments represents solutions that enable marketers and marketing service providers to leverage the power of purchase intelligence outside the banking channel.

**Seasonality**

Our cash flows from operations vary from quarter to quarter, largely due to the seasonal nature of our marketers’ advertising spending. Many marketers tend to devote a significant portion of their marketing budgets to the fourth quarter of the calendar year to coincide with consumer holiday spending and to reduce spend in the first quarter of the calendar year.

**Marketer Cohort Analysis**

We have historically driven growth primarily by both increasing adoption of Cardlytics Direct within our existing marketer base and attracting new marketers that invest in marketing through Cardlytics Direct. With marketers spanning retail, restaurant, grocery, travel and subscription services industries, we believe that we have the opportunity to capture a greater proportion of our existing marketers' overall marketing spend. Our growth strategy is dependent upon our ability to both increase spend from existing marketers and acquire new marketers. The chart below illustrates the aggregate amount that marketers in each cohort spent with us on Cardlytics Direct, inclusive of Consumer Incentives and FI Share payable, during each of the periods presented. Each cohort represents customers who made their initial purchase from us in a given fiscal year. The pre-2012 cohort represents all marketers who made their initial purchase from us between our inception and December 31, 2011; the 2012 cohort represents all marketers who made their initial purchase from us between January 1, 2012 and December 31, 2012; the 2013 cohort represents all marketers who made their initial purchase from us between January 1, 2013 and December 31, 2013; the 2014 cohort represents all marketers who made their initial purchase from us between January 1, 2014 and December 31, 2014; the 2015 cohort represents all marketers who made their initial purchase from us between January 1, 2015 and December 31, 2015; and the 2016 cohort represents all marketers who made their initial purchase from us between January 1, 2016 and December 31, 2016.




**Components of Results of Operations**

***Revenue***

We generate revenue from the sale of our Cardlytics Direct solution and our Other Platform Solutions. We sell our solutions by entering into agreements directly with marketers or their marketing agencies. These agreements state the terms of the arrangement, the agreed-upon fee and, with respect to Cardlytics Direct, the fixed period of time the offers will be available to FI customers. We generally bill for our solutions on a monthly basis following delivery of our solutions. We report revenue net of Consumer Incentives. See "Our Business Model" for additional information.

***Cost and Expense***

We classify our expenses into the following categories: FI Share and other third-party costs; delivery costs; sales and marketing expense; research and development expense; general and administrative expense; and depreciation and amortization expense.

*FI Share and Other Third-Party Costs*

FI Share and other third-party costs consist primarily of the FI Share that we pay our FI partners, media and data costs and, through June 30, 2016, allocation of revenue in the United Kingdom to Aimia EMEA Limited, or Aimia. In June 2016, we acquired full control of, and the right to retain all revenue with respect to, our business in the United Kingdom from Aimia. FI Share and other third-party costs also include the amortization or impairment of deferred implementation costs incurred pursuant to our agreements with certain FI partners and any incremental costs due to FIs as part of revenue commitment arrangements, as well as non-cash expense that we may incur from time to time upon the vesting of outstanding performance-based warrants to purchase shares of our common stock that we issued to certain FI partners, or the Performance Warrants. As of September 30, 2017, we have not recorded an expense associated with these Performance Warrants, as none of the performance conditions have been deemed to have been achieved. In connection with the consummation of this offering, we expect to incur $ million in a non-cash expense, based on an assumed initial public offering price of $ per share, the midpoint of the price range set forth on the cover page of this prospectus, in the quarter in which this offering is completed as the vesting conditions on the Performance Warrants will be deemed to have been achieved upon completion of this offering. The actual non-cash expense that we will incur may be higher or lower than this estimate as it is a function of the actual initial public offering price.

*Delivery Costs*

Delivery costs consist primarily of personnel-related costs of our campaign, data operations and production support teams, including salaries, benefits, bonuses and payroll taxes, as well as stock-based compensation expense. Delivery costs also include hosting facility costs, internally developed and purchased or licensed software costs, outsourcing costs and professional services costs. As we add data center capacity and support personnel in advance of anticipated growth, our delivery costs will increase in absolute dollars and if such anticipated revenue growth does not occur, our delivery costs as a percentage of revenue will be adversely affected.

*Sales and Marketing Expense*

Sales and marketing expense consists primarily of personnel costs of our sales and marketing employees, including salaries, benefits, bonuses, commissions, incentive compensation and payroll taxes. Sales and marketing expense also includes stock-based compensation expense, professional fees, marketing programs such as trade shows, marketing materials, public relations, sponsorships and other brand building expenses, as well as outsourcing costs, travel and entertainment expenses and company funded consumer testing expenses for certain marketers that are not current customers. We expect that our sales and marketing expense will increase in absolute dollars as a result of hiring new sales representatives and as we invest to enhance our brand. Over time, we expect sales and marketing expenses will decline as a percentage of revenue.

*Research and Development Expense*

Research and development expense consists primarily of personnel costs of our research and development employees, including salaries, benefits and bonuses. Research and development expense also includes stock-based compensation expense, outsourcing costs, software licensing costs, professional fees and travel expenses. We focus our research and development efforts on improving our solutions and developing new ones. We expect research and development expense to increase in absolute dollars as we continue to create new solutions and improve the functionality of our existing solutions.

*General and Administrative Expense*

General and administrative expense consist of personnel costs and related expenses for executive, finance, legal, compliance, information technology and human resources personnel, including salaries, benefits, bonuses and incentive compensation. General and administrative expense also includes stock-based compensation expense, professional fees for external legal, accounting and other consulting, financing transaction costs, facilities costs such as rent and utilities, royalties, bad debt expense, travel expense and property and franchise taxes. We expect that general and administrative expenses will increase on an absolute dollar basis but decrease as a percentage of revenue as we focus on processes, systems and controls to enable the our internal support functions to scale with the growth of our business. We also anticipate increases to general and administrative expenses as we incur the costs of compliance associated with being a publicly traded company, including audit and consulting fees, as well as increased costs for directors' and officers' liability insurance.

*Depreciation and Amortization Expense*

Depreciation and amortization expense includes depreciation of property and equipment over the estimated useful life of the applicable asset as well as amortization of deferred patent and capitalized internal-use software development costs.

*Termination of U.K. agreement expense*

Termination of U.K. agreement expense reflects the value of the convertible promissory notes issued to Aimia in connection with the termination of our historical cooperation agreement in the United Kingdom. In June 2016, we acquired full control of, and the right to retain all revenue with respect to, our business in the United Kingdom from Aimia.

***Interest Expense, Net***

Interest expense, net consists of interest incurred on our outstanding debt instruments, as well as related discount amortization and financing costs, partially offset by interest income on our cash balances.

***Change in Fair Value of Warrant Liability***

Change in fair value of warrant liability represents adjustments to the fair value of warrants based upon changes in the fair value of the underlying stock.

***Change in Fair Value of Convertible Promissory Notes Including Related Parties***

In April, May, June and July 2016, we issued unsecured convertible promissory notes to certain of our directors, executive officers and existing stockholders in an aggregate principal amount of $27.0 million, at an interest rate of 10% per year, compounded annually. Change in fair value of convertible promissory notes represents adjustments to the fair value of our convertible promissory notes as a result of our election of the fair value option. In May 2017, these convertible promissory notes converted into shares of our redeemable convertible preferred stock.

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

Other income (expense), net consists primarily of gains and losses on foreign currency transactions and expenses recorded in connection with the termination of our historical term loan and line of credit.

***Income Taxes***

We have generated losses before income taxes in the United States, United Kingdom and most U.S. state income tax jurisdictions. We have generated historical net losses and recorded a full valuation allowance against our

deferred tax assets. We expect to maintain a full valuation allowance in the near term. Due to our history of losses and our expectation of maintaining a full valuation allowance, we have not recorded an income tax provision or benefit during the periods presented. Realization of any of our deferred tax assets depends upon future earnings, the timing and amount of which are uncertain.

**Results of Operations**

The following table sets forth our condensed consolidated statements of operations:

| | Year Ended December 31, | | Nine Months Ended September 30, | |
|---|---|---|---|---|
| | 2015 | 2016 | 2016 | 2017 |
| | (in thousands) | | | |
| Revenue | $ 77,634 | $112,821 | $ 76,400 | $ 91,099 |
| Costs and expenses: | | | | |
| FI Share and other third-party costs | 47,691 | 66,285 | 44,986 | 50,886 |
| Delivery costs(1) | 4,803 | 6,127 | 4,729 | 5,095 |
| Sales and marketing expense(1) | 32,784 | 31,261 | 22,850 | 23,454 |
| Research and development expense(1) | 11,604 | 13,902 | 11,101 | 9,527 |
| General and administrative expense(1) | 18,197 | 21,355 | 16,240 | 14,738 |
| Depreciation and amortization expense | 2,194 | 4,219 | 3,432 | 2,303 |
| Termination of U.K. agreement expense | — | 25,904 | 25,904 | — |
| Total costs and expenses | 117,273 | 169,053 | 129,242 | 106,003 |
| Operating loss | (39,639) | (56,232) | (52,842) | (14,904) |
| Interest expense, net | (1,484) | (6,170) | (3,623) | (6,427) |
| Change in fair value of warrant liability | 914 | (32) | 639 | (412) |
| Change in fair value of convertible promissory notes | — | (786) | (819) | (1,244) |
| Change in fair value of convertible promissory notes—related parties | — | (10,091) | (10,280) | 6,213 |
| Other income (expense), net | (432) | (2,385) | (1,726) | 1,189 |
| Loss before income taxes | (40,641) | (75,696) | (68,651) | (15,585) |
| Income tax benefit | 16 | — | — | — |
| Net loss | $ (40,625) | $ (75,696) | $ (68,651) | $ (15,585) |

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

| | Year Ended December 31, | | Nine Months Ended September 30, | |
|---|---|---|---|---|
| | 2015 | 2016 | 2016 | 2017 |
| | (in thousands) | | | |
| Stock-based compensation expense: | | | | |
| Delivery costs | $ 97 | $ 96 | $ 68 | $ 146 |
| Sales and marketing expense | 1,015 | 1,153 | 826 | 1,390 |
| Research and development expense | 386 | 574 | 419 | 691 |
| General and administrative expense | 955 | 1,624 | 928 | 1,480 |
| Total stock-based compensation expense | $ 2,453 | $ 3,447 | $ 2,241 | $ 3,707 |

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

| | Year Ended December 31,* | | Nine Months Ended September 30,* | |
|---|---|---|---|---|
| | 2015 | 2016 | 2016 | 2017 |
| Revenue | 100% | 100% | 100% | 100% |
| Costs and expenses: | | | | |
| FI share and other third-party costs | 61 | 59 | 59 | 56 |
| Delivery costs | 6 | 5 | 6 | 6 |
| Sales and marketing expense | 42 | 28 | 30 | 26 |
| Research and development expense | 15 | 12 | 15 | 10 |
| General and administrative expense | 23 | 19 | 21 | 16 |
| Depreciation and amortization expense | 3 | 4 | 4 | 3 |
| Termination of U.K. agreement expense | — | 23 | 34 | — |
| Total costs and expenses | 151 | 150 | 169 | 116 |
| Operating loss | (51) | (50) | (69) | (16) |
| Interest expense, net | (2) | (5) | (5) | (7) |
| Change in fair value of warrant liability | 1 | — | 1 | — |
| Change in fair value of convertible promissory notes | — | (1) | (1) | (1) |
| Change in fair value of convertible promissory notes—related parties | — | (9) | (13) | 7 |
| Other income (expense), net | (1) | (2) | (2) | 1 |
| Loss before income taxes | (52) | (67) | (90) | (17) |
| Income tax benefit | — | — | — | — |
| Net loss | (52)% | (67)% | (90)% | (17)% |

* Certain figures may not sum due to rounding.

**Nine Months Ended September 30, 2016 and 2017**

***Revenue***

| | Nine Months Ended September 30, | | 2016 v. 2017 Change | |
|---|---|---|---|---|
| | 2016 | 2017 | $ | % |
| | (dollars in thousands) | | | |
| Revenue by solution: | | | | |
| Cardlytics Direct | $ 65,953 | $ 83,615 | $ 17,662 | 27% |
| Other Platform Solutions | 10,447 | 7,484 | (2,963) | (28) |
| Total revenue | $ 76,400 | $ 91,099 | $ 14,699 | 19% |

Revenue increased by $14.7 million in the nine months ended September 30, 2017 compared to the corresponding period in 2016, primarily due to an $17.7 million increase in revenue generated from sales of our Cardlytics Direct solution, partially offset by a $3.0 million decrease in revenue generated from sales of our Other Platform Solutions. Of this increase, $4.7 million related to sales of Cardlytics Direct to new marketers, while $13.0 million related to increased sales of Cardlytics Direct to existing marketers. Consumer Incentives increased from $41.7 million in the nine months ended September 30, 2016 to $42.1 million in the nine months ended September 30, 2017, which reflects our efforts to optimize the level of Consumer Incentives needed to drive incremental sales for marketers, and resulted in an increase in our revenue. Revenue from Other Platform Solutions consisted substantially of revenue from sales of our Other Platform Solutions delivered as a managed

service. We expect revenue from Other Platform Solutions to decline in future periods compared to prior periods as we discontinued sales of Other Platform Solutions delivered as a managed service as of July 31, 2017.

***Costs and Expenses***

*FI Share and Other Third-Party Costs*

| | Nine Months Ended September 30, | | 2016 v. 2017 Change | |
|---|---|---|---|---|
| | 2016 | 2017 | $ | % |
| | (dollars in thousands) | | | |
| FI Share and other third-party costs by solution: | | | | |
| Cardlytics Direct | $ 39,228 | $ 47,052 | $ 7,824 | 20% |
| Other Platform Solutions | 5,758 | 3,834 | (1,924) | (33) |
| Total FI Share and other third-party costs | $ 44,986 | $ 50,886 | $ 5,900 | 13% |
| % of revenue | 59% | 56% | | |

FI Share and other third-party costs increased by $5.9 million in the nine months ended September 30, 2017 compared to the corresponding period in 2016, primarily due to an increase in revenue from sales of Cardlytics Direct, partially offset by a $1.8 million decrease in FI Share revenue commitments in excess of the FI Share otherwise earned by the applicable FI partners and a $1.2 million decrease as a result of us no longer allocating revenue and FI Share and other third-party costs to Aimia following termination of our cooperation agreement in June 2016. Other Platform Solutions FI Share and other third-party costs decreased $1.9 million in the nine months ended September 30, 2017 compared to the corresponding period in 2016, primarily due to a decline in media and data costs as we began to shift our focus away from delivering Other Platform Solutions as a managed service.

*Delivery Costs*

| | Nine Months Ended September 30, | | 2016 v. 2017 Change | |
|---|---|---|---|---|
| | 2016 | 2017 | $ | % |
| | (dollars in thousands) | | | |
| Delivery costs | $ 4,729 | $ 5,095 | $ 366 | 8% |
| % of revenue | 6% | 6% | | |

Delivery costs increased by $0.4 million in the nine months ended September 30, 2017 compared to the corresponding period in 2016, primarily due to a $0.3 million increase in personnel costs and a $0.1 million increase in software license costs.

*Sales and Marketing Expense*

| | Nine Months Ended September 30, | | 2016 v. 2017 Change | |
|---|---|---|---|---|
| | 2016 | 2017 | $ | % |
| | (dollars in thousands) | | | |
| Sales and marketing expense | $ 22,850 | $ 23,454 | $ 604 | 3% |
| % of revenue | 30% | 26% | | |

Sales and marketing expense increased by $0.6 million in the nine months ended September 30, 2017 compared to the corresponding period in 2016, primarily due to a $1.5 million increase in commissions and personnel costs as a result of incremental sales, partially offset by a $0.4 million decrease in travel and entertainment costs and a $0.3 million decrease in professional fees.

*Research and Development Expense*

| | Nine Months Ended September 30, | | 2016 v. 2017 Change | |
|---|---|---|---|---|
| | 2016 | 2017 | $ | % |
| | (dollars in thousands) | | | |
| Research and development expense | $ 11,101 | $ 9,527 | $ (1,574) | (14)% |
| % of revenue | 15% | 10% | | |

Research and development expense decreased by $1.6 million in the nine months ended September 30, 2017 compared to the corresponding period in 2016, primarily due to a $1.2 million decrease in personnel costs associated with lower research and development headcount and a $0.5 million decrease in outsourcing and professional fee, partially offset by a $0.1 million increase in software licensing costs.

*General and Administrative Expense*

| | Nine Months Ended September 30, | | 2016 v. 2017 Change | |
|---|---|---|---|---|
| | 2016 | 2017 | $ | % |
| | (dollars in thousands) | | | |
| General and administrative expense | $ 16,240 | $ 14,738 | $ (1,502) | (9)% |
| % of revenue | 21% | 16% | | |

General and administrative expense decreased by $1.5 million in the nine months ended September 30, 2017 compared to the corresponding period in 2016, primarily due to a $2.6 million decrease in financing transaction costs, a $0.7 million decrease in bad debt expense, partially offset by a $1.3 million increase in incentive compensation and a $0.2 million increase in professional fees.

*Depreciation and Amortization Expense*

| | Nine Months Ended September 30, | | 2016 v. 2017 Change | |
|---|---|---|---|---|
| | 2016 | 2017 | $ | % |
| | (dollars in thousands) | | | |
| Depreciation and amortization expense | $ 3,432 | $ 2,303 | $ (1,129) | (33)% |
| % of revenue | 4% | 3% | | |

Depreciation and amortization expense decreased by $1.1 million in the nine months ended September 30, 2017 compared to the corresponding period in 2016, due to the suspension of certain development efforts that resulted in the write off of capitalized internal-use software development costs during the nine months ended September 30, 2016.

*Termination of U.K. Agreement Expense*

| | Nine Months Ended September 30, | | 2016 v. 2017 Change | |
|---|---|---|---|---|
| | 2016 | 2017 | $ | % |
| | (dollars in thousands) | | | |
| Termination of U.K. agreement expense | $ 25,904 | $ — | $ (25,904) | N/M |
| % of revenue | 34% | —% | | |

Termination of U.K. agreement expense was $25.9 million expense in the nine months ended September 30, 2016 and reflects the value of convertible promissory notes issued to Aimia in connection with the termination of our historical cooperation agreement in the United Kingdom.

***Interest Expense, Net***

| | Nine Months Ended September 30, | | 2016 v. 2017 Change | |
|---|---|---|---|---|
| | 2016 | 2017 | $ | % |
| | (dollars in thousands) | | | |
| Interest expense, net | $(3,623) | $(6,427) | $(2,804) | 77% |
| % of revenue | (5)% | (7)% | | |

Interest expense, net increased by $2.8 million in the nine months ended September 30, 2017 compared to the corresponding period in 2016, primarily due to interest payable on our new debt facilities entered into in 2016.

***Change in Fair Value of Warrant Liability***

| | Nine Months Ended September 30, | | 2016 v. 2017 Change | |
|---|---|---|---|---|
| | 2016 | 2017 | $ | % |
| | (dollars in thousands) | | | |
| Change in fair value of warrant liability | $ 639 | $ (412) | $(1,051) | (164)% |
| % of revenue | 1% | —% | | |

Change in fair value of warrant liability decreased $1.1 million in the nine months ended September 30, 2017 compared to the corresponding period in 2016, due to a decrease in the value of our redeemable convertible preferred stock and common stock.

***Change in Fair Value of Convertible Promissory Notes***

| | Nine Months Ended September 30, | | 2016 v. 2017 Change | |
|---|---|---|---|---|
| | 2016 | 2017 | $ | % |
| | (dollars in thousands) | | | |
| Change in fair value of convertible promissory notes | $ (819) | $(1,244) | $ (425) | 52% |
| % of revenue | (1)% | (1)% | | |

Change in fair value of convertible promissory notes reflects an increase in the value of our convertible promissory notes, which was driven by periodic valuations. In May 2017, these convertible promissory notes converted into shares of our redeemable convertible preferred stock.

***Change in Fair Value of Convertible Promissory Notes—Related Parties***

| | Nine Months Ended September 30, | | 2016 v. 2017 Change | |
|---|---|---|---|---|
| | 2016 | 2017 | $ | % |
| | (dollars in thousands) | | | |
| Change in fair value of convertible promissory notes—related parties | $(10,280) | $ 6,213 | $16,493 | (160)% |
| % of revenue | (13)% | 7% | | |

Change in fair value of convertible promissory notes reflects a decrease in the value of our convertible promissory notes, which was driven by periodic valuations. In May 2017, these convertible promissory notes converted into shares of our redeemable convertible preferred stock.

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

| | Nine Months Ended September 30, | | 2016 v. 2017 Change | |
|---|---|---|---|---|
| | 2016 | 2017 | $ | % |
| | (dollars in thousands) | | | |
| Other income (expense), net | $(1,726) | $ 1,190 | $2,916 | (169)% |
| % of revenue | (2)% | 1% | | |

Other income (expense), net increased by $2.9 million in the nine months ended September 30, 2017 compared to the corresponding period in 2016, primarily due to an increase in the value of the British pound relative to the U.S. dollar.

**Years Ended December 31, 2015 and 2016**

***Revenue***

| | Year Ended December 31, | | 2015 v. 2016 Change | |
|---|---|---|---|---|
| | 2015 | 2016 | $ | % |
| | (dollars in thousands) | | | |
| Revenue by solution: | | | | |
| Cardlytics Direct | $64,447 | $ 97,789 | $33,342 | 52% |
| Other Platform Solutions | 13,187 | 15,032 | 1,845 | 14 |
| Total revenue | $77,634 | $112,821 | $35,187 | 45% |

Revenue increased by $35.2 million in 2016 compared to 2015, primarily due to a $33.3 million increase in revenue generated from sales of our Cardlytics Direct solution. Of this increase, $12.1 million related to sales of Cardlytics Direct to new marketers, while $21.2 million related to increased sales of Cardlytics Direct to existing marketers. Consumer Incentives remained relatively consistent at $56.3 million in 2015 compared to $57.0 million in 2016, which reflects our efforts to optimize the level of Consumer Incentives needed to drive incremental sales for marketers, and resulted in an increase in our revenue. Revenue from Other Platform Solutions consisted substantially of revenue from sales of our Other Platform Solutions delivered as a managed service and increased by $1.8 million in 2016 compared to 2015, with such increase primarily driven by increased adoption of Other Platform Solutions delivered other than as a managed service. We do not expect to generate substantial revenue from Other Platform Solutions delivered as a managed service in future periods as we discontinued sales of Other Platform Solutions delivered as a managed service as of July 31, 2017.

***Costs and Expenses***

*FI Share and Other Third-Party Costs*

| | Year Ended December 31, | | 2015 v. 2016 Change | |
|---|---|---|---|---|
| | 2015 | 2016 | $ | % |
| | (dollars in thousands) | | | |
| FI Share and other third-party costs by solution: | | | | |
| Cardlytics Direct | $ 38,664 | $ 58,105 | $ 19,441 | 50% |
| Other Platform Solutions | 9,027 | 8,180 | (847) | (9) |
| Total FI Share and other third-party costs | $ 47,691 | $ 66,285 | $ 18,594 | 39% |
| % of revenue | 61% | 59% | | |

FI Share and other third-party costs increased by $18.6 million in 2016 compared to 2015, primary due to an increase in revenue from sales of Cardlytics Direct. In addition to an increase driven by the increase in revenue, the $18.6 million increase in FI Share and other third-party costs included a $2.6 million increase in FI share revenue commitments in excess of the FI Share otherwise earned by the applicable FI partners, partially offset by a $1.2 million decrease as a result of us no longer allocating revenue and FI Share and other third-party costs to Aimia following termination of our cooperation agreement in June 2016. Other Platform Solutions FI Share and other third-party costs decreased $0.8 million in 2016 compared to 2015, primarily due to a decline in media and data costs as we began to shift our focus away from delivering Other Platform Solutions as a managed service.

*Delivery Costs*

| | Year Ended December 31, | | 2015 v. 2016 Change | |
|---|---|---|---|---|
| | 2015 | 2016 | $ | % |
| | (dollars in thousands) | | | |
| Delivery costs | $ 4,803 | $ 6,127 | $ 1,324 | 28% |
| % of revenue | 6% | 5% | | |

Delivery costs increased by $1.3 million in 2016 compared to 2015, primarily to support enhancements for existing FI partners and implementation for new FI partners. These costs include a $0.7 million increase in personnel-related costs for our campaign, data operations and production support teams and a $0.3 million increase in personnel costs and stock-based compensation expense.

*Sales and Marketing Expense*

| | Year Ended December 31, | | 2015 v. 2016 Change | |
|---|---|---|---|---|
| | 2015 | 2016 | $ | % |
| | (dollars in thousands) | | | |
| Sales and marketing expense | $ 32,784 | $ 31,261 | $ (1,523) | (5)% |
| % of revenue | 42% | 28% | | |

Sales and marketing expense decreased by $1.5 million in 2016 compared to 2015, primarily due to a $3.5 million decrease in marketing costs related to reductions in advertising and public relations expenses, reduced sponsorships and consumer testing expenses, and a $0.7 million decrease in outsourcing costs, offset by a $1.7 million increase in personnel cost associated with our additional sales and marketing headcount and a $1.4 million increase in incentive compensation as a result of incremental sales.

*Research and Development Expense*

| | Year Ended December 31, | | 2015 v. 2016 Change | |
|---|---|---|---|---|
| | 2015 | 2016 | $ | % |
| | (dollars in thousands) | | | |
| Research and development expense | $ 11,604 | $ 13,902 | $ 2,298 | 20% |
| % of revenue | 15% | 12% | | |

Research and development expense increased by $2.3 million in 2016 compared to 2015, primarily due to a $0.8 million increase in personnel costs associated with our increased research and development headcount, a $1.1 million increase in incentive compensation and a $0.5 million increase in outsourcing costs.

*General and Administrative Expense*

| | Year Ended December 31, | | 2015 v. 2016 Change | |
|---|---|---|---|---|
| | 2015 | 2016 | $ | % |
| | (dollars in thousands) | | | |
| General and administrative expense | $ 18,197 | $ 21,355 | $ 3,158 | 17% |
| % of revenue | 23% | 19% | | |

General and administrative expense increased by $3.2 million in 2016 compared to 2015, primarily due to a $2.7 million increase in financing-related costs, offset by a $0.5 million decrease in professional services. Incentive compensation also increased by $1.1 million over the same period.

*Depreciation and Amortization Expense*

| | Year Ended December 31, | | 2015 v. 2016 Change | |
|---|---|---|---|---|
| | 2015 | 2016 | $ | % |
| | (dollars in thousands) | | | |
| Depreciation and amortization expense | $ 2,194 | $ 4,219 | $ 2,025 | 92% |
| % of revenue | 3% | 4% | | |

Depreciation and amortization expense increased by $2.0 million in 2016 compared to 2015, primarily due to $1.2 million of accelerated amortization of internal-use software development costs and a $0.8 million increase in depreciation related to technology equipment.

*Termination of U.K. Agreement Expense*

| | Year Ended December 31, | | 2015 v. 2016 Change | |
|---|---|---|---|---|
| | 2015 | 2016 | $ | % |
| | (dollars in thousands) | | | |
| Termination of U.K. agreement expense | $ — | $ 25,904 | $ 25,904 | N/A |
| % of revenue | —% | 23% | | |

Termination of U.K. agreement expense was $25.9 million expense in 2016 and reflects the value of convertible promissory notes issued to Aimia in connection with the termination of our historical cooperation agreement in the United Kingdom.

***Interest Expense, Net***

| | Year Ended December 31, | | 2015 v. 2016 Change | |
|---|---|---|---|---|
| | 2015 | 2016 | $ | % |
| | (dollars in thousands) | | | |
| Interest expense, net | $ (1,484) | $ (6,170) | $ (4,686) | 316% |
| % of revenue | (2)% | (5)% | | |

Interest expense, net increased by $4.7 million in 2016 compared to 2015, primarily due to interest payable on our new debt facilities entered into in 2016.

***Change in Fair Value of Warrant Liability***

| | Year Ended December 31, | | 2015 v. 2016 Change | |
|---|---|---|---|---|
| | 2015 | 2016 | $ | % |
| | (dollars in thousands) | | | |
| Change in fair value of warrant liability | $ 914 | $ (32) | $ (946) | (104)% |
| % of revenue | 1% | —% | | |

Change in fair value of warrant liability decreased in 2016 due to decreases in the value of our redeemable convertible preferred stock.

***Change in Fair Value of Convertible Promissory Notes***

| | Year Ended December 31, | | 2015 v. 2016 Change | |
|---|---|---|---|---|
| | 2015 | 2016 | $ | % |
| | (dollars in thousands) | | | |
| Change in fair value of convertible promissory notes | $ — | $ (786) | $ (786) | N/A |
| % of revenue | —% | (1)% | | |

Change in fair value of convertible promissory notes reflects an increase in the value of our convertible promissory notes, which was driven by periodic valuations.

***Change in Fair Value of Convertible Promissory Notes—Related Parties***

| | Year Ended December 31, | | 2015 v. 2016 Change | |
|---|---|---|---|---|
| | 2015 | 2016 | $ | % |
| | (dollars in thousands) | | | |
| Change in fair value of convertible promissory notes—related parties | $ — | $ (10,091) | $ (10,091) | N/A |
| % of revenue | —% | (9)% | | |

Change in fair value of convertible promissory notes reflects an increase in the value of our convertible promissory notes, which was driven by periodic valuations.

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

| | Year Ended December 31, | | 2015 v. 2016 Change | |
|---|---|---|---|---|
| | 2015 | 2016 | $ | % |
| | (dollars in thousands) | | | |
| Other income (expense), net | $ (432) | $ (2,385) | $ (1,953) | 452% |
| % of revenue | (1)% | (2)% | | |

Other income (expense), net decreased by $2.0 million in 2016 compared to 2015, primarily due to the decrease in the value of the British pound relative to the U.S. dollar and $0.5 million debt extinguishment costs in 2016.

## Quarterly Results of Operations

The following table sets forth our unaudited quarterly consolidated statements of operations data for each of the nine quarters in the period ended September 30, 2017. We have prepared the quarterly financial data on the same basis as the audited consolidated financial statements included in this prospectus. In our opinion, the quarterly financial data reflects all adjustments, consisting only of normal recurring adjustments, that we consider necessary for a fair presentation of this data. This quarterly financial data should be read in conjunction with our consolidated financial statements and related notes included elsewhere in this prospectus. Our historical results are not necessarily indicative of the results to be expected in the future.

| | Three Months Ended | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|
| | September 30, 2015 | December 31, 2015 | March 31, 2016 | June 30, 2016 | September 30, 2016 | December 31, 2016 | March 31, 2017 | June 30, 2017 | September 30, 2017 |
| Revenue by solution: | | | | | | | | | |
| Cardlytics Direct | $ 15,051 | $ 22,116 | $ 16,257 | $ 22,703 | $ 26,993 | $ 31,836 | $ 24,454 | $28,947 | $ 30,214 |
| Other Platform Solutions | 3,712 | 4,734 | 3,085 | 3,186 | 4,176 | 4,585 | 2,427 | 3,865 | 1,192 |
| Total revenue | 18,763 | 26,850 | 19,342 | 25,889 | 31,169 | 36,421 | 26,881 | 32,812 | 31,406 |
| Costs and expenses: | | | | | | | | | |
| FI Share and other third-party costs | 11,821 | 16,532 | 11,467 | 15,737 | 17,782 | 21,299 | 16,677 | 19,680 | 14,529 |
| Delivery costs | 1,359 | 1,191 | 1,596 | 1,568 | 1,565 | 1,398 | 1,553 | 1,896 | 1,646 |
| Sales and marketing expense | 8,732 | 8,985 | 7,576 | 7,752 | 7,522 | 8,411 | 7,232 | 7,920 | 8,302 |
| Research and development expense | 3,246 | 2,636 | 4,099 | 3,792 | 3,210 | 2,801 | 3,013 | 3,093 | 3,421 |
| General and administration expense | 4,422 | 5,476 | 5,171 | 6,470 | 4,599 | 5,115 | 4,689 | 4,773 | 5,276 |
| Depreciation and amortization expense | 578 | 703 | 709 | 805 | 1,918 | 787 | 765 | 767 | 771 |
| Termination of U.K. agreement expense | — | — | — | 13,637 | 12,267 | — | — | — | — |
| Total costs and expenses | 30,158 | 35,523 | 30,618 | 49,761 | 48,863 | 39,811 | 33,929 | 38,129 | 33,945 |
| Operating loss | (11,395) | (8,673) | (11,276) | (23,872) | (17,694) | (3,390) | (7,048) | (5,317) | (2,539) |
| Other income (expense): | | | | | | | | | |
| Interest expense, net | (331) | (488) | (534) | (934) | (2,155) | (2,547) | (2,644) | (2,020) | (1,763) |
| Change in fair value of warrant liability | 56 | 1,090 | 148 | 421 | 71 | (671) | (327) | (1,466) | 1,381 |
| Change in fair value of convertible promissory notes | — | — | — | (28) | (791) | 32 | (383) | (861) | — |
| Change in fair value of convertible promissory notes—related parties | — | — | — | (6,636) | (3,644) | 190 | (2,223) | 8,436 | — |
| Other income (expense), net | (327) | (209) | (258) | (581) | (888) | (659) | 162 | 580 | 447 |
| Total other income (expense) | (602) | 393 | (644) | (7,758) | (7,407) | (3,655) | (5,415) | 4,669 | 65 |
| Loss before income taxes | (11,997) | (8,280) | (11,920) | (31,630) | (25,101) | (7,045) | (12,463) | (648) | (2,474) |
| Income tax benefit | — | 16 | — | — | — | — | — | — | — |
| Net loss | $ (11,997) | $ (8,264) | $ (11,920) | $(31,630) | $ (25,101) | $ (7,045) | $ (12,463) | $ (648) | $ (2,474) |

### *Quarterly Trends*

*Revenue*

Our revenue has generally increased over the past nine quarters, driven primarily by increased sales to new marketers and increased sales to existing marketers. Our revenue is tied to our marketers' advertising spending, which is traditionally strongest in the fourth quarter of each year and weakest in the first quarter of each year.

*Cost of Revenue, Operating Expenses and Other Expenses*

Cost of revenue generally increased during every quarter, primarily driven by increases in revenue. FI Share and other third-party costs are directly related to the amount of revenue that we generate, and therefore increased as

our revenue increased. Our increased operating expenses reflect increases in headcount, investments made to continue growing our business and expenses related to the termination of our U.K. agreement. Total other expense increased over the periods presented, driven primarily by convertible promissory notes issued over the course of 2016.

**Liquidity and Capital Resources**

Through September 30, 2017, we have incurred accumulated net losses of $264.4 million since inception, including losses of $40.6 million and $75.7 million for the years ended December 31, 2015 and 2016 and net losses of $68.7 million and $15.6 million for the nine months ended September 30, 2016 and 2017, respectively. We expect to incur additional operating losses as we continue our efforts to grow our business. We have historically financed our operations and capital expenditures through convertible note financings and private placements of our redeemable convertible preferred stock, as well as lines of credit and term loans. We have received net proceeds of $196.2 million from the issuance of preferred stock and convertible promissory notes through September 30, 2017. Our historical uses of cash have primarily consisted of cash used in operating activities to fund our operating losses and working capital needs.

As of September 30, 2017, we had $28.2 million in cash and cash equivalents and $5.9 million of available borrowings under our line of credit. As of September 30, 2017, we had $1.1 million in cash and cash equivalents in the United Kingdom. While our investment in Cardlytics UK Limited is not considered indefinitely invested, we do not plan to repatriate these funds. As of September 30, 2017, we had $24.5 million outstanding under our line of credit and $32.1 million outstanding under our term loan. In connection with our line of credit, we are subject to financial covenants that include a requirement of a total cash balance plus availability under the line of credit of not less than $5 million and a moving minimum trailing twelve month revenue covenant.

Our future capital requirements will depend on many factors, including our growth rate, the timing and extent of spending to support research and development efforts, the continued expansion of sales and marketing activities, the enhancement of our platform, the introduction of new solutions and the continued market acceptance of our solutions. We expect to continue to incur operating losses for the foreseeable future and may require additional capital resources to continue to grow our business. We believe that current cash and cash equivalents will be sufficient to fund our operations and capital requirements for at least the next 12 months following the date our consolidated financial statements were issued. In the event that additional financing is required from outside sources, we may not be able to raise such financing on terms acceptable to us or at all.

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

| | Year Ended December 31, | | Nine Months Ended September 30, | |
|---|---|---|---|---|
| | 2015 | 2016 | 2016 | 2017 |
| | (in thousands) | | | |
| Cash and cash equivalents at beginning of period | $ 51,198 | $ 27,609 | $ 27,609 | $ 22,968 |
| Net cash used in operating activities | (29,158) | (32,498) | (29,719) | (16,571) |
| Net cash used in investing activities | (6,301) | (2,545) | (2,114) | (1,099) |
| Net cash from financing activities | 11,927 | 30,809 | 26,087 | 22,631 |
| Effect of exchange rates on cash and cash equivalents | (57) | (407) | (178) | 257 |
| Cash and cash equivalents at end of period | $ 27,609 | $ 22,968 | $ 21,685 | $ 28,186 |

***Sources of Funds***

*Series G Preferred Stock Financing*

In May 2017, we sold an aggregate of 1,385,358 shares of our Series G redeemable convertible preferred stock, including to certain of our existing stockholders, at a price of $8.61895 per share for aggregate gross proceeds of approximately $11.9

million. In connection with the issuance of our Series G redeemable convertible preferred stock, we issued warrants to purchase an aggregate number of shares of our common stock equal to the product obtained by multiplying 1,385,358 by a fraction, the numerator of which is the difference between $17.2379 and the volume weighted average closing price of our common stock over the 30 trading days (or such lesser number of days as our common stock has been traded on the Nasdaq Global Market) prior to the date on which such warrants become exercisable and the denominator of which is such volume weighted average closing price, which warrants are exercisable upon the earlier to occur of the date (i) 180 days following the date of this prospectus and (ii) 10 days prior to a sale of our company.

*Issuance of Convertible Notes*

In April, May, June and July 2016, we raised capital through the issuance of unsecured convertible promissory notes, or collectively, the Existing Stockholder Notes, to certain of our existing stockholders in an aggregate principal amount of $27.0 million, at an interest rate of 10% per year, compounded annually. The maturity date of the Existing Stockholder Notes, or the Maturity Date, was the earliest to occur of: (1) a date after April 26, 2018, as specified by the holders of a majority of the aggregate unpaid principal amount outstanding under the Existing Stockholder Notes, (2) our liquidation, dissolution or wind up, including a sale of all or substantially all of our assets or a majority of our voting power or (3) an event of default under the Existing Stockholder Notes. The Existing Stockholder Notes were subordinate to our existing credit facilities with National Electrical Benefit Funds, Ally Bank and Pacific Western Bank described below. In February 2017, we extended the Maturity Date of the Existing Stockholder Notes to the earliest to occur upon the earliest of April 26, 2019 or the occurrence of the events specified in clauses (2) or (3) above. The Existing Stockholder Notes were convertible into shares of our capital stock, depending on certain triggering events. In May 2017, upon the closing of the Series G preferred stock financing described above, the convertible promissory notes converted into an aggregate of 5,183,015 shares of Series G' redeemable convertible preferred stock.

*Loan and Security Agreements and Term Loans*

**Current Credit Agreements**

In July 2016, we entered into a credit agreement, or the Term Loan, for a term loan with National Electrical Benefit Fund as lender, or the Lender, and Columbia Partners, L.L.C as investment manager. As of September 30, 2017, there was approximately $32.1 million outstanding under the Term Loan. The Term Loan is secured by substantially all of our assets and carries a fixed interest rate equal to (1) 13.25%, of which 3% is payable in cash and the remaining 10.25% is payable in-kind or (2) 11.25%, if our adjusted EBITDA for the four most recent trailing fiscal quarters then-ended is greater than $1.0 million and we are not in an event of default, of which 3% is payable in cash and the remaining 8.25% is payable in-kind. The Term Loan expires in July 2019.

The Term Loan contains customary affirmative and negative covenants, including restrictions on mergers, acquisitions and dispositions of assets, incurrence of indebtedness and encumbrances on our assets and restrictions on payments of dividends. The Term Loan also requires us to maintain a total cash balance and unrestricted availability under our senior line of credit of not less than $3.0 million. Once we have achieved an adjusted EBITDA of at least $1.0 million for two consecutive fiscal quarters, this cash balance requirement will be permanently waived. The Term Loan contains customary event of default provisions, including in the event of a change of control, the occurrence of which could lead to an acceleration of our obligations under the Term Loan.

Pursuant to the Term Loan, we granted National Electrical Benefit Fund a warrant to purchase 388,500 shares of our common stock at a price per share of $5.00. We also issued to National Electrical Benefit Fund an unsecured convertible promissory note in an aggregate principal amount of $6.0 million, at an interest rate of 10% per year, compounded annually. This unsecured convertible promissory note was issued under the same terms as the Existing Stockholder Notes.

In April 2017, we amended our Term Loan to remove the acceleration of our repayment upon an initial public offering and reduce the interest rate by 0.5% subsequent to an initial public offering. In June 2017, we amended and restated our Term Loan to permit us to borrow an additional $5.0 million. In connection with this amendment, we issued National Electrical Benefit Fund warrants to purchase up to an aggregate of 70,000 shares of common stock at a price per share of $6.92.

In September 2016, we entered into a loan and security agreement, or the Line of Credit, with Ally Bank and Pacific Western Bank. Under the Line of Credit, we are able to borrow up to the lesser of $50.0 million or 85% of the amount of our eligible accounts receivable. The line of credit is secured by substantially all of our assets and carries a floating interest rate equal to the prime rate in effect from time to time plus 3.5%, not to be less than 7.0% per year, provided that in no event will the accrued interest payable be less than $87,500 per month. All other amounts borrowed are to be paid in full on the maturity date in March 2019. As of September 30, 2017, there was $24.5 million outstanding under the line of credit.

The Line of Credit contains customary affirmative and negative covenants, including restrictions on mergers, acquisitions and dispositions of assets, incurrence of indebtedness and encumbrances on our assets and restrictions on payments of dividends. The Line of Credit also requires us to maintain a total cash balance plus liquidity under the line of credit of not less than $5.0 million.

The Line of Credit also contains a moving minimum trailing twelve month revenue covenant, which was $115.0 million for the period ended September 30, 2017. The Line of Credit contains customary event of default provisions, including in the event of a material adverse change, the occurrence of which would allow the lenders to cease making advances and accelerate repayment of all the then outstanding amounts.

**Terminated Loan Agreements**

We were party to an Amended and Restated Loan and Security Agreement, or the Repaid Line of Credit, for a line of credit with Silicon Valley Bank, as lender. Under the line of credit, we were able to borrow up to the lesser of $25.0 million or 80% of eligible accounts receivable. The Repaid Line of Credit also required us to maintain a minimum adjusted quick ratio of at least 1.00:1.00. We were not in compliance with the financial covenant related to our quick ratio during September and October 2015. On October 14, 2015, we entered into a First Loan Modification Agreement, providing a waiver for these defaults as well as updating the financial covenant and springing lockbox feature. Under the amended terms, the financial covenants include a $10.0 million minimum cash balance and minimum quarterly profitability thresholds, and the springing lockbox feature was based on maintaining a $15.0 million minimum cash balance. We were not in compliance with our minimum quarterly profitability threshold during the fourth quarter of 2015. In February 2016, we obtained a waiver from the lender of this default. On June 16, 2016, we entered into a Second Loan Modification Agreement, providing for changes to the interest rate and additional terms. On July 21, 2016, we entered into a Third Loan Modification Agreement, approving a subordinated credit agreement and changing requirements regarding additional financing. On July 29, 2016, we entered into a Fourth Loan Modification Agreement, altering various financial covenants. We paid off this loan in full on September 12, 2016.

We were also party to an Amended and Restated Loan and Security Agreement, or the Repaid Term Loan, for growth capital advances with Gold Hill Capital 2008, L.P. and Silicon Valley Bank, as lenders, pursuant to which we received loans of $2.0 million in 2010, $10.0 million in 2012 and approximately $1.2 million in 2015. We paid off this loan in full in July 2016.

***Uses of Funds***

Our collection cycles can vary from period to period based on the payment practices of our marketers and their agencies. We are typically obligated to pay Consumer Incentives with respect to our Cardlytics Direct solution by the end of the month following redemption, regardless of whether we have collected payment from a marketer

or its agency. We are generally obligated to pay our FI partners' FI Share by the end of the month following our collection of payment from the applicable marketer or its agency. As a result, timing of cash receipts from our marketers can significantly impact our cash provided by (used in) operating activities for any period. Further, the timing of payment of commitments and implementation fees to our FI partners may also result in variability of our cash provided by (used in) operating activities for any period. During the first quarter of the calendar year, our working capital needs increase due to the seasonality of our business, which may exacerbate any lag between the timing of our payment of Consumer Incentives and our receipt of payment from marketers and their agencies. These cash flow dynamics may change over time as we continue to grow sales of our Other Platform Solutions as a percentage of revenue.

*Operating Activities*

Cash used in operating activities is primarily driven by our operating losses. We expect that we will continue to use cash from operating activities in 2017 as we invest in our business.

Operating activities used $16.6 million of cash in the nine months ended September 30, 2017, which reflected growth in revenue from new customers, offset by continued investment in our operations. Cash used in operating activities reflected our net loss of $15.6 million, including a $8.3 million change in our net operating assets and liabilities, partially offset by non-cash charges of $7.3 million. The non-cash charges primarily related to depreciation and amortization expense and stock-based compensation expense. The change in our net operating assets and liabilities was primarily due to a $5.2 million increase in FI Share liability, a $3.3 million decrease in accounts receivable resulting from seasonally lower sales during the third quarter of 2017 compared to the fourth quarter of 2016 and a $1.3 million increase in accounts payable and accrued expenses.

Operating activities used $29.7 million of cash in the nine months ended September 30, 2016, which reflected growth in revenue, offset by continued investment in our operations. Cash used in operating activities reflected our net loss of $68.7 million, a $11.1 million change in our operating assets and liabilities and non-cash charges of $50.0 million, primarily related to the termination of our U.K. agreement, the change in fair value of our convertible promissory notes, expenses associated with obtaining financing, stock-based compensation expense and depreciation and amortization expense. The change in our net operating assets and liabilities was primarily due to a $5.5 million increase in deferred FI implementation costs, a $4.0 million decrease in accrued consumer incentives resulting from seasonally higher sales during the fourth quarter of 2015 and a $5.3 million decrease in accounts payable and accrued expenses, partially offset by a $1.1 million decrease in accounts receivable resulting from seasonally lower sales during the third quarter of 2016 compared to the fourth quarter of 2015.

Operating activities used $32.5 million of cash in 2016, which reflected growth in revenue from new customers and changes to our pricing model, offset by continued investment in our operations. Cash used in operating activities reflected our net loss of $75.7 million and a $13.9 million change in our net operating assets and liabilities, partially offset by non-cash charges of $57.1 million. The non-cash charges primarily related to the termination of the U.K. cooperation agreement, depreciation and amortization expense, and stock-based compensation expense. The change in our net operating assets and liabilities was primarily due to an $8.2 million increase in deferred FI implementation costs, a $5.8 million increase in accounts receivable resulting from additional sales, and a $5.2 million increase in accounts payable and accrued expenses.

Operating activities used $29.2 million of cash in 2015, which reflected growth in revenue, offset by continued investment in our operations. Cash used in operating activities reflected our net loss of $40.6 million, partially offset by a change in our operating assets and liabilities of $6.1 million and non-cash charges of $5.3 million primarily related stock-based compensation expense and depreciation and amortization expense. The change in our net operating assets and liabilities was primarily due to a $13.2 million increase in operating liabilities, partially offset by a $7.5 million increase in accounts receivable and deferred FI implementation costs.

*Investing Activities*

Our cash flows from investing activities are primarily driven by our investments in, and purchases of, property and equipment. We expect that we will continue to use cash for investing activities in 2017 as we continue to invest in and grow our business.

Investing activities used $1.1 million in cash in the nine months ended September 30, 2017. Our investing cash flows during this period primarily consisted of purchases of technology hardware.

Investing activities used $2.1 million in cash in the nine months ended September 30, 2016. Our investing cash flows during this period primarily consisted of purchases of technology hardware and software.

Investing activities used $2.5 million in cash in 2016. Our investing cash flows during 2016 primarily consisted of purchases of technology hardware and software.

Investing activities used $6.3 million in cash in 2015. Our investing cash flows during 2015 primarily consisted of purchases for leasehold improvements to our new corporate headquarters, purchases of our new transaction data storage and analysis systems and purchases of software to support our growth.

*Financing Activities*

Our cash flows from financing activities have primarily been comprised of net proceeds from our borrowings under our debt facilities.

Financing activities provided $22.6 million in cash during the nine months ended September 30, 2017. Our financing activities during this period consisted primarily of the issuance of $11.9 million of redeemable convertible preferred stock, $5.0 million of borrowings under our Term Loan and $7.5 million of borrowings under our Line of Credit, partially offset by equity issuance costs of $2.2 million.

Financing activities provided $26.1 million in cash during the nine months ended September 30, 2016. Our financing activities during this period primarily consisted of $27.0 million of proceeds from the sale of convertible promissory notes, $19.0 million of borrowings under our Term Loan and $15.3 million of borrowings under our Line of Credit, partially offset by a $32.0 million extinguishment of our Repaid Line of Credit and Repaid Term Loan.

Financing activities provided $30.8 million in cash in 2016. Our financing activities during 2016 primarily consisted of $24.0 million of borrowings under our Term Loan, $27.0 million from the issuance of our Existing Stockholder Notes, $15.3 million of borrowing under our Line of Credit, offset by a $32.0 million extinguishment of our Repaid Term Loan and our Repaid Line of Credit.

Financing activities provided $11.9 million in cash in 2015. Our financing activities during 2015 primarily consisted of $12.1 million of borrowings under our Repaid Line of Credit.

**Contractual Obligations & Commitments**

The following table summarizes our commitments to settle contractual obligations as of December 31, 2016:

| | Less than 1 Year | 1 to 3 Years | 3 to 5 Years | More than 5 Years | Total |
|---|---|---|---|---|---|
| | | | (in thousands) | | |
| Debt(1) | $ — | $ 40,601 | $ — | $ — | $ 40,601 |
| Capital leases(2) | 99 | 64 | 37 | — | 200 |
| Operating leases(3) | 2,290 | 4,837 | 3,631 | 5,877 | 16,635 |
| FI implementation costs(4) | 11,150 | — | — | — | 11,150 |
| Total | $ 13,539 | $ 45,502 | 3,668 | $ 5,877 | $ 68,586 |

(1) Amount represents $15.7 million of our Line of Credit and $24.9 million of our Term Loan. Also included in this balance are principal and interest payments due under our Line of Credit and our Term Loan. Accrued interest included in this amount is $1.3 million. Amount excludes $53.6 million principal and interest payments due under our convertible promissory notes, which converted into shares of our redeemable convertible preferred stock and common stock in May 2017.
(2) Capital leases represent principal payments.
(3) Operating lease obligations represent future minimum lease payments under our non-cancelable operating leases with an initial term in excess of one year.
(4) FI implementation costs represent gross amounts due to FIs for implementation of certain of our solutions. These agreements allow for $4.4 million and $5.0 million to be reimbursed to us through future reductions to FI Share in 2017 and 2018, respectively.

The commitment amounts in the table above are associated with contracts that are enforceable and legally binding and that specify all significant terms, including fixed or minimum services to be used, fixed, minimum or variable price provisions, and the approximate timing of the actions under the contracts. The table above does not include obligations under agreements that we can cancel without a significant penalty.

As a result of not meeting a minimum FI Share commitment in 2016, we were required to pay an FI partner $2.6 million in March 2017, which we had accrued as of December 31, 2016. We also have a minimum FI Share commitment to a certain FI partner totaling $10.0 million over a 12-month period upon completion of milestones which have not yet been met. Also, unrecognized tax benefits totaled $0.6 million as of December 31, 2016. The table above does not include these obligations.

In 2017, we entered into agreements with certain FI partners to fund implementation and development costs of $0.9 million and $9.3 million in 2017 and 2018, respectively, of which $5.0 million will be reimbursed to us through reductions in FI Share in 2019.

**Off-Balance Sheet Arrangements**

We did not have any off-balance sheet arrangements as defined in Item 303(a)(4)(ii) of Regulation S-K.

**Critical Accounting Policies**

Our consolidated financial statements are prepared in accordance with GAAP. The preparation of our consolidated financial statements requires us to make estimates, assumptions and judgments that affect the reported amounts of assets, liabilities, revenue, costs and expenses. We base our estimates and assumptions on historical experience and other factors that we believe to be reasonable under the circumstances. We evaluate our estimates and assumptions on an ongoing basis. Our actual results may differ from these estimates. Our most critical accounting policies are summarized below. See note (2) to our consolidated financial statements beginning on page F-1 of this prospectus for a description of our other significant accounting policies.

***Revenue Recognition***

We recognize revenue in accordance with Accounting Standards Codification, or ASC, Topic 605, *Revenue Recognition*, on a transaction when all of the following conditions have been satisfied:

- persuasive evidence of an agreement exists;
- the solution has been provided to the customer;
- fees are fixed or determinable; and
- the collection of the fees is reasonably assured.

If any of these criteria are not met, revenue recognition is deferred until such time that all of the criteria are met. Our deferred revenue is primarily comprised of payments received in advance for Cardlytics Direct marketing campaigns.

We sell our solutions by entering into agreements directly with marketers or their marketing agencies. Persuasive evidence of an arrangement is considered to exist and the fee is considered fixed and determinable upon the execution of an agreement. With respect to our Cardlytics Direct solution, the solution is deemed to have been provided to the marketer as FIs' customers make qualifying purchases during the marketing campaign term. With respect to Other Platform Solutions, the solution is deemed to have been provided (1) for non-managed service campaigns, when we deliver the purchase intelligence to the marketer and (2) for managed service campaigns, when the digital advertising impressions contemplated by the campaign have been served to targeted consumers. We determine collectability upfront and on an on-going basis by performing credit evaluations and monitoring our marketers' accounts receivable balances.

*Gross/Net Consideration*

We evaluate the appropriateness of revenue recognition on a gross or net basis by considering the indicators outlined within ASC Topic 605-45, *Revenue Recognition—Principal Agent Considerations* and ASC Topic 605-50, *Customer Payments and Incentives*. We consider the nature of the costs and risks associated with the indicators present in evaluating the substance of an arrangement. We consider the relative strength of each indicator and certain factors may be assessed to carry more weight in the evaluation.

**Consumer Incentives**

We report our revenue on our consolidated statement of operations net of Consumer Incentives. We generally pay Consumer Incentives only with respect to our Cardlytics Direct solution. We do not provide the goods or services that are purchased by our FIs' customers from the marketers to which the Consumer Incentives relate. Accordingly, the marketer is deemed to be the principal in the relationship with the customer and, therefore, the Consumer Incentive is deemed to be a reduction in the purchase price paid by the customer for the marketer's goods or services. While we are responsible for remitting Consumer Incentives to our FI partners for further payment to their customers, we function solely as an agent of marketers in these arrangements. We paid $56.3 million and $57.0 million in Consumer Incentives in 2015 and 2016, respectively.

Accounts receivable is recorded at the amount of gross billings to marketers, net of allowances, for the fees and Consumer Incentives that we are responsible to collect. Our accrued liabilities also include the amount of Consumer Incentives due to FI partners. As a result, accounts receivable and accounts payable may appear large in relation to revenue, which is reported on a net basis.

**FI Share and Other Third-Party Costs**

We report our revenue on our consolidated statement of operations gross of FI Share. FI Share is included in FI share and other third-party costs in our consolidated statements of operations, rather than as a reduction of revenue, because we and not our FI partners act as the principal in our arrangements with marketers. We are responsible for fulfillment and acceptability of the solutions purchased by marketers. We also have latitude in establishing the price of our solutions, have discretion in supplier selection and earn variable amounts. FIs only supply consumer purchase data and digital marketing space and have no involvement in the marketing campaigns or relationship (contractual or otherwise) with marketers.

We report our revenue on our consolidated statement of operations gross of media costs. We incur media costs in connection with the delivery of managed services with respect to our Other Platform Solutions. Media costs are included in FI share and other third-party costs in our consolidated statements of operations, rather than as a reduction of revenue, because we and not exchanges or digital publishers act as the principal in our arrangements with marketers.

***Income Taxes***

Income taxes are accounted for using the asset and liability method. Under this method, deferred tax assets and liabilities are recognized for the future tax consequences attributable to differences between the financial statement carrying amounts of existing assets and liabilities and their respective income tax bases, and operating loss and tax credit carryforwards. Valuation allowances are provided when we determine that it is more likely than not that all of, or a portion of, deferred tax assets will not be utilized in the future.

Significant judgment is required in determining any valuation allowance recorded against deferred tax assets. In assessing the need for a valuation allowance, we consider all available evidence, including past operating results, estimates of future taxable income and the feasibility of tax planning strategies. In the event that we change our determination as to the amount of deferred tax assets that can be realized, we will adjust our valuation allowance with a corresponding impact to the provision for income taxes in the period in which such determination is made.

Estimates of future taxable income are based on assumptions that are consistent with our plans. Assumptions represent management’s best estimates and involve inherent uncertainties and the application of management’s judgment. If actual amounts differ from our estimates, the amount of our tax expense and liabilities could be materially impacted.

We have recorded a full valuation allowance related to our deferred tax assets due to the uncertainty of the ultimate realization of the future benefits of those assets.

We recognize the tax effects of an uncertain tax position only if it is more likely than not to be sustained based solely on its technical merits as of the reporting date, and then, only in an amount more likely than not to be sustained upon review by the tax authorities. We consider many factors when evaluating and estimating our tax positions and tax benefits, which may require periodic adjustments and which may not accurately anticipate actual outcomes.

***Stock-Based Compensation***

We measure and recognize compensation expense for all stock options based on the estimated fair value of the award on the grant date. We use the Black-Scholes option pricing model to estimate the fair value of stock option awards. The fair value is recognized as expense over the requisite service period, which is generally the vesting period of the respective award, on a straight-line basis when the only condition to vesting is continued service. Forfeitures are accounted for when they occur. We recognize the fair value of stock options which contain performance conditions based upon the probability of the performance conditions being met. We have not issued

awards where vesting is subject to a market condition; however, if we were to grant such awards in the future, recognition would be based on the derived service period. Expense for awards with performance conditions are estimated and adjusted on a quarterly basis based upon our assessment of the probability that the performance condition will be met.

The determination of the grant date fair value of options using an option pricing model is affected principally by our estimated common stock fair value and requires management to make a number of other assumptions, including the expected life of the option, the volatility of the underlying stock, the risk-free interest rate and expected dividends. The assumptions used in our Black-Scholes option-pricing model represent management's best estimates at the time of grant. These estimates are complex, involve a number of variables, uncertainties and assumptions and the application of management's judgment, as they are inherently subjective. If any assumptions change, our stock-based compensation expense could be materially different in the future. For more information refer to notes (2) and (6) to the consolidated financial statements.

These assumptions are estimated as follows:

- *Fair Value of Common Stock*. As our common stock has not historically been publicly traded, we estimated the fair value of common stock. See "—Fair Value of Common and Preferred Stock."
- *Expected Term*. The expected term represents the period that our stock options are expected to be outstanding. We calculated the expected term using the simplified method based on the average of each option's vesting term and the contractual period during which the option can be exercised, which is typically 10 years following the date of grant.
- *Expected Volatility*. The expected volatility was based on the historical stock volatility of several of our comparable publicly traded companies over a period of time equal to the expected term of the options, as we do not have any trading history to use the volatility of our own common stock.
- *Risk-Free Interest Rate*. The risk-free interest rate was based on the yields of U.S. Treasury securities with maturities appropriate for the term of the award.
- *Expected Dividend Yield*. We have not paid dividends on our common stock nor do we expect to pay dividends in the foreseeable future.

The following table reflects the weighted average assumptions used to estimate the fair value of options granted during the periods presented:

| | Year Ended December 31, | | Nine Months Ended September 30, |
|---|---|---|---|
| | 2015 | 2016 | 2017 |
| Expected term (years) | 7.0 | 7.0 | 7.0 |
| Expected volatility | 51-55% | 51-56% | 49-50% |
| Risk-free interest rate | 1.6-1.9% | 0.5-2.1% | 2.0-2.2% |
| Expected dividend yield | 0% | 0% | 0% |

*Fair Value of Common and Preferred Stock*

Historically, for all periods prior to this offering, the fair values of the shares of common stock underlying our stock options and shares of preferred stock underlying warrants were estimated on each grant date by our board of directors. In order to determine the fair value of our common and preferred stock, our board of directors considered, among other things, contemporaneous valuations of our common and preferred stock prepared by unrelated third-party valuation firms in accordance with the guidance provided by the American Institute of Certified Public Accountants 2013 Practice Aid, Valuation of Privately-Held-Company Equity Securities Issued as Compensation, or the Practice Aid. Given the absence of a public trading market of our capital stock, our

board of directors exercised reasonable judgment and considered a number of objective and subjective factors to determine the best estimate of the fair value of our common and preferred stock, including:

- contemporaneous third-party valuations of our common and preferred stock;
- the prices, rights, preferences and privileges of our preferred stock relative to the common stock;
- our business, financial condition and results of operations, including related industry trends affecting our operations;
- the likelihood of achieving a liquidity event, such as an initial public offering or sale of our company;
- the lack of marketability of our common and preferred stock;
- the market performance of comparable publicly traded technology companies; and
- U.S. and global economic and capital market conditions and outlook.

The following table summarizes by grant date the number of shares of common stock subject to stock options granted from June 30, 2016, as well as the associated per share exercise price and the estimated fair value per share of our common stock as of the grant date:

| Grant Date | Number of Options Granted (#) | Exercise Price per Share of Common Stock ($) | Estimated Fair Value Per Share of Common Stock ($) |
|---|---|---|---|
| August 2, 2016 | 2,720,525 | 5.00 | 4.48 |
| August 4, 2016 | 615,331 | 5.00 | 4.48 |
| September 15, 2016 | 1,875 | 5.00 | 4.47 |
| October 14, 2016 | 200,000 | 5.00 | 4.46 |
| November 17, 2016 | 100,000 | 5.00 | 4.46 |
| December 6, 2016 | 200,000 | 5.00 | 5.67 |
| February 3, 2017 | 243,700 | 4.46 | 6.12 |
| April 1, 2017 | 1,371,676 | 6.12 | 7.04 |
| April 3, 2017 | 5,000 | 6.12 | 7.04 |
| April 4, 2017 | 1,500 | 6.12 | 7.04 |
| April 26, 2017(1) | 4,450 | 7.61 | 6.15 |
| May 4, 2017(1) | 1,050,000 | 7.61 | 6.15 |
| July 18, 2017 | 78,125 | 7.61 | 6.19 |
| December 15, 2017 | 115,000 | (2) | (2) |

(1) These options were deemed granted for financial reporting purposes on July 7, 2017 when the exercise price was determined.
(2) Exercise price per share and fair value per share will be the greater of the estimated fair market value per share of our common stock as set forth in the most recent valuation performed by an unrelated third-party valuation firm or the initial public offering price of our common stock.

Based on an assumed initial public offering price of $ per share, the midpoint of the price range set forth on the cover page of this prospectus, the intrinsic value of vested and unvested stock options outstanding as of September 30, 2017 was $ million and $ million, respectively. In 2016, we extended the exercise period of vested stock options held by employees affected by our reduction in force and recognized less than $0.1 million of additional expense related to these modifications, which expense is not reflected in the table above.

*Common and Preferred Stock Valuation Methodology*

In valuing our common and preferred stock, our board of directors determined the equity value of our business generally using a combination of the income approach and the market approach valuation methods.

The income approach estimates value based on the expectation of future cash flows that a company will generate, such as cash earnings, cost savings, tax deductions and the proceeds from disposition. These future cash flows are discounted to their present values using a discount rate derived based on an analysis of the cost of capital of comparable publicly traded companies in similar lines of business, as of each valuation date, and is adjusted to reflect the risks inherent in our cash flows.

The market approach estimates the fair value of a company by applying market multiples of comparable publicly traded companies in a similar line of business. The market multiples are based on relevant metrics implied by the price that investors have paid for the equity of publicly traded companies. Given our significant focus on investing in and growing our business, we primarily utilized the forward-looking revenue multiple when performing valuation assessments under the market approach and considered both trading and transaction multiples. When considering which companies to include as our comparable industry peer companies, we focused on U.S.-based publicly traded companies that were broadly comparable to us based on consideration of industry, market and line of business. From the comparable companies, a representative market value multiple was determined and applied to our operating results to estimate the value of our company. The market value multiple was determined based on consideration of multiples of revenue to each of the comparable companies' last 12-month revenue and the forecasted future 12-month revenue. In addition, the market approach considers initial public offering, or IPO, and merger and acquisition transactions involving companies similar to the company's business being valued. Multiples of revenue are calculated for these transactions and then applied to the business being valued, after reduction by an appropriate discount.

Once an equity value was determined, we utilized the probability-weighted expected return method, or PWERM, to allocate the overall value of equity to the various share classes. The PWERM relies on a forward-looking analysis to predict the possible future value of a company. Under this method, discrete future outcomes, including an IPO and non-IPO scenarios, are weighted based on the estimated the probability of each scenario. The PWERM is used when discrete future outcomes can be predicted with reasonable certainty based on a probability distribution. We relied on the PWERM to allocate the value of equity under a liquidity scenario. The projected equity value relied upon in the PWERM scenario was based on (1) guideline IPO transactions involving companies that were considered broadly comparable to us and (2) our expectation of the pre-money valuation that we needed to achieve to consider an IPO as a viable exit strategy. See note (9) to our consolidated financial statements appearing elsewhere in this prospectus for further details on our valuation methodology.

Following the closing of this offering, the fair value of our common stock will be determined based on the closing price of our common stock on the Nasdaq Global Market.

***Fair Value of Convertible Promissory Notes***

The redemption features included in the terms of our convertible promissory notes were determined to be derivative liabilities due to a significant discount within the redemption features for the note holders. Embedded derivatives that are not clearly and closely related to the host contract are required to be bifurcated and recorded at fair value unless the fair value option is elected on the host contract. Under the fair value option, bifurcation of the embedded derivative is not necessary as all related gains (losses) on the host contract and derivative will be reflected in the consolidated statements of operations. We elected the fair value option for the Existing Stockholder Notes and Aimia Notes and recognized losses from their initial measurement. Initial losses of $7.6 million related to the Existing Stockholder Notes is recorded in change in fair value of convertible promissory notes and the initial loss of $7.9 million related to the Aimia Notes is recorded in termination of U.K. agreement expense on our consolidated statements of operations. Subsequent changes in fair value of the Existing Stockholder Notes and Aimia Notes are included in change in fair value of convertible promissory notes on our consolidated statements of operations.

To determine the fair value of our convertible promissory notes, we utilized key assumptions from the PWERM, as shown above. Under this method, we considered the redemption features of the convertible promissory notes,

as described in note (5) to our consolidated financial statements appearing elsewhere in this prospectus, to determine the fair value under discrete future outcomes, including IPO and non-IPO scenarios. We weighted the fair values based on the estimated probability of each scenario to determine the overall fair value of the convertible promissory notes as of the balance sheet date. See note (9) to our consolidated financial statements appearing elsewhere in this prospectus for further details on our valuation methodology.

***Fair Value of Preferred Stock Warrants***

We derived the fair value of the preferred stock warrants using key assumptions from the PWERM, as shown above, and an interpolation methodology that considered the timing of future potential liquidity events, changes to our forecasted financial results and changes in the valuation of comparable companies to determine the fair value of the warrants to purchase shares of our Series B-R redeemable convertible preferred stock and Series D-R redeemable convertible preferred stock.

***Fair Value of Common Stock Warrants***

To determine the fair value of our common stock warrants issued in connection with our Series G preferred stock financing, we utilized a monte carlo simulation, which allows for the modeling of complex securities and evaluates many possible outcomes to forecast the stock price of the company post-IPO. As part of the valuation, we considered various scenarios related to the pricing, timing and probability of an IPO. We applied an annual equity volatility of 59% and a discount for lack of marketability of 11% to arrive at a valuation of $7.5 million on the issuance date.

**Recent Accounting Pronouncements**

See note (3) to our consolidated financial statements appearing elsewhere in this prospectus for a description of recent accounting pronouncements applicable to our consolidated financial statements.

**Qualitative and Quantitative Disclosures about Market Risk**

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 exchange rates.

***Interest Rate Risk***

We are exposed to interest rate risk in the ordinary course of our business. Our cash and cash equivalents include cash in readily available checking and money market accounts. These securities are not dependent on interest rate fluctuations that may cause the principal amount of these assets to fluctuate. Additionally, the interest rate on our line of credit, term loan and convertible notes is fixed and not subject to changes in market interest rates. However, the interest rate on our Line of Credit with Ally is variable, with an interest rate of prime plus 3.50%. The current prime rate is 4.50% and a 10% increase in the current prime rate would, for example, result in a $0.2 million increase in interest expense if the maximum borrowable amount under our $50.0 million line of credit were outstanding for an entire year.

***Foreign Currency Exchange Risk***

Both revenue and operating expense in our U.K. entity are denominated in British pounds and we bear foreign currency risks related to these amounts. For example, if the average value of the British pound had been 10% higher relative to the U.S. dollar during 2016, our operating expense would have increased by $0.6 million and if the average value of the British pound had been 10% higher relative to the U.S. dollar during 2015, our operating expense would have increased by $0.3 million.

***Inflation Risk***

We do not believe that inflation has had a material effect on our business, financial condition or results of operations. If our costs were to become subject to significant inflationary pressures, we may not be able to fully offset such higher costs through price increases. Our inability or failure to do so could harm our business, financial condition and results of operations.

**JOBS Act Transition Period**

In April 2012, the Jumpstart Our Business Startups Act of 2012, or the JOBS Act, was enacted. Section 107 of the JOBS Act provides that an "emerging growth company" can take advantage of the extended transition period provided in Section 7(a)(2)(B) of the Securities Act for complying with new or revised accounting standards. Thus, an emerging growth company can delay the adoption of certain accounting standards until those standards would otherwise apply to private companies. We have elected to avail ourselves of this extended transition period and, as a result, we will not adopt new or revised accounting standards on the relevant dates on which adoption of such standards is required for other public companies.

# BUSINESS

## Overview

Cardlytics makes marketing more relevant and measurable through our purchase intelligence platform. With purchase data from more than 2,000 financial institutions, we have a secure view into where and when consumers are spending their money. By applying advanced analytics to this massive aggregation of purchase data, we make it actionable, helping marketers identify, reach and influence likely buyers at scale, and measure the true sales impact of their marketing spend. This collection of debit, credit, ACH, and bill pay data represented approximately $1.3 trillion in U.S. consumer spend in 2016. In 2016, our platform analyzed over 18.0 billion online and in-store transactions across more than 94.0 million accounts in the United States, including one in five debit and credit card swipes in the United States.

Our founders understood the value of purchase data and have devoted nearly a decade to engineering a purchase intelligence platform. As former bankers, they recognized that banks and credit unions, which we refer to as financial institutions, or FIs, enable and collect the different types of electronic payments (e.g., debit, credit, bill pay) consumers and businesses use. This was especially crucial as electronic payments were becoming an increasing portion of all consumer spending. With this data distributed across approximately 10,000 FIs in the United States alone, it would need to be aggregated and standardized to provide effective foundational data for marketing technology and analytics. Given their deep insight into FIs' rigorous security, privacy and regulatory concerns, our founders were well positioned to partner with FIs and architected our platform with their requirements in mind. Today, our platform leverages machine learning and a robust set of algorithms to ingest, process, and analyze trillions of dollars of raw purchase data from tens of millions of accounts. As of December 31, 2015 and 2016 and September 30, 2017, we were a partner to 1,639, 1,659 and 2,041 FIs, respectively, including Bank of America, National Association, or Bank of America; PNC Bank, National Association, or PNC; Lloyds TSB Bank plc, or Lloyds; and Santander UK plc. Additionally, in the first quarter of 2018, we plan to launch a pilot implementation of Cardlytics Direct with Wells Fargo & Company, or Wells Fargo, directed at Wells Fargo customers located in Miami, Florida, Charlotte, North Carolina and San Francisco, California. As the amount of revenue that we can generate from marketers with respect to Cardlytics Direct is primarily a function of the number of active users on our FI partners' digital banking platforms, we believe that the number of monthly active users, or FI MAUs, contributed by any FI partner is indicative of our level of dependence on such FI partner. During 2015, 2016 and the nine months ended September 30, 2017, our largest FI partner, Bank of America, contributed approximately 50%, 47% and 51%, respectively, of our total FI MAUs. Lloyds, our largest FI partner in the United Kingdom, contributed approximately 9%, 10% and 9% of our total FI MAUs in 2015, 2016 and the nine months ended September 30, 2017, respectively. As of September 30, 2017, we had direct contractual relationships with 17 of our FI partners, while our other FI partners became part of our network through bank processors and digital banking providers, such as Digital Insight Corporation, a subsidiary of NCR Corporation, or Digital Insight. Digital Insight contributed approximately 15%, 13% and 11% of our total FI MAUs in 2015, 2016 and the nine months ended September 30, 2017, respectively.

Our platform helps solve fundamental problems for marketers. Marketers increasingly have access to data on the purchase behavior of their customers in their own stores and websites. However, they lack insight into their customers' purchase behavior outside of their stores and websites, as well as the purchase behavior of individuals who are not yet customers. The reality is, no matter how robust their own customer data, marketers only see a small portion of their customers' overall spend—both within and across categories. As a result, it is very difficult for businesses to focus their marketing investments on the most valuable customers. Marketers are also challenged to measure the performance of their marketing. This issue is particularly acute with respect to measuring the impact of marketing on in-store sales, where approximately 92% of consumer spending occurs, according to 2016 U.S. Census data. We believe purchase intelligence is the next disruptive opportunity in marketing and can comprehensively address these challenges. Our purchase intelligence platform is designed to enable marketers to identify, reach and influence likely buyers at scale, and precisely measure how marketing drives sales by "closing the loop"—both online and in-store. We have strong relationships with leading marketers

across a variety of industries, including 20 of the top 25 U.S. restaurant chains based on the Nation's Restaurant News 2016 ranking, 23 of the top 50 U.S. retailers based on the National Retail Federation 2016 ranking, as well as three of the five largest U.S. cable and satellite television providers and three of the four largest U.S. wireless carriers based on 2016 U.S. subscriber counts.

We have proven the power of purchase intelligence with our proprietary native advertising channel, Cardlytics Direct. We have created a powerful, highly captive native advertising channel that reaches customers when they are thinking about their finances. By consolidating the largely untapped, high growth digital banking channels of more than 2,000 FIs, Cardlytics Direct enables marketers to reach consumers across these FIs through their online and mobile banking accounts, and increasingly through email and various real-time notifications. Using our purchase intelligence, our platform predicts where FI customers are likely to shop next and then presents them with offers to save money in these categories at a time when they are thinking of their finances. Since Cardlytics Direct reaches consumers in a trusted, uncluttered digital environment, we believe we see higher engagement in our channel. On average, bank customers in our channel logged into their mobile banking accounts 7.7 times per month in 2016. Customers are at least nine times more likely to engage with our marketers' advertisements as compared to worldwide display digital advertisement click rates as reported by eMarketer in December 2016. Cardlytics Direct offers compelling benefits to both marketers and FIs:

- ***Benefits to Marketers.*** By leveraging Cardlytics Direct, marketers are able to understand who the most valuable customers are in their category and how effectively they are competing for those customers. Marketers grow their business by reaching customers through trusted banking channels and providing precisely tailored marketing to bring *new* customers to their business and to get *current* customers to spend more. In our Cardlytics Direct channel, we deliver strong, guaranteed return on advertising spend, or ROAS. For every dollar marketers spent in our Cardlytics Direct channel in the United States in 2016, they generated an ROAS of approximately $30. We calculate ROAS by measuring the consumers to whom a Cardlytics Direct marketing incentive was shown via such consumer's online or mobile banking application or email and who subsequently made an online or in-store purchase from the applicable marketer during the campaign period, regardless of whether such consumer redeemed the incentive, as compared to the amount the marketer spent with us on the campaign.

- ***Benefits to FIs***. Cardlytics Direct allows customers of our FI partners to receive personalized offers and cash back. Since our company's inception, our FIs' customers have earned approximately $232 million in aggregate cash back incentives. We believe that these savings drove higher customer retention for our FI partners, as well as increased card spend, engagement and loyalty for our FI partners in 2016. For the nine months ended September 30, 2017, our FI partners had 53.7 million FI MAUs. Based on aggregated data from approximately 10,000 randomly-selected customers of three of our 10 largest FIs, we calculated that monthly customer attrition was 17% lower on average among redeeming credit and debit card customers over the six-month period following a customer's first redemption in 2016 for credit and debit card users, as compared to average monthly customer attrition over the same comparison period for non-redeeming customers. In conducting this analysis, we deemed customers who do not have active spend in the applicable account within a given month to have attrited. We also calculated that the monthly card spend increased by 11% on average over the six-month period following a customer's first redemption in 2016 as compared to the monthly average from the preceding three-month period. In contrast, the monthly card spend of non-redeeming customers over the same comparison periods increased by only 2% on average. Since we share a portion of the revenue that we generate from marketers with FIs, we provide an attractive incremental earnings opportunity. We also enable our FI partners to create competitively differentiated offerings that reinforce their broader strategic goals, including marketing their own products with the same precision targeting available to marketers.

We are extending the power of our platform beyond Cardlytics Direct. As we built scale, we recognized a significant opportunity to extend the impact of our purchase intelligence platform, which we refer to as our Other

Platform Solutions. For example, we use purchase intelligence to help marketers measure the impact of marketing campaigns outside of the Cardlytics Direct channel on in-store and online sales. As we have in the past, we plan to continue to work in close collaboration with our FI partners to develop new purchase-intelligence based analytic solutions.

We have experienced rapid growth in our revenue since inception. Our revenue, which excludes consumer incentives, was $53.8 million, $77.6 million and $112.8 million, for 2014, 2015 and 2016, respectively, representing a compound annual growth rate of 44.8%. In 2014, approximately 91.4% of our revenue was generated from sales of Cardlytics Direct. Our revenue for the nine months ended September 30, 2017 was $91.1 million. For 2012, 2013, 2014, 2015 and 2016, our FI MAUs were approximately 17.4 million, 31.3 million, 34.8 million, 39.0 million and 43.9 million, respectively, and our average Cardlytics Direct revenue per user was $0.39, $0.71, $1.41, $1.65 and $2.23, respectively. For 2014, 2015, 2016 and the nine months ended September 30, 2017, our net loss was $38.9 million, $40.6 million, $75.7 million and $15.6 million, respectively. Our historical losses have been driven by our substantial investments in our platform and infrastructure, which we believe will enable us to expand the use of our platform by both FIs and marketers. In 2016, our net loss included a $25.9 million one-time non-cash charge related to the termination of our U.K. agreement with Aimia EMEA Limited and a $10.9 million non-cash charge related to the issuance and change in fair value of convertible promissory notes.

**Industry Background**

***Recent Disruptions in the Marketing Industry***

The fundamental imperative for marketers is to determine how, when, and where to spend marketing dollars effectively and to measure the efficacy of, and return on, their marketing investments. In the past 20 years, there have been a series of disruptive innovations impacting how marketers reach and influence likely buyers. The rise of internet-enabled online advertising drastically accelerated the pace of innovation across the marketing landscape. As the internet became mainstream, search-driven advertising brought the ability to more precisely connect marketing to consumer intent. The advent of social media provided marketers with a greater opportunity for consumer engagement and a wealth of additional data about consumer preferences. Each of these innovations has made digital marketing increasingly more effective and efficient than traditional media. As a result, digital media spending is expected to reach $202 billion in 2017, an increase of approximately 13% from $178 billion in 2016, according to MAGNA Global. However, like television and other traditional forms of advertising, these new forms of digital advertising still fail to provide marketers with visibility into whether an advertisement ultimately resulted in an in-store purchase. This information gap is particularly acute since approximately 92% of consumer spending continues to occur in-store. Marketers remain unable to close the last mile and comprehensively understand how marketing impacts actual in-store and online consumer purchases.

***Challenges to Efficient and Effective Marketing***

The fundamental challenges faced by marketers include:

- ***Imprecise Targeting Across Media Channels***. Although marketing through digital channels is perceived to provide marketers with a greater ability to target and measure efficacy, online targeting typically relies on online behavior, demographic, and other behavioral data to find an audience, which are imprecise proxies for future purchasing behavior. Offline advertising relies on similar data to determine how to allocate advertising spending. Regardless of channel, targeting based only on these types of information fails to capture important differences among consumers who may appear to be similar on the surface, but actually have drastically different interests and purchasing patterns.

- ***Inability to Measure Efficacy and Ensure ROAS***. Many organizations lack the ability to measure return on marketing investments, with over half of marketers stating that they are unable to quantitatively

demonstrate the impact of marketing spending on sales, according to a 2017 CMO study. Marketers are under immense pressure to show that their investments are creating value for their organizations. However, due to the fact that substantially all retail purchasing continues to occur in-store, it is difficult to calculate ROAS accurately because marketers cannot comprehensively connect online or offline marketing campaigns to in-store purchases.

- ***Narrow View of Existing and Potential Customers***. Marketers today increasingly have access to data on the purchase behavior of their customers in their stores and on their websites. However, they lack insight into these customers' overall purchasing patterns outside of their stores and websites and the purchasing behavior of other likely buyers who are not yet customers. As a result, marketers struggle to answer fundamental questions such as: Who are my best customers? Are my best customers loyal to me or do they actually spend more with my competitors? Who are the potential customers spending with my competitors, but not with me?

***Purchase Intelligence: The Next Disruptive Opportunity***

We believe that purchase intelligence is the next disruptive opportunity in marketing. Aggregated consumer spending data analyzed with advanced analytics has the potential to make all marketing more relevant and measurable if it can be effectively analyzed and leveraged to help predict and measure future buying behavior, both in-store and online.

***Massive and Fragmented Source of Purchase Data and Consumer Connectivity***

We believe that FIs are a crucial source of purchase data and have a valuable, direct touchpoint with consumers. Over the past decade, the volume of consumer purchase data held by FIs has significantly increased. Today, more than 70% of U.S. consumer payments are electronic—debit card, credit card, ACH or bill pay—and this percentage is projected to continue to increase, according to The Nilson Report's 2016 findings. These electronic transactions produce an immense amount of consumer purchase data, which can provide valuable insights on where and when consumers choose to shop, how frequently they shop at a particular store, and how much they spend within and across retail categories. More importantly, nearly 60% of electronic spending is in the form of debit and other non-credit transactions, and growth of these types of transactions is expected to be significant through 2020, according to The Nilson Report. Further, non-credit electronic spending is widely dispersed over thousands of FIs, with no party providing an aggregated view at scale.

For purchase intelligence to be actionable, purchase data must be connected to the consumer through electronic touchpoints. The digital marketing ecosystem consistently struggles with this challenge. Consumers interact across thousands of online touchpoints. It is often difficult to identify the consumer across these multiple touchpoints. FIs have uniquely reliable consumer touchpoints. Instead of walking into a branch, over 70% of consumers in 2015 managed some or all of their banking via digital channels, according to a 2016 survey by the Federal Reserve Bank. FIs' touchpoints do not face the same issues as other digital channels. Consumers interact with FIs via authenticated online or mobile applications that are protected with state-of-the-art security. FI touchpoints allow for purchase data to be connected to consumers across the media landscape and thereby become actionable.

***Market Forces in the Banking Industry***

While FIs play an important role in securely maintaining purchase data, market forces have only recently aligned to create incentives for FIs to leverage this data for the benefit of marketers. FIs operate in an increasingly regulated and competitive environment. Further, the rising popularity of alternative banking solutions and the emergence of non-banking players in the areas of lending and electronic payments increasingly threaten to disintermediate traditional FIs from their customers. These trends have keenly focused FIs on finding ways to engage customers and strengthen customer loyalty. Despite these incentives, FIs typically lack the specialized

technological expertise, scale and visibility outside of their own customer bases to analyze and effectively leverage purchase data. As such, although purchase data from any single FI and access to that institution's customer base may be very useful to marketers, aggregated purchase data across a meaningful portion of the fragmented banking landscape from a variety of electronic payment channels holds significantly greater value.

***Challenges to Effective Purchase Data Aggregation***

The challenges to effective aggregation of purchase data include:

- ***Lack of Scale***. Purchase data resides with approximately 10,000 FIs in the United States alone. Although payment processors and payment networks have access to data across multiple FIs, each lacks access to data from all different forms of electronic payments and the ability to electronically connect this disparate payment data to consumers. To understand a consumer's spending, marketers require an expansive view across the payment landscape, including debit card, credit card, bill pay and ACH, that no single FI is able to provide.

- ***Fragmented Touchpoints***. As with purchase data, FI digital touchpoints are spread across thousands of disparate institutions. Further, FIs generally lack the technology to connect purchase data to their customers' online, mobile and television presences.

- ***Privacy and Regulatory Concerns***. FIs are highly regulated and are under strict obligations to safeguard their customers' personal data. To be viable, any data aggregation strategy must navigate the complex privacy and regulatory compliance concerns and obligations of FIs.

- ***Need to Create Uniformity Across Complex and Varied Data Sets***. Each FI captures and retains data differently and the underlying data is itself dynamic. For example, payments made at a single retailer for the same transaction are often identified in different ways at different FIs and retailers are continuously evolving the way in which they capture, process and remit purchase data to FIs. As a result, sophisticated algorithms and analytics are required to make the complex web of purchase data meaningful and actionable for marketers.

To unlock the value of the FIs' purchase data, we believe that there is a significant need for a trusted third party to serve as the nexus for purchase data aggregation and analytics.

**Market Opportunity**

Our platform solves fundamental problems for the marketing industry by utilizing proprietary purchase intelligence. The native bank advertising market was estimated to be approximately $11 billion in the United States in 2016, according to Frost & Sullivan in a study commissioned by us.

We believe that Cardlytics Direct is a leading native bank advertising solution addressing this market.

**Key Benefits of Our Platform**

We make marketing more relevant and measurable through our purchase intelligence platform, while simultaneously driving customer engagement and loyalty for FIs.

Key benefits to marketers:

- ***Comprehensive View of Consumer Behavior***. We leverage the power of our platform to provide Cardlytics Direct marketers with valuable insights into the preferences of their actual or potential customers both within and outside the context of a marketing campaign. We build on the insight

marketers have today—how their customers are spending in their own stores and websites—with our insight into how their customers are spending elsewhere. With a broad view of purchase behavior at scale, we can also help identify likely buyers who are not yet customers.

- ***Precise Targeting in a Captive Channel***. With access to consumers' aggregate purchase data at particular FIs, not just their spending with a single marketer, we enable marketers to identify, reach and influence likely buyers in the highly captive native bank advertising channel. By analyzing billions of purchases across tens of millions of consumers, we believe that we are able to predict future consumer intent based on prior purchase behavior. Cardlytics Direct enables marketers to deliver highly relevant offers to customers inside of trusted and private banking channels. With our purchase intelligence, marketers can reach the right consumer, at the right time, in this channel with a relevant message.

- ***Accurate Measurement of Marketing's Impact on Sales***. We measure the impact of marketing efforts by analyzing actual purchase data—both online and in-store. This enables us to determine the actual return on advertising spend from marketing campaigns within and outside Cardlytics Direct and helps marketers optimize ongoing and future campaigns. Unlike other measurement solutions on which the marketing industry has historically relied, our measurement of return on advertising spend is not probabilistic or based on models, but based on actual purchases by consumers.

- ***Compelling Return on Advertising Spend***. For every dollar marketers spent in our Cardlytics Direct channel in the United States in 2016, they generated an ROAS of approximately $30. Further, because we typically price our solutions based on actual purchases from the applicable marketer, rather than based on impressions served or clicks, we are able to ensure that marketers realize a return on their marketing spend with us.

Key benefits to FIs:

- ***Cash Back Incentives to FI Customers***. Cardlytics Direct allows customers of our FI partners to receive personalized offers and cash back rewards. Our FIs' customers have earned more than $232 million in aggregate cash back incentives to date, and we believe that these savings drive increased customer engagement and loyalty.

- ***Higher Customer Retention and Brand Loyalty***. We believe FIs on our platform see reduced account attrition rates. Based on aggregated data from approximately 10,000 randomly-selected customers of three of our 10 largest FIs, we calculated that monthly customer attrition was 17% lower on average among redeeming credit and debit card customers over the six-month period following a customer's first redemption in 2016 as compared to average monthly customer attrition over the same comparison period for non-redeeming customers. See page 96 above for further information on this calculation.

- ***Increased Card Spend and Engagement***. Our platform provides FIs with a cash-back program that incentivizes their customers to use their cards more frequently. Based on aggregated data from approximately 10,000 randomly-selected customers of three of our 10 largest FIs, we calculated that monthly card spend increased by 11% on average over the six-month period following a customer's first redemption in 2016 as compared to the monthly average from the preceding three-month period. In contrast, the monthly card spend of non-redeeming customers over the same comparison periods increased by only 2% on average. In addition, our FI partners see substantial increases in online and mobile banking engagement among their customers.

- ***New Economics to FIs***. Because we share a portion of the revenue that we generate from marketers with FIs, we also provide FIs with an attractive incremental revenue opportunity. From inception through September 30, 2017, we have paid approximately $159 million in aggregate FI Share, which is

a negotiated and fixed percentage of our billings to marketers less any consumer incentives that we pay to the FIs' customers and certain third-party data costs.

- ***Support for FI Marketing and Business Initiatives***. We believe that we enable our FI partners to create competitively differentiated offerings that reinforce their broader strategic goals, including marketing their own products—such as mortgages, car loans, or 529 plans—directly to customers with the same precision targeting available to marketers.

**Competitive Strengths**

We make marketing more relevant and measurable through our purchase intelligence platform. We believe that the following strengths provide us with competitive advantages:

- ***Deeply Embedded with FIs***. Our founders were bankers who understood the power of historical purchase data and the needs of marketers. Our platform was architected with our FI partners in mind and is designed to ensure that no personally identifiable information, or PII, ever leaves the FI. We have partnered with over 2,000 FIs and no FI partner with which we contract directly has unilaterally terminated its use of our platform. We are generally the exclusive provider of native bank channel advertising to our FI partners as online and mobile banking portals are not conducive to supporting marketing content from different vendors. Further, native bank channel advertising requires deep technological integrations, which we believe increases the cost of switching vendors and therefore increases FI partner loyalty to us.

- ***Our Proprietary Consumer Touchpoints***. With all of our FI partners, we enable marketers to reach consumers in a captive, largely untapped, and digitally engaging environment, when they are thinking about their finances. We have access to consumers both on the web and mobile, and are increasingly reaching them through various other channels, including emails and real-time notifications.

- ***Massive Reach Informed by Purchase Intelligence***. Our platform aggregated and analyzed approximately $1.3 trillion in U.S. purchase data in 2016 across stores, retail categories, and geographies, both online and in-store, representing over 18.0 billion transactions across more than 94.0 million accounts in the United States. While we also have access to credit card consumer purchase data, a substantial majority of the purchase data on our platform is in the form of debit, ACH and bill pay transactions. In 2016, debit transactions among our FIs' customers outnumbered credit transactions by a factor of 2:1 and our FIs' debit card users logged into their online and mobile accounts 85% more frequently than our FIs' credit card users. We provide marketers with the opportunity to leverage this aggregated and unique data set to precisely reach millions of consumers.

- ***Significant Scale with Marketers and Compelling ROAS***. We work with companies across a variety of industries, including 20 of the top 25 U.S. restaurant chains based on the Nation's Restaurant News 2016 ranking, 23 of the top 50 U.S. retailers based on the National Retail Federation 2016 ranking, as well as three of the five largest U.S. cable and satellite television providers and three of the four largest U.S. wireless carriers based on 2016 U.S. subscriber counts. By serving these marketers at scale, we have developed deep insight into consumer behavior, which has allowed us to optimize how we reach and influence likely buyers. For every dollar marketers spent in our Cardlytics Direct channel in the United States in 2016, they generated an average of approximately $30 of ROAS.

- ***Powerful, Self-Reinforcing Network Effects***. We see significant network effects within Cardlytics Direct. By adding new marketers and increasing the potential incentives provided to our FIs' customers, we are able to increase engagement within our FIs' digital banking channels. This, in turn, attracts more FIs to our platform, adding to our scale, and making our platform more valuable to marketers.

- ***Ability to Improve Marketing***. Consumers spend 92% of their purchase dollars in physical stores and digital marketers have long sought efficient and effective ways to understand online-to-offline attribution. Likewise, although marketers may have access to data on the purchase behavior of their customers in their stores and on their websites, they lack visibility about these customers' overall purchasing patterns and the purchasing behavior of other likely buyers. In addition to reaching consumers through our proprietary Cardlytics Direct channel, we use purchase intelligence to help marketers measure the impact of marketing campaigns outside of the Cardlytics Direct channel on in-store and online sales.

- ***Proprietary Technology Architecture and Advanced Analytics Capabilities***. We have designed our purchase intelligence platform to protect highly sensitive first-party data. Our proprietary, distributed architecture helps facilitate both the effective delivery of our solution and the protection of our FI customers' PII. No PII is shared by the FIs with Cardlytics. Key aspects of our technology are hosted at the FI partners' data center. Other aspects of our technology, including those responsible for facilitating the creation of advertising campaigns, evaluating results of campaigns and controlling and providing software updates, are hosted at our data centers, behind our firewalls. These technological components work together, leveraging proprietary algorithms, to process raw purchase data into normalized purchase history useful for marketing and analytics. Our platform also supports integration of data from our FI partners and from third-party sources to enrich the intelligence that we are able to provide. Further, we apply advanced analytics and use machine learning to continuously increase our intelligence capabilities and identify actionable behavior patterns for our marketers. Our advanced analytics capabilities are what transforms our unique purchase dataset into valuable purchase intelligence. We use sophisticated quantitative methods to quickly access our massive volumes of data and make sense of what has happened—and, importantly, what is likely to happen. Our analytics makes our data actionable, enabling us to develop insights that marketers and FIs rely on to make smarter business decisions and more meaningful customer connections.

- ***World-Class Management Team with Unique Combination of Backgrounds and Experiences***. Our team's extensive experience across banking, technology and marketing is invaluable in our ability to forge relationships with financial and marketing partners, and understand the technical complexities inherent in building a platform that is transforming and disrupting the marketing industry.

**Our Growth Strategies**

The principal components of our strategy include the following:

- ***Grow Our Cardlytics Direct Business with Marketers***. While we already work with many large marketers, our purchase intelligence currently captures only a small portion of their overall marketing spend. Our current national restaurants, specialty retail and subscription marketers spent $21 billion in marketing in 2015 based on data from Kantar Media. We are continually adding new marketers to our platform, *and* consistently growing spend with previous cohorts of marketers. For example, in 2012, we generated $0.39 of revenue per FI customer and grew revenue per FI customer to $2.57 in 2016, representing a compound annual growth rate of 60.0%. We intend to continue to expand our sales and marketing efforts to grow our Cardlytics Direct business with existing marketers and attract new brands, retailers and service providers.

- ***Drive Growth through Existing FI Partners***. We intend to drive revenue growth by continuing to increase customer adoption and improve the effectiveness of FIs' digital channels. The revenue that we generate from the incentive programs of each of our FI partners varies. This variance is typically a result of how long the program has been active, the user interface for the program and the FI's efforts to promote the program. We continually work with FIs to improve their customers' user experience, increase customer awareness, and leverage additional customer outreach channels like email. FIs that

launched Cardlytics Direct in 2012 generated approximately 15.5 times more revenue from us on a per customer basis in 2016 than in the year of launch.

- ***Expand our Network of FI Partners***. We will continue to focus on growing our network of FI partners by integrating directly with large regional and national banks and by reselling our solution through financial processors and payment networks. Given our substantial investments to date in our platform and infrastructure, we believe that we will be able to add FIs to our platform with modest incremental investment. Each new FI partner increases the size of our data asset, increasing the value of our platform to both marketers and FIs that are already part of our FI network.

- ***Grow Our Platform Through Integrations with Partners***. We believe that we can improve the value proposition for marketers through the use of purchase intelligence. We intend to continue to partner with other media platforms, marketing technology providers and agencies that can utilize our platform to serve a broad array of customers. To facilitate these partnerships, we intend to focus on continued technological integration of our platform with those of complementary market participants.

- ***Continue to Innovate and Evolve Our Platform***. As we continue to grow our data asset and enhance our platform, we are developing new solutions and increasingly sophisticated analytical capabilities. As we have in the past, we plan to continue to work in close collaboration with our FI partners to develop new purchase intelligence based analytic solutions for marketing and other industries that satisfy the demanding requirements of financial services.

**Our Purchase Intelligence Platform**

***Data Asset***

With purchase data from more than 2,000 financial institutions, we have a secure view into where and when consumers are spending their money. Our technology aggregates and analyzes purchase data without any PII leaving the FI. In 2016, our platform analyzed over 18.0 billion online and in-store transactions across more than 94.0 million accounts in the United States, including one in five debit and credit card swipes in the United States. These types of transactions represented approximately 40% of all U.S. consumer spending in 2016, based on a 2016 study from The Nilson Report, and we believe that access to this purchase data can only be obtained on an aggregated basis by partnering directly with FIs. This data allows us to serve relevant advertisements to our FIs' customers through our Cardlytics Direct native bank advertising channel. We also leverage the power of purchase intelligence to provide marketers with valuable insights into the preferences of their actual or potential customers outside the context of a marketing campaign. For example, we have securely connected our platform to numerous other data sources and analytics platforms. Through these connections, we can help marketers measure the impact of their marketing investments outside of the Cardlytics Direct channel.

Importantly, the information that we collect does not enable us to identify any particular individual. Although we have access to large volumes of granular data from our FI partners and others, without PII, we do not use this information to decipher individual identity. Further, to the extent that we receive proprietary data from an individual marketer, we only use such information for the benefit of that marketer. We only provide aggregated, anonymized information to marketers.

***Advanced Analytics Capabilities***

The advanced analytics and machine learning we apply to our unique purchase dataset are what transforms it into valuable purchase intelligence. We use sophisticated quantitative methods to quickly access our massive volumes of data and make sense of what has happened—and, importantly, what is likely to happen. Our analytics makes our data actionable, enabling us to develop insights that marketers and FIs rely on to make smarter business decisions and more meaningful customer connections.

We analyze the impact marketing campaigns have on in-store and online sales. Since we are able to measure sales impact, marketers can use our purchase intelligence to optimize future campaigns and further inform their marketing across a variety of channels. Given our granular view into consumer spending across all categories, we can also help marketers identify share shift among key competitors, and learn more about where else their customers spend their money.

For FIs, we use our analytics to optimize the offers we display to FI customers within our Cardlytics Direct channel. By assigning relevancy scores to each offer based on what customers are most likely to buy, our platform then presents the most relevant offers earlier in customers' online and mobile banking sessions. This increases the likelihood that customers activate, redeem, and earn more cash back on the things they care about most. At the same time, marketers gain more opportunities to get valuable content in front of the right audience.

In addition to using our analytics to drive our partners' businesses, we use it to drive our own as well. We use advanced analytics to accurately predict the impact FI changes will have on our network. As we on-board new FI partners, make Cardlytics Direct UI improvements, or reach FI customers through new channels (e.g., email, real-time notifications), we are able to accurately predict how these changes will affect our network performance, and we can plan accordingly.

***Distributed Architecture***

A crucial aspect of our platform is our patented distributed architecture, which helps to facilitate both the effective delivery of our solutions and the protection of customer PII. Our Offer Placement System, or OPS, and Offer Management System, or OMS, form the core of our Cardlytics Direct solution and are the foundation for our other solutions.

The OPS is often hosted at the FI partner's data center, behind the FI partner's firewall, but we may also host the OPS on behalf of FI partners. The OPS tracks impressions, engagement, activation and redemptions and is responsible for targeting and presenting offers, which are developed and designed with the OMS, to the FI's customers. Each of our FI partners has its own instance of the OPS, regardless of where hosted, which consists primarily of a web application and database that interact with the FI's web servers to deliver marketing into the FI's online banking portal. The OPS interfaces with FI systems to receive anonymized purchase data, assigns a unique consumer ID to each FI customer, which we call a Cardlytics ID, and aggregates this purchase data. The Cardlytics ID is then used to assign offers as well as to anonymously link a consumer's media presences, including online and mobile, to the consumer's purchase data.

The OMS is hosted in our data centers behind our firewall and is responsible for facilitating the creation of marketing campaigns, evaluating the results of campaigns, and controlling and providing regular software updates to the deployed OPS.

***Our Technology Infrastructure***

We rely on our highly sophisticated software and hardware infrastructure to deliver our solutions. We currently manage our infrastructure through outsourced data centers. We receive and integrate into our data, on average, hundreds of millions of purchase transactions per week from our FI partners. Our system cleans and transforms this data and matches it to a retail category, spend amount and type metrics, geography and merchant, as well as time horizon. Our systems are designed to handle hundreds of varied formats in which we receive data and transform them into a common standard for use in our solutions.

We have implemented a number of security controls. Our security controls have been audited and certified by third parties using standards which include SOC 1, SOC 2 and OWASP. Sensitive data is subject to encryption, anonymization, or de-identification depending on the use case and risk profile. We enhance network security through measures such as network segmentation, firewalls and network and host based intrusion detection at critical network aggregation and ingress/egress points.

**Our Solutions**

Our first solution, Cardlytics Direct, is focused on unlocking the power of purchase intelligence in our own native advertising channel. We designed and created Cardlytics Direct by embedding our proprietary technology into our FI partners' online and mobile banking platforms. Through Cardlytics Direct, marketers can deliver advertising content to FI customers in the form of an opportunity to earn rewards, which are funded with a portion of the fees we collect from marketers. Additionally, Cardlytics Direct benefits FI customers by enhancing their experiences by showing them relevant advertisements tailored to their specific needs based on their specific purchase history.

We analyze customers' purchase history to help predict where they are most likely to shop next. This enables us to help marketers find high potential new customers that are active in their category, but not currently shopping with them, or to grow their business with existing customers. Our marketing is targeted and measured with each individual customer's actual spending information. However, all targeting and reporting is aggregated across consumers in our FI network. Unlike other measurement solutions on which the marketing industry has historically relied, our measurements are not probabilistic or based on models, but are based on actual purchases.

The breadth of our FI partner network means that we are able to offer marketers the ability to optimize their marketing efforts to reach a large number of consumers through a single point of contact. Our Cardlytics Direct solution also offers our FI partners a scalable solution for driving customer loyalty and engagement with little effort on their part, as we handle everything from contracting with marketers, building, running and reporting performance of the marking campaigns to allocating incentives to our FIs' customers.

We currently sell Cardlytics Direct in the United States and United Kingdom.

We believe all types of marketing can be more effectively directed and measured with purchase intelligence. We designed our purchase intelligence platform to leverage the massive, growing and actionable foundational data asset that we amassed with Cardlytics Direct. We seek to connect our purchase data with other datasets to provide deeper visibility into the overall, online and in-store, purchasing patterns of their actual and potential customers. Our purchase intelligence platform enables marketers and marketing service providers to leverage the power of purchase intelligence outside the bank channel.

We have expanded our platform to use purchase intelligence to provide solutions outside the bank channel. These Other Platform Solutions include the measurement of campaigns and business insights. We currently have the right to use purchase intelligence from four FI partners, who collectively represented approximately $750 billion in 2016 annual consumer purchase transaction data or 14% of total U.S. consumer purchase transaction data in 2016, according to a 2017 study from The Nilson Report, outside the banking channel. We are continually working with our FI partners and marketers to expand the scope of our solutions to meet market demands.

**Our FI Partners**

We partner with FIs to offer incentive programs through their digital banking channels. We define an FI partner as either a separate contracting entity from which we generate revenue directly or from which we generate revenue through a third-party intermediary, such as a bank processor, digital banking provider or payment network operator. As of September 30, 2017, we were a partner to 2,041 FIs, including large banks such as Bank of America, PNC Bank, National Association, Branch Banking and Trust Company, SunTrust, Lloyds, and Santander UK plc, several of the largest bank processors and digital banking providers, such as Digital Insight, FIS and Fiserv, to reach customers of small and mid-sized FIs. We are actively working with FIS and Fiserv to increase awareness of our solutions among small and mid-sized FIs in order to drive increased adoption. Additionally, in the first quarter of 2018, we plan to launch a pilot implementation of Cardlytics Direct with Wells Fargo directed at Wells Fargo customers located in Miami, Florida, Charlotte, North Carolina and San Francisco, California.

During 2015, 2016 and the nine months ended September 30, 2017, our largest FI partner, Bank of America contributed approximately 50%, 47% and 51% of our total FI MAUs, respectively. Lloyds, our largest FI partner in the United Kingdom, contributed approximately 9%, 10% and 9% of our total FI MAUs in 2015, 2016 and the nine months ended September 30, 2017, respectively. Digital Insight contributed approximately 15%, 13% and 11% of our total FI MAUs in 2015, 2016 and the nine months ended September 30, 2017, respectively. Further, while FI partners that were part of our network through our relationships with Digital Insight contributed approximately 11% of our total FI MAUs for the nine months ended September 30, 2017, these indirect FI partners represented substantially all of our total FI partners as of September 30, 2017.

From inception to date, no FI partner with which we contract directly has unilaterally terminated its use of our solution. FIs that become part of our network through bank processors and digital banking providers may terminate their relationships with these bank processors and digital banking providers and thereby indirectly terminate their relationships with us. Any such terminations would not be captured in the calculation of our retention rate.

***FI Partner Case Studies***

*Digital Insight*

Situation: Digital Insight, an NCR company, provides online and mobile banking solutions to U.S. community banks and credit unions, or CFIs, and wanted to add a cash back loyalty program to their list of solutions.

Solution and Benefits: In 2008, Digital Insight partnered with Cardlytics to launch Purchase Rewards, a program designed to help Digital Insight's partner CFIs bring cash back rewards to their customers. Since the program's inception, Cardlytics has added more than 400 new CFI partners to our platform through this partnership. Our partnership with Digital Insight provides Cardlytics with access to a number of customers on par with a top five national bank.

In 2010, Digital Insight was the first Cardlytics partner to launch the Cardlytics Direct program in mobile banking. Additionally, in 2014, Digital Insight became the first U.S. partner to integrate four marketer logos into their partner CFIs' online banking landing pages, which placed a higher number of deals in front of the CFIs' customers. Within the first two months after the change, the revenue that we generated from marketers through the Purchase Rewards program doubled. Purchase Rewards has also become an important part of the Digital Insight product offering, and is often used as a sales and retention tool with partner banks and credit unions since it offers value to their customers.

Since the launch of Purchase Rewards, customers of Digital Insight's partner CFIs have earned approximately $23 million in cash back rewards. From 2010 to 2016, the dollar value of customer rewards grew at a 50% compound annual growth rate, and the number of customers' offer redemptions grew at a 52% compound annual growth rate.

*Regions*

Situation: Regions Bank, one of the 25 largest U.S. banks with over four million customers, was looking to develop a new cash back rewards program, and enhance its relationships with its business banking clients.

Solution and Benefits: In 2010, Regions worked with Cardlytics to launch Regions Cashback Rewards, a free program that offers cash back rewards to customers based on their individual spending patterns. In addition to providing valuable cash back rewards to its debit customers, Regions has used the Cardlytics program to engage its business banking clients. Through its merchant referral program, Regions refers business banking clients to Cardlytics, with the intent to have those merchants run marketing campaigns in Cardlytics' native bank channel.

Regions was Cardlytics' first bank partner to display offers in a dedicated area on the online banking landing page. In addition, we believe a series of user interface changes—including an increase in the number of offers and a tiled rewards summary design—are associated with increased redemptions within Regions Cashback Rewards by approximately four times over a six month period.

Since the launch of Cashback Rewards, Regions customers have earned an aggregate of approximately $12 million in cash back rewards, and Regions has earned approximately $7 million in revenue from us to date.

*SunTrust*

Situation: SunTrust, a top 10 retail bank in the United States, wanted to enhance customer engagement with a cash back rewards program.

Solution and Benefits: In March 2017, SunTrust and Cardlytics launched the SunTrust Deals program to over five million debit and credit card customers. As the latest large FI to join Cardlytics' network of FI partners, SunTrust implemented a best-in-class version of Cardlytics' user interface design. The program also includes highly prominent placement of offers within SunTrust's mobile and desktop banking applications, with the opportunity to expand the partnership further. Since launching SunTrust Deals, SunTrust's leading indicators for success, including customer engagement with offers, and savings realized by customers, suggest strong positive momentum. SunTrust believes this is due to the visibility of the program within the digital environment and the relevance of the offers.

**Our Marketers**

We enable marketers and their agencies to efficiently and effectively market to our FIs' customers through Cardlytics Direct. We work with companies across a variety of industries, including 20 of the top 25 U.S. restaurant chains based on the Nation's Restaurant News 2016 ranking, 23 of the top 50 U.S. retailers based on the National Retail Federation 2016 ranking, as well as three of the five largest U.S. cable and satellite television providers and three of the four largest U.S. wireless carriers based on 2016 U.S. subscriber counts. Our top five marketers represented 23% and 23% of revenue for 2015 and 2016, respectively. For the years 2015 and 2016, we did not have any marketer that individually represented a significant concentration of our revenue.

***Marketer Case Studies***

*Clarks*

Opportunity: Clarks is a British-based, international shoe manufacturer and retailer. Clarks has over 1,000 branded stores and franchises around the world and also sells through third-party distribution. Clarks partnered with Cardlytics to drive incremental sales from consumers already purchasing in their category.

Results: Clarks ran a Cardlytics Direct campaign from May 2016 to June 2016, and experienced a 37% increase in spend from new customers over a control group over the campaign period. Not only did Clarks identify new customers, but they reported increased spend among current customers. Incremental spend among existing customers reached increased by 24% during that same time period, when measured against a control group.

*Denny's*

Opportunity: Denny's is a global, full-service restaurant chain that operates more than 1,700 locations worldwide. Denny's was interested in identifying an audience that heavily frequented casual dining restaurants, and then reaching them through relevant digital environments with appropriate brand messaging.

Results: Denny's has worked with Cardlytics since 2013 to gain a deeper understanding of their target consumers' purchase behavior. Using Cardlytics' purchase intelligence, Denny's has targeted consumers likely to

spend with their brand, with relevant messaging in Cardlytics Direct. Across their Cardlytics Direct campaigns, which ran from January 2016 through November 2016, new guest repeat-sales amounted to 30% of total sales generated during the campaign.

In addition to measuring the actual sales impact of their Cardlytics Direct campaigns, Denny's has been able to effectively measure the amount of market share it has captured from its competitors. For example, over a July 2016 campaign period, Denny's saw a 9% share shift in spend from full-service breakfast competitors among customers who made purchases during the campaign.

*Five Guys*

Opportunity: Five Guys is an American fast casual restaurant chain that serves primarily hamburgers, hot dogs, and french fries. Five Guys has historically relied on word-of-mouth marketing and executed limited advertising. Five Guys partnered with us as part of its customer retention and new customer acquisition efforts.

Results: Five Guys partnered with Cardlytics in 2014 to introduce new guests to the brand and drive existing customers to purchase more often. Consumers reached through Cardlytics Direct campaigns from April 2016 through May 2016 spent, on average 20% more with Five Guys, when measured against a control group. Over each campaign period, Five Guys also saw nearly $6 in incremental sales for every $1 invested in Cardlytics Direct. Five Guys expanded their relationship with us in 2016, evolving from a seasonal approach to a year round campaign strategy. In 2017, Five Guys further expanded their relationship to include Cardlytics Direct campaigns in the United Kingdom.

*Mitchells & Butlers*

Opportunity: Mitchells & Butlers is the largest operator of dining and pub brands in the UK. Aiming to re-engage customers to increase visit frequency and target high spend diners, Mitchells & Butlers partnered with Cardlytics.

Results: Mitchells & Butlers partnered with Cardlytics to identify customers most likely to purchase from their brand using actual purchase behavior rather than assumptive demographic data. Mitchells & Butlers ran highly targeted campaigns in Cardlytics Direct, from June 2015 to present. In the last year, Mitchells & Butlers have achieved incremental sales averaging £4.83 for every £1.00 invested in Cardlytics Direct across their brands.

*PetSmart*

Opportunity: PetSmart is a retail chain featuring a range of specialty pet supplies and services. PetSmart partnered with Cardlytics to acquire new customers and increase purchase frequency with current customers. With the majority of sales happening in a store, PetSmart looked to Cardlytics to close the loop on in-store sales driven from digital campaigns.

Results: PetSmart ran a Cardlytics Direct campaign from September 2016 through January 2017 to drive new and lapsed customers to their stores. During this time, consumers reached during the campaign spent 27% more with PetSmart, when measured against a control group. PetSmart is also able to effectively measure spend captured from competitors, both online-only and regional boutiques, enabling them to pivot marketing efforts when necessary.

*Potbelly*

Opportunity: Potbelly, an international sandwich restaurant chain, works with Cardlytics to grow their business by driving sales, increasing in-restaurant traffic, and building customer loyalty.

Results: By using Cardlytics Direct, Potbelly gained a clearer view of the Potbelly customer and engaged them through a more targeted and personalized approach. Their Cardlytics Direct campaigns have helped them reach and influence latent customers, some of whom had not been to Potbelly in over a year. Since 2014, Potbelly has seen an average incremental $4 in sales for every $1 invested in Cardlytics Direct.

*Regis*

Opportunity: Regis Corporate is the largest American operator of hair salons, with more than 9,000 company-owned and franchised salons. Regis partnered with Cardlytics to drive brand recognition and purchases across their salons.

Results: Regis was able to gain insight into guests' shopping habits and advertise directly to those most likely to visit a salon within its family of brands. Visibility to guest spending across numerous categories proved valuable, as ultimately those targeted spent an average of 24% more than members of a control group between November 2016 and February 2017.

*Waitrose*

Opportunity: Waitrose, one of the UK's leading supermarkets, has been working with Cardlytics since 2013. In an increasingly competitive and challenging market, Waitrose uses Cardlytics' purchase intelligence to help increase spend from relevant existing customers, win back lapsed customers, and acquire new customers from competitors.

Results: Cardlytics has worked with Waitrose for four years. In 2016 alone, Waitrose saw approximately £14 million of incremental sales among those reached by Cardlytics Direct, when measured against a control group. This included £8 million in incremental sales from existing customers identified based on competitive category spend. In 2016, Waitrose saw an average £4.77 return for every £1 spent in Cardlytics Direct, and—for lapsed customers—up to £10 return for every £1 spent.

**Sales and Marketing**

Our sales teams are focused on expanding our FI network as well as our marketer and agency customers. Our marketing team is centralized and focuses on increasing market awareness for Cardlytics through partnerships, public relations, industry events and publications. For 2015, 2016 and the nine months ended September 30, 2017, our total sales and marketing expenses were $32.8 million, $31.3 million and $23.5 million, respectively, representing approximately 42%, 28% and 26% of revenue, respectively.

***Marketers***

We have dedicated sales teams responsible for establishing relationships with marketers and their agencies. Our go-to-market efforts are organized by industry vertical, which include restaurants, retail, cable and satellite television providers and wireless carriers. Each vertical team is led by an experienced general manager and staffed with sales, sales support and service specialists who have deep domain knowledge and industry operating experience. We also have account managers that manage our customer relationships within each vertical.

Some of our representative marketers by vertical include:

| Grocery | Home Subscription Services | Restaurant | Retail | Travel |
|---|---|---|---|---|
| Albertson's / Safeway | Comcast | Denny's | Advance Auto Parts | Airbnb |
| Hannaford | Defender Direct (ADT) | Five Guys | Dick's | Best Western |
| Morrison's | Hulu | Little Caesars | General Motors | Carlson Rezidor Hotel Group |
| Sainsbury's | Spotify | Mitchells & Butlers | Michael's | Europcar UK Group Ltd |
| The Fresh Market | Terminix | Olive Garden | Nordstrom Rack | Hilton |
| Waitrose | | Papa John's | PetSmart | Qatar |
| Whole Foods | | Starbucks | Regis Salons | Starwood |
| | | Subway | Under Armour | Sun Country Airlines |

***Financial Institution Partners***

Our go-to-market efforts for expanding our FI network are focused on nurturing our existing banking relationships and cultivating new relationships. From inception to date, no FI partner with which we contract directly has unilaterally terminated its use of our solution. Our FI partner sales team is focused on driving FIs to enhance their user interface for our white label program, otherwise drive increased consumer engagement and encourage adoption of our solution offerings.

**Research and Development**

Our culture is centered on innovation. We pioneered purchase intelligence and continue to focus on enhancing and broadening our platform's capabilities. Our development efforts extend beyond our core technology as we look to help our FI partners enhance overall user experience both on the web and in mobile apps. As a result of our investment in research and development, we were able to expand our solutions offerings beyond Cardlytics Direct. For 2015, 2016 and the nine months ended September 30, 2017, our total research and development expenses were $11.6 million, $13.9 million and $9.5 million, respectively, representing approximately 15%, 12% and 10% of revenue, respectively.

**Our Agreements with Bank of America**

In November 2010, we entered into a General Services Agreement, or the GSA, with Bank of America, which we amended and/or supplemented March 2011, March 2012, February 2014, January 2016 and August 2017.

Pursuant to the GSA, we provide Bank of America with access to Cardlytics Direct. Our additional obligations under the GSA include forming relationships with participating marketers; obtaining and publishing marketer offers to customers after screening both the marketer and specific advertising content; and monitoring redemption rates with respect to consumer incentives offered in Cardlytics Direct campaigns. Bank of America is required to provide us with daily and monthly transaction information to enable us to fulfill our obligations to Bank of America, marketers and customers, and maintain the availability of Cardlytics Direct on its servers in accordance with an agreed service level. Although we are primarily responsible for securing marketers to advertise on Cardlytics Direct, Bank of America may likewise secure marketers and has the right to approve all marketer offers to be presented to Bank of America customers on Cardlytics Direct. Each party is responsible for billing and collecting consumer incentives and advertising fees from the participating marketer accounts that such party has secured. We also have the right to (i) use aggregated Bank of America purchase data to provide marketers participating in Cardlytics Direct with certain analytics services; provided, that we do not sell such analytical services absent Bank of America's consent, and (ii) use aggregated Bank of America purchase data combined with aggregated data from other FIs to create summary analytics.

Pursuant to the GSA, we share the revenue that we generate from the sale of advertising within the Bank of America Cardlytics Direct channel with Bank of America, subject to certain exceptions set forth in the GSA. The amounts that we pay to Bank of America are reflected as FI Share. During 2015, 2016 and the nine months ended September 30, 2017, Bank of America accounted for 63%, 64% and 63% of our aggregate FI Share, respectively. The FI Share percentage that we pay is based on whether we or Bank of America have secured the relevant marketer account and other marketer- and transaction-specific factors; provided that we are entitled to retain no less than a specified percentage of the monthly revenue subject to the GSA. As one of the first major FIs to join our network, the FI Share rate payable to Bank of America is higher than the FI Share rate payable to FIs that joined our network more recently. In 2016, we were also required to pay Bank of America a minimum amount of FI Share, subject to the limitation noted in the preceding sentence.

The GSA requires us to fund the development of specified user interface updates to Cardlytics Direct, some of which are reimbursable to us through monthly holdbacks of FI Share otherwise payable to Bank of America by us. The 2017 user interface updates also include development commitments from Bank of America.

Under the GSA, we are obligated to provide Bank of America with net economic value at least as favorable as that provided by us to any other party obtaining services similar to those that we provide to Bank of America.

The GSA terminates on November 4, 2021, provided that Bank of America (i) has the right to extend the term of the GSA for additional one year periods by written notice to us and (ii) may terminate the GSA at any time upon 45 days written notice to us. Further, either party may terminate the GSA immediately upon (i) material breach of the terms of the GSA by the other party, subject to 30 days written notice and opportunity to cure, (ii) insolvency of the other party, (iii) a change of control of the other party, (iv) breach of applicable law by the other party and (v) other specified events.

In connection with entering into the GSA, we also entered into a Software License, Customization and Maintenance Agreement, or the License Agreement, with Bank of America, which we supplemented in March 2011. The License Agreement grants Bank of America the right to use the software underlying Cardlytics Direct and sets forth additional obligations of the parties with respect thereto. The License Agreement has a perpetual term subject to earlier termination by either party on terms consistent with those set forth in the GSA and described above (provided that the license survives any termination of the License Agreement). The License Agreement also provides that Bank of America may purchase a license to the source code underlying Cardlytics Direct upon the occurrence of specified events and for a specified fee.

In connection with entering into the March 2011 supplements to the GSA and License Agreement, we granted to an affiliate of Bank of America a 10-year warrant to purchase up to (i) 312,402 shares of our common stock at an exercise prices of $0.63 per share and (ii) 1,249,608 shares of our common stock at an exercise price of $1.63 per share.

**Our Competition**

The market for the utilization of purchase intelligence is nascent and we believe that there is no company that can provide purchase intelligence with the scale and the level of granularity that is equivalent to ours. With respect to Cardlytics Direct, we believe that we are the only company that enables marketing through FI channels at scale. As we expand our solutions, we expect to compete with a number of established companies, as well as numerous emerging market entrants. In the future, we may face competition from online retailers, credit card companies, digital publishers and mobile pay providers with access to a substantial amount of consumer purchase data. While we may successfully partner with a wide range of companies that are to some extent currently competitive to us, these companies may become more competitive to us in the future. As we introduce new solutions, as our existing solutions evolve and as other companies introduce new products and services, we are likely to face additional competition.

We believe the principal competitive factors in our industry include the following:

- ability to leverage purchase data to inform marketing;
- depth and breadth of relationships with financial institution partners, marketers and their agencies;
- demonstrating the need for purchase intelligence to inform marketing spend;
- depth and breadth of, and access to, purchase data;
- effectiveness in increasing return on advertising spend for marketers;
- effectiveness in increasing marketing campaign performance for marketers and their agencies;
- ability to maintain confidentiality and security of consumer data;
- transparency into and measurement of marketing performance;
- multi-channel capabilities;
- pricing;
- brand awareness and reputation;
- ability to continue to innovate; and
- ability to attract, retain and develop leading-edge analytical and technical talent.

We believe that we compete favorably with respect to these factors and that we are well positioned as a leading provider and innovator of purchase intelligence.

**Intellectual Property**

Our future success and competitive position depend in part on our ability to protect our intellectual property and proprietary technologies. To safeguard these rights, we rely on a combination of patent, trademark, copyright and trade secret laws and contractual protections in the United States and other jurisdictions.

As of September 30, 2017, we had three issued patents and 10 patent applications pending relating to our software. Our issued patents relate to a distributed system for inserting offers into online banking and expire on October 24, 2028. We cannot assure you that any patents will issue from any patent applications, that patents that issue from such applications will give us the protection that we seek or that any such patents will not be challenged, invalidated, or circumvented. Any patents that may issue in the future from our pending or future patent applications may not provide sufficiently broad protection and may not be enforceable in actions against alleged infringers.

We have registered the “Cardlytics” name and logo in the United States and certain other countries. We have registrations and/or pending applications for additional marks in the United States and other countries; however, we cannot assure you that any future trademark registrations will be issued for pending or future applications or that any registered trademarks will be enforceable or provide adequate protection of our proprietary rights.

We also license software from third parties for integration into our offerings, including open source software and other software available on commercially reasonable terms. We cannot assure you that such third parties will maintain such software or continue to make it available.

We are the registered holder of a variety of domestic and international domain names that include cardlytics.com and similar variations on that name.

In order to protect our unpatented proprietary technologies and processes, we rely on trade secret laws and confidentiality agreements with our employees, consultants, financial institution partners, marketers, vendors and others. Despite our efforts to protect our proprietary technology and trade secrets, unauthorized parties may attempt to misappropriate, reverse engineer or otherwise obtain and use them. In addition, others may independently discover our trade secrets, in which case we would not be able to assert trade secret rights, or develop similar technologies and processes. Further, the contractual provisions that we enter into may not prevent unauthorized use or disclosure of our proprietary technology or intellectual property rights and may not provide an adequate remedy in the event of unauthorized use or disclosure of our proprietary technology or intellectual property rights. If we become more successful, we believe that competitors will be more likely to try to develop solutions and services that are similar to ours and that may infringe our proprietary rights. It may also be more likely that competitors or other third parties will claim that our platform infringes their proprietary rights.

Patent and other intellectual property disputes are common in our industry and we have been involved in such disputes from time to time in the ordinary course of our business. Some companies, including some of our competitors, own large numbers of patents, copyrights and trademarks, which they may use to assert claims against us. Third parties may in the future assert claims of infringement, misappropriation or other violations of intellectual property rights against us. They may also assert such claims against our FI partners, which we typically indemnify against such claims. As the numbers of products and competitors in our market increase and overlaps occur, claims of infringement, misappropriation and other violations of intellectual property rights may increase. Any claim of infringement, misappropriation or other violation of intellectual property rights by a third party, even those without merit, could cause us to incur substantial costs defending against the claim and could distract our management from our business.

**Privacy and Security**

We have architected privacy and security into our systems and practices. A critical part of our strategy involves not collecting, maintaining or using sensitive information, such as social security numbers, credit card numbers, financial account information or medical records. We currently do not receive any PII in connection with the delivery of any of our solutions. We only receive data in aggregate and target marketing against anonymized data. This approach to privacy is intended to protect consumers. Our privacy and security standards have also been designed and implemented to meet the requirements and safeguard the reputations of our FI partners and marketers, many of which are large, multinational corporations. These customers frequently audit our practices and engage in detailed assessments of our infrastructure.

Despite the fact that we do not receive any PII from FIs, privacy and security are among our highest priorities and we commit significant resources to protecting the data that we receive. We have implemented, assess on an ongoing basis, and, when necessary, upgrade our physical, procedural and technical controls. We also take steps to impose compliance with these controls on our service providers via contract.

A cornerstone of our practices is transparency in data use and consumer choice. Our privacy policy outlines the types of data we collect and how we use it. Additionally, we maintain an “opt-out” alternative on our website for any consumer to utilize if they wish to be excluded from our targeting. Additionally, our FI partners maintain ‘opt-out” alternatives for any consumer wishing to opt out of Cardlytics Direct.

Outside of the United States, our privacy and data handling practices are subject to regulation by data protection authorities and other regulators in the countries in which we do business, which may be more restrictive than the requirements that we are subject to in the United States.

**Employees**

As of September 30, 2017, we had 337 full-time employees, including 62 in delivery, 157 in sales and marketing, 75 in research and development and 43 in general and administrative. None of our U.S. employees are covered by collective bargaining agreements. We believe our employee relations are good and we have not experienced any work stoppages.

**Facilities**

Our principal executive offices are located in Atlanta, Georgia where we occupy a facility of approximately 77,000 square feet. Our lease expires in April 2025. We have additional U.S. offices in Chicago, Illinois, New York City, New York and Oakland, California. We also have offices in London, United Kingdom.

**Legal Proceedings**

From time to time we may become involved in legal proceedings or be subject to claims arising in the ordinary course of our business. We are not presently a party to any legal proceedings that, if determined adversely to us, would individually or taken together have a material adverse effect on our business, operating results, financial condition or cash flows. Regardless of the outcome, litigation can have an adverse impact on us because of defense and settlement costs, diversion of management resources and other factors.

# MANAGEMENT

## Executive Officers and Directors

The following table sets forth information concerning our executive officers, key employees and directors as of January 10, 2018:

| Name | Age | Position(s) |
|---|---|---|
| ***Executive Officers*** | | |
| Scott D. Grimes | 55 | Chief Executive Officer, Co-Founder and Director |
| Lynne M. Laube | 48 | Chief Operating Officer, Co-Founder and Director |
| David T. Evans | 42 | Chief Financial Officer and Head of Corporate Development |
| Kirk L. Somers | 52 | Chief Legal & Privacy Officer |
| ***Key Employees*** | | |
| Dani Cushion | 40 | Chief Marketing Officer |
| Craig Snodgrass | 45 | Chief Data Officer |
| Peter Gleason | 49 | President of International Operations |
| James A. Tietz | 55 | Chief Revenue Officer |
| Sathish Gaddipati | 51 | Chief Technology Officer |
| Ronald P. Curtis | 55 | Vice President of Product Management |
| Megan McKean | 36 | Senior Vice President of Advertiser Services |
| ***Non-Employee Directors*** | | |
| David L. Adams | 61 | Director |
| John V. Balen | 57 | Chairman of the Board of Directors |
| Mark A. Johnson | 64 | Director |
| John Klinck | 54 | Director |
| Robert Legters(1) | 47 | Director |
| Tony Weisman | 57 | Director |
| Bryce Youngren | 46 | Director |

(1) Mr. Legters has advised us that he intends to resign from our board of directors contingent upon, and effective immediately prior, to the completion of this offering.

## Executive Officers

*Scott D. Grimes* has served as our Chief Executive Officer and as a member of our board of directors since our founding in June 2008. From 2005 to June 2008, Mr. Grimes was Senior Vice President and General Manager, Payments at Capital One Financial Corporation and, from 2003 to 2005, Mr. Grimes was Vice President, Strategy at Capital One Financial Corporation. From 2001 to 2003, Mr. Grimes was a Principal at Canaan Partners, a venture capital firm. Earlier in his career, Mr. Grimes was a Senior Vice President at FreeMarkets Inc., an e-sourcing company, and a Principal at McKinsey & Company, a management consulting firm. Mr. Grimes began his career at Schlumberger Limited as an electrical engineer. Since August 2014, Mr. Grimes has served as a director of Great Plains Energy Incorporated, a regulated electric utility, where he also serves on the governance and audit committees. Mr. Grimes holds a B.S. in Electrical Engineering from Union College and an M.B.A. from Stanford University. Our board of directors believes that Mr. Grimes's business expertise and his daily insight into corporate matters as our Chief Executive Officer qualify him to serve on our board of directors.

*Lynne M. Laube* has served as our Chief Operating Officer and as a member of our board of directors since our founding in June 2008. From 1995 to June 2008, Ms. Laube held various positions at Capital One, including as a Vice President. Ms. Laube started her career at Bank One Corporation, where she specialized in operations analysis. Ms. Laube holds a B.S. in Finance and Marketing from University of Cincinnati. Our board of directors believes that Ms. Laube's business expertise and her daily insight into corporate matters as our President and Chief Operating Officer qualify her to serve on our board of directors.

*David T. Evans* has served as our Chief Financial Officer and Head of Corporate Development since October 2016. From August 2014 to October 2016, Mr. Evans served as our Senior Vice President, Corporate

Development. From July 2009 to June 2014, Mr. Evans served as a Director in the Technology, Media and Telecom Investment Banking group at Wells Fargo Securities. Earlier in his career, Mr. Evans held positions at Wachovia Securities and Cowen Group. Mr. Evans holds a B.S. in Industrial Engineering from Auburn University and an M.B.A. from Emory University.

*Kirk L. Somers* has served as our Chief Legal and Privacy Officer since July 2014. From March 2013 to June 2014, Mr. Somers was General Counsel and Chief Administrative Officer at Think Geek Inc., an internet based retailer. From November 2001 to January 2013, Mr. Somers was Executive Vice President, Corporate Affairs for Concurrent Computer Corporation, a provider of video software, hardware and professional services. Earlier in his career, Mr. Somers was the Assistant General Counsel for Melita International Inc., a provider of integrated customer contact applications, and a Partner with the law firm of Marshall & Melhorn, LLC. Mr. Somers began his legal career as an attorney in the U.S. Air Force. Mr. Somers holds a B.A. in Physics from Cornell University and a J.D. from Ohio State University. Mr. Somers is a member of the U.S. patent bar.

**Key Employees**

*Dani Cushion* has served as our Chief Marketing Officer since May 2015. From May 2010 to May 2015, Ms. Cushion held various marketing positions at Millennial Media, Inc., a mobile advertising platform company, serving as Senior Vice President, Global Marketing and Communications from October 2014 to May 2015. From October 2005 to April 2010, Ms. Cushion held various marketing positions at Sirius XM Holdings Inc., a satellite radio company. Ms. Cushion began her career in sports marketing holding positions with Major League Soccer and Omnicom Group Inc. Ms. Cushion holds a B.S. in Marketing from Lehigh University.

*Craig Snodgrass* has served as our Chief Data Officer since 2014 and previously served as our Senior Vice President, Data and Network Analytics from 2010 to 2014. From 2000 to 2010, Mr. Snodgrass held a variety of roles at Capital One, including in marketing and operations. Mr. Snodgrass began his career as a chemical engineer at Honeywell International Inc., a multinational conglomerate. Mr. Snodgrass holds a B.S. in Chemical Engineering from Virginia Tech and an M.S. in Mathematics from Virginia Commonwealth University.

*Peter Gleason* has served as our President of International Operations since November 2016. From August 2007 to September 2016, Mr. Gleason was the Managing Director and President of Intelligent Shopper Solutions for Aimia, a data-driven marketing and loyalty analytics company. He was previously a Managing Director at dunnhumby, a customer marketing consultancy, and earlier in his career held various positions at Catalina Marketing, Kimberly-Clark, Mars Confectionery and Gillette. Mr. Gleason holds a Bachelor of Arts Honours Degree in Sports Science from Staffordshire University as well as a Postgraduate Diploma in Marketing Management.

*James A. Tietz* has served as our Chief Revenue Officer since September 2017 and our President of Advertising since May 2016. Previously, he served as our Executive Vice President of Advertiser Sales from March 2012 to May 2016. From December 2010 until March 2012, Mr. Tietz served as our Senior Vice President, Advertiser Sales. From 2001 to December 2010, Mr. Tietz held a variety of sales and management positions at Imagitas, Inc., a marketing services company. Earlier in his career, Mr. Tietz held positions at Catalina Marketing and Hormel Foods. Mr. Tietz holds a B.S. in Agricultural Business Management from the University of Wisconsin.

*Sathish Gaddipati* has served as our Chief Technology Officer since January 2018 and previously served as our Senior Vice President and Head of Technology from January 2017 to January 2018. From August 2015 to January 2017, Mr. Gaddipati was the Vice President of Data Products and Platform Engineering at Omnitracs. From September 2012 to August 2015, he worked as Vice President of Enterprise Data Services and Analytics at The Weather Channel. From May 2011 to September 2012, he served as Director of Enterprise Data and Business Intelligence at NCR Corporation. He previously held positions at The Walt Disney Company, InterContinental Hotels Group, and Sun Microsystems. Mr. Gaddipati holds an B.S. in Production Engineering from Punjab Engineering College and an M.S. in Industrial Management from the Indian Institute of Technology (IIT).

*Ronald P. Curtis* has served as our Vice President of Product Management since July 2017. From January 2014 to January 2017, Mr. Curtis served as Vice President of Product Management for Videa, LLC. From December 2007 to December 2014, Mr. Curtis performed Product Strategy and Project Management roles at Cox Communications, Inc. and Cox Media Group, LLC both as a consultant and later as an employee. From 1997 to 2007, Mr. Curtis co-founded and was active at the board of directors and operating level of start-ups in internet banking and wireless technology. Mr. Curtis began his career at Accenture PLC. Mr. Curtis holds a B.E. in Mechanical Engineering from Stevens Institute of Technology.

*Megan McKean* has served as our Senior Vice President of Advertiser Services since May 2016. Since joining Cardlytics in October 2012, she has held a variety of roles, including overseeing Advertiser Account Management, Analytics and Operations. From January 2005 to September 2012, Ms. McKean was at MSL Atlanta of Publicis Groupe SA. Ms. McKean began her career in public affairs and procurement at NASA's Johnson Space Center in Houston. Ms. McKean holds a B.S. in Marketing from Iowa State University.

**Non-Employee Directors**

*David L. Adams* has served as a member of our board of directors since September 2011. From 2007 until he retired in March 2016, Mr. Adams served as Executive Vice President and Chief Financial Officer of Aimia Inc., a TSX listed, data-driven marketing and loyalty analytics company. Before joining Aimia, Mr. Adams held a variety of executive finance positions at Photowatt Technologies Inc., SR Telecom Inc. and CAE Inc. Prior to these roles, he held a number of positions with the Bank of Nova Scotia and Ernst & Young. Mr. Adams serves as a director of Points International (TSX, NASDAQ), Club Premier (Aeromexico's frequent flyer program), Plan International Canada and is a member of the Board of Governors of the Stratford Festival. Mr. Adams is a member of the audit committee of all of these boards, chairs the HRCC at Plan and is a member of the HRCC at Club Premier. Mr. Adams is a chartered accountant in Canada and holds a B.Comm. in Commerce and Finance from the University of Toronto. Our board of directors believes that Mr. Adams' financial expertise and experience in the technology industry qualify him to serve on our board of directors.

*John V. Balen* has served as a member of our board of directors since August 2008 and as chairman of our board of directors since April 2017. Mr. Balen joined Canaan Partners, a venture capital firm in 1995 and is currently a Partner, where he focuses on the digital media, enterprise and financial technology sectors. Before joining Canaan Partners, Mr. Balen held a variety of operational and financial roles, including Managing Director of Horsley Bridge Partners, a private equity firm. Earlier in his career, Mr. Balen was an engineer at Codenoll Technology, a fiber communications company, and an engineer at Digital Equipment Corp. Mr. Balen serves as a director for a number of privately-held companies. Mr. Balen holds a B.S. in Electrical Engineering and an M.B.A. from Cornell University. Our board of directors believes that Mr. Balen's experience investing in technology businesses and his service on numerous private company boards qualify him to serve on our board of directors.

*Mark A. Johnson* has served as a member of our board of directors since October 2010. Mr. Johnson joined TTV Capital, a venture capital firm, as a General Partner in 2008. From 1982 to 2000 and from 2003 to 2008, Mr. Johnson held various positions at CheckFree Corporation, a provider of financial electronic commerce services and products, including director, Vice President of Operations and Vice Chairman. From 2000 to 2003, Mr. Johnson left CheckFree to form e-RM Ventures, a private investing consultancy focused on early stage payments-related companies, although he continued to serve as a director of CheckFree. Prior to joining CheckFree, Mr. Johnson worked for the Federal Reserve Bank and Bank One Corporation. Mr. Johnson serves as a director and on the audit committee of FleetCor Technologies, Inc., a public company, and serves as a director of a number of privately-held companies. He also is the former chairman of Venture Atlanta, a technology conference focused on connecting Georgia's entrepreneurs with the capital providers. Mr. Johnson holds a B.S. in Business from Miami University and an M.B.A. from Ohio State University. Our board of directors believes that Mr. Johnson's experience in financial e-commerce services and his service on numerous private company boards qualify him to serve on our board of directors.

*John ("Jack") Klinck* has served as a member of our board of directors since October 28, 2016. Mr. Klinck is currently an active angel and seed stage investor in FinTech oriented firms. From 2006 to April 2015, Mr. Klinck was Executive Vice President and Head of Global Strategy and New Ventures at State Street Corporation, where he served on that firm's management committee and ran several business lines including Alternative Investment Solutions, Credit Services, Global Exchange and Corporate Strategy. Before joining State Street, Mr. Klinck was Vice Chairman and President of the Investment Manager Solutions Group at Mellon Financial Corporation. Before joining Mellon in 1997, Mr. Klinck held various management positions at American Express. Mr. Klinck holds a B.A. from Middlebury College and an M.B.A from the Fuqua School of Business at Duke University. Our board of directors believes that Mr. Klinck's diverse management expertise and experience in the financial services industry qualify him to serve on our board of directors.

*Robert Legters* has served as a member of our board of directors since December 2015. Mr. Legters joined Fidelity National Information Services, Inc., a provider of banking and payments technology, as well as consulting and outsourcing solutions, in 2000 and has served as its Senior Vice President of Product since 2009. Our board of directors believes that Mr. Legters experience with banking technology and investing in technology businesses qualify him to serve on our board of directors.

*Tony Weisman* has served as a member of our board of directors since October 2014. Mr. Weisman has served as the Chief Marketing Officer of Dunkin' Donuts since September 2017. From 2007 until September 2017, Mr. Weisman served in senior executive positions at Digitas and as the Chief Executive Officer of Digitas North America from March 2013 until September 2017. From 2002 to 2006, Mr. Weisman was Chief Marketing Officer at DraftFCB/Chicago, an advertising agency. Prior to 2002, he held various management positions at advertising agency Leo Burnett. Mr. Weisman holds a B.A. in Political Science from Brown University. Our board of directors believes that Mr. Weisman's experience in the advertising industry qualifies him to serve on our board of directors.

*Bryce Youngren* has served as a member of our board of directors since August 2008. Mr. Youngren joined Polaris Partners, a venture capital firm, in 2002 and currently is a Managing Partner of the firm and co-leads the firm's technology investing team. Prior to joining Polaris, Mr. Youngren worked for Great Hill Partners and Willis Stein and Partners, two private equity firms, and for Bear Stearns & Co.'s technology investment banking group. Mr. Youngren serves as a director for a number of privately-held companies. Mr. Youngren holds a B.A in Economics from the University of Illinois at Urbana-Champaign and an M.B.A. from the University of Pennsylvania. Our board of directors believes that Mr. Youngren's experience investing in technology businesses and his service on numerous private and public company boards qualify him to serve on our board of directors.

**Family Relationships**

There are no family relationships among any of our executive officers or directors.

**Board Composition**

Our board of directors currently consists of nine members. Each director is currently elected to the board of directors for a one-year term, to serve until the election and qualification of a successor director at our annual meeting of stockholders, or until the director's earlier removal, resignation or death.

All of our directors currently serve on the board of directors pursuant to the voting provisions of a voting agreement between us and several of our stockholders. This agreement will terminate upon the completion of this offering, after which there will be no further contractual obligations regarding the election of our directors.

In accordance with our amended and restated certificate of incorporation, which will become effective immediately prior to completion of this offering, our board of directors will be divided into three classes with staggered three-year terms. At each annual meeting of stockholders, the successors to directors whose terms then

expire will be elected to serve from the time of election and qualification until the third annual meeting following election. Our directors will be divided among the three classes as follows:

- Class I, which will consist of Scott D. Grimes, Mark A. Johnson and David L. Adams, and whose term will expire at our first annual meeting of stockholders to be held after the completion of this offering;
- Class II, which will consist of Lynne M. Laube, John Klinck and Tony Weisman, and whose term will expire at our second annual meeting of stockholders to be held after the completion of this offering; and
- Class III, which will consist of John V. Balen and Bryce Youngren, and whose term will expire at our third annual meeting of stockholders to be held after the completion of this offering.

Our amended and restated bylaws, which will become effective upon the completion of this offering, will provide that the authorized number of directors may be changed only by resolution approved by a majority of our board of directors. Any additional directorships resulting from an increase in the number of directors will be distributed among the three classes so that, as nearly as possible, each class will consist of one-third of the directors.

The division of our board of directors into three classes with staggered three-year terms may delay or prevent a change of our management or a change in control.

**Director Independence**

Our board of directors has undertaken a review of the independence of the directors and considered whether any director has a material relationship with us that could compromise his or her ability to exercise independent judgment in carrying out his or her responsibilities. Based upon information requested from and provided by each director concerning such director's background, employment and affiliations, including family relationships, our board of directors determined that Messrs. Adams, Balen, Johnson, Youngren, Weisman and Klinck representing six of our eight directors following the completion of this offering, are "independent directors" as defined under current rules and regulations of the SEC and the listing standards of the Nasdaq Stock Market. In making these determinations, our board of directors considered the current and prior relationships that each non-employee director has with our company and all other facts and circumstances that our board of directors deemed relevant in determining their independence, including the beneficial ownership of our capital stock by each non-employee director and the transactions involving them described in "Certain Relationships and Related Party Transactions."

**Board Committees**

Our board of directors has established an audit committee, a compensation committee and a nominating and corporate governance committee, each of which has the composition and responsibilities described below. From time to time, our board of directors may establish other committees to facilitate the management of our business.

***Audit Committee***

Upon the completion of this offering, our audit committee will consist of three directors, Messrs. Adams, Klinck and Youngren. Our board of directors has determined that each of Messrs. Adams and Klinck satisfies the independence requirements for audit committee members under the listing standards of the Nasdaq Stock Market and Rule 10A-3 of the Securities Exchange Act of 1934, as amended, or the Exchange Act. Mr. Youngren is an "affiliated person" under Rule 10A-3 of the Exchange Act and therefore does not meet the independence criteria for audit committee membership pursuant to the listing standard of the NASDAQ Stock Market. However, we are permitted to phase-in our compliance with the independent audit committee requirements set forth in the rules of the NASDAQ Stock Market and the Exchange Act, as follows: (1) we must have one independent member at

the time of listing, (2) we must have a majority of independent members within 90 days of listing and (3) we must have all independent members within one year of listing. We expect that, within one year of our listing on the NASDAQ Stock Market, Mr. Youngren will either have (1) ceased to be an "affiliated person" under Rule 10A-3 of the Exchange Act or (2) resigned from our audit committee and an independent director for audit committee purposes (as determined under the listing standards of the NASDAQ Stock Market and Exchange Act rules) will have been added to our audit committee. Each member of our audit committee meets the financial literacy requirements of the listing standards of the Nasdaq Global Market. Mr. Adams is the chairman of the audit committee and our board of directors has determined that Mr. Adams is an audit committee "financial expert" as defined by Item 407(d) of Regulation S-K under the Securities Act. The principal duties and responsibilities of our audit committee include, among other things:

- selecting a qualified firm to serve as the independent registered public accounting firm to audit our financial statements;
- helping to ensure the independence and performance of the independent registered public accounting firm;
- discussing the scope and results of the audit with the independent registered public accounting firm, and reviewing, with management and the independent accountants, our interim and year-end operating results;
- developing procedures for employees to submit concerns anonymously about questionable accounting or audit matters;
- reviewing our policies on risk assessment and risk management;
- reviewing related party transactions;
- obtaining and reviewing a report by the independent registered public accounting firm at least annually, that describes our internal quality-control procedures, any material issues with such procedures, and any steps taken to deal with such issues when required by applicable law; and
- approving (or, as permitted, pre-approving) all audit and all permissible non-audit services, other than de minimis non-audit services, to be performed by the independent registered public accounting firm.

Our audit committee will operate under a written charter, to be effective immediately prior to the completion of this offering that satisfies the applicable rules of the SEC and the listing standards of the Nasdaq Stock Market.

***Compensation Committee***

Upon the completion of this offering, our compensation committee will consist of three directors, Messrs. Johnson, Balen and Weisman, each of whom our board of directors has determined is a non-employee member of our board of directors as defined in Rule 16b-3 under the Exchange Act and an outside director as that term is defined in Section 162(m) of the Internal Revenue Code of 1986, as amended, or the Code. Mr. Johnson is the chairman of the compensation committee. The composition of our compensation committee meets the requirements for independence under current listing standards of the Nasdaq Stock Market and current SEC rules and regulations. The principal duties and responsibilities of our compensation committee include, among other things:

- reviewing and approving, or recommending that our board of directors approve, the compensation of our executive officers, including evaluating the performance of our chief executive officer and, with his assistance, that of our other executive officers;

- reviewing and recommending to our board of directors the compensation of our directors;
- reviewing and approving, or recommending that our board of directors approve, the terms of compensatory arrangements with our executive officers;
- administering our equity and non-equity incentive plans;
- reviewing and approving, or recommending that our board of directors approve, incentive compensation and equity plans; and
- reviewing and establishing general policies relating to compensation and benefits of our employees and reviewing our overall compensation philosophy.

Our compensation committee will operate under a written charter, to be effective immediately prior to the completion of this offering, that satisfies the applicable rules of the SEC and the listing standards of the Nasdaq Stock Market.

***Nominating and Corporate Governance Committee***

Upon the completion of this offering, our nominating and corporate governance committee will consist of three directors, Messrs. Balen, Youngren and Adams. Mr. Balen will be the chairman of the nominating and corporate governance committee. The composition of our nominating and corporate governance committee meets the requirements for independence under current listing standards of the Nasdaq Stock Market and current SEC rules and regulations. The nominating and corporate governance committee's responsibilities include, among other things:

- identifying, evaluating and selecting, or recommending that our board of directors approve, nominees for election to our board of directors and its committees;
- evaluating the performance of our board of directors and of individual directors;
- considering and making recommendations to our board of directors regarding the composition of our board of directors and its committees;
- reviewing developments in corporate governance practices;
- evaluating the adequacy of our corporate governance practices and reporting;
- developing and making recommendations to our board of directors regarding corporate governance guidelines and matters; and
- overseeing an annual evaluation of the board's performance.

Our nominating and corporate governance committee will operate under a written charter, to be effective immediately prior to the completion of this offering, that satisfies the applicable rules of the SEC and the listing standards of the Nasdaq Stock Market.

**Code of Business Conduct and Ethics**

In connection with this offering, we intend to adopt a Code of Business Conduct and Ethics, or the Code of Conduct, applicable to all of our employees, executive officers and directors. Following the completion of this offering, the Code of Conduct will be available on our website at www.cardlytics.com. The nominating and

corporate governance committee of our board of directors will be responsible for overseeing the Code of Conduct and must approve any waivers of the Code of Conduct for employees, executive officers and directors. We expect that any amendments to the Code of Conduct, or any waivers of its requirements, will be disclosed on our website.

**Compensation Committee Interlocks and Insider Participation**

None of our executive officers currently serves, or in the past year has served, as a member of the board of directors or compensation committee of any entity that has one or more executive officers serving on our board of directors or compensation committee. None of the members of our compensation committee is an officer or employee of our company, nor have they ever been an officer or employee of our company.

**Non-Employee Director Compensation**

We provide cash and/or equity-based compensation to certain of our independent directors who are not employees or affiliated with our largest investors for the time and effort necessary to serve as a member of our board of directors. In addition, all of our independent directors are entitled to reimbursement of direct expenses incurred in connection with attending meetings of the board or committees thereof.

We expect that our board of directors will adopt a director compensation policy for non-employee directors to be effective upon the completion of this offering.

***2017 Director Compensation Table***

The following table sets forth information regarding the compensation earned for service on our board of directors during the year ended December 31, 2017 by our directors who were not also our employees. Scott D. Grimes, our Chief Executive Officer, and Lynne M. Laube, our Chief Operating Officer, are also members of our board of directors, but did not receive any additional compensation for service as a director. Mr. Grimes' and Ms. Laube's compensation as executive officers are set forth above under "Executive Compensation—2017 Summary Compensation Table."

| Name | Fees Earned or Paid in Cash | Option Awards(1)(2) | Total |
|---|---|---|---|
| David L. Adams | $ 140,000(3) | $ — | $ 140,000 |
| John V. Balen | — | — | — |
| Mark A. Johnson | — | — | — |
| Jack Klinck | — | — | — |
| Robert Legters | — | — | — |
| Bryce Youngren | — | — | — |
| Tony Weisman | — | — | — |

(1) This column reflects the aggregate grant date fair value for options granted during the fiscal year as computed in accordance with Financial Accounting Standard Board Accounting Standards Codification Topic 718 (ASC 718) as stock-based compensation in our consolidated financial statements. Unlike the calculations contained in our consolidated financial statements, this calculation does not give effect to any estimate of forfeitures related to service-based vesting, but assumes that directors will perform the requisite service for the award to vest in full. The assumptions we used in valuing options are described in note (6) to our consolidated financial statements included in this prospectus.

(2) The table below shows the aggregate number of option awards outstanding for each of our non-employee directors as of December 31, 2017:

| Name | Option Awards (#) |
|---|---|
| David L. Adams | 350,000(1) |
| John V. Balen | — |
| Mark A. Johnson | — |
| Jack Klinck | 100,000(2) |
| Robert Legters | — |
| Bryce Youngren | — |
| Tony Weisman | 100,000(3) |

(1) The shares of common stock underlying this option vest and become exercisable over a two-year period in 24 equal monthly installments beginning on June 15, 2016, subject to Mr. Adams' continued service through each vesting date.

(2) The shares of common stock underlying this option vest and become exercisable over a two-year period in 24 equal monthly installments beginning on November 17, 2016, subject to Mr. Klinck's continued service through each vesting date.

(3) The shares of common stock underlying this option vest and become exercisable over a two-year period in 24 equal monthly installments beginning on March 20, 2014, subject to Mr. Weisman's continued service through each vesting date.

(3) Mr. Adams receives $10,000 per quarter for his service as chairman of our audit committee and $25,000 per quarter for his service as chairman of our board of director's operating committee.

## EXECUTIVE COMPENSATION

### 2017 Summary Compensation Table

The following table sets forth information regarding compensation earned with respect to the years ended December 31, 2016 and 2017 by our principal executive officer and our next two mostly highly compensated executive officers in 2017, whom we refer to as our named executive officers for 2017.

| Name and Principal Position | Year | Salary | Stock Awards(1) | Option Awards(2) | Non-Equity Incentive Plan Compensation | All Other Compensation | Total |
|---|---|---|---|---|---|---|---|
| Scott D. Grimes(5) | 2017 | $ 300,000 | — | $ 653,842 | $ 178,231(3) | $ 24,324(6) | $ 1,156,398 |
| *Chief Executive Officer and Director* | 2016 | 305,769 | 119,812 | 435,850 | 22,688(4) | 18,325(6) | 902,444 |
| Lynne M. Laube(5) | 2017 | 280,000 | — | 653,842 | 166,349(3) | 21,268(6) | 1,121,460 |
| *Chief Operating Officer and Director* | 2016 | 286,154 | 111,824 | 435,850 | 21,176(4) | 11,784(6) | 866,788 |
| David T. Evans | 2017 | 300,000 | — | 435,895 | 178,231(3) | 73,135(6)(7) | 987,261 |
| *Chief Financial Officer* | 2016 | 260,376 | 99,574 | 1,342,848 | 21,176(4) | 26,831(6)(7) | 1,750,805 |

(1) This column reflects the aggregate face value of restricted securities units denominated as convertible promissory notes granted during the fiscal year. See “Certain Relationships and Related Party Transactions—Restricted Securities Units Awards” for a description of the material terms of the restricted securities units awards.

(2) This column reflects the aggregate grant date fair value of options granted during the fiscal year as computed in accordance with ASC 718 as stock-based compensation in our consolidated financial statements. Unlike the calculations contained in our consolidated financial statements, this calculation does not give effect to any estimate of forfeitures related to service-based vesting, but assumes that the named executive officer will perform the requisite service for the award to vest in full. The assumptions we used in valuing options are described in notes (2) and (6) to our consolidated financial statements included in this prospectus.

(3) See “— Employment Arrangements—2017 Bonus Plan” below for a description of the material terms of the plan pursuant to which this compensation was awarded.

(4) See “— Employment Arrangements—2016 Bonus Plan” below for a description of the material terms of the plan pursuant to which this compensation was awarded.

(5) Mr. Grimes and Ms. Laube did not receive any additional compensation in his or her capacity as a director.

(6) Reflects our 401(k) plan matching contributions and health insurance premiums paid by us.

(7) Reflects reimbursements for housing expenses.

### Outstanding Equity Awards as of December 31, 2017

The following table sets forth certain information about equity awards granted to our named executive officers that remain outstanding as of December 31, 2017.

| | | Option Awards(1) | | | | Stock Awards | |
|---|---|---|---|---|---|---|---|
| Name and Principal Position | Grant Date | Number of Securities Underlying Unexercised Options (#) Exercisable | Number of Securities Underlying Unexercised Options (#) Unexercisable | Option Exercise Price | Option Expiration Date | Number of Shares or Units of Stock That Have Not Vested (#) | Market Value of Shares or Units of Stock That Have Not Vested ($) |
| Scott D. Grimes | 7/19/2013 | 250,000 | — | $ 2.29(2) | 7/19/2018 | — | — |
| Chief Executive Officer & Director | 6/15/2016 | | | | | 4,734 | (6) |
| | 8/2/2016 | 73,937 | 123,229 | $ 5.00(3) | 8/2/2026 | — | — |
| | 8/4/2016 | | | | | 8,765 | (6) |
| | 10/28/2016 | | | | | 5,116 | (6) |
| | 7/7/2017 | — | 225,000 | $ 7.61(4) | 7/7/2027 | — | — |
| Lynne M. Laube | 7/19/2013 | 250,000 | — | $ 2.08(2) | 7/19/2023 | — | — |
| Chief Operating Officer & Director | 6/15/2016 | | | | | 4,419 | (6) |
| | 8/2/2016 | 73,937 | 123,229 | $ 5.00(3) | 8/2/2026 | — | — |
| | 8/4/2016 | | | | | 8,181 | (6) |
| | 10/28/2016 | | | | | 4,775 | (6) |
| | 7/7/2017 | — | 225,000 | $ 7.61(4) | 7/7/2027 | — | — |
| David T. Evans | 8/8/2014 | 108,333 | 21,667 | $ 2.27(5) | 8/8/2024 | — | — |
| Chief Financial Officer | 6/15/2016 | | | | | 2,485 | (6) |
| | 8/2/2016 | 150,000 | — | $ 5.00 | 8/2/2026 | — | — |
| | 8/4/2016 | | | | | 8,181 | (6) |
| | 10/28/2016 | | | | | 4,775 | (6) |
| | 7/7/2017 | — | 150,000 | $ 7.61(4) | 7/7/2027 | — | — |

(1) All of the option awards listed in the table above were granted under our 2008 Stock Plan, the terms of which are described below under "—Equity Incentive Plans."

(2) The shares of common stock underlying this option vested and became exercisable over a four-year period as to 25% of the common stock underlying the option on March 15, 2014 and as to 75% of the shares of common stock underlying the option in 36 equal monthly installments thereafter, subject to the recipient's continued service through each vesting date.

(3) The shares of common stock underlying this option vest and become exercisable over a four-year period as to 25% of the common stock underlying the option on June 15, 2017 and as to 75% of the shares of common stock underlying the option in 36 equal monthly installments thereafter, subject to the recipient's continued service through each vesting date.

(4) The shares of common stock underlying this option vest and become exercisable over a four-year period as to 25% of the common stock underlying the option on April 1, 2018 and as to 75% of the shares of common stock underlying the option in 36 equal monthly installments thereafter, subject to the recipient's continued service through each vesting date.

(5) The shares of common stock underlying this option vest and become exercisable over a four-year period as to 25% of the common stock underlying the option on August 8, 2015 and as to 75% of the shares of common stock underlying the option in 36 equal monthly installments thereafter, subject to the recipient's continued service through each vesting date.

(6) The amounts in this row reflect grants of restricted securities units, or the RSU Awards. The RSU Awards include a service-based vesting requirement that requires the named executive officer to remain employed by us and a liquidity event-based vesting requirement. The service-based vesting requirement and liquidity event-based vesting requirement will both be satisfied upon completion of this offering. The RSU Awards are denominated in shares of Series G' redeemable convertible preferred stock, which will convert into shares of common stock upon completion of this offering. The market value set forth above assumes an initial public offering price of $ per share, the midpoint of the price range set forth on the cover page of this prospectus. See "Certain Relationships and Related party Transactions—Restricted Securities Units Awards" for a description of the material terms of the RSU Awards.

See "—Potential Payments upon Termination or Change of Control" for a description of vesting acceleration applicable to stock options held by our named executive officers.

We may in the future, on an annual basis or otherwise, grant additional equity awards to our executive officers pursuant to our 2008 Stock Plan and/or 2018 Equity Incentive Plan, the terms of which are described below under "—Equity Incentive Plans."

**Employment Arrangements**

Each of our named executive officers' employment is "at will" and may be terminated at any time, subject to the executive's right to receive certain benefits and payments, as described below under "Potential Payments Upon Termination or Change of Control." We are not party to employment agreements or offer letter agreements with Scott D. Grimes, our Chief Executive Officer or Lynne M. Laube, our Chief Operating Officer. Mr. Grimes' and Ms. Laube's current annual base salaries are $300,000 and $280,000, respectively.

***Offer Letters with Our Named Executive Officers***

*David T. Evans.* We entered into an offer letter agreement with Mr. Evans effective June 11, 2014 for the position of Senior Vice President, Corporate Development. In October 2016, Mr. Evans began serving as our Chief Financial Officer and Head of Corporate Development. Mr. Evans currently receives a base salary of $300,000. Pursuant to his agreement, Mr. Evans was also entitled to a stock option grant as described under "—Outstanding Equity Awards as of December 31, 2017" above. Mr. Evans is also eligible to participate in our employee benefit plans, subject to the terms of those plans.

***2016 Bonus Plan***

In 2016, each of our executive officers was eligible to participate in our 2016 Annual Bonus Target Incentive Program, or 2016 Bonus Plan. The 2016 Bonus Plan was designed to motivate and reward executives for the attainment of company-wide performance goals. The annual cash targets for Messrs. Grimes and Evans and Ms. Laube were $198,750, $182,250 and $185,500, respectively. Each of our executive officers was eligible to receive more than 100% of his or her target bonus if our performance exceeded the target set forth in the 2016 Bonus Plan. The 2016 Bonus Plan cash targets were based on us achieving certain billings, revenue, adjusted contribution and adjusted EBITDA targets.

***2017 Bonus Plan***

In 2017, each of our executive officers was eligible to participate in our 2017 Annual Bonus Target Incentive Program, or 2017 Bonus Plan. The 2017 Bonus Plan was designed to motivate and reward executives for the attainment of company-wide performance goals. The annual cash targets for Messrs. Grimes and Evans and Ms. Laube were $225,000, $225,000 and $210,000, respectively. Each of our executive officers was eligible to receive more than 100% of his or her target bonus if our performance exceeded the target set forth in the 2017 Bonus Plan.

**Potential Payments upon Termination or Change of Control**

Regardless of the manner in which a named executive officer's service terminates, the named executive officer is entitled to receive amounts earned during his term of service, including salary and accrued vacation or PTO.

Messrs. Grimes and Evans and Ms. Laube are each party to a separation agreement with us. Pursuant to these agreements, if the executive resigns for certain good reasons or is terminated by us other than for cause, then, subject to the execution of a release and compliance with any post-termination obligations and covenants, the executive will receive (1) 12 months of then-current annual base salary, less applicable withholdings, paid in

installments over a period of 12 months, (2) a prorated portion of the executive's annual bonus, if any, based on the amount that would have been earned had the executive remained employed for the entire year, less applicable withholdings, paid on the same date that we pay all other such bonuses for the applicable year and (3) continued payment of COBRA premiums for a period of 12 months, subject to the executive's continued copayment of premiums, if permitted under the terms of the plan and applicable law.

In addition, if we undergo a change of control and Messrs. Grimes', Evans' or Ms. Laube's role, responsibilities or compensation are materially reduced or such individual is terminated without cause in connection with such change of control, unvested stock options held by such executive will vest.

**Equity Incentive Plans**

***2018 Equity Incentive Plan***

We expect that our board of directors will adopt and our stockholders will approve prior to the completion of this offering our 2018 Equity Incentive Plan, or 2018 Plan. We do not expect to utilize our 2018 Plan until after the completion of this offering, at which point no further grants will be made under our 2008 Stock Plan, or 2008 Plan, as described below under "2008 Stock Plan." No awards have been granted and no shares of our common stock have been issued under our 2018 Plan.

*Stock Awards.* The 2018 Plan provides for the grant of incentive stock options within the meaning of Section 422 of the Internal Revenue Code of 1986, as amended, or the Code, nonstatutory stock options, stock appreciation rights, restricted stock awards, restricted stock unit awards, performance-based stock awards, and other forms of equity compensation, which are collectively referred to as stock awards. Additionally, the 2018 Plan provides for the grant of performance cash awards. Incentive stock options may be granted only to employees. All other awards may be granted to employees, including officers, and to non-employee directors and consultants.

*Share Reserve.* Initially, the aggregate number of shares of our common stock that may be issued pursuant to stock awards under the 2018 Plan after the 2018 Plan becomes effective is the sum of (1) and (2) up to shares reserved, and remaining available for issuance, under our 2008 Plan at the time our 2018 Plan becomes effective. Additionally, any shares subject to stock options or other stock awards granted under our 2008 Plan that would have otherwise returned to our 2008 Plan (such as upon the expiration or termination of a stock award prior to vesting) will be added to, and available for issuance under, our 2018 Plan and the number of shares of our common stock reserved for issuance under our 2018 Plan will automatically increase on January 1 of each year, beginning on January 1, 2019 (assuming the 2018 Plan becomes effective before such date) and continuing through and including January 1, 2028, by % of the total number of shares of our capital stock outstanding on December 31 of the preceding calendar year, or a lesser number of shares determined by our board of directors. The maximum number of shares that may be issued upon the exercise of incentive stock options under our 2018 Plan is shares.

No person may be granted stock awards covering more than shares of our common stock under our 2018 Plan during any calendar year pursuant to stock options, stock appreciation rights and other stock awards whose value is determined by reference to an increase over an exercise or strike price of at least 100% of the fair market value on the date the stock award is granted. Additionally, no person may be granted in a calendar year a performance stock award covering more than shares or a performance cash award having a maximum value in excess of $ . Such limitations are designed to help ensure that any deductions to which we would otherwise be entitled with respect to such awards will not be subject to the $1,000,000 limitation on the income tax deductibility of compensation paid to any covered executive officer imposed by Section 162(m) of the Code.

If a stock award granted under the 2018 Plan expires or otherwise terminates without being exercised in full, or is settled in cash, the shares of our common stock not acquired pursuant to the stock award again will become

available for subsequent issuance under the 2018 Plan. In addition, the following types of shares under the 2018 Plan may become available for the grant of new stock awards under the 2018 Plan: (1) shares that are forfeited to or repurchased by us prior to becoming fully vested; (2) shares withheld to satisfy income or employment withholding taxes; or (3) shares used to pay the exercise or purchase price of a stock award. Shares issued under the 2018 Plan may be previously unissued shares or reacquired shares bought by us on the open market.

*Administration.* Our board of directors, or a duly authorized committee thereof, has the authority to administer the 2018 Plan. Our board of directors may also delegate to one or more of our officers the authority to (1) designate employees (other than other officers) to be recipients of certain stock awards, (2) determine the number of shares of common stock to be subject to such stock awards and (3) specify the other terms and conditions, including the strike price or purchase price and vesting schedule, applicable to such awards. Subject to the terms of the 2018 Plan, our board of directors or the authorized committee, referred to as the plan administrator, determines recipients, dates of grant, the numbers and types of stock awards to be granted and the terms and conditions of the stock awards, including the period of their exercisability and vesting schedule applicable to a stock award. Subject to the limitations set forth below, the plan administrator will also determine the exercise price, strike price or purchase price of awards granted and the types of consideration to be paid for the award.

The plan administrator has the authority to modify outstanding awards under our 2018 Plan. Subject to the terms of our 2018 Plan, the plan administrator has the authority, without stockholder approval, to reduce the exercise, purchase or strike price of any outstanding stock award, cancel any outstanding stock award in exchange for new stock awards, cash or other consideration, or take any other action that is treated as a repricing under generally accepted accounting principles, with the consent of any adversely affected participant.

*Stock Options.* Incentive and nonstatutory stock options are evidenced by stock option agreements adopted by the plan administrator. The plan administrator determines the exercise price for a stock option, within the terms and conditions of the 2018 Plan, provided that the exercise price of a stock option generally cannot be less than 100% of the fair market value of our common stock on the date of grant. Options granted under the 2018 Plan vest at the rate specified by the plan administrator.

The plan administrator determines the term of stock options granted under the 2018 Plan, up to a maximum of ten years. Unless the terms of an option holder's stock option agreement provide otherwise, if an option holder's service relationship with us, or any of our affiliates, ceases for any reason other than disability, death or cause, the option holder may generally exercise any vested options for a period of three months following the cessation of service. The option term will automatically be extended in the event that exercise of the option following such a termination of service is prohibited by applicable securities laws or our insider trading policy. If an option holder's service relationship with us or any of our affiliates ceases due to disability or death, or an option holder dies within a certain period following cessation of service, the option holder or a beneficiary may generally exercise any vested options for a period of 12 months in the event of disability and 18 months in the event of death. In the event of a termination for cause, options generally terminate immediately. In no event may an option be exercised beyond the expiration of its term.

Acceptable consideration for the purchase of common stock issued upon the exercise of a stock option will be determined by the plan administrator and may include (1) cash, check, bank draft or money order, (2) a broker-assisted cashless exercise, (3) the tender of shares of our common stock previously owned by the option holder, (4) a net exercise of the option if it is an nonqualified stock option and (5) other legal consideration approved by the plan administrator.

Unless the plan administrator provides otherwise, options generally are not transferable except by will, the laws of descent and distribution, or pursuant to a domestic relations order. An option holder may designate a beneficiary, however, who may exercise the option following the option holder's death.

*Tax Limitations on Incentive Stock Options.* The aggregate fair market value, determined at the time of grant, of our common stock with respect to incentive stock options that are exercisable for the first time by an option holder during any calendar year under all of our stock plans may not exceed $100,000. Options or portions thereof that exceed such limit will be treated as nonqualified stock options. No incentive stock option may be granted to any person who, at the time of the grant, owns or is deemed to own stock possessing more than 10% of our total combined voting power or that of any of our affiliates unless (1) the option exercise price is at least 110% of the fair market value of the stock subject to the option on the date of grant and (2) the term of the incentive stock option does not exceed five years from the date of grant.

*Restricted Stock Awards.* Restricted stock awards are evidenced by restricted stock award agreements adopted by the plan administrator. Restricted stock awards may be granted in consideration for (1) cash, check, bank draft or money order, (2) services rendered to us or our affiliates or (3) any other form of legal consideration. Common stock acquired under a restricted stock award may, but need not, be subject to a share repurchase option in our favor in accordance with a vesting schedule as determined by the plan administrator. Rights to acquire shares under a restricted stock award may be transferred only upon such terms and conditions as set by the plan administrator. Except as otherwise provided in the applicable award agreement, restricted stock unit awards that have not vested will be forfeited upon the participant's cessation of continuous service for any reason.

*Restricted Stock Unit Awards.* Restricted stock unit awards evidenced by restricted stock unit award agreements adopted by the plan administrator. Restricted stock unit awards may be granted in consideration for any form of legal consideration or for no consideration. A restricted stock unit award may be settled by cash, delivery of stock, a combination of cash and stock as deemed appropriate by the plan administrator, or in any other form of consideration set forth in the restricted stock unit award agreement. Additionally, dividend equivalents may be credited in respect of shares covered by a restricted stock unit award. Rights under a restricted stock units award may be transferred only upon such terms and conditions as set by the plan administrator. Restricted stock unit awards may be subject to vesting as determined by the plan administrator. Except as otherwise provided in the applicable award agreement, restricted stock units that have not vested will be forfeited upon the participant's cessation of continuous service for any reason.

*Stock Appreciation Rights.* Stock appreciation rights are evidenced by stock appreciation grant agreements adopted by the plan administrator. The plan administrator determines the strike price for a stock appreciation right, which generally cannot be less than 100% of the fair market value of our common stock on the date of grant. Upon the exercise of a stock appreciation right, we will pay the participant an amount in cash or stock equal to (1) the excess of the per share fair market value of our common stock on the date of exercise over the strike price, multiplied by (2) the number of shares of common stock with respect to which the stock appreciation right is exercised. A stock appreciation right granted under the 2018 Plan vests at the rate specified in the stock appreciation right agreement as determined by the plan administrator.

The plan administrator determines the term of stock appreciation rights granted under the 2018 Plan, up to a maximum of ten years. Unless the terms of a participant's stock appreciation right agreement provides otherwise, if a participant's service relationship with us or any of our affiliates ceases for any reason other than cause, disability or death, the participant may generally exercise any vested stock appreciation right for a period of three months following the cessation of service. The stock appreciation right term will be further extended in the event that exercise of the stock appreciation right following such a termination of service is prohibited by applicable securities laws. If a participant's service relationship with us, or any of our affiliates, ceases due to disability or death, or a participant dies within a certain period following cessation of service, the participant or a beneficiary may generally exercise any vested stock appreciation right for a period of 12 months in the event of disability and 18 months in the event of death. In the event of a termination for cause, stock appreciation rights generally terminate immediately upon the occurrence of the event giving rise to the termination of the individual for cause. In no event may a stock appreciation right be exercised beyond the expiration of its term.

Unless the plan administrator provides otherwise, stock appreciation rights generally are not transferable except by will, the laws of descent and distribution, or pursuant to a domestic relations order. A stock appreciation right holder may designate a beneficiary, however, who may exercise the stock appreciation right following the holder's death.

*Performance Awards.* The 2018 Plan permits the grant of performance-based stock and cash awards that may qualify as performance-based compensation that is not subject to the $1,000,000 limitation on the income tax deductibility of compensation paid to a covered executive officer imposed by Section 162(m) of the Code. To help assure that the compensation attributable to certain types of performance-based awards will so qualify, our compensation committee can structure such awards so that stock or cash will be issued or paid pursuant to such award only after the achievement of certain pre-established performance goals during a designated performance period.

The performance goals that may be selected include one or more of the following: (1) earnings (including earnings per share and net earnings); (2) earnings before interest, taxes and depreciation; (3) earnings before interest, taxes, depreciation and amortization; (4) total stockholder return; (5) return on equity or average stockholders' equity; (6) return on assets, investment, or capital employed; (7) stock price; (8) margin (including gross margin); (9) income (before or after taxes); (10) operating income; (11) operating income after taxes; (12) pre-tax profit; (13) operating cash flow; (14) sales or revenue targets; (15) increases in revenue or product revenue; (16) expenses and cost reduction goals; (17) improvement in or attainment of working capital levels; (18) economic value added (or an equivalent metric); (19) market share; (20) cash flow; (21) cash flow per share; (22) share price performance; (23) debt reduction; (24) implementation or completion of projects or processes; (25) subscriber satisfaction; (26) stockholders' equity; (27) capital expenditures; (28) debt levels; (29) operating profit or net operating profit; (30) workforce diversity; (31) growth of net income or operating income; (32) billings; and (33) to the extent that an award is not intended to comply with Section 162(m) of the Code, other measures of performance selected by our board of directors.

The performance goals may be based on company-wide performance or performance of one or more business units, divisions, affiliates, or business segments, and may be either absolute or relative to the performance of one or more comparable companies or the performance of one or more relevant indices. Unless specified otherwise (1) in the award agreement at the time the award is granted or (2) in such other document setting forth the performance goals at the time the goals are established, we will appropriately make adjustments in the method of calculating the attainment of performance goals as follows: (a) to exclude restructuring and/or certain other specified nonrecurring charges; (b) to exclude exchange rate effects, as applicable, for non-U.S. dollar denominated goals; (c) to exclude the effects of changes to generally accepted accounting principles; (d) to exclude the effects of any statutory adjustments to corporate tax rates; and (e) to exclude the effects of any "extraordinary items" as determined under generally accepted accounting principles. In addition, we retain the discretion to reduce or eliminate the compensation or economic benefit due upon attainment of the goals. The performance goals may differ from participant to participant and from award to award.

*Other Stock Awards.* The plan administrator may grant other awards based in whole or in part by reference to our common stock. The plan administrator will set the number of shares under the stock award and all other terms and conditions of such awards.

*Changes to Capital Structure.* In the event that there is a specified type of change in our capital structure, such as a stock split or recapitalization, appropriate adjustments will be made to (1) the class and maximum number of shares reserved for issuance under the 2018 Plan, (2) the class and maximum number of shares by which the share reserve may increase automatically each year, (3) the class and maximum number of shares that may be issued upon the exercise of incentive stock options, (4) the class and maximum number of shares subject to stock awards that can be granted in a calendar year or as performance stock awards (as established under the 2018 Plan pursuant to Section 162(m) of the Code) and (5) the class and number of shares and exercise price, strike price, or purchase price, if applicable, of all outstanding stock awards.

*Corporate Transactions.* In the event of certain specified significant corporate transactions, the plan administrator has the discretion to take any of the following actions with respect to stock awards:

- arrange for the assumption, continuation or substitution of a stock award by a surviving or acquiring entity or parent company;
- arrange for the assignment of any reacquisition or repurchase rights held by us to the surviving or acquiring entity or parent company;
- accelerate the vesting of the stock award and provide for its termination prior to the effective time of the corporate transaction;
- arrange for the lapse of any reacquisition or repurchase right held by us;
- cancel or arrange for the cancellation of the stock award in exchange for such cash consideration, if any, as our board of directors may deem appropriate or for no consideration; or
- make a payment equal to the excess of (1) the value of the property the participant would have received upon exercise of the stock award over (2) the exercise price or strike price otherwise payable in connection with the stock award.

Our plan administrator is not obligated to treat all stock awards, even those that are of the same type, in the same manner.

Under the 2018 Plan, a significant corporate transaction is generally the consummation of (1) a sale or other disposition of all or substantially all of our consolidated assets, (2) a sale or other disposition of at least 50% of our outstanding securities, (3) a merger, consolidation or similar transaction following which we are not the surviving corporation or (4) a merger, consolidation or similar transaction following which we are the surviving corporation but the shares of our common stock outstanding immediately prior to such transaction are converted or exchanged into other property by virtue of the transaction.

*Change in Control.* The plan administrator may provide, in an individual award agreement or in any other written agreement between a participant and us that the stock award will be subject to additional acceleration of vesting and exercisability or settlement in the event of a change in control. Under the 2018 Plan, a change in control is generally (1) the acquisition by a person or entity of more than 50% of our combined voting power other than by merger, consolidation or similar transaction, (2) a consummated merger, consolidation or similar transaction immediately after which our stockholders cease to own more than 50% of the combined voting power of the surviving entity or (3) a consummated sale, lease or exclusive license or other disposition of all or substantially all of our consolidated assets.

*Amendment and Termination.* Our board of directors has the authority to amend, suspend, or terminate our 2018 Plan, provided that such action does not materially impair the existing rights of any participant without such participant's written consent and provided further that certain types of amendments will require the approval of our stockholders. No incentive stock options may be granted after the tenth anniversary of the date our board of directors adopts our 2018 Plan.

***2008 Stock Plan***

Our 2008 Stock Plan, or 2008 Plan, was initially adopted by our board of directors and approved by our stockholders on July 2, 2008 and was last amended by our board of directors and approved by our stockholders on May 4, 2017. As of September 30, 2017, 2,661,115 shares of our common stock have been issued pursuant to the exercise of options granted under our 2008 Plan, options to purchase 10,130,793 shares of our common stock

were outstanding at a weighted-average exercise price of $4.61 per share, no shares of our common stock have been issued pursuant to rights to acquire restricted stock and 1,188,092 shares remained available for future grant under our 2008 Plan. Following this offering, no further grants will be made under our 2008 Plan but all outstanding stock awards granted under our 2008 Plan will continue to be governed by the terms of our 2008 Plan.

*Stock Awards*. Our 2008 Plan provides for the grant of incentive stock options, nonqualified stock options and rights to acquire restricted stock, referred to collectively as stock awards, to employees, non-employee directors and consultants providing services to us or our affiliates.

*Share Reserve*. The aggregate number of shares of our common stock reserved for issuance pursuant to stock awards under the 2008 Plan is 13,980,000 shares, subject to adjustment as provided in the 2008 Plan.

*Changes to Capital Structure*. In the event that there is a specified type of change in our capital structure, such as a stock split or recapitalization, appropriate adjustments may be made to (1) the class and number of shares available for future grants under the 2008 Plan and (2) the class and number of shares covered by; the exercise or purchase price of, each outstanding stock award; and the repurchase price applicable to any stock award.

*Administration*. Our board of directors, or a duly authorized committee thereof, each referred to as the plan administrator, has the authority to administer the 2008 Plan. Subject to the terms of the 2008 Plan, the plan administrator may determine recipients, dates of grant, the numbers and types of stock awards to be granted and the terms and conditions of the stock awards, including the period of their exercisability and vesting schedule applicable to a stock award. Subject to the terms of the 2008 Plan, the plan administrator has full authority and discretion to interpret the 2008 Plan and to prescribe and rescind rules and regulations related to it. Our board of directors may amend, terminate or discontinue the 2008 Plan at any time. The board of directors may also delegate authority to one of our officers to designate certain non-officer employees to receive stock awards and to determine the number of shares subject to those awards, subject to limits imposed by the board of directors.

*Corporate Transactions*. In the event of a sale of all or substantially all of the company's assets, or a merger, consolidation or other capital reorganization or business combination transaction of the company with or into another corporation, entity or person, which we refer to as a Corporate Transaction, the plan administrator has the discretion to provide for the assumption of stock awards, the issuance of comparable securities under an incentive program, or, in the case of options, settlement in cash or other property to the extent that the options are vested and have an exercise price less than the price paid per share in the applicable Corporate Transaction. Notwithstanding the foregoing, in the event that the successor corporation does not agree to such assumption, substitution or exchange of options, options shall terminate upon the consummation of such Corporate Transaction.

*Amendment and Termination*. As noted above, in connection with this offering, our 2008 Plan will be terminated and no further stock awards will be granted thereunder. All outstanding stock awards under the 2008 Plan will continue to be governed by their existing terms.

**2018 Employee Stock Purchase Plan**

We expect that our board will adopt and our stockholders will approve prior to the closing of this offering our 2018 Employee Stock Purchase Plan, or our 2018 ESPP. We do not expect to grant purchase rights under our 2018 ESPP until after the closing of this offering.

*Share Reserve*. The maximum number of shares of our common stock that may be issued under our 2018 ESPP is shares. Additionally, the number of shares of our common stock reserved for issuance under our 2018 ESPP will automatically increase on January 1 of each year, beginning on January 1, 2019 (assuming the 2018 ESPP becomes effective before such date) and continuing through and including January 1, 2026, by the lesser of

(1) % of the total number of shares of our common stock outstanding on December 31 of the preceding calendar year, (2) shares of our common stock or (3) such lesser number of shares of common stock as determined by our board of directors. Shares subject to purchase rights granted under our 2018 ESPP that terminate without having been exercised in full will not reduce the number of shares available for issuance under our 2018 ESPP.

*Administration*. Our board of directors, or a duly authorized committee thereof, will administer our 2018 ESPP. Our board of directors has delegated its authority to administer our 2018 ESPP to our compensation committee under the terms of the compensation committee's charter.

*Limitations*. Our employees, including executive officers, and the employees of any of our designated affiliates will be eligible to participate in our 2018 ESPP, provided they may have to satisfy one or more of the following service requirements before participating in our 2018 ESPP, as determined by the administrator: (1) customary employment with us or one of our affiliates for more than 20 hours per week and five or more months per calendar year or (2) continuous employment with us or one of our affiliates for a minimum period of time, not to exceed two years, prior to the first date of an offering. An employee may not be granted rights to purchase stock under our 2018 ESPP (a) if such employee immediately after the grant would own stock possessing 5% or more of the total combined voting power or value of all classes of our common stock or (b) to the extent that such rights would accrue at a rate that exceeds $25,000 worth of our stock for each calendar year that the rights remain outstanding.

Our 2018 ESPP is intended to qualify as an employee stock purchase plan under Section 423 of the Code. The administrator may specify offerings with a duration of not more than 27 months, and may specify one or more shorter purchase periods within each offering. Each offering will have one or more purchase dates on which shares of our common stock will be purchased for the employees who are participating in the offering. The administrator, in its discretion, will determine the terms of offerings under our 2018 ESPP.

A participant may not transfer purchase rights under our 2018 ESPP other than by will, the laws of descent and distribution or as otherwise provided under our 2018 ESPP.

*Payroll Deductions*. Our 2018 ESPP permits participants to purchase shares of our common stock through payroll deductions up to 15% of their earnings. Unless otherwise determined by the administrator, the purchase price of the shares will be 85% of the lower of the fair market value of our common stock on the first day of an offering or on the date of purchase. Participants may end their participation at any time during an offering and will be paid their accrued contributions that have not yet been used to purchase shares. Participation ends automatically upon termination of employment with us.

*Corporate Transactions*. In the event of certain specified significant corporate transactions, such as a merger or change in control, a successor corporation may assume, continue or substitute each outstanding purchase right. If the successor corporation does not assume, continue or substitute for the outstanding purchase rights, the offering in progress will be shortened and a new exercise date will be set. The participants' purchase rights will be exercised on the new exercise date and such purchase rights will terminate immediately thereafter.

*Amendment and Termination*. Our board of directors has the authority to amend, suspend or terminate our 2018 ESPP, at any time and for any reason, provided certain types of amendments will require the approval of our stockholders. Our 2018 ESPP will remain in effect until terminated by our board of directors in accordance with the terms of our 2018 ESPP.

**401(k) Plan**

We maintain a defined contribution retirement plan that provides eligible U.S. employees with an opportunity to save for retirement on a tax advantaged basis. Eligible employees may defer eligible compensation on a pre-tax basis, up to the statutorily prescribed annual limits on contributions under the Internal Revenue Code of 1986, as

amended. Contributions are allocated to each participant's individual account and are then invested in selected investment alternatives according to such participant's directions. Employees are immediately and fully vested in their contributions. The 401(k) plan is intended to be qualified under Section 401(a) of the Code with the 401(k) plan's related trust intended to be tax exempt under Section 501(a) of the Code. As a tax-qualified retirement plan, contributions to the 401(k) plan and earnings on those contributions are not taxable to the employees until distributed from the 401(k) plan.

**Limitations on Liability and Indemnification Matters**

Upon the completion of this offering, our amended and restated certificate of incorporation will contain provisions that limit the liability of our current and former directors for monetary damages to the fullest extent permitted by Delaware law. Delaware law provides that directors of a corporation will not be personally liable for monetary damages for any breach of fiduciary duties as directors, except liability for:

- any breach of the director's duty of loyalty to the corporation or its stockholders;
- any act or omission not in good faith or that involves intentional misconduct or a knowing violation of law;
- unlawful payments of dividends or unlawful stock repurchases or redemptions as provided in Section 174 of the Delaware General Corporation Law; or
- any transaction from which the director derived an improper personal benefit.

This limitation of liability does not apply to liabilities arising under federal securities laws and does not affect the availability of equitable remedies such as injunctive relief or rescission.

Our amended and restated certificate of incorporation and our amended and restated bylaws to be in effect upon the completion of this offering will provide that we are required to indemnify our directors to the fullest extent permitted by Delaware law. Our amended and restated bylaws will also provide that, upon satisfaction of certain conditions, we are required to advance expenses incurred by a director in advance of the final disposition of any action or proceeding, and permit us to secure insurance on behalf of any officer, director, employee or other agent for any liability arising out of his or her actions in that capacity regardless of whether we would otherwise be permitted to indemnify him or her under the provisions of Delaware law. Our amended and restated bylaws will also provide our board of directors with discretion to indemnify our officers and employees when determined appropriate by our board of directors. We have entered and expect to continue to enter into agreements to indemnify our directors, executive officers and other employees as determined by the board of directors. With certain exceptions, these agreements provide for indemnification for related expenses including, among other things, attorneys' fees, judgments, fines and settlement amounts incurred by any of these individuals in any action or proceeding. We believe that these provisions and agreements are necessary to attract and retain qualified persons as directors and officers. We also maintain customary directors' and officers' liability insurance.

The limitation of liability and indemnification provisions in our amended and restated certificate of incorporation and amended and restated bylaws to be in effect upon the completion of this offering may discourage stockholders from bringing a lawsuit against our directors for breach of their fiduciary duty. They may also reduce the likelihood of derivative litigation against our directors and officers, even though an action, if successful, might benefit us and other stockholders. Further, a stockholder's investment may be adversely affected to the extent that we pay the costs of settlement and damage awards against directors and officers as required by these indemnification provisions. At present, there is no pending litigation or proceeding involving any of our directors, officers or employees for which indemnification is sought and we are not aware of any threatened litigation that may result in claims for indemnification.

**Rule 10b5-1 Sales Plans**

Our directors and executive officers may adopt written plans, known as Rule 10b5-1 plans, in which they will contract with a broker to buy or sell shares of our common stock on a periodic basis. Under a Rule 10b5-1 plan, a broker executes trades pursuant to parameters established by the director or executive officer when entering into the plan, without further direction from them. The director or executive officer may amend a Rule 10b5-1 plan in some circumstances and may terminate a plan at any time. Our directors and executive officers also may buy or sell additional shares outside of a Rule 10b5-1 plan when they are not in possession of material nonpublic information subject to compliance with the terms of our insider trading policy. Prior to 180 days after the date of this offering, subject to early termination, the sale of any shares under such plan would be subject to the lock-up agreement that the director or executive officer has entered into with the underwriters.

## CERTAIN RELATIONSHIPS AND RELATED PARTY TRANSACTIONS

The following is a summary of transactions since January 1, 2014 to which we have been a participant in which the amount involved exceeded or will exceed $120,000, and in which any of our then directors, executive officers or holders of more than 5% of any class of our capital stock at the time of such transaction, or any members of their immediate family, had or will have a direct or indirect material interest, other than compensation arrangements which are described in "Executive Compensation" and "Management—Non-Employee Director Compensation."

### Series G Preferred Stock and Warrant Financing

In May 2017, we sold an aggregate of 1,385,358 shares of our Series G redeemable convertible preferred stock at a price of $8.61895 per share for aggregate gross proceeds of approximately $11.9 million. In connection with the issuance of our Series G redeemable convertible preferred stock, (1) the principal and accrued interest under the Existing Stockholder Notes described below under the heading "—Unsecured Convertible Promissory Note Financing" converted into an aggregate of 5,183,015 shares of our Series G' redeemable convertible preferred stock, (2) the principal and accrued interest under the Aimia EMEA Notes described below under the heading "—Agreements with Aimia Inc. and Affiliated Entities" converted into an aggregate of 3,205,318 shares of our common stock and (3) we issued warrants to purchase an aggregate number of shares of our common stock equal to the product obtained by multiplying 1,385,358 by a fraction, the numerator of which is the difference between $17.2379 and the volume weighted average closing price of our common stock over the 30 trading days (or such lesser number of days as our common stock has been traded on the Nasdaq Global Market) prior to the date on which such warrants become exercisable and the denominator of which is such volume weighted average closing price, which warrants are exercisable upon the earlier to occur of the date (i) 180 days following the date of this prospectus and (ii) 10 days prior to a sale of our company. The following table summarizes the participation in the foregoing transactions by our directors, executive officers and holders of more than 5% of any class of our capital stock as of the date of such transactions:

| Related Party | Shares of Series G Preferred Stock | Shares of Series G' Preferred Stock | Shares of Common Stock | Warrants to Purchase Common Stock |
|---|---|---|---|---|
| Entities affiliated with Aimia, Inc.(1) | — | 1,528,912 | 3,205,318 | — |
| Entities affiliated with Polaris Venture Partners(2) | 116,023 | 849,879 | — | (6) |
| Canaan VIII L.P.(3) | 214,643 | 1,040,389 | — | (6) |
| Entities affiliated with Discovery Capital(4) | — | 425,379 | — | — |
| Scott D. Grimes | — | 103,876 | — | — |
| Lynne M. Laube | — | 55,933 | — | — |
| Entities affiliated with Mark A. Johnson(5) | 139,228 | 60,182 | — | (6) |
| John Klinck. | 23,205 | — | — | (6) |
| David Adams | 11,602 | — | — | (6) |

(1) Consists of 636,829 shares of Series G' redeemable convertible preferred stock issued to Aeroplan Holdings Europe Sàrl, 892,083 shares of Series G' redeemable convertible preferred stock issued to Aimia EMEA Limited and 3,205,318 shares of common stock issued to Aimia EMEA Limited.

(2) Consists of 111,954 shares of Series G redeemable convertible preferred stock purchased by Polaris Venture Partners V, L.P. ("PVP V"), 820,080 shares of Series G' redeemable convertible preferred stock issued to PVP V, 2,182 shares of Series G redeemable convertible preferred stock purchased by Polaris Venture Partners Entrepreneurs' Fund V, L.L. ("PVP EF V"), 15,983 shares of Series G' redeemable convertible preferred stock issued to PVP EF V, 767 shares of Series G redeemable convertible preferred stock purchased by Polaris Venture Partners Founders' Fund V, L.P. ("PVP FF V"), 5,616 shares of Series G' redeemable convertible preferred stock issued to PVP FF V, 1,120 shares of Series G redeemable convertible preferred stock purchased by Polaris Venture Partners Special Founders' Fund V, L.P. ("PVP SFF V") and 8,200 shares of Series G' redeemable convertible preferred stock issued to PVP SFF V. Polaris Venture Management Co. V, L.L.C. is a general partner of each of PVP V, PVP EF V, PVP FF V and PVP SFF V and may be deemed to have the sole voting and dispositive power over the shares held by PVP V, PVP EF V, PVP FF V and PVP SFF V. Bryce Youngren, a member of our board of directors, is a Managing Partner of Polaris Partners and may be deemed to share voting and dispositive power over the shares held by PVP V, PVP EF V, PVP FF V and PVP SFF V.

(3) John V. Balen, a member of our board of directors, is a managing member of Canaan Partners VIII LLC, the general partner of Canaan VIII L.P. Mr. Balen does not have voting or investment power over any shares held directly by Canaan VIII L.P.

(4) Consists of 381,091 shares of Series G' redeemable convertible preferred stock issued to Discovery Opportunity Master Fund, Ltd. and 44,288 shares of Series G' redeemable convertible preferred stock issued to Discovery Global Focus Master Fund, Ltd.

(5) Consists of 60,182 shares of Series G' redeemable convertible preferred stock issued to TTP Fund II, L.P., 116,023 shares of Series G redeemable convertible preferred stock purchased by TTV Ivy Holdings, LLC and 23,205 shares of Series G redeemable convertible preferred stock purchased by Mr. Johnson. TTV Capital is a provider of management services to TTP GP II, LLC, which is a general partner of TTP Fund II, L.P. TTV Capital is the manager of TTV Ivy Holdings Manager, LLC, which is the general partner of TTV Ivy Holdings, LLC. Mark A. Johnson, a member of our board of directors, is a member of each of TTP GP II, LLC and TTV Ivy Holdings Managers, LLC and holds the title of partner of TTV Capital, and may be deemed to share voting and dispositive power over the shares held by TTP Fund II L.P. and TTV Ivy Holdings, LLC.

(6) The maximum number of shares issuable to each investor upon the exercise of such warrants is equal to the number of shares of Series G redeemable convertible preferred stock set forth opposite such investor's name in the table above. The actual number of shares issuable to each investor upon the exercise of such warrants is equal to the product obtained by multiplying the number of shares of Series G redeemable convertible preferred stock set forth opposite such investor's name in the table above by a fraction, the numerator of which is the difference between $17.2379 and the volume weighted average closing price of our common stock over the 30 trading days (or such lesser number of days as our common stock has been traded on the Nasdaq Global Market) prior to the date on which such warrants become exercisable and the denominator of which is such volume weighted average closing price.

**Unsecured Convertible Promissory Note Financing**

In April, May, June and July 2016, we issued unsecured convertible promissory notes, or collectively, the Existing Stockholder Notes, to certain of our existing stockholders in an aggregate principal amount of $27.0 million, at an interest rate of 10% per year, compounded annually. The following table summarizes purchases of our convertible promissory notes by our directors, executive officers and holders of more than 5% of any class of our capital stock as of the date of such transaction:

| Related Party | Principal Amount of Convertible Notes |
|---|---|
| Aeroplan Holdings Europe Sàrl(1) | $ 3,987,124.92 |
| Entities affiliated with Polaris Venture Partners(2) | $ 5,321,027.91 |
| Canaan VIII L.P.(3) | $ 6,513,769.65 |
| Entities affiliated with Discovery Capital(4) | $ 2,663,266.08 |
| Scott D. Grimes | $ 650,000.00 |
| Lynne M. Laube | $ 350,000.00 |

(1) Aeroplan Holdings Europe Sàrl is an affiliate of Aimia Inc. David L. Adams, a member of our board of directors, was the Executive Vice President and Chief Financial Officer of Aimia Inc. at the time of the issuance.

(2) Consists of convertible promissory notes in an aggregate principal amount of $5,134,443.03 purchased by Polaris Venture Partners V, L.P., or PVP V, convertible promissory notes in an aggregate principal amount of $100,069.82 purchased by Polaris Venture Partners Entrepreneurs' Fund V, L.L., or PVP EF V, convertible promissory notes in an aggregate principal amount of $35,170.61 purchased by Polaris Venture Partners Founders' Fund V, L.P., or PVP FF V, and convertible promissory notes in an aggregate principal amount of $51,344.45 purchased by Polaris Venture Partners Special Founders' Fund V, L.P., or PVP SFF V. Polaris Venture Management Co. V, L.L.C. is a general partner of each of PVP V, PVP EF V, PVP FF V and PVP SFF V and may be deemed to have the sole voting and dispositive power over the shares held by PVP V, PVP EF V, PVP FF V and PVP SFF V. Bryce Youngren, a member of our board of directors, is a Managing Partner of Polaris Partners and may be deemed to share voting and dispositive power over the shares held by PVP V, PVP EF V, PVP FF V and PVP SFF V.

(3) John V. Balen, a member of our board of directors, is a managing member of Canaan Partners VIII LLC, the general partner of Canaan VIII L.P. Mr. Balen does not have voting or investment power over any shares held directly by Canaan VIII L.P.

(4) Consists of convertible promissory notes in an aggregate principal amount of $2,385,974.51 purchased by Discovery Global Opportunity Master Fund, Ltd., or Discovery Global Opportunity and convertible promissory notes in an aggregate principal amount of $277,291.57 purchased by Discovery Global Focus Master Fund, Ltd., or Discovery Global Focus. Discovery Capital Management, LLC is the manager of each of Discovery Global Opportunity and Discovery Global Focus, and may be deemed to have the sole voting and dispositive power over the shares held by Discovery Global Opportunity and Discovery Global Focus.

The maturity date of the Existing Stockholder Notes, or the Maturity Date, was the earliest to occur of: (1) a date after April 26, 2019, as specified by the holders of a majority of the aggregate unpaid principal amount outstanding under the Existing Stockholder Notes, (2) our liquidation, dissolution or wind up, including a sale of all or substantially all of our assets or a majority of our voting power or (3) an event of default under the Existing Stockholder Notes. The Existing Stockholder Notes were subordinate to our existing credit facilities with National Electrical Benefit Funds, Ally Bank and Pacific Western Bank described below.

The Existing Stockholder Notes were convertible into shares of our capital stock, depending on certain triggering events. The Existing Stockholder Notes converted into shares of our Series G' redeemable convertible preferred stock in the Series G preferred stock and warrant financing described above.

**Exchange of Redeemable Convertible Preferred Stock**

In May 2016, in connection with our unsecured convertible promissory note financing, we and certain of our stockholders who participated in the financing, including entities affiliated with Discovery Capital, entities affiliated with Polaris Venture Partners, Canaan VIII L.P., entities affiliated with Aimia Inc., Scott D. Grimes and Lynne M. Laube, which we collectively refer to as the Participating Stockholders, effected the exchange of shares of our existing redeemable convertible preferred stock into our new redeemable convertible preferred stock. Pursuant to this exchange, our Series A redeemable convertible preferred stock held by the Participating Stockholders were exchanged into shares of our Series A-R redeemable convertible preferred stock, our Series B redeemable convertible preferred stock held by the Participating Stockholders were exchanged into shares of our Series B-R redeemable convertible preferred stock, our Series C redeemable convertible preferred stock held by the Participating Stockholders were exchanged into shares of our Series C-R redeemable convertible preferred stock, our Series D redeemable convertible preferred stock held by the Participating Stockholders were exchanged into shares of our Series D-R redeemable convertible preferred stock, our Series E redeemable convertible preferred stock held by the Participating Stockholders were exchanged into shares of our Series E-R redeemable convertible preferred stock and our Series F redeemable convertible preferred stock held by the Participating Stockholders were exchanged into shares of our Series F-R redeemable convertible preferred stock. The shares of our Series A redeemable convertible preferred stock, Series B redeemable convertible preferred stock, Series C redeemable convertible preferred stock, Series D redeemable convertible preferred stock, Series E redeemable convertible preferred stock and Series F redeemable convertible preferred stock held by our stockholders who did not participate in the financing were converted into shares of our common stock. Our Series A-R redeemable convertible preferred stock, Series B-R redeemable convertible preferred stock, Series C-R redeemable convertible preferred stock, Series D-R redeemable convertible preferred stock, Series E-R redeemable convertible preferred stock and Series F-R redeemable convertible preferred stock have the same rights, privileges and preferences as our historical Series A redeemable convertible preferred stock, Series B redeemable convertible preferred stock, Series C redeemable convertible preferred stock, Series D redeemable convertible preferred stock, Series E redeemable convertible preferred stock and Series F redeemable convertible preferred stock, respectively. Following this exchange, we amended our certificate of incorporation to remove our Series A redeemable convertible preferred stock, Series B redeemable convertible preferred stock, Series C redeemable convertible preferred stock, Series D redeemable convertible preferred stock, Series E redeemable convertible preferred stock and Series F redeemable convertible preferred stock from our amended and restated certificate of incorporation.

**Restricted Securities Units Awards**

In June, August and October 2016, we granted restricted securities units, or collectively, the RSU Awards, to certain of our executive officers and key employees. These individuals were entitled to earn additional grants of restricted securities units in 2016 upon the attainment of certain financial and operational metrics. The RSU Awards were originally denominated in convertible promissory notes and, following completion of the Series G preferred stock and warrant financing described above, became denominated in shares of Series G' redeemable convertible preferred stock. The RSU Awards will be settled upon the completion of this offering by the issuance of an aggregate of 149,679 shares of common stock.

The RSU Awards include a service-based vesting requirement that requires the executive officer or key employee to remain employed by us and a liquidity event-based vesting requirement, both of which requirements will be satisfied upon completion of this offering.

In June, August and October 2016, we granted RSU Awards denominated as convertible promissory notes in an aggregate amount of $1.0 million. The following table summarizes grants of RSU Awards denominated as

convertible promissory notes to our directors, executive officers and holders of more than 5% of any class of our capital stock as of the date of such transaction:

| Related Party | Aggregate Principal Amount of Convertible Notes |
|---|---|
| Scott D. Grimes | $ 119,812 |
| Lynne M. Laube | $ 111,824 |
| David T. Evans | $ 99,574 |
| Kirk L. Somers | $ 99,688 |

**Repurchase of Common Stock**

In April 2015, we repurchased 20,175 shares of our common stock from James R. Morgan, who at the time was our Chief Financial Officer, at a price per share equal to $6.10 for aggregate cash consideration of $0.1 million.

**Series F Preferred Stock Financing**

In September 2014, we sold an aggregate of 4,794,553 shares of our Series F redeemable convertible preferred stock at a price of $12.5142 per share for aggregate proceeds of approximately $60.0 million. The following table summarizes purchases of shares of our Series F redeemable convertible preferred stock by our directors, executive officers and holders of more than 5% of any class of our capital stock as of the date of such transaction:

| Related Party | Shares of Series F Preferred Stock (#) |
|---|---|
| Entities affiliated with Discovery Capital(1) | 4,794,553 |

(1) Consists of 4,295,358 shares of Series F redeemable convertible preferred stock purchased by Discovery Global Opportunity Master Fund, Ltd. (“Discovery Global Opportunity”), 450,065 shares of Series F redeemable convertible preferred stock purchased by Discovery Global Focus Master Fund, Ltd. (“Discovery Global Focus”) and 49,130 shares of Series F redeemable convertible preferred stock purchased by Discovery Global Citizens Master Fund, Ltd. (“Discovery Global Citizens”). Discovery Capital Management, LLC is the manager of each of Discovery Global Opportunity, Discovery Global Focus and Discovery Global Citizens, and may be deemed to have the sole voting and dispositive power over the shares held by Discovery Global Opportunity, Discovery Global Focus and Discovery Global Citizens. S.P. “Wije” Wijegoonaratna, a former member of our board of directors, was an affiliate of Discovery Capital Management, LLC at the time of the Series F Preferred Stock Financing, and is currently a consultant to Discovery Capital Management, LLC.

**Agreements with Fidelity Information Services, LLC**

*Reseller Agreement*

In connection with the sale of our Series E redeemable convertible preferred stock, we entered into a reseller agreement with Fidelity Information Services LLC, or FIS, a holder of more than 5% of our capital stock. Pursuant to the reseller agreement, FIS markets and sells our services to financial institutions that are current or potential customers of FIS in exchange for a revenue share percentage. We are also obligated to make milestone payments to FIS related to the integration and deployment of our solutions. Pursuant to the reseller agreement, we paid FIS approximately $0.1 million in 2014, $0 in 2015 and $1.1 million in 2016, respectively.

*Warrant to Purchase Shares of Series E Preferred Stock*

In connection with the sale of our Series E redeemable convertible preferred stock and the reseller agreement described above, we granted FIS a warrant to purchase shares of our Series E redeemable convertible preferred stock based on certain milestones relating to our business, which became exercisable for shares of our common

stock in connection with the exchange of redeemable convertible preferred stock described above. Upon the completion of this offering, the milestones will be deemed to have been achieved and these warrants will be exercisable for 2,577,465 shares of our common stock, for an aggregate exercise price of approximately $15.2 million.

FIS is currently entitled to elect a member of our board of directors, who is currently Robert Legters. This right will terminate upon the completion of this offering.

In addition to the agreements described above, we are also party to a side letter agreement with FIS, which will terminate upon the completion of this offering.

**Agreements with Aimia Inc. and Affiliated Entities**

*Commercial Partnership*

In January 2014, we entered into a U.K. cooperation agreement with Aimia EMEA Limited, or Aimia EMEA, an affiliate of Aimia Inc. Entities affiliated with Aimia Inc. hold more than 5% of our capital stock. The U.K. cooperation agreement generally provided for equal cost and revenue sharing related to our business in the United Kingdom, which was primarily run through our wholly-owned subsidiary, Cardlytics UK Limited. Pursuant to our U.K. cooperation agreement, there were no payments to Aimia EMEA in 2014 and 2015 and we paid Aimia EMEA approximately $1.6 million in 2016.

In connection with the U.K. cooperation agreement, we also entered into a working capital loan agreement and security agreement with Aimia EMEA. The largest aggregate amount of principal outstanding during the term of the loan was approximately $1.1 million in January 2014, which was paid in full in May 2014. During the term of the loan, we made interest payments of approximately $26,000 in 2014. Pursuant to the working capital loan agreement, interest accrued daily at the rate of an amount equal to the three month LIBOR rate plus 5.25% per annum.

*Termination of Joint Venture and Transfer of Joint UK Operations with Aimia Inc.*

In June 2016, we entered into a termination and transition services agreement with Aimia, Inc., Aimia Holdings UK Limited and Aimia EMEA. Pursuant to the termination and transition services agreement, control of our joint operations with the entities affiliated with Aimia Inc. in the United Kingdom were transitioned to us, such that we are now solely operating our business in the United Kingdom. In connection with the termination and transition services agreement, entities affiliated with Aimia Inc. will continue to provide certain services to us, including use of their facilities and office space, information technology services and support and hosting services, some of which will continue through June 2017. The entities affiliated with Aimia Inc. also transferred the employment contracts of certain employees rendering services to us in connection with the joint U.K. operations.

In June and September 2016, in consideration for entering into the termination and transition services agreement and the transfer to us of full control of our U.K. operations, we issued convertible promissory notes in an aggregate principal amount of approximately $23.7 million. The following table summarizes issuances of our convertible promissory notes to our directors, executive officers and holders of more than 5% of any class of our capital stock as of the date of such transaction:

| Related Party | Principal Amount of Convertible Notes |
|---|---|
| Aimia EMEA Limited | $ 23,673,835.36 |

We issued to Aimia EMEA unsecured convertible promissory notes, or the Aimia EMEA Notes, in an aggregate principal amount of $18.0 million, which accrued interest at a rate of 10% per year, compounded annually. In

consideration for our outstanding obligations to Aimia Inc. at the time we terminated our U.K. cooperation agreement, we issued to Aimia EMEA an unsecured convertible promissory note, or the Outstanding Obligation Note, in an aggregate principal amount of approximately $5.7 million, at an interest rate of 10% per year, compounded annually. Both the Aimia EMEA Notes and the Outstanding Obligation Note, which we collectively refer to as the Aimia Notes, were due and payable on the earliest to occur of: (a) a date after June 30, 2019, as specified by the holder, (b) our liquidation, dissolution or wind up, including a sale of all or substantially all of our assets or a majority of our voting power or (c) an event of default. The Aimia Notes were subordinate to our existing credit facilities with National Electrical Benefit Fund, Ally Bank and Pacific Western Bank.

The Aimia Notes were convertible into shares of our capital stock, depending on certain triggering events. The Aimia Notes converted into shares of our Series G' redeemable convertible preferred stock and common stock in the Series G preferred stock and warrant financing described above.

**Option Acceleration and Extension of Exercise Period**

In October 2010 and January 2012, we granted David Perdue, who at the time was a member of our board of directors, options to purchase an aggregate of 300,000 shares of our common stock. In December 2014, while Mr. Perdue was still a director, the board accelerated Mr. Perdue's options and extended the post-termination exercise periods applicable to Mr. Perdue's option grants to October 12, 2020 and January 25, 2022, respectively. The aggregate exercise price for Mr. Perdue's options is approximately $0.3 million.

**Investors' Rights, Voting and Co-Sale Agreements**

In connection with our preferred stock financings, we entered into investors' rights, voting and right of first refusal and co-sale agreements containing registration rights, information rights, voting rights and rights of first refusal, among other things, with certain holders of our redeemable convertible preferred stock and certain holders of our common stock, including entities affiliated with Discovery Capital, entities affiliated with Polaris Venture Partners, Canaan VIII L.P., entities affiliated with Aimia Inc., Fidelity Information Services, LLC, Scott D. Grimes, Lynne M. Laube and TTP Fund II, L.P., an entity affiliated with Mark A. Johnson. These stockholder agreements will terminate upon the closing of this offering, except for the registration rights granted under our investors' rights agreement, as more fully described in "Description of Capital Stock—Registration Rights."

**Employment Arrangements**

We have entered into employment agreements or offer letter agreements with certain of our executive officers. For more information regarding these agreements with our named executive officers, see "Executive Compensation—Employment Arrangements."

**Stock Option Grants to Directors and Executive Officers**

We have granted stock options to certain of our directors and executive officers. For more information regarding the stock options and stock awards granted to our directors and named executive officers, see "Executive Compensation—Equity Incentive Plans" and "Management—Non-Employee Director Compensation."

**Separation Pay Agreements**

We have entered into separation pay agreements with certain of our executive officers. For more information regarding these arrangements with our named executive officers, see "—Potential Payments upon Termination or Change of Control."

**Indemnification Agreements**

We plan to enter into indemnification agreements with each of our directors and executive officers in connection with this offering. The indemnification agreements and our amended and restated certificate of incorporation and

amended and restated bylaws, each to be in effect upon the completion of this offering, require us to indemnify our directors and executive officers to the fullest extent permitted by Delaware law. For more information regarding these agreements, see “Executive Compensation—Limitations on Liability and Indemnification Matters.”

**Related Person Transaction Policy**

Prior to this offering, we have not had a formal policy regarding approval of transactions with related parties. Prior to the completion of this offering, we expect to adopt a related person transaction policy that sets forth our procedures for the identification, review, consideration and approval or ratification of related person transactions. The policy will become effective immediately upon the execution of the underwriting agreement for this offering. For purposes of our policy only, a related person transaction is a transaction, arrangement or relationship, or any series of similar transactions, arrangements or relationships, in which we and any related person are, were or will be participants, in which the amount involves exceeds $120,000. Transactions involving compensation for services provided to us as an employee or director are not covered by this policy. A related person is any executive officer, director or beneficial owner of more than 5% of any class of our voting securities, including any of their immediate family members and any entity owned or controlled by such persons.

Under the policy, if a transaction has been identified as a related person transaction, including any transaction that was not a related person transaction when originally consummated or any transaction that was not initially identified as a related person transaction prior to consummation, our management must present information regarding the related person transaction to our audit committee, or, if audit committee approval would be inappropriate, to another independent body of our board of directors, for review, consideration and approval or ratification. The presentation must include a description of, among other things, the material facts, the interests, direct and indirect, of the related persons, the benefits to us of the transaction and whether the transaction is on terms that are comparable to the terms available to or from, as the case may be, an unrelated third party or to or from our employees generally. Under the policy, we will collect information that we deem reasonably necessary from each director, executive officer and, to the extent feasible, significant stockholder to enable us to identify any existing or potential related-person transactions and to effectuate the terms of the policy.

In addition, under our Code of Business Conduct and Ethics, which we intend to adopt in connection with this offering, our employees and directors have an affirmative responsibility to disclose any transaction or relationship that reasonably could be expected to give rise to a conflict of interest.

In considering related person transactions, our audit committee, or other independent body of our board of directors, will take into account the relevant available facts and circumstances including, but not limited to:

- the risks, costs and benefits to us;
- the impact on a director’s independence in the event that the related person is a director, immediate family member of a director or an entity with which a director is affiliated;
- the availability of other sources for comparable services or products; and
- the terms available to or from, as the case may be, unrelated third parties or to or from employees generally.

The policy requires that, in determining whether to approve, ratify or reject a related person transaction, our audit committee, or other independent body of our board of directors, must consider, in light of known circumstances, whether the transaction is in, or is not inconsistent with, our best interests and those of our stockholders, as our audit committee, or other independent body of our board of directors, determines in the good faith exercise of its discretion.

All of the transactions described above were entered into prior to the adoption of the written policy, but all were approved by our board of directors considering similar factors to those described above.

## PRINCIPAL STOCKHOLDERS

The following table sets forth the beneficial ownership of our common stock as of September 30, 2017, as adjusted to reflect the sale of common stock offered by us in this offering, for:

- each person, or group of affiliated persons, who is known by us to beneficially own more than 5% of our common stock;
- each of our named executive officers;
- each of our directors; and
- all of our executive officers and directors as a group.

The percentage ownership information shown in the table prior to this offering is based upon 56,762,133 shares of common stock outstanding as of September 30, 2017, after giving effect to the conversion of all outstanding shares of redeemable convertible preferred stock into 42,573,435 shares of our common stock. The percentage ownership information shown in the table after this offering is based upon shares outstanding, assuming the sale of shares of our common stock by us in the offering and no exercise of the underwriters' over-allotment option.

We have determined beneficial ownership in accordance with the rules of the SEC. These rules generally attribute beneficial ownership of securities to persons who possess sole or shared voting power or investment power with respect to those securities. In addition, the rules include shares of common stock issuable pursuant to the exercise of stock options or warrants that are either immediately exercisable or exercisable on or before November 29, 2017, which is 60 days after September 30, 2017. These shares are deemed to be outstanding and beneficially owned by the person holding those options or warrants for the purpose of computing the percentage ownership of that person, but they are not treated as outstanding for the purpose of computing the percentage ownership of any other person. Unless otherwise indicated, the persons or entities identified in this table have sole voting and investment power with respect to all shares shown as beneficially owned by them, subject to applicable community property laws.

Except as otherwise noted below, the address for persons listed in the table is c/o Cardlytics, Inc., 675 Ponce de Leon Avenue NE, Suite 6000, Atlanta, Georgia 30308.

| Name of Beneficial Owner | Number of Shares Beneficially Owned | Percentage of Shares Beneficially Owned | |
|---|---|---|---|
| | | Before Offering | After Offering |
| *5% or greater stockholders:* | | | |
| Canaan VIII L.P.(1) | 12,981,466 | % | % |
| Entities affiliated with Polaris Venture Partners(2) | 10,545,099 | | |
| Entities affiliated with Aimia Inc.(3) | 11,912,064 | | |
| Entities affiliated with Discovery Capital(4) | 6,019,024 | | |
| Fidelity Information Services, LLC(5) | 4,167,526 | | |
| *Named executive officers and directors:* | | | |
| Scott D. Grimes(6) | 4,056,331 | | |
| Lynne M. Laube(7) | 2,337,717 | | |
| David T. Evans(8) | 393,761 | | |
| David L. Adams(9) | 259,516 | | |
| John V. Balen | — | — | |
| Mark A. Johnson(10) | 1,304,646 | | |
| Jack Klinck(11) | 73,205 | | |
| Robert Legters(5) | 4,167,526 | | |
| Tony Weisman(12) | 100,000 | | |
| Bryce Youngren(2) | 10,545,099 | | |
| All current executive officers and directors as a group (11 persons)(2)(5)(13) | 23,415,694 | % | % |

* Represents beneficial ownership of less than 1%.

(1) Consists of (a) 3,800,000 shares of common stock issuable upon conversion of Series A-R redeemable convertible preferred stock; (b) 4,583,813 shares of common stock issuable upon conversion of Series B-R redeemable convertible preferred stock; (c) 2,056,095 shares of common stock issuable upon conversion of Series C-R redeemable convertible preferred stock; (d) 809,508 shares of common stock issuable upon conversion of Series D-R redeemable convertible preferred stock; (e) 477,018 shares of common stock issuable upon conversion of Series E-R redeemable convertible preferred stock; (f) 214,643 shares of common stock issuable upon conversion of Series G redeemable convertible preferred stock and (g) 1,040,389 shares of common stock issuable upon conversion of Series G' redeemable convertible preferred stock held by Canaan VIII L.P. Canaan Partners VIII LLC is the general partner of Canaan VIII L.P. and may be deemed to have sole investment and voting power over the shares held by Canaan VIII L.P. Brenton K. Ahrens, John V. Balen, Stephen M. Bloch, Wende S. Hutton, Maha S. Ibrahim, Deepak Kamra, Guy M. Russo and Eric A. Young are the managing members of Canaan Partners VIII LLC. Investment and voting decisions with respect to the shares held by Canaan VIII L.P. are made by the managers of Canaan Partners VIII LLC, collectively. Mr. Balen, a member of our board of directors, is a managing member of Canaan Partners VIII LLC. No manager or member of Canaan Partners VIII LLC has beneficial ownership (within the meaning of Rule 13d-3 promulgated under the Exchange Act) of any shares held by Canaan VIII L.P. The address for Canaan VIII L.P. and Mr. Balen is 2765 Sand Hill Road, Menlo Park, California 94025.

(2) Consists of (a) 3,087,790, 60,181, 21,151 and 30,878 shares of common stock issuable upon conversion of Series A-R redeemable convertible preferred stock; (b) 3,724,699, 72,594, 25,514 and 37,247 shares of common stock issuable upon conversion of Series B-R redeemable convertible preferred stock; (c) 1,670,734, 32,563, 11,444 and 16,707 shares of common stock issuable upon conversion of Series C-R redeemable convertible preferred stock; (d) 657,787, 12,820, 4,506 and 6,578 shares of common stock issuable upon conversion of Series D-R redeemable convertible preferred stock; (e) 102,287, 1,993, 701 and 1,023 shares of common stock issuable upon conversion of Series E-R redeemable convertible preferred stock; (f) 111,954, 2,182, 767 and 1,120 shares of common stock issuable upon conversion of Series G redeemable convertible preferred stock and (g) 820,080, 15,983, 5,616 and 8,200 shares of common stock issuable upon conversion of Series G' redeemable convertible preferred stock held by Polaris Venture Partners V, L.P. ("PVP V"), Polaris Venture Partners Entrepreneurs' Fund V, L.L. ("PVP EF V"), Polaris Venture Partners Founders' Fund V, L.P. ("PVP FF V") and Polaris Venture Partners Special Founders' Fund V, L.P. ("PVP SFF V"), respectively. Polaris Venture Management Co. V, L.L.C. is a general partner of each of PVP V, PVP EF V, PVP FF V and PVP SFF V and may be deemed to have the sole voting and dispositive power over the shares held by PVP V, PVP EF V, PVP FF V and PVP SFF V. Bryce Youngren, a member of our board of directors, is a Managing Partner of Polaris Partners and may be deemed to share voting and dispositive power over the shares held by PVP V, PVP EF V, PVP FF V and PVP SFF V. The address of the entities affiliated with Polaris Venture Partners is 1000 Winter Street, Waltham, Massachusetts 02451.

(3) Consists of (a) (i) 848,032 shares of common stock issuable upon conversion of Series C-R redeemable convertible preferred stock; (ii) 1,590,061 shares of common stock issuable upon conversion of Series E-R redeemable convertible preferred stock and (iii) 636,829

shares of common stock issuable upon conversion of Series G' redeemable convertible preferred stock held by Aeroplan Holdings Europe Sàrl; (b) (i) 3,891,709 shares of common stock issuable upon conversion of Series D-R redeemable convertible preferred stock and (ii) 848,032 shares of common stock issuable upon conversion of Series E-R redeemable convertible preferred stock held by Aeroplan Holdings UK Limited and (c) (i) 892,083 shares of common stock issuable upon conversion of Series G' redeemable convertible preferred stock and (ii) 3,205,318 shares of common stock held by Aimia EMEA Limited. Aeroplan Holdings Europe Sàrl, Aeroplan Holdings UK Limited and Aimia EMEA Limited are affiliates of Aimia Inc. The address of the entities affiliated with Aimia Inc. is 525 Viger Avenue West, Suite 1000, Montreal, Quebec H2Z 0B2, Canada.

(4) Consists of (a) (i) 4,295,358 shares of common stock issuable upon conversion of Series F redeemable convertible preferred stock; (ii) 381,091 shares of common stock issuable upon conversion of Series G' redeemable convertible preferred stock and (iii) 715,894 shares of common stock held by Discovery Global Opportunity Master Fund, LTD ("Discovery GO"); (b) (i) 450,065 shares of common stock issuable upon conversion of Series F redeemable convertible preferred stock; (ii) 44,288 shares of common stock issuable upon conversion of Series G' redeemable convertible preferred stock and (iii) 83,198 shares of common stock held by Discovery Global Focus Master Fund, LTD ("Discovery GF") and (c) 49,130 shares of common stock issuable upon conversion of Series F redeemable convertible preferred stock held by Discovery Global Citizens Master Fund, LTD ("Discovery GC"). Discovery Capital Management, LLC is the manager of each of Discovery GO, Discovery Global GF and Discovery Global GC and may be deemed to have the sole voting and dispositive power over the shares held by Discovery GO, Discovery GF and Discovery GC. The address of the entities affiliated with Discovery is 20 Marshall, Suite 310, South Norwalk, Connecticut 06854.

(5) Consists of 1,590,061 shares of common stock held by Fidelity Information Services, LLC ("FIS") and 2,577,465 shares of common stock issuable upon the exercise of warrants held by FIS, which is an affiliate of Fidelity National Information Services, Inc. Robert Legters, a member of our board of directors, is the Senior Vice President of Products of Fidelity National Information Services, Inc. and may be deemed to share voting and dispositive power over the shares held by FIS. The address of FIS is 601 Riverside Avenue, Jacksonville, Florida 32204.

(6) Includes (a) 776,448 shares of common stock held by the 2013 Scott Grimes GRAT UAD, for which Mr. Grimes is trustee and holds voting and investment power, (b) 103,876 shares of common stock issuable upon conversion of Series G' redeemable convertible preferred stock held by Mr. Grimes and (c) 319,829 shares of common stock issuable upon the exercise of options. The percentage of shares beneficially owned after this offering reflects the issuance of 18,615 Management Conversion Shares to Mr. Grimes upon the closing of this offering.

(7) Includes (a) 174,701 shares of common stock held by the 2013 Lynne Marie Laube GRAT fbo Hayley Marie Allbright, for which Ms. Laube is trustee and holds voting power, (b) 174,701 shares of common stock held by the 2013 Lynne Marie Laube GRAT fbo Keegan George Allbright, for which Ms. Laube is trustee and holds voting power, (c) 55,933 shares of common stock issuable upon conversion of Series G' redeemable convertible preferred stock held by Ms. Laube and (d) 319,829 shares of common stock issuable upon the exercise of options. The percentage of shares beneficially owned after this offering reflects the issuance of 17,375 Management Conversion Shares to Ms. Laube upon the closing of this offering.

(8) Represents shares of common stock issuable upon the exercise of options. The percentage of shares beneficially owned after this offering reflects the issuance of 15,441 Management Conversion Shares to Mr. Evans, upon the closing of this offering.

(9) Consists of 11,602 shares of common stock issuable upon conversion of Series G redeemable convertible preferred stock and 247,914 shares of common stock issuable upon the exercise of options.

(10) Consists of (a) 23,205 shares of common stock issuable upon conversion of Series G redeemable convertible preferred stock held by Mr. Johnson, (b) (i) 509,177 shares of common stock issuable upon conversion of Series B-R redeemable convertible preferred stock; (ii) 124,874 shares of common stock issuable upon conversion of Series C-R redeemable convertible preferred stock; (iii) 49,164 shares of common stock issuable upon conversion of Series D-R redeemable convertible preferred stock; (iv) 60,182 shares of common stock issuable upon conversion of Series G' redeemable convertible preferred stock and (v) 422,021 shares of common stock held by TTP Fund II L.P. and (c) 116,023 shares of common stock issuable upon conversion of Series G redeemable convertible preferred stock held by TTV Ivy Holdings, LLC. TTV Capital is the provider of management services to TTP GP II, LLC, which is a general partner of TTP Fund II, L.P. TTV Capital is the manager of TTV Ivy Holdings Managers, LLC, which is the general partner of TTV Ivy Holdings, LLC. Mark A. Johnson, a member of our board of directors, is a member of each of TTP GP II, LLC and TTV Ivy Holdings Managers, LLC and holds the title of partner of TTV Capital, and may be deemed to share voting and dispositive power over the shares held by TTP Fund II L.P. and TTV Ivy Holdings, LLC.

(11) Consists of 23,205 shares of common stock issuable upon conversion of Series G redeemable convertible preferred stock and 50,000 shares of common stock issuable upon the exercise of options.

(12) Represents shares of common stock issuable upon the exercise of options.

(13) Includes (a) 776,448 shares of common stock held by the 2013 Scott Grimes GRAT UAD, for which Mr. Grimes is trustee and holds voting and investment power, (b) 103,876 shares of common stock issuable upon conversion of Series G' redeemable convertible preferred stock held by Mr. Grimes, (c) 55,933 shares of common stock issuable upon conversion of Series G' redeemable convertible preferred stock held by Ms. Laube, (d) 174,701 shares of common stock held by the 2013 Lynne Marie Laube GRAT fbo Hayley Marie Allbright, for which Ms. Laube is trustee and holds voting power, (e) 174,701 shares of common stock held by the 2013 Lynne

Marie Laube GRAT fbo Keegan George Allbright, for which Ms. Laube is trustee and holds voting power, (f) (i) 509,177 shares of common stock issuable upon conversion of Series B-R redeemable convertible preferred stock; (ii) 124,874 shares of common stock issuable upon conversion of Series C-R redeemable convertible preferred stock; (iii) 49,164 shares of common stock issuable upon conversion of Series D-R redeemable convertible preferred stock; (iv) 60,182 shares of common stock issuable upon conversion of Series G' redeemable convertible preferred stock and (v) 422,021 shares of common stock held by TTP Fund II L.P., (g) 116,023 shares of common stock issuable upon conversion of Series G redeemable convertible preferred stock held by TTV Ivy Holdings, LLC., (h) 23,205 shares of common stock issuable upon conversion of Series G redeemable convertible preferred stock held by Mr. Johnson, (i) 11,602 shares of common stock issuable upon conversion of Series G redeemable convertible preferred stock held by Mr. Adams, (j) 23,205 shares of common stock issuable upon conversion of Series G redeemable convertible preferred stock held by Mr. Klinck and (k) 1,609,226 shares of common stock issuable upon the exercise of options held by all current executive officers and directors as a group. The percentage of shares beneficially owned after this offering reflects the issuance of an aggregate of 66,914 Management Conversion Shares to our current executive officers upon the closing of this offering.

# DESCRIPTION OF CAPITAL STOCK

The following description of our capital stock, certain provisions of our amended and restated certificate of incorporation and amended and restated bylaws, as each will be in effect upon the completion of this offering, and certain provisions of Delaware law are summaries. You should also refer to the amended and restated certificate of incorporation and the amended and restated bylaws, which are filed as exhibits to the registration statement of which this prospectus is part. We refer in this section to our amended and restated certificate of incorporation and amended and restated bylaws that we intend to adopt in connection with this offering as our certificate of incorporation and bylaws, respectively.

## General

Upon the completion of this offering, our amended and restated certificate of incorporation will authorize us to issue up to 100,000,000 shares of common stock, $0.0001 par value per share, and 10,000,000 shares of preferred stock, $0.0001 par value per share, all of which shares of preferred stock will be undesignated. Our board of directors may establish the rights and preferences of the preferred stock from time to time. As of September 30, 2017, after giving effect to the conversion of all outstanding preferred stock into shares of our common stock in connection with the completion of this offering, there would have been an aggregate of 56,762,133 shares of our common stock issued and outstanding, held of record by 226 stockholders.

## Common Stock

### *Voting Rights*

Each holder of our common stock is entitled to one vote for each share on all matters submitted to a vote of the stockholders, including the election of directors. Under our amended and restated certificate of incorporation and amended and restated bylaws, each to be in effect upon the completion of this offering, our stockholders will not have cumulative voting rights. Because of this, the holders of a majority of the shares of our common stock entitled to vote in any election of directors will be able to elect all of the directors standing for election, if they should so choose.

### *Dividends*

Subject to preferences that may be applicable to any then-outstanding preferred stock, holders of our common stock will be entitled to receive ratably those dividends, if any, as may be declared from time to time by our board of directors out of legally available funds.

### *Liquidation*

In the event of our liquidation, dissolution or winding up, holders of our common stock will be entitled to share ratably in the net assets legally available for distribution to our stockholders after the payment of all of our debts and other liabilities and the satisfaction of any liquidation preference granted to the holders of any then-outstanding shares of our preferred stock.

### *Rights and Preferences*

Holders of our common stock have no preemptive, conversion or subscription rights and there are no redemption or sinking fund provisions applicable to the common stock. The rights, preferences and privileges of the holders of our common stock are subject to, and may be adversely affected by, the rights of the holders of shares of any series of preferred stock that we may designate in the future.

**Preferred Stock**

All currently outstanding shares of our redeemable convertible preferred stock will be converted to common stock immediately prior to the closing of this offering.

Following the completion of this offering, our board of directors will have the authority, without further action by our stockholders, to issue up to 10,000,000 shares of preferred stock in one or more series, to establish from time to time the number of shares to be included in each such series, to fix the rights, preferences and privileges of the shares of each wholly unissued series and any qualifications, limitations or restrictions thereon, and to increase or decrease the number of shares of any such series, but not below the number of shares of such series then outstanding.

Our board of directors may authorize the issuance of preferred stock with voting or conversion rights that could adversely affect the voting power or other rights of the holders of our common stock. The purpose of authorizing our board of directors to issue preferred stock and determine its rights and preferences is to eliminate delays associated with a stockholder vote on specific issuances. The issuance of preferred stock, while providing flexibility in connection with possible acquisitions and other corporate purposes, could, among other things, have the effect of delaying, deferring or preventing a change in control and may adversely affect the market price of our common stock and the voting and other rights of the holders of our common stock. It is not possible to state the actual effect of the issuance of any shares of preferred stock on the rights of holders of our common stock until our board of directors determines the specific rights attached to that preferred stock.

We have no present plans to issue any shares of preferred stock.

**Options**

As of September 30, 2017, options to purchase an aggregate of 10,130,793 shares of our common stock were outstanding under our 2008 Plan at a weighted-average exercise price of $4.61 per share. For additional information regarding the terms of our 2008 Plan, see “Executive Compensation—Equity Incentive Plans—2008 Stock Plan.”

**Warrants**

As of September 30, 2017, there were outstanding warrants to acquire an aggregate of 2,401,945 shares of our common stock at a weighted-average exercise price of $2.03 per share. Additionally, there were outstanding warrants to acquire an aggregate of 2,577,465 shares of our common stock at an exercise price of $5.91 per share, which will be exercisable upon the completion of this offering. The common stock warrants expire at various dates between December 2018 and June 2027. Additionally, as of September 30, 2017, we had outstanding warrants to purchase shares of common stock, at an exercise price of $0.0001 per share, with the actual number of shares issuable upon exercise of such warrants being equal to the product obtained by multiplying 1,385,358 by a fraction, the numerator of which is the difference between $17.2379 and the volume weighted average closing price of our common stock over the 30 trading days (or such lesser number of days as our common stock has been traded on the Nasdaq Global Market) prior to the date on which such warrants become exercisable and the denominator of which is such volume weighted average closing price. These warrants are exercisable upon the earlier to occur of the date (i) 180 days following the date of this prospectus and (ii) 10 days prior to a sale of our company.

As of September 30, 2017, there were outstanding warrants to acquire an aggregate of 237,616 shares of our Series B-R redeemable convertible preferred stock at an exercise price of $0.59 per share and 203,000 shares of our Series D-R redeemable convertible preferred stock at an exercise price of $5.91 per share. The Series B-R warrants expire in January 2020 and February 2020 and the Series D-R warrants expire in September 2022.

The warrants contain provisions for the adjustment of the exercise price and the number of shares issuable upon the exercise of the applicable warrant in the event of certain stock dividends, stock splits, reorganizations, reclassifications and consolidations.

**Registration Rights**

After the completion of this offering, certain holders of shares of our common stock, including those shares of our common stock that will be issued upon conversion of our redeemable convertible preferred stock in connection with this offering, will be entitled to certain rights with respect to registration of such shares under the Securities Act pursuant to the terms of an investors' rights agreement. These shares are collectively referred to herein as registrable securities.

The investors' rights agreement provides the holders of registrable securities with demand, piggyback and S-3 registration rights as described more fully below. As of September 30, 2017, after giving effect to the conversion of all outstanding shares of redeemable convertible preferred stock into shares of our common stock in connection with the completion of this offering, there would have been an aggregate of 43,372,527 registrable securities that were entitled to these demand registration rights, an aggregate of 49,204,724 registrable securities that were entitled to these piggyback registration rights and an aggregate of 43,610,143 registrable securities that were entitled to these S-3 registration rights. The number of registrable securities that were entitled to the piggyback registration rights and the S-3 registration rights as of September 30, 2017 does not include shares of common stock issuable upon exercise of warrants, which were also entitled to such piggyback registration rights and the S-3 registration rights.

***Demand Registration Rights***

At any time beginning six months after the effective date of the registration statement of which this prospectus forms a part, the holders of a majority of the registrable securities then outstanding have the right to make up to two demands that we file a registration statement under the Securities Act covering at least 35% of the registrable securities then outstanding, subject to specified exceptions.

***Piggyback Registration Rights***

If we register any securities for public sale, the holders of our registrable securities then outstanding will each be entitled to notice of the registration and will have the right to include their shares in the registration statement.

The underwriters of any underwritten offering will have the right to limit the number of shares having registration rights to be included in the registration statement, but not below 25% of the total number of securities included in such registration.

***Registration on Form S-3***

If we are eligible to file a registration statement on Form S-3, the holders of our registrable securities have the right to demand that we file registration statements on Form S-3; provided, that the aggregate amount of securities to be sold under the registration statement is at least $5.0 million, net of underwriting discounts and commissions. We are not obligated to effect a demand for registration on Form S-3 by holders of our registrable securities more than twice during any 12-month period. The right to have such shares registered on Form S-3 is further subject to other specified conditions and limitations.

***Expenses of Registration***

We will pay all expenses relating to any demand, piggyback or Form S-3 registration, other than underwriting discounts and commissions, subject to specified conditions and limitations.

***Termination of Registration Rights***

The registration rights will terminate three years following the completion of this offering and, with respect to any particular stockholder, when, after 12 months following the completion of this offering, such stockholder is able to sell all of its shares during a three-month period pursuant to Rule 144 under the Securities Act or another similar exemption.

**Anti-Takeover Provisions**

***Anti-Takeover Statute***

We are subject to Section 203 of the Delaware General Corporation Law, which generally prohibits a publicly held Delaware corporation from engaging in any business combination with any interested stockholder for a period of three years after the date that such stockholder became an interested stockholder, with the following exceptions:

- before such date, the board of directors of the corporation approved either the business combination or the transaction that resulted in the stockholder becoming an interested stockholder;
- upon completion of the transaction that resulted in the stockholder becoming an interested stockholder, the interested stockholder owned at least 85% of the voting stock of the corporation outstanding at the time the transaction began, excluding for purposes of determining the voting stock outstanding, but not the outstanding voting stock owned by the interested stockholder, those shares owned (1) by persons who are directors and also officers and (2) employee stock plans in which employee participants do not have the right to determine confidentially whether shares held subject to the plan will be tendered in a tender or exchange offer; or
- on or after such date, the business combination is approved by the board of directors and authorized at an annual or special meeting of the stockholders, and not by written consent, by the affirmative vote of at least 66 ⅔% of the outstanding voting stock that is not owned by the interested stockholder.

In general, Section 203 defines a “business combination” to include the following:

- any merger or consolidation involving the corporation and the interested stockholder;
- any sale, transfer, pledge or other disposition of 10% or more of the assets of the corporation involving the interested stockholder;
- subject to certain exceptions, any transaction that results in the issuance or transfer by the corporation of any stock of the corporation to the interested stockholder;
- any transaction involving the corporation that has the effect of increasing the proportionate share of the stock or any class or series of the corporation beneficially owned by the interested stockholder; or
- the receipt by the interested stockholder of the benefit of any loans, advances, guarantees, pledges or other financial benefits by or through the corporation.

In general, Section 203 defines an “interested stockholder” as an entity or person who, together with the person’s affiliates and associates, beneficially owns, or within three years prior to the time of determination of interested stockholder status did own, 15% or more of the outstanding voting stock of the corporation.

***Anti-Takeover Effects of Certain Provisions of our Certificate of Incorporation and Bylaws to be in Effect Upon the Completion of this Offering***

Our certificate of incorporation will provide for our board of directors to be divided into three classes with staggered three-year terms. Only one class of directors will be elected at each annual meeting of our stockholders, with the other classes continuing for the remainder of their respective three-year terms. Because our stockholders do not have cumulative voting rights, stockholders holding a majority of the shares of our common stock outstanding will be able to elect all of our directors. Our certificate of incorporation and bylaws will also provide that directors may be removed by the stockholders only for cause upon the vote of 66 ⅔% or more of our outstanding common stock. Furthermore, the authorized number of directors may be changed only by resolution of our board of directors, and vacancies and newly created directorships on our board of directors may, except as otherwise required by law or determined by our board, only be filled by a majority vote of the directors then serving on the board, even though less than a quorum.

Our certificate of incorporation and bylaws will also provide that all stockholder actions must be effected at a duly called meeting of stockholders and will eliminate the right of stockholders to act by written consent without a meeting. Our bylaws will also provide that only our chairman of the board, chief executive officer or our board of directors pursuant to a resolution adopted by a majority of the total number of authorized directors may call a special meeting of stockholders.

Our bylaws will also provide that stockholders seeking to present proposals before our annual meeting of stockholders or to nominate candidates for election as directors at a meeting of stockholders must provide timely advance notice in writing, and, subject to applicable law, will specify requirements as to the form and content of a stockholder's notice.

Our certificate of incorporation and bylaws will provide that the stockholders cannot amend many of the provisions described above except by a vote of 66⅔% or more of our outstanding common stock.

The combination of these provisions will make it more difficult for our existing stockholders to replace our board of directors as well as for another party to obtain control of us by replacing our board of directors. Since our board of directors has the power to retain and discharge our officers, these provisions could also make it more difficult for existing stockholders or another party to effect a change in management. In addition, the authorization of undesignated preferred stock makes it possible for our board of directors to issue preferred stock with voting or other rights or preferences that could impede the success of any attempt to change our control.

These provisions are intended to enhance the likelihood of continued stability in the composition of our board of directors and its policies and to discourage coercive takeover practices and inadequate takeover bids. These provisions are also designed to reduce our vulnerability to hostile takeovers and to discourage certain tactics that may be used in proxy fights. However, such provisions could have the effect of discouraging others from making tender offers for our shares and may have the effect of delaying changes in our control or management. As a consequence, these provisions may also inhibit fluctuations in the market price of our stock that could result from actual or rumored takeover attempts. We believe that the benefits of these provisions, including increased protection of our potential ability to negotiate with the proponent of an unfriendly or unsolicited proposal to acquire or restructure us, outweigh the disadvantages of discouraging takeover proposals, because negotiation of takeover proposals could result in an improvement of their terms.

**Choice of Forum**

Our certificate of incorporation to be in effect upon the completion of this offering will provide that the Court of Chancery of the State of Delaware will be the exclusive forum for any derivative action or proceeding brought on our behalf; any action asserting a breach of fiduciary duty owed by any of our directors, officers or employees to us or our stockholders; any action asserting a claim against us arising pursuant to the Delaware General Corporation

Law, our certificate of incorporation or our bylaws; or any action asserting a claim against us that is governed by the internal affairs doctrine. Several lawsuits have been filed in Delaware challenging the enforceability of similar choice of forum provisions and it is possible that a court determines such provisions are not enforceable.

**Transfer Agent and Registrar**

The transfer agent and registrar for our common stock is . The transfer agent's address .

**Listing**

We have applied to list our common stock on the Nasdaq Global Market under the trading symbol "CDLX."

## SHARES ELIGIBLE FOR FUTURE SALE

Prior to this offering, no public market existed for our common stock, and although we expect that our common stock will be approved for listing on the Nasdaq Global Market, we cannot assure investors that there will be an active public market for our common stock following this offering. We cannot predict what effect, if any, sales of our shares in the public market or the availability of shares for sale will have on the market price of our common stock. Future sales of substantial amounts of common stock in the public market, including shares issued upon exercise of outstanding options or warrants, or the perception that such sales may occur, however, could adversely affect the market price of our common stock and also could adversely affect our future ability to raise capital through the sale of our common stock or other equity-related securities at times and prices we believe appropriate.

Based on our shares outstanding as of September 30, 2017, upon the completion of this offering, shares of our common stock will be outstanding, or shares of common stock if the underwriters exercise their over-allotment option in full.

All of the shares of our common stock sold in this offering will be freely tradable without restrictions or further registration under the Securities Act, except for any shares sold to our "affiliates," as that term is defined under Rule 144 under the Securities Act. The remaining outstanding shares of our common stock held by existing stockholders are "restricted securities," as that term is defined in Rule 144 under the Securities Act. Restricted securities may be sold in the public market only if the offer and sale is registered under the Securities Act or if the offer and sale of those securities qualifies for exemption from registration, including exemptions provided by Rules 144 and 701 promulgated under the Securities Act.

As a result of lock-up agreements and market standoff provisions described below and the provisions of Rules 144 and 701, shares of our common stock will be available for sale in the public market as follows:

- shares will be eligible for immediate sale upon the completion of this offering; and
- approximately shares will be eligible for sale upon expiration of lock-up agreements and market standoff provisions described below, beginning 181 days after the date of this prospectus, subject in certain circumstances to the volume, manner of sale and other limitations under Rules 144 and 701.

We may issue shares of our common stock from time to time for a variety of corporate purposes, including in capital-raising activities through future public offerings or private placements, in connection with the exercise of stock options and warrants, vesting of restricted stock units and other issuances relating to our employee benefit plans and as consideration for future acquisitions, investments or other purposes. The number of shares of our common stock that we may issue may be significant, depending on the events surrounding such issuances. In some cases, the shares we issue may be freely tradable without restriction or further registration under the Securities Act; in other cases, we may grant registration rights covering the shares issued in connection with these issuances, in which case the holders of the common stock will have the right, under certain circumstances, to cause us to register any resale of such shares to the public.

### Rule 144

In general, persons who have beneficially owned restricted shares of our common stock for at least six months, and any affiliate of us who owns either restricted or unrestricted shares of our common stock, are entitled to sell their securities without registration with the SEC under an exemption from registration provided by Rule 144 under the Securities Act.

***Non-Affiliates***

Any person who is not deemed to have been one of our affiliates at the time of, or at any time during the three months preceding, a sale may sell an unlimited number of restricted securities under Rule 144 if:

- the restricted securities have been held for at least six months, including the holding period of any prior owner other than one of our affiliates;
- we have been subject to the Exchange Act periodic reporting requirements for at least 90 days before the sale; and
- we are current in our Exchange Act reporting at the time of sale.

Any person who is not deemed to have been an affiliate of ours at the time of, or at any time during the three months preceding, a sale and has held the restricted securities for at least one year, including the holding period of any prior owner other than one of our affiliates, will be entitled to sell an unlimited number of restricted securities without regard to the length of time we have been subject to Exchange Act periodic reporting or whether we are current in our Exchange Act reporting.

***Affiliates***

Persons seeking to sell restricted securities who are our affiliates at the time of, or any time during the three months preceding, a sale, would be subject to the restrictions described above. Sales of restricted or unrestricted shares of our common stock by affiliates are also subject to additional restrictions, by which such person would be required to comply with the manner of sale and notice provisions of Rule 144 and would be entitled to sell within any three-month period only that number of securities that does not exceed the greater of either of the following:

- 1% of the number of shares of our common stock then outstanding, which will equal approximately shares immediately after the completion of this offering based on the number of shares outstanding as of September 30, 2017; or
- the average weekly trading volume of our common stock on the during the four calendar weeks preceding the filing of a notice on Form 144 with respect to the sale.

**Rule 701**

In general, under Rule 701 a person who purchased shares of our common stock pursuant to a written compensatory plan or contract and who is not deemed to have been one of our affiliates during the immediately preceding 90 days may sell these shares in reliance upon Rule 144, but without being required to comply with the notice, manner of sale or public information requirements or volume limitation provisions of Rule 144. Rule 701 also permits affiliates to sell their Rule 701 shares under Rule 144 without complying with the holding period requirements of Rule 144. All holders of Rule 701 shares, however, are required to wait until 90 days after the date of this prospectus before selling such shares pursuant to Rule 701. As of September 30, 2017, 2,661,115 shares of our outstanding common stock had been issued in reliance on Rule 701 as a result of exercises of stock options and issuance of restricted stock. However, substantially all Rule 701 shares are subject to lock-up agreements as described below and in “Underwriting” and will become eligible for sale upon the expiration of the restrictions set forth in those agreements.

**Form S-8 Registration Statements**

As of September 30, 2017, options to purchase an aggregate of 10,130,793 of our common stock were outstanding. As soon as practicable after the completion of this offering, we intend to file with the SEC one or

more registration statements on Form S-8 under the Securities Act to register the shares of our common stock that are issuable pursuant to our equity incentive plans, including pursuant to outstanding options. See “Executive Compensation—Equity Incentive Plans” for a description of our equity incentive plans. These registration statements will become effective immediately upon filing. Shares covered by these registration statements will then be eligible for sale in the public markets, subject to vesting restrictions, any applicable lock-up agreements described below and Rule 144 limitations applicable to affiliates.

**Lock-Up Agreements**

In connection with this offering, we, our directors and officers and the holders of substantially all of our equity securities outstanding immediately prior to this offering have agreed, subject to certain exceptions, not to offer, sell or transfer any common stock or securities convertible into or exchangeable for our common stock for 180 days after the date of this prospectus without the prior written consent of Merrill Lynch, Pierce, Fenner & Smith Incorporated and J.P. Morgan Securities LLC on behalf of the underwriters.

The agreements do not contain any pre-established conditions to the waiver by Merrill Lynch, Pierce, Fenner & Smith Incorporated and J.P. Morgan Securities LLC on behalf of the underwriters of any terms of the lock-up agreements. Any determination to release shares subject to the lock-up agreements would be based on a number of factors at the time of determination, including but not necessarily limited to the market price of the common stock, the liquidity of the trading market for the common stock, general market conditions, the number of shares proposed to be sold, contractual obligations to release certain shares subject to the lock-up agreements in the event any such shares are released, subject to certain specific limitations and thresholds and the timing, purpose and terms of the proposed sale.

In addition to the restrictions contained in the lock-up agreements described above, we have entered into agreements with certain of our security holders, including our investors’ rights agreement and agreements governing our equity awards, that contain market stand-off provisions imposing restrictions on the ability of such security holders to offer, sell or transfer our equity securities for a period of 180 days following the date of this prospectus.

**Registration Rights**

Upon the completion of this offering, the holders of 49,204,724 shares of our common stock, or their transferees, will be entitled to specified rights with respect to the registration of the offer and sale of their shares under the Securities Act. Such number does not include shares of common stock issuable upon exercise of warrants, which were also entitled to specified rights with respect to the registration of the offer and sale of their shares under the Securities Act. Registration of the offer and sale of these shares under the Securities Act would result in the shares becoming freely tradable without restriction under the Securities Act immediately upon the effectiveness of the registration. See “Description of Capital Stock—Registration Rights” for additional information.

## MATERIAL U.S. FEDERAL INCOME TAX AND ESTATE CONSIDERATIONS FOR NON-U.S. HOLDERS

The following is a general discussion of the material U.S. federal income and estate tax consequences of the acquisition, ownership and disposition of our common stock by "Non-U.S. Holders" (as defined below). This discussion is for general information purposes only and does not consider all aspects of U.S. federal income taxation that may be relevant to particular Non-U.S. Holders in light of their individual circumstances or to certain types of Non-U.S. Holders subject to special tax rules, including partnerships or other pass-through entities for U.S. federal income tax purposes, banks, financial institutions or other financial services entities, broker-dealers, insurance companies, tax-exempt organizations, pension plans, real estate investment trusts, controlled foreign corporations, passive foreign investment companies, corporations that accumulate earnings to avoid U.S. federal income tax, persons who use or are required to use mark-to-market accounting, persons that hold more than 5% of our outstanding common stock, directly or indirectly, during the applicable testing period, persons that are "qualified foreign pension funds" as defined in Section 897(1)(2) of the Code and entities all of the interests of which are held by qualified foreign pension funds, persons that hold our shares as part of a "straddle," a "hedge," a "conversion transaction," "synthetic security," integrated investment or other risk reduction strategy, certain former citizens or permanent residents of the United States, persons who hold or receive shares of our common stock pursuant to the exercise of an employee stock option or otherwise as compensation or investors in pass-through entities (or entities that are treated as disregarded entities for U.S. federal income tax purposes). In addition, this discussion does not address, except to the extent discussed below, the effects of any applicable gift or estate tax, and this discussion does not address the potential application of alternative minimum tax, or any tax considerations that may apply to Non-U.S. Holders of our common stock under state, local or non-U.S. tax laws and any other U.S. federal tax laws.

This discussion is based on the Internal Revenue Code of 1986, as amended, or the Code, and applicable Treasury regulations promulgated thereunder, or the Treasury Regulations, rulings, administrative pronouncements and judicial decisions that are issued and available as of the date of this registration statement, all of which are subject to change or differing interpretations at any time with possible retroactive effect. We have not sought, and will not seek, any ruling from the Internal Revenue Service, or the IRS, with respect to the tax consequences discussed herein, and there can be no assurance that the IRS will not take a position contrary to the tax consequences discussed below or that any position taken by the IRS would not be sustained. This discussion is limited to a Non-U.S. Holder who will hold our common stock as a capital asset within the meaning of the Code (generally, property held for investment). For purposes of this discussion, the term "Non-U.S. Holder" means a beneficial owner of our shares that is not a partnership (or entity or arrangement treated as a partnership for U.S. federal income tax purposes) and is not, for U.S. federal income tax purposes, any of the following:

- an individual who is a citizen or resident of the United States;
- a corporation (or other entity treated as a corporation) created or organized in the United States or under the laws of the United States or of any state thereof or the District of Columbia;
- an estate, the income of which is subject to U.S. federal income tax regardless of its source; or
- a trust if (1) a court within the United States can exercise primary supervision over the trust's administration and one or more U.S. persons have the authority to control all of the trust's substantial decisions or (2) the trust has a valid election in effect under applicable U.S. Treasury Regulations to be treated as a U.S. person.

If a partnership (or entity or arrangement treated as a partnership for U.S. federal income tax purposes) is a beneficial owner of our common stock, the tax treatment of such partnership and a partner in such partnership generally will depend upon the status of the partner and the activities of the partnership. If you are a partner of a

partnership holding our shares, you should consult your tax advisor regarding the tax consequences of the purchase, ownership, and disposition of our common stock.

**THIS SUMMARY IS NOT INTENDED TO BE TAX ADVICE. PROSPECTIVE INVESTORS SHOULD CONSULT THEIR TAX ADVISORS REGARDING THE PARTICULAR U.S. FEDERAL INCOME TAX CONSEQUENCES TO THEM OF ACQUIRING, OWNING AND DISPOSING OF OUR COMMON STOCK, AS WELL AS ANY TAX CONSEQUENCES ARISING UNDER ANY STATE, LOCAL OR FOREIGN TAX LAWS AND ANY OTHER U.S. FEDERAL TAX LAWS.**

**Distributions on Our Common Stock**

In general, subject to the discussion below under the headings “Information Reporting and Backup Withholding” and “Foreign Accounts,” distributions, if any, paid on our common stock to a Non-U.S. Holder (to the extent paid out of our current or accumulated earnings and profits, as determined under U.S. federal income tax principles) will constitute dividends and be subject to U.S. withholding tax at a rate equal to 30% of the gross amount of the dividend, or a lower rate prescribed by an applicable income tax treaty, unless the dividends are effectively connected with a trade or business carried on by the Non-U.S. Holder within the United States. Any distribution not constituting a dividend (because such distribution exceeds our current and accumulated earnings and profits) will be treated first as reducing the Non-U.S. Holder’s basis in its shares of common stock, but not below zero, and to the extent it exceeds the Non-U.S. Holder’s basis, as capital gain from the sale or exchange of such stock (see “Gain on Sale, Exchange or Other Taxable Disposition of Common Stock” below).

A Non-U.S. Holder who claims the benefit of an applicable income tax treaty generally will be required to satisfy certain certification and other requirements prior to the distribution date. Such Non-U.S. Holders must generally provide us and/or our paying agent, as applicable, with a properly executed IRS Form W-8BEN or IRS Form W-8BEN-E (or other appropriate form) claiming an exemption from or reduction in withholding under an applicable income tax treaty. Such certificate must be provided before the payment of dividends and must be updated periodically. If tax is withheld in an amount in excess of the amount applicable under an income tax treaty, a refund of the excess amount may generally be obtained by a Non-U.S. Holder by timely filing an appropriate claim for refund with the IRS. Non-U.S. Holders should consult their tax advisors regarding their entitlement to benefits under an applicable income tax treaty.

Dividends that are effectively connected with a Non-U.S. Holder’s conduct of a U.S. trade or business (and, if required by an applicable income tax treaty, attributable to a U.S. permanent establishment or fixed base of the Non-U.S. Holder) generally will not be subject to U.S. federal withholding tax if the Non-U.S. Holder files the required forms, including IRS Form W-8ECI with us and/or our paying agent, as applicable, but instead generally will be subject to U.S. federal income tax on a net income basis at regular graduated rates in the same manner as if the Non-U.S. Holder were a resident of the United States. A corporate Non-U.S. Holder that receives effectively connected dividends may be subject to an additional branch profits tax at a rate of 30%, or a lower rate prescribed by an applicable income tax treaty.

**Gain on Sale, Exchange or Other Disposition of Our Common Stock**

In general, subject to the discussion below under the headings “Information Reporting and Backup Withholding” and “Foreign Accounts,” a non-U.S. holder will not be subject to U.S. federal income tax or withholding tax on any gain realized upon such holder’s sale, exchange or other disposition of shares of our common stock unless:

(1) the gain is effectively connected with a trade or business carried on by the Non-U.S. Holder within the United States (and, if required by an applicable income tax treaty, attributable to a U.S. permanent establishment or fixed base of the Non-U.S. Holder);

(2) the Non-U.S. Holder is an individual who is present in the United States for 183 days or more in the taxable year of disposition and certain other conditions are met; or

(3) we are or have been a "United States real property holding corporation" for U.S. federal income tax purposes at any time during the shorter of the five-year period ending on the date of disposition or the period that the Non-U.S. Holder held the common stock, and, in the case where shares of our common stock are regularly traded on an established securities market, the Non-U.S. Holder owns, or is treated as owning, more than 5% of our common stock at any time during the foregoing period.

Net gain realized by a Non-U.S. Holder described in clause (1) above generally will be subject to U.S. federal income tax in the same manner as if the Non-U.S. Holder were a resident of the United States. Any gains of a corporate Non-U.S. Holder described in clause (1) above may also be subject to an additional "branch profits tax" at a 30% rate, or such lower rate as may be specified by an applicable income tax treaty.

Gain realized by an individual Non-U.S. Holder described in clause (2) above will be subject to a flat 30% tax, which gain may be offset by U.S. source capital losses, even though the individual is not considered a resident of the United States.

For purposes of clause (3) above, a corporation is a United States real property holding corporation, or USRPHC, if the fair market value of its United States real property interests equals or exceeds 50% of the sum of the fair market value of its worldwide real property interests plus its other assets used or held for use in a trade or business. Although there can be no assurance, we believe that we are not, and we do not anticipate that we will become, a USRPHC. Even if we became a USRPHC, a Non-U.S. Holder would not be subject to U.S. federal income tax on a sale, exchange or other taxable disposition of our common stock by reason of our status as an USRPHC so long as our common stock is regularly traded on an established securities market (within the meaning of the applicable regulations) and such Non-U.S. Holder does not own and is not deemed to own (directly, indirectly or constructively) more than 5% of our outstanding common stock at any time during the shorter of the five year period ending on the date of disposition and such holder's holding period. However, no assurance can be provided that our common stock will be regularly traded on an established securities market for purposes of the rules described above. If we are a U.S. real property holding corporation and our common stock is not regularly traded on an established securities market, such Non-U.S. Holder's proceeds received on the disposition of shares will generally be subject to withholding at a rate of 15% and such Non-U.S. Holder will generally be taxed on any gain in the same manner as gain that is effectively connected with the conduct of a U.S. trade or business, except that the branch profits tax generally will not apply. Prospective investors are encouraged to consult their own tax advisors regarding the possible consequences to them if we are, or were to become, a USRPHC.

**Information Reporting and Backup Withholding**

Generally, we must report annually to the IRS and to each Non-U.S. Holder the amount of dividends paid, the name and address of the recipient and the amount, if any, of tax withheld. These information reporting requirements apply even if withholding was not required because the dividends were effectively connected with the Non-U.S. Holder's conduct of a trade or business within the United States or withholding was reduced by an applicable income tax treaty. Under applicable income tax treaties or other agreements, the IRS may make its reports available to the tax authorities in the Non-U.S. Holder's country of residence or country in which the Non-U.S. Holder was established.

Dividends paid to a Non-U.S. Holder that is not an exempt recipient generally will be subject to backup withholding, currently at a rate of 24%, unless the Non-U.S. Holder certifies to the payor as to its foreign status, which certification may generally be made on an applicable IRS Form W-8.

Proceeds from the sale or other disposition of common stock by a Non-U.S. Holder effected by or through a U.S. office of a broker will generally be subject to information reporting and backup withholding, currently at a rate of

24%, unless the Non-U.S. Holder certifies to the withholding agent under penalties of perjury as to, among other things, its name, address and status as a Non-U.S. Holder or otherwise establishes an exemption. Payment of disposition proceeds effected outside the United States by or through a non-U.S. office of a non-U.S. broker generally will not be subject to information reporting or backup withholding if the payment is not received in the United States. Information reporting, but generally not backup withholding, will apply to such a payment if the broker has certain connections with the United States unless the broker has documentary evidence in its records that the beneficial owner thereof is a Non-U.S. Holder and specified conditions are met or an exemption is otherwise established.

Backup withholding is not an additional tax. Any amount withheld under the backup withholding rules from a payment to a Non-U.S. Holder that results in an overpayment of taxes generally will be refunded, or credited against the holder's U.S. federal income tax liability, if any, provided that the required information is timely furnished to the IRS.

**Foreign Accounts**

The Foreign Account Tax Compliance Act, or FATCA, generally imposes a 30% withholding tax on dividends on, and gross proceeds from the sale or disposition of, our common stock if paid to a foreign entity unless (1) if the foreign entity is a "foreign financial institution," the foreign entity undertakes certain due diligence, reporting, withholding and certification obligations, (2) if the foreign entity is not a "foreign financial institution," the foreign entity identifies certain U.S. holders of debt or equity interests in such foreign entity or (3) the foreign entity is otherwise exempt from FATCA.

Withholding under FATCA generally (1) applies to payments of dividends on our common stock and (2) will apply to payments of gross proceeds from a sale or other disposition of our common stock made after December 31, 2018. An intergovernmental agreement between the United States and an applicable foreign country may modify the requirements described in this section. Under certain circumstances, a Non-U.S. Holder may be eligible for refunds or credits of the tax. Non-U.S. Holders should consult their own tax advisors regarding the possible implications of FATCA on their investment in our common stock.

**Federal Estate Tax**

Shares of our common stock that are owned or treated as owned by an individual who is not a citizen or resident of the United States (as specially defined for U.S. federal estate tax purposes) at the time of death are considered U.S. situs assets and will be included in the individual's gross estate for U.S. federal estate tax purposes. Such shares, therefore, may be subject to U.S. federal estate tax, unless an applicable estate tax or other treaty provides otherwise.

## UNDERWRITING

Merrill Lynch, Pierce, Fenner & Smith Incorporated and J.P. Morgan Securities LLC are acting as representatives of each of the underwriters named below. Subject to the terms and conditions set forth in an underwriting agreement among us and the underwriters, we have agreed to sell to the underwriters, and each of the underwriters has agreed, severally and not jointly, to purchase from us, the number of shares of common stock set forth opposite its name below.

| Underwriters | Number of Shares |
|---|---|
| Merrill Lynch, Pierce, Fenner & Smith Incorporated | |
| J.P. Morgan Securities LLC | |
| Wells Fargo Securities, LLC | |
| SunTrust Robinson Humphrey, Inc. | |
| Raymond James & Associates, Inc. | |
| KeyBanc Capital Markets Inc. | |
| Total | |

Subject to the terms and conditions set forth in the underwriting agreement, the underwriters have agreed, severally and not jointly, to purchase all of the shares sold under the underwriting agreement if any of these shares are purchased. If an underwriter defaults, the underwriting agreement provides that the purchase commitments of the nondefaulting underwriters may be increased or the underwriting agreement may be terminated.

We have agreed to indemnify the underwriters against certain liabilities, including liabilities under the Securities Act, or to contribute to payments the underwriters may be required to make in respect of those liabilities.

The underwriters are offering the shares, subject to prior sale, when, as and if issued to and accepted by them, subject to approval of legal matters by their counsel, including the validity of the shares, and other conditions contained in the underwriting agreement, such as the receipt by the underwriters of officer's certificates and legal opinions. The underwriters reserve the right to withdraw, cancel or modify offers to the public and to reject orders in whole or in part.

### Commissions and Discounts

The representatives have advised us that the underwriters propose initially to offer the shares to the public at the public offering price set forth on the cover page of this prospectus and to dealers at that price less a concession not in excess of $ per share. After the initial offering, the public offering price, concession or any other term of the offering may be changed.

The following table shows the public offering price, underwriting discount and proceeds before expenses to us. The information assumes either no exercise or full exercise by the underwriters of their option to purchase additional shares.

| | Per Share | Without Option | With Option |
|---|---|---|---|
| Public offering price | $ | $ | $ |
| Underwriting discount | $ | $ | $ |
| Proceeds, before expenses, to Cardlytics | $ | $ | $ |

The expenses of the offering, not including the underwriting discount, are estimated at $ and are payable by us. The underwriters have agreed to reimburse us for certain documented expenses incurred in connection with this offering.

**Option to Purchase Additional Shares**

We have granted an option to the underwriters, exercisable for 30 days after the date of this prospectus, to purchase up to additional shares at the public offering price, less the underwriting discount. If the underwriters exercise this option, each will be obligated, subject to conditions contained in the underwriting agreement, to purchase a number of additional shares proportionate to that underwriter's initial amount reflected in the above table.

**No Sales of Similar Securities**

We, our executive officers and directors and our other existing security holders have agreed not to sell or transfer any common stock or securities convertible into, exchangeable for, exercisable for, or repayable with common stock, for 180 days after the date of this prospectus without first obtaining the written consent of Merrill Lynch, Pierce, Fenner & Smith Incorporated and J.P. Morgan Securities LLC. Specifically, we and these other persons have agreed not to directly or indirectly:

- offer, pledge, sell or contract to sell any common stock;
- sell any option or contract to purchase any common stock;
- purchase any option or contract to sell any common stock;
- grant any option, right or warrant for the sale of any common stock;
- lend or otherwise dispose of or transfer any common stock;
- request or demand that we file a registration statement related to the common stock; or
- enter into any swap or other agreement that transfers, in whole or in part, the economic consequence of ownership of any common stock whether any such swap or transaction is to be settled by delivery of shares or other securities, in cash or otherwise.

These restrictions are subject to customary exceptions, including, among others, (i) transfers of shares of common stock as a bona fide gift or for estate planning purposes, (ii) transfers by will or intestacy, (iii) transfers to a trust or other entity for the direct or indirect benefit of such person or a member or members of such person's immediate family, (iv) distributions of shares of common stock to limited partners, general partners, limited liability company members, stockholders or other equity holders of such entity or (v) transfers to such entity's affiliates or to any investment fund or other entity controlled or managed by such entity; provided, that in the case of any transfer or distribution pursuant to clause (i), (ii), (iii), (iv) or (v), each donee or distributee must execute and deliver to the underwriters a lock-up letter, such transfer may not involve a disposition for value, no filing by any party (donor, donee, transferor or transferee) under the Exchange Act must be required and no such filing or public announcement, as the case may be, must be made voluntarily, in connection with such transfer or distribution.

This lock-up provision applies to common stock and to securities convertible into or exchangeable or exercisable for or repayable with common stock. It also applies to common stock owned now or acquired later by the person executing the agreement or for which the person executing the agreement later acquires the power of disposition.

**Listing**

We have applied to list our common stock on the Nasdaq Global Market under the symbol "CDLX."

Before this offering, there has been no public market for our common stock. The initial public offering price will be determined through negotiations between us and the representatives. In addition to prevailing market conditions, the factors to be considered in determining the initial public offering price are:

- the valuation multiples of publicly traded companies that the representatives believe to be comparable to us;
- our financial information;
- the history of, and the prospects for, our company and the industry in which we compete;
- an assessment of our management, its past and present operations, and the prospects for, and timing of, our future revenues;
- the present state of our development; and
- the above factors in relation to market values and various valuation measures of other companies engaged in activities similar to ours.

An active trading market for the shares may not develop. It is also possible that after the offering the shares will not trade in the public market at or above the initial public offering price.

The underwriters do not expect to sell more than 5% of the shares in the aggregate to accounts over which they exercise discretionary authority.

**Price Stabilization, Short Positions and Penalty Bids**

Until the distribution of the shares is completed, SEC rules may limit underwriters and selling group members from bidding for and purchasing our common stock. However, the representatives may engage in transactions that stabilize the price of the common stock, such as bids or purchases to peg, fix or maintain that price.

In connection with this offering, the underwriters may purchase and sell our common stock in the open market. These transactions may include short sales, purchases on the open market to cover positions created by short sales and stabilizing transactions. Short sales involve the sale by the underwriters of a greater number of shares than they are required to purchase in this offering. “Covered” short sales are sales made in an amount not greater than the underwriters’ option to purchase additional shares described above. The underwriters may close out any covered short position by either exercising their option to purchase additional shares or purchasing shares in the open market. In determining the source of shares to close out the covered short position, the underwriters will consider, among other things, the price of shares available for purchase in the open market as compared to the price at which they may purchase shares through the option granted to them. “Naked” short sales are sales in excess of such option. The underwriters must close out any naked short position by purchasing shares in the open market. A naked short position is more likely to be created if the underwriters are concerned that there may be downward pressure on the price of our common stock in the open market after pricing that could adversely affect investors who purchase in the offering. Stabilizing transactions consist of various bids for or purchases of shares of common stock made by the underwriters in the open market prior to the completion of the offering.

The underwriters may also impose a penalty bid. This occurs when a particular underwriter repays to the underwriters a portion of the underwriting discount received by it because the representatives have repurchased shares sold by or for the account of such underwriter in stabilizing or short covering transactions.

Similar to other purchase transactions, the underwriters’ purchases to cover the syndicate short sales may have the effect of raising or maintaining the market price of our common stock or preventing or retarding a decline in

the market price of our common stock. As a result, the price of our common stock may be higher than the price that might otherwise exist in the open market. The underwriters may conduct these transactions on the , in the over-the-counter market or otherwise.

Neither we nor any of the underwriters make any representation or prediction as to the direction or magnitude of any effect that the transactions described above may have on the price of our common stock. In addition, neither we nor any of the underwriters make any representation that the representatives will engage in these transactions or that these transactions, once commenced, will not be discontinued without notice.

**Electronic Distribution**

In connection with the offering, certain of the underwriters or securities dealers may distribute prospectuses by electronic means, such as e-mail.

**Other Relationships**

Bank of America, National Association, an affiliate of Merrill Lynch, Pierce, Fenner & Smith Incorporated, is one of our customers. In November 2010, we entered into a general services agreement and a software license, customization and maintenance agreement, with Bank of America, National Association, pursuant to which, among other things, we partnered with Bank of America, National Association with respect to our Cardlytics Direct solution. In January 2016, the general services agreement was amended. In addition, in March 2011, we issued Banc of America Strategic Investments Corporation, an affiliate of Merrill Lynch, Pierce, Fenner & Smith Incorporated, a warrant to purchase up to 1,562,010 shares of our common stock, which shares vested upon the achievement of certain milestones pursuant to the general services agreement. In connection with the warrant, we also agreed to provide Banc of America Strategic Investments Corporation with a board observer right and certain information rights.

Some of the underwriters and their affiliates are engaged in, and may in the future engage in, investment banking and other commercial dealings in the ordinary course of business with us or our affiliates. They have received, or may in the future receive, customary fees and commissions for these transactions.

In addition, in the ordinary course of their business activities, the underwriters and their affiliates may make or hold a broad array of investments and actively trade debt and equity securities (or related derivative securities) and financial instruments (including bank loans) for their own account and for the accounts of their customers. Such investments and securities activities may involve securities and/or instruments of ours or our affiliates. The underwriters and their affiliates may also make investment recommendations and/or publish or express independent research views in respect of such securities or financial instruments and may hold, or recommend to clients that they acquire, long and/or short positions in such securities and instruments.

**European Economic Area**

In relation to each member state of the European Economic Area, no offer of ordinary shares which are the subject of the offering has been, or will be made to the public in that Member State, other than under the following exemptions under the Prospectus Directive:

(a) to any legal entity which is a qualified investor as defined in the Prospectus Directive;

(b) to fewer than 150 natural or legal persons (other than qualified investors as defined in the Prospectus Directive), subject to obtaining the prior consent of the Representatives for any such offer; or

(c) in any other circumstances falling within Article 3(2) of the Prospectus Directive,

*provided* that no such offer of ordinary shares referred to in (a) to (c) above shall result in a requirement for the Company or any Representative to publish a prospectus pursuant to Article 3 of the Prospectus Directive, or supplement a prospectus pursuant to Article 16 of the Prospectus Directive.

Each person located in a Member State to whom any offer of ordinary shares is made or who receives any communication in respect of an offer of ordinary shares, or who initially acquires any ordinary shares will be deemed to have represented, warranted, acknowledged and agreed to and with each Representative and the Company that (1) it is a "qualified investor" within the meaning of the law in that Member State implementing Article 2(1)(e) of the Prospectus Directive; and (2) in the case of any ordinary shares acquired by it as a financial intermediary as that term is used in Article 3(2) of the Prospectus Directive, the ordinary shares acquired by it in the offer have not been acquired on behalf of, nor have they been acquired with a view to their offer or resale to, persons in any Member State other than qualified investors, as that term is defined in the Prospectus Directive, or in circumstances in which the prior consent of the Representatives has been given to the offer or resale; or where ordinary shares have been acquired by it on behalf of persons in any Member State other than qualified investors, the offer of those ordinary shares to it is not treated under the Prospectus Directive as having been made to such persons.

The Company, the Representatives and their respective affiliates will rely upon the truth and accuracy of the foregoing representations, acknowledgments and agreements.

This prospectus has been prepared on the basis that any offer of shares in any Member State will be made pursuant to an exemption under the Prospectus Directive from the requirement to publish a prospectus for offers of shares. Accordingly any person making or intending to make an offer in that Member State of shares which are the subject of the offering contemplated in this prospectus may only do so in circumstances in which no obligation arises for the Company or any of the Representatives to publish a prospectus pursuant to Article 3 of the Prospectus Directive in relation to such offer. Neither the Company nor the Representatives have authorized, nor do they authorize, the making of any offer of shares in circumstances in which an obligation arises for the Company or the Representatives to publish a prospectus for such offer.

For the purposes of this provision, the expression an "offer of ordinary shares to the public" in relation to any ordinary shares in any Member State means the communication in any form and by any means of sufficient information on the terms of the offer and the ordinary shares to be offered so as to enable an investor to decide to purchase or subscribe the ordinary shares, as the same may be varied in that Member State by any measure implementing the Prospectus Directive in that Member State, the expression "Prospectus Directive" means Directive 2003/71/EC (as amended) and includes any relevant implementing measure in each Member State.

The above selling restriction is in addition to any other selling restrictions set out below.

**Notice to Prospective Investors in the United Kingdom**

In addition, in the United Kingdom, this document is being distributed only to, and is directed only at, and any offer subsequently made may only be directed at persons who are "qualified investors" (as defined in the Prospectus Directive) (i) who have professional experience in matters relating to investments falling within Article 19 (5) of the Financial Services and Markets Act 2000 (Financial Promotion) Order 2005, as amended (the "Order") and/or (ii) who are high net worth companies (or persons to whom it may otherwise be lawfully communicated) falling within Article 49(2)(a) to (d) of the Order (all such persons together being referred to as "relevant persons"). This document must not be acted on or relied on in the United Kingdom by persons who are not relevant persons. In the United Kingdom, any investment or investment activity to which this document relates is only available to, and will be engaged in with, relevant persons.

**Notice to Prospective Investors in Switzerland**

The shares may not be publicly offered in Switzerland and will not be listed on the SIX Swiss Exchange ("SIX") or on any other stock exchange or regulated trading facility in Switzerland. This document has been prepared

without regard to the disclosure standards for issuance prospectuses under art. 652a or art. 1156 of the Swiss Code of Obligations or the disclosure standards for listing prospectuses under art. 27 ff. of the SIX Listing Rules or the listing rules of any other stock exchange or regulated trading facility in Switzerland. Neither this document nor any other offering or marketing material relating to the shares or the offering may be publicly distributed or otherwise made publicly available in Switzerland.

Neither this document nor any other offering or marketing material relating to the offering, the Company, the shares have been or will be filed with or approved by any Swiss regulatory authority. In particular, this document will not be filed with, and the offer of shares will not be supervised by, the Swiss Financial Market Supervisory Authority FINMA ("FINMA"), and the offer of shares has not been and will not be authorized under the Swiss Federal Act on Collective Investment Schemes ("CISA"). The investor protection afforded to acquirers of interests in collective investment schemes under the CISA does not extend to acquirers of shares.

**Notice to Prospective Investors in the Dubai International Financial Centre**

This prospectus relates to an Exempt Offer in accordance with the Offered Securities Rules of the Dubai Financial Services Authority ("DFSA"). This prospectus is intended for distribution only to persons of a type specified in the Offered Securities Rules of the DFSA. It must not be delivered to, or relied on by, any other person. The DFSA has no responsibility for reviewing or verifying any documents in connection with Exempt Offers. The DFSA has not approved this prospectus nor taken steps to verify the information set forth herein and has no responsibility for the prospectus. The shares to which this prospectus relates may be illiquid and/or subject to restrictions on their resale. Prospective purchasers of the shares offered should conduct their own due diligence on the shares. If you do not understand the contents of this prospectus you should consult an authorized financial advisor.

**Notice to Prospective Investors in Australia**

No placement document, prospectus, product disclosure statement or other disclosure document has been lodged with the Australian Securities and Investments Commission ("ASIC"), in relation to this offering. This prospectus does not constitute a prospectus, product disclosure statement or other disclosure document under the Corporations Act 2001 (the "Corporations Act"), and does not purport to include the information required for a prospectus, product disclosure statement or other disclosure document under the Corporations Act.

Any offer in Australia of the shares may only be made to persons (the "Exempt Investors") who are "sophisticated investors" (within the meaning of section 708(8) of the Corporations Act), "professional investors" (within the meaning of section 708(11) of the Corporations Act) or otherwise pursuant to one or more exemptions contained in section 708 of the Corporations Act so that it is lawful to offer the shares without disclosure to investors under Chapter 6D of the Corporations Act.

The shares applied for by Exempt Investors in Australia must not be offered for sale in Australia in the period of 12 months after the date of allotment under the offering, except in circumstances where disclosure to investors under Chapter 6D of the Corporations Act would not be required pursuant to an exemption under section 708 of the Corporations Act or otherwise or where the offer is pursuant to a disclosure document which complies with Chapter 6D of the Corporations Act. Any person acquiring shares must observe such Australian on-sale restrictions.

This prospectus contains general information only and does not take account of the investment objectives, financial situation or particular needs of any particular person. It does not contain any securities recommendations or financial product advice. Before making an investment decision, investors need to consider whether the information in this prospectus is appropriate to their needs, objectives and circumstances, and, if necessary, seek expert advice on those matters.

**Notice to Prospective Investors in Hong Kong**

The securities have not been offered or sold and will not be offered or sold in Hong Kong, by means of any document, other than (a) to "professional investors" as defined in the Securities and Futures Ordinance (Cap. 571) of Hong Kong and any rules made under that Ordinance; or (b) in other circumstances which do not result in the document being a "prospectus" as defined in the Companies Ordinance (Cap. 32) of Hong Kong or which do not constitute an offer to the public within the meaning of that Ordinance. No advertisement, invitation or document relating to the securities has been or may be issued or has been or may be in the possession of any person for the purposes of issue, whether in Hong Kong or elsewhere, which is directed at, or the contents of which are likely to be accessed or read by, the public of Hong Kong (except if permitted to do so under the securities laws of Hong Kong) other than with respect to securities which are or are intended to be disposed of only to persons outside Hong Kong or only to "professional investors" as defined in the Securities and Futures Ordinance and any rules made under that Ordinance.

**Notice to Prospective Investors in Japan**

The securities have not been and will not be registered under the Financial Instruments and Exchange Law of Japan (Law No. 25 of 1948, as amended) and, accordingly, will not be offered or sold, directly or indirectly, in Japan, or for the benefit of any Japanese Person or to others for re-offering or resale, directly or indirectly, in Japan or to any Japanese Person, except in compliance with all applicable laws, regulations and ministerial guidelines promulgated by relevant Japanese governmental or regulatory authorities in effect at the relevant time. For the purposes of this paragraph, "Japanese Person" shall mean any person resident in Japan, including any corporation or other entity organized under the laws of Japan.

**Notice to Prospective Investors in Singapore**

This prospectus has not been registered as a prospectus with the Monetary Authority of Singapore. Accordingly, this prospectus and any other document or material in connection with the offer or sale, or invitation for subscription or purchase, of Non-CIS Securities may not be circulated or distributed, nor may the Non-CIS Securities be offered or sold, or be made the subject of an invitation for subscription or purchase, whether directly or indirectly, to persons in Singapore other than (i) to an institutional investor under Section 274 of the Securities and Futures Act, Chapter 289 of Singapore (the "SFA"), (ii) to a relevant person pursuant to Section 275(1), or any person pursuant to Section 275(1A), and in accordance with the conditions specified in Section 275, of the SFA, or (iii) otherwise pursuant to, and in accordance with the conditions of, any other applicable provision of the SFA.

Where the Non-CIS Securities are subscribed or purchased under Section 275 of the SFA by a relevant person which is:

(a) a corporation (which is not an accredited investor (as defined in Section 4A of the SFA)) the sole business of which is to hold investments and the entire share capital of which is owned by one or more individuals, each of whom is an accredited investor; or

(b) a trust (where the trustee is not an accredited investor) whose sole purpose is to hold investments and each beneficiary of the trust is an individual who is an accredited investor,

securities (as defined in Section 239(1) of the SFA) of that corporation or the beneficiaries' rights and interest (howsoever described) in that trust shall not be transferred within six months after that corporation or that trust has acquired the Non-CIS Securities pursuant to an offer made under Section 275 of the SFA except:

(a) to an institutional investor or to a relevant person defined in Section 275(2) of the SFA, or to any person arising from an offer referred to in Section 275(1A) or Section 276(4)(i)(B) of the SFA;

(b) where no consideration is or will be given for the transfer;

(c) where the transfer is by operation of law;

(d) as specified in Section 276(7) of the SFA; or

(e) as specified in Regulation 32 of the Securities and Futures (Offers of Investments) (Shares and Debentures) Regulations 2005 of Singapore.

**Notice to Prospective Investors in Canada**

The securities may be sold only to purchasers purchasing, or deemed to be purchasing, as principal that are accredited investors, as defined in National Instrument 45-106 *Prospectus Exemptions* or subsection 73.3(1) of the *Securities Act* (Ontario), and are permitted clients, as defined in National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations*. Any resale of the securities must be made in accordance with an exemption from, or in a transaction not subject to, the prospectus requirements of applicable securities laws.

Securities legislation in certain provinces or territories of Canada may provide a purchaser with remedies for rescission or damages if this prospectus (including any amendment thereto) contains a misrepresentation, provided that the remedies for rescission or damages are exercised by the purchaser within the time limit prescribed by the securities legislation of the purchaser's province or territory. The purchaser should refer to any applicable provisions of the securities legislation of the purchaser's province or territory for particulars of these rights or consult with a legal advisor.

Pursuant to section 3A.3 (or, in the case of securities issued or guaranteed by the government of a non-Canadian jurisdiction, section 3A.4) of National Instrument 33-105 *Underwriting Conflicts* (NI 33-105), the underwriters are not required to comply with the disclosure requirements of NI 33-105 regarding underwriter conflicts of interest in connection with this offering.

## LEGAL MATTERS

The validity of the shares of common stock being offered by this prospectus will be passed upon for us by Cooley LLP, Boston, Massachusetts. Gunderson Dettmer Stough Villeneuve Franklin & Hachigian, LLP, Redwood City, California, is representing the underwriters.

## EXPERTS

The consolidated financial statements as of December 31, 2015 and 2016, and for each of the two years in the period ended December 31, 2016, included in this prospectus, have been audited by Deloitte & Touche LLP, an independent registered public accounting firm, as stated in their report appearing herein. Such consolidated financial statements have been so included in reliance upon the report of such firm given upon their authority as experts in accounting and auditing.

## WHERE YOU CAN FIND ADDITIONAL INFORMATION

We have filed with the SEC a registration statement on Form S-1 under the Securities Act, with respect to the shares of common stock being offered by this prospectus, which constitutes a part of the registration statement. This prospectus, which constitutes a part of the registration statement, does not contain all of the information in the registration statement and its exhibits. For further information with respect to us and the common stock offered by this prospectus, we refer you to the registration statement and its exhibits. Statements contained in this prospectus as to the contents of any contract or any other document referred to are not necessarily complete, and in each instance, we refer you to the copy of the contract or other document filed as an exhibit to the registration statement. Each of these statements is qualified in all respects by this reference.

You can read our SEC filings, including the registration statement, over the internet at the SEC's website at www.sec.gov. You may also read and copy any document we file with the SEC at its public reference facilities at 100 F Street, N.E., Washington, D.C. 20549. You may also obtain copies of these documents at prescribed rates by writing to the Public Reference Section of the SEC at 100 F Street, N.E., Washington, D.C. 20549. Please call the SEC at 1-800-SEC-0330 for further information on the operation of the public reference facilities.

Upon the completion of this offering, we will be subject to the information reporting requirements of the Exchange Act, and we will file reports, proxy statements and other information with the SEC. These reports, proxy statements and other information will be available for inspection and copying at the public reference room and web site of the SEC referred to above. We also maintain a website at www.cardlytics.com, at which you may access these materials free of charge as soon as reasonably practicable after they are electronically filed with, or furnished to, the SEC. **However, the information contained in or accessible through our website is not part of this prospectus or the registration statement of which this prospectus forms a part, and investors should not rely on such information in making a decision to purchase our common stock in this offering.**

## INDEX TO CONSOLIDATED FINANCIAL STATEMENTS

## CARDLYTICS, INC.

## REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

To the Board of Directors and Stockholders of
Cardlytics, Inc.
Atlanta, Georgia

We have audited the accompanying consolidated balance sheets of Cardlytics, Inc. and its wholly-owned subsidiary (the "Company") as of December 31, 2015 and 2016, and the related consolidated statements of operations, stockholders' deficit, and cash flows for each of the two years in the period ended December 31, 2016. These financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on these financial statements based on our audits.

We conducted our audits in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. The Company is not required to have, nor were we engaged to perform, an audit of its internal control over financial reporting. Our audits included consideration of internal control over financial reporting as a basis for designing audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the Company's internal control over financial reporting. Accordingly, we express no such opinion. An audit also includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements, assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, such consolidated financial statements present fairly, in all material respects, the financial position of Cardlytics, Inc. and its wholly-owned subsidiary as of December 31, 2015 and 2016, and the results of their operations and their cash flows for each of the two years in the period ended December 31, 2016, in conformity with accounting principles generally accepted in the United States of America.

/s/ DELOITTE & TOUCHE LLP

Atlanta, Georgia
April 5, 2017, except for Note 16, as to which the date is May 12, 2017

**CARDLYTICS, INC.**
**CONSOLIDATED BALANCE SHEETS**
**(Amounts in thousands, except par value amounts)**

| | December 31, 2015 | December 31, 2016 |
|---|---|---|
| **ASSETS** | | |
| CURRENT ASSETS: | | |
| Cash and cash equivalents | $ 27,323 | $ 22,838 |
| Restricted cash | 286 | 130 |
| Accounts receivable, net | 37,410 | 42,042 |
| Other receivables | 1,716 | 1,774 |
| Prepaid expenses and other assets | 1,345 | 1,540 |
| Total current assets | 68,080 | 68,324 |
| PROPERTY AND EQUIPMENT, net | 9,551 | 8,345 |
| INTANGIBLE ASSETS, net | 465 | 476 |
| CAPITALIZED SOFTWARE DEVELOPMENT COSTS, net | 630 | — |
| DEFERRED FI IMPLEMENTATION COSTS, net | 1,936 | 8,451 |
| OTHER LONG-TERM ASSETS | 1,628 | 1,263 |
| Total assets | $ 82,290 | $ 86,859 |
| **LIABILITIES AND STOCKHOLDERS' (DEFICIT) EQUITY** | | |
| CURRENT LIABILITIES: | | |
| Accounts payable | $ 4,377 | $ 2,369 |
| Payable to related party, net | 6,133 | — |
| Accrued liabilities: | | |
| Accrued compensation | 4,008 | 3,122 |
| Accrued expenses | 7,126 | 4,410 |
| FI Share liability | 14,627 | 23,109 |
| Consumer incentive liability | 8,044 | 5,857 |
| Deferred billings | 566 | 638 |
| Short-term debt: | | |
| Lines of credit | 22,032 | — |
| Capital leases | 350 | 99 |
| Total current liabilities | $ 67,263 | $ 39,604 |
| LONG-TERM LIABILITIES: | | |
| Deferred liabilities | 4,305 | 4,071 |
| Redeemable convertible preferred stock warrant liability | 2,942 | 2,197 |
| Long-term debt, net of current portion: | | |
| Lines of credit | — | 15,652 |
| Term loans | 9,816 | 23,715 |
| Capital leases | 64 | 101 |
| Convertible promissory notes (recognized at fair value through net loss) | — | 8,662 |
| Convertible promissory notes—related parties (recognized at fair value through net loss) | — | 63,670 |
| Total long-term liabilities | $ 17,127 | $ 118,068 |

See notes to the consolidated financial statements

**CARDLYTICS, INC.**
**CONSOLIDATED BALANCE SHEETS**
**(Amounts in thousands, except par value amounts)**

| | December 31, 2015 | December 31, 2016 |
|---|---|---|
| **LIABILITIES AND STOCKHOLDERS' (DEFICIT) EQUITY** | | |
| COMMITMENTS AND CONTINGENCIES (Note 13) | | |
| REDEEMABLE CONVERTIBLE PREFERRED STOCK: | | |
| Series F/F-R preferred stock, $0.0001 par value—5,000 and 10,000 shares authorized and 4,795 shares issued and outstanding as of December 31, 2015 and 2016, respectively | $ 57,204 | $ 57,958 |
| Series E/E-R preferred stock, $0.0001 par value—7,400 and 14,800 shares authorized and 4,770 and 3,180 shares issued and outstanding as of December 31, 2015 and 2016, respectively | 44,922 | 29,963 |
| Series D/D-R preferred stock, $0.0001 par value—5,787 and 11,574 shares authorized and 5,584 shares issued and outstanding as of December 31, 2015 and 2016, respectively | 32,509 | 32,642 |
| Series C/C-R preferred stock, $0.0001 par value—6,032 and 12,063 shares authorized and 6,032 shares issued and outstanding as of December 31, 2015 and 2016, respectively | 18,254 | 18,323 |
| Series B/B-R preferred stock, $0.0001 par value—9,596 and 19,191 shares authorized and 8,995 and 8,987 shares issued and outstanding as of December 31, 2015 and 2016, respectively | 5,287 | 5,286 |
| Series A/A-R preferred stock, $0.0001 par value—7,528 and 15,055 shares authorized and 7,478 and 7,428 shares issued and outstanding as of December 31, 2015 and 2016, respectively | 1,885 | 1,850 |
| Total redeemable convertible preferred stock | 160,061 | 146,022 |
| STOCKHOLDERS' (DEFICIT) EQUITY: | | |
| Common stock, $0.0001 par value—64,000 shares authorized and 8,539 and 10,362 shares issued and outstanding as of December 31, 2015 and 2016, respectively | 1 | 1 |
| Additional paid-in capital | 10,363 | 29,866 |
| Accumulated other comprehensive income | 583 | 2,102 |
| Accumulated deficit | (173,108) | (248,804) |
| Total stockholders' (deficit) equity | (162,161) | (216,835) |
| Total liabilities and stockholders' (deficit) equity | $ 82,290 | $ 86,859 |

See notes to the consolidated financial statements

**CARDLYTICS, INC.**
**CONSOLIDATED STATEMENTS OF OPERATIONS**
**(Amounts in thousands, except per share amounts)**

| | Year Ended December 31, | |
|---|---|---|
| | 2015 | 2016 |
| REVENUE | $ 77,634 | $ 112,821 |
| COSTS AND EXPENSES: | | |
| FI Share and other third-party costs | 47,691 | 66,285 |
| Delivery costs | 4,803 | 6,127 |
| Sales and marketing expense | 32,784 | 31,261 |
| Research and development expense | 11,604 | 13,902 |
| General and administration expense | 18,197 | 21,355 |
| Depreciation and amortization expense | 2,194 | 4,219 |
| Termination of U.K. agreement expense | — | 25,904 |
| Total costs and expenses | 117,273 | 169,053 |
| OPERATING LOSS | (39,639) | (56,232) |
| OTHER INCOME (EXPENSE): | | |
| Interest expense, net | (1,484) | (6,170) |
| Change in fair value of redeemable convertible preferred stock warrant liability | 914 | (32) |
| Change in fair value of convertible promissory notes | — | (786) |
| Change in fair value of convertible promissory notes—related parties | — | (10,091) |
| Other expense, net | (432) | (2,385) |
| Total other expense | (1,002) | (19,464) |
| LOSS BEFORE INCOME TAXES | (40,641) | (75,696) |
| INCOME TAX BENEFIT | 16 | — |
| NET LOSS | $ (40,625) | $ (75,696) |
| Accretion of redeemable convertible preferred stock to redemption value | (1,001) | (982) |
| Net loss attributable to common stockholders | $ (41,626) | $ (76,678) |
| Net loss per share attributable to common stockholders, basic and diluted | $ (4.98) | $ (8.12) |
| Weighted-average common shares outstanding, basic and diluted | 8,363 | 9,446 |
| Per share attributable to common stockholders, basic and diluted (unaudited) | | $ |
| Pro forma weighted-average common shares outstanding, basic and diluted (unaudited) | | |

See notes to the consolidated financial statements

**CARDLYTICS, INC.**
**CONSOLIDATED STATEMENTS OF COMPREHENSIVE LOSS**
**(Amounts in thousands)**

| | Year Ended December 31, | |
|---|---|---|
| | 2015 | 2016 |
| NET LOSS | $ (40,625) | $ (75,696) |
| OTHER COMPREHENSIVE INCOME: | | |
| Foreign currency translation adjustments, net of zero tax | 383 | 1,519 |
| TOTAL COMPREHENSIVE LOSS | $ (40,242) | $ (74,177) |

See notes to the consolidated financial statements

**CARDLYTICS, INC.**
**CONSOLIDATED STATEMENTS OF STOCKHOLDERS' DEFICIT**
**(Amounts in thousands)**

| | Common Stock Shares | Common Stock Amount | Additional Paid-In Capital | Accumulated Other Comprehensive Income | Accumulated Deficit | Total |
|---|---|---|---|---|---|---|
| BALANCE — December 31, 2014 | 8,166 | $ 1 | $ 8,282 | $ 200 | $ (132,125) | $ (123,642) |
| Cumulative effect adjustment upon adoption of ASU 2016-09 | — | — | 165 | — | (165) | — |
| Exercise of common stock options | 405 | — | 464 | — | — | 464 |
| Repurchase of common stock | (32) | — | — | — | (193) | (193) |
| Stock-based compensation | — | — | 2,453 | — | — | 2,453 |
| Accretion of redeemable convertible preferred stock to redemption value | — | — | (1,001) | — | — | (1,001) |
| Other comprehensive income | — | — | — | 383 | — | 383 |
| Net loss | — | — | — | — | (40,625) | (40,625) |
| BALANCE — December 31, 2015 | 8,539 | $ 1 | $ 10,363 | $ 583 | $ (173,108) | $ (162,161) |
| Conversion of preferred stock | 1,648 | — | 15,021 | — | — | 15,021 |
| Conversion of preferred stock warrants | — | — | 777 | — | — | 777 |
| Exercise of common stock options | 175 | — | 279 | — | — | 279 |
| Issuance of common stock warrants | — | — | 961 | — | — | 961 |
| Stock-based compensation | — | — | 3,447 | — | — | 3,447 |
| Accretion of redeemable convertible preferred stock to redemption value | — | — | (982) | — | — | (982) |
| Other comprehensive income | — | — | — | 1,519 | — | 1,519 |
| Net loss | — | — | — | — | (75,696) | (75,696) |
| BALANCE — December 31, 2016 | 10,362 | $ 1 | $ 29,866 | $ 2,102 | $ (248,804) | $ (216,835) |

See notes to the consolidated financial statements

**CARDLYTICS, INC.**
**CONSOLIDATED STATEMENTS OF CASH FLOWS**
**(Amounts in thousands)**

| | Year Ended December 31, | |
|---|---|---|
| | **2015** | **2016** |
| CASH FLOWS FROM OPERATING ACTIVITIES: | | |
| Net loss | $ (40,625) | $ (75,696) |
| Adjustments to reconcile net loss to net cash used in operating activities: | | |
| Increase in allowance for doubtful accounts | 725 | 1,100 |
| Depreciation and amortization expense | 2,194 | 4,219 |
| Amortization of financing costs charged to interest expense | 152 | 297 |
| Accretion of debt discount charged to interest expense | 75 | 4,368 |
| Stock-based compensation expense | 2,453 | 3,447 |
| Termination of U.K. agreement expense | — | 25,904 |
| Change in fair value of redeemable convertible preferred stock warrant liability | (914) | 32 |
| Change in fair value of convertible promissory notes | — | 786 |
| Change in fair value of convertible promissory notes—related parties | — | 10,091 |
| Other non-cash expenses | 650 | 6,809 |
| Change in operating assets and liabilities: | | |
| Accounts receivable | (5,476) | (5,789) |
| Prepaid expenses and other assets | 480 | (529) |
| Deferred FI implementation costs | (2,023) | (8,200) |
| Accounts payable | 1,972 | (1,234) |
| Other accrued expenses | 4,076 | (3,940) |
| Payable to related party, net | 2,542 | (459) |
| FI Share liability | 1,756 | 8,482 |
| Consumer incentive liability | 2,805 | (2,186) |
| Total adjustment | 11,467 | 43,198 |
| Net cash used in operating activities | $ (29,158) | $ (32,498) |
| CASH FLOWS FROM INVESTING ACTIVITIES: | | |
| Acquisition of property and equipment | (5,704) | (1,827) |
| Acquisition of intangible assets | (597) | (718) |
| Net cash used in investing activities | $ (6,301) | $ (2,545) |

See notes to the consolidated financial statements

**CARDLYTICS, INC.**
**CONSOLIDATED STATEMENTS OF CASH FLOWS**
**(Amounts in thousands)**

| | Year Ended December 31, | |
|---|---|---|
| | 2015 | 2016 |
| CASH FLOWS FROM FINANCING ACTIVITIES: | | |
| Proceeds from issuance of debt | $ 47,917 | $ 46,794 |
| Proceeds from issuance of debt — related parties | — | 19,485 |
| Principal payments of debt | (35,900) | (32,346) |
| Proceeds from issuance of common stock | 464 | 279 |
| Equity issuance costs | (199) | (1,674) |
| Debt issuance costs | (162) | (1,417) |
| Debt extinguishment costs | — | (312) |
| Repurchase of common stock | (193) | — |
| Net cash from financing activities | $ 11,927 | $ 30,809 |
| EFFECT OF EXCHANGE RATES ON CASH, CASH EQUIVALENTS AND RESTRICTED CASH | (57) | (407) |
| NET DECREASE IN CASH, CASH EQUIVALENTS AND RESTRICTED CASH | (23,589) | (4,641) |
| CASH, CASH EQUIVALENTS AND RESTRICTED CASH — beginning of period | 51,198 | 27,609 |
| CASH, CASH EQUIVALENTS AND RESTRICTED CASH — end of period | $ 27,609 | $ 22,968 |
| Supplemental schedule of non-cash investing and financing activities: | | |
| Cash paid for interest | $ 1,279 | $ 1,632 |
| Cash paid for income taxes | $ — | $ — |
| Amounts accrued for property and equipment | $ 211 | $ — |

See notes to the consolidated financial statements

**CARDLYTICS, INC.**

**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**

## 1. NATURE OF OPERATIONS

Cardlytics, Inc. (“we,” “our,” “us,” the “Company,” or “Cardlytics”), is a Delaware corporation, and was formed on June 26, 2008. We make marketing more relevant and measurable through our purchase intelligence platform. Using one of the largest aggregations of purchase data through our partnerships with banks and credit unions (“FIs”), we have a secure view into where and when consumers are spending their money. By applying advanced analytics to this massive aggregation of purchase data, we make it actionable, helping marketers identify, reach and influence likely buyers at scale, and measure the true sales impact of their marketing spend.

On May 4, 2012, we formed Cardlytics UK Limited (“Cardlytics UK”), a wholly-owned subsidiary registered as a private limited company in England and Wales. As discussed in Note 12—Variable Interest Entity, Cardlytics UK was a party to a collaboration agreement whereby 50% of its income and losses are shared with Aimia EMEA Limited (“Aimia”). Cardlytics, Inc. obtained full control of Cardlytics UK in June 2016 upon the termination of the cooperation agreement in exchange for convertible promissory notes of the Company as discussed in Note 5—Debt.

***Liquidity***

We have incurred accumulated net losses of $248.8 million since inception, including losses of $40.6 million and $75.7 million in 2015 and 2016, respectively. We expect to incur additional operating losses as we continue our efforts to grow our business. We have historically financed our operations and capital expenditures through convertible note financings and private placements of our redeemable convertible preferred stock, as well as lines of credit and term loans. We have received net proceeds of $184.4 million from the issuance of redeemable convertible preferred stock and convertible promissory notes through December 31, 2016. Our historical uses of cash have primarily consisted of cash used in operating activities to fund our operating losses and working capital needs.

As of December 31, 2016, we had $22.8 million in cash and cash equivalents and $16.4 million of available borrowings under our line of credit. As of December 31, 2016, we had $72.3 million of convertible promissory notes outstanding, $15.7 million outstanding under our Line of Credit and $23.7 million outstanding under our Term Loan. Our convertible promissory notes will convert into shares of our common stock in connection with the completion of our initial public offering of our common stock. As of December 31, 2016, the carrying value of our convertible promissory notes includes fair value adjustments of $18.8 million due to our election of the fair value option. In connection with our line of credit, we are subject to financial covenants that include a requirement of a total cash balance plus availability under the line of credit of not less than $5.0 million and a moving minimum trailing twelve month revenue financial covenant. See Note 5—Debt and Note 9—Fair Value Measurements for additional information.

Our future capital requirements will depend on many factors, including our growth rate, the timing and extent of spending to support research and development efforts, the continued expansion of sales and marketing activities, the enhancement of our platform, the introduction of new solutions and the continued market acceptance of our solutions. We expect to continue to incur operating losses for the foreseeable future and may require additional capital resources to continue to grow our business. We believe that current cash and cash equivalents will be sufficient to fund our operations and capital requirements for at least 12 months following the date our consolidated financial statements were issued. In the event that additional financing is required from outside sources, we may not be able to raise such financing on terms acceptable to us or at all.

## 2. SIGNIFICANT ACCOUNTING POLICIES

***Principles of Consolidation***

The consolidated financial statements include the accounts of Cardlytics and Cardlytics UK. All intercompany transactions and balances have been eliminated in consolidation.

***Unaudited Pro Forma Presentation***

Upon the consummation of an initial public offering ("IPO") of shares of our common stock that results in gross proceeds to the Company of not less than $70.0 million, after deducting underwriting discounts and expenses, all of the outstanding shares of redeemable convertible preferred stock will automatically convert into shares of common stock. Our December 31, 2016 unaudited consolidated balance sheet has been prepared assuming (1) the conversion of the redeemable convertible preferred stock outstanding as of December 31, 2016 into 36,005,062 shares of common stock as of December 31, 2016, (2) the issuance of 1,385,358 shares of Series G redeemable convertible preferred stock in May 2017 at a purchase price of $8.61895 per share and the conversion of such shares into common stock, (3) the reclassification to stockholders' (deficit) equity of our redeemable convertible preferred stock warrant liability in connection with the conversion of our outstanding redeemable convertible preferred stock warrants into common stock warrants and (4) the conversion of all convertible promissory notes outstanding as of December 31, 2016 into 5,183,015 shares of redeemable convertible preferred stock and 3,205,318 shares of common stock in May 2017 and the subsequent conversion of such shares of redeemable convertible preferred stock into common stock. See Note 16 – Subsequent Events for a description of the Series G preferred stock financings and the transactions that resulted in the conversion of our convertible promissory notes outstanding as of December 31, 2016 into shares of our common stock in May 2017.

The pro forma net loss per share for the year ended December 31, 2016 assumes (1) our issuance and sale of 1,385,358 shares of redeemable convertible preferred stock in May 2017, (2) the automatic conversion of all outstanding shares of redeemable convertible preferred stock outstanding as of December 31, 2016, plus the additional shares of redeemable convertible preferred stock referenced in (1) above and (3) below, into common stock immediately prior to the closing of this offering and (3) the conversion of all convertible promissory notes outstanding as of December 31, 2016 into an aggregate of 5,183,015 shares of redeemable convertible preferred stock and 3,205,318 shares of common stock in May 2017.

***Use of Estimates***

The preparation of financial statements in conformity with generally accepted accounting principles ("U.S. GAAP") requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the consolidated financial statements. Actual results could differ from these estimates. Significant items subject to such estimates and assumptions include revenue recognition, internal-use software development costs, income taxes, stock-based compensation, derivative instruments, income tax valuation allowance, contingencies and changes in fair value of our convertible promissory notes. We base our estimates on historical experience and also on assumptions that we believe are reasonable. Changes in facts or circumstances may cause us to change our assumptions and estimates in future periods and it is possible that actual results could differ from our current or revised future estimates.

***Reclassifications***

We have separately presented deferred FI implementation costs on our December 31, 2016 consolidated balance sheet and 2016 consolidated statement of cash flows. We have conformed our December 31, 2015 consolidated balance sheet and 2015 consolidated statement of cash flows to our current year presentation. As a result, we reclassified cash outflows of $1.8 million from other long-term assets to deferred FI implementation costs, representing net deferred costs as of December 31, 2015. We also reclassified cash outflows of $0.2 million from other non-cash expenses to deferred FI implementation costs, representing 2015 amortization.

***Foreign Currency***

Our foreign subsidiary, Cardlytics UK, records its assets, liabilities and results of operations in British Pounds, which is its functional currency. We translate Cardlytics UK's financial statements into U.S. dollars each reporting period for purposes of consolidation. Assets and liabilities are translated at the period-end currency exchange rates, certain equity accounts are translated at historical exchange rates and income and expense amounts are translated at average currency exchange rates in effect for the period. The effect of these translation adjustments is reported in a separate component of stockholders' (deficit) equity titled accumulated other comprehensive income.

We are also subject to gains and losses from foreign currency denominated transactions and the remeasurement of foreign currency denominated balance sheet accounts, both of which are included in other expense, net in the accompanying consolidated statements of operations. We recorded foreign currency losses totaling $0.4 million and $1.9 million in 2015 and 2016, respectively.

***Revenue***

We have two reportable segments and generate revenue through the sale of two categories of solutions that leverage our intelligence platform: (1) our proprietary native banking channel, Cardlytics Direct and (2) our Other Platform Solutions. We generate revenue from the sale of our Cardlytics Direct service in the United States and United Kingdom and our Other Platform Solutions in the United States.

*Cardlytics Direct*

Our Cardlytics Direct solution is our proprietary native bank advertising channel that enables marketers to reach consumers through their trusted and frequently visited online and mobile banking channels. Working with the marketer, we design a campaign that targets customers based on their purchase history. The consumer is offered an incentive to make a purchase from the marketer within a specified period. We use a portion of the fees that we collect from marketers to provide these consumer incentives to our FIs' customers after they make qualifying purchases, which we refer to as Consumer Incentives. Leveraging our powerful predictive analytics, we are able to create compelling Consumer Incentives that have the potential to increase return on advertising spend for marketers. We also pay our FI partners an FI Share. We have generated substantially all of our revenue from sales of Cardlytics Direct since inception.

We price Cardlytics Direct in two primary ways: (1) Cost per Served Sale ("CPS"), and (2) Cost per Redemption ("CPR"). In both 2015 and 2016, CPS represented 67% of our revenue from Cardlytics Direct.

- ***CPS***. Our primary and fastest growing pricing model is CPS, which we created to meet the media buying preferences of marketers. We generate revenue by charging a percentage, which we refer to as the CPS Rate, of all purchases from the marketer by consumers (1) who are served marketing and (2) subsequently make a purchase from the marketer during the campaign period, regardless of whether consumers select the marketing and thereby becomes eligible to earn the applicable Consumer Incentive. We set CPS Rates for marketers based on our expectation of the marketer's return on spend for the relevant campaign. Additionally, we set the amount of the Consumer Incentives payable for each campaign based on our estimation of our ability to drive incremental sales for the marketer. We seek to optimize the level of Consumer Incentives to retain a greater portion of billings. However, if the amount of Consumer Incentives exceeds the amount of billings that we are paid by the applicable marketer we are still responsible for paying the total Consumer Incentive. This has occurred infrequently and has been immaterial in amount for each of the periods presented.

- ***CPR***. Our initial pricing model is CPR, where marketers specify and fund the Consumer Incentive and pay us a separate negotiated, fixed marketing fee, or the CPR Fee, for each purchase that we

generate. We generate revenue if the consumer (1) is served marketing, (2) selects the marketing and thereby becomes eligible to earn the applicable Consumer Incentive and (3) makes a qualifying purchase from the marketer during the campaign period. We set the CPR Fee for marketers based on our estimation of the marketers' return on spend for the relevant campaign. The CPR Fee is either a percentage of qualifying purchases or a flat amount.

*Other Platform Solutions*

We also generate revenue from our Other Platform Solutions. Our Other Platform Solutions enable marketers and marketing service providers to leverage the power of purchase intelligence across all of their marketing investments. For example, we enable marketers to use purchase intelligence to identify likely buyers outside the banking channel based on their actual spending and interests and measure in-store and online campaign sales impact. To the extent that we use a specific FI customer's anonymized purchase data in the delivery of our Other Platform Solutions, we pay the applicable FI an FI Share calculated based on the relative contribution of the data provided by the FI to the overall delivery of the services. In order to test the efficacy of our Other Platform Solutions, we historically used programmatic vendors to run marketing campaigns outside of the Cardlytics Direct channel, and thereby delivered our Other Platform Solutions primarily as a managed service. This allowed us to gain valuable expertise in leveraging our purchase intelligence outside the banking channel. With regard to delivery of our Other Platform Solutions as a managed service, we charge marketers a fee based on the number of impressions that we deliver for their marketing campaign, calculated on a cost per thousand impressions, or CPM, basis. Revenue from Other Platform Solutions delivered as a managed service represented a significant majority of our total Other Platform Solutions revenue in 2015 and 2016.

*Revenue Recognition*

We recognize revenue in accordance with Accounting Standards Codification ("ASC") Topic 605, *Revenue Recognition*, on a transaction when all of the following conditions have been satisfied:

- persuasive evidence of an agreement exists;
- the service has been provided to the customer;
- fees are fixed or determinable; and
- the collection of the fees is reasonably assured.

If any of these criteria are not met, revenue recognition is deferred until such time that all of the criteria are met. Our deferred revenue is primarily comprised of payments received in advance for Cardlytics Direct marketing campaigns.

We sell our solutions by entering into agreements directly with marketers or their marketing agencies. The agreements state the terms of the arrangement, the agreed upon fee and, with respect to Cardlytics Direct, the fixed period of time the offers will be available to FI customers. Persuasive evidence of an arrangement is considered to exist and the fee is considered fixed and determinable upon the execution of an insertion order. With respect to our Cardlytics Direct service, the service is deemed to have been provided to the marketer as FIs' customers make qualifying purchases during the marketing campaign term. With respect to Other Platform Solutions, the service is deemed to have been provided (1) for non-managed service campaigns, when we deliver the purchase intelligence to the marketer and (2) for managed service campaigns, when the digital advertising impressions contemplated by the campaign have been served to targeted consumers. We determine collectability upfront and on an on-going basis by performing credit evaluations and monitoring our marketers' accounts receivable balances.

*Gross/Net Consideration*

We evaluate the appropriateness of revenue reporting on a gross or net basis by considering the indicators outlined within ASC Topic 605-45, *Revenue Recognition—Principal Agent Considerations* and ASC Topic 605-50, *Customer Payments and Incentives*. We consider the nature of the costs and risks associated with the indicators present in evaluating the substance of an arrangement. We consider the relative strength of each indicator and certain factors may be assessed to carry more weight in the evaluation.

**Consumer Incentives**

We report our revenue on our consolidated statements of operations net of Consumer Incentives. We generally pay Consumer Incentives only with respect to our Cardlytics Direct service. We do not provide the goods or services that are purchased by our FIs' customers from the marketers to which the Consumer Incentives relate. Accordingly, the marketer is deemed to be the principal in the relationship with the customer and, therefore, the Consumer Incentive is deemed to be a reduction in the purchase price paid by the customer for the marketer's goods or services. While we are responsible for remitting Consumer Incentives to our FI partners for further payment to their customers, we function solely as an agent of marketers in these arrangements.

Accounts receivable is recorded at the amount of gross billings to marketers, net of allowances, for the fees and Consumer Incentives that we are responsible to collect. Our accrued liabilities also include the amount of Consumer Incentives due to FI partners. As a result, accounts receivable and accrued liabilities may appear large in relation to revenue, which is reported on a net basis. During 2015 and 2016, Consumer Incentives totaled $56.3 million and $57.0 million, respectively.

**FI Share and Other Third-Party Costs**

We report our revenue on our consolidated statements of operations gross of FI Share. FI Share is included in FI Share and other third-party costs in our consolidated statements of operations, rather than as a reduction of revenue, because we and not our FI partners act as the principal in our arrangements with marketers. We are responsible for the fulfillment and acceptability of the services purchased by marketers. We also have latitude in establishing the price of our services, have discretion in supplier selection and earn variable amounts. FIs only supply consumer purchase data and digital marketing space and have no involvement in the marketing campaigns or relationship (contractual or otherwise) with marketers.

We report our revenue on our consolidated statements of operations gross of media costs. We incur media costs in connection with the delivery of managed services with respect to our Other Platform Solutions. Media costs are included in FI Share and other third-party costs in our consolidated statements of operations, rather than as a reduction of revenue, because we and not exchanges or digital publishers act as the principal in our arrangements with marketers.

***FI Share and Other Third-Party Costs***

FI Share and other third-party costs consist primarily of the FI Share that we pay our FI partners, media and data costs, and through June 30, 2016, allocation of revenue in the United Kingdom to Aimia as discussed in Note 12—Variable Interest Entity. FI Share and other third-party costs also include the amortization or impairment of implementation costs incurred pursuant to our agreements with certain FI partners, any incremental costs due to FIs as part of FI Share commitments, as well as non-cash expense that we may incur from time to time upon the vesting of outstanding performance-based warrants to purchase shares of our redeemable convertible preferred stock and common stock that we issued to certain FI partners. With respect to Cardlytics Direct, we pay FI Share based on the full amount of billings to marketers less any consumer incentives that we pay to the FIs' customers and certain third-party data costs. To the extent that

we use a specific FI customer's anonymized purchase data in the delivery of our Other Platform Solutions, we pay the applicable FI an FI Share calculated based on the relative contribution of the data provided by the FI to the overall delivery of the services.

***Delivery Costs***

Delivery costs consist primarily of personnel-related costs of our campaign, data operations and production support teams, including salaries, benefits, bonuses and payroll taxes, as well as stock-based compensation expense. Delivery costs also include hosting facility costs, internally developed and purchased software costs and professional services costs.

***Accounts Receivable***

Accounts receivable are carried at the original invoiced amount less an allowance for doubtful accounts, determined based on the probability of future collection. When we become aware of circumstances that may decrease the likelihood of collection, we record a specific allowance against amounts due, which reduces the receivable to the amount that we believe will be collected. For all other accounts receivable, we determine the adequacy of the allowance based on historical loss patterns, the number of days that billings are past due and an evaluation of the potential risk of loss associated with specific accounts. The following table presents changes in the allowance for doubtful accounts (in thousands):

| | Year Ended December 31, | |
|---|---|---|
| | 2015 | 2016 |
| Beginning balance | $ 143 | $ 746 |
| Bad debt expense | 725 | 1,100 |
| Write-offs, net of recoveries | (122) | (1,193) |
| Ending balance | $ 746 | $ 653 |

Unbilled receivables were $0.3 million and $0.5 million as of December 31, 2015 and December 31, 2016, respectively. An unbilled receivable represents revenue earned and recognized from customer activity that was not billed prior to the end of the reporting period. Unbilled receivables are included in accounts receivable, net on our consolidated balance sheets.

***Concentrations of Risk***

Financial instruments that potentially subject us to concentrations of credit risk consist primarily of cash and cash equivalents, restricted cash and accounts receivable. Our cash and cash equivalents and restricted cash are held with one financial institution, which we believe is of high credit quality. We believe that our accounts receivable credit risk exposure is limited as a result of being diversified among a large number of marketers segregated by both geography and industry. In 2015, we recorded a reserve of $0.5 million related to a large retailer in the United States that declared bankruptcy in 2016. In 2016, we recorded a reserve of $0.4 million related to a disputed invoice from a different retailer in the United States. Apart from these specific reserves, historically, we have not experienced significant write-downs of our accounts receivable. No single marketer represented a significant concentration of accounts receivable as of December 31, 2015 or December 31, 2016, and no single marketer represented a significant concentration of our revenue during 2015 and 2016.

Our business is substantially dependent on a limited number of FI partners. We require participation from our FI partners in Cardlytics Direct and access to their purchase data in order to offer our solutions to marketers and their agencies. We must have FI partners with a sufficient number of customers and levels of customer engagement to ensure that we have robust purchase data and marketing space to support a broad array of incentive programs for marketers. Our agreements with a substantial majority of our FI partners have three to five year terms but are terminable by the FI partner on 90 days or less prior notice. If an FI partner terminates its agreement with us, we would lose that FI as a source of purchase data and online banking customers.

During 2015 and 2016, our largest FI partner in the United States accounted for approximately 63% and 64% of FI Share, respectively. Two other FI partners accounted for over 10% of FI Share during 2015 and 2016. During 2015 and 2016, an FI partner in the United States accounted for 10% and 9% of FI Share, respectively, and an FI partner in the United Kingdom accounted for 11% and 10% of FI Share, respectively.

***Cash, Cash Equivalents and Restricted Cash***

Cash and cash equivalents consist of cash held in checking accounts. We consider all highly liquid instruments purchased with an initial maturity of three months or less to be cash equivalents. The average balance in this account is substantially higher than the maximum insurance provided by the Federal Deposit Insurance Corporation.

Restricted cash represents money market accounts and certificates of deposit held at a financial institution principally as security in connection with our corporate credit card balance and automated clearing house activities.

| | December 31, | |
|---|---|---|
| | 2015 | 2016 |
| Cash and cash equivalents | 27,323 | 22,838 |
| Restricted cash | 286 | 130 |
| Cash, cash equivalents and restricted cash | $ 27,609 | $ 22,968 |

***Property and Equipment***

Property and equipment are stated at cost. Expenditures for maintenance and repairs are expensed as incurred, while betterments that materially extend the life of an asset are capitalized. The cost of assets sold, retired or otherwise disposed of, and the related accumulated depreciation, are eliminated from the accounts and any resulting gain or loss is recognized.

Depreciation of property and equipment is determined using the straight-line method over the estimated useful lives of the applicable assets, which are as follows:

| | |
|---|---|
| Computer equipment: | 2–3 years |
| Furniture and fixtures: | 5 years |
| Leasehold improvements: | Lesser of estimated useful life or life of the lease |

***Intangible Assets***

Intangible assets are recorded at cost and consist of costs incurred for software patent applications. We received approval for three patents in 2013 and began amortizing the costs of obtaining these patents over the estimated remaining lives of the patents. If a patent application is rejected or if we abandon efforts to obtain a new patent, all deferred patent costs are expensed immediately. Deferred patent costs related to patents for which we have not yet obtained approval totaled $0.4 million as of December 31, 2015 and 2016, respectively. Based on deferred patent costs as of December 31, 2016, the related amortization expense will be less than $0.1 million in each of the next five years. Intangible assets are as follows (in thousands):

| | December 31, | |
|---|---|---|
| | 2015 | 2016 |
| Deferred patent costs, gross | $ 484 | $ 503 |
| Less accumulated amortization | (19) | (27) |
| Deferred patent costs, net | $ 465 | $ 476 |

***Internal-Use Software Development Costs***

Capitalized software development costs consist of costs incurred in the development of internal-use software, primarily associated with the development and enhancement of our offer management system and offer placement system. We capitalize the costs of software developed or obtained for internal use in accordance with ASC Topic 350-40, *Internal Use Software*. We begin to capitalize our costs upon completion of the preliminary project stage. We consider the preliminary project stage to be complete and the application development stage to have begun when preliminary development efforts are successfully completed, management has authorized and committed project funding and it is probable that the project will be completed and the software will be used as intended. These costs are amortized on a straight-line basis over the estimated useful life of the related asset, generally estimated to be five years. Costs incurred in the preliminary project stage and post-implementation operation stages are expensed as incurred and recorded in research and development expense on our consolidated statements of operations.

We capitalized $1.1 million in costs related to the development of our offer management system and offer placement system in 2009, and began amortizing those costs when the software was placed in service, with an expected useful life of 5 years. These software costs were fully amortized as of December 31, 2015.

During 2015 and 2016, we capitalized $0.6 million and $0.6 million, respectively, of development costs for new technology related to the delivery of our Other Platform Solutions as well as a new billing system. In 2016, we suspended these development efforts and wrote off development costs totaling $1.2 million recognized in depreciation and amortization on our consolidated statement of operations. Capitalized software development costs are as follows (in thousands):

| | December 31, | |
|---|---|---|
| | 2015 | 2016 |
| Capitalized software development costs, gross | $ 1,684 | $ 1,054 |
| Less accumulated amortization | (1,054) | (1,054) |
| Capitalized software development costs, net | $ 630 | $ — |

***Impairment of Long-Lived Assets***

We review long-lived assets and intangible assets for impairment whenever events or changes in circumstances indicate that the carrying amount of an asset may not be fully recoverable. Recoverability of assets to be held and used is measured by a comparison of the carrying amount of the assets to the undiscounted future net cash flows expected to be generated by the assets. If such assets are not considered to be recoverable, the impairment to be recognized is measured by the amount by which the carrying amount of the assets exceeds the fair value of the assets. During 2015, no impairment of our long-lived assets and intangibles assets was recognized. During 2016, we wrote off $0.8 million of deferred FI implementation costs as discussed in Note 13—Commitments and Contingencies.

***Debt Issuance Costs***

Costs incurred to obtain loans, other than lines of credit, are recorded as a reduction of the carrying amount of the related liability and amortized over the applicable loans' life using the effective interest method. Costs incurred to obtain lines of credit are capitalized and included in other long-term assets on our consolidated balance sheets and amortized ratably over the term of the arrangement. Costs incurred to obtain loans for which we have elected the fair value option are expensed upon the issuance of the loan and recorded within general and administrative expense on our consolidated statements of operations. As described in Note 5—Debt, we issued multiple new debt facilities in 2016 and deferred debt issuance costs of $1.1 million in connection with these transactions. Amortization of debt issuance costs included in interest expense, net totaled $0.2 million in 2015 and $0.3 million in 2016. In 2016, we also incurred $0.7 million of issuance costs, recorded in general and administrative expense, related to our convertible promissory notes, for which we have elected the fair value option.

Deferred debt issuance costs related to our lines of credit included in other long-term assets are as follows (in thousands):

| | December 31, 2015 | 2016 |
|---|---|---|
| Debt issuance costs, gross | $ 378 | $ 678 |
| Less accumulated amortization | (296) | (82) |
| Debt issuance costs, net | $ 82 | $ 596 |

Deferred debt issuance costs related to our term loans included in debt are as follows (in thousands):

| | December 31, 2015 | 2016 |
|---|---|---|
| Debt issuance costs, gross | $ 606 | $ 468 |
| Less accumulated amortization | (576) | (59) |
| Debt issuance costs, net | $ 30 | $ 409 |

Future amortization of debt issuance costs is as follows (in thousands):

| Years ending December 31, | Amortization |
|---|---|
| 2017 | $ 439 |
| 2018 | 422 |
| 2019 | 144 |
| Total | $ 1,005 |

***Deferred Offering Costs***

Deferred offering costs consist of incremental costs directly attributable to equity offerings. Upon completion of an offering, these amounts are offset against the proceeds of the offering. Deferred offering costs are included in other long-term assets on our consolidated balance sheets. Deferred offering costs related to a proposed equity offering totaled $1.2 million in 2015 and $0.7 million in 2016. As of December 31, 2015, $1.1 million was accrued. We terminated the proposed equity offering in 2016 and expensed the related deferred offering costs, which totaled $1.9 million. No amounts were accrued as of December 31, 2016.

***Reduction in Force***

In 2016, we announced a strategic shift to rebalance our resources and put us on a faster path to potential profitability. This workforce reduction plan resulted in $1.3 million of charges, consisting primarily of severance and medical benefits, recognized in 2016 when the extent of our action was determined and could be estimated. All severance and medical benefits were paid to former employees as of December 31, 2016. Additionally, vested stock options of affected employees were cancelled and re-granted with similar terms, but with exercise periods of up to two years, resulting in stock compensation expense of less than $0.1 million.

The following table summarizes the allocation of expenses related to the reduction in force on the consolidated statements of operations (in thousands):

| | Year Ended December 31, 2016 |
|---|---|
| Delivery costs | $ 93 |
| Sales and marketing | 396 |
| Research and development | 553 |
| General and administration | 249 |
| Total reduction in force costs | $ 1,291 |

***Advertising***

We expense advertising costs as incurred. These costs are included in sales and marketing expense on our consolidated statements of operations. Advertising costs include direct marketing costs such as print advertisements, market research, direct mail, public relations and trade show expenses and totaled $2.0 million and $0.9 million in 2015 and 2016, respectively.

***Research and Development Costs***

Research and development costs are expensed as incurred. Research and development costs consist primarily of personnel costs of our research and development employees, including salaries, benefits and bonuses. Research and development costs also includes stock-based compensation expense, outsourcing costs and travel expenses.

***Stock-Based Compensation***

We measure and recognize compensation expense for all stock options based on the estimated fair value of the award on the grant date. We use the Black-Scholes option pricing model to estimate the fair value of stock option awards. The fair value is recognized as expense over the requisite service period, which is generally the vesting period of the respective award, on a straight-line basis when the only condition to vesting is continued service. Forfeitures are accounted for when they occur. We recognize the fair value of stock options which contain performance conditions based upon the probability of the performance conditions being met. We have not issued awards where vesting is subject to a market condition; however, if we were to grant such awards in the future, recognition would be based on the derived service period. Expense for awards with performance conditions are estimated and adjusted on a quarterly basis based upon our assessment of the probability that the performance condition will be met. See Note 6—Stock-Based Compensation for additional information regarding our specific award plans and estimates and assumptions used to determine fair value.

***Redeemable Convertible Preferred Stock Warrant Liability***

We have outstanding warrants to purchase shares of our redeemable convertible preferred stock that are accounted for as derivative liabilities in accordance with ASC Topic 815, *Derivatives and Hedging* due to the terms of the warrants and related agreements. We have determined that these warrants do not meet the scope exception of a contract indexed to our stock because of fair value protections contained in agreements governing our redeemable convertible preferred stock as described in Note 8—Redeemable Convertible Preferred Stock. We record preferred stock warrant liabilities in our consolidated balance sheets at their fair value. We record the changes in fair value of such instruments as non-cash gains or losses in our statements of operations. See Note 9—Fair Value Measurements, for additional information regarding these warrants.

Warrants to purchase shares of redeemable convertible preferred stock held by parties that did not participate in the Existing Stockholder Note financing were converted to common stock warrants. As a result, during 2016, warrants to purchase 50,000 shares of our Series A Stock and warrants to purchase 100,000 shares of our Series B Stock were converted to common stock warrants.

***Fair Value of Financial Instruments***

When required by U.S. GAAP, assets and liabilities are reported at fair value in our consolidated financial statements. Fair value is defined as the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date. Valuation techniques used to measure fair value must maximize the use of observable inputs and minimize the use of unobservable inputs. Valuation inputs are arranged in a hierarchy that consists of the following levels:

- Level 1 inputs are quoted prices (unadjusted) in active markets for identical assets or liabilities that the reporting entity has the ability to access at the measurement date.

- Level 2 inputs are inputs other than Level 1 inputs such as quoted prices for similar assets or liabilities; quoted prices in markets with insufficient volume or infrequent transactions (less active markets); or model-derived valuations in which all significant inputs are observable or can be derived principally from or corroborated by observable market data for substantially the full term of the assets or liabilities.

- Level 3 inputs are unobservable inputs for the asset or liability.

The carrying amounts of cash and cash equivalents, restricted cash, accounts receivable, other receivables, prepaid expenses and other assets, accounts payable, and accrued liabilities, approximate their fair market value because of their short-term nature. We believe the carrying value of our lines of credit and term loans approximate fair value as the borrowing rates for these instruments are similar to those available to the Company.

The redemption features included in the terms of the convertible promissory notes were determined to be derivative liabilities as a result of a significant discount within the redemption features for the note holders. See Note 5—Debt for additional information regarding the convertible promissory notes. Embedded derivatives that are not clearly and closely related to the host contract are required to be bifurcated and recorded at fair value unless the fair value option is elected on the host contract. Under the fair value option, bifurcation of the embedded derivative is not necessary as all related gains (losses) on the host contract and derivative will be reflected in the consolidated statements of operations. We elected the fair value option for the Existing Stockholder Notes and Aimia Notes upon their issuance. The convertible promissory notes are measured using unobservable inputs that required a high level of judgment to determine fair value, and are therefore classified as Level 3. See Note 9—Fair Value Measurements for additional information.

Redeemable convertible preferred stock is stated at the amount of proceeds received, net of issuance costs, increased by accretion such that the carrying amount will equal the stated redemption amount at September 17, 2019. As of December 31, 2015 and 2016, our redeemable convertible preferred stock warrant liabilities were subject to this guidance and recorded at fair value. The redeemable convertible preferred stock warrants are measured using unobservable inputs that required a high level of judgment to determine fair value, and are therefore classified as Level 3. See Note 9—Fair Value Measurements for additional information.

Our nonfinancial assets that we recognize or disclose at fair value in our consolidated financial statements on a nonrecurring basis include property and equipment, intangible assets, capitalized software development costs and deferred FI implementation costs. The fair values for these assets are evaluated when events or changes in circumstances indicate the carrying value may not be recoverable.

***Income Taxes***

Income taxes are accounted for using the asset and liability method. Under this method, deferred tax assets and liabilities are recognized for the future tax consequences attributable to differences between the financial statement carrying amounts of existing assets and liabilities and their respective income tax bases, and operating loss and tax credit carryforwards. Valuation allowances are provided when we determine that it is more likely than not that all of, or a portion of, deferred tax assets will not be utilized in the future.

Significant judgment is required in determining any valuation allowance recorded against deferred tax assets. In assessing the need for a valuation allowance, we consider all available evidence, including past operating results, estimates of future taxable income and the feasibility of tax planning strategies. In the event that we change our determination as to the amount of deferred tax assets that can be realized, we will adjust our valuation allowance with a corresponding impact to the provision for income taxes in the period in which such determination is made.

Estimates of future taxable income are based on assumptions that are consistent with our plans. Assumptions represent management's best estimates and involve inherent uncertainties and the application of management's judgment. If actual amounts differ from our estimates, the amount of our tax expense and liabilities could be materially impacted.

We have recorded a full valuation allowance related to our net deferred tax assets due to the uncertainty of the ultimate realization of the future benefits of those assets.

We recognize the tax effects of an uncertain tax position only if it is more likely than not to be sustained based solely on its technical merits as of the reporting date, and then, only in an amount more likely than not to be sustained upon review by the tax authorities. Where applicable, we classify associated interest and penalties as income tax expense. The total amounts of interest and penalties were not material. We consider many factors when evaluating and estimating our tax positions and tax benefits, which may require periodic adjustments and which may not accurately anticipate actual outcomes.

## 3. ACCOUNTING STANDARDS

***Recently Adopted Accounting Pronouncements***

In August 2014, the FASB issued ASU 2014-15, *Presentation of Financial Statements—Going Concern (Subtopic 205-40): Disclosure of Uncertainties about an Entity's Ability to Continue as a Going Concern*. This guidance addresses management's responsibility to evaluate whether there is substantial doubt about an entity's ability to continue as a going concern and to provide related footnote disclosures. Management's evaluation should be based on relevant conditions and events that are known and reasonably knowable at the date that the financial statements are issued. ASU 2014-15 is effective for all entities on a prospective basis for annual periods ending after December 15, 2016 and interim periods beginning after December 15, 2016. The new guidance was effective for our annual reporting period ending December 31, 2016. Adoption of this guidance did not have an impact on our consolidated financial statements.

In April 2015, the FASB issued ASU 2015-03, *Imputation of Interest (Subtopic 835-30): Simplifying the Presentation of Debt Issuance Costs.* The FASB's objective for ASU 2015-03 is to reduce the complexity of having different balance sheet presentation requirements for debt issuance costs and debt discounts and premiums. The resulting impact of ASU 2015-03 is that debt issuance costs will be treated as a direct deduction from the carrying amount of the related debt, consistent with debt discounts. Amortization of debt issuance costs shall be reported as interest expense. Given the lack of clear authoritative guidance related to accounting for debt issuance costs associated with line of credit arrangements, the FASB issued ASU 2015-15, *Interest—Imputation of Interest (Subtopic 835-30): Presentation and Subsequent*

*Measurement of Debt Issuance Costs Associated with Line-of-Credit Arrangements.* FASB ASU 2015-15 amends Subtopic 835-30 to reflect that the U.S. Securities and Exchange Commission would not object to the deferral and presentation of debt issuance costs as an asset and subsequent amortization of the deferred costs over the term of the line of credit arrangement, regardless of whether there are any outstanding borrowings under the line of credit. ASU 2015-03 will be effective on a retrospective basis for periods beginning after December 15, 2015 for public entities. For nonpublic entities, the ASU is effective for annual periods after December 15, 2015 and interim periods after December 15, 2016. We adopted the guidance in 2016 and have applied it retrospectively. The adoption of ASU 2015-03 did not have an impact on our consolidated statements of operations or consolidated statements of cash flows. The impact of the adoption of the guidance resulted in reclassification of the unamortized debt issuance costs on our consolidated balance sheets from other long-term assets to long-term debt. Unamortized debt issuance costs related to our Repaid Term Loan were less than $0.1 million at December 31, 2015, respectively. Unamortized debt issuance costs related to a line of credit will continue to be presented on our consolidated balance sheets within other long-term assets.

In November 2015, the FASB issued ASU 2015-17, *Income Taxes (Topic 740): Balance Sheet Classification of Deferred Taxes*. ASU 2015-17 requires organizations that present a classified balance sheet to classify all deferred tax assets and liabilities, along with any related valuation allowance, as noncurrent assets or noncurrent liabilities. Current guidance requiring the offsetting of deferred tax assets and liabilities of a tax-paying component of an entity and presentation as a single noncurrent amount is not affected. The ASU will be effective on a retrospective basis for periods beginning after December 15, 2016 for public entities. For nonpublic entities, the ASU is effective for annual periods beginning after December 15, 2017 and interim periods beginning after December 15, 2018. We adopted the guidance in 2016 and have applied it prospectively. As of December 31, 2015 and 2016, we have recorded a full valuation allowance related to our net deferred tax assets. The adoption of ASU 2015-17 did not have an impact on our consolidated financial statements.

In August 2016, the FASB issued ASU 2016-15, *Statement of Cash Flows (Topic 230): Classification of Certain Cash Receipts and Cash Payments*. This ASU provides guidance on the statement of cash flows presentation of certain transactions where diversity in practice exists. The ASU will be effective on a retrospective basis for annual periods beginning after December 15, 2017 and interim periods within those fiscal years for public entities. For nonpublic entities, the ASU is effective for annual periods beginning after December 15, 2018 and interim periods after December 15, 2019. We adopted the guidance in 2016 and have applied it retrospectively. The adoption of ASU 2016-15 did not have an impact on our 2015 consolidated statement of cash flows. Cash payments for debt extinguishment costs are presented as cash outflows from financing activities on our 2016 consolidated statement of cash flows.

In November 2016, the FASB issued ASU 2016-18, *Statement of Cash Flows (Topic 230): Restricted Cash*. This ASU requires the statement of cash flows to explain the change in cash and cash equivalents during the period inclusive of amounts generally described as restricted cash. Therefore, amounts generally described as restricted cash will be included with cash and cash equivalents when reconciling the beginning-of-period and end-of-period total amounts shown on the statement of cash flows. The ASU will be effective on a retrospective basis for annual periods beginning after December 15, 2017 and interim periods within those fiscal years for public entities. For nonpublic entities, the ASU is effective for annual periods beginning after December 15, 2018 and interim periods after December 15, 2019. We adopted the guidance in 2016 and have applied it retrospectively. The adoption of ASU 2016-18 did not have a material impact on our consolidated financial statements. We have included a tabular reconciliation of cash, cash equivalents and restricted cash in Note 2—Significant Accounting Policies.

***Recently Issued Accounting Pronouncements***

In May 2014, the FASB issued ASU 2014-09, *Revenue from Contracts with Customers (Topic 606).* ASU 2014-09 supersedes the recognition guidance in ASC Topic 605 and most industry specific revenue

guidance. The FASB worked jointly with the International Accounting Standards Board to clarify the principles for recognizing revenue and to develop a common revenue standard for U.S. GAAP and International Financial Reporting Standards. In July 2015, the FASB voted to approve a one-year deferral of the effective date for public entities to December 15, 2017 for interim and annual reporting periods thereafter, and permitted early adoption of the standard, but not before the original effective date of December 15, 2016. The effective date for nonpublic entities was deferred to annual periods beginning after December 15, 2018 and interim reporting periods beginning after December 15, 2019. In March 2016, the FASB issued ASU 2016-08, *Revenue from Contracts with Customers (Topic 606): Principal versus Agent Considerations* (Reporting Revenue Gross versus Net), which amends ASU 2014-09. ASU 2016-08 provides additional guidance for revenue transactions that involve a third party in providing goods or services to a customer. The reporting entity must determine if the obligation to the customer is to provide the goods or services, i.e., as the principal, or to arrange for a third party to provide the goods or services, i.e., as the agent. In April 2016, the FASB issued ASU 2016-10, *Revenue from Contracts with Customers (Topic 606): Identifying Performance Obligations and Licensing*, which amends ASU 2014-09. ASU 2016-10 clarifies that goods or services that are immaterial in the context of the contract are not required to be identified as separate performance obligations. The ASU also provides guidance regarding licensing arrangements to determine whether the license grants the right to use functional or symbolic intellectual property. Revenue for licenses of functional intellectual property, such as software, is generally recognized at a point in time, while revenue for licenses of symbolic intellectual property, such as tradenames, is generally recognized over time. In May 2016, the FASB issued ASU 2016-12, *Revenue from Contracts with Customers (Topic 606): Narrow-Scope Improvements and Practical Expedients*, which amends ASU 2014-09. This ASU clarifies the requirement to assess collectability of contract consideration, clarifies the treatment of noncash consideration and provides a policy election to exclude from revenue amounts collected from customers for sales and similar taxes. Retrospective application will be required for each period presented through either the recasting of the prior periods for the effects of the adoption of this guidance or retrospectively through a cumulative catch up recognized at the date of adoption. We are currently evaluating the potential impact of this recently issued guidance on our consolidated financial statements.

In January 2016, the FASB issued ASU 2016-01, *Financial Instruments-Overall (Subtopic 825-10): Recognition and Measurement of Financial Assets and Financial Liabilities*, which is intended to enhance the reporting model for financial instruments to provide users of financial statements with more decision-useful information. The ASU requires equity investments to be measured at fair value with changes in fair values recognized in net earnings, (public entities to use the exit price notion when measuring the fair value of financial instruments for disclosure purposes), simplifies the impairment assessment of equity investments without readily determinable fair values by requiring a qualitative assessment to identify impairment and eliminates the requirement to disclose fair values, the methods and significant assumptions used to estimate the fair value of financial instruments measured at amortized cost. The ASU also clarifies that management should evaluate the need for a valuation allowance on a deferred tax asset related to available-for-sale debt securities in combination with other deferred tax assets. For public business entities, the ASU is effective for fiscal years beginning after December 15, 2017, including interim periods within those fiscal years. Early adoption is permitted. We are currently evaluating the potential impact of this recently issued guidance on our consolidated financial statements.

In February 2016, the FASB issued ASU 2016-02, *Leases (Topic 842)*, which supersedes ASC 840, *Leases*. The ASU does not significantly change the lessees' recognition, measurement and presentation of expenses and cash flows from the previous accounting standard. The ASU's primary change is the requirement for lessee entities to recognize a lease liability for payments and a right of use asset representing the right to use the leased asset during the term on operating lease arrangements. Lessees are permitted to make an accounting policy election to not recognize the asset and liability for leases with a term of twelve months or less. Lessors' accounting under the ASU is largely unchanged from the previous accounting standard. In addition, the ASU expands the disclosure requirements of lease arrangements. Lessees and lessors will use

a modified retrospective transition approach. For all entities, the ASU is effective for annual periods beginning after December 15, 2019 and interim periods beginning after December 15, 2020. Early adoption is permitted. Although we are currently evaluating the impact of this guidance on our consolidated financial statements, we expect that most of our operating lease commitments will be recognized as operating lease liabilities and right-of-use assets upon adoption of the new guidance.

## 4. PROPERTY AND EQUIPMENT

Significant components of property and equipment are as follows (in thousands):

| | December 31, | |
|---|---|---|
| | 2015 | 2016 |
| Computer equipment | $ 8,413 | $ 9,068 |
| Leasehold improvements | 5,454 | 5,194 |
| Furniture and fixtures | 816 | 818 |
| Property and equipment, gross | 14,683 | 15,080 |
| Less accumulated depreciation | (5,132) | (6,735) |
| Property and equipment, net | $ 9,551 | $ 8,345 |

Assets acquired under capital leases, included within computer equipment, are as follows (in thousands):

| | December 31, | |
|---|---|---|
| | 2015 | 2016 |
| Capital lease assets, gross | $ 996 | $ 1,096 |
| Less accumulated depreciation | (515) | (787) |
| Capital lease assets, net | $ 481 | $ 309 |

Depreciation expense was $2.2 million and $3.0 million in 2015 and 2016, respectively.

## 5. DEBT

Our debt consists of the following (in thousands):

| | December 31, | |
|---|---|---|
| | 2015 | 2016 |
| Lines of credit: | | |
| Repaid line of credit | $ 22,032 | $ - |
| Line of credit | - | 15,652 |
| Term loans: | | |
| Repaid term loan, net of unamortized discount and debt issuance costs of $184 at December 31, 2015 | 9,816 | - |
| Term loan, net of unamortized discount and debt issuance costs of $1,069 at December 31, 2016 | - | 23,715 |
| Capital leases | 414 | 200 |
| Convertible promissory notes | - | 72,332 |
| Total debt | 32,262 | 111,899 |
| Less short-term debt | 22,382 | 99 |
| Long-term debt—net of current portion | $ 9,880 | $ 111,800 |

***Lines of Credit***

In January 2010, we entered into a loan and security agreement with a financial institution with respect to a line of credit (“Repaid Line of Credit”). The Repaid Line of Credit was collateralized by substantially all of

our assets. Maximum borrowings on the Repaid Line of Credit were not permitted to exceed total eligible accounts receivable, as defined in the loan and security agreement. The Repaid Line of Credit contained a springing lockbox feature and subjective acceleration clause. The lockbox feature required that borrowings be repaid upon receipt of eligible accounts receivable or, if earlier, the date on which receivables are no longer eligible to borrow against. Amounts outstanding under the Repaid Line of Credit are classified as short-term due to the springing lockbox feature and subjective acceleration clause.

In May 2015, we entered into an amended and restated loan and security agreement with respect to the Repaid Line of Credit to extend the maturity from July 2015 to May 2017 and increase maximum borrowings available thereunder from $16.0 million to the lesser of $25.0 million or 80% of eligible accounts receivable. The Repaid Line of Credit, as amended, carried a floating interest rate equal to the prime rate plus 0.5%. Under the amended terms, the Repaid Line of Credit included a financial covenant related to our quick ratio.

We were not in compliance with the quick ratio financial covenant under our Repaid Line of Credit during September and October 2015. In October 2015, we entered into a loan modification agreement, providing a waiver for these defaults as well as updating the financial covenant and springing lockbox feature. Under the amended terms, the financial covenants included a $10.0 million minimum cash balance and minimum quarterly profitability thresholds, and the springing lockbox feature was based on maintaining a $15.0 million minimum cash balance. We were not in compliance with our minimum quarterly profitability threshold under our Repaid Line of Credit during the fourth quarter of 2015. In February 2016, we obtained a waiver from the lender for this default. The Repaid Line of Credit was extinguished in September 2016 at which time the unamortized debt issuance costs of $0.1 million was recorded as an expense in other expense, net on our consolidated statements of operations.

In September 2016, we entered into a new loan and security agreement (“Line of Credit”) with a new lender which matures on March 14, 2019. Maximum borrowings are stated as the lesser of $50.0 million or 85% of our eligible accounts receivable. The Line of Credit is collateralized by substantially all of our assets and carries a floating interest rate equal to the Prime Rate in effect plus 3.50%, not to be less than 7.0% per year. Fees include an unused line fee of 0.50% and an annual administrative fee of less than $0.1 million. Interest and fees under the Line of Credit may be added to the principal balance of the loan due and payable at maturity. Amounts outstanding under the Line of Credit are classified as long-term. As of December 31, 2016, we had $16.4 million of unused available borrowings under our Line of Credit. We capitalized $0.7 million of debt issuance costs associated with obtaining the Line of Credit.

The Line of Credit includes customary affirmative and negative covenants, including restrictions on mergers, acquisitions and dispositions of assets, incurrence of indebtedness and encumbrances on our assets and restrictions on payments of dividends. We are also required to maintain a total cash balance plus liquidity under the Line of Credit of not less than $5.0 million and maintain a moving minimum twelve-month revenue throughout the term of the Line of Credit, with minimum revenue of at least $88.8 million for the twelve months ending December 31, 2016. We believe we were in compliance with all financial covenants as of December 31, 2016.

***Term Loans***

We were party to an amended and restated loan and security agreement for growth capital advances (the “Repaid Term Loan”) with two financial institutions, pursuant to which we received loans of $2.0 million in 2010, $10.0 million in 2012 and $1.2 million in 2015. As of December 31, 2015, there was $9.8 million of principal outstanding under the Repaid Term Loan. Interest on the outstanding principal balance accrued at a rate of 9.75% per annum. Interest-only payments were payable through May 2017. Commencing in June 2017, principal payments, along with associated interest, were payable for a period of 24 months, or until the Repaid Term Loan was repaid. The Repaid Term Loan was secured by substantially all of our

assets. The amended and restated loan and security agreement contains customary events of default and affirmative and negative covenants, including restrictions on mergers, acquisitions and dispositions of assets, incurrence of indebtedness and encumbrances on our assets and restrictions on payments of dividends.

In connection with originally obtaining the Repaid Term Loan in September 2012, we issued ten-year warrants to purchase up to an aggregate of 203,000 shares of Series D Stock to the financial institutions at an exercise price of $5.91 per share. In conjunction with the issuance of the warrants as a liability instrument, we recorded a debt discount of $0.5 million. This discount was being accreted over the life of the Repaid Term Loan using the effective interest rate method. The accretion charges were accounted for as interest expense and totaled less than $0.1 million in both 2015 and 2016.

The Repaid Term Loan was extinguished in July 2016 at which time the unamortized discount of $0.1 million and unpaid debt issuance costs of $0.2 million were recorded as an expense in other expense, net on our consolidated statements of operations.

In July 2016, we entered into a $24.0 million credit agreement (“Term Loan”) with a new lender which matures on July 21, 2019. The Term Loan is secured by substantially all of our assets and carries a fixed interest rate equal to (1) 13.25%, of which 3% is payable in cash and the remaining 10.25% is payable in-kind or (2) 11.25%, if our adjusted EBITDA for the four most recent trailing fiscal quarters then-ended is greater than $1.0 million and we are not in an event of default, of which 3% is payable in cash and the remaining 8.25% is payable in-kind. The lender funded an initial loan of $19.0 million at closing and a subsequent loan of $5.0 million in November 2016 when the amount became available upon achieving trailing-four quarter revenue of $100.0 million.

The Term Loan contains customary affirmative and negative covenants, including restrictions on mergers, acquisitions and dispositions of assets, incurrence of indebtedness and encumbrances on our assets and restrictions on payments of dividends. The Term Loan also requires us to maintain a total cash balance and unrestricted availability under our Line of Credit of not less than $3.0 million. Once we have achieved an adjusted EBITDA of at least $1.0 million for two consecutive fiscal quarters, this requirement will be permanently waived. The Term Loan contains customary event of default provisions, including in the event of a change of control or IPO, the occurrence of which could lead to an acceleration of our obligations under the Term Loan.

Pursuant to the Term Loan, we issued ten-year warrants to purchase up to an aggregate of 388,500 shares of our common stock at an exercise price of $5.00 per share. The fair value of the warrants was calculated to be $1.0 million under the Black-Scholes option pricing model. Under the guidance provided by ASC Topic 470-20, *Debt with Conversion and Other Options*, proceeds from the sale of debt instruments with stock purchase warrants are allocated to the two elements based on the relative fair values of the debt instrument without the warrants and of the warrants themselves at time of issuance. The portion of the proceeds allocated to the warrants is accounted for as paid-in capital, as the warrants meet the scope exception within ASC Topic 815 and are considered indexed to the Company’s own stock and accounted for as equity. The remainder of the proceeds is allocated to the debt instrument portion of the transaction. We believe we were in compliance with all financial covenants as of December 31, 2016.

***Convertible Promissory Notes***

*Existing Stockholder Notes*

During 2016, we raised capital through the issuance of unsecured convertible promissory notes (“Existing Stockholder Notes”) to our founders and certain of our existing stockholders in an aggregate principal amount of $27.0 million, at an interest rate of 10% per year, compounded annually. The maturity date of

the Existing Stockholder Notes, or the Maturity Date, is the earliest to occur of: (1) a date after April 26, 2019, as specified by the holders of a majority of the aggregate unpaid principal amount outstanding under the Existing Stockholder Notes, (2) our liquidation, dissolution or wind up, including a sale of all or substantially all of our assets or a majority of our voting power or (3) an event of default under the Existing Stockholder Notes. The Existing Stockholder Notes are subordinate to our Term Loan and Line of Credit. As discussed in Note 11—Related Parties, we issued Existing Stockholder Notes to related parties in an aggregate principal amount of $19.5 million.

The Existing Stockholder Notes are convertible into shares of our capital stock, depending on certain triggering events. In the event we complete an equity financing in which we receive proceeds in excess of $10.0 million, the Existing Stockholder Notes will automatically convert into shares of the same series of our capital stock as the investors in the financing, at a price per share equal to 80% of the price per share paid by such investors. In the event we complete an equity financing of less than $10.0 million, the holders of a majority of the aggregate unpaid principal amount outstanding under the Existing Stockholder Notes can elect to convert the Existing Stockholder Notes into shares of the same series of our capital stock as the investors in the financing, at a price per share equal to 80% of the price per share paid by such investors. Upon the completion of this offering, the Existing Stockholder Notes will automatically convert into shares of our common stock, at a price per share equal to the lower of 80% of the initial public offering price per share and $10.001136 per share. In the event the Existing Stockholder Notes remain outstanding on the Maturity Date, the holders of a majority of the aggregate unpaid principal amount outstanding under all of the Existing Stockholder Notes can elect to convert the Existing Stockholder Notes into shares of our Series F-R redeemable convertible preferred stock, at a price per share equal to $12.5142 per share.

*Aimia Notes*

During 2016, we issued to Aimia unsecured convertible promissory notes (“Aimia EMEA Notes”), in an aggregate principal amount of $18.0 million, which accrue interest at a rate of 10% per year, compounded annually. In consideration for our outstanding obligations to Aimia Inc. at the time we terminated our U.K. cooperation agreement, we issued to Aimia EMEA an unsecured convertible promissory note (“Outstanding Obligation Note)” in an aggregate principal amount of approximately $5.7 million, at an interest rate of 10% per year, compounded annually. Both the Aimia EMEA Notes and the Outstanding Obligation Note, (collectively the “Aimia Notes”) are due and payable on the earliest to occur of: (a) a date after June 30, 2019, as specified by the holder, (b) our liquidation, dissolution or wind up, including a sale of all or substantially all of our assets or a majority of our voting power or (c) an event of default. The Aimia Notes are subordinate to our Term Loan and Line of Credit. See Note 11—Related Parties for a discussion of the termination of the cooperation agreement with Aimia.

The Aimia Notes are convertible into shares of our capital stock, depending on certain triggering events. In the event we complete an equity financing in which we receive proceeds in excess of $10.0 million, the Aimia EMEA Notes will automatically convert into shares of our common stock, at a price per share equal to 80% of the price per share determined by an independent third party valuation firm and the Outstanding Obligation Note will automatically convert into shares of the same series of our capital stock as the investors in the financing, at a price per share equal to 80% of the price per share paid by such investors. In the event we complete an equity financing of less than $10.0 million, the holder of an Aimia EMEA Note can elect to convert the Aimia EMEA Note into shares of our common stock, at a price per share equal to 80% of the price per share determined by an independent third party valuation firm, while the holder of the Outstanding Obligation Note can elect to convert the Outstanding Obligation Note into shares of the same series of our capital stock as the investors in the financing, at a price per share equal to 80% of the price per share paid by such investors. Upon the completion of this offering, the Aimia Notes will automatically convert into shares of our common stock, at a price per share equal to the lower of 80% of the initial public offering price per share and $10.001136 per share. In the event the Aimia Notes remain outstanding on the maturity date, the holder can elect to convert the Aimia Notes into shares of our Series F-R redeemable convertible preferred stock, at a price per share equal to $12.5142 per share.

The redemption features included in the terms of the convertible promissory notes were determined to be derivative liabilities as a result of a significant discount within the redemption features for the note holders. Embedded derivatives that are not clearly and closely related to the host contract are required to be bifurcated and recorded at fair value unless the fair value option is elected on the host contract. Under the fair value option, bifurcation of the embedded derivative is not necessary as all related gains (losses) on the host contract and derivative will be reflected in the consolidated statements of operations. We elected the fair value option for the Existing Stockholder Notes and Aimia Notes and recognized losses from their initial measurement. Initial losses of $7.6 million related to the Existing Stockholder Notes is recorded in change in fair value of convertible promissory notes and the initial loss of $7.9 million related to the Aimia Notes is recorded in termination of U.K. agreement expense on our consolidated statements of operations. Subsequent changes in fair value of the Existing Stockholder Notes and Aimia Notes are included in change in fair value of convertible promissory notes on our consolidated statements of operations. See Note 9—Fair Value Measurements for additional information.

***Working Capital Line of Credit***

We were party to a working capital line of credit with Aimia with maximum borrowings of £3.0 million (the "Working Capital Line of Credit"). The interest rate for borrowings under the Working Capital Line of Credit was equal to the 3-month LIBOR rate plus 5.25%. The Working Capital Line of Credit was secured by funds in a merchant bank account of Cardlytics UK and could only be used in the event that there was insufficient funds within the merchant account to fund Consumer Incentives in the United Kingdom. The borrowings require repayment as customer payments were received by Cardlytics UK.

The termination of the co-cooperation agreement also resulted in a termination of this Working Capital Line of Credit. Also see Note 11—Related Parties for additional information regarding the related party relationship between Aimia and Cardlytics.

***Capital Leases***

We took delivery of leased computer equipment with minimum capital lease obligations of less than $0.1 million in 2015 and $0.1 million in 2016. Effective interest rates for equipment capital leases range from 0% to 13.3%. Fixed monthly payments for equipment under capital leases will be made through June 2021.

***Future Payments***

Aggregate future payments of principal and interest due upon maturity are as follows (in thousands):

| Years Ending December 31, | Debt | Capital Leases | Total Debt |
|---|---|---|---|
| 2017 | $ — | $ 99 | $ 99 |
| 2018 | — | 43 | 43 |
| 2019 | 94,151 | 21 | 94,172 |
| 2020 | — | 24 | 24 |
| 2021 | — | 13 | 13 |
| Total principal payments | 94,151 | 200 | 94,351 |
| Plus fair value adjustments | 18,781 | — | 18,781 |
| Less unamortized debt issuance costs | (409) | — | (409) |
| Less unamortized debt discount | (824) | — | (824) |
| Total debt | $ 111,699 | $ 200 | $ 111,899 |

Accrued interest on debt included in accrued liabilities totaled $0.1 million and $0 as of December 31, 2015 and December 31, 2016, respectively. Accrued interest included in debt totaled $0 and $4.2 million as of December 31, 2015 and December 31, 2016, respectively.

## 6. STOCK-BASED COMPENSATION

Our 2008 Stock Plan ("Stock Plan"), as amended, allows for the issuance of up to 12,480,000 shares of our common stock to employees and consultants. Awards may be granted under the Stock Plan until June 15, 2019.

***Common Stock Options***

The term of each option to purchase shares of our common stock pursuant to the Stock Plan is set by our board of directors or a committee thereof. Option awards are generally granted with an exercise price not less than the fair value per share of our common stock at the grant date. Option awards generally vest over four years and expire 10 years following the date of grant. We determine the grant date fair value of options using the Black-Scholes option pricing model, which is affected by the estimated fair value of our common stock as well as the following significant inputs:

| | Year Ended December 31, | |
|---|---|---|
| | 2015 | 2016 |
| Weighted-average grant date fair value | $3.54 | $1.75 |
| Significant inputs: | | |
| Value of common stock | $6.10 to $7.13 | $4.46 to $5.67 |
| Expected term | 7.0 years | 7.0 years |
| Volatility | 51% to 55% | 51 to 56% |
| Risk-free interest rate | 1.6% to 1.9% | 0.5% to 2.1% |
| Dividend yield | —% | —% |

We determined that a retrospective valuation of the fair value of our common stock on each grant date in 2016 was appropriate for financial reporting purposes. In connection with the preparation of our retrospective valuation, we noted that the fair value of our common stock, as determined by contemporaneous third-party valuations, decreased from $4.93 per share on April 30, 2016 to $4.46 per share on September 30, 2016. The decrease in the fair value of our common stock primarily resulted from the dilutive effect of issuing our convertible promissory notes as the Company's enterprise values on April 30, 2016 and September 30, 2016 were similar and there were no events, or series of events, other than the issuance of the convertible promissory notes, which would have clearly resulted in a decrease in the fair value of our common stock. We derived the fair value of our common stock on each grant date between April 30, 2016 and September 30, 2016 using an interpolation methodology that considered both the timing and amount of dilution from issuing convertible promissory notes.

For awards granted during the fourth quarter of 2016, we applied a straight-line calculation between the $4.46 per share price on September 30, 2016 to the $6.12 per share price on December 31, 2016. Using the benefit of hindsight, we determined that the straight-line calculation would provide the most appropriate conclusion for the valuation of our common stock on the interim dates between valuations because we did not identify any single event, or series of events, that occurred during this interim period that would have caused a material change in fair value other than our progress towards an IPO.

A summary of common stock option activity under the Stock Plan is as follows (in thousands, except per share amounts):

| | Shares | Weighted-Average Exercise Price Per Share |
|---|---|---|
| Options outstanding — December 31, 2014 | 6,238 | $ 1.80 |
| Granted | 1,302 | 6.84 |
| Exercised | (405) | 1.07 |
| Forfeited/cancelled | (432) | 2.73 |
| Options outstanding — December 31, 2015 | 6,703 | 2.76 |
| Granted | 5,321 | 4.52 |
| Exercised | (174) | 1.50 |
| Forfeited/cancelled | (3,302) | 3.10 |
| Options outstanding — December 31, 2016 | 8,548 | $ 3.75 |

As of December 31, 2015 and 2016, there were exercisable options outstanding with respect to 3,929,050 and 4,280,241 shares of our common stock with weighted-average exercise prices of $1.62 and $2.29 per share, respectively, and with weighted-average remaining lives of 6.3 years and 4.6 years, respectively. We granted 2,920,525 shares to certain executives in 2016.

Aggregate intrinsic value represents the difference between the fair value of our common stock and the exercise price of outstanding in-the-money options to purchase shares of our common stock. The total aggregate intrinsic value of options exercised during 2015 and 2016 was $2.1 million and $0.6 million, respectively. The aggregate intrinsic value of options outstanding as of December 31, 2015 and 2016 was $29.5 million and $18.4 million, respectively.

The total fair value of shares that vested and became exercisable during 2015 and 2016 was $2.5 million and $2.9 million, respectively.

As of December 31, 2015 and 2016, unamortized stock-based compensation expense related to unvested common stock options was $7.0 million and $9.6 million, respectively, and the weighted-average period over which such stock-based compensation expense will be recognized was approximately 2.8 years and 3.0 years, respectively.

***Restricted Securities Units***

In connection with the issuance of the Existing Stockholder Notes, we granted $1.0 million of restricted securities units (“RSUs”) to certain executives in lieu of cash bonuses during 2016. The RSUs are indexed to Existing Stockholder Notes with similar terms to those issued to our founders and existing holders of our redeemable convertible preferred stock, but such Existing Stockholder Notes will not be issued. If there is an event or action that results in the Existing Stockholder Notes converting into cash or equity securities, the RSUs will convert into such alternative. Vesting requirements include both a service-based condition and a performance-based condition. The service-based condition requires each recipient to remain employed until the earlier of i) the date 6 months from the RSU grant date, ii) the date of a qualified liquidity event, or iii) date of termination without cause. The performance-based condition requires a sale of the Company or IPO event within a fixed period of time not more than 5 years from the RSU grant date.

The RSUs are considered liability classified awards, but due to the performance condition relating to sale of the Company or IPO, no compensation cost will be recognized until one of these events occur.

The following table summarizes the allocation of stock-based compensation in the consolidated statements of operations (in thousands):

| | Year Ended December 31, | |
|---|---|---|
| | 2015 | 2016 |
| Delivery costs | $ 97 | $ 96 |
| Sales and marketing | 1,015 | 1,153 |
| Research and development | 386 | 574 |
| General and administration | 955 | 1,624 |
| Total stock-based compensation | $ 2,453 | $ 3,447 |

## 7. INCOME TAXES

Domestic and foreign components of loss before income taxes are as follows (in thousands):

| | Year Ended December 31, | |
|---|---|---|
| | 2015 | 2016 |
| Domestic | $ (38,578) | $ (73,167) |
| Foreign | (2,063) | (2,529) |
| Loss before income taxes | $ (40,641) | $ (75,696) |

The significant components of income tax benefit are as follows (in thousands):

| | Year Ended December 31, | |
|---|---|---|
| | 2015 | 2016 |
| **Current:** | | |
| Federal | $ — | $ — |
| State | 16 | — |
| Foreign | — | — |
| Total current | 16 | — |
| Deferred: | | |
| Federal | $ 12,541 | $ 22,449 |
| State | 197 | 1,796 |
| Foreign | 475 | 864 |
| Change in uncertain tax positions | (85) | (117) |
| Increase in valuation allowance | (13,128) | (24,992) |
| Total deferred | — | — |
| Income tax benefit | $ 16 | $ — |

The following table summarizes the significant differences between the U.S. federal statutory tax rate and our effective tax rate:

| | Year Ended December 31, | |
|---|---|---|
| | 2015 | 2016 |
| Tax benefit at federal statutory rate | 34.00% | 34.00% |
| State income taxes, net of federal benefit | 1.20 | 1.36 |
| Foreign rate differential | (0.85) | (0.80) |
| Other adjustments | (2.01) | (1.54) |
| Valuation allowance | (32.30) | (33.02) |
| Income tax benefit | 0.04% | 0.00% |

The significant components of deferred income taxes are as follows (in thousands):

| | December 31, | |
|---|---|---|
| | 2015 | 2016 |
| Current deferred tax asset (liability): | | |
| Allowance for doubtful accounts | $ 259 | $ — |
| Accruals not currently deductible | 744 | — |
| Deferred costs | 130 | — |
| Valuation allowance | (1,104) | — |
| Net current deferred tax asset | $ 29 | $ — |
| Noncurrent deferred tax asset (liability): | | |
| Net operating loss carryforwards | $ 54,933 | $ 72,104 |
| Allowance for doubtful accounts | — | 207 |
| Depreciation and amortization | (895) | (576) |
| Stock-based compensation | 589 | 1,072 |
| Change in fair value of convertible promissory notes | — | 6,679 |
| Deferred costs | 1,523 | 1,580 |
| Other tax credit carryforward | 1,706 | 2,214 |
| Other temporary differences | 800 | 1,203 |
| Valuation allowance | (58,685) | (84,483) |
| Net noncurrent deferred tax liability | $ (29) | $ — |

We have generated historical net losses and recorded a full valuation allowance against our net deferred tax assets. We expect to maintain a full valuation allowance in the near term. Realization of any of our net deferred tax assets depends upon future earnings, the timing and amount of which are uncertain.

As of December 31, 2015 and 2016, we have $151.7 million and $198.4 million, respectively, of gross U.S. federal net operating loss carry forwards that will begin to expire in the 2028 tax year. Additionally, we have $43.7 million and $59.9 million of gross state net operating loss carryforwards as of December 31, 2015 and 2016, respectively that will also begin to expire in the 2028 tax year.

Ownership changes, as defined by Section 382 of the Internal Revenue Code of 1986, as amended (the “Code”), may limit the amount of net operating losses that a company may utilize to offset future taxable income and taxes payable. Pursuant to Section 382 of the Code, an ownership change occurs when the stock ownership of 5% stockholders increases by more than 50% over a three-year testing period. We completed an evaluation of the potential effect of Section 382 of the Code on our net operating losses after

the completion of our convertible promissory note financing in 2016 and concluded that we had not experienced an ownership change in the past three years as of that date. However, it is possible that we have subsequently undergone an ownership changes as defined by Section 382 of the Code or that we may undergo such a change in the future, in connection with an IPO or otherwise. Any such ownership change may limit our ability to utilize net operating losses.

Results for the years ended December 31, 2015 and 2016, reflect $1.0 million and $0.6 million, respectively, of state tax credits related to hiring and research activities that are utilized through the reduction of state payroll tax withholdings.

As of December 31, 2015 and 2016, Cardlytics UK had gross net operating losses of $7.7 million and $8.6 million, respectively. Foreign net operating loss carryforwards expire according to the rules of each country. In the United Kingdom, there is an indefinite carryforward period. As of December 31, 2016, Cardlytics UK held cash and cash equivalents of $3.9 million. While our investment in Cardlytics UK is not considered to be permanently invested, we do not plan to repatriate these funds. Further, although the tax basis of our investment in Cardlytics UK exceeds its book basis, we have not recorded a deferred tax asset since we do not believe that a reversal of this temporary difference will occur in the foreseeable future.

The following table summarizes the activity related to our gross unrecognized tax benefits that would affect our effective tax rate, if recognized (in thousands):

| | Gross Unrecognized Tax Benefits |
|---|---|
| Balance — December 31, 2014 | $ 356 |
| Increase related to current year tax position | 85 |
| Balance — December 31, 2015 | 441 |
| Increase related to current year tax position | 117 |
| Balance — December 31, 2016 | $ 558 |

Our tax filings from inception remain subject to income tax examinations.

## 8. REDEEMABLE CONVERTIBLE PREFERRED STOCK

A summary of the change in carrying amount of the outstanding redeemable convertible preferred stock is as follows (in thousands):

| | Series F/F-R Stock | | Series E/E-R Stock | | Series D/D-R Stock | |
|---|---|---|---|---|---|---|
| | Shares | Amount | Shares | Amount | Shares | Amount |
| Balance — December 31, 2014 | 4,795 | $ 56,451 | 4,770 | $ 44,901 | 5,584 | $ 32,362 |
| Accretion of redeemable convertible preferred stock | — | 753 | — | 21 | — | 147 |
| Balance — December 31, 2015 | 4,795 | $ 57,204 | 4,770 | $ 44,922 | 5,584 | $ 32,509 |
| Conversion of redeemable convertible preferred stock to common stock | — | — | (1,590) | (14,978) | — | — |
| Accretion of redeemable convertible preferred stock | — | 754 | — | 19 | — | 133 |
| Balance — December 31, 2016 | 4,795 | $ 57,958 | 3,180 | $ 29,963 | 5,584 | $ 32,642 |

| | Series C/C-R Stock | | Series B/B-R Stock | | Series A/A-R Stock | |
|---|---|---|---|---|---|---|
| | Shares | Amount | Shares | Amount | Shares | Amount |
| Balance — December 31, 2014 | 6,032 | $ 18,181 | 8,995 | $ 5,283 | 7,478 | $ 1,882 |
| Accretion of redeemable convertible preferred stock | — | 73 | — | 4 | — | 3 |
| Balance — December 31, 2015 | 6,032 | $ 18,254 | 8,995 | $ 5,287 | 7,478 | $ 1,885 |
| Conversion of redeemable convertible preferred stock to common stock | — | — | (8) | (5) | (50) | (38) |
| Accretion of redeemable convertible preferred stock | — | 69 | — | 4 | — | 3 |
| Balance — December 31, 2016 | 6,032 | $ 18,323 | 8,987 | $ 5,286 | 7,428 | $ 1,850 |

During the second quarter of 2016, we increased the authorized number of shares of our redeemable convertible preferred stock to 165,366,424 and issued $21.0 million of convertible promissory notes to our founders and the existing holders of our redeemable convertible preferred stock. Shares of redeemable convertible preferred stock held by investors that participated in the financing were exchanged for shares of replacement preferred stock. These replacement shares have rights and preferences equal to their corresponding original series and are designated as Series A-R Stock, Series B-R Stock, Series C-R Stock, Series D-R Stock, Series E-R Stock and Series F-R Stock. Shares of redeemable convertible preferred stock held by investors that did not participate in the financing were converted to common stock.

***Series F / Series F-R***

In September 2014, we increased the authorized number of shares of our common stock to 64,000,000 and increased the authorized number of shares of our redeemable convertible preferred stock to 82,683,212. In September 2014, we issued and sold an aggregate of 4,794,553 shares of Series F redeemable convertible preferred stock, par value $0.0001 per share (“Series F Stock”), at a purchase price of $12.5142 per share for aggregate consideration of $59,999,995. Issuance costs incurred in connection with the sale of Series F Stock totaled $0.2 million. Of this amount, $0.1 million was accrued as of December 31, 2014.

The Series F Stock carries a stated dividend of $1.168 per annum, payable quarterly when, as, and if declared by our board of directors. These dividends are noncumulative in nature. The Series F Stock is entitled to certain anti-dilution protections.

In connection with the Series F Stock financing, investors also purchased 799,092 shares of common stock from certain members of management at the purchase price of $12.5142 per share for aggregate consideration of $10.0 million. The difference between the $12.5142 purchase price and the $6.10 transaction date fair value per share of our common stock amounted to $5.1 million and is recorded in general and administrative expense. Placement fees of $3.6 million and $0.5 million were allocated to the Series F Stock financing and secondary sale of common stock, respectively. Fees allocated to the Series F Stock financing were recorded as a net reduction in sale proceeds and the fees allocated to the secondary sale of common stock are included in general and administrative expense.

During 2016, 4,794,553 shares of Series F Stock were replaced with Series F-R Stock.

***Series E / Series E-R***

In May 2013, we increased the authorized number of shares of our common stock to 50,000,000 and increased the authorized number of shares of our redeemable convertible preferred stock to 70,664,212. In October 2013, we subsequently increased the authorized number of shares of our common stock to 52,000,000 and increased the authorized number of shares of our redeemable convertible preferred stock to 72,364,212. In May and October 2013, we issued and sold an aggregate of 4,770,182 shares of Series E redeemable convertible preferred stock, par value $0.0001 per share (“Series E Stock”), at the purchase price of $9.4336 per share for aggregate consideration of $45.0 million. Issuance costs incurred in connection with the sale of Series E Stock totaled $0.1 million.

The Series E Stock carries a stated dividend of $0.754688 per annum, payable quarterly when, as, and if declared by our board of directors. These dividends are noncumulative in nature. The Series E Stock is entitled to certain anti-dilution protections.

During 2016, 1,590,061 shares of Series E stock were converted to common stock and 3,180,121 shares of Series E Stock were replaced with Series E-R Stock.

***Series D / Series D-R***

In September 2011, we increased the authorized number of shares of our common stock to 45,000,000 and increased the authorized number of shares of our redeemable convertible preferred stock to 57,458,214. In September 2011, we issued and sold an aggregate of 5,583,756 shares of Series D redeemable convertible preferred stock, par value $0.0001 per share ("Series D Stock"), at a purchase price of $5.91 per share for aggregate consideration of $33.0 million.

The Series D Stock carries a stated dividend of $0.4728 per annum, payable quarterly when, as, and if declared by our board of directors. These dividends are noncumulative in nature. The Series D Stock is entitled to certain anti-dilution protections.

During 2016, 5,583,756 shares of Series D Stock were replaced with Series D-R Stock.

***Series C / Series C-R***

In August 2010, we increased the authorized number of shares of our common stock to 40,000,000 and increased the authorized number of shares of our redeemable convertible preferred stock to 46,290,700. In August 2010, we issued and sold an aggregate of 6,031,643 shares of Series C redeemable convertible preferred stock, par value $0.0001 per share ("Series C Stock"), at the purchase price of $3.067158 per share for aggregate consideration of $18.5 million, which included $17.2 million paid in cash and the conversion of loans totaling $1.3 million, plus accrued interest of less than $0.1 million.

The Series C Stock carries a stated dividend of $0.2453734 per annum, payable quarterly when, as, and if declared by our board of directors. These dividends are noncumulative in nature. The Series C Stock is entitled to certain anti-dilution protections.

During 2016, 6,031,643 shares of Series C Stock were replaced with Series C-R Stock.

***Series B / Series B-R***

In June 2009, we increased the authorized number of shares of our common stock to 27,000,000 and increased the authorized number of shares of our redeemable convertible preferred stock to 16,518,000. In June 2009, we issued and sold an aggregate of 8,995,475 shares of Series B redeemable convertible preferred stock, par value $0.0001 per share ("Series B Stock"), at the purchase price of $0.589185 per share from aggregate consideration of $5.3 million.

The Series B Stock carries a stated dividend of $0.0471348 per annum, payable quarterly when, as, and if declared by our board of directors. These dividends are noncumulative in nature. The Series B Stock is entitled to certain anti-dilution protections.

During 2016, 8,486 shares of Series B stock were converted to common stock and 8,986,989 shares of Series B Stock were replaced with Series B-R Stock.

***Series A / Series A-R***

In August 2008, we increased the authorized number of shares of our common stock to 17,000,000 and increased the authorized number of shares of our redeemable convertible preferred stock to 7,500,000. In August 2008 and May 2009, we issued and sold an aggregate of 7,468,000 shares of Series A redeemable convertible preferred stock, par value $0.0001 per share ("Series A Stock"), at a purchase price of $0.25 per share for aggregate consideration of $1.9 million.

The Series A Stock carries a stated dividend of $0.02 per annum, payable quarterly when, as, and if declared by our board of directors. These dividends are noncumulative in nature. The Series A Stock is entitled to certain anti-dilution protections.

During 2016, 49,500 shares of Series A Stock were converted to common stock and 7,428,000 shares of Series A Stock were replaced with Series A-R Stock.

***Protective Provisions***

As long as at least 6,000,000 shares of our redeemable convertible preferred stock are outstanding, subject to certain exceptions, we may not (by amendment, merger, consolidation or otherwise) without first obtaining the approval of the holders of a majority of the then outstanding shares of redeemable convertible preferred stock, voting together as a single class on an as-converted basis (i) effect a liquidation transaction, (ii) alter or change the rights, preferences or privileges of a series of redeemable convertible preferred stock so as to affect adversely the shares of such series, (iii) increase or decrease the total number of authorized shares of any redeemable convertible preferred stock class, (iv) authorize or issue any other equity security having a preference over or being on a parity with any series of outstanding redeemable convertible preferred stock with respect to voting, dividends, redemption, conversion or liquidation, (v) redeem, purchase or otherwise acquire any share or shares of redeemable convertible preferred stock or common stock, (vi) amend any stock option or purchase plan to modify the number of shares covered thereby, (vii) alter or change the dividend rights, (viii) declare or pay any dividend, (ix) repay any stockholder notes or obligations to related parties, (x) transfer or grant any rights in any of our technology, (xi) increase or decrease the authorized number of members of our board of directors, (xii) amend our certificate of incorporation, (xiii) acquire the capital stock of any other entity or(xiv) incur indebtedness, in a single transaction or series of related transactions, in an amount in excess of $750,000.

Subject to certain exceptions, we may not, by amendment, merger, consolidation or otherwise, (1) without obtaining the approval of the holders of at least 75% of the then outstanding shares of Series C-R Stock, voting together as a single class on an as-converted basis, (2) without obtaining the approval of the holders of a majority of the then outstanding shares of Series D-R Stock, voting together as a single class on an as-converted basis, (3) without obtaining the approval of the holders of at least 63% of the then outstanding shares of Series E-R Stock, voting together as a single class on an as-converted basis or (4) without obtaining the approval of the holders of a majority of the then outstanding shares of Series F-R Stock, voting together as a single class on an as-converted basis, as long as at least 1,000,000 shares of the Series C-R Stock, Series D-R Stock or Series E-R Stock or at least 1,198,638 shares of the Series F-R Stock are outstanding, as applicable, negatively alter or change the rights, preferences, terms or privileges of the shares of Series C-R Stock, Series D-R Stock, Series E-R Stock or Series F-R Stock, as applicable.

Subject to certain exceptions, we may not, by amendment, merger, consolidation or otherwise, (1) without obtaining the approval of the holders of a majority of the then outstanding shares of Series D-R Stock, voting together as a single class on an as-converted basis, (2) without obtaining the approval of the holders of at least 63% of the then outstanding shares of Series E-R Stock, voting together as a single class on an as-converted basis or (3) without obtaining the approval of the holders of a majority of the then outstanding shares of Series F-R Stock, voting together as a single class on an as-converted basis, as long as at least 1,000,000 shares of

the Series D-R Stock or Series E-R Stock or at least 1,198,638 shares of the Series F-R Stock are outstanding, as applicable (i) increase or decrease the authorized shares of Series D-R Stock, Series E-R Stock or Series F-R Stock as applicable, (ii) issue shares of Series D-R Stock, Series E-R Stock or Series F-R Stock, as applicable, (iii) approve or effect a liquidation transaction in which proceeds are not distributed to holders of Series D-R Stock, Series E-R Stock or Series F-R Stock, as applicable, pursuant to the certificate of incorporation, (iv) redeem, purchase or otherwise acquire any shares of redeemable convertible preferred stock or common stock other than in accordance with the redemption provisions of the certificate of incorporation; provided, however, that this restriction shall not apply to the repurchase of shares of common stock from employees, officers, directors, consultants or other persons performing services for us or any of our subsidiaries pursuant to agreements under which we have the option to repurchase such shares or (v) pay or declare any dividend or other distribution that (a) is paid to holders of capital stock within two years following the initial issuance of the Series D Stock, (b) is paid other than to all holders of capital stock on an as-converted basis or (c) exceeds operating income for the four quarters trailing the date of declaration of the dividend; provided, however, that after the expiration of two years following the initial issuance of the Series D Stock, we may declare and distribute a dividend in an amount exceeding our operating income if (1) the amount by which such dividend exceeds operating income is financed by borrowings, (2) we have a total debt to EBITDA ratio immediately following the dividend that is equal to or less than 3:1, (3) the amount by which such dividend exceeds operating income is equal to or below the amount of funds we borrowed to finance such dividend, (4) the amount by which such dividend exceeds operating income does not exceed $25 million in any fiscal year and (5) the dividend is paid to all holders of capital stock on an as-converted basis.

***Redemption***

At any time on or after September 17, 2019, upon written request of the holders of not less than 66 $^{2}/_{3}$% of the shares of redeemable convertible preferred stock then-outstanding, voting together as a single class on an as-converted to common stock basis, we are required to redeem all outstanding shares of redeemable convertible preferred stock in eight quarterly installments. The Series A/A-R Stock, Series B/B-R Stock, Series C/C-R Stock, Series D/D-R Stock, Series E/E-R Stock and Series F/F-R Stock are redeemable at prices equal to $0.25, $0.589185, $3.067158, $5.91, $9.4336 and $14.60 per share, plus any declared or accumulated but unpaid dividends, respectively.

To the extent that we have insufficient funds to redeem all outstanding shares of redeemable convertible preferred stock, we are required to first redeem shares of Series F/F-R Stock, then shares of Series E/E-R Stock, then shares of Series D/D-R Stock, then shares of Series C/C-R Stock and then shares of Series B/B-R Stock and Series A/A-R Stock *pari passu*, in each case on a pro rata basis among the holders thereof.

The redeemable convertible preferred stock carrying amount is increased by periodic accretions, using the interest method, so that the carrying amount will equal the redemption amount at September 17, 2019. Accretion is recorded through a charge against additional paid-in capital.

***Liquidation***

Upon us (i) selling or otherwise disposing of all or substantially all of our property or business or merging with or into or consolidation with any other corporation, limited liability company or other entity, (ii) a majority of the voting power of our outstanding capital stock being transferred or disposed of as a result of a transaction or series of related transactions that are not issuances of capital stock by us primarily for the purposes of raising equity capital or (iii) any dissolution or winding-up of our business, the holders of Series F/F-R Stock, Series E/E-R Stock, Series D/D-R Stock, Series C/C-R Stock, Series B/B-R Stock and Series A/A-R Stock shall be entitled to receive payments in amounts per share equaling $14.60, $9.4336, $5.91, $5.367527, $0.589185 and $0.25, plus any declared but unpaid dividends, respectively. Holders of Series F/F-R Stock are to be paid prior, and in preference to, any distribution of assets to the holders of all other classes of capital stock. Holders of Series E/E-R Stock are to be paid prior, and in preference to, any

distribution of assets to the holders of Series D/D-R Stock, Series C/C-R Stock, Series B/B-R Stock and Series A/A-R Stock. Holders of Series D/D-R Stock are to be paid prior, and in preference to, any distribution of assets to the holders of Series C/C-R Stock, Series B/B-R Stock and Series A/A-R Stock. Holders of Series C/C-R Stock are to be paid prior, and in preference to, any distribution of assets to the holders of Series B/B-R Stock and Series A/A-R Stock. Holders of Series A/A-R Stock and Series B/B-R Stock are *pari passu* and are to be paid prior, and in preference to, any distribution of assets to the holders of common stock.

Upon completion of the distributions detailed above, any remaining assets are to be distributed to the holders of common stock, Series A/A-R Stock, Series B/B-R Stock, Series C/C-R Stock, Series D/D-R Stock, Series E/E-R Stock and Series F/F-R Stock; such participation in the distribution of remaining assets shall cease, however, when the amount that the holders of Series A/A-R Stock, Series B/B-R Stock, Series C/C-R Stock, Series D/D-R Stock, Series E/E-R Stock and Series F/F-R Stock are entitled to receive upon liquidation equals $0.50 per share, $1.178370 per share, $9.201474 per share, $17.73 per share, $28.3008 per share and $43.80 per share, respectively, plus any declared but unpaid dividends thereon.

If, however, as a result of a conversion from redeemable convertible preferred stock to common stock, a holder would receive, in the aggregate, an amount greater than the amount that would be distributed to such holder if such holder did not convert such series of redeemable convertible preferred stock into shares of common stock, such holder shall be deemed to have converted such holder's shares of redeemable convertible preferred stock into shares of common stock for the purposes of determining the amount that such holder is entitled to receive upon liquidation and shall not be entitled to any distribution that would have otherwise been made to the holders of redeemable convertible preferred stock detailed above.

***Dividends***

No dividends have been declared or paid as of December 31, 2016.

***Conversion***

Upon the consummation of an IPO of shares of our common stock that results in gross proceeds to the Company of not less than $70.0 million, after deducting underwriting discounts and expenses, all of the outstanding shares of redeemable convertible preferred stock will automatically convert into shares of common stock.

The holders of our redeemable convertible preferred stock also have the right, at any time, to convert any or all of their shares into such number of shares of common stock as is determined by dividing $0.25 in the case of Series A/A-R Stock, $0.589185 in the case of the Series B/B-R Stock, $3.067158 in the case of Series C/C-R Stock, $5.91 in the case of Series D/D-R Stock, $9.4336 in the case of Series E/E-R Stock, and $12.5142 in the case of Series F/F-R Stock by the applicable conversion price. The initial conversion price is $0.25 in the case of Series A/A-R Stock, $0.589185 in the case of the Series B-R Stock, $3.067158 in the case of Series C/C-R Stock, $5.91 in the case of Series D-R Stock, $9.4336 in the case of Series E-R Stock, and $12.5142 in the case of Series F/F-R. If, at any time following the initial issuance of shares of Series F-R Stock, we issue any additional shares of capital stock without consideration or for a consideration per share less than the then-effective conversion price for the Series A/A-R Stock, Series B/B-R Stock, Series C/C-R Stock, Series D/D-R Stock, Series E/E-R Stock or Series F/F-R Stock, the conversion price for all series of outstanding redeemable convertible preferred stock are subject to adjustment. There have been no changes to the conversion price for any series of redeemable convertible preferred stock as of December 31, 2016.

***Voting Rights***

The holders of the Series A/A-R Stock, Series B/B-R Stock, Series C/C-R Stock, Series D/D-R Stock, Series E/E-R Stock and Series F/F-R Stock are entitled to vote on an as-converted to common stock basis and as a single class with respect to matters presented to our common stockholders for approval.

We evaluated the rights and preferences for all series of redeemable convertible preferred stock for derivatives under the chameleon approach that might have required bifurcation. None were identified as of December 31, 2015 and 2016.

## 9. FAIR VALUE MEASUREMENTS

The following table summarizes our assets and liabilities measured at fair value on a recurring basis as of December 31, 2015 and 2016 by level within the fair value hierarchy. Financial assets and liabilities are classified in their entirety based on the lowest level of input that is significant to the fair value measurement (in thousands):

| | December 31, 2015 | | | |
|---|---|---|---|---|
| | Level 1 | Level 2 | Level 3 | Total |
| Assets: | | | | |
| Restricted cash — money market funds | $ 152 | $ — | $ — | $ 152 |
| Total assets | $ 152 | $ — | $ — | $ 152 |
| Liabilities: | | | | |
| Preferred stock warrants | $ — | $ — | $ 2,942 | $ 2,942 |
| Total liabilities | $ — | $ — | $ 2,942 | $ 2,942 |

| | December 31, 2016 | | | |
|---|---|---|---|---|
| | Level 1 | Level 2 | Level 3 | Total |
| Assets: | | | | |
| Restricted cash — money market funds | $ 130 | $ — | $ — | $ 130 |
| Total assets | $ 130 | $ — | $ — | $ 130 |
| Liabilities: | | | | |
| Preferred stock warrants | $ — | $ — | $ 2,197 | $ 2,197 |
| Convertible promissory notes | — | — | 72,332 | 72,332 |
| Total liabilities | $ — | $ — | $ 74,529 | $ 74,529 |

***Instruments Recorded at Fair Value Using Level 3 Inputs***

Our redeemable convertible preferred stock warrant liability and our convertible promissory notes are measured and recorded at fair value on a recurring basis using Level 3 inputs. The table below provides a roll forward of the changes in fair value of Level 3 financial instruments for the years ended December 31, 2015 and 2016 (in thousands):

| | Preferred Stock Warrants | Convertible Promissory Notes |
|---|---|---|
| Balance at December 31, 2014 | $ 3,856 | $ — |
| Changes in fair value of redeemable convertible preferred stock warrants | (914) | — |
| Balance at December 31, 2015 | $ 2,942 | $ — |
| Fair value of convertible promissory notes at issuance | — | 66,391 |
| Accrued interest on convertible promissory notes | — | 2,876 |
| Conversion of preferred stock warrants to common stock warrants | (777) | — |
| Changes in fair value | 32 | 3,065 |
| Balance at December 31, 2016 | $ 2,197 | $ 72,332 |

In valuing our instruments recorded at fair value using Level 3 inputs, our board of directors determined the equity value of our business generally using a combination of the income approach and the market approach valuation methods.

The income approach estimates value based on the expectation of future cash flows that a company will generate, such as cash earnings, cost savings, tax deductions and the proceeds from disposition. These future cash flows are discounted to their present values using a discount rate derived based on an analysis of the cost of capital of comparable publicly traded companies in similar lines of business, as of each valuation date, and is adjusted to reflect the risks inherent in our cash flows.

The market approach estimates the fair value of a company by applying market multiples of comparable publicly traded companies in a similar line of business. The market multiples are based on relevant metrics implied by the price that investors have paid for the equity of publicly traded companies. Given our significant focus on investing in and growing our business, we primarily utilized the forward-looking revenue multiple when performing valuation assessments under the market approach and considered both trading and transaction multiples. When considering which companies to include as our comparable industry peer companies, we focused on U.S.-based publicly traded companies that were broadly comparable to us based on consideration of industry, market and line of business. From the comparable companies, a representative market value multiple was determined and applied to our operating results to estimate the value of our company. The market value multiple was determined based on consideration of multiples of revenue to each of the comparable companies' historical and forecasted revenue. In addition, the market approach considers IPO and merger and acquisition transactions involving companies similar to the company's business being valued. Multiples of revenue are calculated for these transactions and then applied to the business being valued, after reduction by an appropriate discount.

Once an equity value was determined, we utilized the probability-weighted expected return method ("PWERM") to allocate the overall value of equity to the various share classes. The PWERM relies on a forward-looking analysis to predict the possible future value of a company. Under this method, discrete future outcomes, including an IPO and non-IPO scenarios, are weighted based on the estimated the probability of each scenario. The PWERM is used when discrete future outcomes can be predicted with reasonable certainty based on a probability distribution. We relied on the PWERM to allocate the value of equity under a liquidity scenario. The projected equity value relied upon in the PWERM scenario was based on (1) guideline IPO transactions involving companies that were considered broadly comparable to us and (2) our expectation of the pre-money valuation that we needed to achieve to consider an IPO as a viable exit strategy.

The following table summarizes key assumptions used in the PWERM for estimating the fair value of our redeemable convertible preferred stock warrant liability and convertible promissory notes:

| | December 31, | |
|---|---|---|
| | 2015 | 2016 |
| Cost of debt applicable to convertible promissory notes | — | 12-17% |
| Cost of equity applicable to convertible promissory notes | — | 24-26% |
| Weighted-average cost of capital applicable to redeemable convertible preferred stock warrants | 23% | 23% |
| Discount for lack of marketability | 7% to 13% | 8% to 12% |
| Volatility | 54% | 54% |
| Risk-free interest rate | 0.7% | 0.7% to 1.2% |

***Preferred Stock Warrants***

A summary of our preferred stock warrants is as follows (in thousands, except per share amounts):

| Preferred Series | Grant date | Expiration date | Exercise price | December 31, 2015 | December 31, 2016 |
|---|---|---|---|---|---|
| Series A/A-R | 12/4/2008 | 12/3/2028 | $ 0.25 | 25 | — |
| Series A/A-R | 3/9/2009 | 3/8/2019 | $ 0.25 | 25 | — |
| Series B/B-R | 1/20/2010 | 1/19/2020 | $ 0.59 | 100 | — |
| Series B/B-R | 1/26/2010 | 1/25/2020 | $ 0.59 | 238 | 238 |
| Series D/D-R | 9/21/2012 | 9/20/2022 | $ 5.91 | 152 | 152 |
| Series D/D-R | 9/21/2012 | 9/20/2022 | $ 5.91 | 51 | 51 |
| Series E/E-R | 5/23/2013 | 5/22/2023 | $ 5.91 | 2,577 | — |
| Total | | | | 3,168 | 441 |

On May 26, 2016, warrants to purchase shares of redeemable convertible preferred stock held by parties that did not participate in the Existing Stockholder Note financing were converted to common stock warrants. As a result, warrants to purchase 50,000 shares of our Series A Stock, 100,000 shares of our Series B Stock and 2,577,465 shares of our Series E Stock were converted to common stock warrants. The warrants to purchase 2,577,465 shares of our Series E Stock have performance-based vesting conditions, which have not been met as discussed in Note 11—Related Parties. The conversion date fair value of the Series A Stock warrants and Series B Stock warrants, which were converted to common stock warrants, was reclassified from redeemable convertible preferred stock warrant liability to additional paid-in capital.

We determined that a retrospective valuation of the fair value of our preferred stock warrants on the conversion date was appropriate for financial reporting purposes. In connection with the preparation of our retrospective valuation, we noted that the fair value of our Series B Stock warrants decreased from $5.12 per share on April 30, 2016 to $4.54 per share on September 30, 2016. The decrease in the fair value of the Series B Stock warrants primarily resulted from the dilutive effect of issuing our convertible promissory notes as the Company’s enterprise values on April 30, 2016 and September 30, 2016 were similar and there were no events, or series of events, other than the issuance of the convertible promissory notes, which would have clearly resulted in a decrease in the fair value of the Series B Stock warrants. We derived the fair value of the Series B Stock warrants on the conversion date using an interpolation methodology that considered both the timing and amount of dilution from issuing convertible promissory notes and determined the conversion date fair value to be $5.09 per share.

The fair value of our Series A Stock warrants was $5.39 per share on April 30, 2016. Historically, the fair value of our Series A Stock warrants have changed in a similar pattern to our Series B Stock warrants due to similarities between the underlying Series A Stock and Series B Stock. We determined the conversion date fair value to be $5.36 per share based on similar percentage decline in the fair value of our Series B Stock.

***Convertible Promissory Notes***

The redemption features included in the terms of the convertible promissory notes were determined to be derivative liabilities due to a significant discount within the redemption features for the note holders. Embedded derivatives that are not clearly and closely related to the host contract are required to be bifurcated and recorded at fair value unless the fair value option is elected on the host contract. Under the fair value option, bifurcation of the embedded derivative is not necessary as all related gains (losses) on the host contract and derivative will be reflected in the consolidated statements of operations. We elected the fair value option for the Existing Stockholder Notes and Aimia Notes, therefore direct costs and fees associated with the issuance were recognized in earnings as incurred and were not deferred.

To determine the fair value of our convertible promissory notes, we utilized key assumptions from the PWERM, as shown above. Under this method, we considered the redemption features of the convertible promissory notes, as described in Note 5—Debt, to determine the fair value under discrete future outcomes, including IPO and non-IPO scenarios. Under certain non-IPO scenarios, holders of the convertible promissory notes will receive two times preference on the outstanding principal amount. We weighted the fair values based on the estimated probability of each scenario to determine the overall fair value of the convertible promissory notes as of the balance sheet date. A one percent increase or decrease in the cost of debt and equity would have a $0.6 million impact on the value of the convertible promissory notes as of December 31, 2016.

The Existing Stockholder Notes and Aimia Notes were issued with an aggregate principal amount of $50.7 million. Paid-in-kind interest during 2016 totaled $2.9 million and is recognized in interest expense, net in our consolidated statements of operations.

## 10. COMMON STOCK WARRANTS

We have granted warrants to purchase shares of our common stock warrants to certain FI partners that include both time-based and performance-based vesting conditions. These warrants are accounted for under ASC Topic 505-50. Since the performance conditions contained in these warrants are directly related to revenue-producing activities, we incur non-cash expense in FI Share and other third-party costs on our consolidated statements of operations based on the vesting-date fair value of our common stock underlying these warrants.

A summary of common stock warrant activity, exclusive of unvested performance-based warrants with respect to 925,740 shares of common stock and 2,577,465 shares of common stock as of December 31, 2015 and 2016, respectively, is as follows (in thousands, except per share amounts):

| | Shares | Weighted-average exercise price per share |
|---|---|---|
| Warrants outstanding—December 31, 2015 | 1,793 | $ 1.32 |
| Granted | 389 | 5.00 |
| Exercised | — | — |
| Redeemable convertible preferred stock warrants converted to common stock warrants | 150 | 0.48 |
| Forfeited/cancelled | — | — |
| Warrants outstanding—December 31, 2016 | 2,332 | $ 1.88 |

As of December 31, 2014, there were warrants outstanding to purchase up to an aggregate of 1,793,445 shares of common stock at a weighted-average exercise price of $1.32. There were no changes to outstanding common stock warrants during 2015.

Pursuant to the Term Loan, in July 2016, we issued 10-year fully vested warrants to purchase up to 388,500 shares of common stock to the financial institution at an exercise price of $5.00 per share. In conjunction with the issuance of the warrants, we recorded a debt discount of $1.0 million, which represents the fair value of the warrants upon issuance. We determine the grant date fair value of common warrants using the Black-Scholes option pricing model, which is affected by the estimated fair value of our common stock as well as the following significant inputs:

| | Common stock warrants |
|---|---|
| Weighted-average grant date fair value | $2.61 |
| Significant inputs: | |
| Value of common stock | $4.48 |
| Expected term | 10 years |
| Volatility | 51% |
| Risk-free interest rate | 1.2% |
| Dividend yield | —% |

During 2016, warrants to purchase shares of redeemable convertible preferred stock held by parties that did not participate in the Existing Stockholder Note financing were converted to common stock warrants. As a result, warrants to purchase 50,000 shares of our Series A Stock at an exercise price of $0.25 per share, warrants to purchase 100,000 shares of our Series B Stock at an exercise price of $0.59 per share and warrants to purchase 2,577,465 shares of our Series E Stock at an exercise price of $5.91 per share were converted to common stock warrants. The warrants to purchase shares of our Series A Stock and Series B Stock were fully vested upon issuance. The warrants to purchase 2,577,465 shares of our Series E Stock have performance-based vesting conditions, which have not been met as discussed in Note 11—Related Parties. The conversion date fair value of the Series A Stock warrants and Series B Stock warrants, which were converted to common stock warrants, was reclassified from redeemable convertible preferred stock warrant liability to additional paid-in capital. See Note 9—Fair Value Measurements for more information.

In January 2011, we granted 10-year immediately-exercisable warrants to purchase up to 231,435 shares of common stock at an exercise price of $0.59 per share to an FI partner. We recorded expense for the estimated fair value of the immediately-vested warrants during the year ended December 31, 2011. We also granted the FI partner 10-year performance-based warrants to purchase up to 925,740 shares of common stock. The performance-based warrants were exercisable subject to the attainment of certain active account milestones. The performance-based warrants expired on November 1, 2016 in which no amounts became vested and exercisable.

In March 2011, we granted 10-year warrants to purchase up to 312,402 shares of common stock at an exercise price of $0.63 per share to an FI partner. These warrants vested over a period of 12 months following the date of grant. We recorded expense over the vesting period for the estimated fair value of the warrants during 2011 and 2012.

In June 2012, we granted 10-year performance-based warrants to purchase up to 312,402 shares of common stock at an exercise price of $1.63 per share to an FI partner. These warrants vested in December 2012 upon attainment of the performance conditions. We recorded expense for the estimated fair value of the warrants during 2012.

In December 2012, we granted 10-year performance-based warrants to purchase up to 937,206 shares of common stock at an exercise price of $1.63 per share to an FI partner. These warrants were vested upon grant as the performance condition had been attained. We recorded expense for the estimated fair value of the warrants during 2012.

## 11. RELATED PARTIES

As discussed in Note 5—Debt, in 2016, we issued Existing Stockholder Notes to our founders and certain of our existing stockholders in an aggregate principal amount of $27.0 million. The following table summarizes purchases of our convertible promissory notes by our directors, executive officers and holders of more than 5% of any class of our capital stock as of the date of such transaction (in thousands):

| Related Party | Principal amount of convertible notes |
|---|---|
| Aeroplan Holdings Europe Sàrl(1) | $ 3,987 |
| Entities affiliated with Polaris Venture Partners(2) | 5,321 |
| Canaan VIII L.P.(3) | 6,514 |
| Entities affiliated with Discovery Capital(4) | 2,663 |
| Scott D. Grimes | 650 |
| Lynne M. Laube | $ 350 |

(1) Aeroplan Holdings Europe Sàrl is an affiliate of Aimia Inc. David L. Adams, a member of our board of directors, was the Executive Vice President and Chief Financial Officer of Aimia Inc. at the time of the issuance.

(2) Consists of convertible promissory notes in an aggregate principal amount of $5,134,443.03 purchased by Polaris Venture Partners V, L.P., or PVP V, convertible promissory notes in an aggregate principal amount of $100,069.82 purchased by Polaris Venture Partners Entrepreneurs' Fund V, L.L., or PVP EF V, convertible promissory notes in an aggregate principal amount of $35,170.61 purchased by Polaris Venture Partners Founders' Fund V, L.P., or PVP FF V, and convertible promissory notes in an aggregate principal amount of $51,344.45 purchased by Polaris Venture Partners Special Founders' Fund V, L.P., or PVP SFF V. Polaris Venture Management Co. V, L.L.C. is a general partner of each of PVP V, PVP EF V, PVP FF V and PVP SFF V and may be deemed to have the sole voting and dispositive power over the shares held by PVP V, PVP EF V, PVP FF V and PVP SFF V. Bryce Youngren, a member of our board of directors, is a Managing Partner of Polaris Partners and may be deemed to share voting and dispositive power over the shares held by PVP V, PVP EF V, PVP FF V and PVP SFF V.

(3) John V. Balen, a member of our board of directors, is a managing member of Canaan Partners VIII LLC, the general partner of Canaan VIII L.P. Mr. Balen does not have voting or investment power over any shares held directly by Canaan VIII L.P.

(4) Consists of convertible promissory notes in an aggregate principal amount of $2,385,974.51 purchased by Discovery Global Opportunity Master Fund, Ltd., or Discovery Global Opportunity, and convertible promissory notes in an aggregate principal amount of $277,291.57 purchased by Discovery Global Focus Master Fund, Ltd., or Discovery Global Focus. Discovery Capital Management, LLC is the manager of each of Discovery Global Opportunity and Discovery Global Focus, and may be deemed to have the sole voting and dispositive power over the shares held by Discovery Global Opportunity and Discovery Global Focus.

In January 2014, we entered into a cooperation agreement with Aimia, which is a holder of our equity securities. As discussed in Note 12—Variable Interest Entity, Aimia agreed to terminate the cooperation agreement in June 2016 in exchange for $22.3 million of convertible promissory notes, resulting in Cardlytics, Inc. obtaining full control of Cardlytics UK. The cooperation agreement generally provided for equal cost and revenue sharing related to our business in the United Kingdom, which is operated through Cardlytics UK. Cardlytics UK was treated as a variable interest entity and we consolidated Cardlytics UK under variable interest entity accounting rules as discussed in Note 12—Variable Interest Entity. The termination of the cooperation agreement also resulted in a termination of the Working Capital Line of Credit. See Note 5—Debt, for additional information regarding the Working Capital Line of Credit and Aimia Notes.

Our consolidated statements of operations includes the reimbursement of expense and allocation of revenue that are due to and due from Aimia pursuant to the agreement. Operating expense reimbursements and allocation of revenue less FI Share and third-party costs (recorded in FI Share and other third-party costs), are as follows (in thousands):

| | Year Ended December 31, | |
|---|---|---|
| | 2015 | 2016 |
| Operating expense reimbursements: | | |
| Delivery costs | $ 15 | $ 24 |
| Sales and marketing expense | 1,247 | 597 |
| General and administrative expense | 519 | 129 |
| Allocation of revenue less FI Share and other third-party costs | $ 1,847 | $ 1,223 |

As of December 31, 2015 we recorded a net payable due to Aimia of $6.1 million. The net payable due to Aimia on June 30, 2016 totaled $5.7 million and was converted to a convertible promissory note.

We are party to a reseller agreement with Fidelity Information Services LLC (“FIS”). Pursuant to the reseller agreement, FIS markets and sells our services to financial institutions that are current or potential customers of FIS in exchange for a revenue share percentage. FIS is also currently entitled to elect a member of our board of directors, who is currently Robert Legters. We are also obligated to make milestone payments to FIS related to the integration and deployment of our solutions. See Note 13—Commitments and Contingencies for additional information.

In May 2013, FIS purchased 1,590,061 shares of our Series E Stock. See Note 8—Redeemable Convertible Preferred Stock for additional information. We also granted 10-year performance-based warrants to purchase up to 2,577,465 shares of Series E Stock at an exercise price of $5.91 per share. Since FIS did not participate in the Existing Stockholder Note financing, their preferred stock warrants were converted to common stock warrants in May 2016. The warrants become exercisable subject to the attainment of certain milestones related to the number of active accounts for which our solutions have been enabled. We have determined that these warrants are subject to the guidance under ASC Topic 505-50, Equity—*Equity-Based Payments to Non-Employees*. These warrants will not be subject to the disclosure requirements under ASC Topic 820, *Fair Value Measurements and Disclosures*, when and if vested and expensed. As of December 31, 2016, no such warrants have vested and therefore no related expense has been recorded. Since the performance conditions are directly related to revenue-producing activities, we will incur non-cash expense in our FI Share and other third-party costs based on the vesting-date fair value of our redeemable convertible preferred stock underlying these warrants. These warrants will vest upon the completion of an IPO regardless of whether the milestones are met.

## 12. VARIABLE INTEREST ENTITY

As stated in Note 11—Related Parties, Cardlytics UK was operated through a cooperation agreement with Aimia whereby we and Aimia shared equally in cost and revenue related to the business in the United Kingdom. On June 30, 2016, we and Aimia agreed to terminate this agreement, resulting in Cardlytics, Inc. obtaining full control of Cardlytics UK. While we maintained 100% equity ownership of Cardlytics UK, the cooperation agreement required that we establish a supervisory board, made up of two representatives from each of Cardlytics and Aimia, which is responsible for strategy and other approvals relating to the operations. As such, we and Aimia shared functional control over Cardlytics UK. Accordingly, Cardlytics UK was deemed to be a variable interest entity (“VIE”) while it was operated under the cooperation agreement. Subsequent to the termination of the cooperation agreement, Cardlytics UK is not considered a VIE as it is fully owned and controlled by Cardlytics, Inc. Refer to Note 11—Related Parties for amounts shared with Aimia during 2016 through the end of the cooperation agreement on June 30, 2016.

A VIE is an entity that has either a total equity investment that is insufficient to permit the entity to finance its activities without additional subordinated financial support, or whose equity investors lack the

characteristics of a controlling financial interest (i.e., the ability to make significant decisions through voting rights and the right to receive the expected residual returns of the entity or the obligation to absorb the expected losses of the entity). A variable interest holder that has both (1) the power to direct the activities of the VIE that most significantly impact its economic performance and (2) either an obligation to absorb losses or a right to receive benefits that could potentially be significant to the VIE is referred to as the primary beneficiary and must consolidate the VIE.

Cardlytics UK was deemed to be a VIE because we shared with Aimia the power to direct the activities that most significantly impacted Cardlytics UK's economic performance, and Aimia did not hold any equity investment in Cardlytics UK. Due to the fact that we shared such decision making with Aimia, we individually did not have the characteristics of a primary beneficiary. However, we consolidated Cardlytics UK because (1) it was part of a related party group that included Aimia, (2) the related party group had the characteristics of a primary beneficiary and (3) we were most closely associated with Cardlytics UK. We concluded that we were most closely associated with Cardlytics UK because (1) merchants viewed Cardlytics UK as the primary obligor in the performance of marketing services with Aimia acting as a de facto agent on behalf of Cardlytics UK and (2) our software was used by Cardlytics UK in the performance of its services. We also had a disproportionate share of the economic risks when compared to our functional voting control as we incurred more than 50% of the expenses due to the absorption of 100% of the information technology and systems support related expenses for Cardlytics UK. There were no restrictions on the assets or liabilities of the VIE as a result of the cooperation agreement. The liabilities of the VIE were comprised mainly of short-term accrued expenses, and creditors had no recourse to our general credit or assets. Our conclusion that Cardlytics UK was a VIE was also partially reached due to the fact that Aimia was a related party.

The following tables reflect the impact of the VIE on our condensed consolidated balance sheets and statements of operations. Cardlytics UK's effect on the consolidated operating cash flows is a cash outflow of $0.4 million during 2015. There were no material investing or financing cash flows associated with Cardlytics UK other than the line of credit with Aimia as disclosed in Note 11—Related Parties.

**Cardlytics, Inc.**
**Condensed Consolidated Balance Sheets**
**December 31, 2015**
**(Amounts in thousands)**

| | Before Consolidation of VIE | VIE | Eliminations | Consolidated |
|---|---|---|---|---|
| Cash and cash equivalents | $ 20,810 | $ 6,513 | $ — | $ 27,323 |
| Intercompany receivable | 9,724 | 4,498 | (14,222) | — |
| Other current assets | 36,353 | 4,404 | — | 40,757 |
| Total current assets | 66,887 | 15,415 | (14,222) | 68,080 |
| Long term assets | 14,111 | 99 | — | 14,210 |
| Total assets | $ 80,998 | $ 15,514 | $ (14,222) | $ 82,290 |
| Current liabilities | $ 57,211 | $ 10,052 | $ — | $ 67,263 |
| Intercompany payable | — | 13,526 | (13,526) | — |
| Total current liabilities | 57,211 | 23,578 | (13,526) | 67,263 |
| Non-current liabilities | 17,127 | — | — | 17,127 |
| Total liabilities | 74,338 | 23,578 | (13,526) | 84,390 |
| Redeemable convertible preferred stock | 160,061 | — | — | 160,061 |
| Stockholders' deficit | (153,401) | (8,064) | (696) | (162,161) |
| Total liabilities and stockholders' equity | $ 80,998 | $ 15,514 | $ (14,222) | $ 82,290 |

| Cardlytics, Inc. Condensed Consolidated Statements of Operations Year ended December 31, 2015 (Amounts in thousands) | | | | |
|---|---|---|---|---|
| | Before Consolidation of VIE | VIE | Eliminations | Consolidated |
| Revenues | $ 69,147 | $ 8,487 | $ — | $ 77,634 |
| Operating expenses | 107,081 | 10,192 | — | 117,273 |
| Operating loss | (37,934) | (1,705) | — | (39,639) |
| Other non-operating expense | (211) | (358) | (433) | (1,002) |
| Loss before income taxes | (38,145) | (2,063) | (433) | (40,641) |
| Income tax expense | 16 | — | — | 16 |
| Net loss | $ (38,129) | $ (2,063) | $ (433) | $ (40,625) |

## 13. COMMITMENTS AND CONTINGENCIES

### *FI Implementation Costs*

Agreements with certain FI partners require us to fund the development of user interface enhancements, pay for certain implementation fees, or make milestone payments upon the deployment of our solution. Amounts paid to FI partners are included in deferred FI implementation costs on our consolidated balance sheets the earlier of when paid or earned and are amortized over the remaining term of the related contractual arrangements. Amortization is included in FI Share and other third-party costs on our consolidated statements of operations. Certain of these agreements provide for future reductions in FI Share due to the FI partner. These reductions in FI Share are recorded as a reduction to deferred implementation costs and also result in a cumulative adjustment to accumulated amortization. Reductions to FI Share in 2017 and 2018 are expected to total $4.4 million and $5.0 million, respectively. Unearned amounts not yet paid to FI partners totaled $10.3 million as of December 31, 2016.

One of our FI partners that we have made milestone payments to has experienced prolonged delays in implementing and supporting our Cardlytics Direct solution. As a result, we wrote off deferred FI implementation costs totaling $0.8 million to FI Share and other third-party costs on our consolidated statements of operations in 2016.

The following table presents changes in deferred FI implementation costs (in thousands):

| | Year Ended December 31, | |
|---|---|---|
| | 2015 | 2016 |
| Beginning balance | $ 123 | $ 1,936 |
| Deferred costs | 2,023 | 8,205 |
| Amortization | (210) | (876) |
| Impairment | — | (814) |
| Ending balance | $ 1,936 | $ 8,451 |

Payments to FI partners not yet earned totaled $1.0 million as of December 31, 2016. Based on the amounts earned as of December 31, 2016, future amortization is as follows (in thousands):

| Years Ending December 31, | Amortization |
|---|---|
| 2017 | $ 1,917 |
| 2018 | 1,917 |
| 2019 | 1,917 |
| 2020 | 1,661 |
| 2021 | 39 |
| Total | $ 7,451 |

Additionally, we have minimum FI Share commitments totaling $56.0 million in 2017. As a result of not meeting a minimum FI Share commitment in 2016, we are required to pay an FI partner $2.6 million in March 2017. This shortfall is recorded as of December 31, 2016 as a component of FI Share liability on our consolidated balance sheet and is included in FI Share and other third-party costs on our consolidated statement of operations. We also have an FI Share commitment to a certain FI partner totaling $10.0 million over a 12-month period following the completion of certain milestones.

***Operating Leases***

We lease office and apartment space and office equipment under non-cancelable operating lease agreements expiring on various dates through April 2026. For leases that contain rent escalation or rent concession provisions, we record the total rent expense during the lease term on a straight-line basis over the term of the lease. On our consolidated balance sheets, the current portion of deferred rent is included in accrued liabilities and the noncurrent portion is included within deferred liabilities. Rent expense during 2015 and 2016 totaled $2.5 million and $2.9 million, respectively.

In August 2013, we entered into a 130-month office lease for our new corporate headquarters in Atlanta, Georgia. The facility was delivered to us in July 2014 and provides 76,880 square feet of office space. We began recognizing rent expense at the beginning of the lease term in July 2014. The lease contains a $3.8 million tenant improvement allowance that is included in deferred rent and amortized as a reduction to rent expense over the lease term. Minimum lease payments under the agreement total $16.0 million.

In July 2015, we entered into a 60-month lease, expanding our existing data center space located in Atlanta, GA. Minimum lease payments under the agreement total $2.3 million.

In December 2016, we entered into a 40-month office lease for our new UK office in Victoria, London, providing 5,295 square feet of office space. We began recognizing rent expense at the beginning of the lease term in December 2016. Minimum lease payments under the agreement total £0.8 million.

As of December 31, 2016, future minimum lease payments under non-cancelable operating leases are as follows (in thousands):

| Years Ending December 31, | Minimum Lease Payments |
|---|---|
| 2017 | $ 2,290 |
| 2018 | 2,403 |
| 2019 | 2,434 |
| 2020 | 1,977 |
| 2021 | 1,654 |
| Thereafter | 5,877 |
| Total | $ 16,635 |

***Litigation***

From time to time, we may become involved in legal actions arising in the ordinary course of business including, but not limited to, intellectual property infringement and collection matters. We make assumptions and estimates concerning the likelihood and amount of any potential loss relating to these matters using the latest information available. We record a liability for litigation if an unfavorable outcome is probable and the amount of loss or range of loss can be reasonably estimated. If an unfavorable outcome is probable and a reasonable estimate of the loss is a range, we accrue the best estimate within the range. If no amount within the range is a better estimate than any other amount, we accrue the minimum amount within the range. If an unfavorable outcome is probable but the amount of the loss cannot be reasonably estimated, we disclose the nature of the litigation and indicates that an estimate of the loss or range of loss cannot be made. If an unfavorable outcome is reasonably possible and the estimated loss is material, we disclose the nature and estimate of the possible loss of the litigation. We do not disclose information with respect to litigation where an unfavorable outcome is considered to be remote or where the estimated loss would not be material. Based on current expectations, such matters, both individually and in the aggregate, are not expected to have a material adverse effect on our liquidity, results of operations, business or financial condition.

***Letters of Credit***

In connection with the lease of the new corporate headquarters, we executed a $2.5 million irrevocable letter of credit on April 1, 2014. In December 2016, upon transitioning our operating bank accounts to a new financial institution, we replaced our existing irrevocable letter of credit with a new $2.0 million irrevocable letter of credit.

On September 2, 2015, we executed a $1.0 million irrevocable letter of credit as security for payment of Consumer Incentives to a new FI partner. This irrevocable letter of credit expired in September 2016 and was not renewed.

## 14. EARNINGS PER SHARE

***Basic and diluted net loss per share***

Diluted net loss per share is the same as basic net loss per share for 2015 and 2016 because the effects of potentially dilutive items were anti-dilutive, given our net loss during these periods. The following securities have been excluded from the calculation of diluted weighted-average common shares outstanding because the effect is anti-dilutive (in thousands):

| | Year Ended December 31, | |
|---|---|---|
| | 2015 | 2016 |
| Redeemable convertible preferred stock: | | |
| Series A/A-R | 7,478 | 7,428 |
| Series B/B-R | 8,995 | 8,987 |
| Series C/C-R | 6,032 | 6,032 |
| Series D/D-R | 5,584 | 5,584 |
| Series E/E-R | 4,770 | 3,180 |
| Series F/F-R | 4,795 | 4,794 |
| Common stock warrants | 2,256 | 4,909 |
| Redeemable convertible preferred stock warrants | 3,168 | 441 |
| Common stock options | 6,703 | 8,548 |
| Restricted securities units | — | 212 |
| Convertible promissory notes | — | 10,938 |

***Pro forma net loss per share (unaudited)***

The denominator used in computing pro forma net loss per share for 2016 has been adjusted to assume (1) our issuance and sale of 1,385,358 shares of redeemable convertible preferred stock in May 2017, (2) the automatic conversion of all outstanding shares of redeemable convertible preferred stock outstanding as of December 31, 2016 plus the additional shares of redeemable convertible preferred stock referenced in (1) above and (3) below, into common stock immediately prior to the closing of this offering and (3) the conversion of all convertible promissory notes outstanding as of December 31, 2016 into an aggregate of 5,183,015 shares of redeemable convertible preferred stock and 3,205,318 shares of common stock in May 2017.

The following table presents the calculation of pro forma basic and diluted net loss per share (in thousands, except per share amounts):

| | Year Ended December 31, 2016 |
|---|---|
| **Numerator:** | |
| Net loss | $ |
| Less: Accretion of redeemable convertible preferred stock to redemption value | |
| Plus: Interest on convertible promissory notes | |
| Plus: Interest on convertible promissory notes—related parties | |
| Plus: Change in fair value of convertible promissory notes | |
| Plus: Change in fair value of convertible promissory notes—related parties | |
| Pro forma numerator for basic and diluted net loss per share | $ |
| **Denominator:** | |
| Weighted-average shares available to common stockholders, basic and diluted | |
| Plus: Vesting of restricted securities units and conversion to common stock | |
| Plus: Conversion of redeemable convertible preferred stock to common stock | |
| Plus: Conversion of convertible promissory notes to common stock | |
| Pro forma denominator for basic and diluted net loss per share | |
| Pro forma net loss per share attributable to common stockholders, basic and diluted | $ |

## 15. SEGMENTS

We have three operating segments: our Cardlytics Direct solutions in the United States and United Kingdom and Other Platform Solutions, as determined by the information that both our Chief Executive Officer and President and Chief Operating Officer, who we consider our chief operating decision makers, use to make strategic goals and operating decisions. Our Cardlytics Direct operating segments in the United States and United Kingdom represent our proprietary native bank advertising channels and are aggregated into one reportable segment given their similar economic characteristics, nature of service, types of customers and method of distribution. Our Other Platform Solutions segment represents solutions that enable marketers and marketing service providers to leverage the power of purchase intelligence across all of their marketing investments.

Revenues and FI Share and other third-party can be directly attributable to each segment. Our chief operating decision makers allocate resources to, and evaluate the performance of, our operating segments based on revenue and adjusted contribution. The accounting policies of each of our reportable segments are the same as those described in the summary of significant accounting policies.

The following table provides information regarding our reportable segments (in thousands):

| | Year Ended December 31, 2015 | 2016 |
|---|---|---|
| Cardlytics Direct: | | |
| Adjusted contribution | $ 25,783 | $ 39,684 |
| FI Share and other third-party costs | 38,664 | 58,105 |
| Revenue | $ 64,447 | $ 97,789 |
| Other Platform Solutions: | | |
| Adjusted contribution | $ 4,160 | $ 6,852 |
| FI Share and other third-party costs | 9,027 | 8,180 |
| Revenue | $ 13,187 | $ 15,032 |
| Total: | | |
| Adjusted contribution | $ 29,943 | $ 46,536 |
| FI Share and other third-party costs | 47,691 | 66,285 |
| Revenue | $ 77,634 | $ 112,821 |

***Adjusted Contribution***

Adjusted contribution represents our revenue less FI Share and other third-party costs.

The following table presents a reconciliation of loss before income taxes presented in accordance with U.S. GAAP to adjusted contribution for years ended December 31, 2015 and 2016 (in thousands):

| | Year Ended December 31, 2015 | 2016 |
|---|---|---|
| Adjusted contribution | $ 29,943 | $ 46,536 |
| Minus: | | |
| Delivery costs | 4,803 | 6,127 |
| Sales and marketing expense | 32,784 | 31,261 |
| Research and development expense | 11,604 | 13,902 |
| General and administration expense | 18,197 | 21,355 |
| Depreciation and amortization expense | 2,194 | 4,219 |
| Termination of U.K. agreement expense | — | 25,904 |
| Total other expense | 1,002 | 19,464 |
| Loss before income taxes | $ (40,641) | $ (75,696) |

The following table provides geographical information (in thousands):

| | Year Ended December 31, 2015 | 2016 |
|---|---|---|
| Revenue: | | |
| United States | $ 69,147 | $ 100,590 |
| United Kingdom | 8,487 | 12,231 |
| Total | $ 77,634 | $ 112,821 |
| | December 31, 2015 | 2016 |
| Property and equipment: | | |
| United States | $ 9,460 | $ 8,000 |
| United Kingdom | 91 | 345 |
| Total | $ 9,551 | $ 8,345 |

Capital expenditures within the United Kingdom were immaterial during 2015 and 2016.

## 16. SUBSEQUENT EVENTS

We evaluated subsequent events through April 5, 2017, the date on which the December 31, 2016 consolidated financial statements were originally issued, and May 12, 2017, the date as of which this subsequent event note was revised.

In February 2017, we extended the maturity date of the Existing Stockholder Notes from April 26, 2018 to April 26, 2019 and in March 2017, we extended the maturity date of the Aimia Notes from June 30, 2018 to June 30, 2019.

In February 2017, we amended and restated our certificate of incorporation reducing the authorized number of shares of our redeemable convertible preferred stock to 82,683,212 and cancelled Series A Stock, Series B Stock, Series C Stock, Series D Stock, Series E Stock and Series F Stock. Pursuant to our Existing Stockholder Note financing, these series of preferred stock were either exchanged for shares of replacement preferred stock with rights and preferences equal to their corresponding original series or converted to common stock.

In May 2017, we amended and restated our certificate of incorporation and increased the authorized number of shares of our common stock to 83,000,000 and increased the authorized number of shares of our redeemable convertible preferred stock to 96,131,002. In May 2017, we issued and sold an aggregate of 1,385,358 shares of Series G redeemable convertible preferred stock, par value $0.0001 per share (“Series G Stock”), at a purchase price of $8.61895 per share for aggregate consideration of approximately $11.9 million. The Series G Stock carries a stated dividend of $0.689516 per annum, payable quarterly when, as, and if declared by our board of directors. These dividends are noncumulative in nature. The Series G Stock is entitled to certain anti-dilution protections.

In connection with the Series G Stock financing, the Existing Stockholder Notes and the Outstanding Obligation Note converted into 5,183,015 shares of Series G’ redeemable convertible preferred stock, par value $0.0001 per share (“Series G’ Stock”), at a price per share of $6.89516. The Series G’ Stock carries a stated dividend of $0.689516 per annum, payable quarterly when, as, and if declared by our board of directors. These dividends are noncumulative in nature. The Series G’ Stock is entitled to certain anti-dilution protections.

Upon the consummation of an IPO of shares of our common stock that results in gross proceeds to the Company of not less than $70.0 million, after deducting underwriting discounts and expenses, all of the outstanding shares of Series G and Series G’ redeemable convertible preferred stock will automatically convert into shares of common stock.

As of May 5, 2017, the RSUs will be indexed to the Series G’ Stock on the same terms as the Series G’ Stock issued upon conversion of the Existing Stockholder Notes and the Outstanding Obligation Note, but such Series G’ Stock will not be issued.

In connection with the Series G Stock financing, the Aimia EMEA Notes converted into a number of shares of common stock to be determined by reference to a subsequent valuation of our common stock.

In connection with the Series G Stock financing, we issued warrants to purchase an aggregate of number of shares of common stock equal to the product obtained by multiplying 1,385,358 by a fraction, the numerator of which is the difference between $17.2379 and the volume weighted average closing price of our common stock over the 30 trading days (or such lesser number of days as our common stock has been traded on the Nasdaq Global Market) prior to the date on which such warrants vest and become exercisable and the denominator of which is such volume weighted average closing price, which warrants will become vested and exercisable upon the earlier to occur of the date (i) 180 days following the date of this prospectus and (ii) 10 days prior to a sale of our company, at an exercise price of $0.0001 per share.

In connection with the Series G financing, our board of directors and stockholders approved an increase in the total number of shares of common stock issuable under our 2008 Stock Plan to 13,980,000 shares.

**CARDLYTICS, INC.**
**CONDENSED CONSOLIDATED BALANCE SHEETS (UNAUDITED)**
**(Amounts in thousands, except par value amounts)**

| | December 31, 2016 | September 30, 2017 | Pro Forma at September 30, 2017 |
|---|---|---|---|
| **ASSETS** | | | |
| CURRENT ASSETS: | | | |
| Cash and cash equivalents | $ 22,838 | $ 28,186 | $ |
| Restricted cash | 130 | — | |
| Accounts receivable, net | 42,042 | 38,060 | |
| Other receivables | 1,774 | 2,508 | |
| Prepaid expenses and other assets | 1,540 | 2,490 | |
| Total current assets | 68,324 | 71,244 | |
| PROPERTY AND EQUIPMENT, net | 8,345 | 7,058 | |
| INTANGIBLE ASSETS, net | 476 | 522 | |
| CAPITALIZED SOFTWARE DEVELOPMENT COSTS, net | — | 76 | |
| DEFERRED FI IMPLEMENTATION COSTS, net | 8,451 | 10,854 | |
| OTHER LONG-TERM ASSETS | 1,263 | 3,661 | |
| Total assets | $ 86,859 | $ 93,415 | $ |
| **LIABILITIES AND STOCKHOLDERS' (DEFICIT) EQUITY** | | | |
| CURRENT LIABILITIES: | | | |
| Accounts payable | $ 2,369 | $ 1,809 | $ |
| Accrued liabilities: | | | |
| Accrued compensation | 3,122 | 4,372 | |
| Accrued expenses | 4,410 | 3,284 | |
| FI Share liability | 23,109 | 17,957 | |
| Consumer Incentive liability | 5,857 | 5,349 | |
| Deferred billings | 638 | 447 | |
| Short-term debt: | | | |
| Capital leases | 99 | 63 | |
| Total current liabilities | $ 39,604 | $ 33,281 | $ |
| LONG-TERM LIABILITIES: | | | |
| Deferred liabilities | 4,071 | 3,795 | |
| Warrant liability | 2,197 | 10,061 | — |
| Long-term debt, net of current portion: | | | |
| Lines of credit | 15,652 | 24,548 | |
| Term loans | 23,715 | 30,839 | |
| Capital leases | 101 | 63 | |
| Convertible promissory notes (recognized at fair value through net loss) | 8,662 | — | |
| Convertible promissory notes—related parties (recognized at fair value through net loss) | 63,670 | — | |
| Total long-term liabilities | $ 118,068 | $ 69,306 | $ |

See notes to the condensed consolidated financial statements

**CARDLYTICS, INC.**
**CONDENSED CONSOLIDATED BALANCE SHEETS (UNAUDITED)**
**(Amounts in thousands, except par value amounts)**

| | December 31, 2016 | September 30, 2017 | Pro Forma at September 30, 2017 |
|---|---|---|---|
| **LIABILITIES AND STOCKHOLDERS' (DEFICIT) EQUITY** | | | |
| COMMITMENTS AND CONTINGENCIES (Note 8) | | | |
| REDEEMABLE CONVERTIBLE PREFERRED STOCK: | | | |
| Series G' preferred stock, $0.0001 par value—5,339 shares authorized and 5,183 shares issued and outstanding as of September 30, 2017, no shares authorized, issued or outstanding pro forma (unaudited) | $ — | $ 44,672 | $ — |
| Series G preferred stock, $0.0001 par value—1,385 shares authorized, issued and outstanding as of September 30, 2017, no shares authorized, issued or outstanding pro forma (unaudited) | — | 4,864 | — |
| Series F-R preferred stock, $0.0001 par value—10,000 and 5,000 shares authorized and 4,795 shares issued and outstanding as of December 31, 2016 and September 30, 2017, respectively, no shares authorized, issued or outstanding pro forma (unaudited) | 57,958 | 58,360 | — |
| Series E-R preferred stock, $0.0001 par value—14,800 and 7,400 shares authorized and 3,180 shares issued and outstanding as of December 31, 2016 and September 30, 2017, respectively, no shares authorized, issued or outstanding pro forma (unaudited) | 29,963 | 29,971 | — |
| Series D-R preferred stock, $0.0001 par value—11,574 and 5,787 shares authorized and 5,584 shares issued and outstanding as of December 31, 2016 and September 30, 2017, respectively, no shares authorized, issued or outstanding pro forma (unaudited) | 32,642 | 32,712 | — |
| Series C-R preferred stock, $0.0001 par value—12,063 and 6,032 shares authorized and 6,032 shares issued and outstanding as of December 31, 2016 and September 30, 2017, respectively, no shares authorized, issued or outstanding pro forma (unaudited) | 18,323 | 18,358 | — |
| Series B-R preferred stock, $0.0001 par value—19,191 and 9,596 shares authorized and 8,987 shares issued and outstanding as of December 31, 2016 and September 30, 2017, respectively, no shares authorized, issued or outstanding pro forma (unaudited) | 5,286 | 5,288 | — |
| Series A-R preferred stock, $0.0001 par value—15,055 and 7,528 shares authorized and 7,428 shares issued and outstanding as of December 31, 2016 and September 30, 2017, respectively, no shares authorized, issued or outstanding pro forma (unaudited) | 1,850 | 1,852 | — |
| Total redeemable convertible preferred stock | 146,022 | 196,077 | — |
| STOCKHOLDERS' (DEFICIT) EQUITY: | | | |
| Common stock, $0.0001 par value—64,000 and 83,000 shares authorized and 10,362 and 14,189 shares issued and outstanding as of December 31, 2016 and September 30, 2017, respectively, 83,000 shares authorized and 56,763 shares issued and outstanding pro forma (unaudited) | 1 | 1 | |
| Additional paid-in capital | 29,866 | 57,979 | |
| Accumulated other comprehensive income | 2,102 | 1,160 | |
| Accumulated deficit | (248,804) | (264,389) | |
| Total stockholders' (deficit) equity | (216,835) | (205,249) | |
| Total liabilities and stockholders' (deficit) equity | $ 86,859 | $ 93,415 | $ |

See notes to the condensed consolidated financial statements

**CARDLYTICS, INC.**
**CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS (UNAUDITED)**
**(Amounts in thousands, except per share amounts)**

| | Nine Months Ended September 30, | |
|---|---|---|
| | 2016 | 2017 |
| REVENUE | $ 76,400 | $ 91,099 |
| COSTS AND EXPENSES: | | |
| FI Share and other third-party costs | 44,986 | 50,886 |
| Delivery costs | 4,729 | 5,095 |
| Sales and marketing expense | 22,850 | 23,454 |
| Research and development expense | 11,101 | 9,527 |
| General and administration expense | 16,240 | 14,738 |
| Depreciation and amortization expense | 3,432 | 2,303 |
| Termination of U.K. agreement expense | 25,904 | — |
| Total costs and expenses | 129,242 | 106,003 |
| OPERATING LOSS | (52,842) | (14,904) |
| OTHER INCOME (EXPENSE): | | |
| Interest expense, net | (3,623) | (6,427) |
| Change in fair value of warrant liability | 639 | (412) |
| Change in fair value of convertible promissory notes | (819) | (1,244) |
| Change in fair value of convertible promissory notes—related parties | (10,280) | 6,213 |
| Other (expense) income, net | (1,726) | 1,189 |
| Total other expense | (15,809) | (681) |
| LOSS BEFORE INCOME TAXES | (68,651) | (15,585) |
| INCOME TAX BENEFIT | — | — |
| NET LOSS | $ (68,651) | $ (15,585) |
| Adjustments to the carrying value of redeemable convertible preferred stock | (741) | (5,383) |
| Net loss attributable to common stockholders | $ (69,392) | $ (20,968) |
| Net loss per share attributable to common stockholders, basic and diluted | $ (7.58) | $ (1.67) |
| Weighted-average common shares outstanding, basic and diluted | 9,150 | 12,559 |
| Pro forma net loss per share attributable to common stockholders, basic and diluted (unaudited) | | $ |
| Pro forma weighted-average common shares outstanding, basic and diluted (unaudited) | | |

See notes to the condensed consolidated financial statements

**CARDLYTICS, INC.**
**CONDENSED CONSOLIDATED STATEMENTS OF COMPREHENSIVE LOSS (UNAUDITED)**
**(Amounts in thousands)**

| | Nine Months Ended September 30, | |
|---|---|---|
| | **2016** | **2017** |
| NET LOSS | $ (68,651) | $ (15,585) |
| OTHER COMPREHENSIVE INCOME (LOSS): | | |
| Foreign currency translation adjustments, net of zero tax | 1,092 | (942) |
| TOTAL COMPREHENSIVE LOSS | $ (67,559) | $ (16,527) |

See notes to the condensed consolidated financial statements

**CARDLYTICS, INC.**
**CONDENSED CONSOLIDATED STATEMENTS OF STOCKHOLDERS' DEFICIT (UNAUDITED)**
**(Amounts in thousands)**

| | Common Stock | | Additional Paid-In Capital | Accumulated Other Comprehensive Income | Accumulated Deficit | Total |
|---|---|---|---|---|---|---|
| | Shares | Amount | | | | |
| BALANCE—December 31, 2016 | 10,362 | $ 1 | $ 29,866 | $ 2,102 | $ (248,804) | $ (216,835) |
| Exercise of common stock options | 622 | — | 597 | — | — | 597 |
| Stock-based compensation | — | — | 3,707 | — | — | 3,707 |
| Beneficial conversion feature of Series G stock | — | — | 4,488 | — | — | 4,488 |
| Deemed dividend related to beneficial conversion feature | — | — | (4,488) | — | — | (4,488) |
| Accretion of redeemable convertible preferred stock to redemption value | — | — | (895) | — | — | (895) |
| Conversion of convertible promissory notes to common stock | 3,205 | — | 24,392 | — | — | 24,392 |
| Issuance of common stock warrants | — | — | 312 | — | — | 312 |
| Other comprehensive income | — | — | — | (942) | — | (942) |
| Net loss | — | — | — | — | (15,585) | (15,585) |
| BALANCE—September 30, 2017 | 14,189 | $ 1 | $ 57,979 | $ 1,160 | $ (264,389) | $ (205,249) |

See notes to the condensed consolidated financial statements

**CARDLYTICS, INC.**
**CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS (UNAUDITED)**
**(Amounts in thousands)**

| | Nine Months Ended September 30, | |
|---|---|---|
| | 2016 | 2017 |
| CASH FLOWS FROM OPERATING ACTIVITIES: | | |
| Net loss | $ (68,651) | $ (15,585) |
| Adjustments to reconcile net loss to net cash used in operating activities: | | |
| Change in allowance for doubtful accounts | 744 | (8) |
| Depreciation and amortization expense | 3,432 | 2,303 |
| Amortization of financing costs charged to interest expense | 170 | 421 |
| Accretion of debt discount charged to interest expense | 2,112 | 5,434 |
| Stock-based compensation expense | 2,241 | 3,707 |
| Termination of U.K. agreement expense | 25,904 | — |
| Change in fair value of warrant liability | (639) | 412 |
| Change in fair value of convertible promissory notes | 820 | 1,245 |
| Change in fair value of convertible promissory notes—related parties | 10,279 | (6,213) |
| Other non-cash expenses | 4,969 | 48 |
| Change in operating assets and liabilities: | | |
| Accounts receivable | 1,097 | 3,256 |
| Prepaid expenses and other assets | (764) | (1,092) |
| Deferred FI implementation costs | (5,500) | (3,513) |
| Accounts payable | 74 | (991) |
| Other accrued expenses | (5,418) | (333) |
| Payable to related party, net | (459) | — |
| FI Share liability | 3,911 | (5,153) |
| Consumer incentive liability | (4,041) | (509) |
| Total adjustment | 38,932 | (986) |
| Net cash used in operating activities | $ (29,719) | $ (16,571) |
| CASH FLOWS FROM INVESTING ACTIVITIES: | | |
| Acquisition of property and equipment | (1,432) | (971) |
| Acquisition of intangible assets | (682) | (128) |
| Net cash used in investing activities | $ (2,114) | $ (1,099) |

See notes to the condensed consolidated financial statements

**CARDLYTICS, INC.**
**CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS (UNAUDITED)**
**(Amounts in thousands)**

| | Nine Months Ended September 30, | |
|---|---|---|
| | 2016 | 2017 |
| CASH FLOWS FROM FINANCING ACTIVITIES: | | |
| Proceeds from issuance of debt | $ 41,794 | $ 12,500 |
| Proceeds from issuance of debt—related parties | 19,485 | — |
| Principal payments of debt | (32,300) | (74) |
| Proceeds from issuance of common stock | 186 | 597 |
| Proceeds from issuance of Series G preferred stock | — | 11,940 |
| Equity issuance costs | (1,475) | (2,190) |
| Debt issuance costs | (1,291) | (142) |
| Debt extinguishment costs | (312) | — |
| Net cash from financing activities | $ 26,087 | $ 22,631 |
| EFFECT OF EXCHANGE RATES ON CASH, CASH EQUIVALENTS AND RESTRICTED CASH | (178) | 257 |
| NET DECREASE IN CASH, CASH EQUIVALENTS AND RESTRICTED CASH | (5,924) | 5,218 |
| CASH, CASH EQUIVALENTS AND RESTRICTED CASH—beginning of period | 27,609 | 22,968 |
| CASH, CASH EQUIVALENTS AND RESTRICTED CASH—end of period | $ 21,685 | $ 28,186 |
| Supplemental schedule of non-cash investing and financing activities: | | |
| Cash paid for interest | $ 1,459 | $ 630 |
| Assets acquired through capital leases | $ 100 | $ — |

See notes to the condensed consolidated financial statements

**CARDLYTICS, INC.**

**NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS (UNAUDITED)**

## 1. OVERVIEW OF BUSINESS AND BASIS OF PRESENTATION

Cardlytics, Inc. (“we,” “our,” “us,” the “Company,” or “Cardlytics”), is a Delaware corporation, and was formed on June 26, 2008. We make marketing more relevant and measurable through our purchase intelligence platform. Using one of the largest aggregations of purchase data through our partnerships with banks and credit unions (“FIs”), we have a secure view into where and when consumers are spending their money. By applying advanced analytics to this massive aggregation of purchase data, we make it actionable, helping marketers identify, reach and influence likely buyers at scale, and measure the true sales impact of their marketing spend.

We operate in the United Kingdom through Cardlytics UK Limited (“Cardlytics UK”), a wholly-owned and operated subsidiary registered as a private limited company in England and Wales.

***Unaudited Interim Results***

The accompanying unaudited interim condensed consolidated financial statements and information have been prepared in accordance with generally accepted accounting principles in the United States (or “U.S. GAAP”) and in accordance with the rules and regulations of the Securities and Exchange Commission. Accordingly, they do not include all of the information and disclosures required by U.S. GAAP for complete financial statements. In the opinion of management, these financial statements contain all normal and recurring adjustments considered necessary to present fairly the financial position, results of operations, and cash flows for the periods presented. The results for interim periods presented are not necessarily indicative of the results to be expected for the full year due to the seasonality of our business which has been historically impacted by higher consumer spending during the fourth quarter. These condensed consolidated financial statements should be read in conjunction with the consolidated financial statements and the notes thereto for the years ended December 31, 2015 and 2016 included elsewhere in this prospectus.

There have been no changes to our Significant Accounting Policies as disclosed in Note 2 of the consolidated financial statements and notes thereto for years ended December 31, 2015 and 2016.

***Liquidity***

We have incurred accumulated net losses of $264.4 million since inception, including losses of $40.6 million and $75.7 million in 2015 and 2016, respectively. We expect to incur additional operating losses as we continue our efforts to grow our business. We have historically financed our operations and capital expenditures through convertible note financings and private placements of our redeemable convertible preferred stock, as well as lines of credit and term loans. We have received net proceeds of $196.2 million from the issuance of redeemable convertible preferred stock and convertible promissory notes through September 30, 2017. Our historical uses of cash have primarily consisted of cash used in operating activities to fund our operating losses and working capital needs.

As of September 30, 2017, we had $28.2 million in cash and cash equivalents and $5.9 million of available borrowings under our line of credit. As of September 30, 2017, we also had $24.5 million outstanding under our line of credit and $32.1 million outstanding under our term loan. In connection with our line of credit, we are subject to financial covenants that include a requirement of a total cash balance plus availability under the line of credit of not less than $5.0 million and a moving minimum trailing twelve month revenue financial covenant. See Note 3—Debt for additional information.

Our future capital requirements will depend on many factors, including our growth rate, the timing and extent of spending to support research and development efforts, the continued expansion of sales and marketing activities, the enhancement of our platform, the introduction of new solutions and the continued market acceptance of our solutions. We expect to continue to incur operating losses for the foreseeable future and may require additional capital resources to continue to grow our business. We believe that current cash and cash equivalents will be sufficient to fund our operations and capital requirements for at least 12 months following the date these interim condensed consolidated financial statements were issued. In the event that additional financing is required from outside sources, we may not be able to raise such financing on terms acceptable to us or at all.

***Use of Estimates***

The preparation of financial statements in conformity with U.S. GAAP requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the consolidated financial statements. Actual results could differ from these estimates.

## 2. SIGNIFICANT ACCOUNTING POLICIES AND RECENT ACCOUNTING STANDARDS

***Unaudited Pro Forma Presentation***

Upon the consummation of an initial public offering ("IPO") of shares of our common stock that results in gross proceeds to the Company of not less than $70.0 million, after deducting underwriting discounts and expenses, all of the outstanding shares of redeemable convertible preferred stock will automatically convert into shares of common stock. Our September 30, 2017 unaudited consolidated balance sheet has been prepared assuming the conversion of the redeemable convertible preferred stock outstanding as of September 30, 2017 into 42,573,435 shares of common stock as of September 30, 2017, and the reclassification to stockholders' (deficit) equity of our redeemable convertible preferred stock warrant liability in connection with the conversion of our outstanding redeemable convertible preferred stock warrants into common stock warrants.

The pro forma net loss per share for the nine months ended September 30, 2017 assumes the automatic conversion of all outstanding shares of redeemable convertible preferred stock outstanding as of September 30, 2017.

***Consumer Incentives***

We report our revenue on our condensed consolidated statements of operations net of Consumer Incentives. We generally pay Consumer Incentives only with respect to our Cardlytics Direct service. We do not provide the goods or services that are purchased by our FIs' customers from the marketers to which the Consumer Incentives relate. Accordingly, the marketer is deemed to be the principal in the relationship with the customer and, therefore, the Consumer Incentive is deemed to be a reduction in the purchase price paid by the customer for the marketer's goods or services. While we are responsible for remitting Consumer Incentives to our FI partners for further payment to their customers, we function solely as an agent of marketers in these arrangements.

Accounts receivable is recorded at the amount of gross billings to marketers, net of allowances, for the fees and Consumer Incentives that we are responsible to collect. Our accrued liabilities also include the amount of Consumer Incentives due to FI partners. As a result, accounts receivable and accrued liabilities may appear large in relation to revenue, which is reported on a net basis. During the nine months ended September 30, 2016 and 2017, Consumer Incentives totaled $41.7 million and $42.1 million, respectively.

***Cash, Cash Equivalents and Restricted Cash***

| | December 31, | | September 30, | |
|---|---|---|---|---|
| | 2015 | 2016 | 2016 | 2017 |
| Cash and cash equivalents | $ 27,323 | $ 22,838 | $ 18,870 | $ 28,186 |
| Restricted cash | 286 | 130 | 2,815 | — |
| Cash, cash equivalents and restricted cash | $ 27,609 | $ 22,968 | $ 21,685 | $ 28,186 |

***Deferred Offering Costs***

Deferred offering costs consist of incremental costs directly attributable to equity offerings. Upon completion of an offering, these amounts are offset against the proceeds of the offering. Deferred offering costs are included in other long-term assets on our condensed consolidated balance sheets. Deferred costs during the nine months ended September 30, 2016 totaled $0.7 million. We terminated the proposed equity offering during the second quarter of 2016 and expensed the related deferred offering costs, which totaled $1.9 million. During the nine months ended September 30, 2017, we deferred offering costs related to our proposed IPO totaling $2.4 million. Deferred costs totaled $0 and $2.4 million as of December 31, 2016 and September 30, 2017, respectively. Unpaid amounts as of December 31, 2016 and September 30, 2017 totaled $0.2 million and $0.4 million, respectively.

***Reduction in Force***

In 2016, we announced a strategic shift to rebalance our resources. This workforce reduction plan resulted in charges of $1.3 million during the nine months ended September 30, 2016, consisting primarily of severance and medical benefits. All severance and medical benefits were paid to former employees as of December 31, 2016. Additionally, vested stock options of affected employees were cancelled and re-granted with similar terms, but with exercise periods of up to two years, resulting in stock-based compensation expense of less than $0.1 million.

The following table summarizes the allocation of expenses related to the reduction in force on the consolidated statements of operations (in thousands):

| | Nine Months Ended September 30, 2016 |
|---|---|
| Delivery costs | $ 93 |
| Sales and marketing | 393 |
| Research and development | 555 |
| General and administration | 243 |
| Total reduction in force costs | $ 1,284 |

***Redeemable Convertible Preferred Stock Warrant Liability***

We have outstanding warrants to purchase shares of our redeemable convertible preferred stock that are accounted for as derivative liabilities in accordance with ASC Topic 815, *Derivatives and Hedging* (“ASC 815”) due to the terms of the warrants and related agreements. We have determined that these warrants do not meet the scope exception of a contract indexed to our stock because of fair value protections contained in agreements governing our redeemable convertible preferred stock. We record preferred stock warrant liabilities on our condensed consolidated balance sheets at their fair value. We record the changes in fair value of such instruments as non-cash gains or losses on our condensed consolidated statements of operations. See Note 6—Fair Value Measurements, for additional information regarding these warrants.

***Common Stock Warrant Liability***

In connection with the Series G Stock financing, we issued warrants to purchase an aggregate of number of shares of common stock equal to the product obtained by multiplying 1,385,358 by a fraction, the numerator of which is the difference between $17.2379 and the volume weighted average closing price of our common stock over the 30 trading days (or such lesser number of days as our common stock has been traded on the Nasdaq Global Market) prior to the date on which such warrants vest and become exercisable and the denominator of which is such volume weighted average closing price, which warrants will become vested and exercisable upon the earlier to occur of the date (i) 180 days following the date of this prospectus and (ii) 10 days prior to a sale of our company, at an exercise price of $0.0001 per share.

Due to the fact that the warrants are legally detachable and separately exercisable, the warrants qualify as liabilities under ASC Topic 480, *Distinguishing Liabilities From Equity* ("ASC 480"). We record common stock warrant liabilities on our condensed consolidated balance sheets at their fair value. We record the changes in fair value of such instruments as non-cash gains or losses on our condensed consolidated statements of operations. See Note 6—Fair Value Measurements, for additional information regarding these warrants.

***Fair Value of Financial Instruments***

When required by U.S. GAAP, assets and liabilities are reported at fair value on our condensed consolidated financial statements. Fair value is defined as the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date. Valuation techniques used to measure fair value must maximize the use of observable inputs and minimize the use of unobservable inputs. Valuation inputs are arranged in a hierarchy that consists of the following levels:

- Level 1 inputs are quoted prices (unadjusted) in active markets for identical assets or liabilities that the reporting entity has the ability to access at the measurement date.
- Level 2 inputs are inputs other than Level 1 inputs such as quoted prices for similar assets or liabilities; quoted prices in markets with insufficient volume or infrequent transactions (less active markets); or model-derived valuations in which all significant inputs are observable or can be derived principally from or corroborated by observable market data for substantially the full term of the assets or liabilities.
- Level 3 inputs are unobservable inputs for the asset or liability.

The carrying amounts of cash and cash equivalents, restricted cash, accounts receivable, other receivables, prepaid expenses and other assets, accounts payable, and accrued liabilities, approximate their fair market value because of their short-term nature. We believe the carrying value of our lines of credit and term loans approximate fair value as the borrowing rates for these instruments are similar to those available to the Company.

The redemption features included in the terms of the convertible promissory notes were determined to be derivative liabilities as a result of a significant discount within the redemption features for the note holders. See Note 3—Debt for additional information regarding the convertible promissory notes. Embedded derivatives that are not clearly and closely related to the host contract are required to be bifurcated and recorded at fair value unless the fair value option is elected on the host contract. Under the fair value option, bifurcation of the embedded derivative is not necessary as all related gains (losses) on the host contract and derivative will be reflected in the consolidated statements of operations. We elected the fair value option for the Existing Stockholder Notes and Aimia Notes upon their issuance. The convertible promissory notes are measured using unobservable inputs that required a high level of judgment to determine fair value, and are therefore classified as Level 3. See Note 6—Fair Value Measurements for additional information.

Redeemable convertible preferred stock is stated at the amount of proceeds received, net of issuance costs and the fair value of warrants, increased by accretion such that the carrying amount will equal the stated redemption amount at May 4, 2022. Our redeemable convertible preferred stock warrant liabilities and common stock warrant liabilities are recorded at fair value and are measured using unobservable inputs that require a high level of judgment to determine fair value, and are therefore classified as Level 3. See Note 6—Fair Value Measurements for additional information.

Our nonfinancial assets that we recognize or disclose at fair value on our condensed consolidated financial statements on a nonrecurring basis include property and equipment, intangible assets, capitalized software development costs and deferred FI implementation costs. The fair values for these assets are evaluated when events or changes in circumstances indicate the carrying value may not be recoverable.

***Recently Issued and Adopted Accounting Pronouncements***

In May 2014, the Financial Accounting Standards Board ("FASB") issued Accounting Standards Update ("ASU") 2014-09, *Revenue from Contracts with Customers (Topic 606).* ASU 2014-09 supersedes the recognition guidance in ASC Topic 605, *Revenue Recognition*, and most industry specific revenue guidance and requires an entity to recognize revenue to depict the transfer of promised goods or services to customers in an amount that reflects the consideration to which it expects to be entitled in exchange for those goods or services. In addition, ASU 2014-09 requires disclosures of the nature, amount, timing and uncertainty of revenue and cash flows arising from contracts with customers. ASU 2014-09 supersedes most existing U.S. GAAP revenue recognition principles, and it permits the use of either the retrospective or modified retrospective transition method. For public entities, ASU 2014-09 is effective for annual reporting periods beginning after December 15, 2017, including interim periods within those annual periods. For non-public entities, ASU 2014-09 is effective for annual reporting periods beginning after December 15, 2018, including interim periods within those annual periods. We have made the election to use the extended transition period for complying with new or revised accounting standards under Section 102(b)(1) of the JOBS Act, therefore we will be required to apply ASU 2014-09 for annual reporting periods beginning after December 15, 2018, including interim periods within those annual periods. Retrospective application will be required for each period presented through either the recasting of the prior periods for the effects of the adoption of this guidance or retrospectively through a cumulative catch up recognized at the date of adoption. We are currently evaluating the potential impact of this recently issued guidance on our condensed consolidated financial statements.

In November 2014, the FASB issued ASU 2014-16, *Determining Whether the Host Contract in a Hybrid Financial Instrument Issued in the Form of a Share Is More Akin to Debt or to Equity.* The new guidance addresses diversity in practice in the assessment of preferred stock and other hybrid equity instruments. The widely used "chameleon approach" has been eliminated and outstanding hybrid equity instruments must be reassessed upon adoption. The effects of initial adoption should be applied on a modified retrospective basis to existing hybrid financial instruments issued in the form of a share as of the beginning of the fiscal year for which the amendment is effective. Retrospective application is permitted to all relevant prior periods. The new guidance was effective for interim reporting periods in 2017 and did not have an impact on our consolidated financial statements.

In May 2017, the FASB issued ASU 2017-09, *Scope of Modification Accounting*, which amends the scope of modification accounting for share-based payment arrangements, provides guidance on the types of changes to the terms or conditions of share-based payment awards to which an entity would be required to apply modification accounting under ASC Topic 718, *Compensation—Stock Compensation*. For all entities, the ASU is effective for annual reporting periods, including interim periods within those annual reporting periods, beginning after December 15, 2017. Early adoption is permitted, including adoption in any interim period. We plan to adopt the standard effective January 1, 2018. The adoption is not expected to have a material impact on our condensed consolidated financial statements.

In July 2017, the FASB has issued a two-part ASU, 2017-11, *I. Accounting for Certain Financial Instruments With Down Round Features* and *II. Replacement of the Indefinite Deferral for Mandatorily Redeemable Financial Instruments of Certain Nonpublic Entities and Certain Mandatorily Redeemable Noncontrolling Interests With a Scope Exception*. The amendments in Part I of this ASU change the classification analysis of certain equity-linked financial instruments (or embedded features) with down round features. When determining whether certain financial instruments should be classified as liabilities or equity instruments, a down round feature no longer precludes equity classification when assessing whether the instrument is indexed to an entity's own stock. The amendments also clarify existing disclosure requirements for equity-classified instruments. For public entities, ASU 2017-11 is effective for annual reporting periods beginning after December 15, 2018, including interim periods within those annual periods. For non-public entities, ASU 2017-11 is effective for annual reporting periods beginning after December 15, 2017, and interim periods within fiscal years beginning after December 1, 2020. Early adoption in permitted. We have made the election to use the extended transition period for complying with new or revised accounting standards under Section 102(b)(1) of the JOBS Act, therefore we will be required to apply ASU 2017-11 for annual reporting periods beginning after December 15, 2017. We are currently evaluating the potential impact of this recently issued guidance on our condensed consolidated financial statements.

## 3. DEBT

Our debt consists of the following (in thousands):

| | December 31, 2016 | September 30, 2017 |
|---|---|---|
| Lines of credit: | | |
| Line of credit | $ 15,652 | $ 24,548 |
| Term loans: | | |
| Term loan, net of unamortized discount and debt issuance costs of $1,069 and $1,227 at December 31, 2016 and September 30, 2017, respectively | 23,715 | 30,839 |
| Capital leases | 200 | 126 |
| Convertible promissory notes | 72,332 | — |
| Total debt | 111,899 | 55,513 |
| Less short-term debt | 99 | 63 |
| Long-term debt—net of current portion | $ 111,800 | $ 55,450 |

Accrued interest included in debt totaled $4.2 million and $4.8 million as of December 31, 2016 and September 30, 2017, respectively.

***Lines of Credit***

In September 2016, we entered into a new loan and security agreement ("Line of Credit") with a new lender which matures on March 14, 2019. Maximum borrowings are stated as the lesser of $50.0 million or 85% of our eligible accounts receivable. The Line of Credit is collateralized by substantially all of our assets and carries a floating interest rate equal to the Prime Rate in effect plus 3.50%, not to be less than 7.0% per year. Fees include an unused line fee of 0.50% and an annual administrative fee of less than $0.1 million. Interest and fees under the Line of Credit may be added to the principal balance of the loan due and payable at maturity. Amounts outstanding under the Line of Credit are classified as long-term. We capitalized $0.7 million of debt issuance costs associated with obtaining the Line of Credit.

The Line of Credit includes customary affirmative and negative covenants, including restrictions on mergers, acquisitions and dispositions of assets, incurrence of indebtedness and encumbrances on our assets and restrictions on payments of dividends. We are also required to maintain a total cash balance plus liquidity under the Line of Credit of not less than $5.0 million and maintain a moving minimum twelve-

month revenue throughout the term of the Line of Credit, with minimum revenue of at least $115.0 million for the twelve months ending September 30, 2017. We believe we were in compliance with all financial covenants as of September 30, 2017. As of September 30, 2017, we had $5.9 million of unused available borrowings under our Line of Credit.

***Term Loans***

In July 2016, we entered into a $24.0 million credit agreement ("Term Loan") with a new lender which matures on July 21, 2019. The Term Loan is secured by substantially all of our assets and carries a fixed interest rate equal to (1) 13.25%, of which 3% is payable in cash and the remaining 10.25% is payable in-kind or (2) 11.25%, if our adjusted EBITDA for the four most recent trailing fiscal quarters then-ended is greater than $1.0 million and we are not in an event of default, of which 3% is payable in cash and the remaining 8.25% is payable in-kind. The lender funded an initial loan of $19.0 million at closing and a subsequent loan of $5.0 million in November 2016 when the amount became available upon achieving trailing-four quarter revenue of $100.0 million. In April 2017, we amended our Term Loan to remove the acceleration of our repayment upon IPO and reduce the interest rate by 0.5% subsequent to an IPO. In June 2017, we amended and restated our Term Loan and borrowed an additional $5.0 million.

The Term Loan contains customary affirmative and negative covenants, including restrictions on mergers, acquisitions and dispositions of assets, incurrence of indebtedness and encumbrances on our assets and restrictions on payments of dividends. The Term Loan also requires us to maintain a total cash balance and unrestricted availability under our Line of Credit of not less than $3.0 million. Once we have achieved an adjusted EBITDA of at least $1.0 million for two consecutive fiscal quarters, this requirement will be permanently waived. The Term Loan contains customary event of default provisions, including in the event of a change of control, the occurrence of which could lead to an acceleration of our obligations under the Term Loan.

Pursuant to the Term Loan, in July 2016, we issued ten-year warrants to purchase up to an aggregate of 388,500 shares of our common stock at an exercise price of $5.00 per share. The fair value of the warrants was calculated to be $1.0 million under the Black-Scholes option pricing model. In June 2017, we issued additional ten-year warrants to purchase up to an aggregate of 70,000 shares of common stock at a price per share of $6.92. The fair value of the warrants was calculated to be $0.3 million under the Black-Scholes option pricing model. Under the guidance provided by ASC Topic 470-20, *Debt with Conversion and Other Options*, proceeds from the sale of debt instruments with stock purchase warrants are allocated to the two elements based on the relative fair values of the debt instrument without the warrants and of the warrants themselves at time of issuance. The portion of the proceeds allocated to the warrants is accounted for as paid-in capital, as the warrants meet the scope exception within ASC 815 and are considered indexed to the Company's own stock and accounted for as equity. The remainder of the proceeds is allocated to the debt instrument portion of the transaction. We believe we were in compliance with all financial covenants as of September 30, 2017.

***Convertible Promissory Notes***

*Existing Stockholder Notes*

During 2016, we raised capital through the issuance of unsecured convertible promissory notes ("Existing Stockholder Notes") to our founders and certain of our existing stockholders in an aggregate principal amount of $27.0 million, at an interest rate of 10% per year, compounded annually. The maturity date of the Existing Stockholder Notes, or the Maturity Date, is the earliest to occur of: (1) a date after April 26, 2019, as specified by the holders of a majority of the aggregate unpaid principal amount outstanding under the Existing Stockholder Notes, (2) our liquidation, dissolution or wind up, including a sale of all or substantially all of our assets or a majority of our voting power or (3) an event of default under the Existing

Stockholder Notes. The Existing Stockholder Notes are subordinate to our Term Loan and Line of Credit. As discussed in Note 7—Related Parties, we issued Existing Stockholder Notes to related parties in an aggregate principal amount of $19.5 million.

The Existing Stockholder Notes are convertible into shares of our capital stock, depending on certain triggering events. In the event we complete an equity financing in which we receive proceeds in excess of $10.0 million, the Existing Stockholder Notes will automatically convert into shares of the same series of our capital stock as the investors in the financing, at a price per share equal to 80% of the price per share paid by such investors. In the event we complete an equity financing of less than $10.0 million, the holders of a majority of the aggregate unpaid principal amount outstanding under the Existing Stockholder Notes can elect to convert the Existing Stockholder Notes into shares of the same series of our capital stock as the investors in the financing, at a price per share equal to 80% of the price per share paid by such investors. Upon the completion of this offering, the Existing Stockholder Notes will automatically convert into shares of our common stock, at a price per share equal to the lower of 80% of the initial public offering price per share and $10.001136 per share. In the event the Existing Stockholder Notes remain outstanding on the Maturity Date, the holders of a majority of the aggregate unpaid principal amount outstanding under all of the Existing Stockholder Notes can elect to convert the Existing Stockholder Notes into shares of our Series F-R redeemable convertible preferred stock, at a price per share equal to $12.5142 per share.

See Note 5—Redeemable Convertible Preferred Stock for a description of the Series G Stock financing and the transactions that resulted in the conversion of the Existing Stockholder Notes into shares of our Series G' Stock.

*Aimia Notes*

During 2016, we issued to Aimia unsecured convertible promissory notes ("Aimia EMEA Notes"), in an aggregate principal amount of $18.0 million, which accrue interest at a rate of 10% per year, compounded annually. In consideration for our outstanding obligations to Aimia Inc. at the time we terminated our U.K. cooperation agreement, we issued to Aimia EMEA an unsecured convertible promissory note ("Outstanding Obligation Note)" in an aggregate principal amount of approximately $5.7 million, at an interest rate of 10% per year, compounded annually. Both the Aimia EMEA Notes and the Outstanding Obligation Note, (collectively the "Aimia Notes") are due and payable on the earliest to occur of: (a) a date after June 30, 2019, as specified by the holder, (b) our liquidation, dissolution or wind up, including a sale of all or substantially all of our assets or a majority of our voting power or (c) an event of default. The Aimia Notes are subordinate to our Term Loan and Line of Credit.

The Aimia Notes are convertible into shares of our capital stock, depending on certain triggering events. In the event we complete an equity financing in which we receive proceeds in excess of $10.0 million, the Aimia EMEA Notes will automatically convert into shares of our common stock, at a price per share equal to 80% of the price per share determined by an independent third party valuation firm and the Outstanding Obligation Note will automatically convert into shares of the same series of our capital stock as the investors in the financing, at a price per share equal to 80% of the price per share paid by such investors. In the event we complete an equity financing of less than $10.0 million, the holder of an Aimia EMEA Note can elect to convert the Aimia EMEA Note into shares of our common stock, at a price per share equal to 80% of the price per share determined by an independent third party valuation firm, while the holder of the Outstanding Obligation Note can elect to convert the Outstanding Obligation Note into shares of the same series of our capital stock as the investors in the financing, at a price per share equal to 80% of the price per share paid by such investors. Upon the completion of this offering, the Aimia Notes will automatically convert into shares of our common stock, at a price per share equal to the lower of 80% of the initial public offering price per share and $10.001136 per share. In the event the Aimia Notes remain outstanding on the maturity date, the holder can elect to convert the Aimia Notes into shares of our Series F-R redeemable convertible preferred stock, at a price per share equal to $12.5142 per share.

In connection with the Series G Stock financing, the Aimia EMEA Notes converted into 3,205,318 shares of common stock. See Note 5—Redeemable Convertible Preferred Stock for a description of the Series G Stock financing and the transactions that resulted in the conversion of the Aimia EMEA Notes into shares of our common stock and the conversion of the Outstanding Obligation Note into shares of our Series G' Stock.

The redemption features included in the terms of the convertible promissory notes were determined to be derivative liabilities as a result of a significant discount within the redemption features for the note holders. Embedded derivatives that are not clearly and closely related to the host contract are required to be bifurcated and recorded at fair value unless the fair value option is elected on the host contract. Under the fair value option, bifurcation of the embedded derivative is not necessary as all related gains (losses) on the host contract and derivative will be reflected in the consolidated statements of operations. We elected the fair value option for the Existing Stockholder Notes and Aimia Notes and recognized losses from their initial measurement during the second and third quarters of 2016. Subsequent changes in fair value of the Existing Stockholder Notes and Aimia Notes are included in change in fair value of convertible promissory notes on our condensed consolidated statements of operations. See Note 6—Fair Value Measurements for additional information.

***Future Payments***

Aggregate future payments of principal and interest due upon maturity are as follows (in thousands):

| Years Ending December 31, | Debt | Capital Leases | Total Debt |
|---|---|---|---|
| 2017 | $ — | $ 25 | $ 25 |
| 2018 | — | 44 | 44 |
| 2019 | 56,614 | 20 | 56,634 |
| 2020 | — | 24 | 24 |
| 2021 | — | 13 | 13 |
| Total principal payments | 56,614 | 126 | 56,740 |
| Less unamortized debt issuance costs | (378) | — | (378) |
| Less unamortized debt discount | (849) | — | (849) |
| Total debt | $ 55,387 | $ 126 | $ 55,513 |

## 4. STOCK-BASED COMPENSATION

In connection with the Series G financing, our board of directors and stockholders approved an increase in the total number of shares of common stock issuable under our 2008 Stock Plan from 12,480,000 to 13,980,000 shares. Awards may be granted under the Stock Plan until June 15, 2019.

The following table summarizes the allocation of stock-based compensation in the consolidated statements of operations (in thousands):

| | Nine Months Ended September 30, | |
|---|---|---|
| | 2016 | 2017 |
| Delivery costs | $ 68 | $ 146 |
| Sales and marketing | 826 | 1,390 |
| Research and development | 419 | 691 |
| General and administration | 928 | 1,480 |
| Total stock-based compensation | $ 2,241 | $ 3,707 |

***Common Stock Options***

A summary of common stock option activity under the Stock Plan is as follows (in thousands, except per share amounts):

| | Shares | Weighted-Average Exercise Price Per Share |
|---|---|---|
| Options outstanding—December 31, 2015 | 6,703 | $ 2.76 |
| Granted | 4,821 | 4.47 |
| Exercised | (100) | 1.69 |
| Forfeited/cancelled | (2,787) | 2.99 |
| Options outstanding—September 30, 2016 | 8,637 | $ 3.65 |

| | Shares | Weighted-Average Exercise Price Per Share |
|---|---|---|
| Options outstanding—December 31, 2016 | 8,548 | $ 3.75 |
| Granted | 3,197 | 5.95 |
| Exercised | (622) | 0.96 |
| Forfeited/cancelled | (992) | 3.75 |
| Options outstanding—September 30, 2017 | 10,131 | $ 4.61 |

During the first quarter of 2017, we granted options to purchase 243,700 shares of our common stock to employees with an exercise price of $4.46 per share. These common stock options vest over four years and expire 10 years following the date of grant. The unamortized stock-based compensation expense related to these common stock options is $0.9 million, which will be recognized as stock-based compensation expense over the four-year vesting period of each award. During the first quarter of 2017, we also extended the post-termination exercise period of 250,941 common stock options issued to a former executive.

During the second quarter of 2017, we granted options to purchase 1,378,176 shares of our common stock to employees with an exercise price of $6.12 per share. These common stock options vest over four years and expire 10 years following the date of grant. The unamortized stock-based compensation expense related to these common stock options is $5.5 million, which will be recognized as stock-based compensation expense over the four-year vesting period of each award.

During the third quarter of 2017, we granted options to purchase 1,132,575 shares of our common stock to employees with an exercise price of $7.61 per share. These common stock options vest over four years and expire 10 years following the date of grant. The unamortized stock-based compensation expense related to these common stock options is $3.3 million, which will be recognized as stock-based compensation expense over the four-year vesting period of each award. During the third quarter of 2017, we also extended the post-termination exercise period of 191,560 common stock options issued to a former executive.

***Restricted Securities Units***

In connection with the issuance of the Existing Stockholder Notes, we granted $1.0 million of restricted securities units ("RSUs") to certain executives in lieu of cash bonuses during 2016. Upon issuance, the RSUs were indexed to Existing Stockholder Notes with similar terms to those issued to our founders and existing holders of our redeemable convertible preferred stock and if an event or action resulted in the Existing Stockholder Notes converting into cash or equity securities, the RSUs convert into such alternative. As a result of the Series G Stock financing, the RSUs are indexed to the Series G' Stock on the same terms as the Series G' Stock issued upon conversion of the Existing Stockholder Notes and the Outstanding Obligation Note, but such Series G' Stock will not be issued.

Vesting requirements include both a service-based condition and a performance-based condition. The service-based condition requires each recipient to remain employed until the earlier of i) the date 6 months from the RSU grant date, ii) the date of a qualified liquidity event, or iii) date of termination without cause. The performance-based condition requires a sale of the Company or IPO event within a fixed period of time not more than 5 years from the RSU grant date. The RSUs are considered liability classified awards, but due to the performance condition relating to sale of the Company or IPO, no compensation cost will be recognized until one of these events occur.

## 5. REDEEMABLE CONVERTIBLE PREFERRED STOCK

A summary of the change in carrying amount of the outstanding redeemable convertible preferred stock is as follows (in thousands):

| | Series G' Stock | | Series G Stock | |
|---|---|---|---|---|
| | Shares | Amount | Shares | Amount |
| Balance — December 31, 2016 | — | $ — | — | $ — |
| Issuance of Series G and Series G' Stock | 5,183 | 44,672 | 1,385 | 4,488 |
| Beneficial conversion feature of Series G stock | — | — | — | (4,488) |
| Deemed dividend related to beneficial conversion feature | — | — | — | 4,488 |
| Accretion of redeemable convertible preferred stock | — | — | — | 376 |
| Balance — September 30, 2017 | 5,183 | $ 44,672 | 1,385 | $ 4,864 |

| | Series F-R Stock | | Series E-R Stock | | Series D-R Stock | |
|---|---|---|---|---|---|---|
| | Shares | Amount | Shares | Amount | Shares | Amount |
| Balance — December 31, 2016 | 4,795 | $ 57,958 | 3,180 | $ 29,963 | 5,584 | $ 32,642 |
| Accretion of redeemable convertible preferred stock | — | 402 | — | 8 | — | 70 |
| Balance — September 30, 2017 | 4,795 | $ 58,360 | 3,180 | $ 29,971 | 5,584 | $ 32,712 |

| | Series C-R Stock | | Series B-R Stock | | Series A-R Stock | |
|---|---|---|---|---|---|---|
| | Shares | Amount | Shares | Amount | Shares | Amount |
| Balance — December 31, 2016 | 6,032 | $ 18,323 | 8,987 | $ 5,286 | 7,428 | $ 1,850 |
| Accretion of redeemable convertible preferred stock | — | 35 | — | 2 | — | 2 |
| Balance — September 30, 2017 | 6,032 | $ 18,358 | 8,987 | $ 5,288 | 7,428 | $ 1,852 |

During the second quarter of 2016, we increased the authorized number of shares of our redeemable convertible preferred stock to 165,366,424 and issued $21.0 million of convertible promissory notes to our founders and the existing holders of our redeemable convertible preferred stock. Shares of redeemable convertible preferred stock held by investors that participated in the financing were exchanged for shares of replacement preferred stock. These replacement shares have rights and preferences equal to their

corresponding original series and are designated as Series A-R Stock, Series B-R Stock, Series C-R Stock, Series D-R Stock, Series E-R Stock and Series F-R Stock. Shares of redeemable convertible preferred stock held by investors that did not participate in the financing were converted to common stock.

In February 2017, we amended and restated our certificate of incorporation reducing the authorized number of shares of our redeemable convertible preferred stock to 82,683,212 and cancelled Series A Stock, Series B Stock, Series C Stock, Series D Stock, Series E Stock and Series F Stock. Pursuant to our Existing Stockholder Note financing, these series of preferred stock were either exchanged for shares of replacement preferred stock with rights and preferences equal to their corresponding original series or converted to common stock

***Series G***

In May 2017, we amended and restated our certificate of incorporation and increased the authorized number of shares of our common stock to 83,000,000 and increased the authorized number of shares of our redeemable convertible preferred stock to 96,131,002. In May 2017, we issued and sold, for aggregate consideration of $11.9 million, an aggregate of 1,385,358 shares of Series G redeemable convertible preferred stock, par value $0.0001 per share with a stated price of $8.61895 per share (“Series G Stock”), and warrants to purchase shares of our common stock. The Series G Stock carries a stated dividend of $0.689516 per annum, payable quarterly when, as, and if declared by our board of directors. These dividends are noncumulative in nature. The Series G Stock is entitled to certain anti-dilution protections. Issuance costs incurred in connection with the sale of Series G Stock totaled $0.1 million.

In connection with the Series G Stock financing, we issued warrants to purchase an aggregate of number of shares of common stock equal to the product obtained by multiplying 1,385,358 by a fraction, the numerator of which is the difference between $17.2379 and the volume weighted average closing price of our common stock over the 30 trading days (or such lesser number of days as our common stock has been traded on the Nasdaq Global Market) prior to the date on which such warrants vest and become exercisable and the denominator of which is such volume weighted average closing price, which warrants will become vested and exercisable upon the earlier to occur of the date (i) 180 days following the date of this prospectus and (ii) 10 days prior to a sale of our company, at an exercise price of $0.0001 per share.

***Beneficial conversion feature***

The aggregate proceeds of $11.9 million from the Series G Stock financing were first allocated to the warrants to purchase shares of our common stock, which qualify as liabilities under ASC 480 and are recorded at fair value, with the residual value of $4.5 million allocated to our Series G Stock. As a result of this allocation, Series G Stock was determined to contain a beneficial conversion feature with an intrinsic value of $6.1 million. The amount assigned to the beneficial conversion feature was limited to the $4.5 million residual value allocated to Series G Stock and is classified as a component of additional paid-in capital. During the second quarter of 2017, we recorded a deemed dividend of $4.5 million related to the beneficial conversion feature, which is reflected below net loss to arrive at net loss available to common stockholders.

See Note 6—Fair Value Measurements, for additional information regarding the warrants issued in connection with the Series G Stock financing.

***Series G’***

In connection with the Series G Stock financing, the Existing Stockholder Notes and the Outstanding Obligation Note converted into 5,183,015 shares of Series G’ redeemable convertible preferred stock, par value $0.0001 per share (“Series G’ Stock”), at a price per share of $6.89516. The Series G’ Stock carries a

stated dividend of $0.689516 per annum, payable quarterly when, as, and if declared by our board of directors. These dividends are noncumulative in nature. The Series G' Stock is entitled to certain anti-dilution protections.

***Protective Provisions***

As long as at least 6,000,000 shares of our redeemable convertible preferred stock are outstanding, subject to certain exceptions, we may not (by amendment, merger, consolidation or otherwise) without first obtaining the approval of the holders of a majority of the then outstanding shares of redeemable convertible preferred stock, voting together as a single class on an as-converted basis (i) effect a liquidation transaction, (ii) alter or change the rights, preferences or privileges of a series of redeemable convertible preferred stock so as to affect adversely the shares of such series, (iii) increase or decrease the total number of authorized shares of any redeemable convertible preferred stock class, (iv) authorize or issue any other equity security having a preference over or being on a parity with any series of outstanding redeemable convertible preferred stock with respect to voting, dividends, redemption, conversion or liquidation, (v) redeem, purchase or otherwise acquire any share or shares of redeemable convertible preferred stock or common stock, (vi) amend any stock option or purchase plan to modify the number of shares covered thereby, (vii) alter or change the dividend rights, (viii) declare or pay any dividend, (ix) repay any stockholder notes or obligations to related parties, (x) transfer or grant any rights in any of our technology, (xi) increase or decrease the authorized number of members of our board of directors, (xii) amend our certificate of incorporation, (xiii) acquire the capital stock of any other entity or (xiv) incur indebtedness, in a single transaction or series of related transactions, in an amount in excess of $750,000.

Subject to certain exceptions, we may not, by amendment, merger, consolidation or otherwise, (1) without obtaining the approval of the holders of at least 75% of the then outstanding shares of Series C-R Stock, voting together as a single class on an as-converted basis, (2) without obtaining the approval of the holders of a majority of the then outstanding shares of Series D-R Stock, voting together as a single class on an as-converted basis, (3) without obtaining the approval of the holders of at least 63% of the then outstanding shares of Series E-R Stock, voting together as a single class on an as-converted basis or (4) without obtaining the approval of the holders of a majority of the then outstanding shares of Series F-R Stock, (5) without obtaining the approval of the holders of at least 66 $^{2}/_{3}$% of the then outstanding shares of Series G Stock or (6) without obtaining the approval of the holders of a majority of the then outstanding shares of Series G' Stock, voting together as a single class on an as-converted basis, as long as at least 1,000,000 shares of the Series C-R Stock, Series D-R Stock or Series E-R Stock, at least 1,198,638 shares of the Series F-R Stock, at least 346,340 shares of the Series G Stock or at least 1,334,634 shares of the Series G' Stock are outstanding, as applicable, negatively alter or change the rights, preferences, terms or privileges of the shares of Series C-R Stock, Series D-R Stock, Series E-R Stock, Series F-R Stock, Series G Stock or Series G' Stock, as applicable.

Subject to certain exceptions, we may not, by amendment, merger, consolidation or otherwise, (1) without obtaining the approval of the holders of a majority of the then outstanding shares of Series D-R Stock, voting together as a single class on an as-converted basis, (2) without obtaining the approval of the holders of at least 63% of the then outstanding shares of Series E-R Stock, voting together as a single class on an as-converted basis or (3) without obtaining the approval of the holders of a majority of the then outstanding shares of Series F-R Stock, voting together as a single class on an as-converted basis, as long as at least 1,000,000 shares of the Series D-R Stock or Series E-R Stock or at least 1,198,638 shares of the Series F-R Stock are outstanding, as applicable (i) increase or decrease the authorized shares of Series D-R Stock, Series E-R Stock or Series F-R Stock as applicable, (ii) issue shares of Series D-R Stock, Series E-R Stock or Series F-R Stock, as applicable, (iii) approve or effect a liquidation transaction in which proceeds are not distributed to holders of Series D-R Stock, Series E-R Stock or Series F-R Stock, as applicable, pursuant to the certificate of incorporation, (iv) redeem, purchase or otherwise acquire any shares of redeemable convertible preferred stock or common stock other than in accordance with the redemption provisions of

the certificate of incorporation; provided, however, that this restriction shall not apply to the repurchase of shares of common stock from employees, officers, directors, consultants or other persons performing services for us or any of our subsidiaries pursuant to agreements under which we have the option to repurchase such shares or (v) pay or declare any dividend or other distribution that (a) is paid to holders of capital stock within two years following the initial issuance of the Series D Stock, (b) is paid other than to all holders of capital stock on an as-converted basis or (c) exceeds operating income for the four quarters trailing the date of declaration of the dividend; provided, however, that after the expiration of two years following the initial issuance of the Series D Stock, we may declare and distribute a dividend in an amount exceeding our operating income if (1) the amount by which such dividend exceeds operating income is financed by borrowings, (2) we have a total debt to EBITDA ratio immediately following the dividend that is equal to or less than 3:1, (3) the amount by which such dividend exceeds operating income is equal to or below the amount of funds we borrowed to finance such dividend, (4) the amount by which such dividend exceeds operating income does not exceed $25 million in any fiscal year and (5) the dividend is paid to all holders of capital stock on an as-converted basis.

Subject to certain exceptions, we may not, by amendment, merger, consolidation or otherwise, (1) without obtaining the approval of the holders of at least 66 2/3% of the then outstanding shares of Series G Stock or (2) without obtaining the approval of the holders of a majority of the then outstanding shares of Series G' Stock, voting together as a single class on an as-converted basis, as long as at least 346,340 shares of the Series G Stock or at least 1,334,634 shares of the Series G' Stock are outstanding, as applicable (i) increase the authorized shares of Series G Stock or Series G' Stock as applicable or (ii) pay or declare any dividend or other distribution that (a) is paid to holders of capital stock within two years following the initial issuance of the Series D Stock, (b) is paid other than to all holders of capital stock on an as-converted basis or (c) exceeds operating income for the four quarters trailing the date of declaration of the dividend; provided, however, that after the expiration of two years following the initial issuance of the Series D Stock, we may declare and distribute a dividend in an amount exceeding our operating income if (1) the amount by which such dividend exceeds operating income is financed by borrowings, (2) we have a total debt to EBITDA ratio immediately following the dividend that is equal to or less than 3:1, (3) the amount by which such dividend exceeds operating income is equal to or below the amount of funds we borrowed to finance such dividend, (4) the amount by which such dividend exceeds operating income does not exceed $25 million in any fiscal year and (5) the dividend is paid to all holders of capital stock on an as-converted basis.

***Redemption***

At any time on or after May 4, 2022, upon written request of the holders of not less than 66 2/3% of the shares of redeemable convertible preferred stock then-outstanding, voting together as a single class on an as-converted to common stock basis, we are required to redeem all outstanding shares of redeemable convertible preferred stock in eight quarterly installments. The Series A-R Stock, Series B-R Stock, Series C-R Stock, Series D-R Stock, Series E-R Stock, Series F-R Stock, Series G Stock and Series G' Stock are redeemable at prices equal to $0.25, $0.589185, $3.067158, $5.91, $9.4336, $14.60, $8.61895 and $8.61895 per share, plus any declared or accumulated but unpaid dividends, respectively.

To the extent that we have insufficient funds to redeem all outstanding shares of redeemable convertible preferred stock, we are required to first redeem shares of Series G Stock and Series G' Stock, then shares of Series F/F-R Stock, then shares of Series E/E-R Stock, then shares of Series D/D-R Stock, then shares of Series C/C-R Stock and then shares of Series B/B-R Stock and Series A/A-R Stock *pari passu*, in each case on a pro rata basis among the holders thereof.

The redeemable convertible preferred stock carrying amount is increased by periodic accretions, using the interest method, so that the carrying amount will equal the redemption amount at May 4, 2022. Accretion is recorded through a charge against additional paid-in capital.

***Liquidation***

Upon us (i) selling or otherwise disposing of all or substantially all of our property or business or merging with or into or consolidation with any other corporation, limited liability company or other entity, (ii) a majority of the voting power of our outstanding capital stock being transferred or disposed of as a result of a transaction or series of related transactions that are not issuances of capital stock by us primarily for the purposes of raising equity capital or (iii) any dissolution or winding-up of our business, the holders of Series G' Stock, Series G Stock, Series F-R Stock, Series E-R Stock, Series D-R Stock, Series C-R Stock, Series B-R Stock and Series A-R Stock shall be entitled to receive payments in amounts per share equaling $8.61895, $17.2379, $14.60, $9.4336, $5.91, $5.367527, $0.589185 and $0.25, plus any declared but unpaid dividends, respectively. Holders of Series G Stock and Series G' Stock are *pari passu* and are to be paid prior, and in preference to, any distribution of assets to the holders of all other classes of capital stock. Holders of Series F-R Stock are to be paid prior, and in preference to, any distribution of assets to the holders of Series E-R Stock, Series D-R Stock, Series C-R Stock, Series B-R Stock and Series A-R Stock. Holders of Series E-R Stock are to be paid prior, and in preference to, any distribution of assets to the holders of Series D-R Stock, Series C-R Stock, Series B-R Stock and Series A-R Stock. Holders of Series D-R Stock are to be paid prior, and in preference to, any distribution of assets to the holders of Series C-R Stock, Series B-R Stock and Series A-R Stock. Holders of Series C-R Stock are to be paid prior, and in preference to, any distribution of assets to the holders of Series B-R Stock and Series A-R Stock. Holders of Series A-R Stock and Series B-R Stock are *pari passu* and are to be paid prior, and in preference to, any distribution of assets to the holders of common stock.

Upon completion of the distributions detailed above, any remaining assets are to be distributed to the holders of common stock, Series A-R Stock, Series B-R Stock, Series C-R Stock, Series D-R Stock, Series E-R Stock, Series F-R Stock, Series G Stock and Series G' Stock; such participation in the distribution of remaining assets shall cease, however, when the amount that the holders of Series A-R Stock, Series B-R Stock, Series C-R Stock, Series D-R Stock, Series E-R Stock, Series F-R Stock, Series G Stock and Series G' Stock are entitled to receive upon liquidation equals $0.50 per share, $1.178370 per share, $9.201474 per share, $17.73 per share, $28.3008 per share, $43.80 per share, $25.85685 per share and $25.85685 per share, respectively, plus any declared but unpaid dividends thereon.

If, however, as a result of a conversion from redeemable convertible preferred stock to common stock, a holder would receive, in the aggregate, an amount greater than the amount that would be distributed to such holder if such holder did not convert such series of redeemable convertible preferred stock into shares of common stock, such holder shall be deemed to have converted such holder's shares of redeemable convertible preferred stock into shares of common stock for the purposes of determining the amount that such holder is entitled to receive upon liquidation and shall not be entitled to any distribution that would have otherwise been made to the holders of redeemable convertible preferred stock detailed above.

***Dividends***

No dividends have been declared or paid as of September 30, 2017.

***Conversion***

Upon the consummation of an IPO of shares of our common stock that results in gross proceeds to the Company of not less than $70.0 million, after deducting underwriting discounts and expenses, all of the outstanding shares of redeemable convertible preferred stock will automatically convert into shares of common stock.

The holders of our redeemable convertible preferred stock also have the right, at any time, to convert any or all of their shares into such number of shares of common stock as is determined by dividing $0.25 in the case of Series A-R Stock, $0.589185 in the case of the Series B-R Stock, $3.067158 in the case of

Series C-R Stock, $5.91 in the case of Series D-R Stock, $9.4336 in the case of Series E-R Stock, $12.5142 in the case of Series F-R Stock, and $8.61895 in the case of Series G Stock and Series G' Stock by the applicable conversion price. The initial conversion price is $0.25 in the case of Series A-R Stock, $0.589185 in the case of the Series B-R Stock, $3.067158 in the case of Series C-R Stock, $5.91 in the case of Series D-R Stock, $9.4336 in the case of Series E-R Stock, $12.5142 in the case of Series F-R and $8.61895 in the case of Series G Stock and Series G' Stock. If, at any time following the initial issuance of shares of Series G Stock, we issue any additional shares of capital stock without consideration or for a consideration per share less than the then-effective conversion price for our redeemable convertible preferred stock, the conversion price for all series of outstanding redeemable convertible preferred stock are subject to adjustment. There have been no changes to the conversion price for any series of redeemable convertible preferred stock as of September 30, 2017.

***Voting Rights***

The holders of our redeemable convertible preferred stock are entitled to vote on an as-converted to common stock basis and as a single class with respect to matters presented to our common stockholders for approval.

We evaluated the rights and preferences for all series of redeemable convertible preferred stock for derivatives that might have required bifurcation. None were identified as of September 30, 2017.

## 6. FAIR VALUE MEASUREMENTS

Financial assets and liabilities are classified in their entirety based on the lowest level of input that is significant to the fair value measurement. The following table summarizes our liabilities measured at fair value on a recurring basis by level within the fair value hierarchy (in thousands):

| | December 31, 2016 | | | |
|---|---|---|---|---|
| | Level 1 | Level 2 | Level 3 | Total |
| Liabilities: | | | | |
| Preferred stock warrants | $ — | $ — | $ 2,197 | $ 2,197 |
| Convertible promissory notes | — | — | 72,332 | 72,332 |
| Total liabilities | $ — | $ — | $ 74,529 | $ 74,529 |

| | September 30, 2017 | | | |
|---|---|---|---|---|
| | Level 1 | Level 2 | Level 3 | Total |
| Liabilities: | | | | |
| Preferred stock warrants | $ — | $ — | $ 2,078 | $ 2,078 |
| Common stock warrants | — | — | 7,983 | 7,983 |
| Total liabilities | $ — | $ — | $ 10,061 | $ 10,061 |

***Instruments Recorded at Fair Value Using Level 3 Inputs***

Our redeemable convertible preferred stock warrant liability and our convertible promissory notes are measured and recorded at fair value on a recurring basis using Level 3 inputs. The table below provides a roll forward of the changes in fair value of Level 3 financial instruments (in thousands):

| | Preferred Stock Warrants | Common Stock Warrants | Convertible Promissory Notes |
|---|---|---|---|
| Balance at December 31, 2015 | $ 2,942 | $ — | $ — |
| Fair value of convertible promissory notes at issuance | — | — | 66,391 |
| Accrued interest on convertible promissory notes | — | — | 1,603 |
| Conversion of preferred stock warrants to common stock warrants | (777) | — | — |
| Changes in fair value | (639) | — | 3,286 |
| Balance at September 30, 2016 | $ 1,526 | $ — | $ 71,280 |

| | Preferred Stock Warrants | Common Stock Warrants | Convertible Promissory Notes |
|---|---|---|---|
| Balance at December 31, 2016 | $ 2,197 | $ — | $ 72,332 |
| Accrued interest on convertible promissory notes | — | — | 1,701 |
| Conversion of convertible promissory notes to Series G' preferred stock | — | — | (44,672) |
| Conversion of convertible promissory notes to common stock | — | — | (24,392) |
| Issuance of common stock warrants | — | 7,452 | — |
| Changes in fair value | (119) | 531 | (4,969) |
| Balance at September 30, 2017 | $ 2,078 | $ 7,983 | $ — |

In valuing our instruments recorded at fair value using Level 3 inputs, our board of directors determined the equity value of our business generally using a combination of the income approach and the market approach valuation methods.

The income approach estimates value based on the expectation of future cash flows that a company will generate, such as cash earnings, cost savings, tax deductions and the proceeds from disposition. These future cash flows are discounted to their present values using a discount rate derived based on an analysis of the cost of capital of comparable publicly traded companies in similar lines of business, as of each valuation date, and is adjusted to reflect the risks inherent in our cash flows.

The market approach estimates the fair value of a company by applying market multiples of comparable publicly traded companies in a similar line of business. The market multiples are based on relevant metrics implied by the price that investors have paid for the equity of publicly traded companies. Given our significant focus on investing in and growing our business, we primarily utilized the forward-looking revenue multiple when performing valuation assessments under the market approach and considered both trading and transaction multiples. When considering which companies to include as our comparable industry peer companies, we focused on U.S.-based publicly traded companies that were broadly comparable to us based on consideration of industry, market and line of business. From the comparable companies, a representative market value multiple was determined and applied to our operating results to estimate the value of our company. The market value multiple was determined based on consideration of multiples of revenue to each of the comparable companies' historical and forecasted revenue. In addition, the market approach considers IPO and merger and acquisition transactions involving companies similar to the company's business being valued. Multiples of revenue are calculated for these transactions and then applied to the business being valued, after reduction by an appropriate discount.

Once an equity value was determined, we utilized the probability-weighted expected return method ("PWERM") to allocate the overall value of equity to the various share classes. The PWERM relies on a

forward-looking analysis to predict the possible future value of a company. Under this method, discrete future outcomes, including an IPO and non-IPO scenarios, are weighted based on the estimated probability of each scenario. The PWERM is used when discrete future outcomes can be predicted with reasonable certainty based on a probability distribution. We relied on the PWERM to allocate the value of equity under a liquidity scenario. The projected equity value relied upon in the PWERM scenario was based on (1) guideline IPO transactions involving companies that were considered broadly comparable to us and (2) our expectation of the pre-money valuation that we needed to achieve to consider an IPO as a viable exit strategy.

The following table summarizes key assumptions used in the PWERM for estimating the fair value of our redeemable convertible preferred stock warrant liability and convertible promissory notes:

| | September 30, | |
|---|---|---|
| | 2016 | 2017 |
| Cost of debt applicable to convertible promissory notes | 15% | — |
| Cost of equity applicable to convertible promissory notes | 25% | — |
| Weighted-average cost of capital applicable to redeemable convertible preferred stock warrants | 25% | 21% |
| Discount for lack of marketability | 10% to 13% | 7% to 13% |
| Volatility | 54% | 55% |
| Risk-free interest rate | 0.6% to 0.8% | 1.2% to 1.4% |

***Preferred Stock Warrants***

A summary of our preferred stock warrants is as follows (in thousands, except per share amounts):

| Preferred Series | Grant date | Expiration date | Exercise price | December 31, 2016 | September 30, 2017 |
|---|---|---|---|---|---|
| Series B-R | 1/26/2010 | 1/25/2020 | $ 0.59 | 238 | 238 |
| Series D-R | 9/21/2012 | 9/20/2022 | $ 5.91 | 152 | 152 |
| Series D-R | 9/21/2012 | 9/20/2022 | $ 5.91 | 51 | 51 |
| Total | | | | 441 | 441 |

The fair value of the warrants to purchase Series B-R Stock and Series D-R Stock decreased from $6.29 per share and $3.46 per share on December 31, 2016 to $6.08 per share and $3.12 per share on September 30, 2017, respectively. The decrease in the fair value of the warrants to purchase Series B-R Stock and Series D-R Stock primarily resulted from the timing of future potential liquidity events, changes to our forecasted financial results and changes in the valuation of comparable companies.

***Common Stock Warrants***

To determine the fair value of our common stock warrants issued in connection with our Series G Stock financing, we utilized a Monte Carlo simulation, which allows for the modeling of complex securities and evaluates many possible outcomes to forecast the stock price of the company post-IPO. As part of the valuation, we considered various scenarios related to the pricing, timing and probability of an IPO. We applied an annual equity volatility of 59% and a discount for lack of marketability of 11% to arrive at a valuation of $7.5 million on the issuance date.

The fair value of these common stock warrants as of September 30, 2017 was determined to be $8.0 million. We applied an annual equity volatility of 54% and a discount for lack of marketability of 13%. As a result, during the nine months ended September 30, 2017, we recorded a non-cash loss of $0.5 million related to the change in fair value of our common stock warrants.

***Convertible Promissory Notes***

The redemption features included in the terms of the convertible promissory notes were determined to be derivative liabilities due to a significant discount within the redemption features for the note holders. Embedded derivatives that are not clearly and closely related to the host contract are required to be bifurcated and recorded at fair value unless the fair value option is elected on the host contract. Under the fair value option, bifurcation of the embedded derivative is not necessary as all related gains (losses) on the host contract and derivative will be reflected in the consolidated statements of operations. We elected the fair value option for the Existing Stockholder Notes and Aimia Notes, therefore direct costs and fees associated with the issuance were recognized in earnings as incurred and were not deferred.

To determine the fair value of our convertible promissory notes, we utilized key assumptions from the PWERM, as shown above. Under this method, we considered the redemption features of the convertible promissory notes, as described in Note 3—Debt, to determine the fair value under discrete future outcomes, including IPO and non-IPO scenarios. Under certain non-IPO scenarios, holders of the convertible promissory notes will receive two times preference on the outstanding principal amount. We weighted the fair values based on the estimated probability of each scenario to determine the overall fair value of the convertible promissory notes as of the balance sheet date. A one percent increase or decrease in the cost of debt and equity would have a $0.6 million impact on the value of the convertible promissory notes as of December 31, 2016.

The Existing Stockholder Notes and Aimia Notes were issued with an aggregate principal amount of $50.7 million. Paid-in-kind interest is recognized in interest expense, net on our condensed consolidated statements of operations and totaled $1.6 million and $1.7 million during the nine months ended September 30, 2016 and 2017, respectively.

See Note 5—Redeemable Convertible Preferred Stock for a description of the Series G Stock financing and the transactions that resulted in the conversion of the convertible promissory notes into shares of our Series G' Stock.

## 7. RELATED PARTIES

***Convertible Promissory Notes***

As discussed in Note 3—Debt, in 2016, we issued Existing Stockholder Notes to our founders and certain of our existing stockholders in an aggregate principal amount of $27.0 million. The following table summarizes purchases of our convertible promissory notes by our directors, executive officers and holders of more than 5% of any class of our capital stock as of the date of such transaction (in thousands):

| Related Party | Principal Amount of Convertible Notes |
|---|---|
| Aeroplan Holdings Europe Sàrl(1) | $ 3,987 |
| Entities affiliated with Polaris Venture Partners(2) | $ 5,321 |
| Canaan VIII L.P.(3) | $ 6,514 |
| Entities affiliated with Discovery Capital(4) | $ 2,663 |
| Scott D. Grimes | $ 650 |
| Lynne M. Laube | $ 350 |

(1) Aeroplan Holdings Europe Sàrl is an affiliate of Aimia Inc. David L. Adams, a member of our board of directors, was the Executive Vice President and Chief Financial Officer of Aimia Inc. at the time of the issuance.

(2) Consists of convertible promissory notes in an aggregate principal amount of $5,134,443.03 purchased by Polaris Venture Partners V, L.P., or PVP V, convertible promissory notes in an aggregate principal amount of $100,069.82 purchased by Polaris Venture Partners Entrepreneurs' Fund V, L.L., or PVP EF V, convertible promissory notes in an aggregate principal amount of $35,170.61 purchased by Polaris Venture Partners Founders' Fund V, L.P., or PVP FF V, and convertible promissory notes in an aggregate principal amount of $51,344.45 purchased by Polaris Venture Partners Special Founders' Fund V, L.P., or PVP SFF V. Polaris Venture Management Co. V, L.L.C. is a general partner of each of PVP V, PVP EF V, PVP FF V and PVP SFF V and may be deemed to have the sole voting and dispositive power over the shares held by PVP V, PVP EF V, PVP FF V and PVP SFF V. Bryce Youngren, a member of our board of directors, is a Managing Partner of Polaris Partners and may be deemed to share voting and dispositive power over the shares held by PVP V, PVP EF V, PVP FF V and PVP SFF V.

(3) John V. Balen, a member of our board of directors, is a managing member of Canaan Partners VIII LLC, the general partner of Canaan VIII L.P. Mr. Balen does not have voting or investment power over any shares held directly by Canaan VIII L.P.

(4) Consists of convertible promissory notes in an aggregate principal amount of $2,385,974.51 purchased by Discovery Global Opportunity Master Fund, Ltd., or Discovery Global Opportunity and convertible promissory notes in an aggregate principal amount of $277,291.57 purchased by Discovery Global Focus Master Fund, Ltd., or Discovery Global Focus. Discovery Capital Management, LLC is the manager of each of Discovery Global Opportunity and Discovery Global Focus, and may be deemed to have the sole voting and dispositive power over the shares held by Discovery Global Opportunity and Discovery Global Focus.

***Series G / Series G'***

In May 2017, we issued and sold, for aggregate consideration of $11.9 million, an aggregate of 1,385,358 shares of our Series G Stock and warrants to purchase shares of our common stock. In connection with the issuance of our Series G Stock, the principal and accrued interest under the Existing Stockholder Notes converted into an aggregate of 5,183,015 shares of our Series G' redeemable convertible preferred stock and the principal and accrued interest under the Aimia EMEA Notes converted into an aggregate of 3,205,318 shares of our common stock. The following table summarizes the participation in the foregoing transactions by our directors, executive officers and holders of more than 5% of any class of our capital stock as of the date of such transactions (in thousands):

| Related Party | Shares of Series G Preferred Stock | Shares of Series G' Preferred Stock | Shares of Common Stock | Warrants to Purchase Common Stock |
|---|---|---|---|---|
| Entities affiliated with Aimia, Inc.(1) | — | 1,529 | 3,205 | — |
| Entities affiliated with Polaris Venture Partners(2) | 116 | 850 | — | (6) |
| Canaan VIII L.P.(3) | 215 | 1,040 | — | (6) |
| Entities affiliated with Discovery Capital(4) | — | 425 | — | — |
| Scott D. Grimes | — | 104 | — | — |
| Lynne M. Laube | — | 56 | — | — |
| Entities affiliated with Mark A. Johnson(5) | 139 | 60 | — | (6) |
| John Klinck. | 23 | — | — | (6) |
| David Adams | 12 | — | — | (6) |

(1) Consists of 636,829 shares of Series G' redeemable convertible preferred stock issued to Aeroplan Holdings Europe Sàrl, 892,083 shares of Series G' redeemable convertible preferred stock issued to Aimia EMEA Limited and 3,205,318 shares of common stock issued to Aimia EMEA Limited.

(2) Consists of 111,954 shares of Series G redeemable convertible preferred stock purchased by Polaris Venture Partners V, L.P. ("PVP V"), 820,080 shares of Series G' redeemable convertible preferred stock issued to PVP V, 2,182 shares of Series G redeemable convertible preferred stock purchased by Polaris Venture Partners Entrepreneurs' Fund V, L.L. ("PVP EF V"), 15,983 shares of Series G' redeemable convertible preferred stock issued to PVP EF V, 767 shares of Series G redeemable convertible preferred stock purchased by Polaris Venture Partners Founders' Fund V, L.P. ("PVP FF V"), 5,616 shares of Series G' redeemable convertible preferred stock issued to PVP FF V, 1,120 shares of Series G redeemable convertible preferred stock purchased by Polaris Venture Partners Special Founders' Fund V, L.P. ("PVP SFF V") and 8,200 shares of Series G' redeemable

convertible preferred stock issued to PVP SFF V. Polaris Venture Management Co. V, L.L.C. is a general partner of each of PVP V, PVP EF V, PVP FF V and PVP SFF V and may be deemed to have the sole voting and dispositive power over the shares held by PVP V, PVP EF V, PVP FF V and PVP SFF V. Bryce Youngren, a member of our board of directors, is a Managing Partner of Polaris Partners and may be deemed to share voting and dispositive power over the shares held by PVP V, PVP EF V, PVP FF V and PVP SFF V.

(3) John V. Balen, a member of our board of directors, is a managing member of Canaan Partners VIII LLC, the general partner of Canaan VIII L.P. Mr. Balen does not have voting or investment power over any shares held directly by Canaan VIII L.P.

(4) Consists of 381,091 shares of Series G' redeemable convertible preferred stock issued to Discovery Opportunity Master Fund, Ltd. and 44,288 shares of Series G' redeemable convertible preferred stock issued to Discovery Global Focus Master Fund, Ltd.

(5) Consists of 60,182 shares of Series G' redeemable convertible preferred stock issued to TTP Fund II, L.P., 116,023 shares of Series G redeemable convertible preferred stock purchased by TTV Ivy Holdings, LLC and 23,205 shares of Series G redeemable convertible preferred stock purchased by Mr. Johnson. TTV Capital is a provider of management services to TTP GP II, LLC, which is a general partner of TTP Fund II, L.P. TTV Capital is the manager of TTV Ivy Holdings Manager, LLC, which is the general partner of TTV Ivy Holdings, LLC. Mark A. Johnson, a member of our board of directors, is a member of each of TTP GP II, LLC and TTV Ivy Holdings Managers, LLC and holds the title of partner of TTV Capital, and may be deemed to share voting and dispositive power over the shares held by TTP Fund II L.P. and TTV Ivy Holdings, LLC.

(6) The maximum number of shares issuable to each investor upon the exercise of such warrants is equal to the number of shares of Series G redeemable convertible preferred stock set forth opposite such investor's name in the table above. The actual number of shares issuable to each investor upon the exercise of such warrants is equal to the product obtained by multiplying the number of shares of Series G redeemable convertible preferred stock set forth opposite such investor's name in the table above by a fraction, the numerator of which is the difference between $17.2379 and the volume weighted average closing price of our common stock over the 30 trading days (or such lesser number of days as our common stock has been traded on the Nasdaq Global Market) prior to the date on which such warrants become exercisable and the denominator of which is such volume weighted average closing price.

***Agreements with Fidelity Information Services, LLC***

We are party to a reseller agreement with Fidelity Information Services LLC ("FIS"). Pursuant to the reseller agreement, FIS markets and sells our services to financial institutions that are current or potential customers of FIS in exchange for a revenue share percentage. FIS is also currently entitled to elect a member of our board of directors, who is currently Robert Legters. We are also obligated to make milestone payments to FIS related to the integration and deployment of our solutions. See Note 8—Commitments and Contingencies for additional information.

In May 2013, FIS purchased 1,590,061 shares of our Series E Stock. We also granted 10-year performance-based warrants to purchase up to 2,577,465 shares of Series E Stock at an exercise price of $5.91 per share. Since FIS did not participate in the Existing Stockholder Note financing, their preferred stock warrants were converted to common stock warrants in May 2016. The warrants become exercisable subject to the attainment of certain operational and performance metrics. We have determined that these warrants are subject to the guidance under ASC Topic 505-50, Equity—*Equity-Based Payments to Non-Employees*. These warrants will not be subject to the disclosure requirements under ASC Topic 820, *Fair Value Measurements and Disclosures*, when and if vested and expensed. As of September 30, 2017, no such warrants have vested and therefore no related expense has been recorded. Since the performance conditions are directly related to revenue-producing activities, we will incur non-cash expense in our FI Share and other third-party costs based on the vesting-date fair value of our redeemable convertible preferred stock underlying these warrants. These warrants will vest upon the completion of an IPO.

***Agreements with Aimia Inc. and Affiliated Entities***

Cardlytics UK was operated through a cooperation agreement with Aimia EMEA Limited ("Aimia") whereby we and Aimia shared equally in cost and revenue related to the business in the United Kingdom. On June 30, 2016, we and Aimia agreed to terminate this agreement, resulting in Cardlytics, Inc. obtaining full control of Cardlytics UK. Our condensed consolidated statements of operations includes the reimbursement of expense and allocation of revenue that are due to and due from Aimia pursuant to the

agreement. Operating expense reimbursements and allocation of revenue less FI Share and third-party costs (recorded in FI Share and other third-party costs), are as follows (in thousands):

| | Nine Months Ended September 30, 2016 |
|---|---|
| Operating expense reimbursements: | |
| Delivery costs | $ 24 |
| Sales and marketing expense | 597 |
| General and administrative expense | 129 |
| Allocation of revenue less FI Share and other third-party costs | $ 1,223 |

Cardlytics UK's effect on consolidated operating cash flows is a cash outflow of $0.6 million during the nine months ended September 30, 2016. There were no material investing or financing cash flows associated with Cardlytics UK during the nine months ended September 30, 2016.

## 8. COMMITMENTS AND CONTINGENCIES

***FI Implementation Costs***

Agreements with certain FI partners require us to fund the development of user interface enhancements, pay for certain implementation fees, or make milestone payments upon the deployment of our solution. Amounts paid to FI partners are included in deferred FI implementation costs on our condensed consolidated balance sheets the earlier of when paid or earned and are amortized over the remaining term of the related contractual arrangements. Amortization is included in FI Share and other third-party costs on our condensed consolidated statements of operations. Certain of these agreements provide for future reductions in FI Share due to the FI partner. These reductions in FI Share are recorded as a reduction to deferred implementation costs and also result in a cumulative adjustment to accumulated amortization. Reductions to FI Share in 2017, 2018 and 2019 are expected to total $4.4 million, $5.0 million and $5.0 million, respectively. Unearned amounts not yet paid to FI partners totaled $13.5 million as of September 30, 2017.

The following table presents changes in deferred FI implementation costs (in thousands):

| | Nine months ended September 30, | |
|---|---|---|
| | 2016 | 2017 |
| Beginning balance | $ 1,936 | $ 8,451 |
| Deferred costs | 5,500 | 6,650 |
| Recoveries through FI Share, net of accumulated amortization | — | (2,450) |
| Amortization | (499) | (1,797) |
| Ending balance | $ 6,937 | $10,854 |

As a result of not meeting a minimum FI Share commitment in 2016, we were required to pay an FI partner $2.6 million in March 2017. This shortfall was recorded as of December 31, 2016 as a component of FI Share liability on our condensed consolidated balance sheet and is included in FI Share and other third-party costs on our condensed consolidated statement of operations. In August 2017, we amended an agreement with an FI partner to remove a minimum FI Share commitment in 2017, resulting in a $3.0 million reversal of our accrued shortfall recorded as of June 30, 2017. We also have an FI Share commitment to a certain FI partner totaling $10.0 million over a 12-month period following the completion of certain milestones, which were not met as of September 30, 2017.

***Litigation***

From time to time, we may become involved in legal actions arising in the ordinary course of business including, but not limited to, intellectual property infringement and collection matters. We make

assumptions and estimates concerning the likelihood and amount of any potential loss relating to these matters using the latest information available. We record a liability for litigation if an unfavorable outcome is probable and the amount of loss or range of loss can be reasonably estimated. If an unfavorable outcome is probable and a reasonable estimate of the loss is a range, we accrue the best estimate within the range. If no amount within the range is a better estimate than any other amount, we accrue the minimum amount within the range. If an unfavorable outcome is probable but the amount of the loss cannot be reasonably estimated, we disclose the nature of the litigation and indicates that an estimate of the loss or range of loss cannot be made. If an unfavorable outcome is reasonably possible and the estimated loss is material, we disclose the nature and estimate of the possible loss of the litigation. We do not disclose information with respect to litigation where an unfavorable outcome is considered to be remote or where the estimated loss would not be material. Based on current expectations, such matters, both individually and in the aggregate, are not expected to have a material adverse effect on our liquidity, results of operations, business or financial condition.

## 9. EARNINGS PER SHARE

Diluted net loss per share is the same as basic net loss per share for the nine months ended September 30, 2016 and 2017 because the effects of potentially dilutive items were anti-dilutive, given our net loss during these periods. The following securities have been excluded from the calculation of diluted weighted-average common shares outstanding because the effect is anti-dilutive (in thousands):

| | Nine Months Ended September 30, | |
|---|---|---|
| | 2016 | 2017 |
| Redeemable convertible preferred stock: | | |
| Series A-R | 7,428 | 7,428 |
| Series B-R | 8,987 | 8,987 |
| Series C-R | 6,032 | 6,032 |
| Series D-R | 5,584 | 5,584 |
| Series E-R | 3,180 | 3,180 |
| Series F-R | 4,795 | 4,795 |
| Series G | — | 1,385 |
| Series G’ | — | 5,183 |
| Common stock warrants | 5,372 | 4,979 |
| Redeemable convertible preferred stock warrants | 441 | 441 |
| Common stock options | 10,515 | 10,131 |

***Pro forma net loss per share (unaudited)***

The denominator used in computing pro forma net loss per share has been adjusted to assume the automatic conversion of all outstanding shares of redeemable convertible preferred stock outstanding as of September 30, 2017.

The following table presents the calculation of pro forma basic and diluted net loss per share (in thousands, except per share amounts):

| | Nine Months Ended September 30, 2017 |
|---|---|
| **Numerator:** | |
| Net loss | $ |
| Plus: | |
| Deemed dividend related to beneficial conversion feature | |
| Accretion of redeemable convertible preferred stock to redemption value | |
| Change in fair value of warrant liability | |
| Interest on convertible promissory notes | |
| Interest on convertible promissory notes—related parties | |
| Change in fair value of convertible promissory notes | |
| Change in fair value of convertible promissory notes—related parties | |
| Pro forma numerator for basic and diluted net loss per share | $ |
| **Denominator:** | |
| Weighted-average shares available to common stockholders, basic and diluted | $ |
| Plus: | |
| Vesting of restricted securities units and conversion to common stock | |
| Conversion of redeemable convertible preferred stock to common stock | $ |
| Impact of assuming conversion of convertible promissory notes at the beginning of the period | $ |
| Pro forma denominator for basic and diluted net loss per share | $ |
| Pro forma net loss per share attributable to common stockholders, basic and diluted | $ |

## 10. SEGMENTS

We have three operating segments: our Cardlytics Direct solutions in the United States and United Kingdom and Other Platform Solutions, as determined by the information that both our Chief Executive Officer and President and Chief Operating Officer, who we consider our chief operating decision makers, use to make strategic goals and operating decisions. Our Cardlytics Direct operating segments in the United States and United Kingdom represent our proprietary native bank advertising channels and are aggregated into one reportable segment given their similar economic characteristics, nature of service, types of customers and method of distribution. Our Other Platform Solutions segment represents solutions that enable marketers and marketing service providers to leverage the power of purchase intelligence across all of their marketing investments.

Revenues and FI Share and other third-party can be directly attributable to each segment. Our chief operating decision makers allocate resources to, and evaluate the performance of, our operating segments based on revenue and adjusted contribution. The accounting policies of each of our reportable segments are the same as those described in the summary of significant accounting policies.

The following table provides information regarding our reportable segments (in thousands):

| | Nine Months Ended September 30, 2016 | 2017 |
|---|---|---|
| Cardlytics Direct: | | |
| Adjusted contribution | $ 26,725 | $ 36,563 |
| Plus: FI Share and other third-party costs | 39,228 | 47,052 |
| Revenue | $ 65,953 | $ 83,615 |
| Other Platform Solutions: | | |
| Adjusted contribution | $ 4,689 | $ 3,650 |
| Plus: FI Share and other third-party costs | 5,758 | 3,834 |
| Revenue | $ 10,447 | $ 7,484 |
| Total: | | |
| Adjusted contribution | $ 31,414 | $ 40,213 |
| Plus: FI Share and other third-party costs | 44,986 | 50,886 |
| Revenue | $ 76,400 | $ 91,099 |

***Adjusted Contribution***

Adjusted contribution represents our revenue less FI Share and other third-party costs.

The following table presents a reconciliation of loss before income taxes presented in accordance with U.S. GAAP to adjusted contribution (in thousands):

| | Nine Months Ended September 30, 2016 | 2017 |
|---|---|---|
| Adjusted contribution | $ 31,414 | $ 40,213 |
| Minus: | | |
| Delivery costs | 4,729 | 5,095 |
| Sales and marketing expense | 22,850 | 23,454 |
| Research and development expense | 11,101 | 9,527 |
| General and administration expense | 16,240 | 14,738 |
| Depreciation and amortization expense | 3,432 | 2,303 |
| Termination of U.K. agreement expense | 25,904 | — |
| Total other expense | 15,809 | 681 |
| Loss before income taxes | $ (68,651) | $ (15,585) |

The following table provides geographical information (in thousands):

| | Nine Months Ended September 30, | |
|---|---|---|
| | 2016 | 2017 |
| Revenue: | | |
| United States | $ 67,768 | $ 80,606 |
| United Kingdom | 8,632 | 10,493 |
| Total | $ 76,400 | $ 91,099 |

| | December 31, 2016 | September 30, 2017 |
|---|---|---|
| Property and equipment: | | |
| United States | $ 8,000 | $ 6,504 |
| United Kingdom | 345 | 554 |
| Total | $ 8,345 | $ 7,058 |

Capital expenditures within the United Kingdom were $0.3 million during both the nine months ended September 30, 2016 and 2017.

## 11. SUBSEQUENT EVENTS

We evaluated subsequent events for recognition and measurement purposes through the date that the condensed consolidated financial statements were issued.

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# Shares


## Common Stock

**PROSPECTUS**

## BofA Merrill Lynch

## J.P. Morgan

**Wells Fargo Securities**

**SunTrust Robinson Humphrey**

**Raymond James**

**KeyBanc Capital Markets**

**, 2018**

## PART II

## INFORMATION NOT REQUIRED IN PROSPECTUS

### Item 13. Other Expenses of Issuance and Distribution.

The following table sets forth all costs and expenses, other than underwriting discounts and commissions, payable by us in connection with the sale of the common stock being registered. All amounts shown are estimates except for the SEC registration fee and the FINRA filing fee.

| | Amount to be Paid |
|---|---|
| SEC registration fee | $ 9,338 |
| FINRA filing fee | 11,750 |
| NASDAQ Global Market initial listing fee | 125,000 |
| Blue sky fees and expenses | * |
| Printing and engraving | * |
| Legal fees and expenses | * |
| Accounting fees and expenses | * |
| Transfer agent and registrar fees | * |
| Miscellaneous fees and expenses | * |
| Total | * |

* To be filed by amendment.

### Item 14. Indemnification of Directors and Officers.

We are incorporated under the laws of the State of Delaware. Section 102 of the Delaware General Corporation Law permits a corporation to eliminate the personal liability of directors of a corporation to the corporation or its stockholders for monetary damages for a breach of fiduciary duty as a director, except where the director breached his or her duty of loyalty, failed to act in good faith, engaged in intentional misconduct or knowingly violated a law, authorized the payment of a dividend or approved a stock repurchase in violation of Delaware corporate law or obtained an improper personal benefit.

Section 145 of the Delaware General Corporation Law provides that a corporation has the power to indemnify a director, officer, employee or agent of the corporation and certain other persons serving at the request of the corporation in related capacities against expenses (including attorneys' fees), judgments, fines and amounts paid in settlements actually and reasonably incurred by the person in connection with an action, suit or proceeding to which he is or is threatened to be made a party by reason of such position, if such person acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the corporation, and, in any criminal action or proceeding, had no reasonable cause to believe his or her conduct was unlawful, except that, in the case of actions brought by or in the right of the corporation, no indemnification shall be made with respect to any claim, issue or matter as to which such person shall have been adjudged to be liable to the corporation unless and only to the extent that the Court of Chancery or other adjudicating court determines that, despite the adjudication of liability but in view of all of the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which the Court of Chancery or such other court shall deem proper.

As permitted by the Delaware General Corporation Law, our amended and restated certificate of incorporation and amended and restated bylaws will provide that: (1) we are required to indemnify our directors to the fullest extent permitted by the Delaware General Corporation Law; (2) we may, in our discretion, indemnify our officers, employees and agents as set forth in the Delaware General Corporation Law; (3) we are required, upon satisfaction of certain conditions, to advance all expenses incurred by our directors in connection with certain

legal proceedings; (4) the rights conferred in the bylaws are not exclusive; and (5) we are authorized to enter into indemnification agreements with our directors, officers, employees and agents.

Our policy is to enter into agreements with our directors that require us to indemnify them against expenses, judgments, fines, settlements and other amounts that any such person becomes legally obligated to pay (including with respect to a derivative action) in connection with any proceeding, whether actual or threatened, to which such person may be made a party by reason of the fact that such person is or was a director or officer of us or any of our affiliates, provided such person acted in good faith and in a manner such person reasonably believed to be in, or not opposed to, our best interests. These indemnification agreements also set forth certain procedures that will apply in the event of a claim for indemnification thereunder. At present, no litigation or proceeding is pending that involves any of our directors or officers regarding which indemnification is sought, nor are we aware of any threatened litigation that may result in claims for indemnification.

We maintain a directors' and officers' liability insurance policy. The policy insures directors and officers against unindemnified losses arising from certain wrongful acts in their capacities as directors and officers and reimburses us for those losses for which we have lawfully indemnified the directors and officers. The policy contains various exclusions.

In addition, the underwriting agreement filed as Exhibit 1.1 to this registration statement provides for indemnification by the underwriters of us and our officers and directors for certain liabilities arising under the Securities Act, or otherwise. Our amended and restated investors' rights agreement with certain stockholders also provides for cross-indemnification in connection with the registration of our common stock on behalf of such investors.

## Item 15. Recent Sales of Unregistered Securities.

The following list sets forth information regarding all unregistered securities issued by us since January 1, 2014 through the date of the prospectus that is a part of this registration statement:

***Issuances of Common Stock and Options to Purchase Common Stock***

From January 1, 2014 through the date of this registration statement, we have granted under our 2008 Plan options to purchase an aggregate of 11,858,107 shares of our common stock to employees, consultants and directors, having exercise prices ranging from $0.05 to $12.51 per share. Of these, options to purchase an aggregate of 3,183,391 shares have been cancelled without being exercised. From January 1, 2014 through the date of this registration statement, an aggregate of 1,008,738 shares of our common stock were issued upon the exercise of stock options under the 2008 Plan, at exercise prices between $0.05 and $7.13 per share, for aggregate proceeds of approximately $1.2 million.

The offers, sales and issuances of the securities described in the preceding paragraph were deemed to be exempt from registration either under Rule 701 promulgated under the Securities Act, or Rule 701, in that the transactions were under compensatory benefit plans and contracts relating to compensation, or under Section 4(a)(2) of the Securities Act in that the transactions were between an issuer and members of its senior executive management and did not involve any public offering within the meaning of Section 4(a)(2). The recipients of such securities were our employees, directors or consultants and received the securities under our equity incentive plans. Appropriate legends were affixed to the securities issued in these transactions.

***Issuances of Restricted Securities Units***

In June, August and October 2016, we granted restricted securities units in an aggregate amount of $1.0 million to certain of our executive officers and key employees. The restricted securities units are denominated in convertible promissory notes. Such convertible promissory notes will be issued to the executive officer or key employee upon the satisfaction of the vesting requirements described below.

The restricted securities units include a service-based vesting requirement that requires the executive officer or key employee to remain employed by us and a liquidity event-based vesting requirement. The liquidity event-based vesting requirement will be satisfied upon completion of this offering.

The offers, sales and issuances of the securities described in the preceding paragraph were deemed to be exempt from registration either under Rule 701 promulgated under the Securities Act, or Rule 701, in that the transactions were under compensatory benefit plans and contracts relating to compensation, or under Section 4(a)(2) of the Securities Act in that the transactions were between an issuer and members of its senior executive management and did not involve any public offering within the meaning of Section 4(a)(2). The recipients of such securities were our employees, directors or consultants and received the securities under our equity incentive plans. Appropriate legends were affixed to the securities issued in these transactions.

***Issuances of Preferred Stock, Common Stock and Warrants***

In September 2014, we issued an aggregate of 4,794,553 shares of our Series F redeemable convertible preferred stock to three accredited investors at a per share price of $12.5142, for aggregate consideration of approximately $60.0 million.

In July 2016, we issued a warrant to purchase up to 388,500 shares of our common stock at a price per share of $5.00 to National Electrical Benefit Fund.

In May 2017, we sold an aggregate of 1,385,358 shares of our Series G redeemable convertible preferred stock at a price of $8.61895 per share for aggregate gross proceeds of approximately $11.9 million.

In May 2017, we issued an aggregate of 5,183,015 shares of our Series G' redeemable convertible preferred stock upon conversion of outstanding promissory notes.

In May 2017, we issued an aggregate of 3,205,318 shares of common stock upon conversion of outstanding promissory notes.

In May 2017, we issued warrants to purchase an aggregate number of shares of our common stock equal to the product obtained by multiplying 1,385,358 by a fraction, the numerator of which is the difference between $17.2379 and the volume weighted average closing price of our common stock over the 30 trading days (or such lesser number of days as our common stock has been traded on the Nasdaq Global Market) prior to the date on which such warrants become exercisable and the denominator of which is such volume weighted average closing price, which warrants are exercisable upon the earlier to occur of the date (i) 180 days following the date of this prospectus and (ii) 10 days prior to a sale of our company, at an exercise price of $0.0001 per share.

In June 2017, we issued a warrant to purchase up to 70,000 shares of common stock at a price per share of $6.92 to National Electrical Benefit Fund.

The offers, sales and issuances of the securities described in the preceding paragraph were deemed to be exempt from registration under the Securities Act in reliance on Section 4(a)(2) of the Securities Act or Rule 506 of Regulation D promulgated thereunder as a transaction by an issuer not involving a public offering. The recipients of securities in each of these transactions acquired the securities for investment only and not with a view to or for sale in connection with any distribution thereof, and appropriate legends were affixed to the securities issued in these transactions. Each of the recipients of securities in these transactions was either an accredited investor within the meaning of Rule 501 of Regulation D under the Securities Act or had adequate access, through employment, business or other relationships, to information about us.

***Issuances of Convertible Promissory Notes***

In June and September 2016, we sold convertible promissory notes in an aggregate principal amount of approximately $23.7 million to Aimia EMEA Limited, in consideration for the transfer to us of our joint operations in the United Kingdom with entities affiliated with Aimia Inc.

In April, May, June and July 2016, we sold convertible promissory notes in an aggregate principal amount of $27.0 million to our founders and twelve accredited investors.

In July 2016, we issued an unsecured convertible promissory note in an aggregate principal amount of $6.0 million to National Electrical Benefit Fund, at an interest rate of 10% per year, compounded annually.

These securities were issued pursuant to the exemption from registration provided by Section 4(a)(2) of the Securities Act of 1933, as amended, in reliance on the recipient's status as an "accredited investor" as defined in Rule 501(a) of Regulation D.

## Item 16. Exhibits and Financial Statement Schedules.

### *(a) Exhibits*

| Exhibit Number | Description of Document |
|---|---|
| 1.1† | Form of Underwriting Agreement. |
| 3.1† | Amended and Restated Certificate of Incorporation of Cardlytics, Inc., as amended and as currently in effect. |
| 3.2 | Form of Amended and Restated Certificate of Incorporation of Cardlytics, Inc. to be effective upon the completion of this offering. |
| 3.3 | Amended Bylaws of Cardlytics, Inc., as currently in effect. |
| 3.4 | Form of Amended and Restated Bylaws of Cardlytics, Inc. to be effective upon completion of this offering. |
| 4.1† | Form of common stock certificate of Cardlytics, Inc. |
| 4.2 | Amended and Restated Investors' Rights Agreement by and among Cardlytics, Inc. and certain of its stockholders, dated May 4, 2017. |
| 5.1† | Opinion of Cooley LLP. |
| 10.1+ | 2008 Stock Plan and Forms of Option Agreement, Notice of Stock Option Grant and Exercise Notice thereunder, as amended to date. |
| 10.2+† | 2018 Equity Incentive Plan and Forms of Stock Option Agreement, Notice of Exercise and Stock Option Grant Notice thereunder. |
| 10.3+† | 2018 Employee Stock Purchase Plan. |
| 10.4+† | Non-Employee Director Compensation Plan to be in effect upon the completion of this offering. |
| 10.5+ | 2016 Bonus Plan of Cardlytics, Inc. |
| 10.6+ | 2017 Bonus Plan of Cardlytics, Inc. |
| 10.7+† | 2018 Bonus Plan of Cardlytics, Inc. |
| 10.8+ | Form of restricted securities unit award of Cardlytics, Inc. |
| 10.9+ | Form of Indemnification Agreement by and between Cardlytics, Inc. and each of its directors and executive officers. |
| 10.10+ | Offer Letter Agreement, dated as of June 11, 2014, by and between Cardlytics, Inc. and David T. Evans. |
| 10.11+ | Form of Separation Pay Agreement by and between Cardlytics, Inc. and each of Scott D. Grimes, Lynne M. Laube, David T. Evans and Kirk L. Somers. |
| 10.12 | Office Lease Agreement, dated as of August 5, 2013, by and between Cardlytics, Inc. and Jamestown Ponce City Market, L.P., as amended to date. |
| 10.13 | Credit Agreement, dated as of July 21, 2016, by and among Cardlytics, Inc., Columbia Partners, L.L.C. Investment Management and National Electrical Benefit Fund, as amended to date. |
| 10.14 | Loan and Security Agreement, dated September 14, 2016 by and among Cardlytics, Inc., Ally Bank and Pacific Western Bank. |
| 10.15# | General Services Agreement, dated as of November 5, 2010 by and between Cardlytics, Inc. and Bank of America, N.A., as amended to date. |

| Exhibit Number | Description of Document |
|---|---|
| 10.16# | Software License, Customization and Maintenance Agreement, dated as of November 4, 2010 by and between Cardlytics, Inc. and Bank of America, N.A., as amended to date. |
| 21.1 | Subsidiaries of Cardlytics, Inc. |
| 23.1 | Consent of Deloitte & Touche LLP, independent registered public accounting firm. |
| 23.2† | Consent of Cooley LLP (included in Exhibit 5.1). |
| 24.1 | Power of Attorney. Reference is made to the signature page hereto. |
| 99.1 | Consent of Frost & Sullivan. |

† To be filed by amendment.
+ Indicates management contract or compensatory plan.
# Confidential treatment requested as to certain portions, which portions have been omitted and filed separately with the Securities and Exchange Commission.

***(b) Financial Statement Schedules***

No financial statement schedules are provided because the information called for is not required or is shown either in the financial statements or notes.

**Item 17. Undertakings.**

The undersigned registrant hereby undertakes to provide to the underwriters at the closing specified in the underwriting agreement, certificates in such denominations and registered in such names as required by the underwriters to permit prompt delivery to each purchaser.

Insofar as indemnification for liabilities arising under the Securities Act may be permitted to directors, officers and controlling persons of the registrant pursuant to the foregoing provisions, or otherwise, the registrant has been advised that in the opinion of the Securities and Exchange Commission such indemnification is against public policy as expressed in the Securities Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the registrant of expenses incurred or paid by a director, officer or controlling person of the registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Securities Act and will be governed by the final adjudication of such issue.

The undersigned registrant hereby undertakes that:

(1) For purposes of determining any liability under the Securities Act, the information omitted from the form of prospectus filed as part of this Registration Statement in reliance upon Rule 430A and contained in a form of prospectus filed by the registrant pursuant to Rule 424(b)(1) or (4) or 497(h) under the Securities Act shall be deemed to be part of this Registration Statement as of the time it was declared effective.

(2) For the purpose of determining any liability under the Securities Act, each post-effective amendment that contains a form of prospectus shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

## SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, as amended, the Registrant has duly caused this Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in Atlanta, Georgia, on the 12th day of January, 2018.

**CARDLYTICS, INC.**

By: /s/ Scott D. Grimes
Scott D. Grimes
*Chief Executive Officer*

KNOW ALL BY THESE PRESENTS, that each person whose signature appears below hereby constitutes and appoints Scott D. Grimes and Lynne M. Laube, and each of them, his or her true and lawful agent, proxy and attorney-in-fact, with full power of substitution and resubstitution, for him or her and in his or her name, place and stead, in any and all capacities, to (1) act on, sign and file with the Securities and Exchange Commission any and all amendments (including post-effective amendments) to this registration statement together with all schedules and exhibits thereto and any subsequent registration statement filed pursuant to Rule 462(b) under the Securities Act of 1933, as amended, together with all schedules and exhibits thereto, (2) act on, sign and file such certificates, instruments, agreements and other documents as may be necessary or appropriate in connection therewith, (3) act on and file any supplement to any prospectus included in this registration statement or any such amendment or any subsequent registration statement filed pursuant to Rule 462(b) under the Securities Act of 1933, as amended, and (4) take any and all actions which may be necessary or appropriate to be done, as fully for all intents and purposes as he or she might or could do in person, hereby approving, ratifying and confirming all that such agent, proxy and attorney-in-fact or any of his or her substitutes may lawfully do or cause to be done by virtue thereof.

Pursuant to the requirements of the Securities Act of 1933, as amended, this Registration Statement has been signed by the following persons in the capacities and on the dates indicated.

| Signature | Title | Date |
|---|---|---|
| /s/ Scott D. Grimes<br>Scott D. Grimes | Chief Executive Officer and Director *(Principal Executive Officer)* | January 12, 2018 |
| /s/ David T. Evans<br>David T. Evans | Chief Financial Officer<br>*(Principal Financial Officer and Principal Accounting Officer)* | January 12, 2018 |
| /s/ Lynne M. Laube<br>Lynne M. Laube | Director | January 12, 2018 |
| /s/ David L. Adams<br>David L. Adams | Director | January 12, 2018 |
| /s/ John V. Balen<br>John V. Balen | Chairman of the Board of Directors | January 12, 2018 |
| /s/ Mark A. Johnson<br>Mark A. Johnson | Director | January 12, 2018 |
| /s/ Robert Legters<br>Robert Legters | Director | January 12, 2018 |
| /s/ Bryce Youngren<br>Bryce Youngren | Director | January 12, 2018 |
| /s/ Tony Weisman<br>Tony Weisman | Director | January 12, 2018 |
| /s/ John Klinck<br>John Klinck | Director | January 12, 2018 |

**Exhibit 3.2**

**AMENDED AND RESTATED**
**CERTIFICATE OF INCORPORATION**
**OF**
**CARDLYTICS, INC.**

Cardlytics, Inc., a corporation organized and existing under and by virtue of the General Corporation Law of the State of the Delaware does hereby certify that:

**ONE:** The original name of this corporation was Cardlytics, Inc. and the date of filing the original Certificate of Incorporation of this corporation with the Secretary of State of the State of Delaware (the "***Secretary***") was June 26, 2008.

**TWO:** The Amended and Restated Certificate of Incorporation of this corporation as filed with the Secretary on February 22, 2017 is hereby amended and restated to read as follows:

**I.**

The name of the corporation is **CARDLYTICS, INC.** (the "***Corporation***").

**II.**

The address of the registered office of the Corporation in the State of Delaware is 2711 Centerville Road, Suite 400, City of Wilmington, New Castle County, Delaware 19808, and the name of the registered agent of this Corporation in the State of Delaware at such address is Corporation Service Company.

**III.**

The purpose of the Corporation is to engage in any lawful act or activity for which a corporation may be organized under the Delaware General Corporation Law ("***DGCL***").

**IV.**

**A.** The Corporation is authorized to issue two classes of stock to be designated, respectively, "***Common Stock***" and "***Preferred Stock***." The total number of shares which the Corporation is authorized to issue is one hundred ten million (110,000,000) shares. One hundred million (100,000,000) shares shall be Common Stock, each having a par value of one-hundredth of one cent ($0.0001) and ten million (10,000,000) shares shall be Preferred Stock, each having a par value of one-hundredth of one cent ($0.0001).

**B.** The Preferred Stock may be issued from time to time in one or more series. The Board of Directors of the Corporation (the "***Board of Directors***") is hereby expressly authorized to provide for the issue of all of any of the shares of the Preferred Stock in one or more series, and to fix the number of shares and to determine or alter for each such series, such voting powers, full or limited, or no voting powers, and such designation, preferences, and relative, participating, optional, or other rights and such qualifications, limitations, or restrictions thereof, as shall be stated and expressed in the resolution or resolutions adopted by the Board of Directors

providing for the issuance of such shares and as may be permitted by the DGCL. The Board of Directors is also expressly authorized to increase or decrease the number of shares of any series subsequent to the issuance of shares of that series, but not below the number of shares of such series then outstanding. In case the number of shares of any series shall be decreased in accordance with the foregoing sentence, the shares constituting such decrease shall resume the status that they had prior to the adoption of the resolution originally fixing the number of shares of such series. The number of authorized shares of Preferred Stock may be increased or decreased (but not below the number of shares thereof then outstanding) by the affirmative vote of the holders of a majority of the voting power of the outstanding shares of stock of the Corporation entitled to vote thereon, without a separate vote of the holders of the Preferred Stock, or of any series thereof, unless a vote of any such holders is required pursuant to the terms of any certificate of designation filed with respect to any series of Preferred Stock.

**C.** Each outstanding share of Common Stock shall entitle the holder thereof to one vote on each matter properly submitted to the stockholders of the Corporation for their vote; *provided, however*, that, except as otherwise required by law, holders of Common Stock shall not be entitled to vote on any amendment to this Amended and Restated Certificate of Incorporation (including any certificate of designation filed with respect to any series of Preferred Stock) that relates solely to the terms of one or more outstanding series of Preferred Stock if the holders of such affected series are entitled, either separately or together as a class with the holders of one or more other such series, to vote thereon by law or pursuant to this Amended and Restated Certificate of Incorporation (including any certificate of designation filed with respect to any series of Preferred Stock).

**V.**

For the management of the business and for the conduct of the affairs of the Corporation, and in further definition, limitation and regulation of the powers of the Corporation, of its directors and of its stockholders or any class thereof, as the case may be, it is further provided that:

**A. MANAGEMENT OF BUSINESS.**

The management of the business and the conduct of the affairs of the Corporation shall be vested in its Board of Directors. The number of directors which shall constitute the Board of Directors shall be fixed exclusively by resolutions adopted by a majority of the authorized number of directors constituting the Board of Directors.

**B. BOARD OF DIRECTORS**

Subject to the rights of the holders of any series of Preferred Stock to elect additional directors under specified circumstances, following the closing of the initial public offering pursuant to an effective registration statement under the Securities Act of 1933, as amended (the "***1933 Act***"), covering the offer and sale of Common Stock to the public (the "***Initial Public Offering***"), the directors shall be divided into three classes designated as Class I, Class II and Class III, respectively. The Board of Directors is authorized to assign members of the Board of Directors already in office to such classes at the time the classification becomes effective. At the

first annual meeting of stockholders following the closing of the Initial Public Offering, the term of office of the Class I directors shall expire and Class I directors shall be elected for a full term of three years. At the second annual meeting of stockholders following the closing of the Initial Public Offering, the term of office of the Class II directors shall expire and Class II directors shall be elected for a full term of three years. At the third annual meeting of stockholders following the closing of the Initial Public Offering, the term of office of the Class III directors shall expire and Class III directors shall be elected for a full term of three years. At each succeeding annual meeting of stockholders, directors shall be elected for a full term of three years to succeed the directors of the class whose terms expire at such annual meeting.

Notwithstanding the foregoing provisions of this section, each director shall serve until his or her successor is duly elected and qualified or until his or her earlier death, resignation or removal. No decrease in the number of directors constituting the Board of Directors shall shorten the term of any incumbent director.

**C. REMOVAL OF DIRECTORS.**

Subject to the rights of any series of Preferred Stock to elect additional directors under specified circumstances, following the closing of the Initial Public Offering, neither the Board of Directors nor any individual director may be removed without cause.

Subject to any limitation imposed by applicable law, any individual director or directors may be removed with cause by the affirmative vote of the holders of at least sixty six and two thirds percent (66 2/3%) of the voting power of all then outstanding shares of capital stock of the Corporation entitled to vote generally at an election of directors.

**D. VACANCIES.**

Subject to any limitations imposed by applicable law and subject to the rights of the holders of any series of Preferred Stock, any vacancies on the Board of Directors resulting from death, resignation, disqualification, removal or other causes and any newly created directorships resulting from any increase in the number of directors, shall, unless the Board of Directors determines by resolution that any such vacancies or newly created directorships shall be filled by the stockholders and except as otherwise provided by applicable law, be filled only by the affirmative vote of a majority of the directors then in office, even though less than a quorum of the Board of Directors, and not by the stockholders. Any director elected in accordance with the preceding sentence shall hold office for the remainder of the full term of the director for which the vacancy was created or occurred and until such director’s successor shall have been elected and qualified.

**E. BYLAW AMENDMENTS.**

The Board of Directors is expressly empowered to adopt, amend or repeal the Bylaws of the Corporation. Any adoption, amendment or repeal of the Bylaws of the Corporation by the Board of Directors shall require the approval of a majority of the authorized number of directors. The stockholders shall also have power to adopt, amend or repeal the Bylaws of the Corporation; *provided, however,* that, in addition to any vote of the holders of any class or series of stock of the Corporation required by law or by this Amended and Restated Certificate of Incorporation,

such action by stockholders shall require the affirmative vote of the holders of at least sixty-six and two-thirds percent (66 2/3%) of the voting power of all of the then-outstanding shares of the capital stock of the Corporation entitled to vote generally in the election of directors, voting together as a single class.

**F. STOCKHOLDER ACTIONS.**

**1.** The directors of the Corporation need not be elected by written ballot unless the Bylaws so provide.

**2.** No action shall be taken by the stockholders of the Corporation except at an annual or special meeting of stockholders called in accordance with the Bylaws, and no action shall be taken by the stockholders by written consent or electronic transmission.

**3.** Advance notice of stockholder nominations for the election of directors and of business to be brought by stockholders before any meeting of the stockholders of the Corporation shall be given in the manner provided in the Bylaws of the Corporation.

**VI.**

**A.** The liability of the directors for monetary damages shall be eliminated to the fullest extent under applicable law.

**B.** To the fullest extent permitted by applicable law, the Corporation is authorized to provide indemnification of (and advancement of expenses to) directors, officers and agents of the Corporation (and any other persons to which applicable law permits the Corporation to provide indemnification) through Bylaw provisions, agreements with such agents or other persons, vote of stockholders or disinterested directors or otherwise in excess of the indemnification and advancement otherwise permitted by such applicable law. If applicable law is amended after approval by the stockholders of this Article VI to authorize corporate action further eliminating or limiting the personal liability of directors, then the liability of a director to the Corporation shall be eliminated or limited to the fullest extent permitted by applicable law as so amended.

**C.** Any repeal or modification of this Article VI shall only be prospective and shall not affect the rights or protections or increase the liability of any director under this Article VI in effect at the time of the alleged occurrence of any act or omission to act giving rise to liability or indemnification.

**VII.**

Unless the Corporation consents in writing to the selection of an alternative forum, the Court of Chancery of the State of Delaware shall, to the fullest extent permitted by applicable law, be the sole and exclusive forum for (A) any derivative action or proceeding brought on behalf of the Corporation; (B) any action asserting a claim of breach of a fiduciary duty owed by any director, officer or other employee of the Corporation to the Corporation or the Corporation’s stockholders; (C) any action asserting a claim against the Corporation or any director or officer or other employee of the Corporation arising pursuant to any provision of the DGCL, this Amended and Restated Certificate of Incorporation or the Bylaws of the Corporation; or (D) any action asserting a claim against the Corporation or any director or officer or other employee of the Corporation governed by the internal affairs doctrine.

**VIII.**

**A.** The Corporation reserves the right to amend, alter, change or repeal any provision contained in this Amended and Restated Certificate of Incorporation, in the manner now or hereafter prescribed by statute, except as provided in paragraph B. of this Article VIII, and all rights conferred upon the stockholders herein are granted subject to this reservation.

**B.** Notwithstanding any other provisions of this Amended and Restated Certificate of Incorporation or any provision of law which might otherwise permit a lesser vote or no vote, but in addition to any affirmative vote of the holders of any particular class or series of the Corporation required by law or by this Amended and Restated Certificate of Incorporation or any certificate of designation filed with respect to a series of Preferred Stock, the affirmative vote of the holders of at least sixty-six and two-thirds percent (66 2/3%) of the voting power of all of the then outstanding shares of capital stock of the Corporation entitled to vote generally in the election of directors, voting together as a single class, shall be required to alter, amend or repeal Articles V, VI, VII and VIII.

* * * *

**THREE:** This Amended and Restated Certificate of Incorporation has been duly approved by the Board of Directors of the Corporation.

**FOUR:** This Amended and Restated Certificate of Incorporation was approved by the holders of the requisite number of shares of said Corporation in accordance with Section 228 of the DGCL. This Amended and Restated Certificate of Incorporation has been duly adopted in accordance with the provisions of Sections 242 and 245 of the DGCL by the stockholders of the Corporation.

**IN WITNESS WHEREOF**, Cardlytics, Inc. has caused this Amended and Restated Certificate of Incorporation to be signed by its Chief Executive Officer this day of , 2018.

**CARDLYTICS, INC.**

By: _____

Scott Grimes
Chief Executive Officer

**Exhibit 3.3**

**CERTIFICATE OF AMENDMENT**

**OF THE BYLAWS OF**

**CARDLYTICS, INC.**

The undersigned, being the Secretary of Cardlytics, Inc., a Delaware corporation, hereby certifies that the Bylaws of this corporation were amended, effective September 17, 2014, by the Board of Directors as follows:

1. Section 3.2 was amended in its entirety to read as follows:

"3.2 **Number Of Directors.**

Upon the adoption of these bylaws, the number of directors constituting the entire Board of Directors shall be ten (10). Thereafter, this number may be changed by a resolution of the Board of Directors or of the stockholders, subject to Section 3.4 of these Bylaws. No reduction of the authorized number of directors shall have the effect of removing any director before such director's term of office expires."

Dated: Effective September 17, 2014

/s/ Glen R. Van Ligten

Glen R. Van Ligten, Secretary

**CERTIFICATE OF AMENDMENT**

**OF THE BYLAWS OF**

**CARDLYTICS, INC.**

The undersigned, being the Secretary of Cardlytics, Inc., a Delaware corporation, hereby certifies that the Bylaws of this corporation were amended, effective September 3, 2011, by the stockholders of this corporation as follows:

1. Section 3.2 was amended in its entirety to read as follows:

"3.2 **Number Of Directors.**

Upon the adoption of these bylaws, the number of directors constituting the entire Board of Directors shall be nine (9). Thereafter, this number may be changed by a resolution of the Board of Directors or of the stockholders, subject to Section 3.4 of these Bylaws. No reduction of the authorized number of directors shall have the effect of removing any director before such director's term of office expires."

Dated: Effective September 7, 2011

/s/ Glen R. Van Ligten

Glen R. Van Ligten, Secretary

**CERTIFICATE OF AMENDMENT**

**OF THE BYLAWS OF**

**CARDLYTICS, INC.**

The undersigned, being the Secretary of Cardlytics, Inc., a Delaware corporation, hereby certifies that the Bylaws of this corporation were amended, effective August 4, 2010, by the stockholders of this corporation as follows:

1. Section 3.2 was amended in its entirety to read as follows:

"3.2 **Number Of Directors.**

Upon the adoption of these bylaws, the number of directors constituting the entire Board of Directors shall be seven (7). Thereafter, this number may be changed by a resolution of the Board of Directors or of the stockholders, subject to Section 3.4 of these Bylaws. No reduction of the authorized number of directors shall have the effect of removing any director before such director's term of office expires."

Dated: Effective August 4, 2010

/s/ Glen R. Van Ligten

Glen R. Van Ligten, Secretary

**CERTIFICATE OF AMENDMENT**

**OF THE BYLAWS OF**

**CARDLYTICS, INC.**

The undersigned, being the Secretary of Cardlytics, Inc., a Delaware corporation, hereby certifies that the Bylaws of this corporation were amended, effective August 17, 2008, by the Board of Directors as follows:

1. Section 3.2 was amended in its entirety to read as follows:

"3.2 **Number Of Directors.**

Upon the adoption of these bylaws, the number of directors constituting the entire Board of Directors shall be five. Thereafter, this number may be changed by a resolution of the Board of Directors or of the stockholders, subject to Section 3.4 of these Bylaws. No reduction of the authorized number of directors shall have the effect of removing any director before such director's term of office expires."

Dated: Effective August 19, 2008

/s/ Glen R. Van Ligten

Glen R. Van Ligten, Secretary

# BYLAWS

# OF

# CARDLYTICS, INC.

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**BYLAWS**

**OF**

**CARDLYTICS, INC.**

## ARTICLE I

## CORPORATE OFFICES

1.1 **Registered Office.**

The registered office of the corporation shall be in the City of Wilmington, County of New Castle, State of Delaware. The name of the registered agent of the corporation at such location is Corporation Service Company.

1.2 **Other Offices.**

The Board of Directors may at any time establish other offices at any place or places where the corporation is qualified to do business.

## ARTICLE II

## MEETINGS OF STOCKHOLDERS

2.1 **Place Of Meetings.**

Meetings of stockholders shall be held at any place, within or outside the State of Delaware, designated by the Board of Directors. In the absence of any such designation, stockholders' meetings shall be held at the registered office of the corporation.

2.2 **Annual Meeting.**

The annual meeting of stockholders shall be held on such date, time and place, either within or without the State of Delaware, as may be designated by resolution of the Board of Directors each year. At the meeting, directors shall be elected and any other proper business may be transacted.

2.3 **Special Meeting.**

A special meeting of the stockholders may be called at any time by the Board of Directors, the chairman of the board, the president or by one or more stockholders holding shares in the aggregate entitled to cast not less than ten percent of the votes at that meeting.

If a special meeting is called by any person or persons other than the Board of Directors, the president or the chairman of the board, the request shall be in writing, specifying the time of such meeting and the general nature of the business proposed to be transacted, and

shall be delivered personally or sent by registered mail or by telegraphic or other facsimile transmission to the chairman of the board, the president, any vice president, or the secretary of the corporation. No business may be transacted at such special meeting otherwise than specified in such notice. The officer receiving the request shall cause notice to be promptly given to the stockholders entitled to vote, in accordance with the provisions of Sections 2.4 and 2.5 of this Article II, that a meeting will be held at the time requested by the person or persons calling the meeting, not less than thirty-five (35) nor more than sixty (60) days after the receipt of the request. If the notice is not given within twenty (20) days after the receipt of the request, the person or persons requesting the meeting may give the notice. Nothing contained in this paragraph of this Section 2.3 shall be construed as limiting, fixing, or affecting the time when a meeting of stockholders called by action of the Board of Directors may be held.

2.4 **Notice Of Stockholders' Meetings.**

All notices of meetings with stockholders shall be in writing and shall be sent or otherwise given in accordance with Section 2.5 of these Bylaws not less than ten (10) nor more than sixty (60) days before the date of the meeting to each stockholder entitled to vote at such meeting. The notice shall specify the place (if any), date and hour of the meeting, and in the case of a special meeting, the purpose or purposes for which the meeting is called.

2.5 **Manner Of Giving Notice; Affidavit Of Notice**.

Written notice of any meeting of stockholders, if mailed, is given when deposited in the United States mail, postage prepaid, directed to the stockholder at his address as it appears on the records of the corporation. Without limiting the manner by which notice otherwise may be given effectively to stockholders, any notice to stockholders may be given by electronic mail or other electronic transmission, in the manner provided in Section 232 of the Delaware General Corporation Law. An affidavit of the secretary or an assistant secretary or of the transfer agent of the corporation that the notice has been given shall, in the absence of fraud, be prima facie evidence of the facts stated therein.

2.6 **Quorum.**

The holders of a majority of the shares of stock issued and outstanding and entitled to vote thereat, present in person or represented by proxy, shall constitute a quorum at all meetings of the stockholders for the transaction of business except as otherwise provided by statute or by the certificate of incorporation. If, however, such quorum is not present or represented at any meeting of the stockholders, then either (a) the chairman of the meeting or (b) holders of a majority of the shares of stock entitled to vote who are present, in person or by proxy, shall have power to adjourn the meeting to another place (if any), date or time.

2.7 **Adjourned Meeting; Notice.**

When a meeting is adjourned to another place (if any), date or time, unless these Bylaws otherwise require, notice need not be given of the adjourned meeting if the time and place (if any), thereof and the means of remote communications, if any, by which stockholders and proxyholders may be deemed to be present and vote at such adjourned meeting, are announced at the meeting at which the adjournment is taken. At the adjourned meeting the

corporation may transact any business that might have been transacted at the original meeting. If the adjournment is for more than 30 days, or if after the adjournment a new record date is fixed for the adjourned meeting,, notice of the place (if any), date and time of the adjourned meeting and the means of remote communications, if any, by which stockholders and proxy holders may be deemed to be present in person and vote at such adjourned meeting shall be given to each stockholder of record entitled to vote at the meeting.

2.8 **Organization; Conduct of Business.**

(a) Such person as the Board of Directors may have designated or, in the absence of such a person, the President of the Corporation or, in his or her absence, such person as may be chosen by the holders of a majority of the shares entitled to vote who are present, in person or by proxy, shall call to order any meeting of the stockholders and act as Chairman of the meeting. In the absence of the Secretary of the Corporation, the Secretary of the meeting shall be such person as the Chairman of the meeting appoints.

(b) The Chairman of any meeting of stockholders shall determine the order of business and the procedure at the meeting, including the manner of voting and the conduct of business. The date and time of opening and closing of the polls for each matter upon which the stockholders will vote at the meeting shall be announced at the meeting.

2.9 **Voting.**

The stockholders entitled to vote at any meeting of stockholders shall be determined in accordance with the provisions of Section 2.12 of these Bylaws, subject to the provisions of Sections 217 and 218 of the General Corporation Law of Delaware (relating to voting rights of fiduciaries, pledgors and joint owners of stock and to voting trusts and other voting agreements).

Except as may be otherwise provided in the certificate of incorporation, each stockholder shall be entitled to one vote for each share of capital stock held by such stockholder. All elections shall be determined by a plurality of the votes cast, and except as otherwise required by law, all other matters shall be determined by a majority of the votes cast affirmatively or negatively.

2.10 **Waiver Of Notice.**

Whenever notice is required to be given under any provision of the General Corporation Law of Delaware or of the certificate of incorporation or these Bylaws, a written waiver thereof, signed by the person entitled to notice, or waiver by electronic mail or other electronic transmission by such person, whether before or after the time stated therein, shall be deemed equivalent to notice. Attendance of a person at a meeting shall constitute a waiver of notice of such meeting, except when the person attends a meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the stockholders need be specified in any written waiver of notice, or any waiver of notice by electronic transmission, unless so required by the certificate of incorporation or these Bylaws.

2.11 **Stockholder Action By Written Consent Without A Meeting.**

Unless otherwise provided in the certificate of incorporation, any action required to be taken at any annual or special meeting of stockholders of the corporation, or any action that may be taken at any annual or special meeting of such stockholders, may be taken without a meeting, without prior notice, and without a vote if a consent in writing, setting forth the action so taken, is (i) signed by the holders of outstanding stock having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all shares entitled to vote thereon were present and voted, and (ii) delivered to the Corporation in accordance with Section 228(a) of the Delaware General Corporation Law.

Every written consent shall bear the date of signature of each stockholder who signs the consent and no written consent shall be effective to take the corporate action referred to therein unless, within 60 days of the date the earliest dated consent is delivered to the Corporation, a written consent or consents signed by a sufficient number of holders to take action are delivered to the Corporation in the manner prescribed in this Section. A telegram, cablegram, electronic mail or other electronic transmission consenting to an action to be taken and transmitted by a stockholder or proxyholder, or by a person or persons authorized to act for a stockholder or proxyholder, shall be deemed to be written, signed and dated for purposes of this Section to the extent permitted by law. Any such consent shall be delivered in accordance with Section 228(d)(1) of the Delaware General Corporation Law.

Any copy, facsimile or other reliable reproduction of a consent in writing may be substituted or used in lieu of the original writing for any and all purposes for which the original writing could be used, provided that such copy, facsimile or other reproduction shall be a complete reproduction of the entire original writing.

Prompt notice of the taking of the corporate action without a meeting by less than unanimous written consent shall be given to those stockholders who have not consented in writing (including by electronic mail or other electronic transmission as permitted by law). If the action which is consented to is such as would have required the filing of a certificate under any section of the General Corporation Law of Delaware if such action had been voted on by stockholders at a meeting thereof, then the certificate filed under such section shall state, in lieu of any statement required by such section concerning any vote of stockholders, that written notice and written consent have been given as provided in Section 228 of the General Corporation Law of Delaware.

2.12 **Record Date For Stockholder Notice; Voting; Giving Consents.**

In order that the corporation may determine the stockholders entitled to notice of or to vote at any meeting of stockholders or any adjournment thereof, or entitled to express consent to corporate action in writing without a meeting, or entitled to receive payment of any dividend or other distribution or allotment of any rights, or entitled to exercise any rights in respect of any change, conversion or exchange of stock or for the purpose of any other lawful action, the Board of Directors may fix, in advance, a record date, which shall not be more than 60 nor less than 10 days before the date of such meeting, nor more than 60 days prior to any other action.

If the Board of Directors does not so fix a record date:

(a) The record date for determining stockholders entitled to notice of or to vote at a meeting of stockholders shall be at the close of business on the day next preceding the day on which notice is given, or, if notice is waived, at the close of business on the day next preceding the day on which the meeting is held.

(b) The record date for determining stockholders entitled to consent to corporate action in writing without a meeting, when no prior action by the Board of Directors is necessary, shall be the day on which the first written consent (including consent by electronic mail or other electronic transmission as permitted by law) is delivered to the corporation.

(c) The record date for determining stockholders for any other purpose shall be at the close of business on the day on which the Board of Directors adopts the resolution relating thereto.

A determination of stockholders of record entitled to notice of or to vote at a meeting of stockholders shall apply to any adjournment of the meeting, if such adjournment is for thirty (30) days or less; provided, however, that, the Board of Directors may fix a new record date for the adjourned meeting.

2.13 **Proxies.**

Each stockholder entitled to vote at a meeting of stockholders or to express consent or dissent to corporate action in writing without a meeting may authorize another person or persons to act for such stockholder by an instrument in writing or by an electronic transmission permitted by law filed with the secretary of the corporation, but no such proxy shall be voted or acted upon after three years from its date, unless the proxy provides for a longer period. A proxy shall be deemed signed if the stockholder's name is placed on the proxy (whether by manual signature, typewriting, facsimile, electronic or telegraphic transmission or otherwise) by the stockholder or the stockholder's attorney-in-fact. The revocability of a proxy that states on its face that it is irrevocable shall be governed by the provisions of Section 212(e) of the General Corporation Law of Delaware.

## ARTICLE III

## DIRECTORS

3.1 **Powers.**

Subject to the provisions of the General Corporation Law of Delaware and any limitations in the certificate of incorporation or these Bylaws relating to action required to be approved by the stockholders or by the outstanding shares, the business and affairs of the corporation shall be managed and all corporate powers shall be exercised by or under the direction of the Board of Directors.

3.2 **Number Of Directors.**

Upon the adoption of these bylaws, the number of directors constituting the entire Board of Directors shall be two (2). Thereafter, this number may be changed by a resolution of the Board of Directors or of the stockholders, subject to Section 3.4 of these Bylaws. No reduction of the authorized number of directors shall have the effect of removing any director before such director's term of office expires.

3.3 **Election, Qualification And Term Of Office Of Directors.**

Except as provided in Section 3.4 of these Bylaws, and unless otherwise provided in the certificate of incorporation, directors shall be elected at each annual meeting of stockholders to hold office until the next annual meeting. Directors need not be stockholders unless so required by the certificate of incorporation or these Bylaws, wherein other qualifications for directors may be prescribed. Each director, including a director elected to fill a vacancy, shall hold office until his or her successor is elected and qualified or until his or her earlier resignation or removal.

Unless otherwise specified in the certificate of incorporation, elections of directors need not be by written ballot.

3.4 **Resignation And Vacancies.**

Any director may resign at any time upon written notice to the attention of the Secretary of the corporation. When one or more directors so resigns and the resignation is effective at a future date, a majority of the directors then in office, including those who have so resigned, shall have power to fill such vacancy or vacancies, the vote thereon to take effect when such resignation or resignations shall become effective, and each director so chosen shall hold office as provided in this section in the filling of other vacancies.

Unless otherwise provided in the certificate of incorporation or these Bylaws:

(a) Vacancies and newly created directorships resulting from any increase in the authorized number of directors elected by all of the stockholders having the right to vote as a single class may be filled by a majority of the directors then in office, although less than a quorum, or by a sole remaining director.

(b) Whenever the holders of any class or classes of stock or series thereof are entitled to elect one or more directors by the provisions of the certificate of incorporation, vacancies and newly created directorships of such class or classes or series may be filled by a majority of the directors elected by such class or classes or series thereof then in office, or by a sole remaining director so elected.

If at any time, by reason of death or resignation or other cause, the corporation should have no directors in office, then any officer or any stockholder or an executor, administrator, trustee or guardian of a stockholder, or other fiduciary entrusted with like responsibility for the person or estate of a stockholder, may call a special meeting of stockholders in accordance with the provisions of the certificate of incorporation or these Bylaws, or may apply to the Court of Chancery for a decree summarily ordering an election as provided in Section 211 of the General Corporation Law of Delaware.

If, at the time of filling any vacancy or any newly created directorship, the directors then in office constitute less than a majority of the whole board (as constituted immediately prior to any such increase), then the Court of Chancery may, upon application of any stockholder or stockholders holding at least 10% of the total number of the shares at the time outstanding having the tight to vote for such directors, summarily order an election to be held to fill any such vacancies or newly created directorships, or to replace the directors chosen by the directors then in office as aforesaid, which election shall be governed by the provisions of Section 211 of the General Corporation Law of Delaware as far as applicable.

3.5 **Place Of Meetings; Meetings By Telephone.**

The Board of Directors of the corporation may hold meetings, both regular and special, either within or outside the State of Delaware.

Unless otherwise restricted by the certificate of incorporation or these Bylaws, members of the Board of Directors, or any committee designated by the Board of Directors, may participate in a meeting of the Board of Directors, or any committee, by means of conference telephone or other communications equipment by means of which all persons participating in the meeting can hear each other, and such participation in a meeting shall constitute presence in person at the meeting.

3.6 **Regular Meetings.**

Regular meetings of the Board of Directors may be held without notice at such time and at such place as shall from time to time be determined by the board.

3.7 **Special Meetings; Notice.**

Special meetings of the Board of Directors for any purpose or purposes may be called at any time by the chairman of the board, the president, any vice president, the secretary or any two directors.

Notice of the time and place of special meetings shall be delivered personally or by telephone to each director or sent by first-class mail, facsimile, electronic transmission, or telegram, charges prepaid, addressed to each director at that director’s address as it is shown on the records of the corporation. If the notice is mailed, it shall be deposited in the United States mail at least four days before the time of the holding of the meeting. If the notice is delivered personally or by facsimile, electronic transmission, telephone or telegram, it shall be delivered at least 48 hours before the time of the holding of the meeting. Any oral notice given personally or by telephone may be communicated either to the director or to a person at the office of the director who the person giving the notice has reason to believe will promptly communicate it to the director. The notice need not specify the purpose of the meeting. The notice need not specify the place of the meeting, if the meeting is to be held at the principal executive office of the corporation. Unless otherwise indicated in the notice thereof, any and all business may be transacted at a special meeting.

3.8 **Quorum.**

At all meetings of the Board of Directors, a majority of the total number of directors shall constitute a quorum for the transaction of business and the act of a majority of the directors present at any meeting at which there is a quorum shall be the act of the Board of Directors, except as may be otherwise specifically provided by statute or by the certificate of incorporation. If a quorum is not present at any meeting of the Board of Directors, then the directors present thereat may adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum is present.

A meeting at which a quorum is initially present may continue to transact business notwithstanding the withdrawal of directors, if any action taken is approved by at least a majority of the required quorum for that meeting.

3.9 **Waiver Of Notice.**

Whenever notice is required to be given under any provision of the General Corporation Law of Delaware or of the certificate of incorporation or these Bylaws, a written waiver thereof, signed by the person entitled to notice, or waiver by electronic mail or other electronic transmission by such person, whether before or after the time stated therein, shall be deemed equivalent to notice. Attendance of a person at a meeting shall constitute a waiver of notice of such meeting, except when the person attends a meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the directors, or members of a committee of directors, need be specified in any written waiver of notice unless so required by the certificate of incorporation or these Bylaws.

3.10 **Board Action By Written Consent Without A Meeting.**

Unless otherwise restricted by the certificate of incorporation or these Bylaws, any action required or permitted to be taken at any meeting of the Board of Directors, or of any committee thereof, may be taken without a meeting if all members of the board or committee, as the case may be, consent thereto in writing or by electronic transmission, and the writing or writings or electronic transmission or transmissions are filed with the minutes of proceedings of the board or committee. Such filing shall be in paper form if the minutes are maintained in paper form and shall be in electronic form if the minutes are maintained in electronic form.

Any copy, facsimile or other reliable reproduction of a consent in writing may be substituted or used in lieu of the original writing for any and all purposes for which the original writing could be used, provided that such copy, facsimile or other reproduction shall be a complete reproduction of the entire original writing.

3.11 **Fees And Compensation Of Directors.**

Unless otherwise restricted by the certificate of incorporation or these Bylaws, the Board of Directors shall have the authority to fix the compensation of directors. No such compensation shall preclude any director from serving the corporation in any other capacity and receiving compensation therefor.

3.12 **Approval Of Loans To Officers.**

The corporation may lend money to, or guarantee any obligation of, or otherwise assist any officer or other employee of the corporation or of its subsidiary, including any officer or employee who is a director of the corporation or its subsidiary, whenever, in the judgment of the directors, such loan, guaranty or assistance may reasonably be expected to benefit the corporation. The loan, guaranty or other assistance may be with or without interest and may be unsecured, or secured in such manner as the Board of Directors shall approve, including, without limitation, a pledge of shares of stock of the corporation. Nothing in this section shall be deemed to deny, limit or restrict, the powers of guaranty or warranty of the corporation at common law or under any statute.

3.13 **Removal Of Directors.**

Unless otherwise restricted by statute, by the certificate of incorporation or by these Bylaws, any director or the entire Board of Directors may be removed, with or without cause, by the holders of a majority of the shares then entitled to vote at an election of directors; provided, however, that if the stockholders of the corporation are entitled to cumulative voting, if less than the entire Board of Directors is to be removed, no director may be removed without cause if the votes cast against his removal would be sufficient to elect him if then cumulatively voted at an election of the entire Board of Directors.

No reduction of the authorized number of directors shall have the effect of removing any director prior to the expiration of such director's term of office.

3.14 **Chairman Of The Board Of Directors.**

The corporation may also have, at the discretion of the Board of Directors, a chairman of the Board of Directors who shall not be considered an officer of the corporation.

## ARTICLE IV

## COMMITTEES

4.1 **Committees Of Directors.**

The Board of Directors may designate one or more committees, each committee to consist of one or more of the directors of the corporation. The Board may designate 1 or more directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of the committee. In the absence or disqualification of a member of a committee, the member or members present at any meeting and not disqualified from voting, whether or not such member or members constitute a quorum, may unanimously appoint another member of the Board of Directors to act at the meeting in the place of any such absent or disqualified member. Any such committee, to the extent provided in the resolution of the Board of Directors, or in these Bylaws, shall have and may exercise all the powers and authority of the

Board of Directors in the management of the business and affairs of the corporation, and may authorize the seal of the corporation to be affixed to all papers which may require it; but no such committee shall have the power or authority in reference to the following matters: (i) approving or adopting, or recommending to the stockholders, any action or matter expressly required by the General Corporate Law of Delaware to be submitted to stockholders for approval or (ii) adopting, amending or repealing any Bylaw of the corporation.

4.2 **Committee Minutes.**

Each committee shall keep regular minutes of its meetings and report the same to the Board of Directors when required.

4.3 **Meetings And Action Of Committees.**

Meetings and actions of committees shall be governed by, and held and taken in accordance with, the provisions of Section 3.5 (place of meetings and meetings by telephone), Section 3.6 (regular meetings), Section 3.7 (special meetings and notice), Section 3.8 (quorum), Section 3.9 (waiver of notice), and Section 3.10 (action without a meeting) of these Bylaws, with such changes in the context of such provisions as are necessary to substitute the committee and its members for the Board of Directors and its members; provided, however, that the time of regular meetings of committees may be determined either by resolution of the Board of Directors or by resolution of the committee, that special meetings of committees may also be called by resolution of the Board of Directors and that notice of special meetings of committees shall also be given to all alternate members, who shall have the right to attend all meetings of the committee. The Board of Directors may adopt rules for the government of any committee not inconsistent with the provisions of these Bylaws.

## ARTICLE V

## OFFICERS

5.1 **Officers.**

The officers of the corporation shall be a president, a secretary, and a chief financial officer. The corporation may also have, at the discretion of the Board of Directors, a chief executive officer, one or more vice presidents, one or more assistant secretaries, one or more assistant treasurers, and any such other officers as may be appointed in accordance with the provisions of Section 5.3 of these Bylaws. Any number of offices may be held by the same person.

5.2 **Appointment Of Officers.**

The officers of the corporation, except such officers as may be appointed in accordance with the provisions of Sections 5.3 or 5.5 of these Bylaws, shall be appointed by the Board of Directors, subject to the rights, if any, of an officer under any contract of employment.

5.3 **Subordinate Officers.**

The Board of Directors may appoint, or empower the chief executive officer or the president to appoint, such other officers and agents as the business of the corporation may require, each of whom shall hold office for such period, have such authority, and perform such duties as are provided in these Bylaws or as the Board of Directors may from time to time determine.

5.4 **Removal And Resignation Of Officers.**

Subject to the rights, if any, of an officer under any contract of employment, any officer may be removed, either with, or without cause, by an affirmative vote of the majority of the Board of Directors at any regular or special meeting of the board or, except in the case of an officer chosen by the Board of Directors, by any officer upon whom the power of removal is conferred by the Board of Directors.

Any officer may resign at any time by giving written notice to the corporation. Any resignation shall take effect at the date of the receipt of that notice or at any later time specified in that notice; and, unless otherwise specified in that notice, the acceptance of the resignation shall not be necessary to make it effective. Any resignation is without prejudice to the rights, if any, of the corporation under any contract to which the officer is a party.

5.5 **Vacancies In Offices.**

Any vacancy occurring in any office of the corporation shall be filled by the Board of Directors.

5.6 **Chief Executive Officer.**

Subject to such supervisory powers, if any, as may be given by the Board of Directors to the chairman of the board, if any, the chief executive officer of the corporation (if such an officer is appointed) shall, subject to the control of the Board of Directors, have general supervision, direction, and control of the business and the officers of the corporation. He or she shall preside at all meetings of the stockholders and, in the absence or nonexistence of a chairman of the board, at all meetings of the Board of Directors and shall have the general powers and duties of management usually vested in the office of chief executive officer of a corporation and shall have such other powers and duties as may be prescribed by the Board of Directors or these Bylaws.

5.7 **President.**

Subject to such supervisory powers, if any, as may be given by the Board of Directors to the chairman of the board (if any) or the chief executive officer, the president shall have general supervision, direction, and control of the business and other officers of the corporation. He or she shall have the general powers and duties of management usually vested in the office of president of a corporation and such other powers and duties as may be prescribed by the Board of Directors or these Bylaws.

5.8 **Vice Presidents.**

In the absence or disability of the chief executive officer and president, the vice presidents, if any, in order of their rank as fixed by the Board of Directors or, if not ranked, a vice president designated by the Board of Directors, shall perform all the duties of the president and when so acting shall have all the powers of, and be subject to all the restrictions upon, the president. The vice presidents shall have such other powers and perform such other duties as from time to time may be prescribed for them respectively by the Board of Directors, these Bylaws, the president or the chairman of the board.

5.9 **Secretary.**

The secretary shall keep or cause to be kept, at the principal executive office of the corporation or such other place as the Board of Directors may direct, a book of minutes of all meetings and actions of directors, committees of directors, and stockholders. The minutes shall show the time and place of each meeting, the names of those present at directors' meetings or committee meetings, the number of shares present or represented at stockholders' meetings, and the proceedings thereof.

The secretary shall keep, or cause to be kept, at the principal executive office of the corporation or at the office of the corporation's transfer agent or registrar, as determined by resolution of the Board of Directors, a share register, or a duplicate share register, showing the names of all stockholders and their addresses, the number and classes of shares held by each, the number and date of certificates evidencing such shares, and the number and date of cancellation of every certificate surrendered for cancellation.

The secretary shall give, or cause to be given, notice of all meetings of the stockholders and of the Board of Directors required to be given by law or by these Bylaws. He or she shall keep the seal of the corporation, if one be adopted, in safe custody and shall have such other powers and perform such other duties as may be prescribed by the Board of Directors or by these Bylaws.

5.10 **Chief Financial Officer.**

The chief financial officer shall be the treasurer and shall keep and maintain, or cause to be kept and maintained, adequate and correct books and records of accounts of the properties and business transactions of the corporation, including accounts of its assets, liabilities, receipts, disbursements, gains, losses, capital retained earnings, and shares. The books of account shall at all reasonable times be open to inspection by any director.

The chief financial officer shall deposit all moneys and other valuables in the name and to the credit of the corporation with such depositories as may be designated by the Board of Directors. He or she shall disburse the funds of the corporation as may be ordered by the Board of Directors, shall render to the president, the chief executive officer, or the directors, upon request, an account of all his or her transactions as chief financial officer and of the financial condition of the corporation, and shall have other powers and perform such other duties as may be prescribed by the Board of Directors or the bylaws.

5.11 **Representation Of Shares Of Other Corporations.**

The chairman of the board, the chief executive officer, the president, any vice president, the chief financial officer, the secretary or assistant secretary of this corporation, or any other person authorized by the Board of Directors or the chief executive officer or the president or a vice president, is authorized to vote, represent, and exercise on behalf of this corporation all rights incident to any and all shares of any other corporation or corporations standing in the name of this corporation. The authority granted herein may be exercised either by such person directly or by any other person authorized to do so by proxy or power of attorney duly executed by the person having such authority.

5.12 **Authority And Duties Of Officers.**

In addition to the foregoing authority and duties, all officers of the corporation shall respectively have such authority and perform such duties in the management of the business of the corporation as may be designated from time to time by the Board of Directors or the stockholders.

## ARTICLE VI

## INDEMNIFICATION OF DIRECTORS, OFFICERS, EMPLOYEES, AND OTHER AGENTS

6.1 **Indemnification Of Directors And Officers.**

The corporation shall, to the maximum extent and in the manner permitted by the General Corporation Law of Delaware, indemnify each of its directors and officers against expenses (including attorneys' fees), judgments, fines, settlements and other amounts actually and reasonably incurred, in connection with any proceeding, arising by reason of the fact that such person is or was an agent of the corporation. For purposes of this Section 6.1, a "director" or "officer" of the corporation includes any person (a) who is or was a director or officer of the corporation, (b) who is or was serving at the request of the corporation as a director or officer of another corporation, partnership, joint venture, trust or other enterprise, or (c) who was a director or officer of a corporation which was a predecessor corporation of the corporation or of another enterprise at the request of such predecessor corporation.

6.2 **Indemnification Of Others.**

The corporation shall have the power, to the maximum extent and in the manner permitted by the General Corporation Law of Delaware, to indemnify each of its employees and agents (other than directors and officers) against expenses (including attorneys' fees), judgments, fines, settlements and other amounts actually and reasonably incurred in connection with any proceeding, arising by reason of the fact that such person is or was an agent of the corporation. For purposes of this Section 6.2, an "employee" or "agent" of the corporation (other than a director or officer) includes any person (a) who is or was an employee or agent of the corporation, (b) who is or was serving at the request of the corporation as an employee or agent of another corporation, partnership, joint venture, trust or other enterprise, or (c) who was an employee or agent of a corporation which was a predecessor corporation of the corporation or of another enterprise at the request of such predecessor corporation.

6.3 **Payment Of Expenses In Advance.**

Expenses incurred in defending any action or proceeding for which indemnification is required pursuant to Section 6.1 or for which indemnification is permitted pursuant to Section 6.2 following authorization thereof by the Board of Directors shall he paid by the corporation in advance of the final disposition of such action or proceeding upon receipt of an undertaking by or on behalf of the indemnified party to repay such amount if it shall ultimately be determined by final judicial decision from which there is no further right to appeal that the indemnified party is not entitled to be indemnified as authorized in this Article VI.

6.4 **Indemnity Not Exclusive.**

The indemnification provided by this Article VI shall not be deemed exclusive of any other rights to which those seeking indemnification may be entitled under any bylaw, agreement, vote of stockholders or disinterested directors or otherwise, both as to action in an official capacity and as to action in another capacity while holding such office, to the extent that such additional rights to indemnification are authorized in the certificate of incorporation.

6.5 **Insurance.**

The corporation may purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against any liability asserted against him or her and incurred by him or her in any such capacity, or arising out of his or her status as such, whether or not the corporation would have the power to indemnify him or her against such liability under the provisions of the General Corporation Law of Delaware.

6.6 **Conflicts.**

No indemnification or advance shall be made under this Article VI, except where such indemnification or advance is mandated by law or the order, judgment or decree of any court of competent jurisdiction, in any circumstance where it appears:

(a) That it would be inconsistent with a provision of the certificate of incorporation, these Bylaws, a resolution of the stockholders or an agreement in effect at the time of the accrual of the alleged cause of the action asserted in the proceeding in which the expenses were incurred or other amounts were paid, which prohibits or otherwise limits indemnification; or

(b) That it would be inconsistent with any condition expressly imposed by a court in approving a settlement.

## ARTICLE VII

## RECORDS AND REPORTS

7.1 **Maintenance And Inspection Of Records.**

The corporation shall, either at its principal executive offices or at such place or places as designated by the Board of Directors, keep a record of its stockholders listing their names and addresses and the number and class of shares held by each stockholder, a copy of these Bylaws as amended to date, accounting books, and other records.

Any stockholder of record, in person or by attorney or other agent, shall, upon written demand under oath stating the purpose thereof, have the right during the usual hours for business to inspect for any proper purpose the corporation's stock ledger, a list of its stockholders, and its other books and records and to make copies or extracts therefrom. A proper purpose shall mean a purpose reasonably related to such person's interest as a stockholder. In every instance where an attorney or other agent is the person who seeks the right to inspection, the demand under oath shall be accompanied by a power of attorney or such other writing that authorizes the attorney or other agent to so act on behalf of the stockholder. The demand under oath shall be directed to the corporation at its registered office in Delaware or at its principal place of business.

A complete list of stockholders entitled to vote at any meeting of stockholders, arranged in alphabetical order for each class of stock and showing the address of each such stockholder and the number of shares registered in each such stockholder's name, shall be open to the examination of any such stockholder for a period of at least ten (10) days prior to the meeting in the manner provided by law. The stock list shall also be open to the examination of any stockholder during the whole time of the meeting as provided by law. This list shall presumptively determine the identity of the stockholders entitled to vote at the meeting and the number of shares held by each of them.

7.2 **Inspection By Directors.**

Any director shall have the right to examine the corporation's stock ledger, a list of its stockholders, and its other books and records for a purpose reasonably related to his or her position as a director. The Court of Chancery is hereby vested with the exclusive jurisdiction to determine whether a director is entitled to the inspection sought. The Court may summarily order the corporation to permit the director to inspect any and all books and records, the stock ledger, and the stock list and to make copies or extracts therefrom. The Court may, in its discretion, prescribe any limitations or conditions with reference to the inspection, or award such other and further relief as the Court may deem just and proper.

## ARTICLE VIII

## GENERAL MATTERS

8.1 **Checks.**

From time to time, the Board of Directors shall determine by resolution which person or persons may sign or endorse all checks, drafts, other orders for payment of money, notes or other evidences of indebtedness that are issued in the name of or payable to the corporation, and only the persons so authorized shall sign or endorse those instruments.

8.2 **Execution Of Corporate Contracts And Instruments.**

The Board of Directors, except as otherwise provided in these Bylaws, may authorize any officer or officers, or agent or agents, to enter into any contract or execute any instrument in the name of and on behalf of the corporation; such authority may be general or confined to specific instances. Unless so authorized or ratified by the Board of Directors or within the agency power of an officer, no officer, agent or employee shall have any power or authority to bind the corporation by any contract or engagement or to pledge its credit or to render it liable for any purpose or for any amount.

8.3 **Stock Certificates; Partly Paid Shares.**

The shares of a corporation shall be represented by certificates, provided that the Board of Directors of the corporation may provide by resolution or resolutions that some or all of any or all classes or series of its stock shall be uncertificated shares. Any such resolution shall not apply to shares represented by a certificate until such certificate is surrendered to the corporation. Any or all of the signatures on the certificate may be a facsimile. In case any officer, transfer agent or registrar who has signed or whose facsimile signature has been placed upon a certificate has ceased to be such officer, transfer agent or registrar before such certificate is issued, it may be issued by the corporation with the same effect as if he or she were such officer, transfer agent or registrar at the date of issue.

The corporation may issue the whole or any part of its shares as partly paid and subject to call for the remainder of the consideration to be paid therefor. Upon the face or back of each stock certificate issued to represent any such partly paid shares, upon the books and records of the corporation in the case of uncertificated partly paid shares, the total amount of the consideration to be paid therefor and the amount paid thereon shall be stated. Upon the declaration of any dividend on fully paid shares, the corporation shall declare a dividend upon partly paid shares of the same class, but only upon the basis of the percentage of the consideration actually paid thereon.

8.4 **Special Designation On Certificates.**

If the corporation is authorized to issue more than one class of stock or more than one series of any class, then the powers, the designations, the preferences, and the relative, participating, optional or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such preferences and/or rights shall be set forth in full

or summarized on the face or back of the certificate that the corporation shall issue to represent such class or series of stock; provided, however, that, except as otherwise provided in Section 202 of the General Corporation Law of Delaware, in lieu of the foregoing requirements there may be set forth on the face or back of the certificate that the corporation shall issue to represent such class or series of stock a statement that the corporation will furnish without charge to each stockholder who so requests the powers, the designations, the preferences, and the relative, participating, optional or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such preferences and/or rights.

8.5 **Lost Certificates.**

Except as provided in this Section 8.5, no new certificates for shares shall be issued to replace a previously issued certificate unless the latter is surrendered to the corporation and cancelled at the same time. The corporation may issue a new certificate of stock or uncertificated shares in the place of any certificate previously issued by it, alleged to have been lost, stolen or destroyed, and the corporation may require the owner of the lost, stolen or destroyed certificate, or the owner's legal representative, to give the corporation a bond sufficient to indemnify it against any claim that may be made against it on account of the alleged loss, theft or destruction of any such certificate or the issuance of such new certificate or uncertificated shares.

8.6 **Construction; Definitions.**

Unless the context requires otherwise, the general provisions, rules of construction, and definitions in the Delaware General Corporation Law shall govern the construction of these Bylaws. Without limiting the generality of this provision, the singular number includes the plural, the plural number includes the singular, and the term "person" includes both a corporation and a natural person.

8.7 **Dividends.**

The directors of the corporation, subject to any restrictions contained in (a) the General Corporation Law of Delaware or (b) the certificate of incorporation, may declare and pay dividends upon the shares of its capital stock. Dividends may be paid in cash, in property, or in shares of the corporation's capital stock.

The directors of the corporation may set apart out of any of the funds of the corporation available for dividends a reserve or reserves for any proper purpose and may abolish any such reserve. Such purposes shall include but not be limited to equalizing dividends, repairing or maintaining any property of the corporation, and meeting contingencies.

8.8 **Fiscal Year.**

The fiscal year of the corporation shall be fixed by resolution of the Board of Directors and may be changed by the Board of Directors.

8.9 **Seal.**

The corporation may adopt a corporate seal, which may be altered at pleasure, and may use the same by causing it or a facsimile thereof, to be impressed or affixed or in any other manner reproduced.

8.10 **Transfer Of Stock.**

Upon surrender to the corporation or the transfer agent of the corporation of a certificate for shares duly endorsed or accompanied by proper evidence of succession, assignation or authority to transfer, it shall be the duty of the corporation to issue a new certificate to the person entitled thereto, cancel the old certificate, and record the transaction in its books.

8.11 **Stock Transfer Agreements.**

The corporation shall have power to enter into and perform any agreement with any number of stockholders of any one or more classes of stock of the corporation to restrict the transfer of shares of stock of the corporation of any one or more classes owned by such stockholders in any manner not prohibited by the General Corporation Law of Delaware.

8.12 **Registered Stockholders.**

The corporation shall be entitled to recognize the exclusive right of a person registered on its books as the owner of shares to receive dividends and to vote as such owner, shall be entitled to hold liable for calls and assessments the person registered on its books as the owner of shares, and shall not be bound to recognize any equitable or other claim to or interest in such share or shares on the part of another person, whether or not it shall have express or other notice thereof, except as otherwise provided by the laws of Delaware.

8.13 **Facsimile Signature.**

In addition to the provisions for use of facsimile signatures elsewhere specifically authorized in these Bylaws, facsimile signatures of any officer or officers of the Corporation may be used whenever and as authorized by the Board of Directors or a committee thereof.

## ARTICLE IX

## AMENDMENTS

The Bylaws of the corporation may be adopted, amended or repealed by the stockholders entitled to vote; provided, however, that the corporation may, in its certificate of incorporation, confer the power to adopt, amend or repeal Bylaws upon the directors. The fact that such power has been so conferred upon the directors shall not divest the stockholders of the power, nor limit their power to adopt, amend or repeal Bylaws.

**CERTIFICATE OF ADOPTION OF BYLAWS**

**OF**

**CARDLYTICS, INC.**

**ADOPTION BY INCORPORATOR**

The undersigned person appointed in the certificate of incorporation to act as the Incorporator of Cardlytics, Inc., a Delaware corporation, hereby adopts the foregoing bylaws as the Bylaws of the corporation.

Executed as of June 26, 2008.

/s/ James S. Wild
James S. Wild, Incorporator

**CERTIFICATE BY SECRETARY OF ADOPTION BY INCORPORATOR**

The undersigned hereby certifies that the undersigned is the duly elected, qualified, and acting Secretary of Cardlytics, Inc., a Delaware corporation, and that the foregoing Bylaws were adopted as the Bylaws of the corporation as of June 26, 2008, by the person appointed in the certificate of incorporation to act as the Incorporator of the corporation.

Executed as of June 26, 2008.

/s/ Glen R. Van Ligten
Glen R. Van Ligten, Secretary

# AMENDED AND RESTATED BYLAWS

# OF

# CARDLYTICS, INC.
# (A DELAWARE CORPORATION)

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(continued)

**Exhibit 3.4**

# AMENDED AND RESTATED BYLAWS

# OF

# CARDLYTICS, INC.
# (A DELAWARE CORPORATION)

## ARTICLE I

## OFFICES

**Section 1. Registered Office.** The registered office of the corporation in the State of Delaware shall be in the City of Wilmington, County of New Castle.

**Section 2. Other Offices.** The corporation shall also have and maintain an office or principal place of business at such place as may be fixed by the Board of Directors, and may also have offices at such other places, both within and without the State of Delaware as the Board of Directors may from time to time determine or the business of the corporation may require.

## ARTICLE II

## CORPORATE SEAL

**Section 3. Corporate Seal.** The Board of Directors may adopt a corporate seal. If adopted, the corporate seal shall consist of a die bearing the name of the corporation and the inscription, "Corporate Seal-Delaware." Said seal may be used by causing it or a facsimile thereof to be impressed or affixed or reproduced or otherwise.

## ARTICLE III

## STOCKHOLDERS' MEETINGS

**Section 4. Place Of Meetings.** Meetings of the stockholders of the corporation may be held at such place, either within or without the State of Delaware, as may be determined from time to time by the Board of Directors. The Board of Directors may, in its sole discretion, determine that the meeting shall not be held at any place, but may instead be held solely by means of remote communication as provided under the Delaware General Corporation Law ("***DGCL***").

**Section 5. Annual Meetings.**

**(a)** The annual meeting of the stockholders of the corporation, for the purpose of election of directors and for such other business as may properly come before it, shall be held on such date and at such time as may be designated from time to time by the Board of Directors. Nominations of persons for election to the Board of Directors of the corporation and the proposal of business to be considered by the stockholders may be made at an annual meeting of stockholders: (i) pursuant to the corporation's notice of meeting of stockholders (with respect to

business other than nominations); (ii) brought specifically by or at the direction of the Board of Directors; or (iii) by any stockholder of the corporation who was a stockholder of record at the time of giving the stockholder's notice provided for in Section 5(b) below, who is entitled to vote at the meeting and who complied with the notice procedures set forth in Section 5. For the avoidance of doubt, clause (iii) above shall be the exclusive means for a stockholder to make nominations and submit other business (other than matters properly included in the corporation's notice of meeting of stockholders and proxy statement under Rule 14a-8 under the Securities Exchange Act of 1934, as amended, and the rules and regulations thereunder (the "***1934 Act***")) before an annual meeting of stockholders.

**(b)** At an annual meeting of the stockholders, only such business shall be conducted as is a proper matter for stockholder action under Delaware law and as shall have been properly brought before the meeting.

**(i)** For nominations for the election to the Board of Directors to be properly brought before an annual meeting by a stockholder pursuant to clause (iii) of Section 5(a) of these Bylaws, the stockholder must deliver written notice to the Secretary at the principal executive offices of the corporation on a timely basis as set forth in Section 5(b)(iii) and must update and supplement such written notice on a timely basis as set forth in Section 5(c). Such stockholder's notice shall set forth: (A) as to each nominee such stockholder proposes to nominate at the meeting: (1) the name, age, business address and residence address of such nominee, (2) the principal occupation or employment of such nominee, (3) the class and number of shares of each class of capital stock of the corporation which are owned of record and beneficially by such nominee, (4) the date or dates on which such shares were acquired and the investment intent of such acquisition, (5) a statement whether such nominee, if elected, intends to tender, promptly following such person's failure to receive the required vote for election or re-election at the next meeting at which such person would face election or re-election, an irrevocable resignation effective upon acceptance of such resignation by the Board of Directors, and (6) such other information concerning such nominee as would be required to be disclosed in a proxy statement soliciting proxies for the election of such nominee as a director in an election contest (even if an election contest is not involved), or that is otherwise required to be disclosed pursuant to Section 14 of the 1934 Act and the rules and regulations promulgated thereunder (including such person's written consent to being named as a nominee and to serving as a director if elected); and (B) the information required by Section 5(b)(iv). The corporation may require any proposed nominee to furnish such other information as it may reasonably require to determine the eligibility of such proposed nominee to serve as an independent director of the corporation or that could be material to a reasonable stockholder's understanding of the independence, or lack thereof, of such proposed nominee.

**(ii)** Other than proposals sought to be included in the corporation's proxy materials pursuant to Rule 14(a)-8 under the 1934 Act, for business other than nominations for the election to the Board of Directors to be properly brought before an annual meeting by a stockholder pursuant to clause (iii) of Section 5(a) of these Bylaws, the stockholder must deliver written notice to the Secretary at the principal executive offices of the corporation on a timely basis as set forth in Section 5(b)(iii), and must update and supplement such written notice on a timely basis as set forth in Section 5(c). Such stockholder's notice shall set forth: (A) as to each matter such stockholder proposes to bring before the meeting, a brief description of

the business desired to be brought before the meeting, the reasons for conducting such business at the meeting, and any material interest (including any anticipated benefit of such business to any Proponent (as defined below) other than solely as a result of its ownership of the corporation's capital stock, that is material to any Proponent individually, or to the Proponents in the aggregate) in such business of any Proponent; and (B) the information required by Section 5(b)(iv).

**(iii)** To be timely, the written notice required by Section 5(b)(i) or 5(b)(ii) must be received by the Secretary at the principal executive offices of the corporation not later than the close of business on the ninetieth (90th) day nor earlier than the close of business on the one hundred twentieth (120th) day prior to the first anniversary of the preceding year's annual meeting; *provided*, *however*, that, subject to the last sentence of this Section 5(b)(iii), in the event that the date of the annual meeting is advanced more than thirty (30) days prior to or delayed by more than thirty (30) days after the anniversary of the preceding year's annual meeting, notice by the stockholder to be timely must be so received not earlier than the close of business on the one hundred twentieth (120th) day prior to such annual meeting and not later than the close of business on the later of the ninetieth (90th) day prior to such annual meeting or the tenth (10th) day following the day on which public announcement of the date of such meeting is first made. In no event shall an adjournment or a postponement of an annual meeting for which notice has been given, or the public announcement thereof has been made, commence a new time period for the giving of a stockholder's notice as described above.

**(iv)** The written notice required by Section 5(b)(i) or 5(b)(ii) shall also set forth, as of the date of the notice and as to the stockholder giving the notice and the beneficial owner, if any, on whose behalf the nomination or proposal is made (each, a "***Proponent***" and collectively, the "***Proponents***"): (A) the name and address of each Proponent, as they appear on the corporation's books; (B) the class, series and number of shares of the corporation that are owned beneficially and of record by each Proponent; (C) a description of any agreement, arrangement or understanding (whether oral or in writing) with respect to such nomination or proposal between or among any Proponent and any of its affiliates or associates, and any others (including their names) acting in concert, or otherwise under the agreement, arrangement or understanding, with any of the foregoing; (D) a representation that the Proponents are holders of record or beneficial owners, as the case may be, of shares of the corporation entitled to vote at the meeting and intend to appear in person or by proxy at the meeting to nominate the person or persons specified in the notice (with respect to a notice under Section 5(b)(i)) or to propose the business that is specified in the notice (with respect to a notice under Section 5(b)(ii)); (E) a representation as to whether the Proponents intend to deliver a proxy statement and form of proxy to holders of a sufficient number of holders of the corporation's voting shares to elect such nominee or nominees (with respect to a notice under Section 5(b)(i)) or to carry such proposal (with respect to a notice under Section 5(b)(ii)); (F) to the extent known by any Proponent, the name and address of any other stockholder supporting the proposal on the date of such stockholder's notice; and (G) a description of all Derivative Transactions (as defined below) by each Proponent during the previous twelve (12) month period, including the date of the transactions and the class, series and number of securities involved in, and the material economic terms of, such Derivative Transactions.

**(c)** A stockholder providing written notice required by Section 5(b)(i) or (ii) shall update and supplement such notice in writing, if necessary, so that the information provided or required to be provided in such notice is true and correct in all material respects as of (i) the record date for the meeting and (ii) the date that is five (5) business days prior to the meeting and, in the event of any adjournment or postponement thereof, five (5) business days prior to such adjourned or postponed meeting. In the case of an update and supplement pursuant to clause (i) of this Section 5(c), such update and supplement shall be received by the Secretary at the principal executive offices of the corporation not later than five (5) business days after the record date for the meeting. In the case of an update and supplement pursuant to clause (ii) of this Section 5(c), such update and supplement shall be received by the Secretary at the principal executive offices of the corporation not later than two (2) business days prior to the date for the meeting, and, in the event of any adjournment or postponement thereof, two (2) business days prior to such adjourned or postponed meeting.

**(d)** Notwithstanding anything in Section 5(b)(iii) to the contrary, in the event that the number of directors in an Expiring Class is increased and there is no public announcement of the appointment of a director to such class, or, if no appointment was made, of the vacancy in such class, made by the corporation at least ten (10) days before the last day a stockholder may deliver a notice of nomination in accordance with Section 5(b)(iii), a stockholder's notice required by this Section 5 and which complies with the requirements in Section 5(b)(i), other than the timing requirements in Section 5(b)(iii), shall also be considered timely, but only with respect to nominees for any new positions in such Expiring Class created by such increase, if it shall be received by the Secretary at the principal executive offices of the corporation not later than the close of business on the tenth (10th) day following the day on which such public announcement is first made by the corporation. For purposes of this section, an "***Expiring Class***" shall mean a class of directors whose term shall expire at the next annual meeting of stockholders.

**(e)** A person shall not be eligible for election or re-election as a director unless the person is nominated either in accordance with clause (ii) of Section 5(a), or in accordance with clause (iii) of Section 5(a). Except as otherwise required by law, the chairperson of the meeting shall have the power and duty to determine whether a nomination or any business proposed to be brought before the meeting was made, or proposed, as the case may be, in accordance with the procedures set forth in these Bylaws and, if any proposed nomination or business is not in compliance with these Bylaws, or the Proponent does not act in accordance with the representations in Sections 5(b)(iv)(D) and 5(b)(iv)(E), to declare that such proposal or nomination shall not be presented for stockholder action at the meeting and shall be disregarded, notwithstanding that proxies in respect of such nominations or such business may have been solicited or received.

**(f)** Notwithstanding the foregoing provisions of this Section 5, in order to include information with respect to a stockholder proposal in the proxy statement and form of proxy for a stockholders' meeting, a stockholder must also comply with all applicable requirements of the 1934 Act and the rules and regulations thereunder. Nothing in these Bylaws shall be deemed to affect any rights of stockholders to request inclusion of proposals in the corporation's proxy statement pursuant to Rule 14a-8 under the 1934 Act; *provided, however,* that any references in these Bylaws to the 1934 Act or the rules and regulations thereunder are not intended to and shall not limit the requirements applicable to proposals and/or nominations to be considered pursuant to Section 5(a)(iii) of these Bylaws.

**(g)** For purposes of Sections 5 and 6,

**(i)** "***affiliates***" and "***associates***" shall have the meanings set forth in Rule 405 under the Securities Act of 1933, as amended (the "***1933 Act***");

**(ii)** "***Derivative Transaction***" means any agreement, arrangement, interest or understanding entered into by, or on behalf or for the benefit of, any Proponent or any of its affiliates or associates, whether record or beneficial:

(w) the value of which is derived in whole or in part from the value of any class or series of shares or other securities of the corporation,

(x) which otherwise provides any direct or indirect opportunity to gain or share in any gain derived from a change in the value of securities of the corporation,

(y) the effect or intent of which is to mitigate loss, manage risk or benefit of security value or price changes, or

(z) which provides the right to vote or increase or decrease the voting power of, such Proponent, or any of its affiliates or associates, with respect to any securities of the corporation,

which agreement, arrangement, interest or understanding may include, without limitation, any option, warrant, debt position, note, bond, convertible security, swap, stock appreciation right, short position, profit interest, hedge, right to dividends, voting agreement, performance-related fee or arrangement to borrow or lend shares (whether or not subject to payment, settlement, exercise or conversion in any such class or series), and any proportionate interest of such Proponent in the securities of the corporation held by any general or limited partnership, or any limited liability company, of which such Proponent is, directly or indirectly, a general partner or managing member.

**(iii)** "***public announcement***" shall mean disclosure in a press release reported by the Dow Jones News Service, Associated Press or comparable national news service or in a document publicly filed by the corporation with the Securities and Exchange Commission pursuant to Section 13, 14 or 15(d) of the 1934 Act; and

**Section 6. Special Meetings.**

**(a)** Special meetings of the stockholders of the corporation may be called, for any purpose as is a proper matter for stockholder action under Delaware law, by (i) the Chairperson of the Board of Directors, (ii) the Chief Executive Officer, or (iii) the Board of Directors pursuant to a resolution adopted by a majority of the total number of authorized directors (whether or not there exist any vacancies in previously authorized directorships at the time any such resolution is presented to the Board of Directors for adoption).

**(b)** The Board of Directors shall determine the time and place, if any, of such special meeting. Upon determination of the time and place, if any, of the meeting, the Secretary shall cause a notice of meeting to be given to the stockholders entitled to vote, in accordance with the provisions of Section 7 of these Bylaws. No business may be transacted at such special meeting otherwise than specified in the notice of meeting.

**(c)** Nominations of persons for election to the Board of Directors may be made at a special meeting of stockholders at which directors are to be elected (i) by or at the direction of the Board of Directors or (ii) by any stockholder of the corporation who is a stockholder of record at the time of giving notice provided for in this paragraph, who shall be entitled to vote at the meeting and who delivers written notice to the Secretary of the corporation setting forth the information required by Section 5(b)(i). In the event the corporation calls a special meeting of stockholders for the purpose of electing one or more directors to the Board of Directors, any such stockholder of record may nominate a person or persons (as the case may be), for election to such position(s) as specified in the corporation's notice of meeting, if written notice setting forth the information required by Section 5(b)(i) of these Bylaws shall be received by the Secretary at the principal executive offices of the corporation not later than the close of business on the later of the ninetieth (90th) day prior to such meeting or the tenth (10th) day following the day on which public announcement is first made of the date of the special meeting and of the nominees proposed by the Board of Directors to be elected at such meeting. The stockholder shall also update and supplement such information as required under Section 5(c). In no event shall an adjournment or a postponement of a special meeting for which notice has been given, or the public announcement thereof has been made, commence a new time period for the giving of a stockholder's notice as described above.

**(d)** Notwithstanding the foregoing provisions of this Section 6, a stockholder must also comply with all applicable requirements of the 1934 Act and the rules and regulations thereunder with respect to matters set forth in this Section 6. Nothing in these Bylaws shall be deemed to affect any rights of stockholders to request inclusion of proposals in the corporation's proxy statement pursuant to Rule 14a-8 under the 1934 Act; *provided, however,* that any references in these Bylaws to the 1934 Act or the rules and regulations thereunder are not intended to and shall not limit the requirements applicable to nominations for the election to the Board of Directors to be considered pursuant to Section 6(c) of these Bylaws.

**Section 7. Notice Of Meetings.** Except as otherwise provided by law, notice, given in writing or by electronic transmission, of each meeting of stockholders shall be given not less than ten (10) nor more than sixty (60) days before the date of the meeting to each stockholder entitled to vote at such meeting, such notice to specify the place, if any, date and hour, in the case of special meetings, the purpose or purposes of the meeting, and the means of remote communications, if any, by which stockholders and proxy holders may be deemed to be present in person and vote at any such meeting. If mailed, notice is given when deposited in the United States mail, postage prepaid, directed to the stockholder at such stockholder's address as it appears on the records of the corporation. Notice of the time, place, if any, and purpose of any meeting of stockholders may be waived in writing, signed by the person entitled to notice thereof, or by electronic transmission by such person, either before or after such meeting, and will be waived by any stockholder by his or her attendance thereat in person, by remote communication, if applicable, or by proxy, except when the stockholder attends a meeting for the

express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened. Any stockholder so waiving notice of such meeting shall be bound by the proceedings of any such meeting in all respects as if due notice thereof had been given.

**Section 8. Quorum.** At all meetings of stockholders, except where otherwise provided by statute or by the Certificate of Incorporation, or by these Bylaws, the presence, in person, by remote communication, if applicable, or by proxy duly authorized, of the holders of a majority of the voting power of the outstanding shares of stock entitled to vote shall constitute a quorum for the transaction of business. In the absence of a quorum, any meeting of stockholders may be adjourned, from time to time, either by the chairperson of the meeting or by vote of the holders of a majority of the voting power of the shares represented thereat, but no other business shall be transacted at such meeting. The stockholders present at a duly called or convened meeting, at which a quorum is present, may continue to transact business until adjournment, notwithstanding the withdrawal of enough stockholders to leave less than a quorum. Except as otherwise provided by statute or by applicable stock exchange rules, or by the Certificate of Incorporation or these Bylaws, in all matters other than the election of directors, the affirmative vote of the majority of voting power of the shares present in person, by remote communication, if applicable, or represented by proxy at the meeting and entitled to vote generally on the subject matter shall be the act of the stockholders. Except as otherwise provided by statute or by applicable stock exchange rules, the Certificate of Incorporation or these Bylaws, directors shall be elected by a plurality of the votes of the shares present in person, by remote communication, if applicable, or represented by proxy at the meeting and entitled to vote generally on the election of directors. Where a separate vote by a class or classes or series is required, except where otherwise provided by the statute, or by applicable stock exchange rules, or by the Certificate of Incorporation or these Bylaws, a majority of the voting power of the outstanding shares of such class or classes or series, present in person, by remote communication, if applicable, or represented by proxy duly authorized, shall constitute a quorum entitled to take action with respect to that vote on that matter. Except where otherwise provided by statute or by applicable stock exchange rules or by the Certificate of Incorporation or these Bylaws, the affirmative vote of the majority (plurality, in the case of the election of directors) of shares of such class or classes or series present in person, by remote communication, if applicable, or represented by proxy at the meeting shall be the act of such class or classes or series.

**Section 9. Adjournment And Notice Of Adjourned Meetings.** Any meeting of stockholders, whether annual or special, may be adjourned from time to time either by the chairperson of the meeting or by the vote of the holders of a majority of the voting power of the shares present in person, by remote communication, if applicable, or represented by proxy at the meeting. When a meeting is adjourned to another time or place, if any, notice need not be given of the adjourned meeting if the time and place, if any, thereof are announced at the meeting at which the adjournment is taken. At the adjourned meeting, the corporation may transact any business which might have been transacted at the original meeting. If the adjournment is for more than thirty (30) days or if after the adjournment a new record date is fixed for the adjourned meeting, a notice of the adjourned meeting shall be given to each stockholder of record entitled to vote at the meeting.

**Section 10. Voting Rights.** For the purpose of determining those stockholders entitled to vote at any meeting of the stockholders, except as otherwise provided by law, only persons in whose names shares stand on the stock records of the corporation on the record date, as provided in Section 12 of these Bylaws, shall be entitled to vote at any meeting of stockholders. Every person entitled to vote shall have the right to do so either in person, by remote communication, if applicable, or by an agent or agents authorized by a proxy granted in accordance with Delaware law. An agent so appointed need not be a stockholder. No proxy shall be voted after three (3) years from its date of creation unless the proxy provides for a longer period.

**Section 11. Joint Owners Of Stock.** If shares or other securities having voting power stand of record in the names of two (2) or more persons, whether fiduciaries, members of a partnership, joint tenants, tenants in common, tenants by the entirety, or otherwise, or if two (2) or more persons have the same fiduciary relationship respecting the same shares, unless the Secretary is given written notice to the contrary and is furnished with a copy of the instrument or order appointing them or creating the relationship wherein it is so provided, their acts with respect to voting shall have the following effect: (a) if only one (1) votes, his or her act binds all; (b) if more than one (1) votes, the act of the majority so voting binds all; (c) if more than one (1) votes, but the vote is evenly split on any particular matter, each faction may vote the securities in question proportionally, or may apply to the Delaware Court of Chancery for relief as provided in the DGCL, Section 217(b). If the instrument filed with the Secretary shows that any such tenancy is held in unequal interests, a majority or even-split for the purpose of subsection (c) shall be a majority or even-split in interest.

**Section 12. List Of Stockholders.** The Secretary shall prepare and make, at least ten (10) days before every meeting of stockholders, a complete list of the stockholders entitled to vote at said meeting, arranged in alphabetical order, showing the address of each stockholder and the number and class of shares registered in the name of each stockholder. Such list shall be open to the examination of any stockholder, for any purpose germane to the meeting, (a) on a reasonably accessible electronic network, provided that the information required to gain access to such list is provided with the notice of the meeting, or (b) during ordinary business hours, at the principal place of business of the corporation. In the event that the corporation determines to make the list available on an electronic network, the corporation may take reasonable steps to ensure that such information is available only to stockholders of the corporation. The list shall be open to examination of any stockholder during the time of the meeting as provided by law.

**Section 13. Action Without Meeting.** No action shall be taken by the stockholders except at an annual or special meeting of stockholders called in accordance with these Bylaws, and no action shall be taken by the stockholders by written consent or by electronic transmission.

**Section 14. Organization.**

**(a)** At every meeting of stockholders, the Chairperson of the Board of Directors, or, if a Chairperson has not been appointed or is absent, the Chief Executive Officer, or if no Chief Executive Officer is then serving or is absent, the President, or, if the President is absent, a chairperson of the meeting chosen by a majority in interest of the stockholders entitled to vote, present in person or by proxy, shall act as chairperson. The Chairperson of the Board may appoint the Chief Executive Officer as chairperson of the meeting. The Secretary, or, in his or her absence, an Assistant Secretary or other officer or other person directed to do so by the chairperson of the meeting, shall act as secretary of the meeting.

**(b)** The Board of Directors of the corporation shall be entitled to make such rules or regulations for the conduct of meetings of stockholders as it shall deem necessary, appropriate or convenient. Subject to such rules and regulations of the Board of Directors, if any, the chairperson of the meeting shall have the right and authority to prescribe such rules, regulations and procedures and to do all such acts as, in the judgment of such chairperson, are necessary, appropriate or convenient for the proper conduct of the meeting, including, without limitation, establishing an agenda or order of business for the meeting, rules and procedures for maintaining order at the meeting and the safety of those present, limitations on participation in such meeting to stockholders of record of the corporation and their duly authorized and constituted proxies and such other persons as the chairperson shall permit, restrictions on entry to the meeting after the time fixed for the commencement thereof, limitations on the time allotted to questions or comments by participants and regulation of the opening and closing of the polls for balloting on matters which are to be voted on by ballot. The date and time of the opening and closing of the polls for each matter upon which the stockholders will vote at the meeting shall be announced at the meeting. Unless and to the extent determined by the Board of Directors or the chairperson of the meeting, meetings of stockholders shall not be required to be held in accordance with rules of parliamentary procedure.

## ARTICLE IV

## DIRECTORS

**Section 15. Number And Term Of Office.** The authorized number of directors of the corporation shall be fixed in accordance with the Certificate of Incorporation. Directors need not be stockholders unless so required by the Certificate of Incorporation. If for any cause, the directors shall not have been elected at an annual meeting, they may be elected as soon thereafter as convenient at a special meeting of the stockholders called for that purpose in the manner provided in these Bylaws.

**Section 16. Powers.** The powers of the corporation shall be exercised, its business conducted and its property controlled by the Board of Directors, except as may be otherwise provided by statute or by the Certificate of Incorporation.

**Section 17. Classes of Directors.**

Subject to the rights of the holders of any series of Preferred Stock to elect additional directors under specified circumstances, following the closing of the initial public offering pursuant to an effective registration statement under the 1933 Act, covering the offer and sale of Common Stock of the corporation to the public (the "***Initial Public Offering***"), the directors shall be divided into three classes designated as Class I, Class II and Class III, respectively. The Board of Directors is authorized to assign members of the Board of Directors already in office to such classes at the time the classification becomes effective. At the first annual meeting of stockholders following the closing of the Initial Public Offering, the term of office of the Class I directors shall expire and Class I directors shall be elected for a full term of three years. At the

second annual meeting of stockholders following the Initial Public Offering, the term of office of the Class II directors shall expire and Class II directors shall be elected for a full term of three years. At the third annual meeting of stockholders following the Initial Public Offering, the term of office of the Class III directors shall expire and Class III directors shall be elected for a full term of three years. At each succeeding annual meeting of stockholders, directors shall be elected for a full term of three years to succeed the directors of the class whose terms expire at such annual meeting.

Notwithstanding the foregoing provisions of this Section 17, each director shall serve until his or her successor is duly elected and qualified or until his or her earlier death, resignation or removal. No decrease in the number of directors constituting the Board of Directors shall shorten the term of any incumbent director.

**Section 18. Vacancies.**

Unless otherwise provided in the Certificate of Incorporation, and subject to the rights of the holders of any series of Preferred Stock or as otherwise provided by applicable law, any vacancies on the Board of Directors resulting from death, resignation, disqualification, removal or other causes and any newly created directorships resulting from any increase in the number of directors shall, unless the Board of Directors determines by resolution that any such vacancies or newly created directorships shall be filled by stockholders, be filled only by the affirmative vote of a majority of the directors then in office, even though less than a quorum of the Board of Directors, or by a sole remaining director, and not by the stockholders, *provided*, *however*, that whenever the holders of any class or classes of stock or series thereof are entitled to elect one or more directors by the provisions of the Certificate of Incorporation, vacancies and newly created directorships of such class or classes or series shall, unless the Board of Directors determines by resolution that any such vacancies or newly created directorships shall be filled by stockholders, be filled by a majority of the directors elected by such class or classes or series thereof then in office, or by a sole remaining director so elected, and not by the stockholders. Any director elected in accordance with the preceding sentence shall hold office for the remainder of the full term of the director for which the vacancy was created or occurred and until such director's successor shall have been elected and qualified. A vacancy in the Board of Directors shall be deemed to exist under this Bylaw in the case of the death, removal or resignation of any director.

**Section 19. Resignation.** Any director may resign at any time by delivering his or her notice in writing or by electronic transmission to the Secretary, such resignation to specify whether it will be effective at a particular time. If no such specification is made, the Secretary, in his or her discretion, may either (a) require confirmation from the director prior to deeming the resignation effective, in which case the resignation will be deemed effective upon receipt of such confirmation, or (b) deem the resignation effective at the time of delivery of the resignation to the Secretary. When one or more directors shall resign from the Board of Directors, effective at a future date, a majority of the directors then in office, including those who have so resigned, shall have power to fill such vacancy or vacancies, the vote thereon to take effect when such resignation or resignations shall become effective, and each director so chosen shall hold office for the unexpired portion of the term of the director whose place shall be vacated and until his or her successor shall have been duly elected and qualified.

**Section 20. Removal.**

**(a)** Subject to the rights of holders of any series of Preferred Stock to elect additional directors under specified circumstances, neither the Board of Directors nor any individual director may be removed without cause.

**(b)** Subject to any limitation imposed by law, any individual director or directors may be removed with cause by the affirmative vote of the holders of at least sixty-six and two-thirds percent (66 2/3%) of the voting power of all then outstanding shares of capital stock of the corporation entitled to vote generally at an election of directors, voting together as a single class.

**Section 21. Meetings.**

**(a) Regular Meetings.** Unless otherwise restricted by the Certificate of Incorporation, regular meetings of the Board of Directors may be held at any time or date and at any place within or without the State of Delaware which has been designated by the Board of Directors and publicized among all directors, either orally or in writing, by telephone, including a voice-messaging system or other system designed to record and communicate messages, facsimile, telegraph or telex, or by electronic mail or other electronic means. No further notice shall be required for regular meetings of the Board of Directors.

**(b) Special Meetings.** Unless otherwise restricted by the Certificate of Incorporation, special meetings of the Board of Directors may be held at any time and place within or without the State of Delaware whenever called by the Chairperson of the Board, the Chief Executive Officer or a majority of the total number of authorized directors.

**(c) Meetings by Electronic Communications Equipment.** Any member of the Board of Directors, or of any committee thereof, may participate in a meeting by means of conference telephone or other communications equipment by means of which all persons participating in the meeting can hear each other, and participation in a meeting by such means shall constitute presence in person at such meeting.

**(d) Notice of Special Meetings.** Notice of the time and place of all special meetings of the Board of Directors shall be orally or in writing, by telephone, including a voice messaging system or other system or technology designed to record and communicate messages, facsimile, telegraph or telex, or by electronic mail or other electronic means, during normal business hours, at least twenty-four (24) hours before the date and time of the meeting. If notice is sent by US mail, it shall be sent by first class mail, charges prepaid, at least three (3) days before the date of the meeting. Notice of any meeting may be waived in writing, or by electronic transmission, at any time before or after the meeting and will be waived by any director by attendance thereat, except when the director attends the meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened.

**(e) Waiver of Notice.** The transaction of all business at any meeting of the Board of Directors, or any committee thereof, however called or noticed, or wherever held, shall be as valid as though it had been transacted at a meeting duly held after regular call and notice, if

a quorum be present and if, either before or after the meeting, each of the directors not present who did not receive notice shall sign a written waiver of notice or shall waive notice by electronic transmission. All such waivers shall be filed with the corporate records or made a part of the minutes of the meeting.

**Section 22. Quorum And Voting.**

**(a)** Unless the Certificate of Incorporation requires a greater number, and except with respect to questions related to indemnification arising under Section 44 for which a quorum shall be one-third of the exact number of directors fixed from time to time, a quorum of the Board of Directors shall consist of a majority of the exact number of directors fixed from time to time by the Board of Directors in accordance with the Certificate of Incorporation; *provided, however,* at any meeting whether a quorum be present or otherwise, a majority of the directors present may adjourn from time to time until the time fixed for the next regular meeting of the Board of Directors, without notice other than by announcement at the meeting.

**(b)** At each meeting of the Board of Directors at which a quorum is present, all questions and business shall be determined by the affirmative vote of a majority of the directors present, unless a different vote be required by law, the Certificate of Incorporation or these Bylaws.

**Section 23. Action Without Meeting.** Unless otherwise restricted by the Certificate of Incorporation or these Bylaws, any action required or permitted to be taken at any meeting of the Board of Directors or of any committee thereof may be taken without a meeting, if all members of the Board of Directors or committee, as the case may be, consent thereto in writing or by electronic transmission, and such writing or writings or transmission or transmissions are filed with the minutes of proceedings of the Board of Directors or committee. Such filing shall be in paper form if the minutes are maintained in paper form and shall be in electronic form if the minutes are maintained in electronic form.

**Section 24. Fees And Compensation.** Directors shall be entitled to such compensation for their services as may be approved by the Board of Directors, including, if so approved, by resolution of the Board of Directors, a fixed sum and expenses of attendance, if any, for attendance at each regular or special meeting of the Board of Directors and at any meeting of a committee of the Board of Directors. Nothing herein contained shall be construed to preclude any director from serving the corporation in any other capacity as an officer, agent, employee, or otherwise and receiving compensation therefor.

**Section 25. Committees.**

**(a) Executive Committee.** The Board of Directors may appoint an Executive Committee to consist of one (1) or more members of the Board of Directors. The Executive Committee, to the extent permitted by law and provided in the resolution of the Board of Directors shall have and may exercise all the powers and authority of the Board of Directors in the management of the business and affairs of the corporation, and may authorize the seal of the corporation to be affixed to all papers which may require it; but no such committee shall have the power or authority in reference to (i) approving or adopting, or recommending to the stockholders, any action or matter (other than the election or removal of directors) expressly required by the DGCL to be submitted to stockholders for approval, or (ii) adopting, amending or repealing any Bylaw of the corporation.

**(b) Other Committees.** The Board of Directors may, from time to time, appoint such other committees as may be permitted by law. Such other committees appointed by the Board of Directors shall consist of one (1) or more members of the Board of Directors and shall have such powers and perform such duties as may be prescribed by the resolution or resolutions creating such committees, but in no event shall any such committee have the powers denied to the Executive Committee in these Bylaws.

**(c) Term.** The Board of Directors, subject to any requirements of any outstanding series of Preferred Stock and the provisions of subsections (a) or (b) of this Section 25, may at any time increase or decrease the number of members of a committee or terminate the existence of a committee. The membership of a committee member shall terminate on the date of his or her death or voluntary resignation from the committee or from the Board of Directors. The Board of Directors may at any time for any reason remove any individual committee member and the Board of Directors may fill any committee vacancy created by death, resignation, removal or increase in the number of members of the committee. The Board of Directors may designate one or more directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of the committee, and, in addition, in the absence or disqualification of any member of a committee, the member or members thereof present at any meeting and not disqualified from voting, whether or not he or they constitute a quorum, may unanimously appoint another member of the Board of Directors to act at the meeting in the place of any such absent or disqualified member.

**(d) Meetings.** Unless the Board of Directors shall otherwise provide, regular meetings of the Executive Committee or any other committee appointed pursuant to this Section 25 shall be held at such times and places as are determined by the Board of Directors, or by any such committee, and when notice thereof has been given to each member of such committee, no further notice of such regular meetings need be given thereafter. Special meetings of any such committee may be held at any place which has been determined from time to time by such committee, and may be called by any director who is a member of such committee, upon notice to the members of such committee of the time and place of such special meeting given in the manner provided for the giving of notice to members of the Board of Directors of the time and place of special meetings of the Board of Directors. Notice of any special meeting of any committee may be waived in writing or by electronic transmission at any time before or after the meeting and will be waived by any director by attendance thereat, except when the director attends such special meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened. Unless otherwise provided by the Board of Directors in the resolutions authorizing the creation of the committee, a majority of the authorized number of members of any such committee shall constitute a quorum for the transaction of business, and the act of a majority of those present at any meeting at which a quorum is present shall be the act of such committee.

**Section 26. Duties of Chairperson of the Board of Directors and Lead Independent Director.**

**(a)** The Chairperson of the Board of Directors, if appointed and when present, shall preside at all meetings of the stockholders and the Board of Directors. The Chairperson of the Board of Directors shall perform other duties commonly incident to the office and shall also perform such other duties and have such other powers, as the Board of Directors shall designate from time to time.

**(b)** The Chairperson of the Board of Directors, or if the Chairperson is not an independent director, one of the independent directors, may be designated by the Board of Directors as lead independent director to serve until replaced by the Board of Directors ("***Lead Independent Directo***r"). The Lead Independent Director will: with the Chairperson of the Board of Directors, establish the agenda for regular Board meetings and serve as chairperson of Board of Directors meetings in the absence of the Chairperson of the Board of Directors; establish the agenda for meetings of the independent directors; coordinate with the committee chairs regarding meeting agendas and informational requirements; preside over meetings of the independent directors; preside over any portions of meetings of the Board of Directors at which the evaluation or compensation of the Chief Executive Officer is presented or discussed; preside over any portions of meetings of the Board of Directors at which the performance of the Board of Directors is presented or discussed; and perform such other duties as may be established or delegated by the Chairperson of the Board of Directors.

**Section 27. Organization.** At every meeting of the directors, the Chairperson of the Board of Directors, or, if a Chairperson has not been appointed or is absent, the Lead Independent Director, or if the Lead Independent Director has not been appointed or is absent, the Chief Executive Officer (if a director), or, if a Chief Executive Officer is absent, the President (if a director), or if the President is absent, the most senior Vice President (if a director), or, in the absence of any such person, a chairperson of the meeting chosen by a majority of the directors present, shall preside over the meeting. The Secretary, or in his or her absence, any Assistant Secretary or other officer, director or other person directed to do so by the person presiding over the meeting, shall act as secretary of the meeting.

## ARTICLE V

## OFFICERS

**Section 28. Officers Designated.** The officers of the corporation shall include, if and when designated by the Board of Directors, the Chief Executive Officer, the President, one or more Vice Presidents, the Secretary, the Chief Financial Officer and the Treasurer. The Board of Directors may also appoint one or more Assistant Secretaries and Assistant Treasurers and such other officers and agents with such powers and duties as it shall deem necessary. The Board of Directors may assign such additional titles to one or more of the officers as it shall deem appropriate. Any one person may hold any number of offices of the corporation at any one time unless specifically prohibited therefrom by law. The salaries and other compensation of the officers of the corporation shall be fixed by or in the manner designated by the Board of Directors.

**Section 29. Tenure And Duties Of Officers.**

**(a) General.** All officers shall hold office at the pleasure of the Board of Directors and until their successors shall have been duly elected and qualified, unless sooner removed. Any officer elected or appointed by the Board of Directors may be removed at any time by the Board of Directors. If the office of any officer becomes vacant for any reason, the vacancy may be filled by the Board of Directors.

**(b) Duties of Chief Executive Officer.** The Chief Executive Officer shall preside at all meetings of the stockholders and at all meetings of the Board of Directors (if a director), unless the Chairperson of the Board of Directors or the Lead Independent Director has been appointed and is present. Unless an officer has been appointed Chief Executive Officer of the corporation, the President shall be the chief executive officer of the corporation and shall, subject to the control of the Board of Directors, have general supervision, direction and control of the business and officers of the corporation. To the extent that a Chief Executive Officer has been appointed and no President has been appointed, all references in these Bylaws to the President shall be deemed references to the Chief Executive Officer. The Chief Executive Officer shall perform other duties commonly incident to the office and shall also perform such other duties and have such other powers, as the Board of Directors shall designate from time to time.

**(c) Duties of President.** The President shall preside at all meetings of the stockholders and at all meetings of the Board of Directors (if a director), unless the Chairperson of the Board of Directors, the Lead Independent Director or the Chief Executive Officer has been appointed and is present. Unless another officer has been appointed Chief Executive Officer of the corporation, the President shall be the chief executive officer of the corporation and shall, subject to the control of the Board of Directors, have general supervision, direction and control of the business and officers of the corporation. The President shall perform other duties commonly incident to the office and shall also perform such other duties and have such other powers, as the Board of Directors shall designate from time to time.

**(d) Duties of Vice Presidents.** A Vice President may assume and perform the duties of the President in the absence or disability of the President or whenever the office of President is vacant. A Vice President shall perform other duties commonly incident to their office and shall also perform such other duties and have such other powers as the Board of Directors or the Chief Executive Officer, or, if the Chief Executive Officer has not been appointed or is absent, the President shall designate from time to time.

**(e) Duties of Secretary.** The Secretary shall attend all meetings of the stockholders and of the Board of Directors and shall record all acts and proceedings thereof in the minute book of the corporation. The Secretary shall give notice in conformity with these Bylaws of all meetings of the stockholders and of all meetings of the Board of Directors and any committee thereof requiring notice. The Secretary shall perform all other duties provided for in these Bylaws and other duties commonly incident to the office and shall also perform such other duties and have such other powers, as the Board of Directors shall designate from time to time. The Chief Executive Officer, or if no Chief Executive Officer is then serving, the President may direct any Assistant Secretary or other officer to assume and perform the duties of the Secretary

in the absence or disability of the Secretary, and each Assistant Secretary shall perform other duties commonly incident to the office and shall also perform such other duties and have such other powers as the Board of Directors or the Chief Executive Officer, or if no Chief Executive Officer is then serving, the President shall designate from time to time.

**(f) Duties of Chief Financial Officer.** The Chief Financial Officer shall keep or cause to be kept the books of account of the corporation in a thorough and proper manner and shall render statements of the financial affairs of the corporation in such form and as often as required by the Board of Directors or the Chief Executive Officer, or if no Chief Executive Officer is then serving, the President. The Chief Financial Officer, subject to the order of the Board of Directors, shall have the custody of all funds and securities of the corporation. The Chief Financial Officer shall perform other duties commonly incident to the office and shall also perform such other duties and have such other powers as the Board of Directors or the Chief Executive Officer, or if no Chief Executive Officer is then serving, the President shall designate from time to time. To the extent that a Chief Financial Officer has been appointed and no Treasurer has been appointed, all references in these Bylaws to the Treasurer shall be deemed references to the Chief Financial Officer. The President may direct the Treasurer, if any, or any Assistant Treasurer, or the controller or any assistant controller to assume and perform the duties of the Chief Financial Officer in the absence or disability of the Chief Financial Officer, and each Treasurer and Assistant Treasurer and each controller and assistant controller shall perform other duties commonly incident to the office and shall also perform such other duties and have such other powers as the Board of Directors or the Chief Executive Officer, or if no Chief Executive Officer is then serving, the President shall designate from time to time.

**(g) Duties of Treasurer.** Unless another officer has been appointed Chief Financial Officer of the corporation, the Treasurer shall be the chief financial officer of the corporation and shall keep or cause to be kept the books of account of the corporation in a thorough and proper manner and shall render statements of the financial affairs of the corporation in such form and as often as required by the Board of Directors or the Chief Executive Officer, or if no Chief Executive Officer is then serving, the President, and, subject to the order of the Board of Directors, shall have the custody of all funds and securities of the corporation. The Treasurer shall perform other duties commonly incident to the office and shall also perform such other duties and have such other powers as the Board of Directors or the Chief Executive Officer, or if no Chief Executive Officer is then serving, the President and Chief Financial Officer (if not Treasurer) shall designate from time to time.

**Section 30. Delegation Of Authority.** The Board of Directors may from time to time delegate the powers or duties of any officer to any other officer or agent, notwithstanding any provision hereof.

**Section 31. Resignations.** Any officer may resign at any time by giving notice in writing or by electronic transmission to the Board of Directors or to the Chief Executive Officer, or if no Chief Executive Officer is then serving, the President or to the Secretary. Any such resignation shall be effective when received by the person or persons to whom such notice is given, unless a later time is specified therein, in which event the resignation shall become effective at such later time. Unless otherwise specified in such notice, the acceptance of any such resignation shall not be necessary to make it effective. Any resignation shall be without prejudice to the rights, if any, of the corporation under any contract with the resigning officer.

**Section 32. Removal.** Any officer may be removed from office at any time, either with or without cause, by the affirmative vote of a majority of the directors in office at the time, or by the unanimous written consent of the directors in office at the time, or by any committee or by the Chief Executive Officer or by other superior officers upon whom such power of removal may have been conferred by the Board of Directors.

## ARTICLE VI

## EXECUTION OF CORPORATE INSTRUMENTS AND VOTING OF SECURITIES OWNED BY THE CORPORATION

**Section 33. Execution Of Corporate Instruments.** The Board of Directors may, in its discretion, determine the method and designate the signatory officer or officers, or other person or persons, to execute on behalf of the corporation any corporate instrument or document, or to sign on behalf of the corporation the corporate name without limitation, or to enter into contracts on behalf of the corporation, except where otherwise provided by law or these Bylaws, and such execution or signature shall be binding upon the corporation.

All checks and drafts drawn on banks or other depositaries on funds to the credit of the corporation or in special accounts of the corporation shall be signed by such person or persons as the Board of Directors shall authorize so to do.

Unless authorized or ratified by the Board of Directors or within the agency power of an officer, no officer, agent or employee shall have any power or authority to bind the corporation by any contract or engagement or to pledge its credit or to render it liable for any purpose or for any amount.

**Section 34. Voting Of Securities Owned By The Corporation.** All stock and other securities of other corporations owned or held by the corporation for itself, or for other parties in any capacity, shall be voted, and all proxies with respect thereto shall be executed, by the person authorized so to do by resolution of the Board of Directors, or, in the absence of such authorization, by the Chairperson of the Board of Directors, the Chief Executive Officer, the President, or any Vice President.

## ARTICLE VII

## SHARES OF STOCK

**Section 35. Form And Execution Of Certificates.** The shares of the corporation shall be represented by certificates, or shall be uncertificated if so provided by resolution or resolutions of the Board of Directors. Certificates for the shares of stock, if any, shall be in such form as is consistent with the Certificate of Incorporation and applicable law. Every holder of stock in the corporation represented by certificate shall be entitled to have a certificate signed by or in the name of the corporation by the Chairperson of the Board of Directors, or the President or any Vice President and by the Treasurer or Assistant Treasurer or the Secretary or Assistant

Secretary, certifying the number of shares owned by him in the corporation. Any or all of the signatures on the certificate may be facsimiles. In case any officer, transfer agent, or registrar who has signed or whose facsimile signature has been placed upon a certificate shall have ceased to be such officer, transfer agent, or registrar before such certificate is issued, it may be issued with the same effect as if he were such officer, transfer agent, or registrar at the date of issue.

**Section 36. Lost Certificates.** A new certificate or certificates shall be issued in place of any certificate or certificates theretofore issued by the corporation alleged to have been lost, stolen, or destroyed, upon the making of an affidavit of that fact by the person claiming the certificate of stock to be lost, stolen, or destroyed. The corporation may require, as a condition precedent to the issuance of a new certificate or certificates, the owner of such lost, stolen, or destroyed certificate or certificates, or the owner's legal representative, to agree to indemnify the corporation in such manner as it shall require or to give the corporation a surety bond in such form and amount as it may direct as indemnity against any claim that may be made against the corporation with respect to the certificate alleged to have been lost, stolen, or destroyed.

**Section 37. Transfers.**

**(a)** Transfers of record of shares of stock of the corporation shall be made only upon its books by the holders thereof, in person or by attorney duly authorized, and, in the case of stock represented by certificate, upon the surrender of a properly endorsed certificate or certificates for a like number of shares.

**(b)** The corporation shall have power to enter into and perform any agreement with any number of stockholders of any one or more classes of stock of the corporation to restrict the transfer of shares of stock of the corporation of any one or more classes owned by such stockholders in any manner not prohibited by the DGCL.

**Section 38. Fixing Record Dates.**

**(a)** In order that the corporation may determine the stockholders entitled to notice of or to vote at any meeting of stockholders or any adjournment thereof, the Board of Directors may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board of Directors, and which record date shall, subject to applicable law, not be more than sixty (60) nor less than ten (10) days before the date of such meeting. If no record date is fixed by the Board of Directors, the record date for determining stockholders entitled to notice of or to vote at a meeting of stockholders shall be at the close of business on the day next preceding the day on which notice is given, or if notice is waived, at the close of business on the day next preceding the day on which the meeting is held. A determination of stockholders of record entitled to notice of or to vote at a meeting of stockholders shall apply to any adjournment of the meeting; *provided, however,* that the Board of Directors may fix a new record date for the adjourned meeting.

**(b)** In order that the corporation may determine the stockholders entitled to receive payment of any dividend or other distribution or allotment of any rights or the stockholders entitled to exercise any rights in respect of any change, conversion or exchange of stock, or for the purpose of any other lawful action, the Board of Directors may fix, in advance, a

record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted, and which record date shall be not more than sixty (60) days prior to such action. If no record date is fixed, the record date for determining stockholders for any such purpose shall be at the close of business on the day on which the Board of Directors adopts the resolution relating thereto.

**Section 39. Registered Stockholders.** The corporation shall be entitled to recognize the exclusive right of a person registered on its books as the owner of shares to receive dividends, and to vote as such owner, and shall not be bound to recognize any equitable or other claim to or interest in such share or shares on the part of any other person whether or not it shall have express or other notice thereof, except as otherwise provided by the laws of Delaware.

## ARTICLE VIII

## OTHER SECURITIES OF THE CORPORATION

**Section 40. Execution Of Other Securities.** All bonds, debentures and other corporate securities of the corporation, other than stock certificates (covered in Section 35), may be signed by the Chairperson of the Board of Directors, the President or any Vice President, or such other person as may be authorized by the Board of Directors, and the corporate seal impressed thereon or a facsimile of such seal imprinted thereon and attested by the signature of the Secretary or an Assistant Secretary, or the Chief Financial Officer or Treasurer or an Assistant Treasurer; *provided, however,* that where any such bond, debenture or other corporate security shall be authenticated by the manual signature, or where permissible facsimile signature, of a trustee under an indenture pursuant to which such bond, debenture or other corporate security shall be issued, the signatures of the persons signing and attesting the corporate seal on such bond, debenture or other corporate security may be the imprinted facsimile of the signatures of such persons. Interest coupons appertaining to any such bond, debenture or other corporate security, authenticated by a trustee as aforesaid, shall be signed by the Treasurer or an Assistant Treasurer of the corporation or such other person as may be authorized by the Board of Directors, or bear imprinted thereon the facsimile signature of such person. In case any officer who shall have signed or attested any bond, debenture or other corporate security, or whose facsimile signature shall appear thereon or on any such interest coupon, shall have ceased to be such officer before the bond, debenture or other corporate security so signed or attested shall have been delivered, such bond, debenture or other corporate security nevertheless may be adopted by the corporation and issued and delivered as though the person who signed the same or whose facsimile signature shall have been used thereon had not ceased to be such officer of the corporation.

## ARTICLE IX

## DIVIDENDS

**Section 41. Declaration Of Dividends.** Dividends upon the capital stock of the corporation, subject to the provisions of the Certificate of Incorporation and applicable law, if any, may be declared by the Board of Directors pursuant to law at any regular or special meeting. Dividends may be paid in cash, in property, or in shares of the capital stock, subject to the provisions of the Certificate of Incorporation and applicable law.

**Section 42. Dividend Reserve.** Before payment of any dividend, there may be set aside out of any funds of the corporation available for dividends such sum or sums as the Board of Directors from time to time, in their absolute discretion, think proper as a reserve or reserves to meet contingencies, or for equalizing dividends, or for repairing or maintaining any property of the corporation, or for such other purpose as the Board of Directors shall think conducive to the interests of the corporation, and the Board of Directors may modify or abolish any such reserve in the manner in which it was created.

## ARTICLE X

## FISCAL YEAR

**Section 43. Fiscal Year.** The fiscal year of the corporation shall be fixed by resolution of the Board of Directors.

## ARTICLE XI

## INDEMNIFICATION

**Section 44. Indemnification of Directors, Executive Officers, Other Officers, Employees and Other Agents.**

**(a) Directors and Executive Officers.** The corporation shall indemnify its directors and executive officers (for the purposes of this Article XI, "***executive officers***" shall have the meaning defined in Rule 3b-7 promulgated under the 1934 Act) to the extent not prohibited by the DGCL or any other applicable law; *provided, however,* that the corporation may modify the extent of such indemnification by individual contracts with its directors and executive officers; and, *provided, further,* that the corporation shall not be required to indemnify any director or executive officer in connection with any proceeding (or part thereof) initiated by such person unless (i) such indemnification is expressly required to be made by law, (ii) the proceeding was authorized by the Board of Directors of the corporation, (iii) such indemnification is provided by the corporation, in its sole discretion, pursuant to the powers vested in the corporation under the DGCL or any other applicable law or (iv) such indemnification is required to be made under subsection (d).

**(b) Other Officers, Employees and Other Agents.** The corporation shall have power to indemnify its other officers, employees and other agents as set forth in the DGCL or any other applicable law. The Board of Directors shall have the power to delegate the determination of whether indemnification shall be given to any such person except executive officers to such officers or other persons as the Board of Directors shall determine.

**(c) Expenses.** The corporation shall advance to any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative, by reason of the fact that he is or was a director or executive officer, of the corporation, or is or was serving at the request of

the corporation as a director or executive officer of another corporation, partnership, joint venture, trust or other enterprise, prior to the final disposition of the proceeding, promptly following request therefor, all expenses incurred by any director or executive officer in connection with such proceeding provided, however, that if the DGCL requires, an advancement of expenses incurred by a director or executive officer in his or her capacity as a director or executive officer (and not in any other capacity in which service was or is rendered by such indemnitee, including, without limitation, service to an employee benefit plan) shall be made only upon delivery to the corporation of an undertaking (hereinafter an "***undertaking***"), by or on behalf of such indemnitee, to repay all amounts so advanced if it shall ultimately be determined by final judicial decision from which there is no further right to appeal (hereinafter a "***final adjudication***") that such indemnitee is not entitled to be indemnified for such expenses under this section or otherwise.

Notwithstanding the foregoing, unless otherwise determined pursuant to paragraph (e) of this section, no advance shall be made by the corporation to an executive officer of the corporation (except by reason of the fact that such executive officer is or was a director of the corporation in which event this paragraph shall not apply) in any action, suit or proceeding, whether civil, criminal, administrative or investigative, if a determination is reasonably and promptly made (i) by a majority vote of directors who were not parties to the proceeding, even if not a quorum, or (ii) by a committee of such directors designated by a majority vote of such directors, even though less than a quorum, or (iii) if there are no such directors, or such directors so direct, by independent legal counsel in a written opinion, that the facts known to the decision-making party at the time such determination is made demonstrate clearly and convincingly that such person acted in bad faith or in a manner that such person did not believe to be in or not opposed to the best interests of the corporation.

**(d) Enforcement.** Without the necessity of entering into an express contract, all rights to indemnification and advances to directors and executive officers under this Bylaw shall be deemed to be contractual rights and be effective to the same extent and as if provided for in a contract between the corporation and the director or executive officer. Any right to indemnification or advances granted by this section to a director or executive officer shall be enforceable by or on behalf of the person holding such right in any court of competent jurisdiction if (i) the claim for indemnification or advances is denied, in whole or in part, or (ii) no disposition of such claim is made within ninety (90) days of request therefor. To the extent permitted by law, the claimant in such enforcement action, if successful in whole or in part, shall be entitled to be paid also the expense of prosecuting the claim. In connection with any claim for indemnification, the corporation shall be entitled to raise as a defense to any such action that the claimant has not met the standards of conduct that make it permissible under the DGCL or any other applicable law for the corporation to indemnify the claimant for the amount claimed. In connection with any claim by an executive officer of the corporation (except in any action, suit or proceeding, whether civil, criminal, administrative or investigative, by reason of the fact that such executive officer is or was a director of the corporation) for advances, the corporation shall be entitled to raise a defense as to any such action clear and convincing evidence that such person acted in bad faith or in a manner that such person did not believe to be in or not opposed to the best interests of the corporation, or with respect to any criminal action or proceeding that such person acted without reasonable cause to believe that his or her conduct was lawful. Neither the failure of the corporation (including its Board of Directors, independent

legal counsel or its stockholders) to have made a determination prior to the commencement of such action that indemnification of the claimant is proper in the circumstances because he has met the applicable standard of conduct set forth in the DGCL or any other applicable law, nor an actual determination by the corporation (including its Board of Directors, independent legal counsel or its stockholders) that the claimant has not met such applicable standard of conduct, shall be a defense to the action or create a presumption that claimant has not met the applicable standard of conduct. In any suit brought by a director or executive officer to enforce a right to indemnification or to an advancement of expenses hereunder, the burden of proving that the director or executive officer is not entitled to be indemnified, or to such advancement of expenses, under this section or otherwise shall be on the corporation.

**(e) Non-Exclusivity of Rights.** The rights conferred on any person by this Bylaw shall not be exclusive of any other right which such person may have or hereafter acquire under any applicable statute, provision of the Certificate of Incorporation, Bylaws, agreement, vote of stockholders or disinterested directors or otherwise, both as to action in his or her official capacity and as to action in another capacity while holding office. The corporation is specifically authorized to enter into individual contracts with any or all of its directors, officers, employees or agents respecting indemnification and advances, to the fullest extent not prohibited by the DGCL, or by any other applicable law.

**(f) Survival of Rights.** The rights conferred on any person by this Bylaw shall continue as to a person who has ceased to be a director or executive officer or officer, employee or other agent and shall inure to the benefit of the heirs, executors and administrators of such a person.

**(g) Insurance.** To the fullest extent permitted by the DGCL or any other applicable law, the corporation, upon approval by the Board of Directors, may purchase insurance on behalf of any person required or permitted to be indemnified pursuant to this section.

**(h) Amendments.** Any repeal or modification of this section shall only be prospective and shall not affect the rights under this Bylaw in effect at the time of the alleged occurrence of any action or omission to act that is the cause of any proceeding against any agent of the corporation.

**(i) Saving Clause.** If this Bylaw or any portion hereof shall be invalidated on any ground by any court of competent jurisdiction, then the corporation shall nevertheless indemnify each director and executive officer to the full extent not prohibited by any applicable portion of this section that shall not have been invalidated, or by any other applicable law. If this section shall be invalid due to the application of the indemnification provisions of another jurisdiction, then the corporation shall indemnify each director and executive officer to the full extent under any other applicable law.

**(j) Certain Definitions.** For the purposes of this Bylaw, the following definitions shall apply:

**(i)** The term "***proceeding***" shall be broadly construed and shall include, without limitation, the investigation, preparation, prosecution, defense, settlement, arbitration and appeal of, and the giving of testimony in, any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative.

**(ii)** The term "***expenses***" shall be broadly construed and shall include, without limitation, court costs, attorneys' fees, witness fees, fines, amounts paid in settlement or judgment and any other costs and expenses of any nature or kind incurred in connection with any proceeding.

**(iii)** The term the "***corporation***" shall include, in addition to the resulting corporation, any constituent corporation (including any constituent of a constituent) absorbed in a consolidation or merger which, if its separate existence had continued, would have had power and authority to indemnify its directors, officers, and employees or agents, so that any person who is or was a director, officer, employee or agent of such constituent corporation, or is or was serving at the request of such constituent corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, shall stand in the same position under the provisions of this section with respect to the resulting or surviving corporation as he would have with respect to such constituent corporation if its separate existence had continued.

**(iv)** References to a "***director***," "***executive officer***," "***officer***," "***employee***," or "***agent***" of the corporation shall include, without limitation, situations where such person is serving at the request of the corporation as, respectively, a director, executive officer, officer, employee, trustee or agent of another corporation, partnership, joint venture, trust or other enterprise.

**(v)** References to "***other enterprises***" shall include employee benefit plans; references to "***fines***" shall include any excise taxes assessed on a person with respect to an employee benefit plan; and references to "***serving at the request of the corporation***" shall include any service as a director, officer, employee or agent of the corporation which imposes duties on, or involves services by, such director, officer, employee, or agent with respect to an employee benefit plan, its participants, or beneficiaries; and a person who acted in good faith and in a manner he reasonably believed to be in the interest of the participants and beneficiaries of an employee benefit plan shall be deemed to have acted in a manner "***not opposed to the best interests of the corporation***" as referred to in this section.

## ARTICLE XII

## NOTICES

**Section 45. Notices.**

**(a) Notice To Stockholders.** Written notice to stockholders of stockholder meetings shall be given as provided in Section 7 herein. Without limiting the manner by which notice may otherwise be given effectively to stockholders under any agreement or contract with such stockholder, and except as otherwise required by law, written notice to stockholders for purposes other than stockholder meetings may be sent by US mail or nationally recognized overnight courier, or by facsimile, telegraph or telex or by electronic mail or other electronic means.

**(b) Notice To Directors.** Any notice required to be given to any director may be given by the method stated in subsection (a), as otherwise provided in these Bylaws with notice other than one which is delivered personally to be sent to such address as such director shall have filed in writing with the Secretary, or, in the absence of such filing, to the last known address of such director.

**(c) Affidavit Of Mailing.** An affidavit of mailing, executed by a duly authorized and competent employee of the corporation or its transfer agent appointed with respect to the class of stock affected, or other agent, specifying the name and address or the names and addresses of the stockholder or stockholders, or director or directors, to whom any such notice or notices was or were given, and the time and method of giving the same, shall in the absence of fraud, be prima facie evidence of the facts therein contained.

**(d) Methods of Notice.** It shall not be necessary that the same method of giving notice be employed in respect of all recipients of notice, but one permissible method may be employed in respect of any one or more, and any other permissible method or methods may be employed in respect of any other or others.

**(e) Notice To Person With Whom Communication Is Unlawful.** Whenever notice is required to be given, under any provision of law or of the Certificate of Incorporation or Bylaws of the corporation, to any person with whom communication is unlawful, the giving of such notice to such person shall not be required and there shall be no duty to apply to any governmental authority or agency for a license or permit to give such notice to such person. Any action or meeting which shall be taken or held without notice to any such person with whom communication is unlawful shall have the same force and effect as if such notice had been duly given. In the event that the action taken by the corporation is such as to require the filing of a certificate under any provision of the DGCL, the certificate shall state, if such is the fact and if notice is required, that notice was given to all persons entitled to receive notice except such persons with whom communication is unlawful.

**(f) Notice to Stockholders Sharing an Address.** Except as otherwise prohibited under DGCL, any notice given under the provisions of DGCL, the Certificate of Incorporation or the Bylaws shall be effective if given by a single written notice to stockholders who share an address if consented to by the stockholders at that address to whom such notice is given. Such consent shall have been deemed to have been given if such stockholder fails to object in writing to the corporation within sixty (60) days of having been given notice by the corporation of its intention to send the single notice. Any consent shall be revocable by the stockholder by written notice to the corporation.

## ARTICLE XIII

## AMENDMENTS

**Section 46.** Subject to the limitations set forth in Section 44(h) of these Bylaws or the provisions of the Certificate of Incorporation, the Board of Directors is expressly empowered to adopt, amend or repeal the Bylaws of the corporation. Any adoption, amendment or repeal of the Bylaws of the corporation by the Board of Directors shall require the approval of a majority of the authorized number of directors. The stockholders also shall have power to adopt, amend or repeal the Bylaws of the corporation; *provided*, *however*, that, in addition to any vote of the holders of any class or series of stock of the corporation required by law or by the Certificate of Incorporation, such action by stockholders shall require the affirmative vote of the holders of at least sixty-six and two-thirds percent (66-2/3%) of the voting power of all of the then-outstanding shares of the capital stock of the corporation entitled to vote generally in the election of directors, voting together as a single class.

## ARTICLE XIV

## LOANS TO OFFICERS

**Section 47. Loans To Officers.** Except as otherwise prohibited by applicable law, the corporation may lend money to, or guarantee any obligation of, or otherwise assist any officer or other employee of the corporation or of its subsidiaries, including any officer or employee who is a director of the corporation or its subsidiaries, whenever, in the judgment of the Board of Directors, such loan, guarantee or assistance may reasonably be expected to benefit the corporation. The loan, guarantee or other assistance may be with or without interest and may be unsecured, or secured in such manner as the Board of Directors shall approve, including, without limitation, a pledge of shares of stock of the corporation. Nothing in these Bylaws shall be deemed to deny, limit or restrict the powers of guaranty or warranty of the corporation at common law or under any statute.

**CARDLYTICS, INC.**

**AMENDED AND RESTATED INVESTORS' RIGHTS AGREEMENT**

**May 4, 2017**

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**CARDLYTICS, INC.**

**AMENDED AND RESTATED INVESTORS' RIGHTS AGREEMENT**

**THIS AMENDED AND RESTATED INVESTORS' RIGHTS AGREEMENT** (the "***Agreement***") is made as of May 4, 2017, by and among **CARDLYTICS, INC.**, a Delaware corporation (the "***Company***"), **SCOTT GRIMES** and **LYNNE LAUBE**, each of whom is herein referred to as a "***Founder,***" the holders of the Company's Series A-R Preferred Stock, Series B-R Preferred Stock Series C-R Preferred Stock (the "***Series C Holders***"), Series D-R Preferred Stock (the "***Series D Holders***"), Series E-R Preferred Stock, and Series F-R Preferred Stock (the "***Series F Holders***") listed on **Exhibit A** attached hereto (collectively, the "***Existing Holders***") and the purchasers of the Company's Series G Preferred Stock (the "***Series G Holders***") and Series G' Preferred Stock (the "***Series G' Holders,***" and together with the Existing Holders, the "***Investors***") listed on **Exhibit A** attached hereto.

**RECITALS**

**A.** The Company, the Founders and the Existing Holders have previously entered into that certain Amended and Restated Investors' Rights Agreement dated as of September 18, 2014 (as amended, the "***Prior Rights Agreement***"), pursuant to which the Company granted the Founders and the Existing Holders certain rights.

**B.** The Company, the Series G Holders and the Series G' Holders have entered into a Series G Preferred Stock, Series G' Preferred Stock and Warrant Purchase Agreement of even date herewith (the "***Purchase Agreement***") pursuant to which the Company desires to (i) sell to the Series G Holders and the Series G Holders desire to purchase from the Company shares of the Company's Series G Preferred Stock and (ii) sell to the Series G' Holders and the Series G' Holders desire to purchase from the Company shares of the Company's Series G' Preferred Stock. A condition to the Series G Holders' and Series G' Holders' obligations under the Purchase Agreement is that the Company, the Founders and the Investors enter into this Agreement in order to provide the Series G Holders and Series G' Holders with (i) certain rights to register shares of Common Stock issuable upon conversion of the Company's Series G Preferred Stock and Series G' Preferred Stock held by the Series G Holders and Series G' Holders, as applicable, (ii) certain rights to receive or inspect information pertaining to the Company, and (iii) a right of first offer with respect to certain issuances by the Company of its securities. The Company, the Founders and the Existing Holders each desires to induce the Series G Holders and Series G' Holders to purchase shares of the Company's Series G Preferred Stock and Series G' Preferred Stock, as applicable, pursuant to the Purchase Agreement by agreeing to the terms and conditions set forth herein.

**C.** The Company, the Founders and the Existing Holders each desire to amend and restate the Prior Rights Agreement to add the Series G Holders and Series G' Holders as parties to this Agreement and make certain other changes, and to supersede in its entirety the Prior Rights Agreement.

**AGREEMENT**

The parties hereby agree as follows:

**1. Supersession of Prior Rights Agreement; Waiver of Right of First Offer.** Effective and contingent upon execution of this Agreement by the Company and the holders of a majority of the Registrable Securities (as such term is defined in the Prior Rights Agreement) currently outstanding not including the Founders' Stock (as such term is defined in the Prior Rights Agreement) and upon closing of the transactions contemplated by the Purchase Agreement, the Prior Rights Agreement is hereby amended, restated and superseded in its entirety by this Agreement, and the Company and the Investors

hereby agree to be bound by the provisions hereof as the sole agreement of the Company and the Investors with respect to registration rights of the Company's securities and certain other rights, as set forth herein. The Existing Holders that are Major Investors (as that term is defined in the Prior Rights Agreement) hereby waive the Right of First Offer, including the notice requirements, set forth in the Prior Rights Agreement with respect to the issuance of Series G Preferred Stock and Series G' Preferred Stock.

**2. Registration Rights.** The Company and the Investors covenant and agree as follows:

**2.1 Definitions**. For purposes of this Section 2:

**(a)** The term "***Affiliate***" means, with respect to any specified Person, any other Person who, directly or indirectly, controls, is controlled by, or is under common control with such Person, including without limitation any general partner, managing member, officer or director of such Person or any venture capital fund now or hereafter existing that is controlled by one or more general partners or managing members of, or shares the same management company with, such Person;

**(b)** The term "***Exchange Act***" means the Securities Exchange Act of 1934, as amended (and any successor thereto) and the rules and regulations promulgated thereunder;

**(c)** The term "***Form S-3***" means such form under the Securities Act as in effect on the date hereof or any successor form under the Securities Act that permits significant incorporation by reference of the Company's subsequent public filings under the Exchange Act;

**(d)** The term "***Founders' Stock***" means the shares of Common Stock issued to the Founders;

**(e)** The term "***Holder***" means any person owning or having the right to acquire Registrable Securities or any assignee thereof in accordance with Section 2.12 of this Agreement;

**(f)** The term "***Innov8***" shall mean Singtel Innov8 Pte Ltd and its Affilates;

**(g)** The term "***Major Investor***" means any person who, together with any current or former limited or general partners, current or former managing or non-managing members and affiliates of such person, including Affiliated Funds, holds at least 500,000 shares of the Company's Preferred Stock or the Common Stock issued upon conversion of the Company's Preferred Stock (subject to adjustment for stock splits, stock dividends, reclassifications or the like) and/or Common Stock purchased pursuant to the Common Purchase Agreement, excluding shares issued pursuant to the Special Mandatory Conversion provision set forth in Section 8 of Article IV(B) of the Restated Certificate; provided, that Innov8 shall be deemed to be a Major Investor for so long as it holds at least 406,082 shares of Series G Preferred Stock.

**(h)** The term "***Preferred Stock***" means the Company's Series A-R Preferred Stock, Series A-R-1 Preferred Stock, Series B-R Preferred Stock, Series B-R-1 Preferred Stock, Series C-R Preferred Stock, Series C-R-1 Preferred Stock, Series D-R Preferred Stock, Series D-R-1 Preferred Stock, Series E-R Preferred Stock, Series E-R-1 Preferred Stock, Series F-R Preferred Stock, Series F-R-1 Preferred Stock, Series G Preferred Stock, Series G-1 Preferred Stock, Series G' Preferred Stock, and Series G'-1 Preferred Stock;

**(i)** The term "***Qualified IPO***" means a Qualifying Public Offering (as defined in the Restated Certificate);

**(j)** The terms "***register,***" "***registered,***" and "***registration***" refer to a registration effected by preparing and filing a registration statement or similar document in compliance with the Securities Act, and the declaration or ordering of effectiveness of such registration statement or document;

**(k)** The term "***Registrable Securities***" means (i) the shares of Common Stock (A) issuable or issued upon conversion of the Company's Preferred Stock and (B) acquired by the Series F Holders pursuant to certain stock purchase agreements with certain holders of Common Stock each dated as of September 18, 2014 (collectively, the "***Common Purchase Agreement***"), other than shares for which registration rights have terminated pursuant to Section 2.15 hereof, (ii) the shares of Founders' Stock, provided, however, that for the purposes of Section 2.2, 2.4, 2.13 or 3 the Founders' Stock shall not be deemed Registrable Securities and the Founders shall not be deemed Holders, (iii) the shares of Common Stock issuable or issued upon conversion of the Company's Series A Preferred Stock issuable or issued upon exercise of those certain Warrants to Purchase Stock issued in connection with that certain Loan and Security Agreement by and between the Company and Silicon Valley Bank dated December 4, 2008 (the "***2008 SVB Warrant Shares***"), (iv) the shares of Common Stock issuable or issued upon conversion of the Company's Series B Preferred Stock issuable or issued upon exercise of that certain Warrant to Purchase Stock issued in connection with that certain Loan and Security Agreement by and between the Company and Silicon Valley Bank dated January 20, 2010 (the "***2010 SVB Warrant Shares***" and together with the 2008 SVB Warrant Shares, the "***SVB Warrant Shares***"), (v) the shares of Common Stock issuable or issued upon conversion of the Company's Series B Preferred Stock issuable or issued upon exercise of that certain Warrant to Purchase Stock issued in connection with that certain Loan and Security Agreement by and between the Company and Gold Hill Capital 2008, L.P. dated February 26, 2010 (the "***Gold Hill Warrant Shares***"), (vi) the shares of Common Stock issuable or issued upon exercise of that certain IPO Adjustment Warrant (as defined in the Purchase Agreement (the "***IPO Adjustment Warrant Shares***", and together with the Gold Hill Warrant Shares and the SVB Warrant Shares the "***Warrant Shares***"), provided, however, that for the purposes of Section 2.2, 2.13 or 3 the Warrant Shares shall not be deemed Registrable Securities and neither Silicon Valley Bank nor Gold Hill Capital 2008, L.P. shall be deemed a Holder, (vii) acquired by the Investors pursuant to the Purchase Agreement, and (viii) any other shares of Common Stock of the Company issued as (or issuable upon the conversion or exercise of any warrant, right or other security which is issued as) a dividend or other distribution with respect to, or in exchange for or in replacement of, the shares listed in (i), (ii), (iii), (iv), (v), (vi) and (vii) above; provided, however, that the foregoing definition shall exclude in all cases any Registrable Securities sold by a person in a transaction in which his or her rights under this Agreement are not assigned. Notwithstanding the foregoing, Common Stock or other securities shall only be treated as Registrable Securities if and so long as (A) they have not been sold to or through a broker or dealer or underwriter in a public distribution or a public securities transaction, (B) they have not been sold in a transaction exempt from the registration and prospectus delivery requirements of the Securities Act under Section 4(1) thereof so that all transfer restrictions, and restrictive legends with respect thereto, if any, are removed upon the consummation of such sale, or (C) the Holder thereof is not entitled to exercise any right provided in Section 2 in accordance with Section 2.15 below;

**(l)** The number of shares of "***Registrable Securities then outstanding***" shall be determined by the number of shares of Common Stock outstanding which are, and the number of shares of Common Stock issuable pursuant to then exercisable or convertible securities which are, Registrable Securities;

**(m)** The "***Restated Certificate***" means the Company's Amended and Restated Certificate of Incorporation, as may be amended from time to time;

**(n)** The term "***Restricted Securities***" means the securities of the Company required to be notated with the legend set forth in Subsection 2.16 hereof;

**(o)** The term "***SEC***" means the Securities and Exchange Commission; and

**(p)** The term "***Securities Act***" means the Securities Act of 1933, as amended (and any successor thereto) and the rules and regulations promulgated thereunder.

**2.2 Request for Registration**.

**(a)** If the Company shall receive at any time after the earlier of (i) four years from the date hereof; or (ii) six months after the effective date of the first registration statement for a public offering of securities of the Company (other than a registration statement relating either to the sale of securities to employees of the Company pursuant to a stock option, stock purchase or similar plan or an SEC Rule 145 transaction), a written request from the Holders of a majority of the Registrable Securities then outstanding that the Company file a registration statement under the Securities Act covering the registration of at least 35% of the Registrable Securities then outstanding, then the Company shall, within 10 days of the receipt thereof, give written notice of such request to all Holders and shall, subject to the limitations of subsection 2.2(b), use its best efforts to file as soon as practicable, and in any event within 90 days of the receipt of such request, a registration statement under the Securities Act covering all Registrable Securities which the Holders request to be registered within 20 days of the mailing of such notice by the Company.

**(b)** If the Holders initiating the registration request hereunder ("***Initiating Holders***") intend to distribute the Registrable Securities covered by their request by means of an underwriting, they shall so advise the Company as a part of their request made pursuant to this Section 2.2 and the Company shall include such information in the written notice referred to in subsection 2.2(a). The underwriter will be selected by a majority in interest of the Initiating Holders and shall be reasonably acceptable to the Company. In such event, the right of any Holder to include his Registrable Securities in such registration shall be conditioned upon such Holder's participation in such underwriting and the inclusion of such Holder's Registrable Securities in the underwriting (unless otherwise mutually agreed by a majority in interest of the Initiating Holders and such Holder) to the extent provided herein. All Holders proposing to distribute their securities through such underwriting shall (together with the Company as provided in subsection 2.5(e)) enter into an underwriting agreement in customary form with the underwriter or underwriters selected for such underwriting. Notwithstanding any other provision of this Section 2.2, if the underwriter advises the Initiating Holders in writing that marketing factors require a limitation of the number of shares to be underwritten, then the Initiating Holders shall so advise all Holders of Registrable Securities which would otherwise be underwritten pursuant hereto, and the number of shares of Registrable Securities that may be included in the underwriting shall be allocated among all participating Holders thereof, including the Initiating Holders, in proportion (as nearly as practicable) to the amount of Registrable Securities of the Company owned by each participating Holder; provided, however, that the number of shares of Registrable Securities to be included in such underwriting shall not be reduced unless all other securities are first entirely excluded from the underwriting; and provided further, however, that in no event shall the amount of securities of the selling Holders included in the offering be reduced below 35% of the total amount of securities included in such offering, unless such offering is the initial public offering of the Company's securities, in which case, the selling security holders may be entirely excluded.

**(c)** Notwithstanding the foregoing, if the Company shall furnish to Holders requesting a registration statement pursuant to this Section 2.2, a certificate signed by the President of the Company stating that in the good faith judgment of the Board of Directors of the Company, it would be seriously detrimental to the Company and its holders of capital stock for such registration statement to be filed and it is therefore essential to defer the filing of such registration statement, the Company shall have the right to defer such filing for a period of not more than 120 days after receipt of the request of the Initiating Holders; provided, however, that the Company may not utilize this right more than once in any twelve-month period.

**(d)** In addition, the Company shall not be obligated to effect, or to take any action to effect, any registration pursuant to this Section 2.2:

(i) After the Company has effected two registrations pursuant to this Section 2.2 and such registrations have been declared or ordered effective;

(ii) During the period starting with the date 90 days prior to the Company's good faith estimate of the date of filing of, and ending on a date 90 days after the effective date of, a registration subject to Section 2.3 hereof unless such offering is the initial public offering of the Company's securities, in which case, ending on a date 180 days after the effective date of such registration subject to Section 2.3 hereof; provided that the Company is actively employing in good faith all reasonable efforts to cause such registration statement to become effective; or

(iii) If the Initiating Holders propose to dispose of shares of Registrable Securities that may be immediately registered on Form S-3 pursuant to a request made pursuant to Section 2.4 below.

**2.3 Company Registration**. If (but without any obligation to do so) the Company proposes to register (including for this purpose a registration effected by the Company for holders of capital stock other than the Holders) any of its stock under the Securities Act in connection with the public offering of such securities solely for cash (other than a registration relating solely to the sale of securities to participants in a Company stock plan or a transaction covered by Rule 145 under the Securities Act, a registration in which the only stock being registered is Common Stock issuable upon conversion of debt securities which are also being registered, or any registration on any form which does not include substantially the same information as would be required to be included in a registration statement covering the sale of the Registrable Securities), the Company shall, at such time, promptly give each Holder written notice of such registration. Upon the written request of each Holder given within 20 days after mailing of such notice by the Company in accordance with Section 4.5, the Company shall, subject to the provisions of Section 2.8, cause to be registered under the Securities Act all of the Registrable Securities that each such Holder has requested to be registered.

**2.4 Form S-3 Registration**. In case the Company shall receive from any Holder a written request or requests that the Company effect a registration on Form S-3 and any related qualification or compliance with respect to all or a part of the Registrable Securities owned by such Holder or Holders, the Company will:

**(a)** promptly give written notice of the proposed registration, and any related qualification or compliance, to all other Holders; and

**(b)** as soon as practicable, effect such registration and all such qualifications and compliances as may be so requested and as would permit or facilitate the sale and distribution of all or such portion of such Holder's or Holders' Registrable Securities as are specified in such request,

together with all or such portion of the Registrable Securities of any other Holder or Holders joining in such request as are specified in a written request given within 15 days after receipt of such written notice from the Company; provided, however, that the Company shall not be obligated to effect any such registration, qualification or compliance, pursuant to this Section 2.4: (i) if Form S-3 is not available for such offering by the Holders; (ii) if the Holders, together with the holders of any other securities of the Company entitled to inclusion in such registration, propose to sell Registrable Securities and such other securities (if any) at an aggregate price to the public (net of any underwriters' discounts or commissions) of less than $5,000,000; (iii) if the Company shall furnish to the Holders a certificate signed by the President of the Company stating that in the good faith judgment of the Board of Directors of the Company, it would be seriously detrimental to the Company and its holders of capital stock for such Form S-3 Registration to be effected at such time, in which event the Company shall have the right to defer the filing of the Form S-3 registration statement for a period of not more than 120 days after receipt of the request of the Holder or Holders under this Section 2.4; provided, however, that the Company shall not utilize this right more than twice in any 12-month period; (iv) if the Company has, within the 12-month period preceding the date of such request, already effected two registrations on Form S-3 for the Holders pursuant to this Section 2.4; (v) in any particular jurisdiction in which the Company would be required to qualify to do business or to execute a general consent to service of process in effecting such registration, qualification or compliance; or (vi) during the period ending on a date 90 days after the effective date of, a registration subject to Section 2.3 hereof unless such offering is the initial public offering of the Company's securities, in which case, ending on a date 180 days after the effective date of such registration subject to Section 2.3 hereof; provided that the Company is actively employing in good faith all reasonable efforts to cause such registration statement to become effective.

**(c)** Subject to the foregoing, the Company shall file a registration statement covering the Registrable Securities and other securities so requested to be registered as soon as practicable after receipt of the request or requests of the Holders. Registrations effected pursuant to this Section 2.4 shall not be counted as demands for registration or registrations effected pursuant to Sections 2.2 or 2.3, respectively.

**2.5 Obligations of the Company**. Whenever required under this Section 2 to effect the registration of any Registrable Securities, the Company shall, as expeditiously as reasonably possible:

**(a)** Prepare and file with the SEC a registration statement with respect to such Registrable Securities and use its best efforts to cause such registration statement to become effective, and, upon the request of the Holders of a majority of the Registrable Securities registered thereunder, keep such registration statement effective for up to 120 days, or until the distribution described in such registration statement is completed, if earlier. The Company shall not be required to file, cause to become effective or maintain the effectiveness of any registration statement that contemplates a distribution of securities on a delayed or continuous basis pursuant to Rule 415 under the Securities Act.

**(b)** Prepare and file with the SEC such amendments and supplements to such registration statement and the prospectus used in connection with such registration statement as may be necessary to comply with the provisions of the Securities Act with respect to the disposition of all securities covered by such registration statement for up to 120 days, or until the distribution described in such registration statement is completed, if earlier.

**(c)** Furnish to the Holders such numbers of copies of a prospectus, including a preliminary prospectus, in conformity with the requirements of the Securities Act, and such other documents as they may reasonably request in order to facilitate the disposition of Registrable Securities owned by them.

**(d)** Use its best efforts to register and qualify the securities covered by such registration statement under such other securities or Blue Sky laws of such jurisdictions as shall be reasonably requested by the Holders, provided that the Company shall not be required in connection therewith or as a condition thereto to qualify to do business or to file a general consent to service of process in any such states or jurisdictions.

**(e)** In the event of any underwritten public offering, enter into and perform its obligations under an underwriting agreement, in usual and customary form, with the managing underwriter of such offering. Each Holder participating in such underwriting shall also enter into and perform its obligations under such an agreement.

**(f)** Notify each Holder of Registrable Securities covered by such registration statement at any time when a prospectus relating thereto is required to be delivered under the Securities Act of the happening of any event as a result of which the prospectus included in such registration statement, as then in effect, includes an untrue statement of a material fact or omits to state a material fact required to be stated therein or necessary to make the statements therein not misleading in the light of the circumstances then existing, such obligation to continue for 120 days.

**(g)** Cause all such Registrable Securities registered pursuant hereunder to be listed on each securities exchange on which similar securities issued by the Company are then listed.

**(h)** Provide a transfer agent and registrar for all Registrable Securities registered pursuant hereunder and a CUSIP number for all such Registrable Securities, in each case not later than the effective date of such registration.

**(i)** Use its best efforts to cause to be furnished, at the request of any Holder requesting registration of Registrable Securities pursuant to this Section 2, on the date that such Registrable Securities are delivered to the underwriters for sale in connection with a registration pursuant to this Section 2, if such securities are being sold through underwriters, (i) an opinion, dated such date, of the counsel representing the Company for the purposes of such registration, in form and substance as is customarily given to underwriters in an underwritten public offering, addressed to the underwriters and (ii) a letter dated such date, from the independent certified public accountants of the Company, in form and substance as is customarily given by independent certified public accountants to underwriters in an underwritten public offering, addressed to the underwriters.

**2.6 Furnish Information**. It shall be a condition precedent to the obligations of the Company to take any action pursuant to this Section 2 with respect to the Registrable Securities of any selling Holder that such Holder shall furnish to the Company such information regarding itself, the Registrable Securities held by it, and the intended method of disposition of such securities as shall be required to effect the registration of such Holder's Registrable Securities. The Company shall have no obligation with respect to any registration requested pursuant to Section 2.2 or Section 2.4 of this Agreement if, as a result of the application of the preceding sentence, the number of shares or the anticipated aggregate offering price of the Registrable Securities to be included in the registration does not equal or exceed the number of shares or the anticipated aggregate offering price required to originally trigger the Company's obligation to initiate such registration as specified in subsection 2.2(a) or subsection 2.4(b)(ii), whichever is applicable.

**2.7 Expenses of Registration**.

**(a) Demand Registration**. All expenses other than underwriting discounts and commissions incurred in connection with registrations, filings or qualifications pursuant to Section 2.2, including (without limitation) all registration, filing and qualification fees, printers' and accounting fees, fees and disbursements of counsel for the Company, and the reasonable fees and disbursements of one counsel for the selling Holders selected by them shall be borne by the Company; provided, however, that the Company shall not be required to pay for any expenses of any registration proceeding begun pursuant to Section 2.2 if the registration request is subsequently withdrawn at the request of the Holders of a majority of the Registrable Securities to be registered (in which case all participating Holders shall bear such expenses), unless the Holders of a majority of the Registrable Securities agree to forfeit their right to one demand registration pursuant to Section 2.2.

**(b) Company Registration**. All expenses other than underwriting discounts and commissions incurred in connection with registrations, filings or qualifications of Registrable Securities pursuant to Section 2.3 for each Holder (which right may be assigned as provided in Section 2.12), including (without limitation) all registration, filing, and qualification fees, printers' and accounting fees, fees and disbursements of counsel for the Company and the reasonable fees and disbursements of one counsel for the selling Holder or Holders selected by them shall be borne by the Company.

**(c) Registration on Form S-3**. All expenses incurred in connection with a registration requested pursuant to Section 2.4, including (without limitation) all registration, filing, qualification, printers' and accounting fees, fees and disbursements of counsel for the Company and the reasonable fees and disbursements of one counsel for the selling Holder or Holders selected by them shall be borne by the Company, and any underwriters' discounts or commissions associated with Registrable Securities, shall be borne pro rata by the Holder or Holders participating in the Form S-3 Registration.

**2.8 Underwriting Requirements**. In connection with any offering involving an underwriting of shares of the Company's capital stock, the Company shall not be required under Section 2.3 to include any of the Holders' securities in such underwriting unless they accept the terms of the underwriting as agreed upon between the Company and the underwriters selected by it (or by other persons entitled to select the underwriters), and then only in such quantity as the underwriters determine in their sole discretion will not jeopardize the success of the offering by the Company. If the total amount of securities, including Registrable Securities, requested by holders of capital stock to be included in such offering exceeds the amount of securities sold other than by the Company that the underwriters determine in their sole discretion is compatible with the success of the offering, then the Company shall be required to include in the offering only that number of such securities, including Registrable Securities, which the underwriters determine in their sole discretion will not jeopardize the success of the offering (the securities so included to be apportioned pro rata among the selling security holders according to the total amount of securities entitled to be included therein owned by each selling security holder or in such other proportions as shall mutually be agreed to by such selling security holders) but in no event shall (i) the amount of securities of the selling Holders included in the offering be reduced below 25% of the total amount of securities included in such offering, unless such offering is the initial public offering of the Company's securities, in which case, the selling security holders may be excluded if the underwriters make the determination described above and no other holder's securities are included or (ii) any securities held by a Founder be included if any securities held by any selling Holder who is not a Founder are excluded. For purposes of the preceding parenthetical concerning apportionment, for any selling security holder which is a holder of Registrable Securities and which is a partnership or corporation, the partners, retired partners and holders of capital stock of such holder, or the estates and family members of any such partners and retired partners and any trusts for the benefit of any of the foregoing persons shall be deemed to be a single "***selling security holder,***" and any pro-rata reduction with respect to such "***selling security holder***" shall be based upon the aggregate amount of shares carrying registration rights owned by all entities and individuals included in such "***selling security holder,***" as defined in this sentence.

**2.9 Delay of Registration**. No Holder shall have any right to obtain or seek an injunction restraining or otherwise delaying any such registration as the result of any controversy that might arise with respect to the interpretation or implementation of this Section 2.

**2.10 Indemnification**. In the event any Registrable Securities are included in a registration statement under this Section 2:

**(a)** To the extent permitted by law, the Company will indemnify and hold harmless each Holder, the partners, officers, directors and stockholders of each Holder, legal counsel and accountants for each Holder, any underwriter (as defined in the Securities Act) for such Holder and each person, if any, who controls or is alleged to control such Holder or underwriter within the meaning of the Securities Act or the Exchange Act, against any losses, claims, damages, or liabilities (joint or several) to which they may become subject under the Securities Act, the Exchange Act or other federal or state law, insofar as such losses, claims, damages, or liabilities (or actions in respect thereof) arise out of or are based upon any of the following statements, omissions or violations (collectively a "***Violation***"): (i) any untrue statement or alleged untrue statement of a material fact contained in such registration statement, including any preliminary prospectus or final prospectus contained therein or any amendments or supplements thereto, (ii) the omission or alleged omission to state therein a material fact required to be stated therein, or necessary to make the statements therein not misleading, or (iii) any violation or alleged violation by the Company of the Securities Act, the Exchange Act, any state securities law or any rule or regulation promulgated under the Securities Act, the Exchange Act or any state securities law; and the Company will pay to each such Holder, underwriter or controlling person, as incurred, any legal or other expenses reasonably incurred by them in connection with investigating or defending any such loss, claim, damage, liability, or action; provided, however, that the indemnity agreement contained in this subsection 2.10(a) shall not apply to amounts paid in settlement of any such loss, claim, damage, liability, or action if such settlement is effected without the consent of the Company (which consent shall not be unreasonably withheld), nor shall the Company be liable to any Holder, underwriter or controlling person for any such loss, claim, damage, liability, or action to the extent that it arises out of or is based upon a Violation which occurs in reliance upon and in conformity with written information furnished expressly for use in connection with such registration by any such Holder, underwriter or controlling person.

**(b)** To the extent permitted by law, each selling Holder will indemnify and hold harmless the Company, each of its directors, each of its officers who has signed the registration statement, each person, if any, who controls the Company within the meaning of the Securities Act, any underwriter, any other Holder selling securities in such registration statement and any controlling person of any such underwriter or other Holder, against any losses, claims, damages, or liabilities (joint or several) to which any of the foregoing persons may become subject, under the Securities Act, the Exchange Act or other federal or state law, insofar as such losses, claims, damages, or liabilities (or actions in respect thereto) arise out of or are based upon any Violation, in each case to the extent (and only to the extent) that such Violation occurs in reliance upon and in conformity with written information furnished by such Holder expressly for use in connection with such registration; and each such Holder will pay, as incurred, any legal or other expenses reasonably incurred by any person intended to be indemnified pursuant to this subsection 2.10(b), in connection with investigating or defending any such loss, claim, damage, liability, or action; provided, however, that the indemnity agreement contained in this subsection 2.10(b) shall not apply to amounts paid in settlement of any such loss, claim, damage, liability or action if such settlement is effected without the consent of the Holder, which consent shall not be unreasonably withheld; provided, that in no event shall any indemnity under this subsection 2.10(b) together with any liability under Section 2.10(d) exceed the net proceeds from the offering received by such Holder, except in the case of willful fraud by such Holder.

**(c)** Promptly after receipt by an indemnified party under this Section 2.10 of notice of the commencement of any action (including any governmental action), such indemnified party will, if a claim in respect thereof is to be made against any indemnifying party under this Section 2.10, deliver to the indemnifying party a written notice of the commencement thereof and the indemnifying party shall have the right to participate in, and, to the extent the indemnifying party so desires, jointly with any other indemnifying party similarly noticed, to assume the defense thereof with counsel mutually satisfactory to the parties; provided, however, that an indemnified party (together with all other indemnified parties which may be represented without conflict by one counsel) shall have the right to retain one separate counsel, with the reasonable fees and expenses to be paid by the indemnifying party, if representation of such indemnified party by the counsel retained by the indemnifying party would be inappropriate due to actual or potential differing interests between such indemnified party and any other party represented by such counsel in such proceeding. The failure to deliver written notice to the indemnifying party within a reasonable time of the commencement of any such action, if prejudicial to its ability to defend such action, shall relieve such indemnifying party of any liability to the indemnified party under this Section 2.10, but the omission so to deliver written notice to the indemnifying party will not relieve it of any liability that it may have to any indemnified party otherwise than under this Section 2.10.

**(d)** If the indemnification provided for in this Section 2.10 is held by a court of competent jurisdiction to be unavailable to an indemnified party with respect to any loss, liability, claim, damage or expense referred to therein, then the indemnifying party, in lieu of indemnifying such indemnified party hereunder, shall contribute to the amount paid or payable by such indemnified party as a result of such loss, liability, claim, damage, or expense in such proportion as is appropriate to reflect the relative fault of the indemnifying party on the one hand and of the indemnified party on the other in connection with the statements or omissions that resulted in such loss, liability, claim, damage or expense as well as any other relevant equitable considerations; provided, that in no event shall any contribution by a Holder under this Subsection 2.10(d) exceed the net proceeds from the offering received by such Holder, except in the case of willful fraud by such Holder. The relative fault of the indemnifying party and of the indemnified party shall be determined by reference to, among other things, whether the untrue or alleged untrue statement of a material fact or the omission to state a material fact relates to information supplied by the indemnifying party or by the indemnified party and the parties' relative intent, knowledge, access to information, and opportunity to correct or prevent such statement or omission.

**(e)** Notwithstanding the foregoing, to the extent that the provisions on indemnification and contribution contained in the underwriting agreement entered into in connection with the underwritten public offering are in conflict with the foregoing provisions, the provisions in the underwriting agreement shall control.

**(f)** The obligations of the Company and Holders under this Section 2.10 shall survive the completion of any offering of Registrable Securities in a registration statement under this Section 2, and otherwise.

**2.11 Reports Under the Exchange Act**. With a view to making available to the Holders the benefits of Rule 144 promulgated under the Securities Act and any other rule or regulation of the SEC that may at any time permit a Holder to sell securities of the Company to the public without registration or pursuant to a registration on Form S-3, the Company agrees to:

**(a)** make and keep public information available, as those terms are understood and defined in SEC Rule 144, at all times after 90 days after the effective date of the first registration statement filed by the Company for the offering of its securities to the general public so long as the Company remains subject to the periodic reporting requirements under Sections 13 or 15(d) of the Exchange Act;

**(b)** take such action, including the voluntary registration of its Common Stock under Section 12 of the Exchange Act, as is necessary to enable the Holders to utilize Form S-3 for the sale of their Registrable Securities, such action to be taken as soon as practicable after the end of the fiscal year in which the first registration statement filed by the Company for the offering of its securities to the general public is declared effective;

**(c)** file with the SEC in a timely manner all reports and other documents required of the Company under the Securities Act and the Exchange Act; and

**(d)** furnish to any Holder, so long as the Holder owns any Registrable Securities, forthwith upon request (i) a written statement by the Company that it has complied with the reporting requirements of SEC Rule 144 (at any time after 90 days after the effective date of the first registration statement filed by the Company), the Securities Act and the Exchange Act (at any time after it has become subject to such reporting requirements), or that it qualifies as a registrant whose securities may be resold pursuant to Form S-3 (at any time after it so qualifies), and (ii) such other information as may be reasonably requested in availing any Holder of any rule or regulation of the SEC which permits the selling of any such securities without registration or pursuant to such form.

**2.12 Assignment of Registration Rights**. The rights to cause the Company to register Registrable Securities pursuant to this Section 2 may be assigned (but only with all related obligations) by a Holder to a transferee or assignee (i) of at least 500,000 shares of such securities (subject to adjustment for stock splits, stock dividends, reclassification or the like), (ii) that is a subsidiary, parent, partner, limited partner, former partner, member, former member or holder of capital stock of a Holder or any entity controlling, controlled by or under common control with such entity, (iii) that is an affiliated fund or entity of the Holder, which means with respect to a limited liability company or a limited liability partnership, a fund or entity managed by the same manager or managing member or general partner or management company or by an entity controlling, controlled by, or under common control with such manager or managing member or general partner or management company (such a fund or entity, an "***Affiliated Fund***"), (iv) who is a Holder's child, stepchild, grandchild, parent, stepparent, grandparent, spouse, sibling, mother-in-law, father-in-law, son-in-law, daughter-in-law, brother-in-law, or sister-in-law (such a relation, a Holder's "***Immediate Family Member***", which term shall include adoptive relationships), or (v) that is a trust for the benefit of an individual Holder or such Holder's Immediate Family Member, provided the Company is, within a reasonable time after such transfer, furnished with written notice of the name and address of such transferee or assignee and the securities with respect to which such registration rights are being assigned; and provided, further, that such assignment shall be effective only if the transferee agrees to be bound by this Agreement and immediately following such transfer the further disposition of such securities by the transferee or assignee is restricted under the Securities Act. For the purposes of determining the number of shares of Registrable Securities held by a transferee or assignee, the holdings of transferees and assignees of (x) a partnership who are partners or retired partners of such partnership or (y) a limited liability company who are members or retired members of such limited liability company (including Immediate Family Members of such partners or members who acquire Registrable Securities by gift, will or intestate succession) shall be aggregated together and with the partnership or limited liability company; provided that all assignees and transferees who would not qualify individually for assignment of registration rights shall have a single attorney-in-fact for the purpose of exercising any rights, receiving notices or taking any action under Section 2.

**2.13 Limitations on Subsequent Registration Rights**. From and after the date of this Agreement, the Company shall not, without the prior written consent of the Holders of a majority of the outstanding Registrable Securities, enter into any agreement with any holder or prospective holder of any securities of the Company which would allow such holder or prospective holder (a) to include such securities in any registration filed under Section 2.2, 2.3 or 2.4 hereof, unless under the terms of such agreement, such holder or prospective holder may include such securities in any such registration on other than either a pro rata basis with respect to the Registrable Securities or on a subordinated basis after all Holders have had the opportunity to include in the registration all shares of the Registrable Securities that such Holders wish to include or (b) to make a demand registration which could result in such registration statement being declared effective prior to the earlier of either of the dates set forth in subsection 2.2(a) or within 180 days of the effective date of any registration effected pursuant to Section 2.2.

**2.14 Lock-Up Agreement**.

**(a) Lock-Up Period; Agreement**. In connection with the initial public offering of the Company's securities and upon request of the Company or the underwriters managing such offering of the Company's securities, each Holder agrees not to sell, make any short sale of, loan, grant any option for the purchase of, or otherwise dispose of any securities of the Company, however or whenever acquired (other than those included in the registration) without the prior written consent of the Company or such underwriters, as the case may be, for such period of time (not to exceed one hundred eighty (180) days (or such other period, not to exceed 30 days after the expiration of the market stand-off time period, as may be requested by the Company or an underwriter to accommodate regulatory restrictions on (i) the publication or other distribution of research reports and (ii) analyst recommendations and opinions, including, but not limited to, the restrictions contained in FINRA Rule 2711(f)(4) or NYSE Rule 472(f)(4), or any successor provisions or amendments thereto)) from the effective date of such registration as may be requested by the Company or such managing underwriters and to execute an agreement reflecting the foregoing as may be requested by the underwriters at the time of the Company's initial public offering. In addition, upon request of the Company or the underwriters managing a public offering of the Company's securities (other than the initial public offering), the Holder agrees to be bound by similar restrictions, and to sign a similar agreement, in connection with no more than one additional registration statement filed within 12 months after the closing date of the initial public offering, provided that the duration of the lock-up period with respect to such additional registration shall not exceed 90 days from the effective date of such additional registration statement. The foregoing provisions of Section 2.14 shall not apply to any sale of any shares pursuant to an underwriting agreement. Each Holder further agrees to execute such agreements as may be reasonably requested by the underwriters in the Company's initial public offering that are consistent with this Section 2.14 or that are necessary to give further effect thereto. Any discretionary waiver or termination of the restrictions of any or all of such agreements applicable to the Holders, officers and directors or one percent securityholders, by the Company or the underwriters shall apply to all Holders subject to such agreements pro rata based on the number of shares subject to such agreements.

**(b) Limitations**. The obligations described in Section 2.14(a) shall apply only if all officers and directors of the Company and all one-percent securityholders enter into similar agreements, and shall not apply to a registration relating solely to employee benefit plans, or to a registration relating solely to a transaction pursuant to Rule 145 under the Securities Act.

**(c) Stop-Transfer Instructions**. In order to enforce the foregoing covenants, the Company may impose stop-transfer instructions with respect to the securities of each Holder (and the securities of every other person subject to the restrictions in Section 2.14(a)).

**(d) Transferees Bound**. Each Holder agrees that it will not transfer securities of the Company unless each transferee agrees in writing to be bound by all of the provisions of this Section 2.14.

**2.15 Termination of Registration Rights**. No Holder shall be entitled to exercise any right provided for in this Section 2 after the earlier of (i) three years following the consummation of a the Company's initial public offering pursuant to an effective registration statement under the Securities Act, (ii) such time more than twelve months following the initial public offering of the Company's securities as Rule 144 or another similar exemption under the Securities Act is available for the sale of all of such Holder's shares during a three-month period without registration, or (iii) upon termination of this Agreement, as provided in Section 4.1.

**2.16 Restrictions on Transfer**.

**(a)** The Preferred Stock and the Registrable Securities shall not be sold, pledged, or otherwise transferred, and the Company shall not recognize and shall issue stop-transfer instructions to its transfer agent with respect to any such sale, pledge, or transfer, except upon the conditions specified in this Agreement, which conditions are intended to ensure compliance with the provisions of the Securities Act. A transferring Holder will cause any proposed purchaser, pledgee, or transferee of the Preferred Stock and the Registrable Securities held by such Holder to agree to take and hold such securities subject to the provisions and upon the conditions specified in this Agreement.

**(b)** Each certificate, instrument, or book entry representing (i) the Preferred Stock, (ii) the Registrable Securities, and (iii) any other securities issued in respect of the securities referenced in clauses (i) and (ii), upon any stock split, stock dividend, recapitalization, merger, consolidation, or similar event, shall (unless otherwise permitted by the provisions of Subsection 2.16(c)) be notated with a legend substantially in the following form:

**"THE SECURITIES REPRESENTED HEREBY HAVE BEEN ACQUIRED FOR INVESTMENT AND HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED. SUCH SHARES MAY NOT BE SOLD, PLEDGED, OR TRANSFERRED IN THE ABSENCE OF SUCH REGISTRATION OR A VALID EXEMPTION FROM THE REGISTRATION AND PROSPECTUS DELIVERY REQUIREMENTS OF SAID ACT.**

**THE SECURITIES REPRESENTED HEREBY MAY BE TRANSFERRED ONLY IN ACCORDANCE WITH THE TERMS OF AN AGREEMENT BETWEEN THE COMPANY AND THE STOCKHOLDER, A COPY OF WHICH IS ON FILE WITH THE SECRETARY OF THE COMPANY."**

The Holders consent to the Company making a notation in its records and giving instructions to any transfer agent of the Restricted Securities in order to implement the restrictions on transfer set forth in this Subsection 2.16.

**(c)** The holder of such Restricted Securities, by acceptance of ownership thereof, agrees to comply in all respects with the provisions of this Section 2. Before any proposed sale, pledge, or transfer of any Restricted Securities, unless there is in effect a registration statement under the Securities Act covering the proposed transaction, the Holder thereof shall give notice to the Company of such Holder's intention to effect such sale, pledge, or transfer. Each such notice shall describe the manner and circumstances of the proposed sale, pledge, or transfer in sufficient detail and, if reasonably requested by the Company, shall be accompanied at such Holder's expense by either (i) a written opinion

of legal counsel who shall, and whose legal opinion shall, be reasonably satisfactory to the Company, addressed to the Company, to the effect that the proposed transaction may be effected without registration under the Securities Act; (ii) a "no action" letter from the SEC to the effect that the proposed sale, pledge, or transfer of such Restricted Securities without registration will not result in a recommendation by the staff of the SEC that action be taken with respect thereto; or (iii) any other evidence reasonably satisfactory to counsel to the Company to the effect that the proposed sale, pledge, or transfer of the Restricted Securities may be effected without registration under the Securities Act, whereupon the Holder of such Restricted Securities shall be entitled to sell, pledge, or transfer such Restricted Securities in accordance with the terms of the notice given by the Holder to the Company. The Company will not require such a legal opinion or "no action" letter (x) in any transaction in compliance with SEC Rule 144; or (y) in any transaction in which such Holder distributes Restricted Securities to an Affiliate of such Holder for no consideration; provided, that each transferee agrees in writing to be subject to the terms of this Subsection 2.16. Each certificate, instrument, or book entry representing the Restricted Securities transferred as above provided shall be notated with, except if such transfer is made pursuant to SEC Rule 144, the appropriate restrictive legend set forth in Subsection 2.16(b), except that such certificate instrument, or book entry shall not be notated with such restrictive legend if, in the opinion of counsel for such Holder and the Company, such legend is not required in order to establish compliance with any provisions of the Securities Act.

**3. Covenants of the Company.**

**3.1 Delivery of Financial Statements**. The Company shall deliver to each Major Investor (other than a Major Investor reasonably deemed by the Board of Directors of the Company to be a competitor of the Company):

**(a)** as soon as practicable, but in any event within 90 days after the end of each fiscal year of the Company, an income statement for such fiscal year, a balance sheet of the Company and statement of shareholders' equity as of the end of such year, and a statement of cash flows for such year, such year-end financial reports to be in reasonable detail, prepared in accordance with generally accepted accounting principles ("***GAAP***"), and audited and certified by an independent public accounting firm of nationally recognized standing selected by the Company;

**(b)** within 45 days after the end of each of the first three quarters of each fiscal year of the Company, an unaudited income statement and a statement of cash flows and balance sheet for and as of the end of such quarter, in reasonable detail;

**(c)** within 30 days of the end of each month, an unaudited income statement and a statement of cash flows and balance sheet for and as of the end of such month, in reasonable detail;

**(d)** as soon as practicable, but in any event 30 days prior to the end of each fiscal year, a budget and business plan for the next fiscal year, prepared on a monthly basis, and, as soon as prepared, any other budgets or revised budgets prepared by the Company;

**(e)** as soon as practicable, but in any event at least 45 days after the end of each quarter of each fiscal year of the Company, an up-to-date capitalization table of the Company; and

**(f)** with respect to the financial statements called for in subsections (b) and (c) of this Section 3.1, an instrument executed by the Chief Financial Officer or President of the Company and certifying that such financials were prepared in accordance with GAAP consistently applied with prior practice for earlier periods (with the exception, in the case of Section 3.1(c), of footnotes that may be required by GAAP) and fairly present the financial condition of the Company and its results of

operation for the period specified, subject to year-end audit adjustment, provided that the foregoing shall not restrict the right of the Company to change its accounting principles consistent with GAAP, if the Board of Directors determines that it is in the best interest of the Company to do so.

**3.2 Inspection**. The Company shall permit each Major Investor (except for a Major Investor reasonably deemed by the Board of Directors of the Company to be a competitor of the Company), at such Major Investor's expense, to visit and inspect the Company's properties, to examine its books of account and records and to discuss the Company's affairs, finances and accounts with its officers, all at such reasonable times as may be requested by the Holder.

**3.3 Right of First Offer**. Subject to the terms and conditions specified in this Section 3.3, the Company hereby grants to each Major Investor a right of first offer with respect to future sales by the Company of its Shares (as hereinafter defined). A Major Investor who chooses to exercise the right of first offer may designate as purchasers under such right itself or its partners or affiliates, including Affiliated Funds, in such proportions as it deems appropriate. Each time the Company proposes to offer any shares of, or securities convertible into or exercisable for any shares of, any class of its capital stock ("***Shares***"), the Company shall first make an offering of such Shares to each Major Investor in accordance with the following provisions:

**(a)** The Company shall deliver a notice (the "***RFO Notice***") to the Major Investors stating (i) its bona fide intention to offer such Shares, (ii) the number of such Shares to be offered, and (iii) the price and terms, if any, upon which it proposes to offer such Shares.

**(b)** Within 15 calendar days after delivery of the RFO Notice, each Major Investor may elect to purchase, at the price and on the terms specified in the RFO Notice, up to its pro rata share of such Shares which equals the proportion that the number of shares of Common Stock issued and held, or issuable upon conversion and exercise of all outstanding convertible or exercisable securities then held, by such Major Investor bears to the total number of shares of Common Stock then outstanding (assuming full conversion and exercise of all convertible or exercisable securities) (the "***Standard Pro Rata Share Ratio***"). The Company shall promptly, in writing, inform each Major Investor that purchases all the shares available to it (each, a "***Fully-Exercising Investor***") of any other Major Investor's failure to do likewise. During the 10-day period commencing after receipt of such information, each Fully-Exercising Investor shall be entitled to purchase that portion of the Shares for which Major Investors were entitled to subscribe but which were not subscribed for by the Major Investors that is equal to the proportion that the number of shares of Common Stock issued and held, or issuable upon conversion and exercise of all convertible or exercisable securities then held, by such Fully-Exercising Investor bears to the total number of shares of Common Stock then outstanding (assuming full conversion and exercise of all outstanding convertible or exercisable securities) issued and held, or issuable upon conversion of the Preferred Stock then held, by all the Fully-Exercising Investors.

**(c)** The Company may, during the 90-day period following the expiration of the period provided in subsection 3.3(b) hereof, offer the remaining unsubscribed portion of the Shares to any person or persons at a price not less than, and upon terms no more favorable to the offeree than those specified in the RFO Notice. If the Company does not enter into an agreement for the sale of the Shares within such period, or if such agreement is not consummated within 60 days of the execution thereof, the right provided hereunder shall be deemed to be revived and such Shares shall not be offered unless first reoffered to the Major Investors in accordance herewith.

**(d)** The right of first offer in this Section 3.3 shall not be applicable to (i) Exempt Shares (as defined in the Restated Certificate); (ii) the issuance of Common Stock in a Qualified IPO; or (iii) the issuance of securities deemed to be exempt from the provisions of this Section 3.3 with

the affirmative vote of at least a majority of the then outstanding shares of Preferred Stock, voting together as a class on an as-converted basis. In addition to the foregoing, the right of first offer in this Section 3.3 shall not be applicable with respect to any Major Investor and any subsequent securities issuance, if (i) at the time of such subsequent securities issuance, the Major Investor is not an "accredited investor," as that term is then defined in Rule 501(a) under the Securities Act, and (ii) such subsequent securities issuance is otherwise being offered only to accredited investors.

**3.4 Compensation Committee**. The Board of Directors of the Company shall maintain a compensation committee, which shall be authorized to determine the compensation of the Company's officers and other key employees.

**3.5 Confidential Information and Inventions Assignment Agreements**. After the date of this Agreement, the Company shall require all employees and consultants to execute and deliver to the Company a Confidential Information and Inventions Assignment Agreement in substantially the form approved by the Company's Board of Directors as a condition for the commencement of an employment or consulting relationship with the Company.

**3.6 Non-Compete Agreements**. Each employee (including each Founder) that is at or above the director level or whose responsibilities are technical in nature shall enter into a non-competition agreement (which agreement shall cover the employee's employment period and a one-year period following the termination of their employment) in a form approved by the Company's Board of Directors, including at least one director designated by the holders of the Company's Preferred Stock.

**3.7 Vesting of Shares; Repurchase Right with Respect to Restricted Stock**. Unless otherwise approved by the Board of Directors, all stock options, restricted stock and other stock equivalents issued after the date of this Agreement to employees, directors, consultants and other service providers shall be subject to vesting as follows: (a) twenty-five percent (25%) of such stock options, restricted stock and other stock equivalents shall vest at the end of the first year following the earlier of the date of issuance or such person's services commencement date with the company, and (b) seventy-five percent (75%) of such stock options, restricted stock and other stock equivalents shall vest ratably over the following three (3) years. Any unvested shares of restricted stock issued to employees, directors, consultants and other service providers shall be repurchaseable by the Company at the original purchase price of such shares upon termination of employment or cessation of the provision of services to the Company for any reason.

**3.8 Termination of Covenants**.

**(a)** The covenants set forth in Sections 3.1 through 3.7 shall terminate as to each Holder and be of no further force or effect (i) immediately prior to the consummation of a Qualified IPO, or (ii) upon termination of this Agreement, as provided in Section 4.1; provided, however, that in case of any proposed sale of Shares offered to the Major Investors pursuant to the first sentence of Section 3.3(b) in which the issuance of such Shares would trigger (whether actually waived or not) an adjustment to the Conversion Price of the Preferred Stock (as such term is defined in the Restated Certificate) pursuant to the terms of the Restated Certificate, except with respect to the offer and sale by the Company of Series F Preferred Stock pursuant to the Purchase Agreement, if any Major Investor fails to purchase its Standard Pro Rata Share Ratio of the shares available to it under the first sentence of Section 3.3(b) as a Fully-Exercising Investor, the covenants set forth in Section 3.3 shall terminate as to any such Major Investor.

**(b)** The covenants set forth in Sections 3.1 and 3.2 shall terminate as to each Holder and be of no further force or effect when the Company first becomes subject to the periodic reporting requirements of Sections 13 or 15(d) of the Exchange Act, if this occurs earlier than the events described in subsection (a) immediately above.

**3.9 Confidentiality**. Each Holder agrees that, except with the prior written permission of the Company, it shall at all times hold in confidence and trust and not use or disclose any confidential information of the Company provided to or learned by such Holder in connection with the Holder's rights under the Transaction Agreements. Notwithstanding the foregoing, each Holder may disclose any confidential information of the Company provided to or learned by such Holder in connection with such rights to the minimum extent necessary (i) to evaluate or monitor such Holder's investment in the Company; (ii) as required by any court or other governmental body, provided that such Holder provides the Company with prompt notice of such court order or requirement to the Company to enable the Company to seek a protective order or otherwise to prevent or restrict such disclosure; (iii) to legal counsel of such Holder; (iv) in connection with the enforcement of any Transaction Agreement (as defined herein) or rights under any of the Transaction Agreements; or (v) to comply with applicable law. The provisions of this Section 3.9 shall be in addition to, and not in substitution for, the provisions of any separate nondisclosure agreement executed by the parties hereto with respect to the transactions contemplated hereby. "***Transaction Agreements***" means collectively, this Agreement, the Amended and Restated Voting Agreement, dated as of the date hereof, by and among the Corporation and other parties thereto, the Amended and Restated Right of First Refusal and Co-Sale Agreement, dated as of the date hereof, by and among the Corporation and other parties thereto, the Purchase Agreement, and the Restated Certificate.

**4. Miscellaneous.**

**4.1 Termination**. This Agreement shall terminate, and have no further force and effect, when the Company shall consummate a Liquidation Transaction, as defined in the Restated Certificate.

**4.2 Entire Agreement**. This Agreement supersedes in its entirety the Prior Rights Agreement and constitutes the entire agreement between the parties hereto pertaining to the subject matter hereof, and any and all other written or oral agreements relating to the subject matter hereof existing between the parties hereto are expressly canceled.

**4.3 Successors and Assigns**. Except as otherwise provided in this Agreement, the terms and conditions of this Agreement shall inure to the benefit of and be binding upon the respective permitted successors and assigns of the parties (including transferees of any of the Company's Preferred Stock, or any Common Stock issued upon conversion thereof). Nothing in this Agreement, express or implied, is intended to confer upon any party other than the parties hereto or their respective successors and assigns any rights, remedies, obligations, or liabilities under or by reason of this Agreement, except as expressly provided in this Agreement.

**4.4 Amendments and Waivers**. Any term of this Agreement may be amended or waived only with the written consent of the Company and the holders of a majority of the Registrable Securities then outstanding, not including the Founders' Stock; provided, however, that if such amendment or waiver has the effect of affecting the Founders' Stock (i) in a manner different than securities issued to the Investors and (ii) in a manner adverse to the interests of the holders of the Founders' Stock, then such amendment shall require the consent of the holder or holders of a majority of the Founders' Stock; provided, further, any amendment or waiver of the rights granted to the Major Investors in Section 3 above shall require the consent of a two-thirds in interest of the Registrable Securities held by the Major Investors; provided, further, that any amendment or waiver of the rights of Silicon Valley Bank, Gold Hill Capital 2008, L.P. or the holders of IPO Adjustment Warrants with

respect to the Gold Hill Warrant Shares, IPO Adjustment Warrant Shares, the Series C Holders, the Series D Holders, the Series E Holders, the Series F Holders, the Series G Holders or the Series G' Holders in an adverse manner disproportionately affecting Silicon Valley Bank, Gold Hill Capital 2008, L.P. or the holders of IPO Adjustment Warrants with respect to the Gold Hill Warrant Shares, the IPO Adjustment Warrant Shares, the Series C Holders, Series D Holders, Series E Holders, Series F Holders, Series G Holders or Series G' Holders as compared to the rights of other Holders shall require the consent of Silicon Valley Bank, Gold Hill Capital 2008, L.P., the holders of IPO Adjustment Warrants equivalent to 66 2/3% of the aggregate Warrant Share Number, the holders of at least 75% of the Series C-R Preferred Stock and Series C-R-1 Preferred Stock, the holders of at least a majority of the Series D-R Preferred Stock and Series D-R-1 Preferred Stock, the holders of at least a majority of the Series E-R Preferred Stock and Series E-R-1 Preferred Stock, the holders of at least a majority of the Series F-R Preferred Stock and Series F-R-1 Preferred Stock, the holders of at least a majority of the Series G Preferred Stock and Series G-1 Preferred Stock, or the holders of at least a majority of the Series G' Preferred Stock and Series G'-1 Preferred Stock, in each case voting together as a single class on an as-converted basis, as the case may be. Notwithstanding the foregoing, Purchasers purchasing Stock in a Closing after the Initial Closing (as such terms are defined in the Purchase Agreement) may become parties to this Agreement by executing a counterpart signature page to this Agreement, without any amendment of this Agreement pursuant to this paragraph or any consent or approval of any Founder or other Investor. Any amendment or waiver effected in accordance with this paragraph shall be binding upon each party to this Agreement, whether or not such party has signed such amendment or waiver, each future holder of all such Registrable Securities, and the Company.

**4.5 Notices**. Unless otherwise provided, any notice required or permitted by this Agreement shall be in writing and shall be deemed sufficient upon delivery, when delivered personally or by overnight courier or sent by facsimile, or 48 hours after being deposited in the U.S. mail, as certified or registered mail, with postage prepaid, and addressed to the party to be notified at such party's address or facsimile number as set forth on the signature page or Exhibit A hereto or as subsequently modified by written notice.

**4.6 Severability**. If one or more provisions of this Agreement are held to be unenforceable under applicable law, the parties agree to renegotiate such provision in good faith. In the event that the parties cannot reach a mutually agreeable and enforceable replacement for such provision, then (a) such provision shall be excluded from this Agreement, (b) the balance of this Agreement shall be interpreted as if such provision were so excluded and (c) the balance of this Agreement shall be enforceable in accordance with its terms.

**4.7 Governing Law**. This Agreement and all acts and transactions pursuant hereto shall be governed, construed and interpreted in accordance with the laws of the State of Delaware, without giving effect to principles of conflicts of laws.

**4.8 Counterparts**. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

**4.9 Titles and Subtitles**. The titles and subtitles used in this Agreement are used for convenience only and are not to be considered in construing or interpreting this Agreement.

**4.10 Aggregation of Stock**. All shares of the Preferred Stock held or acquired by affiliated entities or persons shall be aggregated together for the purpose of determining the availability of any rights under this Agreement.

**[SIGNATURE PAGES FOLLOW]**

The parties hereto have executed this Amended and Restated Investors' Rights Agreement as of the date first written above.

**THE COMPANY:**

**CARDLYTICS, INC.**

By: /s/ Scott Grimes
Name: Scott Grimes
Title: Chief Executive Officer

Address:
675 Ponce de Leon Avenue NE
Suite 6000
Atlanta, Georgia 30308

The parties hereto have executed this Amended and Restated Investors' Rights Agreement as of the date first written above.

**THE PURCHASERS:**

**SINGTEL INNOV8 PTE LTD**

By: /s/ Edgar Hardless
Name: Edgar Hardless
Title: Director

Address:

Fax:

The parties hereto have executed this Amended and Restated Investors' Rights Agreement as of the date first written above.

**THE PURCHASERS:**

**AIMIA EMEA LIMITED**

By: /s/ Jonathan Levy
Name: Jonathan Levy
Title: Legal Director

Address:

Fax:

The parties hereto have executed this Amended and Restated Investors' Rights Agreement as of the date first written above.

**THE INVESTORS:**

**DISCOVERY GLOBAL OPPORTUNITY MASTER FUND, LTD.**

By: /s/ Adam Schreck
Name: Adam Schreck
Title: General Counsel

Address:

Fax:

**DISCOVERY GLOBAL FOCUS MASTER FUND, LTD.**

By: /s/ Adam Schreck
Name: Adam Schreck
Title: General Counsel

Address:

Fax:

The parties hereto have executed this Amended and Restated Investors' Rights Agreement as of the date first written above.

**THE INVESTORS:**

**POLARIS VENTURE PARTNERS V, L.P.**

By: POLARIS VENTURE MANAGEMENT CO. V, L.L.C.
ITS GENERAL PARTNER

By: /s/ Max Eisenberg
Name: Max Eisenberg
Title: Attorney-in-fact

**POLARIS VENTURE PARTNERS ENTREPRENEURS' FUND V, L.P.**

By: POLARIS VENTURE MANAGEMENT CO. V, L.L.C.
ITS GENERAL PARTNER

By: /s/ Max Eisenberg
Name: Max Eisenberg
Title: Attorney-in-fact

**POLARIS VENTURE PARTNERS FOUNDERS' FUND V, L.P.**

By: POLARIS VENTURE MANAGEMENT CO. V, L.L.C.
ITS GENERAL PARTNER

By: /s/ Max Eisenberg
Name: Max Eisenberg
Title: Attorney-in-fact

**POLARIS VENTURE PARTNERS SPECIAL FOUNDERS' FUND V, L.P.**

By: POLARIS VENTURE MANAGEMENT CO. V, L.L.C.
ITS GENERAL PARTNER

By: /s/ Max Eisenberg
Name: Max Eisenberg
Title: Attorney-in-fact

The parties hereto have executed this Amended and Restated Investors' Rights Agreement as of the date first written above.

**THE INVESTORS:**

**CANAAN VIII, L.P.**

By: **CANAAN PARTNERS VIII, LLC**

By: /s/ John V. Balen
Name: John V. Balen
Title: Member/Manager

Address:

Fax:

The parties hereto have executed this Amended and Restated Investors' Rights Agreement as of the date first written above.

**THE INVESTORS:**

**TTP FUND II, L.P.**

By: TTP II, LLC, ITS GENERAL PARTNER

By: /s/ Gardiner W. Garrard, III
Name: Gardiner W. Garrard, III
Title: Managing Partner

Address:

Fax:

The parties hereto have executed this Amended and Restated Investors' Rights Agreement as of the date first written above.

**THE INVESTORS:**

**AEROPLAN HOLDINGS EUROPE SARL**

By: /s/ Stuart MacGregor
Name: Stuart MacGregor
Title: Manager A

By: /s/ Irina Horner
Name: Irina Horner
Title: Manager B

Address:

Fax:

The parties hereto have executed this Amended and Restated Investors' Rights Agreement as of the date first written above.

**THE INVESTORS:**

**TTV IVY HOLDINGS, LLC**

By: TTV IVY HOLDINGS MANAGER, LLC, ITS MANAGER

By: /s/ Gardiner W. Garrard, III
Name: Gardiner W. Garrard, III
Title: Managing Partner

Address:

Fax:

The parties hereto have executed this Amended and Restated Investors' Rights Agreement as of the date first written above.

**THE INVESTORS:**

**FIDELITY INFORMATION SERVICES, LLC**

By: /s/ Michael P. Oates
Name: Michael P. Oates
Title: Corporate Executive Vice President

Address:
601 Riverside Avenue
Jacksonville, FL 32204

Fax: (904) 438-6032

The parties hereto have executed this Amended and Restated Investors' Rights Agreement as of the date first written above.

**THE INVESTORS:**

**ITC PARTNERS FUND I, LP**

By: ITC PARTNERS GP, LLC, ITS GENERAL PARTNER

By: /s/ Timothy B. Knight
Name: Timothy B. Knight
Title: Chief Financial Officer

Address:

Fax:

The parties hereto have executed this Amended and Restated Investors' Rights Agreement as of the date first written above.

**THE INVESTORS:**

**KINETIC VENTURES VIII, L.P.**

By: KINETIC VENTURES PARTNERS, VIII, L.L.C.,
ITS GENERAL PARTNER

By: KINETIC VENTURES, L.L.C., ITS MANAGING
MEMBER

By: /s/ Nelson Chu
Name: Nelson Chu
Title: Managing Director

Address:

Fax:

The parties hereto have executed this Amended and Restated Investors' Rights Agreement as of the date first written above.

**THE INVESTORS:**

**REGIONS FINANCIAL CORPORATION**

By: /s/ David J. Turner, Jr.
Name: David J. Turner, Jr.
Title: CFO

Address:

Fax:

The parties hereto have executed this Amended and Restated Investors' Rights Agreement as of the date first written above.

**THE INVESTORS:**

**ORRICK INVESTMENTS 2009 LLC**

By: /s/ Peter Lillevand
Name: Peter Lillevand
Title: Chair, Investment Committee

Address:

Fax:

**ORRICK INVESTMENTS 2008 LLC**

By: /s/ Peter Lillevand
Name: Peter Lillevand
Title:

Address:

Fax:

The parties hereto have executed this Amended and Restated Investors' Rights Agreement as of the date first written above.

**THE INVESTORS:**

**HANS THEISEN**

/s/ Hans Theisen

Address:

Fax:

The parties hereto have executed this Amended and Restated Investors' Rights Agreement as of the date first written above.

**THE INVESTORS:**

**DAVID ADAMS**

/s/ David Adams

Address:

Fax:

The parties hereto have executed this Amended and Restated Investors' Rights Agreement as of the date first written above.

**THE INVESTORS:**

**MARK JOHNSON**

/s/ Mark Johnson

Address:

Fax:

The parties hereto have executed this Amended and Restated Investors' Rights Agreement as of the date first written above.

**THE INVESTORS:**

**JOHN L. KLINCK JR.**

/s/ John L. Klinck Jr.

Address:

Fax:

The parties hereto have executed this Amended and Restated Investors' Rights Agreement as of the date first written above.

**THE INVESTORS:**

**GOLD HILL CAPITAL 2008, L.P.**

By: GOLD HILL CAPITAL 2008, LLC, ITS GENERAL PARTNER

By: /s/ Frank Tower
Name: Frank Tower
Title: Manager

Address:

Fax:

The parties hereto have executed this Amended and Restated Investors' Rights Agreement as of the date first written above.

**THE INVESTORS:**

**NATIONAL ELECTRICAL BENEFIT FUND**

By: COLUMBIA PARTNERS, L.L.C. INVESTMENT MANAGEMENT, ITS AUTHORIZED SIGNATORY

By: /s/ Christopher Doherty
Name: Christopher Doherty
Title: Managing Director

Address:

Fax:

The parties hereto have executed this Amended and Restated Investors' Rights Agreement as of the date first written above.

**THE FOUNDERS:**

/s/ Scott Grimes

Name: Scott Grimes

Address:
675 Ponce de Leon Avenue NE
Suite 6000
Atlanta, Georgia 30308

/s/ Lynne Laube

Name: Lynne Laube

Address:
675 Ponce de Leon Avenue NE
Suite 6000
Atlanta, Georgia 30308

## Exhibit A

## Investors

| Name and Address | No. of Common Shares[2] | No. of Series A-R Preferred Shares | No. of Series B-R Preferred Shares | No. of Series C-R Preferred Shares | No. of Series D-R Preferred Shares | No. of Series E-R Preferred Shares | No. of Series F-R Preferred Shares | No. of Series G Preferred Shares | No. of Series G' Preferred Shares |
|---|---|---|---|---|---|---|---|---|---|
| **Singtel Innov8 Pte Ltd** | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 812,164 | 0 |
| **Discovery Global Opportunity Master Fund1 LTD.**<br>20 Marshall, Suite 312<br>South Norwalk, CT 06854 | 0 | 0 | 0 | 0 | 0 | 0 | 4,295,358 | 0 | 381,091 |
| **Discovery Global Focus Master Fund, LTD.**<br>20 Marshall, Suite 312<br>South Norwalk, CT 06854 | 0 | 0 | 0 | 0 | 0 | 0 | 499,195 | 0 | 44,288 |
| **Discovery Global Citizens Master Fund, LTD.**<br>20 Marshall, Suite 312<br>South Norwalk, CT 06854 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |

2 Issued upon conversion of Preferred Shares.

| Name and Address | No. of Common Shares[2] | No. of Series A-R Preferred Shares | No. of Series B-R Preferred Shares | No. of Series C-R Preferred Shares | No. of Series D-R Preferred Shares | No. of Series E-R Preferred Shares | No. of Series F-R Preferred Shares | No. of Series G Preferred Shares | No. of Series G' Preferred Shares |
|---|---|---|---|---|---|---|---|---|---|
| **Fidelity Information Services, LLC**<br>601 Riverside Avenue,<br>T-12<br>Jacksonville, FL 32204<br>Attention: General Counsel | 1,590,061 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| **Aeroplan Holdings Europe Sarl**<br>5100 De Maisonneuve Blvd. West, Montreal, Quebec,<br>Canada H4A 2K9<br>Attention: General Counsel;<br>Fax: (514) 205-7578 | 0 | 0 | 0 | 848,032 | 3,891,709 | 2,438,093 | 0 | 0 | 636,829 |
| **Aimia EMEA Limited**<br>5100 De Maisonneuve Blvd. West, Montreal, Quebec,<br>Canada H4A 2K9<br>Attention: General Counsel;<br>Fax: (514) 205-7578 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 892,083 |

| Name and Address | No. of Common Shares[2] | No. of Series A-R Preferred Shares | No. of Series B-R Preferred Shares | No. of Series C-R Preferred Shares | No. of Series D-R Preferred Shares | No. of Series E-R Preferred Shares | No. of Series F-R Preferred Shares | No. of Series G Preferred Shares | No. of Series G' Preferred Shares |
|---|---|---|---|---|---|---|---|---|---|
| **Kinetic Ventures VIII, L.P.**<br>Nelson Chu<br>Kinetic Ventures<br>75 5th Street, N.W.,<br>Suite 316<br>Atlanta, GA 30308<br>(404) 995-8811<br>Sydney Shepherd<br>Chief Financial Officer<br>Kinetic Ventures<br>Two Wisconsin Circle,<br>Suite 620<br>Chevy Chase,<br>MD 20815<br>(301) 652-8066 | 0 | 0 | 0 | 481,542 | 88,482 | 0 | 0 | 29,006 | 50,235 |
| **ITC Partners Fund I, L.P.**<br>Attention: Campbell B.<br>Lanier, III<br>1791 O.G. Skinner<br>Drive<br>West Point, Georgia<br>31833 | 0 | 0 | 0 | 137,583 | 25,281 | 0 | 0 | 29,006 | 14,356 |
| **Regions Financial Corporation**<br>1900 Fifth Avenue<br>North Birmingham, AL<br>35203<br>Attention: Brad<br>Kimbrough | 0 | 0 | 0 | 489,052 | 37,921 | 0 | 0 | 0 | 46,430 |

| Name and Address | No. of Common Shares[2] | No. of Series A-R Preferred Shares | No. of Series B-R Preferred Shares | No. of Series C-R Preferred Shares | No. of Series D-R Preferred Shares | No. of Series E-R Preferred Shares | No. of Series F-R Preferred Shares | No. of Series G Preferred Shares | No. of Series G' Preferred Shares |
|---|---|---|---|---|---|---|---|---|---|
| **Polaris Venture Partners V, L.P.**<br>Attn: Bryce Youngren<br>One Marina Park Drive, 10th Floor<br>Boston, MA 02210 | 0 | 3,087,790 | 3,724,699 | 1,670,734 | 657,787 | 102,287 | 0 | 111,954 | 820,080 |
| **Polaris Venture Partners Entrepreneurs' Fund V, L.P.**<br>Attn: Bryce Youngren<br>One Marina Park Drive, 10th Floor<br>Boston, MA 02210 | 0 | 60,181 | 72,594 | 32,563 | 12,820 | 1,993 | 0 | 2,182 | 15,983 |
| **Polaris Venture Partners Founders' Fund V, L.P.**<br>Attn: Bryce Youngren<br>One Marina Park Drive, 10th Floor<br>Boston, MA 02210 | 0 | 21,151 | 25,514 | 11,444 | 4,506 | 701 | 0 | 767 | 5,616 |
| **Polaris Venture Partners Special Founders' Fund V, L.P.**<br>Attn: Bryce Youngren<br>One Marina Park Drive, 10th Floor<br>Boston, MA 02210 | 0 | 30,878 | 37,247 | 16,707 | 6,578 | 1,023 | 0 | 1,120 | 8,200 |

| Name and Address | No. of Common Shares[2] | No. of Series A-R Preferred Shares | No. of Series B-R Preferred Shares | No. of Series C-R Preferred Shares | No. of Series D-R Preferred Shares | No. of Series E-R Preferred Shares | No. of Series F-R Preferred Shares | No. of Series G Preferred Shares | No. of Series G' Preferred Shares |
|---|---|---|---|---|---|---|---|---|---|
| **Canaan VIII L.P.**<br>Attn: John V. Balen<br>2765 Sand Hill Road<br>Menlo Park, CA<br>94025 | 0 | 3,800,000 | 4,583,813 | 2,056,095 | 809,508 | 477,018 | 0 | 214,643 | 1,040,389 |
| **Orrick Investments 2008 LLC**<br>c/o Orrick, Herrington & Sutcliffe LLP<br>1000 Marsh Road<br>Menlo Park, CA<br>94025 | 0 | 128,000 | 0 | 0 | 0 | 0 | 0 | 0 | 11,278 |
| **Orrick Investments 2009 LLC**<br>c/o Orrick, Herrington & Sutcliffe LLP<br>1000 Marsh Road<br>Menlo Park, CA<br>94025 | 0 | 0 | 33,945 | 0 | 0 | 0 | 0 | 0 | 2,990 |
| **Glen R. Van Ligten**<br>c/o Gunderson Dettmer Stough Villeneuve Franklin & Hachigian, LLP<br>1200 Seaport Blvd.<br>Redwood City, CA<br>94063 | 48,486 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |

| Name and Address | No. of Common Shares[2] | No. of Series A-R Preferred Shares | No. of Series B-R Preferred Shares | No. of Series C-R Preferred Shares | No. of Series D-R Preferred Shares | No. of Series E-R Preferred Shares | No. of Series F-R Preferred Shares | No. of Series G Preferred Shares | No. of Series G' Preferred Shares |
|---|---|---|---|---|---|---|---|---|---|
| **Hans Theisen** | 0 | 300,000 | 0 | 0 | 0 | 0 | 0 | 6,589 | 26,438 |
| **TTP Fund II, L.P.**<br>1230 Peachtree Street<br>Promenade II,<br>Suite 1150<br>Atlanta, GA 30309 | 0 | 0 | 509,177 | 124,874 | 49,164 | 0 | 0 | 0 | 60,182 |
| **TTV Ivy Holdings, LLC**<br>1230 Peachtree Street<br>Promenade II, Suite 1150,<br>Atlanta, GA<br>30309 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 116,023 | 0 |
| **Gold Hill Capital 2008, L.P.**<br>1 Almaden Blvd.<br>Ste 630<br>San Jose, CA 95113 | 0 | 0 | 0 | 163,017 | 0 | 159,006 | 0 | 3,892 | 28,379 |
| **National Electrical Benefit Fund**<br>5425 Wisconsin<br>Avenue, Suite 700<br>Chevy Chase,<br>MD 20815 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 938,359 |
| **Market Platform Dynamics, Inc.** | 9,500 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| **Scott Grimes** | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 103,876 |
| **Lynne Laube** | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 55,933 |
| **Mark Johnson** | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 23,205 | 0 |
| **John L. Klinck** | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 23,205 | 0 |
| **David Adams** | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 11,602 | 0 |
| **TOTAL** | **1,648,047** | **7,428,000** | **8,986,989** | **6,031,643** | **5,583,756** | **3,180,121** | **4,794,553** | **1,385,358** | **5,183,015** |

**CARDLYTICS, INC.**

**2008 STOCK PLAN**

(as amended August 2, 2016)

1. **Purposes of the Plan.** The purposes of this 2008 Stock Plan are to attract and retain the best available personnel for positions of substantial responsibility, to provide additional incentive to Employees and Consultants, and to promote the success of the Company's business. Options granted under the Plan may be Incentive Stock Options or Nonstatutory Stock Options, as determined by the Administrator at the time of grant of an Option and subject to the applicable provisions of Section 422 of the Code and the regulations promulgated thereunder. Restricted Stock may also be granted under the Plan.

2. **Definitions.** As used herein, the following definitions shall apply:

(a) **"Administrator"** means the Board or a Committee.

(b) **"Affiliate"** means an entity other than a Subsidiary which, together with the Company, is under common control of a third person or entity.

(c) **"Applicable Laws"** means all applicable laws, rules, regulations and requirements, including, but not limited to, all applicable U.S. federal or state laws, any Stock Exchange rules or regulations, and the applicable laws, rules or regulations of any other country or jurisdiction where Options or Restricted Stock are granted under the Plan or Participants reside or provide services, as such laws, rules, and regulations shall be in effect from time to time.

(d) **"Award"** means any award of an Option or Restricted Stock under the Plan.

(e) **"Board"** means the Board of Directors of the Company.

(f) **"California Participant"** means a Participant whose Award is issued in reliance on Section 25102(o) of the California Corporations Code.

(g) **"Cashless Exercise"** means a program approved by the Administrator in which payment of the Option exercise price or tax withholding obligations may be satisfied, in whole or in part, with Shares subject to the Option, including by delivery of an irrevocable direction to a securities broker (on a form prescribed by the Administrator) to sell Shares and to deliver all or part of the sale proceeds to the Company in payment of the aggregate exercise price and, if applicable, the amount necessary to satisfy the Company's withholding obligations.

(h) **"Cause"** for termination of a Participant's Continuous Service Status will exist (unless another definition is provided in an applicable Option Agreement, Restricted Stock Purchase Agreement, employment agreement or other applicable written agreement) if the Participant's Continuous Service Status is terminated for any of the following reasons: (i) Participant's willful failure to perform his or her duties and responsibilities to the Company or

Participant's violation of any written Company policy; (ii) Participant's commission of any act of fraud, embezzlement, dishonesty or any other willful misconduct that has caused or is reasonably expected to result in injury to the Company; (iii) Participant's unauthorized use or disclosure of any proprietary information or trade secrets of the Company or any other party to whom the Participant owes an obligation of nondisclosure as a result of his or her relationship with the Company; or (iv) Participant's material breach of any of his or her obligations under any written agreement or covenant with the Company. The determination as to whether a Participant's Continuous Service Status has been terminated for Cause shall be made in good faith by the Company and shall be final and binding on the Participant. The foregoing definition does not in any way limit the Company's ability to terminate a Participant's employment or consulting relationship at any time, and the term "Company" will be interpreted to include any Subsidiary, Parent, Affiliate, or any successor thereto, if appropriate.

(i) **"Code"** means the Internal Revenue Code of 1986, as amended.

(j) **"Committee"** means one or more committees or subcommittees of the Board consisting of two (2) or more Directors (or such lesser or greater number of Directors as shall constitute the minimum number permitted by Applicable Laws to establish a committee or sub-committee of the Board) appointed by the Board to administer the Plan in accordance with Section 4 below.

(k) **"Common Stock"** means the Company's common stock, par value $0.0001 per share, as adjusted in accordance with Section 14 below.

(l) **"Company"** means Cardlytics, Inc., a Delaware corporation.

(m) **"Consultant"** means any person or entity, including an advisor but not an Employee, who is engaged by the Company, or any Parent, Subsidiary or Affiliate, to render services (other than capital-raising services) and is compensated for such services, and any Director whether compensated for such services or not.

(n) **"Continuous Service Status"** means the absence of any interruption or termination of service as an Employee or Consultant. Continuous Service Status as an Employee or Consultant shall not be considered interrupted or terminated in the case of: (i) Company approved sick leave; (ii) military leave; (iii) any other bona fide leave of absence approved by the Administrator, provided that such leave is for a period of not more than ninety (90) days, unless reemployment upon the expiration of such leave is guaranteed by contract or statute, or unless provided otherwise pursuant to a written Company policy. Also, Continuous Service Status as an Employee or Consultant shall not be considered interrupted or terminated in the case of a transfer between locations of the Company or between the Company, its Parents, Subsidiaries or Affiliates, or their respective successors, or a change in status from an Employee to a Consultant or from a Consultant to an Employee.

(o) **"Director"** means a member of the Board.

(p) **"Disability"** means "disability" within the meaning of Section 22(e)(3) of the Code.

(q) **"Employee"** means any person employed by the Company, or any Parent, Subsidiary or Affiliate, with the status of employment determined pursuant to such factors as are deemed appropriate by the Administrator in its sole discretion, subject to any requirements of the Applicable Laws, including the Code. The payment by the Company of a director's fee shall not be sufficient to constitute "employment" of such director by the Company or any Parent, Subsidiary or Affiliate.

(r) **"Exchange Act"** means the Securities Exchange Act of 1934, as amended.

(s) **"Fair Market Value"** means, as of any date, the per share fair market value of the Common Stock, as determined by the Administrator in good faith on such basis as it deems appropriate and applied consistently with respect to Participants. Whenever possible, the determination of Fair Market Value shall be based upon the per share closing price for the Shares as reported in the Wall Street Journal for the applicable date.

(t) **"Family Members"** means any child, stepchild, grandchild, parent, stepparent, grandparent, spouse, former spouse, sibling, niece, nephew, mother-in-law, father-in-law, son-in-law, daughter-in-law, brother-in-law, or sister-in-law (including adoptive relationships) of the Optionee, any person sharing the Optionee's household (other than a tenant or employee), a trust in which these persons (or the Optionee) have more than 50% of the beneficial interest, a foundation in which these persons (or the Optionee) control the management of assets, and any other entity in which these persons (or the Optionee) own more than 50% of the voting interests.

(u) **"Incentive Stock Option"** means an Option intended to qualify as an incentive stock option within the meaning of Section 422 of the Code, as designated in the applicable Option Agreement.

(v) **"Involuntary Termination"** means (unless another definition is provided in the applicable Option Agreement, Restricted Stock Purchase Agreement, employment agreement or other applicable written agreement) the termination of a Participant's Continuous Service Status other than for death or Disability or for Cause by the Company or a Subsidiary, Parent, Affiliate or successor thereto, as appropriate.

(w) "**Listed Security**" means any security of the Company that is listed or approved for listing on a national securities exchange or designated or approved for designation as a national market system security on an interdealer quotation system by the National Association of Securities Dealers, Inc.

(x) **"Nonstatutory Stock Option"** means an Option not intended to qualify as an Incentive Stock Option, as designated in the applicable Option Agreement.

(y) **"Option"** means a stock option granted pursuant to the Plan.

(z) **"Option Agreement"** means a written document, the form(s) of which shall be approved from time to time by the Administrator, reflecting the terms of an Option granted under the Plan and includes any documents attached to or incorporated into such Option Agreement, including, but not limited to, a notice of stock option grant and a form of exercise notice.

(aa) **"Option Exchange Program"** means a program approved by the Administrator whereby outstanding Options (i) are exchanged for Options with a lower exercise price or Restricted Stock or (ii) are amended to decrease the exercise price as a result of a decline in the Fair Market Value of the Common Stock.

(bb) **"Optioned Stock"** means Shares that are subject to an Option or that were issued pursuant to the exercise of an Option.

(cc) **"Optionee"** means an Employee or Consultant who receives an Option.

(dd) **"Parent"** means any corporation (other than the Company) in an unbroken chain of corporations ending with the Company if, at the time of grant of the Award, each of the corporations other than the Company owns stock possessing 50% or more of the total combined voting power of all classes of stock in one of the other corporations in such chain. A corporation that attains the status of a Parent on a date after the adoption of the Plan shall be considered a Parent commencing as of such date.

(ee) **"Participant"** means any holder of one or more Awards or Shares issued pursuant to an Award.

(ff) **"Plan"** means this 2008 Stock Plan.

(gg) **"Restricted Stock"** means Shares acquired pursuant to a right to purchase Common Stock granted pursuant to Section 11 below.

(hh) **"Restricted Stock Purchase Agreement"** means a written document, the form(s) of which shall be approved from time to time by the Administrator, reflecting the terms of Restricted Stock granted under the Plan and includes any documents attached to such agreement.

(ii) **"Rule 16b-3"** means Rule 16b-3 promulgated under the Exchange Act, as amended from time to time, or any successor provision.

(jj) **"Share"** means a share of Common Stock, as adjusted in accordance with Section 14 below.

(kk) **"Stock Exchange"** means any stock exchange or consolidated stock price reporting system on which prices for the Common Stock are quoted at any given time.

(ll) **"Subsidiary"** means any corporation (other than the Company) in an unbroken chain of corporations beginning with the Company if, at the time of grant of the Award, each of the corporations other than the last corporation in the unbroken chain owns stock possessing 50% or more of the total combined voting power of all classes of stock in one of the other corporations in such chain. A corporation that attains the status of a Subsidiary on a date after the adoption of the Plan shall be considered a Subsidiary commencing as of such date.

(mm) **"Ten Percent Holder"** means a person who owns stock representing more than 10% of the voting power of all classes of stock of the Company or any Parent or Subsidiary measured as of an Award's date of grant.

(nn) **"Triggering Event"** means:

(i) a sale, transfer or disposition of all or substantially all of the Company's assets other than to (A) a corporation or other entity of which at least a majority of its combined voting power is owned directly or indirectly by the Company, (B) a corporation or other entity owned directly or indirectly by the holders of capital stock of the Company in substantially the same proportions as their ownership of Common Stock, or (C) an Excluded Entity (as defined in subsection (ii) below); or

(ii) any merger, consolidation or other business combination transaction of the Company with or into another corporation, entity or person, other than a transaction with or into another corporation, entity or person in which the holders of at least a majority of the shares of voting capital stock of the Company outstanding immediately prior to such transaction continue to hold (either by such shares remaining outstanding in the continuing entity or by their being converted into shares of voting capital stock of the surviving entity) a majority of the total voting power represented by the shares of voting capital stock of the Company (or the surviving entity) outstanding immediately after such transaction (an "Excluded Entity").

Notwithstanding anything stated herein, a transaction shall not constitute a "Triggering Event" if its sole purpose is to change the state of the Company's incorporation, or to create a holding company that will be owned in substantially the same proportions by the persons who hold the Company's securities immediately before such transaction. For clarity, the term "Triggering Event" as defined herein shall not include stock sale transactions whether by the Company or by the holders of capital stock.

3. **Stock Subject to the Plan.** Subject to the provisions of Section 14 of the Plan, the maximum aggregate number of Shares that may be issued under the Plan is 12,480,000 Shares, of which a maximum of 12,480,000 Shares may be issued under the Plan pursuant to Incentive Stock Options. The Shares issued under the Plan may be authorized, but unissued, or reacquired Shares. If an Award should expire or become unexercisable for any reason without having been exercised in full, or is surrendered pursuant to an Option Exchange Program, the unpurchased Shares that were subject thereto shall, unless the Plan shall have been terminated, become available for future grant under the Plan. In addition, any Shares which are retained by the Company upon exercise of an Award in order to satisfy the exercise or purchase price for such Award or any withholding taxes due with respect to such Award shall be treated as not issued and shall continue to be available under the Plan. Shares issued under the Plan and later repurchased by the Company pursuant to any repurchase right that the Company may have shall not be available for future grant under the Plan.

4. **Administration of the Plan.**

(a) **General.** The Plan shall be administered by the Board or a Committee, or a combination thereof, as determined by the Board. The Plan may be administered by different administrative bodies with respect to different classes of Participants and, if permitted by Applicable Laws, the Board may authorize one or more officers of the Company to make Awards under the Plan to Employees and Consultants (who are not subject to Section 16 of the Exchange Act) within parameters specified by the Board.

(b) **Committee Composition.** If a Committee has been appointed pursuant to this Section 4, such Committee shall continue to serve in its designated capacity until otherwise directed by the Board. From time to time the Board may increase the size of any Committee and appoint additional members thereof, remove members (with or without cause) and appoint new members in substitution therefor, fill vacancies (however caused) and dissolve a Committee and thereafter directly administer the Plan, all to the extent permitted by the Applicable Laws and, in the case of a Committee administering the Plan in accordance with the requirements of Rule 16b-3 or Section 162(m) of the Code, to the extent permitted or required by such provisions.

(c) **Powers of the Administrator.** Subject to the provisions of the Plan and, in the case of a Committee, the specific duties delegated by the Board to such Committee, the Administrator shall have the authority, in its sole discretion:

(i) to determine the Fair Market Value of the Common Stock in accordance with Section 2(s) above, provided that such determination shall be applied consistently with respect to Participants under the Plan;

(ii) to select the Employees and Consultants to whom Awards may from time to time be granted;

(iii) to determine the number of Shares to be covered by each Award;

(iv) to approve the form(s) of agreement(s) and other related documents used under the Plan;

(v) to determine the terms and conditions, not inconsistent with the terms of the Plan, of any Award granted hereunder, which terms and conditions include but are not limited to the exercise or purchase price, the time or times when Awards may be exercised (which may be based on performance criteria), the circumstances (if any) when vesting will be accelerated or forfeiture restrictions will be waived, and any restriction or limitation regarding any Award, Optioned Stock, or Restricted Stock;

(vi) to amend any outstanding Award or agreement related to any Optioned Stock or Restricted Stock, including any amendment adjusting vesting (e.g., in connection with a change in the terms or conditions under which such person is providing services to the Company), provided that no amendment shall be made that would materially and adversely affect the rights of any Participant without his or her consent;

(vii) to determine whether and under what circumstances an Option may be settled in cash under Section 10(c) instead of Common Stock;

(viii) to implement an Option Exchange Program and establish the terms and conditions of such Option Exchange Program, provided that no amendment or adjustment to an Option that would materially and adversely affect the rights of any Optionee shall be made without his or her consent;

(ix) to grant Awards to, or to modify the terms of any outstanding Option Agreement or Restricted Stock Purchase Agreement or any agreement related to any Optioned Stock or Restricted Stock held by, Participants who are foreign nationals or employed outside of the United States with such terms and conditions as the Administrator deems necessary or appropriate to accommodate differences in local law, tax policy or custom which deviate from the terms and conditions set forth in this Plan to the extent necessary or appropriate to accommodate such differences; and

(x) to construe and interpret the terms of the Plan, any Option Agreement or Restricted Stock Purchase Agreement, and any agreement related to any Optioned Stock or Restricted Stock, which constructions, interpretations and decisions shall be final and binding on all Participants.

(d) **Indemnification.** To the maximum extent permitted by Applicable Laws, each member of the Committee (including officers of the Company, if applicable), or of the Board, as applicable, shall be indemnified and held harmless by the Company against and from (i) any loss, cost, liability, or expense that may be imposed upon or reasonably incurred by him or her in connection with or resulting from any claim, action, suit, or proceeding to which he or she may be a party or in which he or she may be involved by reason of any action taken or failure to act under the Plan or pursuant to the terms and conditions of any Award except for actions taken in bad faith or failures to act in bad faith, and (ii) any and all amounts paid by him or her in settlement thereof, with the Company's approval, or paid by him or her in satisfaction of any judgment in any such claim, action, suit, or proceeding against him or her, provided that such member shall give the Company an opportunity, at its own expense, to handle and defend any such claim, action, suit or proceeding before he or she undertakes to handle and defend it on his or her own behalf. The foregoing right of indemnification shall not be exclusive of any other rights of indemnification to which such persons may be entitled under the Company's Articles of Incorporation, Certificate of Incorporation or Bylaws, by contract, as a matter of law, or otherwise, or under any other power that the Company may have to indemnify or hold harmless each such person.

5. **Eligibility.**

(a) **Recipients of Grants.** Nonstatutory Stock Options and Restricted Stock may be granted to Employees and Consultants. Incentive Stock Options may be granted only to Employees, provided that Employees of Affiliates shall not be eligible to receive Incentive Stock Options.

(b) **Type of Option.** Each Option shall be designated in the Option Agreement as either an Incentive Stock Option or a Nonstatutory Stock Option.

(c) **ISO $100,000 Limitation.** Notwithstanding any designation under Section 5(b), to the extent that the aggregate Fair Market Value of Shares with respect to which Options designated as Incentive Stock Options are exercisable for the first time by any Optionee during any calendar year (under all plans of the Company or any Parent or Subsidiary) exceeds $100,000, such excess Options shall be treated as Nonstatutory Stock Options. For purposes of this Section 5(c), Incentive Stock Options shall be taken into account in the order in which they were granted, and the Fair Market Value of the Shares subject to an Incentive Stock Option shall be determined as of the date of the grant of such Option.

(d) **No Employment Rights.** Neither the Plan nor any Award shall confer upon any Employee or Consultant any right with respect to continuation of an employment or consulting relationship with the Company (any Parent or Subsidiary), nor shall it interfere in any way with such Employee's or Consultant's right or the Company's (Parent's or Subsidiary's) right to terminate his or her employment or consulting relationship at any time, with or without cause.

6. **Term of Plan.** The Plan shall become effective upon its adoption by the Board of Directors. It shall continue in effect for a term of ten (10) years unless sooner terminated under Section 16 below.

7. **Term of Option.** The term of each Option shall be the term stated in the Option Agreement; provided that the term shall be no more than ten (10) years from the date of grant thereof or such shorter term as may be provided in the Option Agreement and provided further that, in the case of an Incentive Stock Option granted to a person who at the time of such grant is a Ten Percent Holder, the term of the Option shall be five (5) years from the date of grant thereof or such shorter term as may be provided in the Option Agreement.

8. **Reserved.**

9. **Option Exercise Price and Consideration.**

(a) **Exercise Price.** The per Share exercise price for the Shares to be issued pursuant to the exercise of an Option shall be such price as is determined by the Administrator and set forth in the Option Agreement, but shall be subject to the following:

(i) In the case of an Incentive Stock Option

(A) granted to an Employee who at the time of grant is a Ten Percent Holder, the per Share exercise price shall be no less than 110% of the Fair Market Value on the date of grant;

(B) granted to any other Employee, the per Share exercise price shall be no less than 100% of the Fair Market Value on the date of grant;

(ii) Except as provided in subsection (iii) below, in the case of a Nonstatutory Stock Option the per Share exercise price shall be such price as is determined by the Administrator, provided that, if the per Share exercise price is less than 100% of the Fair Market Value on the date of grant, it shall otherwise comply with all Applicable Laws, including Section 409A of the Code;

(iii) In the case of a Nonstatutory Stock Option that is intended to qualify as performance-based compensation under Section 162(m) of the Code and is granted on or after the date, if ever, on which the Common Stock becomes a Listed Security, the per Share exercise price shall be no less than 100% of the Fair Market Value on the date of grant; and

(iv) Notwithstanding the foregoing, Options may be granted with a per Share exercise price other than as required above pursuant to a merger or other corporate transaction.

(b) **Permissible Consideration.** The consideration to be paid for the Shares to be issued upon exercise of an Option, including the method of payment, shall be determined by the Administrator (and, in the case of an Incentive Stock Option and to the extent required by Applicable Laws, shall be determined at the time of grant) and may consist entirely of (1) cash; (2) check; (3) to the extent permitted under Applicable Laws, delivery of a promissory note with such recourse, interest, security and redemption provisions as the Administrator determines to be appropriate (subject to the provisions of Section 153 of the Delaware General Corporation Law); (4) cancellation of indebtedness; (5) other previously owned Shares that have a Fair Market Value on the date of surrender equal to the aggregate exercise price of the Shares as to which the Option is exercised, provided that in the case of Shares acquired directly or indirectly from the Company, the Administrator may, in its sole discretion, require that Shares tendered for payment be previously held by the Participant for a minimum duration (e.g., to avoid financial accounting charges to the Company's earnings); (6) a Cashless Exercise; (7) such other consideration and method of payment permitted under Applicable Laws; or (8) any combination of the foregoing methods of payment. In making its determination as to the type of consideration to accept, the Administrator shall consider if acceptance of such consideration may be reasonably expected to benefit the Company and the Administrator may, in its sole discretion, refuse to accept a particular form of consideration at the time of any Option exercise.

10. **Exercise of Option.**

(a) **General.**

(i) **Exercisability.** Any Option granted hereunder shall be exercisable at such times and under such conditions as determined by the Administrator, consistent with the terms of the Plan and reflected in the Option Agreement, including vesting requirements and/or performance criteria with respect to the Company, and Parent or Subsidiary, and/or the Optionee.

(ii) **Leave of Absence.** The Administrator shall have the discretion to determine whether and to what extent the vesting of Options shall be tolled during any unpaid leave of absence; provided, however, that in the absence of such determination, vesting of Options shall be tolled during any such unpaid leave (unless otherwise required by the

Applicable Laws). Notwithstanding the foregoing, in the event of military leave, vesting shall toll during any unpaid portion of such leave, provided that, upon a Optionee's returning from military leave (under conditions that would entitle him or her to protection upon such return under the Uniform Services Employment and Reemployment Rights Act), he or she shall be given vesting credit with respect to Options to the same extent as would have applied had the Optionee continued to provide services to the Company (or any Parent or Subsidiary, if applicable) throughout the leave on the same terms as he or she was providing services immediately prior to such leave.

(iii) **Minimum Exercise Requirements.** An Option may not be exercised for a fraction of a Share. The Administrator may require that an Option be exercised as to a minimum number of Shares, provided that such requirement shall not prevent an Optionee from exercising the full number of Shares as to which the Option is then exercisable.

(iv) **Procedures for and Results of Exercise.** An Option shall be deemed exercised when written notice of such exercise has been received by the Company in accordance with the terms of the Option Agreement by the person entitled to exercise the Option and the Company has received full payment for the Shares with respect to which the Option is exercised and has paid, or made arrangements to satisfy, any applicable withholding requirements in accordance with Section 12 below. The exercise of an Option shall result in a decrease in the number of Shares that thereafter may be available, both for purposes of the Plan and for sale under the Option, by the number of Shares as to which the Option is exercised.

(v) **Rights as Holder of Capital Stock.** Until the issuance of the Shares (as evidenced by the appropriate entry on the books of the Company or of a duly authorized transfer agent of the Company), no right to vote or receive dividends or any other rights as a holder of capital stock shall exist with respect to the Optioned Stock, notwithstanding the exercise of the Option. No adjustment will be made for a dividend or other right for which the record date is prior to the date the stock certificate is issued, except as provided in Section 14 below.

(b) **Termination of Employment or Consulting Relationship.** The Administrator shall establish and set forth in the applicable Option Agreement the terms and conditions upon which an Option shall remain exercisable, if at all, following termination of an Optionee's Continuous Service Status, which provisions may be waived or modified by the Administrator at any time. To the extent that an Option Agreement does not specify the terms and conditions upon which an Option shall terminate upon termination of an Optionee's Continuous Service Status, the following provisions shall apply:

(i) **General Provisions.** To the extent that the Optionee is not vested in Optioned Stock at the date of his or her termination of Continuous Service Status or, if the Optionee (or other person entitled to exercise the Option) does not exercise the Option to the extent so entitled within the time specified below, the Option shall terminate and the Optioned Stock underlying the unexercised portion of the Option shall revert to the Plan. In no event may any Option be exercised after the expiration of the Option term as set forth in the Option Agreement (and subject to Section 7).

(ii) **Termination other than Upon Disability or Death or for Cause.** In the event of termination of an Optionee's Continuous Service Status other than under the circumstances set forth in subsections (iii) through (v) below, such Optionee may exercise any outstanding Option at any time within 60 days following such termination to the extent the Optionee was vested in the Optioned Stock as of the date of such termination.

(iii) **Disability of Optionee.** In the event of termination of an Optionee's Continuous Service Status as a result of his or her Disability, such Optionee may exercise any outstanding Option at any time within 12 months following such termination to the extent the Optionee was vested in the Optioned Stock as of the date of such termination.

(iv) **Death of Optionee.** In the event of the death of an Optionee during the period of Continuous Service Status since the date of grant of any outstanding Option, or within 3 months following termination of Optionee's Continuous Service Status, the Option may be exercised by the Optionee's estate, or by a person who acquired the right to exercise the Option by bequest or inheritance, at any time with in 12 months following the date of death or, if earlier, the date the Optionee's Continuous Service Status terminated, but only to the extent the Optionee was vested in the Optioned Stock as of the date of death.

(v) **Termination for Cause.** In the event of termination of an Optionee's Continuous Service Status for Cause, any outstanding Option (including any vested portion thereof) held by such Optionee shall immediately terminate in its entirety upon first notification to the Optionee of termination of the Optionee's Continuous Service Status for Cause. If an Optionee's Continuous Service Status is suspended pending an investigation of whether the Optionee's Continuous Service Status will be terminated for Cause, all the Optionee's rights under any Option, including the right to exercise the Option, shall be suspended during the investigation period. Nothing in this Section 10(b)(v) shall in any way limit the Company's right to purchase unvested Shares issued upon exercise of an Option as set forth in the applicable Option Agreement.

(c) **Buyout Provisions.** The Administrator may at any time offer to buy out for a payment in cash or Shares an Option previously granted under the Plan based on such terms and conditions as the Administrator shall establish and communicate to the Optionee at the time that such offer is made.

11. **Restricted Stock.**

(a) **Rights to Purchase.** When a right to purchase Restricted Stock is granted under the Plan, the Administrator shall advise the recipient in writing of the terms, conditions and restrictions related to the offer, including the number of Shares that such person shall be entitled to purchase, the price to be paid (which shall be as determined by the Administrator, subject to Applicable Laws, including any applicable securities laws), and the time within which such person must accept such offer. The permissible consideration for Restricted Stock shall be determined by the Administrator and shall be the same as is set forth in Section 9(b) with respect to exercise of Options. The offer to purchase Shares shall be accepted by execution of a Restricted Stock Purchase Agreement in the form determined by the Administrator.

(b) **Repurchase Option.**

(i) **General.** Unless the Administrator determines otherwise, the Restricted Stock Purchase Agreement shall grant the Company a repurchase option exercisable upon the voluntary or involuntary termination of the Participant's Continuous Service Status for any reason (including death or Disability). The purchase price for Shares repurchased pursuant to the Restricted Stock Purchase Agreement shall be the original purchase price paid by the purchaser and may be paid by cancellation of any indebtedness of the purchaser to the Company. The repurchase option shall lapse at such rate as the Administrator may determine.

(ii) **Leave of Absence.** The Administrator shall have the discretion to determine whether and to what extent the lapsing of Company repurchase rights shall be tolled during any unpaid leave of absence; provided, however, that in the absence of such determination, such lapsing shall be tolled during any such unpaid leave (unless otherwise required by the Applicable Laws). Notwithstanding the foregoing, in the event of military leave, the lapsing of Company repurchase rights shall toll during any unpaid portion of such leave, provided that, upon a Participant's returning from military leave (under conditions that would entitle him or her to protection upon such return under the Uniform Services Employment and Reemployment Rights Act), he or she shall be given vesting credit with respect to Shares purchased pursuant to the Restricted Stock Purchase Agreement to the same extent as would have applied had the Participant continued to provide services to the Company (or any Parent or Subsidiary, if applicable) throughout the leave on the same terms as he or she was providing services immediately prior to such leave.

(c) **Other Provisions.** The Restricted Stock Purchase Agreement shall contain such other terms, provisions and conditions not inconsistent with the Plan as may be determined by the Administrator in its sole discretion. In addition, the provisions of Restricted Stock Purchase Agreements need not be the same with respect to each Participant.

(d) **Rights as a Holder of Capital Stock.** Once the Restricted Stock is purchased, the Participant shall have the rights equivalent to those of a holder of capital stock, and shall be a record holder when his or her purchase is entered upon the records of the duly authorized transfer agent of the Company. No adjustment will be made for a dividend or other right for which the record date is prior to the date the Restricted Stock is purchased, except as provided in Section 14 of the Plan.

12. **Taxes.**

(a) As a condition of the grant, vesting and exercise of an Award, the Participant (or in the case of the Participant's death or a permitted transferee, the person holding or exercising the Award) shall make such arrangements as the Administrator may require for the satisfaction of any applicable U.S. federal, state or local tax withholding obligations or foreign tax withholding obligations that may arise in connection with such Award. The Company shall not be required to issue any Shares under the Plan until such obligations are satisfied.

(b) The Administrator may permit a Participant (or in the case of the Participant's death or a permitted transferee, the person holding or exercising the Award) to satisfy all or part of his or her tax withholding obligations by Cashless Exercise or by surrendering Shares (either directly or by stock attestation) that he or she previously acquired; provided that, unless the Cashless Exercise is an approved broker-assisted Cashless Exercise, the Shares tendered for payment have been previously held for a minimum duration (e.g., to avoid financial accounting charges to the Company's earnings), or as otherwise permitted to avoid financial accounting charges under applicable accounting guidance, amounts withheld shall not exceed the amount necessary to satisfy the Company's tax withholding obligations at the minimum statutory withholding rates, including, but not limited to, U.S. federal and state income taxes, payroll taxes, and foreign taxes, if applicable. Any payment of taxes by surrendering Shares to the Company may be subject to restrictions, including, but not limited to, any restrictions required by rules of the Securities and Exchange Commission.

13. **Non-Transferability of Options.**

(a) **General.** Except as set forth in this Section 13, Options may not be sold, pledged, assigned, hypothecated, transferred or disposed of in any manner other than by will or by the laws of descent or distribution. The designation of a beneficiary by an Optionee will not constitute a transfer. An Option may be exercised, during the lifetime of the holder of the Option, only by such holder or a transferee permitted by this Section 13.

(b) **Limited Transferability Rights.** Notwithstanding anything else in this Section 13, the Administrator may in its sole discretion grant Nonstatutory Stock Options that may be transferred by instrument to an inter vivos or testamentary trust in which the Options are to be passed to beneficiaries upon the death of the trustor (settlor) or by gift to Family Members.

14. **Adjustments Upon Changes in Capitalization, Merger or Certain Other Transactions.**

(a) **Changes in Capitalization.** Subject to any action required under Applicable Laws by the holders of capital stock of the Company, (i) the numbers and class of Shares or other stock or securities: (x) available for future Awards under Section 3 above, (y) set forth in Section 8 above, and (z) covered by each outstanding Award, (ii) the price per Share covered by each such outstanding Option, and (iii) any repurchase price per Share applicable to Shares issued pursuant to any Award may be adjusted by the Administrator (and, if required by Applicable Laws, shall be proportionately adjusted) in the event of a stock split, reverse stock split, stock dividend, combination, consolidation, recapitalization or reclassification of the Shares, subdivision of the Shares, dividend payable in other than Shares in an amount that has a material effect on the price of the Shares, a reorganization, merger, liquidation, spin-off, split-up, distribution, exchange of Shares, repurchase of Shares, change in corporate structure or other similar occurrence. Any adjustment by the Administrator pursuant to this Section 14(a) shall be made in the Administrator's sole and absolute discretion and shall be final, binding and conclusive. Except as expressly provided herein, no issuance by the Company of shares of stock of any class, or securities convertible into shares of stock of any class, shall affect, and no adjustment by reason thereof shall be made with respect to, the number or price of Shares subject to an Award. If, by reason of a transaction described in this Section 14(a) or an adjustment pursuant to this Section 14(a), a Participant's Award agreement or agreement related to any Optioned Stock or Restricted Stock covers additional or different shares of stock or securities,

then such additional or different shares, and the Award agreement or agreement related to the Optioned Stock or Restricted Stock in respect thereof, shall be subject to all of the terms, conditions and restrictions which were applicable to the Award, Optioned Stock and Restricted Stock prior to such adjustment.

(b) **Dissolution or Liquidation.** In the event of the dissolution or liquidation of the Company, each Award will terminate immediately prior to the consummation of such action, unless otherwise determined by the Administrator.

(c) **Corporate Transactions.** In the event of a sale of all or substantially all of the Company's assets, or a merger, consolidation or other capital reorganization or business combination transaction of the Company with or into another corporation, entity or person (a "Corporate Transaction"), each outstanding Option shall either be (i) assumed or an equivalent option or right shall be substituted by such successor corporation or a parent or subsidiary of such successor corporation (the "Successor Corporation"), or (ii) terminated in exchange for a payment of cash, securities and/or other property equal to the excess of the Fair Market Value of the portion of the Optioned Stock that is vested and exercisable immediately prior to the consummation of the Corporate Transaction over the per Share exercise price thereof. Notwithstanding the foregoing, in the event such Successor Corporation does not agree to such assumption, substitution or exchange, each such Option shall terminate upon the consummation of the Corporate Transaction.

15. **Time of Granting Options and Right to Purchase Restricted Stock.** The date of grant of an Award shall, for all purposes, be the date on which the Administrator makes the determination granting such Award, or such other date as is determined by the Administrator, provided that in the case of any Incentive Stock Option, the grant date shall be the later of the date on which the Administrator makes the determination granting such Incentive Stock Option or the date of commencement of the Optionee's employment relationship with the Company.

16. **Amendment and Termination of the Plan.** The Board may at any time amend or terminate the Plan, but no amendment or termination (other than an adjustment pursuant to Section 14 above) shall be made that would materially and adversely affect the rights of any Participant under any outstanding Award, without his or her consent. In addition, to the extent necessary and desirable to comply with the Applicable Laws, the Company shall obtain the approval of holders of capital stock with respect to any Plan amendment in such a manner and to such a degree as required.

17. **Conditions Upon Issuance of Shares.** Notwithstanding any other provision of the Plan or any agreement entered into by the Company pursuant to the Plan, the Company shall not be obligated, and shall have no liability for failure, to issue or deliver any Shares under the Plan unless such issuance or delivery would comply with the Applicable Laws, with such compliance determined by the Company in consultation with its legal counsel. As a condition to the exercise of any Option or purchase of any Restricted Stock, the Company may require the person exercising the Option or purchasing the Restricted Stock to represent and warrant at the time of any such exercise or purchase that the Shares are being purchased only for investment and without any present intention to sell or distribute such Shares if, in the opinion of counsel for the Company, such a representation is required by Applicable Laws. Shares issued upon

exercise of Options or purchase of Restricted Stock prior to the date, if ever, on which the Common Stock becomes a Listed Security shall be subject to a right of first refusal in favor of the Company pursuant to which the Participant will be required to offer Shares to the Company before selling or transferring them to any third party on such terms and subject to such conditions as is reflected in the applicable Option Agreement or Restricted Stock Purchase Agreement.

18. **Beneficiaries.** Unless stated otherwise in an Award agreement, a Participant may designate one or more beneficiaries with respect to an Award by timely filing the prescribed form with the Company. A beneficiary designation may be changed by filing the prescribed form with the Company at any time before the Participant's death. If no beneficiary was designated or if no designated beneficiary survives the Participant, then after a Participant's death any vested Award(s) shall be transferred or distributed to the Participant's estate.

19. **Approval of Holders of Capital Stock.** If required by the Applicable Laws, continuance of the Plan shall be subject to approval by the holders of capital stock of the Company within twelve (12) months before or after the date the Plan is adopted or, to the extent required by Applicable Laws, any date the Plan is amended. Such approval shall be obtained in the manner and to the degree required under the Applicable Laws.

20. **Addenda.** The Administrator may approve such addenda to the Plan as it may consider necessary or appropriate for the purpose of granting Awards to Employees or Consultants, which Awards may contain such terms and conditions as the Administrator deems necessary or appropriate to accommodate differences in local law, tax policy or custom, which, if so required under Applicable Laws, may deviate from the terms and conditions set forth in this Plan. The terms of any such addenda shall supersede the terms of the Plan to the extent necessary to accommodate such differences but shall not otherwise affect the terms of the Plan as in effect for any other purpose.

**ADDENDUM A**

**2008 STOCK PLAN**

*(California Participants)*

Prior to the date, if ever, on which the Common Stock becomes a Listed Security and/or the Company is subject to the reporting requirements of the Exchange Act, the terms set forth herein shall apply to Awards issued to California Participants. All capitalized terms used herein but not otherwise defined shall have the respective meanings set forth in the Plan.

1. In the case of an Option, the per Share exercise price shall be no less than 85% of the Fair Market Value on the date of grant, unless the Employee or Consultant is a Ten Percent Holder, in which case, the per Share exercise price shall be no less than 110% of the Fair Market Value on the date of grant.

2. In the case of Restricted Stock, the per Share purchase price shall not be less than 85% of the Fair Market Value on the date of grant, unless the Employee or Consultant is a Ten Percent Holder, in which case, the per Share purchase price shall not be less than 100% of the Fair Market Value on the date of grant.

3. With respect to an Option issued to any Participant who is not an officer, Director or Consultant, such Option shall become exercisable at the rate of at least 20% per year over five (5) years from the date of grant, subject to such Participant's Continuous Service Status.

4. The following rules shall apply to any Option in the event of termination of the Participant's Continuous Service Status:

a. If such termination was for reasons other than death, "disability" (as defined below), or Cause, the Participant shall have at least thirty (30) days after the date of such termination to exercise his or her Option to the extent the Participant is entitled to exercise on his or her termination date.

b. If such termination was due to death or disability, the Participant shall have at least six (6) months after the date of such termination to exercise his or her Option to the extent the Participant is entitled to exercise on his or her termination date.

"Disability" for purposes of this Addendum shall mean the inability of the Participant, in the opinion of a qualified physician acceptable to the Company, to perform the major duties of the Participant's position with the Company or any Parent or Subsidiary because of the sickness of injury of the Participant.

5. Notwithstanding anything stated herein to the contrary, no Option shall be exercisable on or after the tenth anniversary of the date of grant and any Award agreement shall terminate on or before the tenth anniversary of the date of grant.

6. Any repurchase right shall be at such purchase price as is set forth in the Award agreement provided that: (i) if the purchase price is equal to or greater than the Fair Market Value of the Shares to be repurchased (measured as of the date of termination of Continuous

Service Status), then such repurchase right must be exercised for cash or cancellation of purchase money indebtedness for such shares within ninety (90) days of the termination of Continuous Service Status (or, if later, within ninety (90) days of the exercise of the applicable Award) and such repurchase right must terminate when the Common Stock becomes a Listed Security; and (ii) if the purchase price is equal to the original purchase price, such repurchase right must lapse at a rate of at least 20% per year from the date of grant of the Award and such repurchase right must be exercised for cash or cancellation of purchase money indebtedness for the shares within ninety (90) days of the termination of Continuous Service Status (or, if later, within ninety (90) days of the exercise of the applicable Award). Notwithstanding the foregoing, Awards held by officers, Directors or Consultants of the Company or any Parent or Subsidiary may be subject to additional or greater restrictions.

7. Shares acquired under the Plan shall normally carry equal voting rights as similar equity securities on all matters where such vote is permitted by Applicable Laws.

8. The Company shall furnish summary financial information (audited or unaudited) of the Company's financial condition and results of operations, consistent with the requirements of Applicable Laws, at least annually to each California Participant during the period such Participant has one or more Awards outstanding, and in the case of an individual who acquired Shares pursuant to the Plan, during the period such Participant owns such Shares. The Company shall not be required to provide such information if the issuance is limited to key employees whose duties in connection with the Company assure their access to equivalent information.

**CARDLYTICS, INC.**

**2008 STOCK PLAN**

**NOTICE OF STOCK OPTION GRANT**

[[FIRSTNAME]] [[LASTNAME]]
[[RESADDR1]] [[RESADDR2]]
[[RESCITY]], [[RESSTATEORPROV]] [[RESPOSTALCODE]]
[[RESCOUNTRY]]

You have been granted an option to purchase Common Stock of Cardlytics, Inc., a Delaware corporation (the "Company"), as follows:

| | |
|---|---|
| Date of Grant: | [[GRANTDATE]] |
| Exercise Price Per Share: | [[GRANTPRICE]] |
| Total Number of Shares: | [[SHARESGRANTED]] |
| Type of Option: | [[GRANTTYPE]] |
| Expiration Date: | [[GRANTEXPIRATIONDATE]] |
| Vesting Commencement Date: | [[VESTINGSTARTDATE]] |
| Vesting/Exercise Schedule: | So long as your Continuous Service Status does not terminate, the Shares underlying this Option shall vest and become exercisable in accordance with the following schedule: 12/48th of the Total Number of Option Shares Granted shall vest twelve months after the Vesting Commencement Date and 1/48th of the Total Number of Option Shares Granted shall vest on each monthly anniversary of the Vesting Commencement Date thereafter. |
| Termination Period: | You may exercise this Option for sixty (60) days after termination of your Continuous Service Status except as set out in Section 5 of the Stock Option Agreement (but in no event later than the Expiration Date). You are responsible for keeping track of these exercise periods following the termination of your Continuous Service Status for any reason. The Company will not provide further notice of such periods. |
| Transferability: | You may not transfer this Option. |

By your signature and the signature of the Company's representative below, you and the Company agree that this Option is granted under and governed by the terms and conditions of the Cardlytics, Inc. 2008 Stock Plan and the Stock Option Agreement, both of which are attached to and made a part of this document.

In addition, you agree and acknowledge that your rights to any Shares underlying this Option will be earned only as you provide services to the Company over time, that the grant of this Option is not as consideration for services you rendered to the Company prior to your First Vest Date, and that nothing in this Notice or the attached documents confers upon you any right to continue your employment or consulting relationship with the Company for any period of time, nor does it interfere in any way with your right or the Company's right to terminate that relationship at any time, for any reason, with or without cause. Also, to the extent applicable, the Exercise Price Per Share has been set in good faith compliance with the applicable guidance issued by the IRS under Section 409A of the Code. However, there is no guarantee that the IRS will agree with the valuation, and by signing below, you agree and acknowledge that the Company shall not be held liable for any applicable costs, taxes, or penalties associated with this Option if, in fact, the IRS were to determine that this Option constitutes deferred compensation under Section 409A of the Code. You should consult with your own tax advisor concerning the tax consequences of such a determination by the IRS.

**THE COMPANY:**

**CARDLYTICS, INC.**

By:

Title: Chief Financial Officer

**OPTIONEE:**

[[SIGNATURE]]

[[FIRSTNAME]] [[LASTNAME]]
[[SIGNATURE_DATE]]

**CARDLYTICS, INC.**

**2008 STOCK PLAN**

**STOCK OPTION AGREEMENT**

1. **Grant of Option.** Cardlytics, Inc., a Delaware corporation (the "Company"), hereby grants to [[FIRSTNAME]] [[LASTNAME]] ("Optionee"), an option (the "Option") to purchase the total number of shares of Common Stock (the "Shares") set forth in the Notice of Stock Option Grant (the "Notice"), at the exercise price per Share set forth in the Notice (the "Exercise Price") subject to the terms, definitions and provisions of the Cardlytics, Inc. 2008 Stock Plan (the "Plan") adopted by the Company, which is incorporated in this Agreement by reference. Unless otherwise defined in this Agreement, the terms used in this Agreement shall have the meanings defined in the Plan.

2. **Designation of Option.** This Option is intended to be an Incentive Stock Option as defined in Section 422 of the Code only to the extent so designated in the Notice, and to the extent it is not so designated or to the extent this Option does not qualify as an Incentive Stock Option, it is intended to be a Nonstatutory Stock Option.

Notwithstanding the above, if designated as an Incentive Stock Option, in the event that the Shares subject to this Option (and all other Incentive Stock Options granted to Optionee by the Company or any Parent or Subsidiary, including under other plans of the Company) that first become exercisable in any calendar year have an aggregate fair market value (determined for each Share as of the date of grant of the option covering such Share) in excess of $100,000, the Shares in excess of $100,000 shall be treated as subject to a Nonstatutory Stock Option, in accordance with Section 5(c) of the Plan.

3. **Exercise of Option.** This Option shall be exercisable during its term in accordance with the Vesting/Exercise Schedule set out in the Notice and with the provisions of Section 10 of the Plan as follows:

(a) **Right to Exercise.**

(i) This Option may not be exercised for a fraction of a share.

(ii) In the event of Optionee's death, Disability or other termination of Continuous Service Status, the exercisability of this Option is governed by Section 5 below, subject to the limitations contained in this Section 3.

(iii) In no event may this Option be exercised after the Expiration Date set forth in the Notice.

(b) **Method of Exercise.**

(i) This Option shall be exercisable by execution and delivery of the Exercise Agreement attached hereto as Exhibit A or of any other form of written notice approved

for such purpose by the Company which shall state Optionee's election to exercise this Option, the number of Shares in respect of which this Option is being exercised, and such other representations and agreements as to the holder's investment intent with respect to such Shares as may be required by the Company pursuant to the provisions of the Plan. Such written notice shall be signed by Optionee and shall be delivered to the Company by such means as are determined by the Plan Administrator in its discretion to constitute adequate delivery. The written notice shall be accompanied by payment of the aggregate Exercise Price for the purchased Shares.

(ii) As a condition to the exercise of this Option and as further set forth in Section 12 of the Plan, Optionee agrees to make adequate provision for federal, state or other tax withholding obligations, if any, which arise upon the grant, vesting or exercise of this Option, or disposition of Shares, whether by withholding, direct payment to the Company, or otherwise.

(iii) The Company is not obligated, and will have no liability for failure, to issue or deliver any Shares upon exercise of this Option unless such issuance or delivery would comply with the Applicable Laws, with such compliance determined by the Company in consultation with its legal counsel. This Option may not be exercised until such time as the Plan has been approved by the holders of capital stock of the Company, or if the issuance of such Shares upon such exercise or the method of payment of consideration for such Shares would constitute a violation of any Applicable Laws, including any applicable U.S. federal or state securities laws or any other law or regulation, including any rule under Part 221 of Title 12 of the Code of Federal Regulations as promulgated by the Federal Reserve Board. As a condition to the exercise of this Option, the Company may require Optionee to make any representation and warranty to the Company as may be required by the Applicable Laws. Assuming such compliance, for income tax purposes the Shares shall be considered transferred to Optionee on the date on which this Option is exercised with respect to such Shares.

(iv) Subject to compliance with Applicable Laws, this Option shall be deemed to be exercised upon receipt by the Company of the appropriate written notice of exercise accompanied by the Exercise Price and the satisfaction of any applicable withholding obligations.

4. **Method of Payment.** Payment of the Exercise Price shall be by any of the following, or a combination of the following, at the election of Optionee:

(a) cash or check;

(b) cancellation of indebtedness;

(c) at the discretion of the Plan Administrator on a case by case basis, by surrender of other shares of Common Stock of the Company (either directly or by stock attestation) that Optionee previously acquired and that have an aggregate Fair Market Value on the date of surrender equal to the aggregate Exercise Price of the Shares as to which this Option is being exercised; or

(d) at the discretion of the Plan Administrator on a case by case basis, by Cashless Exercise.

5. **Termination of Relationship.** Following the date of termination of Optionee's Continuous Service Status for any reason (the "Termination Date"), Optionee may exercise this Option only as set forth in the Notice and this Section 5. To the extent that Optionee is not entitled to exercise this Option as of the Termination Date, or if Optionee does not exercise this Option within the Termination Period set forth in the Notice or the termination periods set forth below, this Option shall terminate in its entirety. In no event, may any Option be exercised after the Expiration Date of this Option as set forth in the Notice.

(a) **Termination.** In the event of termination of Optionee's Continuous Service Status other than as a result of Optionee's Disability or death or for Cause, Optionee may, to the extent Optionee is vested in the Option Shares at the date of such termination (the "Termination Date"), exercise this Option during the Termination Period set forth in the Notice.

(b) **Other Terminations.** In connection with any termination other than a termination covered by Section 5(a), Optionee may exercise this Option only as described below:

(i) **Termination upon Disability of Optionee.** In the event of termination of Optionee's Continuous Service Status as a result of Optionee's Disability, Optionee may, but only within 12 months following the Termination Date, exercise this Option to the extent Optionee was vested in the Option Shares as of such Termination Date.

(ii) **Death of Optionee.** In the event of termination of Optionee's Continuous Service Status as a result of Optionee's death, or in the event of Optionee's death within 3 months following Optionee's Termination Date, this Option may be exercised at any time within 12 months following the date of death (or, if earlier, the date Optionee's Continuous Service Status terminated) by Optionee's estate or by a person who acquired the right to exercise this Option by bequest or inheritance, but only to the extent Optionee was vested in this Option as of the Termination Date.

(iii) **Termination for Cause.** In the event of termination of Optionee's Continuous Service Status for Cause, this Option (including any vested portion thereof) shall immediately terminate in its entirety upon first notification to Optionee of such termination for Cause. If Optionee's Continuous Service Status is suspended pending an investigation of whether Optionee's Continuous Service Status will be terminated for Cause, all Optionee's rights under this Option, including the right to exercise this Option, shall be suspended during the investigation period.

6. **Non-Transferability of Option.** This Option may not be transferred in any manner otherwise than by will or by the laws of descent or distribution and may be exercised during the lifetime of Optionee only by him or her. The terms of this Option shall be binding upon the executors, administrators, heirs, successors and assigns of Optionee.

7. **Lock-Up Agreement.** In connection with the initial public offering of the Company's securities and upon request of the Company or the underwriters managing any underwritten offering of the Company's securities, Optionee hereby agrees not to sell, make any short sale of, loan, grant any option for the purchase of, or otherwise dispose of any securities of the Company however and whenever acquired (other than those included in the registration)

without the prior written consent of the Company or such underwriters, as the case may be, for such period of time (not to exceed 180 days) from the effective date of such registration as may be requested by the Company or such managing underwriters and to execute an agreement reflecting the foregoing as may be requested by the underwriters at the time of the public offering.

8. **Effect of Agreement.** Optionee acknowledges receipt of a copy of the Plan and represents that he or she is familiar with the terms and provisions thereof (and has had an opportunity to consult counsel regarding the Option terms), and hereby accepts this Option and agrees to be bound by its contractual terms as set forth herein and in the Plan. Optionee hereby agrees to accept as binding, conclusive and final all decisions and interpretations of the Plan Administrator regarding any questions relating to this Option. In the event of a conflict between the terms and provisions of the Plan and the terms and provisions of the Notice and this Agreement, the Plan terms and provisions shall prevail.

9. **Miscellaneous.**

(a) **Governing Law.** This Agreement and all acts and transactions pursuant hereto and the rights and obligations of the parties hereto shall be governed, construed and interpreted in accordance with the laws of the State of California, without giving effect to principles of conflicts of law.

(b) **Entire Agreement; Enforcement of Rights.** This Agreement, together with the Notice of Stock Option Grant to which this Agreement is attached and the Plan, sets forth the entire agreement and understanding of the parties relating to the subject matter herein and therein and merges all prior discussions between the parties. Except as contemplated under the Plan, no modification of or amendment to this Agreement, nor any waiver of any rights under this Agreement, shall be effective unless in writing signed by the parties to this Agreement. The failure by either party to enforce any rights under this Agreement shall not be construed as a waiver of any rights of such party.

(c) **Severability.** If one or more provisions of this Agreement are held to be unenforceable under applicable law, the parties agree to renegotiate such provision in good faith. In the event that the parties cannot reach a mutually agreeable and enforceable replacement for such provision, then (i) such provision shall be excluded from this Agreement, (ii) the balance of this Agreement shall be interpreted as if such provision were so excluded and (iii) the balance of this Agreement shall be enforceable in accordance with its terms.

(d) **Notices.** Any notice required or permitted by this Agreement shall be in writing and shall be deemed sufficient when delivered personally or sent by telegram or fax or forty-eight (48) hours after being deposited in the U.S. mail, as certified or registered mail, with postage prepaid, and addressed to the party to be notified at such party's address as set forth below or as subsequently modified by written notice.

(e) **Counterparts.** This Option may be executed in two or more counterparts, each of which shall be deemed an original and all of which together shall constitute one instrument.

(f) **Successors and Assigns.** The rights and benefits of this Agreement shall inure to the benefit of, and be enforceable by the Company's successors and assigns. The rights and obligations of Optionee under this Agreement may not be assigned without the prior written consent of the Company.

*[Signature Page Follows]*

IN WITNESS WHEREOF, the parties have executed or caused this Agreement to be executed by their officers thereunto duly authorized, effective as of the Date of Grant set forth in the accompanying Notice of Stock Option Grant.

**THE COMPANY:**

**CARDLYTICS, INC.**

By:

Title: Chief Financial Officer

**OPTIONEE:**

[[SIGNATURE]]

[[FIRSTNAME]] [[LASTNAME]]
[[SIGNATURE_DATE]]

**CARDLYTICS, INC.**

**2008 STOCK PLAN**

**EXERCISE AGREEMENT**

This Exercise Agreement (this "Agreement") is made as of , by and between Cardlytics, Inc., a Delaware corporation (the "Company"), and ("Purchaser"). To the extent any capitalized terms used in this Agreement are not defined, they shall have the meaning ascribed to them in the Company's 2008 Stock Plan (the "Plan").

1. **Exercise of Option.** Subject to the terms and conditions hereof, Purchaser hereby elects to exercise his or her option to purchase shares of the Common Stock (the "Shares") of the Company under and pursuant to the Plan and the Stock Option Agreement granted , 20 (the "Option Agreement"). The purchase price for the Shares shall be $ . per Share for a total purchase price of $ . The term "Shares" refers to the purchased Shares and all securities received as stock dividends or splits, all securities received in replacement of the Shares in a recapitalization, merger, reorganization, exchange or the like, and all new, substituted or additional securities or other property to which Purchaser is entitled by reason of Purchaser's ownership of the Shares.

2. **Time and Place of Exercise.** The purchase and sale of the Shares under this Agreement shall occur at the principal office of the Company simultaneously with the execution and delivery of this Agreement, the payment of the aggregate exercise price by any method listed in Section 4 of the Option Agreement, and the satisfaction of any applicable tax withholding obligations, all in accordance with the provisions of Section 3(b) of the Option Agreement. The Company shall issue the Shares to Purchaser by entering such Shares in Purchaser's name as of such date in the books and records of the Company or, if applicable, a duly authorized transfer agent of the Company, against payment of the exercise price therefor by Purchaser. If applicable, the Company will deliver to Purchaser a certificate representing the Shares as soon as practicable following such date.

3. **Limitations on Transfer.** In addition to any other limitation on transfer created by applicable securities laws, Purchaser shall not assign, encumber or dispose of any interest in the Shares except in compliance with the provisions below and applicable securities laws.

(a) **Right of First Refusal.** Before any Shares held by Purchaser or any transferee of Purchaser (either being sometimes referred to herein as the "Holder") may be sold or otherwise transferred (including transfer by gift or operation of law), the Company or its assignee(s) shall have a right of first refusal to purchase the Shares on the terms and conditions set forth in this Section 3(a) (the "Right of First Refusal").

(i) **Notice of Proposed Transfer.** The Holder of the Shares shall deliver to the Company a written notice (the "Notice") stating: (i) the Holder's bona fide intention to sell or otherwise transfer such Shares; (ii) the name of each proposed purchaser or

other transferee ("Proposed Transferee"); (iii) the number of Shares to be transferred to each Proposed Transferee; and (iv) the terms and conditions of each proposed sale or transfer. The Holder shall offer the Shares at the same price (the "Purchase Price") and upon the same terms (or terms as similar as reasonably possible) to the Company or its assignee(s).

(ii) **Exercise of Right of First Refusal.** At any time within thirty (30) days after receipt of the Notice, the Company and/or its assignee(s) may, by giving written notice to the Holder, elect to purchase all, but not less than all, of the Shares proposed to be transferred to any one or more of the Proposed Transferees, at the Purchase Price. If the Purchase Price includes consideration other than cash, the cash equivalent value of the non-cash consideration shall be determined by the Board in good faith.

(iii) **Payment.** Payment of the Purchase Price shall be made, at the election of the Company or its assignee(s), in cash (by check), by cancellation of all or a portion of any outstanding indebtedness, or by any combination thereof within sixty (60) days after receipt of the Notice or in the manner and at the times set forth in the Notice.

(iv) **Holder's Right to Transfer.** If all of the Shares proposed in the Notice to be transferred to a given Proposed Transferee are not purchased by the Company and/or its assignee(s) as provided in this Section 3(a), then the Holder may sell or otherwise transfer such Shares to that Proposed Transferee at the Purchase Price or at a higher price, provided that such sale or other transfer is consummated within one hundred twenty (120) days after the date of the Notice and provided further that any such sale or other transfer is effected in accordance with any applicable securities laws and the Proposed Transferee agrees in writing that the provisions of this Section 3 shall continue to apply to the Shares in the hands of such Proposed Transferee. If the Shares described in the Notice are not transferred to the Proposed Transferee within such period, or if the Holder proposes to change the price or other terms to make them more favorable to the Proposed Transferee, a new Notice shall be given to the Company, and the Company and/or its assignees shall again be offered the Right of First Refusal before any Shares held by the Holder may be sold or otherwise transferred.

(v) **Exception for Certain Family Transfers.** Anything to the contrary contained in this Section 3(a) notwithstanding, and provided that such transfer complies with applicable securities laws, the transfer of any or all of the Shares during Purchaser's lifetime or on Purchaser's death by will or intestacy to Purchaser's Immediate Family or a trust for the benefit of Purchaser's Immediate Family shall be exempt from the provisions of this Section 3(a). "Immediate Family" as used herein shall mean spouse, lineal descendant or antecedent, father, mother, brother or sister. In such case, the transferee or other recipient shall receive and hold the Shares so transferred subject to the provisions of this Section 3, and there shall be no further transfer of such Shares except in accordance with the terms of this Section 3.

(b) **Company's Right to Purchase upon Involuntary Transfer.** In the event of any transfer by operation of law or other involuntary transfer (including death or divorce, but excluding a transfer to Immediate Family as set forth in Section 3(a)(v) above) of all or a portion of the Shares by the record holder thereof, the Company shall have an option to purchase all of the Shares transferred at the greater of the purchase price paid by Purchaser pursuant to this Agreement or the Fair Market Value of the Shares on the date of transfer (as

determined by the Board). Upon such a transfer, the person acquiring the Shares shall promptly notify the Secretary of the Company of such transfer. The right to purchase such Shares shall be provided to the Company for a period of thirty (30) days following receipt by the Company of written notice by the person acquiring the Shares.

(c) **Assignment.** The right of the Company to purchase any part of the Shares may be assigned in whole or in part to any holder or holders of capital stock of the Company or other persons or organizations.

(d) **Restrictions Binding on Transferees.** All transferees of Shares or any interest therein will receive and hold such Shares or interest subject to the provisions of this Agreement. Any sale or transfer of the Company's Shares shall be void unless the provisions of this Agreement are satisfied.

(e) **Termination of Rights.** The right of first refusal granted the Company by Section 3(a) above and the option to repurchase the Shares in the event of an involuntary transfer granted the Company by Section 3(b) above shall terminate upon the first sale of Common Stock of the Company to the general public pursuant to a registration statement filed with and declared effective by the Securities and Exchange Commission under the Securities Act of 1933, as amended (the "Securities Act"). Upon termination of the right of first refusal described in Section 3(a) above the Company will remove any stop-transfer notices referred to in Section 5(b) below and related to the restrictions in this Section 3 and, if certificates are issued, a new certificate or certificates representing the Shares not repurchased shall be issued, on request, without the legend referred to in Section 5(a)(ii) below and delivered to Purchaser.

4. **Investment and Taxation Representations.** In connection with the purchase of the Shares, Purchaser represents to the Company the following:

(a) Purchaser is aware of the Company's business affairs and financial condition and has acquired sufficient information about the Company to reach an informed and knowledgeable decision to acquire the Shares. Purchaser is purchasing these securities for investment for his or her own account only and not with a view to, or for resale in connection with, any "distribution" thereof within the meaning of the Securities Act or under any applicable provision of state law. Purchaser does not have any present intention to transfer the Shares to any person or entity.

(b) Purchaser understands that the Shares have not been registered under the Securities Act by reason of a specific exemption therefrom, which exemption depends upon, among other things, the bona fide nature of Purchaser's investment intent as expressed herein.

(c) Purchaser further acknowledges and understands that the securities must be held indefinitely unless they are subsequently registered under the Securities Act or an exemption from such registration is available. Purchaser further acknowledges and understands that the Company is under no obligation to register the securities. Purchaser understands that the certificate(s) evidencing the securities will be imprinted with a legend which prohibits the transfer of the securities unless they are registered or such registration is not required in the opinion of counsel for the Company.

(d) Purchaser is familiar with the provisions of Rules 144 and 701, each promulgated under the Securities Act, which, in substance, permit limited public resale of "restricted securities" acquired, directly or indirectly, from the issuer of the securities (or from an affiliate of such issuer), in a non-public offering subject to the satisfaction of certain conditions. Purchaser understands that the Company provides no assurances as to whether he or she will be able to resell any or all of the Shares pursuant to Rule 144 or Rule 701, which rules require, among other things, that the Company be subject to the reporting requirements of the Securities Exchange Act of 1934, as amended, that resales of securities take place only after the holder of the Shares has held the Shares for certain specified time periods, and under certain circumstances, that resales of securities be limited in volume and take place only pursuant to brokered transactions. Notwithstanding this paragraph (d), Purchaser acknowledges and agrees to the restrictions set forth in paragraph (e) below.

(e) Purchaser further understands that in the event all of the applicable requirements of Rule 144 or 701 are not satisfied, registration under the Securities Act, compliance with Regulation A, or some other registration exemption will be required; and that, notwithstanding the fact that Rules 144 and 701 are not exclusive, the Staff of the Securities and Exchange Commission has expressed its opinion that persons proposing to sell private placement securities other than in a registered offering and otherwise than pursuant to Rule 144 or 701 will have a substantial burden of proof in establishing that an exemption from registration is available for such offers or sales, and that such persons and their respective brokers who participate in such transactions do so at their own risk.

(f) Purchaser understands that Purchaser may suffer adverse tax consequences as a result of Purchaser's purchase or disposition of the Shares. Purchaser represents that Purchaser has consulted any tax consultants Purchaser deems advisable in connection with the purchase or disposition of the Shares and that Purchaser is not relying on the Company for any tax advice.

5. **Restrictive Legends and Stop-Transfer Orders.**

(a) **Legends.** The certificate or certificates representing the Shares shall bear the following legends (as well as any legends required by applicable state and federal corporate and securities laws):

(i) THE SHARES REPRESENTED BY THIS CERTIFICATE HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AND HAVE BEEN ACQUIRED FOR INVESTMENT AND NOT WITH A VIEW TO, OR IN CONNECTION WITH, THE SALE OR DISTRIBUTION THEREOF. NO SUCH SALE OR DISTRIBUTION MAY BE EFFECTED WITHOUT AN EFFECTIVE REGISTRATION STATEMENT RELATED THERETO OR AN OPINION OF COUNSEL FOR THE COMPANY THAT SUCH REGISTRATION IS NOT REQUIRED UNDER THE SECURITIES ACT OF 1933.

(ii) THE SHARES REPRESENTED BY THIS CERTIFICATE MAY BE TRANSFERRED ONLY IN ACCORDANCE WITH THE TERMS OF AN AGREEMENT BETWEEN THE COMPANY AND THE HOLDER, A COPY OF WHICH IS ON FILE WITH THE SECRETARY OF THE COMPANY.

(b) **Stop-Transfer Notices.** Purchaser agrees that, in order to ensure compliance with the restrictions referred to herein, the Company may issue appropriate "stop transfer" instructions to its transfer agent, if any, and that, if the Company transfers its own securities, it may make appropriate notations to the same effect in its own records.

(c) **Refusal to Transfer.** The Company shall not be required (i) to transfer on its books any Shares that have been sold or otherwise transferred in violation of any of the provisions of this Agreement or (ii) to treat as owner of such Shares or to accord the right to vote or pay dividends to any purchaser or other transferee to whom such Shares shall have been so transferred.

6. **No Employment Rights.** Nothing in this Agreement shall affect in any manner whatsoever the right or power of the Company, or a parent or subsidiary of the Company, to terminate Purchaser's employment or consulting relationship, for any reason, with or without cause.

7. **Lock-Up Agreement.** In connection with the initial public offering of the Company's securities and upon request of the Company or the underwriters managing any underwritten offering of the Company's securities, Purchaser agrees not to sell, make any short sale of, loan, grant any option for the purchase of, or otherwise dispose of any securities of the Company however or whenever acquired (other than those included in the registration) without the prior written consent of the Company or such underwriters, as the case may be, for such period of time (not to exceed one hundred eighty (180) days) from the effective date of such registration as may be requested by the Company or such managing underwriters and to execute an agreement reflecting the foregoing as may be requested by the underwriters at the time of the public offering.

8. **Miscellaneous.**

(a) **Governing Law.** This Agreement and all acts and transactions pursuant hereto and the rights and obligations of the parties hereto shall be governed, construed and interpreted in accordance with the laws of the State of California, without giving effect to principles of conflicts of law.

(b) **Entire Agreement; Enforcement of Rights.** This Agreement sets forth the entire agreement and understanding of the parties relating to the subject matter herein and merges all prior discussions between them. No modification of or amendment to this Agreement, nor any waiver of any rights under this Agreement, shall be effective unless in writing signed by the parties to this Agreement. The failure by either party to enforce any rights under this Agreement shall not be construed as a waiver of any rights of such party.

(c) **Severability.** If one or more provisions of this Agreement are held to be unenforceable under applicable law, the parties agree to renegotiate such provision in good faith. In the event that the parties cannot reach a mutually agreeable and enforceable replacement for such provision, then (i) such provision shall be excluded from this Agreement, (ii) the balance of the Agreement shall be interpreted as if such provision were so excluded and (iii) the balance of the Agreement shall be enforceable in accordance with its terms.

(d) **Notices.** Any notice required or permitted by this Agreement shall be in writing and shall be deemed sufficient when delivered personally or sent by telegram or fax or forty-eight (48) hours after being deposited in the U.S. mail, as certified or registered mail, with postage prepaid, and addressed to the party to be notified at such party's address as set forth below or as subsequently modified by written notice.

(e) **Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original and all of which together shall constitute one instrument.

(f) **Successors and Assigns.** The rights and benefits of this Agreement shall inure to the benefit of, and be enforceable by the Company's successors and assigns. The rights and obligations of Purchaser under this Agreement may only be assigned with the prior written consent of the Company.

(g) **California Corporate Securities Law.** THE SALE OF THE SECURITIES WHICH ARE THE SUBJECT OF THIS AGREEMENT HAS NOT BEEN QUALIFIED WITH THE COMMISSIONER OF CORPORATIONS OF THE STATE OF CALIFORNIA AND THE ISSUANCE OF THE SECURITIES OR THE PAYMENT OR RECEIPT OF ANY PART OF THE CONSIDERATION THEREFOR PRIOR TO THE QUALIFICATION IS UNLAWFUL, UNLESS THE SALE OF SECURITIES IS EXEMPT FROM QUALIFICATION BY SECTION 25100, 25102 OR 25105 OF THE CALIFORNIA CORPORATIONS CODE. THE RIGHTS OF ALL PARTIES TO THIS AGREEMENT ARE EXPRESSLY CONDITIONED UPON THE QUALIFICATION BEING OBTAINED, UNLESS THE SALE IS SO EXEMPT.

*[Signature Page Follows]*

The parties have executed this Exercise Agreement as of the date first set forth above.

**THE COMPANY:**

**CARDLYTICS, INC.**

By: _____

(Signature)

Name: _____

Title: _____

Address: 675 Ponce de Leon Avenue NE
Suite 6000
Atlanta, GA 30308

**PURCHASER:**

_____

Address:

_____

_____

I, , spouse of , have read and hereby approve the foregoing Agreement. In consideration of the Company's granting my spouse the right to purchase the Shares as set forth in the Agreement, I hereby agree to be irrevocably bound by the Agreement and further agree that any community property or other such interest shall hereby by similarly bound by the Agreement. I hereby appoint my spouse as my attorney-in-fact with respect to any amendment or exercise of any rights under the Agreement.

Spouse of _____ (if applicable)

**2016 ANNUAL BONUS TARGET INCENTIVE PROGRAM**

Corporate Employees – US and UK

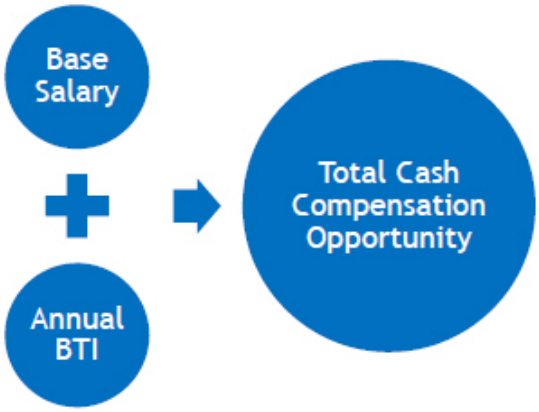
Leadership Contributor Level

## Overview

Cardlytics' Annual Bonus Target Incentive (BTI) Program is designed for you to share in the success you help create for our customers, our team and our company. The plan provides cash rewards when both financial results and your individual performance and goals attainment are strong.

This document provides an overview of the key features of Cardlytics' Annual BTI Program.

Our comprehensive rewards package:




**Base salary** provides a competitive, fair reward recognizing the market value of your skills, experience and performance.

**Annual BTI** rewards you for achieving your annual key performance objectives (goals) that you set with your manager as part of our annual performance review process. This component also rewards you for your contribution to Cardlytics' annual financial success.

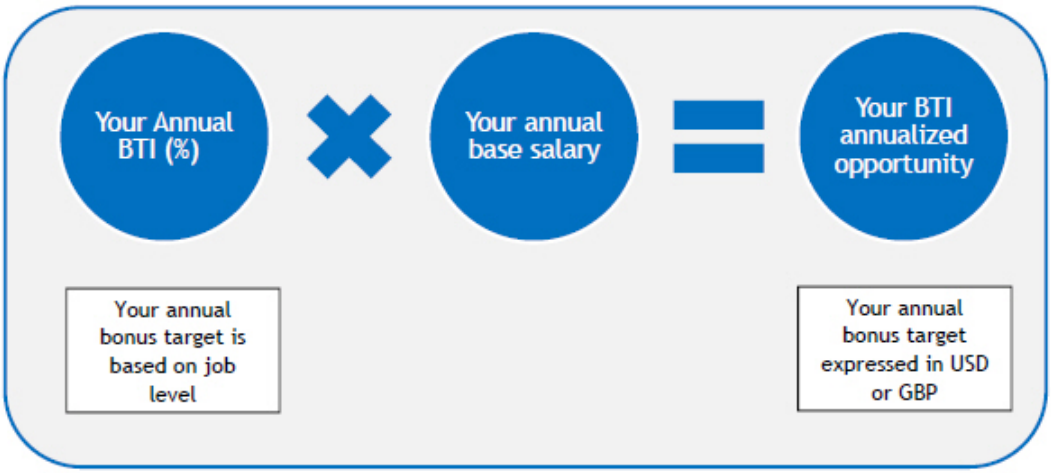
In addition to these cash compensation programs, Cardlytics' offers you a set of core competitive, voluntary benefits through TriNet, as well as long term incentives in the form of equity.

## How the plan works

The Cardlytics' BTI Program rewards you for helping the company meet its annual strategic business imperatives. When you participate in the plan, you will have an annual bonus target, expressed as a percentage of your annualized base salary. The amount of BTI you actually receive will depend on your own attainment of annual performance goals and Cardlytics' financial performance during the 2016 fiscal year.

January 1, 2016

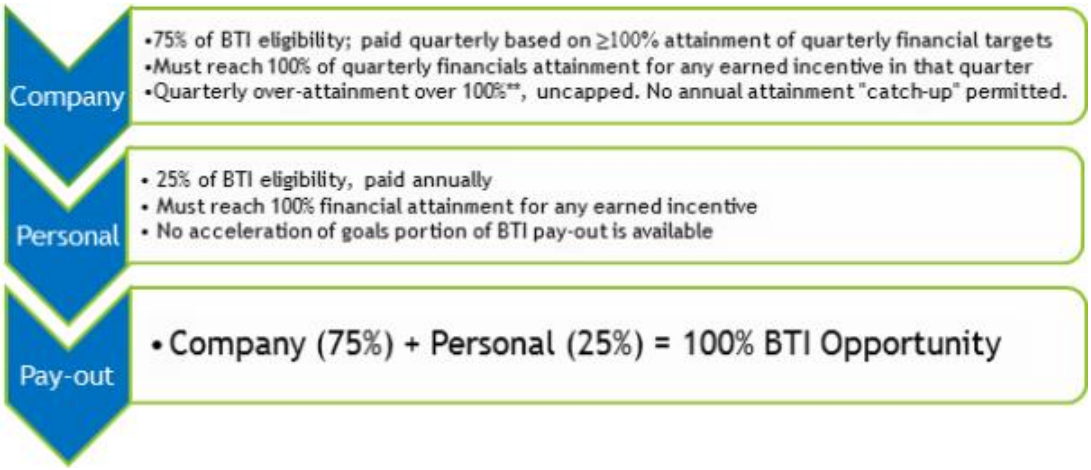
The annual BTI is a percentage of your base salary tied to your job level. Your direct manager will communicate your percentage eligibility target, given your job level in the company. The minimum performance rating score for BTI eligibility for 2016 is “Growing.”




**Measurement**

There are two components of measurement within the BTI plan design: (1) company financial performance and (2) your personal performance.

For leadership level contributors, the breakdown is:

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** **Example**: If we have quarterly over-attainment and achieve 110% financials, your quarterly pay-out would be 110% of your quarterly variable opportunity.

January 1, 2016

**Bonus Target Incentive (BTI) Plan Rule Details**

- Regular full/part-time employees located in the US and UK hired on or before August 1 of the plan year are eligible to participate, pro-rated based on date of hire. Expatriates working in other regions are also eligible to participate.
- Participants are not eligible to participate in multiple incentive plans simultaneously. Therefore, participants in specialized incentive plans (sales, commissioned roles, etc.) are not eligible to participate in this plan.
- Participants must be active employees of Cardlytics when the plan is paid.
- Participants who voluntarily resign or are terminated prior to incentive payment date are not eligible for an incentive payment.
- Participants hired during the plan year (on or before August 1) or who become eligible to participate in another specialized incentive plan, or who change roles or scheduled hours during the plan year will receive a pro-rated incentive based on the effective date of the hire or the change. If the date of the change is on or before the 15th of the month, incentive eligibility will be calculated from the 1st of the month. If the change occurs after the 15th of the month, eligibility becomes effective the 1st day of the following month.
- Participants under a documented Performance Improvement Plan during the plan year may not be eligible for an incentive. If and when the PIP is complete and the performance issue is corrected, management may at its discretion determine whether the participant will be eligible for any portion of the incentive award.

**Bonus Target Incentive (BTI) Administration**

- Cardlytics maintains the right to adjust plan measures during the plan year in the event of significant changes in the company's business plan.
- Performance levels and/or measures may be revised and communicated during the plan year to reflect significant changes in the company's strategy or other changes in business conditions.
- The earned incentives are calculated using an exempt participant's annual pay rate at the end of the plan year as of December 31 or a non-exempt (hourly) participant's eligible earnings, whichever is applicable.
- Eligible earnings for non-exempt participants is defined as all base and overtime earning paid during the plan year.
- Talent and Finance coordinate incentive award calculations and payments and their decisions and interpretations of the plan are final in all respects.
- Quarterly payments will be made no later than 45 days after quarter end. Annual payments will be made no later than March 15 following the end of the plan year.
- All incentive awards are gross amounts and subject to applicable federal, state and local tax withholdings at the time of payment.
- Cardlytics reserves the right to change, modify, alter or terminate this plan at any time in its sole discretion. Any such changes will not apply to incentives previously earned and calculated, but not paid.
- This plan does not create an employment contract or any other type of binding contract between Cardlytics and any plan participant.

January 1, 2016

**2017 Bonus Plan**

## Overview

The Cardlytics Bonus Plan ("Bonus Plan") rewards employees for helping Cardlytics ("Company") reach our corporate goals and for employees' personal performance. This document provides details on the 2017 Bonus Plan. If you have additional questions, please speak with your manager or People Operations.

## Bonus Potential

Your bonus potential is a percentage (%) of your annualized base salary. For each bonus period (either a quarter or the year), your bonus potential is based on your base salary at the end of that period. Your bonus % is based upon your level and will be communicated to you by your manager. Your bonus % can also be found in Namely after May 1, 2017.

## Bonus Components

Your bonus consists of two components: corporate and personal. The weight of each of these components depends upon your level.

| | Level | Corporate Component | Personal Component |
|---|---|---|---|
| 2017 | C-Level/SVP | 100% | 0% |
| | VP | 75% | 25% |
| | Director / Sr Director / Principal / Sr Principal / Manager / Sr Manager | 50% | 50% |
| | Entry-level / Mid / Senior | 40% | 60% |

## Payout

- Corporate component
  - Paid out quarterly based upon Company performance on two metrics[1]
  - Typically paid out within 45 days of the end of each quarter
- Personal component
  - Paid out annually based upon 2017 personal performance rating
  - Typically paid out within 60 days of the end of the year, but may be up to 90 days
  - The company must meet a minimum performance threshold for personal bonus to be paid

[1] For C-Level/SVP bonus plans, 20% of the corporate component is paid out each quarter based upon quarterly metrics, and 20% is paid out annually based on annual metrics.

## Corporate Component

The corporate component of the bonus is paid out based upon two metrics:

1. Operating Expenses (OpEx)
    - Excluding commissions and bonus
2. Net Revenue
    - Net Revenue = Revenue minus Bank Share

Each metric makes up 50% of the quarterly bonus potential. The goal for each metric will be communicated at the beginning of the quarter.

Each metric is paid out independently at the following levels[2]:

- **Under 90% of goal:** 0% payout
- **90-99% of goal:** 50% payout
- **100% of goal:** 100% payout
- **Over 100% of goal:** % for % payout, capped at 125%

Example: If the company hits 95% of Net Revenue and hits 100% of OpEx, then the Net Revenue portion will pay out at 50% and the OpEx portion at 100%.

## Personal Component

The personal component of bonus is paid out based on each employee's performance rating for 2017 at the following levels:

- **Superstar:** 110% payout
- **Achiever Plus:** 105% payout
- **Achiever:** 100% payout
- **Growing:** 70% payout
- **Opportunity:** 0% payout

The Company must hit at least 85% of the annual target for both metrics to trigger personal payout.

[2] OpEx is paid out inversely (e.g., if OpEx is 99% of the goal, this is considered 101% attainment).

Fine Print

- Regular, full-time employees are eligible to participate
- Employees hired during a quarter will be eligible for a pro-rated bonus for the quarter in which he/she was hired
- Employees hired between January 1, 2017 and October 1, 2017 will be eligible for a pro-rated annual bonus; employees hired after October 1, 2017 will not be eligible for any annual portion of the bonus but will be eligible for a pro-rated Q4 corporate bonus
- Employees who switch from the bonus plan to a commission plan, or vice versa, will be eligible for pro-rated participation in the bonus plan based on the portion of the year he/she was bonus eligible
- Employees are not eligible to participate in a commission plan and the bonus plan simultaneously. Commissioned employees will only be eligible for incentive compensation through his/her commission plan
- You must be active employee of Cardlytics on the date the bonus is paid in order to be eligible; participants who voluntarily resign prior to the bonus payment date may not be eligible for payment
- The Bonus Plan, its guidelines and your participation are all subject to modification or termination at any time at the sole discretion of the Company
- People Operations and Finance calculate bonus payments and their interpretations of the plan are final in all respects
- Quarterly payments will typically be made 45 days after the end of the quarter, but will be no later than 60 days after the end of the quarter
- Annual payments will typically be made 60 days after the end of the year, but will be made no later than 90 days after the end of the year
- All bonus payments are subject to applicable federal, state and local tax withholdings
- This plan does not create a contract of employment or a contract for pay or benefits

**Exhibit 10.8**

**CARDLYTICS, INC.**
**RESTRICTED SECURITIES UNIT GRANT NOTICE**

Cardlytics, Inc. (the "***Company***") hereby awards to Grantee (as of the date indicated below) the Restricted Securities Unit ("***RSUs***") with the terms set forth below (the "***Award***"). The Award is subject to all of the terms and conditions as set forth herein and in the Restricted Securities Unit Award Agreement attached hereto as Attachment I and the form of Convertible Promissory Note attached hereto as Attachment II, both of which are incorporated herein in their entirety. Capitalized terms not otherwise defined in this Grant Notice will have the meanings set forth in the attached Restricted Securities Unit Award Agreement.

Name of Grantee: _____

Date of Grant: _____

Notional Principal Amount $_____

Expiration Date: _____

**Vesting Schedule:** Grantee will receive a benefit with respect to an RSU only if it vests. Except as explicitly set forth below, two vesting requirements must be satisfied on or before the applicable Expiration Date specified above in order for an RSU to vest: a time and service-based requirement (the "***Service-Based Requirement***") and a "***Liquidity Event Requirement***" (described below). An RSU shall vest (and, therefore, becomes a "***Vested RSU***") on the first date upon which both the Service-Based Requirement and the Liquidity Event Requirement are satisfied with respect to that particular RSU (the "***Vesting Date***"). If the RSUs do not become Vested RSUs on or before the applicable Expiration Date, they will be immediately forfeited to the Company upon expiration at no cost to the Company.

**Service-Based Requirement:** The Service-Based Requirement will be met if the Grantee's Continuous Service (as defined below) has not terminated prior to the earliest to occur of the following events: (a) the date six months following the Date of Grant; (b) the date that the Liquidity Event Requirement is met; or (c) the date that the Grantee's Continuous Service is terminated by the Company and its Affiliates without Cause. "***Continuous Service***" means that the Grantee's service with the Company or an Affiliate, whether as an employee, or Consultant (as defined below), is not interrupted or terminated in a manner that would constitute a Separation from Service (as defined in Section 21 of the Restricted Securities Unit Award Agreement attached hereto as Attachment I). A change in the capacity in which the Grantee renders service to the Company or an Affiliate as an employee

| | |
|---|---|
| | or Consultant or a change in the entity for which the Grantee renders such service, provided that there is no interruption or termination of the Grantee's service with the Company or an Affiliate, will not terminate a Grantee's Continuous Service; provided, however, that if the entity for which a Grantee is rendering services ceases to qualify as an Affiliate, as determined by the Board of Directors of the Company (the "***Board***") in its sole discretion, such Grantee's Continuous Service will be considered to have terminated on the date such entity ceases to qualify as an Affiliate. "***Affiliate***" means, at the time of determination, any "parent" or "majority-owned subsidiary" of the Company, as such terms are defined in Rule 405 of the Securities Act of 1933, as amended (the "***Securities Act***"). The Board will have the authority to determine the time or times at which "parent" or "majority-owned subsidiary" status is determined within the foregoing definition. ***Consultant***" means any person, including an advisor, who is engaged by the Company or an Affiliate to render consulting or advisory services and is compensated for such services. |
| **Liquidity-Based Requirement:** | The Liquidity-Based Requirement shall be met upon the earliest to occur of the following events prior to the Expiration Date: (a) a sale of all of the outstanding shares of capital stock of the Company or all or substantially all assets of the Company to a purchaser or group of related purchasers resulting in gross proceeds to the selling stockholders or the Company, as applicable, of not less than $300,000,000; or (b) an initial public offering of the Company's common stock pursuant to a registration statement filed pursuant to the Securities Act resulting in gross proceeds to the Company of not less than $50,000,000. |
| **Settlement:** | Upon the Vesting Date, the Grantee shall be entitled to receive a Convertible Promissory Note in substantially the form attached hereto as Attachment II with a principal amount equal to the Notional Principal Amount plus the Deemed Interest (as defined in Section 6 of the Restricted Securities Unit Award Agreement attached hereto as Attachment I) and dated as of the Date of Grant (the "***Note***"); provided, however, that if, between the Date of Grant and the Vesting Date, the Note would have converted (had the Note been outstanding at all times since the Date of Grant) into another form (including but not limited to cash, securities or other property) in accordance with its terms, then upon the Vesting Date the Grantee shall be entitled to receive such cash, securities or other property, consistent with the terms applicable thereto. Any Note, cash, securities or other property by which this Award is settled shall be referred to herein as the "***Property***." |

| | |
|---|---|
| **Cause:** | **Cause**: "***Cause***" will have the meaning ascribed to such term in any written agreement between Grantee and the Company defining such term and, in the absence of such agreement, such term means, with respect to Grantee, the occurrence of any of the following events: (i) Grantee's commission of any felony or any crime involving fraud, dishonesty or moral turpitude under the laws of the United States or any state thereof; (ii) Grantee's attempted commission of, or participation in, a fraud or act of dishonesty against the Company; (iii) Grantee's material violation of any contract or agreement between Grantee and the Company or any fiduciary or statutory duty owed to the Company; (iv) Grantee's unauthorized use or disclosure of the Company's confidential information or trade secrets; or (v) Grantee's gross misconduct. The determination that a termination of Grantee's Continuous Service is either for Cause or without Cause will be made by the Board in its sole discretion. Any determination by the Company that the Continuous Service of Grantee was terminated with or without Cause for the purposes of this Award will have no effect upon any determination of the rights or obligations of the Company or Grantee for any other purpose. For the avoidance of doubt, "termination without Cause" does not include any form of termination of the Grantee's Continuous Service by the Grantee including claimed termination of Continuous Service by the Grantee pursuant to a "good reason termination" or because the Grantee had been "constructively terminated" by the Company. |

**Additional Terms/Acknowledgements:** Grantee acknowledges receipt of, and understands and agrees to, this Restricted Securities Unit Grant Notice, the Restricted Securities Unit Award Agreement and the Note. Grantee further acknowledges that as of the Date of Grant, this Restricted Securities Unit Grant Notice, the Restricted Securities Unit Award Agreement and the Note set forth the entire understanding between Grantee and the Company regarding this Award and supersede all prior oral and written agreements, offer letters, promises and/or representations on that subject with the exception of (i) any compensation recovery policy that is adopted by the Company, (ii) the Award Settlement Agreements (as defined in Section 8 of the Restricted Securities Unit Award Agreement attached hereto as Attachment I) or (iii) is otherwise required by applicable law.

By accepting the Award, Grantee acknowledges having received and read the Restricted Securities Unit Grant Notice, the Restricted Securities Unit Award Agreement and the Note (the "***Grant Documents***") and agrees to all of the terms and conditions set forth therein.

Furthermore, by accepting the Award, Grantee consents to receive such documents by electronic delivery through an on-line or electronic system established and maintained by the Company or another third party designated by the Company.

Notwithstanding the above, if Grantee has not actively accepted the Award within 90 days of the Date of Grant set forth in this Restricted Securities Unit Grant Notice, Grantee is deemed to have rejected the Award and the Award shall immediately be deemed null and void and of no further force or effect.

**CARDLYTICS, INC.**

By:_____
Signature

Title:_____
Date:_____

**GRANTEE:**

_____
Signature

Date:_____

**ATTACHMENT I**: Restricted Securities Unit Award Agreement
**ATTACHMENT II**: Note

**ATTACHMENT I**

**CARDLYTICS, INC.**
**RESTRICTED SECURITIES UNIT AWARD AGREEMENT**

Pursuant to the Restricted Securities Unit Grant Notice (the "***Grant Notice***") and this Restricted Securities Unit Award Agreement (the "***Agreement***") and in consideration of your services, Cardlytics, Inc. (the "***Company***") has awarded you Restricted Securities Units (the "***Award***"). The Award is granted to you effective as of the Date of Grant set forth in the Grant Notice for this Award. The details of the Award, in addition to those set forth in the Grant Notice, are as follows.

**1. GRANT OF THE AWARD.** The Award represents the right to be issued on a future date the Property as indicated in the Grant Notice upon the satisfaction of the terms set forth in this Agreement. Except as otherwise provided herein, you will not be required to make any payment to the Company with respect to your receipt of the Award, the vesting of the Property or the delivery of the underlying Property.

**2. VESTING.** Subject to the limitations contained herein, the Award will vest, if at all, in accordance with the vesting schedule provided in the Grant Notice.

**3. DELIVERY OF PROPERTY; RESTRICTIONS.** Any Property that becomes subject to the Award will be subject to the same forfeiture restrictions, restrictions on transferability, and time and manner of delivery as the Property delivered to holders of the Notes.

**4. SECURITIES LAW AND OTHER COMPLIANCE.** You may not be issued any securities under the Award unless either (a) the securities are registered under the Securities Act; or (b) the Company has determined that such issuance would be exempt from the registration requirements of the Securities Act. The Award also must comply with other applicable laws and regulations, and you will not receive Property if the Company determines that such receipt would not be in material compliance with such laws and regulations.

**5. DATE OF ISSUANCE.**

**(a)** Subject to the satisfaction of the withholding obligations set forth in Section 11 of this Agreement, the Company will deliver to you Property within thirty (30) days following the applicable Vesting Date(s). The issuance date determined by this paragraph is referred to as the "***Original Issuance Date***".

**(b)** Notwithstanding anything to the contrary in Section 5(a), if the Property is publicly traded securities *and*:

**(i)** the Original Issuance Date does not occur (1) during an "open window period" applicable to you, as determined by the Company in accordance with the Company's then-effective policy on trading in Company securities, or (2) on a date when you are otherwise permitted to sell the Property on an established stock exchange or stock market, *and*

**(ii)** either (1) withholding taxes do not apply, or (2) the Company decides, prior to the Original Issuance Date, (A) not to satisfy the withholding taxes by withholding securities from the Property otherwise due, on the Original Issuance Date, to you under this Award, and (B) not to permit you to pay your withholding taxes in cash,

then the securities that would otherwise be issued to you on the Original Issuance Date will not be delivered on such Original Issuance Date and will instead be delivered on the first business day when you are not prohibited from selling the securities in the open public market, but in no event later than December 31 of the calendar year in which the Vesting Date occurs (that is, the last day of your taxable year in which the Vesting Date occurs), or, if and only if permitted in a manner that complies with Treasury Regulations Section 1.409A-1(b)(4), no later than the date that is the 15th day of the third calendar month of the applicable year following the year in which the Property under this Award is no longer subject to a "substantial risk of forfeiture" within the meaning of Treasury Regulations Section 1.409A-1(d).

**(c)** The form of delivery (*e.g.*, a stock certificate or electronic entry evidencing such Property) shall be determined by the Company.

**(d)** Notwithstanding anything to the contrary in Section 5(a) or 5(b), if a scheduled delivery date falls on a date that is not a business day, such delivery date will instead fall on the next following business day. The form of such delivery (*e.g.*, a stock certificate or electronic entry evidencing such Property) will be determined by the Company. In all cases, the delivery of Property under this Award is intended to comply with Treasury Regulation Section 1.409A-1(b)(4) and will be construed and administered in such a manner.

**6. DIVIDENDS; INTEREST.** You will receive no benefit or adjustment to your Restricted Securities Units with respect to any cash dividend, stock dividend or other distribution. Notwithstanding the foregoing, if the Award is settled in the form of a Note, than the aggregate principal amount of the Note at the time of the settlement of the Award shall equal (i) the Notional Principal Amount plus (ii) any interest that would have accrued had you held a Note with an issuance date identical to the Date of Grant, and with a principal amount equal to the Notional Principal Amount (such interest calculated pursuant to clause (ii), the "***Deemed Interest***").

**7. MARKET STAND-OFF AGREEMENT**. By acquiring securities under your Award, you agree that you will not sell, dispose of, transfer, make any short sale of, grant any option for the purchase of, or enter into any hedging or similar transaction with the same economic effect as a sale, any securities of the Company held by you, for a period of 180 days following the effective date of a registration statement of the Company filed under the Securities Act or such longer period as the underwriters or the Company request or as necessary to permit compliance with FINRA Rule 2711 or NYSE Member Rule 472 and similar or successor regulatory rules and regulations (the "***Lock-Up Period***"); *provided, however*, that nothing contained in this

Section 7 will prevent the exercise of a repurchase option, if any, in favor of the Company during the Lock-Up Period. You further agree to execute and deliver such other agreements as may be reasonably requested by the Company and the underwriters that are consistent with the foregoing or that are necessary to give further effect thereto. You also agree that any transferee of any securities of the Company held by you will be bound by this Section 7. To enforce the foregoing covenant, the Company may impose stop-transfer instructions with respect to your securities until the end of such period. The underwriters of the Company's stock are intended third party beneficiaries of this Section 7 and will have the right, power and authority to enforce the provisions of this Section 7 as though they were a party to this Agreement.

**8. TRANSFER RESTRICTIONS; CONDITIONS OF SETTLEMENT.** In addition to any other limitation on transfer created by applicable securities laws, as applicable, you will not sell, assign, hypothecate, donate, encumber or otherwise dispose of all or any part of the Property subject to your Award or any interest in such Property except in compliance with this Agreement, the Company's bylaws and applicable securities laws. In addition, as a condition of the settlement of this Award or the conversion of the Note into other securities of the Company, upon request by the Company you shall enter into (a) a Subordination Agreement in the form prescribed by the Company or its senior lenders; (b) the Company's Amended and Restated Investors' Rights Agreement as an "Investor" thereunder with respect to the securities of the Company issued in settlement of this Award and (c) the Company's Amended and Restated Voting Agreement as an "Investor" thereunder with respect to the securities of the Company issued in settlement of this Award (the agreements referred to in clauses (a), (b) and (c) are referred to collectively, the "***Award Settlement Agreements***").

**9. RESTRICTIVE LEGENDS.** All certificates representing securities issued under this Agreement will be endorsed with legends in substantially the following forms (in addition to any other legend that may be required by other agreements between you and the Company):

**(a)** "THIS NOTE AND THE SECURITIES INTO WHICH IT MAY BE CONVERTED HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "ACT"), OR APPLICABLE STATE SECURITIES LAWS AND MAY NOT BE OFFERED, SOLD OR OTHERWISE TRANSFERRED, PLEDGED OR HYPOTHECATED IN THE ABSENCE OF AN EXEMPTION FROM REGISTRATION OR AN EFFECTIVE REGISTRATION STATEMENT UNDER THE ACT."

**(b)** "THIS NOTE AND THE RIGHTS AND OBLIGATIONS EVIDENCED HEREBY ARE SUBORDINATE IN THE MANNER AND TO THE EXTENT SET FORTH IN THAT CERTAIN SUBORDINATION AGREEMENT DATED AS OF APRIL 26, 2016, BY AND BETWEEN SILICON VALLEY BANK ("SVB"), GOLD HILL CAPITAL 2008, L.P. ("GOLD HILL" AND, TOGETHER WITH SVB, THE "LENDERS") AND THE HOLDER AND ACKNOWLEDGED AND AGREED BY CARDLYTICS, INC. (THE "COMPANY") (AS AMENDED, MODIFIED, EXTENDED OR RESTATED FROM TIME TO TIME, THE "SUBORDINATION AGREEMENT"), TO THE INDEBTEDNESS (INCLUDING INTEREST, COSTS FEES AND EXPENSES) OWED BY THE COMPANY TO THE LENDERS AND TO ANY AND ALL SECURITY INTERESTS, LIENS AND CHARGES HELD BY THE LENDERS IN ANY ASSETS OR PROPERTIES OF COMPANY; AND EACH HOLDER OF THIS NOTE, BY ITS ACCEPTANCE HEREOF, IRREVOCABLY AGREES TO BE BOUND BY THE PROVISIONS OF THE SUBORDINATION AGREEMENT."

**(c)** "THE SHARES REPRESENTED BY THIS CERTIFICATE ARE SUBJECT TO RESTRICTIONS AND CONDITIONS SET FORTH IN A RESTRICTED SECURITIES UNIT AWARD AGREEMENT BETWEEN THE COMPANY AND THE REGISTERED HOLDER, OR SUCH HOLDER'S PREDECESSOR IN INTEREST, A COPY OF WHICH IS ON FILE AT THE COMPANY'S PRINCIPAL CORPORATE OFFICES. ANY TRANSFER OR ATTEMPTED TRANSFER OF ANY SHARES IN VIOLATION OF SUCH RESTRICTIONS IS VOID WITHOUT THE PRIOR EXPRESS WRITTEN CONSENT OF THE COMPANY."

**(d)** "THE SHARES EVIDENCED HEREBY ARE SUBJECT TO THE TERMS AND CONDITIONS OF AN AMENDED AND RESTATED VOTING AGREEMENT BY AND AMONG THE COMPANY AND CERTAIN HOLDERS OF CAPITAL STOCK OF THE COMPANY (A COPY OF WHICH MAY BE OBTAINED FROM THE COMPANY) WHICH PLACES CERTAIN RESTRICTIONS ON THE VOTING OF THE SHARES EVIDENCED HEREBY ANY PERSON ACCEPTING ANY INTEREST IN SUCH SHARES SHALL BE DEEMED TO AGREE TO AND SHALL BECOME BOUND BY ALL THE PROVISIONS OF SAID AMENDED AND RESTATED VOTING AGREEMENT."

**(e)** Any legend required by appropriate blue sky officials or the Award Settlement Agreements.

**10. AWARD NOT AN EMPLOYMENT OR SERVICE CONTRACT.**

**(a)** Your Continuous Service with the Company and its Affiliates is not for any specified term and may be terminated by you or by the Company and its Affiliates at any time, for any reason, with or without cause and with or without notice. Nothing in this Agreement (including, but not limited to, the vesting of the Award pursuant to Section 2 or the issuance of the Property subject to the Award) or any covenant of good faith and fair dealing that may be found implicit in this Agreement will: (i) confer upon you any right to continue in the employ of, or affiliation with, the Company or any Affiliate; (ii) constitute any promise or commitment by the Company or any Affiliate of the Company regarding the fact or nature of future positions, future work assignments, future compensation or any other term or condition of employment or affiliation; (iii) confer any right or benefit under this Agreement unless such right or benefit has specifically accrued under the terms of this Agreement; or (iv) deprive the Company or any Affiliate of the right to terminate you at will and without regard to any future vesting opportunity that you may have.

**(b)** By accepting this Award, you acknowledge and agree that the right to continue vesting in the Award pursuant to Section 2 and the schedule set forth in the Grant Notice is earned in part by continuing as an employee or Consultant at the will of the Company and/or any Affiliate (not through the act of being hired, being granted this Award or any other award or benefit) and that the Company has the right to reorganize, sell, spin-out or otherwise restructure one or more of its businesses or Affiliates at any time or from time to time, as it deems appropriate (a "***Reorganization***"). You further acknowledge and agree that such

Reorganization could result in the termination of your Continuous Service or the termination of Affiliate status of your employer and the loss of benefits available to you under this Agreement, including but not limited to, the termination of the right to continue vesting in the Award. You further acknowledge and agree that this Agreement, the transactions contemplated hereunder and the vesting schedule set forth in the Grant Notice or any covenant of good faith and fair dealing that may be found implicit in any of them do not constitute an express or implied promise of continued engagement as an employee or Consultant with the Company or any Affiliate for the term of this Agreement, for any period, or at all, and will not interfere in any way with your right or the right of the Company and/or any Affiliate to terminate your Continuous Service at any time, with or without cause and with or without notice.

**11. RESPONSIBILITY FOR TAXES.**

**(a)** You acknowledge that, regardless of any action taken by the Company or its Affiliates, the ultimate liability for all income tax, social insurance, payroll tax, fringe benefits tax, payment on account or other tax-related items related to the Award and legally applicable to you or deemed by the Company or its Affiliates in their discretion to be an appropriate charge to you even if legally applicable to the Company or its Affiliates ("***Tax-Related Items***") is and remains your responsibility and may exceed the amount actually withheld by the Company.

**(b)** Prior to any relevant taxable or tax withholding event, as applicable, you agree to make adequate arrangements satisfactory to the Company and its Affiliates to satisfy all Tax-Related Items. In this regard, you authorize the Company and its Affiliates or their agent to satisfy their withholding obligations with regard to all Tax-Related Items, if any, by any of the following means or by a combination of such means, in each case as determined to be applicable by the Company to the form of Property being issued: (i) withholding from any compensation otherwise payable to you by the Company or an Affiliate; (ii) causing you to tender a cash payment; (iii) entering on your behalf (pursuant to this authorization without further consent) into a "same day sale" commitment with a broker dealer that is a member of the Financial Industry Regulatory Authority (a "***FINRA Dealer***") whereby you irrevocably elect to sell a portion of any securities to be delivered under the Award to satisfy the Tax-Related Items and whereby the FINRA Dealer irrevocably commits to forward the proceeds necessary to satisfy the Tax-Related Items directly to the Company or an Affiliate; or (iv) withholding Property from the Property issued or otherwise issuable to you in connection with the Award with a Fair Market Value (measured as of the date Property is issued to you or, if and as determined by the Company or an Affiliate, the date on which the Tax-Related Items are required to be calculated) equal to the amount of such Tax-Related Items. The Company and its Affiliates will use commercially reasonable efforts (as determined by the Company and its Affiliates) to facilitate the satisfaction of Tax-Related Items by you using one of the methods described in clauses (iii) and (iv) of the preceding sentence or by permitting you to sell securities in any initial public offering by the Company. However, the Company and its Affiliates do not guarantee that you will be able to satisfy any Tax-Related Items through any of the methods described in the preceding sentence and in all circumstances you remain responsible for timely and fully satisfying the Tax-Related Items. Depending on the withholding method employed, the Company and its Affiliates may withhold or account for Tax-Related Items by considering applicable minimum statutory withholding rates or other applicable withholding rates, including maximum applicable rates, in which case you will receive a refund of any over-withheld amount

in cash. If the obligation for Tax-Related Items is satisfied by withholding in securities, for tax purposes, you are deemed to have been issued the full number of securities subject to the vested portion of the Award, notwithstanding that a number of the securities are held back solely for the purpose of paying the Tax-Related Items.

**(c)** Finally, you agree to pay to the Company or an Affiliate any amount of Tax-Related Items that the Company or such Affiliate may be required to withhold or account for as a result of the Award that cannot be satisfied by any of the means previously described. Notwithstanding any contrary provision of the Notice of Grant or of this Agreement, if you fail to make satisfactory arrangements for the payment of any Tax-Related Items when due, you permanently will forfeit the Restricted Securities Units on which the Tax-Related Items were not satisfied and will also permanently forfeit any right to receive Property thereunder. In that case, the Restricted Securities Units will be returned to the Company at no cost to the Company.

**12. INVESTMENT REPRESENTATIONS.** In connection with your acquisition of the Property under your Award, you represent to the Company the following:

**(a)** You are aware of the Company's business affairs and financial condition and have acquired sufficient information about the Company to reach an informed and knowledgeable decision to acquire the Property. You are acquiring the Property for investment for your own account only and not with a view to, or for resale in connection with, any "distribution" thereof within the meaning of the Securities Act.

**(b)** You are an "accredited investor" as such term is defined in Rule 501 under the Securities Act.

**(c)** You understand that the Property has not been registered under the Securities Act by reason of a specific exemption therefrom, which exemption depends upon, among other things, the bona fide nature of your investment intent as expressed in this Agreement.

**(d)** You further acknowledge and understand that any Property that is securities must be held indefinitely unless the securities are subsequently registered under the Securities Act or an exemption from such registration is available. You further acknowledge and understand that the Company is under no obligation to register the Property. You understand that the certificate evidencing the Property will be imprinted with a legend that prohibits the transfer of the Property unless the Property is registered or such registration is not required in the opinion of counsel for the Company.

**(e)** You are familiar with the provisions of Rules 144 and 701 under the Securities Act, as in effect from time to time, which, in substance, permit limited public resale of "restricted securities" acquired, directly or indirectly, from the issuer thereof (or from an affiliate of such issuer), in a non-public offering subject to the satisfaction of certain conditions. Rule 701 provides that if the issuer qualifies under Rule 701 at the time of issuance of the securities, such issuance will be exempt from registration under the Securities Act. In the event the Company becomes subject to the reporting requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, as amended, the securities exempt under Rule 701 may be sold by you 90 days thereafter, subject to the satisfaction of certain of the conditions specified by Rule 144 and the market stand-off agreement described in Section 7.

**(f)** In the event that the sale of securities does not qualify under Rule 701 at the time of issuance, then the securities may be resold by you in certain limited circumstances subject to the provisions of Rule 144, which requires, among other things: (i) the availability of certain public information about the Company; and (ii) the resale occurring following the required holding period under Rule 144 after you have purchased, and made full payment of (within the meaning of Rule 144), the securities to be sold.

**(g)** You further understand that at the time you wish to sell securities there may be no public market upon which to make such a sale, and that, even if such a public market then exists, the Company may not be satisfying the current public current information requirements of Rule 144 or 701, and that, in such event, you would be precluded from selling securities under Rule 144 or 701 even if the minimum holding period requirement had been satisfied.

**13. NO OBLIGATION TO MINIMIZE TAXES.** You acknowledge that the Company is not making representations or undertakings regarding the treatment of any Tax-Related Items in connection with any aspect of the Award, including, but not limited to, the grant, vesting or settlement of the Award, the subsequent sale of securities acquired pursuant to such settlement and the receipt of any dividends and/or any dividend equivalent payments. Further, you acknowledge that the Company does not have any duty or obligation to minimize your liability for Tax-Related Items arising from the Award and will not be liable to you for any Tax-Related Items arising in connection with the Award.

**14. NO ADVICE REGARDING GRANT.** The Company is not providing any tax, legal or financial advice, nor is the Company making any recommendations regarding your Award, or your acquisition or sale of the underlying Property. You are hereby advised to consult with your own personal tax, financial and/or legal advisors regarding the Tax-Related Items arising in connection with the Award and by accepting the Award, you have agreed that you have done so or knowingly and voluntarily declined to do so.

**15. UNSECURED OBLIGATION.** The Award is unfunded, and as a holder of a vested Award, you will be considered an unsecured creditor of the Company with respect to the Company's obligation, if any, to issue Property pursuant to this Agreement. You will not have voting or any other rights as a stockholder of the Company with respect to the Property to be issued pursuant to this Agreement until such Property is issued to you pursuant to Section 5 of this Agreement and only to the extent that such Property provides such rights. Nothing contained in this Agreement, and no action taken pursuant to its provisions, will create or be construed to create a trust of any kind or a fiduciary relationship between you and the Company or any other person.

**16. NOTICES.** Any notices provided for in the Grant Notice or this Agreement will be given in writing and will be deemed effectively given upon receipt or, in the case of notices delivered by the Company to you, five (5) days after deposit in the United States mail, postage prepaid, addressed to you at the last address you provided to the Company. Notwithstanding the

foregoing, the Company may, in its sole discretion, decide to deliver any documents related to this Award by electronic means or to request your consent to the Award by electronic means. You hereby consent to receive such documents by electronic delivery and, if requested, to agree to receive the Award through an on-line or electronic system established and maintained by the Company or another third party designated by the Company.

**17. MISCELLANEOUS.**

**(a)** As a condition to the grant of your Award or to the Company's issuance of any Property under this Agreement, the Company may require you to execute certain customary agreements entered into with the holders of capital stock of the Company, including without limitation the Award Settlement Agreements.

**(b)** The rights and obligations of the Company under the Award will be transferable to any one or more persons or entities, and all covenants and agreements hereunder will inure to the benefit of, and be enforceable by the Company's successors and assigns. Your rights and obligations under the Award may only be assigned with the prior written consent of the Company.

**(c)** You agree upon request to execute any further documents or instruments necessary or desirable in the sole determination of the Company to carry out the purposes or intent of the Award.

**(d)** You acknowledge and agree that you have reviewed the documents provided to you in relation to the Award in their entirety, have had an opportunity to obtain the advice of counsel prior to executing and accepting the Award, and fully understand all provisions of such documents.

**(e)** This Agreement will be subject to all applicable laws, rules, and regulations, and to such approvals by any governmental agencies or national securities exchanges as may be required.

**(f)** All obligations of the Company under this Agreement will be binding on any successor to the Company, whether the existence of such successor is the result of a direct or indirect purchase, merger, consolidation, or otherwise, of all or substantially all of the business and/or assets of the Company.

**18. SEVERABILITY.** If all or any part of this Agreement is declared by any court or governmental authority to be unlawful or invalid, such unlawfulness or invalidity will not invalidate any portion of this Agreement not declared to be unlawful or invalid. Any Section of this Agreement (or part of such a Section) so declared to be unlawful or invalid will, if possible, be construed in a manner which will give effect to the terms of such Section or part of a Section to the fullest extent possible while remaining lawful and valid.

**19. EFFECT ON EMPLOYEE BENEFIT PLANS.** The value of the Award subject to this Agreement will not be included as compensation, earnings, salaries, or other similar terms used when calculating the Grantee's benefits under any employee benefit plan sponsored by the Company or any Affiliate, except as such plan otherwise expressly provides. The Company expressly reserves its rights to amend, modify, or terminate any of the Company's or any Affiliate's employee benefit plans.

**20. AMENDMENT.** This Agreement may not be modified, amended or terminated except by an instrument in writing, signed by you and by a duly authorized representative of the Company. Notwithstanding the foregoing, this Agreement may be amended solely by the Board by a writing which specifically states that it is amending this Agreement, so long as a copy of such amendment is delivered to you, and provided that no such amendment adversely affecting your rights hereunder may be made without your written consent. Without limiting the foregoing, the Board reserves the right to change, by written notice to you, the provisions of this Agreement in any way it may deem necessary or advisable to carry out the purpose of the grant as a result of any change in applicable laws or regulations or any future law, regulation, ruling, or judicial decision, provided that any such change will be applicable only to rights relating to that portion of the Award which is then subject to restrictions as provided herein.

**21. COMPLIANCE WITH SECTION 409A OF THE CODE**. This Award is intended to comply with the "short-term deferral" rule set forth in Treasury Regulation Section 1.409A-1(b)(4). Notwithstanding the foregoing, if it is determined that the Award fails to satisfy the requirements of the short-term deferral rule and is otherwise deferred compensation subject to Section 409A, and if you are a "Specified Employee" (within the meaning set forth in Section 409A(a)(2)(B)(i) of the Code) as of the date of your separation from service (within the meaning of Treasury Regulation Section 1.409A-1(h) ("***Separation from Service***")), then the issuance of any Property that would otherwise be made upon the date of the separation from service or within the first six months thereafter will not be made on the originally scheduled date(s) and will instead be issued in a lump sum on the date that is six months and one day after the date of the Separation from Service. Notwithstanding any contrary provision of the Notice of Grant or of this Agreement:

**(a)** The Expiration Date shall be the earlier of (i) the Expiration Date set forth on the Notice of Grant or (ii) the later of (x) the date that is 185 days after the Date of Grant or (y) the latest date after the Date of Grant which, determined on the Date of Grant, would result in the Liquidity-Based vesting condition constituting a "substantial risk of forfeiture" within the meaning of Treasury Regulations Section 1.409A-1(d).

**(b)** In the event the Expiration Date is determined pursuant to clause (x) of paragraph (a)(ii) above, the Liquidity Event Requirement shall be deemed to be met on the first business day following the Date of Grant. For the avoidance of doubt, in the event the Expiration Date is not earlier than the date that is 185 days after the Date of Grant, the provisions of this paragraph (b) shall not apply.

**(c)** Under no circumstances will the Company reimburse you for any taxes or other costs under Section 409A or any other tax law or rule. All such taxes and costs are solely your responsibility.

* * *

This Agreement will be deemed to be signed by you upon the signing by you of the Restricted Securities Unit Grant Notice to which it is attached.

10.

**ATTACHMENT II**

THIS NOTE AND THE SECURITIES INTO WHICH IT MAY BE CONVERTED HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "***ACT***"), OR APPLICABLE STATE SECURITIES LAWS AND MAY NOT BE OFFERED, SOLD OR OTHERWISE TRANSFERRED, PLEDGED OR HYPOTHECATED IN THE ABSENCE OF AN EXEMPTION FROM REGISTRATION OR AN EFFECTIVE REGISTRATION STATEMENT UNDER THE ACT.

THIS NOTE AND THE RIGHTS AND OBLIGATIONS EVIDENCED HEREBY ARE SUBORDINATE IN THE MANNER AND TO THE EXTENT SET FORTH IN THAT CERTAIN SUBORDINATION AGREEMENT DATED AS OF [ ], 2016, BY AND BETWEEN SILICON VALLEY BANK ("***SVB***"), GOLD HILL CAPITAL 2008, L.P. ("***GOLD HILL***" AND, TOGETHER WITH SVB, THE "***LENDERS***") AND THE HOLDER AND ACKNOWLEDGED AND AGREED BY CARDLYTICS, INC. (THE "***COMPANY***") (AS AMENDED, MODIFIED, EXTENDED OR RESTATED FROM TIME TO TIME, THE "***SUBORDINATION AGREEMENT***"), TO THE INDEBTEDNESS (INCLUDING INTEREST, COSTS FEES AND EXPENSES) OWED BY THE COMPANY TO THE LENDERS AND TO ANY AND ALL SECURITY INTERESTS, LIENS AND CHARGES HELD BY THE LENDERS IN ANY ASSETS OR PROPERTIES OF COMPANY; AND EACH HOLDER OF THIS NOTE, BY ITS ACCEPTANCE HEREOF, IRREVOCABLY AGREES TO BE BOUND BY THE PROVISIONS OF THE SUBORDINATION AGREEMENT.

**CARDLYTICS, INC.**

**CONVERTIBLE PROMISSORY NOTE**

USD $[ ] **[ ], 2016**

**FOR VALUE RECEIVED** in immediately available funds, the undersigned, **CARDLYTICS, INC.**, a Delaware corporation (the "***Company***"), promises to pay to the order of **[ ]**, or its assigns (the "***Holder***"), the principal sum of **[ ]** ($**[ ]**) in lawful money of the United States of America, together with interest as provided herein.

This Note has been issued pursuant to a Restricted Securities Unit granted in accordance with Section 2(e) of that certain Note Purchase Agreement (the "***Purchase Agreement***"), dated as of April 26, 2016, by and among the Company and Investors parties thereto. Capitalized terms used herein but not otherwise defined herein have the meanings given to them in the Purchase Agreement.

The following is a statement of the rights of the Holder of this Note and the conditions to which this Note is subject and to which the Holder hereof, by the acceptance of this Note, agrees:

**1. MATURITY DATE; PREPAYMENT**. Unless earlier converted into shares of the Company's capital stock pursuant to Section 2 hereof, on the earliest of (a) such date specified by the Requisite Investors after April 26, 2018, (b) upon the closing of a Liquidation Transaction (as defined in the Company's Amended and Restated Certificate of Incorporation, as amended to date and as may be further amended from time to time), or (c) the date on which an Event of Default (as defined below) has occurred and repayment of this Note has been accelerated pursuant to Section 5.2 (the earliest to occur of (a), (b), or (c), the "***Maturity Date***"), the Company shall pay to Holder, in cash, the amount of the then outstanding principal balance of this Note plus all accrued and unpaid interest hereon (the "***Outstanding***

***Balance***"), or in the case of a Liquidation Transaction only, the Repayment Amount set forth in Section 2.6. Except in connection with a Liquidation Transaction, without the written consent of the Requisite Investors, the Company may not and shall not prepay any portion of the outstanding principal of this Note. In the event the Requisite Investors consent to the prepayment of Notes, prepayments shall be made by the Company to the Investors on a pro-rata basis according to the Outstanding Balance of their respective Notes.

**2. NOTE CONVERSION.**

**2.1 Automatic Conversion Upon the Occurrence of a Qualified Financing**. If, at any time after the date hereof while this Note remains outstanding, the Company consummates an equity financing pursuant to which it sells shares of its preferred stock (the "***Preferred Stock***"), with an aggregate sales price of not less than $10,000,000, excluding any and all indebtedness under the Notes that is converted into Preferred Stock, and with the principal purpose of raising capital (a "***Qualified Financing***"), then all principal, together with all accrued but unpaid interest under this Note (the "***Outstanding Balance***"), shall, effective on the initial closing of the Qualified Financing, automatically convert into a number of shares of the Preferred Stock issued in such Qualified Financing equal to the Outstanding Balance *divided by* eighty percent (80%) of the lowest purchase price per share paid by other new investors in the Qualified Financing for the Preferred Stock issued in the Qualified Financing; *provided, however*, that if (a) the Holder is a Fully-Participating Investor, (b) the Overallotment Condition Precedent has been met, and (c) the Holder failed to purchase Notes with an aggregate principal amount equal to at least the Holder's full Overallotment Amount in one or more Overallotment Closings following the Closing Deadline but prior to the Overallotment Deadline, then the Outstanding Balance shall instead automatically convert into a number of shares of the Preferred Stock issued in such Qualified Financing equal to the Outstanding Balance *divided by* the lowest purchase price per share paid by other new investors in the Qualified Financing for the Preferred Stock issued in the Qualified Financing.

**2.2 Optional Conversion Upon the Occurrence of a Non-Qualified Financing**. If, at any time after the date hereof while this Note remains outstanding, the Company consummates an equity financing pursuant to which it sells shares of Preferred Stock that does not constitute a Qualified Financing (a "***Non-Qualified Financing***", and, together with a Qualified Financing, an "***Equity Financing***"), then upon written notice by the Requisite Investors, the Outstanding Balance shall, effective on the initial closing of such Non-Qualified Financing, convert into a number of shares of the Preferred Stock issued in such Non-Qualified Financing equal to the Outstanding Balance *divided by* eighty percent (80%) of the lowest purchase price per share paid by other new investors in the Non-Qualified Financing for the Preferred Stock issued in such Non-Qualified Financing.

**2.3 Automatic Conversion Upon the Occurrence of an IPO**. If, at any time after the date hereof while this Note remains outstanding, the Company consummates an initial public offering of its Common Stock pursuant to an effective registration statement under the Securities Act of 1933, as amended (an "***IPO***"), then the Outstanding Balance shall, effective immediately prior to the closing of such IPO, automatically convert into a number of shares of the Company's Common Stock equal to (i) the Outstanding Balance *divided by* (ii) the lesser of (A) eighty percent (80%) of the price per share that such Common Stock is sold to the public in the IPO (the "***IPO Price***") and (B) eighty percent (80%) of the Series F/F-R Original Issue Price (as defined below).

**2.4 Conversion After the Maturity Date**. In the event that this Note remains outstanding on the Maturity Date, then on the tenth ($10^{th}$) business day following delivery to the Company of a written election of the Requisite Investors at any time after the Maturity Date (the "***Maturity Conversion Date***"), the Outstanding Balance shall be converted into such number of shares of the Company's Series F Preferred Stock or Series F-R Preferred Stock, as applicable (the "***Series F/F-R Preferred Stock***") as is equal to: (i) the Outstanding Balance *divided by* (ii) $12.5142 (as adjusted for stock splits, stock dividends, reclassification and the like, the "***Series F/F-R Original Issue Price***").

**2.5 Conversion Procedure**. If this Note is converted into Preferred Stock upon an Equity Financing, Common Stock in an IPO or Series F/F-R Preferred Stock on the Maturity Date (collectively, "***Conversion Securities***") pursuant to Section 2.1, 2.2, 2.3 or 2.4, the following terms shall govern such conversion.

**2.5.1 Notice of Conversion**. The Company shall deliver written notice to the Holder of this Note at the address shown on the records of the Company for the Holder, notifying the Holder of the conversion to be effective, specifying the Conversion Securities into which this Note shall be converted, the principal amount of this Note to be converted, the amount of accrued interest to be converted, and the date on which such conversion will occur. Holder agrees to deliver the original of this Note (or an affidavit of loss to the effect that the original Note has been lost, stolen or destroyed and an agreement acceptable to the Company whereby the Holder agrees to indemnify the Company from any loss incurred by it related to such lost, stolen or destroyed Note) at the closing of the IPO, the Equity Financing or the Maturity Conversion Date, as applicable, for cancellation; *provided, however*, that upon the closing of an IPO, an Equity Financing or the Maturity Conversion Date, as applicable, this Note shall be deemed converted and of no further force and effect, whether or not it is delivered for cancellation as set forth in this sentence. In addition, upon the conversion of this Note in an Equity Financing, the Holder shall execute the stock purchase agreement and all ancillary agreements in the forms agreed upon and entered into by the investors in such Equity Financing; *provided, however,* the Holder(s) have been provided a reasonable opportunity to provide comments on such agreements (and the Company has considered any such comments in good faith).

**2.5.2 Mechanics and Effect of Conversion**. No fractional shares of the Company's Conversion Securities shall be issued upon conversion or maturity of this Note. In lieu of the Company issuing any fractional shares to the Holder upon the conversion or maturity of this Note, the Company shall pay to the Holder the amount of outstanding principal and accrued interest that is not so converted in cash. The Holder shall surrender this Note, duly endorsed, at the principal office of the Company after full conversion of this Note in exchange for stock certificates representing the Conversion Securities into which this Note has been converted. Upon full conversion of this Note, the Company shall be forever released from all of its obligations and liabilities under this Note.

**2.6 Payment Upon a Liquidation Transaction**. If a Liquidation Transaction occurs at any time while this Note remains outstanding and prior to the date of the initial closing of an Equity Financing, an IPO or the Maturity Conversion Date, the Company shall, or shall cause the acquirer of the Company in such Liquidation Transaction to pay to the Holder, in full discharge, satisfaction and cancellation of this Note: (i) the Outstanding Balance on the closing date of the Liquidation Transaction plus (ii) a repayment premium equal to one hundred percent (100%) of the outstanding principal balance of this Note as of immediately prior to the repayment of the Outstanding Balance (the "***Repayment Amount***"). The Holder agrees to deliver to the Company the original of this Note at the closing of the Liquidation Transaction for cancellation; *provided, however*, that immediately prior to the consummation of the Liquidation Transaction, this Note shall be deemed of no further force and effect, whether or not it is delivered for cancellation as set forth in this sentence, subject only to the payments set forth in this Section 2.6 actually occurring.

**3. INTEREST.** Interest shall accrue on the outstanding principal balance of this Note at the rate of 10% per year, compounded annually on the basis of actual days elapsed in a 365- or 366-day year, as appropriate. Notwithstanding any other provision of this Note, the Holder does not intend to charge, and the Company shall not be required to pay, any interest or other fees or charges or premiums in excess of the maximum permitted by applicable law; any payments in excess of such maximum shall be refunded to the Company or credited to reduce principal hereunder.

**4. WAIVER OF NOTICE**. The Company hereby waives notice, presentment, protest and notice of dishonor.

**5. EVENT OF DEFAULT**.

**5.1 Event of Default**. The following events shall constitute an "***Event of Default***" under this Note:

**5.1.1 Voluntary Bankruptcy or Insolvency Proceedings**. The Company shall have (a) applied for or consented to the appointment of a receiver, trustee, liquidator or custodian of itself or of all or a substantial part of its property, (b) made a general assignment for the benefit of its creditors, (c) been dissolved or liquidated in full or in part, or (d) commenced a voluntary case or other proceeding seeking relief on its behalf as a debtor, or to adjudicate it as bankrupt or insolvent, or seeking liquidation, winding-up, reorganization, arrangement, adjustment, composition, compromise or other relief with respect to itself or its debts under any law relating to bankruptcy, insolvency, reorganization or relief of debtors or any other similar law now or hereafter in effect or consent to any such relief or to the appointment of or taking possession of its property by any official in an involuntary case or other proceeding commenced against it.

**5.1.2 Involuntary Bankruptcy or Insolvency Proceedings**. If any notice of intention is filed or any proceeding or filing is instituted or made against the Company in any jurisdiction seeking to have an order for relief entered against it as debtor or to adjudicate it as bankrupt or insolvent, or seeking liquidation, winding-up, reorganization, arrangement, adjustment, composition or compromise of it or its debts under any law relating to bankruptcy, insolvency, reorganization or relief of debtors, or seeking appointment of a receiver, trustee, custodian or other similar official for it or for any substantial part of its properties or assets or seeking possession, foreclosure or retention, or sale or other disposition of, or other proceedings to enforce security over, all or a substantial part of the assets of the Company and the same has not been dismissed, vacated or stayed within sixty (60) days of commencement.

**5.1.3 Failure to Pay**. Failure by the Company to pay any principal or interest on any Note when due, whether at maturity or by reason of acceleration.

**5.1.4 Other Payment Obligations**. Defaults shall exist under any agreements of the Company with any third party or parties which consists of the failure to pay any indebtedness for borrowed money at maturity or which results in the exercise of rights by such third party or parties to accelerate the maturity of such indebtedness for borrowed money of the Company in an aggregate amount in excess of Five Hundred Thousand Dollars ($500,000).

**5.2 Acceleration**. If an Event of Default under Section 5.1.3 or Section 5.1.4 occurs and is continuing, then the Requisite Investors may declare the outstanding principal balance, accrued interest thereon and all other payments payable on the Notes to be forthwith due and payable in cash immediately, without presentment, demand, protest or further notice of any kind, all of which are hereby expressly waived by the Company, to the fullest extent permitted by applicable law. If an Event of Default specified in Section 5.1.1 or 5.1.2 occurs and is continuing, then the outstanding principal balance, accrued interest thereon and all other payments payable hereunder shall become and be immediately due and payable in cash without any declaration or other act on the part of the Holder or the Requisite Investors. The Requisite Investors by notice to the Company may rescind an acceleration and its consequences. No such rescission shall affect any subsequent default or impair any right thereto.

**6. MISCELLANEOUS.**

**6.1 Successors and Assigns; Transfer**. Subject to the exceptions specifically set forth in this Note, the terms and conditions of this Note shall inure to the benefit of and be binding upon the respective successors and permitted transferees and assigns of the parties. The Company may not transfer or assign its obligations hereunder without the prior written consent of the Holder. This Note may be not be transferred by the Holder (other than to any of its Affiliates) without the written consent of the Company. Each Note thus transferred shall bear a legend as to the applicable restrictions on transferability in order to ensure compliance with the Securities Act of 1933, as amended (the "***Securities Act***"). Prior to any proposed transfer of this Note under this Section 6.1, the Holder shall give notice to the Company of such Holder's intention to effect such transfer. Each such notice shall describe the manner and circumstances of the proposed transfer in sufficient detail such as to enable the Company and its counsel to determine that the proposed transfer of this Note may be effected without registration under the Securities Act, whereupon the Holder shall be entitled to transfer this Note in accordance with the terms of the notice given by the holder to the Company. Any proposed transferee shall agree in a written instrument delivered to the Company to be bound by and subject to the terms and conditions of the Purchase Agreement.

**6.2 Loss or Mutilation of Note**. Upon receipt by the Company of evidence reasonably satisfactory to the Company of the loss, theft, destruction or mutilation of this Note, together with indemnity reasonably satisfactory to the Company, the Company shall execute and deliver to Holder a new Note of like tenor and denomination as this Note. Principal and interest is payable only to the Holder of the Note.

**6.3 Titles and Subtitles**. The titles and subtitles of the Sections of this Note are used for convenience only and shall not be considered in construing or interpreting this agreement.

**6.4 Notices**. Any notice, request or other communication required or permitted hereunder shall be in writing and shall be delivered in accordance with the Purchase Agreement.

**6.5 Note Holder Not Shareholder**. This Note does not confer upon Holder any right to vote or to consent to or to receive notice as a shareholder of the Company, as such, in respect of any matters whatsoever, or any other rights or liabilities as a shareholder, prior to the conversion hereof.

**6.6 Governing Law**. The terms of this Note shall be construed in accordance with the laws of the State of Delaware, without regard to conflict of laws principles.

**6.7 Waiver and Amendment**. Any amendments to, changes in or additions to this Note may be made, and compliance with any covenant or provision herein set forth may be omitted or waived, if approved in writing by the Company and the Requisite Investors. Any amendment, change, addition, omission or waiver so effected shall be binding upon the Company, the Holder and all of their respective successors and permitted assigns whether or not such party, successor or assignee entered into or approved such amendment or waiver. The Holder acknowledges and agrees that it is not an "Investor" under the Note Purchase Agreement and that therefore this Note may be amended by the Requisite Investors under the Note Purchase Agreement without the consent of the Holder. Notwithstanding the foregoing, no such amendment, change, addition, omission or waiver shall be effective to change the Principal Amount of this Note without the consent of the Holder.

**6.8 Pari Passu Repayment of Notes**. The Holder acknowledges and agrees that the payment of all or any portion of the outstanding principal amount of this Note and all interest hereon shall be *pari passu* in right of payment to the other Notes issued pursuant to the Purchase Agreement. In the event the Holder receives payments in excess of its pro rata share of the Company's payments to all Investors of all of the Notes, then the Holder shall hold in trust all such excess payments for the benefit of the other Investors and shall pay such amounts held in trust to such other Investors upon demand by such other Investors.

[*Signature Page to Follow*]

**IN WITNESS WHEREOF**, the Company has caused this Note to be signed in its name the date first written above.

**THE COMPANY:**

**CARDLYTICS, INC.**

By: _____
Name: Scott Grimes
Title: Chief Executive Officer

**Exhibit 10.9**

**CARDLYTICS, INC.**

**INDEMNITY AGREEMENT**

**Approved May 26, 2017**

**THIS INDEMNITY AGREEMENT** (this "***Agreement***") dated as of [ ], is made by and between **CARDLYTICS, INC.**, a Delaware corporation (the "***Company***"), and [ **]** ("***Indemnitee***").

**RECITALS**

**A.** The Company desires to attract and retain the services of highly qualified individuals as directors, officers, employees and agents.

**B.** The Company's bylaws (the "***Bylaws***") require that the Company indemnify its directors and executive officers, and empowers the Company to indemnify its **other** officers, employees and agents, as authorized by the Delaware General Corporation Law, as amended (the "***Code***"), under which the Company is organized and such Bylaws expressly provide that the indemnification provided therein is not exclusive and contemplates that the Company may enter into separate agreements with its directors, officers and other persons to set forth specific indemnification provisions.

**C.** Indemnitee does not regard the protection currently provided by applicable law, the Company's governing documents and available insurance as adequate under the present circumstances, and the Company has determined that Indemnitee and other directors, officers, employees and agents of the Company may not be willing to serve or continue to serve in such capacities without additional protection.

**D.** The Company desires and has requested Indemnitee to serve or continue to serve as a director, officer, employee or agent of the Company, as the case may be, and has proffered this Agreement to Indemnitee as an additional inducement to serve in such capacity.

**E.** Indemnitee is willing to serve, or to continue to serve, as a director, officer, employee or agent of the Company, as the case may be, if Indemnitee is furnished the indemnity provided for herein by the Company.

**AGREEMENT**

**NOW THEREFORE**, in consideration of the mutual covenants and agreements set forth herein, the parties hereto, intending to be legally bound, hereby agree as follows:

**1. Definitions**.

(a) **Agent**. For purposes of this Agreement, the term "***agent***" of the Company means any person who: (i) is or was a director**,** officer, employee or other fiduciary of the

Company or a subsidiary of the Company; or (ii) is or was serving at the request or for the convenience of, or representing the interests of, the Company or a subsidiary of the Company, as a director, officer, employee or other fiduciary of a foreign or domestic corporation, partnership, joint venture, trust or other enterprise, including any employee benefit plan.

(b) **Expenses**. For purposes of this Agreement, the term "***expenses***" shall be broadly construed and shall include, without limitation, all direct and indirect costs of any type or nature whatsoever (including, without limitation, all attorneys', witness, or other professional fees and related disbursements, and other out-of-pocket costs of whatever nature), actually and reasonably incurred by Indemnitee in connection with the investigation, defense or appeal of a proceeding or establishing or enforcing a right to indemnification under this Agreement, the Code or otherwise, and amounts paid in settlement by or on behalf of Indemnitee, but shall not include any judgments, fines or penalties actually levied against Indemnitee for such individual's violations of law. The term "expenses" shall also include reasonable compensation (which shall be determined by the Company's disinterested directors, as defined in Section 1(f)) for time spent by Indemnitee for which he is not compensated by the Company or any subsidiary or third party (i) for any period during which Indemnitee is not an agent, in the employment of, or providing services for compensation to, the Company or any subsidiary; and (ii) if the rate of compensation and estimated time involved is approved by the Company's disinterested directors, (as defined in Section 1(f)), for Indemnitee while an agent of, employed by, or providing services for compensation to, the Company or any subsidiary.

(c) **Proceedings**. For purposes of this Agreement, the term "***proceeding***" shall be broadly construed and shall include, without limitation, any threatened, pending, or completed action, suit, arbitration, alternate dispute resolution mechanism, investigation, inquiry, administrative hearing or any other actual, threatened or completed proceeding, whether brought in the right of the Company or otherwise and whether of a civil, criminal, administrative or investigative nature, and whether formal or informal in any case, in which Indemnitee was, is or will be involved as a party or otherwise by reason of: (i) the fact that Indemnitee is or was a director or officer of the Company; (ii) the fact that any action taken by Indemnitee or of any action on Indemnitee's part while acting as director, officer, employee or agent of the Company; or (iii) the fact that Indemnitee is or was serving at the request of the Company as a director, officer, employee or agent of another corporation, partnership, joint venture, trust, employee benefit plan or other enterprise, and in any such case described above, whether or not serving in any such capacity at the time any liability or expense is incurred for which indemnification, reimbursement, or advancement of expenses may be provided under this Agreement.

(d) **Subsidiary**. For purposes of this Agreement, the term "***subsidiary***" means any corporation or limited liability company of which more than 50% of the outstanding voting securities or equity interests are owned, directly or indirectly, by the Company and one or more of its subsidiaries, and any other corporation, limited liability company, partnership, joint venture, trust, employee benefit plan or other enterprise of which Indemnitee is or was serving at the request of the Company as a director, officer, employee, agent or fiduciary.

(e) **Independent Counsel**. For purposes of this Agreement, the term "***independent counsel***" means a law firm, or a partner (or, if applicable, member) of such a law firm, that is experienced in matters of corporation law and neither presently is, nor in the past

five (5) years has been, retained to represent: (i) the Company or Indemnitee in any matter material to either such party (other than with respect to matters concerning the rights of Indemnitee under this Agreement, or of other indemnitees under similar indemnification agreements), or (ii) any other party to the proceeding giving rise to a claim for indemnification hereunder. Notwithstanding the foregoing, the term "independent counsel" shall not include any person who, under the applicable standards of professional conduct then prevailing, would have a conflict of interest in representing either the Company or Indemnitee in an action to determine Indemnitee's rights under this Agreement.

(f) **Disinterested Director**. For purposes of this Agreement, the term "***disinterested director***" means a director of the Company who is not and was not a party to the proceeding in respect of which indemnification is sought by Indemnitee.

**2. Agreement to Serve**. Indemnitee will serve, or continue to serve, as a director, officer, employee or agent of the Company or any subsidiary, as the case may be, faithfully and to the best of his or her ability, at the will of such corporation (or under separate agreement, if such agreement exists), in the capacity Indemnitee currently serves as an agent of such corporation, so long as Indemnitee is duly appointed or elected and qualified in accordance with the applicable provisions of the bylaws or other applicable charter documents of such corporation, or until such time as Indemnitee tenders his or her resignation in writing; provided, however, that nothing contained in this Agreement is intended as an employment agreement between Indemnitee and the Company or any of its subsidiaries or to create any right to continued employment of Indemnitee with the Company or any of its subsidiaries in any capacity.

The Company acknowledges that it has entered into this Agreement and assumes the obligations imposed on it hereby, in addition to and separate from its obligations to Indemnitee under the Bylaws, to induce Indemnitee to serve, or continue to serve, as a director, officer, employee or agent of the Company, and the Company acknowledges that Indemnitee is relying upon this Agreement in serving as a director, officer, employee or agent of the Company.

**3. Indemnification**.

(a) **Indemnification in Third Party Proceedings**. Subject to Section 10 below, the Company shall indemnify Indemnitee to the fullest extent permitted by the Code, as the same may be amended from time to time (but, only to the extent that such amendment permits Indemnitee to broader indemnification rights than the Code permitted prior to adoption of such amendment), if Indemnitee is a party to or threatened to be made a party to or otherwise involved in any proceeding, for any and all expenses, actually and reasonably incurred by Indemnitee in connection with the investigation, defense, settlement or appeal of such proceeding.

(b) **Indemnification in Derivative Actions and Direct Actions by the Company**. Subject to Section 10 below, the Company shall indemnify Indemnitee to the fullest extent permitted by the Code, as the same may be amended from time to time (but, only to the extent that such amendment permits Indemnitee to broader indemnification rights than the Code permitted prior to adoption of such amendment), if Indemnitee is a party to or threatened to be

made a party to or otherwise involved in any proceeding by or in the right of the Company to procure a judgment in its favor, against any and all expenses actually and reasonably incurred by Indemnitee in connection with the investigation, defense, settlement, or appeal of such proceedings.

(c) **Indemnification of Related Parties.** If (i) Indemnitee is or was affiliated with one or more venture capital funds that has invested in the Company (an "***Appointing Stockholder***"), (ii) the Appointing Stockholder is, or is threatened to be made, a party to or a participant in any proceeding, and (iii) the Appointing Stockholder's involvement in the proceeding is related to Indemnitee's service to the Company as a director of the Company or any direct or indirect subsidiaries of the Company, then, to the extent resulting from any claim based on the Indemnitee's service to the Company as a director or other fiduciary of the Company, the Appointing Stockholder will be entitled to indemnification hereunder for reasonable expenses to the same extent as Indemnitee.

(d) **Fund Indemnitors.** The Company hereby acknowledges that the Indemnitee has certain rights to indemnification, advancement of expenses or insurance, provided by other entities and/or organizations (collectively, the "***Fund Indemnitors***"). In the event that the Indemnitee is, or is threatened to be made, a party to or a participant in any proceeding to the extent resulting from any claim based on the Indemnitee's service to the Company as a director or other fiduciary of the Company, then the Company shall (i) be an indemnitor of first resort (*i.e.*, its obligations to Indemnitee are primary and any obligation of the Fund Indemnitors to advance expenses or to provide indemnification for the same expenses or liabilities incurred by Indemnitee are secondary), (ii) be required to advance reasonable expenses incurred by Indemnitee, and (iii) be liable for the full amount of all expenses, judgments, penalties, fines and amounts paid in settlement to the extent legally permitted and as required by the terms of this Agreement and any provision of the Bylaws or the Certificate of Incorporation of the Company (or any other agreement between the Company and Indemnitee), without regard to any rights Indemnitee may have against the Fund Indemnitors. The Company irrevocably waives, relinquishes and releases the Fund Indemnitors from any and all claims against the Fund Indemnitors for contribution, subrogation or any other recovery of any kind in respect thereof. No advancement or payment by the Fund Indemnitors on behalf of Indemnitee with respect to any claim for which Indemnitee has sought indemnification from the Company shall affect the foregoing and the Fund Indemnitors shall have a right of contribution or be subrogated to the extent of such advancement or payment to all of the rights of recovery of Indemnitee against the Company. The Fund Indemnitors are third party beneficiaries of the terms of this Section.

**4. Indemnification of Expenses of Successful Party**. Notwithstanding any other provision of this Agreement, to the extent that Indemnitee has been successful on the merits or otherwise in defense of any proceeding or in defense of any claim, issue or matter therein, including the dismissal of any action without prejudice, the Company shall indemnify Indemnitee against all expenses actually and reasonably incurred in connection with the investigation, defense or appeal of such proceeding, claim, issue or matter and no Standard of Conduct Determination (as defined in Section 11) shall be required. To the extent that Indemnitee's only involvement in the proceeding is to prepare to serve and serve as a witness, the Indemnitee shall be indemnified against all expenses incurred in connection therewith and no Standard of Conduct Determination (as defined in Section 11) shall be required.

**5. Partial Indemnification**. If Indemnitee is entitled under any provision of this Agreement to indemnification by the Company for some or a portion of any expenses actually and reasonably incurred by Indemnitee in the investigation, defense, settlement or appeal of a proceeding, but is precluded by applicable law or the specific terms of this Agreement to indemnification for the total amount thereof, the Company shall nevertheless indemnify Indemnitee for the portion thereof to which Indemnitee is entitled.

**6. Advancement of Expenses**. To the extent not prohibited by law, the Company shall advance the expenses incurred by Indemnitee in connection with any proceeding, and such advancement shall be made within twenty (20) days after the receipt by the Company of a statement or statements requesting such advances (which shall include invoices received by Indemnitee in connection with such expenses but, in the case of invoices in connection with legal services, any references to legal work performed or to expenditures made that would cause Indemnitee to waive any privilege accorded by applicable law shall not be included with the invoice) and upon request of the Company, an undertaking to repay the advancement of expenses if and to the extent that it is ultimately determined by a court of competent jurisdiction in a final judgment, not subject to appeal, that Indemnitee is not entitled to be indemnified by the Company. Advances shall be unsecured, interest free and without regard to Indemnitee's ability to repay the expenses or ultimate entitlement to indemnification under the provisions of this Agreement. Advances shall include any and all expenses actually and reasonably incurred by Indemnitee in pursuing an action to enforce Indemnitee's right to indemnification under this Agreement, or otherwise. Advances shall also include any and all expenses actually and reasonably incurred by Indemnitee in pursuing this right of advancement, including expenses incurred preparing and forwarding statements to the Company to support the advances claimed. Indemnitee acknowledges that the execution and delivery of this Agreement shall constitute an undertaking providing that Indemnitee shall, to the fullest extent required by law, repay the advance if and to the extent that it is ultimately determined by a court of competent jurisdiction in a final judgment, not subject to appeal, that Indemnitee is not entitled to be indemnified by the Company. The right to advances under this Section shall continue until final disposition of any proceeding, including any appeal therein. This Section 6 shall not apply to any claim made by Indemnitee for which indemnity is excluded pursuant to Section 10(b).

**7. Notice and Other Indemnification Procedures**.

(a) **Notification of Proceeding**. Indemnitee will notify the Company in writing promptly upon being served with any summons, citation, subpoena, complaint, indictment, information or other document relating to any proceeding or matter which may be subject to indemnification or advancement of expenses covered hereunder. The failure of Indemnitee to so notify the Company shall not relieve the Company of any obligation which it may have to Indemnitee under this Agreement or otherwise, unless, and only to the extent that, such failure actually and materially prejudices the Company.

(b) **Request for Indemnification and Indemnification Payments**. Indemnitee shall notify the Company promptly in writing upon receiving notice of any demand, judgment or other requirement for payment that Indemnitee reasonably believes to be subject to indemnification under the terms of this Agreement, and shall request payment thereof by the Company. Any request by Indemnitee for payment under Section 7(b) shall be accompanied by

such documentation and information as is reasonably available to Indemnitee and is reasonably necessary to determine whether and to what extent Indemnitee is entitled to indemnification hereunder. Indemnitee's failure to submit such a request will not relieve the Company from any liability which the Company may have to Indemnitee under this Agreement or otherwise unless, and only to the extent that, the Company did not otherwise learn of such request and such failure results in forfeiture by the Company of substantial defenses, rights or insurance coverage. Claims for advancement of expenses shall be made under the provisions of Section 6 herein.

(c) **Application for Enforcement**. In the event the Company fails to make timely payments as set forth in Sections 6, 7(b) or 11, Indemnitee shall have the right to apply to any court of competent jurisdiction for the purpose of enforcing Indemnitee's right to indemnification or advancement of expenses pursuant to this Agreement. In such an enforcement hearing or proceeding, the burden of proof shall be on the Company to prove that indemnification or advancement of expenses to Indemnitee is not required under this Agreement or permitted by applicable law. Neither a determination by the Company (including its Board of Directors, stockholders or independent counsel) that Indemnitee is not entitled to indemnification hereunder, nor the failure of the Company (including its Board of Directors, stockholders, or independent counsel) to have made a determination prior to the commencement of such enforcement action that indemnification of Indemnitee is proper under the circumstances, shall be a defense by the Company to the action or create any presumption that Indemnitee is not entitled to indemnification or advancement of expenses hereunder.

(d) **Indemnification of Certain Expenses.** The Company shall indemnify Indemnitee for, and if requested by Indemnitee, advance to Indemnitee, all expenses incurred in connection with any hearing or proceeding under this Section 7 or Section 11 herein unless the Company prevails in such hearing or proceeding on the merits in all material respects.

**8. Assumption of Defense**. In the event the Company shall be requested by Indemnitee to pay the expenses of any proceeding, the Company, if appropriate, shall be entitled to assume the defense of such proceeding, or to participate to the extent permissible in such proceeding, with counsel reasonably acceptable to Indemnitee. Upon assumption of the defense by the Company, and the retention of such counsel by the Company, the Company shall not be liable to Indemnitee under this Agreement for any fees of counsel subsequently incurred by Indemnitee with respect to the same proceeding, provided that Indemnitee shall have the right to employ separate counsel in such proceeding at Indemnitee's sole cost and expense. Notwithstanding the foregoing, if (i) Indemnitee's counsel delivers a written notice to the Company at any time stating that such counsel has reasonably concluded that there may be a conflict of interest between the Company and Indemnitee in the conduct of any such defense or that the conduct of any such defense would be precluded under the applicable standards of professional conduct then prevailing, (ii) the Company shall not, in fact, have employed counsel or otherwise actively pursued the defense of such proceeding within a reasonable time, or fails to continue to retain such counsel to assume the defense of such proceeding, or (iii) the employment of counsel by Indemnitee has been authorized by the Company, then in any such event the fees and expenses of Indemnitee's counsel to defend such proceeding shall be the expense of the Company and subject to the indemnification and advancement of expenses provisions of this Agreement.

**9. Insurance.** To the extent that the Company maintains an insurance policy or policies providing liability insurance for directors, officers, employees, or agents of the Company or of any subsidiary ("***D&O Insurance***"), Indemnitee shall be covered by such policy or policies in accordance with its or their terms to the maximum extent of the coverage available for any such director, officer, employee or agent under such policy or policies. If, at the time of the receipt of a notice of a claim pursuant to the terms hereof, the Company has D&O Insurance in effect, the Company shall give prompt notice of the commencement of such proceeding to the insurers in accordance with the procedures set forth in the respective policies. The Company shall thereafter take all necessary or desirable action to cause such insurers to pay, on behalf of Indemnitee, all amounts payable as a result of such proceeding in accordance with the terms of such policies. Notwithstanding the foregoing, nothing in this Section 9 shall limit the Company's obligation as the indemnitor of first resort pursuant to Section 3(d) above.

**10. Exceptions**.

(a) **Certain Matters**. Any provision herein to the contrary notwithstanding, the Company shall not be obligated pursuant to the terms of this Agreement to indemnify Indemnitee on account of any proceeding with respect to (i) remuneration paid to Indemnitee if it is determined by final judgment or other final adjudication that such remuneration was in violation of law (and, in this respect, both the Company and Indemnitee have been advised that the Securities and Exchange Commission believes that indemnification for liabilities arising under the federal securities laws is against public policy and is, therefore, unenforceable and that claims for indemnification should be submitted to appropriate courts for adjudication, as indicated in Section 10(d) below); (ii) a final judgment rendered against Indemnitee for an accounting, disgorgement or repayment of profits made from the purchase or sale by Indemnitee of securities of the Company against Indemnitee pursuant to the provisions of Section 16(b) of the Securities Exchange Act of 1934, as amended (the "***Exchange Act***"), or other provisions of any federal, state or local statute or rules and regulations thereunder; (iii) any claim for reimbursement of the Company by Indemnitee of any bonus or other incentive-based or equity-based compensation or of any profits realized by Indemnitee from the sale of securities of the Company, as required in each case under the Exchange Act (including any such reimbursements that arise from an accounting restatement of the Company pursuant to Section 304 of the Sarbanes-Oxley Act of 2002, as amended (the "***Sarbanes-Oxley Act***"), or the payment to the Company of profits arising from the purchase and sale by Indemnitee of securities in violation of Section 306 of the Sarbanes-Oxley Act), if Indemnitee is held liable therefor (including pursuant to any settlement); (iv) a final judgment or other final adjudication that Indemnitee's conduct was in bad faith, knowingly fraudulent or deliberately dishonest or constituted willful misconduct (but only to the extent of such specific determination); or (v) on account of conduct that is established by a final judgment as constituting a breach of Indemnitee's duty of loyalty to the Company or resulting in any personal profit or advantage to which Indemnitee is not legally entitled. For purposes of the foregoing sentence, a final judgment or other adjudication may be reached in either the underlying proceeding or action in connection with which indemnification is sought or a separate proceeding or action to establish rights and liabilities under this Agreement.

(b) **Claims Initiated by Indemnitee**. Any provision herein to the contrary notwithstanding, the Company shall not be obligated to indemnify or advance expenses to Indemnitee with respect to proceedings or claims initiated or brought by Indemnitee against the Company or its directors, officers, employees or other agents and not by way of defense, except (i) with respect to proceedings brought to establish or enforce a right to indemnification under this Agreement or under any other agreement, provision in the Bylaws or Certificate of Incorporation or applicable law or (ii) with respect to any other proceeding initiated by Indemnitee that is either approved by the Board of Directors or Indemnitee's participation is required by applicable law. However, indemnification or advancement of expenses may be provided by the Company in specific cases if the Board of Directors determines it to be appropriate.

(c) **Unauthorized Settlements**. Any provision herein to the contrary notwithstanding, the Company shall not be obligated pursuant to the terms of this Agreement to indemnify Indemnitee under this Agreement for any amounts paid in settlement of a proceeding effected without the Company's written consent. Further, the Company shall not, without the prior written consent of the Indemnitee, effect any settlement on the Indemnitee's behalf of (i) any proceeding the Indemnitee is or could have been properly made a party to or (ii) any proceeding in which the Company is jointly liable with Indemnitee (or would be if joined in such proceeding) pursuant to Section 5(b) above unless such settlement solely involves the payment of money and includes a complete and unconditional release of the Indemnitee from all liability on any claims that are the subject matter of such proceeding. Neither the Company nor Indemnitee shall unreasonably withhold consent to any proposed settlement; provided, however, that (i) the Company may in any event decline to consent to (or to otherwise admit or agree to any liability for indemnification hereunder in respect of) any proposed settlement if the Company is also a party in such proceeding and determines in good faith that such settlement is not in the best interests of the Company and its stockholders and (ii) Indemnitee may withhold consent to any settlement that does not provide a complete and unconditional release of Indemnitee or requires Indemnitee to take any action other than executing a release of parties providing a release of Indemnitee.

(d) **Securities Act Liabilities**. Any provision herein to the contrary notwithstanding, the Company shall not be obligated pursuant to the terms of this Agreement to indemnify Indemnitee or otherwise act in violation of any undertaking appearing in and required by the rules and regulations promulgated under the Securities Act of 1933, as amended (the "***Act***"), or in any registration statement filed with the U.S. Securities and Exchange Commission under the Act. Indemnitee acknowledges that paragraph (h) of Item 512 of Regulation S-K currently generally requires the Company to undertake in connection with any registration statement filed under the Act to submit the issue of the enforceability of Indemnitee's rights under this Agreement in connection with any liability under the Act on public policy grounds to a court of appropriate jurisdiction and to be governed by any final adjudication of such issue. Indemnitee specifically agrees that any such undertaking shall supersede the provisions of this Agreement and to be bound by any such undertaking.

**11. Determination of Right to Indemnification**

(a) To the extent that the provisions of Section 4 are inapplicable to a proceeding that shall have been finally disposed of, any determination of whether Indemnitee has satisfied any applicable standard of conduct under the Code that is a legally required condition to

indemnification of Indemnitee hereunder (a "**Standard of Conduct Determination**") shall be made as follows: (i) by a majority vote of a quorum of disinterested directors, or (ii) if there is no such quorum of disinterested directors, by independent counsel in a written opinion addressed to the Board of Directors, a copy of which shall be delivered to Indemnitee. Indemnitee shall cooperate with the person or persons conducting the Standard of Conduct Determination, including providing to such person or persons upon reasonable advance request any documentation or information which is not privileged or otherwise protected from disclosure and which is reasonably available to Indemnitee and reasonably necessary to such determination. The Company shall indemnify Indemnitee for and, if requested by Indemnitee, advance to Indemnitee, within thirty (30) business days of such request, any and all costs and expenses incurred by Indemnitee in cooperating with the person or persons making such Standard of Conduct Determination.

(b) The Company shall use its reasonable best efforts to cause any Standard of Conduct Determination required under Section 11(a) to be made as promptly as practicable. If the person or persons determined under Section 11(a) to make the Standard of Conduct Determination shall not have made a determination within sixty (60) days after the later of (A) receipt by the Company of written request for indemnification as set forth in Section 7(b), and (B) the selection of an independent counsel, if such determination is to be made by independent counsel, then Indemnitee shall be deemed to have satisfied the applicable standard of conduct absent (i) a misstatement by Indemnitee of a material fact, or an omission of a material fact necessary to make Indemnitee's statement not materially misleading, in connection with the request for indemnification, or (ii) a prohibition of such indemnification under applicable law; provided that such 60-day period may be extended for a reasonable time, not to exceed an additional thirty (30) days, if the person or persons making such determination in good faith requires such additional time to obtain or evaluate information relating thereto.

(c) If (i) Indemnitee shall be entitled to indemnification pursuant to Section 4, (ii) no determination of whether Indemnitee has satisfied any applicable standard of conduct under the Code is a legally required condition to indemnification of Indemnitee hereunder, or (iii) Indemnitee has been determined or deemed pursuant to Section 11(a) or (b) to have satisfied any applicable standard of conduct under the Code which is a legally required condition to indemnification of Indemnitee, then the Company shall pay to Indemnitee, within thirty (30) business days after the later of (A) receipt by the Company of written request for indemnification as set forth in Section 7(b), and (B) the earliest date on which the applicable criterion specified in clause (i), (ii) or (iii) is satisfied, an amount equal to such expenses.

(d) If a Standard of Conduct Determination is to be made by independent counsel pursuant to Section 11(a), the independent counsel shall be selected by the Board of Directors, and the Company shall give written notice to Indemnitee advising him or her of the identity of the independent counsel so selected. Indemnitee may, within ten (10) business days after receiving written notice of selection from the Company, deliver to the Company a written objection to such selection; provided, however, that such objection may be asserted only on the ground that the independent counsel so selected does not satisfy the criteria set forth in the definition of "Independent Counsel" in Section 1(e), and the objection shall set forth with particularity the factual basis of such assertion. Absent a proper and timely objection, the person or firm so selected shall act as independent counsel. If such written objection is properly and

timely made and substantiated, (i) the independent counsel so selected may not serve as independent counsel unless and until such objection is withdrawn or a court has determined that such objection is without merit and (ii) the Company may, at its option, select an alternative independent counsel and give written notice to the Indemnitee advising Indemnitee of the identity of the alternative independent counsel so selected, in which case the provisions of the two immediately preceding sentences and clause (i) of this sentence shall apply to such subsequent selection and notice. If applicable, the provisions of clause (ii) of the immediately preceding sentence shall apply to successive alternative selections. If no independent counsel that is permitted under the foregoing provisions of this Section 11(d) to make the Standard of Conduct Determination shall have been selected within thirty (30) days after the Company gives its initial notice pursuant to the first sentence of this Section 11(d), either the Company or Indemnitee may petition a court of competent jurisdiction for resolution of any objection which shall have been made by the Indemnitee to the Company's selection of independent counsel and/or for the appointment as independent counsel of a person selected by the Court or such other person as the court shall designate, and the person or firm with respect to whom all objections are so resolved or the person or firm so appointed will act as independent counsel. In all events, the Company shall pay all of the reasonable fees and expenses of the independent counsel incurred in connection with the independent counsel's determination pursuant to Section 11(a).

**12. Presumption of Entitlement**. In making any Standard of Conduct Determination, the person or persons making such determination shall presume that Indemnitee has satisfied the applicable standard of conduct, and the Company may overcome such presumption only by adducing clear and convincing evidence to the contrary. For purposes of this Agreement, the termination of any proceeding by judgment, order, settlement or conviction, or upon a plea of nolo contendere or its equivalent, shall not create a presumption that the Indemnitee did not meet any particular standard of conduct or has any particular belief or that a court has determined that indemnification is not permitted by applicable law. Any Standard of Conduct Determination that is adverse to Indemnitee may be challenged by the Indemnitee in a court of competent jursidiction. No determination by the Company (including by its directors or any independent counsel) that Indemnitee has not satisfied any applicable standard of conduct shall be a defense to any claim by Indemnitee for indemnification or advancement of expenses by the Company hereunder or create a presumption that Indemnitee has not met any applicable standard of conduct.

**13. Contribution.**

(a) If, for any reason, Indemnitee shall elect or be required to pay all or any portion of any expenses, judgment or settlement in connection with any proceeding in which the Company is jointly liable with Indemnitee (or would be if joined in such proceeding), the Company shall contribute to the amount of expenses, judgments, fines and amounts paid in settlement actually and reasonably paid or incurred by Indemnitee in such proportion as is appropriate to reflect (i) the relative benefits received by the Company and all directors, officers, employees, or agents other than Indemnitee, on the one hand, and Indemnitee, on the other hand, from the transaction from which such action, suit or proceeding arose, and (ii) the relative fault of the Company and all directors, officers, employees, or agents other than Indemnitee, on the one hand, and of Indemnitee, on the other hand, in connection with the events which resulted in

such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of the Company and all directors, officers, employees, or agents other than Indemnitee, on the one hand, and of Indemnitee, on the other, shall be determined by reference to, among other things, the parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts, whether their liability is primary or secondary, and the degree to which their conduct is active or passive. The Company agrees that it would not be just and equitable if contribution pursuant to this Section 13 were determined by pro-rata allocation or any other method of allocation, which does not take account of the foregoing equitable considerations. Nothing in this Section 13 shall impact the parties' rights as they relate to determining whether Indemnitee has satisfied any applicable standard of conduct, as set forth in Section 11.

(b) To the fullest extent permissible under applicable law, if the indemnification provided for in this Agreement is unavailable to Indemnitee for any reason whatsoever, the Company, in lieu of indemnifying Indemnitee, shall contribute to the amount incurred by Indemnitee for expenses in connection with any claim relating to an indemnifiable event under this Agreement, in such proportion as is deemed fair and reasonable in light of all of the circumstances of such proceeding in order to reflect: (i) the relative benefits received by the Company and Indemnitee as a result of the event(s) and/or transaction(s) giving cause to such proceeding and/or (ii) the relative fault of the Company (and its directors, officers, employees and agents) and Indemnitee in connection with such event(s) and/or transaction(s).

**14. Injunctive Relief**. The Company and the Indemnitee agree that a monetary remedy for breach of this Agreement, at some later date, may be inadequate, impracticable and difficult of proof, and further agree that such breach may cause the Indemnitee and the Company irreparable harm. Accordingly, the parties hereto agree that the parties may enforce this Agreement by seeking injunctive relief and/or specific performance hereof, without any necessity of showing actual damage or irreparable harm and that by seeking injunctive relief and/or specific performance, they shall not be precluded from seeking or obtaining any other relief to which they may be entitled. The Company and the Indemnitee further agree that they shall be entitled to such specific performance and injunctive relief, including temporary restraining orders, preliminary injunctions and permanent injunctions, without the necessity of posting bonds or other undertaking in connection therewith. The Company and the Indemnitee acknowledge that in the absence of a waiver, a bond or undertaking may be required by the court, and they hereby waive any such requirement of such a bond or undertaking.

**15. Nonexclusivity and Survival of Rights**. The provisions for indemnification and advancement of expenses set forth in this Agreement shall not be deemed exclusive of any other rights which Indemnitee may at any time be entitled under any provision of applicable law, the Company's Certificate of Incorporation, Bylaws or other agreements, both as to action in Indemnitee's official capacity and Indemnitee's action as an agent of the Company, in any court in which a proceeding is brought, and Indemnitee's rights hereunder shall continue after Indemnitee has ceased acting as an agent of the Company and shall inure to the benefit of the heirs, executors, administrators and assigns of Indemnitee. The obligations and duties of the Company to Indemnitee under this Agreement shall be binding on the Company and its successors and assigns until terminated in accordance with its terms. The Company shall require

any successor (whether direct or indirect, by purchase, merger, consolidation or otherwise) to all or substantially all of the business or assets of the Company, expressly to assume and agree to perform this Agreement in the same manner and to the same extent that the Company would be required to perform if no such succession had taken place (and such successor will thereafter be deemed the "Company" for purposes of this Agreement). This Agreement is personal in nature and neither of the parties hereto shall, without the consent of the other, assign or delegate this Agreement or any rights or obligations hereunder except as expressly provided in this Section 15.

No amendment, alteration or repeal of this Agreement or of any provision hereof shall limit or restrict any right of Indemnitee under this Agreement in respect of any action taken or omitted by such Indemnitee in his or her corporate status prior to such amendment, alteration or repeal. To the extent that a change in the Code, whether by statute or judicial decision, permits greater indemnification or advancement of expenses than would be afforded currently under the Company's Certificate of Incorporation, Bylaws and this Agreement, it is the intent of the parties hereto that Indemnitee shall enjoy by this Agreement the greater benefits so afforded by such change. No right or remedy herein conferred is intended to be exclusive of any other right or remedy, and every other right and remedy shall be cumulative and in addition to every other right and remedy given hereunder or now or hereafter existing at law or in equity or otherwise. The assertion or employment of any right or remedy hereunder, or otherwise, by Indemnitee shall not prevent the concurrent assertion or employment of any other right or remedy by Indemnitee.

**16. Term**. This Agreement shall continue until and terminate upon the later of: (a) five (5) years after the date that Indemnitee shall have ceased to serve as a director or and/or officer, employee or agent of the Company; or (b) one (1) year after the final termination of any proceeding, including any appeal then pending, in respect to which Indemnitee was granted rights of indemnification or advancement of expenses hereunder.

No legal action shall be brought and no cause of action shall be asserted by or in the right of the Company against an Indemnitee or an Indemnitee's estate, spouse, heirs, executors or personal or legal representatives after the expiration of five (5) years from the date of accrual of such cause of action, and any claim or cause of action of the Company shall be extinguished and deemed released unless asserted by the timely filing of a legal action within such five-year period; provided, however, that if any shorter period of limitations is otherwise applicable to such cause of action, such shorter period shall govern.

**17. Subrogation**. In the event of payment under this Agreement, the Company shall be subrogated to the extent of such payment to all of the rights of recovery of Indemnitee, who, at the request and expense of the Company, shall execute all papers required and shall do everything that may be reasonably necessary to secure such rights, including the execution of such documents necessary to enable the Company effectively to bring suit to enforce such rights.

**18. Interpretation of Agreement**. It is understood that the parties hereto intend this Agreement to be interpreted and enforced so as to provide indemnification to Indemnitee to the fullest extent now or hereafter permitted by law.

**19. Severability**. If any provision of this Agreement shall be held to be invalid, illegal or unenforceable for any reason whatsoever, (a) the validity, legality and enforceability of the remaining provisions of the Agreement (including without limitation, all portions of any paragraphs of this Agreement containing any such provision held to be invalid, illegal or unenforceable, that are not themselves invalid, illegal or unenforceable) shall not in any way be affected or impaired thereby; and (b) to the fullest extent possible, the provisions of this Agreement (including, without limitation, all portions of any paragraph of this Agreement containing any such provision held to be invalid, illegal or unenforceable, that are not themselves invalid, illegal or unenforceable) shall be construed so as to give effect to the intent manifested by the provision held invalid, illegal or unenforceable and to give effect to Section 18 hereof.

**20. Amendment and Waiver**. No supplement, modification, amendment, or cancellation of this Agreement shall be binding unless executed in writing by the parties hereto. No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any other provision hereof (whether or not similar) nor shall such waiver constitute a continuing waiver.

**21. Notice**. Except as otherwise provided herein, any notice or demand which, by the provisions hereof, is required or which may be given to or served upon the parties hereto shall be in writing and, if by telegram, telecopy or telex, shall be deemed to have been validly served, given or delivered when sent, if by overnight delivery, courier or personal delivery, shall be deemed to have been validly served, given or delivered upon actual delivery and, if mailed, shall be deemed to have been validly served, given or delivered three (3) business days after deposit in the United States mail, as registered or certified mail, with proper postage prepaid and addressed to the party or parties to be notified at the addresses set forth on the signature page of this Agreement (or such other address(es) as a party may designate for itself by like notice). If to the Company, notices and demands shall be delivered to the attention of the Secretary of the Company.

**22. Governing Law**. This Agreement shall be governed exclusively by and construed according to the laws of the State of Delaware, as applied to contracts between Delaware residents entered into and to be performed entirely within Delaware.

**23. Counterparts**. This Agreement may be executed in one or more counterparts, each of which shall for all purposes be deemed to be an original but all of which together shall constitute but one and the same Agreement. Only one such counterpart need be produced to evidence the existence of this Agreement.

**24. Headings**. The headings of the sections of this Agreement are inserted for convenience only and shall not be deemed to constitute part of this Agreement or to affect the construction hereof.

**25. Certain Interpretive Matters**. No provision of this Agreement shall be interpreted in favor of, or against, either of the parties hereto by reason of the extent to which any such party or its counsel participated in the drafting thereof or by reason of the extent to which any such provision is inconsistent with any prior draft thereof.

**26. Entire Agreement**. This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes and replaces all (if any) prior agreements, understandings and negotiations, written and oral, between the parties with respect to the subject matter of this Agreement; provided, however, that this Agreement is a supplement to and in furtherance of the Company's Certificate of Incorporation, Bylaws, the Code and any other applicable law, and shall not be deemed a substitute therefor, and does not diminish or abrogate any rights of Indemnitee thereunder.

[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK - *SIGNATURE PAGE FOLLOWS*]

**IN WITNESS WHEREOF**, the parties hereto have entered into this Agreement effective as of the date first above written.

**CARDLYTICS, INC.**

By: _____
Name: _____
Title: _____

**INDEMNITEE**

_____
Signature of Indemnitee

_____
Print or Type Name of Indemnitee


112 Krog Street, Suite 10
Atlanta, GA 30307

*June 11, 2014 - Revised*

David Evans

Dear David:

I am very pleased to present you with Cardlytics' ("Company") offer to employ you as Senior Vice President, Corporate Development. Your target start date will be August 8, 2014. We are excited to bring you aboard and believe your leadership will contribute significantly to the success of our growing organization.

This position is exempt for purposes of the federal wage and hour laws, meaning that you will not be eligible for overtime compensation for hours worked in excess of 40 in a given workweek.

The following terms will serve as your compensation package, in accordance with the Company's established policies:

- *Salary:* $175,000 annually, to be paid in accordance with the Company's normal payroll practices. The Company currently pays on a bi-weekly basis, which is 26 times per calendar year. When the Company implements a leadership bonus plan, you will be eligible to participate in this plan.
- *Sign On Bonus:* In your first payroll, you will receive a sign on bonus of $15,615, subject to normal withholdings.
- *Stock Options:* Participation in the Company's stock option plan. Provided you commence employment, subject to the approval of the Company's Board of Directors, you will be granted an option to purchase 130,000 shares of the Company stock at an exercise price determined by the Company's Board of Directors on the date of grant. This option vests over a period of 48 months. No options will vest until the end of twelve months of employment by Cardlytics, at which time 25% of the total options shall vest and an additional l/48th of the total options shall vest on the corresponding day of each month thereafter. In the event the company is acquired or an entity assumes a majority ownership (a "Change of Control") and you have vested less than 50% of your options, 50% of your total options will immediately vest. The remaining options will vest over a period of 24 months. Vesting, exercise rights, forfeiture of stock options and other terms and conditions are governed by the Plan and the applicable stock option agreement. You should consult your tax advisor about the tax implications of stock options.
- *Housing Stipend/Relocation Assistance:* For a period of up 12 months after your Start Date and if your primary residence is not within 50 miles of the Company's Atlanta headquarters you will be provided a monthly Housing Stipend of $1,750 per month. In addition, in the event you relocate your primary residence within 15 months of your start date to the Atlanta area, the Company will offer Relocation Assistance of up to $20,000. If you voluntarily leave the Company before twelve (12) months of continuous employment after payment of the Relocation Assistance, you are required to return the total amount of Relocation Assistance.
- *Benefits:* Healthcare partially paid by employer with options for Medical, Vision and Dental coverage. Participation in a 401(k) Plan.
- *Paid Leave:* Cardlytics fosters a progressive environment where employees have the flexibility to get their work accomplished within the concept of full time employment. The Company expects employees will work the hours necessary to satisfactorily perform their jobs, and recognizes the round the clock nature of their responsibilities. Cardlytics leaves it to the employees' discretion on how to best manage his/her time, including scheduling time away from the office. As a result, Cardlytics employees do not accrue vacation pay or other paid time off. It's up to the employee and their manager to make certain that a fair and reasonable amount of work is being provided in exchange for the compensation received. It also is important that employees meet work related deadlines and other time commitments of the job. Advance notice of time off from work, whenever possible, is encouraged. On average, employees take approximately three weeks of paid leave, including sick time, company holidays, and vacations.

The Company's policies and plan documents govern benefits provided to employees and should be consulted for the details of the plan. The benefits described in this letter are provided for informational purposes only. At the Company's discretion, policy, pay and benefits may be changed at any time, and this letter does not establish any vested rights in pay or benefits.

Your employment relationship with the Company is at-will, meaning that your employment with the Company will continue until the employment relationship is terminated by the Company or You. You may terminate your employment with the Company at any time and for any reason whatsoever simply by notifying the Company. Likewise, the Company may terminate your employment, or discipline, transfer, or demote you at any time with or without cause or advance notice, as long as not otherwise prohibited by law. This at-will employment relationship between the Company and You cannot be changed except in writing signed by the CEO of the Company. Nothing contained in this offer of employment shall be construed as guaranteeing employment for a specific period of time or for future employment.

It is the Company's policy not to infringe upon the proprietary information, trade secrets, or confidential information of third parties. In addition, it is the Company's policy not to interfere with third parties' contractual or business relations. Therefore, I am also confirming that you have represented and warranted that you are not subject to any agreement that would prevent you from performing your duties for the Company, and that you are not subject to or in breach of any non-disclosure agreement, including any agreement concerning trade secrets or confidential information owned by any other party. Please notify Lynne Laube or Scott Grimes if you are subject to a confidentiality, non-compete, or non-solicitation agreement that may restrict your activities at the Company. Finally, I write to confirm that, during your employment with the Company, you will not use, disclose, or reverse engineer (i) any confidential information or trade secrets of any former employer or third party, or (ii) any works of authorship developed in whole or in part by you during any former employment or for any other party, unless authorized in writing by the former employer or third party.

Your employment/continued employment at Cardlytics is contingent upon successful completion of relevant background screening. Cardlytics reserves the right to amend your target start date in the event the screening results are delayed for any reason.

If you have any questions concerning this offer, please do not hesitate to contact me.

Upon acceptance of this offer letter, please returned a signed copy to me. Thanks again, and we look forward to welcoming you aboard.

Sincerely,

Jim Morgan
Chief Financial Officer

Accepted:

/s/ Jim Morgan

**Cardlytics, Inc.**
**David Evans - Sign on Estimates**

| | | |
|---|---|---|
| $ | 175,000 | Base Salary |
| | 2080 | hours per year |
| | 8 | hours per day |
| | 12 | months per year |
| | 21.66666667 | days per month |
| $ | 14,583 | Monthly Rate |
| | 18 | days worked |
| | 83.1% | % of Month |
| $ | 12,115.38 | Due for Days |
| $ | 3,500.00 | July/Aug Housing Stipend |
| $ | 15,615.38 | Total Due |

# SEPARATION PAY AGREEMENT

This Separation Pay Agreement (the "Agreement") by and between Cardlytics, Inc. (the "Company"), and [ ] ("You" or "Your") (collectively, the "Parties"), is entered into and effective as of [ ] (the "Effective Date").

WHEREAS, You are currently employed by the Company;

WHEREAS, the Company and You have agreed to certain payment obligations upon termination of Your employment Without Cause (as defined below) or Your resignation for Good Reason (as defined below) under certain conditions set forth below, and the Parties desire to express the terms and conditions in this Agreement.

NOW, THEREFORE, in consideration of the Company's agreement to continue to employ You and in further consideration of the mutual agreements set forth herein, it is agreed:

1. Termination of Offer Letter/Agreements. The Parties acknowledge and agree that, effective as of the Effective Date, any and all offer letters, agreements, clauses, or policies between You and the Company relating to Your severance or separation pay shall be terminated in their entirety. You release and discharge the Company from any and all claims or liability, whether known or unknown, arising out of or relating to any such offer letters, agreements, clauses, or policies between You and the Company.

2. At-will Employment. This Agreement does not create a contract of employment. Your employment relationship with the Company is at-will. This means that at either Your option or the Company's option, Your employment may be terminated at any time, with or without cause, and for any other reason, with or without notice. This Agreement does not alter the at-will employment relationship.

3. Termination. As an at-will employee, Your employment may be terminated at any time, and for any or no reason, including any of the following events:

(a) Mutual written agreement between You and the Company at any time;

(b) Your death;

(c) Your disability which renders You unable to perform the essential functions of Your job even with reasonable accommodation, as determined by the Company in its sole and absolute discretion;

(d) For Cause. For Cause shall mean a termination by the Company because of any one of the following events, regardless of whether the evidence used to support a for Cause termination is acquired before or after the date Your employment is terminated by the Company: (i) Your insubordination; (ii) Your breach of any agreement with the Company; (iii) Your breach of Your fiduciary duty to the Company; (iv) any act or omission by You which injures, or is likely to injure, the Company or the business reputation of the Company; (v) Your dishonesty, fraud, negligence, or misconduct; (vi)Your failure to (1) satisfactorily perform Your duties under this Agreement, (2) follow the direction of any individual to whom You report, (3) abide by the policies, procedures, and rules of the Company, or (4) abide by laws applicable to You in Your capacity as an employee, executive, or officer of the Company; or (vii) Your arrest, indictment for, conviction of, or entry of a plea of guilty or no contest to (a) a felony; or (b) a crime involving moral turpitude;

(e) Your resignation for Good Reason. Good Reason shall exist if (i) the Company, without Your written consent, (a) materially reduces Your then current authority, duties, or responsibilities, (b) materially reduces Your then current base salary, (c) commits a material breach of any agreement with You, or (d) materially changes the geographic location at which You must perform services for the Company; (ii) You provide written notice to the Company of any such action within ninety (90) days of the date on which such action first occurs and provide the Company with thirty (30) days to remedy such action (the "Cure Period"); (iii) the Company fails to remedy such action within the Cure Period; and (iv) You resign within thirty (30) days of the expiration of the Cure Period. Good Reason shall not include any isolated, insubstantial, or inadvertent action that (a) is not taken in bad faith, and (b) is remedied by the Company within the Cure Period;

(f) Your resignation without Good Reason; or

(g) Without Cause. Without Cause means any termination by the Company which is not defined in subsections (a) through (f) above.

4. Post-Termination Payment Obligations. If the Company terminates Your employment Without Cause, or You resign for Good Reason, then the Company shall:

_____

Employee's Initials

(a) Pay You all accrued but unpaid wages through the date Your employment terminates (the "Termination Date"), based on Your then current base salary; and

(b) Following Your separation from service, (a) pay You a separation payment equal to twelve (12) months of Your then current base salary, minus all applicable withholdings, including taxes and Social Security (the "Separation Payment"). The Separation Payment shall be divided and paid over a period of twelve (12) months in accordance with the Company's normal payroll schedule as of the Effective Date, beginning with the first such date that is at least sixty (60) days after the date of Your separation, provided that You have complied with the Conditions set forth below as of such date; (b) pay You a pro-rated portion of Your annual bonus, if any, that would have been payable to You for such calendar year had You remained employed by the Company for the entire calendar year, calculated by multiplying the bonus by a fraction, the numerator of which is the number of days in the calendar year of Your termination that precede the date of Your termination, and the denominator of which is 365, all as determined in the sole and absolute discretion of the Company (the "Bonus"). The Bonus, if any, shall be subject to all applicable withholdings, and shall be paid on the same date the Company pays all such other bonuses for such calendar year, provided that You have complied with the Conditions set forth below as of such date; and (c) subject to (A) Your timely election of continuation coverage under the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended ("COBRA"), for You, (B) Your continued copayment of premiums at the same level and cost to You as if You were an employee of the Company (excluding, for purposes of calculating cost, an employee's ability to pay premiums with pre-tax dollars), and (C) Your continued compliance with the obligations in this Agreement, provide continued participation by You in the Company's group health plan (to the extent permitted under applicable law and the terms of such plan) for a period of twelve (12) months at the Company's expense; provided that You are eligible and remain eligible for COBRA coverage; and provided, further, that in the event that You obtain other employment that offers group health benefits, such payments (but not the ability to continue COBRA coverage at Your sole expense) shall immediately cease when You become eligible to participate in such group health benefit plan. Except as set forth in this subsection, the Company shall have no other obligations to You, including under any provision of this Agreement or any other agreement, Company policy, or otherwise. The Company's obligation to pay You as set forth above shall be conditioned upon the following:

(i) Your execution of a Release Agreement in a form prepared by the Company, which has become irrevocable within the sixty (60) day period after Your separation, and which includes, but is not limited to, Your release of the Company from any and all liability and claims of any kind; and

(ii) Your compliance with all post-termination obligations to the Company to which You may be subject, including, but not limited to, any restrictive covenants

(subclauses (i) and (ii) above, the "Conditions"). If You do not execute an effective Release Agreement as set forth above, the Company shall have no obligation to pay the payments set forth above. The Company's obligation to pay the payments set forth above shall terminate immediately upon any breach by You of any post-termination obligations to which You are subject.

5. Set-Off. If You have any outstanding obligations to the Company upon the termination of Your employment for any reason, You hereby authorize the Company to deduct any amounts owed to the Company from Your final paycheck and/or any amounts that would otherwise be due to You, including under this Agreement, to the extent permitted by law, and except to the extent such amounts constitute "deferred compensation" under Section 409A of the Internal Revenue Code (the "Code").

6. Section 409A Compliance. The Parties agree that this Agreement shall be interpreted and administered in a manner so that any amount or benefit payable hereunder shall be paid or provided in a manner that is exempt from, or, if that is not possible, then compliant with the requirements of Section 409A of the Code and applicable Internal Revenue Service guidance and Treasury Regulations issued there under (and any applicable transition relief under Section 409A of the Code). Nevertheless, the tax treatment of the benefits provided under the Agreement is not warranted or guaranteed. Neither the Company nor its managers, members, officers, employees, or advisers shall be held liable for any taxes, interest, penalties, or other monetary amounts owed by You as a result of the application of Section 409A of the Code. Any right to a series of installment payments under this Agreement shall, for purposes of Section 409A of the Code, be treated as a right to a series of separate payments.

All reimbursements and in-kind benefits provided under this Agreement that are includible in Your federal gross taxable income shall be made or provided in accordance with the requirements of Section 409A of the Code, including the requirement that (i) any reimbursement is for expenses incurred during Your lifetime (or during a shorter period of time specified in this letter), (ii) the amount of expenses eligible for reimbursement or in-kind benefit provided during a calendar

year may not affect the expenses eligible for reimbursement, or in-kind benefits to be provided, in any other calendar year, (iii) the reimbursement of an eligible expense will be made on or before the last day of the calendar year following the year in which the expense was incurred, and (iv) the right to reimbursement or in-kind benefits is not subject to liquidation or exchange for another benefit.

Additionally, notwithstanding anything in this Agreement to the contrary, any separation payments under this Agreement, and any other amount or benefit that would constitute non-exempt "deferred compensation" for purposes of Section 409A of the Code and that would otherwise be payable or distributable hereunder by reason of Your termination, will not be payable or distributable to You by reason of such circumstance unless the circumstances giving rise to such termination meet any description or definition of "separation from service" in Section 409A of the Code and applicable regulations (without giving effect to any elective provisions that may be available under such definition). If this provision prevents the payment or distribution of any amount or benefit, such payment or distribution shall be made on the date, if any, on which an event occurs that constitutes a Section 409A-compliant "separation from service."

In the event that You are a "specified employee" (as described in Code Section 409A), and any payment or benefit payable pursuant to this Agreement constitutes deferred compensation under Code Section 409A and would otherwise be payable upon Your "separation from service" (as described in Code Section 409A), then no such payment or benefit shall be made before the date that is six (6) months after Your "separation from service" (or, if earlier, the date of Your death). Any payment or benefit delayed by reason of the prior sentence (the "Delayed Payment") shall be paid out or provided in a single lump sum at the end of such required delay period in order to catch up to the original payment schedule.

7. Stock Options. In the event the Company consummates a Liquidation Transaction (as such term is defined in the Company's Amended and Restated Certificate of Incorporation) and either 90 days prior or 1 year after such Liquidation Transaction, either (a) your employment is terminated by the Company for any reason other than Cause, or by You without Good Reason, (b) your role, responsibilities or duties are materially changed, reduced, or eliminated, (c) your compensation is materially reduced, or (d) the geographic location of your employment is materially changed (each an "Acceleration Event"), then all of the then-remaining unvested options which were granted prior to such Liquidation Transaction shall immediate and fully vest and become exercisable on such Acceleration Event.

8. Entire Agreement. This Agreement and the Covenants Agreement and Confidential Inventions Agreement both of which were executed by You in June 2014 and July 2014, respectively, (the "Prior Agreement")(collectively, the "Agreements") constitute the entire agreement between the Parties. The Prior Agreement is incorporated by reference, and any of Your post-termination obligations contained in the Prior Agreement shall remain in full force and effect, and shall survive cessation of Your employment. You acknowledge that Your post-termination obligations contained in the Prior Agreement are valid, enforceable and reasonably necessary to protect the interests of the Company, and You agree to abide by such obligations. These Agreements supersede any prior communications, agreements or understandings, whether oral or written, between the Parties arising out of or relating to Your employment and the termination of that employment. Other than this Agreement, no other representation, promise or agreement has been made with You to cause You to sign this Agreement.

9. Amendments. This Agreement may not be amended or modified except in writing signed by both Parties.

10. Successors and Assigns. This Agreement shall be assignable to, and shall inure to the benefit of, the Company's successors and assigns, including, without limitation, successors through merger, name change, consolidation, or sale of a majority of the Company's stock or assets, and shall be binding upon You and Your heirs and assigns.

11. Governing Law/Consent to Jurisdiction and Venue. The laws of the State of Georgia shall govern this Agreement. If Georgia's conflict of law rules would apply another state's laws, the Parties agree that Georgia law shall still govern. Any and all claims arising out of or relating to this Agreement shall be brought in a state or federal court of competent jurisdiction in Georgia. The Parties consent to the personal jurisdiction of the state and/or federal courts located in Georgia, and waive (i) any objection to jurisdiction or venue, or (ii) any defense claiming lack of jurisdiction or improper venue, in any action brought in such courts.

_____

Employee's Initials

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the Effective Date**.**

**Cardlytics, Inc.**

By: _____

Its: _____

Date: _____

**[ ]**

_____

Date: _____

_____
Employee's Initials

**Exhibit 10.12**

# OFFICE LEASE AGREEMENT

THIS OFFICE LEASE AGREEMENT (this "Lease") is made as of the 5th day of August, 2013 (the "Effective Date") by and between JAMESTOWN Ponce City Market, L.P., a Delaware limited partnership ("Landlord") and CARDLYTICS, INC., a Delaware corporation ("Tenant").

## RECITALS:

Landlord is the owner of that certain mixed use commercial project located at 675 Ponce de Leon Avenue, NE, Atlanta, Georgia, and known as Ponce City Market, as generally depicted on **Exhibit A,** attached hereto (as the same may be modified from time to time, the "Project"). A portion of the Project consists of approximately 441,000 square feet of office space (as modified from time to time, the "Office Component"), and Landlord desires to lease to Tenant a portion of the Office Component containing approximately 74,000 square feet, as depicted on **Exhibit B** attached hereto (the "Demised Premises"), subject to the following terms and conditions.

## ARTICLE 1. **BASIC PROVISIONS SUMMARY**

Section 1.1 Basic Provisions. Certain basic provisions of the Lease are summarized as follows:

(a) Addresses for Notice:

| | |
|---|---|
| to Landlord: | JAMESTOWN Ponce City Market, L.P.<br>One Overton Park, 12th Floor<br>3625 Cumberland Boulevard<br>Atlanta, Georgia 30339<br>Attention: General Counsel<br>Fax: 770-805-1001 |
| with a copy to: | JAMESTOWN Ponce City Market, L.P.<br>One Overton Park, 12th Floor<br>3625 Cumberland Boulevard<br>Atlanta, Georgia 30339<br>Attention: Asset Manager<br>Fax: 770-805-1001 |
| to Tenant | (prior to Rent Commencement Date):<br><br>Cardlytics, Inc.<br>112 Krog St.<br>Suite 10<br>Atlanta, GA 30307 |

To Tenant (after Rent Commencement Date): the Demised Premises

(b) Base Rent:

| Lease Years | Monthly | Annually | Per SF |
|---|---|---|---|
| 1* | $109,458.33 | $1,313,500.00 | $17.75 |
| 2 | $112,742.08 | $1,352,905.00 | $18.28 |
| 3 | $116,124.35 | $1,393,492.15 | $18.83 |
| 4 | $119,608.08 | $1,435,296.91 | $19.40 |
| 5 | $123,196.32 | $1,478,355.82 | $19.98 |
| 6 | $126,892.21 | $1,522,706.50 | $20.58 |
| 7 | $130,698.97 | $1,568,387.69 | $21.19 |
| 8 | $134,619.94 | $1,615,439.32 | $21.83 |
| 9 | $138,658.54 | $1,663,902.50 | $22.49 |
| 10 | $142,818.30 | $1,713,819.58 | $23.16 |
| 11 | $147,102.85 | $1,765,234.16 | $23.85 |

* Base Rent shall be abated during Lease Year 1 from the Lease Commencement Date through the Rent Commencement Date

(c) Broker:
Landlord's Broker - Cushman & Wakefield of Georgia, Inc.
Tenant's Broker - Vantage Realty Partners.

(d) Demised Premises: Space shown on attached **Exhibit B** attached hereto.

(e) Demised Premises Area: 74,000 square feet.

(f) Estimated Delivery Date: June 1, 2014.

(g) Estimated Commencement of Operations Date: five (5) months after the Lease Commencement Date.

(h) Guarantor(s): N/A.

(i) Lease Commencement Date: June 1, 2014, subject to adjustment pursuant to Section 2.2.

(j) Office Component Area: Approximately 441,000 square feet.

(k) Permitted Use: General office purposes and for no other uses or purposes whatsoever.

(1) Rent Commencement Date: Ten (10) months after the Lease Commencement Date.

(m) Tenant Allowance: $3,700,000 ($50.00 per square foot of Demised Premises).

(n) Tenant's Proportionate Share: 0.1678 (16.78%).

| | | |
|---|---|---|
| (o) | Term: | One Hundred Thirty (130) full calendar months after the Lease Commencement Date. |
| (p) | Security Deposit: | $150,000 (in addition to Letter of Credit – see Article 27). |

ARTICLE 2. **GRANT AND DELIVERY**

Section 2.1 Grant. For and in consideration of the rents, covenants and agreements hereinafter reserved and contained on the part of Tenant to be observed and performed, Landlord demises and leases to Tenant, and Tenant leases, rents and accepts from Landlord the Demised Premises.

Section 2.2 Delivery of Demised Premises. Landlord agrees to complete the work described in **Exhibit C** (the "Landlord's Work"). Landlord shall deliver to Tenant, and Tenant agrees to accept from Landlord, possession of the Demised Premises in the condition described in **Exhibit C** as the "Pre-Delivery Condition" (such date referred to as the "Delivery Date"). Landlord and Tenant acknowledge that the date set forth in Section 1.1(f) as the estimated Delivery Date and the date set forth in Section 1.1(h) as the Lease Commencement Date are target dates only, and that the actual Delivery Date and Lease Commencement Date shall be later to occur of June 1, 2014, or the date on which the Demised Premises is in Pre-Delivery Condition.

Section 2.3 Tenant's Work. Tenant shall perform the work described in **Exhibit D** (the "Tenant's Work"), at its own expense, subject to the payment of the Tenant Allowance by Landlord.

ARTICLE 3. **TERM**

The term of this Lease (the "Term") shall commence upon the Lease Commencement Date and shall continue for the number of full calendar months set forth in Section 1.1 from and after the Lease Commencement Date, and shall expire on the last day of the calendar month which is the 130th month after the Lease Commencement Date. As used in this Lease, the term "Lease Year" shall mean each twelve (12) month period commencing with the Lease Commencement Date, and term "Calendar Year" shall mean the calendar year commencing in January and ending in December.

ARTICLE 4. **RENT**

Section 4.1 Base Rent. Starting on the Rent Commencement Date, Tenant agrees to pay to Landlord as minimum rent for each Lease Year the amount set forth as Base Rent in Section 1.1 (the "Base Rent"). Base Rent for the period from the Rent Commencement Date to the next-occurring first day of the month shall be prorated on a daily basis and shall be payable with and in addition to the first installment of Base Rent. The Base Rent for each Lease Year shall be payable in twelve (12) equal monthly installments, in advance, on the first day of each calendar month.

Section 4.2 Additional Rent. For purposes of this Lease, all sums of money or charges of any nature (except Base Rent) required to be paid by Tenant to Landlord pursuant to this Lease shall be referred to as "Additional Rent," and all such amounts (including Base Rent) shall be referred to collectively as "Rent."

Section 4.3 Rent Payments. Rent payable by Tenant under this Lease shall be paid to Landlord at its address in Section 1.1 above, or to such payee and at such place as may be designated by Landlord to Tenant in writing on or before the first day of each month, without prior demand therefor (except where such prior demand is expressly provided for in this Lease), without any deductions, set offs or counterclaims whatsoever.

Section 4.4 Late Payments. If Landlord does not receive any payment of Rent within ten (10) days after it becomes due, Tenant shall pay Landlord a late charge equal to three percent (3%) of the overdue amount. Any amount of Rent owed by Tenant to Landlord which is not paid when due shall bear interest at a rate per annum equal to the lesser of eight percent (8%) per annum or the maximum lawful rate of interest allowed under the laws of the State of Georgia (the "Default Rate") from the due date of such amount until paid. Such interest shall not begin to accrue until thirty (30) days following the date that such Rent is due.

ARTICLE 5. **PARKING**

Section 5.1 Tenant Parking. Tenant shall be entitled to use up to two hundred twenty-two (222) parking spaces in the parking facilities serving the Office Component. Of such parking spaces, one hundred sixty-six (166) of which spaces shall be located in the "Standard" parking area as shown on **Exhibit E**, and the remaining fifty-six (56) of which spaces shall be located in the "Premier" parking area as shown on **Exhibit E**. All parking spaces provided to Tenant shall be unreserved and are to be used by Tenant, its employees and invitees in common with the other tenants of the Office Component and their employees and invitees. Landlord reserves the right to build improvements upon, reconfigure, and/or make alterations or additions to all or any of the parking facilities of the Project at any time provided that such alterations or additions do not unreasonably interfere with or hinder Tenant's parking or access to the Demised Premises.

Section 5.2 Parking Fees. Tenant agrees to pay to Landlord (or any parking operator, as identified by Landlord in advance to Tenant) the parking fees for all parking spaces from time to time, together with each monthly installment of Base Rent (if paid to Landlord) or on or before the first day of each month (if paid to a parking operator), commencing on the Lease Commencement Date and thereafter throughout the Term. The initial rates for parking spaces shall be $50.00 per space per month for Standard spaces, and $90.00 per space per month for Premier spaces. The rates for such spaces may be increased at any time during the Term to the then-current rates being charged by Landlord for the Standard parking area and the Premier parking area, as applicable; provided, however, that such rates may not be increased more than three (3) times during the initial Term.

ARTICLE 6. **TAXES AND ASSESSMENTS**

Section 6.1 Tenant Share of Taxes. Tenant agrees to pay to Landlord, as Additional Rent, in the manner set forth in Article 9, Tenant's Proportionate Share of all Taxes paid with respect to any Calendar Year or portion thereof during the Term. For purposes hereof, "Taxes" shall mean all real estate and other ad valorem taxes and assessments of every kind with respect

to the Demised Premises or the Office Component, as applicable, as well as any tax or levy charged on the Project or any part thereof during the Term as a replacement for such taxes and assessments, as well as any taxes levied at any time upon Rents. The term "Taxes" excludes the following: federal, state, or local income taxes; franchise, gift, transfer, excise, capital stock, estate, succession, or inheritance taxes; and penalties or interest for late payment of Taxes. To the extent that Taxes on the Project are not separately assessed with respect to the Office Component, Landlord shall allocate Taxes to the Office Component as Landlord determines to be fair and equitable, in its reasonable discretion. Landlord shall cause all Taxes on the Demised Premises to be paid prior to delinquency.

Section 6.2 Tax Reduction. Landlord and Tenant acknowledge that during a portion of the Term, certain components of Taxes have been reduced or remain fixed at lower rates pursuant to agreements with applicable taxing authorities, and Tenant shall be entitled to the benefit of such reductions during the duration of any such reduction.

ARTICLE 7. **INSURANCE AND LIABILITY**

Section 7.1 Tenant's Insurance.

(a) Tenant agrees that, from and after the date on which Tenant first enters into the Demised Premises, Tenant shall carry at its sole cost and expense the following types of insurance, in the amounts specified and in the form hereinafter provided for:

(i) Commercial general liability insurance covering the Demised Premises and Tenant's use thereof against claims for contractual liability, personal injury or death, and property damage, occurring upon or about the Demised Premises, such insurance to afford protection to the limit of not less than $5,000,000.00 per occurrence. The foregoing may be maintained using so-called "umbrella policies" provided the stated coverages are provided;

(ii) Property damage insurance against "all-risks" of physical loss covering all of the items included in Tenant's Work, Tenant's leasehold improvements, whether paid for by Landlord or Tenant, within the core and shell of the Demised Premises, heating, ventilating and air conditioning equipment, trade fixtures, signs and personal property from time to time upon or about the Demised Premises, providing protection against perils included within standard forms of fire and extended coverage insurance policies, together with insurance against sprinkler damage, vandalism and malicious mischief in accordance with policy terms and exclusions;

(iii) Business interruption insurance for a period of at least twelve (12) months;

(iv) If alcohol or other distilled beverages are provided, or otherwise available in the Demised Premises, Tenant shall carry host liquor liability coverage in amounts reasonably required by Landlord.

(v) Worker's compensation insurance in the minimum amounts required by the State of Georgia, and Employers' Liability Insurance in an amount not less than $500,000.00 per occurrence; and

(vi) Automobile liability insurance with a minimum combined single limit of liability of at least one million dollars ($1,000,000) including coverage for owned (if any), non-owned and hired vehicles.

(b) All such policies of insurance shall be issued in form and by issuers with a rating of "A-VIII" or higher by A.M. Best in the name of Tenant and shall name Landlord and parties designated in writing by Landlord as additional insureds with respect to the liability insurance coverage (except for worker's compensation insurance), and as loss payees, as their interests may appear, with respect to the all-risk property insurance. Such policies shall be for the mutual and joint benefit and protection of Landlord and Tenant. All liability insurance obtained by Tenant shall be primary insurance as to all claims thereunder and provide that any insurance carried by Landlord is excess and is non-contributing with any insurance requirement of Tenant and shall contain a waiver of subrogation clause in favor of Landlord. Certificates evidencing each such policy shall be delivered to Landlord no later than the Delivery Date, and as soon as practicably possible prior to the expiration of each such policy. Tenant shall give Landlord at least thirty (30) days' prior written notice of any cancellation, or lapse, or the effective date of any reduction in the amounts of insurance. All such commercial general liability and property damage policies shall contain a provision that Landlord (and any other party named as an additional insured under Article 8), although named as an additional insured, shall nevertheless be entitled to recover under said policies for loss occasioned to it, its servants, agents and employees by reason of the negligence of Tenant. The minimum limits of such insurance policies shall be subject to increase if Landlord shall reasonably deem it necessary for adequate protection.

Section 7.2 Landlord's Insurance.

(a) Landlord shall maintain in effect for the entire Term and any extensions or renewals thereof a policy or policies of insurance covering the Office Component, the Common Areas, and other portions of the Project not leased to tenants, providing protection against "all-risks" of physical loss perils, together with insurance against vandalism, malicious mischief, and such other risks, deductibles and in such amounts as Landlord may from time to time determine. Any such insurance may be effected by a policy or policies of blanket insurance covering additional items or locations or insureds. The premiums for any such policies shall be referred to as the "Insurance Premiums."

(b) Tenant agrees to pay to Landlord, as Additional Rent, in the manner set forth in Article 9, Tenant's Proportionate Share of Insurance Premiums paid with respect to any Calendar Year or portion thereof during the Term. Tenant acknowledges that certain Insurance Premiums are shared by tenants of the Project other than tenants of the Office Component, and Landlord shall reasonably allocate such Insurance Premiums among Project tenants.

Section 7.3 Landlord's Liability. To the maximum extent permitted by law, except in the event of Landlord's negligence or willful misconduct, Landlord shall not be liable for any damage or liability of any kind or for any injury to or death of any persons or damage to any property on or about the Demised Premises from any cause whatsoever.

Section 7.4 Indemnification.

(a) Tenant hereby agrees to indemnify, defend, and save Landlord harmless from and against all claims, actions, demands, costs and expenses and liability whatsoever, including reasonable attorneys' fees, resulting from, relating to or arising out of, in whole or part, Tenant's obligations pursuant to the Lease and/or Tenant's use, occupancy or activities in or about the Demised Premises, the building in which the Demised Premises is located, the Project, the Office Component and/or the Common Areas.

(b) Subject to Sections 7.4(a) and 7.6, Landlord hereby agrees to indemnify, defend, and save Tenant harmless from all claims, actions, demands, costs and expenses and liability whatsoever, including reasonable attorneys' fees, on account of any damage or liability occasioned in whole or in part by the negligence or willful misconduct of Landlord or its agents, contractors, and employees unless such damage or injury arises from perils against which Tenant is required by this Lease to insure.

(c) The obligations of Landlord and Tenant under this Section shall survive the expiration or other termination of this Lease.

Section 7.5 Mutual Waivers of Subrogation. Landlord and Tenant hereby waive any rights they may have against each other on account of any loss or damage occasioned to Landlord or Tenant, their property, the Demised Premises or, its contents, arising from any risk covered by fire and extended coverage insurance maintained by Landlord or Tenant, as the case may be. The parties hereto each, on behalf of their respective insurance companies insuring the property of either Landlord or Tenant against any such loss, waive any right of subrogation that it may have against Landlord or Tenant, and covenant to use commercially reasonable efforts to cause such insurance companies to waive any such rights of subrogation.

Section 7.6 Effect on Insurance. Tenant shall not do or suffer to be done, or keep or suffer to be kept, anything in, upon or about the Demised Premises which will contravene Landlord's insurance policies or which will prevent such policies from being procured with companies acceptable to Landlord, or which will cause an increase in the insurance rates upon the Demised Premises or any other portion of the Project. If Tenant violates any prohibition provided for in this Section, Landlord may, without notice to Tenant, correct the same at Tenant's expense. Tenant agrees to pay to Landlord as Additional Rent on demand the amount of any increase in premiums for insurance resulting from any violation of this Section.

## ARTICLE 8. **COMMON AREAS**

Section 8.1 Common Areas. "Common Area" or "Common Areas" shall mean all areas, facilities and improvements in the Project from time to time intended for the non-exclusive, common and joint use and/or benefit of Landlord, Tenant and/or some or all other tenants of the Project, including but not limited to sidewalks, stairways, elevators, service corridors, truckways, ramps, loading docks, dumpsters, service areas, parking areas, access and interior roads, delivery areas, landscaped areas, elevators, vestibules, public washrooms, water features, pedestrian mall areas (enclosed or open), and lighting facilities.

Section 8.2 Use by Tenant. Tenant and its employees and invitees shall have the right to use the Common Areas for their respective intended purposes in common with other parties only as otherwise specifically provided and authorized in this Lease. Tenant agrees to comply with such reasonable rules and regulations which may now exist or which may be issued from time to time by Landlord for the proper efficient use, operation and maintenance of the Common Areas. In no event shall Tenant use the Common Areas for the conduct of any business or for events, signs, displays or any other use without the prior written consent of Landlord, which consent may be withheld in Landlord's discretion absent any standard set forth herein or any Governing Instrument (as defined in Section 11.2).

Section 8.3 Landlord's Control. Landlord shall at all times during the Term have the sole and exclusive control, management and direction of the Common Areas. The rights of Tenant in and to the Common Areas shall at all times be subject to the rights of others to use the same in common with Tenant. Landlord may at any time and from time to time reconfigure, increase, or decrease the Common Areas, or close all or any portion of the Common Areas to make repairs or changes and, to the extent necessary in the opinion of Landlord, to prevent a dedication thereof or the accrual of any rights to any person or to the public therein provided that any changes or reconfigurations do not materially and unreasonably interfere with Tenant's access to or use of the Demises Premises.

Section 8.4 Landlord's Use of Common Areas. Tenant acknowledges that the Project was developed with the intention of creating a unique atmosphere to attract customers and to create a community gathering point, for the benefit of the tenants of the Project and their customers, and that Landlord may use the Common Areas or any part thereof for promotions, festivals, concerts, exhibits, events, displays, the leasing of kiosks and food facilities, landscaping, decorative items, and any other use which, in Landlord's judgment, tends to attract customers to or benefit the tenants of the Project, or otherwise benefit the community surrounding the Project. Landlord reserves the right to charge fees or costs for the use of portions of the Common Areas in connection with any such events. Tenant acknowledges that certain inconveniences may result from such actions, and that Tenant may from time to time be restricted from use of certain areas which are otherwise Common Areas, and Tenant hereby acknowledges the benefit to Tenant from such use of the Common Areas. Tenant hereby relieves and releases Landlord from any and all liability with respect thereto.

Section 8.5 Common Area Costs. "Common Area Costs" shall be defined as all costs of operating the Common Areas, and shall include, but not be limited to, the costs and expenses of the following: (a) operating, maintaining, repairing, lighting, servicing, painting and removing debris from and cleaning the Common Areas; (b) the compaction and removal of garbage and trash from the Office Component; (c) maintaining and repairing the roofs, walls, and other common elements, including common ducts, conduits and similar items, common fire protection systems, utility, sprinkler and security alarm systems, storm and sanitary drainage systems and other utility systems, signs and decorations, directional signs and markers, and on-and off-site traffic regulation and control signs and devices; (d) premiums for plate glass insurance for glass exclusively serving the Common Areas; (e) reasonable reserves for deferred repairs and maintenance; (f) landscaping located on the Common Areas; (g) the repair and maintenance of the parking areas or sidewalks, including striping, re-striping and paving thereof; (h) pest control; (i) the maintenance, repair, and inspection of all machinery and equipment used in the operation, maintenance or security of the Common Areas; (j) management fees at rates not to exceed the amount customarily charged by an independent entity providing management services to similar class buildings in the City of Atlanta; (k) security programs and initiatives, including without limitation the cost of security personnel; and (l) any events undertaken by Landlord for the tenants of the Office Component. Tenant acknowledges that certain Common Area Costs are shared by tenants of the Project other than tenants of the Office Component, and Landlord shall reasonably allocate such Common Area Costs among Project tenants.

Notwithstanding anything herein to the contrary, “Common Area Costs” will not include the following: (i) costs incurred by Landlord for the repair of damage to the Common Areas to the extent that Landlord is reimbursed by insurance proceeds, (ii) costs incurred by Landlord due to its violation of any tenant lease or the Governing Instruments, (iii) costs incurred by Landlord to comply with the “CAP” (as those terms are defined in Section 31.14 hereof) or otherwise related to the removal of Hazardous Substances (as hereinafter defined) existing at the Demised Premises as of the date hereof; (iv) interest, principal, points and fees on debts or amortization on any mortgage or mortgages or any other debt instrument encumbering the Office Component or the property on which the Project stands or any ground rents; (v) costs for bringing the Common Area into compliance with any applicable law that exists on the date of this Lease; (vi) operating costs of the parking decks and lots to the extent of parking fees or charges received by Landlord from other tenants or visitors; and (vii) cost of repairs necessitated by the negligence or willful misconduct of Landlord or its agents, contractors or employees.

Section 8.6 Tenant’s Proportionate Share of Common Area Costs. Tenant agrees to pay to Landlord, as Additional Rent, in the manner set forth in Article 9, Tenant’s Proportionate Share of Common Area Costs paid with respect to any Calendar Year or portion thereof during the Term.

Section 8.7 Non-Dedication. Nothing contained in this Agreement shall be deemed to be a gift or dedication of the easements or of any portion of the Common Areas to the general public or for any public use or purpose whatsoever. Landlord shall have the right to close all or any portion of the Common Areas for such period of time as is reasonably necessary to prevent the creation of any prescriptive rights or easements in favor of any party under applicable law with respect to any portion of the Common Areas.

Section 8.8 Gross-Up. If at any time during a Calendar Year the Office Component is not 100% occupied or Landlord is not supplying services to 100% of the total Rentable Square Footage of the Office Component, Common Area Costs shall be determined as if the Office Component had been 100% occupied and Landlord had been supplying services to 100% of the Rentable Square Footage of the Office Component.

ARTICLE 9. **PAYMENT OF TAXES, INSURANCE AND COMMON AREA COSTS**

Section 9.1 Payment by Tenant. Starting on the Rent Commencement Date, Tenant shall pay as Additional Rent all amounts owed by Tenant with respect to Taxes, Insurance Premiums, and Common Area Costs, as follows. In any Calendar Year, Landlord may by written notice to Tenant advise Tenant of the estimated costs to Tenant for Taxes, Insurance Premiums, and Common Area Costs for such Calendar Year. Tenant shall pay one twelfth (1/12) of such amount to Landlord each month during such year, on the first day of each month. The first such installment shall be due and payable by Tenant on the Rent Commencement Date.

Section 9.2 Reconciliation. Promptly following the end of each Calendar Year, Landlord shall furnish Tenant a statement covering the Calendar Year just ended. If the estimated payments made by Tenant are greater than Tenant’s actual liability, Tenant shall be entitled to a credit of the difference. If the estimated payments made by Tenant are less than Tenant’s actual liability, Tenant shall pay Landlord the difference as Additional Rent within forty-five (45) days after receipt of such statement.

Section 9.3 Common Area Costs. Notwithstanding the provisions of Article 8, Tenant's Proportionate Share of Common Area Costs for the initial Calendar Year for which Tenant is responsible for such costs shall not exceed Eight and 75/100 Dollars ($8.75) per square foot of the Demised Premises. In addition, Landlord agrees that in calculating Tenant's Proportionate Share of Common Area Costs for each Calendar Year, that portion of the Common Area Costs for each year that consists of "Controllable Costs," defined below, shall be limited to the lesser of (i) the actual Controllable Costs for such calendar year, or (ii) the amount that Controllable Costs would have been if the amount of Controllable Costs had increased at the rate of five percent (5%) over the amount of Controllable Costs over the prior Calendar Year, calculated on a non-cumulative basis. As used herein, the term "Controllable Costs" shall mean any Common Area Costs, the scope and cost of which are within the direct control of Landlord. By way of example and not limitation, the parties agree that the scope and cost of the following expenses are not within the direct control of Landlord: (a) utility charges; (b) costs of maintenance and repair to the extent required as result of damage caused by Tenant, third parties, natural disasters or acts of God; (c) costs subject to government regulation, such as the minimum wage; (d) ice and snow removal costs; (e) security costs; and (f) costs incurred to comply with new or revised federal or state laws, municipal or county ordinances or codes or regulations promulgated under any of the same.

Section 9.4 Tenant's Right to Audit. Tenant, and its agents, and employees shall have ninety (90) days after receiving Landlord's reconciliation statement described in Section 9.2 above to audit Landlord's books and records concerning the statement at a mutually convenient time at Landlord's offices. Tenant may recover that part of the Additional Rent paid (plus interest at eight percent (8%) per annum), because of any overcharge of Additional Rent revealed by such audit, and shall pay to Landlord any underpayment of Additional Rent (plus interest at eight percent (8%) per annum) revealed by such audit.

ARTICLE 10. **BUILDING SERVICES**

Section 10.1 Landlord Services. Landlord shall furnish Tenant with the following services: (a) water for use in the lavatories; (b) customary heat and air conditioning in season from the hours of 8:00 a.m. to 6:00 p.m. on Business Days and 9:00 a.m. to 1:00 p.m. on Saturdays ("Building Service Hours"), provided that Tenant shall have the right to receive HVAC service during hours other than Building Service Hours by paying Landlord's then standard charge for additional HVAC service and providing such prior notice as is reasonably specified by Landlord; (c) standard janitorial service on Business Days; (d) elevator service; (e) electricity for standard building lighting fixtures provided by Landlord and for the operation of desk-top portable office equipment, and (f) such other services as Landlord reasonably determines are necessary or appropriate for the Property.

Section 10.2 Electricity. Landlord shall furnish electric current to the Demised Premises in amounts up to nine tenths (0.9) of one watt per square foot connected load of the Demised Premises for lighting, and up to five (5) watts per square foot connected load of the Demised Premises for all other purposes other than HVAC service. Electricity used by Tenant in the Demised Premises shall be paid for by Tenant, with any charges for electricity which are not part of Common Area Costs being paid directly by Tenant. Without the consent of Landlord, Tenant's use of electrical service shall not exceed, either in voltage, rated capacity, use beyond

Building Service Hours or overall load which Landlord reasonably deems to be standard for the Project. Landlord shall have the right to measure electrical usage by commonly accepted methods. If it is determined that Tenant is using excess electricity, Tenant shall pay Landlord for the cost of such excess electrical usage as Additional Rent.

Section 10.3 Service Failure. Tenant agrees that Landlord shall not be liable for damages, by abatement of Rent or otherwise, for failure to furnish or delay in furnishing any service (including telephone and telecommunication services), or for any diminution in the quality or quantity thereof, when such failure or delay or diminution is occasioned, in whole or in part, by breakage, repairs, replacements, or improvements, by any strike, lockout or other labor trouble, by inability to secure electricity, gas, water, or other fuel at the Building or Project after reasonable effort to do so, by any riot or other dangerous condition, emergency, accident or casualty whatsoever, by act or default of Tenant or other parties, or by any other cause beyond Landlord's reasonable control; and such failures or delays or diminution shall never be deemed to constitute an eviction or disturbance of Tenant's use and possession of the Premises or relieve Tenant from paying Rent or performing any of its obligations under this Lease. Furthermore, Landlord shall not be liable under any circumstances for a loss of, or injury to, property or for injury to, or interference with, Tenant's business, including, without limitation, loss of profits, however occurring, through or in connection with or incidental to a failure to furnish any of the services or utilities as set forth in this Article.

## ARTICLE 11. **PROJECT GOVERNANCE AND CONTROL**

Section 11.1 Operation of Project. Tenant acknowledges that (a) the Project is a mixed use development which may include multiple uses in one or more buildings, (b) the Office Component is a portion of the Project, (c) each of the Project and the Office Component may now or hereafter be subdivided, and (d) portions of the Project and the Office Component may now or hereafter be under separate ownership or subject to separate leasehold estates or legal regimes.

Section 11.2 Governing Instruments. This Lease and Tenant's rights hereunder are and shall be subject and subordinate to the Governing Instruments. As used in this Lease, "Governing Instruments" means, individually and collectively, any and all vertical subdivisions, horizontal subdivisions, air rights agreements, ground leases, master leases, sale leaseback instruments, condominium declarations, condominium plats, condominium plans, condominium association articles and by-laws, articles and bylaws of other owners' association regimes, other multiple ownership regimes, easement agreements, covenants, conditions and restrictions, rules, regulations, governmental and private restrictions, and other instruments or legal regimes, recorded or unrecorded, to which all or any part of the Project or the Office Component may now be submitted or by which all or any part of the Project or the Office Component may now or hereafter be bound. Notwithstanding the above, Tenant shall not be required to subordinate this Lease to a Governing Instrument if such instrument could terminate this Lease or violate Section 11.3 unless Tenant is furnished with a written non-disturbance agreement for the benefit of Tenant. The non-disturbance agreement shall provide, among other provisions, that so long as this Lease shall be in full force and effect, any other party to such Governing Instrument having the right to terminate this Lease or violate Section 11.3 may not disturb Tenant's possession of the Demised Premises pursuant to this Lease, so long as there does not exist an uncured Event of Default by Tenant.

Section 11.3 No Increased Burden. As between Landlord and Tenant, the Governing Instruments shall not by their terms increase the Base Rent, materially increase any Additional Rent, materially increase Tenant's non-Rent obligations, or materially decrease Tenant's rights under this Lease. Landlord may determine any allocation of Taxes, Insurance Premiums, Common Area Costs, or other costs and expenses of the Project or the Office Component based on the allocation of such items under the Governing Instruments, if applicable, and any such costs and expenses which relate to the Office Component or the Common Areas shall be treated as expenses incurred by Landlord under this Lease whether or not paid directly by Landlord. The rights of Tenant and its employees, customers and guests to use the Common Areas shall be subject to the Governing Instruments.

Section 11.4 Landlord Performance. Notwithstanding anything to the contrary contained herein, to the extent that any party other than Landlord performs any obligation of Landlord (under the Governing Instruments or otherwise), Tenant agrees to accept such performance as performance by Landlord of such obligation. To the extent any approval, consent, or decision sought by Tenant or required from Landlord under this Lease requires the approval, consent or decision of any other party other than Landlord under the Governing Instruments, Landlord may (without limiting Landlord's discretion under this Lease) withhold such approval, consent or decision pending, or condition such approval, consent or decision on, receipt of the approval or decision of such other party. In addition, to the extent authorized by or contemplated under the Governing Instruments, (a) any rights of Landlord (for example, rights of inspection, enforcement, control or operation) may be exercised by the applicable governing body or other authorized party under the Governing Instruments, and (b) the applicable governing body or other required party or parties shall be named as an additional insured or loss payee to the extent Tenant is required to name Landlord as additional insured or loss payee under this Lease, and shall be afforded the same rights and benefits with respect to such insurance as Landlord is afforded hereunder.

Section 11.5 Confirming Documentation. Tenant agrees that, in order to confirm the provisions of this Article, but in no way limiting the self-operative effect of said provisions, Tenant shall execute and deliver whatever instruments Landlord may require for such purposes within ten (10) days following written request by Landlord, including but not limited to a subordination agreement, amendment of this Lease or other instrument requested by Landlord confirming the subordination of this Lease and Tenant's rights hereunder to any Governing Instruments.

Section 11.6 Governing Instrument Authorities. Tenant acknowledges and agrees that Landlord shall have the right to grant to any person or entity having authority under any of the Governing Instruments, including without limitation a declarant, owners' association, master association, architectural committee, lender, or superior lessor (each an "Authority") the right to exercise one or more of Landlord's rights, decisions or judgments under this Lease. In addition, any agreement by Tenant hereunder to indemnify Landlord or release or waive any claim against Landlord shall extend to any Authority, as applicable.

Section 11.7 Default and Cure. If any party other than Landlord shall default in any of its obligations under the Governing Instruments and Landlord as a result fails or is unable to perform any obligation of Landlord under this Lease, then Landlord shall not be in default under this Lease provided that Landlord shall, following notice of such default from Tenant, use commercially reasonable efforts to enforce the defaulting party's obligations under the Governing Instruments.

ARTICLE 12. **USE OF DEMISED PREMISES**

Section 12.1 Sole Use. Throughout the Term, Tenant shall use the Demised Premises solely for the purpose specified in Section 1.1 as the "Permitted Use."

Section 12.2 Restrictions. Tenant agrees that it will not cause or permit strong, unusual, offensive or objectionable noise, odors, lights, fumes, dust or vapors to emanate or be dispelled from the Demised Premises.

Section 12.3 Requirements. Tenant shall comply with all laws, rules and regulations relating to the Demised Premises, including any reasonable and nondiscriminatory rules and regulations established by Landlord from time to time for the benefit of the Project.

Section 12.4 Commencement of Operation. Tenant covenants and agrees to use its diligent, good faith efforts to commence the operation of its business within the Demised Premises on or before the Estimated Commencement of Operations Date set forth in Section 1.1.

ARTICLE 13. **HAZARDOUS SUBSTANCES**

Tenant shall not bring to the Demised Premises, or use or permit the use of the Demised Premises for the generation, storage, treatment, use, transportation, handling or disposal of, any Hazardous Substances except in de minimis quantities necessary for or incidental to the conduct of the business of the Tenant and in strict compliance with all applicable laws. "Hazardous Substances" shall mean any chemical, material or substance which is regulated as toxic or hazardous or exposure to which is prohibited, limited or regulated by any governmental authority, or which could pose a hazard to the health or safety of persons on the Demised Premises or other tenants or occupants of the Project or property adjacent thereto. Tenant shall at all times observe and abide by all laws and regulations relating to the handling of Hazardous Substances and will promptly notify Landlord of (a) the receipt of any warning notice, notice of violation, or complaint received from any governmental agency or third party relating to environmental compliance and (b) any release of Hazardous Substances on the Demised Premises. Tenant shall carry out, at its sole cost and expense, any remediation required as a result of the release of any Hazardous Substance by Tenant or by Tenant's agents, contractors, employees, or invitees, from the Demised Premises or the Project. Tenant agrees to indemnify, defend, and save Landlord harmless from all liability, costs and claims, including attorneys' fees, resulting from any environmental contamination on the Project caused by Tenant or its agents, contractors, employees or invitees, including the cost of remediation and defense of any action for any violation of this Article. The provisions of this Article shall survive the expiration or other termination of this Lease.

ARTICLE 14. **ALTERATIONS TO DEMISED PREMISES**

Tenant shall make no structural alterations, additions or changes in or to the Demised Premises, or any changes which affect the heating, ventilating and air conditioning equipment and systems ("HVAC Systems") in or otherwise serving the Demised Premises, electrical, plumbing or other systems serving the Demised Premises, or any penetration through any roof, floor or exterior or corridor wall without Landlord's prior written consent, which consent may be withheld in Landlord's sole discretion. Tenant shall make no nonstructural changes to the Demised Premises without the prior written consent of Landlord, which consent shall not be unreasonably withheld. Tenant shall be responsible for any and all damages resulting from any alteration, addition or change Tenant makes. Any and all permitted alterations, additions and changes made to the Demised Premises by Tenant shall be made in accordance with (a) the approved design criteria for the Project, as revised by Landlord from time to time; (b) plans and specifications approved in writing by Landlord before the commencement of the work; and (c) all necessary approvals and permits, which approvals and permits Tenant shall obtain at its sole expense. Any changes to Tenant's plans and specifications after Landlord's initial approval shall require Landlord's additional approval. Landlord shall have the right to approve Tenant's general contractor prior to the commencement of such work, and all parties performing work on behalf of Tenant shall procure insurance as required by Landlord, and shall have Landlord named as an additional insured on such policies. Neither Landlord's approval of Tenant's plans and specifications nor any inspections of Tenant's Work by Landlord shall be deemed a representation by Landlord that Tenant's Work complies with governmental requirements, as such compliance shall be the sole responsibility of Tenant. All work with respect to any alterations, additions and changes must be done in a good and workmanlike manner and diligently prosecuted to completion to the end that the Demised Premises shall at all times be a complete unit except during the period of the work. Any permitted changes, alterations and additions made by Tenant shall be performed strictly in accordance with applicable laws, rules, regulations and building codes relating thereto. Tenant shall have the work performed in such a manner so as not to obstruct the access to the Demised Premises or to the premises of any other occupant of the Project or obstruct the Common Areas. At Landlord's request, any alterations made by Tenant shall be returned to its original condition at Tenant's expense at the expiration or termination of this lease. Tenant's obligations under this Article shall survive the expiration or other termination of this Lease. Without limiting the provisions of this Article, Tenant acknowledges that Landlord has or will apply for and may be granted certain state or federal tax credits relating to historic rehabilitation in connection with the Project (the "Historic Tax Credits"), and that any proposed modification of the Project, including the interior or exterior of the Demised Premises, and the Common Areas, may be prohibited or restricted in order to qualify for, obtain, maintain and preserve the Historic Tax Credits. Tenant shall make no alterations which are not permitted in connection with the obtaining or maintaining of the Historic Tax Credits.

ARTICLE 15. **CASUALTY AND RECONSTRUCTION**

Section 15.1 Landlord's Duty to Reconstruct. If the Demised Premises, or any part thereof, or a portion of the Common Area which in Landlord's reasonable opinion impacts the Tenant's operation within Demised Premises, is damaged or destroyed by an event which involves any of the risks against which Landlord has procured insurance (such event referred to

as a “Casualty”), Landlord shall (subject to being able to obtain all necessary permits and approvals therefor and subject to receipt of insurance proceeds), within one hundred twenty (120) days after the occurrence of the Casualty (unless Landlord terminates this Lease pursuant to this Article), commence to repair, reconstruct and restore or replace the portions of the Demised Premises, or Common Area, for which Landlord is responsible and prosecute the same diligently to completion. In no event shall Landlord be liable for interruption to business of Tenant or for damage to or repair, reconstruction, restoration or replacement of any of those items which Tenant is required to insure, nor shall Landlord be required to expend more for any repair, reconstruction, restoration or replacement of the Demised Premises, or Common Area, pursuant to this Section than the amount of insurance proceeds actually paid to Landlord in connection therewith plus the amount of any applicable deductible.

Section 15.2 Tenant’s Duty to Reconstruct. If any item which Tenant is required to insure is damaged or destroyed, Tenant shall, within one hundred twenty (120) days thereafter (unless Landlord terminates this Lease pursuant to this Article), commence to repair, reconstruct and restore or replace said matters and prosecute the same diligently to completion.

Section 15.3 Landlord’s Right to Terminate. If, following a Casualty, Landlord determines that the Project, the Office Component, or the Demised Premises, or such portion of the Common Area as is necessary to provide access to the Demised Premises, cannot be made tenantable within two hundred seventy (270) days from the date the Casualty occurs, then Landlord shall have the right to terminate this Lease upon written notice to Tenant within thirty (30) days after the date of the Casualty. In addition, Landlord, by notice to Tenant within ninety (90) days after the date of the Casualty, shall have the right to terminate this Lease if: (a) the Demised Premises have been materially damaged and there are fewer than two (2) years of the Term remaining on the date of the Casualty; (b) any lender, requires that the insurance proceeds be applied to the payment of the applicable mortgage debt; (c) a material uninsured loss to the Project or Demised Premises occurs; or (d) necessary for Landlord to comply with the Governing Instruments following such Casualty.

Section 15.4 Abatement of Rent. If this Lease is not terminated by Landlord pursuant to this Article and if the Demised Premises have been rendered wholly or partially untenantable by such damage or destruction, then the Base Rent and the Additional Rent payable by Tenant under this Lease during the period the Demised Premises are untenantable shall be abated in direct proportion to the percentage of the Demised Premises which is untenantable.

Section 15.5 Extension of Time Requirements. Both Landlord and Tenant shall be granted extensions of the time limits for restoration or termination set forth above to the extent that any such restoration is delayed by an Authority or in connection with obtaining or maintaining the Historic Tax Credits or any requirement of the Governing Instruments.

ARTICLE 16. **CONDEMNATION**

Section 16.1 Taking of the Demised Premises. In the event of a taking by any right of eminent domain or similar proceedings, or as a result of a conveyance in lieu thereof (a “Condemnation”) of all of the Demised Premises, or such portion of the Common Area as is necessary to provide access to the Demised Premises, this Lease shall terminate as of the day possession shall be taken by the condemning authority, and Tenant shall pay Rent and perform

all of its other obligations under this Lease up to that date with a proportionate refund by Landlord of any Rent that may have been paid in advance for a period subsequent to the date of taking. If less than all of the Demised Premises is taken by a Condemnation, and the remainder of the Demised Premises cannot reasonably be expected to be used by Tenant for the Permitted Use, then either Landlord or Tenant shall have the right to terminate this Lease upon notice in writing to the other party within thirty (30) days after possession is taken by such Condemnation. If this Lease is so terminated, it shall terminate as of the day possession shall be taken by such authority and Tenant shall pay Rent and perform all of its other obligations under this Lease up to that date with a proportionate refund by Landlord of any Rent that may have been paid in advance for a period subsequent to the date of the taking. If this Lease is not so terminated, it shall terminate only with respect to the parts of the Demised Premises so taken as of the day possession is taken by such authority, and Tenant shall pay Rent up to that day with a proportionate refund by Landlord of any Rent that may have been paid for a period subsequent to the date of the taking and, thereafter, the Rent shall be based on the remaining square footage of Demised Premises.

Section 16.2 Office Component Taken. If any part of the Project or Office Component (including any easement, lease or other property right appurtenant to the Project or Office Component) is taken by Condemnation so as to render, in Landlord's judgment, the Office Component or the remainder thereof unsuitable for commercial uses, Landlord shall have the right to terminate this Lease upon notice in writing to Tenant within thirty (30) days after possession is taken by such Condemnation. If Landlord so terminates this Lease, the Lease shall terminate as of the day possession is taken by the condemning authority, and Tenant shall pay Rent and perform all of its obligations under this Lease up to that date with a proportionate refund by Landlord of any Rent as may have been paid in advance for a period subsequent to such possession.

Section 16.3 Ownership of Award. All damages for any Condemnation of all or any part of the Project or the Office Component or the Demised Premises owned by Landlord, including, but not limited to, all damages as compensation for diminution in value of the leasehold, reversion, and fee shall belong to the Landlord without any deduction therefrom for any present or future estate of Tenant, and Tenant hereby assigns to Landlord all its right, title and interest to any such award. Notwithstanding anything else in this Section 16.3, Tenant may claim and recover from the condemning authority a separate award for Tenant's moving expenses, business dislocation damages, Tenant's personal property and fixtures, the unamortized costs of leasehold improvements paid for by Tenant, and any other award that would not materially reduce the award payable to Landlord. Each party shall seek its own award, as limited above, at its own expense, and neither shall have any right to the award made to the other.

## ARTICLE 17. **MAINTENANCE OF DEMISED PREMISES**

Section 17.1 Landlord's Duty to Maintain. Landlord shall keep and maintain in good repair and working order and perform maintenance upon the: (a) structural elements of the building of which the Demised Premises are a part; (b) mechanical (including HVAC), electrical, plumbing and fire/life safety systems serving the building in general; (c) Common Areas; (d) roof of the building; (e) exterior windows of the building; and (f) elevators serving the

building. Notwithstanding the foregoing, Landlord shall not be liable to Tenant on account of Landlord's failure to make repairs unless Tenant shall have given Landlord written notice of the necessity for such repairs and has afforded Landlord a reasonable opportunity to effect the same after such notice. Landlord shall not have any obligation for repair hereunder to the extent of any damage caused by the negligence or willful act or omission of Tenant, its agents, contractors, employees or invitees (for which repairs Tenant shall be solely responsible) or with respect to any of the items Tenant is required to insure.

Section 17.2 Tenant's Duty to Maintain. Tenant shall, at its sole cost and expense, perform all maintenance and repairs to the Demised Premises that are not Landlord's express responsibility under this Lease, and keep the Demised Premises in good condition and repair, reasonable wear and tear excepted. Tenant's repair and maintenance obligations include, without limitation, repairs to: (a) floor covering; (b) interior partitions; (c) doors; (d) the interior side of demising walls; (e) electronic, phone and data cabling and related equipment that is installed by or for the exclusive benefit of Tenant; (f) supplemental air conditioning units, kitchens, including hot water heaters, plumbing, and similar facilities exclusively serving Tenant; and (g) any alterations permitted hereunder.

Section 17.3 Landlord's Repair of Demised Premises. Landlord shall be under no obligation to make any repairs, replacements, reconstruction, alterations, renewals or improvements to or upon the Demised Premises or the mechanical equipment exclusively serving the Demised Premises except as expressly provided for herein. In the event that Tenant shall fail to perform its maintenance obligations as set forth herein, Landlord shall have the right, but not the obligation, after first providing written notice to Tenant and affording reasonably opportunity to cure, to enter upon the Demised Premises and perform such maintenance at Tenant's expense, and Tenant shall promptly reimburse Landlord for such cost, plus an additional fee for Landlord's administrative expense, as Additional Rent hereunder.

Section 17.4 Landlord's Right of Entry and Use. Landlord and its authorized representatives may enter the Demised Premises at any time during usual business hours upon at least twenty-four (24) hours' prior notice (except in the event of emergency, in which event no notice shall be necessary) for the purpose of inspecting the Demised Premises. Tenant further agrees that Landlord may from time to time go upon the Demised Premises and make any repairs to the Demised Premises or to any utilities, systems or equipment located in, above or under the Demised Premises. Landlord may install pipes, ducts, conduits, wires and other mechanical equipment serving other portions, tenants and occupants of the Project, within, under or above the Demised Premises without the same constituting an actual or constructive eviction of Tenant. Landlord may also go into the Demised Premises at all times for the purpose of showing the Demised Premises to prospective purchasers, mortgagees and tenants. No exercise by Landlord of any rights provided in this Article shall entitle Tenant to any damage for any inconvenience, disturbance, loss of business or other damage to Tenant occasioned thereby, nor to any abatement of Rent. In exercising its rights under this Section, Landlord will use commercially reasonable efforts to promptly complete any repairs or installations and to minimize the interference to Tenant's business.

ARTICLE 18. **LIENS**

No part of the Project shall be subject to liens for work done or materials used on the Demised Premises made at the request of, or on order of or to discharge an obligation of, Tenant. If any lien or notice of lien on account of an alleged debt of Tenant or any notice of lien by a party engaged by Tenant or Tenant's contractor to work on the Demised Premises shall be filed against the Project, the Office Component, or the Demised Premises, or any part thereof, Tenant, within thirty (30) days after notice of the filing thereof, will cause the same to be discharged of record. If Tenant shall fail to cause such lien or notice of lien to be discharged within the aforesaid period, then, in addition to any other right or remedy, Landlord may discharge the same either by paying the amounts claimed to be due or by procuring the discharge of such lien by deposit or by bonding procedures. Any amount so paid by Landlord and all costs and expenses, including reasonable attorneys' fees, actually incurred by Landlord in connection therewith and including interest at the Default Rate, shall constitute Additional Rent and shall be paid by Tenant to Landlord on demand. The obligations of Tenant under this Article shall survive the termination or expiration of this Lease.

ARTICLE 19. **SIGNS**

Landlord, at its expense, shall provide Tenant with one listing on the Office Component electronic directory. Landlord shall also provide tenant with one building standard suite entry sign. Tenant shall not install or erect any other signs at, on or in the Demised Premises without Landlord's prior written approval. Landlord may remove any signs or displays that are in violation of this Section.

ARTICLE 20. **ASSIGNMENT AND SUBLETTING**

Section 20.1 Restrictions on Assignment. Tenant shall have no right to transfer, assign, sublet, enter into license or concession agreements, or mortgage or hypothecate this Lease or the Tenant's interest in the Demised Premises or any part thereof without Landlord's prior written consent. Any attempted transfer, assignment, subletting, license or concession agreement or hypothecation shall be void and confer no rights upon any third person. Any assignment of this Lease without the prior written approval of Landlord shall be a violation of this Section. Landlord may deny its consent to assignment without cause or justification and may impose such conditions upon the granting of its consent as it may deem appropriate, including, without limitation, requiring the assignee to agree to new or different terms.

Section 20.2 Change of Ownership. If Tenant or any guarantor is a corporation, limited liability company, partnership, or other business entity, a transfer, assignment or hypothecation of any stock or interest in such corporation, limited liability company, partnership, or other business entity by any stockholder, member, partner, or owner so as to result in a change in the control thereof by the person, persons or entities owning a majority interest therein as of the date of this Lease shall be deemed to be an assignment of this Lease.

Section 20.3 Requirement for Transfer. In the event that Tenant proposes any Transfer of the Demised Premises or the Lease, whether by assignment, subletting or otherwise (each a "Transfer") Tenant shall notify Landlord in writing by certified mail at least sixty (60) days before the date on which the Transfer is to be effective and include with such notice (a) the name

of the entity receiving a Transfer (the "Transferee"); (b) a detailed description of the business of the Transferee; (c) audited financial statements of the Transferee; (d) all written agreements governing the Transfer; (e) any information reasonably requested by Landlord with respect to the Transfer or the Transferee; and (f) a review and administration fee of Three Thousand and No/100 Dollars ($3,000.00). No such consent by Landlord to the proposed Transfer, and no such transfer, assignment or sublease shall relieve Tenant of its obligations under this Lease.

Section 20.4 Permitted Assignment. Notwithstanding anything contained in this Article 20 to the contrary, Tenant may without Landlord's prior written consent assign this Lease to any corporation or other artificial entity (a "Successor Corporation") into or with which Tenant is merged or consolidated or to an entity which purchases all, or substantially all, of the assets of Tenant (a "Purchaser"); provided, that (i) Tenant gives Landlord written notice of such assignment or sublease not later than thirty (30) days prior to the effective date of such assignment, (ii) Tenant shall not be released from any liability under this Lease, whether past, present or future, by reason of such assignment or sublease, and (iii) the Successor Corporation or Purchaser, as the case maybe, assumes this Lease by a written assumption agreement delivered to Landlord prior to the effective date of such assignment.

ARTICLE 21. **DEFAULT**

Section 21.1 Events of Default. The following shall each be deemed to be an "Event of Default" under this Lease:

(a) Any part of the Rent required to be paid by Tenant under this Lease shall not be paid when due and remains unpaid after five (5) days' written notice from Landlord (provided, however, Landlord shall not be required to provide written notices of monetary defaults more often than one (1) time in any twelve [12] month period, and each additional failure shall be an Event of Default without any notice);

(b) Tenant fails in the observance or performance of any of its other covenants, agreements or conditions provided for in this Lease and such failure shall continue for a period of thirty (30) days after written notice thereof from Landlord to Tenant (unless such failure cannot reasonably be cured within thirty (30) days and Tenant shall have commenced to cure said failure within said thirty (30) days and thereafter diligently and continuously pursues such cure to completion, so long as such cure is completed within a total of sixty (60) days);

(c) Tenant breaches any Governing Instrument beyond any applicable cure period, or causes Landlord to breach any Governing Instrument, provided that Tenant is given written notice of such breach and afforded a cure period which is at least as long as that set forth in the applicable Governing Instrument;

(d) Tenant's leasehold interest pursuant to this Lease is taken in execution or by other process of law; all or a substantial part of the assets of Tenant or any Guarantor is placed in the hands of a liquidator, receiver or trustee (and such receivership or trusteeship or liquidation continues for a period of thirty (30) days); Tenant or any such Guarantor makes an assignment for the benefit of creditors, admits in writing that it cannot meet its obligations as they become due or is adjudicated as bankrupt; Tenant or any such Guarantor institutes any proceedings under any federal or state insolvency or bankruptcy law; or should any involuntary proceedings be filed

against Tenant or any such Guarantor under any such insolvency or bankruptcy law (and such proceeding not be removed within ninety (90) days thereafter). The Demised Premises shall not become an asset in any such insolvency or bankruptcy proceedings.

Section 21.2 Landlord's Remedies. If any Event of Default occurs, Landlord may treat the occurrence of such Event of Default as a breach of this Lease and, in addition to any and all other rights and remedies of Landlord in this Lease or by law or in equity provided, it shall be, at the option of Landlord, without further notice or demand to Tenant, Guarantor, or any other person, the right of Landlord to:

(a) declare the Term ended and this Lease terminated and to enter the Demised Premises and take possession thereof and remove all persons therefrom and Tenant shall have no further claim thereon or thereunder;

(b) bring suit for the collection of Rent as it accrues pursuant to the terms of this Lease and damages without entering into possession of the Demised Premises or canceling or terminating this Lease, it being understood that in the case of any Event of Default, Additional Rent for each Lease Year of the unexpired Term shall be deemed to be the amount of Additional Rent payable by Tenant during the twelve (12) calendar months immediately preceding the Event of Default;

(c) with or without terminating this Lease, retake possession of the Demised Premises from Tenant by summary proceedings or otherwise; or

(d) terminate this Lease and recover from Tenant all damages which Landlord may incur by reason of Event of Default, including, without limitation, a sum which, at the date of termination represents the present value (discounted at a rate of eight percent [8%] per annum) of the excess, if any, of (x) the sum of the entire amount of Base Rent and Additional Rent, and all other charges and sums which would have been payable hereunder by Tenant for the remainder of the Term, over (y) the aggregate reasonable rental value of the Demised Premises for the same period, all of which present value of such excess sum shall be immediately due and payable. In determining the aggregate reasonable rental value pursuant to item (y) above, all relevant factors shall be considered as of the time of such termination, including, without limitation (aa) the length of time remaining in the Term, (bb) the then-current market conditions in the general area in which the Demised Premises are located, (cc) the likelihood of reletting the Demised Premises for a period of time equal to the Term, (dd) the net effective rental rates (taking into account all concessions) then being obtained for space of similar type and size in the general area in which the Demised Premises are located, (ee) the vacancy levels in comparable quality buildings in the general area in which the Demised Premises are located, (ff) the anticipated duration of the period that the Demised Premises will be unoccupied prior to reletting, (gg) the anticipated cost of reletting, and (hh) the current levels of new construction that will be completed during the remainder of the Term and the degree to which such new construction will likely affect vacancy rates and rental rates in comparable quality buildings in the general area in which the Demised Premises are located. Such payment shall constitute liquidated damages to Landlord, Landlord and Tenant acknowledging and agreeing that it is difficult to determine the actual damages Landlord would suffer by virtue of such Event of Default and that the agreed-upon liquidated damages are not punitive or a penalty and are just, fair and reasonable, all in accordance with O.C.G.A. Section 13-6-7.

Section 21.3 Other Infractions. In the event that Tenant fails to comply with the requirements of Section 11.5 (additional documents), Section 23.3 (subordination evidence) or Article 24 (estoppel certificates) and fails to cure such failure within twenty-four (24) hours after written notice from Landlord, Landlord shall have the right to assess Tenant with fines of up to One Hundred Dollars ($100.00) per occurrence, per day that such failure goes uncured.

ARTICLE 22. **LIABILITY OF LANDLORD**

Section 22.1 Limitation on Landlord's Liability. Landlord's obligations and liabilities to Tenant with respect to this Lease shall be limited solely and exclusively to Landlord's interest in the Demised Premises and neither Landlord nor any affiliate, nor any of their respective officers, directors, shareholders, partners, members, representatives or agents shall have any personal liability to Tenant or to others with respect to this Lease. Tenant hereby expressly waives and releases such personal liability on behalf of itself and all persons claiming by, through or under Tenant. Under no circumstances shall Landlord be liable for injury to Tenant's business or for any loss of income or profit therefrom. Except as specifically provided in this Lease, Landlord shall not be liable for any damage to property, injury to or death of any persons or any other liability of any kind occurring on or about the Demised Premises from any cause whatsoever.

Section 22.2 Transfer of Landlord's Interest. In the event of the sale or other transfer or conveyance of Landlord's interest in the Demised Premises (except in connection with financing obtained by Landlord), Landlord shall transfer and assign to such purchaser or transferee Landlord's corresponding rights and obligations under this Lease. Landlord shall be released from all liability and obligations hereunder arising out of any act, occurrence or omission relating to the Demised Premises or this Lease occurring after the consummation of such sale or transfer. Tenant agrees to attorn to any successor, assign, mortgagee or ground lessor of Landlord. This Article shall survive the expiration or other termination of this Lease. Notwithstanding the foregoing, the submission of the Project or any component thereof to the Governing Instruments shall not, in and of itself, constitute a transfer of Landlord's interests in the Demised Premises.

ARTICLE 23. **SUBORDINATION AND ATTORNMENT**

Section 23.1 Subordination of Lease. This Lease is and shall be subject and subordinate to the lien of all mortgages, deeds of trust, security instruments, deeds to secure debt, ground leases, master leases, and easement agreements, covering all or any part of the Project or Office Component, and to all modifications, consolidations, renewals, replacements and extensions thereof, whether now existing or hereafter created.

Section 23.2 Tenant's Attornment. In the event of any proceedings brought for the enforcement of any deed to secure debt, mortgage, deed of trust or other debt instrument (each a "Mortgage"), Tenant shall, upon demand by the holder of the Mortgage (the "Holder"), attorn to and recognize Holder as landlord under this Lease. In the event of a sale, transfer, or assignment of Landlord's interest under this Lease or in the Demised Premises, Tenant shall attorn to and

recognize such purchaser or assignee as Landlord under this Lease without further act by Landlord or such purchaser or assignee. Tenant's obligations to attorn to any new landlord as set forth in this paragraph are conditioned upon such new landlord agreeing that, so long as Tenant performs its obligations under this Lease, the new landlord shall not disturb Tenant's rights hereunder and any instruments requested by the new landlord shall not provide for additional obligations or liabilities on the part of Tenant.

Section 23.3 Instruments to Carry Out Intent. Tenant agrees that, in order to confirm the provisions of this Article, but in no way limiting the self-operative effect of said provisions, Tenant shall execute and deliver whatever instruments may be required for such purposes (including, without limitation, a subordination, nondisturbance and attornment agreement in favor of Holder, in a form reasonably acceptable to Landlord and Tenant (an "SNDA")) within fifteen (15) days following written request by Landlord. Notwithstanding the above, Tenant shall not be required to subordinate this Lease to a Mortgage hereafter recorded against the Project unless Tenant is furnished with a written SNDA for the benefit of Tenant. The SNDA shall be in the Lender's standard form (with such commercially reasonable and customary modifications thereto as may be requested in writing by Tenant), and shall provide, among other provisions, that so long as this Lease shall be in full force and effect that in the event it should become necessary to foreclose the Mortgage, the Lender thereunder will not join Tenant in summary or foreclosure proceedings or otherwise disturb Tenant's possession of the Demised Premises pursuant to this Lease, so long as there does not exist an uncured Event of Default by Tenant.

## ARTICLE 24. **ESTOPPEL CERTIFICATES**

Within twenty (20) days after Tenant opens for business in the Demised Premises, and upon ten (10) days' notice at such other times as Landlord may request, Tenant agrees to execute and deliver to Landlord, or to such other addressee or addressees as Landlord may designate (and any such addressee may rely thereon), an estoppel certificate in the form attached hereto as **Exhibit F** confirming and certifying (if true) the facts set forth therein and making such other true representations as may be reasonably requested by Landlord. Landlord and any party so designated by Landlord shall be entitled to rely on such estoppel certificate. If Tenant fails to supply such estoppel certificate within the time required by this Article and fails to object in writing specifying the manner in which the requested estoppel certificate is untrue, it shall be conclusively deemed that the matters set forth in the requested estoppel certificate are true and correct as of the date of the request.

## ARTICLE 25. **QUIET ENJOYMENT**

Upon payment by Tenant of the Rent herein provided for and upon the observance and performance of all of the agreements, covenants, terms and conditions on Tenant's part to be observed and performed, Tenant shall peaceably and quietly hold and enjoy the Demised Premises for the Term without hindrance or interruption by Landlord or any other person or persons lawfully or equitably claiming by, through or under Landlord, subject to the terms and conditions of this Lease.

ARTICLE 26. **SURRENDER AND HOLDING OVER**

Section 26.1 Surrender. Tenant shall deliver up and surrender to Landlord possession of the Demised Premises upon the expiration or earlier termination of the Term, broom clean, free of debris, in good order, condition and state of repair and shall deliver the keys at the office of Landlord or to any other address as Landlord may designate. Tenant shall properly disconnect and tag all low voltage data cabling in the Demised Premises. Tenant, at its expense, shall repair any damage occasioned to the Demised Premises or any portion of the Project by reason of installation or removal of any trade fixtures and other personal property. If Tenant fails to remove such items from the Demised Premises within three (3) Business Days after such expiration or termination, then in any such event all such trade fixtures and other personal property shall thereupon become the property of Landlord without further act by either party hereto, unless Landlord elects to require their removal, in which case Tenant agrees to promptly remove same and restore the Demised Premises to its prior condition at Tenant's expense. All leasehold improvements to the Demised Premises by Tenant, including, but not limited to, the items furnished pursuant to Landlord's Work and Tenant's Work, but excluding trade fixtures, shall become the property of Landlord upon expiration or earlier termination of this Lease; provided, however, that at the time Landlord approves any alterations to the Demised Premises, Landlord may designate by written notice to Tenant those alterations, changes and additions which shall be removed by Tenant at the expiration or termination of this Lease, in which event Tenant shall, at its expense, promptly remove the same and repair any damage to the Demised Premises caused by such removal, which obligation shall survive the expiration or other termination of this Lease. The obligations of Tenant under this Section shall survive the expiration or other termination of this Lease.

Section 26.2 Holding Over. If not sooner terminated as herein provided, this Lease shall terminate at the end of the Term without the necessity of notice from either Landlord or Tenant to terminate the same. If Tenant or any party claiming under Tenant remains in possession of the Demised Premises, or any part thereof, after the expiration or earlier termination of this Lease, no tenancy or interest in the Demised Premises shall result therefrom, but such holding over shall be a tenancy at sufferance and all such parties shall be subject to immediate eviction and removal and Tenant shall upon demand pay to Landlord a sum equal to all Additional Rent provided for in this Lease during any period which Tenant shall hold over the Demised Premises, plus an amount computed at the rate of one hundred twenty-five percent (125%) of the Base Rent for the last month of the Term, for the first month of such holdover, and one hundred fifty percent (150%) of the Base Rent for the last month of the Term for any additional holdover. The acceptance of any such amounts by Landlord shall not estop Landlord from pursuing or constitute a waiver by Landlord of its rights against Tenant as a tenant at sufferance.

ARTICLE 27. **SECURITY DEPOSIT AND LETTER OF CREDIT**

Section 27.1 Security Deposit. As security for the faithful performance by Tenant of all of the terms and conditions of this Lease on the Tenant's part to be performed, Tenant has deposited with Landlord a security deposit in the amount set forth in Section 1.1 (the "Security Deposit"). Landlord shall have the right after Tenant's failure to pay as required by the terms hereof to apply any part of the Security Deposit to the payment of monies due to Landlord

hereunder by Tenant, but such application shall not remedy any Event of Default. In the event Landlord applies the Security Deposit or any part thereof to satisfy any of Tenant's obligations under this Lease or to pay a late fee as set forth above in this Article, Tenant shall deposit with Landlord within three (3) Business Days in immediately available funds the amount so applied by Landlord so that at all times during the Term, the Security Deposit will total the amount set forth in Section 1.1. Upon the expiration of the Term and if Tenant has fully and faithfully carried out all of the terms, covenants and conditions on its part to be performed, Landlord shall promptly return the balance of the Security Deposit to Tenant without interest. In the event of a sale of the Demised Premises, Landlord shall have the right to transfer the Security Deposit to the transferee and Landlord shall thereupon be released from all liability for the return of the Security Deposit and Tenant shall look solely to the new landlord for the return of the Security Deposit. This provision shall apply to every transfer or assignment made of the Security Deposit to a new landlord. The Security Deposit shall not be mortgaged, assigned or encumbered by Tenant without the written consent of Landlord.

Section 27.2 Letter of Credit.

(a) On or before April 1, 2014, Tenant shall deliver to Landlord, as additional security for the obligations of Tenant under this Lease, an irrevocable and transferable letter of credit issued by a bank acceptable to Landlord, in Landlord's sole discretion ("Issuer"), in favor of Landlord, in the initial amount of Two Million Five Hundred Thousand Dollars ($2,500,000.00) (the "Letter of Credit"). The Letter of Credit shall be in a form acceptable to Landlord in its sole discretion. Tenant shall maintain the Letter of Credit in favor of Landlord throughout the Term of the Lease.

(b) In the event that Tenant shall fail to deliver the Letter of Credit to Landlord by the date set forth above, such failure shall be an Event of Default hereunder (subject to the notice and cure periods set forth in Section 21.1(a) hereof, and Landlord shall be entitled to terminate this Lease by written notice to Tenant, and retain the Security Deposit paid by Tenant as partial compensation for such failure, in addition to any other remedies available to Landlord.

(c) The term of the original Letter of Credit required hereunder shall commence as of the date of delivery thereof to Landlord and shall expire no earlier than one (1) year thereafter. The expiration date of the Letter of Credit shall be clearly stated on its face by month, day and year. The Letter of Credit shall be payable in immediately available funds in U.S. Dollars upon presentation by Landlord to Issuer of the original of the Letter of Credit when accompanied by a certificate from Landlord confirming that Landlord is entitled to payment pursuant to the terms of this Lease.

(d) The Letter of Credit shall be irrevocable for the term thereof and shall provide that it will be automatically renewed for successive periods of one (1) year each without any other action by Landlord or the Issuer. The Issuer shall have the right not to renew such Letter of Credit by giving written notice to Landlord not less than ninety (90) days prior to the expiration thereof. The privilege of the Issuer not to renew such Letter of Credit shall not relieve Tenant of the obligation to maintain the Letter of Credit with Landlord. If the Issuer notifies Landlord that the Letter of Credit will not be automatically renewed at the end of the then current term thereof, Tenant, at least thirty (30) days prior to the expiration of the Letter of Credit, shall deliver to

Landlord a new Letter of Credit or an endorsement to the existing Letter of Credit, and any other evidence reasonably required by Landlord evidencing that the Letter of Credit has been renewed or replaced for a period of at least one (1) year. If the Issuer gives notice that the Letter of Credit will not automatically renew, and Tenant shall fail to renew or replace the Letter of Credit with a replacement Letter of Credit on or before the deadline for such delivery, Landlord may present the Letter of Credit for payment and retain the proceeds thereof as an addition to the Security Deposit, in lieu of the Letter of Credit.

(e) If Tenant fails to pay Rent or Additional Rent beyond any applicable notice and cure periods or otherwise commits an Event of Default under this Lease, Landlord may draw upon the Letter of Credit for the payment of any amount due Landlord or to reimburse or compensate Landlord for any liability, cost, expense, loss or damage (including attorney's fees) which Landlord may suffer or incur by reason thereof. Landlord may draw upon the Letter of Credit on one or more occasions, and may make demand for less than the full amount of the Letter of Credit. Thereafter, Landlord shall be entitled to use, apply and retain the proceeds of such draw or draws on a Letter of Credit for the payment of any one or more of the following: (1) any Rent, Additional Rent or other sums of money that Tenant may not have paid when due; and (2) reimbursement to Landlord of any sum which Landlord may expend or be required to expend by reason of such default, including, without limitation, any damage or deficiency incurred by Landlord as a result of the reletting of the Demised Premises.

(f) Upon any drawing by Landlord of any amount under the Letter of Credit, Tenant shall promptly cause the Letter of Credit to be issued or reinstated for the full amount required hereunder. The failure of the Issuer to reissue or reinstate the stated amount of the Letter of Credit within ten (10) business days after such drawing shall constitute an Event of Default by Tenant under this Lease, without the necessity of any notice from Landlord and without any grace period or cure rights.

(g) In the event that Landlord shall sell or transfer the Demised Premises to a third party, Landlord shall be entitled to assign the Letter of Credit and rights thereto to the purchaser. At the request of Landlord, Tenant shall cause the Issuer to reissue the Letter of Credit in the name of the purchaser.

(h) On the first (1st), second (2nd), third (3rd) and fourth (4th) anniversary of the Rent Commencement Date, Tenant may reduce the amount of the Letter of Credit by Five Hundred Thousand Dollars ($500,000.00) each time, so that as of the 4th anniversary, the amount of the Letter of Credit shall be $500,000.00. On such 4th anniversary, Tenant shall have the right to deliver to Landlord the cash sum of $500,000.00 to be held as an addition to the Security Deposit, in lieu of continuing to maintain the Letter of Credit.

ARTICLE 28. **GUARANTY**

Intentionally deleted.

ARTICLE 29. **RELOCATION**

Intentionally deleted.

ARTICLE 30. **ADDITIONAL LEASE PROVISIONS**

Tenant understands and agrees that it shall be bound by the additional lease provisions attached hereto as **Exhibit H** and incorporated into this Lease.

ARTICLE 31. **MISCELLANEOUS**

Section 31.1 Relationship of Parties. Nothing herein contained shall be construed as creating any relationship between the parties other than the relationship of Landlord and Tenant, nor cause either party to be responsible in any way for the acts, debts or obligations of the other.

Section 31.2 Notices. Any notice, demand, request, approval, consent or other instrument which may be or is required to be given under this Lease shall be in writing and shall be sent to the party to be notified by United States certified mail, return receipt requested, postage prepaid, or by a nationally recognized overnight delivery service addressed to the party to be notified at the address of such party set forth in Section 1.1, or to such other address as such party may from time to time designate by at least thirty (30) days prior written notice to the other given in accordance with the terms of this Section. Any such notice shall be deemed given on the date on which such notice is deposited in the United States Mail or with the overnight delivery service, but the timeframe in which a response must be given shall commence on the date on which the notice is delivered (or delivery is first attempted in the event of a change of address of which the other party was not informed in accordance with this Section or if delivery is rejected).

Section 31.3 Brokers Commission. Landlord and Tenant each warrants and represents to the other that it has dealt with no broker in connection with this Lease other than Landlord's Broker and Tenant's Broker, if any, named in Section 1.1. Landlord and Tenant each hereby indemnifies and holds harmless the other from and against any and all liabilities, damages, costs, expenses and/or fees (including but not limited to reasonable legal and other professional fees), resulting from, relating to or arising out of its warranty and representation set forth in the first sentence of this Section. This indemnity and hold harmless shall survive the expiration or earlier termination of this Lease.

Section 31.4 Unavoidable Delays. If either party shall be delayed or hindered in or prevented from the performance of any act required hereunder by any reason, including, without limitation, strikes, lockouts, inability to procure materials, riots, insurrection, war, or other beyond the reasonable control of the party delayed in performing work or doing acts required under the terms of this Lease, then performance of such act shall be excused for the period of the delay and the period for the performance of any such act shall be extended for a period equivalent to the period of such delay. The provisions of this Section shall not operate to excuse Tenant from prompt payment of Rent or any other payments required by the terms of this Lease and shall not extend the Term.

Section 31.5 Waiver. The waiver by either party of any term, covenant, agreement or condition herein shall not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant, agreement or condition. The acceptance of Rent hereunder by Landlord shall not be deemed to be a waiver of any prior default by Tenant, other than the failure of Tenant to pay the particular Rent so accepted.

Section 31.6 Accord and Satisfaction. No payment by Tenant or receipt by Landlord of a lesser amount than the Rent herein stipulated shall be deemed to be other than on account of the earliest stipulated Rent, nor shall any endorsement or statement on any check or any letter accompanying any such check or payment as Rent be deemed an accord and satisfaction and Landlord may accept such check or payment without prejudice to Landlord's right to recover the balance of such Rent or pursue any other remedy provided for in this Lease or available at law or in equity.

Section 31.7 Joint and Several Liability. If two or more individuals, corporations, partnerships, limited liability companies, or other business associations (or any combination of two or more thereof) shall sign this Lease as Tenant, the liability of each of them shall be joint and several. In like manner, if the Tenant named in this Lease shall be a partnership, limited liability company, or other business entity, the members of which are, by virtue of statute or general law, subject to personal liability, the liability of each such member shall be joint and several.

Section 31.8 Severability. If any provision in this Lease or the application thereof shall to any extent be held to be invalid, illegal or otherwise unenforceable by a court of competent jurisdiction, the remainder of this Lease, and the application of such provision other than as invalid, illegal, or unenforceable, shall not be affected thereby; and such provisions in this Lease shall be valid and enforceable to the fullest extent permitted by law.

Section 31.9 Time of the Essence. Time is of the essence of each and every obligation under this Lease.

Section 31.10 Confidential Terms. Tenant hereby agrees not to disclose the terms of this Lease to anyone other than Tenant's attorneys, accountants, officers, directors, shareholders, investors and lenders. This restriction on disclosure shall survive the termination or expiration of this Lease.

Section 31.11 Other Tenants. Landlord reserves the absolute right to grant such other estates or tenancies in the Project as Landlord shall determine in the exercise of its sole business judgment. Tenant does not rely on the fact, nor does Landlord represent, that any specific tenant or occupant or number of tenants or occupants shall occupy any space in the Project.

Section 31.12 Attorneys Fees. In the event that either party engages an attorney to enforce the obligations of the other party hereunder, the non-prevailing party shall be responsible for paying the amount of any reasonable attorneys fees and costs actually incurred by the prevailing party.

Section 31.13 Usufruct. This Lease shall create the relationship of landlord and tenant between the parties, and no estate shall pass from Landlord. Tenant shall have a usufruct, not subject to levy or sale.

Section 31.14 Project Condition Disclosure. (a) Tenant acknowledges that Tenant has been informed that the Demised Premises and the Project are part of a mixed-use redevelopment. The real property upon which the Project is located was originally developed, owned and operated by Sears Roebuck & Co. and later owned and operated by the City of

Atlanta. Prior to redevelopment, the Project was used for a variety of purposes, including as a retail store, as a warehouse, and as a garage where vehicles were fueled and serviced. In the course of these activities, Hazardous Substances, including petroleum products, were released into the soil and groundwater of the Project. In addition, there have been releases of Hazardous Substances, including solvents, into the groundwater at properties in close proximity to the Project, which have migrated onto the Project property. As was typical for the time in which this property was previously developed, Hazardous Substances were used in the Project and in its building materials, including asbestos containing materials ("ACM"), sand containing contamination (''Contaminated Sand") and lead-based paint and lead-based shellac ("Lead Coatings"). Prior to the redevelopment of the Project, Landlord engaged a consultant to assess the environmental conditions of the Project. Using these assessment data, Landlord submitted a Brownfield Corrective Action Plan ("CAP") to the State of Georgia's environmental agency, the Department of Natural Resources, Environmental Protection Division ("EPD"). The CAP calls for the Landlord to perform soil remediation and to evaluate the potential risk of vapor intrusion. Vapor intrusion occurs when Hazardous Substances present in soil or groundwater migrate vertically into the indoor air of the buildings above contaminated areas. Prior to the Tenant's occupancy, Landlord will evaluate the vapor intrusion risk for the Demised Premises, and, if necessary, take appropriate measures consistent with the Permitted Use of the Demised Premises. EPD has reviewed the CAP and determined that, if the CAP is implemented, the Project will be suitable for commercial and residential use. Landlord is currently conducting the corrective action specified in the CAP. At such time as Landlord has achieved the cleanup standards set forth in the CAP, there will remain residual contamination in the soil and groundwater under the Project, but at levels that EPD has concluded are acceptable for commercial and residential use. The ACM, Contaminated Sand, and Lead Coatings will be remediated or encapsulated by Landlord to make the Project suitable for commercial and residential use in accordance with that certain Operation and Maintenance Plan for ACM, that certain Operation and Maintenance Plan for Sand, and that certain Operation and Maintenance Plan for Coatings being prepared for Landlord (collectively, the "OM Plans"), copies of which shall be delivered to Tenant upon their respective completion. Landlord shall promptly deliver to Tenant copies of any written confirmation from any applicable governing authority of Landlord's compliance or failure to comply with the OM Plans.

(b) Tenant covenants and agrees that during the Term: (a) Tenant shall comply with the OM Plans; (b) Tenant shall immediately notify Landlord in the event that Tenant discovers that any ACM, Contaminated Sand or Lead Coatings has been disturbed in any way, or any other portion of the Project is not in compliance with the OM Plans; and (c) Tenant shall indemnify, defend and hold Landlord harmless for any cost incurred by Landlord as a result of Tenant's failure to comply with the OM Plans.

(c) Landlord covenants and agrees that during the Term: (a) Landlord shall comply with the components of the CAP and OM Plans which pertain to Landlord; and (b) Landlord shall indemnify, defend and hold Tenant harmless for any cost incurred by Tenant as a result of Landlord's failure to comply with any component of the CAP and OM Plans which pertains to Landlord.

Section 31.15 Miscellaneous General Provisions. This Lease, including the Exhibits and any addenda, sets forth all the covenants, promises, agreements, conditions and understandings

between Landlord and Tenant concerning the Demised Premises. For purposes of this Lease, “Business Days” shall refer to Monday through Friday of each week, exclusive of recognized Federal holidays. This Lease shall inure to the benefit of and be binding upon Landlord, its successors and assigns and Tenant and its permitted successors and assigns. The laws of the State of Georgia shall govern the validity, performance, enforcement and interpretation of this Lease. Tenant agrees that it will not record this Lease. This Lease may be executed in more than one counterpart, and each such counterpart shall be deemed to be an original document. The captions appearing in this Lease are inserted only as a matter of convenience and in no way amplify, define, limit, construe or describe the scope or intent of such sections of the Lease. This Lease is the product of negotiations between the Landlord and Tenant and shall not be construed for or against either party.

IN WITNESS WHEREOF, Landlord and Tenant have duly executed this Lease under seal as of the Effective Date.

LANDLORD:

JAMESTOWN Ponce City Market, L.P., a Delaware limited partnership

By: JAMESTOWN Ponce City Market GP, LLC, a Georgia limited liability company, its general partner

By: /s/ Matt M. Bronfman

Name: Matt M. Bronfman

Title: President

TENANT:

CARDLYTICS, INC., a Delaware corporation

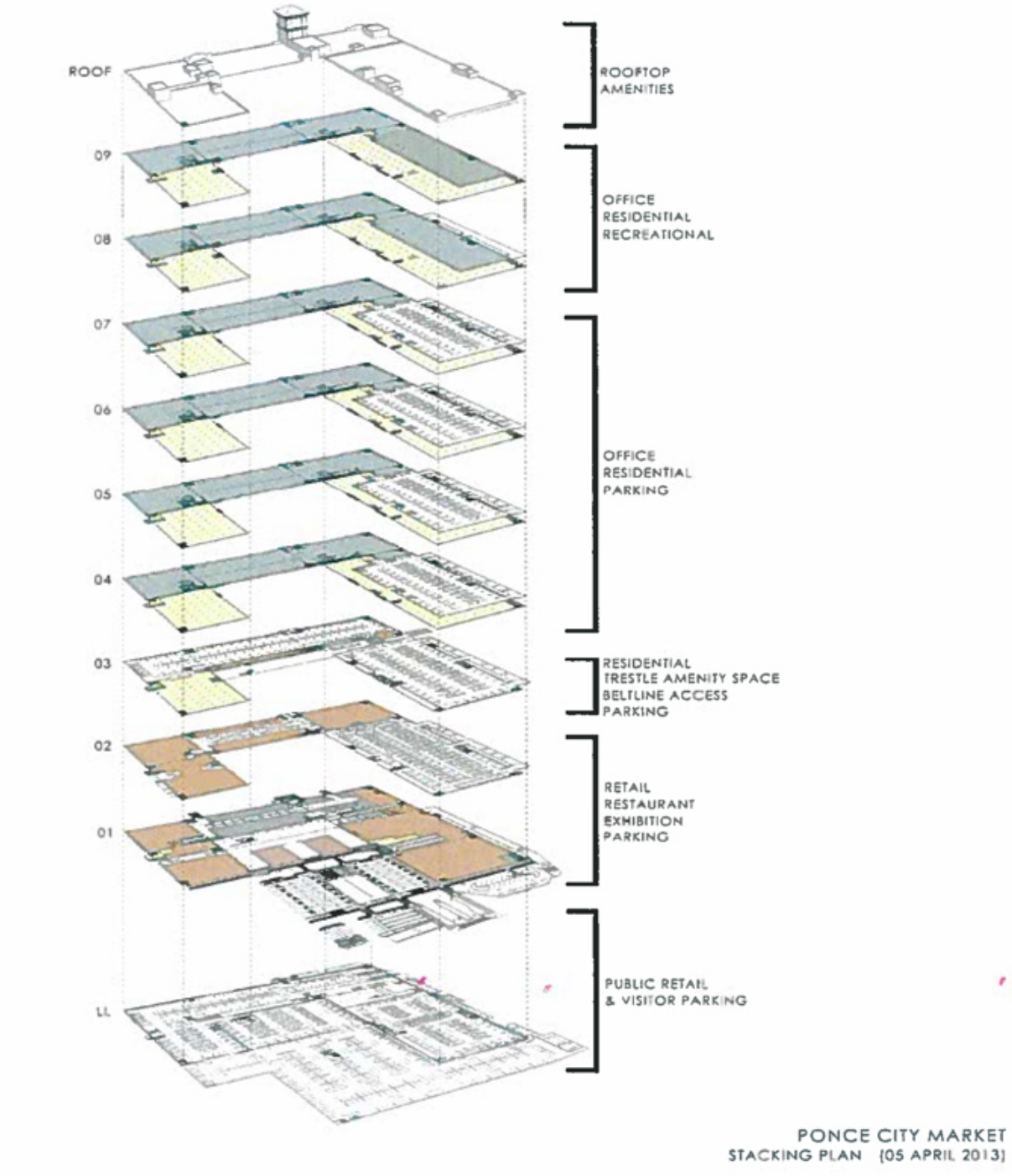
By: /s/ Scott Grimes

Name: Scott Grimes

Title: CEO

**EXHIBIT A**

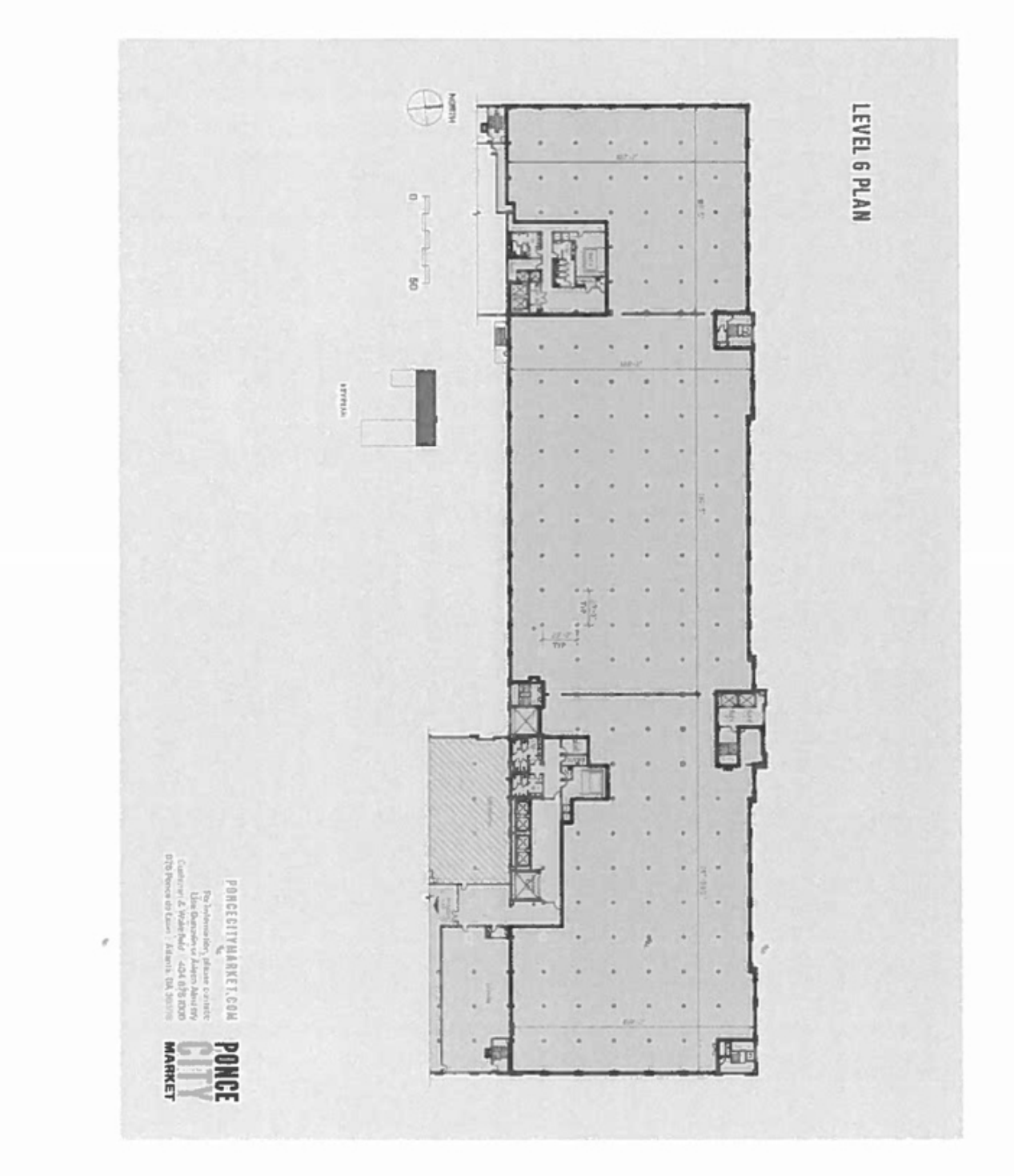
**PONCE CITY MARKET**




"A"

**EXHIBIT B**

**DEMISED PREMISES**




"B"

**EXHIBIT C**

**LANDLORD'S WORK**

Landlord shall perform the following work within the Office Component or the Demised Premises at Landlord's expense. All of the Landlord's work will be completed in a good and workmanlike manner and diligently prosecuted to completion and free from liens, in accordance with the approved plans and specifications and applicable laws. All other work in the Demised Premises shall be performed at Tenant's expense, subject to Landlord's payment of the Tenant Allowance. The completion of Items 1 through 5 below shall constitute the "Pre-Delivery Condition."

1. The interior walls surrounding the mechanical rooms shall be constructed, taped and sanded.

2. The walls surrounding the rest rooms which will serve the 6th floor shall be constructed.

3. Landlord shall be providing at least temporary power to the Demised Premises to facilitate construction of the Tenant's Work.

4. The mechanical duct loops serving the Demised Premises shall be in place and operational.

5. Life safety equipment and wet sprinkler system shall be installed throughout the Demised Premises per NFPA-13, with sprinkler system installed in standard configuration, heads turned up. Provided Tenant has supplied to Landlord Tenant's proposed configuration for the sprinklers prior to the final installation thereof in the Demised Premises, the sprinkler heads shall be installed according to Tenant's design at no additional cost.

6. Electrical power shall be distributed to the Demised Premises via main switchboards with ground fault protection.

7. Electrical distribution for each floor of the Demised Premises shall be in accordance with the following:

(a) Three (3) 400A 2-section panel (HM*) with 30 poles each (90-poles total) at 480V/277, for HVAC.

(b) Two (2) 100A 42-pole lighting panel (H*_) with 42 poles at 480V/277 for lighting. Access to these panels will be available.

(c) Four (4) energy efficient transformers of varying sizes, totaling 375 kVA, feeding 208V/120 panels.

(d) Five (5) 225 amp, 2-section panels (L*A, L*B, L*C, L*D, L*D) with 42- poles each (84-poles total) at 208/120V. Minimum three hundred (300) 20A/1-pole spare circuit breakers provided.

(e) Sufficient lighting circuits will be available for emergency egress lighting use only.

8. An empty conduit system typical for a Class A facility shall be provided for telephone/data service from main electrical/telephone room and run vertically to electrical/telephone rooms at the 6th floor.

9. HVAC:

(a) The basic Office Component block load shall include heat gain and losses per design conditions and include lighting for the Demised Premises at up to 0.9 watts per usable square foot. Occupancy load shall be not less than seven (7) persons per usable 1,000 square feet. The outside air shall be introduced at a rate of 17 CFM per person (ASHRAE 62.1-2010). The process equipment load shall be 2.0 watts per usable square feet to handle the total appliance and receptacle load exclusive of lighting and building operation.

(b) The HVAC equipment shall maintain the following indoor conditions maintained to plus or minus 2 degrees F, based upon the local conditions specified in the 2009 Edition of ASHRAE HANDBOOK OF FUNDAMENTALS:

(1) Summer indoor shall be 74 degrees F.D.B. and 50% maximum relative humidity. The cooling tower, self-contained units, piping and equipment shall be designed and sized accordingly.

(2) Summer outdoor shall be the ASHRAE 2% coincident weather data.

(3) Winter indoor shall be 70 degrees F.D.B. The equipment shall be designed and sized accordingly.

(4) Winter outdoor shall be the ASHRAE 99% weather data.

(c) The 6th floor shall be provided with a Trane water-cooled self-contained unit or equal, with a medium pressure duct loop. Unit sizes are as follows:

Westside Nominal 90-tons
Eastside Nominal 90-tons

(d) Two (2) energy recovery units will provide outside air to the 6th floor. Each floor’s outside air will be monitored by the Energy Management System for the Office Component to ensure that proper ventilation is provided to the Demised Premises.

(e) All HVAC equipment (terminal units, pumps, self-contained units, etc.) will be controlled by a web-based DDC control system; Trane Summit or equal.

10. Glass panes for the exterior windows of the Demised Premises shall have been replaced and resealed on all exterior window frames to reduce outside air leakage.

11. Mecco fabric shade Window treatments, uniform across all upper floors of the Office Component, the color scheme thereof as selected by Landlord, shall have been installed by Landlord.

12. At least two (2) traction passenger elevators for the Office Component shall be operating.

13. The main building lobby of the Office Component shall be substantially complete and open for use by tenants of the Office Component and their guests and invitees.

If the Landlord's Work as described herein is not substantially completed on or before October 1, 2014 (the "Outside Completion Date"), Tenant shall be entitled to a one (1) day abatement of all Base Rent and other charges due from Tenant under this Lease for each day after the Outside Completion Date until the Delivery Date which abatement will result in an extension of the period between the Lease Commencement Date and the Rent Commencement Date. The Outside Completion Date shall be extended day for day for any unavoidable delay as set forth in Section 31.4. In addition to such rent abatement, in such event, Landlord shall be responsible to Tenant for the reasonable, actual cost incurred by Tenant to directly resulting from the Landlord's failure to deliver the Demised Premises by the Outside Completion Date, to hold over in its then existing space or secure temporary space, provided that the maximum liability to Landlord in such event shall not exceed One Million Five Hundred Thousand Dollars ($1,500,000.00).

**EXHIBIT D**

**TENANT'S WORK**

1. Definitions. In this Exhibit D, the following terms shall have the following meaning:

(a) **Tenant's Representative:** To be designated by Tenant in writing to Landlord.

(b) **Landlord's Representative:** Jim Irwin.

(c) **Space Plan:** A drawing of the Demised Premises clearly showing the layout and relationship of all departments and offices, depicting partitions, corridors, door locations, break rooms, copy rooms and delineation of furniture.

(d) **Estimated Construction Costs:** A preliminary estimate of the Costs of the Tenant's Work that are depicted on the Space Plan, including all architectural, engineering, contractor, and any other costs as can be determined from the Space Plan.

(e) **Working Drawings:** Construction documents detailing the Tenant's Work, including, without limitation, the mechanical, electrical and plumbing work, and conforming to codes, complete in form and content. The Working Drawings shall include a review by Landlord's architect and/or engineers, at no cost to Tenant, of the construction documents prepared by Tenant's architect.

(f) **Construction Schedule:** A schedule depicting the relative time frames for various activities related to the construction of the Tenant's Work in the Demised Premises.

(g) **Final Cost Proposal:** A final estimate of Costs of the Tenant's Work that are depicted on the Work Drawings, including all architectural, engineering, contractor, and any other costs, and clearly indicating the dollar amount, if any, that is to be paid by Tenant.

(h) **General Contractor.** The general contractor for the performance of the Tenant's Work.

(i) **Maximum Approved Cost:** The sum of the Tenant Allowance and any additional amount that Tenant has agreed to pay for the Tenant's Work to the Demised Premises.

(j) **Tenant's Work:** The work to be performed at the Demised Premises, which is inclusive of the following:

(1) The development of Space Plans and Working Drawings, including supporting engineering studies.

(2) All construction work necessary to complete the work described in the Space Plans and Working Drawings, which shall include, without limitation, reflected ceiling plan, walls, and floor surfaces, as well as complete HVAC, lighting, electrical, and life-safety systems.

The Tenant's Work will not include personal property items, such as decorator items or services, art work, plants, furniture, or furniture systems, and equipment not permanently affixed to the Demised Premises.

(k) **Cost of the Tenant's Work:** The Cost of the Tenant's Work includes, but is not limited to, the following: (1) all space planning, design, architectural and engineering fees and expenses, including, but not limited to, the Space Plan, the Final Space Plan, the Working Drawings; (2) the cost and expense of constructing and installing the Tenant's Work; (3) all contractor and construction manager costs and fees; (4) Landlord's construction management fee, which shall equal one and one-half percent (1.5 %) of the Cost of the Tenant's Work excluding such management fee and other softs costs; and (5) all permits and taxes.

(1) **Change Order:** Any change, modification, or addition to the Working Drawings after Tenant has approved the same.

(m) **Building Standard:** Component elements utilized in the design and construction of the Tenant's Work that have been pre-selected by the Landlord to ensure uniformity of quality, function, and appearance throughout the Building. These elements include, but are not limited to, ceiling systems, doors, hardware, walls, floor coverings, finishes, window coverings, light fixtures, and HVAC components.

2. Representatives. Landlord appoints Landlord's Representative to act for Landlord in all matters associated with this Exhibit D. Tenant appoints Tenant's Representative to act for Tenant in all matters associated with this Exhibit D. All inquiries, requests, instructions, authorizations, approvals, consents, and other communications with respect to the matters covered by this Exhibit D will be made by or to Landlord's Representative or Tenant's Representative, as the case may be. Except for Landlord's Representative, Tenant will not make any inquiries of or requests to, and will not give any instructions, or authorizations to, any contractor, employee or agent of Landlord, including, without limitation, Landlord's architect, engineers, and contractors or any of their agents or employees, with regard to matters associated with this Exhibit D. Either party may change its Representative under this Exhibit D at any time by providing three (3) days' prior written notice to the other party.

3. Project Design and Construction. The design and construction of all Tenant's Work will be performed by architects, designers and a General Contractor approved in writing by Landlord, which approval shall not be unreasonably withheld.

4. Cost Responsibilities.

(a) **Landlord:** Landlord will pay up to the amount of the Tenant Allowance for the Cost of the Tenant's Work.

(b) **Tenant:** To the extent that the Cost of the Tenant's Work exceeds the Tenant Allowance, Tenant will pay any such excess.

(c) **Excess Tenant Allowance.** To the extent that the Tenant Allowance exceeds the cost of the Tenant's Work, Tenant will have the option to apply the unused portion of the Tenant Allowance (up to an amount not to exceed Five Dollars [$5.00] per square foot of the Demised Premises) to Base Rent and other charges coming due under this Lease.

5. Landlord's Approval. Landlord may withhold its approval of any Space Plan, Working Drawings, or Change Order that:

(a) Exceeds or adversely affects the structural integrity of the Project, or any component or the functionality of the heating, ventilating, air conditioning, plumbing, mechanical, electrical, communication, or other systems of the Office Component;

(b) Violates any agreement which affects the Project or binds the Landlord with respect to the Project;

(c) Conflicts with Landlord's ability to qualify for, obtain, maintain or preserve the Historic Tax Credits;

(d) Will materially increase the cost of operation or maintenance of any of the systems of the Project;

(e) Will reduce the market value of the Demised Premises or the Project at the end of the Term;

(f) Does not conform to applicable building code or is not approved by any governmental, quasi-governmental or utility authority with jurisdiction over the Demised Premises;

(g) Conflicts with or adversely impacts any of the OM Plans;

(h) Does not reflect a ten percent (10%) efficiency improvement in tenant fit-up lighting efficiency over minimum code; or

(i) Does not conform to the Building Standard as reasonably determined by Landlord.

6. Schedule of Improvement Activities.

(a) No later than January 15, 2014, Tenant will cause to be prepared a Space Plan and forward it to Landlord for review and approval. Landlord will give Tenant written notice whether or not it approves the proposed Space Plan within five (5) days after its receipt of such Space Plan. If Landlord objects in writing to the proposed Space Plan, such notice must set

forth in reasonable detail how the proposed Space Plan must be changed in order to overcome Landlord's objections. Tenant will cause a revised Space Plan to be delivered to Landlord and it will be treated as though it was the first proposed Space Plan prepared pursuant to this paragraph.

(b) After Landlord's approval of the Space Plan (the "Final Space Plan"), Tenant will promptly cause to be prepared, a preliminary estimate of the Cost of the Tenant's Work as set forth in the Final Space Plan (the "Estimated Construction Cost"). If the Estimated Construction Cost is less than the Tenant Allowance, the Estimated Construction Cost will be deemed approved without a required response from Landlord. If the Estimated Construction Cost is more than the Tenant Allowance, Tenant shall establish the Maximum Approved Cost by either:

(1) Agreeing in writing to pay the amount by which the Estimated Construction Cost exceeds the Tenant Allowance; or

(2) Agreeing to have the Final Space Plan revised in an effort to cause the Estimated Construction Cost to be either: (A) not more than the Tenant Allowance; or (B) not more than the amount equal to the Tenant Allowance plus the amount Tenant agrees to pay pursuant to clause (1) immediately above.

Tenant shall respond by notice pursuant to either clause (1) or (2) immediately above within five (5) days of the determination of the Estimated Construction Cost. Failure to respond within such five (5) day period shall be conclusively deemed to constitute Tenant's agreement pursuant to clause (1) immediately above.

(c) Upon establishment of the Maximum Approved Cost, Tenant will cause to be prepared and delivered to Landlord the Working Drawings, the Construction Schedule, and the Final Cost Proposal for the Tenant's Work in accordance with the Final Space Plan. If the Final Cost Proposal is more than the Maximum Approved Cost, Tenant will either (1) agree in writing to pay the amount by which the Final Cost Proposal exceeds the Maximum Approved Cost or (2) revise the Working Drawings in order to assure that the Final Cost Proposal is no more than the Maximum Approved Cost, such election to be made within five (5) days of determination of the Final Cost Proposal.

(d) Following approval of the Working Drawings and the Final Cost Proposal, Tenant will cause application to be made to the appropriate governmental authorities for necessary approvals and building permits. Upon receipt of the necessary approvals and permits, Tenant shall enter into a construction contract with the General Contractor, which contract shall be subject to the approval of Landlord, which approval shall not be unreasonably withheld.

7. Landlord's Role. The parties acknowledge that Landlord is not an architect, contractor or engineer and that the Tenant's Work will be designed and performed by independent architects, engineers and contractors. Landlord shall have no responsibility for the design of, or for construction means, methods or techniques or safety precautions in connection with the Tenant's Work. Landlord's approval of Tenant's Space Plan and Working Drawings for

the Tenant's Work, or other submissions, materials, drawings, plans or specifications pertaining thereto will create no responsibility or liability on the part of Landlord for the completeness, design sufficiency, or compliance with any or all laws, rules and regulations or governmental agencies or authorities with respect thereto or with respect to the Tenant's Work constructed in conformity with them. Tenant, in reviewing the Working Drawings and Tenant's Work, shall have the right, opportunity and obligation to check for any errors, omissions or defects.

8. Payment by Tenant. The amount payable by Tenant pursuant to Paragraph 4(b) hereof shall be due and payable by Tenant to Landlord 50% prior to commencement of construction of the Tenant's Work and 50% upon issuance of the final certificate of occupancy.

9. Change Orders. Tenant may request changes to the Tenant's Work during construction only by written instructions to Landlord's Representative on a form approved by Landlord. All such changes will be subject to Landlord's prior written approval in accordance with Paragraph 5 hereof. Prior to commencing any change, Tenant will prepare and deliver to Landlord, for Landlord's approval, a Change Order setting forth the revised total Maximum Approved Cost as a result of such change, which will include associated architectural, engineering, General Contractor's costs and fees, Construction Schedule changes, and the cost of Landlord's construction management fee, consistent with Paragraph 1 hereof. If Landlord approves such Change Order Tenant shall proceed to have Tenant's Work made in accordance with the Change Order.

10. Funding of Tenant Allowance. (a) Landlord shall fund the Tenant Allowance, at Landlord's option, either to Tenant or directly to the General Contractor, in accordance with the provisions of this Paragraph. No more than monthly, Tenant shall submit the draw requests to Landlord from the General Contractor, setting forth the amount requested and confirming the portion of the Tenant's Work completed through such date, for Landlord's review and approval. Landlord shall make all approved payments within fifteen (15) days after receipt of such draw request. Landlord shall fund the Tenant Allowance in pro rata payments, based on the percentage of the Tenant's Work that has been completed (but not in excess of the sums actually being disbursed to the General Contractor); provided, however, that the final ten percent (10%) of the Tenant Allowance will not be disbursed until Substantial Completion of the Tenant's Work and Landlord's receipt of final lien waivers. A condition precedent to Landlord's obligation to disburse any portion of the Tenant Allowance shall be the receipt by Landlord of (s) invoices for portions of the Tenant's Work or other eligible costs for which payment has been requisitioned, (b) partial lien waivers for such work from all persons or entities that could file mechanics' or materialmen's liens against the Project with respect to all work performed or services or materials provided through the date of each such invoice (subject only to receipt of the requisitioned amount), and (c) evidence that all labor or materials included within the Tenant's Work for which a requisition is being submitted has been incorporated into the Demised Premises in accordance with this Exhibit D. Any portion of the Tenant Allowance that remains unreserved and unapplied as of the Commencement Date shall belong to Landlord. Tenant shall include in all contracts for the Tenant's Work a provision that states that such contract is terminable by Landlord at its convenience and without cause, subject to payment only for work performed to the date of termination and reasonable termination costs, specifically excluding therefrom lost profits or other damages for early termination.

(b) In addition to the Tenant Allowance, Landlord shall reimburse Tenant up to twelve cents ($0.12) per usable square foot of the Demised Premises for the cost of "test fit" space planning analysis to be prepared by Tenant's space planner. Landlord shall pay such amount to Tenant upon completion of such test fit and receipt of an invoice therefor from Tenant.

11. Substantial Completion. Tenant shall diligently pursue the construction of the Tenant's Work to completion thereof. The date upon which the Tenant's Work has been substantially completed in accordance with the Working Drawings, as evidenced by (a) a certificate of substantial completion from Tenant's architect, and (b) the issuance of a temporary or final certificate of occupancy by applicable governing authorities which allows for Tenant's occupancy of the Demised Premises for the Permitted Use, shall be deemed the date the Tenant's Work is "Substantially Complete."

12. Tenant Default. Tenant shall cause Landlord to be a third party beneficiary of all design, architectural, and construction contracts with respect to the Tenant's Work. In the event that Tenant shall fail to commence or diligently pursue the construction of the Tenant's Work, and such failure shall continue for thirty (30) days after written notice from Landlord, Landlord shall have the right to assume Tenant's role in the construction of the Tenant's Work, at Tenant's cost and expense, subject to the payment of the Tenant Allowance.

11. Work Performed by Landlord. Landlord, its architects, engineers, contractors, suppliers, employees, agents and other such parties (collectively, "Landlord's Contractors") shall have the right to enter the Demised Premises during the construction of the Tenant's Work prior to Substantial Completion of the Tenant's Work in order to perform any portion of the Landlord's Work. Landlord agrees to cause Landlord's Contractors to work in harmony with the General Contractor and to avoid interfering with the construction of the Tenant's Work.

12. Tenant Occupancy. Tenant agrees that entry into the Demised Premises prior to the Commencement Date shall be deemed to be under all of the terms, covenants, conditions and provisions of the Lease, except for the payment of rent, and further agrees that Landlord shall not be liable in any way for any injury, loss or damage which may occur to any decorations, fixtures, personal property, installations or other improvements or items of work installed, constructed or brought upon the Demised Premises by or for Tenant or Tenant's contractors prior to Substantial Completion of the Tenant's Work, all of the same being at Tenant's sole risk. Without limitation as to other provisions, Tenant hereby expressly acknowledges that Tenant's indemnity and related obligations under the Lease shall apply to all claims and matters arising from early entry to the Demised Premises pursuant hereto. All of Tenant's contractors shall maintain worker's compensation, liability insurance, and property insurance and such other insurance in force and effect as may be reasonably requested by Landlord or as required by applicable law, and shall provide copies of applicable insurance certificates to Landlord for review and approval prior to the commencement of any work in the Demised Premises. Any such insurance certificate for liability coverage shall name Landlord as additional insured.

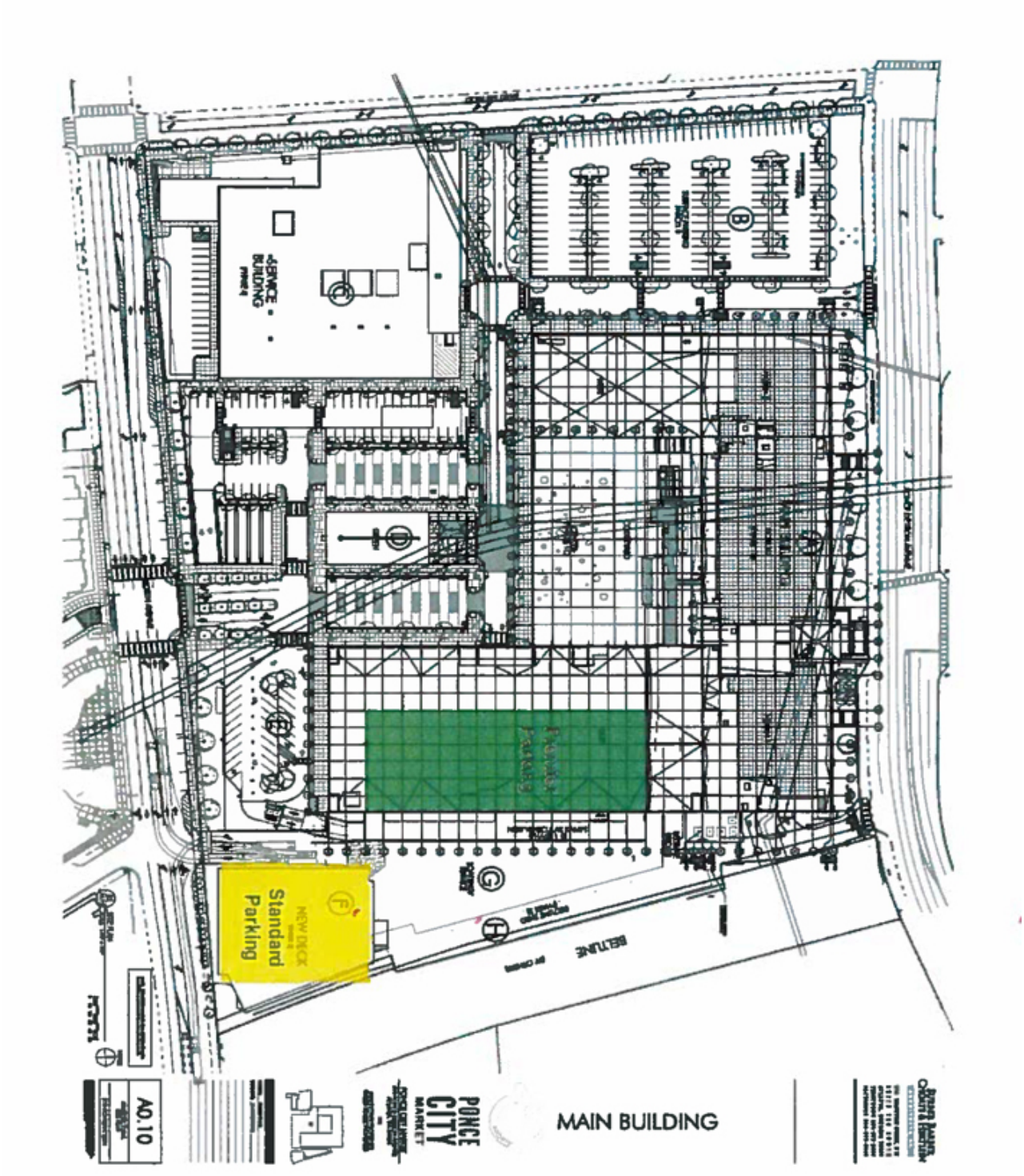
13. Condition of the Demised Premises. Tenant will be deemed to have accepted the Demised Premises in their "AS IS" condition on the date of Substantial Completion of the

Tenant’s Work. Notwithstanding the foregoing, Landlord will use reasonable efforts to enforce any applicable guaranties or warranties related to the tenant buildout, and Landlord shall be responsible for repair of all non-code compliant work for any adjacent space that impacts Tenant’s ability to obtain permits, approvals, or a certificate of occupancy.

“D”

**EXHIBIT "E"**

**PARKING PLAN**




"E"

**EXHIBIT "F"**

**FORM OF ESTOPPEL CERTIFICATE**

To: _____
_____
_____
_____
_____
_____
_____
_____

Re: Lease dated , , as amended by dated (as amended, the "Lease") between , as Landlord, and , as Tenant, for the property known as (the "**Property**").

Ladies and Gentlemen:

The undersigned, as Tenant, certifies to you as follows, with the understanding and intention that you will rely on the following information:

1. Tenant has accepted possession of the premises described in the Lease (the "**Leased Space**"). All work required to be performed by Landlord under the Lease has been completed in a satisfactory manner. The commencement date of the Lease was , , and the initial Lease term expires on , . If extended or modified the existing expiration is , . The Lease contains options on the part of the Tenant to extend the term of the Lease for periods of years each.

2. Tenant presently utilizes the entire Leased Space for its normal business activities and has not closed or moved its normal business activities from the Leased Space. Additionally, Tenant has not given any notice to Landlord, either verbally or in writing, of Tenant's intention to vacate the Leased Space in whole or in part, except as follows:

_____. [If none, so state].

3. To the best of Tenant's knowledge, there are no offsets, defenses or counterclaims with respect to the payment of rent under the Lease or to the Tenant's performance of the other terms, covenants and conditions of the Lease.

4. As of the date hereof no default in the performance of any covenant, agreement, term, provision, or condition contained in the Lease has been declared by either party to the Lease. As of the date hereof Tenant has no knowledge of any facts or circumstances which it might reasonably believe would give rise to any default by either Landlord or Tenant.

5. Except as may be set forth below, Landlord does not hold a security deposit from Tenant in connection with the Lease.

Security Deposit: $ . [If none, so state.]

6. Except as may be set forth below, no rent under the Lease has been paid more than thirty (30) days in advance of the due date. Tenant is currently paying each month rent, additional rent and other charges, as set forth below:

(a) Square footage of occupied space .

(b) Basic rent per month in the amount of $ , paid through , . The next increase in basic rent shall occur , and shall be .

(c) Common Area Costs pro rata charges per month in the amount of $ .

(d) Tax pro rata charges per month in the amount of $ .

(e) Insurance pro rata charges per month in the amount of $ .

Executed and delivered by Tenant this day of , 20 .

**Tenant:** , a

By: _____
Print Name: _____
Print Title: _____

**EXHIBIT "G"**

**FORM OF GUARANTY**

Intentionally omitted.

**EXHIBIT "H"**

**ADDITIONAL LEASE PROVISIONS**

1. Renewal Option. Provided that no Event of Default then exists, and Tenant has not committed more than two (2) Events of Default of a monetary nature within the twelve (12) month period preceding the date of any exercise by Tenant, Tenant shall have the right, exercisable at Tenant's option, to extend the Term of the Lease for two (2) additional terms of five (5) years each (each a "Renewal Term"). If timely exercised and if the conditions applicable thereto have been satisfied, each Renewal Term shall commence immediately following the end of the preceding Term. The right of extension herein granted to Tenant shall be subject to, and shall be exercised in accordance with, the following terms and conditions:

(a) **Notice.** Tenant shall exercise its right of renewal with respect to each Renewal Term by giving Landlord written notice of the exercise thereof (the "Renewal Option Notice") not less than twelve (12) months prior to the expiration of the then-current Term. In the event that the Renewal Option Notice is not given in a timely manner, Tenant's right of renewal with respect to the Renewal Term shall lapse and be of no further force or effect. If there exists an Event of Default under the Lease on the date the Renewal Option Notice is given or on the day prior to the commencement date of the Renewal Term, then at Landlord's option, the Renewal Option Notice shall be ineffective and Tenant's right of renewal as to the Renewal Term shall lapse and be of no further force of effect.

(b) **Rent.** During a Renewal Term, all the terms, conditions, covenants and agreements set forth in the Lease shall continue to apply and be binding upon Landlord and Tenant, except that the annual Base Rent payable during each year of the Renewal Term shall be calculated as follows: (i) with respect to the first Renewal Term, Base Rent will continue to increase by three percent (3%) per Lease Year over the Base Rent for the prior Lease Year, and (ii) with respect to the second Renewal Term, Base Rent will be an amount equal to the Fair Market Rent as determined in the manner provided in this Paragraph.

(c) **Fair Market Rent.** "**Fair Market Rent**" shall mean the fair market rental rate that would be agreed upon between a landlord and a tenant extending a lease for office space comparable to the Demised Premises (as to size, location in the Project, and build-out) in an office building comparable to the Office Component located in the general office rental market in the Atlanta Midtown submarket (the "Market Area"), for a term comparable to the Renewal Term, assuming the landlord and tenant are informed and well-advised and each is acting in what it considers its own best interests. Among the factors to be considered in determining Fair Market Rent shall be (i) the rental rates then being obtained by other building owners in the Midtown Atlanta, Georgia office market, (ii) the rental rates then being obtained by Landlord for comparable office space in the Office Component, and (iii) escalations and passthroughs of operating expenses as provided in the Lease (it being agreed that if such escalations and passthroughs are not then fair market provisions, an appropriate adjustment shall be made to such provisions or to the corresponding determination of Fair Market Rent). Vacancy periods shall not be considered in determining Fair Market Rent.

(d) **Initial Determination of Fair Market Rent.** Promptly following Landlord's timely receipt of the Renewal Option Notice for a Renewal Term, Landlord shall submit to Tenant in writing Landlord's determination of the Fair Market Rent. If Tenant does not dispute Landlord's determination of Fair Market Rent by giving written notice of such dispute within thirty (30) days after receipt of Landlord's determination, then Landlord's determination shall be conclusive and binding upon Landlord and Tenant. If Tenant disputes Landlord's determination of Fair Market Rent, Tenant shall notify Landlord in writing within thirty (30) days after receipt of Landlord's determination, and the parties shall thereafter have thirty (30) days to negotiate and agree on the Fair Market Rent. The parties shall be obligated to conduct such negotiations in good faith. If the parties agree on the Fair Market Rent payable during each year of the Renewal Term, they shall promptly execute an amendment to the Lease stating the Base Rent and other terms set forth herein.

(e) **Arbitration.** If, during such thirty (30) day period referred to in subparagraph (d) above, the parties are unable to agree on the Fair Market Rent, then the Fair Market Rent shall be determined in accordance with the procedure set forth in this subparagraph (e). Within ten (10) days after expiration of such thirty (30) day period, each of Landlord and Tenant shall appoint an independent, unaffiliated real estate broker (a "Broker") who shall have at least ten (10) years relevant experience in office rentals in the Midtown Atlanta, Georgia market. Within thirty (30) days after such appointments, the two (2) Brokers so chosen shall each independently make a determination of the Fair Market Rent, taking into consideration the factors set out in subparagraph (c) above, and deliver the results thereof to Landlord and to Tenant. In the event that there is a material difference between the Fair Market Rents as determined by two Brokers, then within ten (10) days after the date such determinations are delivered to Landlord and to Tenant, the two Brokers shall jointly select a third Broker, which third Broker shall not have represented either Landlord or Tenant within the previous five (5) years and shall have the same qualifications required of the other Brokers. Such third Broker shall select the determination of Fair Market Rent from either the Broker appointed by Landlord, or the Broker appointed by Tenant, without modification, and the determination so selected shall be the Fair Market Rent. Landlord and Tenant shall each bear the cost of its Broker and shall share equally the cost of the third Broker.

2. Right of First Refusal. Landlord hereby grants to Tenant a continuing right of refusal (the "Right of Refusal") to lease all or part of that certain portion of the Office Component containing approximately 26,000 square feet, located on the 4th floor, and approximately depicted on **Exhibit I** attached hereto (the "Refusal Space"), in accordance with the following provisions:

(a) **Notice of Terms.** In the event Landlord enters into discussions with a bona fide third party to lease all or any portion of the Refusal Space for a term to exceed twelve (12) months, before leasing such portion of the Refusal Space to such party, Landlord shall first notify Tenant in writing of the material terms and conditions (the "Offer Terms") on which Landlord proposes to lease such portion of the Refusal Space to such party.

(b) **Exercise.** Tenant shall have ten (10) business days after receipt of notice from Landlord of the Offer Terms to exercise the Right of Refusal as to such portion of the Refusal Space by giving written notice to Landlord of its intention to exercise the Right of

Refusal on the same terms as set forth in the Offer Terms; provided, however, that if, on the date the lease for such portion of the Refusal Space would commence, there would be fewer than three (3) years remaining in the Term of this Lease, Tenant shall also agree as part of any such exercise, to extend the Term of this Lease so that it would expire no later than the expiration of the proposed lease for such portion of the Refusal Space.

(c) **Waiver.** In the event Tenant does not give Landlord timely written notice of its intention to exercise the Right of Refusal, Tenant shall be deemed to have waived the Right of Refusal, and Landlord shall then be authorized to lease such portion of the Refusal Space to the identified prospective tenant on the Offer Terms. In the event such authorized lease is for any reason not consummated pursuant to the Offer Terms (subject to modifications which are not material to the Offer Terms), then the Right of Refusal shall continue and no lease of such portion of the Refusal Space or any interest therein may be made by Landlord without giving Tenant the Right of Refusal described herein by repeating the foregoing procedure.

(d) **Lease.** In the event Tenant timely and properly exercises the Right of Refusal, then Landlord and Tenant shall promptly proceed to negotiate in good faith to execute a lease in accordance with the terms and conditions of the Offer Terms and otherwise consistent with the terms and provisions of this Lease. In the event that Landlord and Tenant are unable to agree upon a lease despite such good faith negotiations within thirty (30) days after Tenant's exercise of the Right of Refusal, then the Right of Refusal shall be deemed to have been waived with respect to such portion of the Refusal Space, and Landlord shall have the right to consummate the lease with such third party in accordance with the Offer Terms.

(e) **Tenant Default.** Tenant shall have no right to exercise the Right of Refusal in the event that on the date Tenant receives the Terms, (1) Tenant has committed an uncured Event of Default, or (2) within the twelve (12) months prior to Tenant's receipt of the Offer Terms, Tenant has committed more than two (2) Events of Default which are monetary in nature.

(f) **Expiration.** In the event that Tenant shall waive or be deemed to have waived the Right of Refusal, and any portion of the Refusal Space is leased to a third party pursuant to the Offer Terms (subject to modifications which are not material to the Offer Terms), the Right of Refusal shall expire and be of no further force or effect whatsoever as to such portion of the Refusal Space.

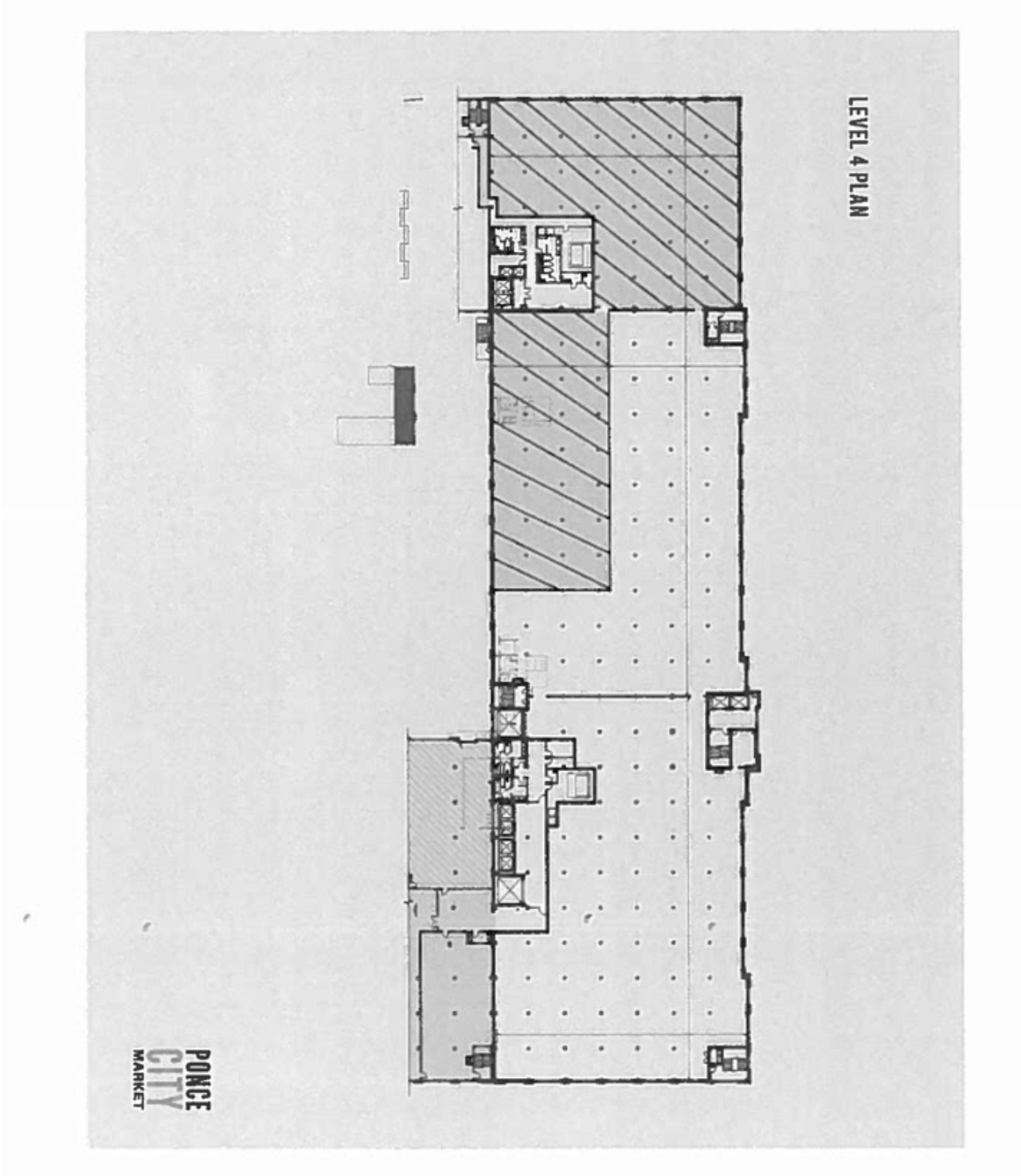
3. Opening Co-Tenancy. The parties acknowledge that a portion of the Project, consisting of approximately three hundred thousand (300,000) square feet (the "Retail Market"), is being developed to be leased to and operated by retail merchants (any such merchant a "Retailer"). Landlord has agreed to use its commercially reasonable efforts to cause at least one hundred thousand (100,000) square feet of the Retail Market to be leased to Retailers which shall be open and operating for business no later than six (6) months after the Rent Commencement Date (the "Retailer Occupancy Date"), which shall include at least fifteen thousand (15,000) square feet to be leased to Retailers which are food and beverage establishments offering lunch and dinner (the "Retail Occupancy Condition"). In the event that as of the Retailer Occupancy Date, Landlord has not satisfied the Retail Occupancy Condition, then Tenant shall be entitled to

an abatement of Base Rent and Additional Rent of one (1) day for each day between the Retailer Occupancy Date and the date the Retail Occupancy Condition has been satisfied.

“H”

**EXHIBIT "I"**

**REFUSAL SPACE**




"I"

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**Exhibit 10.13**

# CREDIT AGREEMENT

This Credit Agreement (this **"Agreement"**) is dated as of July 21, 2016 (the "**Closing Date**") and entered into by and among **CARDLYTICS, INC.,** a Delaware corporation ("**Borrower**"), **COLUMBIA PARTNERS, L.L.C. INVESTMENT MANAGEMENT,** as Investment Manager ("**Investment Manager**"), and **NATIONAL ELECTRICAL BENEFIT FUND,** as Lender ("**Lender**").

## RECITALS:

**Whereas**, Borrower desires that Lender extend a term credit facility to Borrower, to provide long term working capital financing for Borrower, to repay existing indebtedness and to provide funds for other general corporate purposes of Borrower; and

**Whereas**, Borrower desires to secure all of its Obligations (as hereinafter defined) under the Loan Documents (as hereinafter defined) by granting to Investment Manager, for the benefit of Investment Manager and Lender, a security interest in and lien upon substantially all of its personal and real property; and

**Whereas**, all capitalized terms herein shall have the meanings ascribed thereto in **Annex A** hereto which is incorporated herein by reference.

**Now, Therefore**, in consideration of the premises and the agreements, provisions and covenants herein contained, Borrower, Lender and Investment Manager agree as follows:

## ARTICLE 1
## AMOUNTS AND TERMS OF LOAN

**1.1 Loan**. Subject to the terms and conditions of this Agreement and in reliance upon the representations and warranties of Borrower contained herein:

**(a) Loan**.

**(i)** Note and Draw Period. Borrower has executed and delivered to Lender a senior subordinated secured promissory note in the form of note attached hereto as **Exhibit 1.1**, payable to the order of Lender in the principal amount of Twenty-Four Million Dollars ($24,000,000) (the "**Note**"). Subject to the terms and conditions of this Agreement, during the Draw Period, Lender shall make Loans to Borrower not exceeding Twenty-Four Million Dollars ($24,000,000) in the aggregate (the "**Loan Amount Maximum**"). When repaid, no Loan may be re-borrowed.

**(ii)** Initial Loan. The initial Loan (the "**Initial Loan**") (which shall be in the principal amount of Nineteen Million Dollars ($19,000,000)) shall be advanced by Lender to Borrower upon the satisfaction of the conditions to closing set forth in **Section 2.1** of this Agreement.

**(iii)** Subsequent Loan. From and after such time that Borrower has achieved the Second Draw Milestone, if Borrower so elects, Lender shall make one (1) additional Loan to Borrower (the "**Subsequent Loan**") in the principal amount of up to Five Million Dollars ($5,000,000).

**(iv)** Procedures for Borrowing. If Borrower elects to borrow amounts pursuant to this **Section 1.1**, Borrower shall provide to Investment Manager (in addition to all other deliverables required pursuant to **Section 2.1** and **2.2**) a written notice (each a "**Loan Advance Notice**") specifying the date on which the Loan shall be advanced (the "**Loan Advance Date**"), which Loan Advance Date must be no earlier than three (3) Business Days after Investment Manager's receipt of the Loan Advance Notice.

**1.2 Warrant**. On the Closing Date, Borrower shall issue to Lender, as part of its inducement to make the Loan, a warrant (the "**Warrant**") entitling Lender to purchase, at an exercise price of $5.00 per share, 388,500 shares of Borrower's Common Stock, all of which will be issued and fully vested on the Closing Date. The Warrant shall be in the form attached hereto as **Exhibit 1.2**. Borrower and Lender, as a result of arm's length bargaining, agree that:

**(a)** Neither Lender, Investment Manager nor any affiliated company of Lender or Investment Manager has rendered any services to Borrower in connection with this Agreement;

**(b)** The Warrant is not being issued as compensation; and

**(c)** All tax returns and other information return of each party relative to this Agreement and the Note and the Warrant issued pursuant hereto shall consistently reflect the matters agreed to in (a) and (b) above.

**1.3 Note**.

**(a) Security**. The Note and the Obligations of Borrower shall be secured in accordance with the terms of the Collateral Documents.

**(b) Maturity**. The outstanding principal amount of the Note issued under this Agreement, any accrued and unpaid interest thereon, and all other amounts then owing by Borrower to Lender or Investment Manager hereunder shall be due and payable in full on July 21, 2019 (the "**Maturity Date**"), unless such amounts become due and payable earlier in accordance with the terms of this Agreement, any Loan Document or otherwise.

**(c) Interest**. The outstanding principal amount of the Loans shall bear interest at the Interest Rate. Accrued interest on the outstanding principal amount of the Loans shall be payable in cash in arrears on each Quarterly Interest Payment Date. All accrued and unpaid interest shall be payable by Borrower to Lender upon any of the following: (i) the Maturity Date, (ii) a Liquidity Event, (iii) a Partial Liquidity Event, (iv) the date of any prepayment or (v) at such other time such amount becomes due and payable in accordance with the terms of this Agreement. All computations of interest payable hereunder shall be on the basis of a three hundred sixty (360)-day year consisting of twelve (12) thirty (30)-day months and actual days elapsed in the period of which such interest is payable. Notwithstanding the above, upon the occurrence and continuation of an Event of Default, at Lender's sole option, the Interest Rate shall immediately increase by two percent (2.0%) per annum (the "**Default Rate**").

Notwithstanding the foregoing, provided no Default or Event of Default has occurred and is continuing, prior to the Maturity Date, Borrower shall have the option to pay-in-kind (each, an "**In Kind Payment**"), rather than in cash, the interest otherwise payable on the Loans on each Quarterly Interest Payment Date in excess of three percent (3%) per annum, by sending Investment Manager, on or before the date such payment of interest is due, written notice of Borrower's election to make an In Kind Payment. The amount of each In Kind Payment shall be automatically added to the principal balance of the Loan, and such sum shall accrue interest at the Interest Rate (subject to imposition of the Default Rate, if applicable). Upon the request of Investment Manager or Lender, Borrower shall immediately execute and deliver to Investment Manager a Replacement Note payable to Lender in the form of **Exhibit 1.1B** attached hereto which shall evidence the obligations of Borrower under the Loans as increased by the In Kind Payments. Investment Manager's determination of the amount of In Kind Payments and the resulting principal balance of the Note shall be deemed conclusive absent manifest error on the part of Investment Manager.

**1.4 Standby Fee**. On each Quarterly Interest Payment Date during the Draw Period, and on the last day of the Draw Period, Borrower shall pay to Investment Manager, for the benefit of Lender, payable quarterly in arrears, a fully earned, non-refundable fee (the "**Standby Fee**") in an amount equal to three quarters of one percent (0.75%) per annum of the unused portion of the Subsequent Loan. The amount of each Standby Fee shall be automatically added to the principal balance of the Loan, and such sum shall accrue interest at the Interest Rate (subject to imposition of the Default Rate, if applicable).

**1.5 Facility Fee**. On the Closing Date, Borrower shall pay to Investment Manager, for the benefit of Lender, a fully earned, non-refundable facility fee equal to Three Hundred Eighty Thousand Dollars ($380,000) and at the time the Subsequent Loan is requested, Borrower shall pay to Investment Manager a fully earned, non-refundable facility fee of two percent (2%) of the amount of the Subsequent Loan (collectively, the "**Facility Fee**").

**1.6 Expenses and Attorneys Fees; Good Faith Deposit**. Borrower agrees to pay or reimburse Investment Manager and Lender for: (a) all costs, expenses and other charges in respect of any lien, tax and judgment searches performed by a service firm, to be chosen by Investment Manager in its sole discretion, in connection with the transactions contemplated by the Loan Documents and other collateral searches and filings; (b) all reasonable out-of-pocket costs and expenses of Investment Manager and Lender including the legal fees and disbursements of Troutman Sanders LLP, incurred in connection with the negotiation, preparation, execution and delivery of this Agreement and the other Loan Documents and the other instruments and agreements entered into pursuant hereto and thereto; provided, that Borrower shall have no reimbursement obligation for any legal fees of Investment Manager and Lender in connection with the negotiation, preparation, execution and delivery of the Loan Documents executed on the date hereof in excess of Sixty Thousand Dollars ($60,000); and provided, further, that for the avoidance of doubt, neither Investment Manager nor Lender shall be required to return the non-refundable advance from Borrower in the amount of Twenty Thousand Dollars ($20,000) unless the transactions contemplated by this Agreement and the Loan Documents are not consummated solely due to the decision of Investment Manager or Lender and then only to the extent of the excess (if any) of such advance over the expenses of Investment Manager and Lender entitled to reimbursement hereunder; (c) all reasonable out-of-

pocket costs and expenses of Investment Manager and Lender including the fees and disbursements of counsel for Investment Manager and Lender, incurred in connection with the negotiation, preparation, execution and delivery of any modification, supplement or waiver of this Agreement and any other Loan Documents (whether or not consummated); provided, that Borrower shall have no reimbursement obligation for any out-of-pocket costs and expenses in connection with the negotiation, preparation, execution and delivery of the Loan Documents executed on the Closing Date in excess of Five Thousand Dollars ($5,000); (d) all expenses of Investment Manager and Lender including the fees and disbursements of counsel for Investment Manager and Lender in connection with (1) any Event of Default and any enforcement or collection proceedings resulting therefrom, including, without limitation, all manner of participation in or other involvement with (A) bankruptcy, insolvency, receivership, foreclosure, winding up or liquidation proceedings, (B) judicial or regulatory proceedings and (C) workout, restructuring or other negotiations or proceedings (whether or not the workout, restructuring or transaction contemplated thereby is consummated) and (2) the enforcement of this **Section 1.6**; and (e) all transfer, stamp, documentary or other similar taxes, assessments or charges levied by any governmental or revenue authority in respect of this Agreement or any of the other Loan Documents or any other document referred to herein or therein and all costs, expenses, taxes, assessments and other charges incurred in connection with any filing, registration, recording or perfection of any security interest contemplated by the Collateral Documents or any other document referred to therein. Payments under this Section shall be made promptly and in any case no later than ten (10) days after written demand therefor. The non-refundable advance from Borrower to Investment Manager in the amount of Twenty Thousand Dollars ($20,000) shall be credited to the reimbursement of any expenses of Investment Manager and Lender incurred as of the Closing Date and entitled to reimbursement hereunder. The remaining amount, if any, of the non-refundable advance from Borrower shall be credited to the Facility Fee payable under **Section 1.5** above.

**1.7 Payments**. All payments by Borrower of the Obligations shall be without deduction, defense, setoff or counterclaim and shall be made in same day funds and delivered to Lender, for the benefit of Investment Manager and Lender, as applicable, by wire transfer to the account of Lender specified on the signature page hereof or such other place as Investment Manager may from time to time designate in writing. Borrower shall receive credit on the day of receipt for funds received by Investment Manager by 2:00 p.m. (Eastern Time). Funds received after 2:00 pm (Eastern Time) shall be deemed to have been paid on the next Business Day. Whenever any payment to be made hereunder shall be stated to be due on a day that is not a Business Day, the payment may be made on the next succeeding Business Day and such extension of time shall be included in the computation of the amount of interest and Fees due hereunder.

**1.8 Prepayments.**

**(a) Voluntary Prepayments**. At any time and from time to time, Borrower may prepay the amounts due under the Note, in whole or in part. Any prepayment shall include all costs and fees incurred as of the date of payment, all accrued and unpaid interest, and the principal amount intended to be prepaid. Prepayments shall be applied in accordance with **Section 1.9** or as otherwise may be agreed by Lender. If Borrower elects to prepay all or any part of the principal due under the Note pursuant to this **Section 1.8(a)**, Borrower shall give

notice of such prepayment to the Investment Manager to be prepaid not less than ten (10) days or more than sixty (60) days prior to the date fixed for prepayment, specifying the amounts to be repaid as required by this **Section 1.8(a)**.

**(b) Mandatory Prepayment.**

**(i) Maturity Date, Acceleration and Liquidity Event**. Upon the earliest to occur of (a) the Maturity Date, (b) the acceleration of the Loans following the occurrence of an Event of Default, or (c) a Liquidity Event, Borrower shall immediately pay to Lender all amounts due under the Loan as set forth in this Agreement, including, without limitation, all costs and fees incurred as of the date of payment, all accrued and unpaid interest, and the principal outstanding as of the date of such payment. The payments shall be applied in accordance with **Section 1.9**.

**(ii) Partial Liquidity Event**. Upon the occurrence of a Partial Liquidity Event, Borrower shall use all proceeds of such Partial Liquidity Event exceeding the Excess Proceeds Amount (the "**Excess Proceeds**") to immediately pay all costs and fees incurred by Investment Manager and Lender as of the date of payment and all accrued and unpaid interest. The payments shall be applied in accordance with **Section 1.9**.

**1.9 Application of Payments**. With respect to any payment hereunder, including without limitation the prepayments described in **Sections 1.8(a) and 1.8(b)**, such payments shall be applied: first, to all accrued and unpaid interest due on the Note and all fees and expenses due and payable pursuant to this Agreement; second, to reduce the outstanding principal balance under the Note; and third, to any other Obligations of Borrower owing to Investment Manager or Lender hereunder or under any Loan Document.

**1.10 Application of Insurance Proceeds.** So long as no Event of Default has occurred and is then continuing, proceeds of the insurance maintained by Borrower and payable as a result of loss of or damage to any of the tangible Collateral shall be paid to Borrower to be applied, in Borrower's discretion, toward the replacement, restoration or repair of the tangible Collateral which may be lost, stolen, destroyed or damaged or acquisition of other assets useful to the business of Borrower. All amounts payable while any Event of Default is continuing shall be paid to Investment Manager to be applied, in Investment Manager's discretion, toward payment of the Obligations or toward the replacement, restoration or repair; of the tangible Collateral which may be lost, stolen, destroyed or damaged. To the extent of Investment Manager's rights to receive insurance proceeds under this **Section 1.10**, Borrower irrevocably appoints Investment Manager as Borrower's attorney-in-fact to make claim for, receive payment of, and execute and endorse all documents, checks or drafts received in payment for loss or damage under any of Borrower's insurance policies.

**1.11 ERISA Matters**. Each of the Investment Manager and Lender represents and warrants that the consummation of the transactions contemplated by this Agreement will not result in a nonexempt prohibited transaction under section 406 of ERISA. In making the foregoing representation, Investment Manager and Lender may rely on Borrower's representation set forth in
**Section 3.4(b)** of this Agreement.

## ARTICLE 2
## CONDITIONS TO LOANS

**2.1 Conditions to Initial Loan**. The obligation of Lender to make the initial Loan, as provided in **Section 1.1** hereof, shall be subject to the performance by Borrower of its agreements to be performed hereunder and to the satisfaction, prior thereto or concurrently therewith, of the following further conditions:

**(a) Representations and Warranties**. The representations and warranties of Borrower contained in **Article 3** hereof shall be true and correct in all material respects as of the Closing Date (as modified by the Disclosure Schedules delivered as of the Closing Date) as though such warranties and representations were made at and as of such date, except as otherwise affected by the transactions contemplated hereby.

**(b) Compliance with Loan Documents, No Default or Event of Default**. Borrower shall have performed and complied with all agreements, covenants and conditions contained in the Loan Documents which are required to be performed or complied with by it prior to or on the Closing Date. No Default or Event of Default shall exist prior to or after giving effect to the transactions contemplated on the Closing Date.

**(c) Officer's Certificate**. Investment Manager shall have received a certificate, dated the Closing Date, signed by the President or the Chief Financial Officer of Borrower, certifying that the conditions specified in **Sections 2.1(a), (b), and (d)** hereof have been fulfilled.

**(d) Injunction**. There shall be no effective injunction, writ, preliminary restraining order or any order of any nature issued by a court of competent jurisdiction directing that the transactions provided for herein or any of them not be consummated as herein provided.

**(e) Adverse Development**. There shall have been no developments in the business of Borrower, which in the opinion of Investment Manager or Lender could reasonably be expected to have a Material Adverse Effect.

**(f) Approval of Proceedings**. All proceedings to be taken in connection with the transactions contemplated by this Agreement, and all documents incident thereto, shall be reasonably satisfactory in form and substance to Investment Manager or Lender and their counsel; and Investment Manager shall have received copies of all documents or other evidence which they and their counsel may reasonably request in connection with such transactions and of all records of corporate proceedings in connection therewith in form and substance reasonably satisfactory to Investment Manager or Lender and their counsel.

**(g) Other Fees and Expenses**. Borrower shall have paid to Investment Manager all other amounts payable hereunder, including the payment of the fees and expenses of Troutman Sanders LLP, counsel to Investment Manager.

**(h) Secretary's Certificate**. Investment Manager shall have received a certificate, dated the Closing Date, signed by the Secretary or Assistant Secretary, as the case may be, of Borrower certifying that (i) its certificate of incorporation annexed thereto is in full

force and effect without any amendment, (ii) the by-laws annexed thereto are correct and complete as in effect on the date thereof; and (iii) the resolutions annexed thereto approving the transactions contemplated herein have been duly approved by the Board of Directors of Borrower and remain in full force and effect.

**(i) Security Interests**. All action necessary or determined by Investment Manager to be desirable to create and perfect the security interests purported to be created by the Collateral Documents shall have been taken or completed, including the execution and delivery of the Collateral Documents and provisions shall have been made for the filing of the Uniform Commercial Code financing statements, delivery of instruments or securities.

**(j) Insurance**. Investment Manager shall have received evidence that the insurance required to be maintained under this Agreement and the Collateral Documents is in full force and effect and that Investment Manager or Lender has been named as lender loss payee or additional insured, as appropriate, under the applicable insurance policies.

**(k) Other Documents**. Borrower shall have executed and delivered to Investment Manager, for the benefit of Lender, the Note and the Warrant.

**(l) Payoff Letter.** Investment Manager shall have received an executed payoff letter from Gold Hill Capital 2008, L.P.

**(m) Senior Lender Subordination Agreement.** Borrower and Senior Lender shall have executed and delivered to Investment Manager the Senior Lender Subordination Agreement.

**(n) Subordinated Lender Subordination Agreement.** Borrower and Subordinated Lenders shall have executed and delivered to Investment Manager the Subordinated Lender Subordination Agreement.

**2.2 Conditions to all Loans.** The obligation of Lender to make each Loan, as provided in **Section 1.1** hereof (including the initial Loan), shall be subject to the performance by Borrower of its agreements to be performed hereunder and to the satisfaction, prior thereto or concurrently therewith, of the following further conditions:

**(a) Representations and Warranties**. The representations and warranties of Borrower contained in **Article 3** hereof shall be true and correct in all material respects on each Loan Advance Date (as modified by the Disclosure Schedules delivered as of the Loan Advance Date) as though such warranties and representations were made at and as of such date, except as otherwise affected by the transactions contemplated hereby.

**(b) Compliance with Loan Documents, No Default or Event of Default**. Borrower shall have performed and complied with all agreements, covenants and conditions contained in the Loan Documents which are required to be performed or complied with by it prior to or on the Loan Advance Date, or failure to so comply shall have previously been cured or waived. No Default or Event of Default shall exist prior to or after giving effect to the transactions contemplated on the Loan Advance Date.

**(c) Officer's Certificate**. Investment Manager shall have received a certificate, dated the Loan Advance Date, signed by the President or the Chief Financial Officer of Borrower, certifying that the conditions specified in **Sections 2.2(a), (b),** and **(d)** hereof have been fulfilled.

**(d) Injunction**. There shall be no effective injunction, writ, preliminary restraining order or any order of any nature issued by a court of competent jurisdiction directing that the transactions provided for herein or any of them not be consummated as herein provided.

**(e) Adverse Development**. There shall have been no developments in the business of Borrower, which in the opinion of Investment Manager or Lender would reasonably be expected to have a Material Adverse Effect.

**2.3 Post-Closing Condition**. Within thirty (30) days after the Closing Date, Investment Manager shall have received, in form and substance satisfactory to Investment Manager, an executed landlord consent, acceptable to Investment Manager, with respect to Borrower's headquarter located at 675 Ponce de Leon Ave., NE, Suite 6000, Atlanta, Georgia 30308.

## ARTICLE 3
## REPRESENTATIONS AND WARRANTIES

To induce Investment Manager and Lender to enter into the Loan Documents and to make the Loan, Borrower represents, warrants and covenants to Investment Manager and Lender that the following statements are true, correct and complete in all material respects as of each Loan Advance Date. Such representations and warranties are subject to the qualifications and exceptions set forth in the Disclosure Schedules delivered to Investment Manager in connection herewith. References to the knowledge or awareness of Borrower are deemed to include the actual knowledge of any officer or director of Borrower or any of its Subsidiaries after due inquiry.

**3.1 Disclosure**. No representation or warranty of Borrower contained in this Agreement, the Financial Statements, or any other document, certificate or written statement furnished to Investment Manager or Lender by or on behalf of any such Person for use in connection with the Loan Documents contains any untrue statement of a material fact or omitted, omits or will omit to state a material fact necessary in order to make the statements contained herein or therein not misleading in light of the circumstances in which the same were made; provided that Investment Manager and Lender acknowledge that the Projections delivered on or prior to the Closing Date and the updated Projections delivered pursuant to **Section 6.1(f)** are forward-looking statements and not to be viewed as statements of fact.

**3.2 No Material Adverse Effect**. Since the Closing Date, there have been no events or changes in facts or circumstances affecting Borrower or any of its Subsidiaries which individually or in the aggregate have had or would reasonably be expected to have a Material Adverse Effect and that have not been disclosed herein or in the attached Disclosure Schedules.

**3.3 No Conflict; Compliance**. The consummation of the transactions contemplated by this Agreement and the other Loan Documents does not and will not violate or conflict with

any laws, rules, regulations or orders of any Governmental Authority or violate, conflict with, result in a breach of, or constitute a default (with due notice or lapse of time or both) under any Contractual Obligation or organizational documents of Borrower or any of its Subsidiaries except if such violations, conflicts, breaches or defaults could not reasonably be expected to have, either individually or in the aggregate, a Material Adverse Effect. Borrower (i) is in compliance and each of its Subsidiaries is in compliance with the requirements of all applicable laws, rules, regulations and orders of any Governmental Authority and the obligations, conditions and covenants contained in all Contractual Obligations other than those laws, rules, regulations, orders and provisions of such Contractual Obligations the noncompliance with which could not be reasonably expected to have, either individually or in the aggregate, a Material Adverse Effect, and (ii) maintains and each of its Subsidiaries maintains all material licenses, qualifications and permits necessary for the conduct of their respective businesses as presently conducted and expected to be conducted**.**

**3.4 Organization, Powers, Capitalization and Good Standing**.

**(a) Organization and Powers**. Borrower and each of its Subsidiaries is duly organized, validly existing and in good standing under the laws of its jurisdiction of organization and qualified to do business in all states where such qualification is required except where failure to be so qualified could not reasonably be expected to have a Material Adverse Effect. The jurisdiction of organization and all jurisdictions in which Borrower and its Subsidiaries are qualified to do business are set forth on **Schedule 3.4(a)**. Borrower and each of its Subsidiaries has all requisite organizational power and authority to own and operate its properties, to carry on its business as now conducted and proposed to be conducted, to enter into each of the Loan Documents to which it is a party and to incur the Obligations, grant liens and security interests in the Collateral and carry out the transactions contemplated by this Agreement and the other Loan Documents.

**(b) Capitalization**. (i) The authorized Stock of each of Borrower and each of its Subsidiaries is as set forth on **Schedule 3.4(b)**; (ii) all issued and outstanding Stock of Borrower and each of its Subsidiaries is duly authorized and validly issued, fully paid, non-assessable, free and clear of all Liens other than Permitted Encumbrances, and such Stock was issued in compliance in all material respects with all applicable state, federal and foreign laws concerning the issuance of securities; (iii) the identity of the holders of the Stock of Borrower and each of its Subsidiaries and the percentage of their fully diluted ownership of the Stock of each of Borrower and each of its Subsidiaries is set forth on **Schedule 3.4(b)**; and (iv) no Stock of Borrower or any of its Subsidiaries, other than those described above, are issued and outstanding. Except as provided in **Schedule 3.4(b)**, there are no preemptive or other outstanding rights, options, warrants, conversion rights or similar agreements or understandings for the purchase or acquisition from Borrower or any of its Subsidiaries of any Stock of any such entity.

**(c) Binding Obligation**. This Agreement is, and the other Loan Documents when executed and delivered will be, the legally valid and binding obligations of the applicable parties thereto, each enforceable against each of such parties, as applicable, in accordance with their respective terms except as enforceability may be limited by applicable bankruptcy, insolvency, moratorium and laws affecting the rights of creditors generally and by general principles of equity whether considered at law or in equity.

**3.5 Financial Statements and Projections**. All Financial Statements concerning Borrower and its Subsidiaries which have been or will hereafter be furnished to Investment Manager or Lender pursuant to this Agreement, including those listed below, have been or will be prepared in accordance with GAAP consistently applied (except as disclosed therein) and do or will present fairly in all material respects the financial condition of the entities covered thereby as at the dates thereof and the results of their operations for the periods then ended, subject to, in the case of unaudited Financial Statements, the absence of footnotes and normal year-end adjustments. The Projections delivered on or prior to the Loan Advance Date and the updated Projections delivered pursuant to **Section 6.1(f)** were (or will be) prepared on the basis of the assumptions stated therein and such assumptions were (or will be) reasonable at the time prepared.

**3.6 Intellectual Property**. Borrower and each of its Subsidiaries owns, is licensed to use or otherwise has the right to use, all registered Intellectual Property, except where the failure to so own or license would not reasonably be expected to have a Material Adverse Effect. All such Intellectual Property is identified on **Schedule 3.6** and fully protected and/or duly and properly registered, in the process of registering, filed or issued in the appropriate office and jurisdictions for such registrations, filings or issuances. All Intellectual Property owned by Borrower and each of its Subsidiaries is fully protected and/or duly and properly registered, filed or issued in the appropriate office and jurisdictions for such registrations, filings or issuances, except where the failure to do so would not reasonably be expected to have a Material Adverse Effect. Except as disclosed in **Schedule 3.6**, the use of such Intellectual Property by Borrower and its Subsidiaries and the conduct of their businesses do not, and, to the knowledge of the Borrower, have not been alleged by any Person to infringe on the rights of any Person.

**3.7 Investigations, Audits, Etc**. Except as set forth on **Schedule 3.7**, neither Borrower nor any of its Subsidiaries is the subject of any review or audit by the IRS or any governmental investigation concerning the violation or possible violation of any law.

**3.8 Employee Matters**. Except as set forth on **Schedule 3.8**, there are no strikes, slowdowns, work stoppages or controversies pending or, to the knowledge of Borrower after due inquiry, threatened between Borrower or any of its Subsidiaries and its respective employees, other than employee grievances arising in the ordinary course of business which could not reasonably be expected to have, either individually or in the aggregate, a Material Adverse Effect and (d) hours worked by and payment made to employees of Borrower and each of its Subsidiaries comply with the Fair Labor Standards Act and each other federal, state, local or foreign law applicable to such matters. Except as set forth on **Schedule 3.8**, neither Borrower nor any of its Subsidiaries is party to an employment contract.

**3.9 Solvency**. Each of Borrower and its Subsidiaries is Solvent.

**3.10 Litigation; Adverse Facts**. Except as set forth on **Schedule 3.10**, there are no judgments outstanding against Borrower or any of its Subsidiaries or affecting any property of Borrower or any of its Subsidiaries, nor is there any Litigation pending, or to the knowledge of Borrower threatened, against Borrower or any of its Subsidiaries which would reasonably be expected to result in any Material Adverse Effect.

**3.11 Use of Proceeds; Margin Regulations.**

**(a)** No part of the proceeds of the Loans will be used for "buying" or "carrying" "margin stock" within the respective meanings of such terms under Regulation U of the Board of Governors of the Federal Reserve System as now and from time to time hereafter in effect or for any other purpose that violates the provisions of the regulations of the Board of Governors of the Federal Reserve System. If requested by Investment Manager, Borrower will furnish to Investment Manager and Lender a statement to the foregoing effect in conformity with the requirements of FR Form G 3 or FR Form 0 1, as applicable, referred to in Regulation U.

**(b)** Borrower shall utilize the proceeds of the Loans solely for the financing of Borrower's ordinary long term working capital, make capital improvements and expenditures, and the retirement of existing Indebtedness.

**3.12 Ownership of Property; Liens**. The real estate ("**Real Estate**") listed in **Schedule 3.12** constitutes all of the real property owned, leased, subleased, or used by Borrower or any of its Subsidiaries. Borrower and each of its Subsidiaries owns good and marketable fee simple title to all of its owned Real Estate, and valid and marketable leasehold interests in all of its leased Real Estate, all as described on **Schedule 3.12**, and copies of all such leases or a summary of terms thereof reasonably satisfactory to Investment Manager have been delivered to Investment Manager. **Schedule 3.12** further describes any Real Estate with respect to which Borrower or any of its Subsidiaries is a lessor, sublessor or assignor. Borrower and each of its Subsidiaries also have good and marketable title to, or valid leasehold interests in, all of the personal property and assets necessary for the operation of Borrower's business. None of the properties and assets of Borrower or any of its Subsidiaries are subject to any Liens other than Permitted Encumbrances, and there are no facts, circumstances or conditions known to Borrower that may result in any Liens (including Liens arising under Environmental Laws) other than Permitted Encumbrances against the properties or assets of Borrower or any of its Subsidiaries. Borrower and each of its Subsidiaries have received all deeds, assignments, waivers, consents, nondisturbance and attornment or similar agreements, bills of sale and other documents, and has duly effected all recordings, filings and other actions necessary to establish, protect and perfect Borrower's or such Subsidiary's right, title and interest in and to all such Real Estate and other properties and assets necessary for the operation of Borrower's business. **Schedule 3.12** also describes any purchase options, rights of first refusal or other similar contractual rights pertaining to any Real Estate. No portion of Borrower's or any of its Subsidiaries' Real Estate has suffered any material damage by fire or other casualty loss that has not heretofore been repaired and restored in all material respects to its original condition or otherwise remedied. All material permits required to have been issued or appropriate to enable the Real Estate to be lawfully occupied and used for all of the purposes for which it is currently occupied and used have been lawfully issued and are in full force and effect.

**3.13 Environmental Matters.**

**(a)** Except as set forth in **Schedule 3.13**: (i) the Real Estate is free of contamination from any Hazardous Material; (ii) neither Borrower nor any of its Subsidiaries has caused or suffered to occur any Release of Hazardous Materials on, at, in, under, above, to, from or about any of their Real Estate; (iii) Borrower and its Subsidiaries are and have been in compliance with all Environmental Laws; (iv) Borrower and its Subsidiaries have obtained, and are in compliance with, all material Environmental Permits required by Environmental Laws for the operations of their respective businesses as presently conducted and all such Environmental Permits are valid, uncontested and in good standing; (v) neither Borrower nor any of its Subsidiaries is involved in operations or knows of any facts, circumstances or conditions, including any Releases of Hazardous Materials and neither Borrower nor any of its Subsidiaries has permitted any current or former tenant or occupant of the Real Estate to engage in any such operations; (vi) there is no Litigation arising under or related to any Environmental Laws, Environmental Permits or Hazardous Material; (vii) no notice has been received by Borrower or any of its Subsidiaries identifying any of them as a "potentially responsible party" or requesting information under CERCLA or analogous state statutes, and to the knowledge of Borrower, there are no facts, circumstances or conditions that may result in any of Borrower or its Subsidiaries being identified as a "potentially responsible party" under CERCLA or analogous state statutes; and (viii) Borrower has provided to Investment Manager copies of all existing environmental reports, reviews and audits and all written information pertaining to actual or potential Environmental Liabilities relating to Borrower or its Subsidiaries.

**(b)** Borrower hereby acknowledges and agrees that neither Investment Manager nor Lender (i) is now, or has ever been, in control of any of the Real Estate or affairs of Borrower or its Subsidiaries, and (ii) has the capacity through the provisions of the Loan Documents or otherwise to influence Borrower's or its Subsidiaries' conduct with respect to the ownership, operation or management of any of their Real Estate or compliance with Environmental Laws or Environmental Permits.

**3.14 ERISA.**

**(a) Schedule 3.14** lists all Plans and separately identifies all Pension Plans, including Title IV Plans, Multiemployer Plans, ESOPs and Welfare Plans, including all Retiree Welfare Plans. Copies of all such listed Plans, together with a copy of the latest form IRS/DOL 5500-series for each such Plan have been delivered to Investment Manager. Except with respect to Multiemployer Plans, each Qualified Plan has been determined by the IRS to qualify under Section 401 of the IRC, the trusts created thereunder have been determined to be exempt from tax under the provisions of Section 501 of the IRC, and, to the knowledge of Borrower, nothing has occurred that would cause the loss of such qualification or tax exempt status. Each Plan is in material compliance with the applicable provisions of ERISA and the IRC, including the timely filing of all reports required under the IRC or ERISA, including the statement required by 29 CFR Section 2520.104-23. Neither Borrower nor any ERISA Affiliate has failed to make any contribution or pay any amount due as required by either Section 412 of the IRC or Section 302 of ERISA or the terms of any such Plan. Neither Borrower nor any ERISA Affiliate has engaged in a "prohibited transaction," as defined in Section 406 of ERISA and Section 4975 of the IRC, in connection with any Plan, that would subject Borrower to a material tax on prohibited transactions imposed by Section 502(i) of ERISA or Section 4975 of the IRC.

**(b)** Except as set forth in **Schedule 3.14**: (i) no Title IV Plan has any Unfunded Pension Liability; (ii) no ERISA Event or event described in Section 4062(e) of ERISA with respect to any Title IV Plan has occurred or is reasonably expected to occur; (iii) there are no pending, or to the knowledge of Borrower, threatened claims (other than claims for benefits in the normal course), sanctions, actions or lawsuits, asserted or instituted against any Plan or any Person as fiduciary or sponsor of any Plan; (iv) neither Borrower nor any ERISA Affiliate has incurred or reasonably expects to incur any liability as a result of a complete or partial withdrawal from a Multiemployer Plan; (v) within the last five years no Title IV Plan of Borrower or any ERISA Affiliate has been terminated, whether or not in a "standard termination" as that term is used in Section 4041(b)(1) of ERISA, nor has any Title IV Plan of Borrower or any ERISA Affiliate (determined at any time within the past five years) with Unfunded Pension Liabilities been transferred outside of the "controlled group" (within the meaning of Section 4001(a)(14) of ERISA) of Borrower or its ERISA Affiliate; (vi) except in the case of any ESOP, Stock of Borrower and its ERISA Affiliates makes up, in the aggregate, no more than ten percent (10%) of fair market value of the assets of any Plan measured on the basis of fair market value as of the latest valuation date of any Plan; and (vii) no liability under any Title IV Plan has been satisfied with the purchase of a contract from an insurance company that is not rated AAA by S&P or an equivalent rating by another nationally recognized rating agency.

**3.15 Brokers**. No broker or finder acting on behalf of Borrower or its Affiliates brought about the obtaining, making or closing of the Loan, and neither Borrower nor its Affiliates have any obligation to any Person in respect of any finder's or brokerage fees in connection therewith.

**3.16 Deposit and Disbursement Accounts**. **Schedule 3.16** lists all banks and other financial institutions at which Borrower maintains deposit or other accounts, and such Schedule correctly identifies the name and address of each depository, the name in which the account is held, a description of the purpose of the account, and the complete account number therefor.

**3.17 Material Agreements; Customers and Suppliers.**

**(a) Schedule 3.17(a)** sets forth a true and complete list of each Material Agreement to which Borrower is a party or is otherwise bound. Each Material Agreement is valid, binding and enforceable against Borrower and, to Borrower's knowledge, the other parties thereto, and is in full force and effect in accordance with its terms, except as limited by (i) applicable bankruptcy, insolvency, reorganization, moratorium, and other laws of general application affecting enforcement of creditors' rights generally, (ii) laws relating to the availability of specific performance, injunctive relief or other equitable remedies and (iii) state and federal securities laws with respect to rights to indemnification or contribution. Except as set forth on **Schedule 3.17(a)**, Borrower is not in default or breach under any of the Material Agreements, nor, to the knowledge of Borrower, is any other party thereto in default or breach thereunder, nor are there facts or circumstances to the knowledge of Borrower which have occurred which, with or without the giving of notice or the passage of time or both, would constitute a material default or breach under any of the Material Agreements.

**(b)** The relationships of Borrower with its suppliers are commercial working relationships and no material customer or material supplier has canceled or otherwise terminated its relationship with Borrower. To Borrower's knowledge, no material customer or material supplier intends to cancel or materially curtail its relationship with Borrower.

**3.18 Insurance**. **Schedule 3.18** lists all insurance policies of any nature maintained by Borrower.

## ARTICLE 4
## AFFIRMATIVE COVENANTS

Borrower agrees that from and after the date hereof and until the Termination Date:

**4.1 Compliance With Laws and Contractual Obligations**. Borrower will (a) comply with and shall cause each of its Subsidiaries to comply with (i) the requirements of all applicable laws, rules, regulations and orders of any Governmental Authority (including, without limitation, laws, rules, regulations and orders relating to taxes, employer and employee contributions, securities, employee retirement and welfare benefits, environmental protection matters and employee health and safety) as now in effect and which may be imposed in the future in all jurisdictions in which Borrower or any of its Subsidiaries is now doing business or may hereafter be doing business and (ii) the obligations, covenants and conditions contained in all Contractual Obligations of Borrower or any of its Subsidiaries other than those laws, rules, regulations, orders and provisions of such Contractual Obligations the noncompliance with which would not be reasonably expected to have, either individually or in the aggregate, a Material Adverse Effect, and (b) maintain or obtain and shall cause each of its Subsidiaries to maintain or obtain all licenses, qualifications and permits now held or hereafter required to be held by Borrower or any of its Subsidiaries, for which the loss, suspension, revocation or failure to obtain or renew, would reasonably be expected to have, either individually or in the aggregate, a Material Adverse Effect. This **Section 4.1** shall not preclude Borrower or its Subsidiaries from contesting any taxes or other payments, if they are being diligently contested in good faith in a manner which stays enforcement thereof and if appropriate expense provisions have been recorded in conformity with GAAP, subject to **Section 5.2**.

**4.2 Maintenance of Properties; Insurance**. Borrower will maintain or cause to be maintained in good repair, working order and condition all material properties used in the business of Borrower and its Subsidiaries and will make or cause to be made all appropriate repairs, renewals and replacements thereof, ordinary wear and tear excepted. Borrower will maintain or cause to be maintained, with financially sound and reputable insurers, public liability and property damage insurance with respect to its business and properties and the business and properties of its Subsidiaries against loss or damage of the kinds customarily carried or maintained by corporations of established reputation engaged in similar businesses and in amounts reasonably acceptable to Investment Manager and will deliver evidence thereof to Investment Manager. Borrower will maintain business interruption insurance in at least the same amount as maintained on the Closing Date as evidenced in the insurance certificate delivered to

Investment Manager pursuant to Section 2.1(j). Borrower shall cause Investment Manager, pursuant to endorsements and/or assignments in form and substance reasonably satisfactory to Investment Manager, to be named as lender's loss payee in the case of casualty insurance, additional insured in the case of all liability insurance, and assignee in the case of all business interruption insurance, in each case for the benefit of Investment Manager and Lender. Borrower represents and warrants that it and each of its Subsidiaries currently maintains all material properties as set forth above and maintains all insurance described above. In the event Borrower fails to provide Investment Manager with evidence of the insurance coverage required by this Agreement, Investment Manager may purchase insurance at Borrower's expense to protect Investment Manager's interests in the Collateral. This insurance may, but need not, protect Borrower's interests. The coverage purchased by Investment Manager may not pay any claim made by Borrower or any claim that is made against Borrower in connection with the Collateral. Borrower may, and Investment Manager shall at the written request of Borrower, later cancel any insurance purchased by Investment Manager, but only after providing Investment Manager with evidence that Borrower has obtained insurance as required by this Agreement. If Investment Manager purchases insurance for the Collateral, Borrower will be responsible for the costs of that insurance, including interest and other Charges imposed by Investment Manager in connection with the placement of the insurance, until the effective date of the cancellation or expiration of the insurance. The costs of the insurance may be added to the Obligations. The costs of the insurance may be more than the cost of insurance Borrower is able to obtain on its own.

**4.3 Inspection; Lender Meeting**. Borrower shall permit any authorized representatives of Investment Manager to visit, audit and inspect any of Borrower's properties and those of its Subsidiaries, including its and their financial and accounting records, and to make copies and take extracts therefrom, and to discuss its and their affairs, finances and business with its and their officers and certified public accountants, at such reasonable times during normal business hours and as often as may be reasonably requested, provided that, such visits, audits and inspections in excess of one (1) per year by the Investment Manager shall not be at the expense of Borrower, unless a Default or an Event of Default shall have occurred and be continuing. Representatives of Lender will, at Lender's expense so long as no Default or Event of Default shall have occurred and be continuing, be permitted to accompany representatives of Investment Manager during each visit, inspection and discussion referred to in the immediately preceding sentence. Without in any way limiting the foregoing, Borrower will participate and will cause its key management personnel and those of its Subsidiaries to participate in a meeting with Investment Manager and Lender at least once during each year, which meeting shall be held at such time and such place as may be reasonably requested by Investment Manager.

**4.4 Organizational Existence**. Except as otherwise permitted by **Section 5.6**, Borrower will and will cause its Subsidiaries to at all times preserve and keep in full force and effect its organizational existence and all rights and franchises material to its business.

**4.5 Environmental Matters**. Borrower shall and shall cause each of its Subsidiaries to: (a) conduct its operations and keep and maintain its Real Estate in compliance with all material Environmental Laws and Environmental Permits; (b) implement any and all investigation, remediation, removal and response actions that are appropriate or necessary to

maintain the value and marketability of the Real Estate or to otherwise comply with Environmental Laws and Environmental Permits pertaining to the presence, generation, treatment, storage, use, disposal, transportation or Release of any Hazardous Material on, at, in, under, above, to, from or about any of its Real Estate; (c) notify Investment Manager promptly after Borrower or any Person within its control becomes aware of any violation of Environmental Laws or Environmental Permits or any Release on, at, in, under, above, to, from or about any Real Estate; and (d) promptly forward to Investment Manager a copy of any order, notice, request for information or any communication or report received by Borrower or any Person within its control in connection with any such violation or Release or any other matter relating to any Environmental Laws or Environmental Permits, in each case whether or not the Environmental Protection Agency or any Governmental Authority has taken or threatened any action in connection with any such violation, Release or other matter. If Investment Manager at any time has a reasonable basis to believe that there may be a violation of any Environmental Laws or Environmental Permits by Borrower or any Person under its control or any Environmental Liability arising thereunder, or a Release of Hazardous Materials on, at, in, under, above, to, from or about any of its Real Estate, then Borrower and its Subsidiaries shall, upon Investment Manager's written request (i) cause the performance of such environmental audits including subsurface sampling of soil and groundwater, and preparation of such environmental reports, at Borrower's expense, as Investment Manager may from time to time reasonably request, which shall be conducted by reputable environmental consulting firms reasonably acceptable to Investment Manager and shall be in form and substance reasonably acceptable to Investment Manager, and (ii) permit Investment Manager or its representatives to have access to all Real Estate for the purpose of conducting such environmental audits and testing as Investment Manager deems appropriate, including subsurface sampling of soil and groundwater. Borrower shall reimburse Investment Manager for the costs of such audits and tests and the same will constitute a part of the Obligations secured hereunder.

**4.6 Landlords' Agreements, Mortgagee Agreements, Bailee Letters and Real Estate Purchases**. Borrower shall use commercially reasonable efforts to obtain a landlord's agreement, mortgagee agreement or bailee letter, as applicable, from each lessor of leased property, mortgagee of owned property or bailee with respect to any warehouse, processor or converter facility or other location serving as the Company's headquarters or where Collateral with an aggregate value of Two Hundred Fifty Thousand Dollars ($250,000) or more is stored or located, which agreement or letter shall contain a waiver or subordination of all Liens or claims that the landlord, mortgagee or bailee may assert against the Collateral at that location, and shall otherwise be reasonably satisfactory in form and substance to Investment Manager. After the Closing Date, no real property or warehouse space shall be leased by Borrower or its Subsidiaries and no Inventory shall be shipped to a processor or converter under arrangements established after the Closing Date unless Borrower shall have used commercially reasonable efforts to obtain a landlord agreement or bailee letter, as appropriate, with respect to such location. Borrower shall and shall cause its Subsidiaries to timely and fully pay and perform their payment and other material obligations under all leases and other agreements with respect to each leased location or public warehouse where any Collateral is or may be located.

**4.7 New Subsidiaries.** Borrower shall (a) cause each Person upon its becoming a Domestic Subsidiary of Borrower (provided that this shall not be construed to constitute consent by Lender to any transaction not expressly permitted by the terms of this Agreement), promptly

to guaranty the Obligations and to grant to Investment Manager, for the benefit of Investment Manager and Lender, a security interest in the real, personal and mixed property of such Person to secure the Obligations and (b) pledge, or cause to be pledged, to Investment Manager, for the benefit of Investment Manager and Lender, all of the Stock of such Subsidiary owned by Borrower to secure the Obligations (not to exceed 65% of the equity securities of any Subsidiary that is not a Domestic Subsidiary). The documentation for such guaranty, security and pledge shall be substantially similar to the Loan Documents executed concurrently herewith with such modifications as are reasonably requested by Investment Manager.

**4.8 Board Observation Rights; Management Rights.** Borrower shall allow one representative designated by Investment Manager and who is an officer, member, manager, partner, agent or employee of Investment Manager (the "**Observer**") to attend and observe all meetings of the Board of Directors of Borrower (and all Board committees) in accordance with the Board Observer Letter. Borrower shall also provide Investment Manager with certain management rights as set forth in the Board Observer Letter.

**4.9 Further Assurances.**

**(a)** Borrower shall, from time to time, execute such guaranties, financing statements, documents, security agreements and reports as Investment Manager or Lender at any time may reasonably request to evidence, perfect or otherwise implement the guaranties and security for repayment of the Obligations contemplated by the Loan Documents.

**(b)** In the event Borrower acquires a fee interest in real property owned after the Closing Date, Borrower shall deliver to Investment Manager a fully executed mortgage or deed of trust over such real property in form and substance satisfactory to Investment Manager, together with such title insurance policies, surveys, appraisals, evidence of insurance, legal opinions, environmental assessments and other documents and certificates as shall be reasonably requested by Investment Manager.

## ARTICLE 5
## NEGATIVE COVENANTS

Borrower agrees that from and after the date hereof until the Termination Date:

**5.1 Indebtedness**. Borrower shall not and shall not cause or permit its Subsidiaries directly or indirectly to create, incur, assume, or otherwise become or remain directly or indirectly liable with respect to any Indebtedness (other than pursuant to a Contingent Obligation permitted under **Section 5.4**) except for **"Permitted Indebtedness"** as follows:

**(a)** the Obligations;

**(b)** Indebtedness not to exceed Five Hundred Thousand Dollars ($500,000) in the aggregate at any time outstanding secured by purchase money Liens incurred with respect to Capital Leases;

**(c)** Indebtedness under the Senior Line of Credit or permitted under the Senior Lender Subordination Agreement;

**(d)** Indebtedness of Borrower secured by Permitted Encumbrances;

**(e)** Indebtedness arising from the endorsement of instruments in the ordinary course of business;

**(f)** Indebtedness existing on the date hereof and disclosed to Investment Manager in writing or as set forth on **Schedule 5.1**;

**(g)** Indebtedness to trade creditors and with respect to surety bonds and similar obligations (including letters of credit issued for the benefit of Borrower's customers to ensure payment of consumer incentives) incurred in the ordinary course of business;

**(h)** Indebtedness of Borrower to UK Subsidiary and Indebtedness of UK Subsidiary to Borrower to the extent permitted under the definition of "Permitted Investments and Restricted Payments"; and

**(i)** Subordinated Debt.

**5.2 Liens and Related Matters.**

**(a) No Liens**. Borrower shall not and shall not cause or permit its Subsidiaries to directly or indirectly create, incur, assume or permit to exist any Lien on or with respect to any of Borrower's or such Subsidiary's property or assets, whether now owned or hereafter acquired, or any income or profits therefrom, except Permitted Encumbrances (including, without limitation, those Liens constituting Permitted Encumbrances existing on the date hereof and renewals and extensions thereof, as set forth on **Schedule 5.2**).

**(b) No Negative Pledges**. Borrower shall not and shall not cause or permit its Subsidiaries to directly or indirectly enter into or assume any agreement (other than the Loan Documents and other than agreements constituting Indebtedness permitted under Section 5.1(b) or non-exclusive licenses entered into in the ordinary course of business) prohibiting the creation or assumption of any Lien upon its properties or assets, whether now owned or hereafter acquired unless such prohibitions shall have been waived with respect to Investment Manager's and Lender's Lien in such properties or assets.

**(c) No Restrictions on Subsidiary Distributions to Borrower.** Except as provided herein or as set forth on **Schedule 5.2**, Borrower shall not and shall not cause or permit its Subsidiaries to directly or indirectly create or otherwise cause or suffer to exist or become effective any consensual encumbrance or restriction of any kind on the ability of any Subsidiary to: (1) pay dividends or make any other distribution on any of such Subsidiary's Stock owned by Borrower or any other Subsidiary; (2) pay any Indebtedness owed to Borrower or any other; (3) make loans or advances to Borrower or any other Subsidiary; or (4) transfer any of its property or assets to Borrower or any other Subsidiary.

**5.3 Investments**. Borrower shall not and shall not cause or permit its Subsidiaries to directly or indirectly make or own any Investment in any Person except Permitted Investments and Restricted Payments.

**5.4 Contingent Obligations**. Borrower shall not and shall not cause or permit its Subsidiaries to directly or indirectly create or become or be liable with respect to any Contingent Obligation except for "**Permitted Contingent Obligations**" as follows:

**(a)** those resulting from endorsement of negotiable instruments for collection in the ordinary course of business;

**(b)** those existing on the Closing Date and described in **Schedule 5.4**;

**(c)** Indebtedness to trade creditors incurred in the ordinary course of business; and

**(d)** those arising under indemnity agreements to title insurers to cause such title insurers to issue to Investment Manager mortgagee title insurance policies.

**5.5 Restricted Payments**. Borrower shall not and shall not cause or permit its Subsidiaries to directly or indirectly declare, order, pay, make or set apart any sum for any Restricted Payment except Permitted Investments and Restricted Payments.

**5.6 Restriction on Fundamental Changes**. Borrower shall not and shall not cause or permit its Subsidiaries to directly or indirectly: (a) change its name or jurisdiction of organization without providing Investment Manager not less than thirty (30) days prior written notice, (b) amend, modify or waive any term or provision of its organizational documents, including its certificate of incorporation, certificates of designations pertaining to preferred stock, or bylaws in any manner materially adverse to Lender unless required by law; (c) enter into any transaction of merger or consolidation except that, upon not less than five (5) Business Days prior written notice to Investment Manager, any wholly-owned Subsidiary of Borrower may be merged with or into Borrower (provided that Borrower is the surviving entity) or any other wholly-owned Subsidiary of Borrower; (c) liquidate, wind-up or dissolve itself (or suffer any liquidation or dissolution); or (d) acquire by purchase or otherwise all or substantially all of the business or assets of any other Person.

**5.7 Disposal of Assets or Subsidiary Stock**. Borrower shall not and shall not cause or permit its Subsidiaries to directly or indirectly convey, sell, lease, sublease, transfer or otherwise dispose of, or grant any Person an option to acquire, in one transaction or a series of related transactions, any of its property, business or assets, whether now owned or hereafter acquired, except for Permitted Transfers.

**5.8 Transactions with Affiliates**. Borrower shall not and shall not cause or permit its Subsidiaries to directly or indirectly enter into or permit to exist any transaction (including the purchase, sale, lease or exchange of any property or the rendering of any management, consulting, investment banking, advisory or other similar services) with any Affiliate or with any director, officer or employee of Borrower, except (a) as set forth on **Schedule 5.8**, (b) transactions in the ordinary course of and pursuant to the reasonable requirements of the business of any Borrower or any of its Subsidiaries and upon fair and reasonable terms not materially less favorable to any Borrower or any of its Subsidiaries (considered as a whole) than would be obtained in a comparable arm's length transaction with a Person that is not an Affiliate, (c) payment of reasonable compensation to officers, directors and employees for services actually rendered to Borrower or any of its Subsidiaries and (d) the purchase of Borrower's equity securities or issuance of Subordinated Indebtedness to Borrower's investors.

**5.9 Conduct of Business**. Borrower shall not and shall not cause or permit its Subsidiaries to directly or indirectly engage in any business other than businesses of the type described on **Schedule 5.9** and any other business reasonably related, ancillary or complimentary thereto.

**5.10 Changes Relating to Indebtedness**. Borrower shall not and shall not cause or permit its Subsidiaries to directly or indirectly change or amend the terms of any of its Indebtedness permitted by **Sections 5.1(b), 5.1(c) and 5.1(d)** if the effect of such amendment is to: (a) increase the interest rate on such Indebtedness; (b) change the dates upon which payments of principal or interest are due on or principal amount of such Indebtedness; (c) change any event of default in a manner adverse to Borrower, Investment Manager or Lender or add or make more restrictive any covenant with respect to such Indebtedness; (d) change the redemption or prepayment provisions of such Indebtedness; (e) change the subordination provisions thereof (or the subordination terms of any guaranty thereof); (f) change or amend any other term if such change or amendment would materially increase the obligations of the obligor or confer additional material rights on the holder of such Indebtedness in a manner adverse to Borrower or Lender; or (g) increase the portion of interest payable in cash with respect to any Indebtedness for which interest is payable by the issuance of payment-in-kind notes or is permitted to accrue; provided, that Borrower may amend the terms of the Senior Line of Credit to the extent not prohibited in the Senior Lender Subordination Agreement.

**5.11 Fiscal Year**. Borrower shall not change its Fiscal Year or permit any of its Subsidiaries to change their respective fiscal years without thirty (30) days prior written notice to the Investment Manager.

**5.12 Press Release; Public Offering Materials**. Borrower agrees that neither it nor its Affiliates will in the future issue any press releases or other public disclosure, including any prospectus, proxy statement or other materials filed with any Governmental Authority relating to a public offering of the Stock of Borrower, using the name of Investment Manager or Lender or their respective Affiliates or referring to this Agreement or the other Loan Documents without at least two (2) Business Days' prior notice to Investment Manager or Lender unless (and only to the extent that) Borrower or such Affiliate is required to do so under law and then, in any event, Borrower or such Affiliate will consult with Investment Manager or Lender, as applicable, before issuing such press release or other public disclosure. Borrower consents to the publication by Investment Manager or Lender of a tombstone or similar advertising material relating to the financing transactions contemplated by this Agreement. Investment Manager or Lender shall provide a draft of any such tombstone or similar advertising material to Borrower for review and comment prior to the publication thereof. Investment Manager and Lender reserve the right to provide to industry trade organizations information necessary and customary for inclusion in league table measurements.

**5.13 Reserved**.

**5.14 Bank Accounts**. Borrower shall not and shall not cause or permit its Subsidiaries other than UK Subsidiary to establish any new bank accounts, without prior written notice to Investment Manager and unless Investment Manager and the bank at which the account is to be opened enter into a control agreement pursuant to which such bank (a) acknowledges the security interest of Investment Manager in such bank account, (b) agrees to comply with instructions originated by Investment Manager directing disposition of the funds in the bank account without further consent from Borrower or its Subsidiary, and (c) agrees to subordinate and limit any security interest the bank may have in the bank account on terms reasonably satisfactory to Investment Manager (a "**Control Agreement**") subject to the terms of the Senior Lender Subordination Agreement.

**5.15 Hazardous Materials**. Borrower shall not and shall not cause or permit its Subsidiaries to cause or permit a Release of any Hazardous Material on, at, in, under, above, to, from or about any of the Real Estate except in compliance with Environmental Laws or Environmental Permits.

**5.16 ERISA**. Borrower shall not and shall not cause or permit any ERISA Affiliate to, cause or permit to occur an ERISA Event to the extent such ERISA Event would reasonably be expected to have a Material Adverse Effect.

**5.17 Sale Leasebacks**. Borrower shall not and shall not cause or permit any of its Subsidiaries to engage in any sale leaseback, synthetic lease or similar transaction involving any of their respective assets.

**5.18 Prepayments of Other Indebtedness**. Borrower shall not, directly or indirectly, voluntarily purchase, redeem, defease or prepay any principal of, premium, if any, interest or other amount payable in respect of any Subordinated Indebtedness, other than (i) by conversion of such Indebtedness into equity securities of Borrower and; (ii) intercompany Indebtedness reflecting amounts owing to Borrower.

**5.19 Changes to Material Contracts**. Borrower shall not and shall not cause or permit any of its Subsidiaries to change or amend the terms of any Material Agreement if such change would have a Material Adverse Effect.

## ARTICLE 6
## FINANCIAL COVENANTS/REPORTING

Borrower covenants and agrees that from and after the date hereof until the Termination Date, Borrower shall perform and comply with all covenants in this **Article 6.**

**6.1 Financial Statements and Other Reports**. Borrower will maintain, and cause each of its Subsidiaries to maintain, a system of accounting established and administered in accordance with sound business practices to permit preparation of Financial Statements in conformity with GAAP (it being understood that monthly Financial Statements are not required to have footnote disclosures). Borrower will deliver each of the Financial Statements and other reports described below to Investment Manager.

**(a) Monthly Financials**. As soon as available and in any event within thirty (30) days after the end of each calendar month, Borrower will deliver the consolidated balance sheets of Borrower and its Subsidiaries, as at the end of such month, and the related consolidated statement of income for such month.

**(b) Year-End Financials**. As soon as available and in any event within one hundred eighty (180) days after the end of each Fiscal Year of Borrower, unless Borrower's board of directors shall have determined in its reasonable judgment not to require an audit for such Fiscal Year, Borrower will deliver to Investment Manager (1) the audited consolidated and consolidating balance sheets of Borrower and its Subsidiaries, as at the end of such year, and the related consolidated statements of income and cash flow for such Fiscal Year, and (2) an unqualified opinion with respect to the consolidated Financial Statements from a firm of Certified Public Accountants selected by Borrower and reasonably acceptable to Investment Manager. If Borrower's board of directors shall have determined in its reasonable judgment not to require an audit for such Fiscal Year, Borrower shall deliver to Investment Manager within sixty (60) days after the end of each Fiscal Year the unaudited consolidated and consolidating balance sheets of Borrower and its Subsidiaries, as at the end of such year, and the related consolidated statements of income and cash flow for such Fiscal Year. Borrower further agrees to deliver to Investment Manager, promptly upon completion, any audited financial statements subsequently prepared for such Fiscal Year.

**(c) Accountants' Reports**. Promptly upon receipt thereof, Borrower will deliver to Investment Manager copies of all significant reports submitted by Borrower's firm of certified public accountants in connection with each annual, interim or special audit or review of any type of the Financial Statements or related internal control systems of Borrower and its Subsidiaries made by such accountants, including any comment letter submitted by such accountants to management in connection with their services.

**(d) Reserved**

**(e) Appraisals**. At Borrower's expense, Investment Manager may, from time to time, but no more often than once per calendar year, obtain appraisal reports in form and substance and from appraisers satisfactory to Investment Manager, stating the then current market values of all or any portion of the Real Estate and personal property owned by Borrower; provided, however, that Investment Manager may obtain such appraisal reports at any time there exists an Event of Default and such report shall not count against the one-per-year limitation set forth herein.

**(f) Projections**. At least annually and within ten (10) days after approval thereof by the Borrower's board of directors, and within five (5) days of any amendment or updated thereto, Borrower will deliver to Investment Manager board-approved Projections of Borrower and its Subsidiaries for the forthcoming fiscal year.

**(g) SEC Filings and Press Releases**. Promptly upon their becoming available, Borrower will deliver to Investment Manager copies of (1) all Financial Statements, reports, notices and proxy statements sent or made available by Borrower or any of its Subsidiaries to their Stockholders generally, (2) all regular and periodic reports and all

registration statements and prospectuses, if any, filed by Borrower or any of its Subsidiaries with any securities exchange or with the Securities and Exchange Commission, any Governmental Authority or any private regulatory authority, and (3) all press releases and other statements made available by Borrower or any of its Subsidiaries to the public concerning developments in the business of any such Person. Documents required to be delivered under clauses (2) and (3) of this Section 6.1(g) shall be deemed to have been delivered if links thereto are posted conspicuously on the Borrower's website.

**(h) Events of Default, Etc**. Promptly upon any officer of Borrower obtaining knowledge of any of the following events or conditions, Borrower shall deliver to Investment Manager copies of all notices given or received by Borrower or any of its Subsidiaries with respect to any such event or condition and a certificate of Borrower's chief executive officer specifying the nature and period of existence of such event or condition and what action Borrower or any of its Subsidiaries has taken, is taking and proposes to take with respect thereto: (1) any condition or event that constitutes, or which would reasonably be expected to result in the occurrence of, an Event of Default; (2) any notice that any Person has given to Borrower or any of its Subsidiaries or any other action taken with respect to a claimed default or event or condition of the type referred to in **Section 7.1(b)**; (3) any event or condition that result in any Material Adverse Effect; or (4) the occurrence of any "Default" or "Event of Default" under the Senior Line of Credit.

**(i) Litigation**. Promptly upon any officer of Borrower obtaining knowledge of (1) the institution of any action, charge, claim, demand, suit, proceeding, petition, governmental investigation, tax audit or arbitration now pending or, to the knowledge of Borrower after due inquiry, threatened in writing against or affecting Borrower or any of its Subsidiaries or any property of Borrower or any of its Subsidiaries ("**Litigation**") not previously disclosed by Borrower to Investment Manager or (2) any material development in any action, suit, proceeding, governmental investigation or arbitration at any time pending against or affecting Borrower or any property of Borrower which, in each case, would reasonably be expected to have a Material Adverse Effect, Borrower will promptly give notice thereof to Investment Manager and provide such other information as may be reasonably available to them to enable Investment Manager and its counsel to evaluate such matter.

**(j) Notice of Corporate and other Changes**. Borrower shall provide prompt written notice to Investment Manager of (1) any amendment to Borrower's articles or certificate of incorporation, by-laws, partnership agreement or other organizational documents, and (2) any Subsidiary created or acquired by Borrower or any of its Subsidiaries after the Closing Date, such notice, in each case, to identify the applicable jurisdictions, capital structures or Subsidiaries, as applicable. The foregoing notice requirement shall not be construed to constitute consent by Lender to any transaction referred to above which is expressly prohibited by the terms of this Agreement.

**(k) Other Information**. With reasonable promptness, Borrower will deliver to Investment Manager such other certificates, documents, information and data with respect to itself or any Subsidiary as from time to time may be reasonably requested by Investment Manager.

**(l) Compliance Certificate**. Together with each delivery of Financial Statements of Borrower and its Subsidiaries pursuant to **Sections 6.1(a) and (b)**, Borrower will deliver to Investment Manager a fully and properly completed Compliance Certificate (in substantially the same form as **Exhibit 6.1(l)** signed by Borrower's chief executive officer or chief financial officer.

**(m) Taxes**. Borrower shall provide prompt written notice to Investment Manager of (i) the execution or filing with the IRS or any other Governmental Authority of any agreement or other document extending, or having the effect of extending, the period for assessment or collection of any Charges by Borrower or any of its Subsidiaries and (ii) any agreement by Borrower or any of its Subsidiaries or request directed to Borrower or any of its Subsidiaries to make any adjustment under IRC Section 481(a), by reason of a change in accounting method or otherwise, in each case which would reasonably be expected to have a Material Adverse Effect.

**(n) Board Materials**. Borrower shall provide to Investment Manager all materials relating to and used in meetings and activities of Borrower's Board of Directors in the normal course of business.

**(o) 409a Valuation Reports**. Borrower shall provide to Investment Manager promptly, but no later than five (5) days after completion, a copy of each 409a valuation report as to Borrower's capital stock that Borrower completes after the Closing Date.

**6.2 Accounting Terms; Utilization of GAAP for Purposes of Calculations Under Agreement**. For purposes of this Agreement, all accounting terms not otherwise defined herein shall have the meanings assigned to such terms in conformity with GAAP. Financial Statements and other information furnished to Investment Manager pursuant to **Section 6.1** or any other section (unless specifically indicated otherwise) shall be prepared in accordance with GAAP as in effect at the time of such preparation; *provided* that no Accounting Change shall affect the covenants, standards or terms in this Agreement; *provided further* that Borrower shall prepare footnotes to the Financial Statements required to be delivered hereunder that show the differences between the Financial Statements delivered (which reflect such Accounting Changes) and the basis for calculating financial covenant compliance (without reflecting such Accounting Changes). All such adjustments described in clause (c) of the definition of the term Accounting Changes resulting from expenditures made subsequent to the Closing Date (including capitalization of costs and expenses or payment of pre-Closing Date liabilities) shall be treated as expenses in the period the expenditures are made. In the event that any Accounting Change shall occur and such change results in a change in the method of calculation of financial covenants, standards or terms in this Agreement, then Borrower and Investment Manager agree to negotiate in good faith in order to amend such provisions of this Agreement so as to equitably reflect such Accounting Changes with the desired result that the criteria for evaluating the financial condition of Borrower shall be the same after such Accounting Changes as if such Accounting Changes had not been made. Until such time as such an amendment shall have been executed and delivered by Borrower, Investment Manager and Lender, all financial covenants, standards and terms in this Agreement shall continue to be calculated or construed as if such Accounting Changes had not occurred

**6.3 Financial Covenants**.

**(a) Minimum Liquidity**. Borrower shall maintain, at all times, a total balance of Cash in an account or accounts subject to a Control Agreement plus unrestricted availability under the Senior Line of Credit of not less than $3,000,000, to be certified to Investment Manager monthly. From and after the date on which Borrower provides Investment Manager with evidence satisfactory to Investment Manager that Borrower has achieved EBITDA of not less than $1,000,000 for two (2) consecutive Fiscal Quarters, this covenant will be permanently waived.

## ARTICLE 7
## DEFAULT, RIGHTS AND REMEDIES

**7.1 Event of Default**. "Event of Default" shall mean the occurrence or existence of any one or more of the following:

**(a) Payment**. Failure to pay any installment or other payment of principal of any Loan when due or any interest on any Loan or any other amount due under this Agreement or any of the other Loan Documents within three (3) days of when due; or

**(b) Default in Other Agreements**. (1) Borrower or any of its Subsidiaries fails to pay when due or within any applicable grace period any principal or interest on Indebtedness (other than the Loan) or any Contingent Obligations having an aggregate principal amount in excess of Five Hundred Thousand Dollars ($500,000) or (2) breach or default of Borrower or any of its Subsidiaries, or the occurrence of any condition or event, with respect to any Indebtedness (other than the Loan) or any Contingent Obligations, if the effect of such breach, default or occurrence is to cause or to permit the holder or holders then to cause, Indebtedness and/or Contingent Obligations having an aggregate principal amount in excess of Five Hundred Thousand Dollars ($500,000) to become or be declared due prior to their stated maturity; or

**(c) Breach of Certain Provisions**. Failure of Borrower to perform or comply with any term or condition contained in that portion of **Section 4.2** relating to Borrower's obligation to maintain insurance, **Section 2.3**, **Section 4.3, Section 4.7, Article 5 or Article 6**; or

**(d) Breach of Warranty**. Any representation, warranty, certification or other statement made by Borrower or any Guarantor in any Loan Document or in any statement or certificate at any time given by such Person in writing pursuant or in connection with any Loan Document is false in any material respect (without duplication of materiality qualifiers contained therein) on the date made; or

**(e) Other Defaults Under Loan Documents**. Borrower defaults in the performance of or compliance with any term contained in this Agreement or the other Loan Documents (other than occurrences described in other provisions of this **Section 7.1** for which a different grace or cure period is specified, or for which no cure period is specified and which constitute immediate Events of Default) and such default is not remedied or waived within thirty (30) days; or

**(f) Involuntary Bankruptcy; Appointment of Receiver, Etc**. (1) A court enters a decree or order for relief with respect to Borrower or any Guarantor in an involuntary case under the Bankruptcy Code, which decree or order is not stayed or other similar relief is not granted under any applicable federal or state law; or (2) the continuance of any of the following events for sixty (60) days unless dismissed, bonded or discharged: (a) an involuntary case is commenced against Borrower or any Guarantor, under any applicable bankruptcy, insolvency or other similar law now or hereafter in effect; or (b) a decree or order of a court for the appointment of a receiver, liquidator, sequestrator, trustee, custodian or other officer having similar powers over Borrower, or over all or a substantial part of its property, is entered; or (c) a receiver, trustee or other custodian is appointed without the consent of Borrower, for all or a substantial part of the property of Borrower; or

**(g) Voluntary Bankruptcy; Appointment of Receiver, Etc**. (1) Borrower commences a voluntary case under the Bankruptcy Code, or consents to the entry of an order for relief in an involuntary case or to the conversion of an involuntary case to a voluntary case under any such law or consents to the appointment of or taking possession by a receiver, trustee or other custodian for all or a substantial part of its property; or (2) Borrower or any Guarantor makes any assignment for the benefit of creditors; or (3) the Board of Directors of Borrower or any Guarantor adopts any resolution or otherwise authorizes action to approve any of the actions referred to in this **Section 7.1(g)**; or

**(h) Judgment and Attachments**. Any money judgment, writ or warrant of attachment, or similar process (other than those described elsewhere in this **Section 7.1**) involving an amount in the aggregate at any time in excess of Two Hundred Fifty Thousand Dollars ($250,000) (to the extent not adequately covered by insurance as to which the insurance company has acknowledged coverage) is entered or filed against Borrower or any of its assets and remains undischarged, unvacated, unbonded or unstayed for a period of ten (10) days or in any event later than five (5) Business Days prior to the date of any proposed sale thereunder; or

**(i) Dissolution**. Any order, judgment or decree is entered against Borrower or any Guarantor decreeing the dissolution or split up of Borrower or such Guarantor and such order remains undischarged or unstayed for a period in excess of thirty (30) days; or

**(j) Solvency**. Borrower and the Guarantors, taken as a whole, cease to be Solvent, are unable to pay their debts as they become due or admit in writing their present or prospective inability to pay their debts as they become due; or

**(k) Invalidity of Loan Documents**. Any of the Loan Documents for any reason, other than a partial or full release in accordance with the terms thereof, ceases to be in full force and effect or is declared to be null and void, or Borrower or any Guarantor denies that it has any further liability under any Loan Documents to which it is party, or gives notice to such effect; or

**(l) Change of Control**. A Change of Control occurs; or

**(m) Subordinated Indebtedness**. (i) The failure of Borrower or any creditor of Borrower or any of its Subsidiaries to comply with the terms of any subordination or

intercreditor agreement or any subordination provisions of any note or other document running to the benefit of Investment Manager or Lender, or (ii) if any such document becomes null and void or (iii) any party denies further liability under any such document or provides notice to that effect.

**(n) Senior Loan Documents**. An event of default occurs under the Senior Loan Documents.

**7.2 Acceleration and other Remedies**.

**(a)** Upon the occurrence of any Event of Default described in **Sections 7.1(f) or 7.1(g)**, all of the Obligations shall automatically become immediately due and payable, without presentment, demand, protest, notice of intent to accelerate, notice of acceleration or other requirements of any kind, all of which are hereby expressly waived by Borrower.

**(b)** Upon the occurrence and during the continuance of any Event of Default other than described in **Sections 7.1(f) or 7.1(g)**, Investment Manager may, and at the request of Lender, Investment Manager shall (i) declare all or any portion of the Obligations to be, and the same shall forthwith become, immediately due and payable together with accrued interest thereon and (ii) exercise any other remedies which may be available under the Loan Documents or applicable law, including all remedies provided under the Code.

**(c)** Except as otherwise provided for in this Agreement or by applicable law, Borrower waives: (i) presentment, demand and protest and notice of presentment, dishonor, notice of intent to accelerate, notice of acceleration, protest, default, nonpayment, maturity, release, compromise, settlement, extension or renewal of any or all commercial paper, accounts, contract rights, documents, instruments, chattel paper and guaranties at any time held by Investment Manager on which Borrower may in any way be liable, and hereby ratifies and confirms whatever Investment Manager may do in this regard, (ii) all rights to notice and a hearing prior to Investment Manager's taking possession or control of, or to Investment Manager's replevy, attachment or levy upon, the Collateral or any bond or security that might be required by any court prior to allowing Investment Manager to exercise any of its remedies, and (iii) the benefit of all valuation, appraisal, marshaling and exemption laws.

**7.3 Performance by Investment Manager**. If Borrower shall fail to perform any covenant, duty or agreement contained in any of the Loan Documents, Investment Manager may perform or attempt to perform such covenant, duty or agreement on behalf of Borrower after the expiration of any cure or grace periods set forth herein. In such event, Borrower shall, at the request of Investment Manager, promptly pay any amount reasonably expended by Investment Manager in such performance or attempted performance to Investment Manager. Notwithstanding the foregoing, it is expressly agreed that Investment Manager shall not have any liability or responsibility for the performance of any obligation of Borrower under this Agreement or any other Loan Document.

**7.4 Set Off and Sharing of Payments**. In addition to any rights now or hereafter granted under applicable law and not by way of limitation of any such rights, during the continuance of any Event of Default, Lender is hereby authorized by Borrower at any time or

from time to time, with reasonably prompt subsequent notice to Borrower (any prior or contemporaneous notice being hereby expressly waived) to set off and to appropriate and to apply any and all (A) balances held by Lender at any of its offices for the account of Borrower or any of its Subsidiaries (regardless of whether such balances are then due to Borrower or its Subsidiaries), and (B) other property at any time held or owing by Lender to or for the credit or for the account of Borrower or any of its Subsidiaries, against and on account of any of the Obligations; except that Lender shall not exercise any such right without the prior written consent of Investment Manager. Lender, in exercising a right to set off or otherwise receiving any payment on account of the Obligations, shall deliver such amounts to Investment Manager and Investment Manager shall apply such funds to the payment of the Obligations in accordance with **Section 7.5**.

**7.5 Application of Proceeds after Default**. Notwithstanding anything to the contrary contained in this Agreement, upon the occurrence and during the continuance of an Event of Default, (a) Borrower irrevocably waives the right to direct the application of any and all payments at any time or times thereafter received by Lender or Investment Manager from or on behalf of Borrower, and Investment Manager shall have the continuing and exclusive right to apply and to reapply any and all payments received at any time or times after the occurrence and during the continuance of an Event of Default against the Obligations in such manner as Investment Manager may deem advisable notwithstanding any previous application by Investment Manager and (b) in the absence of a specific determination by Investment Manager with respect thereto, the proceeds of any sale of, or other realization upon, all or any part of the Collateral shall be applied in accordance with **Section 1.9** hereof. Any balance remaining shall be delivered to Borrower or to whomever may be lawfully entitled to receive such balance or as a court of competent jurisdiction may direct.

## ARTICLE 8
## ASSIGNMENT

**8.1 Assignment.**

**(a)** Subject to the terms of this Section 8.1, Lender may make an assignment, at any time or times, of the Loan Documents, Loan or any portion thereof or interest therein, including Lender's rights, title, interests, remedies, powers or duties thereunder. Any assignment by Lender shall: (i) require (A) the consent of (1) Investment Manager (which consent shall not be unreasonably withheld or delayed with respect to a Qualified Assignee) and (2) so long as no Event of Default has occurred and is continuing, Borrower, if such assignment is, in the reasonable estimation of Lender, to a known direct competitor of Borrower or to a so-called "vulture" fund or "distressed debt" fund, and (B) the execution of an assignment agreement in form and substance reasonably satisfactory to, and acknowledged by, Investment Manager); (ii) be conditioned on such assignee Lender representing to the assigning Lender and Investment Manager that it is purchasing the applicable Loans to be assigned to it for its own account, for investment purposes and not with a view to the distribution thereof; and (iii) after giving effect to any such partial assignment, the assignee Lender shall hold Loan the original principal amount of which is at least One Million Dollars ($1,000,000) and the assigning Lender shall continue to hold Loan the original principal amount of which is at least equal to One Million Dollars ($1,000,000). Investment Manager may in its sole and absolute discretion

permit any assignment by Lender to a Person or Persons that are not Qualified Assignees unless (x) no Event of Default has occurred and is continuing and (y) such Person or Persons is in the reasonable estimation of Lender a known direct competitor of Borrower or to a so-called "vulture" fund or "distressed debt" fund. In the case of an assignment by Lender under this **Section 8.1**, the assignee shall have, to the extent of such assignment, the same rights, benefits and obligations as Lender hereunder. The assigning Lender shall be relieved of its obligations hereunder with respect to the assigned portion of the Loan from and after the date of such assignment. Borrower hereby acknowledges and agrees that any assignment shall give rise to a direct obligation of Borrower to the assignee and that the assignee shall be considered to be a "Lender." In the event Investment Manager or Lender assigns or otherwise transfers all or any part of the Obligations, Investment Manager or Lender shall so notify Borrower and Borrower shall, upon the request of Investment Manager or Lender, execute new Notes in exchange for the Notes, if any, being assigned. Notwithstanding the foregoing provisions of this **Section 8.1(a)**, (a) Lender may at any time pledge the Obligations held by it and Lender's rights under this Agreement and the other Loan Documents to a Federal Reserve Bank, and (b) Lender may assign the Obligations held by it and Lender's rights under this Agreement and the other Loan Documents to another investment fund managed by the same investment advisor or pledge such Obligations and rights to a trustee for the benefit of its investors; provided that such assignment does not result in a nonexempt prohibited transaction under section 406 of ERISA.

**(b)** Lender may furnish any information concerning Borrower in the possession of Lender from time to time to assignees and participants (including prospective assignees and participants); *provided* that Lender shall obtain from assignees or participants confidentiality covenants substantially equivalent to those contained in **Section 10.12**.

## ARTICLE 9
## PROVISIONS RELATED TO INVESTMENT MANAGER

**9.1 Appointment**. Lender hereby designates and appoints Investment Manager as its agent under this Agreement and the other Loan Documents, and Lender hereby irrevocably authorizes Investment Manager to execute and deliver the Collateral Documents and to take such action or to refrain from taking such action on its behalf under the provisions of this Agreement and the other Loan Documents and to exercise such powers as are set forth herein or therein, together with such other powers as are reasonably incidental thereto. Investment Manager is authorized and empowered to amend, modify, or waive any provisions of this Agreement or the other Loan Documents on behalf of Lender subject to the requirement that Lender's consent be obtained in certain instances as provided in this **Article 9** and **Section 10.2**. The provisions of this **Article 9** are solely for the benefit of Investment Manager and Lender and neither Borrower nor any other Person shall have any rights as a third party beneficiary of any of the provisions hereof. In performing its functions and duties under this Agreement, Investment Manager shall act solely as agent of Lender and does not assume and shall not be deemed to have assumed any obligation toward or relationship of agency or trust with or for Borrower. Investment Manager may perform any of its duties hereunder, or under the Loan Documents, by or through its agents or employees.

**9.2 Reliance**. Investment Manager shall be entitled to rely, and shall be fully protected in relying, upon any written or oral notices, statements, certificates, orders or other

documents or any telephone message or other communication (including any writing, telex, fax or telegram) believed by it in good faith to be genuine and correct and to have been signed, sent or made by the proper Person, and with respect to all matters pertaining to this Agreement or any of the Loan Documents and its duties hereunder or thereunder. Investment Manager shall be entitled to rely upon the advice of legal counsel, independent accountants, and other experts selected by Investment Manager in its sole discretion.

**9.3 Successor Investment Manager.**

**(a) Resignation**. Investment Manager may resign from the performance of all its agency functions and duties hereunder at any time by giving at least thirty (30) days' prior written notice to Borrower and Lender. Such resignation shall take effect upon the acceptance by a successor Investment Manager of appointment pursuant to clause (b) below or as otherwise provided in clause (b) below.

**(b) Appointment of Successor**. Upon any such notice of resignation pursuant to clause (a) above, Lender shall appoint a successor Investment Manager which, unless an Event of Default has occurred and is continuing, shall be acceptable to Borrower (Borrower's approval not to be unreasonably conditioned, delayed or withheld).

**(c) Successor Investment Manager**. Upon the acceptance of any appointment as Investment Manager under the Loan Documents by a successor Investment Manager, such successor Investment Manager shall thereupon succeed to and become vested with all the rights, powers, privileges and duties of the retiring Investment Manager, and the retiring Investment Manager shall be discharged from its duties and obligations under the Loan Documents. After any retiring Investment Manager's resignation as Investment Manager, the provisions of this **Article 9** shall continue to inure to its benefit as to any actions taken or omitted to be taken by it in its capacity as Investment Manager.

**9.4 Collateral Matters.**

**(a) Release of Collateral**. Lender hereby irrevocably authorizes Investment Manager, at its option and in its discretion, to release any Lien granted to or held by Investment Manager upon any Collateral (x) upon payment and satisfaction of all Obligations (other than contingent indemnification obligations to the extent no claims giving rise thereto have been asserted) or (y) constituting property being sold or disposed of if Borrower certifies to Investment Manager that the sale or disposition is made in compliance with the provisions of this Agreement (and Investment Manager may rely in good faith conclusively on any such certificate, without further inquiry).

**(b) Confirmation of Authority; Execution of Releases**. Without in any manner limiting Investment Manager's authority to act without any specific or further authorization or consent by Lender (as set forth in **Section 9.4(a))**, Lender agrees to confirm in writing, upon request by Investment Manager or Borrower, the authority to release any Collateral conferred upon Investment Manager under clauses (x) and (y) of **Section 9.4(a)**. Upon receipt by Investment Manager of any required confirmation from Lender of its authority to release any particular item or types of Collateral, and upon at least ten (10) Business Days'

prior written request by Borrower, Investment Manager shall (and is hereby irrevocably authorized by Lender to) execute such documents as may be necessary to evidence the release of the Liens granted to Investment Manager upon such Collateral; *provided*, *however*, that (x) Investment Manager shall not be required to execute any such document on terms which, in Investment Manager's opinion, would expose Investment Manager to liability or create any obligation or entail any consequence other than the release of such Liens without recourse or warranty, and (y) such release shall not in any manner discharge, affect or impair the Obligations or any Liens upon, all interests retained by Borrower, including the proceeds of any sale, all of which shall continue to constitute part of the Collateral.

**(c) Absence of Duty**. Investment Manager shall have no obligation whatsoever to Lender or any other Person to assure that the property covered by the Collateral Documents exists or is owned by Borrower or is cared for, protected or insured or has been encumbered or that the Liens granted to Investment Manager have been properly or sufficiently or lawfully created, perfected, protected or enforced or are entitled to any particular priority, or to exercise at all or in any particular manner or under any duty of care, disclosure or fidelity, or to continue exercising, any of the rights, authorities and powers granted or available to Investment Manager in this **Section 9.4** or in any of the Loan Documents, it being understood and agreed that in respect of the property covered by the Collateral Documents or any act, omission or event related thereto, Investment Manager may act in any manner it may deem appropriate, in its discretion, given Investment Manager's own interest in property covered by the Collateral Documents and that Investment Manager shall have no duty or liability whatsoever to Lender, *provided* that Investment Manager shall exercise the same care which it would in dealing with loan for its own account.

**9.5 Agency for Perfection**. Investment Manager and Lender hereby appoint each other as agent for the purpose of perfecting the security interest in assets which, in accordance with the Code in any applicable jurisdiction, can be perfected by possession or control. Should Lender obtain possession or control of any such assets, Lender shall notify Investment Manager thereof, and, promptly upon Investment Manager's request therefor, shall deliver such assets to Investment Manager or in accordance with Investment Manager's instructions or transfer control to Investment Manager in accordance with Investment Manager's instructions. Lender agrees that it will not have any right individually to enforce or seek to enforce any Collateral Document or to realize upon any collateral security for the Loans unless instructed to do so by Investment Manager in writing, it being understood and agreed that such rights and remedies may be exercised only by Investment Manager.

**9.6 Notice of Default**. Investment Manager shall not be deemed to have knowledge or notice of the occurrence of any Default or Event of Default unless Investment Manager shall have received written notice from Lender or Borrower referring to this Agreement, describing such Default or Event of Default and stating that such notice is a "notice of default". Investment Manager will use reasonable efforts to notify Lender of its receipt of any such notice, unless such notice is with respect to defaults in the payment of principal, interest and Fees, in which case Investment Manager will notify Lender of its receipt of such notice. Investment Manager shall take such action with respect to such Default or Event of Default as may be requested by Lender in accordance with **Article 7**. Unless and until Investment Manager has received any such request, Investment Manager may (but shall not be obligated to) take such action, or refrain from taking such action, with respect to such Default or Event of Default as it shall deem advisable or in the best interests of Lender.

**9.7 Lender Actions Against Collateral**. With respect to any action by Investment Manager to enforce the rights and remedies of Investment Manager and Lender under this Agreement and the other Loan Documents, Lender hereby consents to the jurisdiction of the court in which such action is maintained, and agrees to deliver its Note to Investment Manager to the extent necessary to enforce the rights and remedies of Investment Manager for the benefit of Lender under the mortgages or similar Liens or encumbrances in accordance with the provisions hereof.

**9.8 Payment; Information; Actions in Concert.**

**(a) Return of Payments.**

**(i)** If Investment Manager pays an amount to Lender under this Agreement in the belief or expectation that a related payment has been or will be received by Investment Manager from Borrower and such related payment is not received by Investment Manager, then Investment Manager will be entitled to recover such amount from Lender on demand without setoff, counterclaim or deduction of any kind.

**(ii)** If Investment Manager determines at any time that any amount received by Investment Manager under this Agreement must be returned to Borrower or paid to any other Person pursuant to any insolvency law or otherwise, then, notwithstanding any other term or condition of this Agreement or any other Loan Document, Investment Manager will not be required to distribute any portion thereof to Lender. In addition, Lender will repay to Investment Manager on demand any portion of such amount that Investment Manager has distributed to Lender, together with interest at such rate, if any, as Investment Manager is required to pay to Borrower or such other Person, without setoff, counterclaim or deduction of any kind.

**(b) Dissemination of Information**. Investment Manager shall use reasonable efforts to provide Lender with any notice of Default or Event of Default received by Investment Manager from, or delivered by Investment Manager to, Borrower, with notice of any Event of Default of which Investment Manager has actually become aware and with notice of any action taken by Investment Manager following any Event of Default; *provided*, that Investment Manager shall not be liable to Lender for any failure to do so.

## ARTICLE 10
## MISCELLANEOUS

**10.1 Indemnities**. Borrower agrees to indemnify, pay, and hold Investment Manager, Lender and their respective officers, directors, employees, agents, and attorneys (the **"Indemnitees"**) harmless from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, claims, costs and expenses (including all reasonable fees and expenses of counsel to such Indemnitees) of any kind or nature whatsoever that may be imposed on, incurred by, or asserted against the Indemnitee as a result of such Indemnitees being a party to this Agreement or the transactions consummated pursuant to this Agreement; *provided*, that

Borrower shall have no obligation to an Indemnitee hereunder with respect to liabilities to the extent resulting from the gross negligence or willful misconduct of that Indemnitee as determined by a court of competent jurisdiction. If and to the extent that the foregoing undertaking may be unenforceable for any reason, Borrower agrees to make the maximum contribution to the payment and satisfaction thereof which is permissible under applicable law.

**10.2 Amendments and Waivers**. Except for actions expressly permitted to be taken by Investment Manager, no amendment, modification, termination or waiver of any provision of this Agreement or any other Loan Document, or any consent to any departure by Borrower therefrom, shall in any event be effective unless the same shall be in writing and signed by Borrower, Investment Manager and Lender.

**10.3 Notices**. Any notice or other communication required shall be in writing addressed to the respective party as set forth below and may be personally served, telecopied, sent by overnight courier service and shall be deemed to have been given: (a) if delivered in person, when delivered; (b) if delivered by fax, on the date of transmission if transmitted on a Business Day before 4:00 p.m. Eastern Time; or (c) if delivered by overnight courier, one (1) Business Day after delivery to the courier properly addressed.

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|---|---|
| Notices shall be addressed as follows: | |
| If to Borrower: | **Cardlytics, Inc.** |
| | 675 Ponce de Leon Ave., NE, Suite 6000 |
| | Atlanta, Georgia 30308 |
| | Attn: David Evans, CFO |
| | Fax: (_____)_____-_____ |
| | |
| With a copy to: | **Cooley LLP** |
| | 1299 Pennsylvania Avenue, NW, Suite 700 |
| | Washington, DC 20004 |
| | Attn: Jonathan P. Bagg |
| | Fax: (202) 842-7899 |
| | |
| If to Investment Manager or Lender: | **Columbia Partners, L.L.C. Investment Management** |
| | 5425 Wisconsin Avenue |
| | Suite 700 |
| | Chevy Chase, Maryland 20815 |
| | Attn: Tom Bain Fax: (240) 482-0401 |

| | |
|---|---|
| With a copy to: | **Troutman Sanders LLP** |
| | 1850 Towers Crescent Plaza |
| | Suite 500 |
| | Tysons Corner, Virginia 22182 |
| | Attn: Kristopher Henman, Esq. |
| | Fax: (703) 448-6502 |

**10.4 Obligations**.

**(a) Obligations Absolute; Failure or Indulgence Not Waiver; Remedies Cumulative**. The payment and performance by Borrower of all of the Obligations shall be absolute and unconditional, irrespective of any defense or rights of set-off, recoupment or counterclaim Borrower might otherwise have against Investment Manager or Lender, and Borrower shall pay and perform all of the Obligations, free of any deductions and without abatement, diminution, recoupment, counterclaim or set-off. Until payment in full of all of the Obligations (other than inchoate indemnification obligations), Borrower shall (a) not suspend or discontinue any payments required pursuant to the Note, this Agreement or any other Loan Document; and (b) perform and observe all of the other terms and provisions of this Agreement or any other Loan Documents. No failure or delay on the part of Investment Manager or Lender to exercise, nor any partial exercise of, any power, right or privilege hereunder or under any other Loan Documents shall impair such power, right, or privilege or be construed to be a waiver of any Default or Event of Default. All rights and remedies existing hereunder or under any other Loan Document are cumulative to and not exclusive of any rights or remedies otherwise available.

**10.5 Marshaling; Payments Set Aside**. Neither Investment Manager nor Lender shall be under any obligation to marshal any assets in payment of any or all of the Obligations. To the extent that Borrower makes payment(s) or Investment Manager enforces its Liens or Investment Manager or Lender exercises its right of set-off, and such payment(s) or the proceeds of such enforcement or set-off is subsequently invalidated, declared to be fraudulent or preferential, set aside, or required to be repaid by anyone, then to the extent of such recovery, the Obligations or part thereof originally intended to be satisfied, and all Liens, rights and remedies therefor, shall be revived and continued in full force and effect as if such payment had not been made or such enforcement or set off had not occurred.

**10.6 Severability**. The invalidity, illegality, or unenforceability in any jurisdiction of any provision under the Loan Documents shall not affect or impair the remaining provisions in the Loan Documents.

**10.7 Headings**. Section and subsection headings are included herein for convenience of reference only and shall not constitute a part of this Agreement for any other purposes or be given substantive effect.

**10.8 Applicable Law**. THIS AGREEMENT AND EACH OF THE OTHER LOAN DOCUMENTS WHICH DOES NOT EXPRESSLY SET FORTH APPLICABLE LAW SHALL BE GOVERNED BY AND SHALL BE CONSTRUED AND ENFORCED IN ACCORDANCE WITH THE INTERNAL LAWS OF THE STATE OF MARYLAND, WITHOUT REGARD TO CONFLICTS OF LAW PRINCIPLES.

**10.9 Successors and Assigns**. This Agreement and the other Loan Documents shall be binding on and shall inure to the benefit of Borrower, Investment Manager, Lender and their respective successors and assigns (including, in the case of Borrower, a debtor-in-possession on behalf of such Borrower), except as otherwise provided herein or therein. Borrower may not assign, transfer, hypothecate or otherwise convey its rights, benefits, obligations or duties hereunder or under any of the other Loan Documents without the prior express written consent of Investment Manager and Lender. Any such purported assignment, transfer, hypothecation or other conveyance by Borrower without the prior express written consent of Investment Manager and Lender shall be void. The terms and provisions of this Agreement are for the purpose of defining the relative rights and obligations of Borrower, Investment Manager and Lender with respect to the transactions contemplated hereby and no Person shall be a third party beneficiary of any of the terms and provisions of this Agreement or any of the other Loan Documents.

**10.10 No Fiduciary Relationship; Limited Liability**. No provision in the Loan Documents and no course of dealing between the parties shall be deemed to create any fiduciary duty owing to Borrower by Investment Manager or Lender. Borrower agrees that neither Investment Manager nor Lender shall have liability to Borrower (whether sounding in tort, contract or otherwise) for losses suffered by Borrower in connection with, arising out of, or in any way related to the transactions contemplated and the relationship established by the Loan Documents, or any act, omission or event occurring in connection therewith, unless and to the extent that it is determined that such losses resulted from the gross negligence or willful misconduct of the party from which recovery is sought as determined by a final non-appealable order by a court of competent jurisdiction. Neither Investment Manager nor Lender shall have any liability with respect to, and Borrower hereby waives, releases and agrees not to sue for, any special, indirect or consequential damages suffered by Borrower in connection with, arising out of, or in any way related to the Loan Documents or the transactions contemplated thereby.

**10.11 Construction**. Investment Manager, Lender and Borrower acknowledge that each of them has had the benefit of legal counsel of its own choice and has been afforded an opportunity to review the Loan Documents with its legal counsel and that the Loan Documents shall be construed as if jointly drafted by Investment Manager, Lender and Borrower.

**10.12 Confidentiality**. Investment Manager and Lender agree to exercise reasonable efforts to keep confidential any non-public information delivered pursuant to the Loan Documents and not to disclose such information to Persons other than to potential assignees or participants or to Persons employed by or engaged by Investment Manager or Lender or Lender's assignees or participants including attorneys, auditors, professional consultants, rating agencies, insurance industry associations and portfolio management services, provided that each of the foregoing has agreed to comply with confidentiality provisions substantially similar to those contained herein. The confidentiality provisions contained in this **Section 10.12** shall not apply to disclosures (i) required to be made by Investment Manager or Lender to any regulatory or governmental agency or pursuant to legal process or (ii) consisting of general portfolio information that does not identify Borrower. The obligations of Investment Manager and Lender under this **Section 10.12** shall supersede and replace the obligations of Investment Manager and Lender under any confidentiality agreement in respect of this financing executed and delivered by Investment Manager or Lender prior to the date hereof.

**10.13 CONSENT TO JURISDICTION**. BORROWER HEREBY CONSENTS TO THE JURISDICTION OF ANY STATE OR FEDERAL COURT LOCATED WITHIN THE STATE OF MARYLAND AND IRREVOCABLY AGREE THAT, SUBJECT TO INVESTMENT MANAGER'S ELECTION, ALL ACTIONS OR PROCEEDINGS ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE OTHER LOAN DOCUMENTS SHALL BE LITIGATED IN SUCH COURTS. BORROWER EXPRESSLY SUBMITS AND CONSENTS TO THE JURISDICTION OF THE AFORESAID COURTS AND WAIVE ANY DEFENSE OF FORUM NON CONVENIENS. BORROWER HEREBY WAIVES PERSONAL SERVICE OF ANY AND ALL PROCESS AND AGREES THAT ALL SUCH SERVICE OF PROCESS MAY BE MADE UPON BORROWER BY CERTIFIED OR REGISTERED MAIL, RETURN RECEIPT REQUESTED, ADDRESSED TO BORROWER, AT THE ADDRESS SET FORTH IN THIS AGREEMENT AND SERVICE SO MADE SHALL BE COMPLETE TEN (10) DAYS AFTER THE SAME HAS BEEN POSTED. IN ANY LITIGATION, TRIAL, ARBITRATION OR OTHER DISPUTE RESOLUTION PROCEEDING RELATING TO THIS AGREEMENT OR ANY OF THE OTHER LOAN DOCUMENTS, ALL DIRECTORS, OFFICERS, EMPLOYEES AND AGENTS OF BORROWER OR ANY OF ITS AFFILIATES SHALL BE DEEMED TO BE EMPLOYEES OR MANAGING AGENTS OF BORROWER FOR PURPOSES OF ALL APPLICABLE LAW OR COURT RULES REGARDING THE PRODUCTION OF WITNESSES BY NOTICE FOR TESTIMONY (WHETHER IN A DEPOSITION, AT TRIAL OR OTHERWISE). BORROWER AGREES THAT INVESTMENT MANAGER'S OR LENDER'S COUNSEL IN ANY SUCH DISPUTE RESOLUTION PROCEEDING MAY EXAMINE ANY OF THESE INDIVIDUALS AS IF UNDER CROSS-EXAMINATION AND THAT ANY DISCOVERY DEPOSITION OF ANY OF THEM MAY BE USED IN THAT PROCEEDING AS IF IT WERE AN EVIDENCE DEPOSITION. BORROWER IN ANY EVENT WILL USE ALL COMMERCIALLY REASONABLE EFFORTS TO PRODUCE IN ANY SUCH DISPUTE RESOLUTION PROCEEDING, AT THE TIME AND IN THE MANNER REQUESTED BY INVESTMENT MANAGER OR LENDER, ALL PERSONS, DOCUMENTS (WHETHER IN TANGIBLE, ELECTRONIC OR OTHER FORM) OR OTHER THINGS UNDER THEIR CONTROL AND RELATING TO THE DISPUTE.

**10.14 WAIVER OF JURY TRIAL**. BORROWER, INVESTMENT MANAGER AND LENDER HEREBY WAIVE THEIR RESPECTIVE RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS. BORROWER, INVESTMENT MANAGER AND LENDER ACKNOWLEDGE THAT THIS WAIVER IS A MATERIAL INDUCEMENT TO ENTER INTO A BUSINESS RELATIONSHIP, THAT EACH HAS RELIED ON THE WAIVER IN ENTERING INTO THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS AND THAT EACH WILL CONTINUE TO RELY ON THE WAIVER IN THEIR RELATED FUTURE DEALINGS. BORROWER, INVESTMENT MANAGER AND LENDER WARRANT AND REPRESENT THAT EACH HAS HAD THE OPPORTUNITY OF REVIEWING THIS JURY WAIVER WITH LEGAL COUNSEL, AND THAT EACH KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS.

**10.15 Survival of Warranties and Certain Agreements**. All agreements, representations and warranties made herein shall survive the execution and delivery of this Agreement, the making of the Loans and the execution and delivery of the Note. Notwithstanding anything in this Agreement or implied by law to the contrary, the agreements of Borrower set forth in **Sections 1.6 and 10.1** shall survive the repayment of the Obligations and the termination of this Agreement.

**10.16 Entire Agreement**. This Agreement, the Note and the other Loan Documents embody the entire agreement among the parties hereto and supersede all prior commitments, agreements, representations, and understandings, whether oral or written, relating to the subject matter hereof, and may not be contradicted or varied by evidence of prior, contemporaneous, or subsequent oral agreements or discussions of the parties hereto. All Exhibits, Schedules and Annexes referred to herein are incorporated in this Agreement by reference and constitute a part of this Agreement.

**10.17 Counterparts; Effectiveness**. This Agreement and any amendments, waivers, consents or supplements may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed and delivered (including by electronic mail or PDF) shall be deemed an original, but all of which counterparts together shall constitute but one in the same instrument. This Agreement shall become effective upon the execution of a counterpart hereof by each of the parties hereto.

**10.18 Delivery of Termination Statements and Mortgage Releases**. Upon payment in full in cash and performance of all of the Obligations (other than inchoate indemnification Obligations), and so long as no suits, actions proceedings, or claims are pending or threatened against any Indemnitee asserting any damages, losses or liabilities that are indemnified liabilities hereunder, this Agreement and the other Loan Documents shall terminate and in connection therewith the Investment Manager shall deliver to Borrower termination statements, mortgage releases and other documents necessary or appropriate to evidence the termination of the Liens securing payment of the Obligations.

*[SIGNATURES APPEAR ON THE FOLLOWING PAGE]*

**IN WITNESS WHEREOF**, the undersigned have hereunto set their hands to this Credit Agreement as of the day and year first above written.

CARDLYTICS, INC.

By: /s/ Scott Grimes
Name: Scott Grimes
Title: Chief Executive Officer

COLUMBIA PARTNERS, L.L.C. INVESTMENT MANAGEMENT, as Investment Manager

By: /s/ Thomas Bain
Name: Thomas Bain
Title: Managing Director

NATIONAL ELECTRICAL BENEFIT FUND, as Lender

By: Columbia Partners, L.L.C. Investment Management, its Authorized Signatory

By: /s/ Christopher J. Doherty
Name: Christopher J. Doherty
Title: Managing Director

Bank:
ABA No.:
Account Number:
Account Name:
Reference:
Contact:

**ANNEX A**
**to**
**CREDIT AGREEMENT**

**DEFINITIONS**

Capitalized terms used in the Loan Documents shall have (unless otherwise provided elsewhere in the Loan Documents) the following respective meanings and all references to Sections, Exhibits, Schedules or Annexes in the following definitions shall refer to Sections, Exhibits, Schedules or Annexes of or to the Agreement:

**"Accounting Changes"** means: (a) changes in accounting principles required by GAAP and implemented by Borrower; and (b) changes in accounting principles recommended by Borrower's certified public accountants and implemented by Borrower.

**"Affiliate"** means, with respect to any Person, (a) each Person that, directly or indirectly, owns or controls, whether beneficially, or as a trustee, guardian or other fiduciary, ten percent (10%) or more of the Stock having ordinary voting power in the election of directors of such Person, (b) each Person that controls, is controlled by or is under common control with such Person and (c) each of such Person's officers, directors, joint venturers and partners. For the purposes of this definition, **"control"** of a Person shall mean the possession, directly or indirectly, of the power to direct or cause the direction of its management or policies, whether through the ownership of voting securities, by contract or otherwise;

**"Agreement"** means this Credit Agreement (including all schedules, subschedules, annexes and exhibits hereto), as the same may be amended, supplemented, restated or otherwise modified from time to time.

**"Bankruptcy Code"** means the provisions of Title 11 of the United States Code, 11 U.S.C. §§ 101 et seq. or any other applicable bankruptcy, insolvency or similar laws.

**"Board Observer Letter"** means that certain letter agreement re: board observer rights, dated as of the Closing Date, made by Borrower in favor of Investment Manager.

**"Borrower"** has the meaning ascribed to it in the Preamble.

**"Business Day"** means any day that is not a Saturday, a Sunday or a day on which banks are required or permitted to be closed in the State of Maryland.

**"Capital Lease"** means, with respect to any Person, any lease of any property (whether real, personal or mixed) by such Person as lessee that, in accordance with GAAP, would be required to be classified and accounted for as a capital lease on a balance sheet of such Person.

**"Capital Lease Obligation"** means, with respect to any Capital Lease of any Person, the amount of the obligation of the lessee thereunder that, in accordance with GAAP, would appear on a balance sheet of such lessee in respect of such Capital Lease.

**"Cash"** means unrestricted cash and Cash Equivalents.

**"Cash Equivalents"** means: (i) marketable securities (A) issued or directly and unconditionally guaranteed as to interest and principal by the United States government or (B) issued by any agency of the United States government the obligations of which are backed by the full faith and credit of the United States, in each case maturing within eighteen (18) months after acquisition thereof; (ii) marketable direct obligations issued by any state of the United States of America or any political subdivision of any such state or any public instrumentality thereof, in each case maturing within eighteen (18) months after acquisition thereof and having, at the time of acquisition, a rating of at least A-1 from S&P or at least P 1 from Moody's; (iii) commercial paper maturing no more than eighteen (18) months from the date of acquisition and, at the time of acquisition, having a rating of at least A 1 from S&P or at least P 1 from Moody's; (iv) certificates of deposit or bankers' acceptances issued or accepted by Lender or by any commercial bank organized under the laws of the United States of America or any state thereof or the District of Columbia that is at least (A) "adequately capitalized" (as defined in the regulations of its primary Federal banking regulator) and (B) has Tier 1 capital (as defined in such regulations) of not less than Two Hundred Fifty Million Dollars ($250,000,000), in each case maturing within eighteen (18) months after issuance or acceptance thereof; and (v) shares of any money market mutual or similar funds that (A) has substantially all of its assets invested continuously in the types of investments referred to in clauses (i) through (iv) above, (B) has net assets of not less than Two Hundred Fifty Million Dollars ($250,000,000) and (C) has a rating of at least A-1/P-1 either S&P or Moody's.

**"Change of Control"** means (i) a sale, lease, license or other disposition of all or substantially all of the assets of Borrower, (ii) any consolidation or merger of Borrower with or into any other corporation or other entity or person, or any other corporate reorganization, in which the holders of the capital stock of Borrower immediately prior to such consolidation, merger or reorganization, hold less than fifty percent (50%) of the voting power of the surviving entity (or, if the surviving entity is a wholly owned subsidiary, its parent) immediately after such consolidation, merger or reorganization; or (iii) any transaction or series of related transactions to which Borrower is a party in which in excess of fifty percent (50%) of Borrower's voting power is transferred; provided that a Change of Control shall not include (x) any consolidation or merger effected exclusively to change the domicile of Borrower, or (y) any transaction or series of transactions principally for bona fide equity financing purposes in which cash is received by Borrower or any successor or indebtedness of Borrower is cancelled or converted or a combination thereof.

**"Charges"** means all federal, state, county, city, municipal, local, foreign or other governmental taxes (including premiums and other amounts owed to the PBGC at the time due and payable), levies, assessments, charges, liens, claims or encumbrances upon or relating to (a) the Collateral, (b) the Obligations, (c) the employees, payroll, income or gross receipts of Borrower, (d) Borrower's ownership or use of any properties or other assets, or (e) any other aspect of Borrower's business.

**"Closing Date"** has the meaning ascribed to it in the Preamble.

**"Code"** means the Uniform Commercial Code as the same may, from time to time, be enacted and in effect in the State of Maryland; *provided*, that to the extent that the Code is used to define any term herein or in any Loan Document and such term is defined differently in

different Articles or Divisions of the Code, the definition of such term contained in Article or Division 9 shall govern; *provided further*, that in the event that, by reason of mandatory provisions of law, any or all of the attachment, perfection or priority of, or remedies with respect to, Investment Manager's or Lender's Lien on any Collateral is governed by the Uniform Commercial Code as enacted and in effect in a jurisdiction other than the State of Maryland, the term "Code" shall mean the Uniform Commercial Code as enacted and in effect in such other jurisdiction solely for purposes of the provisions thereof relating to such attachment, perfection, priority or remedies and for purposes of definitions related to such provisions.

**"Collateral"** means the property covered by the Security Agreement and the other Collateral Documents and any other property, real or personal, tangible or intangible, now existing or hereafter acquired, that may at any time be or become subject to a security interest or Lien in favor of, or for the benefit of, Investment Manager or Lender, to secure the Obligations or any portion thereof.

**"Collateral Documents"** means the Security Agreement the Guaranties, the Pledge Agreements, the Intellectual Property Security Agreement, and all similar agreements entered into guaranteeing payment of, or granting a Lien upon property as security for payment of, the Obligations or any portion thereof.

**"Consolidated Net Income (or Deficit)"** means the consolidated net income (or deficit) of any Person and its Subsidiaries, after deduction of all expenses, taxes, and other proper charges, determined in accordance with GAAP, after eliminating therefrom all extraordinary nonrecurring items of income.

**"Consolidated Total Interest Expense"** means with respect to any Person for any period, the aggregate amount of interest required to be paid or accrued by a Person and its Subsidiaries during such period on all Indebtedness of such Person and its Subsidiaries outstanding during all or any part of such period, whether such interest was or is required to be reflected as an item of expense or capitalized, including payments consisting of interest in respect of any capitalized lease or any synthetic lease, and including commitment fees, agency fees, facility fees, balance deficiency fees and similar fees or expenses in connection with the borrowing of money.

**"Contingent Obligation"** means, as applied to any Person, means any direct or indirect liability of that Person: (i) with respect to Guaranteed Indebtedness and with respect to any Indebtedness, lease, dividend or other obligation of another Person if the purpose or intent of the Person incurring such liability, or the effect thereof, is to provide assurance to the obligee of such liability that such liability will be paid or discharged, or that any agreements relating thereto will be complied with, or that the holders of such liability will be protected (in whole or in part) against loss with respect thereto; (ii) with respect to any letter of credit issued for the account of that Person or as to which that Person is otherwise liable for reimbursement of drawings; (iii) under any foreign exchange contract, currency swap agreement, interest rate swap agreement or other similar agreement or arrangement designed to alter the risks of that Person arising from fluctuations in currency values or interest rates, (iv) any agreement, contract or transaction involving commodity options or future contracts, (v) to make take-or-pay or similar payments if required regardless of nonperformance by any other party or parties to an agreement, or

(vi) pursuant to any agreement to purchase, repurchase or otherwise acquire any obligation or any property constituting security therefor, to provide funds for the payment or discharge of such obligation or to maintain the solvency, financial condition or any balance sheet item or level of income of another. The amount of any Contingent Obligation shall be equal to the amount of the obligation so guaranteed or otherwise supported or, if not a fixed and determined amount, the maximum amount so guaranteed.

**"Contractual Obligations"** means, as applied to any Person, any indenture, mortgage, deed of trust, contract, undertaking, agreement or other instrument to which that Person is a party or by which it or any of its properties is bound or to which it or any of its properties is subject.

**"Control Agreement"** is defined in Section 5.14.

**"Copyright License"** means any and all rights now owned or hereafter acquired by Borrower under any written agreement granting any right to use any Copyright or Copyright registration.

**"Copyrights"** means all of the following now owned or hereafter adopted or acquired by Borrower: (a) all copyrights and General Intangibles of like nature (whether registered or unregistered), all registrations and recordings thereof, and all applications in connection therewith, including all registrations, recordings and applications in the United States Copyright Office or in any similar office or agency of the United States, any state or territory thereof, or any other country or any political subdivision thereof; and (b) all reissues, extensions or renewals thereof.

**"Default"** means any event that, with the passage of time or notice or both, would, unless cured or waived, become an Event of Default.

**"Default Rate"** is defined in Section 1.3(c).

"**Disclosure Schedules"** means the Schedules prepared by Borrower and denominated as **Schedules 3.4(a)** through **5.9** in the index to the Agreement.

**"Dollars"** or **"$"** means lawful currency of the United States of America.

**"Domestic Subsidiary"** means a Subsidiary organized under the laws of the United States or any state or territory thereof or the District of Columbia other than any such Subsidiary substantially all of the assets of which consist of equity investments in Foreign Subsidiaries.

**"Draw Period"** is the period of time from the Closing Date through July 21, 2017; provided, however, Borrower may elect to terminate the Draw Period at any time upon ten (10) days' prior written notice to Investment Manager.

**"EBITDA"** means with respect to any period an amount equal to the sum of (a) Consolidated Net Income (or Deficit) of the Borrower and its Subsidiaries for such fiscal period, plus (b) in each case to the extent deducted in the calculation of the Consolidated Net Income of the Borrower and its Subsidiaries and without duplication, (i) depreciation and amortization of the Borrower and its Subsidiaries for such period, plus (ii) income tax expenses

of the Borrower and its Subsidiaries during such period, plus (iii) Consolidated Total Interest Expense of the Borrower and its Subsidiaries paid or accrued during such period, plus (iv) non-cash expense associated with granting stock options, plus (v) non-recurring or extraordinary losses or charges incurred or paid in such period in connection with an Initial Public Offering (regardless of whether or not ultimately consummated) incurred after the Closing Date to the extent the aggregate amount of all such expenses does not exceed $1,000,000, and minus, (c) to the extent added in computing Consolidated Net Income, and without duplication, all extraordinary and non-recurring revenue and gains (including income tax benefits) for such period, all as determined in accordance with GAAP.

**"Environmental Laws"** means all applicable federal, state, local and foreign laws, statutes, ordinances, codes, rules, standards and regulations, now or hereafter in effect, and any applicable judicial or administrative interpretation thereof, including any applicable judicial or administrative order, consent decree, order or judgment, imposing liability or standards of conduct for or relating to the regulation and protection of human health, safety, the environment and natural resources (including ambient air, surface water, groundwater, wetlands, land surface or subsurface strata, wildlife, aquatic species and vegetation). Environmental Laws include the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. §§ 9601 et seq.) (**"CERCLA"**); the Hazardous Materials Transportation Authorization Act of 1994 (49 U.S.C. §§ 5101 et seq.); the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. §§ 136 et seq.); the Solid Waste Disposal Act (42 U.S.C. §§ 6901 et seq.); the Toxic Substance Control Act (15 U.S.C. §§ 2601 et seq.); the Clean Air Act (42 U.S.C. §§ 7401 et seq.); the Federal Water Pollution Control Act (33 U.S.C. §§ 1251 et seq.); the Occupational Safety and Health Act (29 U.S.C. §§ 651 et seq.); and the Safe Drinking Water Act (42 U.S.C. §§ 300(f) et seq.), and any and all regulations promulgated thereunder, and all analogous state, local and foreign counterparts or equivalents and any transfer of ownership notification or approval statutes.

**"Environmental Liabilities"** means, with respect to any Person, all liabilities, obligations, responsibilities, response, remedial and removal costs, investigation and feasibility study costs, capital costs, operation and maintenance costs, losses, damages, punitive damages, property damages, natural resource damages, consequential damages, treble damages, costs and expenses (including all reasonable fees, disbursements and expenses of counsel, experts and consultants), fines, penalties, sanctions and interest incurred as a result of or related to any claim, suit, action, investigation, proceeding or demand by any Person, whether based in contract, tort, implied or express warranty, strict liability, criminal or civil statute or common law, including any arising under or related to any Environmental Laws, Environmental Permits, or in connection with any Release or threatened Release or presence of a Hazardous Material whether on, at, in, under, from or about or in the vicinity of any real or personal property.

"**Environmental Permits"** means all permits, licenses, authorizations, certificates, approvals or registrations required by any Governmental Authority under any Environmental Laws.

**"Equipment"** means all "equipment," as such term is defined in the Code, now owned or hereafter acquired by Borrower, wherever located and, in any event, including all Borrower's machinery and equipment, including processing equipment, conveyors, machine tools, data

processing and computer equipment, including embedded software and peripheral equipment and all engineering, processing and manufacturing equipment, office machinery, furniture, materials handling equipment, tools, attachments, accessories, automotive equipment, trailers, trucks, forklifts, molds, dies, stamps, motor vehicles, rolling stock and other equipment of every kind and nature, trade fixtures and fixtures not forming a part of real property, together with all additions and accessions thereto, replacements therefor, all parts therefor, all substitutes for any of the foregoing, fuel therefor, and all manuals, drawings, instructions, warranties and rights with respect thereto, and all products and proceeds thereof and condemnation awards and insurance proceeds with respect thereto.

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

**"ERISA Affiliate"** means, with respect to Borrower, any trade or business (whether or not incorporated) that, together with Borrower, are treated as a single employer within the meaning of Sections 414(b), (c), (m) or (o) of the IRC.

**"ERISA Event"** means, with respect to Borrower or any ERISA Affiliate, (a) any event described in Section 4043(c) of ERISA with respect to a Title IV Plan; (b) the withdrawal of Borrower or ERISA Affiliate from a Title IV Plan subject to Section 4063 of ERISA during a plan year in which it was a substantial employer, as defined in Section 4001(a)(2) of ERISA; (c) the complete or partial withdrawal of Borrower or any ERISA Affiliate from any Multiemployer Plan; (d) the filing of a notice of intent to terminate a Title IV Plan or the treatment of a plan amendment as a termination under Section 4041 of ERISA; (e) the institution of proceedings to terminate a Title IV Plan or Multiemployer Plan by the PBGC; (f) the failure by Borrower or ERISA Affiliate to make when due required contributions to a Multiemployer Plan or Title IV Plan unless such failure is cured within thirty (30) days; (g) any other event or condition that might reasonably be expected to constitute grounds under Section 4042 of ERISA for the termination of, or the appointment of a trustee to administer, any Title IV Plan or Multiemployer Plan or for the imposition of liability under Section 4069 or 4212(c) of ERISA; (h) the termination of a Multiemployer Plan under Section 4041A of ERISA or the reorganization or insolvency of a Multiemployer Plan under Section 4241 or 4245 of ERISA; or (i) the loss of a Qualified Plan's qualification or tax exempt status; or (j) the termination of a Plan described in Section 4064 of ERISA.

**"ESOP"** means a Plan that is intended to satisfy the requirements of Section 4975(e)(7) of the IRC.

**"Event of Default"** has the meaning ascribed to it in **Section 7.1**.

**"Excess Proceeds"** has the meaning ascribed to it in **Section 1.8(b)(ii).**

**"Excess Proceeds Amount"** means Twenty-Five Million Dollars ($25,000,000); provided, however, for any Partial Liquidity Event consisting of the issuance of new equity for which the majority is issued to a new investor, "Excess Proceeds Amount" shall be Fifty Million Dollars ($50,000,000).

**"Facility Fee"** has the meaning ascribed to it in **Section 1.5.**

**"Fair Labor Standards Act"** means the Fair Labor Standards Act, 29 U.S.C. §201 et seq.

**"Fees"** means any and all fees payable to Investment Manager or Lender pursuant to the Agreement or any of the other Loan Documents, including without limitation, the Facility Fees and Standby Fees.

**"Financial Statements"** means the consolidated income statements, statements of cash flows and balance sheets of Borrower and its Subsidiaries delivered in accordance with Section 6.1.

**"Fiscal Quarter"** means any of the three month periods of Borrower ending on March 31, June 30, September 30 and December 31 of each year.

**"Fiscal Year"** means any of the annual accounting periods of Borrower ending on December 31 of each year.

**"Fixtures"** means all "fixtures" as such term is defined in the Code, now owned or hereafter acquired by Borrower.

**"Foreign Subsidiary"** means any Subsidiary which is not a Domestic Subsidiary.

**"GAAP"** means generally accepted accounting principles in the United States of America, consistently applied.

**"General Intangibles"** means "general intangibles," as such term is defined in the Code, now owned or hereafter acquired by Borrower, including all right, title and interest that Borrower may now or hereafter have in or under any Contractual Obligation, all payment intangibles, customer lists, Licenses, Copyrights, Trademarks, Patents, and all applications therefor and reissues, extensions or renewals thereof, rights in Intellectual Property, interests in partnerships, joint ventures and other business associations, licenses, permits, copyrights, trade secrets, proprietary or confidential information, inventions (whether or not patented or patentable), technical information, procedures, designs, knowledge, know how, software, data bases, data, skill, expertise, experience, processes, models, drawings, materials and records, goodwill (including the goodwill associated with any Trademark or Trademark License), all rights and claims in or under insurance policies (including insurance for fire, damage, loss and casualty, whether covering personal property, real property, tangible rights or intangible rights, all liability, life, key man and business interruption insurance, and all unearned premiums), uncertificated securities, chooses in action, deposit, checking and other bank accounts, rights to receive tax refunds and other payments, rights to receive dividends, distributions, cash, instruments and other property in respect of or in exchange for pledged Stock and Investment Property, rights of indemnification, all books and records, correspondence, credit files, invoices and other papers, including all tapes, cards, computer runs and other papers and documents in the possession or under the control of Borrower or any computer bureau or service company from time to time acting for Borrower.

**"Governmental Authority"** means any nation or government, any state or other political subdivision thereof, and any agency, department or other entity exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government.

**"Guaranteed Indebtedness"** means, as to any Person, any obligation of such Person guaranteeing, providing comfort or otherwise supporting any Indebtedness, lease, dividend, or other obligation (**"primary obligation"**) of any other Person (the **"primary obligor"**) in any manner, including any obligation or arrangement of such Person to (a) purchase or repurchase any such primary obligation, (b) advance or supply funds (i) for the purchase or payment of any such primary obligation or (ii) to maintain working capital or equity capital of the primary obligor or otherwise to maintain the net worth or solvency or any balance sheet condition of the primary obligor, (c) purchase property, securities or services primarily for the purpose of assuring the owner of any such primary obligation of the ability of the primary obligor to make payment of such primary obligation, (d) protect the beneficiary of such arrangement from loss (other than product warranties given in the ordinary course of business) or (e) indemnify the owner of such primary obligation against loss in respect thereof. The amount of any Guaranteed Indebtedness at any time shall be deemed to be an amount equal to the lesser at such time of (x) the stated or determinable amount of the primary obligation in respect of which such Guaranteed Indebtedness is incurred and (y) the maximum amount for which such Person may be liable pursuant to the terms of the instrument embodying such Guaranteed Indebtedness, or, if not stated or determinable, the maximum reasonably anticipated liability (assuming full performance) in respect thereof.

**"Guaranties"** means, collectively, any guaranty executed by any Guarantor in favor of Investment Manager and Lender in respect of the Obligations.

**"Guarantor"** means any Person, if any, that executes a guaranty or other similar agreement in favor of Investment Manager, for itself and the benefit of Lender, or Lender in connection with the transactions contemplated by the Agreement and the other Loan Documents.

**"Hazardous Material"** means any substance, material or waste that is regulated by, or forms the basis of liability now or hereafter under, any Environmental Laws, including any material or substance that is (a) defined as a "solid waste," "hazardous waste," "hazardous material," "hazardous substance," "extremely hazardous waste,""restricted hazardous waste," "pollutant," "contaminant," "hazardous constituent," "special waste," "toxic substance" or other similar term or phrase under any Environmental Laws, or (b) petroleum or any fraction or by product thereof, asbestos, polychlorinated biphenyls (PCB's), or any radioactive substance.

**"In Kind Payment"** is defined in **Section 1.3(c).**

**"Indebtedness"** means, with respect to any Person, without duplication (a) all indebtedness of such Person for borrowed money or for the deferred purchase price of property payment for which is deferred six (6) months or more, but excluding obligations to trade creditors incurred in the ordinary course of business that are unsecured and not overdue by more than six (6) months unless being contested in good faith, (b) all reimbursement and other obligations with respect to letters of credit, bankers' acceptances and surety bonds, whether or not matured, (c) all obligations evidenced by notes, bonds, debentures or similar instruments,

(d) all indebtedness created or arising under any conditional sale or other title retention agreement with respect to property acquired by such Person (even though the rights and remedies of the seller or lender under such agreement in the event of default are limited to repossession or sale of such property), (e) all Capital Lease Obligations, (f) all obligations of such Person under commodity purchase or option agreements or other commodity price hedging arrangements, in each case whether contingent or matured, (g) all obligations of such Person under any foreign exchange contract, currency swap agreement, interest rate swap, cap or collar agreement or other similar agreement or arrangement designed to alter the risks of that Person arising from fluctuations in currency values or interest rates, in each case whether contingent or matured, (h) all Indebtedness referred to above secured by (or for which the holder of such Indebtedness has an existing right, contingent or otherwise, to be secured by) any Lien upon or in property or other assets (including accounts and contract rights) owned by such Person, even though such Person has not assumed or become liable for the payment of such Indebtedness, (i) "earnouts" and similar payment obligations in each case to the extent a payment obligation actually exists, and (j) the Obligations.

**"Indemnitees"** has the meaning ascribed to it in **Section 10.1**.

**"Initial Loan"** has the meaning ascribed to it in **Section 1.1(a)(ii)**.

**"Initial Public Offering"** means the closing of a firmly underwritten public offering pursuant to an effective registration statement under the Securities Act of 1933, as amended, covering the offer and sale of Common Stock for the account of Borrower.

**"Intellectual Property"** means any and all Licenses, Patents, Copyrights, Trademarks, and the goodwill associated with such Trademarks.

**"Intellectual Property Security Agreement"** means the Intellectual Property Security Agreement made in favor of Investment Manager, for the benefit of itself and Lender, by Borrower.

**"Interest Rate"** is a fixed per annum rate equal to (a) eleven and one quarter of one percent (11.25%) at all times that Borrower is Reduced Pricing Eligible, and (b) thirteen and one quarter of one percent (13.25%) at all other times.

**"Inventory"** means any "inventory," as such term is defined in the Code, now owned or hereafter acquired by Borrower, wherever located, including inventory, merchandise, goods and other personal property that are held by or on behalf of Borrower for sale or lease or are furnished or are to be furnished under a contract of service, or that constitute raw materials, work in process, finished goods, returned goods, supplies or materials of any kind, nature or description used or consumed or to be used or consumed in Borrower's business or in the processing, production, packaging, promotion, delivery or shipping of the same, including all supplies and embedded software.

**"Investment"** means (i) any direct or indirect purchase or other acquisition by Borrower or any of its Subsidiaries of any Stock, or other ownership interest in, any other Person, and (ii) any direct or indirect loan, advance or capital contribution by Borrower or any of its Subsidiaries to any other Person, including all indebtedness and accounts receivable from that other Person that are not current assets or did not arise from sales to that other Person in the ordinary course of business.

**"Investment Manager"** means Columbia Partners, L.L.C. Investment Management in its capacity as Investment Manager for Lender or its successor appointed pursuant to **Section 9.3**.

**"Investment Property"** means all "investment property," as such term is defined in the Code, now owned or hereafter acquired by Borrower, wherever located, including: (i) all securities, whether certificated or uncertificated, including stocks, bonds, interests in limited liability companies, partnership interests, treasuries, certificates of deposit, and mutual fund shares; (ii) all securities entitlements of Borrower, including the rights of Borrower to any securities account and the financial assets held by a securities intermediary in such securities account and any free credit balance or other money owing by any securities intermediary with respect to that account; (iii) all securities accounts of Borrower; (iv) all commodity contracts of Borrower; and (v) all commodity accounts held by Borrower.

**"IRC"** means the Internal Revenue Code of 1986, as amended, and all regulations promulgated thereunder.

**"IRS"** means the Internal Revenue Service.

**"Lender"** means National Electrical Benefit Fund, and if Lender shall decide to assign all or any portion of the Obligations in accordance with the terms of Section 8.1, such term shall include any assignee of Lender.

**"License"** means any Copyright License, Patent License, Trademark License or other license of rights or interests now held or hereafter acquired by Borrower.

**"Lien"** means any mortgage or deed of trust, pledge, hypothecation, assignment, deposit arrangement, lien, charge, claim, security interest, easement or encumbrance, or preference, priority or other security agreement or preferential arrangement of any kind or nature whatsoever (including any lease or title retention agreement, any financing lease having substantially the same economic effect as any of the foregoing, and the filing of, or agreement to give, any financing statement perfecting a security interest under the Code or comparable law of any jurisdiction).

**"Liquidity Event"** means a Change of Control or an Initial Public Offering.

**"Litigation"** has the meaning ascribed to it in **Section 6.1(l)**.

**"Loans"** means, collectively, all of the loans made by Lender hereunder.

**"Loan Advance Date"** has the meaning ascribed to it in **Section 1.1(a)(iv**).

**"Loan Advance Notice"** has the meaning ascribed to it in **Section 1.1(a)(iv)**.

**"Loan Amount Maximum"** has the meaning ascribed to it in **Section 1.1(a)**.

**"Loan Documents"** means the Agreement, the Note, the Collateral Documents, the Guaranties, the Board Observer Letter, the Senior Lender Subordination Agreement, the Subordinated Lender Subordination Agreement, and all other agreements, instruments, documents and certificates executed and delivered to, or in favor of, Investment Manager or Lender and including all other pledges, powers of attorney, consents, assignments, contracts, notices, and all other written matter whether heretofore, now or hereafter executed by or on behalf of Borrower or any Guarantor, or any employee of Borrower or any Guarantor, and delivered to Investment Manager or Lender in connection with the Agreement or the transactions contemplated thereby. Any reference in the Agreement or any other Loan Document to a Loan Document shall include all appendices, exhibits or schedules thereto, and all amendments, restatements, supplements or other modifications thereto, and shall refer to the Agreement or such Loan Document as the same may be in effect at any and all times such reference becomes operative.

**"Material Adverse Effect"** means (a) a material adverse change in Borrower's business or financial condition, (b) a material impairment in the ability of Borrower to perform all or any of the Obligations or in otherwise performing Borrower's obligations under the Loan Documents, or (c) a material impairment in the perfection, value or priority of Investment Manager's security interests, on behalf of itself and Lender, in the Collateral.

**"Material Agreement"** means any written contract, agreement, instrument, commitment or other written arrangement to which Borrower is a party, the absence of which would reasonably be expected to have a Material Adverse Effect (other than the Loan Documents).

**"Maturity Date"** has the meaning ascribed to it in **Section 1.3(b)**.

**"Moody's"** means Moody's Investor's Services, Inc.

**"Multiemployer Plan"** means a "multiemployer plan" as defined in Section 4001(a)(3) of ERISA, and to which Borrower or any ERISA Affiliate is making, is obligated to make or has made or been obligated to make, contributions on behalf of participants who are or were employed by any of them.

**"Note"** has the meaning ascribed to it in **Section 1.1(a)**.

**"Obligations"** means all loans, advances, debts, liabilities and obligations, for the performance of covenants, tasks or duties or for payment of monetary amounts (whether or not such performance is then required or contingent, or such amounts are liquidated or determinable), owing by Borrower to Investment Manager or Lender, and all covenants and duties regarding such amounts, of any kind or nature, present or future, whether or not evidenced by any note, agreement or other instrument, arising under the Agreement or any of the other Loan Documents other than the Warrant). This term includes all principal, interest (including all interest that accrues after the commencement of any case or proceeding by or against Borrower in bankruptcy, whether or not allowed in such case or proceeding), Fees, Charges, expenses, attorneys' fees and any other sum chargeable to Borrower under the Agreement or any of the other Loan Documents, but expressly excludes the obligations of the Borrower under the Warrant.

**"Partial Liquidity Event"** means (i) the issuance of Indebtedness by Borrower (other than the Obligations pursuant to this Agreement or Indebtedness permitted under Section 5.1(b) of this Agreement) with an aggregate principal amount in excess of the Excess Proceeds Amount or (ii) the issuance of equity securities by Borrower (other than equity securities issued pursuant to the Warrant or in connection with the Next Round) to one or more investors for an aggregate purchase price in excess of the Excess Proceeds Amount.

**"Patent License"** means rights under any written agreement now owned or hereafter acquired by Borrower granting any right with respect to any invention on which a Patent is in existence.

**"Patents"** means all of the following in which Borrower now holds or hereafter acquires any interest: (a) all letters patent of the United States or any other country, all registrations and recordings thereof, and all applications for letters patent of the United States or of any other country, including registrations, recordings and applications in the United States Patent and Trademark Office or in any similar office or agency of the United States, any State or any other country, and (b) all reissues, continuations, continuations in part or extensions thereof.

**"PBGC"** means the Pension Benefit Guaranty Corporation.

**"Pension Plan"** means a Plan described in Section 3(2) of ERISA.

**"Permitted Encumbrances"** means the following encumbrances: (a) Liens existing on the Closing Date and set forth on **Schedule 5.2; (b)** Liens for taxes or assessments or other governmental Charges not yet delinquent or being contested in good faith by appropriate proceedings and for which Borrower maintains adequate reserves, provided the same have no priority over any of Investment Manager's security interests; (c) Liens securing Indebtedness permitted by **Section 5.1(b)** *provided* that the Liens attach only to the equipment or software financed by such Indebtedness; (d) Liens incurred in connection with the extension, renewal or refinancing of the Indebtedness secured by Liens described in (a) through (c) above, provided that any extension, renewal or replacement Lien shall be limited to the property encumbered by the existing Lien and the principal amount of the Indebtedness being extended, renewed or refinanced does not increase; (e) any attachment or judgment lien not constituting an Event of Default under **Section 7.1**; (f) Liens in favor of financial institutions arising in connection with Borrower's deposit accounts held at such institutions to secure standard fees for deposit services charged by, but not financing made available by, such institutions, provided Investment Manager has a perfected security interest in the amounts held in such deposit accounts to the extent required under Section 5.14; (g) (i) non-exclusive licenses or sublicenses and (ii) exclusive licenses set forth on **Schedule 5.2** granted in the ordinary course of Borrower's business; (h) carriers', warehousemen's, mechanics', materialmen's, repairmen's or other similar possessory liens arising in the ordinary course of business, which are not overdue for a period of more than thirty (30) days or which are being contested in good faith and by appropriate proceedings if adequate reserves with respect thereto are maintained on the books of the applicable Person; (i) deposits of money to secure the performance of bids, trade contracts (other than contracts for the payment of money), contracts for the purchase of property, leases, statutory obligations, surety and appeal bonds, performance bonds and other obligations of a like nature, in each case, incurred in the ordinary course of business and not representing an obligation for

borrowed money and including any deposits required to procure letters of credit to secure any of the foregoing; and (j) encumbrances in favor of the Senior Lender pursuant to the Senior Loan Documents and permitted under the Senior Lender Subordination Agreement.

**"Permitted Investments and Restricted Payments"** means

(a) Investments existing on the Closing Date disclosed on **Schedule 5.3**;

(b) Investments in Cash Equivalents subject to control agreements in favor of Investment Manager on terms acceptable to Investment Manager;

(c) repurchases of stock from former employees or directors of Borrower under the terms of applicable repurchase agreements (i) in an aggregate amount not to exceed Five Hundred Thousand Dollars ($500,000) in any fiscal year, provided that no Event of Default has occurred, is continuing or would exist after giving effect to the repurchases, or (ii) in any amount where the consideration for the repurchase is the cancellation of Indebtedness owed by such former employees to Borrower regardless of whether an Event of Default exists;

(d) Investments accepted in connection with Permitted Transfers;

(e)(i) Investments of Subsidiaries in or to other Subsidiaries or Borrower and Investments by Borrower in Subsidiaries (other than UK Subsidiary) not to collectively exceed Two Hundred Fifty Thousand Dollars ($250,000) in the aggregate in any fiscal year; and
(ii) Investments by Borrower in UK Subsidiary not to collectively exceed Two Million Dollars ($2,000,000) in the aggregate in any fiscal year;

(f) Investments not to collectively exceed Two Hundred Fifty Thousand Dollars ($250,000) in the aggregate for Borrower in any fiscal year consisting of (i) travel advances and employee relocations loans and other employee loans and advances in the ordinary course of business, and (ii) loans to employees, officers or directors relating to the purchase of equity securities of Borrower or its Subsidiaries pursuant to employee stock purchase plan agreements approved by Borrower's Board of Directors;

(g) Investments (including debt obligations) received in connection with the bankruptcy or reorganization of customers or suppliers and in settlement of delinquent obligations of, and other disputes with, customers or suppliers arising in the ordinary course of Borrower's business;

(h) Investments consisting of notes receivable of, or prepaid royalties and other credit extensions, to customers and suppliers who are not Affiliates, in the ordinary course of business, provided that this subparagraph (i) shall not apply to Investments of Borrower in any Subsidiary; and

(i) joint ventures or strategic alliances in the ordinary course of Borrower's business consisting of the non-exclusive licensing of technology, the development of

technology or the providing of technical support, provided that any cash Investments by Borrower do not collectively exceed Two Hundred Fifty Thousand Dollars ($250,000) in the aggregate in any fiscal year.

**“Permitted Transfers**” means (a) sales of inventory in the ordinary course of business; (b) licenses and similar arrangements for the use of the property of Borrower or is Subsidiaries in the ordinary course of business; (c) dispositions of obsolete or worn out equipment no longer used or useful in the business, and (d) other assets of Borrower or its Subsidiaries that do not in the aggregate exceed Two Hundred Fifty Thousand Dollars ($250,000) collectively during any fiscal year.

**“Person**” means any individual, sole proprietorship, partnership, joint venture, trust, unincorporated organization, association, corporation, limited liability company, institution, public benefit corporation, other entity or government (whether federal, state, county, city, municipal, local, foreign, or otherwise, including any instrumentality, division, agency, body or department thereof).

**“Plan**” means, at any time, an “employee benefit plan,” as defined in **Section 3(3)** of ERISA, that Borrower or any ERISA Affiliate maintains, contributes to or has an obligation to contribute to on behalf of participants who are or were employed by Borrower.

**“Pledge Agreements”** means any pledge agreement in favor of Investment Manager or Lender.

**“Projections”** means Borrower’s forecasted consolidated: (a) balance sheets; (b) profit and loss statements; (c) cash flow statements; and (d) capitalization statements, all prepared on a quarterly basis, and otherwise consistent with the historical Financial Statements of Borrower, together with appropriate supporting details and a statement of underlying assumptions.

**“Qualified Assignee”** means (a) Lender, any Affiliate of Lender and any other investment fund that invests in commercial loans and that is managed or advised by the same investment advisor as Lender or by an Affiliate of such investment advisor, and (b) any commercial bank, savings and loan association or savings bank or any other entity which is an “accredited investor” (as defined in Regulation D under the Securities Act of 1933) which extends credit or buys loans as one of its businesses, including insurance companies, mutual funds, lease financing companies and commercial finance companies, in each case, which has a rating of BBB or higher from S&P and a rating of Baa2 or higher from Moody’s at the date that it becomes a Lender and which, through its applicable lending office, is capable of lending to Borrower without the imposition of any withholding or similar taxes.

**“Qualified Plan”** means a Pension Plan that is intended to be tax-qualified under Section 401(a) of the IRC.

**“Quarterly Interest Payment Date”** means March 31, June 30, September 30 and December 31 of each year during the term hereof.

**“Real Estate”** has the meaning ascribed to it in **Section 3.12**.

**"Reduced Pricing Eligible"** means such times that Borrower has provided Investment Manager with evidence satisfactory to Investment Manager that Borrower has achieved EBITDA, for the most recent trailing four (4) Fiscal Quarters then ended, of greater than $1,000,000; provided, however, that Borrower shall not be Reduced Pricing Eligible during the continuance of an Event of Default. At any time that Borrower's EBITDA, for any trailing four (4) Fiscal Quarters is determined to be less than or equal to $1,000,000, Borrower will not be Reduced Pricing Eligible until such time as Investment Manager confirms that Borrower's EBITDA, for a subsequent trailing four (4) Fiscal Quarters is greater than $1,000,000. For example, if Borrower's EBITDA for the trailing four (4) Fiscal Quarters ending September 30, 2016 is greater than $1,000,000, the Borrower would be Reduced Pricing Eligible commencing without the Fiscal Quarter ending December 31, 2016.

**"Release"** means any release, threatened release, spill, emission, leaking, pumping, pouring, emitting, emptying, escape, injection, deposit, disposal, discharge, dispersal, dumping, leaching or migration of Hazardous Material in the indoor or outdoor environment, including the movement of Hazardous Material through or in the air, soil, surface water, ground water or property.

**"Restricted Payment"** means, with respect to any Person (a) the declaration or payment of any dividend or the incurrence of any liability to make any other payment or distribution of cash or other property or assets in respect of Stock of such Person; (b) any payment on account of the purchase, redemption, defeasance, sinking fund or other retirement of such Person's Stock or any other payment or distribution made in respect thereof, either directly or indirectly; (c) any payment or prepayment of principal or premium, if any, or interest, fees or other charges on or with respect to, and any redemption, purchase, retirement, defeasance, sinking fund or similar payment and any claim for rescission with respect to any Subordinated Debt; (d) any payment made to redeem, purchase, repurchase or retire, or to obtain the surrender of, any outstanding warrants, options or other rights to acquire Stock of such Person now or hereafter outstanding; (e) any payment of a claim for the rescission of the purchase or sale of, or for material damages arising from the purchase or sale of, any shares of such Person's Stock or of a claim for reimbursement, indemnification or contribution arising out of or related to any such claim for damages or rescission; (f) any payment, loan, contribution, or other transfer of funds or other property to any Stockholder of such Person other than payment of compensation in the ordinary course of business to Stockholders who are employees or directors of such Person; and (g) any payment of management fees (or other fees of a similar nature) or out-of-pocket expenses in connection therewith by such Person to any Stockholder of such Person or its Affiliates.

**"Retiree Welfare Plan"** means, at any time, a Welfare Plan that provides for continuing coverage or benefits for any participant or any beneficiary of a participant after such participant's termination of employment, other than continuation coverage provided pursuant to Section 4980B of the IRC and at the sole expense of the participant or the beneficiary of the participant.

**"S&P"** means Standard & Poor's Ratings Services, a division of the McGraw-Hill Companies, Inc.

**"Second Draw Milestone"** means that Investment Manager has received evidence satisfactory to Investment Manager that Borrower's revenue (determined in accordance with GAAP), measured as of the last day of any calendar quarter after the Closing Date for the trailing twelve (12) month period then ended, is greater than or equal to One Hundred Million Dollars ($100,000,000).

**"Security Agreement"** means the Security Agreement of even date herewith entered into by and among Investment Manager, on behalf of itself and Lender, and Borrower.

**"Senior Lender"** means Silicon Valley Bank or such other commercial bank or similar financial institution selected by Borrower.

**"Senior Lender Subordination Agreement"** means that certain Subordination Agreement, dated as of the Closing Date, among the Senior Lender, Investment Manager, Lender and Borrower.

**"Senior Line of Credit"** means the senior secured line of credit established by the Senior Lender for the benefit of Borrower pursuant to the Senior Loan Documents which shall not exceed Fifty Million Dollars ($50,000,000).

**"Senior Loan Documents"** means all of the documents now or hereafter executed in connection with the Senior Line of Credit.

**"Standby Fee"** has the meaning ascribed to it in **Section 1.4**.

**"Solvent"** means, with respect to any Person on a particular date, that on such date (a) the fair value of the property of such Person is greater than the total amount of liabilities, including subordinated and contingent liabilities, of such Person; (b) the present fair saleable value of the assets of such Person is not less than the amount that will be required to pay the probable liability of such Person on its debts and liabilities, including subordinated and contingent liabilities as they become absolute and matured; (c) such Person does not intend to, and does not believe that it will, incur debts or liabilities beyond such Person's ability to pay as such debts and liabilities mature; and (d) such Person is not engaged in a business or transaction, and is not about to engage in a business or transaction, for which such Person's property would constitute an unreasonably small capital. The amount of contingent liabilities (such as Litigation, guaranties and pension plan liabilities) at any time shall be computed as the amount that, in light of all the facts and circumstances existing at the time, represents the amount that can be reasonably be expected to become an actual or matured liability.

**"Stock"** means all shares, options, warrants, general or limited partnership interests, membership interests or other equivalents (regardless of how designated) of or in a corporation, partnership, limited liability company or equivalent entity whether voting or nonvoting, including common stock, preferred stock or any other "equity security" (as such term is defined in Rule 3a11 1 of the General Rules and Regulations promulgated by the Securities and Exchange Commission under the Securities Exchange Act of 1934).

**"Stockholder"** means, with respect to any Person, each holder of Stock of such Person.

"**Subordinated Debt**" means any Indebtedness of Borrower subordinated to the Obligations in a manner and form satisfactory to Investment Manager and Lender in their sole discretion, as to right and time of payment and as to any other rights and remedies thereunder including, without limitation Borrower's Indebtedness subject to the Subordinated Lender Subordination Agreement.

"**Subordinated Lenders**" means the lenders designated as creditors in the Subordinated Lender Subordination Agreement.

"**Subordinated Lender Subordination Agreement**" means that certain Subordination Agreement, dated as of the Closing Date, among the Subordinated Lenders, Investment Manager, Lender and Borrower.

"**Subsequent Loan**" has the meaning ascribed to it in Section 1.1(a)(iii).

"**Subsidiary**" means, with respect to any Person, (a) any corporation of which an aggregate of more than fifty percent (50%) of the outstanding Stock having ordinary voting power to elect a majority of the board of directors of such corporation (irrespective of whether, at the time, Stock of any other class or classes of such corporation shall have or might have voting power by reason of the happening of any contingency) is at the time, directly or indirectly, owned legally or beneficially by such Person or one or more Subsidiaries of such Person, or with respect to which any such Person has the right to vote or designate the vote of fifty percent (50%) or more of such Stock whether by proxy, agreement, operation of law or otherwise, and (b) any partnership or limited liability company in which such Person and/or one or more Subsidiaries of such Person shall have an interest (whether in the form of voting or participation in profits or capital contribution) of more than fifty percent (50%) or of which any such Person is a general partner or may exercise the powers of a general partner. Unless the context otherwise requires, each reference to a Subsidiary shall be a reference to a Subsidiary of Borrower.

"**Termination Date**" means the date on which (a) the Loans have been indefeasibly repaid in full, (b) all other Obligations under the Agreement and the other Loan Documents have been completely discharged, and (c) Borrower shall not have any further right to borrow any monies under the Agreement.

"**Title IV Plan**" means a Pension Plan (other than a Multiemployer Plan), that is covered by Title IV of ERISA, and that Borrower or any ERISA Affiliate maintains, contributes to or has an obligation to contribute to on behalf of participants who are or were employed by any of them.

"**Trademark License**" means rights under any written agreement now owned or hereafter acquired by Borrower granting any right to use any Trademark.

"**Trademarks**" means all of the following now owned or hereafter adopted or acquired by Borrower: (a) all trademarks, trade names, corporate names, business names, trade styles, service marks, logos, internet domain names, other source or business identifiers, prints and labels on which any of the foregoing have appeared or appear, designs and general intangibles of like nature (whether registered or unregistered), all registrations and recordings thereof, and all applications in connection therewith, including registrations, recordings and applications in the

United States Patent and Trademark Office or in any similar office or agency of the United States, any state or territory thereof, or any other country or any political subdivision thereof; (b) all reissues, extensions or renewals thereof; and (c) all goodwill associated with or symbolized by any of the foregoing.

"**UK Subsidiary**" means Cardlytics UK Limited, a Subsidiary of Borrower formed under the laws of England and Wales.

"**Unfunded Pension Liability**" means, at any time, the aggregate amount, if any, of the sum of (a) the amount by which the present value of all accrued benefits under each Title IV Plan exceeds the fair market value of all assets of such Title IV Plan allocable to such benefits in accordance with Title IV of ERISA, all determined as of the most recent valuation date for each such Title IV Plan using the actuarial assumptions for funding purposes in effect under such Title IV Plan, and (b) for a period of 5 years following a transaction which might reasonably be expected to be covered by Section 4069 of ERISA, the liabilities (whether or not accrued) that could be avoided by Borrower or any ERISA Affiliate as a result of such transaction.

"**Warrant**" has the meaning ascribed to it in **Section 1.2**.

"**Welfare Plan**" means a Plan described in Section 3(1) of ERISA.

Rules of construction with respect to accounting terms used in the Agreement or the other Loan Documents shall be as set forth or referred to in this **Annex A**. All other undefined terms contained in any of the Loan Documents shall, unless the context indicates otherwise, have the meanings provided for by the Code to the extent the same are used or defined therein; in the event that any term is defined differently in different Articles or Divisions of the Code, the definition contained in Article or Division 9 shall control. Unless otherwise specified, references in the Agreement or any of the Appendices to a Section, subsection or clause refer to such Section, subsection or clause as contained in the Agreement. The words "herein," "hereof" and "hereunder" and other words of similar import refer to the Agreement as a whole, including all Annexes, Exhibits and Schedules, as the same may from time to time be amended, restated, modified or supplemented, and not to any particular section, subsection or clause contained in the Agreement or any such Annex, Exhibit or Schedule.

Wherever from the context it appears appropriate, each term stated in either the singular or plural shall include the singular and the plural, and pronouns stated in the masculine, feminine or neuter gender shall include the masculine, feminine and neuter genders. The words "including", "includes" and "include" shall be deemed to be followed by the words "without limitation"; the word "or" is not exclusive; references to Persons include their respective successors and assigns (to the extent and only to the extent permitted by the Loan Documents) or, in the case of governmental Persons, Persons succeeding to the relevant functions of such Persons; and all references to statutes and related regulations shall include any amendments of the same and any successor statutes and regulations. Whenever any provision in any Loan Document refers to the knowledge (or an analogous phrase) of Borrower, such words are intended to signify that Borrower has actual knowledge or awareness of a particular fact or circumstance or that Borrower.

**Exhibit 1.1**

**Form Senior Subordinated Secured Promissory Note**

[See Attached]

**SENIOR SUBORDINATED SECURED PROMISSORY NOTE**

$24,000,000 July 21, 2016

**FOR VALUE RECEIVED**, the undersigned, **CARDLYTICS, INC.**, a corporation organized under the laws of the State of Delaware ("**Borrower**"), promises to pay to the order of **NATIONAL ELECTRICAL BENEFIT FUND** ("**Lender**") or its permitted assigns, in lawful money of the United States of America and in immediately available funds, the principal sum of Twenty Four Million Dollars ($24,000,000), or so much thereof as has been or may be advanced to or for the account of Borrower pursuant to the terms and conditions of the Credit Agreement (as hereinafter defined), together with interest thereon as set out herein, at its offices or such other place as Lender may designate in writing.

**1. Credit Agreement**. This Senior Subordinated Secured Promissory Note (this "**Note**") is subject to the terms of a certain Credit Agreement of even date herewith by and among Borrower, Lender and certain other parties named therein (as the same may be amended, restated, modified or supplemented from time to time, the "**Credit Agreement**"). Lender is entitled to the benefits of the Credit Agreement and all of the exhibits thereto, and reference is made thereto for a description of all rights and remedies thereunder. Neither reference to the Credit Agreement, nor any provision thereof or security for the other obligations evidenced hereby, shall affect or impair the absolute and unconditional obligations of Borrower to pay the principal amount hereof, together with all interest accrued thereon and expenses, when due. Capitalized terms used herein and not otherwise defined shall have the meanings set forth in the Credit Agreement.

**2. Interest Rate; Prepayments**.

**2.1** From the date of disbursement of funds until such time as all principal, interest and other amounts outstanding hereunder are unconditionally and irrevocably paid and performed in full, interest shall accrue on the unpaid principal amount at the rate specified in Section 1.3 of the Credit Agreement. Payments of interest, principal, and any prepayments hereunder shall be made in accordance with the Credit Agreement.

**2.2 Other Payment Provisions**. Borrower shall make each payment hereunder not later than 2:00 P.M. (Eastern time) on the day when due, without offset, in lawful money of the United States of America to Investment Manager, for the benefit of Lender, in same day funds at Investment Manager's offices or pursuant to a wire transfer to Lender's designated bank account, which shall initially be: [ ]. All payments will be applied in accordance with the terms of the Credit Agreement. If the date for any payment or prepayment hereunder falls on a day which is not a Business Day, then for all purposes of this Note the same shall be deemed to have fallen on the next following Business Day, and such extension of time shall in such case be included in the computation of payments of interest.

**3. Maturity Date**. All of the amounts due hereunder including the entire principal amount then-outstanding, all accrued and unpaid interest thereon and all other Obligations shall be due and payable on July 21, 2019 (the "**Maturity Date**") or such earlier date as such maturity may be accelerated pursuant to the terms hereof and as provided in the Credit Agreement.

**4. Collateral**. This Note is secured by the Collateral under the terms of the Security Agreement and the other Collateral Documents.

**5. Assignment**. There shall be no assignment or transfer of this Note or Borrower's obligations hereunder except as set forth in the Credit Agreement, and any purported assignment or transfer in contravention thereof shall be invalid. Lender may assign its rights hereunder in accordance with the terms of the Credit Agreement, including, without limitation, in connection with a syndication, participation or securitization.

**6. Default and Remedies**. The occurrence of an Event of Default under the Credit Agreement shall constitute a default hereunder and shall entitle Lender and Investment Manager to exercise the rights and remedies specified in the Credit Agreement and the various Loan Documents, as well as those available at law or in equity. These rights and remedies include, but are not limited to, the right to accelerate the maturity of this Note and to sell or otherwise dispose of any or all of the Collateral by public or private sale; in each case, subject to and in accordance with the Credit Agreement and the other Loan Documents.

**7. Miscellaneous**.

**7.1 No Usury**. This Note is subject to the express condition that at no time shall Borrower be obligated or required to pay interest hereunder at a rate which could subject Lender to either civil or criminal liability as a result of being in excess of the maximum rate which borrowers are permitted by law to contract or agree to pay. If, by the terms of this Note, Borrower is at any time required or obligated to pay interest at a rate in excess of such maximum rate, the rate of interest hereunder shall be deemed to be immediately reduced to such maximum rate and interest payable hereunder shall be computed at such maximum rate and the portion of all prior interest payments in excess of such maximum rate shall be applied and shall be deemed to have been payments in reduction of the principal balance of this Note.

**7.2 Controlling Law**. This Note shall be construed in accordance with and governed by the laws of the State of Maryland, without regard to its principles of conflicts of law. Venue for any adjudication hereof shall be only in the courts of the State of Maryland, the jurisdiction of such courts Borrower hereby consents to as the agreement of the parties, as not inconvenient and as not subject to review by any court other than such courts in the State of Maryland. Borrower intends that the courts of the jurisdiction in which Borrower is incorporated and conducts business should afford full faith and credit to any judgment rendered by a court of the State of Maryland against Borrower, and should hold that the State of Maryland courts have jurisdiction to enter a valid, *in personam* judgment against Borrower. Borrower agrees that service of any summons or complaint, and other process which may be served in any action, may be made by mailing via registered mail or delivering a copy of such process to Borrower, and Borrower hereby

agrees that this submission to jurisdiction and consent to service of process are reasonable and made for the express benefit of Lender and Investment Manager.

**7.3 Waiver of Notice and Presentment**. Borrower hereby waives presentment, demand, notice, protest, stay of execution, and all other defenses to payment generally, in each case to the extent permitted or not otherwise prohibited by applicable law, assents to the terms hereof, and agrees that any renewal, extension, or postponement of the time for payment or any other indulgence or any substitution, exchange, or release of collateral may be affected without notice to and without releasing Borrower from any liability hereunder.

**7.4 No Rescission Right or Set-Off**. This Note is not subject to any valid right of rescission, set-off, abatement, diminution, counterclaim or defense as against Lender or Investment Manager, including the defense of usury, in each case to the extent permitted or not otherwise prohibited by applicable law, and the operation of any of the terms of the loan, or the exercise of any right thereunder, will not render this Note unenforceable, in whole or in part, or subject to any right of rescission, set-off, abatement, diminution, counterclaim or defense, including the defense of usury, in each case to the extent permitted or not otherwise prohibited by applicable law, and Lender has not taken any action which would give rise to the assertion of any of the foregoing and no such right of rescission, set-off, abatement, diminution, counterclaim or defense, including the defense of usury, has been asserted with respect thereto.

**7.5 Severability**. In the event any one or more of the provisions contained in this Note shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of this Note, but this Note shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein or therein.

**IN WITNESS WHEREOF,** the undersigned has duly caused this Note to be executed and its seal, if any, affixed as of the date first set forth above.

**BORROWER:**

**CARDLYTICS, INC.**

By: _____
Name: David Evans
Title: Chief Financial Officer

**Exhibit 1.2**

**Form Warrant**

[See Attached]

THIS WARRANT AND THE SHARES ISSUABLE HEREUNDER HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "***ACT***"), OR THE SECURITIES LAWS OF ANY STATE AND, EXCEPT AND PURSUANT TO THE PROVISIONS OF ARTICLE 5 BELOW, MAY NOT BE OFFERED, SOLD OR OTHERWISE TRANSFERRED, PLEDGED OR HYPOTHECATED UNLESS AND UNTIL REGISTERED UNDER SAID ACT AND APPLICABLE STATE SECURITIES LAW OR, IN THE OPINION OF LEGAL COUNSEL IN FORM AND SUBSTANCE SATISFACTORY TO THE ISSUER OF THESE SECURITIES, SUCH OFFER, SALE OR TRANSFER, PLEDGE OR HYPOTHECATION IS EXEMPT FROM REGISTRATION.

**WARRANT TO PURCHASE STOCK**

Company: Cardlytics, Inc., a Delaware corporation
Number of Shares: 388,500, subject to adjustment
Class of Stock: Common Stock, $0.0001 par value per share
Warrant Price: $5.00, subject to adjustment
Issue Date: July 21, 2016
Expiration Date: July 21, 2026

Credit Facility: This Warrant is issued in connection with that certain Credit Agreement of even date herewith among Columbia Partners, L.L.C. Investment Management, National Electrical Benefit Fund and the Company (as amended from time to time, the "***Credit Agreement***").

THIS WARRANT CERTIFIES THAT, for good and valuable consideration, National Electrical Benefit Fund (together with any successor or permitted assignee or transferee of this Warrant or of any shares issued upon exercise hereof, "***Holder***") is entitled to purchase the number of fully paid and non-assessable shares (the "***Shares***") of the above-stated Class of Stock (the "***Class***") of the above-named company (the "***Company***") at the above-stated Warrant Price per Share, all as set forth above and as adjusted pursuant to Article 2 of this Warrant, subject to the provisions and upon the terms and conditions set forth in this Warrant.

**ARTICLE 1**

**EXERCISE**

1.1 Method of Exercise. Holder may exercise this Warrant by delivering the original of this Warrant together with a duly executed Notice of Exercise in substantially the form attached as Appendix 1 to the principal office of the Company. Unless Holder is exercising the conversion right set forth in Article 1.2, Holder shall also deliver to the Company either, at Holder's option in its sole discretion, (a) a check, wire transfer (to an account designated by the Company), or other form of payment acceptable to the Company for the aggregate Warrant Price for the Shares being purchased, or (b) confirmation that Holder has reduced the outstanding principal of the Loans (as defined in the Credit Agreement) in an amount equal the aggregate Warrant Price.

1.2 Conversion Right; Cashless Exercise. In lieu of exercising this Warrant as specified in Article 1.1 and payment of the aggregate Warrant Price in the manner as specified in

Article 1.1 above, Holder may from time to time convert this Warrant, in whole or in part, into a number of Shares determined by dividing (a) the aggregate fair market value of the Shares or other securities otherwise issuable upon exercise of this Warrant minus the aggregate Warrant Price of such Shares by (b) the fair market value of one Share. The fair market value of the Shares shall be determined pursuant to Article 1.3.

1.3 Fair Market Value. If the Company's common stock is traded in a public market and the Shares are common stock, the fair market value of a Share shall be the closing price of a share of the Company's common stock reported for the business day immediately before Holder delivers this Warrant together with its Notice of Exercise to the Company (or in the instance where the Warrant is exercised immediately prior to the effectiveness of the Company's initial public offering ("***IPO***"), the "price to public" per share price specified in the final prospectus relating to such offering). If the Company's common stock is traded in a public market and the Shares are preferred stock, the fair market value of a Share shall be the closing price of a share of the Company's common stock reported for the business day immediately before Holder delivers this Warrant together with its Notice of Exercise to the Company (or, in the instance where the Warrant is exercised immediately prior to the effectiveness of the IPO, the initial "price to public" per share price specified in the final prospectus relating to such offering), in both cases, multiplied by the number of shares of the Company's common stock into which a Share is convertible. If the Company's common stock is not traded in a public market, the Board of Directors of the Company shall determine fair market value in its reasonable good faith judgment.

1.4 Delivery of Certificate and New Warrant. Promptly after Holder exercises or converts this Warrant and, if applicable, the Company receives payment of the aggregate Warrant Price, the Company shall deliver to Holder certificates for the Shares acquired and, if this Warrant has not been fully exercised or converted and has not expired, a new warrant of like tenor representing the Shares not so acquired.

1.5 Replacement of Warrants. On receipt of evidence reasonably satisfactory to the Company of the loss, theft, destruction or mutilation of this Warrant and, in the case of loss, theft or destruction, on delivery of an indemnity agreement reasonably satisfactory in form and amount to the Company or, in the case of mutilation, on surrender and cancellation of this Warrant, the Company shall execute and deliver, in lieu of this Warrant, a new warrant of like tenor.

1.6 Treatment of Warrant Upon Acquisition of Company.

1.6.1 Acquisition. For the purpose of this Warrant, "***Acquisition***" means any sale, license, or other disposition of all or substantially all of the assets of the Company, or any reorganization, consolidation, merger or sale of outstanding equity securities of the Company where the holders of the Company's outstanding voting equity securities as of immediately before the transaction beneficially own less than a majority of the outstanding voting equity securities of the surviving or successor entity as of immediately after the transaction.

1.6.2 Treatment of Warrant at Acquisition. Upon the written request of the Company, Holder agrees that, in the event of an Acquisition or an "arms length" sale of all or

substantially all of the Company's assets (and only its assets) to a third party that is not an Affiliate (as defined below) of the Company (a "***True Asset Sale***"), either (a) Holder shall exercise its conversion or purchase right under this Warrant and such exercise will be deemed effective immediately prior to the consummation of such Acquisition or True Asset Sale, as applicable, or (b) if Holder elects not to exercise the Warrant, this Warrant will be deemed to be converted pursuant to Article 1.2 immediately prior to such Acquisition or True Asset Sale, as applicable. The Company shall provide the Holder with written notice of its request relating to the foregoing (together with such reasonable information as the Holder may request in connection with such contemplated Acquisition giving rise to such notice), which is to be delivered to Holder not less than five (5) days prior to the closing of the proposed Acquisition or True Asset Sale, as applicable.

As used in this Article 1.6, "***Affiliate***" shall mean any person or entity that owns or controls directly or indirectly ten percent (10%) or more of the stock of Company, any person or entity that controls or is controlled by or is under common control with such persons or entities, and each of such person's or entity's officers, directors, joint venturers or partners, as applicable.

1.7 Certain Agreements. Upon any exercise or conversion of this Warrant, the Company may require as a condition to the issuance of the Shares that Holder become a party to, by execution and delivery to the Company of a counterpart signature page, joinder agreement, instrument of accession or similar instrument, the Company's Amended and Restated Investors' Rights Agreement dated September 18, 2014, as amended and in effect from time to time (the "***Investors' Rights Agreement***"), the Company's Amended and Restated Voting Agreement dated September 18, 2014, as amended and in effect from time to time, the Company's Amended and Restated Right of First Refusal and Co-Sale Agreement dated September 18, 2014, as amended and in effect from time to time, and each other agreement entered into among the Company and the holders of the outstanding shares of the Class, solely with respect to the Shares issued upon such exercise or conversion (and the shares of Common Stock, if any, issued upon conversion of such Shares), solely to the extent that a majority of the holders of outstanding shares of the Class are then parties thereto, and solely to the extent each such agreement is then by its terms in force and effect.

1.8 Market Stand-Off. The Holder hereby agrees that, if so requested by the Company or any representative of the underwriters in connection with the IPO, the Holder shall not sell, offer, contract to sell, pledge or otherwise transfer or dispose of, directly or indirectly, any securities (including warrants) of the Company, enter into a transaction which would have the same effect, or enter into any swap, hedge or other arrangement that transfers, in whole or in part, any economic consequences of ownership of such securities, whether any such aforementioned transaction is to be settled by delivery of the securities or such other securities, in cash or otherwise, or publicly disclose the intention to make any such offer, sale, pledge or disposition, or to enter into any such transaction, swap, hedge or other arrangement, without, in each case, written consent of the managing underwriter(s), during the period requested in writing by the managing underwriter and agreed to in writing by the Company (not to exceed one hundred eighty (180) days) following the effective date of the Company's IPO registration statement (the "***Market Standoff Period***"); provided, that all officers and directors of the Company, and all holders of one percent (1%) or more of the Company's common stock (on an as-exercised, as-converted basis) enter into similar agreements; provided, further, that if the

Company or managing underwriter(s) release any such officer, director or stockholder from his or its obligations under such agreement prior to the expiration thereof, Holder shall automatically be released from its obligations under this Article 1.8 and its agreement with the Company and/or underwriter(s) to the same extent. The Company may impose stop transfer instructions with respect to securities subject to the foregoing restrictions until the end of such Market Standoff Period.

## ARTICLE 2

## ADJUSTMENTS TO THE SHARES

2.1 Stock Dividends, Splits, Etc. If the Company declares or pays a dividend on the outstanding shares of the Class payable in common stock or other securities, then upon exercise of this Warrant, for each Share acquired, Holder shall receive, without cost to Holder, the total number and kind of securities to which Holder would have been entitled had Holder owned the Shares of record as of the date the dividend occurred. If the Company subdivides the outstanding shares of the Class by reclassification or otherwise into a greater number of shares, the number of Shares purchasable hereunder shall be proportionately increased and the Warrant Price shall be proportionately decreased. If the outstanding shares of the Class are combined or consolidated, by reclassification or otherwise, into a lesser number of shares, the Warrant Price shall be proportionately increased and the number of Shares shall be proportionately decreased.

2.2 Reclassification, Exchange, Combinations or Substitution. Upon any reclassification, exchange, substitution, or other event that results in a change of the number and/or class of the securities issuable upon exercise or conversion of this Warrant, Holder shall be entitled to receive, upon exercise or conversion of this Warrant, the number and kind of securities and property that Holder would have received for the Shares if this Warrant had been exercised immediately before such reclassification, exchange, substitution, or other event. Such an event shall include, without limitation, any automatic conversion of the outstanding or issuable securities of the Company of the same class or series as the Shares to common stock pursuant to the terms of the Company's Certificate of Incorporation. The Company or its successor shall promptly issue to Holder a certificate pursuant to Article 2.6 hereof setting forth the number, class and series or other designation of such new securities or other property issuable upon exercise or conversion of this Warrant as a result of such reclassification, exchange, substitution or other event. The provisions of this Article 2.2 shall similarly apply to successive reclassifications, exchanges, substitutions, or other events.

2.3 Adjustments for Diluting Issuances. The number of shares of common stock issuable upon conversion of the Shares shall be subject to adjustment, from time to time in the manner set forth in the Company's Certificate of Incorporation as if the Shares were issued and outstanding on and as of the date of any such required adjustment. The provisions set forth for the Class in the Company's Certificate of Incorporation relating to the above in effect as of the Issue Date may not be amended, modified or waived, without the prior written consent of Holder unless such amendment, modification or waiver affects the rights associated with the Shares in the same manner as such amendment, modification or waiver affects the rights associated with all other shares of the Class.

2.4 No Impairment. The Company shall not, by amendment of its Certificate of Incorporation or through a reorganization, transfer of assets, consolidation, merger, dissolution, issue, or sale of securities or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms to be observed or performed under this Warrant by the Company, but shall at all times in good faith assist in carrying out of all the provisions of this Article 2 and in taking all such action as may be necessary or appropriate to protect Holder's rights under this Article against impairment; provided, however, that the Company shall have the right to take any such action that shall change the rights, designations, limitations, restrictions, and obligations for its Series B Convertible Preferred Stock to the extent all holders of its Series B Convertible Preferred Stock are similarly affected.

2.5 Fractional Shares. No fractional Shares shall be issuable upon exercise or conversion of the Warrant and the number of Shares to be issued shall be rounded down to the nearest whole Share. If a fractional share interest arises upon any exercise or conversion of the Warrant, the Company shall eliminate such fractional share interest by paying Holder the amount computed by multiplying the fractional interest by the fair market value of a full Share.

2.6 Certificate as to Adjustments. Upon each adjustment of the Warrant Price, Class and/or number of Shares, the Company shall promptly notify Holder in writing, and, at the Company's expense, promptly compute such adjustment, and furnish Holder with a certificate of its Chief Financial Officer setting forth such adjustment and the facts upon which such adjustment is based. The Company shall, upon written request, furnish Holder a certificate setting forth the Warrant Price, Class and number of Shares in effect upon the date thereof and the series of adjustments leading to such Warrant Price, Class and number of Shares.

## ARTICLE 3

## REPRESENTATIONS AND COVENANTS OF THE COMPANY

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

(a) The initial Warrant Price referenced on the first page of this Warrant is not greater than the fair market value of a share of the Company's Common Stock set forth in the 409a valuation of the Company's stock completed most recently prior to the Issue Date.

(b) All Shares which may be issued upon the exercise of the purchase right represented by this Warrant, and all securities, if any, issuable upon conversion of the Shares, shall, upon issuance, be duly authorized, validly issued, fully paid and non-assessable, and free of any liens and encumbrances except for restrictions on transfer provided for herein or under applicable federal and state securities laws.

3.2 Notice of Certain Events. If the Company proposes at any time (a) to declare any dividend or distribution upon the outstanding shares of the Class, whether in cash, property, stock, or other securities and whether or not a regular cash dividend; or (b) to effect an Acquisition or to liquidate, dissolve or wind up, then, in connection with each such event, the Company shall give Holder: (1) at least ten (10) days' prior written notice of the date on which a

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

3.3 Registration Under Securities Act of 1933, as amended. The Company agrees that upon the Holder's execution and delivery of the Investors' Rights Agreement or exercise or conversion of the Warrant, the Shares or, if the Shares are convertible into common stock of the Company, such common stock, shall have certain incidental, or "Piggyback**,**" and S-3 registration rights pursuant to and as set forth in the Investors' Rights Agreement, as then in effect.

3.4 No Shareholder Rights. Except as provided in this Warrant, Holder will not have any rights as a shareholder of the Company until the exercise of this Warrant.

**ARTICLE 4**

**REPRESENTATIONS, WARRANTIES OF THE HOLDER**

The Holder represents and warrants to the Company as follows:

4.1 Purchase for Own Account. This Warrant and the securities to be acquired upon exercise of this Warrant by Holder will be acquired for investment for Holder's account, not as a nominee or agent, and not with a view to the public resale or distribution within the meaning of the Act. Holder also represents that it has not been formed for the specific purpose of acquiring this Warrant or the Shares.

4.2 Disclosure of Information. Holder has received or has had full access to all the information it considers necessary or appropriate to make an informed investment decision with respect to the acquisition of this Warrant and its underlying securities. Holder further has had an opportunity to ask questions and receive answers from the Company regarding the terms and conditions of the offering of this Warrant and its underlying securities and to obtain additional information (to the extent the Company possessed such information or could acquire it without unreasonable effort or expense) necessary to verify any information furnished to Holder or to which Holder has access.

4.3 Investment Experience. Holder understands that the purchase of this Warrant and its underlying securities involves substantial risk. Holder has experience as an investor in securities of companies in the development stage and acknowledges that Holder can bear the economic risk of such Holder's investment in this Warrant and its underlying securities and has such knowledge and experience in financial or business matters that Holder is capable of evaluating the merits and risks of its investment in this Warrant and its underlying securities and/or has a preexisting personal or business relationship with the Company and certain of its

officers, directors or controlling persons of a nature and duration that enables Holder to be aware of the character, business acumen and financial circumstances of such persons.

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

4.5 The Act. Holder understands that this Warrant and the Shares issuable upon exercise or conversion hereof have not been registered under the Act in reliance upon a specific exemption therefrom, which exemption depends upon, among other things, the bona fide nature of the Holder's investment intent as expressed herein. Holder understands that this Warrant and the Shares issued upon any exercise or conversion hereof must be held indefinitely unless subsequently registered under the Act and qualified under applicable state securities laws, or unless exemption from such registration and qualification are otherwise available.

**ARTICLE 5**

**MISCELLANEOUS**

5.1 Term: This Warrant is exercisable in whole or in part at any time and from time to time on or before the Expiration Date.

5.2 Legends. This Warrant and the Shares (and the securities issuable, directly or indirectly, upon conversion of the Shares, if any) shall be imprinted with a legend in substantially the following form:

THIS WARRANT AND THE SHARES ISSUABLE HEREUNDER HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "***ACT***"), OR THE SECURITIES LAWS OF ANY STATE AND, EXCEPT AND PURSUANT TO THE PROVISIONS OF ARTICLE 5 OF THAT CERTAIN WARRANT TO PURCHASE STOCK ISSUED BY THE COMPANY TO NATIONAL ELECTRICAL BENEFIT FUND DATED AS OF JULY 21, 2016, MAY NOT BE OFFERED, SOLD OR OTHERWISE TRANSFERRED, PLEDGED OR HYPOTHECATED UNLESS AND UNTIL REGISTERED UNDER SAID ACT AND APPLICABLE STATE SECURITIES LAW OR, IN THE OPINION OF LEGAL COUNSEL IN FORM AND SUBSTANCE SATISFACTORY TO THE ISSUER OF THESE SECURITIES, SUCH OFFER, SALE OR TRANSFER, PLEDGE OR HYPOTHECATION IS EXEMPT FROM REGISTRATION.

5.3 Compliance with Securities Laws on Transfer. This Warrant and the Shares issuable upon exercise of this Warrant (and the securities issuable, directly or indirectly, upon conversion of the Shares, if any) may not be transferred or assigned in whole or in part without compliance with applicable federal and state securities laws by the transferor and the transferee (including, without limitation, the delivery of investment representation letters and legal opinions reasonably satisfactory to the Company, as reasonably requested by the Company). The Company shall not require Holder to provide an opinion of counsel if the transfer is to any

affiliate of Holder, provided that any such transferee is an "***accredited investor***" as defined in Regulation D promulgated under the Act.

5.4 Transfer Procedure. Subject to the provisions of Article 5.3 and upon providing the Company with written notice, Holder may transfer all or part of this Warrant or the Shares issuable upon exercise of this Warrant (or the securities issuable directly or indirectly, upon conversion of the Shares, if any) to any transferee, provided, however, in connection with any such transfer, Holder will give the Company notice of the portion of the Warrant being transferred with the name, address and taxpayer identification number of the transferee and Holder will surrender this Warrant to the Company for reissuance to the transferee(s) (and Holder if applicable). The Company may refuse to transfer this Warrant or the Shares to any person who directly competes with the Company, unless, in either case, the stock of the Company is publicly traded.

5.5 Notices. All notices and other communications from the Company to the Holder, or vice versa, shall be deemed delivered and effective when given personally or mailed by first-class registered or certified mail, postage prepaid (or on the first business day after transmission by facsimile), at such address as may have been furnished to the Company or Holder, as the case may be, in writing by the Company or such holder from time to time. All notices to Holder shall be addressed as follows until the Company receives notice of a change of address in connection with a transfer or otherwise:

Columbia Partners, L.L.C. Investment Management
5425 Wisconsin Avenue
Suite 700
Chevy Chase, Maryland 20815
Attn: Tom Bain
Fax: (240) 482-0401

Notice to the Company shall be addressed as follows until Holder receives notice of a change in address:

Cardlytics, Inc.
Attn: David Evans, CFO
675 Ponce de Leon Ave., NE
Suite 6000
Atlanta, Georgia 30308

5.6 Amendment and Waiver. This Warrant and any term hereof may be amended, changed, waived, discharged or terminated only by an instrument in writing signed by the party against which enforcement of such amendment, change, waiver, discharge or termination is sought.

5.7 Attorney's Fees. In the event of any dispute between the parties concerning the terms and provisions of this Warrant, the party prevailing in such dispute shall be entitled to collect from the other party all costs incurred in such dispute, including reasonable attorneys' fees.

5.8 Automatic Conversion upon Expiration. In the event that, upon the Expiration Date, the fair market value of one Share (or other security issuable upon the exercise hereof) as determined in accordance with Article 1.3 above is greater than the Warrant Price in effect on such date, then this Warrant shall automatically be deemed on and as of such date to be converted pursuant to Article 1.2 above as to all Shares (or such other securities) for which it shall not previously have been exercised or converted, and the Company shall promptly deliver a certificate representing the Shares (or such other securities) issued upon such conversion to Holder.

5.9 Counterparts. This Warrant may be executed in counterparts, all of which together shall constitute one and the same agreement.

5.10 Governing Law. This Warrant shall be governed by and construed in accordance with the laws of the State of Delaware, without giving effect to its principles regarding conflicts of law.

*[Remainder of page left blank intentionally]*

“COMPANY”

CARDLYTICS, INC.

By:

Name: Scott Grimes
Title: Chief Executive Officer

“HOLDER”

NATIONAL ELECTRICAL BENEFIT FUND

By Columbia Partners, L.L.C. Investment Management, its Authorized Signatory

By:

Name:
Title:

APPENDIX 1

NOTICE OF EXERCISE

1. Holder elects to purchase shares of the Common/Series Preferred [strike one] Stock of pursuant to the terms of the attached Warrant, and tenders payment of the purchase price of the shares in full.

[or]

1. Holder elects to convert the attached Warrant into Shares/cash [strike one] in the manner specified in the Warrant. This conversion is exercised for of the Shares covered by the Warrant.

[Strike paragraph that does not apply.]

2. Please issue a certificate or certificates representing the Shares in the name specified below:

Holders Name

(Address)

3. By its execution below and for the benefit of the Company, Holder hereby restates each of the representations and warranties in Article 4 of the Warrant as of the date hereof.

HOLDER:

By:

Name:

Title:

(Date):

**Exhibit 1.1B**

**Form Replacement Note**

[See Attached]

**SENIOR SUBORDINATED SECURED PROMISSORY NOTE**

$_____ _____ ___, ____

**FOR VALUE RECEIVED**, the undersigned, **CARDLYTICS, INC.**, a corporation organized under the laws of the State of Delaware ("**Borrower**"), promises to pay to the order of **NATIONAL ELECTRICAL BENEFIT FUND** ("**Lender**") or its permitted assigns, in lawful money of the United States of America and in immediately available funds, the principal sum of Dollars ($ ), or so much thereof as has been or may be advanced to or for the account of Borrower pursuant to the terms and conditions of the Credit Agreement (as hereinafter defined), together with interest thereon as set out herein, at its offices or such other place as Lender may designate in writing.

**1. Credit Agreement**. This Senior Subordinated Secured Promissory Note (this "**Note**") is subject to the terms of a certain Credit Agreement of even date herewith by and among Borrower, Lender and certain other parties named therein (as the same may be amended, restated, modified or supplemented from time to time, the "**Credit Agreement**"). Lender is entitled to the benefits of the Credit Agreement and all of the exhibits thereto, and reference is made thereto for a description of all rights and remedies thereunder. Neither reference to the Credit Agreement, nor any provision thereof or security for the other obligations evidenced hereby, shall affect or impair the absolute and unconditional obligations of Borrower to pay the principal amount hereof, together with all interest accrued thereon and expenses, when due. Capitalized terms used herein and not otherwise defined shall have the meanings set forth in the Credit Agreement.

**2. Interest Rate; Prepayments**.

**2.1** From the date of disbursement of funds until such time as all principal, interest and other amounts outstanding hereunder are unconditionally and irrevocably paid and performed in full, interest shall accrue on the unpaid principal amount at the rate specified in Section 1.3 of the Credit Agreement. Payments of interest, principal, and any prepayments hereunder shall be made in accordance with the Credit Agreement.

**2.2 Other Payment Provisions**. Borrower shall make each payment hereunder not later than 2:00 P.M. (Eastern time) on the day when due, without offset, in lawful money of the United States of America to Investment Manager, for the benefit of Lender, in same day funds at Investment Manager's offices or pursuant to a wire transfer to Lender's designated bank account, which shall initially be: [ ]. All payments will be applied in accordance with the terms of the Credit Agreement. If the date for any payment or prepayment hereunder falls on a day which is not a Business Day, then for all purposes of this Note the same shall be deemed to have fallen on the next following Business Day, and such extension of time shall in such case be included in the computation of payments of interest.

**3. Maturity Date**. All of the amounts due hereunder including the entire principal amount then-outstanding, all accrued and unpaid interest thereon and all other Obligations shall be due and payable on July 21, 2019 (the "**Maturity Date**") or such earlier date as such maturity may be accelerated pursuant to the terms hereof and as provided in the Credit Agreement.

**4. Collateral**. This Note is secured by the Collateral under the terms of the Security Agreement and the other Collateral Documents.

**5. Assignment**. There shall be no assignment or transfer of this Note or Borrower's obligations hereunder except as set forth in the Credit Agreement, and any purported assignment or transfer in contravention thereof shall be invalid. Lender may assign its rights hereunder in accordance with the terms of the Credit Agreement, including, without limitation, in connection with a syndication, participation or securitization.

**6. Default and Remedies**. The occurrence of an Event of Default under the Credit Agreement shall constitute a default hereunder and shall entitle Lender and Investment Manager to exercise the rights and remedies specified in the Credit Agreement and the various Loan Documents, as well as those available at law or in equity. These rights and remedies include, but are not limited to, the right to accelerate the maturity of this Note and to sell or otherwise dispose of any or all of the Collateral by public or private sale; in each case, subject to and in accordance with the Credit Agreement and the other Loan Documents.

**7. Miscellaneous**.

**7.1 No Usury**. This Note is subject to the express condition that at no time shall Borrower be obligated or required to pay interest hereunder at a rate which could subject Lender to either civil or criminal liability as a result of being in excess of the maximum rate which borrowers are permitted by law to contract or agree to pay. If, by the terms of this Note, Borrower is at any time required or obligated to pay interest at a rate in excess of such maximum rate, the rate of interest hereunder shall be deemed to be immediately reduced to such maximum rate and interest payable hereunder shall be computed at such maximum rate and the portion of all prior interest payments in excess of such maximum rate shall be applied and shall be deemed to have been payments in reduction of the principal balance of this Note.

**7.2 Controlling Law**. This Note shall be construed in accordance with and governed by the laws of the State of Maryland, without regard to its principles of conflicts of law. Venue for any adjudication hereof shall be only in the courts of the State of Maryland, the jurisdiction of such courts Borrower hereby consents to as the agreement of the parties, as not inconvenient and as not subject to review by any court other than such courts in the State of Maryland. Borrower intends that the courts of the jurisdiction in which Borrower is incorporated and conducts business should afford full faith and credit to any judgment rendered by a court of the State of Maryland against Borrower, and should hold that the State of Maryland courts have jurisdiction to enter a valid, *in personam* judgment against Borrower. Borrower agrees that service of any summons or complaint, and other process which may be served in any action, may be made by mailing via registered mail or delivering a copy of such process to Borrower, and Borrower hereby agrees that this submission to jurisdiction and consent to service of process are reasonable and made for the express benefit of Lender and Investment Manager.

**7.3 Waiver of Notice and Presentment**. Borrower hereby waives presentment, demand, notice, protest, stay of execution, and all other defenses to payment generally, in each case to the extent permitted or not otherwise prohibited by applicable law, assents to the terms hereof, and agrees that any renewal, extension, or postponement of the time for payment or any other indulgence or any substitution, exchange, or release of collateral may be affected without notice to and without releasing Borrower from any liability hereunder.

**7.4 No Rescission Right or Set-Off**. This Note is not subject to any valid right of rescission, set-off, abatement, diminution, counterclaim or defense as against Lender or Investment Manager, including the defense of usury, in each case to the extent permitted or not otherwise prohibited by applicable law, and the operation of any of the terms of the loan, or the exercise of any right thereunder, will not render this Note unenforceable, in whole or in part, or subject to any right of rescission, set-off, abatement, diminution, counterclaim or defense, including the defense of usury, in each case to the extent permitted or not otherwise prohibited by applicable law, and Lender has not taken any action which would give rise to the assertion of any of the foregoing and no such right of rescission, set-off, abatement, diminution, counterclaim or defense, including the defense of usury, has been asserted with respect thereto.

**7.5 Severability**. In the event any one or more of the provisions contained in this Note shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of this Note, but this Note shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein or therein.

**IN WITNESS WHEREOF,** the undersigned has duly caused this Note to be executed and its seal, if any, affixed as of the date first set forth above.

**BORROWER:**

**CARDLYTICS, INC.**

By: _____
Name:
Title:

**EXHIBIT 6.1(l)**

**Form of Compliance Certificate**

**Please send all Required Reporting to:**

Columbia Partners, L.L.C. Investment Management
5425 Wisconsin Avenue
Suite 700
Chevy Chase, Maryland 20815
ATTN: Tom Bain
Fax: (240) 482-0401
email: tbain@columbiaptrs.com

**FROM:** Cardlytics, Inc.

The undersigned authorized officer of Cardlytics, Inc. ("**Borrower**"), hereby certifies that in accordance with the terms and conditions of the Credit Agreement among Borrower, Columbia Partners, L.L.C. Investment Management, as Investment Manager ("**Investment Manager**"), and National Electrical Benefit Fund, as Lender ("**Lender**") (as amended from time to time, the "**Agreement**"), (i) Borrower is in complete compliance for the period ending with all required covenants, except as noted below and (ii) all representations and warranties of Borrower stated in the Agreement are true and correct in all material respects as of the date hereof. Attached herewith are the required documents supporting the above certification. The officer further certifies that these are prepared in accordance with Generally Accepted Accounting Principles ("**GAAP**") and are consistently applied from one period to the next except as explained in an accompanying letter or footnotes.

Please indicate compliance status by circling Yes/No under "Complies" column.

| REPORTING COVENANTS | REQUIRED | COMPLIES |
|---|---|---|
| Company Prepared F/S | Monthly, within 30 days | YES NO |
| Compliance Certificate | Monthly, within 30 days, and annually, within 180 days of FYE | YES NO |
| CPA Audited | Annually, within 180 days of FYE* | YES NO |
| Annual Projections | Annually and within 10 days after Board approval | YES NO |
| 409a Valuation | 5 days after completion | YES NO |

* to the extent the Board requires audited statement; otherwise, unaudited

| | DESCRIPTION | APPLICABLE |
|---|---|---|
| Legal Actions (Sect. 6.1(i)) | Notify promptly upon notice _____ | YES NO |
| Cross default with other agreements >$500,000 (Sect. 7.1(b)) | Notify promptly upon notice _____ | YES NO |
| Judgments > $250,000 (Sect. 7.1(h)) | Notify promptly upon notice _____ | YES NO |

| FINANCIAL COVENANTS | REQUIRED | ACTUAL | COMPLIES |
|---|---|---|---|
| **TO BE TESTED MONTHLY, UNLESS OTHERWISE NOTED:** | | | |
| Minimum Liquidity | See Section 6.3(a) | $_____ | YES NO |

| OTHER COVENANTS | REQUIRED | ACTUAL | COMPLIES |
|---|---|---|---|
| Permitted Indebtedness for equipment leases | £$500,000 | $ | YES NO |
| Permitted Investments for stock repurchase | £$500,000 | $ | YES NO |
| Permitted Investments for subsidiaries | £$250,000 | $ | YES NO |
| Permitted Investments for employee loans | £$250,000 | $ | YES NO |
| Permitted Investments for joint ventures | £250,000 | $ | YES NO |
| Permitted Transfers | £$250,000 | $ | YES NO |

Please Enter Below Comments Regarding Covenant Violations:

The Officer further acknowledges that at any time Borrower is not in compliance with all the terms set forth in the Agreement, including, without limitation, the financial covenants, no credit extensions will be made.

Very truly yours,

_____
Authorized Signer

_____
Name:

_____
Title:

LENDER USE ONLY

Rec'd By: _____
Date: _____
Reviewed By: _____
Date: _____
Financial Compliance Status: YES/NO

# FIRST AMENDMENT TO CREDIT AGREEMENT

**THIS FIRST AMENDMENT TO CREDIT AGREEMENT** (this "**Agreement**") is entered into this 26th day of April, 2017, by and among CARDLYTICS, INC., a Delaware corporation ("**Borrower**"), COLUMBIA PARTNERS, L.L.C. INVESTMENT MANAGEMENT, as investment manager ("**Investment Manager**"), and NATIONAL ELECTRICAL BENEFIT FUND, as lender ("**Lender**").

## Recitals

**A.** Borrower, Investment Manager and Lender have entered into that certain Credit Agreement, dated July 21, 2016 (as the same may from time to time be amended, modified, supplemented or restated, the "**Credit Agreement**"). Lender has extended credit to Borrower for the purposes permitted in the Credit Agreement.

**B.** Borrower has requested that the Investment Manager and Lender make certain revisions to the Credit Agreement as more fully set forth herein.

**C.** Although the Investment Manager and Lender are under no obligation to do so, the Investment Manager and Lender are willing to so amend the Credit Agreement on the terms and conditions set forth in this Agreement, so long as Borrower complies with those terms, covenants, and conditions set forth in this Agreement.

## Agreement

**NOW, THEREFORE,** in consideration of the foregoing recitals and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, and intending to be legally bound, the parties hereto agree as follows:

**1. Definitions**. Capitalized terms used but not defined in this Agreement, including its preamble and recitals, shall have the meanings given to them in the Credit Agreement.

**2. Recitals**. The parties hereto acknowledge and agree that the above Recitals are true and correct in all material respects and that the same are incorporated herein and made a part hereof by reference.

**3. Amendments to Credit Agreement.**

**3.1 Definitions**. The following definitions in Annex A to the Credit Agreement are amended by deleting them in their entirety and replacing them with the following:

"**Interest Rate**" is a fixed per annum rate equal to the following: (a) unless Borrower is Reduced Pricing Eligible, thirteen and one quarter of one percent (13.25%); provided, however, if Borrower raises at least Seventy-Five Million Dollars ($75,000,000) from its Initial Public Offering, such rate shall instead be twelve and three quarters of one percent (12.75%); and (b) when Borrower is Reduced Pricing Eligible, eleven and one quarter of one percent (11.25%).

"**Liquidity Event**" means a Change of Control.

**4. Representations and Warranties**. To induce Investment Manager and Lender to enter into this Agreement, Borrower hereby represents and warrants to Investment Manager and Lender as follows:

**4.1** Immediately after giving effect to this Agreement (a) the representations and warranties contained in the Credit Agreement are true and correct in all material respects as of the date hereof (except to the extent such representations and warranties relate to an earlier date, in which case they are true and correct as of such date), and (b) no Default or Event of Default has occurred and is continuing; and

**4.2** Borrower has the power and due authority to execute and deliver this Agreement.

**5. Prior Agreement**. The Credit Agreement is hereby ratified and reaffirmed and shall remain in full force and effect. This Agreement is not a novation and the terms and conditions of this Agreement shall be in addition to and supplemental to all terms and conditions set forth in the Credit Agreement. In the event of any conflict or inconsistency between this Agreement and the terms of such documents, the terms of this Agreement shall be controlling, but such document shall not otherwise be affected or the rights therein impaired.

**6. Governing Law**. This Agreement and the rights and obligations of the parties hereto shall be governed by and construed in accordance with the laws of the State of Maryland, without regards to conflicts of laws principles.

**7. Headings**. Section and subsection headings are included herein for convenience of reference only and shall not constitute a part of this Agreement for any other purposes or be given substantive effect.

**8. Counterparts; Effectiveness**. This Agreement may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed and delivered shall be deemed an original, but all of which counterparts together shall constitute but one in the same instrument. This Agreement shall become effective upon (a) the execution of a counterpart hereof by each of the parties hereto, and (b) Borrower's payment of Investment Manager's legal fees and expenses in connection with the negotiation and preparation of this Agreement.

*[SIGNATURES APPEAR ON THE FOLLOWING PAGE]*

**IN WITNESS WHEREOF,** the parties hereto have caused this Agreement to be duly executed and delivered as of the date first written above.

CARDLYTICS, INC.

By: /s/ David Evans
Name: David Evans
Title: CFO

COLUMBIA PARTNERS, L.L.C.
INVESTMENT MANAGEMENT,
as Investment Manager

By: /s/ Thomas Bain
Name: Thomas Bain
Title: Managing Director

NATIONAL ELECTRICAL
BENEFIT FUND,
as Lender

By: Columbia Partners, L.L.C. Investment Management, its Authorized Signatory

By: /s/ Christopher Doherty
Name: Christopher Doherty
Title: Managing Director

**SECOND AMENDMENT TO CREDIT AGREEMENT**

**THIS SECOND AMENDMENT TO CREDIT AGREEMENT** (this "**Agreement**") is entered into this 5th day of June, 2017, by and among CARDLYTICS, INC., a Delaware corporation ("**Borrower**"), COLUMBIA PARTNERS, L.L.C. INVESTMENT MANAGEMENT, as investment manager ("**Investment Manager**"), and NATIONAL ELECTRICAL BENEFIT FUND, as lender ("**Lender**").

**Recitals**

**A.** Borrower, Investment Manager and Lender have entered into that certain Credit Agreement, dated July 21, 2016 (as the same may from time to time be amended, modified, supplemented or restated, the "**Credit Agreement**"). Lender has extended credit to Borrower for the purposes permitted in the Credit Agreement.

**B.** Borrower has requested that the Investment Manager and Lender make (i) an additional Loan to Borrower and (ii) certain other revisions to the Credit Agreement as more fully set forth herein.

**C.** Although the Investment Manager and Lender are under no obligation to do so, the Investment Manager and Lender are willing to so amend the Credit Agreement on the terms and conditions set forth in this Agreement, so long as Borrower complies with those terms, covenants, and conditions set forth in this Agreement.

**Agreement**

**NOW, THEREFORE,** in consideration of the foregoing recitals and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, and intending to be legally bound, the parties hereto agree as follows:

**1. Definitions**. Capitalized terms used but not defined in this Agreement, including its preamble and recitals, shall have the meanings given to them in the Credit Agreement.

**2. Recitals**. The parties hereto acknowledge and agree that the above Recitals are true and correct in all material respects and that the same are incorporated herein and made a part hereof by reference.

**3. Amendments to Credit Agreement.**

**3.1 Section 1.1(a) (Loan)**.

(a) Section 1.1 of the Credit Agreement is amended by deleting Section 1.1(a)(i) in its entirety and replacing it with the following:

(i) Note and Draw Period. Borrower has executed and delivered to Lender a senior subordinated secured promissory note in the form of note attached hereto as **Exhibit 1.1**, payable to the order of Lender in the principal amount of Twenty-Nine Million Dollars ($29,000,000) (the "**Note**"). Subject to the terms and

conditions of this Agreement, during the Draw Period, Lender shall make Loans to Borrower not exceeding Twenty-Nine Million Dollars ($29,000,000) in the aggregate (the "**Loan Amount Maximum**"). When repaid, no Loan may be re-borrowed.

(b) Section 1.1 of the Credit Agreement is further amended by adding the following at the end of Section 1.1(a)(iii):

Lender shall make one (1) additional Loan to Borrower (the "**Supplemental Subsequent Loan**") no later than June 30, 2017 in the principal amount of up to Five Million Dollars ($5,000,000).

**3.2 Section 1.2 (Warrant)**. Section 1.2 of the Credit Agreement is amended by re-numbering the existing text therein as Section 1.2.1 and adding the following at the end thereof as Section 1.2.2:

**1.2.2 Supplemental Warrant**. On June 5, 2017 (the "**Supplemental Closing Date**"), Borrower shall issue to Lender, as part of its inducement to make the Supplemental Subsequent Loan, a warrant (the "**Supplemental Warrant**", and together with the Warrant in Section 1.2.1, collectively, the "**Warrant**") entitling Lender to purchase, at an exercise price of $6.92 per share, 70,000 shares of Borrower's Common Stock, all of which will be issued and fully vested on the Supplemental Closing Date. The Warrant shall be in the form attached hereto as **Exhibit 1.2.2**. Borrower and Lender, as a result of arm's length bargaining, agree that:

**(a)** Neither Lender, Investment Manager nor any affiliated company of Lender or Investment Manager has rendered any services to Borrower in connection with this Agreement;

**(b)** The Warrant is not being issued as compensation; and

**(c)** All tax returns and other information return of each party relative to this Agreement and the Supplemental Note and the Supplemental Warrant issued pursuant hereto shall consistently reflect the matters agreed to in (a) and (b) above.

**3.3 Section 1.5 (Facility Fee)**. At the time the Supplemental Subsequent Loan is requested, Borrower shall pay to Investment Manager, for the benefit of Lender, a fully earned, non-refundable facility fee equal to One Hundred Thousand Dollars ($100,000) (the "**Supplemental Facility Fee**"). The definition of "**Facility Fee**" in Section 1.5 shall hereinafter be deemed to include the Supplemental Facility Fee.

**3.4 Exhibit 1.1 (Note)**. The Credit Agreement is amended by deleting **Exhibit 1.1** thereto in its entirety and replacing it with **Exhibit 1.1** attached hereto.

**3.5 Exhibit 1.2.2 (Supplemental Warrant)**. The Credit Agreement is amended by adding **Exhibit 1.2.2** attached hereto to the Credit Agreement as **Exhibit 1.2.2** thereto.

**4. Representations and Warranties**. To induce Investment Manager and Lender to enter into this Agreement, Borrower hereby represents and warrants to Investment Manager and Lender as follows:

**4.1** Immediately after giving effect to this Agreement (a) the representations and warranties contained in the Credit Agreement are true and correct in all material respects as of the date hereof (except to the extent such representations and warranties relate to an earlier date, in which case they are true and correct as of such date), and (b) no Default or Event of Default has occurred and is continuing; and

**4.2** Borrower has the power and due authority to execute and deliver this Agreement.

**5. Prior Agreement**. The Credit Agreement is hereby ratified and reaffirmed and shall remain in full force and effect. This Agreement is not a novation and the terms and conditions of this Agreement shall be in addition to and supplemental to all terms and conditions set forth in the Credit Agreement. In the event of any conflict or inconsistency between this Agreement and the terms of such documents, the terms of this Agreement shall be controlling, but such document shall not otherwise be affected or the rights therein impaired.

**6. Governing Law**. This Agreement and the rights and obligations of the parties hereto shall be governed by and construed in accordance with the laws of the State of Maryland, without regards to conflicts of laws principles.

**7. Headings**. Section and subsection headings are included herein for convenience of reference only and shall not constitute a part of this Agreement for any other purposes or be given substantive effect.

**8. Counterparts; Effectiveness**. This Agreement may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed and delivered shall be deemed an original, but all of which counterparts together shall constitute but one in the same instrument. This Agreement shall become effective upon (a) the execution of a counterpart hereof by each of the parties hereto, (b) the due execution and delivery to Investment Manager of the Note, (c) Investment Manager's completion of due diligence in a manner satisfactory to Investment Manager, and (d) Borrower's payment of Investment Manager's legal fees and expenses in connection with the negotiation and preparation of this Agreement which shall not exceed Ten Thousand Dollars ($10,000).

*[SIGNATURES APPEAR ON THE FOLLOWING PAGE]*

**IN WITNESS WHEREOF,** the parties hereto have caused this Agreement to be duly executed and delivered as of the date first written above.

CARDLYTICS, INC.

By: /s/ David Evans
Name: David Evans
Title: CFO

COLUMBIA PARTNERS, L.L.C.
INVESTMENT MANAGEMENT,
as Investment Manager

By: /s/ Thomas Bain
Name: Thomas Bain
Title: Managing Director

NATIONAL ELECTRICAL
BENEFIT FUND,
as Lender

By: Columbia Partners, L.L.C. Investment Management, its Authorized Signatory

By: /s/ Christopher Doherty
Name: Christopher Doherty
Title: Managing Director

**Exhibit 1.1**
**Note**

**Exhibit 1.2.2**
**Supplemental Warrant**

**Exhibit 10.14**

# Loan and Security Agreement

**Borrower:** **Cardlytics, Inc.**
**Address:** **675 Ponce de Leon Avenue NE, Suite 6000**
**Atlanta, Georgia 30308**
**Date:** **September 14, 2016**

**THIS LOAN AND SECURITY AGREEMENT** is entered into on the above date among ALLY BANK ("Ally"), whose address is 300 Park Avenue, 4th Floor, New York, New York 10022, PACIFIC WESTERN BANK, a California state chartered bank ("PWB"), whose address is 406 Blackwell Street, Suite 240, Durham, North Carolina 27701, and the borrower named above (the "Borrower"), whose chief executive office is located at the above address ("Borrower's Address"). Ally and PWB are herein sometimes collectively referred to as "Lenders" and individually as a "Lender". Ally, in its capacity as administrative and collateral Agent for the Lenders, is referred to herein as the "Agent" (which term shall include any successor Agent in accordance with terms hereof). The Schedule to this Agreement (the "Schedule") shall for all purposes be deemed to be a part of this Agreement, and the same is an integral part of this Agreement. (Definitions of certain terms used in this Agreement are set forth in Section 8 below and in Exhibit A hereto.)

## *1. LOANS.*

***1.1 Loans.*** Lenders will make loans to Borrower (the "Loans"), in the amounts shown on the Schedule (the "Credit Limit"), subject to the provisions of this Agreement and subject to deduction of Reserves for accrued interest and such other Reserves as Agent deems proper from time to time in its Good Faith Business Judgment.

***1.2 Interest.*** All Loans and all other monetary Obligations shall bear interest at the interest rate shown on the Schedule. Accrued interest shall be payable monthly, to Agent for the benefit of Lenders, on the last day of the month, and shall be charged to Borrower's loan account (and the same shall thereafter bear interest at the same rate as the other Loans).

***1.3 Overadvances.*** If at any time or for any reason the total of all outstanding Loans and all other monetary Obligations exceeds the Credit Limit (an "Overadvance"), Borrower shall immediately pay the amount of the excess to Agent, without notice or demand. Without limiting Borrower's obligation to repay to Agent the amount of any Overadvance, Borrower agrees to pay Agent interest on the outstanding amount of any Overadvance, on demand, at the Default Rate.

***1.4 Fees.*** Borrower shall pay Agent for the benefit of Lenders the fees shown on the Schedule, which are in addition to all interest and other sums payable to Agent and Lenders and are not refundable. Fees shall be allocated between the Lenders as they shall agree in writing from time to time.

***1.5 Loan Requests.*** To obtain a Loan, Borrower shall make a request to Agent by submitting a Notice of Borrowing to Agent in the form of Exhibit B hereto or by making the request by telephone confirmed by a Notice of Borrowing on the same day. Loan requests received after 1:00 PM Eastern Time will be deemed made on the next Business Day. Agent and Lenders may rely on any Notice of Borrowing or telephone request for a Loan given by a person whom Agent believes is an authorized representative of Borrower, and Borrower will indemnify Agent and Lenders for any loss they suffer as a result of that reliance.

***2. SECURITY INTEREST.*** To secure the payment and performance of all of the Obligations when due, Borrower hereby grants to Agent for the benefit of Agent and Lenders, a security interest in all of the following (collectively, the "Collateral"): all right, title and interest of Borrower in and to all of the following, whether now owned or hereafter arising or acquired and wherever located: all Accounts; all Inventory; all Equipment; all Deposit Accounts; all General Intangibles (including without limitation all Intellectual Property); all Investment Property; all Other Property; and any and all claims, rights and interests in any of the above, and all guaranties and security for any of the above, and all substitutions and replacements for, additions, accessions, attachments, accessories, and improvements to, and proceeds (including proceeds of any insurance policies, proceeds of proceeds and claims against third parties) of, any and all of the above, and all Borrower's books relating to any and all of the above.

Notwithstanding the foregoing, the Collateral shall not include any of the following property (the "Excluded Property"):

(i) property which consists of a license of Intellectual Property to Borrower, pursuant to a license which is nonassignable by its terms without the consent of the licensor thereof (but only to the extent such prohibition on assignability is enforceable under applicable law, including, without limitation, Section 9408 of the Code), and as to any such licenses, Borrower represents and warrants that they are non-exclusive and replaceable on commercially reasonable terms;

(ii) property which consists of a lease of Equipment leased to Borrower pursuant to a capital lease which by its terms is non-assignable (but only to the extent such prohibition on assignability is enforceable under applicable law, including, without limitation, Sections 9407 of the Code);

(iii) Equipment as to which the granting of a security interest in it is prohibited by enforceable provisions of applicable law, provided that upon the cessation of any such prohibition, such Equipment shall automatically become part of the Collateral; or

(iv) property that is subject to a Lien that is permitted pursuant to clause (i) of the definition of Permitted Liens, if the grant of a security interest with respect to such property would be prohibited by the agreement creating such Permitted Lien or would otherwise constitute a default thereunder, but only to the extent such prohibition is enforceable under applicable law, and provided, that such property will be deemed "Collateral" hereunder upon the termination and release of such Permitted Lien; or

(v) property that consists of outstanding capital stock of any "controlled foreign corporation" (as that term is defined in the Internal Revenue Code of 1986, as amended) in excess of 65% of the voting power of all classes of capital stock of such controlled foreign corporation entitled to vote;

provided, that any assets excluded from the Collateral in this paragraph shall not include any proceeds, products, substitutions or replacements of such Collateral (unless such proceeds, products, substitutions or replacements would otherwise constitute assets that are excluded from the Collateral pursuant to this definition).

Borrower represents and warrants to Lender that Excluded Property which is material to Borrower's business or includes Intellectual Property which is licensed by the Borrower to its customers or incorporated in products licensed or sold by the Borrower to its customers is generally available on commercially reasonable terms.

***3. REPRESENTATIONS, WARRANTIES AND COVENANTS OF BORROWER.***

In order to induce Agent and Lenders to enter into this Agreement and to make Loans, Borrower represents and warrants to Agent and Lenders as follows, and Borrower covenants that Borrower will at all times comply with all of the following covenants, throughout the term of this Agreement and until all Obligations (other than inchoate indemnification obligations) have been paid and performed in full:

***3.1 Corporate Existence and Authority.*** Borrower is, and will continue to be, duly organized, validly existing and in good standing under the laws of the jurisdiction of its incorporation or organization. Borrower is and will continue to be qualified and licensed to do business in all jurisdictions in which any failure to do so would reasonably be expected to result in a Material Adverse Change. The execution, delivery and performance by Borrower of this Agreement, and all other documents contemplated hereby now are, and in the future will be (i) duly and validly authorized, (ii) not subject to any consents, which have not been obtained, (iii) enforceable against Borrower in accordance with their terms (except as enforcement may be limited by equitable principles and by bankruptcy, insolvency, reorganization, moratorium or similar laws relating to creditors' rights generally), and (iv) not in violation of Borrower's articles or certificate of incorporation, or Borrower's by-laws, or any law or any material agreement or instrument, which is binding upon Borrower or its property, and (v) not grounds for acceleration of any indebtedness or obligations in excess of $500,000 in the aggregate, under any agreement or instrument which is binding upon Borrower or its property.

***3.2 Name; Trade Names and Styles.*** As of the date hereof, the name of Borrower set forth in the heading to this Agreement is its correct name. Listed in the Representations are all prior names of Borrower and all of Borrower's present and prior trade names, as of the date hereof. Borrower shall give Agent 30 days' prior written notice before changing its name, and prompt written notice after starting to do business under any other name. Borrower has complied, and will in the future comply, in all material respects, with all laws relating to the conduct of business under a fictitious business name.

***3.3 Place of Business; Location of Collateral.*** As of the date hereof, the address set forth in the heading to this Agreement is Borrower's chief executive office. In addition, as of the date hereof, Borrower has places of business and Collateral is located only at the locations set forth in the Representations. Borrower will give Agent written notice within 30

days of changing its chief executive office, or moving any of the Collateral to a location other than Borrower's Address or one of the locations set forth in the Representations, except that Borrower may maintain sales offices in the ordinary course of business at which not more than a total of $250,000 fair market value of Equipment is located.

***3.4 Title to Collateral; Perfection; Permitted Liens.***

(a) Borrower is now, and will at all times in the future be, the sole owner of all the Collateral, except for items of Equipment which are leased to Borrower, and except for non-exclusive licenses granted by Borrower to its customers in the ordinary course of business. The Collateral now is and will remain free and clear of any and all Liens and adverse claims, except for Permitted Liens. Agent for the benefit of Lenders now has, and will continue to have, a first-priority perfected and enforceable security interest in all of the Collateral, subject only to Permitted Liens, and Borrower will at all times defend Agent and Lenders and the Collateral against all claims of others.

(b) Borrower has set forth in the Representations all of Borrower's Deposit Accounts as of the date hereof, and Borrower will give Agent prompt written notice upon establishing any new Deposit Accounts and will cause the institution where any such new Deposit Account is maintained (if such new Deposit Account is maintained within the United States) to execute and deliver to Agent for the benefit of Lenders a control agreement in form sufficient to perfect Agent's security interest in the Deposit Account for the benefit of Agent and Lenders and otherwise satisfactory to Agent in its Good Faith Business Judgment. Nothing herein limits any requirements which may be set forth in the Schedule as to where Deposit Accounts will be maintained.

(c) In the event that Borrower shall at any time after the date hereof have any commercial tort claims against others, which it is asserting or intends to assert, and in which the potential recovery exceeds $100,000, Borrower shall promptly notify Agent thereof in writing and provide Agent with such information regarding the same as Agent shall request. Such notification to Agent shall constitute a grant of a security interest in the commercial tort claim and all proceeds thereof to Agent for the benefit of Lenders, and Borrower shall execute and deliver all such documents and take all such actions as Agent shall request in connection therewith.

(d) Whenever any Collateral with a value in excess of $500,000 is located upon premises in which any third party has an interest, Borrower shall, whenever requested by Agent, use commercially reasonable efforts to cause such third party to execute and deliver to Agent, in form reasonably acceptable to Agent, such landlord agreements, waivers, subordinations and other agreements as Agent shall specify in its Good Faith Business Judgment. Borrower will keep in full force and effect, and will comply with all material terms of, any lease of real property where any of the Collateral now or in the future may be located.

(e) Except as disclosed in the Representations, Borrower is not a party to, nor is it bound by, any license or other agreement that is important for the conduct of Borrower's business and that prohibits or otherwise restricts Borrower from granting a security interest in Borrower's interest in such license or agreement or any other property important for the conduct of Borrower's business.

(f) Borrower is the sole owner of the Intellectual Property, except for non-exclusive licenses granted by Borrower to its customers in the ordinary course of business. To the best of Borrower's knowledge, each of the Copyrights, Trademarks and Patents is valid and enforceable, and no part of the Intellectual Property has been judged invalid or unenforceable, in whole or in part, and no claim has been made to Borrower that any part of the Intellectual Property violates the rights of any third party except to the extent such claim would not reasonably be expected to result in liability of the Borrower exceeding $500,000 or cause a Material Adverse Change.

***3.5 Maintenance of Collateral.*** Borrower will maintain the Collateral in good working condition (ordinary wear and tear excepted), and Borrower will not use the Collateral for any unlawful purpose. Borrower will promptly advise Agent in writing of any loss or damage to Collateral in excess of $500,000.

***3.6 Books and Records.*** Borrower has maintained and will maintain at Borrower's Address books and records, which are complete and accurate in all material respects, and comprise an accounting system in accordance with GAAP.

***3.7 Financial Condition, Statements and Reports.*** All financial statements now or in the future delivered to Agent or a Lender have been, and will be, prepared in conformity with GAAP, and now and in the future will fairly present the results of operations and financial condition of Borrower, in accordance with GAAP, at the times and for the periods therein stated (except for non-compliance with FAS 123R in monthly financial statements, and, in the case of interim financial statements, for the lack of footnotes and subject to year-end adjustments). Between the last date covered by any such statement provided to Agent and the date hereof, there has been no Material Adverse Change.

***3.8 Tax Returns and Payments; Pension Contributions.*** Borrower has timely filed, and will timely file, all required tax returns and reports, and Borrower has timely paid, and will timely pay, all foreign, federal, state and local taxes, assessments, deposits and contributions now or in the future owed by Borrower, except for inadvertent failures to make payments not

exceeding $250,000 which are promptly rectified when discovered. Borrower may, however, defer payment of any contested taxes, provided that Borrower (i) in good faith contests Borrower's obligation to pay the taxes by appropriate proceedings promptly and diligently instituted and conducted, (ii) notifies Agent in writing of the commencement of, and any material development in, the proceedings, and (iii) posts bonds or takes any other steps required to keep the contested taxes from becoming a Lien upon any of the Collateral. Borrower is unaware of any claims or adjustments proposed for any of Borrower's prior tax years which could result in additional taxes becoming due and payable by Borrower. Borrower has paid, and shall continue to pay all amounts necessary to fund all present and future pension, profit sharing and deferred compensation plans in accordance with their terms, and Borrower has not and will not withdraw from participation in, permit partial or complete termination of, or permit the occurrence of any other event with respect to, any such plan which could reasonably be expected to result in any liability of Borrower exceeding $250,000, including any liability to the Pension Benefit Guaranty Corporation or its successors or any other governmental agency.

***3.9 Compliance with Law.***

(a) Borrower has complied, and will in the future comply, in all material respects, with all provisions of all foreign, federal, state and local laws and regulations applicable to Borrower, including, but not limited to, those relating to Borrower's ownership of real or personal property, the conduct and licensing of Borrower's business, and all environmental matters. Borrower has obtained all consents, approvals and authorizations of, made all declarations or filings with, and given all notices to, all governmental authorities that are necessary for the continued operation of Borrower's business as currently conducted, except where the failure to do so would not reasonably be expected to result in liability of the Borrower in excess of $500,000 or result in a Material Adverse Change.

(b) Borrower is not in violation and shall not violate any of the country or list based economic and trade sanctions administered and enforced by OFAC or as otherwise published from time to time. Neither Borrower, nor to the knowledge of Borrower, any director, officer, employee, agent, affiliate or representative thereof, (i) is a Sanctioned Person or a Sanctioned Entity, (ii) has its assets located in a Sanctioned Entity, (iii) derives revenues from investments in, or transactions with a Sanctioned Person or a Sanctioned Entity or (iv) is owned or controlled by a Sanctioned Entity or a Sanctioned Person.

(c) Borrower is in compliance with, and will continue to comply with, all applicable Anti-Terrorism Laws. No part of the proceeds of the Loans will be used, directly or indirectly, for any payments to any government official or employee, political party, official of a political party, candidate for political office, or anyone else acting in an official capacity, in order to obtain, retain or direct business or obtain any improper advantage, in violation of the United States Foreign Corrupt Practices Act of 1977, as amended.

***3.10 Litigation.*** As of the date hereof, there is no claim, suit, litigation, proceeding or investigation pending or, to Borrower's knowledge, threatened against or affecting Borrower in any court or before any governmental agency (or any basis therefor known to Borrower) involving any claim against Borrower of more than $500,000. Borrower will promptly inform Agent in writing of any claim, proceeding, litigation or investigation in the future threatened or instituted against Borrower involving any claim against Borrower of more than $500,000.

***3.11 Use of Proceeds.*** All proceeds of all Loans shall be used solely for Borrower's working capital. Borrower is not purchasing or carrying any "margin stock" (as defined in Regulation U of the Board of Governors of the Federal Reserve System) and no part of the proceeds of any Loan will be used to purchase or carry any "margin stock" or to extend credit to others for the purpose of purchasing or carrying any "margin stock."

***3.12 Solvency, Payment of Debts.*** Borrower is able to pay its debts (including trade debts) as they mature; the fair saleable value of Borrower's assets exceeds the fair value of its liabilities; and Borrower is not left with unreasonably small capital after the transactions contemplated by this Agreement.

***3.13 Broker's Fees.*** Borrower does not have any obligation to any Person in respect of any finder's, broker's, investment banking or similar fee in connection with any of the transactions contemplated under the Loan Documents (other than fees that will have been paid on or prior to the date hereof).

***4. ACCOUNTS.***

***4.1 Representations Relating to Accounts.*** Borrower represents and warrants to Agent and Lenders as follows: Each Account with respect to which Loans are requested by Borrower shall, on the date each Loan is requested and made, (i) represent an undisputed bona fide existing unconditional obligation of the Account Debtor created by the sale, delivery, and acceptance of goods or the rendition of services, or the non-exclusive licensing of Intellectual Property, in the ordinary course of Borrower's business, and (ii) meet the Minimum Eligibility Requirements set forth in Section 8 below.

***4.2 Representations Relating to Documents and Legal Compliance.*** Borrower represents and warrants to Agent and Lenders as follows: All statements made and all unpaid balances appearing in all invoices, instruments and other documents

evidencing the Accounts are and shall be true and correct in all material respects, and all such invoices, instruments and other documents and all of Borrower's books and records are and shall be genuine and in all respects what they purport to be. All sales and other transactions underlying or giving rise to each Account shall comply in all material respects with all applicable laws and governmental rules and regulations. To the best of Borrower's knowledge, all signatures and endorsements on all documents, instruments, and agreements relating to all Accounts are and shall be genuine, and all such documents, instruments and agreements are and shall be legally enforceable in accordance with their terms.

***4.3 Schedules and Documents relating to Accounts.*** If requested by Agent, Borrower shall furnish Agent with copies (or, at Agent's request, originals) of all contracts, orders, invoices, and other similar documents, and Borrower warrants the genuineness of all of the foregoing. In addition, Borrower shall deliver to Agent, on its request, the originals of all instruments, chattel paper, security agreements, guarantees and other documents and property evidencing or securing any Accounts, in the same form as received, with all necessary endorsements, and copies of all credit memos.

***4.4 Cash Collateral Account.***

*(a)* Within 90 days after the date hereof, Borrower shall establish (i) a post office box, as designated by Agent (the "Lockbox"), over which Agent shall have exclusive and unrestricted access; and (ii) a cash collateral account at PWB in Borrower's name (the "Cash Collateral Account"), over which PWB and Agent shall have exclusive and unrestricted access. Commencing within 90 days after the date hereof and continuing at all times thereafter, Borrower shall immediately deposit any funds received by Borrower from any source (including without limitation all proceeds of Accounts and all other Collateral) into the Cash Collateral Account, and Borrower shall direct all of its Account Debtors (i) to make any wire or other electronic transfer of funds owing to Borrower directly to the Cash Collateral Account, and (ii) to mail or deliver all checks or other forms of payment for amounts owing to Borrower to the Lockbox. Except for funds deposited into the Cash Collateral Account, all funds received by Borrower from any source shall immediately be directed to the Lockbox. Agent shall collect the mail delivered to the Lockbox, open such mail, and endorse and deposit all items to the Cash Collateral Account.

(b) All funds flowing through the Lockbox shall automatically be transferred to the Cash Collateral Account. Borrower shall hold in trust for Lender all amounts that Borrower receives from Account Debtors despite the directions to make payments to the Cash Collateral Account, and immediately deliver such payments to PWB in their original form as received from the payor, with proper endorsements for deposit into the Cash Collateral Account. Borrower irrevocably authorizes Agent and Lenders to transfer to the Cash Collateral Account any funds from Account Debtors that have been deposited into any other accounts of Borrower or that Borrower has received by wire transfer, check, cash, or otherwise. Agent for the benefit of Lenders shall have all right, title and interest in all of the items from time to time held in the Cash Collateral Account and their proceeds. Neither Borrower nor any person claiming through Borrower shall have any right or control over the use of, or any right to withdraw any amount from, the Cash Collateral Account, which shall be under the sole control of Agent for the benefit of Lenders.

(c) Agent and PWB shall transfer all sums collected in the Cash Collateral Account into Borrower's operating account maintained with PWB, promptly after receipt of such sums in immediately available funds, provided that if a Default or Event of Default has occurred and is continuing, Agent shall have the right to apply amounts held in the Cash Collateral Account to the outstanding balance of the Obligations on a daily basis.

***4.5 Disputes.*** Borrower shall not forgive (completely or partially), compromise or settle any Account for less than payment in full, or agree to do any of the foregoing, except that Borrower may do so, provided that: (i) Borrower does so in good faith, in a commercially reasonable manner, in the ordinary course of business, and in arm's length transactions, which are reported to Agent on the regular reports provided to Agent; (ii) no Default or Event of Default has occurred and is continuing; and (iii) taking into account all such discounts, settlements and forgiveness, the total outstanding Loans will not exceed the Credit Limit.

***4.6 Verification.*** Agent may, from time to time after the occurrence and during the continuation of an Event of Default, verify directly with the respective Account Debtors the validity, amount and other matters relating to the Accounts, by means of mail, telephone or otherwise, either in the name of Borrower or Agent or such other name as Agent may choose, and Agent or its designee may, at any time after the occurrence and during the continuation of an Event of Default, notify Account Debtors that it has a security interest in the Accounts.

***4.7 No Liability.*** **Neither** Agent nor Lenders shall be responsible or liable for any error, act, omission, or delay of any kind occurring in the settlement, failure to settle, collection or failure to collect any Account, or for settling any Account in good faith for less than the full amount thereof, nor shall Agent or Lenders be deemed to be responsible for any of Borrower's obligations under any contract or agreement giving rise to an Account. Nothing in this Section 4.9 shall, however, relieve Agent or a Lender from liability for its own gross negligence or willful misconduct.

***5. ADDITIONAL DUTIES OF BORROWER.***

***5.1 Financial and Other Covenants.*** Borrower shall at all times comply with the financial and other covenants set forth in the Schedule.

***5.2 Insurance.*** Borrower shall, at all times insure all of the tangible personal property Collateral and carry such other business insurance, with financially sound and reputable insurance companies, in such form and amounts as Agent may reasonably require and that are customary and in accordance with standard practices for Borrower's industry and locations, and Borrower shall provide evidence of such insurance to Agent. All such insurance policies shall name Agent for the benefit of Lenders as loss payee, and shall contain a lenders loss payee endorsement in form reasonably acceptable to Agent and shall name Agent for the benefit of Lenders as an additional insured with regard to liability coverage. Upon receipt of the proceeds of any such insurance, Agent shall apply such proceeds in reduction of the Obligations as Agent shall determine in its sole discretion, except that, provided no Default or Event of Default has occurred and is continuing, Agent shall release to Borrower insurance proceeds totaling less than $500,000, which shall be utilized by Borrower for the purchase of assets used or useful in the Borrower's business. Agent may require reasonable assurance that the insurance proceeds so released will be so used. If Borrower fails to provide or pay for any insurance, Agent for the benefit of Lenders may, but is not obligated to, obtain the same at Borrower's expense. Borrower shall promptly deliver to Agent copies of all material reports made to insurance companies.

***5.3 Reports.*** Borrower, at its expense, shall provide Agent with the written reports set forth in the Schedule, and such other written reports with respect to Borrower as Agent shall from time to time reasonably request.

***5.4 Access to Collateral, Books and Records.*** At reasonable times, and on one Business Day's notice, Agent, or its agents, shall have the right to inspect the Collateral, and the right to audit and copy Borrower's books and records. The foregoing inspections and audits shall be at Borrower's expense and the charge therefor shall be Agent's then current standard charge for the same, plus reasonable out-of-pocket expenses (including without limitation any additional costs and expenses of outside auditors retained by Agent), provided that, if no Default or Event of Default has occurred and is continuing, Borrower shall not be obligated to pay for more than two such audits or inspections in any calendar year.

***5.5 Negative Covenants.*** Except as may be permitted in the Schedule, Borrower shall not, without Agent's prior written consent (which shall be a matter of its Good Faith Business Judgment), do any of the following:

(i) merge or consolidate with another corporation or entity (other than mergers or consolidations of a wholly-owned Subsidiary into another wholly-owned Subsidiary or into Borrower, with Borrower being the surviving Person);

(ii) Engage in or permit any of its Subsidiaries to engage in any business other than the businesses currently engaged in by Borrower and such Subsidiary, as applicable, or reasonably related thereto;

(iii) acquire all or substantially all of the capital stock of another Person, or all or a substantial part of the business or property of another Person;

(iv) convey, sell, lease, transfer or otherwise dispose of (collectively, a "Transfer"), or permit any of its Subsidiaries to Transfer, all or any part of its business or property, other than: (i) Transfers of Inventory in the ordinary course of business; (ii) Transfers of non-exclusive licenses and similar arrangements for the use of the property of Borrower or its Subsidiaries in the ordinary course of business and other non-perpetual licenses in the ordinary course of business that could not result in a legal transfer of title of the licensed property but that may be exclusive in respects other than territory and that may be exclusive as to territory only as to discreet geographical areas outside of the United States, in each case not interfering in any material respect with the business of Borrower or its Subsidiaries; provided that the duration of the exclusivity does not extend beyond three (3) years; (iii) Transfers of obsolete, damaged, worn-out or surplus Equipment and Inventory or property and Equipment no longer used or useful in the conduct of Borrower's business; (iv) Transfers permitted under clauses (vi), (xi), or (xiii) of this Section 5.5; (v) Grants of Liens that constitute Permitted Liens; (vi) transfers or dispositions of Permitted Investments in the ordinary course of business, including the sale or disposition of delinquent notes, charge-offed accounts or accounts receivable for collection purposes in the ordinary course of business; (vii) sales or transfers from Borrower to a wholly-owned Subsidiary that is a co-borrower hereunder or to the extent such sale or transfer constitutes a Permitted Investment; (viii) asset sales in which the sale price is at least equal to the fair market value of the asset sold and the consideration received is cash or cash equivalents of debt of Borrower being assumed by the purchaser, provided, that the aggregate amount of such asset sales does not exceed $50,000 in any fiscal year and no Event of Default has occurred and continuing at the time of each such sale (before and after giving effect to such asset sale); (ix) dispositions of owned or leased vehicles in the ordinary course of business; and (x) Transfers of other assets of Borrower or its Subsidiaries that do not in the aggregate exceed $500,000 in any fiscal year;

(v) store any Collateral with any warehouseman or other third party with a total value in excess of $500,000, unless Borrower has used commercially reasonable efforts to cause such warehouseman or other third party to execute an agreement in favor of Agent for the benefit of Lenders in such form as Agent shall specify in its Good Faith Business Judgment;

(vi) sell any Inventory on a sale-or-return, guaranteed sale, consignment, or other contingent basis;

(vii) make any loans of any money or other assets or any other Investments, other than Permitted Investments;

(viii) create, incur, assume or permit to be outstanding any Indebtedness other than Permitted Indebtedness;

(ix) create, incur, assume or suffer to exist Lien upon any of its property, whether now owned or hereafter acquired, other than Permitted Liens;

(x) guarantee or otherwise become liable with respect to the obligations of another Person, except for guaranties of the obligations of Borrower's wholly-owned Subsidiaries in the ordinary course of business, which are not for borrowed money;

(xi) pay or declare any dividends or make any other distribution or payment on account of or in redemption, retirement or purchase of any capital stock, or permit any of its Subsidiaries to do so, except that (a) Borrower may repurchase the stock (including restricted stock units) of former employees, consultants or directors pursuant to stock repurchase agreements by the cancellation of indebtedness owed by such former employee, consultant or director to Borrower regardless of whether an Event of Default exists, (b) Borrower may convert any of its convertible securities into other securities pursuant to the terms of such convertible securities or otherwise in exchange thereof, (c) Borrower may pay dividends solely in common stock, (d) Borrower may make payments of cash in lieu of fractional shares upon conversion of convertible securities or upon any stock dividend, stock split or combination or business combination, (e) Borrower may make acquisitions of capital stock (including restricted stock units) of Borrower, solely by issuance of capital stock, in connection with either (i) the exercise of stock options or warrants by way of cashless exercise or (ii) in connection with the satisfaction of withholding tax obligations related to the exercise of stock options, (f) Borrower may redeem, retire or purchase any capital stock (including restricted stock units) of Borrower from any officer, director, employee or consultant of Borrower or its Subsidiaries upon the resignation, termination or death of such officer, director, employee or consultant in an aggregate amount not to exceed $500,000 in any fiscal year provided that at the time of such purchase and after giving effect thereto no Event of Default has occurred and is continuing, and (g) Borrower may purchase, redeem or otherwise acquire capital stock (including restricted stock units) issued by it with the proceeds received from the substantially concurrent issue of new shares of its capital stock, provided that no Event of Default has occurred, is continuing or would exist after giving effect to the transaction, and provided that, in the case of purchase, redemption or other acquisitions of capital stock for an aggregate purchase price exceeding $500,000, Borrower shall give Lender at least ten Business Days prior written notice thereof;

(xii) engage, directly or indirectly, in any business other than the businesses currently engaged in by Borrower or reasonably related thereto, or become an "investment company" within the meaning of the Investment Company Act of 1940;

(xiii) directly or indirectly enter into, or permit to exist, any material transaction with any Affiliate of Borrower, except for (a) transactions that are in the ordinary course of Borrower's business, upon fair and reasonable terms that are no less favorable to Borrower than would be obtained in an arm's length transaction with a non-affiliated Person, (b) sales of equity securities by Borrower and incurrence of Subordinated Debt in connection with a bona fide equity financing or capitalization of Borrower, and (c) Investments permitted under sub-clauses (ii) or (vi) of the definition of Permitted Investments; or

(xiv) reincorporate in another state or change its form of organization without giving Agent 20 Business Days prior written notice and executing and delivering such documents and taking such actions as Agent shall reasonably request in order to continue this Agreement in full force and effect;

(xv) change its fiscal year (other than a one-time change in Borrower's fiscal year from December 31st to September 30th so long as Borrower has given Agent 20 Business Days prior written notice of such change);

(xvi) create a Subsidiary, unless, within five Business Days after the formation of such Subsidiary, pursuant to documents and agreements reasonably requested by Agent, such Subsidiary (other than a Foreign Sub) has become a co-borrower under this Agreement, and granted a first priority perfected security interest (subject only to Permitted Liens) in its property and assets to Agent for the benefit of Lenders.

(xvii) dissolve or elect to dissolve, except that a wholly-owned Subsidiary of Borrower may dissolve if all of its assets are distributed to Borrower.

***5.6 Litigation Cooperation.*** Should any third-party suit or proceeding be instituted by or against Agent or any Lender with respect to any Collateral or relating to Borrower, Borrower shall, without expense to Agent or Lenders, make available Borrower and its officers, employees and agents and Borrower's books and records, to the extent that Agent and Lenders may deem them reasonably necessary in order to prosecute or defend any such suit or proceeding; provided that nothing herein shall require Borrower to provide any information that is subject to attorney-client privilege.

***5.7 Notification of Changes.*** Borrower will give Agent written notice of any change in its chief executive officer or chief financial officer within ten Business Days of the date of such change.

***5.8 Registration of Intellectual Property Rights.***

(a) Without limiting the terms of subsection (b) below, Borrower shall within the period required by Section 6(h) of the Schedule, give Lender written notice of any applications or registrations it files or obtains with respect to Intellectual Property filed with the United States Patent and Trademark Office, including the date of any such filing and the registration or application numbers, if any.

(b) Borrower shall (i) give Lender within the period required by Section 6(h) of the Schedule, notice of the filing of any applications or registrations with the United States Copyright Office, including the title of such intellectual property rights registered, as such title appears on such applications or registrations, and the date such applications or registrations were filed; (ii) promptly upon the request of Lender, execute such documents as Lender may reasonably request for Lender to maintain its perfection in the Intellectual Property rights to be registered by Borrower; (iii) upon the request of Lender, either deliver to Lender or file such documents with the United States Patent and Trademark Office or United States Copyright Office, as applicable; (iv) promptly upon the request of Lender, provide Lender with a copy of such applications or registrations together with any exhibits, evidence of the filing of any documents requested by Lender to be filed for Lender to maintain the perfection and priority of its security interest in such Intellectual Property rights.

(c) Borrower shall use commercially reasonable efforts to (i) protect, defend and maintain the validity and enforceability of the Intellectual Property that is material to Borrower, (ii) detect infringements of the Intellectual Property, and (iii) not allow any material Intellectual Property that is material to Borrower to be abandoned, forfeited or dedicated to the public without the written consent of Lender, which shall not be unreasonably withheld.

(d) Lender shall have the right, but not the obligation, to take, at Borrower's sole expense, any actions that Borrower is required under this Section 5.8 to take but which Borrower fails to take, after 15 days' notice to Borrower. Borrower shall reimburse and indemnify Lender for all reasonable costs and reasonable expenses incurred in the reasonable exercise of its rights under this Section.

***5.9 Consent of Inbound Licensors.*** Prior to entering into, or becoming bound by, any material inbound license or agreement in the future, Borrower shall: (i) provide written notice to Agent of the material terms of such license or agreement with a description of its likely impact on Borrower's business or financial condition; and (ii) in good faith use commercially reasonable efforts to obtain the consent of, or waiver by, any person whose consent or waiver is necessary for Borrower's interest in such licenses or contract rights to be deemed Collateral and for Agent to have a security interest therein, provided, however, that the failure to obtain any such consent or waiver shall not constitute a default under this Agreement.

***5.10 Further Assurances.*** Borrower agrees, at its expense, on request by Agent, to execute all documents and take all actions, as Agent, may reasonably deem necessary or useful in order to perfect and maintain Agent's and Lenders' perfected first-priority security interest in the Collateral (subject only to Permitted Liens), and in order to fully consummate the transactions contemplated by this Agreement.

***6. TERM.***

***6.1 Maturity Date.*** This Agreement shall continue in effect until the maturity date set forth on the Schedule (the "Maturity Date"), subject to Section 6.2 below.

***6.2 Early Termination.*** This Agreement may be terminated prior to the Maturity Date as follows: (i) by Borrower, effective three Business Days after written notice of termination is given to Agent; or (ii) by Agent at any time after the occurrence and during the continuance of an Event of Default, without notice, effective immediately upon written notice to Borrower.

***6.3 Payment of Obligations.*** On the Maturity Date or on any earlier effective date of termination, Borrower shall pay and perform in full all Obligations, whether evidenced by installment notes or otherwise, and whether or not all or any part of such Obligations are otherwise then due and payable. Notwithstanding any termination of this Agreement, all of Agent's and Lenders' security interests in all of the Collateral and all of the terms and provisions of this Agreement shall continue in full force and effect until all Obligations (other than inchoate indemnification obligations) have been paid and performed in full; provided that each of Agent and Lenders may, in its sole discretion, refuse to make any further Loans after termination. No termination shall in any way affect or impair any right or remedy of Agent or Lenders, nor shall any such termination relieve Borrower of any Obligation to Agent and Lenders, until all of the Obligations (other than inchoate indemnification

obligations) have been paid and performed in full. Agent shall, at Borrower's expense, release or terminate all financing statements and other filings in favor of Agent as may be required to fully terminate Agent's and Lenders' security interests, provided that there are no suits, actions, proceedings or claims pending or threatened against any Person indemnified by Borrower under this Agreement with respect to which indemnity has been or may be sought, upon Agent's receipt of the following, in form and content satisfactory to Agent: (i) cash payment in full of all of the Obligations and performance by Borrower of all non-monetary Obligations under this Agreement, (ii) written confirmation by Borrower that the commitment of Lenders to make Loans under this Agreement has terminated, and (iii) an agreement by Borrower to indemnify Agent and Lenders for any payments received by Agent and Lenders that are applied to the Obligations that may subsequently be returned or otherwise not paid for any reason.

***7. EVENTS OF DEFAULT AND REMEDIES.***

***7.1 Events of Default.*** The occurrence of any of the following events shall constitute an "Event of Default" under this Agreement, and Borrower shall give Agent immediate written notice thereof:

(a) Any warranty, representation, statement, report or certificate made or delivered to Agent or a Lender by Borrower or any of Borrower's officers, employees or agents, now or in the future, shall be untrue or misleading in a material respect when made or deemed to be made; or

(b) Borrower shall fail to pay when due any Loan or any interest thereon or fail to pay any other monetary Obligation within three Business Days of the same becoming due; or

(c) any Overadvance occurs, unless it is cured within two Business Days after it occurs; or

(d) Borrower shall fail to comply with any non-monetary Obligation which by its nature cannot be cured, or shall fail to comply with the provisions of Section 3.1 (titled "Corporate Existence", but solely as it relates to failure of Borrower to continue to be duly organized and validly existing under the laws of the jurisdiction of its incorporation or organization), Section 3.8 (titled "Tax Returns and Payments; Pension Contributions"), Section 4.4 (titled "Lockbox"), Section 5.2 (titled "Insurance"), Section 5.4 (titled "Access to Collateral, Books and Records"), Section 5.5 (titled "Negative Covenants"), Section 5 of the Schedule (titled "Financial Covenants"), Section 6 of the Schedule (titled "Reporting"), or Section 8 of the Schedule (titled "Additional Provisions"); or

(e) Borrower shall fail to perform any other non-monetary Obligation, which failure is not cured within ten Business Days after the date due; provided, however, that if the default cannot by its nature be cured within such ten-day period or cannot after diligent attempts by Borrower be cured within such ten-day period, and such default is likely to be cured within a reasonable time, then Borrower shall have an additional reasonable period (which shall not in any case exceed an additional ten Business Days) to attempt to cure such default, and within such reasonable time period the failure to have cured such default shall not be deemed an Event of Default (but no Loans shall be made during such cure period); or

(f) any Collateral becomes subject to any Lien (other than a Permitted Lien) which is not cured within 10 days after the occurrence of the same; or

(g) any Collateral is attached, seized, subjected to a writ or distress warrant, or is levied upon, and such attachment, seizure, writ or distress warrant or levy has not been removed, discharged or rescinded within 10 days, or if Borrower is enjoined, restrained, or in any way prevented by court order from continuing to conduct all or any material part of its business affairs, or if a judgment or other claim above $300,000 becomes a Lien on any of the Collateral which is not removed or fully bonded within 10 days after it arises, or if a notice of lien, levy, or assessment is filed of record with respect to any of the Collateral by the United States Government, or any department, agency, or instrumentality thereof, or by any state, county, municipal, or governmental agency;

(h) [intentionally omitted]; or

(i) a default or event of default shall occur under any document or agreement evidencing or relating to any Permitted Indebtedness in excess of $500,000 (after the expiration of any cure period under the documents relating thereto); or

(j) [intentionally omitted]; or

(k) a final judgment or judgments for the payment of money (not covered by independent third-party insurance as to which liability has been accepted by such carrier) in an amount, individually or in the aggregate, of at least $250,000 shall be rendered against Borrower, and within 10 days after the entry, assessment or issuance thereof, the same shall not be satisfied, discharged or paid, or after execution thereof, stayed or bonded pending appeal, or such judgments are not discharged prior to the expiration of any such stay (provided that no Loans shall be made prior to the satisfaction, payment, discharge, stay, or bonding of such judgments); or

(l) Dissolution, termination of existence, temporary or permanent suspension of business, insolvency or business failure of Borrower or any Guarantor; or appointment of a receiver, trustee or custodian, for all or any part of the property of, assignment for the benefit of creditors by, or the commencement of any Insolvency Proceeding by Borrower or any Guarantor; or

(m) the commencement of any Insolvency Proceeding against Borrower or any Guarantor, which is not cured by the dismissal thereof within 45 days after the date commenced (but no Loans or other extensions of credit need be made or provided by Lenders until such dismissal had occurred); or

(n) any revocation or termination of, or limitation or denial of liability upon, or default under, any guaranty of the Obligations, or any document or agreement securing such guaranty or relating thereto, or any attempt to do any of the foregoing, or death of any Guarantor; or

(o) [Intentionally Omitted]; or

(p) Borrower makes any payment on account of any Subordinated Debt, other than as permitted in the applicable subordination agreement, or if any Person who has subordinated such indebtedness or obligations terminates or in any way limits its subordination agreement; or

(q) a Change in Control shall occur; or

(r) [Intentionally Omitted]; or

(s) Borrower shall generally not pay its debts as they become due, or Borrower shall conceal, remove or transfer any part of its property, with intent to hinder, delay or defraud its creditors, or make or suffer any transfer of any of its property which may be fraudulent under any bankruptcy, fraudulent conveyance or similar law; or

(t) a Material Adverse Change shall occur; or

(u) any Loan Document, other than in connection with the satisfaction in full of the Obligations, ceases to be in full force and effect or ceases to give Agent and Lenders a valid and perfected Lien in the Collateral with the priority required by the relevant Loan Document; or Borrower contests in any manner the validity or enforceability of any Loan Document.

A Lender may cease making any Loans hereunder during any of the above cure periods, and thereafter if an Event of Default has occurred and is continuing.

***7.2 Remedies.*** Upon the occurrence and during the continuance of any Event of Default, and at any time thereafter, Agent may, and shall upon the request of Required Lenders, at their at its option, and without notice or demand of any kind (all of which are hereby expressly waived by Borrower), may do any one or more of the following: (a) Cease making Loans or otherwise extending credit to Borrower under this Agreement or any other Loan Document; (b) Accelerate and declare all or any part of the Obligations to be immediately due, payable, and performable, notwithstanding any deferred or installment payments allowed by any instrument evidencing or relating to any Obligation; provided, however, that upon the occurrence and continuance of any Event of Default described in Section 7.1(l), 7.1(m) or Section 7.1(s), the obligation of Lenders to make Loans shall automatically terminate and the Obligations shall automatically become due and payable; (c) Take possession of any or all of the Collateral wherever it may be found, and for that purpose Borrower hereby authorizes Agent without judicial process to enter onto any of Borrower's premises without interference to search for, take possession of, keep, store, or remove any of the Collateral, and remain on the premises or cause a custodian to remain on the premises in exclusive control thereof, without charge for so long as Agent deems it necessary, in its Good Faith Business Judgment, in order to complete the enforcement of its rights under this Agreement or any other agreement; provided, however, that should Agent seek to take possession of any of the Collateral by court process, Borrower hereby irrevocably waives: (i) any bond and any surety or security relating thereto required by any statute, court rule or otherwise as an incident to such possession; (ii) any demand for possession prior to the commencement of any suit or action to recover possession thereof; and (iii) any requirement that Agent retain possession of, and not dispose of, any such Collateral until after trial or final judgment; (d) Require Borrower to assemble any or all of the Collateral and make it available to Agent at places designated by Agent which are reasonably convenient to Agent and Borrower, and to remove the Collateral to such locations as Agent may deem advisable; (e) Complete the processing, manufacturing or repair of any Collateral prior to a disposition thereof and, for such purpose and for the purpose of removal, Agent shall have the right to use Borrower's premises, vehicles, hoists, lifts, cranes, and other Equipment and all other property without charge; (f) Sell, lease or otherwise dispose of any of the Collateral, in its condition at the time Agent obtains possession of it or after further manufacturing, processing or repair, at one or more public and/or private sales, in lots or in bulk, for cash, exchange or other property, or on credit, and to adjourn any such sale from time to time without notice other than oral announcement at the time scheduled for sale. Agent shall have the right to conduct such disposition on Borrower's premises without charge, for such time or times as Agent deems reasonable, or on Agent's premises, or elsewhere and the Collateral need not be located at the place of disposition. Agent (or any entity formed by Agent, at the direction of the Required Lenders, for this purpose) may directly or through any Affiliate purchase or lease

any Collateral at any such public disposition, and if permissible under applicable law, at any private disposition. Any sale or other disposition of Collateral shall not relieve Borrower of any liability Borrower may have if any Collateral is defective as to title or physical condition or otherwise at the time of sale; (g) demand payment of, and collect any Accounts and General Intangibles comprising Collateral and, in connection therewith, Borrower irrevocably authorizes Agent to endorse or sign Borrower's name on all collections, receipts, instruments and other documents, to take possession of and open mail addressed to Borrower and remove therefrom payments made with respect to any item of the Collateral or proceeds thereof, and, in Agent's Good Faith Business Judgment, to grant extensions of time to pay, compromise claims and settle Accounts and the like for less than face value; (h) demand and receive possession of any of Borrower's federal and state income tax returns and the books and records utilized in the preparation thereof or referring thereto; and (i) set off any of the Obligations against any general, special or other Deposit Accounts of Borrower maintained with Agent or any Lender. All reasonable attorneys' fees, expenses, costs, liabilities and obligations incurred by Agent and Lenders with respect to the foregoing shall be added to and become part of the Obligations, shall be due on demand, and shall bear interest at a rate equal to the highest interest rate applicable to any of the Obligations. Without limiting any of Agent's or any Lender's rights and remedies, from and after the occurrence and during the continuance of any Event of Default, the interest rate applicable to the Obligations shall be increased by an additional three percent per annum (the "Default Rate").

***7.3 Standards for Determining Commercial Reasonableness.*** Borrower, Agent and Lenders agree that a sale or other disposition (collectively, "Sale") of any Collateral which complies with the following standards will conclusively be deemed to be commercially reasonable: (i) notice of the Sale is given to Borrower at least ten days prior to the Sale, and, in the case of a public Sale, notice of the Sale is published at least five days before the date of the Sale in a newspaper of general circulation in the county where the Sale is to be conducted; (ii) notice of the Sale describes the Collateral in general, non-specific terms; (iii) the Sale is conducted at a place designated by Agent, with or without the Collateral being present; (iv) the Sale commences at any time between 8:00 a.m. and 6:00 p.m.; (v) payment of the purchase price in cash or by cashier's check or wire transfer is required; (vi) with respect to any Sale of any of the Collateral, Agent may (but is not obligated to) direct any prospective purchaser to ascertain directly from Borrower any and all information concerning the same. Agent shall be free to employ other methods of noticing and selling the Collateral, in its discretion, if they are commercially reasonable.

***7.4 Investment Property.*** If a Default or an Event of Default has occurred and is continuing, Borrower shall hold all payments on, and proceeds of, and distributions with respect to, Investment Property in trust for Agent for the benefit of Lenders, and Borrower shall deliver all such payments, proceeds and distributions to Agent for the benefit of Lenders, immediately upon receipt, in their original form, duly endorsed, to be applied to the Obligations in such order as Agent shall determine. Borrower recognizes that Agent may be unable to make a public sale of any or all of the Investment Property, by reason of prohibitions contained in applicable securities laws or otherwise, and expressly agrees that a private sale to a restricted group of purchasers for investment and not with a view to any distribution thereof shall be considered a commercially reasonable sale thereof.

***7.5 Power of Attorney.*** Upon the occurrence and during the continuance of any Event of Default, without limiting Agent's or any Lender's other rights and remedies, Borrower grants to Agent an irrevocable power of attorney coupled with an interest, authorizing and permitting Agent (acting through any of its employees, attorneys or agents) at any time, at its option, but without obligation, with or without notice to Borrower, and at Borrower's expense, to do any or all of the following, in Borrower's name or otherwise, but Agent agrees that if it exercises any right hereunder, it will do so in good faith and in a commercially reasonable manner: (a) execute on behalf of Borrower any documents that Agent may, in its Good Faith Business Judgment, deem advisable in order to perfect and maintain Agent's and Lenders' security interest in the Collateral, or in order to exercise a right of Borrower, Agent or any Lender, or in order to fully consummate all the transactions contemplated under this Agreement, and all other Loan Documents; (b) execute on behalf of Borrower, any invoices relating to any Account, any draft against any Account Debtor and any notice to any Account Debtor, any proof of claim in bankruptcy, any Notice of Lien, claim of mechanic's, materialman's or other Lien, or assignment or satisfaction of mechanic's, materialman's or other Lien; (c) take control in any manner of any cash or non-cash items of payment or proceeds of Collateral; endorse the name of Borrower upon any instruments, or documents, evidence of payment or Collateral that may come into Agent's or any Lender's possession; (d) endorse all checks and other forms of remittances received by Agent or any Lender; (e) pay, contest or settle any Lien and adverse claim in or to any of the Collateral, or any judgment based thereon, or otherwise take any action to terminate or discharge the same; (f) grant extensions of time to pay, compromise claims and settle Accounts and General Intangibles for less than face value and execute all releases and other documents in connection therewith; (g) pay any sums required on account of Borrower's taxes or to secure the release of any Liens therefor, or both; (h) settle and adjust, and give releases of, any insurance claim that relates to any of the Collateral and obtain payment therefor; (i) instruct any third party having custody or control of any books or records belonging to, or relating to, Borrower to give Agent the same rights of access and other rights with respect thereto as Agent has under this Agreement; and (j) take any action or pay any sum required of Borrower pursuant to this Agreement and any other Loan Documents; (k) enter into a short-form intellectual property security agreement consistent with the terms of this Agreement

for recording purposes only or modify, in its sole discretion, any intellectual property security agreement entered into between Borrower and Agent without first obtaining Borrower's approval of or signature to such modification by amending exhibits thereto, as appropriate, to include reference to any right, title or interest in any Copyrights, Patents or Trademarks acquired by Borrower after the execution hereof or to delete any reference to any right, title or interest in any Copyrights, Patents or Trademarks in which Borrower no longer has or claims to have any right, title or interest; and (l) file, in its sole discretion, one or more financing or continuation statements and amendments thereto, relative to any of the Collateral; provided Agent may exercise such power of attorney to sign the name of Borrower on any of the documents described in clauses (k) and (l) above, regardless of whether an Event of Default has occurred. Any and all reasonable sums paid and any and all reasonable costs, expenses, liabilities, obligations and attorneys' fees incurred by Agent or any Lender with respect to the foregoing shall be added to and become part of the Obligations, shall be payable on demand, and shall bear interest at a rate equal to the highest interest rate applicable to any of the Obligations. In no event shall Agent's or any Lender's rights under the foregoing power of attorney or any of Agent's or any Lender's other rights under this Agreement be deemed to indicate that Agent or any Lender is in control of the business, management or properties of Borrower.

***7.6 Application of Proceeds.*** All proceeds realized as the result of any Sale of the Collateral shall be applied by Agent first to the reasonable costs, expenses, liabilities, obligations and attorneys' fees incurred by Agent and Lenders in the exercise of its rights under this Agreement, second to the interest due upon any of the Obligations pro rata based upon the Lenders' respective Pro Rata Shares of the Obligations, and third to the principal of the Obligations, pro rata based upon the Lenders' respective Pro Rata Shares of the Obligations; provided that proceeds of any separate Deposit Account maintained to secure any Bank Services Indebtedness (up to the limits set forth in clause (vii) of the definition of "Permitted Indebtedness") shall be applied to such Bank Services Indebtedness. Any surplus shall be paid to Borrower or other persons legally entitled thereto; Borrower shall remain liable to Agent and Lenders for any deficiency. If, Agent, in its Good Faith Business Judgment, directly or indirectly enters into a deferred payment or other credit transaction with any purchaser at any Sale of Collateral, Agent shall have the option, exercisable at any time, in its Good Faith Business Judgment, of either reducing the Obligations by the principal amount of purchase price or deferring the reduction of the Obligations until the actual receipt by Agent of the cash therefor.

***7.7 Remedies Cumulative.*** In addition to the rights and remedies set forth in this Agreement, Agent and Lenders shall have all the other rights and remedies accorded a secured party under the Uniform Commercial Code and under all other applicable laws, and under any other instrument or agreement now or in the future entered into between Agent and any Lender and Borrower, and all of such rights and remedies are cumulative and none is exclusive. Exercise or partial exercise by Agent or any Lender of one or more of its rights or remedies shall not be deemed an election, nor bar Agent or any Lender from subsequent exercise or partial exercise of any other rights or remedies. The failure or delay of Agent or any Lender to exercise any rights or remedies shall not operate as a waiver thereof, but all rights and remedies shall continue in full force and effect until all of the Obligations have been fully paid and performed.

***8. DEFINITIONS.*** As used in this Agreement, the following terms have the following meanings:

"Account Debtor" means the obligor on an Account.

"Accounts" means all present and future "accounts" as defined in the Uniform Commercial Code in effect on the date hereof with such additions to such term as may hereafter be made, and includes without limitation all accounts receivable and other sums owing to Borrower.

"Affiliate" means, with respect to any Person, a relative, partner, shareholder, director, officer, or employee of such Person, or any parent or subsidiary of such Person, or any Person controlling, controlled by or under common control with such Person.

"this Agreement", "the Loan Agreement" and "this Loan Agreement" refer collectively to this Loan and Security Agreement and the Schedule and all exhibits and schedules thereto, as the same may be modified, amended or restated from time to time by a written agreement signed by Borrower and Agent and Lenders.

"Anti-Terrorism Laws" means any applicable laws relating to terrorism or money laundering, including Executive Order No. 13224, the USA PATRIOT Act, the applicable laws comprising or implementing the Bank Secrecy Act, and the applicable laws administered by the United States Treasury Department's Office of Foreign Assets Control and any other enabling legislation or executive order relating thereto (as any of the foregoing applicable laws may from time to time be amended, renewed, extended or replaced).

"Business Day" means a day on which Agent is open for business.

"Change in Control" means: (i) a sale, lease, license or other disposition of all or substantially all of the assets of Borrower, (ii) any consolidation or merger of Borrower with or into any other corporation or other entity or person, or any other corporate reorganization, in which the holders of the capital stock of Borrower immediately prior to such consolidation,

merger or reorganization, hold less than fifty percent (50%) of the voting power of the surviving entity (or, if the surviving entity is a wholly owned subsidiary, its parent) immediately after such consolidation, merger or reorganization; or (iii) any transaction or series of related transactions in which in excess of fifty percent (50%) of Borrower's voting power is transferred; provided that a Change of Control shall not include (x) any consolidation or merger effected exclusively to change the domicile of Borrower, or (y) any transaction or series of transactions principally for bona fide equity financing purposes in which cash is received by Borrower or any successor or indebtedness of Borrower is cancelled or converted or a combination thereof.

"Code" means the Uniform Commercial Code as adopted and in effect in the State of New York from time to time.

"Collateral" has the meaning set forth in Section 2 above.

"Contingent Obligation" means, as applied to any Person, any direct or indirect liability, contingent or otherwise, of that Person with respect to (i) any indebtedness, lease, dividend, letter of credit or other obligation of another, including, without limitation, any such obligation directly or indirectly guaranteed, endorsed, co-made or discounted or sold with recourse by that Person, or in respect of which that Person is otherwise directly or indirectly liable; (ii) any obligations with respect to undrawn letters of credit, corporate credit cards or merchant services issued for the account of that Person; and (iii) all obligations arising under any interest rate, currency or commodity swap agreement, interest rate cap agreement, interest rate collar agreement, or other agreement or arrangement designated to protect a Person against fluctuation in interest rates, currency exchange rates or commodity prices; provided, however, that the term "Contingent Obligation" shall not include endorsements for collection or deposit in the ordinary course of business. The amount of any Contingent Obligation shall be deemed to be an amount equal to the stated or determined amount of the primary obligation in respect of which such Contingent Obligation is made or, if not stated or determinable, the maximum reasonably anticipated liability in respect thereof as determined by such Person in good faith; provided, however, that such amount shall not in any event exceed the maximum amount of the obligations under the guarantee or other support arrangement.

"continuing" and "during the continuance of" when used with reference to a Default or Event of Default means that the Default or Event of Default has occurred and has not been either waived in writing by Agent and Required Lenders or cured within any applicable cure period.

"Copyrights" means any and all copyright rights, copyright applications, copyright registrations and like protections in each work or authorship and derivative work thereof, whether published or unpublished and whether or not the same also constitutes a trade secret, now or hereafter existing, created, acquired or held.

"Default" means any event which with notice or passage of time or both, would constitute an Event of Default.

"Default Rate" has the meaning set forth in Section 7.2 above.

"Deposit Accounts" means all present and future "deposit accounts" as defined in the Code in effect on the date hereof with such additions to such term as may hereafter be made, and includes without limitation all general and special bank accounts, demand accounts, checking accounts, savings accounts and certificates of deposit.

"Eligible Accounts" means collectively Eligible Borrower Accounts and Eligible UK Accounts.

"Eligible Borrower Accounts" means Accounts and General Intangibles arising in the ordinary course of Borrower's business from the sale of goods or the rendition of services, or the non-exclusive licensing of Intellectual Property, which Agent, in its Good Faith Business Judgment, shall deem eligible for borrowing. Without limiting the fact that the determination of which Accounts are eligible for borrowing is a matter of Agent's Good Faith Business Judgment, the following (the "Minimum Eligibility Requirements") are the minimum requirements for an Account to be an Eligible Account:

(i) the Account must not be outstanding for more than 120 days from its invoice date (the "Eligibility Period");

(ii) the Account must not represent progress billings, or be due under a fulfillment or requirements contract with the Account Debtor;

(iii) the Account must not be subject to any contingencies (including Accounts arising from sales on consignment, guaranteed sale, bill and hold, sale on approval, or other terms pursuant to which payment by the Account Debtor may be conditional);

(iv) the Account must not be owing from an Account Debtor with whom Borrower has any dispute (whether or not relating to the particular Account), but if an Account is owing from an Account Debtor with whom Borrower has any dispute, the Account will not be Eligible under this clause (iv) only to the extent of the amount of the dispute;

(v) the Account must not be owing from an Affiliate of Borrower;

(vi) the Account must not be owing from an Account Debtor which is subject to any Insolvency Proceeding, or becomes insolvent, or from which collection of the Account is doubtful (as determined by Agent in its Good Faith Business Judgment);

(vii) the Account must not be owing from the United States or any department, agency or instrumentality thereof (unless there has been compliance, to Agent's satisfaction, with the United States Assignment of Claims Act);

(viii) the Account must not be owing from an Account Debtor located outside the United States;

(ix) the Account must have been billed to the Account Debtor and must not represent deposits (such as good faith deposits) or other property of the Account Debtor held by Borrower for the performance of services or delivery of goods which Borrower has not yet performed or delivered;

(x) the Account must not be owing from an Account Debtor to whom Borrower is or may be liable for goods purchased from such Account Debtor or otherwise (but, in such case, the Account will be deemed not eligible only to the extent of any amounts owed by Borrower to such Account Debtor).

Accounts owing from one Account Debtor will not be deemed Eligible Accounts to the extent they exceed 25% of the total Eligible Accounts outstanding. In addition, if more than 25% of the Accounts owing from an Account Debtor are outstanding for a period longer than their Eligibility Period or are otherwise not Eligible Accounts, then all Accounts owing from that Account Debtor will be deemed ineligible for borrowing. Agent may, from time to time, in its Good Faith Business Judgment, revise the Minimum Eligibility Requirements, upon 30 days prior written notice to Borrower.

"Eligible UK Accounts" means Accounts which meet all of the requirements of "Eligible Borrower Accounts", except for the fact that (i) they arise in the ordinary course of the UK Sub's business, (ii) they are owing to the UK Sub, (ii) they are owing from an Account Debtor located outside the United States, and (iv) they are owing in British Pounds; provided that Eligible UK Accounts may not constitute more than 30% of the total of Eligible Borrower Accounts and Eligible UK Accounts.

"Equipment" means all present and future "equipment" as defined in the Code in effect on the date hereof with such additions to such term as may hereafter be made, and includes without limitation all machinery, fixtures, goods, vehicles (including motor vehicles and trailers), and any interest in any of the foregoing.

"Event of Default" means any of the events set forth in Section 7.1 of this Agreement.

"Federal Funds Effective Rate" means, for any day, a rate per annum (rounded upward to the nearest 1/100th of 1%) equal to the rate published by the Federal Reserve Bank of New York on the preceding Business Day or, if no such rate is so published, the average rate per annum, as determined by Agent, quoted for overnight Federal Funds transactions last arranged prior to such day.

"Foreign Subs" has the meaning given in Section 8(d) of the Schedule.

"GAAP" means generally accepted accounting principles consistently applied, as in effect from time to time in the United States.

"General Intangibles" means all present and future "general intangibles" as defined in the Code in effect on the date hereof with such additions to such term as may hereafter be made, and includes without limitation all Intellectual Property, payment intangibles, royalties, contract rights, goodwill, franchise agreements, purchase orders, customer lists, route lists, telephone numbers, domain names, claims, income tax refunds, security and other deposits, options to purchase or sell real or personal property, rights in all litigation presently or hereafter pending (whether in contract, tort or otherwise), insurance policies (including without limitation key man, property damage, and business interruption insurance), payments of insurance and rights to payment of any kind.

"Good Faith Business Judgment" means Agent's and Lenders' business judgment, exercised honestly and in good faith and not arbitrarily.

"Guarantor" means any Person who has guaranteed, or in the future guarantees, any of the Obligations.

"including" means including (but not limited to).

"Indebtedness" means (a) all indebtedness created, assumed or incurred in any manner by Borrower representing money borrowed (including by the issuance of debt securities, notes, bonds debentures or similar instruments), (b) all indebtedness for the deferred purchase price of property or services, (c) the Obligations, (d) obligations and liabilities of any Person secured by a Lien or claim on property owned by Borrower, even though Borrower has not assumed or become liable therefor, (e) obligations and liabilities created or arising under any capital lease or conditional sales contract or other title retention agreement with respect to property used or acquired by Borrower, even though the rights and remedies of the

lessor, seller or lender are limited to repossession or otherwise limited; (f) all obligations of Borrower on or with respect to letters of credit, bankers' acceptances and other similar extensions of credit whether or not representing obligations for borrowed money; and (g) the amount of any Contingent Obligations.

"Intellectual Property" means all of Borrower's right, title, and interest in and to the following: Copyrights, Trademarks and Patents; any and all trade secrets, and any and all intellectual property rights in computer software and computer software products now or hereafter existing, created, acquired or held; any and all design rights which may be available to Borrower now or hereafter existing, created, acquired or held; any and all claims for damages by way of past, present and future infringement of any of the rights included above, with the right, but not the obligation, to sue for and collect such damages for said use or infringement of the intellectual property rights identified above; all licenses or other rights to use any of the Copyrights, Patents or Trademarks, and all license fees and royalties arising from such use; and all amendments, renewals and extensions of any of the Copyrights, Trademarks or Patents.

"Insolvency Proceeding" means any proceeding commenced by or against any Person or entity under any provision of the United States Bankruptcy Code, as amended, or under any other state, federal or other bankruptcy or insolvency law, now or hereafter in effect, including assignments for the benefit of creditors, formal or informal moratoria, compositions, extension generally with its creditors, or proceedings seeking reorganization, arrangement, readjustment of debt, dissolution or liquidation, or other relief.

"Inventory" means all present and future "inventory" as defined in the Code in effect on the date hereof with such additions to such term as may hereafter be made, and includes without limitation all merchandise, raw materials, parts, supplies, packing and shipping materials, work in process and finished products, including without limitation such inventory as is temporarily out of Borrower's custody or possession or in transit, and including any returned goods and any documents of title representing any of the above.

"Investment" means any beneficial ownership interest in any Person (including stock, securities, partnership interest, limited liability company interest, or other interests), and any loan, advance or capital contribution to any Person, including the creation or capital contribution to a wholly-owned or partially-owned subsidiary)

"Investment Property" means all present and future investment property, securities, stocks, bonds, debentures, debt securities, partnership interests, limited liability company interests, options, security entitlements, securities accounts, commodity contracts, commodity accounts, and all financial assets held in any securities account or otherwise, and all options and warrants to purchase any of the foregoing, wherever located, and all other securities of every kind, whether certificated or uncertificated.

"Lien" means any mortgage, lien, deed of trust, charge, pledge, security interest or other encumbrance. For the avoidance of doubt, a license of rights is not a "Lien".

"Loan Documents" means, collectively, this Agreement, the Representations, and all other present and future documents, instruments and agreements between Agent, or Agent and Lenders and Borrower, including, but not limited to those relating to this Agreement, and all amendments and modifications thereto and replacements therefor.

"Material Adverse Change" means a material adverse effect on (i) the operations, business or financial condition of Borrower taken as a whole, (ii) the ability of Borrower to repay the Obligations or otherwise perform its obligations under the Loan Documents, or (iii) Borrower's interest in, or the value, perfection or priority of Agent's security interest in the Collateral for the benefit of Lenders.

"Obligations" means all present and future Loans, advances, debts, liabilities, obligations, guaranties, covenants, duties and indebtedness at any time owing by Borrower to Agent or any Lender, whether evidenced by this Agreement or any note or other instrument or document, or otherwise, whether arising from an extension of credit, opening of a letter of credit, banker's acceptance, loan, guaranty, indemnification, Bank Services Indebtedness, or otherwise, whether direct or indirect (including, without limitation, those acquired by assignment and any participation by Agent in Borrower's debts owing to others, and any interest and other obligations that accrue after the commencement of an Insolvency Proceeding), absolute or contingent, due or to become due, including, without limitation, all interest, charges, expenses, fees, attorney's fees, expert witness fees, audit fees, letter of credit fees, collateral monitoring fees, closing fees, facility fees, termination fees, minimum interest charges and any other sums chargeable to Borrower under this Agreement or under any other Loan Documents.

"OFAC" means The Office of Foreign Assets Control of the U.S. Department of the Treasury.

"Other Property" means the following as defined in the Code in effect on the date hereof with such additions to such term as may hereafter be made, and all rights relating thereto: all present and future "commercial tort claims" (including without limitation any commercial tort claims identified in the Representations), "documents", "instruments", "promissory notes", "chattel paper", "letters of credit", "letter-of-credit rights", "fixtures", "farm products" and "money"; and all other goods and personal property of every kind, tangible and intangible, whether or not governed by the Code.

"Overadvance" is defined in Section 1.3.

"Patents" means all patents, patent applications and like protections including without limitation improvements, divisions, continuations, renewals, reissues, extensions and continuations-in-part of the same.

"Payment" means all checks, wire transfers and other items of payment received by Agent (including proceeds of Accounts and payment of the Obligations in full) for credit to Borrower's outstanding Loans.

"Permitted Indebtedness" means:

(i) the Obligations;

(ii) Indebtedness existing on the date hereof in a total principal amount not in excess of $276,832;

(iii) trade payables incurred in the ordinary course of business;

(iv) Indebtedness incurred as a result of endorsing negotiable instruments received in the ordinary course of business;

(v) capitalized leases and purchase money Indebtedness secured by Permitted Liens in an aggregate amount not exceeding $500,000 at any time outstanding, provided the amount of such capitalized leases and purchase money Indebtedness do not exceed, at the time they were incurred, the lesser of the cost or fair market value of the property so leased or financed with such Indebtedness;

(vi) Indebtedness subordinated to the Obligations pursuant to Section 8(a) of the Schedule and other Subordinated Debt incurred in the future;

(vii) (A) Indebtedness incurred in the future to a Lender relating to credit cards, ACH services and letters of credit issued for the account of Borrower (collectively "Bank Services Indebtedness"), and (B) existing contingent Indebtedness of Borrower relating to existing letters of credit issued for the account of Borrower, in a total amount outstanding not to exceed $3,000,000 at any time (collectively "Existing Contingent LC Indebtedness"); provided that the total amount of Bank Services Indebtedness and Existing Contingent LC Indebtedness outstanding at any time may not exceed $5,000,000; and

(viii) Indebtedness of Borrower to any Subsidiary;

(ix) Contingent Obligations of Borrower permitted under Section 5.5 (x);

(x) extensions, refinancings, modifications, amendments and restatements of any items of Permitted Indebtedness in clauses (ii) through (vi) above, provided that the principal amount thereof is not increased and the terms thereof are not modified to impose more burdensome terms upon Borrower, and provided, in the case of Subordinated Debt, that it continues to be Subordinated Debt.

"Permitted Investments" means:

(i) Investments existing on the date hereof and disclosed on Exhibit C;

(ii) Marketable direct obligations issued or unconditionally guaranteed by the United States of America or any agency or any State thereof maturing within one year from the date of acquisition thereof, commercial paper maturing no more than one year from the date of creation thereof and currently having rating of at least A-2 or P-2 from either Standard & Poor's Corporation or Moody's Investors Service, Agent's or a Lender's certificates of deposit maturing no more than one year from the date of investment therein, and Agent's or a Lender's money market accounts; Investments in regular deposit or checking accounts held with Agent or a Lender or subject to a control agreement in favor of Agent for the benefit of Lenders;

(iii) Investments of a Borrower in another Borrower and Investments in Foreign Subs permitted by Section 8(d) of the Schedule;

(iv) Investments (including debt obligations) received in connection with the bankruptcy or reorganization of customers or suppliers and in settlement of delinquent obligations of, and other disputes with, customers or suppliers arising in the ordinary course of Borrower's business; and

(v) Investments consisting of notes receivable of, or prepaid royalties and other credit extensions, to customers and suppliers who are not Affiliates, in the ordinary course of business;

(vi) Investments permitted under Section 5.5 (xi);

(vii) Investments not to exceed $250,000 in the aggregate in any fiscal year consisting of (i) travel advances and employee relocation loans and other employee loans and advances in the ordinary course of business; and (ii) the acceptance of notes from employees, officers or directors for the purchase of equity securities of Borrower or its Subsidiaries pursuant to employee stock purchase plans or agreements approved by Borrower's Board of Directors;

(viii) Deposit and securities accounts maintained with banks and other financial institutions to the extent expressly permitted under Section 8(c) of the Schedule; and

(ix) joint ventures or strategic alliances in the ordinary course of Borrower's business consisting of the nonexclusive licensing of technology, the development of technology or the providing of technical support, provided that any cash investments by Borrower do not exceed $250,000 in the aggregate in any fiscal year.

"Permitted Liens" means the following:

(i) purchase money security interests in specific items of Equipment;

(ii) leases of specific items of Equipment;

(iii) Liens for taxes not yet payable;

(iv) security interests which are subordinated to the security interest in favor of Agent for the benefit of Lenders under Section 8(a)((1) of the Schedule, and additional future security interests which are consented to in writing by Agent, which consent may be withheld in its Good Faith Business Judgment, and which are subordinate to the security interest of Agent and Lenders pursuant to a Subordination Agreement in such form and containing such provisions as Agent shall specify in its Good Faith Business Judgment;

(v) Liens arising from judgments, decrees or attachments in circumstances not constituting an Event of Default, provided no action is taken to enforce the same against any Collateral unless such action has been bonded or stayed pending appeal;

(vi) security interests being terminated substantially concurrently with this Agreement;

(vii) Liens incurred on deposits made in the ordinary course of business in connection with workers compensation, unemployment insurance, social security and other like laws or to secure the performance of statutory obligations, in an aggregate amount not exceeding $250,000 at any time;

(viii) Liens of mechanics, materialmen, workers, repairmen, fillers and common carriers arising by operation of law for amounts that are not yet due and payable or which are being contested in good faith by Borrower by appropriate proceedings, in an aggregate amount not exceeding $250,000 at any time; and

(ix) deposits or pledges of cash to secure bids, tenders, contracts (other than contracts for the payment of money), leases, surety and appeal bonds and other obligations of a like nature arising in the ordinary course of business, in an aggregate amount not exceeding $100,000 at any time;

(x) pledges of cash in an amount not to exceed a total of $5,000,000 to secure Permitted Indebtedness under clause (vii) of the definition thereof.

Agent will have the right to require, as a condition to its consent under subparagraph (iv) above, that the holder of the additional security interest or voluntary Lien sign a subordination agreement in such form and substance as Agent shall specify, acknowledge that the security interest is subordinate to the security interest in favor of Agent and Lenders, and agree not to take any action to enforce its subordinate security interest so long as any Obligations remain outstanding, and that Borrower agree that any uncured default in any obligation secured by the subordinate security interest shall also constitute an Event of Default under this Agreement.

"Person" means any individual, sole proprietorship, partnership, joint venture, limited liability company, trust, unincorporated organization, association, corporation, government, or any agency or political division thereof, or any other entity.

"Prime Rate" means the variable rate of interest per annum equal to the higher of (a) the rate of interest from time to time published by the Board of Governors of the Federal Reserve System as the "Bank Prime Loan" rate in Federal Reserve Statistical Release H.I5(519) entitled "Selected Interest Rates" or any successor publication of the Federal Reserve System reporting the Bank Prime Loan rate or its equivalent, or (b) the Federal Funds Effective Rate plus fifty (50) basis points. The statistical release generally sets forth a Bank Prime Loan rate for each Business Day. The applicable Bank Prime Loan rate for any date not set forth shall be the rate set forth for the last preceding date. In the event the Board of Governors of the Federal Reserve System ceases to publish a Bank Prime Loan rate or its equivalent, the rate for purposes of sub-clause (a) of this definition shall be a variable rate of interest per annum equal to the highest of the "prime rate", "reference rate", "base rate", or other similar rate announced from time to time by any of the three largest banks (based on combined capital and surplus) headquartered in New York, New York (with the understanding that any such rate may merely be a reference rate and may not necessarily represent the lowest or best rate actually charged to any customer by any such bank.

"Representations" means the written Representations and Warranties provided by Borrower to Agent referred to in the Schedule.

"Reserves" means, as of any date of determination, such amounts as Agent may from time to time establish and revise in its Good Faith Business Judgment, reducing the amount of Loans, and other financial accommodations which would otherwise be available to Borrower under the lending formulas provided in the Schedule: (a) to reflect events, conditions, contingencies or risks which, as determined by Agent in its Good Faith Business Judgment, do or may adversely affect (i) the Collateral or any other property which is security for the Obligations or its value (including without limitation any increase in delinquencies of Accounts), (ii) the assets, business or prospects of Borrower or any Guarantor, or (iii) the security interests and other rights of Agent and Lenders in the Collateral (including the enforceability, perfection and priority thereof); or (b) to reflect Agent's good faith belief that any Collateral report or financial information furnished by or on behalf of Borrower or any Guarantor to Agent is or may have been incomplete, inaccurate or misleading in any material respect; or (c) in respect of any state of facts which Agent determines in good faith constitutes an Event of Default or may, with notice or passage of time or both, constitute an Event of Default.

"Required Lenders" is defined in Exhibit A hereto.

"Sanctioned Entity" means (a) a country or a government of a country, (b) an agency of the government of a country, (c) an organization directly or indirectly controlled by a country or its government, or (d) a Person resident in or determined to be resident in a country, in each case, that is subject to a country sanctions program administered and enforced by OFAC.

"Sanctioned Person" means a Person named on the OFAC-maintained list of "Specially Designated Nationals" (as defined by OFAC).

"Subordinated Debt" means unsecured Indebtedness which is on terms acceptable to Agent in its Good Faith Business Judgment, and which is subordinated to the Obligations pursuant to a Subordination Agreement between Agent for the benefit of Lenders and the holder of such Indebtedness, in such form as Agent shall specify in its Good Faith Business Judgment

"Subsidiary" means, with respect to any Person, a Person of which more than 50% of the voting stock or other equity interests is owned or controlled, directly or indirectly, by such Person or one or more Affiliates of such Person.

"Trademarks" means any trademark and servicemark rights, whether registered or not, applications to register and registrations of the same and like protections, and the entire goodwill of the business of Borrower connected with and symbolized by such trademarks.

"UK Sub" is defined in Section 8(d) of the Schedule.

"USA PATRIOT Act" means the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, Public Law 107-56, as the same has been, or shall hereafter be, renewed, extended, amended or replaced.

Other Terms. All accounting terms used in this Agreement, unless otherwise indicated, shall have the meanings given to such terms in accordance with GAAP, consistently applied. All other terms contained in this Agreement, unless otherwise indicated, shall have the meanings provided by the Code, to the extent such terms are defined therein.

***8A. AGENTED CREDIT PROVISIONS.*** The Agented Credit Provisions in Exhibit A hereto are a part of this Agreement and are incorporated herein by this reference

***9.GENERAL PROVISIONS.***

***9.1 Application of Payments.*** All payments with respect to the Obligations may be applied, and in Agent's Good Faith Business Judgment reversed and re-applied, to the Obligations, in such order and manner as Agent shall determine in its Good Faith Business Judgment. Agent shall not be required to credit Borrower's account for the amount of any item of payment which is unsatisfactory to Agent in its Good Faith Business Judgment, and Agent may charge Borrower's loan account for the amount of any item of payment which is returned to Agent unpaid. In computing interest on the Obligations, all Payments will be deemed received and applied by Agent on account of the Obligations when received in immediately available funds, provided that, if such immediately available funds are received after 1:00 PM Eastern Time on any day, they shall be deemed received and so applied on the next Business Day.

***9.2 Increased Costs and Reduced Return.*** If a Lender shall have determined that the adoption or implementation of, or any change in, any law, rule, treaty or regulation, or any policy, guideline or directive of, or any change in, the interpretation

or administration thereof by, any court, central bank or other administrative or governmental authority, or compliance by Lender with any directive of, or guideline from, any central bank or other Governmental Authority or the introduction of, or change in, any accounting principles applicable to Lender (whether or not having the force of law) shall (i) subject the Lender to any tax, duty or other charge with respect to this Agreement or any Loan made hereunder, or change the basis of taxation of payments to Lender of any amounts payable hereunder (except for taxes on the overall net income of Lender), (ii) impose, modify or deem applicable any reserve, special deposit or similar requirement against any Loan, or against assets of or held by, or deposits with or for the account of, or credit extended by, Lender, or (iii) impose on Lender any other condition regarding this Agreement or any Loan, and the result of any event referred to in clauses (i), (ii) or (iii) above shall be to increase the cost to Lender of making any Loan, or agreeing to make any Loan or to reduce any amount received or receivable by Lender, then, upon demand by Lender, Borrower shall pay to Lender such additional amounts as will compensate the Lender for such increased costs or reductions in amount. For purposes of this Agreement, (i) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, guidelines and directives in connection therewith and (ii) all requests, rules, guidelines, or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States regulatory authorities, in each case pursuant to Basel III, shall in each case, be deemed to have been adopted and gone into effect after the date of this Agreement. All amounts payable under this Section shall bear interest from the date of demand by the Lender until payment in full to the Lender at the highest interest rate applicable to the Obligations. With respect to this Section 9.2, Lender shall treat Borrower no differently than Lender treats other similarly situated Borrowers. A certificate of the Lender claiming compensation under this Section, specifying the event herein above described and the nature of such event shall be submitted by the Lender to Borrower, setting forth the additional amount due and an explanation of the calculation thereof, and the Lender's reasons for invoking the provisions of this Section, and the same shall be final and conclusive absent manifest error.

***9.3 Charges to Accounts.*** Agent may, in its discretion, require that Borrower pay monetary Obligations in cash to Agent, or charge them to Borrower's Loan account (in which event they will bear interest at the same rate applicable to the Loans), or any of Borrower's Deposit Accounts maintained with Agent or a Lender.

***9.4 Monthly Accountings.*** Agent may provide Borrower monthly with an account of advances, charges, expenses and payments made pursuant to this Agreement. Such account shall be deemed correct, accurate and binding on Borrower and an account stated (except for reverses and reapplications of payments made and corrections of errors discovered by Agent), unless Borrower notifies Agent in writing to the contrary within 60 days after such account is rendered, describing the nature of any alleged errors or omissions.

***9.5 Notices.*** All notices to be given under this Agreement shall be in writing and shall be given either personally or by reputable private delivery service or by regular first-class mail, or certified mail return receipt requested, addressed (i) to Borrower at the address shown in the heading to this Agreement, or (ii) to Agent and Lenders at the addresses shown in the heading to this Agreement, or (iii) for either party at any other address designated in writing by one party to the other party. All notices shall be deemed to have been given upon delivery in the case of notices personally delivered, or at the expiration of one Business Day following delivery to the private delivery service, or two Business Days following the deposit thereof in the United States mail, with postage prepaid.

***9.6 Severability.*** Should any provision of this Agreement be held by any court of competent jurisdiction to be void or unenforceable, such defect shall not affect the remainder of this Agreement, which shall continue in full force and effect.

***9.7 Integration.*** This Agreement and such other written agreements, documents and instruments as may be executed in connection herewith are the final, entire and complete agreement among Borrower, Agent and Lenders and supersede all prior and contemporaneous negotiations and oral representations and agreements, all of which are merged and integrated in this Agreement. <u>There are no oral understandings, representations or agreements between the parties which are not set forth in this Agreement or in other written agreements signed by the parties in connection herewith.</u>

***9.8 Waivers; Indemnity.*** The failure of Agent or any Lender at any time or times to require Borrower to strictly comply with any of the provisions of this Agreement or any other Loan Document shall not waive or diminish any right of Agent later to demand and receive strict compliance therewith. Any waiver of any default shall not waive or affect any other default, whether prior or subsequent, and whether or not similar. None of the provisions of this Agreement or any other Loan Document shall be deemed to have been waived by any act or knowledge of Agent or any Lender or its agents or employees, but only by a specific written waiver signed by an authorized officer of Agent or Lender and delivered to Borrower. Borrower waives the benefit of all statutes of limitations relating to any of the Obligations or this Agreement or any other Loan Document, and Borrower waives demand, protest, notice of protest and notice of default or dishonor, notice of payment and nonpayment, release, compromise, settlement, extension or renewal of any commercial paper, instrument, account, General Intangible, document or guaranty at any time held by Agent or any Lender on which Borrower is or may in any way be liable, and notice of any action taken by Agent or any Lender, unless expressly required by this Agreement. Borrower hereby agrees to indemnify Agent and Lenders and their respective affiliates, subsidiaries, parent, directors,

officers, employees, agents, and attorneys, and to hold them harmless from and against any and all claims, debts, liabilities, demands, obligations, actions, causes of action, penalties, costs and expenses (including reasonable attorneys' fees), of every kind, which they may sustain or incur based upon or arising out of any of the Obligations, or any relationship or agreement among Agent or any Lender and Borrower, or any other matter, relating to Borrower or the Obligations; provided that this indemnity shall not extend to damages proximately caused by the indemnitee's own gross negligence or willful misconduct. Notwithstanding any provision in this Agreement to the contrary, the indemnity agreement set forth in this Section shall survive any termination of this Agreement and shall for all purposes continue in full force and effect.

***9.9 Liability.*** NEITHER Agent Or Any Lender NOR ANY OF Any Of Their AFFILIATES, SUBSIDIARIES, DIRECTORS, OFFICERS, EMPLOYEES, AGENTS OR ATTORNEYS SHALL BE LIABLE FOR ANY CLAIMS, DEMANDS, LOSSES OR DAMAGES, OF ANY KIND WHATSOEVER, MADE, CLAIMED, INCURRED OR SUFFERED BY BORROWER OR ANY OTHER PARTY THROUGH THE ORDINARY NEGLIGENCE OF Agent Or Any Lender, OR ITS PARENT OR ANY OF ITS AFFILIATES, SUBSIDIARIES, DIRECTORS, OFFICERS, EMPLOYEES, AGENTS OR ATTORNEYS, BUT NOTHING HEREIN SHALL RELIEVE Agent Or Any Lender FROM LIABILITY FOR ITS OWN GROSS NEGLIGENCE OR WILLFUL MISCONDUCT. NEITHER NOR ANY LENDER NOR ANY OF THEIR AFFILIATES, SUBSIDIARIES, DIRECTORS, OFFICERS, EMPLOYEES, AGENTS OR ATTORNEYS SHALL BE RESPONSIBLE OR LIABLE TO BORROWER OR TO ANY OTHER PARTY FOR ANY INDIRECT, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES WHICH MAY BE ALLEGED AS A RESULT OF ANY FINANCIAL ACCOMMODATION HAVING BEEN EXTENDED, SUSPENDED OR TERMINATED UNDER THIS AGREEMENT OR AS A RESULT OF ANY OTHER ACT, OMISSION OR TRANSACTION.

***9.10 Amendment.*** The terms and provisions of this Agreement may not be waived or amended, except in a writing executed by Borrower and a duly authorized officer of Agent and Required Lenders.

***9.11 Time of Essence.*** Time is of the essence in the performance by Borrower of each and every obligation under this Agreement.

***9.12 Attorneys Fees and Costs.*** Borrower shall reimburse Agent and Lenders for all reasonable attorneys' and consultant's fees (including without limitation those of their outside counsel and in-house counsel, and whether incurred before, during or after an Insolvency Proceeding), and all filing, recording, search, title insurance, appraisal, audit, and other reasonable costs incurred by Agent and Lenders, pursuant to, or in connection with, or relating to this Agreement (whether or not a lawsuit is filed), including, but not limited to, any reasonable attorneys' fees and costs Agent and any Lender incurs in order to do the following: prepare and negotiate this Agreement and all present and future documents relating to this Agreement; obtain legal advice in connection with this Agreement or Borrower; enforce, or seek to enforce, any of its rights; prosecute actions against, or defend actions by, Account Debtors; commence, intervene in, or defend any action or proceeding; initiate any complaint to be relieved of any automatic stay in bankruptcy; file or prosecute any probate claim, bankruptcy claim, third-party claim, or other claim; examine, audit, copy, and inspect any of the Collateral or any of Borrower's books and records; protect, obtain possession of, lease, dispose of, or otherwise enforce Agent's or any Lender's security interest in, the Collateral; and otherwise represent Agent or any Lender in any litigation relating to Borrower. All attorneys' fees and costs to which Agent or any Lender may be entitled pursuant to this Paragraph shall immediately become part of Borrower's Obligations, shall be due on demand, and shall bear interest at a rate equal to the highest interest rate applicable to any of the Obligations.

***9.13 Benefit of Agreement.*** The provisions of this Agreement shall be binding upon and inure to the benefit of the respective successors, assigns, heirs, beneficiaries and representatives of Borrower and Agent and Lenders; provided, however, that (i) Borrower may not assign or transfer any of its rights under this Agreement without the prior written consent of Agent and Required Lenders, and any prohibited assignment shall be void. No consent by Agent and Required Lenders to any assignment shall release Borrower from its liability for the Obligations.

***9.14 Joint and Several Liability.*** If Borrower consists of more than one Person, their liability shall be joint and several, and the compromise of any claim with, or the release of, any Borrower shall not constitute a compromise with, or a release of, any other Borrower.

***9.15 Limitation of Actions.*** Any claim or cause of action by Borrower against Agent or any Lender, its directors, officers, employees, agents, accountants or attorneys, based upon, arising from, or relating to this Loan Agreement, or any other Loan Document, or any other transaction contemplated hereby or thereby or relating hereto or thereto, or any other matter, cause or thing whatsoever, occurred, done, omitted or suffered to be done by Agent or such Lender, its directors, officers, employees, agents, accountants or attorneys, shall be barred unless asserted by Borrower by the commencement of an action or proceeding in a court of competent jurisdiction by the filing of a complaint within one year after the first act, occurrence or omission upon which such claim or cause of action, or any part thereof, is based, and the service of a summons and complaint on an officer of Agent or such Lender, or on any other person authorized to accept service on behalf of Agent or such Lender, within thirty (30) days thereafter. Borrower agrees that such one-year period is a reasonable and sufficient time

for Borrower to investigate and act upon any such claim or cause of action. The one-year period provided herein shall not be waived, tolled, or extended except by the written consent of Agent or such Lender in its sole discretion. This provision shall survive any termination of this Loan Agreement or any other Loan Document.

***9.16 Paragraph Headings; Construction.*** Paragraph headings are only used in this Agreement for convenience. The parties acknowledge that the headings may not describe completely the subject matter of the applicable paragraph, and the headings shall not be used in any manner to construe, limit, define or interpret any term or provision of this Agreement. This Agreement has been fully reviewed and negotiated between the parties and no uncertainty or ambiguity in any term or provision of this Agreement shall be construed strictly against any party under any rule of construction or otherwise.

***9.17 Public Announcement.*** Borrower hereby agrees that Agent and any Lender may make a public announcement of the transactions contemplated by this Agreement, and may publicize the same in marketing materials, newspapers, tombstones, and other publications, and otherwise, and in connection therewith may use Borrower's name, tradenames and logos.

***9.18 Confidentiality***. Agent and Lenders agrees to use the same degree of care that it exercises with respect to its own proprietary information, to maintain the confidentiality of any and all proprietary, trade secret or confidential information provided to or received by Agent and Lenders from Borrower, which indicates that it is confidential or would reasonably be understood to be confidential, including business plans and forecasts, non-public financial information, confidential or secret processes, formulae, devices and contractual information, customer lists, and employee relation matters, provided that Agent and Lenders may disclose such information to their officers, directors, employees, attorneys, accountants, affiliates, participants, prospective participants, assignees and prospective assignees, and such other Persons to whom they shall at any time be required to make such disclosure in accordance with applicable law or regulatory authority, and provided, that the foregoing provisions shall not apply to disclosures made by them in their Good Faith Business Judgment in connection with the enforcement of its rights or remedies after an Event of Default. The confidentiality agreement in this Section supersedes any prior confidentiality agreement of Agent or any Lender relating to Borrower.

***9.19 PATRIOT Act Notice.*** Agent and Lenders hereby notify Borrower that pursuant to the requirements of the USA PATRIOT Act, they are required to obtain, verify and record information that identifies Borrower and each of its Subsidiaries, which information includes the names and addresses of each Borrower and each of its Subsidiaries and other information that will allow them, as applicable, to identify Borrower and each of its Subsidiaries in accordance with the USA PATRIOT Act.

***9.20 APPLICABLE LAW.*** **THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS SHALL BE GOVERNED BY, AND SHALL BE CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE INTERNAL LAWS OF THE STATE OF NEW YORK, WITHOUT REGARD TO CONFLICTS OF LAWS PRINCIPLES (BUT INCLUDING AND GIVING EFFECT TO SECTIONS 5-1401 AND 5-1402 OF THE NEW YORK GENERAL OBLIGATIONS LAW), EXCEPT TO THE EXTENT ANY SUCH OTHER LOAN DOCUMENT EXPRESSLY SELECTS THE LAW OF ANOTHER JURISDICTION AS GOVERNING LAW THEREOF, IN WHICH CASE THE LAW OF SUCH OTHER JURISDICTION SHALL GOVERN.**

***9.21 CONSENT TO JURISDICTION.*** **BORROWER HEREBY CONSENTS TO THE JURISDICTION OF ANY STATE OR FEDERAL COURT LOCATED WITHIN THE COUNTY OF NEW YORK, STATE OF NEW YORK AND IRREVOCABLY AGREES THAT, SUBJECT TO AGENT'S ELECTION, ALL ACTIONS OR PROCEEDINGS ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE OTHER LOAN DOCUMENTS SHALL BE LITIGATED IN SUCH COURTS PROVIDED THAT, NOTWITHSTANDING THE FOREGOING, NOTHING HEREIN SHALL LIMIT THE RIGHT OF AGENT OR ANY LENDER TO BRING PROCEEDINGS AGAINST BORROWER IN THE COURTS OF ANY OTHER JURISDICTION. BORROWER EXPRESSLY SUBMITS AND CONSENTS TO THE JURISDICTION OF THE AFORESAID COURTS AND WAIVES ANY DEFENSE OF FORUM NON CONVENIENS. BORROWER HEREBY WAIVES PERSONAL SERVICE OF ANY AND ALL PROCESS AND AGREES THAT ALL SUCH SERVICE OF PROCESS MAY BE MADE UPON BORROWER BY CERTIFIED OR REGISTERED MAIL, RETURN RECEIPT REQUESTED, ADDRESSED TO BORROWER, AT THE ADDRESS SET FORTH IN THIS AGREEMENT AND SERVICE SO MADE SHALL BE COMPLETE TEN (10) DAYS AFTER THE SAME HAS BEEN POSTED. IN ANY LITIGATION, TRIAL, ARBITRATION OR OTHER DISPUTE RESOLUTION PROCEEDING RELATING TO THIS AGREEMENT OR ANY OF THE OTHER LOAN DOCUMENTS, ALL DIRECTORS, OFFICERS, EMPLOYEES AND AGENTS OF BORROWER OR OF ITS AFFILIATES SHALL BE DEEMED TO BE EMPLOYEES OR MANAGING AGENTS OF BORROWER FOR PURPOSES OF ALL APPLICABLE LAW OR COURT RULES REGARDING THE PRODUCTION OF WITNESSES BY NOTICE FOR TESTIMONY (WHETHER IN A DEPOSITION, AT TRIAL OR OTHERWISE). BORROWER AGREES THAT AGENT'S, LENDER'S OR THEIR COUNSEL IN ANY SUCH DISPUTE RESOLUTION PROCEEDING MAY EXAMINE ANY OF THESE INDIVIDUALS AS IF UNDER CROSS-EXAMINATION AND THAT ANY DISCOVERY**

**DEPOSITION OF ANY OF THEM MAY BE USED IN THAT PROCEEDING AS IF IT WERE AN EVIDENCE DEPOSITION. BORROWER IN ANY EVENT WILL USE ALL COMMERCIALLY REASONABLE EFFORTS TO PRODUCE IN ANY SUCH DISPUTE RESOLUTION PROCEEDING, AT THE TIME AND IN THE MANNER REQUESTED BY THEM, ALL PERSONS, DOCUMENTS (WHETHER IN TANGIBLE, ELECTRONIC OR OTHER FORM) OR OTHER THINGS UNDER ITS CONTROL AND RELATING TO THE DISPUTE.**

*[Signatures on Next Page]*

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*9.22 Mutual Waiver of Jury Trial.* **Agent and Lenders AND BORROWER EACH ACKNOWLEDGE THAT THE RIGHT TO TRIAL BY JURY IS A CONSTITUTIONAL RIGHT, BUT THAT IT MAY BE WAIVED. EACH OF THE PARTIES, AFTER CONSULTING OR HAVING HAD THE OPPORTUNITY TO CONSULT, WITH COUNSEL OF THEIR CHOICE, KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LITIGATION BASED UPON OR ARISING OUT OF THIS AGREEMENT OR ANY RELATED INSTRUMENT OR LOAN DOCUMENT OR ANY OF THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT OR ANY COURSE OF CONDUCT, DEALING, STATEMENTS (WHETHER ORAL OR WRITTEN), ACTION OR INACTION OF ANY OF THEM. THESE PROVISIONS SHALL NOT BE DEEMED TO HAVE BEEN MODIFIED IN ANY RESPECT OR RELINQUISHED BY ANY PARTY HERETO, EXCEPT BY A WRITTEN INSTRUMENT EXECUTED BY EACH OF THEM. IF FOR ANY REASON THE PROVISIONS OF THIS SECTION ARE VOID, INVALID OR UNENFORCEABLE, THE SAME SHALL NOT AFFECT ANY OTHER TERM OR PROVISION OF THIS AGREEMENT, AND ALL OTHER TERMS AND PROVISIONS OF THIS AGREEMENT SHALL BE UNAFFECTED BY THE SAME AND CONTINUE IN FULL FORCE AND EFFECT.**

**Borrower:**

**CARDLYTICS, INC.**

**By** /s/ Scott Grimes
**Title** CEO

**Agent:**

**ALLY BANK**

**By** /s/ Illegible
**Title** Authorized Signatory

**Lender:**

**ALLY BANK**

**By** /s/ Illegible
**Title** Authorized Signatory

**Lender:**

**PACIFIC WESTERN BANK**

**By** /s/ Illegible
**Title** Senior Vice President

*[Signature Page—Loan and Security Agreement]*

**Schedule to**
**Loan and Security Agreement**

| | |
|---|---|
| **Borrower:** | **Cardlytics, Inc.** |
| **Address:** | **675 Ponce de Leon Avenue NE, Suite 6000** |
| | **Atlanta, Georgia 30308** |
| **Date:** | **September 14, 2016** |

This Schedule forms an integral part of the Loan and Security Agreement among ALLY BANK ("Ally"), PACIFIC WESTERN BANK ("PWB"), and the borrower named above (the "Borrower") of even date, and all references to "this Loan Agreement" include this Schedule.

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**1. LOANS; CREDIT LIMIT**

(Section 1.1). Each Lender, severally, agrees to lend to the Borrower its Pro Rata Share of Loans hereunder, in a total amount not to exceed the lesser of (a) and (b) below (the "Credit Limit"):

(a) a total of $**50,000,000.00** at any one time outstanding (the "Maximum Credit Limit"); or

(b) **85%** (an "Advance Rate") of the amount of Borrower's Eligible Accounts (as defined in Section 8 above).

The Lenders' Pro Rata Shares of the Loans are as follows:

Ally: 60%; and
PWB: 40%.

Agent may, from time to time, adjust the Advance Rate, in its Good Faith Business Judgment, upon notice to Borrower, based on changes in collection experience with respect to Accounts, or other issues or factors relating to the Accounts or other Collateral or Borrower. Subject to the terms hereof, Loans may be borrowed, repaid and re-borrowed, until the Maturity Date. After the Maturity Date no further Loans will be made.

ACH Reserves: Lenders may reserve from Loans available hereunder an amount equal to $20,000, relating to ACH facilities provided by PWB to Borrower (which amount may be adjusted in the PWB's Good Faith Business Judgment, if Borrower's daily ACH limit with PWB exceeds $1,000,000, or if ACH returns exceed one percent).

**2. INTEREST.**

**Interest Rate** (Section 1.2):

A rate equal to the Prime Rate in effect from time to time, plus **3.50%** per annum, provided that the interest rate in effect on any day shall not be less than **7.00%** per annum, and provided that interest in each month shall not be less than **$87,500**. Interest shall be calculated on the basis of a 360-day year for the actual number of days elapsed. The interest rate applicable to the Obligations shall change on each date there is a change in the Prime Rate. Notwithstanding anything to the contrary contained in any Loan Document, the interest paid or agreed to be paid under the Loan Documents shall not exceed the maximum rate of non-usurious interest permitted by applicable law.

**3. FEES** (Section 1.4):

| | |
|---|---|
| Loan Fee: | $500,000, payable to Agent for the benefit of Lenders, concurrently herewith. |
| Unused Line Fee: | In the event, in any calendar quarter (or portion thereof at the beginning and end of the term hereof), the average daily principal balance of the Loans outstanding during the month is less than the Maximum Credit Limit, Borrower shall pay Agent for the benefit of Lenders an unused line fee in an amount equal to 0.50% per annum on the difference between the Maximum Credit Limit and the average daily principal balance of the Loans outstanding during the quarter, which unused line fee shall be computed and paid quarterly, in arrears, on the first day of the following month and upon termination of this Loan Agreement. |
| Administrative Fee: | $50,000 per annum (or prorata portion thereof at the end of the term hereof), payable on each anniversary of the date hereof and at the end of the term hereof. |

**4. MATURITY DATE**

(Section 6.1): March 14, 2019.

**5. FINANCIAL COVENANTS**

(Section 5.1): Borrower shall comply with each of the following covenants. Compliance shall be determined as of the end of each month, except as otherwise specifically provided below:

Minimum Liquidity: Borrower shall at all times maintain Liquidity of not less than $5,000,000.

As used herein, "Liquidity" means, on any day, the sum of (i) Borrower's unrestricted cash maintained in demand deposit accounts with one or more banks in the United States, subject to a deposit account control agreement in favor of Agent for the benefit of Lenders in form acceptable to Agent in its Good Faith Business Judgment, plus (ii) Loans available to be borrowed by Borrower hereunder, on such day.

Minimum Revenue: Borrower shall maintain revenue, determined in accordance with GAAP, in the following amounts for each twelve-month period ending at following dates:

| Twelve Months Ending | Minimum Revenue |
|---|---|
| 9/30/2016 | $ 88,000,000 |
| 10/31/2016 | $ 88,300,000 |
| 11/30/2016 | $ 88,500,000 |
| 12/31/2016 | $ 88,800,000 |
| 1/31/2017 | $ 91,700,000 |
| 2/28/2017 | $ 94,400,000 |
| 3/31/2017 | $ 97,600,000 |
| 4/30/2017 | $ 100,700,000 |
| 5/31/2017 | $ 103,300,000 |
| 6/30/2017 | $ 106,000,000 |
| 7/31/2017 | $ 109,500,000 |
| 8/31/2017 | $ 114,100,000 |
| 9/30/2017 | $ 118,300,000 |
| 10/31/2017 | $ 122,600,000 |
| 11/30/2017 | $ 127,700,000 |
| 12/31/2017 | $ 133,000,000 |
| 1/31/2018 | $ 137,000,000 |

| | |
|---|---|
| 2/28/2018 | $ 140,000,000 |
| 3/31/2018 | $ 144,000,000 |
| 4/30/2018 | $ 148,000,000 |
| 5/31/2018 | $ 152,000,000 |
| 6/30/2018 | $ 156,000,000 |
| 7/31/2018 | $ 160,000,000 |
| 8/31/2018 | $ 164,000,000 |
| 9/30/2018 | $ 169,000,000 |
| 10/31/2018 | $ 174,000,000 |
| 11/30/2018 | $ 180,500,000 |
| 12/31/2018 | $ 187,500,000 |
| 1/31/2019 | $ 193,000,000 |
| 2/28/2019 | $ 198,500,000 |

**6. REPORTING**

(Section 5.3):

Borrower shall provide Agent with the following, all of which shall be in form acceptable to Agent in its Good Faith Business Judgment:

(a) Monthly accounts receivable agings, aged by invoice date, with borrowing base certificate, within 30 days after the end of each month;

(b) Monthly accounts payable agings, aged by invoice date, within 30 days after the end of each month;

(c) Monthly unaudited financial statements, as soon as available, and in any event within 30 days after the end of each month;

(d) Annual operating budgets and financial projections (including income statements, balance sheets and cash flow statements, by month) for each fiscal year of Borrower within 60 days after the beginning of such fiscal year, approved by Borrower's board of directors;

(e) Annual financial statements, as soon as available, and in any event within 180 days following the end of Borrower's fiscal year, certified by, and with an unqualified opinion of, independent certified public accountants of nationally recognized standing or otherwise reasonably acceptable to Agent, provided that Borrower's annual audited financial statements for its 2015 fiscal year shall be provided to Agent by December 31, 2016;

(f) Each of the financial statements in subsections (c) and (e) above shall be accompanied by Compliance Certificates, in the form of Exhibit D hereto, signed by the Chief Financial Officer of Borrower, certifying that as of the end of such period Borrower was in full compliance with all of the terms and conditions of this Loan Agreement, and setting forth calculations showing compliance with the financial covenants set forth in this Agreement and such other information as Agent shall reasonably request;

(g) promptly upon receipt, each management letter prepared by Borrower's independent certified public accounting firm regarding Borrower's management control systems;

(h) such budgets, sales projections, operating plans or other financial information generally prepared by Borrower in the ordinary course of business as Agent may reasonably request from time to time; and

(i) within 30 days of the last day of each fiscal quarter, a report signed by Borrower, in form reasonably acceptable to Agent, listing any applications or registrations that Borrower has made or filed in respect of any Patents, Copyrights or Trademarks and the status of any outstanding applications or registrations, as well as any material change in Borrower's Intellectual Property, including but not limited to any subsequent ownership right of Borrower in or to any Trademark, Patent or Copyright not specified in exhibits to any Intellectual Property Security Agreement delivered to Agent by Borrower in connection with this Loan Agreement;

(j) Promptly (and in any event within two Business Days), notice in writing of the occurrence of any Default or Event of Default;

(k) Promptly (and in any event within two Business Days), notice in writing of any matter that has resulted or could reasonably be expected to result in a Material Adverse Change; and

(l) Promptly (and in any event within two Business Days), notice in writing of the threat or institution of, any material development in, any claim, suit, litigation, proceeding or investigation which could reasonably be expected to result in a Material Adverse Change.

**7. BORROWER INFORMATION:**

Borrower represents and warrants that the information set forth in the Borrower Information Certificate dated September 14, 2016, previously submitted to Agent (the "Representations") is true and correct as of the date hereof.

**8. ADDITIONAL PROVISIONS:**

(a) **Additional Conditions Precedent.** In addition to any other conditions to the first disbursement of the Loans set forth in this Loan Agreement, the first disbursement of the Loans is subject to the following additional conditions precedent:

**(1) Subordination of Existing Secured Indebtedness.** Columbia Partners, L.L.C. and Investment Management and National Electrical Benefit Fund ("Existing Secured Lenders") shall execute and deliver to Agent for the benefit of Lenders a Debt and Security Interest Subordination Agreement, in such form as Agent shall specify, subordinating all present and future Indebtedness of the Borrower to Existing Secured Lenders under that certain Credit Agreement dated as of July 21, 2016, to the Obligations, and subordinating the security interest granted to Existing Secured Lenders to the security interest in favor of Agent for the benefit of Lenders.

**(2) Subordination of Convertible Notes.** The holder of Borrower's outstanding convertible notes, issued pursuant to that certain Note Purchase Agreement dated as of April 26, 2016, shall execute and deliver to Agent for the benefit of Lenders a Subordination Agreement, in such form as Agent shall specify, subordinating all Indebtedness of the Borrower under such notes (which are in the total approximate amount of $27,000,000 presently outstanding) to the Obligations; provided that Subordination Agreements signed by the holders of up to $10,000 of such notes may be provided within 30 days after the date hereof.

**(3) Subordination of Other Indebtedness.** Aimia EMEA Limited ("Aimia') shall execute and deliver to Agent for the benefit of Lenders a Subordination Agreement, in such form as Agent shall specify, subordinating existing and future Indebtedness of the Borrower to Aimia in the amount of $23,673,836 to the Obligations.

**(4) Payment of Existing Indebtedness.** All Indebtedness to Silicon Valley Bank is paid in full.

**(1) Insurance Requirements.** In addition to the post-closing insurance requirements set forth below, Borrower shall provide Agent with the following with respect to the insurance requirements in Section 5.2 of this Loan Agreement:

**(i) Property Insurance**. An Acord Form 28 showing evidence of property insurance, naming Agent as a certificate holder.

**(ii) Liability Insurance.** An Acord Form 25 showing Agent as a certificate holder.

**(iii) Insurance Companies**. All insurance required pursuant to this Loan Agreement shall be issued by insurance companies in good standing with a current rating of A- or better by A.M. Best Company and a Financial Size Category of VIII or higher.

**(iv) Name and Address.** The Agent name and address format on all insurance related documentation shall be as follows:

Ally Bank, as agent
300 Park Avenue, 4th Floor
New York, New York 10022

**(b) Subordination of Inside Debt**. All present and future indebtedness of Borrower to its officers, directors and shareholders ("Inside Debt") shall, at all times, be subordinated to the Obligations pursuant to a subordination agreement on Agent's standard form. Borrower represents and warrants that there is no Inside Debt presently outstanding, except for Indebtedness referred to in Section 8(a) above. Prior to incurring any Inside Debt in the future, Borrower shall cause the person to whom such Inside Debt will be owed to execute and deliver to Agent a subordination agreement on Agent's standard form.

**(c) Deposit Accounts.**

**(1) Transfer of Deposit Accounts.** Within 90 days after the date hereof, Borrower shall (i) transfer all of its

Deposit Accounts to PWB, and (ii) transfer its primary investment accounts to PWB or PWB's Affiliates, and (iii) at all times thereafter maintain the foregoing with PWB or PWB's Affiliates; provided that Borrower may maintain up to a total not to exceed $250,000 in Deposit Accounts at other institutions, subject to a control agreement among Borrower, such institution and Agent, in form and substance satisfactory to Agent in its Good Faith Business Judgment.

**(2) Deposit Account Control Agreements.** Within 30 days after the date hereof (as such date may be extended by Agent in writing in its sole discretion), Borrower shall cause any other banks or other institutions where its Deposit Accounts or investment accounts are maintained to enter into control agreements with Agent, in form and substance satisfactory to Agent in its Good Faith Business Judgment and sufficient to perfect Agent's first-priority security interest in the same for the benefit of Lenders; provided that, in the case of the Deposit Accounts securing existing Bank Services Indebtedness and Existing Contingent LC Indebtedness, which are Permitted Liens, such control agreements (i) shall be provided within 60 days after the date hereof, and (ii) may provide that the Person to which the Bank Services Indebtedness and Existing Contingent LC Indebtedness is owing shall have a first-priority security interest in such Deposit Accounts to secure such Bank Services Indebtedness and Existing Contingent LC Indebtedness, respectively.

**(d) Foreign Subsidiaries; Foreign Assets.**

**(1) Representations.** Borrower represents and warrants that it has no partially-owned or wholly-owned Subsidiaries which are not Borrowers hereunder, except for Subsidiaries organized under the laws of a jurisdiction other than the United States or any state or territory thereof or the District of Columbia ("Foreign Subs"), which are as follows: Cardlytics UK Limited, a company organized under the laws of England and Wales (the "UK Sub").

**(2) Investments.** Borrower may make Investments in the Foreign Subs, in an aggregate amount not to exceed the amount necessary to fund the current operating expenses of the Foreign Subs (taking into account their revenue from other sources); provided that the total of

such investments and loans in any fiscal year to all such Foreign Subs shall not exceed $2,000,000. The foregoing shall constitute "Permitted Investments" for purposes of this Loan Agreement.

**(3) Foreign Assets.** Borrower covenants that the total amount maintained by Borrower in foreign bank accounts owned by Borrower shall not, at any time, exceed $250,000. Borrower shall not permit any of the assets of any of the Foreign Subs to be subject to any security interest, lien or encumbrance, except for Liens that would be Permitted Liens if the Foreign Sub was a Borrower hereunder (other than Liens securing Indebtedness for borrowed money), and Borrower shall not agree with any other Person to restrict its ability to cause a Foreign Sub to grant any security interest in, or lien or encumbrance on, its assets.

**(e) Perfection of Security Interest in Stock of Foreign Sub.** Within 60 days after the date hereof, Borrower shall execute and deliver all such documents as are necessary to grant Agent for the benefit of Lenders, a security interest in 100% of the non-voting stock and 65% of the voting stock of all classes of the UK Sub, as Agent's UK counsel shall recommend, together with certified resolutions or other evidence of authority with respect to the execution and delivery of such documents, and Borrower shall take such actions as shall be reasonably necessary in order to perfect such security interest. Throughout the term of this Loan Agreement, Borrower shall cause such documents and perfected security interest to continue in full force and effect.

**(f) Post-Closing Insurance Requirements.** Within 30 days after the date hereof, Borrower shall provide the following to Agent:

**(1) Property Insurance.** A Lender's Loss Payable endorsement showing Agent as a lender's loss payee.

**(2) Liability Insurance.** An endorsement to Borrower's liability insurance policy showing Agent as an additional insured.

**(g) Extensions of Deadlines.** Deadlines for actions by Borrower to complete matters set forth in this Section 8 after the date hereof may be extended by Agent from time to time in its sole discretion, provided such extension is in a written extension signed by Agent and delivered to Borrower. The granting of any such extension shall not be deemed to imply any agreement to provide any further extensions.

*[Signatures on Next Page]*

Form Version: -1.3 (04-16)
Document Version -4.1

Borrower:
CARDLYTICS, INC.

By /s/ Scott Grimes
Title CEO

Agent:
ALLY BANK

By /s/ Illegible
Title Authorized Signatory

Lender:
ALLY BANK

BY /s/ Illegible
Title Authorized Signatory

Lender:
PACIFIC WESTERN BANK

BY /s/ Illegible
Title Senior Vice President

*[Signature Page—Schedule to Loan and Security Agreement]*

**Exhibit A**

**Agented Credit Provisions**

**Exhibit A**

**Agented Credit Provisions**

8A.1 Certain Additional Definitions. As used in this Loan Agreement the following terms have the following meanings:

"Agent's Account" means the following Deposit Account of Agent:

Bank:
ABA No.:
Account Name:
Account No.:
Attention:
Reference:

"Commitment" means the commitment of the Lenders to make the Loans hereunder.

"Daily Loan Balance" means an amount calculated as of the end of each calendar day by subtracting (i) the cumulative principal amount paid by Agent to a Lender on a Loan from the date of this Agreement through and including such calendar day, from (ii) the cumulative principal amount on a Loan advanced by such Lender to Agent on that Loan from the date of this Agreement through and including such calendar day.

"Daily Interest Rate" means an amount calculated by dividing the interest rate payable on the Loans as of each calendar day by three hundred sixty (360).

"Daily Interest Amount" means an amount calculated by multiplying the Daily Loan Balance of a Loan by the associated Daily Interest Rate on that Loan.

"Defaulting Lender" means any Lender that (a) has failed to (i) fund all or any portion of its Loans within one (1) Business Day of the date such Loans were required to be funded hereunder unless such Lender notifies Agent and Borrower in writing that such failure is the result of such Lender's determination that one or more conditions precedent to funding (each of which conditions precedent, together with any applicable default, shall be specifically identified in such writing) has not been satisfied, or (ii) pay to Agent or any other Lender any other amount required to be paid by it hereunder within one (1) Business Day of the date when due, (b) has notified Borrower, Agent, in writing that it does not intend to comply with its funding obligations hereunder, or has made a public statement to that effect (unless such writing or public statement relates to such Lender's obligation to fund a Loan hereunder and states that such position is based on such Lender's determination that a condition precedent to funding (which condition precedent, together with any applicable default, shall be specifically identified in such writing or public statement) cannot be satisfied), (c) has failed, within three (3) Business Days after written request by Agent, to confirm in writing to Agent that it will comply with its prospective funding obligations hereunder (provided that such Lender shall cease to be a Defaulting Lender pursuant to this clause (c) upon receipt of such written confirmation by Agent

and Borrower), or (d) has, or has a direct or indirect parent company that has, (i) become the subject of any Insolvency Proceeding, or (ii) had appointed for it a receiver, custodian, conservator, trustee, administrator, assignee for the benefit of creditors or similar Person charged with reorganization or liquidation of its business or assets, including the Federal Deposit Insurance Corporation or any other state or federal regulatory authority acting in such a capacity. Any determination by Agent that a Lender is a Defaulting Lender under any one or more of clauses (a) through (d) above shall be conclusive and binding absent manifest error, and such Lender shall be deemed to be a Defaulting Lender upon delivery of written notice of such determination to Borrower, and each Lender.

"Funding Date" means the date of each funding of a Loan.

"Interest Ratio" means a number calculated by dividing the total amount of the interest on a Loan received by Agent with respect to the immediately preceding month by the total amount of interest on that Loan due from a Borrower during the immediately preceding month.

"Pro Rata Share" as to a Lender means: the percentage obtained by dividing (i) such Lender's Total Credit Exposure, by (ii) the sum of the Total Credit Exposures of all Lenders; provided that "Pro Rata Share of the Obligations" (or words of similar effect) at any time means the percentage obtained by dividing (i) the principal amount of the outstanding Loans owing to such Lender at such time, by (ii) the sum of the principal amount of the outstanding Loans owing to all Lenders at such time.

"Required Lenders" means, at any time, Lenders having Total Credit Exposures representing more than 50% of the Total Credit Exposures of all Lenders; provided that so long as the only Lenders are Ally and PWB, "Required Lenders" shall mean Ally and PWB. The Total Credit Exposure of any Defaulting Lender shall be disregarded in determining Required Lenders at any time and no Defaulting Lender shall constitute a "Required Lender".

"Total Credit Exposure" of all Lenders is $50,000,000. The "Total Credit Exposure" of Ally is $30,000,000 and the "Total Credit Exposure" of PWB is $20,000,000.

8A.2 Disbursement of Funds. Agent may, on behalf of Lenders, disburse funds to Borrower for Loans requested. Each Lender shall reimburse Agent on demand for all funds disbursed on its behalf by Agent, or if Agent so requests, each Lender will remit to Agent its Pro Rata Share of any Loan before Agent disburses same to Borrower. If Agent elects to require that each Lender make funds available to Agent prior to a disbursement by Agent to Borrower, Agent shall advise each Lender by telephone, fax or telecopy of the amount of such Lender's Pro Rata Share of the Loan requested by Borrower no later than 1:00 p.m. New York City time on the Funding Date applicable thereto, and each such Lender shall pay Agent such Lender's Pro Rata Share of such requested Loan, in same day funds, by wire transfer to Agent's account on such Funding Date.

8A.3 Settlements. Payments

(A) Loans and Payments.

(1) Fluctuation of Loan Balance. The Loan balance may fluctuate from day to day through Agent's disbursement of funds to, and receipt of funds from, Borrower. In order to minimize the frequency of transfers of funds between Agent and each Lender, subject to Agent's options set forth in Sections 8A.2 and 8A.4, Loans and repayments will be settled according to the procedures described in this Section 8A.3. Notwithstanding these procedures, each Lender's obligation to fund its portion of any advances made by Agent to Borrower will commence on the date such advances are made by Agent. Such payments will be made by such Lender without set off, counterclaim or reduction of any kind.

(2) Settlement Dates. Once each week or more frequently (including daily), if Agent so elects (each such day being a "Settlement Date"), Agent will advise each Lender by telephone, fax or telecopy of the amount of each such Lender's Pro Rata Share of the Loans outstanding. In the event payments are necessary to adjust the amount of such Lender's required Pro Rata Share of the Loan balance to such Lender's actual Pro Rata Share of the Loan balance as of any Settlement Date, the party from which such payment is due will pay the other, in same day funds, by wire transfer to the other's account not later than 3:00 p.m., New York City time, on the Business Day following the Settlement Date.

(3) Settlement Payments. On the first Business Day of each month ("Interest Settlement Date"), Agent will advise each Lender by telephone, fax or telecopy of the amount of such Lender's share of interest and fees on the Loans as of the end of the last day of the immediately preceding month. Provided that such Lender has made all payments required to be made by it under this Agreement, Agent will pay to such Lender, by wire transfer to such Lender's account (as specified by such Lender in writing to Agent) not later than 3:00 p.m., New York City time, on the next Business Day following the Interest Settlement Date, such Lender's share of interest and fees on the Loans. Such Lender's share of interest on the Loans will be calculated by adding together the Daily Interest Amounts for each calendar day of the prior month for the Loan and multiplying the total thereof by the Interest Ratio for the Loan. Such Lender's share of the Unused Line Fee payable under Section 3 of the Schedule for a month shall be an amount equal to (a)(i) such Lender's Pro Rata Share of the Maximum Credit Limit during such month, less (ii) such Lender's average Daily Loan Balance of the Loans for such month, multiplied by (b) the percentage specified regarding the Unused Line Fee in Section 3 of the Schedule. Such Lender's share of all other fees paid to Agent for the benefit of Lenders hereunder shall be paid and calculated based on such Lender's Pro Rata Share of the Total Credit Exposure, except that the Loan Fee payable under Section 3 of the Schedule shall be allocated $400,000 to Ally and $100,000 to PWB. To the extent Agent does not receive the total amount of any fee owing by Borrowers under this Agreement, each amount payable by Agent to a Lender under this Section 8A.3(A)(3) with respect to such fee shall be reduced on a pro rata basis based on their Pro Rata Share. Any funds disbursed or received by Agent pursuant to this Agreement, including, without limitation, under Sections 8A.2, 8A.3(A)(1), and 8A.4, prior to the Settlement Date for such disbursement or payment shall be deemed advances or remittances by Ally, in its capacity as a Lender, for purposes of calculating interest and fees pursuant to this Section 8A.3(A)(3).

(B) Return of Payments.

(1) Recovery after Non-Receipt of Expected Payment. If Agent pays an amount to a Lender under this Agreement in the belief or expectation that a related payment has been or will be received by Agent from Borrower and such related payment is not received by Agent, then Agent will be entitled to recover such amount from such Lender without set-off, counterclaim or deduction of any kind together with interest thereon, for each day from and including the date such amount is made available by Agent to such Lender to but excluding the date of repayment to Agent, at the greater of the Federal Funds Effective Rate and a rate determined by Agent in accordance with banking industry rules on interbank compensation.

(2) Recovery of Returned Payment. If Agent determines at any time that any amount received by Agent under this Agreement must be returned to Borrower or paid to any other Person pursuant to any requirement of law, court order or otherwise, then, notwithstanding any other term or condition of this Agreement, Agent will not be required to distribute any portion thereof to any Lender. In addition, each Lender will repay to Agent on demand any portion of such amount that Agent has distributed to such Lender, together with interest at such rate, if any, as Agent is required to pay to Borrower or such other Person, without set-off, counterclaim or deduction of any kind.

(C) Payments Pro Rata. Agent agrees that promptly after its receipt of each payment from or on behalf of Borrower in respect of any Obligations of such Borrower, it shall, except as otherwise provided in this Agreement, distribute such payment to the Lenders pro rata based upon their respective Pro Rata Shares, if any, of the Obligations with respect to which such payment was received.

8A.4 Discretionary Advances. Notwithstanding anything contained herein to the contrary, at any time after and during the continuance of a Default or Event of Default, Agent may, with the consent of the Required Lenders, for a period of not more than sixty (60) consecutive days make Loans in an aggregate amount of not more than $2,500,000 (but not in excess of the Maximum Credit Limit) for the purpose of preserving or protecting the Collateral or for incurring any costs associated with collection or enforcing rights or remedies against the Collateral, or incurred in any action to enforce this Agreement or any other Loan Document. Required Lenders may at any time revoke Agent's authorization to make further Loans under this Section 8A.4 by written notice to Agent.

Upon Agent's making of any Loans under this Section 8A.4, each of the Lenders shall be deemed to have irrevocably, unconditionally and immediately purchased from Agent a participation in such Loans in an amount equal to such Lender's Pro Rata Share multiplied by the total amount of such Loans outstanding under this Section 8A.4. Each Lender shall effect such purchase by making available the amount of such Lender's participation in such Loans in U.S. Dollars in immediately available funds to Agent's Account. In the event any Lender fails to make available to Agent when due the amount of such Lender's participation in such Loans, Agent shall be entitled to recover such amount on demand from such Lender together with interest at the Federal Funds Effective Rate. Each such purchase by a Lender shall be made without recourse to Agent, without representation or warranty of any kind, and shall be effected and evidenced pursuant to documents reasonably acceptable to Agent. The obligations of the

Lenders under this Section 8A.4 shall be absolute, irrevocable and unconditional, shall be made under all circumstances and shall not be affected, reduced or impaired for any reason whatsoever.

8A.5 Agent.

(A) Appointment. Each Lender hereto and, upon obtaining an interest in any Loan, any participant, transferee or other assignee of any Lender irrevocably appoints, designates and authorizes Ally as Agent to take such actions or refrain from taking such action as its agent on its behalf and to exercise such powers hereunder and under the other Loan Documents as are delegated by the terms hereof and thereof, together with such powers as are reasonably incidental thereto. Neither Agent nor any of its directors, officers, employees or agents shall be liable for any action so taken. The provisions of this Section 8A.5 are solely for the benefit of Agent and Lenders; Borrower shall not have any rights as a third party beneficiary of any of the provisions hereof. In performing its functions and duties under this Agreement and the other Loan Documents, Agent shall act solely as agent of Lenders and does not assume and shall not be deemed to have assumed any obligation toward or relationship of agency or trust with or for Borrower. Agent may perform any of its duties hereunder, or under the Loan Documents, by or through its agents or employees.

(B) Nature of Duties. Agent shall have no duties, obligations or responsibilities except those expressly set forth in this Agreement or in the Loan Documents. The duties of Agent shall be mechanical and administrative in nature. Agent shall not have, by reason of this Agreement, a fiduciary, trust or agency relationship with, or in respect of, any Lender or Borrower. Nothing in this Agreement or any of the Loan Documents, express or implied, is intended to, or shall be construed to, impose upon Agent any obligations in respect of this Agreement or any of the Loan Documents, except as expressly set forth herein or therein. Each Lender shall make its own appraisal of the credit worthiness of Borrower, and shall have independently taken whatever steps it considers necessary to evaluate the financial condition and affairs of Borrower, and Agent shall have no duty or responsibility, either initially or on a continuing basis, to provide any Lender with any credit or other information with respect thereto (other than as expressly required herein), whether coming into its possession before the date hereof or at any time or times thereafter. If Agent seeks the consent or approval of any Lenders to the taking or refraining from taking any action hereunder, then Agent shall send notice thereof to each Lender. Agent shall promptly notify each Lender any time that the Required Lenders have instructed Agent to act or refrain from acting pursuant hereto.

(C) Rights, Exculpation, Etc. Neither Agent nor any of its officers, directors, employees or agents shall be liable to any Lender for any action taken or omitted by them hereunder or under any of the Loan Documents, or in connection herewith or therewith, except that Agent shall be liable to the extent of its own gross negligence or willful misconduct as determined by a court of competent jurisdiction in a final and non-appealable judgment. Agent shall not be liable for any apportionment or distribution of payments made by it in good faith and if any such apportionment or distribution is subsequently determined to have been made in error, the sole recourse of any Lender to whom payment was due but not made, shall be to recover from other Lenders any payment in excess of the amount to which they are determined to be entitled (and such other Lenders hereby agree to return to such Lender any such erroneous

payments received by them). Neither Agent nor any of its agents or representatives shall be responsible to any Lender for any recitals, statements, representations or warranties herein or for the execution, effectiveness, genuineness, validity, enforceability, collectibility, or sufficiency of this Agreement or any of the Loan Documents or the transactions contemplated thereby, or for the financial condition of any Borrower. Agent shall not be required to make any inquiry concerning either the performance or observance of any of the terms, provisions or conditions of this Agreement or any of the Loan Documents or the financial condition of any Borrower, or the existence or possible existence of any Default or Event of Default. Agent may at any time request instructions from Lenders with respect to any actions or approvals which by the terms of this Agreement or of any of the Loan Documents Agent is permitted or required to take or to grant, and if such instructions are promptly requested, Agent shall be absolutely entitled to refrain from taking any action or to withhold any approval and shall not be under any liability whatsoever to any Person for refraining from any action or withholding any approval under any of the Loan Documents until it shall have received such instructions from Required Lenders or all or such other portion of the Lenders as shall be prescribed by this Agreement. Without limiting the foregoing, no Lender shall have any right of action whatsoever against Agent as a result of Agent acting or refraining from acting under this Agreement or any of the other Loan Documents in accordance with the instructions of Required Lenders in the absence of an express requirement for a greater percentage of Lender approval hereunder for such action.

(D) Reliance. Agent shall be under no duty to examine, inquire into, or pass upon the validity, effectiveness or genuineness of this Agreement, any other Loan Document, or any instrument, document or communication furnished pursuant hereto or in connection herewith. Agent shall be entitled to rely, and shall be fully protected in relying, upon any written or oral notices, statements, certificates, orders or other documents or any telephone message or other communication (including any writing, fax, email, telecopy or telegram) believed by it in good faith to be genuine and correct and to have been signed, sent or made by the proper Person, and with respect to all matters pertaining to this Agreement or any of the Loan Documents and its duties hereunder or thereunder. Agent shall be entitled to rely upon the advice of legal counsel, independent accountants, and other experts selected by Agent in its sole discretion.

(E) Indemnification. Lenders will reimburse and indemnify Agent for and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses (including, without limitation, attorneys' fees and expenses), advances or disbursements of any kind or nature whatsoever which may be imposed on, incurred by, or asserted against Agent in any way relating to or arising out of this Agreement or any of the Loan Documents or any action taken or omitted by Agent under this Agreement or any of the Loan Documents, in proportion to each Lender's Pro Rata Share of the Total Credit Exposure, but only to the extent that any of the foregoing is not promptly reimbursed by Borrower; provided, however, no Lender shall be liable for any portion of such liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses, advances or disbursements resulting from Agent's gross negligence or willful misconduct as determined by a final non-appealable judgment by a court of competent jurisdiction. If any indemnity furnished to Agent for any purpose shall, in the opinion of Agent, be insufficient or become impaired, Agent may call for additional indemnity and cease, or not commence, to do the acts indemnified against, even if so directed by Lenders or Required Lenders, until such additional indemnity is furnished.

The obligations of Lenders under this Section 8A.5(E) shall survive the payment in full of the Obligations and the termination of this Agreement.

(F) Ally Individually. With respect to its Commitments and the Loans made by it, Ally shall have and may exercise the same rights and powers hereunder and is subject to the same obligations and liabilities as and to the extent set forth herein for any other Lender. The terms "Lenders" or "Required Lenders" or any similar terms shall, unless the context clearly otherwise indicates, include Ally in its individual capacity as a Lender or one of the Required Lenders. Ally, either directly or through strategic affiliations, may lend money to, acquire equity or other ownership interests in, provide advisory services to, and generally engage in any kind of banking, trust or other business with, any Borrower as if it were not acting as Agent pursuant hereto and without any duty to account therefor to Lenders. Ally, either directly or through strategic affiliations, may accept fees and other consideration from any Borrower for services in connection with this Agreement or otherwise without having to account for the same to Lenders.

(G) Successor Agent.

(1) Resignation. Agent may resign from the performance of all of its agency functions and duties hereunder at any time by giving at least thirty (30) Business Days' prior written notice to Borrower and the Lenders. Such resignation shall take effect upon the acceptance by a successor Agent of appointment as provided below.

(2) Appointment of Successor. Upon any such notice of resignation pursuant to Section 8A.5(G)(1) above, Required Lenders shall appoint a successor Agent which, unless an Event of Default has occurred and is continuing, shall be reasonably acceptable to Borrower. If a successor Agent shall not have been so appointed within said thirty (30) Business Day period, the retiring Agent, upon notice to Borrower, shall then appoint a successor Agent who shall serve as Agent until such time, if any, as Required Lenders appoint a successor Agent as provided above.

(3) Successor Agent. Upon the acceptance of any appointment as Agent under the Loan Documents by a successor Agent, such successor Agent shall thereupon succeed to and become vested with all the rights, powers, privileges and duties of the retiring Agent, and the retiring Agent shall be discharged from its duties and obligations under the Loan Documents. After any retiring Agent's resignation as Agent, the provisions of this Section 8A shall inure to its benefit as to any actions taken or omitted to be taken by it while it was Agent.

(H) Collateral Matters.

(1) Release of Collateral. Lenders hereby irrevocably authorize Agent, at its option and in its discretion, to release any Lien granted to or held by Agent upon any Collateral (a) upon termination of the Commitments and upon payment and satisfaction of all Obligations (other than contingent indemnification obligations to the extent no claims giving rise thereto have been asserted); (b) constituting property being sold or disposed of, if a Borrower certifies to Agent that the sale or disposition is made in compliance with the provisions of this Agreement (and Agent may rely in good faith conclusively on any such certificate, without further inquiry), or (c) constituting property being sold or disposed with the consent of the Required Lenders.

(2) Confirmation of Authority; Execution of Releases. Without in any manner limiting Agent's authority to act without any specific or further authorization or consent by Lenders (as set forth in Section 8A.5(H)(1) above), each Lender agrees to confirm in writing, upon request by Agent or any Borrower, the authority to release any Collateral conferred upon Agent under clauses (a) (b) or (c) of Section 8A.5(H)(1). To the extent Agent agrees to release any Lien granted to or held by Agent as authorized under Section 8A.5(H)(1), (a) Agent is hereby irrevocably authorized by Lenders to, execute such documents as may be necessary to evidence the release of the Liens granted to Agent, for the benefit of Agent and the Lenders, upon such Collateral; provided, however, that Agent shall not be required to execute any such document on terms which, in Agent's opinion, would expose Agent to liability or create upon Agent any obligation or entail any consequence other than the release of such Liens without recourse or warranty, and (b) Borrower shall have provided at least ten (10) Business Days prior written notice of any request for any document evidencing such release of the Liens and Borrower agrees that any such release shall not in any manner discharge, affect or impair the Obligations or any Liens granted to Agent on behalf of Agent and Lenders upon (or obligations of any Borrower, in respect of) all interests retained by any Borrower, including, without limitation, the proceeds of any sale, all of which shall continue to constitute part of the property covered by this Agreement or the Loan Documents.

(3) Absence of Duty. Agent shall have no obligation whatsoever to any Lender or any other Person to assure that the property covered by this Agreement or the Loan Documents exists or is owned by any Borrower or is cared for, protected or insured or has been encumbered or that the Liens granted to Agent on behalf of Agent and Lenders herein or pursuant hereto have been properly or sufficiently or lawfully created, perfected, protected or enforced or are entitled to any particular priority, or to exercise at all or in any particular manner or under any duty of care, disclosure or fidelity, or to continue exercising, any of the rights, authorities and powers granted or available to Agent in this Agreement or in any of the Loan Documents, it being understood and agreed that in respect of the property covered by this Agreement or the Loan Documents or any act, omission or event related thereto, Agent may act in any manner it may deem appropriate, in its discretion, given Agent's own interest in property covered by this Agreement or the Loan Documents as one of the Lenders, and that Agent shall have no duty or liability whatsoever to any of the other Lenders; provided, however, that Agent shall exercise the same care which it would in dealing with loans for its own account.

(I) Agency for Perfection. Agent and each Lender hereby appoint each other Lender as agent for the purpose of perfecting Agent's security interest in assets which, in accordance with the Uniform Commercial Code in any applicable jurisdiction, can be perfected by possession or Control (as defined in the Code). Should any Lender (other than Agent) obtain possession of any such assets, such Lender shall notify Agent thereof, and, promptly upon Agent's request therefor, shall deliver such assets to Agent or in accordance with Agent's instructions. Agent may file such proofs of claim or documents as may be necessary or advisable in order to have the claims of Agent and the Lenders (including any claim for the reasonable compensation, expenses, disbursements and advances of Agent and the Lenders, their respective agents, financial advisors and counsel), allowed in any judicial proceedings relative to any Borrower and/or their Subsidiaries, or any of their respective creditors or property, and shall be entitled and empowered to collect, receive and distribute any monies, securities or other property payable or deliverable on any such claims. Any custodian in any judicial proceedings relative to

any Borrower and/or its Subsidiaries is hereby authorized by each Lender to make payments to Agent and, in the event that Agent shall consent to the making of such payments directly to the Lenders, to pay to Agent any amount due for the reasonable compensation, expenses, disbursements and advances of Agent, its agents, financial advisors and counsel, and any other amounts due Agent. Nothing contained in this Agreement or the other Loan Documents shall be deemed to authorize Agent to authorize or consent to, or accept or adopt on behalf of any Lender any plan of reorganization, arrangement, adjustment or composition affecting the Loans, or the rights of any holder thereof, or to authorize Agent to vote in respect of the claim of any Lender in any such proceeding, except as specifically permitted herein.

(J) Exercise of Remedies. Each Lender agrees that it will not have any right individually to enforce or seek to enforce this Agreement or any Loan Document or to realize upon any collateral security for the Obligations, unless instructed to do so by Agent, it being understood and agreed that such rights and remedies may be exercised only by Agent; provided that notwithstanding anything in this Section 8A.5 or any other provisions of this Agreement to the contrary, PWB shall have the sole right to enforce its security interest in separate, segregated Deposit Accounts specifically pledged to PWB to secure Bank Services Indebtedness and to apply the proceeds thereof to such Bank Services Indebtedness (up to the limit on Bank Services Indebtedness set forth in clause (vii) of the definition of "Permitted Indebtedness"). Without limiting the generality of the foregoing, none of Lenders may exercise any right that it might otherwise have under applicable law to credit bid at foreclosure sales, Uniform Commercial Code sales or other similar sales or dispositions of any of the Collateral except as authorized by the Required Lenders.

8A.6 Notice of Default. Agent shall not be deemed to have knowledge or notice of the occurrence of any Default or Event of Default except with respect to defaults in the payment of principal, interest and fees required to be paid to Agent for the account of Lenders, unless Agent shall have received written notice from a Lender or Borrower referring to this Agreement, describing such Default or Event of Default and stating that such notice is a "notice of default". Agent will notify each Lender of its receipt of any such notice.

8A.7 Action by Agent. Agent shall take such action with respect to any Default or Event of Default as may be requested by Required Lenders in accordance with Section 7 of this Loan Agreement. Unless and until Agent has received any such request, Agent may (but shall not be obligated to) take such action, or refrain from taking such action, with respect to any Default or Event of Default as it shall deem advisable or in the best interests of Lenders.

8A.8 Amendments, Waivers and Consents.

(A) Percentage of Lenders Required. Except as otherwise provided herein or in any of the other Loan Documents, no amendment, modification, termination or waiver of any provision of this Agreement or any other Loan Document, or consent to any departure by any Borrower therefrom, shall in any event be effective unless the same shall be in writing and signed by the Required Lenders (or, Agent, if expressly set forth herein or in any of the other Loan Documents) and the applicable Borrower. Any amendment, modification, termination, waiver or consent effected in accordance with this Section 8A shall be binding upon each Lender or future Lender and, if signed by a Borrower, on such Borrower.

(B) Specific Purpose or Intent. Each amendment, modification, termination, waiver or consent shall be effective only in the specific instance and for the specific purpose for which it was given. No amendment, modification, termination, waiver or consent shall be required for Agent to take additional Collateral.

(C) Failure to Give Consent; Replacement of Non-Consenting Lender. In the event Agent requests the consent of a Lender and does not receive a written consent or denial thereof within fifteen (15) Business Days after such Lender's receipt of such request, then such Lender will be deemed to have denied the giving of such consent. If, in connection with any proposed amendment, modification, termination or waiver of any of the provisions of this Agreement requiring the consent or approval of all Lenders, the consent of Ally is obtained but the consent of one or more other Lenders whose consent is required (whether as a "Required Lender" or otherwise) is not obtained, then Borrower or Agent shall have the right, so long as all such non-consenting Lenders are replaced as described below, to replace the non-consenting Lenders with one or more Replacement Lenders pursuant to Section 8A.10(B), as if such Lender were an Affected Lender thereunder, but only so long as each such Replacement Lender consents to the proposed amendment, modification, termination or waiver.

Notwithstanding anything in this Section 8A.8, Agent and Borrower, without the consent of either Required Lenders or all Lenders, may execute amendments to this Agreement and the Loan Documents, which consist solely of the making of typographical corrections.

(D) Return of Payments.

(1) Recovery after Non-Receipt of Expected Payment. If Agent pays an amount to a Lender under this Agreement in the belief or expectation that a related payment has been or will be received by Agent from any Borrower and such related payment is not received by Agent, then Agent will be entitled to recover such amount from such Lender without set-off, counterclaim or deduction of any kind together with interest thereon, for each day from and including the date such amount is made available by Agent to such Lender to but excluding the date of repayment to Agent, at the greater of the Federal Funds Effective Rate and a rate determined by Agent in accordance with banking industry rules on interbank compensation.

(2) Recovery of Returned Payment. If Agent determines at any time that any amount received by Agent under this Agreement must be returned to any Borrower or paid to any other Person pursuant to any requirement of law, court order or otherwise, then, notwithstanding any other term or condition of this Agreement, Agent will not be required to distribute any portion thereof to any Lender. In addition, each Lender will repay to Agent on demand any portion of such amount that Agent has distributed to such Lender, together with interest at such rate, if any, as Agent is required to pay to any Borrower or such other Person, without set-off, counterclaim or deduction of any kind.

8A.9 Set Off and Sharing of Payments.

(A) In addition to any rights now or hereafter granted under applicable law and not by way of limitation of any such rights, upon the occurrence and during the continuance of any Event of Default, each Lender is hereby authorized by each Borrower at any time or from time to

time, with reasonably prompt subsequent notice to such Borrower (any prior or contemporaneous notice being hereby expressly waived) to set off and to appropriate and to apply any and all (a) balances held by such Lender at any of its offices for the account of such Borrower or any of its Subsidiaries (regardless of whether such balances are then due to such Borrower or its Subsidiaries), and (b) other property at any time held or owing by such Lender to or for the credit or for the account of such Borrower or any of its Subsidiaries, against and on account of any of the Obligations; except that no Lender shall exercise any such right without the prior written consent of Agent; provided that in the event that any Defaulting Lender shall exercise any such right of setoff, (x) all amounts so set off shall be paid over immediately to Agent for further application in accordance with the provisions of Section 8A.3 and, pending such payment, shall be segregated by such Defaulting Lender from its other funds and deemed held in trust for the benefit of Agent and the Lenders, and (y) the Defaulting Lender shall provide promptly to Agent a statement describing in reasonable detail the Obligations owing to such Defaulting Lender as to which it exercised such right of setoff.

(B) If any Lender shall, by exercising any right of setoff or counterclaim or otherwise, obtain payment in respect of any principal of, or interest on, any of its Loans or other obligations hereunder resulting in such Lender receiving payment of a proportion of the aggregate amount of its Loans and accrued interest thereon or other such obligations greater than its Pro Rata Share thereof as provided herein, then the Lender receiving such greater proportion shall (a) notify Agent of such fact, and (b) purchase (for cash at face value) participations in the Loans and such other obligations of the other Lenders, or make such other adjustments as shall be equitable, so that the benefit of all such payments shall be shared by the Lenders ratably in accordance with the aggregate amount of principal of and accrued interest on their respective Loans and other amounts owing them; provided that if any such participations are purchased and all or any portion of the payment giving rise thereto is recovered, such participations shall be rescinded and the purchase price restored to the extent of such recovery, without interest

(C) Each Borrower consents to the foregoing and agrees, to the extent it may effectively do so under applicable law, that any Lender acquiring a participation pursuant to the foregoing arrangements may exercise against each Borrower rights of setoff and counterclaim with respect to such participation as fully as if such Lender were a direct creditor of each Borrower in the amount of such participation.

8A.10 Defaulting Lender.

(A) Availability of a Lender's Pro Rata Share.

(1) Lender's Amounts Available on a Funding Date. Unless Agent receives written notice from a Lender on or prior to any Funding Date that such Lender will not make available to Agent as and when required such Lender's Pro Rata Share of any requested Loan, Agent may assume that each Lender will make such amount available to Agent in immediately available funds on the Funding Date and Agent may (but shall not be so required), in reliance upon such assumption, make available to Borrower on such date a corresponding amount.

(2) Lender's Failure to Fund. A Defaulting Lender shall pay interest to Agent at the Federal Funds Effective Rate on the Defaulted Amount from the Business Day following

the applicable Funding Date of such Defaulted Amount until the date such Defaulted Amount is paid to Agent. A notice of Agent submitted to any Lender with respect to amounts owing under this subsection shall be conclusive, absent manifest error. If such amount is not paid when due to Agent, Agent, at its option, may notify Borrower of such failure to fund and, upon demand by Agent, Borrower shall pay the unpaid amount to Agent for Agent's account, together with interest thereon for each day elapsed since the date of such borrowing, at a rate per annum equal to the interest rate applicable at the time to the Loan made by the other Lenders on such Funding Date. The failure of any Lender to make available any portion of its Commitment on any Funding Date or to fund its participation in any advance made by Agent pursuant to Section 8A.4 shall not relieve any other Lender of any obligation hereunder to fund such Lender's Commitment on such Funding Date or to fund any such participation, but no Lender shall be responsible for the failure of any other Lender to honor its Commitment on any Funding Date or to fund any participation to be funded by any other Lender.

(B) Defaulting Lenders.

(1) Defaulting Lender Adjustments. Notwithstanding anything to the contrary contained in this Agreement, if any Lender becomes a Defaulting Lender, then, until such time as such Lender is no longer a Defaulting Lender, to the extent permitted by Applicable Law:

(a) Waivers and Amendments. Such Defaulting Lender's right to approve or disapprove any amendment, waiver or consent with respect to this Agreement and the other Loan Documents shall be restricted as set forth in the definition of Required Lenders.

(b) Defaulting Lender Waterfall. Any payment of principal, interest, fees or other amounts received by Agent for the account of such Defaulting Lender (whether voluntary or mandatory, at maturity, or otherwise) shall be applied at such time or times as may be determined by Agent as follows: first, to the payment of any amounts owing by such Defaulting Lender to Agent hereunder; second, to any Lender which may have advanced any Loans or other sums or payments which the Defaulting Lender has failed to advance or pay (which shall be a matter of a Lender's sole discretion), the amount so advanced, with interest thereon at the highest rate payable by Borrower on the Loans; third, as Borrower may request (so long as no Default or Event of Default exists), to the funding of any Loan in respect of which such Defaulting Lender has failed to fund its portion thereof as required by this Agreement, as determined by Agent; fourth, if so determined by Agent and Borrower, to be held in a deposit account and released pro rata in order to satisfy such Defaulting Lender's potential future funding obligations with respect to Loans under this Agreement; fifth, to the payment of any amounts owing to Agent or the Lenders as a result of any judgment of a court of competent jurisdiction obtained by Agent or any Lender against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement; sixth, so long as no Default or Event of Default exists, to the payment of any amounts owing to Borrower as a result of any judgment of a court of competent jurisdiction obtained by Borrower against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement; and seventh, to such Defaulting Lender or as otherwise directed by a court of competent jurisdiction; provided that if (x) such payment is a payment of the principal amount of any Loans in respect of which such Defaulting Lender has not fully funded its appropriate share, and (y) such Loans were made at a time when the conditions to such Loans were satisfied or waived,

such payment shall be applied solely to pay the Loans of all Non-Defaulting Lenders on a pro rata basis prior to being applied to the payment of any Loans of such Defaulting Lender until such time as all Loans are held by the Lenders pro rata in accordance with their Pro Rata Shares. Any payments, prepayments or other amounts paid or payable to a Defaulting Lender that are applied (or held) to pay amounts owed by a Defaulting Lender pursuant to this subsection shall be deemed paid to and redirected by such Defaulting Lender, and each Lender irrevocably consents hereto.

(c) Certain Fees. No Defaulting Lender shall be entitled to receive any Unused Line Fee for any period during which that Lender is a Defaulting Lender (and Borrower shall not be required to pay any such fee that otherwise would have been required to have been paid to that Defaulting Lender). With respect to any Unused Line Fee not required to be paid to any Defaulting Lender pursuant to this subsection, Borrower shall not be required to pay any such fee, provided that, if another Lender has advanced any Loans which the Defaulting Lender was required to make, but did not advance, then such Unused Line Fee shall be payable to such Lender which advanced such Loans.

(2) Replacement of Defaulting Lender. Within fifteen (15) days after receipt by Borrower of written notice from Agent declaring any Lender a Defaulting Lender, Borrower may, at its option, without limiting any of its rights and remedies obtain, at Borrower's expense, a replacement Lender ("Replacement Lender") for a Defaulting Lender (the "Affected Lender"), which Replacement Lender shall be reasonably satisfactory to Agent. In the event Borrower obtains a Replacement Lender that will purchase all outstanding Obligations for the full amount thereof owed to such Affected Lender and assume its Commitments hereunder within ninety (90) days following notice of Borrower's intention to do so, the Affected Lender shall sell and assign its Loans and Commitments to such Replacement Lender in accordance with documentation reasonably satisfactory to Affected Lender and Replacement Lender.

(3) Defaulting Lender Cure. If Borrower and Agent agree in writing that a Lender is no longer a Defaulting Lender, Agent will so notify the parties hereto, whereupon as of the effective date specified in such notice and subject to any conditions set forth therein, that Lender will, to the extent applicable, purchase at par that portion of outstanding Loans of the other Lenders or take such other actions as Agent may determine to be necessary to cause the Loans to be held pro rata by the Lenders in accordance with their Pro Rata Shares, whereupon such Lender will cease to be a Defaulting Lender; provided that no adjustments will be made retroactively with respect to fees accrued or payments made by or on behalf of Borrower while that Lender was a Defaulting Lender; and provided, further, that except to the extent otherwise expressly agreed by the affected parties, no change hereunder from Defaulting Lender to Lender will constitute a waiver or release of any claim of any party hereunder arising from that Lender's having been a Defaulting Lender.

8A.11 Mutual Option to Purchase.

(A) Upon the occurrence and during the continuance of any of the following events or conditions (each, an "Option Trigger"): (i) an Event of Default shall occur and Required Lenders cannot agree on a course of action, or (ii) an Insolvency Event shall occur, a Lender (the "Buying Lender") shall have an option (the "Option") to purchase all of the Obligations owing to the other Lender (the "Selling Lender"), and all security and collateral therefor and all guarantees thereof for a purchase price (the "Purchase Price") equal to the total unpaid balance of Obligations, including all accrued and unpaid interest thereon, and all fees, costs and expenses (including without limitation attorneys fees) incurred by Selling Lender in connection therewith.

(B) The Option may be exercised by the Buying Lender at any time after the occurrence and during the continuance of an Option Trigger, by giving written notice thereof to the Selling Lender. (The first Lender to exercise the Option shall be the "Buying Lender" for purposes of this Section 8A.11.) Within ten business days after written notice of the exercise of the Option is given, the Buying Lender shall pay the Selling Lender the Purchase Price in immediately available funds, and the Selling Lender shall execute assignments of the Selling Lender's Obligations, all of Selling Lender's rights under this Agreement, and all documents and instruments relating thereto, in such form as the Buying Lender shall reasonably request, but without recourse, warranty or representation of any kind on the part of the Selling Lender, except a representation as to the unpaid balance of the Selling Lender's Obligations, and that Selling Lender has good title to the Selling Lender's Obligations, free and clear of any liens, claims or encumbrances.

(C) The Option shall lapse and be of no further force and effect if the Buying Lender fails to consummate the purchase in accordance with this Section 8A.11 within the ten-business day period specified above.

8A.12 Successors and Assigns.

(A) Successors and Assigns Generally. The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby, except that Borrower may not assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of Agent and Required Lenders, and no Lender may assign or otherwise transfer any of its rights or obligations hereunder except (i) to an assignee in accordance with the provisions of paragraph (B) of this Section 8A.12, (ii) by way of participation in accordance with the provisions of paragraph (D) of this Section 8A.12, (iii) by way of pledge or assignment of a security interest subject to the restrictions of paragraph (F) of this Section 8A.12 (and any other attempted assignment or transfer by any party hereto shall be null and void), or (iv) as provided in paragraph (E) of this Section 8A.12. Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby, Participants to the extent provided in paragraph (D) of this Section 8A.12, and, to the extent expressly contemplated hereby, affiliates of each of Agent and the Lenders) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(B) Assignments by Lenders. Any Lender may at any time assign to one or more assignees all or a portion of its rights and obligations under this Agreement (including all or a portion of its Commitment and the Loans at the time owing to it); provided that (in each case with respect to any Loans) any such assignment shall be subject to the following conditions:

(1) Minimum Amounts.

(a) in the case of an assignment of the entire remaining amount of the assigning Lender's Commitment and the Loans at the time owing to it or in the case of an assignment to a Lender or an Affiliate of a Lender, no minimum amount need be assigned; and

(b) in any case not described in paragraph (B)(1)(a) of this subsection, the aggregate amount of the Commitment (which for this purpose includes Loans outstanding thereunder) or, if the applicable Commitment is not then in effect, the principal outstanding balance of the Loans of the assigning Lender subject to each such assignment (determined as of the date the Assignment and Assumption Agreement with respect to such assignment is delivered to Agent) shall not be less than $5,000,000, unless Agent otherwise consents (each such consent not to be unreasonably withheld or delayed).

(2) Proportionate Amounts. Each partial assignment shall be made as an assignment of a proportionate part of all the assigning Lender's rights and obligations under this Agreement with respect to the Loan or the Commitment assigned.

(3) Required Consents. No consent shall be required for any assignment except to the extent required by paragraph (B)(1)(b) of this Section 8A.12 and, in addition:

(a) the consent of Borrower (such consent not to be unreasonably withheld or delayed) shall be required unless an Event of Default has occurred and is continuing at the time of such assignment; provided that Borrower shall be deemed to have consented to any such assignment unless it shall object thereto by written notice to Agent within five Business Days after having received notice thereof; and

(b) the consent of Agent (such consent not to be unreasonably withheld or delayed) shall be required for assignments, if such assignment is to a Person that is not a Lender or an Affiliate of such Lender.

(4) Assignment and Assumption. The parties to each assignment shall execute and deliver to Agent an Assignment and Assumption Agreement, together with a processing and recordation fee of $3,500; provided that Agent may, in its sole discretion, elect to waive such processing and recordation fee in the case of any assignment.

(5) No Assignment to Certain Persons. No such assignment shall be made (A) to Borrower or any of Borrower's Affiliates or Subsidiaries, or (B) to any Defaulting Lender or any of its Subsidiaries, or (C) to any Person who, upon becoming a Lender hereunder, would constitute any of the foregoing Persons described in this clause (5).

(6) No Assignment to Natural Persons. No such assignment shall be made to a natural Person.

(7) Certain Additional Payments. In connection with any assignment of rights and obligations of any Defaulting Lender hereunder, no such assignment shall be effective unless and until, in addition to the other conditions thereto set forth herein, the parties to the assignment shall make such additional payments to Agent in an aggregate amount sufficient, upon distribution thereof as appropriate (which may be outright payment, purchases by the assignee of participations or sub-participations, or other compensating actions, including funding, with the consent of Borrower and Agent, the applicable Pro Rata Share of Loans previously requested but not funded by the Defaulting Lender, to each of which the applicable assignee and assignor hereby irrevocably consent), to (x) pay and satisfy in full all payment liabilities then owed by such Defaulting Lender to Agent and each Lender hereunder (and interest accrued thereon), and (y) acquire (and fund as appropriate) its full Pro Rata Share of all Loans. Notwithstanding the foregoing, in the event that any assignment of rights and obligations of any Defaulting Lender hereunder shall become effective under applicable law without compliance with the provisions of this paragraph, then the assignee of such interest shall be deemed to be a Defaulting Lender for all purposes of this Agreement until such compliance occurs.

Subject to acceptance and recording thereof by Agent pursuant to paragraph (C) of this subsection, from and after the effective date specified in each Assignment and Assumption Agreement, the assignee thereunder shall be a party to this Agreement and, to the extent of the interest assigned by such Assignment and Assumption Agreement, have the rights and obligations of a Lender under this Agreement, and the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Assumption Agreement, be released from its obligations under this Agreement (and, in the case of an Assignment and Assumption Agreement covering all of the assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto) but shall continue to be entitled to the benefits of indemnities provided herein with respect to facts and circumstances occurring prior to the effective date of such assignment; provided, that except to the extent otherwise expressly agreed by the affected parties, no assignment by a Defaulting Lender will constitute a waiver or release of any claim of any party hereunder arising from that Lender's having been a Defaulting Lender. Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this paragraph shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with paragraph (D) of this Section.

(C) Register. Agent, acting solely for this purpose as an agent of Borrower, shall maintain at one of its offices in New York, New York a copy of each Assignment and Assumption Agreement delivered to it and a register for the recordation of the names and addresses of the Lenders, and the Commitments of, and principal amounts (and stated interest) of the Loans owing to, each Lender pursuant to the terms hereof from time to time (the "Register"). The entries in the Register shall be conclusive absent manifest error, and Agent and the Lenders shall treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement. The Register shall be available for inspection by Borrower and any Lender, at any reasonable time and from time to time upon reasonable prior notice.

(D) Participations. Any Lender may at any time, without the consent of, or notice to, Borrower or Agent, sell participations to any Person (other than a natural Person or Borrower or

any of Borrower's Affiliates or Subsidiaries) (each, a "Participant") in all or a portion of such Lender's rights and/or obligations under this Agreement (including all or a portion of its Commitment and/or the Loans owing to it); provided that (i) such Lender's obligations under this Agreement shall remain unchanged, (ii) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations, and (iii) Borrower, Agent, the Issuing Lenders and Lenders shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement. For the avoidance of doubt, each Lender shall be responsible for the indemnities provided in this Agreement with respect to any payments made by such Lender to its Participant(s).

Any agreement or instrument pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Agreement and to approve any amendment, modification or waiver of any provision of this Agreement. Each Lender that sells a participation shall, acting solely for this purpose as an agent of Borrower, maintain a register on which it enters the name and address of each Participant and the principal amounts (and stated interest) of each Participant's interest in the Loans or other obligations under the Loan Documents (the "Participant Register"); provided that no Lender shall have any obligation to disclose all or any portion of the Participant Register (including the identity of any Participant or any information relating to a Participant's interest in any commitments, loans, letters of credit or its other obligations under any Loan Document) to any Person except to the extent that such disclosure is necessary to establish that such commitment, loan, letter of credit or other obligation is in registered form under Section 5f. 103-1(c) of the United States Treasury Regulations. The entries in the Participant Register shall be conclusive absent manifest error, and such Lender shall treat each Person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary. For the avoidance of doubt, Agent (in its capacity as Agent) shall have no responsibility for maintaining a Participant Register.

(E) Security Interests; Assignment to Affiliates. Notwithstanding any other provision set forth in this Agreement, any Lender may at any time following written notice to Agent (1) pledge the Obligations held by it or create a security interest in all or any portion of its rights under this Agreement or the other Loan Documents in favor of any Person; provided, however (a) no such pledge or grant of security interest to any Person shall release such Lender from its obligations hereunder or under any other Loan Document, and (b) the acquisition of title to such Lender's Obligations pursuant to any foreclosure or other exercise of remedies by such Person shall be subject to the provisions of this Agreement and the other Loan Documents in all respects including, without limitation, any consent required by this Section 8A.12.

**Exhibit B**

**Notice of Borrowing**

***[To be printed on Borrower's letterhead]***

**Request for Loan**

Date: , 20

Ally Bank,
300 Park Avenue,
Fourth Floor,
New York, NY 10022

Ladies and Gentlemen:

Reference is made to the Loan and Security Agreement dated as of September 14, 2016 (as amended, restated, supplemented or otherwise modified from time to time, the "Loan Agreement") by and among CARDLYTICS, INC. ("Borrower"), ALLY BANK, as Agent, and ALLY BANK and PACIFIC WESTERN BANK ("Lenders"). Capitalized terms used but not defined herein shall have the meanings given such terms in the Loan Agreement. Pursuant to the Loan Agreement, Borrower gives notice that it hereby requests a Loan under the Loan Agreement in the amount of $ on , 20 ..

The Borrower hereby certifies that the representations and warranties contained in the Loan Agreement and in each other Loan Document, certificate or other writing delivered to the Agent and Lenders pursuant thereto are true and correct in all material respects on and as the date first above written (other than those which expressly relate only to a specific earlier date), and no Default or Event of Default has occurred and is continuing as of the date hereof or would result from such requested Loan requested hereby or from the application of proceeds thereof.

The proceeds of the Loan requested hereby should be transmitted to Borrower in accordance with the following wire transfer instructions:

Bank Name
City, State & ZIP
ABA Routing No.
Account Name:
Account No:
Amount:
Reference:

Very truly yours,

Cardlytics, Inc.

By: _____
Name:
Title:

**Exhibit C**

Existing Investments: None

**Exhibit D**

**Form of Compliance Certificate**

**COMPLIANCE CERTIFICATE**

TO: ALLY BANK ("Agent") Date: , 20
FROM: CARDLYTICS, INC. ("Borrower")

The undersigned authorized officer of Borrower certifies as follows under the terms and conditions of the Loan and Security Agreement dated September , 2016 among Borrower, Ally Bank as Agent and a Lender, and Pacific Western Bank as a Lender (as amended, the "Loan Agreement"), as of the date hereof: (1) Borrower is in complete compliance for the period ending , 20 ("Measurement Date") with the financial and reporting covenants of Borrower under the Loan Agreement and the other Loan Documents, except as noted below; (2) Borrower is in full compliance with all covenants and agreements of Borrower under the Loan Agreement and the other Loan Documents, and no Defaults or Events of Default have occurred, (3) all representations and warranties in the Loan Agreement and other Loan Documents are true and correct as of the date hereof (except to the extent that such representation or warranty relates to a particular date), (4) Borrower has timely filed all required tax returns and reports, and Borrower has timely paid all foreign, federal, state and local taxes, assessments, deposits and contributions owed by Borrower, except as otherwise permitted pursuant to the terms of the Loan Agreement, and (5) no Liens have been levied or claims made against Borrower relating to unpaid employee payroll or benefits. Enclosed are financial statements of Borrower as required by the Loan Agreement. The undersigned certifies that the enclosed financial statements have been prepared in accordance with GAAP consistently applied as required by the Loan Agreement. The undersigned acknowledges that no Loans or other credit accommodations may be requested at any time that Borrower is not in compliance with any of the terms of the Loan Agreement. Capitalized terms used but not otherwise defined herein shall have the meanings given them in the Loan Agreement.

**Please indicate compliance status by circling Yes/No under "Complies" column.**

| Reporting Covenant | Required | Complies |
|---|---|---|
| AR/AP agings | Monthly within 30 days after month end | Yes No |
| Monthly financial statements with Compliance Certificate | Monthly within 30 days after month end | Yes No |
| Quarterly IP Report | Quarterly within 30 days after quarter end | Yes No |
| Annual operating budgets and financial projections | Within 60 days after the end of the prior FYE | Yes No |
| Annual financial statement (CPA Audited) with Compliance Certificate | FYE within 180 days after FYE* | Yes No |

* except that annual audited financial statements for the 2015 fiscal year are to be provided to Agent by December 31, 2016.

| Financial Covenant | Required | Actual | Complies |
|---|---|---|---|
| Minimum Liquidity—at all times | $5,000,000. | $ (lowest) | Yes No |
| Minimum Adjusted Revenue for the 12 months ending , 20 . | | | Yes No |

The following Intellectual Property was registered after the date of the Loan Agreement (or if later since the last report) (if no registrations, state "None")

The following are the exceptions with respect to the certification above: (If none exceptions exist, state “None”)

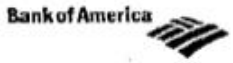
**Borrower:**

CARDLYTICS, INC.

By: _____

Name: _____
Title: _____

**[***] = CERTAIN CONFIDENTIAL INFORMATION CONTAINED IN THIS DOCUMENT, MARKED BY BRACKETS, HAS BEEN OMITTED AND FILED SEPARATELY WITH THE SECURITIES AND EXCHANGE COMMISSION PURSUANT TO RULE 406 OF THE SECURITIES ACT OF 1933, AS AMENDED.**




**General Services Agreement**

| | |
|---|---|
| Agreement Number: | CW251208 |
| Effective Date: | 11/5/10 |
| Expiration Date: | 11/4/15 |
| Company Name: | Cardlytics, Inc. |
| Company Address: | 621 North Avenue NE<br>Suite C-30<br>Atlanta, GA 30308 |
| Company Telephone: | 888.798.5802 |

This GENERAL SERVICES AGREEMENT ("Agreement") is entered into as of the Effective Date by and between Bank of America, N.A, ("Bank of America"), a national banking association, and the above-named Supplier, a corporation, and consists of this signature page and attached Terms and Conditions, Schedules, and all other documents attached hereto, which are incorporated in full by this reference.

**Cardlytics, Inc.**

By: /s/ Scott Grimes
Name: Scott Grimes
Title: Chief Executive Officer
Date: 11/8/10

Address for Notices:

Cardlytics, Inc.
621 North Ave NE
Suite C-30
Atlanta, Ga 30030
ATTN: Scott Grimes
Telephone: 888.798.5802
Email:

**Bank of America, N.A.**

By: /s/ Chandra Torrence
Name: Chandra Torrence
Title: V.P., Sourcing Manager
Date: 11/5/10

Address for Notices: [Supply Chain Management Contact]

Mailcode NC1-023-09-01
Bank of America
525 N Tryon St
Charlotte, NC 28255
ATTN: Chandra Torrence
Telephone: [***]
Email: [***]

With a copy to:

Bank of America Legal Department Contact
101 S. Tryon Street
Charlotte, NC 28255

**Table of Contents**

## 1.0 DEFINITIONS

1.1 All capitalized terms in this Agreement not defined in this Section shall have the meanings set forth in the Sections or Schedules of this Agreement in which they are defined.

1.2 Affiliate - a business entity now or hereafter controlled by, controlling or under common control with a Party. Control exists when an entity owns or controls directly or indirectly 50% or more of the outstanding equity representing the right to vote for the election of directors or other managing authority of another entity.

1.3 Associate Information – any non-public information about a Bank of America Representative, whether in paper, electronic, or other form that is maintained by or on behalf of Bank of America for a business purpose.

1.4 Bank Security Requirements - all bank security requirements as described in SCHEDULE D and the Bank of America Service Provider Security Requirements document provided separately.

1.5 Business Continuity Plan - the policies and procedures that describe contingency plans, recovery plans, and proper risk controls to ensure Supplier's continued performance under this Agreement.

1.6 Business Day - Monday through Friday, excluding days on which Bank of America is not open for business in the United States of America.

1.7 Consumer Information - any record about an individual, whether in paper, electronic, or other form, that is a consumer report as such term is defined in the Fair Credit Reporting Act (15 USC 1681 et seq.) or is derived from a consumer report and that is maintained or otherwise possessed by or on behalf of Bank of America for a business purpose. Consumer information also means a compilation of such records. The term does not include any record that does not identify an individual.

1.8 Customer Information - any record containing information about a customer, its usage of Bank of America's services, or about a customer's accounts, whether in paper, electronic, or other form that is maintained by or on behalf of Bank of America for a business purpose.

1.9 Effective Date – the date set forth on the signature page on which this Agreement takes effect.

1.10 Expiration Date – the date set forth on the signature page on which this Agreement expires, unless terminated earlier or extended under the terms hereof.

1.11 Information Security Program - the documents that describe how Supplier will provide Services to Bank of America in a manner that complies with the confidentiality and information security requirements of this Agreement and all pertinent Schedules and Exhibits hereto. Such information security program must be approved by Supplier's board of directors or equivalent executive management prior to the Effective Date thereof and annually thereafter. It must describe Supplier's network infrastructure and security procedures and controls that protect Confidential Information on a basis that meets or exceeds the Bank Security Requirements.

1.12 Intellectual Property Rights - all intellectual property rights throughout the world, including copyrights, patents, mask works, trademarks, service marks, trade secrets, inventions (whether or not patentable), know how, authors' rights, rights of attribution, and other proprietary rights and all applications and rights to apply for registration or protection of such rights.

1.13 Order - Statement of Work, purchase order, work order or other written instrument executed, or electronic transmissions originated by, an authorized officer of Bank of America Supply Chain Management directing Supplier in the provision of Services substantially conforming to a form provided to Supplier by Bank of America. Unless otherwise provided in writing, the business terms in each Order relating to description of Services, pricing, and performance standards shall apply only to such Order.

1.14 Party - Bank of America or Supplier.

1.15 Records - documentation of facts that include normal and customary documentation of facts or events for an industry, specific deliverables as designated, emails determined to be "records" because of the business or litigation purpose, any records documenting legal, regulatory, fiscal, or administrative requirements.

1.16 Relationship Manager - the employee designated by a Party to act on its behalf with regard to matters arising under this Agreement who shall be the person the other Party shall contact in writing regarding matters concerning this Agreement.

1.17 Representative - an employee, officer, director, or agent of a Party.

1.18 Services - the services as generally described in SCHEDULE A to this Agreement and as more specifically described in each Order, including without limitation all professional, management, labor and general services, together with any materials, supplies, products, tangible items or other goods Supplier furnishes in connection with such services.

1.19 Statement of Work ("SOW") - documents which document and constitute the description of Services Supplier will render to Bank of America and the fees for such Services.

1.20 Subcontractor - a third party to whom Supplier has delegated or subcontracted any portion of its obligations set forth herein.

1.21 Supplier Security Controls - those controls implemented by Supplier as part of its Information Security Program that address each of the Bank Security Requirements, as modified from time to time.

1.22 Term - the initial term of the Agreement or any renewal or extension.

1.23 Work Product - all information, data, materials, discoveries, inventions, works of authorship, documents, documentation, models, computer programs, software (including source code and object code), firmware, designs, drawings, specifications, processes, procedures, techniques, algorithms, diagrams, methods, and all tangible embodiments of each of the foregoing (in whatever form and media) conceived, created, reduced to practice or prepared by or for Supplier at the request of Bank of America pursuant to this Agreement or within the scope of Services provided under this Agreement, whether or not prepared on Bank of America's premises and all Intellectual Property Rights therein.

## 2.0 SCOPE OF THE AGREEMENT

2.1 Supplier shall perform the Services described in each applicable Order in accordance with this Agreement and the service levels, specifications and timeframes set forth in such Order, and in accordance with performance measurements set forth in SCHEDULE C, or an applicable Order.

2.2 Unless the Parties otherwise agree in writing, all Services provided hereunder shall be processed and/or provided, whether in part or in whole, by Supplier, its employees, Representatives and/or Subcontractors on and from a location or locations in one (1) or more of the fifty (50) states of the United States of America only, all subject to applicable laws and regulations.

2.3 To the extent available, all documentation will be provided in printed and electronic formats. Except as otherwise provided in Section 26.1 "Ownership of Work Product", Bank of America may use and reproduce for internal purposes all documentation furnished by Supplier, including displaying the documentation on Bank of America's intranet or other internal electronic distribution system, in part or in whole.

2.4 All instruments, such as Orders, acknowledgments, invoices, schedules and the like used in conjunction with this Agreement ("Instruments") shall be for the sole purpose of defining quantities, prices and describing the Services to be provided hereunder, and to this extent only are incorporated as a part of this Agreement. Any preprinted terms and conditions included in Instruments shall not be incorporated and such instrument shall be construed to modify, amend, or alter the terms of this Agreement solely for the purpose stated in the preceding sentence. Preprinted, standard, or posted terms and conditions in any media (including terms where acquiescence requires only a mouse click) shall not be incorporated into nor construed to amend the terms of this Agreement. Any Instrument submitted to Bank of America by Supplier in connection with this Agreement shall reference, as applicable, Order number and Agreement number.

2.5 Supplier shall deliver to Bank of America and keep current a list of persons and telephone numbers ("Calling List") for Bank of America to contact in order to obtain answers to questions related to the Services set out in the Order. The Calling List shall include (1) the first person to contact if a question arises or problem occurs and (2) the persons in successively more responsible or qualified positions to provide the answer or assistance desired. If Supplier does not respond promptly to any request by Bank of America for telephone consultative service, then Bank of America may attempt to contact the next more responsible or qualified person on the Calling List until contact is made and a designated person responds to the call.

2.6 Supplier expressly acknowledges and agrees that the rights of Bank of America set forth in this Agreement shall inure to all Bank of America Affiliates and such Affiliates may execute Orders and purchase Services hereunder.

## 3.0 RELATIONSHIP MANAGER

3.1 Each Party shall designate an employee Relationship Manager(s) to act on its behalf with regard to matters arising under this Agreement and shall notify the other Party in writing of the name of its Relationship Manager; however, the Relationship Manager shall have no authority to alter or amend any term, condition, or provision of this Agreement. Either Party may change its Relationship Manager(s) by providing the other Party prior written notice. The Relationship Manager must be identified in a writing delivered to the other Party at least one (1) week prior to the commencement of any work under this Agreement.

3.2 The Relationship Manager(s) shall meet via conference call with such frequency as Bank of America's Relationship Manager(s) shall reasonably request. Bank of America may require meetings in person at a site designated by Bank of America.

## 4.0 TERM OF AGREEMENT

4.1 This Agreement shall be in effect from the Effective Date through the Expiration Date indicated on the signature page ("Initial Term") unless terminated earlier or extended under the terms of this Agreement. Bank of America shall have the right to extend this Agreement for an additional twelve (12) months ('Renewal Term") by giving Supplier written notice of its intent at least thirty (30) calendar days prior to the end of the Initial Term or any Renewal Term. If Bank of America does not notify Supplier of its intent to renew or terminate this Agreement, the Agreement shall continue in effect on a month-to-month basis, at the prices in effect in each applicable Order, for the Term just expired, until terminated by either Party upon at least thirty (30) calendar days prior written notice to the other.

## 5.0 TERMINATION

5.1 Bank of America may terminate this Agreement or any Order under this Agreement for its convenience, without cause, at any time without further charge or expense upon at least forty-five (45) calendar days prior written notice to Supplier. Termination of one Order shall not cause a termination of this Agreement or any other Order, unless otherwise specified by Bank of America.

5.2 In addition to any other remedies available to either Party, upon the occurrence of a Termination Event (as defined below) with respect to either Party, the other Party may immediately terminate this Agreement or the Order that is subject of the Termination Event by providing written notice of termination. A Termination Event shall have occurred if: (a) a Party materially breaches its obligations under this Agreement or an Order under this Agreement, and the breach is not cured within thirty (30) calendar days after written notice of the breach and intent to terminate is provided by the other Party; (b) a Party becomes insolvent (generally unable to pay its debts as they become due) or the subject of a bankruptcy, conservatorship, receivership or similar proceeding, or makes a general assignment for the benefit of its creditors; (c) Supplier either: (i) merges with another entity, (ii) suffers a transfer involving fifty percent (50%) or more of

any class of its voting securities or (iii) transfers all, or substantially all, of its assets; (d) in providing Services hereunder, Supplier violates any law or regulation governing the financial services industry, or causes Bank of America to be in material violation of any law or regulation governing the financial services industry; (e) Bank of America has the right to terminate under the Section entitled "Pricing/Fees" or (f) a Party attempts to assign this Agreement in breach of the Section entitled "Non-Assignment." Breach of one Order shall not cause a breach of any other Order, unless otherwise specified in writing by the non- breaching Party in the applicable Order.

5.3 In addition to the Termination Events above, if (he Product License Schedule A of the Software License, Customization and Maintenance Agreement of even date between the parties to this Agreement expires, does not renew or terminates for any reason then Schedule A of this General Services Agreement shall terminate at the same time.

5.4 In the event of expiration or termination of this Agreement or an Order under this Agreement, Supplier agrees that upon the request of Bank of America, Supplier will, at no additional cost to Bank of America, continue uninterrupted operations, conclude and cooperate with Bank of America in the transition of the business at Bank of America's direction and in a manner that causes no material disruption to Bank of America business and operations. The fees associated with such transition shall be in accordance with the fees in effect at the expiration or termination of this Agreement. In no event shall the transition be more than three hundred sixty five (365) calendar days from the date of termination unless the Parties otherwise agree in writing. For the avoidance of doubt, Bank of America agrees to pay Supplier all undisputed fees for Services rendered up to the date of termination or expiration pursuant to the related terms hereunder. Reimbursement of all extraordinary costs and expenses incurred outside of the Agreement terms and conditions will be agreed upon by Supplier and Bank of America in writing prior to their incurrence.

5.5 The rights and obligations of the Parties which by their nature must survive termination or expiration of this Agreement in order to achieve its fundamental purposes including, without limitation, the provisions of the following Sections entitled "AUDIT," "CONFIDENTIALITY AND INFORMATION PROTECTION,'' "INDEMNITY," "LIMITATION OF LIABILITY" "MEDIATION/ARBITRATION," "OWNERSHIP OF WORK PRODUCT" and "MISCELLANEOUS," shall survive in perpetuity any termination of this Agreement.

## 6.0 PRICING/FEES

6.1 Bank of America and Supplier shall pay to each other for Services provided under this Agreement as set forth in Schedule B or an applicable Order.

6.2 Bank of America shall not be required to pay for Services that are; (a) not requested by Bank of America and documented in an Order, or (b) not meeting the requirements of this Agreement. Fees for additional Services not listed in SCHEDULE B or an applicable Order shall be as mutually agreed in writing between Bank of America and Supplier prior to performance. No fees for additional Services shall be due unless such Services and fees are agreed to in writing by Bank of America prior to Supplier's performance thereof.

## 7.0 INVOICES/TAXES/PAYMENT

7.1 Supplier shall submit monthly invoices to the address set forth on the signature page. Bank of America requires Supplier to bill for Services and tangible personal property separately. Bank of America also requires Supplier to include, on the face of the invoice, the "ship to" address for any purchase of tangible personal property and the location where the Services are performed. Bank of America requires Supplier to accept payment through electronic media in one of the following agreed upon methods; credit card using the Bank of America ePayables process, ACH or electronic check. In the event that the agreed upon method of payment is through the Bank of America ePayables process using purchase cards, the Supplier shall, at no additional cost to Bank of America, ensure Supplier has the capability to process purchasing cards, prior to submitting invoices to Bank of America. Supplier shall electronically invoice Bank of America using the Bank of America designated e-Procurement tool. Invoices shall contain such detail as Bank of America may reasonably require from time to time. Amounts shall be invoiced promptly after the Services performed or Work Product delivered. Amounts not invoiced by Supplier to Bank of America within three (3) months after such amounts could first be invoiced under this Agreement may not thereafter be invoiced, and Bank of America shall not be required to pay such amounts.

7.2 The items listed on Supplier's invoice must appear in the same sequence as listed on the Order.

7.3 Invoices omitting this Agreement reference number and Order number if applicable, or that are incorrect, incomplete or list Services that were not requested in writing by Bank of America will not be paid. The Relationship Manager for Bank of America will contact the Supplier Relationship Manager to address the situation informally prior to initiating the dispute resolution process under this Agreement.

7.4 Bank of America shall pay Supplier for all Services and applicable taxes invoiced in arrears in accordance with the terms of this Agreement, within sixty (60) calendar days of the date of receipt of a valid invoice by Bank of America, Bank of America reserves the right to pay prior to the expiration of the sixty (60) day period. If Bank of America pays within thirty (30) calendar days of receipt of a valid invoice by Bank of America, a discount of two percent (2%) will be subtracted from the total invoice amount for Services.

7.5 Invoices shall include and list all applicable sales, use, or excise taxes that are a statutory obligation of Bank of America as separate line items identifying each separate tax category and taxing authority. Bank of America will reimburse Supplier for all sales, use or excise taxes levied in accordance with the general statutes or other authoritative directives of the taxing authority on amounts payable by Bank of America to Supplier pursuant to this Agreement; however, Bank of America shall not be responsible for remittance of such taxes to applicable tax authorities.

7.6 Bank of America shall not be responsible for any ad valorem, income, *gross* receipts, franchise, privilege, value added or occupational taxes of Supplier. Bank of America and Supplier shall each bear sole responsibility for all taxes, assessments and other real or personal property-related levies on its owned or leased real or personal property. The Supplier must ensure that the business personal property tax exemption granted to financial institutions by California, Missouri, Virginia, Maryland, South Carolina, or other states is properly applied.

7.7 Supplier shall be responsible for the payment of all taxes, interest and penalties related to any assessment by a taxing authority as contemplated by Section 7.5 to the extent that Supplier fails to accurately and timely invoice Bank of America for such taxes and remit such taxes directly to the applicable taxing authority. In the event that a taxing authority performs a sample and projection audit of Bank of America, then Supplier shall be responsible for the payment of all projected tax amounts including all interest and penalties on any projected taxes assessed resulting from taxing errors identified by such taxing authority on Supplier's invoices, provided however, that Supplier shall receive timely notice that such invoice is included in a tax authority's audit and Supplier has the right to produce documentation to support that the tax was satisfied. In the event Supplier voluntarily registers to collect sales tax at some future date, and wishes to remit historical taxes Supplier deems due, Bank of America will only be responsible for the taxes due for the time period that Bank of America is statutorily obligated to the tax authorities in each state.

7.8 Supplier shall fully cooperate with Bank of America's efforts to identify taxable and nontaxable portions of amounts payable pursuant to this Agreement (including segregation of such portions on invoices) and to obtain refunds of taxes paid, where appropriate. Bank of America may furnish Supplier with certificates or other evidence supporting applicable exemptions from sales, use or excise taxation. If Bank of America pays or reimburses Supplier under this Section, Supplier hereby assigns and transfers to Bank of America all of its right, title and interest in and to any refund for taxes paid. Any claim for refund of taxes against the assessing authority may be made in the name of Bank of America or Supplier, or both, at Bank of America's option. Bank of America may initiate and manage litigation brought in the name of Bank of America or Supplier, or both, to obtain refunds of amounts paid under this Section. Supplier shall cooperate fully with Bank of America in pursuing any refund claims, including any related litigation or administrative procedures.

7.9 Supplier shall keep and maintain complete and accurate accounting Records in accordance with generally accepted accounting principles consistently applied to support and document all amounts becoming payable to Supplier hereunder. Upon request from Bank of America and within a reasonably prompt time

after such request, Supplier shall provide to Bank of America (or a Representative designated by Bank of America) access to such Records for the purpose of auditing such Records during normal business hours. Supplier shall retain all Records required under this Section in accordance with the Section entitled "Audit" of this Agreement, after the amounts documented in such Records become due. Supplier shall cooperate fully with Bank of America and any taxing authority involving any audit of sales, use or excise taxes. Upon request from Bank of America, Supplier will provide copies of invoices in electronic form that have been selected for review by any taxing authority, together with documents supporting the identification of taxable and nontaxable portions of amounts reflected on such invoices as contemplated by Section 7.8.

## 8.0 MUTUAL REPRESENTATIONS AND WARRANTIES

8.1 Each Party represents and warrants the following: (a) the Party's execution, delivery and performance of this Agreement: (i) have been authorized by all necessary corporate action, (ii) do not violate the terms of any law, regulation, or court order to which such Party is subject or the terms of any material agreement to which the Party or any of its assets may be subject and (iii) are not subject to the consent or approval of any third party; (b) this Agreement is the valid and binding obligation of the representing Party, enforceable against such Party in accordance with its terms; and (c) such Party is not subject to any pending or threatened litigation or governmental action which could interfere with such Party's performance of its obligations hereunder.

## 9.0 REPRESENTATIONS AND WARRANTIES OF SUPPLIER

9.1 In rendering its obligations under this Agreement, without limiting other applicable performance warranties, Supplier represents and warrants to Bank of America as follows: (a) Supplier is in good standing in the state of its incorporation and is qualified to do business as a foreign corporation in each of the other states in which it is providing Services hereunder; and (b) Supplier shall secure or has secured all permits, licenses, regulatory approvals and registrations required to render Services set forth herein, including without limitation, registration with the appropriate taxing authorities for remittance of taxes.

9.2 Supplier represents and warrants that it shall perform the Services in a timely and professional manner using competent personnel having expertise suitable to their assignments. Supplier represents and warrants that the Services shall conform to or exceed, in all material respects, the specifications described herein, as well as the standards generally observed in the industry for similar services. Supplier represents and warrants that neither performance nor functionality of the Services or systems is or will be affected by dates prior to, during and after the year 2000. Supplier represents and warrants that Services supplied hereunder shall be free of defects in workmanship, design and material. Supplier represents and warrants that the Work Product and Services furnished under this Agreement do not and shall not infringe, misappropriate or otherwise violate any Intellectual Property Rights or any other rights of any third party.

9.3 As of the Effective Date, there are no actions, suits or proceedings pending, or to the knowledge of Supplier threatened, against Supplier, Supplier's Representatives and Subcontractors alleging infringement, misappropriation or other violation of any Intellectual Property Rights related to any Work Product or Service contemplated by this Agreement.

9.4 Supplier shall, and shall be responsible for ensuring that Supplier's Representatives and Subcontractors shall, perform all obligations of Supplier under this Agreement in compliance with all laws, rules, regulations and other legal requirements.

9.5 Supplier represents and warrants that it is familiar with all applicable domestic and foreign antibribery or anticorruption laws, including those prohibiting Supplier, and, if applicable, its officers, employees, agents and others working on its behalf, from taking corrupt actions in furtherance of an offer, payment, promise to pay or authorization of the payment of anything of value, including but not limited to cash, checks, wire transfers, tangible and intangible gifts, favors, services, and those entertainment and travel expenses that go beyond what is reasonable and customary and of modest value, to: (i) an executive, official, employee or agent of a governmental department, agency or instrumentality, (ii) a director, officer, employee or agent of a wholly or partially government-owned or -controlled company or business, (iii) a political party or official

thereof, or candidate for political office, or (iv) an executive, official, employee or agent of a public international organization (e.g., the International Monetary Fund or the World Bank) ("Government Official"); while knowing or having a reasonable belief that all or some portion will be used for the purpose of: (a) influencing any act, decision or failure to act by a Government Official in his or her official capacity, (b) inducing a Government Official to use his or her influence with a government or instrumentality to affect any act or decision of such government or entity, or (c) securing an improper advantage; in order to obtain, retain, or direct business.

9.6 Supplier represents and warrants that it would now be in compliance with all applicable domestic or foreign antibribery or anticorruption laws, including those prohibiting the bribery of Government Officials, and will remain in compliance with all applicable laws; that it will not authorize, offer or make payments directly or indirectly to any Government Official; and that no part of the payments received by it from Bank of America will be used for any purpose that could constitute a violation of any applicable laws.

9.7 THE WARRANTIES CONTAINED IN THIS AGREEMENT ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THOSE OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

## 10.0 FINANCIAL RESPONSIBILITY

10.1 Upon Bank of America's request, Supplier shall promptly furnish its financial statements as prepared by or for Supplier in the ordinary course of its business, if Supplier is subject to laws and regulations of the U.S. Securities & Exchange Commission (SEC), the financial reporting and notification requirements contained herein shall be limited to all information that *can be* provided and in accordance with timelines which are legally permitted. Financial information provided hereunder shall be used by Bank of America solely for the purpose of determining Supplier's ability to perform its obligations under this Agreement. To the extent any such financial information is not otherwise publicly available, it shall be deemed Confidential Information (as defined in Section 15.1) of Supplier. If Bank of America's review of financial statements causes Bank of America to question Supplier's ability to perform its duties hereunder, Bank of America may request, and Supplier shall provide to Bank of America, reasonable assurances of Supplier's ability to perform its duties hereunder. Failure by Supplier to provide such reasonable assurances to Bank of America shall be deemed a material breach of this Agreement. Furthermore, Supplier shall notify Bank of America immediately in the event there is a change of control or material adverse change in Supplier's business or financial condition.

## 11.0 BUSINESS CONTINUITY

11.1 Supplier agrees to establish, maintain and implement per the terms thereof a Business Continuity Plan. The Business Continuity Plan must be in place and delivered to Bank of America within forty-five (45) calendar days after the Effective Date of this Agreement. The Business Continuity Plan shall be delivered annually thereafter and shall include, but not be limited to, the items called for in SCHEDULE F entitled "Recovery," as applicable. If Bank of America objects in writing to any provision of such plans and controls, Supplier shall respond in writing within thirty (30) calendar days, explaining, among other matters Supplier wishes to include in its response, the actions Supplier intends to take to cure Bank of America's objection.

11.2 Supplier agrees to establish, maintain and implement per the terms thereof a Business Continuity Plan. The Business Continuity Plan must be in place within forty-five (45) calendar days after the Effective Date of this Agreement, and shall include, but not be limited to, the items called for in SCHEDULE F entitled "Recovery," as applicable. Supplier shall provide the Business Continuity Plan to Bank of America upon Bank of America's request. If Bank of America objects in writing to any provision of such plans and controls, Supplier shall respond in writing within thirty (30) calendar days, explaining, among other matters Supplier wishes to include in its response, the actions Supplier intends to take to cure Bank of America's objection.

## 12.0 RELATIONSHIP OF THE PARTIES

12.1 The Parties are independent contractors. Nothing in this Agreement or in the activities contemplated by the Parties hereunder shall be deemed to create an agency, partnership, employment or joint venture relationship between the Parties or any of their Subcontractors or Representatives.

## 13.0 SUPPLIER PERSONNEL

13.1 Bank of America shall provide Supplier, if necessary and at a mutually agreed upon time, reasonable access to Bank of America to provide its Services, subject to the existing security regulations at Bank of America.

13.2 Supplier's personnel are not eligible to participate in any of the employee benefit or similar programs of Bank of America. Supplier shall inform all of its personnel providing Services pursuant to this Agreement that they will not be considered employees of Bank of America for any purpose, and that Bank of America shall not be liable to any of them as an employer for any claims or causes of action arising out of or relating to their assignment.

13.3 Upon the request of Bank of America, Supplier shall Immediately remove any of Supplier's Representatives or Subcontractors performing Services under this Agreement and replace such Representative or Subcontractor as soon as practicable. Upon the request of Bank of America, Supplier shall promptly, and after consultation with Bank of America, address any concerns or issues raised by Bank of America regarding any of Supplier's Representatives or Subcontractors performing Services under this Agreement, which may include, as appropriate, replacing such Representative or Subcontractor from the Bank of America account.

13.4 The engagement of a Subcontractor by Supplier shall be subject to Bank of America's prior written consent, which shall not be unreasonably withheld, and shall not relieve Supplier of any of its obligations under this Agreement. Supplier shall be responsible for the performance or nonperformance of its Subcontractors as if such performance or nonperformance were that of Supplier. Supplier shall require all Subcontractors, as a condition to their engagement, to agree to be bound by provisions substantially the same as those included in this Agreement particularly the Sections entitled "Supplier Personnel," "Insurance," "Confidentiality and Information Protection," "Audit" and "Business Continuity."

13.5 Supplier shall comply and shall cause its Representatives and Subcontractors to comply with all personnel, facility, safety and security policies, rules and regulations and other instructions of Bank of America, when performing work at a Bank of America facility or accessing any Bank of America systems or data, and shall conduct its work at Bank of America facilities or on Bank of America systems in such a manner as to avoid endangering the safety, or interfering with the convenience of, Bank of America Representatives or customers. Supplier understands that Bank of America operates under various laws and regulations that are unique to the security-sensitive banking industry. As such, persons engaged by Supplier to provide Services under this Agreement are held to a higher standard of conduct and scrutiny than in other industries or business enterprises. Supplier agrees that its Representatives and Subcontractors providing Services hereunder shall possess appropriate character, disposition and honesty. Supplier shall, to the extent permitted by law, exercise reasonable and prudent efforts to comply with the security provisions of this Agreement.

13.6 Supplier shall not knowingly permit a Representative or Subcontractor to have access to the Confidential Information, premises, records or data of Bank of America when such Representative or Subcontractor: (a) has been convicted of a crime or has agreed to or entered into a pretrial diversion or similar program in connection with: (i) a dishonest act or a breach of trust, as set forth in Section 19 of the Federal Deposit Insurance Act, 12 U.S.C. 1829(a); or (ii) a felony; or (b) uses illegal drugs. Notwithstanding anything in this Agreement to the contrary, Supplier shall conduct at its expense background checks on its employees and those of its Subcontractors who will have access (whether physical, remote, or otherwise and whether on or off Bank of America premises) to Bank of America facilities, equipment, systems or data and such background checks shall comply with Bank of America procedures and requirements as set forth in SCHEDULE E to this Agreement and updated in writing delivered to Supplier from time to time. Supplier shall report to Bank of America on background checks done, in accordance with the requirements of SCHEDULE E and prior to such employee being granted such access.

13.7 Supplier represents that it maintains comprehensive hiring policies and procedures which include, among other things, a background check for criminal convictions, and if requested by Bank of America, drug testing, all to the extent permitted by law. Supplier further represents that through its hiring policies and procedures including background checks, it endeavors to hire the best candidates with appropriate character, disposition, and honesty. In the event that Supplier employs non-U.S. citizens to provide Services hereunder, Supplier shall ensure that all such persons have and maintain appropriate visas to enable them to provide the Services.

13.8 Bank of America shall notify Supplier of any act of dishonesty or breach of trust committed against Bank of America, which may involve a Supplier Representative, or Subcontractor of which Bank of America becomes aware, and Supplier shall notify Bank of America if it becomes aware of any such offense. Following such notice, at the request of Bank of America and to the extent permitted by law, Supplier shall cooperate with investigations conducted by or on behalf of Bank of America.

13.9 To the extent Executive Order 13496 applies to this Agreement or the work performed hereunder, the text of 29 CFR Part 471, Appendix A to Subpart A (as amended, modified, restated or supplemented from time to time) is hereby incorporated by reference into this Agreement as if set forth fully herein. Supplier shall comply with all requirements set forth in 29 CFR Part 471, Appendix A to Subpart A, and all promulgated regulations applicable thereto (collectively, "EO 13496 Requirements"). At least annually, and on a more frequent basis as determined by Bank of America, Supplier shall certify in writing, in a form acceptable to Bank of America, that Supplier has fully complied with all E0 13496 Requirements. Failure to comply with the EO 13496 Requirements or the written certification requirements shall be deemed a material breach of this Agreement.

Supplier shall indemnify, defend, and hold harmless Bank of America and its Representatives, successors and permitted assigns from and against any and all claims or legal actions of whatever kind or nature that are made or threatened by any third party or government agency and all related losses, expenses, damages, costs and liabilities, including reasonable attorneys' fees and expenses incurred in investigation, defense or settlement, which arise out of, are alleged to arise out of, or relate to Supplier's failure to comply with the EO 13496 Requirements. Supplier's liability pursuant to this Subsection 13.9 shall not be subject to or limited in any way by the limitations set forth in Section 17.0, Limitation of Liability.

## 14.0 INSURANCE

14.1 Supplier shall at its own expense secure and continuously maintain, and shall require its Subcontractors to secure and continuously maintain, throughout the Term, the following insurance with companies qualified to do business in the jurisdiction in which the Services will be performed and rating A-Vll or better in the current Best's Insurance Reports published by A. M. Best Company and shall, within thirty (30) calendar days of the Effective Date and prior to commencing work, furnish to Bank of America certificates and required endorsements evidencing such insurance. Bank of America shall be named as an "Additional Insured" to the coverages described in Sections 14.1.3, 14.1.4 and 14.1.5 below for the purpose of protecting Bank of America from any expense and/or liability arising out of, alleged to arise out of, related to, or connected with the Services provided by Supplier and/or its Subcontractors. The certificates shall state the amount of all deductibles and self-insured retentions and shall contain evidence that the policy or policies shall not be canceled or materially altered without at least thirty (30) calendar days prior written notice to Bank of America. Supplier and its Subcontractors shall pay any and all costs which are incurred by Bank of America as a result of any such deductibles or self-insured retentions to the extent that Bank of America is named as an "Additional Insured," and to the same extent as if the policies contained no deductibles or self-insured retention. The insurance coverages and limits required to be maintained by Supplier and its Subcontractors shall be primary and non-contributory to insurance coverage, if any, maintained by Bank of America. Supplier and its Subcontractors and their underwriters shall waive subrogation against Bank of America and shall cause their insurer(s) to waive subrogation against Bank of America.

14.2 Supplier shall at its own expense secure and continuously maintain, and shall require its Subcontractors to secure and continuously maintain, throughout the Term, the following insurance with companies qualified to do business in the jurisdiction in which the Services will be performed and rating A-VII or better in the current Best's Insurance Reports published by A. M. Best Company and shall, upon Bank of America's request, be furnished to Bank of America certificates and required endorsements evidencing such insurance. Bank of America shall be named as an "Additional Insured" to the coverages described in Sections 14.1.3, 14.1.4 and 14.1.5 below for the purpose of protecting Bank of America from any expense and/or liability arising out of, alleged to arise out of, related to, or connected with the Services provided by Supplier and/or its Subcontractors. The certificates shall state the amount of all deductibles and self-insured retentions and shall contain evidence that the policy or policies shall not be canceled or materially altered without at least thirty (30) calendar days prior written notice to Bank of America. Supplier and its Subcontractors shall pay any and all costs which are incurred by Bank of America as a result of any such deductibles or self-insured retentions to the extent that Bank of America is named as an "Additional Insured," and to the same extent as if the policies contained no deductibles or self-insured retention. The insurance coverages and limits required to be maintained by Supplier and its Subcontractors shall be primary and non-contributory to insurance coverage, if any, maintained by Bank of America. Supplier and its Subcontractors and their underwriters shall waive subrogation against Bank of America and shall cause their insurer(s) to waive subrogation against Bank of America.

14.1 Insurance Coverages

14.1.1 Worker's Compensation Insurance which shall fully comply with the statutory requirements of all applicable state and federal laws.

14.1.2 Employers Liability Insurance which limit shall be $1,000,000 per accident for Bodily Injury and $1,000,000 per employee/aggregate for disease.

14.1.3 Commercial General Liability Insurance with a minimum combined single limit of liability of $1,000,000 per occurrence and $2,000,000 aggregate for bodily injury, death, property damage and personal injury. This policy shall include products/completed operations coverage and shall also include contractual liability coverage.

14.1.4 Business Automobile Liability Insurance covering all owned, hired and non-owned vehicles and equipment used by Supplier with a minimum combined single limit of liability of $1,000,000 for injury and/or death and/or property damage.

14.1.5 Excess coverage with respect to Sections 14.1.2, 14.1.3 and 14.1.4 above with a per occurrence limit of $5,000,000. The limits of liability required in subsections14.1.2, 14.1.3 and 14.1.4 may be satisfied by a combination of those policies with an Umbrella/Excess Liability policy.

14.1.6 Errors and Omissions coverage with a minimum limit of $5,000,000.

14.1.7 Supplier shall be responsible for loss to bank property and customer property, directly or indirectly, and shall maintain Fidelity Bond or Crime coverage for the dishonest acts of its employees in a minimum amount of $5,000,000. Supplier shall endorse such policy to include a "Client Coverage" or "Joint Payee Coverage" endorsement. Bank of America shall be named as "Loss Payee, As Their Interest May Appear" in such Fidelity Bond.

14.2 The failure of Bank of America to obtain certificates, endorsements, or other forms of insurance evidence from Supplier and its Subcontractors is not a waiver by Bank of America of any requirements for the Supplier and its Subcontractors to secure and continuously maintain the specified coverages. Supplier shall notify and shall advise its Subcontractors to notify insurers of the coverages required hereunder. Bank of America's acceptance of certificates and/or endorsements that in any respect do not comply with the requirements of this Section does not release the Supplier and its Subcontractors from compliance herewith. Should Supplier and/or its Subcontractors fail to secure and continuously maintain the insurance

coverage required under this Agreement, Supplier shall itself be responsible to Bank of America for all the benefits and protections that would have been provided by such coverage, including without limitation, the defense and indemnification protections.

## 15.0 CONFIDENTIALITY AND INFORMATION PROTECTION

15.1 The term "Confidential Information" shall mean this Agreement and all data, trade secrets, business information and other information of any kind whatsoever that a Party ("Discloser") discloses, in writing, orally, visually or in any other medium, to the other Party ("Recipient") or to which Recipient obtains access and that relates to Discloser or, in the case of Supplier, to Bank of America or its Representatives, customers, third-party vendors or licensors. Confidential Information includes Associate Information, Customer Information and Consumer Information, as defined in the Section entitled "Definitions." A "writing" shall include an electronic transfer of information by e-mail, over the internet or otherwise.

15.2 Supplier acknowledges that Bank of America has a responsibility to its customers and other consumers using its services to keep Associate Information, Customer Information and Consumer Information strictly confidential. Each of the Parties, as Recipient, hereby agrees that it will not, and will cause its Representatives, consultants, Affiliates and independent contractors not to disclose Confidential Information of the other Party, including Associate Information, Customer Information and Consumer Information, during or after the Term of this Agreement, other than on a "need to know" basis and then only to: (a) Affiliates of Bank of America; (b) Recipient's employees or officers; (c) Affiliates of Recipient, its independent contractors at any level, agents and consultants, provided that all such persons are subject to a written confidentiality agreement that shall be no less restrictive than the provisions of this Section; (d) pursuant to the exceptions set forth in 15 U.S.C 6802(e) and accompanying regulations, which disclosures are made in the ordinary course of business and (e) as required by law or as otherwise expressly permitted by this Agreement. Recipient shall not use or disclose Confidential Information of the other Party for any purpose other than to carry out this Agreement Recipient shall treat Confidential Information of the other Party with no less care than it employs for its own Confidential Information of a similar nature that it does not wish to disclose, publish or disseminate, but not less than a reasonable level of care. Upon expiration or termination of this Agreement for any reason or at the written request of Bank of America during the Term of this Agreement, Supplier shall promptly return to Bank of America or destroy according to the Information Destruction Requirements described within SCHEDULE D, "Information Security", at Bank of America's election, all Bank of America Confidential Information in the possession of Supplier or Supplier's Subcontractors, subject to and in accordance with the terms and provisions of this Agreement.

15.3 To the extent legally permitted, Recipient shall notify Discloser of any actual or threatened requirement of law to disclose Confidential Information promptly upon receiving actual knowledge thereof and shall cooperate with Discloser's reasonable, lawful efforts to resist, limit or delay disclosure. Nothing in this Section shall require any notice or other action by Bank of America in connection with requests or demands for Confidential Information by bank examiners.

15.4 Supplier shall not remove or download from Bank of America's premises or systems, the original or any reproduction of any notes, memoranda, files, records, or other documents, whether in tangible or electronic form, containing Bank of America's Confidential Information or any document prepared by or on behalf of Supplier that contains or is based on Bank of America's Confidential Information, without the prior written consent of an authorized Representative of Bank of America. Any document or media provided by an authorized Bank of America Representative or notes taken to document discussions with Bank of America Representatives pertaining to the Services performed hereunder will be deemed to fall outside this consent requirement unless otherwise stated by the Bank of America Representative.

15.5 With the exception of Associate Information, Customer Information and Consumer Information, the obligations of confidentiality in this Section shall not apply to any information that (i) Recipient rightfully has in its possession when disclosed to it, free of obligation to Discloser to maintain its confidentiality; (ii) Recipient independently develops without access to Discloser's Confidential Information; (iii) is or becomes known to the public other than by breach of this Section or (iv) is rightfully received by Recipient from a third party without the obligation of confidentiality. Any combination of Confidential Information disclosed

with information not so classified shall not be deemed to be within one of the foregoing exclusions merely because individual portions of such combination are free of any confidentiality obligation or are separately known in the public domain.

15.6 Bank of America may disclose Confidential Information of Supplier to independent contractors for the purpose of further handling, processing, modifying and adapting the Services for use by or for Bank of America, provided that such independent contractors have agreed to observe in substance the obligations of Bank of America set forth in this Section.

15.7 All Confidential Information disclosed by Bank of America and any results of processing such Confidential Information or derived in any way therefrom shall at all times remain the property of Bank of America. Supplier shall have responsibility for and bear all risk of loss or damage to Confidential Information and damages resulting from improper or inaccurate processing of such data arising from the negligence or willful misconduct of Supplier, its Representatives or Subcontractors.

15.8 Supplier acknowledges that Bank of America is required to comply with the information security standards required by the Gramm-Leach-Bliley Act (15 U.S.C. 6801, 6805(b)(1)) and the regulations issued thereunder (12 C.F.R. Part 40), the Fair and Accurate Credit Transactions Act (15 U.S.C. 1681, 1681w) and the regulations issued thereunder (12 C.F.R. Parts 30 and 41*)* and with other statutory, legal and regulatory requirements (collectively, "Privacy Laws"). If applicable. Supplier shall make commercial best efforts to assist Bank of America to so comply and shall comply and conform with applicable Privacy Laws, as amended from time to time, and with the Bank of America policies for information protection as modified by Bank of America from time to time.

15.9 Bank of America may, in its sole discretion and at any time during the Term of this Agreement, suspend, revoke or terminate Supplier's right to access Confidential Information upon written notice to Supplier. Upon receipt of that notice, Supplier shall (i) immediately stop accessing and/or accepting Confidential Information and (ii) promptly return to Bank of America or destroy according to the Information Destruction Requirements described within SCHEDULE D, "Information Security", at Bank of America's election, all Bank of America Confidential Information in the possession of Supplier or Supplier's Subcontractors, subject to and in accordance with the terms and provisions of this Agreement.

15.10 It is the understanding of the Parties, and a condition of this Agreement, that Supplier will not require access to any Customer or Consumer Information in order to perform under this Agreement in the event that access to such information is required for Supplier to perform its obligations, Bank of America reserves the right to amend the Agreement, in language mutually agreeable to the Parties, by including language that allows the Bank to discharge its regulatory obligations to evaluate the manner in which Supplier protects such Customer and Consumer Information. Supplier hereby acknowledges and agrees that Supplier has no legal right to access, receive, accept, transmit, store or otherwise impact Confidential Information under any circumstance whatsoever unless and until Bank of America has granted such rights to Supplier after the opportunity to determine the level of Supplier's compliance with the Bank Security Requirements and such other terms or conditions as Bank of America may require. After granting such rights to Supplier, Bank of America may suspend, revoke or terminate such rights in its sole discretion upon written notice to Supplier. Upon receipt of that notice, Supplier shall (i) immediately stop accessing and/or accepting Confidential Information and (ii) promptly return to Bank of America or destroy according to the Information Destruction Requirements described within SCHEDULE D, "Information Security", at Bank of America's election, all Bank of America Confidential Information in the possession of Supplier or Supplier's Subcontractors, subject to and in accordance with the terms and provisions of this Agreement.

15.11 As a condition of access to the Confidential Information of Bank of America, Supplier shall make available to Bank of America a copy of its written Information Security Program for evaluation. The program shall be designed to:

A. Ensure the security, integrity and confidentiality of Confidential Information;

B. Protect against any anticipated threats or hazards to the security or integrity of such Confidential Information;

C. Protect against unauthorized access to or use of such Confidential Information that could result in substantial harm or inconvenience to the person or entity that is the subject of such Confidential Information; and

D. Ensure the proper disposal of such Confidential Information.

15.12 At the request of Bank of America, Supplier shall make commercially reasonable modifications to its Information Security Program or to the procedures and practices thereunder to conform at least to the Bank Security Requirements, Supplier shall require any Subcontractors and other persons or entities who provide services to Supplier for delivery to Bank of America directly or indirectly or who hold Confidential Information to implement and administer an information protection program and plan that complies with Bank Security Requirements. Supplier shall include or shall cause to be included in written agreements with such Subcontractors or other persons or entities substantially the terms of this Section and the provisions of SCHEDULE D.

15.13 One aspect of the determination of Supplier compliance with Bank Security Requirements is a review of Supplier Security Controls. As a condition precedent to performance under this Agreement, Supplier agrees to satisfy the following validation requirements:

A. Participation in Bank of America's Supplier testing and assessment process including the completion of online and/or on-site assessment(s), as appropriate, and remediation of any findings;

B. Periodic discussions between Bank of America personnel and Supplier Information Technology. security personnel to review Supplier Security Controls; and

C. Delivery to Bank of America of network diagrams depicting Supplier perimeter controls and security policies and processes relevant to the protection of Confidential Information. Examples of these policies include, but are not limited to, access control, physical security, patch management, password standards, encryption standards, and change control.

15.14 During the course of performance under this Agreement, Supplier shall ensure the following:

A. Adequate governance and risk assessment processes are in place to maintain controls over Confidential Information. A security awareness program must be in place or implemented that communicates security policies to all Supplier (and Supplier Subcontractor(s)) personnel having access to Confidential Information.

B. Notification to Bank of America of changes that may impact the security of Confidential Information. Such changes requiring notification include, by way of example and not limitation, outsourcing of computer networking, data storage, management and processing or other information technology functions or facilities and the implementation of external web-enabled (Internet) access to Confidential Information.

C. Use of strong, industry-standard encryption of Confidential Information transmitted over public networks (e.g. Internet, non-dedicated leased lines) and backup tapes residing at off-site storage facilities.

15.15 Bank of America reserves the right to monitor Supplier-maintained platforms that reside on the Bank of America network. The Supplier may be required, at the expense of Bank of America, to assist with installation, support and problem resolution of Bank of America owned equipment or processes, or to provide an information feed from the Supplier platform to the Bank of America monitoring processes.

15.16 Supplier shall deliver an updated Information Security Program or confirm that no changes have been made to the Information Security Program annually.

15.17 To the extent Supplier will store, process, transmit or otherwise access or possess cardholder data in connection with the Services provided under this Agreement, Supplier understands and acknowledges its obligation to secure cardholder data and to adhere to the Payment Card Industry Data Security Standard (PCI DSS) for the protection of cardholder data throughout the Term of this Agreement and any Renewal Terms. The PCI DSS may be found at www.pcisecuritystandards.org. Supplier further understands it is responsible for the security of cardholder data in the possession or control of any Subcontractors it engages to perform under this Agreement. Such Subcontractors must be identified to and approved by Bank of America in writing prior to sharing cardholder data with the Subcontractor. In support of this obligation, Supplier shall provide appropriate documentation to demonstrate compliance with applicable PCI DSS requirements by Supplier and all identified Subcontractors. Failure to discharge this obligation may be considered by Bank of America to be a Termination Event under subsection (a) of the Section entitled "Termination".

## 16.0 INDEMNITY

16.1 Supplier shall indemnify, defend, and hold harmless Bank of America and its Representatives, successors and permitted assigns from and against any and all claims or legal actions of whatever kind or nature that are made or threatened by any third party and all related losses, expenses, damages, costs and liabilities, including reasonable attorneys' fees and expenses incurred in investigation, defense or settlement ("Damages"), which arise out of, are alleged to arise out of, or relate to the following: (a) any negligent act or omission or willful misconduct by Supplier, its Representatives or any Subcontractor engaged by Supplier in the performance of Supplier's obligations under this Agreement; or (b) any breach in a representation, covenant or obligation of Supplier contained in this Agreement.

16.2 Supplier shall defend or settle at its expense any threat, claim, suit or proceeding arising from or alleging infringement, misappropriation or other violation of any Intellectual Property Rights or any other rights of any third party by Work Product or Services furnished under this Agreement. Supplier shall indemnify and hold Bank of America, its Affiliates and each of their Representatives and customers harmless from and against and pay any Damages, including royalties and license fees attributable to such threat, claim, suit or proceeding.

A. If any Work Product or Services furnished under this Agreement, including, without limitation, software, system design, equipment or documentation, becomes, or in Bank of America's or Supplier's reasonable opinion is likely to become, the subject of any claim, suit, or proceeding arising from or alleging facts that if true would constitute infringement, misappropriation or other violation of, or in the event of any adjudication that such Work Product or Service infringes, misappropriates or otherwise violates, any Intellectual Property Rights or any other rights of a third party, Supplier, at its own expense, shall take the following actions in the listed order of preference: (a) secure for Bank of America the right to continue using the Work Product or Service; or if commercially reasonable efforts are unavailing, (b) replace or modify the Work Product or Service to make it non-infringing; provided, however, that such modification or replacement shall not degrade the operation or performance of the Work Product or Service.

B. The indemnity in the preceding provision shall not extend to any claim of infringement resulting solely from Bank of America's unauthorized modification or use of the Work Product or Service.

16.3 Bank of America shall give Supplier notice of, and the Parties shall cooperate in, the defense of any such claim, suit or proceeding, including appeals, negotiations and any settlement or compromise thereof, provided that Bank of America must approve the terms of any settlement or compromise that may impose any unindemnified or nonmonetary liability on Bank of America.

## 17.0 LIMITATION OF LIABILITY

17.1 Neither Party shall be liable to the other for any special, indirect, incidental, consequential, punitive or exemplary damages, including, but not limited to, lost profits, even if such Party alleged to be liable has knowledge of the possibility of such damages, provided, however, that the limitations set forth in this Section shall not apply to or in any way limit the obligations of the Section entitled "Indemnity," the Section entitled "Confidentiality and Information Protection," or Supplier's gross negligence or willful misconduct.

## 18.0 SUPPLIER DIVERSITY

18.1 Supplier acknowledges and supports the Bank of America Supplier Diversity efforts supporting minority, woman and disabled-owned business enterprises and its commitment to the participation of minority, woman and disabled-owned business enterprises in its procurement of goods and services.

18.2 **Definitions**: For purposes of this Agreement, the following are the definitions of "Minority-Owned Business Enterprise," "Minority Group," "Woman-Owned Business Enterprise," "Disabled Veteran-Owned Business Enterprise" and ' Disabled-Owned Business Enterprise:"

A. "Minority-Owned Business Enterprise" is recognized as a "for profit" enterprise, regardless of size, physically located in the United States or its trust territories, which is at least fifty-one (51%) percent owned, operated and controlled, by one or more member(s) of a Minority Group who maintain United States citizenship.

B. “Minority Group” means African Americans, Hispanic Americans, Native Americans (American Indians, Eskimos, Aleuts, and native Hawaiians), Asian-Pacific Americans, and other minority group as recognized by the United States Small Business Administration Office of Minority Small Business and Capital Ownership Development.

C. “Woman-Owned Business Enterprise” is recognized as a “for profit” enterprise, regardless of size, located in the United States or its trust territories, which is at least fifty-one (51%) percent owned, operated and controlled by a female of United States citizenship.

D. “Disabled Veteran-Owned Business Enterprise” is recognized as a “for profit” enterprise, regardless of size, located in the United States or its trust territories, which is at least fifty-one (51%) percent owned, operated, and controlled by a disabled veteran. The disabled veteran’s ownership and control shall be real and continuing and not created solely to take advantage of special or set aside programs aimed at supplier diversity. The Association of Service Disabled Veterans, www.asdv.org provides certification for this category of business owners throughout the United States.

E. “Disabled-Owned Business Enterprise” is recognized as a “for profit” enterprise, regardless of size, located in the United States or its trust territories, which is at least fifty-one (51%) percent owned, operated and controlled, by an individual of United States citizenship with a permanent mental or physical impairment that substantially limits one or more of the major life activities and which has a significant negative impact upon the company’s ability to successfully compete. The ownership and control shall be real and continuing and not created solely to take advantage of special or set aside programs aimed at supplier diversity. Due to the absence of a certifying agency for this category of business owners, the Disabled-Owned Business Enterprise must complete an affidavit and provide supporting documentation to be eligible for consideration towards diverse supplier participation.

18.3 In addition to the above criteria to qualify as a Minority, Woman or Disabled-Owned Business Enterprise under this Agreement, the diverse supplier must be certified by an agency acceptable to Bank of America.

18.4 **Participation Representation:** Supplier represents it is not a Minority, Woman, Disabled or Disabled-Veteran Owned Business Enterprise.

## 19.0 ENVIRONMENTAL INITIATIVE

19.1 Supplier acknowledges that Bank of America encourages each supplier with which it enters into an agreement for the provision of goods or services to use, consistent with the efficient performance of such agreements, recycled paper goods and other environmentally preferable products, and to implement and adhere to other environmentally beneficial policies and practices. Supplier warrants that Supplier uses environmentally beneficial practices specific to its industry that meet at least the minimum standard recommended for its industry. Upon Bank of America’s request, Supplier will provide written information on its environmental policies and procedures.

## 20.0 AUDIT

20.1 Supplier shall maintain at no additional cost to Bank of America, in a reasonably accessible location, all Records pertaining to its Services provided to Bank of America under this Agreement for a period of seven (7) years or as required by law, if longer. Such Supplier Records referenced above may be inspected, audited and copied by Bank of America, its Representatives or by federal or state agencies having jurisdiction over Bank of America, during normal business hours and at such reasonable times as Bank of America and Supplier may determine. Records available for review shall exclude any records pertaining to Supplier’s other customers deemed proprietary and confidential and Supplier confidential and proprietary records not associated with the Services provided under the Agreement, however Bank of America will be provided any Records necessary to confirm Supplier’s adherence to the Favorable Terms section in Schedule A of this Agreement.. Supplier will give prior notice to Bank of America of requests by federal or state authorities to examine Supplier’s Bank of America Records. At Bank of America’s written request, Supplier shall reasonably cooperate with Bank of America in seeking a protective order with respect to such Records.

20.2 Supplier shall provide at its expense on an annual basis, a copy of the latest SAS70 (Statement on Auditing Standards No. 70, Service Organizations) Type II independent audit firm report for facilities not managed by Bank of America that are used to provide Services under this Agreement. If not available, Supplier, at its sole cost and expense, will engage a nationally recognized certified public accounting firm to conduct the audit and prepare applicable reports. Each report will cover a minimum six (6) calendar month period each calendar year during the Term. Bank of America reserves the right to expand the scope of the controls to be covered in any SAS70-Type II audit report prepared during the Term. Supplier shall provide Bank of America with the scope of the audit and a complete copy of each report prepared in connection with each such audit within thirty (30) calendar days after it receives such report.

20.3 Supplier shall provide a copy of the latest operational audit for facilities not managed by Bank of America that are used to provide Services under this Agreement. If necessary, Supplier, at its sole cost and expense, will engage a nationally recognized certified public accounting firm to conduct the audit and prepare applicable reports. Each report will cover a minimum six (6) calendar month period each calendar year during the Term. Such audits may be on a rotating site basis where operations and procedures of Supplier Services provided to Bank of America are in multiple locations in order to confirm that Supplier is in compliance in all aspects of the Agreement. Supplier shall provide Bank of America with a copy of each report prepared in connection with each such audit within thirty (30) calendar days after it receives such report.

20.4 During regular business hours but no more frequently than once a year, Bank of America may, at its sole expense, perform a confidential audit of Supplier's operations as they pertain to the Services provided under this Agreement. Such audits shall be conducted on a mutually agreed upon date [which shall be no more than ten (10) Business Days after Bank of America's written notice of time, location and duration], subject to reasonable postponement by Supplier upon Supplier's reasonable request, provided, however, that no such postponement shall exceed twenty (20) Business Days. Bank of America will provide Supplier a summary of the findings from each report prepared in connection with any such audit and discuss results, including any remediation plans. If audit results find Supplier is not in substantial compliance with the requirements of this Agreement, then Bank of America shall be entitled, at Supplier's expense, to perform up to two (2) additional such audits in that year in accordance with the procedure set forth in this Section. Supplier agrees to promptly take action at its expense to correct those matters or items identified in any such audit that require correction. Failure to correct such matters shall be considered a material breach of this Agreement.

20.5 Supplier will provide reasonable access to Bank of America's federal and state governmental regulators (at a minimum, to the extent required by law), at Bank of America's expense, to Bank of America's Records held by Supplier and to the procedures and facilities of Supplier relating to the Services provided under this Agreement. Pursuant to 12 U.S.C. 1867(c), the performance of such Services will be subject to regulation and examination by the appropriate federal banking agency to the same extent as if the Services were being performed by Bank of America itself. Supplier acknowledges and agrees that regulatory agencies may audit Supplier's performance at any time during normal business hours and that such audits may include both methods and results under this Agreement.

20.6 Upon prior written notice and at a mutually acceptable time, Bank of America personnel or its Representatives (e.g., external audit consultants) may audit, test or inspect Supplier's Information Security Program and its facilities to assure Bank of America's data and Confidential Information are adequately protected. This right to audit is in addition to the other audit rights or assessments granted herein. Bank of America will determine the scope of such audits, tests or inspections, which may extend to Supplier's Subcontractors and other Supplier resources (other systems, environmental support, recovery processes, etc.) used to support the systems and handling of Confidential Information. Supplier will inform Bank of America of any internal auditing capability it possesses and permit Bank of America's personnel to consult on a confidential basis with such auditors at all reasonable times. Bank of America may provide Supplier a summary of the findings from each report prepared in connection with any such audit and discuss results,

including any remediation plans. Without limiting any other rights of Bank of America herein, if Supplier is in breach or otherwise not compliant with any of the provisions set forth in the Section of this Agreement entitled "Confidentiality and Information Protection" and/or SCHEDULE D, then Bank of America may conduct additional audits.

20.7 In addition to the requirements under this Section 20.0 and upon Bank of America's request, Supplier shall deliver to Bank of America, within thirty (30) calendar days after its receipt by its board of directors or senior management, a copy of any preliminary or final report of audit of Supplier by any third-party auditors retained by Supplier, including any management letter such auditors submit, and on any other audit or inspection upon which Bank of America and Supplier may mutually agree.

21.0 NON-ASSIGNMENT

21.1 Neither Party may assign this Agreement or any of the rights hereunder or delegate any of its obligations hereunder, without the prior written consent of the other Party, and any such attempted assignment shall be void, except that Bank of America or any permitted Bank of America assignee may assign any of its rights and obligations under this Agreement (including, without limitation, any individual Order) to any Bank of America Affiliate, the surviving corporation with or into which Bank of America or such assignee may merge or consolidate or an entity to which Bank of America or such assignee transfers all, or substantially all, of its business and assets. Bank of America may not unreasonably withhold its consent of assignment in the event the supplier merges or consolidates with another entity.

22.0 GOVERNING LAW

22.1 This Agreement shall be governed by the internal laws, and not by the laws regarding conflicts of laws, of the State of North Carolina. Each Party hereby submits to the exclusive jurisdiction of the courts of such state, and waives any objection to venue with respect to actions brought in such courts. This provision shall not be construed to conflict with the provisions of the Section entitled "Mediation/Arbitration."

23.0 DISPUTE RESOLUTION

23.1 The following procedure will be adhered to in all disputes arising under this Agreement which the Parties cannot resolve informally through their Relationship Managers. The aggrieved Party shall notify the other Party in writing of the nature of the dispute with as much detail as possible about the deficient performance of the other Party. The Relationship Managers shall meet (in person or by telephone) within seven (7) calendar days (or other mutually agreed upon date) after the date of the written notification to reach an agreement about the nature of the deficiency and the corrective action to be taken by the respective Parties. If the Relationship Managers do not meet or are unable to agree on corrective action, senior managers of the Parties having authority to resolve the dispute without the further consent of any other person ("Management") shall meet or otherwise act to facilitate an agreement within fourteen (14) calendar days (or other mutually agreed upon date) of the date of the written notification. If Management do not meet or cannot resolve the dispute or agree upon a written plan of corrective action to do so within seven (7) calendar days (or other mutually agreed upon date) after their initial meeting or other action, or if the agreed-upon completion dates in the written plan of corrective action are exceeded, either Party may request mediation and/or arbitration as provided for in this Agreement. Except as otherwise specifically provided, neither Party shall initiate arbitration, mediation or litigation unless and until this dispute resolution procedure has been substantially complied with or waived. Failure of a Party to fulfill its obligations in this Section, including failure to meet timely upon the other Party's notice, shall be deemed such a waiver.

24.0 MEDIATION/ARBITRATION

24.1 If the Parties are unable to resolve a dispute arising out of or relating to this Agreement in accordance with the Section entitled "Dispute Resolution," the Parties will in good faith attempt to resolve such dispute through non-binding mediation. The mediation shall be conducted before a mediator acceptable to both sides, who shall be an attorney or retired judge practicing in the areas of banking and/or information technology law. The mediation shall be held in Charlotte, N.C., provided, however, a dispute relating to infringement of Intellectual Property Rights or the Section entitled "Confidentiality and Information Protection" shall not be subject to this Section entitled "Mediation/Arbitration".

24.2 Any controversy or claim, other than those specifically excluded, between or among the Parties not resolved through mediation under the preceding provision, shall at the request of a Party be determined by arbitration. The arbitration shall be conducted by one independent arbitrator who shall be an attorney or retired judge practicing in the areas of banking and/or information technology law. The arbitration shall be held in Charlotte, N.C. in accordance with the United States Arbitration Act (9 U.S.C. 1 et seq.), notwithstanding any choice of law provision in this Agreement, and under the auspices and the Commercial Arbitration Rules of the American Arbitration Association.

24.3 Consistent with the expedited nature of arbitration, each Party will, upon the written request of the other Party, promptly provide the other with copies of documents relevant to the issues raised by any claim or counterclaim on which the producing Party may rely in support of or in opposition to any claim or defense. At the request of a Party, the arbitrator shall have the discretion to order examination by deposition of witnesses to the extent the arbitrator deems such additional discovery relevant and appropriate. Depositions shall be limited to a maximum of three (3) per Party and shall be held within thirty (30) calendar days of the making of a request. Additional depositions may be scheduled only with the permission of the arbitrator, and for good cause shown. Each deposition shall be limited to a maximum of three (3) hours duration. All objections are reserved for the arbitration hearing except for objections based on privilege and proprietary or confidential information. Any dispute regarding discovery, or the relevance or scope thereof, shall be determined by the arbitrator, which determination shall be conclusive. All discovery shall be completed within sixty (60) calendar days following the appointment of the arbitrator.

24.4 The arbitrator shall give effect to statutes of limitation in determining any claim, and any controversy concerning whether an issue is arbitrable shall be determined by the arbitrator. The arbitrator shall follow the law in reaching a reasoned decision and shall deliver a written opinion setting forth findings of fact, conclusions of law and the rationale for the decision. The arbitrator shall reconsider the decision once upon the motion and at the expense of a Party. The Section of this Agreement entitled “Confidentiality and Information Protection” shall apply to the arbitration proceeding, all evidence taken, and the arbitrator’s opinion, which shall be Confidential Information of both Parties. Judgment upon the decision rendered by the arbitrator may be entered in any court having jurisdiction.

24.5 No provision of this Section shall limit the right of a Party to obtain provisional or ancillary remedies from a court of competent jurisdiction before, after, or during the pendency of any arbitration. The exercise of a remedy does not waive the right of either Party to resort to arbitration. The institution and maintenance of an action for judicial relief or pursuit of a provisional or ancillary remedy shall not constitute a waiver of the right of either Party to submit the controversy or claim to arbitration if the other Party contests such action for judicial relief.

## 25.0 NON-EXCLUSIVE NATURE OF AGREEMENT

25.1 Supplier agrees that it shall not be considered Bank of America’s exclusive provider of any goods or Services provided hereunder. Bank of America retains the unconditional right to utilize other suppliers in the provision of similar services.

## 26.0 OWNERSHIP OF WORK PRODUCT

26.1 Bank of America will own exclusively all Work Product and Supplier hereby assigns to Bank of America all right, title and interest (including all Intellectual Property Rights) in the Work Product. Work Product, to the extent permitted by law, shall be deemed “works made for hire” (as that term is defined in the United States Copyright Act). Supplier shall provide Bank of America upon request with all assistance reasonably required to register, perfect or enforce such right, title and interest, including providing pertinent information and, executing all applications, specifications, oaths, assignments and all other instruments that Bank of America shall deem necessary. Supplier shall enter into agreements with all of its Representatives and Subcontractors necessary to establish Bank of America’s sole ownership in the Work Product. Bank of

America acknowledges Supplier's and its licensors' claims of proprietary rights in preexisting works of authorship and other intellectual property ("Pre-existing IP") Supplier uses in its work pursuant to this Agreement. Bank of America does not claim any right not expressly granted by this Agreement in such Pre-existing IP, which shall not be deemed Work Product, even if incorporated with Work Product in the Services Supplier delivers to Bank of America. Unless otherwise agreed in an Order, Supplier grants Bank of America a perpetual, worldwide, irrevocable, nonexclusive, royalty free license to any Pre-existing IP embedded in the Work Product, which shall permit Bank of America and any transferee or sublicensee of Bank of America, subject to the restrictions in this Agreement, to make, use, import, reproduce, display, distribute, make derivative works and modify such Pre-existing IP as necessary or desirable for the use of the Work Product.

26.2 Supplier shall promptly notify Bank of America in writing, of any threat, or the filing of any action, suit or proceeding, against Supplier, its Affiliates, Subcontractors or Representatives, (i) alleging infringement, misappropriation or other violation of any Intellectual Property Right related to any Work Product or Service furnished under this Agreement, or (ii) in which an adverse decision would reasonably be expected to have a material adverse effect on the Supplier or the use by Bank of America of the Work Product or Services furnished under this Agreement.

27.0 MISCELLANEOUS

27.1 Bank of America and Supplier represent that they are equal opportunity employers and do not discriminate in employment of persons or awarding of subcontracts because of a person's race, sex, age, religion, national origin, veteran or handicap status. Supplier is aware of and fully informed of Supplier's responsibilities and agrees to the provisions under the following: (a) Executive Order 11246, as amended or superseded in whole or in part, and as contained in Section 202 of the Executive Order as found at 41 C.F.R. § 60-1.4(a)(1-7); (b) Section 503 of the Rehabilitation Act of 1973 as contained in 41 C.F.R. § 60-741.4; and (c) The Vietnam Era Veterans' Readjustment Assistance Act of 1974 as contained in 41 C.F.R. § 60-250.4.

27.2 Section headings are included for convenience or reference only and are not intended to define or limit the scope of any provision of this Agreement and should not be used to construe or interpret this Agreement.

27.3 No delay, failure or waiver of either Party's exercise or partial exercise of any right or remedy under this Agreement shall operate to limit, impair, preclude, cancel, waive or otherwise affect such right or remedy. Any waiver by either Party of any provision of this Agreement shall not imply a subsequent waiver of that or any other provision of this Agreement.

27.4 If any provision of this Agreement is held invalid, illegal or unenforceable, the validity, legality or enforceability of the remaining provisions shall in no way be affected or impaired thereby.

27.5 No amendments of any provision of this Agreement shall be valid unless made by an instrument in writing signed by both Parties specifically referencing this Agreement. Notwithstanding anything therein to the contrary, the terms of any Order to this Agreement shall supplement and not replace or amend the terms or provisions of this Agreement and the terms and provisions of this Agreement shall control in the event of any conflict between such terms thereof and the terms and provisions of this Agreement and such conflict shall be resolved in favor of the express terms and provisions of this Agreement. The terms and provisions of this Agreement shall be incorporated by reference into any Order to this Agreement.

27.6 Anything in this Agreement to the contrary notwithstanding, the Parties hereby agree that thirty (30) calendar days after written notice by Bank of America of any amendment to this Agreement for compliance with a change in federal law, rule or regulation affecting financial services companies or the suppliers of financial services companies, this Agreement shall be amended by such notice and the amendment contained therein and without need for further action of the Parties, and the Agreement, as amended thereby, shall be enforceable against the Parties, their successors and assigns. The notice provided hereunder shall set forth such change and provide the relevant amendment to the Agreement. Bank of America shall have the right to terminate immediately the Agreement, without further liability to Supplier, in the event of Supplier's failure to comply with the terms and conditions of any such amendment to the Agreement.

27.7 This Agreement may be executed by the Parties in one or more counterparts, and each of which when so executed shall be an original but all such counterparts shall constitute one and the same instrument.

27.8 The remedies under this Agreement shall be cumulative and are not exclusive. Election of one remedy shall not preclude pursuit of other remedies available under this Agreement or at law or in equity. In arbitration a Party may seek any remedy generally available under the governing law.

27.9 Notwithstanding the general rules of construction, both Bank of America and Supplier acknowledge that both Parties were given an equal opportunity to negotiate the terms and conditions contained in this Agreement, and agree that the identity of the drafter of this Agreement is not relevant to any interpretation of the terms and conditions of this Agreement.

27.10 All notices or other communications required under this Agreement shall be given to the Parties in writing to the applicable addresses set forth on the signature page, or to such other addresses as the Parties may substitute by written notice given in the manner prescribed in this Section as follows: (a) by first class, registered or certified United States mail, return receipt requested and postage prepaid, (b) over-night express courier or (c) by hand delivery to such addresses. Such notices shall be deemed to have been duly given (i) five (5) Business Days after the date of mailing as described above, (ii) one (1) Business Day after being received by an express courier during business hours, or (iii) the same day if by hand delivery.

27.11 Wherever this Agreement requires either Party’s approval or consent such approval or consent shall not be unreasonably withheld or delayed.

27.12 This Agreement shall be binding upon, and inure to the benefit of, the Parties and their respective permitted successors and assigns. Except as expressly set forth in this Agreement and with the exception of the Affiliates of Bank of America, the Parties do not intend the benefits of this Agreement to inure to any third party, and nothing contained herein shall be construed as creating any right, claim or cause of action in favor of any such other third party, against either of the Parties hereto.

27.13 Any transaction undertaken pursuant to this Agreement in which Supplier furnishes services shall be governed by Article 2 of the Uniform Commercial Code as if the services were goods, unless the applicable law of the state of the governing law expressly otherwise provides.

27.14 Neither Party shall issue any media releases, public announcements and public disclosures, relating to this Agreement or use the name or logo of the other Party, including, without limitation, in promotional or marketing material or on a list of customers, provided that nothing in this paragraph shall restrict any disclosure required by legal, accounting or regulatory requirements beyond the reasonable control of the releasing Party.

28.0 ENTIRE AGREEMENT

28.1 This Agreement, the Schedules, and other documents incorporated herein by reference, is the final, full and exclusive expression of the agreement of the Parties and supersedes all prior agreements, understandings, writings, proposals, representations and communications, oral or written, of either Party with respect to the subject matter hereof and the transactions contemplated hereby. The Parties agree to accept a digital image of this Agreement, as executed, as a true and correct original and admissible as best evidence to the extent permitted by a court with proper jurisdiction.

[Schedules A and B to the General Services Agreement, dated as of November 5, 2010, have been superseded in their entirety by Schedules A and B to the Amendment to General Services Agreement, dated August 16, 2017. Schedule C to the General Services Agreement, dated as of November 5, 2010, has been superseded in its entirety by Schedule C to the Amendment to General Services Agreement, dated January 14, 2016.]

**INFORMATION SECURITY PROGRAM**

Bank of America shall have the opportunity to evaluate the Supplier's Information Security Program and Supplier Security Controls to ensure Supplier's compliance with the Section entitled "Confidentiality and Information Protection." The Supplier's Information Security Program (the "Program") shall address the Bank Security Requirements described below. This Program shall, at a minimum, prescribe the architecture of Supplier's system, Confidential Information placement within the system, the security controls in place (e.g. firewalls, web page security, intrusion detection, incident response process, etc.) and contain the information called for in the Subsection entitled "Security Program Features" below. The Program shall also describe physical security measures in place to protect Confidential Information received or processed by Supplier, including those that will protect Confidential Information that has been printed or otherwise displayed in forms perceptible with or without the aid of equipment. Bank of America shall provide Supplier with the Service Provider Security Requirements document outlining such Bank Security Requirements and Supplier Security Controls which shall be deemed a part of Bank of America's Confidential Information under this Agreement. Supplier acknowledges that upon request in order to be allowed continued access to Confidential Information, it will make modifications to its Information Security Program to add additional measures necessary to retain Information security standards consistent with the Bank Security Requirements.

**PRIVACY POLICY**

With respect to Confidential Information and the Services provided to or on behalf of Bank of America, Supplier promptly shall conform its publicly available privacy and security policies, in Bank of America's reasonable judgment, to those of Bank of America, as they may exist from time to time.

**PROTECTION**

Supplier shall install and use a reasonable change control process to ensure that access to its systems and to Confidential Information is controlled and recorded. Supplier shall notify Bank of America of any planned system configuration changes or other changes affecting the Program applicable to Confidential Information, setting forth how such change will impact the security and protection of Confidential Information. No such change, which could reasonably be expected by Bank of America to have a material adverse impact on the security and protection of Confidential Information, may be implemented without the prior written consent of a Bank of America security representative. Bank of America may approve these types of changes prior to their becoming effective, such approval not to be unreasonably withheld or delayed.

Supplier shall permit Bank of America, at the election of Bank of America, to conduct security vulnerability (penetration) testing on those portions of the Supplier network, and any application servers that Supplier hosts on behalf of Bank of America, on which Confidential Information is stored or processed. Such vulnerability testing shall be conducted in a non-production environment with production equivalent security controls and with prior notice to Supplier. Supplier also agrees to make available to Bank of America the results of any vulnerability testing conducted by Supplier or a qualified third party provider of this service.

Supplier shall permit Bank of America to inspect the physical system equipment, operational environment, and Confidential Information handling procedures. Supplier's agreement with any independent contractor to provide services to Bank of America in support of this Agreement shall likewise permit Bank of America to conduct the same inspections.

Subject to the terms of this Agreement and the Schedules attached hereto, Supplier will take commercial best measures to prevent the unintended or malicious loss, destruction or alteration of Bank of America's files, Confidential Information, software and other property received and held by Supplier. Supplier shall maintain backup files (including off-site back-up copies) thereof and of resultant output to facilitate their reconstruction in the case of such loss, destruction or alteration, in order to ensure uninterrupted Services in accordance with the terms of this Agreement, its Schedules, Bank of America's written policies and Supplier's disaster recovery plans.

**DETECTION AND RESPONSE**

Supplier shall notify Bank of America immediately (within 24 hours or as soon thereafter as practicable) following discovery of any suspected breach or compromise of the security, confidentiality, or integrity of nonpublic personal information of any current or former Bank of America employee or customer ("Affected Persons") or otherwise provided to Supplier by Bank of America under this agreement through the defined security escalation channel of Bank of America, the Bank of America Incident Response Team ("lnfoSafe") by calling (800) 207-2322, option 1. Callers will be asked to identify themselves as Supplier. Such notification to Bank of America shall precede notifications to any other party. Supplier shall cooperate fully with all Bank of America security investigation activities consistent with the lnfoSafe guidelines for escalation and control of significant security incidents.

Bank of America reserves the right in its sole discretion to make appropriate privacy breach notifications to Affected Persons and regulators pursuant to federal or state guidelines, including but not limited to the Interagency Guidance on Response Programs for Unauthorized Access to Customer Information and Customer Notice. To assist Bank of America in such notifications, Supplier shall include a brief summary of the available facts, the status of any investigation, and, if known, the potential number of Affected Persons. Supplier agrees to provide at no charge, to Affected Persons appropriate credit monitoring services for two years. All costs associated with any security breach, including but not limited to, the costs of the notices to, and credit monitoring for, Affected Persons shall be the sole responsibility of Supplier. Supplier agrees that it shall not communicate with any third party, including, but not limited to the media, vendors, consumers, and Affected Persons regarding any security breach without the express written consent of Bank of America. Supplier shall maintain for a mutually agreed-upon length of time, and afford Bank of America reasonable access to, all records and logs of that portion of Supplier's network that stores or processes Confidential Information. Bank of America may review and inspect any record of system activity or Confidential Information handling upon reasonable prior notice. Supplier acknowledges and agrees that records of system activity and of Confidential Information handling may be evidence (subject to appropriate chain of custody procedures) in the event of a Security Breach or other inappropriate activity. Upon the request of Bank of America, Supplier shall deliver the original copies of such records to Bank of America for use in any legal, investigatory or regulatory proceeding.

Supplier shall monitor industry-standard information channels (bugtraq, CERT, OEMs, etc.) for newly identified system vulnerabilities regarding the technologies and Services provided to Bank of America and fix or patch any identified security problem in an adequate and timely manner. Unless otherwise expressly agreed in writing, "timely" shall mean that Supplier shall introduce such fix or patch as soon as commercially reasonable after Supplier becomes aware of the security problem. This obligation extends to all devices that comprise Supplier's system, e.g., application software, databases, servers, firewalls, routers and switches, hubs, etc., and to all of Supplier's other Confidential Information handling practices.

Bank of America may perform vulnerability testing of Supplier's system to test the remediation measures implemented after a security incident or event to protect Confidential Information.

**SECURITY PROGRAM FEATURES**

At the request of Bank of America, Supplier shall meet with the Bank of America information security team to discuss information security issues in much greater detail at mutually agreeable times and locations.

Bank of America acknowledges and agrees that the Information Supplier so provides is Supplier's Confidential Information, as defined in this Agreement, and is valuable proprietary information of Supplier. Supplier shall provide detailed information including, but not limited to, the following topics, which also shall be addressed in Supplier's Program.

1. Diagrams. The diagrams shall show the detail of the system architecture including, without limitation, the logical topology of routers, switches, Internet firewalls, management or monitoring firewalls, servers (web, application and database), intrusion detection systems, network and platform redundancy. The diagrams shall include all hosting environments, including those provided by Supplier's Subcontractors.
2. Firewalls. State the specifications of the firewalls in use and who manages them. Specify the services, tools and connectivity required to manage the firewalls.

3. Intrusion Detection Systems. Describe the Intrusion detection system (“IDS”) environment and the Security Breach and event escalation process. Indicate who manages the IDS environment Specify the services, tools and connectivity required to manage the IDS environment, and if the IDS network is host based.
4. Change Management Describe the change management process for automated systems used to provide Services. Describe the process for information handling policies and practices.
5. Business Continuity. Describe the business and technical disaster recovery management process.
6. System Administration Access Control. Describe the positions that perform administration functions on servers, firewalls or other devices within the application and network infrastructure. Detail level of access needed to perform functions. Explain the access control mechanisms. Describe the process by which recurring access review of the system(s) is conducted to ensure permissions are granted on a “need to know’’ basis. Detail access reports generated and when reports are reviewed periodically. Describe methods used to track/log the usage of each account.
7. Customer Access Control. Describe each logon process to be followed by Bank of America Customers (including Bank of America employees) to obtain access to Services Supplier provides to Bank of America. Describe the initial enrollment process for such Customers. Describe the password policies and procedures Supplier’s system enforces, including, without limitation, password expiration, length of password, password revocation, invalid logon attempt threshold, etc. Describe methods used to track/log the usage of each account. Supplier shall demonstrate how a customer or end user authenticates to each application.
8. Access to Confidential Information in Human-Perceptible Forms. Describe policies, procedures and controls used to protect Confidential Information when it is printed or in other perceptible forms; how and how often these policies and procedures are reviewed and tested; and what methods are used to ensure destruction of Confidential Information on hard copy.
9. Operating System Baselines. Describe Supplier’s operating system security controls and configurations. Examples: Operating system services that have been removed because not required by Supplier’s Services to Bank of America. Identify and provide current operating system fixes that have not been applied, if any.
10. Encryption. Describe in detail the technology and usage of encryption for protecting Confidential Information, including passwords and authentication information, during transit and in all forms and locations where it may be stored.
11. Application and Network Management. Specify the services, tools and connectivity required to manage the application and network environments; who carries out the management functions; and what level of physical security applies to managed devices.
12. Physical Security. For each location where Confidential Information will be processed or stored or Services for Bank of America produced by Supplier, describe in detail the arrangements in place for physical security.
13. Privacy: Describe Supplier’s privacy and security policies; indicate if they are in writing; and whether they are compatible with Bank of America’s policies.
14. Location of Servers. Are web servers on a separate segment of the network from the application and database servers? If not, explain the reason this has not been done. At Bank of America’s request, Supplier shall make reasonable efforts to create this separation.
15. Portable Media and Devices. Bank of America’s Confidential Information shall not be stored on any portable media or devices to include notebook/laptop computers, USB storage devices, personal digital assistants (e.g. Blackberry) or similar equipment. Use of such devices shall be approved by Bank of America and security precautions such as encryption of data and remote network connectivity will be addressed in the Supplier’s Information Security Program.

**INFORMATION DESTRUCTION REQUIREMENTS**

**Overall Requirements**

At Bank of America's direction, Supplier shall destroy all Confidential Information at all locations where it is stored after it is no longer needed for performance under this Agreement or to satisfy regulatory requirements. Supplier must have in place or develop information destruction schedules and processes that meet Bank of America standards and that must be used in all cases when Confidential Information is no longer needed. These information destruction requirements are to be applied to paper, microfiche, disks, disk drives, tape and other destroyable electronic or digital media containing Confidential Information.

**Paper and Other Shreddable Media**

Paper and other shreddable media includes paper, microfiche, microfilm, compact disks (CDs) and any other media that can be shredded. This media must be shredded using shredding techniques or machines such that Confidential Information in this media is completely destroyed as set forth herein when Supplier is finished with the Confidential Information contained thereon and it is no longer needed. This media may be shredded immediately or temporarily stored in a highly secured, locked container. The media may be shredded at a location other than Supplier's facilities; however it must be transferred in a highly secured, locked container. Supplier is responsible for supervising the shredding regardless of where the shredding activity occurs and by whom the shredding is performed. Confidential Information in this media must be completely destroyed by shredding such that the results are not readable or useable for any purpose.

**Electronic Media**

Electronic media includes, but is not limited to, disk drives, diskettes, tapes, universal serial bus (USB) and other media that is used for electronic recording and storage. This media is to be wiped or degaussed using a Bank of America approved wipe or degaussing tool. Wiping uses a program that repeatedly writes data to the media and thereby destroys the original content. Degaussing produces an electronic field that electronically eliminates the original data and clears the media. These techniques must meet Bank of America standards and baselines. The resulting media must be free from any machine or computer content readable for any purpose.

**Certification**

These processes must be documented as a procedure by Supplier and should outline the techniques and methods to be used. The procedure must also indicate when and where Confidential Information is to be destroyed. Supplier shall keep records of all Confidential Information destruction completed and provide such records to Bank of America upon demand.

[Schedule E to the General Services Agreement, dated as of November 5, 2010, has been superseded in its entirety by Schedule E to the Amendment to General Services Agreement, dated January 14, 2016.]

# SCHEDULE F

Recovery

1. Supplier shall establish, maintain and implement per the terms thereof, a Business Continuity Plan. The Business Continuity Plan must be in place within forty-five (45) calendar days after the assumption of Service and shall include, but not be limited to, recovery strategy, loss of critical personnel, documented recovery plans covering all areas of operations necessary to delivering Supplier's Services pursuant to this Agreement, vital records protection and testing plans. The plans shall provide, without limitation, for off-site backup of critical data files, Confidential Information, software, documentation, forms and supplies as well as alternative means of transmitting and processing Confidential Information.

2. The recovery strategy shall provide for recovery after both short and long term disruptions in facilities, environmental support, workforce availability, and data processing equipment. Although short term outages can be protected with redundant resources and network diversity, the long term strategy must allow for total destruction of Supplier's business operations for a period of six (6) months or longer and set forth a recovery strategy.

3. Supplier's recovery objectives shall not exceed the following during any recovery period:

   A. Time to Full Restoration from time of disruption event: 4 hours

   B. Maximum Data Loss (stated in hours) from time of disruption event: 24 hours

   C. Percentage Reduction of Service Levels: 50% during the 24 hour recovery period

   In the event of a change, Bank of America agrees to work with Supplier to determine a mutually agreeable date for Supplier to match the new objectives if necessary.

4. Supplier shall continue to provide service to Bank of America if Bank of America activates its contingency plan or moves to an interim site to conduct its business, including during tests of Bank of America's contingency operations plans.

5. Supplier shall furnish contingency recovery plans, contingency exercise and testing schedules annually or upon request. Supplier shall provide to Bank of America, annually, or upon request, copies of all contingency exercise final reports, and shall include, but not be limited to, disaster scenario description, exercise scope and objectives, detailed tasks, exercise issues list and remediation, and exercise results. If requested, Supplier shall allow Bank of America, at its own expense, to observe a contingency test.

6. If Supplier provides electronic interchange of data with Bank of America, Supplier shall participate, if requested, in the recovery exercises of Bank of America to validate recovery capability.

7. Supplier must provide evidence of capability to meet any applicable regulatory requirements concerning business continuity.

8. Supplier shall be required to participate, if requested by Bank of America, in recovery testing of a mutually agreed upon scope and frequency.

**Amendment to General Services Agreement**

| | | | |
|---|---|---|---|
| **Company Name:** | Cardlytics, Inc. | **Master Agreement Number:** | CW251208 |
| **Company Address:** | 675 Ponce de Leon NE<br>Suite 6000<br>Atlanta, GA 30308 | **Amendment Number:** | CW641256 |
| | | **Effective Date:** 1/14/2016 | |
| **Company Telephone:** | 888.798.5802 | | |

This Amendment is attached to the General Services Agreement executed by and between Bank of America, N.A. ("Bank of America") and Cardlytics, Inc. ("Supplier") dated November 5, 2010 (the "Agreement"). The Services attached hereto shall be subject to the terms and conditions of the Agreement.

WHEREAS, Bank of America and Supplier entered into the Agreement in order to set forth the terms and conditions pursuant to which Supplier provides certain Services to Bank of America.

WHEREAS, the Parties desire to amend the Agreement with certain terms and conditions and make updates to Schedules A (Services) and B (Service Payments).

NOW THEREFORE, in consideration of the promises and accords made herein, and the exchange of such good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Bank of America and Supplier agree as follows:

1. The Expiration Date on page 1 of the Agreement is amended to November 4, 2020.

2. The following Sections 9.8-9.11 are hereby added to the Agreement.

   "9.8 Supplier shall, and shall be responsible for ensuring that Supplier's Representatives and Subcontractors shall, perform all obligations of Supplier under this Agreement in compliance with all laws, rules, regulations and other legal requirements applicable to Supplier as well as applicable to Bank of America as and to the extent such laws, rules, regulatory guidance, regulations and legal requirements relate to the Services (all such laws, rules, regulatory guidance, regulations and legal requirements being, hereinafter, "Applicable Laws." Additionally, Supplier shall, and shall be responsible for ensuring that Supplier's Representatives and Subcontractors shall, perform all obligations of Supplier under this Agreement in compliance with all policies, procedures and other instructions of Bank of America, as may be amended from time to time in Bank of America's sole discretion. Applicable policies, procedures and other instructions will be provided to Supplier by Bank of America.

   Supplier shall implement policies, procedures, training and guidelines to ensure compliance with Applicable Laws. In addition, Supplier shall ensure that all Supplier's Representatives and Subcontractors providing Services for Bank of America successfully complete and implement, on an annual basis, such mandatory training as Bank of America may require and shall provide in connection with compliance with Applicable Laws, which mandatory training may be revised, replaced or terminated at any time at Bank of America's sole discretion. Supplier and its Representatives and Subcontractors shall follow all procedures, processes, and guidelines outlined in the mandatory training. Bank of America shall be responsible for ensuring that Supplier receives all updated

mandatory training. Upon Bank of America's request and pursuant to Section 22 (Supplier Personnel) of this Agreement, any Supplier Representative or Subcontractor who fails to successfully complete Bank of America's mandatory training on an annual basis shall be immediately removed from working on the Bank of America account. The foregoing is not intended to be applicable to process servers in the course of serving process nor upon licensed attorneys during the course of their appearance with a Bank of America customer before a court of law.

Upon prior written notice during normal business hours and at such reasonable time as Bank of America may determine, Bank of America may, upon delivery of written notice to Supplier, audit, test or inspect Supplier and its Representatives and Subcontractors with respect to Supplier's policies, procedures and controls in connection with, and compliance with, Applicable Laws. Bank of America will determine the scope of such audits, tests or inspections. The Parties shall agree on the date, time, location and duration of the audit, tests or inspection, provided that it or they shall take place not later than twenty (20) Business Days of the written notice. Unless otherwise agreed between the Parties and in addition to the Audit rights set forth in Section 31, such audits, tests, or inspections will be performed no more than every twelve months, unless there are operational or compliance risks or significant regulatory change that warrants additional audits, tests or inspections. Supplier shall promptly remediate any deficiencies found with respect to compliance with Applicable Laws as a result of such audits, tests or inspections. Supplier's failure or refusal to remediate any high deficiencies within thirty (30) days, medium deficiencies within sixty (60) days, and low deficiencies within ninety (90) days of written notice to Supplier, or to commence remediation within such stated period and diligently pursue it to completion (if remediation cannot be completed in the stated period), shall be deemed a "Termination Event" entitling Bank of America to terminate this Agreement pursuant to Section 6.3 of this Agreement (Termination).

9.9 Supplier represents and warrants that it is familiar with all applicable domestic and foreign antibribery or anticorruption laws, including, without limitation, those prohibiting Supplier, and, if applicable, its officers, employees, agents and others working on its behalf, from taking actions in furtherance of an offer, payment, promise to pay or authorization of the payment of anything of value, including but not limited to cash, checks, wire transfers, tangible and intangible gifts, favors, services, and those entertainment and travel expenses that go beyond what is reasonable and customary and of modest value, to: (i) an executive, official, employee or agent of a governmental department, agency or instrumentality, (ii) a director, officer, employee or agent of a wholly or partially government-owned or -controlled company or business, (iii) a political party or official thereof, or candidate for political office, or (iv) an executive, official, employee or agent of a public international organization (e.g., the International Monetary Fund or the World Bank) ("Government Official") or any other person; while knowing or having a reasonable belief that all or some portion will be used for the purpose of rewarding or: (a) influencing any act, decision or failure to act by a Government Official in his or her official capacity, (b) inducing a Government Official to use his or her influence with a government or instrumentality to affect any act or decision of such government or entity, (c) inducing any person to use his or her influence to improperly affect any act or decision of such their employer, or (d) securing an improper advantage; in order to obtain, retain, or direct business.

9.10 Supplier represents and warrants that it currently complies with all applicable domestic or foreign antibribery or anticorruption laws, including those prohibiting the bribery of Government Officials, and will remain in compliance with all applicable laws; that it will not authorize, offer or make payments directly or indirectly to any Government Official; and that no part of the payments received by it (whether compensation or otherwise) from Bank of America will be used for any purpose that could constitute a violation of any applicable laws.

9.11 Supplier represents and warrants that neither it nor its Representatives and/or Subcontractors is the subject of any sanctions administered or enforced by the U.S. Department of the Treasury's Office of Foreign Assets Control ("OFAC"), the United Nations Security Council ("UNSC"), the European Union ("EU"), Her Majesty's Treasury ("HMT"), or other relevant sanctions authority (collectively, "Sanctions"), nor is the Supplier, or its Representatives or Subcontractors located, organized or resident in a country or territory that is the subject of Sanctions. Supplier

represents and warrants that neither it nor its Representatives and/or Subcontractors has or during the Term of this Agreement will violate any Sanctions. Supplier represents and warrants that neither it nor its Representatives and/or Subcontractors will use this Agreement to fund or engage in any activities with any individual or entity ("Person") or in any country or territory, that, at the time of such funding or activity, is the subject of Sanctions, or in any other manner that will result in a violation by any Person of Sanctions."

3. Section 20.2 is hereby replaced with the following Section 20.2:

"20.2 Supplier shall provide at its expense on an annual basis a copy of an independent audit firm attestation, assurance and/or audit report covering Supplier's operations as a services organization providing Services under this Agreement. Such reports shall include, but not be limited to, a current SOC 1, Type II Audit Report, if applicable (or any successor or replacement reports hereafter provided for by the American Institute of CPAs (AICPA) or any successor organization). IN NO EVENT SHALL BANK OF AMERICA BE REQUIRED TO AGREE TO ADDITIONAL TERMS AND CONDITIONS IN ORDER TO ACCESS ANY SUCH REPORTS SUBMITTED BY SUPPLIER OR ITS REPRESENTATIVES. If current reports are not available, Supplier will engage a reputable U.S. or internationally recognized certified public accounting firm to conduct the audit and prepare the applicable reports. Each report will cover a minimum six (6) calendar month period, prior to date of report, of each calendar year during the Term. Bank of America reserves the right to expand the scope of controls to be covered in any such attestation, assurance and/or audit report prepared during the Term. Supplier shall provide Bank of America with the scope of the audit and a complete copy of each report prepared in connection with such audit within thirty (30) calendar days after it receives such report."

4. Schedules A-C are hereby replaced with the attached Schedules A-C.

5. The current Schedule E – BACKGROUND CHECKS shall be deleted in its entirety and replaced with the attached Schedule E.

| | |
|---|---|
| **Supplier, Inc.**<br>("Supplier") | **Bank of America N.A., Inc.**<br>("BANA") |
| By: /s/ John Brown | By: /s/ Chandra Torrence |
| Name: John Brown | Name: Chandra Torrence |
| Title: President, U.S. Operations | Title: SVP; Sourcing Manager |
| Date: 1/14/2016 | Date: 1/14/2016 |

[Schedules A and B to the Amendment to General Services Agreement, dated January 14, 2016, have been superseded in their entirety by Schedules A and B to the Amendment to General Services Agreement, dated August 16, 2017.]

SERVICE LEVELS

**1. UPTIME/AVAILABILITY; SCHEDULED MAINTENANCE; PERFORMANCE**

Uptime: Cardlytics will ensure that the TMS Service will be available to Bank of America and their Users at 99.999% of the time in any given calendar month, exclusive of Scheduled Downtime, database; maintenance, upgrades, or migrations; or hardware maintenance or faults; or connectivity issues. This assumes that Bank of America is maintaining the OPS installed in their environment per this agreement.

In the event of scheduled downtime, Cardlytics agrees to:

a) Provide Bank of America with at least:

   a. Ten (10) days prior written notice for Priority 3-4 Changes

   b. Two (2) days prior written notice for Priority 2 Changes

   c. Four (4) hour notice for Priority 1 Changes

b) Schedule for off-peak hours

c) Ensure that such downtime does not exceed four (4) hours at any one time; and does not exceed eight (8) hours in aggregate in any given month related to core OPS software. This will not include database maintenance, upgrades, or migrations, hardware maintenance or faults or connectivity provided by Bank of America.

The Service availability calculation will exclude “scheduled downtime” which meets the foregoing criteria. The Bank of America is responsible for calculating Uptime.

**2. PROCESS FOR ESCALATING PRODUCTION SUPPORT ISSUES**

All Bank of America and Reseller will submit Production Support Issues through email to productionsupport@cardlytics.com. This email distribution group will be monitored 24 hours a day, 7 days a week, 365 days a year.

It will be the responsibility of the Active – On Call Member to acknowledge the Reseller’s request within the first 15 minutes.

The first responder will escalate the issue to the relative On Call Technician to begin troubleshooting the issue. The On Call Technician will assign a Severity Level, as approved by Bank of America, to the Issue, and follow the below Service Level Agreement (SLA”). If the below SLA elapses, the On Call Technician will escalate to the next level following the below escalation chart.

The On Call Technician will communicate to the party (or parties) on the original issue email following the below communication Service Level Agreement. On Call technician will use all available resources in an attempt to resolve the issues.

Upon successful resolution of a Severity 1 or Severity 2 issue as confirmed by Bank of America. the On Call Technician will provide a follow-up email to the party (or parties) and any relative business units within Supplier, with a detailed description of the issue, what the identified root cause was, as outlined below.

**Root Cause Analysis:**

A written analysis of the problem provided within 5 business days with the required information listed below.

- Issue: Brief description of the issue/event
- Total Outage if applicable: Include total outage (hours/minutes)
- Start Date/Time: Start time of the incident & date
- End Date/Time: End time of the incident & date
- User Experience: What was experienced as a result of this issue? What did the User/Bank of America Associate see?
- Customer Impact: How many Users were affected?
- Technical Impacts:
- Applications Impact:
- Root Cause: If the information is not available, state that it is still being investigated or that the information will be provided by a specific date. Otherwise, describe the root cause
- Short-Term Actions Taken: Describe the steps that were taken to restore Service.
- Next Steps: Describe what steps will need to be taken and include any target dates that the action will be taken

**Liquidated Damages**

If Supplier fails to meet the Issue Resolution SLA as outlined below, Supplier will pay to Bank of America the corresponding payments, as liquidated damages and not as a penalty. All incidents ended in any given month will be counted separately and, as such, the payments will be additive.

- Supplier restores a Sev 1 issue between eight (8) hours and twenty-four (24) hours – One percent (1%) of Supplier Revenue Share for the month in which the issue began.
- Supplier restores a Sev1 issue in greater than twenty-four (24) hours – Two percent (2%) of Supplier Revenue Share for the month in which the issue began.
- Supplier restores a Sev 2 issue in greater than twenty-four (24) hours – One percent (1%) of Supplier Revenue Share for the month in which the issue began.

**Table 1: Service Level Agreement**

| Sev Level | Definition | Status Update Frequency | Target Service Restoration | Resolution |
|---|---|---|---|---|
| **1** | An event causing severe impact to Cardlytics ability to interact with Bank of America.<br><br>No workaround is available.<br><br>Services down or unusable: An error stops the Services from running, or so severely impacts production use of the Services that customer's business operations are critically affected and Bank of America cannot reasonably continue work | Provide a bridgeline and a status every 30 minutes to Bank of America | Within 2 Hours | up to 7 calendar days or longer if approved by Bank of America |
| **2** | An event causing major impact to Cardlytics support of Bank of America. This could involve severe impact to one or more function. No workaround is available.<br><br>Functionality disabled*:* An error causes important features of the Service to be unavailable with no reasonable workaround and there is a serious impact on Bank of America's productivity, but production use of the Service is continuing and Bank of America can reasonably continue work using the Service. | Hourly to Bank of America | Within 4 Hours | up to 7 calendar days or longer if approved in writing by Bank of America |
| **3** | An event causing moderate impact to Cardlytics ability to support Bank of America. This could involve major impact to one or more business function. A workaround may be available.<br><br>Degraded operations*:* An error which causes important features of the application to be unavailable or to function other than as specified in the applicable documentation but a workaround exists, or an error causes less significant features of the application to be unavailable or to function other than as specified in the applicable documentation, with no reasonable workaround. | Status update is communicated daily to Bank of America | Workaround as soon as reasonable and practical in all the circumstances; but not to exceed 7 calendar days; | Fix for the error within the next maintenance release or as approved by Bank of America |
| **4** | An event causing minor impact to Cardlytics ability to support Bank of America, but potentially moderate impact on one or more individuals. A workaround may or may not exist.<br><br>Minor error: An error which does not affect essential use of the application, but which represents a deviation from the applicable documentation. | Status update is communicated daily to Bank of America | Workaround as soon as reasonable and practical in all the circumstances; but not to exceed 7 calendar days; | Fix for the error within the next maintenance release or as approved by Bank of America |

## 3. CUSTOMER CARE

Supplier will resolve customer care cases in a (Tier 2/Tier 3) environment. Bank of America will be responsible for entering dispute data into Cardlytics CSR tool per CSA user guide. Cardlytics will confirm resolution of ninety-five percent (95%) of cases (ninety-eight (98%) of cases beginning September 1, 2013) within two (2) business days from initial case generation by Bank of America. For the avoidance of doubt, claims related to Merchant Cleaning issues as outlined below will not be included in this SLA.

Liquidated Damages: If Supplier fails to resolve more than ninety-five percent (95%) of cases within two (2) days in any month, Supplier will pay to Bank of America, as liquidated damages, and not as a penalty, a total of 1% of the Supplier Revenue Share for that month.

For customer care cases requiring Merchant cleaning (where the cleaned Merchant name is required to generate the appropriate redemption), Supplier will attempt to clean ninety percent (90%) of the merchant names within an average of five (5) business days of initial Bank of America contact case generation (CSA Ticket)

**4. Offer Quality SLA**

Supplier shall endeavor to provide error-free Merchant Offers for the Services herein and will make continued and proactive efforts to prevent the following errors and any subsequently identified errors identified by the Parties ("Merchant Offer Errors"). The Supplier SLA standard for Merchant Offer Errors will be less than one % (<1%) of all Merchant Offers provided to Bank of America as measured monthly by Supplier:

- Duplicate Merchant Offers
- Incorrect customer cash back Incentive percentage amount
- Offer Frequency
- Inaccurate or missing expiration date
- Inaccurate or missing call to action (i.e. Shop, Dine)
- Merchant Offers with undisputed grammatical errors
- Merchant Offers with inaccurate or missing location information if location detail is necessary for appropriate redemption.
- Merchant Offers with inaccurate or missing channel information if channel detail is necessary for appropriate redemption.

Liquidated Damages:

Beginning December 1, 2013, if Supplier loads greater than three percent (>3%) and less than five percent (<5%) of Merchant Offers with Merchant Offer Errors, Supplier shall pay to Bank of America, as liquidated damages, and not as a penalty 1% of the monthly Supplier Revenue Share

Beginning December 1, 2014, if Supplier loads greater than two percent (>2%) and less than five percent (<5%) of Merchant Offers with Merchant Offer Errors, Supplier shall pay to Bank of America, as liquidated damages, and not as a penalty 1% of the monthly Supplier Revenue Share

If Supplier loads greater than five percent (>5%) of Merchant Offers with Merchant Offer Errors, Supplier shall pay to Bank of America, as liquidated damages, and not as a penalty 2% of the monthly Supplier Revenue Share.

**5. Reports:**

Supplier shall provide Bank of America reports in a manner approved by Bank of America on the Bank of America/Cardlytics Program that include but are not limited to the list below and the information set forth in Appendix 1 to Schedule C.. The reports provided by Supplier to Bank of America will be at no additional cost to Bank of America. Further, Supplier will deliver the raw data to Bank of America. Bank of America is authorized to use that raw data to produce any other reports for internal use it may want to produce at its expense. Any changes to the reporting content, schedule, or format must be pre-approved by Bank of America in writing.

Supplier will attempt to deliver report Tuesday by 4:00p ET and no later than Thursdays by 4:00p ET. Delays resulting from technical or data processing issues caused by Bank of America will not be included in this SLA measurement.

BAC Inquiries Report

Report 100 BAC Current Month

Report 100 BAC Wave1 Launch

Report_100_BAC_Daily

Supplier will attempt to deliver report Tuesday by 4:00p ET and no later than Thursday4:00p ET. Delays resulting from technical or data processing issues caused by Bank of America will not be included in this SLA measurement.

Weekly Merchant Reporting

Compliance_MCC_Black_White_List_BAC

Affinity_Merchant_Exclusions_metrics

**Appendix 1 to Schedule C**

**Cardlytics Report Fields**

Report_100_BAC_Daily_Thru_(Date) with the following field information

ActualStartDate

ActualEndDate

TimePeriodDescription

NumEligibleAccounts

NumAccounts_EnrollmentValidation

NumAccountsOptOut

NumUniqueAccountsServedAnyOffer

NumUniqueAccountsServedAnyOffer_Core

NumUniqueAccountsServedAnyOffer_Transaction

NumUniqueAccountsServedAnyOffer_SummaryPage

NumUniqueAccountsServedAnyOffer_Alternate

NumNewOffersSeen

NumNewOffersSeen_Core

NumImpressions

NumImpressions_Core

NumImpressions_Transaction

NumImpressions_SummaryPage

NumImpressions_Alternate

NumUniqueAccountsActivatedOffer

NumUniqueAccountsActivatedOffer_Core

NumUniqueAccountsActivatedOffer_Transaction

NumUniqueAccountsActivatedOffer_SummaryPage

NumUniqueAccountsActivatedOffer_Alternate

NumOffersActivated

NumOffersActivated_Core

NumOffersActivated_Transaction

NumOffersActivated_SummaryPage

NumOffersActivated_Alternate

NumTimesRewardsSummaryPageOpened

NumUniqueAccountsOpeningRewardsSummaryPage

NumUniqueAccountsRedeemed

NumUniqueAccountOffersRedeemed

NumRedemptions

SpendAmount

RewardAmount

OptOutRate

OfferActivationRate_UniqueAccountsServed

OfferRedemptionRate_UniqueAccountsServed

AvgRewardAmt_PerAccount

ConversionRate

ResponseRate

AvgRewardAmt_PerRedemption

**Channels Activation Report (providing by Launch, Rolling Month, End of Month and Daily view.**

Report Description

Actual Start Date

Actual End Date

Time Period Description

Channel Description

Location Description

Display Description

Distinct Customers Activating

First Activations

**Current Month Through Report Date**

Actual Start Date

Actual End Date

Time Period Description

Number of Eligible Accounts

Number of Accounts Enrollment Validation

Number of Accounts Opt Out

Number of Unique Accounts Served Any Offer

Number of Unique Accounts Served Any Offer Core

Number of Unique Accounts Served Any Offer Transaction

Number of Unique Accounts Served Any Offer Summary Page

Number of Unique Accounts Served Any Offer Alternate

Number of New Offers Seen

Number of New Offers Seen Core

Number of Impressions

Num ber of Impressions Core

Number of Impressions Transaction

Number of Impressions Summary Page

Number of Impressions Alternate

Number of Unique Accounts Activated Offer

Number of Unique Accounts Activated Offer Core

Number of Unique Accounts Activated Offer Transaction

Number of Unique Accounts Activated Offer Summary Page

Number of Unique Accounts Activated Offer Alternate

Number of Offers Activated

Number of Offers Activated Core

Number of Offers Activated Transaction

Number of Offers Activated Summary Page

Number of Offers Activated Alternate

Number of Times Rewards Summary Page Opened

Number of Unique Accounts Opening Rewards Summary Page

Number of Unique Accounts Redeemed

Number of Unique Account Offers Redeemed

Number of Redemptions

Spend Amount

Reward Amount

Opt Out Rate

Offer Activation Rate Unique Accounts Served

Offer Redemption Rate Unique Accounts Served

Avg Reward Amt Per Account

Conversion Rate

Response Rate

Avg Reward Amt Per Redemption

**SCHEDULE E**
Background Checks

BACKGROUND SCREENING GUIDELINES

1. As provided in Sections 13.6 and 13.7, prior to assignment of a Supplier or Subcontractor employee or contract laborer to the Services, Supplier shall administer and comply with, and shall ensure that Supplier's Subcontractors administer and comply with, the background screening requirements as set forth below.

   (a) Validate United States citizenship or certification to work in the United States. The Supplier or Subcontractor employee or contract laborer shall not be assigned to Bank of America's account if Supplier or Subcontractor is unable to confirm United States citizenship or obtain proper evidence of certification to work in the United States.

   (b) Search the Supplier Representative's social security number to verify the accuracy of the individual's identity. The Supplier or Subcontractor employee or contract laborer shall not be assigned to Bank of America's account if Supplier or Subcontractor is unable to verify the accuracy of the employee or contract laborer's identity.

   (c) Conduct or obtain a comprehensive criminal background check of all criminal court records (misdemeanor and felony in federal courts and state courts) in each venue of the Supplier Representative's current and previous home addresses for the past ten (10) years prior to the date of being assigned to provide any of the Services, unless local or state laws or regulations mandate a lesser period. Subject to Section 13.6, the Supplier or Subcontractor employee or contract laborer shall not be assigned to Bank of America's account if Supplier or Subcontractor's criminal background check discloses matters set forth in Section 13.5 (a)-(b), inclusive.

2. If a Supplier or Subcontractor employee or contract laborer had a break in continuous service with the Supplier or Subcontractor of longer than ninety (90) consecutive days, then a new background check will be performed according to the requirements in #1 above, prior to re-assignment of the employee or contractor to the Services.

3. If required for the role or Service and requested by the applicable Bank of America business unit for which the Services are being provided, verify completion of any post high school education or degrees (i.e., B.A., B.S., Associate, or professional certifications).

4. Any other additional checks that Bank of America may require will be submitted to Supplier for review, and Supplier will be allowed a reasonable and mutually agreed upon timeframe to implement such additional checks. In the event Bank of America determines in its sole discretion that additional checks need to be conducted on currently engaged Supplier or Subcontractor employees or contract laborers, such checks shall be at Bank of America's expense based upon a mutually agreed process and timeline as evidenced in writing.

   (a) Employees or contract laborers of Supplier or Subcontractors who are placed within the Consumer Real Estate/Mortgage business and any other lines of business that may have similar requirements may have additional databases checked upon Bank of America's request and at Bank of America's discretion as part of the Financial Sanctions Search, such check to be administered by a Bank of America's preferred service provider.

   (b) In the event Bank of America requests, in its sole discretion, Financial Industry Regulatory Authority (FINRA) fingerprint screening and/or FBI fingerprint screening, such fingerprint screening will be managed and paid for by Bank of America, provided, however, that Supplier shall be obligated to obtain from each affected Supplier person a completed Vendor Personnel Background Check/Fingerprint Authorization Form in the form attached to this Schedule.

Bank of America

**Vendor Personnel**
**Background Check/Fingerprinting**
**Authorization Form**

**PLEASE PRINT LEGIBLY** **TRY NOT TO TOUCH THE SIDES OF THE BOXES**

| Name (First, MI, Last) | Social Security Number | Date of Birth | Today's Date |
|---|---|---|---|
| | | | |
| Current Address – Street City State Zip Code | | | Telephone |
| | | | |

**Please read the following statements carefully before signing and completing this document. If you have any questions regarding the content of this document, please ask them of your Vendor representative *before* signing and completing.**

☐ I acknowledge and agree that I am an employee or subcontractor of _____ ("Vendor").

_____

**Print Name of Vendor / Employer**

☐ I further acknowledge that I am not an employee of Bank of America Corporation, or one of its predecessors, subsidiaries or affiliates, including but not limited to among others, Countrywide Home Loans, Inc., Countrywide Bank FSB, CWB Mortgage Ventures LLC, Countrywide KB Home Loans LLC, Fleet National Bank, LaSalle Bank, N.A. (collectively, the "Company").

☐ I further acknowledge that the Vendor employs me to, among other things, perform certain work and has placed me on assignment at the Company (the "Services").

☐ I understand that in addition to the specific requirements for employment eligibility required by the Vendor, federal and state laws may require the Company to perform additional fingerprinting and / or background checks from time to time.

☐ I hereby give Bank of America permission to conduct additional fingerprinting and / or additional background checks as required by federal and state laws.

☐ I hereby release Bank of America, its officers, directors, employees or agents and any such individuals, corporations, or organizations who provide such information or who conduct such inquiries from any liability for claims for damages in relation to such contacts or inquiries.

☐ I understand that nothing contained in this document is intended to imply that I am an employee of the Company. I authorize the Company and / or its agents to conduct a thorough inquiry into all areas deemed necessary to validate my eligibility for continued placement on assignment to provide Services. I certify that all information provided on this Vendor Personnel Background Check Authorization Form is true and complete. I understand that any omission or misinformation on this form may prohibit my continued or future assignment to the Company or be grounds for an immediate removal from any ongoing assignment / placement with the Company whenever such omission or misinformation is discovered.

☐ I understand that refusal to permit the described background investigation will result in the Company requesting that Vendor immediately remove me from any ongoing assignment / placement with the Company.

Signature _____ Date _____

**Amendment to General Services Agreement**

| | | | |
|---|---|---|---|
| **Supplier Name:** | Cardlytics, Inc. | **Master Agreement Number:** | CW251208 |
| **Supplier Address:** | 675 Ponce de Leon NE<br>Suite 6000<br>Atlanta, GA 30308 | **Amendment Number:** | **CW967765** |
| | | **Effective Date:** | Upon Execution |
| **Supplier Telephone:** | 888.798.5802 | | |

This Amendment is attached to the General Services Agreement executed by and between Bank of America, N.A. ("Bank of America") and Cardlytics, Inc. ("Supplier" ") dated November 5, 2010, as amended (the "Agreement"). The Services attached hereto shall be subject to the terms and conditions of the Agreement.

WHEREAS, Bank of America and Supplier entered into the Agreement in order to set forth the terms and conditions pursuant to which Supplier provides certain Services to Bank of America.

WHEREAS, the Parties desire to amend the Agreement with certain terms and conditions and make updates to Schedules A (Services) and B (Service Payments).

NOW THEREFORE, in consideration of the promises and accords made herein, and the exchange of such good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Bank of America and Supplier agree as follows:

1. The Expiration Date on page 1 of the Agreement is amended to November 4, 2021.

2. Supplier's address for Notices is updated to:

675 Ponce de Leon Ave NE, Suite 6000, Atlanta, GA 30308. Attn: General Counsel

3. Schedules A and B are hereby replaced with the attached Schedules A and B.

| | |
|---|---|
| **Supplier, Inc.**<br>("Supplier") | **Bank of America N.A., Inc.**<br>("Bank of America") |
| By: /s/ Lynne Laube | By: /s/ Chandra Torrence |
| Name: Lynne Laube | Name: Chandra Torrence |
| Title: COO & President | Title: SVP; Sourcing |
| Date: 8/16/17 | Date: 8/16/17 |

**1. DEFINITIONS** - When used in this Schedule the following terms will have the meanings ascribed to them below.

1. "Aggregated Data" has the meaning assigned in Section 5d.
2. "Allowable Expenses" means, for any Measurement Period, the aggregate amount of expenses incurred for the following as approved by Bank of America:
   (i) Commissions due to any external sales representative or organization directly attributable to or calculated based upon Total Revenues.
   (ii) Any revenue share, royalty, or commission due to any third party directly attributable to or calculated based upon Total Revenues.
   (iii) Sales, use, franchise or any other taxes levied by a governmental or regulatory authority directly attributable to or calculated based upon Total Revenues.
   (iv) third party services directly related to (i) targeting (ii) media placement, and (iii) validation of billings and related connectivity with Privacy Partners or (ii) processing, management or collection of Total Revenues.
3. "Bank of America Managed Merchant" means a Bank of America Secured Merchant that Supplier has confirmed as such and where Bank of America is responsible for the pre-sales, account management, reporting, billing and collection with the advertiser.
4. "Bank of America Operated Merchant" means a Bank of America Secured Merchant that Supplier has confirmed as such and where (i) Bank of America is responsible for the pre-sales, account management, reporting, billing and collection with the advertiser; (ii) Bank of America is responsible for building and executing the advertising campaigns; and iii) Bank of America has purchased the TMS software source code; and (iv) Bank of America is operating and maintaining the TMS without support by the Supplier.
5. "Bank of America Referred Merchant" means a Bank of America Secured Merchant that Supplier has confirmed as such and who launches a Supplier campaign within 6 months after Bank of America secures the merchant.
6. "Bank of America Secured Merchant" means a Bank of America Managed Merchant or a Bank of America Referred Merchant.
7. "Eligible Bank of America customers" means Bank of America customers who log into Bank of America digital banking channels at least once in the last ninety (90) days and are otherwise eligible to receive the Services herein.
8. "Measurement Period" means a calendar month.
9. "National Launch Date" means November 30, 2012
10. "Negative Service Change" means a change implemented by Bank of America that quantifiably, negatively impacts the performance of the Services as reasonably determined by Bank of America.

11. “Participating Merchants” means any merchant that presents Merchant Offers to Users and otherwise utilize the Services or that has done either of the foregoing in the past 12 months.

12. “Privacy Partner” means a trusted third-party such as Equifax, Experian, and Acxiom/Live Ramp that anonymously connects Cardlytics IDs to IDs provided by other entities

13. “Receivables” means the aggregate amount of Total Revenue billed to Participating Merchants, net of any Revenue Adjustments, which remains uncollected as of any measurement date.

14. “Receivables Adjustment” means, for purposes of adjusting Total Revenue for the portion not collected from Participating Merchants, an adjustment calculated by subtracting (x) Receivables on the last day of the current Measurement Period from (y) Receivables on the last day of the preceding Measurement Period. If the Receivables Adjustment is positive, it shall be added to Total Revenue. If the Receivables Adjustment is negative, it will be subtracted from Total Revenue.

15. “Redemption Rate” means the number of offers redeemed divided by the total number of transaction offers presented.

16. “Revenue Adjustments” includes invoice credits granted to Participating Merchants for any of the following, and shall be subtracted from Total Revenue: Fee discounts, rebates, adjustments, disputed fee invoices.

17. “Revenue Share Amount” means the amount as calculated below in Schedule B, subsection (c).

18. “Revenue Share Percentage” means the applicable percentage as set forth in Schedule B:

19. “Reward Summary Offers” means Merchant Offers Served in a summary format of all offers available to the individual customer.

20. “Rewards” means the economic value of rewards earned by Users.

21. “Served” means that a Merchant Offer has been made available on a Rewards Summary Offers Page and that the User has viewed the Rewards Summary Offers.

22. “Standard Merchant Offer” means a Merchant Offer that is 100% funded by the Merchant and where the fees paid by the Merchant to Cardlytics are substantially similar to the then current standard fees for such service.”

23. “Supplier Secured Local Merchant” means a Supplier Secured Merchant who is not a retailer that is predominately online and has 100 or fewer physical locations and is utilizing the Supplier’s Targeted Marketing Service in 3 or fewer states.

24. “Total Redemptions” means total number of redemptions in a calendar month.

25. “Total Revenue” means the aggregate amount of fees billed by Supplier or Bank of America as applicable to Participating Merchants and actually collected during the Measurement Period for advertising, offer placement, and any other activities directly related to the Service and directly identified with, or allocable to Bank of America customers however the following are not included in Total Revenue and are not to be any part of Revenue Share: (i) User Incentives, and (ii) any mark-up amounts or other sums charged or received by other third parties that are not collected by Supplier.

26. “User” means a Bank of America account holder that is Served a Merchant Offer in a calendar month regardless of delivery channel.

27. “User Incentive” means the stated or calculated cash value earned by a User upon redemption of a Merchant Offer, based upon the value currency of the Merchant Offer, including cash, points, miles, or any other rewards currency offered by Bank of America.

28. “User Incentive Adjustments” means, for any Measurement Period, the aggregate amount of the following:

(i) Reductions of User Incentives awarded during a Measurement Period for returns by Users of goods or services purchased from Participating Merchants that occur within 30 days after the date of initial purchase by the User.

(ii) Adjustments to User Incentives awarded in the current or any previous Measurement Period resulting from any of the following:

i. Correction of errors by Supplier in the calculation of any User Incentives.

ii. Resolution of User disputes regarding determination of User Incentives.

iii. Other adjustments to User Incentives mutually agreed to by Bank of America and Supplier.

29. “User Incentive Amount” means (x) the aggregate amount of User Incentives for a Measurement Period (y) plus or minus, as the case may be, the User Incentive Adjustments.

30. “2016 User Interface Updates” means the following as further explained below:

| Improvement | Target Launch Date | Improvement | Target Launch Date |
|---|---|---|---|
| Increased data sources to include Bill Pay and ACH | Mar-16 | Geolocation | Nov-16 |
| Rewards Summary – OLB | Jun-16 | Reward Summary – Mobile | Nov-16 |
| Self-select life stage filter – OLB | Jun-16 | Enhanced Alerts Functionality | Nov-16 |
| AD widget – OLB | Jun-16 | Mobile AD – widget link to Offers | Nov-16 |
| Rewards Hub | Aug-16 | Activatable Marketing | Aug 16 |
| | | Email Activatable Alert Emails | Nov 16 |
| Portfolio Designation | Jan 16 | Bank of America to send monthly Marketing emails | Mar 16 |

| Improvement | Description |
|---|---|
| Increased data sources to include Bill Pay and ACH | Allow for an increased volume of ACH, Bill Pay and eCheck transactions to be send to the OPS |
| Rewards Summary – OLB | The online banking Reward Summary page will be changed to reflect a ‘tiled’ format. This format will allow for a greater number of offers to appear “above the fold” than in its current state |
| Self-select life stage filter – OLB | A self-select life stage filter will be developed to drive enhanced offer and cross-sell relevance |
| AD widget – OLB | A multi-logo widget will be added to the account details page |
| Rewards Hub | BankAmeriDeals will be integrated into the upcoming Rewards Hub project. BankAmeriDeals content will be displayed via widget or multi-logo tile format |
| Geolocation | Geo mapping functionality based off location will be built within the mobile app |

| Improvement | Description |
|---|---|
| Reward Summary – Mobile | The mobile banking Reward Summary will be changed to reflect a 'tiled' format. This format will allow for a greater number of offers to appear "above the fold" than in its current state |
| Enhanced Alerts Functionality | Updated messaging and reminder functionality within the mobile app that uses the authorization stream to deliver timely BankAmeriDeals messages. |
| Mobile AD – widget link to Offers | The multi-logo widget will be available in the account details page and link directly to the rewards summary. |
| Activatable Email | A monthly email that is sent to all Bank of America Eligible customers, less standard suppressions, that includes all customer offers, which can be activated and counted as a served offer from within the email |
| Portfolio Designation | Updated Portfolio designation via file and OPS field are required to facilitate customer segmentation goals. |
| Bank of America to send monthly marketing emails | Bank of America contemplates continuing monthly email triggers and restarting a monthly missed opportunity email. |

31. "2017 User Interface Updates" means the technical enhancements detailed in Exhibit 2.

**2. PERFORMANCE WARRANTS.**

Concurrently with the execution of the Agreement, Supplier issued to Bank of America a warrant to purchase shares of Common Stock of Supplier and Supplier and Bank of America entered into a letter agreement relating to such warrant.

**3. FAVORABLE TERMS**. During the Term the net economic value, where net economic value is calculated as Supplier Revenue Share plus any other dollars received by Supplier minus any other dollars spent by Supplier, of the Services as defined by Bank of America that Supplier provides to Bank of America under this Agreement will be as favorable as (or better than) that provided by Supplier to any other customer obtaining similar services from Cardlytics.

**4. SERVICE DESCRIPTION:**

4.1 Service Overview:

For purposes of this agreement, Supplier will offer the following services to Bank of America (each a "Service" or the "Services") and will pay Bank of America Revenue Share Amount on such Services as outlined in Schedule B:

(i) On-Platform – Merchant Offers

Market products, services, coupons, discount offers, and other marketing communications, including without limitation the new advertising campaigns from time to time developed by Supplier ("Merchant Offers") via distribution channels including Bank of America online banking and mobile applications offered via Bank of America channels with Bank of America branding; and

(ii) On-Platform Analytics

Analytics, assessments, consumer groupings, insights, market information reports or marketing services to Participating Merchants incorporating the Bank of America Aggregated Data ("On-Platform Analytics"). Merchant Offers and/or On-Platform Analytics Services is known as the "On-Platform Services"

Business Development Process. Prior to selling On-Platform Analytics to a Participating Merchant, Supplier will obtain Bank of America's written approval (email is sufficient) and such approval will not be unreasonably withheld. On-Platform Analytics are intended to enhance the value of the On-Platform – Merchant Offers Services and, as such, will only be made available to Participating Merchants who have provided Merchant Offers in the previous twelve (12) months.

Following the provisions of On-Platform Analytics, Supplier will provide periodic reports updating Bank of America on the progress in enlarging the Participating Merchant's participation in On-Platform Merchant Offers.

4.2 Additional Service Terms

Termination: For clarity, Bank of America may exercise its rights under Section 5.1 of the Agreement for either of the Services outlined in Section 4.1 above. Such termination shall not impact the other Services in this Schedule A.

Supplier has developed Services that enable Bank of America to target end-users of Bank of America's debit and credit cards. Activities of Supplier and Bank of America pertaining to the promotion and operation of the Services shall include, but is not limited to, the standard offering of Supplier as it is from time to time revised and enhanced by Supplier, including without limitation those features and services detailed in this Agreement and are executed by both parties hereafter.

Supplier shall provide the Services with respect to merchants secured by Supplier or its agents ("Supplier Secured Merchants") and with respect to merchants secured by Bank of America or its agents ("Bank of America Secured Merchants"), including the development of advertising campaigns for Supplier Secured Merchants and Bank of America Secured Merchants. Bank of America shall be solely responsible for billing and collecting customer incentives and advertising fees from Bank of America Secured Merchants. Supplier shall be solely responsible for billing and collecting customer incentives and advertising fees from Supplier Secured Merchants. Customer incentives and revenue share with respect to Supplier Secured Merchants and Bank of America Secure Merchants shall be paid as described below in Schedule B. For the avoidance of doubt, the merchants in Exhibit 1 to this Schedule A are considered Bank of America Secured Merchants.

During the Term, Supplier shall provide a dedicated team to Bank of America consisting of a sufficient number of resources with the appropriate skill set to complete the work necessary to provide the Service. This team will be solely dedicated to Bank of America and will not work on any other Supplier customer.

The Merchant Offers, shall be a Bank of America-branded version of the Cardlytics TMS and will be hosted by Bank of America

Bank of America will have sole discretion over which Merchant Offers to display for Merchant Offers Services. Notwithstanding the foregoing, the Parties agree that Bank of America will not have any right to change the specific content or copy within a Merchant Offer. Supplier shall facilitate the exclusion of certain Merchant Offers for segments of the Bank of America customer portfolio.

For Bank of America Secured Merchant Offers that have limited availability or redemption quantity and with the merchant's permission, Bank of America shall have optional exclusivity and first refusal over other Supplier customers. Supplier will work with Bank of America to provide an exclusive set of offers as requested. During the first two years after the National Launch Date, Supplier may not assist any Supplier customer, with the exception of Intuit, in soliciting exclusive Merchant Offers without Bank of America's prior written consent but may facilitate the processing of offers if the Supplier customer sources the offer directly. Supplier may not provide a Supplier customer with a superior offer unless the incremental offer value is funded directly by the Supplier customer.

**6. SERVICE PARTNERSHIP:**

a) **Development of On-Platform Services for Cardlytics Targeted Marketing System.** Supplier will develop the systems, technologies, relationships, and training to enable Bank of America to electronically accept and process Merchant Offers through the Cardlytics Targeted Marketing System, which manages the matching, serving and redemption of Merchant Offers ("Cardlytics TMS"). This process will involve linking the Cardlytics TMS to Bank of America and installing Cardlytics Offer Placement System ("Cardlytics OPS") on Bank of America's servers in Bank of America's data center.

b) **Cardlytics TMS Service Processes.** Supplier will operate and manage the On-Platform Service to and for Bank of America and Participating Merchants, which Services will take the following form and also as may be further described in this and other schedules:

i. Supplier is responsible for the design, development, maintenance and on-going enhancement of the Cardlytics TMS.

ii. Supplier will form relationships with its Participating Merchants and obtain and publish to customers Merchant Offers using the Service and other methods of communicating with Supplier customers.

1. Supplier will develop at least two (2) seasonal concepts throughout the year such as spring home improvement, back-to-school, and summer vacation planning

2. Supplier will provide real time messaging capabilities and enhance such capabilities to allow Bank of America to deliver 'missed reward' notifications.

3. Subject to Bank of America providing the relevant customer identification information, Supplier will ensure a minimum amount of content is aspirational in nature for the relevant Bank of America customer segment as outlined below. Aspirational content means content from advertisers that is reasonably considered to be desirable to the relevant customer segment (e.g. Brooks Brothers for Preferred or OfficeDepot for Small Business).

| **Customer Segment** (as defined and updated by Bank of America) | **Minimum Aspirational Content** |
|---|---|
| Preferred | 10% January – June 2016 and 20% July 2016 and after |
| GWIM | 30% |
| Small Business | 10% |

iii. Supplier will be solely responsible for setting ad pricing with its Cardlytics Secured Merchants pursuant to separate agreements between Supplier and its Participating Merchants that shall not be considered beneficiaries of this Agreement.

iv. Supplier will operate the Cardlytics TMS so that it enables its Participating Merchants to manage market campaigns. Participating Merchants will build advertising campaigns that target users with particular spend behaviors based on, but not limited to, the following variables: user zip code, merchant name, purchase amount or merchant category. Any combination of these variables may be used to develop a merchant campaign.

v. Supplier will operate the Cardlytics TMS to build and manage campaigns for merchants sourced by Bank of America. Bank of America Secured Merchants will build advertising campaigns that target users with particular spend behaviors based on, but not limited to, the following variables: user zip code, merchant name, purchase amount or merchant category. Any combination of these variables may be used to develop a merchant campaign.

vi. Supplier will screen advertisers and individual ads to ensure that they meet both Supplier and Participating Merchant, media and message standards. Bank of America will have the ability to control merchant advertising campaigns in the following manner:

1. Bank of America can eliminate any merchant or category of merchants from placing offers to Bank of America. These exclusions will be identified by Bank of America before launching the Supplier Service and will be excluded forever unless Bank of America requests changes, additions or deletions from the merchant exclusions.

2. Bank of America will have access to a review queue where they can preview all Merchant Offers that are scheduled to be published to Bank of America. Merchant Offers will be in the review queue until Bank of America has approved such offers. Bank of America will make reasonable efforts to approve or disapprove offers within three (3) Business Days unless mutually agreed between Bank of America and Supplier. Bank of America has the right to veto any merchant or Merchant Offer for any reason. Publishing of Merchant Offers without Bank of America approval shall be considered a breach of this Agreement.

vii. Supplier will install and assist Bank of America in operating the Cardlytics OPS that will be hosted with Bank of America's data center.

viii. Supplier will provide technology support to Bank of America for problems arising solely out of the Cardlytics TMS as set forth on Schedule C.

ix. Supplier will provide dedicated client management support to Bank of America.

x. Supplier will provide training to enable Bank of America to address inquiries from customers.

xi. Supplier will provide integration work and training on the Cardlytics TMS as necessary for activities under this Agreement.

xii. Supplier will continue to enhance the Cardlytics TMS to extend value to Bank of America and create additional earnings for Bank of America.

c) **Bank of America's Responsibilities.** Bank of America shall perform the following:

The project plan, including format and connectivity, was jointly defined and agreed upon by Supplier and Bank of America. Bank of America will:

- Obtain any necessary information required for initial testing and integration.
- Install Cardlytics OPS in the Bank of America's data center including physical installation, networking, web server configuration and security.
- On a daily basis, send to the Cardlytics OPS a list of transactions and account information for accounts receiving the Supplier Service.
- On a monthly basis, enable Supplier to provide Bank of America with the amount of rewards earned by each customer of Bank of America receiving the Supplier Service. Bank of America will credit the rewards to each account.
- On a monthly basis, enable Supplier to reimburse Bank of America for the rewards earned by each user receiving the Supplier Service.
- Perform the tasks required to display offers to users on electronic statements.
- Ensure cardholder terms and conditions allow Bank of America to offer the Supplier Service.
- Provide Level 1 Customer support
- Provide assistance and cooperation in the design and preparation of the product display and provide resources to enable the product design and look and feel in the website and computer system of Bank of America operating the Service.
- Provide the computers and other hardware that is determined to be appropriate for the operation of the Cardlytics TMS in the data centers of Bank of America in accordance with the scope and specifications in the plan created and agreed to by Supplier and Bank of America.
- Provide the personnel, hardware and software resources required to support the operation of the Cardlytics OPS and Services, including without limitation technology and operations support, database management and customer support.

**d)** **Use of Service Data**. Subject to Section 15 of the Agreement and pursuant to Section 15.2, Supplier may do the following with Bank of America Confidential Information: use, reproduce, and retain all non-personally identifiable customer aggregated data including browsing data ("Aggregated Data") solely for the purposes of delivering the Services outlined in this Agreement including (i) activities that pertain to the marketing, operation, utility, functionality, or performance of the Service, the marketing and offering of Merchant Offers, or the distribution of reports to Bank of America and Participating Merchants or (ii) is necessary or useful in assisting Supplier in (a) the diagnosis or correction of an irregularity, error, problem, or defect in the Service, (b) the measurement of Service usage, (c) the protection or security of the Service, (d) the evaluation and operation of the Service, (e) the introduction, implementation, or testing of any improvements, upgrades, or enhancements thereto, and (f) performing Supplier' obligations under this Agreement. In addition, Supplier may also use Aggregated Data for the purpose of obtaining and marketing to merchants and Merchant Offers for the Service by i) providing media releases and though pieces to the marketplace and/or ii) by providing report data to prospective merchants that are a) approved by Bank of America in advance, b) not customer, or merchant-specific, and c) is marked as Bank of America proprietary when Bank of America Aggregated Data is not aggregated with data from Supplier's other customers. Supplier will ensure that merchants understand the confidential nature of the Aggregated Data and will ensure that merchants do not use the Aggregated Data for any other purpose than to support or consider the Services outlined in this Agreement. For clarity, Supplier derives summary analytics from the combination of Bank of America Aggregated Data combined with aggregated data from other Supplier customers (e.g. percentage of debit versus credit transactions by geographical region). The use of such summary analytics is not considered Bank of America Confidential Information under the Agreement. Except for the limited rights granted herein for purposes of this Agreement and the use of Aggregated Data, Supplier shall not otherwise use or retain any Customer Information or Consumer Information. Notwithstanding anything to the contrary to the Agreement, Supplier may not under any circumstances monetize or sell Bank of America Aggregated Data.

**e)** **Participation Marketing.** Supplier may use Bank of America's name and logo, exactly as provided by Bank of America, solely with merchants and solely in connection with the procuring of offers necessary for the provision of the Services pursuant to this Agreement. Supplier will market the Supplier Service to obtain regional and national advertisements from merchants and manage and encourage merchant participation in the Supplier Service ("Participation Marketing"). Subject to section d above, Supplier is entitled to use the name of Bank of America and Aggregated Data in Participation Marketing.

**f)** **Redemption Control.** Supplier shall protect against inaccurate redemptions by approving those with certain criteria. Supplier shall hold and review redemptions that meet any of the following:

1. Duplicates
    a) REASON: To guard against technical issues. This flag is in place in case a FI loads a transaction file twice.
2. Statistical Deviation
    a) REASON: Operations control to ensure campaigns are configured correctly.
3. High Priority
    a) REASON: Operations control to ensure all redemptions are reviewed and investigated following the initial launch of a high priority/important campaign. This is an additional safeguard to guarantee we deliver correct results from the campaigns.
        i. Set at the discretion of the merchant services team based on priority of merchant relationship.

Exhibit 1 – Bank of America Secured Merchants

Lowes
Wal mart
Gap, Inc.
McDonalds
Best Buy
Starbucks
Staples
Home Depot
Subway
Target

| Improvement | Description | Target Production Date (customer launch) |
|---|---|---|
| Account Overview Tile-OLB | Add a single logo “always on”, activateable offer to the Account Overview page in the Activity Center that produces viewable serves. | August 2017 |
| Marketing Integration-OLB | Add the ability to serve and activate content from Marketing containers within the online banking space. The following placements are expected: Targeted Online Add (“TOLA”), Special Offers Page and in the Special Offers and DealsDrop Down Menu. These placements should generate viewable served offers. | February - 2017 |
| Account Details Widget-OLB | Change from a 4 logo display to 6 logo display. | February - 2017 |
| Small Business Credit Card AD Widget | Change from a 4 logo display to 6 or more logo display. | February - 2017 |
| Account Details Widget-Mobile | Only log offers as served that have been confirmed as visible to the user. | August 2017 |
| Account Overview Widget-Mobile | Add a 4 logo, ‘always on’ widget that will only log offers as served that have been confirmed as visible to the user. | August - 2017 |
| Gamification Test Plan | Supplier will run three separate campaign tests on behalf of Bank of America during the first half of 2017. These tests will be structured to provide feedback on different prize types and customer engagement. Bank of America will fund the prizes for this test out of the Bank of America Revenue Share Amount. The Parties expect the prizes will be approximately $500,000. | Beginning February 2017 |
| Gamification | Depending on test results, create a system that provides prizes to customers for engaging with BankAmeriDeals. Prizes should reflect activity, limited to making redemptions.<br>Any additional prize functionality that requires Supplier development is currently out of scope. Funding of prizes associated with gamification will be determined at a later date. | Employee Pilot Beginning December 2017. Full customer launch by February 2018 |
| ATM | Allow for Merchant Offers to be displayed within the ATM channel. Offers will be viewable and not marked as served until visible on the screen. | November - 17 |
| Marketing Emails | Bank of America will continue to send activateable marketing emails to customers on a monthly basis utilizing mutually agreed upon logic. | Throughout 2017 |
| Increased Settlement | Allow for settlement runs to take place at least two times per month. Capture all redemptions up until that settlement run. Supplier current funding cycle of once per month for previous month’s redemptions will not change. | February - 2017 |
| Marketing Emails | Furthermore, Bank of America will expand the size of the email population to additional customers and expand the number of offers in the email from a maximum of 4 to 8. | Sept 2017 |

| Improvement | Description | Target Production Date (customer launch) |
|---|---|---|
| Posted Transaction Enhancements | Bank of America will update their posted strings to contain agreed upon data fields and make recommended modifications to clean up the Bank of America transaction string | Feb - 2018 |

**SCHEDULE B**
Service Payments

Supplier shall pay to Bank of America a revenue share for Supplier Secured Merchants and Bank of America shall pay to Supplier for Bank of America Secured Merchants during the Term of this Agreement as provided below. Supplier agrees to enforce the obligations of Supplier Secured Merchants to pay any sums owed by Supplier Secured Merchants. Bank of America agrees to enforce the obligations of Bank of America Secured Merchants to pay any sums owed by Bank of America Secured Merchants.

| Merchant Source | Bank of America Revenue Share Percentage | Supplier Revenue Share Percentage |
|---|---|---|
| From Supplier Secured Merchants as of National Launch Date | [***]%. | [***]% |
| From Supplier Secured Local Merchants from one year after National Launch Date | [***]% | [***]% |
| From Bank of America Referred Merchants | [***]. | [***]% |
| From Bank of America Managed Merchants | [***]. | [***]% |
| Bank of America Operated Merchants | [***]% | [***]% |

**a) Payment of Customer Incentive Amount.**

Supplier shall be solely responsible for paying the User Incentives, subject to the User Incentive Adjustments, of Cardlytics Secured Merchants to Bank of America for payment to Users. Supplier bears full collection risk for such billing and any Cardlytics Secured Merchant's failure to pay will have no effect on Supplier's obligation to pay User Incentives for those Cardlytics Secured Merchants under this Agreement. The User Incentive will be paid to Bank of America on the fifth to last business day of the calendar month following the User's earning of the incentive. Supplier agrees to enforce the obligations of Cardlytics Secured Merchants to pay any User Incentives promised in Merchant Offers of Cardlytics Secured Merchants and the other fees and charges owed by that Merchant.

For all Bank of America Managed Merchants and Operated Merchants, Bank of America shall be solely responsible for paying the User Incentives, subject to the Adjustments, of Bank of America Secured Merchants to Users unless Bank of America and Supplier have agreed that Supplier will collect and settle

the User Incentives from Bank of America Secured Merchants. In either case Bank of America bears full collection risk for such billing, and any Bank of America Secured Merchant's failure to pay will have no effect on Bank of America's obligation to pay User Incentives under this Agreement. Bank of America agrees to enforce the obligations of Bank of America Secured Merchants to pay any User Incentives promised in Merchant Offers of Bank of America Secured Merchants and the other fees and charges owed by that Merchant.

The User Incentive Amount from Supplier Secured Merchants shall be payable by Supplier by wire transfer on the fifth to last business day of each calendar month for the Measurement Period ending on the most recent date prior to the first day of the calendar month of payment. Each payment shall be accompanied by a data file, in a format acceptable to Bank of America, reconciled to the User Incentive Amount, reflecting the amount of User Incentives and User Incentive Adjustments to be applied to each User account.

For Bank of America Secured Merchants, Supplier will provide Bank of America a weekly report that provides the information required to invoice those Bank of America Secured Merchants.

**b) Revenue Share Schedule**

Supplier and Bank of America shall make commercially reasonable efforts to collect in a timely fashion all receivables for which that party is obligated to collect. Regardless of when receivables are collected they will be shared with the other party per the terms of this Agreement. Supplier and Bank of America are not obligated to pay any Revenue Share Amount with respect to a sum that party has not collected and received. In the unlikely event that receivables are never collected, those sums will not be owed. For all Supplier Secured Offers, uncollected receivables will be capped at 10% of Total Revenues for any given Measurement Period.

**c) Calculation of Revenue Share**

1. For each Measurement Period, the Revenue Share Amount due to Bank of America and the Revenue Share Amount due to Supplier shall be calculated as follows:

i. An amount equal to:

   a. Total Revenues from the Services in Schedule A Section 4,

   b. minus total Revenue Adjustments

   c. plus/minus the Receivables Adjustment

   d. minus Allowable Expenses

ii. Multiplied by the applicable Revenue Share Percentage

2. Notwithstanding anything else in this Agreement, Supplier's Revenue Share under this Agreement for any Measurement Period, will not fall below [***] percent ([***]%).

3. For the avoidance of doubt, all monetary amounts in the Agreement and this Amendment, are calculated on a cash basis, consistent with how the Parties have operated under the Agreement to date.

**d.) Performance Requirements:** The Parties acknowledge that Supplier's ability to meet its performance obligations under the Agreement is dependent on Bank of America operational performance. The Parties agree to document such performance goals and meet regularly to discuss, update and resolve any concerns.

**e.) Portfolio Development Expenses**

2016 - Supplier will provide $[***] ("2016 Development Prepayment") for the 2016 User Interface Updates. $[***] will be provided in January of 2016 and nothing further will be due at that time, provided a proportionate amount of the remaining $[***] will be paid on a schedule agreed upon by the Parties. Bank of America will reimburse [***]% of the 2016 development costs paid by Supplier in monthly installments deducted from the Bank of America Revenue Share Amount in calendar year 2017. Such timing and amounts will be agreed upon by the Parties. If any of the 2016 User Interface Updates are not made available to Eligible Bank of America customers by January 1, 2017, then Cardlytics may withhold [***]% of Bank of America's revenue share until [***]% of the 2016 Development Prepayment is recouped. In addition to the 2016 development expenses, Supplier agrees to invest [***] dollars ($[***]) in testing mobile adoption programs between January and May of 2016.

Explanatory table of Development Prepayment and Revenue Share Amount

| | Dev Payments | Reimbursement | Total Paid by Supplier |
|---|---|---|---|
| 2016 | $ [***] | | $ [***] |
| 2017 | $ [***] | $ [***] | $ [***] |
| 2018 | [***] | $ [***] | [***] |
| 2019 | [***] | $ [***] | [***] |

2017 - Supplier will provide $[***] ("2017 Development Prepayment") for the 2017 User Interface Updates. Bank of America will reimburse [***] in monthly installments deducted from the Bank of America Revenue Share Amount in calendar year 2018.

If any of the 2017 User Interface Updates are not made available to Eligible Bank of America customers within two (2) months of the Target Production Date, then Cardlytics may withhold [***]% of Bank of America's revenue share until [***]% of the 2017 Development Prepayment is recouped.

2018 and later – The Parties contemplate continuing User Interface Updates and annual projects related to the development of system and product improvements throughout the Term of this Agreement. As such, the Parties agree to reasonably cooperate and agree on finalizing such improvements and projects along with the corresponding Supplier funded development expenses from 2018 forward in a manner similar to those outlined herein for 2016 and 2017. The 2018 Development Payments will be made according to the following calendar quarterly schedule: $[***], $[***], $[***], and $[***].

**f.) Financial Reporting**

Supplier shall supply financial reporting to Bank of America with all details necessary to validate the metrics herein, by the end of the following month. Supplier shall make all changes to the reporting reasonably requested by Bank of America in a timely manner. Supplier will provide back-up documentation and other support as necessary to validate any such reporting.

**[***] = CERTAIN CONFIDENTIAL INFORMATION CONTAINED IN THIS DOCUMENT, MARKED BY BRACKETS, HAS BEEN OMITTED AND FILED SEPARATELY WITH THE SECURITIES AND EXCHANGE COMMISSION PURSUANT TO RULE 406 OF THE SECURITIES ACT OF 1933, AS AMENDED.**

**Software License, Customization and Maintenance Agreement**

| | |
|---|---|
| Agreement Number: | CW251207 |
| Effective Date: | 11/4/10 |
| Company Name: | Cardlytics, Inc. |
| Company Address: | 621 North Avenue NE<br>Suite C-30<br>Atlanta, GA 30308 |
| Company Telephone: | 888.798.5802 |

This SOFTWARE LICENSE, CUSTOMIZATION AND MAINTENANCE AGREEMENT ("Agreement") is entered into as of the Effective Date by and between Bank of America, N.A. ("Bank of America"), a national banking association, and the above-named Supplier, a corporation, and consists of this signature page and the attached Terms and Conditions, Schedules, and all other documents attached hereto, which are incorporated in full by this reference.

**("Supplier")**

By: /s/ Scott Grime
Name: Scott Grime
Title: Chief Executive Officer
Date: 11/8/10

Address for Notices:

Cardlytics, Inc.
621 North Ave NE
Suite C-30
Atlanta, GA 30030
ATTN: Scott Grimes
Telephone: 888.798.5802
Email: [***]

**Bank of America, N.A.**

By: /s/ Chandra Torrence
Name: Chandra Torrence
Title: V.P., Sourcing Manager
Date: 11/4/10

Address for Notices: (Supply Chain Management Contact)
Mailcode NC1-023-09-01
Bank of America
625 N Tryon St
Charlotte, NC 28255
ATTN: Chandra Torrence
Telephone: [***]
Email: [***]

With a copy to:

Bank of America Legal Department
101 S. Tryon Street
Charlotte, NC 28255

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1.0 DEFINITIONS

1.1 All defined terms In this Agreement not otherwise defined in this Section shall have the meanings assigned in the part of this Agreement in which they are defined.

1.2 Acceptance Date - the first Business Day after the day Bank of America accepts the Software or it is deemed accepted pursuant to the Section entitled “Acceptance.”

1.3 Acceptance Period - the period commencing on the Installation Date and continuing for the number of days specified in each Product License Schedule, as such period may be extended pursuant to the Section entitled “Acceptance.”

1.4 Affiliate - a business entity now or hereafter controlled by, controlling or under common control with a Party. Control exists when an entity owns or controls directly or indirectly 50% or more of the outstanding equity representing the right to vote for the election of directors or other managing authority of another entity.

1.5 Associate Information - any non-public information about a Bank of America Representative, whether in paper, electronic, or other form that is maintained by or on behalf of Bank of America for a business purpose.

1.6 Bank of America Customizations - Customizations listed on a Customization Schedule, which shall be owned by Bank of America and subject to the Marketing Restrictions outlined in the Section entitled “Customizations.”

1.7 Bank Security Requirements- all bank security requirements as described in SCHEDULE E and the Bank of America Service Provider Security Requirements document provided separately.

1.8 Business Continuity Plan - the policies and procedures that describe contingency plans, recovery plans, and proper risk controls to ensure Supplier’s continued performance under this Agreement.

1.9 Business Day - Monday through Friday, excluding days on which Bank of America is not open for business in the United States of America.

1.10 Consumer Information - any record about an individual, whether in paper. electronic. or other form, that is a consumer report as such term is defined in the Fair Credit Reporting Act (15 USC 1681 et seq.) or is derived from a consumer report and that is maintained or otherwise possessed by or on behalf of Bank of America for a business purpose. Consumer Information also means a compilation of such records. The term does not include any record that does not identify an individual.

1.11 Correction - a modification to Software to resolve one (1) or more Errors.

1.12 Customer Information - any record containing information about a customer, its usage of Bank of America’s services, or about a customer’s accounts, whether in paper, electronic, or other form that is maintained by or on behalf of Bank of America for a business purpose.

1.13 Customizations - modifications to the Licensed Programs and new coding made at the request or Bank of America.

1.14 Customization Schedule - a document substantially In the form of SCHEDULE B attached hereto.

1.15 Customization Status Report - a written report prepared by Supplier that describes the status of the development and implementation, describes problems and the steps underway to resolve them, provides a report of hours expended to date for each Customization, and reports all other information necessary or desirable for Bank of America management to understand the status of the project to develop Customizations.

1.16 Delivery Date - the date on which Bank of America actually receives the Software from Supplier.

1.17 Documentation - any and all: (i) materials created by or on behalf of Supplier that describe or relate to the functional, operational or performance capabilities of the Software, regardless of format; (ii) user, operator, system administration, technical, support and other manuals, including but not limited to functional specifications, help files, flow charts, logic diagrams, programming comments, acceptance plan, if any, and portions of licensor's web site that in any way describe the Software; (iii) responses and other materials submitted by Supplier in response to any Bank of America Request for Information ("RFI"), Request for Proposal ("RFP") or Request for Quotation ("RFQ"); and (iv) updates, changes and corrections to any of the forgoing that may be made during the Term of this Agreement.

1.18 Effective Date - the date set forth on the signature page on which this Agreement takes effect.

1.19 Error - an instance of failure of Software to be Operative. An Error is a Class 1 Error if it renders the Software unusable for its intended purpose. An Error is a Class 2 Error if the Software is still usable for its intended purpose, but such use is seriously inconvenient and the value to Bank of America of the use of the Software is substantially reduced. All other Errors are Class 3 Errors.

1.20 Information Security Program - the documents that describe how Supplier will provide services to Bank of America in a manner that complies with the confidentiality and information security requirements of this Agreement and all pertinent Schedules and Exhibits hereto. Such information security program must be approved by Supplier's board of directors or equivalent executive management prior to the Effective Date thereof and annually thereafter. It must describe Supplier's network infrastructure and security procedures and controls that protect Confidential Information on a basis that meets or exceeds the Bank Security Requirements.

1.21 Installation Date - the date the Software has been properly installed.

1.22 Installation Site - the building or complex of buildings at which Bank of America installs the Software.

1.23 Intellectual Property Rights - all intellectual property rights throughout the world, including copyrights, patents, mask works, trademarks, service marks, trade secrets, inventions (whether or not patentable), know how, authors' rights, rights of attribution, and other proprietary rights and all applications and rights to apply for registration or protection of such rights.

1.24 Licensed Programs - the computer programs and all Documentation for such computer programs described in each Product License Schedule (including Source Code for such computer programs unless expressly stated otherwise in such Product License Schedule).

1.25 Maintenance Fees - the fees for Maintenance Services set forth in each Product License Schedule.

1.26 Maintenance Period - unless otherwise specified in a Product License Schedule, the Maintenance Period shall be twenty-four (24) hours per day, seven (7) per week, including Bank of America holidays.

1.27 Maintenance Services - the services described in SCHEDULE D or in any Product License Schedule or Order with respect to any Licensed Program including telephone consultation, online and on-site technical support, Error correction and the provision of Updates.

1.28 Object Code - machine-readable computer instructions that can be executed by a computer.

1.29 Operative - conforming in all material respects to performance levels and functional specifications described in the Program Materials and in this Agreement.

1.30 Order - Product License Schedule, purchase order, work order, Customization Schedule or other written instrument executed, or electronic transmissions originated by, an authorized officer of Bank of America Supply Chain Management directing Supplier in the provision of services substantially conforming to a form provided to Supplier by Bank of America. Unless otherwise provided in writing, the business terms in each Order relating to description of the Licensed Program, pricing, and performance standards shall apply only to such Order.

1.31 Party - Bank of America or Supplier.

1.32 Platform - the computer equipment and operating system which can execute the Object Code.

1.33 Product or Products equipment, Software, firmware, system designs, Program Materials, Customizations, Maintenance Services, Documentation, training and any other goods or services this Agreement calls for Supplier to furnish or Supplier furnishes. Unless expressly otherwise provided, Product or Products shall also mean any separate portion or part of the Product or Products that Supplier furnishes.

1.34 Product License Schedule - a document substantially in the form of SCHEDULE A attached hereto.

1.35 Production Installation Date - the fifth consecutive Business Day upon which the Software has been used successfully to process Bank of America's work commercially in production.

1.36 Program Materials - Supplier's proposals to Bank of America, Documentation, specifications and any other Documentation delivered in connection with the Software, including without limitation materials described in each Product License Schedule.

1.37 Records - documentation of facts that include normal and customary documentation of facts or events for an industry, specific deliverables as designated, emails determined to be "records" because of the business or litigation purpose, any records documenting legal, regulatory, fiscal or administrative requirements.

1.38 Relationship Manager(s) -the employee designated by a Party to act on its behalf with regard to matters arising under this Agreement who shall be the person the other Party shall contact in writing regarding matters concerning this Agreement.

1.39 Repair Period - the time period commencing when Bank of America reports an Error to Supplier and continuing for four (4) hours or such other period as may be specified In a Product License Schedule.

1.40 Representative an employee, officer, director, or agent of a Party.

1.41 Software - the Licensed Programs and Object Code licensed by Supplier pursuant to a Product License Schedule that produces the results described in the Program Materials, together with the Documentation, all Corrections, Customizations and Updates and any Upgrades acquired by Bank of America pursuant to this Agreement, and, if licensed to Bank of America in this Agreement, the Source Code or other software programs offered by Supplier to the public on Supplier's Web site and used by Bank of America, notwithstanding any associated EULA, GPL or other license terms, any Updates thereto, and any related user manuals or Documentation.

1.42 Source Code - the human-readable code from which a computer can compile or assemble the Object Code of a computer program, together with a description of the procedure for generating the Object Code.

1.43 Subcontractor - a third party to whom Supplier has delegated or subcontracted any portion of its obligations set forth herein.

1.44 Supplier Customizations - Customizations listed on a Customization Schedule, which Supplier shall own and license to Bank of America under the terms of this Agreement.

1.45 Supplier Security Controls those controls implemented by Supplier as part of its Information Security Program that address each of the Bank Security Requirements, as modified from time to time.

1.46 Term - the initial term of the Agreement or any renewal or extension.

1.47 Time and Materials Rates - the rates specified in each Product License Schedule [or Order] that Supplier may charge for services provided under this Agreement which are not covered by the Maintenance Fee, or if not so specified, supplier's standard rates for such services.

1.48 Update - a set of procedures or new program code that Supplier implements to correct Errors and which may include modifications to improve performance or a revised version or release of the Software which may incidentally improve its functionality, together with related Documentation.

1.49 Upgrade - a new version or release of computer programs licensed hereunder which Supplier makes generally available to its customers to improve the functionality of, or add functional capabilities to such computer programs, together with related Documentation. Upgrades shall include new programs which replace, or contain functionality similar to, the Software already licensed to Bank of America hereunder.

1.50 Warranty Period - the time period specified in each Product License Schedule commencing on the Acceptance Date of the applicable Software component as extended pursuant to the Section entitled "Acceptance."

1.51 Work in Progress - all plans, systems designs, Documentation, working materials, specifications, flow charts source code, documented test results and other Work Product prepared by Supplier pursuant to this Agreement or during development of the Customizations.

1.52 Work Product all information, data. materials, discoveries, inventions, drawings, works of authorship, documents, documentation, models, software, computer programs, software (including source code and object code), firmware, designs, specifications, processes, procedures, techniques, algorithms, diagrams, methods, and all tangible embodiments of each of the foregoing (in whatever form and media) conceived, created, reduced to practice or prepared by or for Supplier at the request of Bank of America within the scope of services provided under this Agreement, whether or not prepared on Bank of America's premises and all Intellectual Property Rights therein.

2.0 LICENSE

2.1 Supplier hereby grants Bank of America a nonexclusive, worldwide, irrevocable, perpetual license to install, use, execute and copy the Software described in each Product License Schedule as necessary to conduct Bank of America business in accordance with the terms and restrictions of this Section and any special terms and restrictions stated on the applicable Product License Schedule.

2.2 In addition, Bank of America may, at no additional charge other than the Software license fees specified in each Product License Schedule, (i) install, use, execute and copy the Software for any backup, archival and emergency purposes and any internal, non-production Bank of America purpose including for test, development, and training; (ii) allow a third party outsourcer or service provider to install, use, execute and copy the Software solely in connection with its provision of services to Bank of America, provided that such use does not extend to providing services to others; and (iii) transfer the Software to any other Platform or Installation Site replacing that on which it was previously installed.

2.3 Bank of America may transfer the Software to other server operating systems or database platforms, whether or not in existence as of the effective date of this Agreement, but on which the Software is subsequently certified to operate, and Supplier shall provide Bank of America with any generally available versions of the Software, including required passwords or keys, that are reasonably necessary to accomplish such transfer, all at no additional charge.

2.4 Bank of America may for a reasonable period of time after the sale of a Affiliate of Bank of America or a division of Bank of America, provide to such divested entity, processing services and/or similar activities which are or become incidental to Bank of America's business, at no additional charge or fee. All restrictions set forth in this Agreement on Bank of America's use of the Software shall be deemed also to apply to any divested entity's use of the Software.

2.5 The license is subject to the following restrictions: (a) Title to and ownership of the Software (except the Bank of America Customizations) shall remain with Supplier or its licensors; (b) Bank of America shall not reverse engineer, reverse compile or disassemble any part of the Software without the prior written consent of Supplier: and (c) Bank of America shall not remove, obscure or deface any proprietary legend relating to the Software and shall include in each copy all proprietary notices contained in the Software.

2.6 The licenses set forth above shall include the right to install, use, execute and copy the Source Code for test and development purposes. to modify it, to compile it into Object Code and to prepare from it derivative works for internal use only. Bank of America must keep the Source Code at the Source Code Installation Site named in SCHEDULE A. Bank of America may transfer Source Code to an alternate source code installation site if Supplier is notified promptly after such relocation. Other copies may be made for backup and archival purposes and may be transferred to Bank of America's off-site backup storage and contingency operations sites only. Any additional charge for the Source Code Is specified in SCHEDULE A.

2.7 If Bank of America is not in default of its obligations under this Agreement or the General Services Agreement of even date between Supplier and Bank of America, then at Bank of America's request, Supplier shall deliver the then existing compiled and Source Code Software for the Cardlytics Software and any Improvements of thereto subject to the payment schedule to Supplier as outlined in Schedule A, Section B. Upon delivery, Bank of America will have all license right outlined in Section 2.7.1:

2.7.1 Supplier hereby grants Bank of America a nonexclusive, worldwide, irrevocable, perpetual license to: (a) any patents related to or necessary or desirable to use the Software to the extent such patents are now held, licensed to or hereafter acquired by Supplier, for the purpose of allowing Bank of America and its Affiliates and permitted assigns to install, copy, use, execute, modify, distribute (as necessary or useful for Bank of America and its Affiliates and permitted assigns to enjoy their rights as set forth in the Agreement), make, have made, enhance, improve and alter the Software (both in Object Code and Source Code form) as necessary to conduct Bank of America business in accordance with the terms and restrictions or this Section; (b) any Copyrights now held, licensed to or hereafter acquired by Supplier in the Software for the purpose of allowing Bank of America and its Affiliates an permitted assigns to install, copy, use, execute, modify, distribute (as necessary or useful for Bank of America and its Affiliates and permitted assigns to enjoy their fights as set forth In the Agreement, produce derivative works from and

display such Software (both in Object Code and Source Code for ); any (c) other Intellectual Property Rights or Supplier in the Software as are necessary or useful for Bank of America, its Affiliates and permitted assigns to install, copy, use, execute, modify, distribute, enhance, improve and alter and copy the Software (both in Object Code and Source Code form) for the purpose of conducting Bank of America business in accordance with the terms and restrictions of this Section. Without limiting the foregoing, but subject to the restrictions set forth in Section 2.5 hereof, Bank of America may: (x) sublicense its rights granted herein to its third party contractors for the purpose of their performing services for Bank of America and its Affiliates (which services may include, without limitation, altering, modifying, enhancing and improving the Software and creating derivatives to the Software), provided that such third party contractors have entered into a written agreement containing commercially standard confidentiality provisions requiring them to maintain the Source Code to the Licensed Programs securely and in confidence (subject to commercially standard exceptions), prior to having access to the Source Code for the Software: (y) sublicense its rights in the Software excluding any rights in the Source Code, to its end user customers as necessary for Bank of America to provide services to such end user customers; and (z) host the Software on its systems (or allow a third party to host the Software on its behalf) and make the Software available for use by its end user customers through the internet or other similar means. Any derivative works of or alterations, enhancements, modifications, or improvements to the Software created by Bank of America, its Representatives and Affiliates or their third party contractors shall be owned, and be freely assignable, by Bank of America, and Supplier shall have no rights therein (subject to Supplier's ownership of the underlying software). Without limiting the foregoing, Bank of America may freely transfer such Software to any other Platform or Installation Site replacing that on which it was previously installed.

2.8 Supplier expressly acknowledges and agrees that the rights of Bank of America set forth in this Agreement shall inure to all Bank of America Affiliates, provided that Bank of America shall be responsible for the obligations of its Affiliates under this Agreement. Such Affiliates may execute Orders and purchase Licensed Programs hereunder.

2.9 No Shrink Wrap Licenses. Supplier and Bank of America agree that no so-called "shrink wrap" or "click wrap" license terms shall apply to any Licensed Programs licensed to Bank of America hereunder. In the event that licenses or versions of the Licensed Programs that are packaged with any such "shrink wrap" or "click wrap" license are delivered to Bank of America hereunder. the terms and conditions of this Agreement and the applicable Order shall apply and not the terms of the "shrink wrap" or "click wrap" license.

3.0 RELATIONSHIP MANAGER

3.1 Each Party shall designate an employee Relationship Manager(s) to act on its behalf with regard to matters arising under this Agreement and shall notify the other Party in writing of the name of its Relationship Manager; however, the Relationship Manager shall have no authority to alter or amend any term, condition, or provision of this Agreement. Either Party may change its Relationship Manager(s) by providing the other Party prior written notice. The Relationship Manager must be identified in a writing delivered to the other Party at least one (1) week prior to the commencement of any work under this Agreement.

3.2 The Relationship Manager(s) shall meet via conference call with such frequency as Bank of America's Relationship Manager shall reasonably request. Bank of America may require meetings in person at a site designated by Bank of America.

3.3 Supplier shall provide the Bank of America Relationship Manager a Customization Status Report by the first and fifteenth day of each month until all Customizations are accepted.

4.0 TERM

4.1 This Agreement shall apply and remain in effect from the Effective Date and perpetually thereafter unless terminated pursuant to the Section entitled "Termination."

5.0 TERMINATION

5.1 Bank of America may terminate this Agreement, an Order and/or any Customization Schedule(s) for its convenience, without cause, at any time without further charge or expense upon at least forty-five (45) calendar days prior written notice to Supplier. Termination of one Order shall not cause a termination of this Agreement or any other Order, unless otherwise specified by Bank of America.

5.2 In addition to any other remedies available to either Party, upon the occurrence of a Termination Event (as defined below) with respect to either Party, the other Party may immediately terminate this Agreement, the applicable Order or any Customization Schedule that is subject of the Termination Event by providing written notice of termination. A Termination Event shall have occurred if: (a) a Party materially breaches its obligations under this Agreement, an Order or any Customization Schedule under this Agreement and the breach is not cured within thirty (30) calendar days after written notice of the breach and intent to terminate is provided by the other Party; (b) a Party becomes insolvent (generally unable to pay its debts as they became due) or the subject of a bankruptcy, conservatorship, receivership or similar proceeding, or makes a general assignment for the benefit of its creditors; (c) Supplier either: (i) merges with another entity, (ii) suffers a transfer involving fifty (50%) percent or more of any class of its voting securities or (iii) transfers all, or substantially all, of its assets; (d) in providing services hereunder, Supplier violates any law or regulation governing the financial services Industry, or causes Bank of America to be in material violation of any law or regulation governing the financial services industry; (e) Bank of America has the right to terminate under the Section entitled "Pricing/Fees"; or (f) a Party attempts to assign this Agreement in breach of the Section entitled "Non-Assignment." In the event of a Termination Event described in item (a) above with respect to an Order, only the applicable Order shall be subject to termination. Breach of one Order shall not constitute a default of any other Order, unless otherwise agreed in writing between the Parties.

5.3 In addition to the Termination Events above, if the Services Schedule A of the General Services Agreement of even date between the parties to this Agreement expires, does not renew or terminates for any reason within the initial term and the Parties have not reached agreement on the delivery of the Software herein, then Cardlytics may terminate this Software License, Customization and Maintenance Agreement, including without limitation the Term License, shall terminate at the same time.

5.4 The Parties agree that all Software delivered pursuant to this Agreement and the documentation therefore constitute "intellectual property" under Section 101(35A) of the Code (11 U.S.C. section 101(35A)). Supplier agrees that if it, as a debtor-in-possession, or if a trustee in bankruptcy for Supplier, in a case under the Code, rejects this Agreement, Bank of America may elect to retain its rights under this Agreement as provided in Section 365(n) of the Code. Bank of America, and any Intellectual Property Rights, licenses or assignments from Supplier of which Bank of America may have the benefit, shall receive the full protection granted to Bank of America by applicable bankruptcy law.

5.5 The licenses granted in this Agreement with respect to any Licensed Program shall not terminate for any reason unless Supplier terminates the applicable Product License Schedule pursuant to Section 5.2 after Bank of America fails to pay in full the undisputed portion of license fees payable with respect to such Licensed Program under such Product License Schedule.

5.6 In addition to the rights of Bank of America set forth in this Section, (a) If Bank of America terminates any Product License Schedule for material default by Supplier prior to the Acceptance Date of the Software, Bank of America shall be entitled to a full refund, within thirty (30) calendar days after notice of termination, of all license fees, Maintenance Fees and other fees paid

hereunder; and (b) Bank of America may terminate Maintenance Services under any Product License Schedule or Order for convenience at any time, and Bank of America shall then have no obligation to pay any additional Maintenance Fees, other than for Maintenance Services performed through the date of termination. Bank of America may terminate the Maintenance Services under any Product License Schedule or Order for material default by Supplier, upon Bank of America's termination of such Maintenance Services for default, Bank of America shall be entitled to a pro rata refund of all prepaid Maintenance Fees for the period after the date of termination.

5.7 Supplier shall deliver all Work in Progress relating to Bank of America Customizations to Bank of America within five (5) calendar days after the effective date of termination under Sections 5.1, 5.2, and 5.3 above. All right, title and interest in such Work in Progress relating to Bank of America Customizations (including copyright) shall be deemed assigned to and vested in Bank of America.

5.8 In the event of expiration or termination of this Agreement, an Order or of Maintenance Services under this Agreement, Supplier agrees that upon the request of Bank of America, Supplier will, at no additional cost to Bank of America and through the period of paid up Maintenance Services, continue uninterrupted operations, conclude and cooperate with Bank of America in the transition of the business at Bank of America's direction and in a manner that causes no material disruption to Bank of America business and operations. The fees associated with such transition shall be in accordance with the fees in effect at the expiration or termination of this Agreement. In no event shall the transition exceed one hundred eighty [180] calendar days from the date of termination unless the Parties otherwise agree in writing. For the avoidance of doubt, Bank of America agrees to pay Supplier all undisputed fees for Maintenance Services rendered up to the date of termination or expiration pursuant to the related terms hereunder. Reimbursement of all extraordinary costs and expenses incurred outside of the Agreement terms and conditions will be agreed upon by Supplier and Bank of America in writing prior to their incurrence.

5.9 The rights and obligations of the Parties which by their nature must survive termination or expiration of this Agreement in order to achieve its fundamental purposes including, without limitation, the provisions of the following Sections, "AUDIT, "CONFIDENTIALITY AND INFORMATION PROTECTION," "INDEMNITY," "LICENSE," "LIMITATION OF LIABILITY. "MEDIATION/ARBITRATION," "OWNERSHIP OF WORK PRODUCT" and "MISCELLANEOUS" shall survive in perpetuity any termination of this Agreement.

6.0 ORDERING, DELIVERY AND INSTALLATION

6.1 To order Product(s), Bank of America or any of its Affiliates shall Issue Supplier an Order or other written authorization delivered in hard copy, via facsimile or other form of electronic communication referring to this Agreement. Bank of America shall not be obligated to pay for Product in the absence of such an Order. Supplier shall not deliver software not licensed to Bank of America.

6.2 Supplier shall, at Bank of America's election, either (i) electronically deliver the Software and Documentation to Bank of America premises from a remote location via electronic transmission, such as over telecommunications networks (e.g., file transfer protocol), by granting Bank of America downloading access through a secured web site, without Bank of America receiving or retaining possession of the Software and Documentation in the form of tangible personal property, such as tapes, disks or printed materials ("Electronic Delivery"), or (ii) deliver to and install the Software and Documentation at a Bank of America facility and depart the facility with all storage devices and resources used to deliver and install the Software and Documentation ("Load and Leave"). If the Software and Documentation are received through Electronic Delivery or through a Load and Leave exchange, no tangible personal property will transfer to or come into the possession of Bank of America from Supplier in fulfillment of Bank of America's entitlements to the Software and Documentation. Shipment and delivery of the Software shall be deemed

complete upon Supplier transmitting the Software to Bank of America or Supplier making it accessible by Bank of America for downloading, whichever Is applicable. Any other delivery method shall be by exception only and shall be clearly documented in the applicable Product License Schedule. If there is not a preference to delivery in such Product License Schedule, then ii is assumed that all Software and all Updates are by Electronic Delivery or by Load and Leave delivery to Bank of America.

6.3 Supplier shall be responsible for and shall bear any and all risk of loss or disclosure of, or damage to, Software until delivery to the Installation Site.

6.4 After delivery of Software, Bank of America shall attempt diligently to install it on the Platform using adequate numbers of technically skilled personnel, and shall notify Supplier promptly after the Software has been properly installed. Alternatively, Bank of America may request Supplier in writing to install the Software at the Time and Material Rates, unless otherwise expressly agreed in an Order.

6.5 Supplier shall provide at, no additional charge, installation Documentation and reasonable telephonic off site consultation and assistance as necessary for Bank of America to install the Software, together with the installation support, if any, described in an Order.

7.0 CUSTOMIZATIONS

7.1 Supplier shall provide Bank of America, within twenty-one (21) calendar days after receipt of the Bank of America's request setting forth the relevant requirements, with a written estimate of the cost of the Customizations. Bank of America may direct Supplier to provide such written estimate on a time and materials basis or a fixed price basis, and Supplier shall comply with such direction. Supplier's response shall set forth the Delivery Target Date for such Customizations.

7.2 Bank of America may submit to Supplier an Order or other written authorization for Customizations, stating Bank of America's preferred Delivery Target Date for Customizations and the terms for the Customizations, as proposed by Supplier pursuant to the preceding paragraph. Unless Supplier notifies Bank of America of its rejection of Bank of America's written order within five (5) Business Days after its receipt, it shall be deemed accepted. Bank of America shall not be obligated to pay for Customizations or time and materials supplied in the absence of an Order or written authorization. The parties shall execute a Customization Schedule for each Customization.

7.3 Bank of America and Supplier shall agree in writing on the functional, technical and performance specifications of any Customizations. The specifications for each customization shall be described in a Customization Schedule. Such specifications shall be subject to the Section entitled "Acceptance" and Supplier shall make such reasonable changes to the specifications or such preliminary documents as Bank of America may request. In accordance with Section 7.4, if applicable, at Bank of America's written request, accompanied by an Order or other written authorization. Supplier shall prepare functional. technical and performance specifications for Customizations prior to undertaking Customizations. Supplier shall deliver to Bank of America the Source Code and Object Code for Bank of America Customizations.

7.4 Change Orders;

A. If Bank of America requests a material change in the Customization specifications prior to acceptance of the Customizations, Supplier shall prepare revised specifications within fifteen (15) calendar days reflecting the price effect of Bank of America's request. Bank of America shall accept or reject Supplier's proposal within fifteen (15) calendar days after receipt thereof. The Parties shall make any appropriate amendment to the Customization Schedule.

B. Unless otherwise directed by Bank of America, Supplier shall continue to develop the Customizations using the Customization specifications in effect at the time Bank of America requests the change. Supplier may amend Customization specifications at no charge at its option, provided that Supplier shall obtain Bank of America's written consent to such amendment. At Supplier's option, Supplier may use the Change Order form to obtain Bank of America's consent.

7.5 Supplier shall provide Bank of America sufficient access to the development site and Supplier personnel so that Bank of America may have a reasonable opportunity to evaluate the status of any Customizations. Suppler shall notify Bank of America of, and Bank of America may at its request participate in, alpha, beta and quality assurance tests for the Customizations.

7.6 Commencing upon the Customization Delivery Date, Bank of America shall perform acceptance tests on the Customizations, following the procedure set forth in the Section entitled "Acceptance." If Bank of America rejects Customizations in accordance with the procedure set forth in the Section entitled "Acceptance," Bank of America has no further obligation to pay Supplier for them and shall receive a full refund of all amounts previously paid for that Customization.

7.7 Marketing Restrictions. Unless specified in the applicable customization Schedule or otherwise agreed, all Customizations shall be deemed Bank of America Customizations. Bank of America shall own all right, title, and interest in and to the Bank of America Customizations as Work Product in accordance with Section 39.0. Supplier shall not provide a Bank of America Customization to any third party. In the event that any Bank of America Customization is furnished or plan, design or specification for producing the same has been specifically designed, developed or modified for or by Bank of America, then no such Bank of America Customization, plan, design or specification shall be duplicated or furnished to others by Supplier without the prior written consent of Bank of America.

8.0 SOURCE CODE CUSTODY

8.1 The provisions of this Section shall apply only to the Source Code for the Licensed Programs. The Source Code for the Bank of America Customizations may be use by Bank of America without any of the restrictions set forth in this Section.

8.2 With each delivery of Software to Bank of America hereunder, Supplier shall deliver to Bank of America the Source Code for all Software and for all Updates, Upgrades and new releases of the Software. Until a Release Condition (as defined in Section 8.6) occurs and the conditions of Section 8.7 have been satisfied, Bank of America shall not permit access to or use of the Source Code, except as expressly provided herein.

8.3 Bank of America shall establish a secure receptacle in which it shall place the Source Code and shall put the receptacle under supervision of one or more of its officers, whose identity shall be available to Supplier at all times. Bank of America shall exercise the degree of care in carrying out its obligations hereunder that Bank of America then exercises with respect to Bank of America proprietary data of a similar nature, but not less than reasonable care. Bank of America acknowledges that the Source Code is proprietary data, and Bank of America shall have an obligation to preserve and protect the confidentiality of the Source Code.

8.4 Supplier grants Bank of America the right to duplicate the Source Code only as necessary to preserve and safely store the Source Code and as expressly permitted in this Section. Bank of America shall reproduce in all copies of the Source Code made by Bank of America any proprietary or confidentiality notices contained in the Source Code when originally delivered by Supplier.

8.5 Upon delivery of the Source Code to Bank of America by Supplier, including in connection with any Upgrade, Update or new release, Bank of America shall have the right to verify the Source Code for accuracy, completeness and sufficiency, and to confirm that it compiles to the pertinent object code of the Software. Bank of America shall notify Supplier of the dates on which any such verification will be conducted, and the results thereof. Bank of America may temporarily release the Source Code for this purpose only, but all copies of the Source Code shall be returned to the designated storage location as soon as the verification is completed. Supplier may elect to observe the verification process at its own expense.

8.6 Any or the following events shall be Release Conditions for purposes of this Section: (a) Supplier defaults on any of its maintenance obligations herein; (b) Supplier ceases to provide maintenance for the Software; (c) Supplier ceases doing business in the ordinary course, files or has filed against it a petition under bankruptcy Code, becomes insolvent or has a receiver appointed for all or a substantial part of its business; or (d) Bank of America terminates this Agreement for cause pursuant to the terms hereof.

8.7 If a Release Condition has occurred, Bank of America may immediately release the Source Code for the purposes described in Section 8.8, following the issuance of a written statement to Supplier by Bank of America's executive management, stating that a Release Condition has occurred.

8.8 Supplier hereby grants to Bank of America a nonexclusive, fully paid, irrevocable, royalty-free, world-wide license to use, modify, copy, produce derivative works from, display, disclose to persons who have entered into a written agreement containing substantially the same confidentiality provisions as in this Agreement for the purpose of maintaining the Software for Bank of America, and otherwise to utilize the Software and the Source Code and other materials necessary to maintain and improve the Software for use by Bank of America, subject always to the limitations In this Agreement on reproduction and use of the Software.

## 9.0 DOCUMENTATION

9.1 At no additional charge and in accordance with the delivery method specified in each Product License Schedule, Supplier shall deliver a complete set of Documentation for the Software at the same time as the Software is delivered and for every Customization and Upgrade delivered to Bank of America. The Documentation shall describe fully the proper procedure for using the Software and provide sufficient information to enable Bank of America to operate all features and functionality of the Software on the Platform. Supplier shall deliver reasonable Documentation to allow Bank of America to install and use each Update. Except as otherwise provided in Section 39.0, "Ownership of Work Product", Bank of America may use and reproduce for internal purposes all Documentation furnished by Supplier, including displaying the Documentation on Bank of America's intranet or other internal electronic distribution system, in part or in whole. Documentation for Customizations, Updates and Upgrades shall meet or exceed the level of quality, form and completeness of the Documentation for the Licensed Programs.

9.2 Supplier shall, in accordance with the delivery method specified in each Product License Schedule, deliver updated Documentation to Bank of America concurrently with delivery of any Upgrades or Customizations or any other occasion of issuance of updated Documentation.

## 10.0 ACCEPTANCE

10.1 During the Acceptance Period, Bank of America shall perform whatever acceptance tests on the Software it may wish to confirm that the Software is Operative. If Bank of America discovers during the Acceptance Period that any Software is not Operative, Bank of America shall notify Supplier of the deficiencies. Supplier, at its own expense, shall modify, repair, adjust or replace the Software to make it Operative within fifteen (15) calendar days after the date of Bank of America's deficiency notice. Bank of America may perform additional acceptance tests during a

period commencing when Supplier has delivered revised Software correcting all the deficiencies Bank of America has noted. This restarted Acceptance Period shall have a duration equal to that of the initial Acceptance Period, unless Bank of America earlier accepts the Software in writing. If the Software, at the end of the Acceptance Period as so extended, still is not Operative in Bank of America's judgment after consultation with Supplier, Bank of America may reject the Software and terminate this Agreement for material breach or, at its option, repeat the procedure of this paragraph as often as it determines is necessary. If Bank of America does not notify Supplier of acceptance or rejection of the Software, it shall be deemed accepted at the end of the Acceptance Period extended pursuant to this paragraph. If not previously accepted, the Software shall also be deemed accepted upon the Production Installation Date.

10.2 Bank of America shall use the procedure in this Section to determine acceptance of Customizations and Upgrades. If Bank of America finds an Upgrade not to be Operative and rejects it, Bank of America shall have no obligation to pay for such Upgrade if Supplier provided the Upgrade to Bank of America for an additional charge above Maintenance Services, and Supplier shall continue to support the version or release of the Software that Bank of America has installed.

11.0 MAINTENANCE SERVICES

11.1 Supplier shall provide the Maintenance Services attached hereto as SCHEDULE D.

12.0 UPGRADES

12.1 Supplier shall offer Upgrades to Bank of America whenever Supplier makes Upgrades generally available to its other customers. Unless otherwise agreed to in a Product License Schedule, Supplier shall deliver by Electronic Delivery or by Load and Leave delivery each Upgrade to Bank of America at no additional charge as part of Maintenance Services.

12.2 Supplier shall notify Bank of America as far in advance as reasonably possible, but in no event less than six (6) months prior to release, of all Upgrades and Software replacements/ phase-outs, and shall provide Bank of America all relevant release notes and other Documentation as soon as possible after notification.

12.3 Supplier shall continue to provide Maintenance Services on the terms and conditions of this Agreement for the version of Software Bank of America has installed for at least twenty-four (24) months after Supplier makes an Upgrade generally available to its customers.

13.0 NON-MAINTENANCE SERVICES SUPPORT

13.1 If Supplier agrees to perform non-Maintenance Services support services at Bank of America's request in connection with the implementation of the Software, such services shall be performed in a workmanlike and professional manner by qualified personnel at the Time and Materials Rates set forth in SCHEDULE A.

14.0 TRAINING

14.1 Supplier shall provide, at the rates and fees specified in an Order, if any, the training classes called for in an Order in use, operation and maintenance of the Software for Bank of America personnel on Bank of America premises on dates to be specified by Bank of America. Supplier shall provide training Documentation for each attendee at any classes Supplier conducts. Prices for additional classes, if any, shall be specified in an Order. If Supplier agrees to allow Bank of America to train Bank of America personnel, Supplier shall provide Bank of America, at the rates and fees specified in an Order, if any, all trainer/class leadership materials Supplier has available or used in connection with the classes conducted for Bank of America. Bank of America may duplicate these materials for Bank of America's use exclusively and use them to conduct other classes at Bank of America's convenience.

15.0 PRICING/FEES

15.1 Software license fees, Maintenance Fees and the method of payment shall be set forth in each Order or the applicable Order. Fees for additional services not listed on an Order shall be as mutually agreed in writing between Bank of America and Supplier prior to performance.

15.2 If the Order is for Customizations, fees and the method of payment are set forth in the applicable Customization Schedule.

15.3 Fees for services, other than Maintenance Services listed in SCHEDULE A, B and D or an Order are subject to the standard of measurement or evaluation applicable to the commercial production and sale of similar Products and services provided by Supplier under this Agreement ("Industry Benchmarking") at any time at Bank of America's option, and may be reduced based on the results. Bank of America shall give notice to Supplier of any proposed fee reduction including the effective date of such fee reduction. Supplier shall notify Bank of America of its acceptance or rejection of the proposed fee reduction within fifteen (15) calendar days of Supplier's receipt of notice. If Supplier does not give notice to Bank of America, such fee reduction shall be deemed accepted and invoices shall be adjusted accordingly. If Supplier rejects a proposed fee reduction, Bank of America may terminate the services engagement with no further liability.

16.0 INVOICES TAXES/PAYMENT

16.1 Supplier shall submit invoices, in accordance with the timeframes specified in SCHEDULE A, to the address set forth in SCHEDULE A or the applicable Order. Bank of America requires Suppliers to accept payment through electronic media in one of the following agreed upon methods; credit card using the Bank of America ePayables process, ACH, or electronic check. In the event that the agreed upon method of payment is through the Bank of America ePayables process using purchase cards, the Supplier shall, at no additional cost to Bank of America, ensure Supplier has the capability to process purchasing cards, prior to submitting invoices to Bank of America. Supplier shall electronically invoice Bank of America using the Bank of America designated e-Procurement tool. Each invoice shall specify the amount for each item on the invoice and include the following: (i) the slate where Supplier will electronically deliver the Software and Documentation to Bank of America, (ii) the method of electronic delivery, (iii) the state where services are to be performed, (iv) the Agreement reference number as Indicated on the signature page of this Agreement), and (v) the Order number if applicable.

16.2 The items listed on Supplier's invoice must appear in the same sequence as listed on the Order.

16.3 Invoices that omit the state of Electronic Delivery. the method of Electronic Delivery, the state where services are to be performed, the Agreement reference number and Order number of applicable, or that fail to list Products and services separately, or that are incorrect, incomplete or list Products or services that were not requested in writing by Bank of America will not be paid. The Relationship Manager for Bank of America will contact the Supplier Relationship Manager to address the situation informally prior to initiating the dispute resolution process under this Agreement.

16.4 Bank of America shall pay Supplier for all services and applicable taxes invoiced In arrears in accordance with the terms of this Agreement, within sixty (60) calendar days of the date of receipt of a valid and correct invoice by Bank of America. Bank of America reserves the right to pay prior to the expiration of the sixty (60) day period. If Bank of America pays within thirty (30) calendar days of receipt of a valid invoice by Bank of America, a discount of two percent (2%) will be subtracted from the total invoice amount for Services.

16.5 Unless otherwise agreed upon by Bank of America, (i) all charges for Maintenance Services shall be invoiced in accordance. with the terms specified in the applicable Order, (ii) charges for Software shall be invoiced on the Acceptance Date, and (iii) all other charges shall be invoiced when incurred. Invoices shall contain such detail as Bank of America may reasonably require from time to time. Amounts not invoiced by Supplier to Bank of America within three (3) months after such amounts could first be invoiced under this Agreement may not thereafter be invoiced, and Bank of America shall not be required to pay such amounts.

16.6 Invoices shall include and list all applicable sales, use, or excise taxes that are a statutory obligation of Bank of America as separate line items identifying each separate tax category and taxing authority. Bank of America will reimburse Supplier for all sales, use or excise taxes levied on amounts payable by Bank of America to Supplier pursuant to this Agreement, however, Bank of America shall not be responsible for remittance of such taxes to applicable tax authorities.

16.7 Bank of America shall not be responsible for any ad valorem, income, gross receipts, franchise, privilege, value added or occupational taxes of Supplier. Bank of America and Supplier shall each bear sole responsibility for all taxes, assessments and other real or personal property-related levies on its owned or leased real or personal property.

16.8 Supplier shall be responsible for the payment of all taxes, interest and penalties related to any assessment by a taxing authority as contemplated by Section 16.6 to the extent that Supplier fails to accurately and timely invoice Bank of America for such taxes and remit such taxes directly to the applicable taxing authority. In the event that a taxing authority performs a sample and projection audit on Bank of America, then Supplier shall be responsible for the payment of all projected tax amounts including all interest and penalties on any projected taxes assessed resulting from taxing errors identified by such taxing authority on Supplier’s Invoices, provided however, that Supplier shall receive timely notice that such invoice is included In a tax authority’s audit and Supplier has the right to produce documentation to support that the tax was satisfied. In the event Supplier voluntarily registers to collect sales tax at some future date, and wishes to remit historical taxes Supplier deems due, Bank of America will only be responsible for the taxes due for the time period that Bank of America is statutorily obligated to the tax authorities in each state.

16.9 Supplier shall fully cooperate with Bank of America’s efforts to identify taxable and nontaxable portions of amounts payable pursuant to this Agreement (including segregation of such portions on invoices) and to obtain refunds of taxes paid, where appropriate. Bank of America may furnish Supplier with certificates or other evidence supporting applicable exemptions from sales, use or excise taxation. If Bank of America pays or reimburses Supplier under this Section, Supplier hereby assigns and transfers to Bank of America all of its right, title and interest in and to any refund for taxes paid. Any claim for refund of taxes against the assessing authority may be made in the name of Bank of America or Supplier, or both, at Bank of America’s option. Bank of America may initiate and manage litigation brought in the name of Bank of America or Supplier, or both, to obtain refunds of amounts paid under this Section. Supplier shalt cooperate fully with Bank of America in pursuing any refund claims, including any related litigation or administrative procedures.

16.10 Supplier shall keep and maintain complete and accurate accounting Records in accordance with generally accepted accounting principles consistently applied to support and document all amounts becoming payable to Supplier hereunder. Upon request from Bank of America, Supplier shall provide to Bank of America (or a Representative designated by Bank of America) access to such Records for the purpose of auditing such Records during normal business hours. Supplier shall retain all Records required under this Section in accordance with the Section entitled “Audit” of this Agreement, after the amounts documented In such Records become due. Supplier shall

cooperate fully with Bank of America and any taxing authority involving any audit of sales, use or excise taxes. Upon request from Bank of America, Supplier will provide copies of invoices in electronic form that have been selected for review by any taxing authority, together with documents supporting the identification of taxable and nontaxable portions of amounts reflected on such invoices as contemplated by Section 16.9..

17.0 EXPORT LAWS

17.1 Export of Software. To the extent the Software contains any cryptographic functionality that would subject it to the provisions of the United States Export Administration Regulations (the "EAR"), Supplier hereby represents and warrants that: (a) the Export Control Classification Number ("ECCN") for such Software is set forth on the applicable Product License Schedule; and (b) Supplier has obtained all necessary licenses, if any, and submitted all necessary prior notifications and review requests (without receipt of any objection) to the Bureau of Industry and Security ("BIS'') and the National Security Agency (the "NSA), which are required to be made under the EAR in order for Bank of America to be able to use such Software as contemplated hereunder and in accordance with (and subject to) the provisions of the Agreement and the applicable Product License Schedule, outside of the United States, subject to the following: (i) Bank of America may not export such Software to any countries (or the nationals thereof) in Country Group E:1 on Supplement No. 1 to Part 740 of the EAR (as such provision may be hereafter amended); (ii) Bank of America may not export such Software in violation of any prohibitions of EAR Parts 744 and 746 (as such provisions may be amended from time to time); and (iii) Bank of America may have obligations to make periodic reports to BIS and/or the NSA (unless such exports are made to Bank of America Affiliates which are classified as "U.S. Subsidiaries" under Part 772 of the EAR), and to the extent such reports are required, Supplier has provided, or will provide, a brief summary of such requirements, as given to the best of its knowledge, on the applicable Product License Schedule. Supplier will hereafter communicate to Bank of America any additional laws and regulations relevant to Bank of America's export, reexport, sale or other disposition of Product pursuant to this Agreement

18.0 MUTUAL REPRESENTATIONS AND WARRANTIES

18.1 Each Party represents and warrants the following: (a) the Party's execution, delivery and performance of this Agreement (i) have been authorized by all necessary corporate action, (ii) do not violate the terms of any law, regulation, or court order to which such Party is subject or the terms of any material agreement to which the Party or any of its assets may be subject and (iii) are not subject to the consent or approval of any third party; (b) this Agreement is the valid and binding obligation of the representing Party, enforceable against such Party in accordance with its terms; and (c) such Party is not subject to any pending or threatened litigation or governmental action which could interfere with such Party's performance of its obligations hereunder.

19.0 REPRESENTATIONS AND WARRANTIES OF SUPPLIER

19.1 In rendering its obligations under this Agreement, without limiting other applicable performance warranties, Supplier represents and warrants to Bank of America as follows: (a) Supplier is in good standing in the state of its incorporation and is qualified to do business as a foreign corporation in each of the other states in which it is providing Products or services hereunder; (b) Supplier shall secure or has secured all permits, licenses, regulatory approvals and registrations required to deliver Products or render services set forth herein, including without limitation, registration with the appropriate taxing authorities for remittance of taxes; and (c) Supplier shall, and shall be responsible for ensuring that Supplier's Representatives and Subcontractors shall, perform all obligations of Supplier under this Agreement in compliance with all laws, rules, regulations and other legal requirements.

19.2 Supplier represents and warrants that it shall perform the Maintenance Services in a timely and professional manner using competent personnel having expertise suitable to their assignments. Supplier represents and warrants that the services shall conform to or exceed, in all material respects, the specifications described herein, as well as the standards generally observed in the industry for similar services. Supplier represents and warrants that neither performance nor functionality of the services, Products or systems is or will be affected by dates prior to, during and after the year 2000. Supplier represents and warrants that services supplied hereunder shall be reasonably free of defects in workmanship, design and material. Supplier represents and warrants that sale, licensing or use of any Product, Work Product and service furnished under this Agreement, including but not limited to Software, system design, equipment or Documentation, do not and shall not infringe, misappropriate or otherwise violate any Intellectual Property Rights or any other rights of any third party.

19.3 As of the Effective Date, there are no actions, suits or proceedings pending, or to the knowledge of Supplier threatened, against Supplier, Supplier's Representatives and Subcontractors alleging infringement, misappropriation or other violation of any Intellectual Property Rights related to any product, Work Product or Service contemplated by this Agreement.

19.4 Supplier warrants that it shall develop any Customizations in a professional workmanlike manner, using qualified personnel familiar with the Software and its operation.

19.5 Supplier hereby represents and warrants that the Software shall be and shall remain Operative, from the Delivery Date through the end of the Warranty Period. Following expiration of the Warranty Period and for so long as Bank of America has contracted Supplier to provide Maintenance Services, Supplier represents and warrants that the Software shall remain Operative. If the Software is not Operative at the expiration of the initial Warranty Period, the Warranty Period shall be extended until Supplier makes the Software Operative. This warranty shall not be affected by Bank of America's modification of the Software so long as Supplier can discharge its warranty obligations notwithstanding such modifications or following their removal by Bank of America.

19.6 Supplier warrants that during the term of this Agreement, Bank of America may use Product without disturbance, subject only to Bank of America's obligations to make the payments required by this Agreement. Supplier represents that this Agreement, the Products and the Intellectual Property Rights in the Products are not subject or subordinate to any right of Supplier's creditors, or if such subordination exists, the agreement or instrument creating it provides for non-disturbance of Bank of America.

19.7 Supplier represents and warrants that it is familiar with all applicable domestic and foreign antibribery or anticorruption laws, including those prohibiting Supplier, and, if applicable, its officers, employees, agents and others working on its behalf, from taking corrupt actions in furtherance of an offer, payment, promise to pay or authorization of the payment of anything of value, including but not limited to cash, checks, wire transfers, tangible and Intangible gifts, favors, services, and those entertainment and travel expenses that go beyond what is reasonable and customary and of modest value, to: (i) an executive, official, employee or agent of a governmental department, agency or instrumentality, (ii) a director, officer, employee or agent of a wholly or partially government-owned or -controlled company or business, (iii) a political party or official thereof, or candidate for political office, or (iv) an executive, official, employee or agent of a public international organization (e.g., the International Monetary Fund or the World Bank) ("Government Official'); while knowing or having a reasonable belief that all or some portion will be used for the purpose of: (a) influencing any act, decision or failure to act by a Government Official In his or her official capacity, (b) inducing a Government Official to use his or her influence with a government or instrumentality to affect any act or decision of such government or entity, or (c) securing an Improper advantage; in order to obtain, retain, or direct business.

19.8 Supplier represents and warrants that it would now be in compliance with all applicable domestic or foreign antibribery or anticorruption laws, including those prohibiting the bribery of Government Officials, and will remain in compliance with all applicable laws; that it will not authorize, offer or

make payments directly or indirectly to any Government Official; and that no part of the payments received by it from Bank of America will be used for any purpose that could constitute a violation of any applicable laws.

19.9 THE WARRANTIES CONTAINED IN THIS AGREEMENT ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THOSE OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

20.0 DELETION OF FUNCTIONS

20.1 In the event that Supplier deletes functions from the Software and transfers or offers those functions in other or new products (whether directly or Indirectly or through an agreement with a third party), the portion of those other or new products that contain the functions in question, or the entire product, if the functions cannot be separated out, shall be provided to Bank of America under the terms of this Agreement, at no additional charge and shall be covered under Maintenance Services for such Software.

21.0 DISABLEMENT OF SOFTWARE AND HARDWARE

21.1 Except during and in conjunction with maintenance or any other authorized servicing or support, in no event shall Supplier, its Representatives or Subcontractors or anyone acting on its behalf, disable (or permit or cause any embedded mechanism to disable) the Software or hardware owned or utilized by Bank of America without the prior written permission of an officer of Bank of America. Disablement shall also apply to all instances of Software installed, used, and executed in support of disaster recovery activities or the non-emergency tests of such activities.

22.0 FINANCIAL RESPONSIBILITY

22.1 Upon Bank of America’s request, Supplier shall promptly furnish its financial statements as prepared by or for Supplier in the ordinary course of its business. If Supplier is subject to laws and regulations of the U.S. Securities & Exchange Commission (SEC), the financial reporting and notification requirements contained herein shall be limited to all information that can be provided and in accordance with timelines which are legally permitted. Financial information provided hereunder shall be used by Bank of America solely for the purpose of determining Supplier’s ability to perform its obligations under this Agreement. To the extent any such financial information ls not otherwise publicly available, it shall be deemed Confidential Information (as defined in Section 27.1) of Supplier. If Bank of America’s review of financial statements causes Bank of America to question Supplier’s ability to perform its duties hereunder, Bank of America may request, and Supplier shall provide to Bank of America, reasonable assurances of Supplier’s ability to perform its duties hereunder. Failure by Supplier to provide such reasonable assurances to Bank of America shall be deemed a material breach of this Agreement. Furthermore, Supplier shall notify Bank of America immediately In the event there is a change of control or material adverse change in Supplier’s business or financial condition.

23.0 BUSINESS CONTINUITY

23.1 Supplier agrees to establish, maintain and implement per the terms thereof, a Business Continuity Plan. The Business Continuity Plan must be in place and delivered to Bank of America within forty-five (45) calendar days after the Effective Date of this Agreement. The Business Continuity Plan shall be delivered annually thereafter and shall include, but not be limited to, the items called for in SCHEDULE G entitled “Recovery,” as applicable. If Bank of America objects in writing to any provision of such plans and controls, Supplier shall respond in writing within thirty (30) calendar days, explaining, among other matters Supplier wishes to include in its response, the actions Supplier intends to take to cure Bank of America’s objection.

24.0 RELATIONSHIP OF THE PARTIES

24.1 The Parties are independent contractors. Nothing in this Agreement or in the activities contemplated by the Parties hereunder shall be deemed to create an agency, partnership, employment or joint venture relationship between the Parties or any of their Subcontractors or Representatives.

25.0 SUPPLIER PERSONNEL

25.1 Bank of America shall provide Supplier, if necessary and at a mutually agreed upon time, reasonable access to Bank of America to provide its services, subject to the existing security regulations at Bank of America.

25.2 Supplier's personnel are not eligible to participate in any of the employee benefit or similar programs of Bank of America. Supplier shall inform all of its personnel providing services pursuant to this Agreement that they will not be considered employees of Bank of America for any purpose, and that Bank of America shall not be liable to any of them as an employer for any claims or causes of action arising out of or relating to their assignment.

25.3 Upon the request of Bank of America, Supplier shall immediately remove any of Supplier's Representatives or Subcontractors performing services under this Agreement and replace such Representative or Subcontractor as soon as practicable. Upon the request of Bank of America, Supplier shall promptly, and after consultation with Bank of America, address any concerns or issues raised by Bank of America regarding any of Supplier's Representatives or Subcontractors performing services under this Agreement which may include, as appropriate, replacing such Representative or Subcontractor from the Bank of America account.

25.4 The engagement of a Subcontractor by Supplier shall be subject to Bank of America's prior written consent, which shall not be unreasonably withheld, and shall not relieve Supplier of any of its obligations under this Agreement. Supplier shall be responsible for the performance or nonperformance of its Subcontractors as if such performance or nonperformance were that of Supplier. Supplier shall require all Subcontractors, as a condition to their engagement, to agree to be bound by provisions substantially the same as those included in this Agreement particularly the Sections entitled "Supplier Personnel," "Insurance," "Confidentiality and Information Protection," "Audit" and "Business Continuity."

25.5 Supplier shall comply and shall cause its Representatives and Subcontractors to comply with all personnel, facility, safety and security policies, rules and regulations and other instructions of Bank of America, when performing work at a Bank of America facility or accessing any Bank of America systems or data, and shall conduct its work at Bank of America facilities or on Bank of America systems in such a manner as to avoid endangering the safety, or interfering with the convenience of, Bank of America Representatives or customers. Supplier understands that Bank of America operates under various laws and regulations that are unique to the security-sensitive banking industry. As such, persons engaged by Supplier to provide services under this Agreement are held to a higher standard of conduct and scrutiny than in other industries or business enterprises. Supplier agrees that its Representatives and Subcontractors providing services hereunder shall possess appropriate character, disposition and honesty. Supplier shall, to the extent permitted by law, exercise reasonable and prudent efforts to comply with the security provisions of this Agreement.

25.6 Supplier shall not knowingly permit a Representative or Subcontractor to have access to the Confidential Information, premises, records or data of Bank of America when such Representative or Subcontractor: (a) has been convicted of a crime or has agreed to or entered into a pretrial diversion or similar program in connection with: (i) a dishonest act or a breach of trust, as set forth in Section 19 of the Federal Deposit Insurance Act, 12 U.S.C. 1829(a); or (ii) a felony: or (b) uses illegal drugs. Notwithstanding anything in this Agreement to the contrary,

Supplier shall conduct at its expense background checks on its employees and those of its Subcontractors who will have access (whether physical, remote, or otherwise and whether on or off Bank of America premises) to Bank of America facilities, equipment, systems or data and such background checks shall comply with Bank of America procedures and requirements as set forth in SCHEDULE F to this Agreement and updated in writing delivered to Supplier from time to time. Supplier shall report to Bank of America on background checks done, in accordance with the requirements of SCHEDULE F and prior to such employee being granted such access.

25.7 Supplier represents that it maintains comprehensive hiring policies and procedures which include, among other things, a background check for criminal convictions, and if requested by Bank of America, drug testing, all to the extent permitted by law. Supplier further represents that through its hiring policies and procedures including background checks, it endeavors to hire the best candidates with appropriate character, disposition, and honesty. In the event that supplier employs non-U.S. citizens to provide services hereunder, Supplier shall ensure that all such persons have and maintain appropriate visas to enable them to provide the services.

25.8 Bank or America shall notify Supplier of any act of dishonesty or breach of trust committed against Bank of America. which may involve a Supplier Representative, or Subcontractor of which Bank of America becomes aware, and Supplier shall notify Bank of America if it becomes aware of any such offense. Following such notice, at the request of Bank of America and to the extent permitted by law, Supplier shall cooperate with investigations conducted by or on behalf of Bank of America.

26.0 INSURANCE

26.1 Supplier shall at its own expense secure and continuously maintain, and shall require its Subcontractors to secure and continuously maintain, throughout the Term, the following insurance with companies qualified to do business in the jurisdiction in which the services will be performed and rating A-VII or better in the current Best's Insurance Reports published by A M. Best Company and shall, upon Bank of America's request, be furnished to Bank of America certificates and required endorsements evidencing such insurance. Bank of America shall be named as an ‘‘Additional Insured" to the coverages described in Sections 26.2.3, 26.2.4, and 26.2.5 below for the purpose of protecting Bank of America from any expense and/or liability arising out of, alleged to arise out of, related to or connected with the Products provided by Supplier and/or its Subcontractors. The certificates shall state the amount of all deductibles and self-insured retentions and shall contain evidence that the policy or policies shall not be canceled or materially altered without at least thirty (30) calendar days prior written notice to Bank of America. Supplier and its Subcontractors shalt pay any and all costs which are incurred by Bank of America as a result of any such deductibles or self-insured retentions to the extent that Bank of America is named as an "Additional Insured," and to the same extent as if the policies contained no deductibles or self-insured retention. The insurance coverages and limits required to be maintained by Supplier and its Subcontractors shall be primary and non-contributory to insurance coverage, if any, maintained by Bank of America. Supplier and Proprietary to Bank of America its Subcontractors and their underwriters shall waive subrogation against Bank of America and shall cause their insurer(s) to waive subrogation against Bank of America.

26.2 Insurance Coverages

26.2.1 Worker's Compensation Insurance which shall fully comply with the statutory requirements of all applicable state and federal laws.

26.2.2 Employers' Liability Insurance which limit shall be $1,000,000 per accident for Bodily injury and $1,000,000 per employee/aggregate for disease.

26.2.3 Commercial General Liability Insurance with a minimum combined single limit of liability of $1,000,000 per occurrence and $2,000,000 aggregate for bodily Injury, death, property damage and personal injury, and specifically covering infringement of Intellectual Property Rights. This policy shall include products/completed operations coverage and shall also include contractual liability coverage.

26.2.4 Business Automobile Liability Insurance covering all owned, hired and non-owned vehicles and equipment used by Supplier with a minimum combined single limit of liability of $1,000,000 for injury and/or death and/or property damage.

26.2.5 Excess coverage with respect to Sections 26.2.2, 26.2.3 and 26.2.4 above with a per occurrence limit of $5,000,000. The limits of liability required In subsections 26.2.2, 26.2.3 and 26.2.4 may be satisfied by a combination of those policies with an Umbrella/Excess Liability policy.

26.2.6 Technology Errors and Omissions Insurance with minimum limits of not less than $5,000,000, covering liabilities arising from errors, omission, etc., in rendering computer or information technology services including but not limited to (1) systems analysis (2) systems programming (3) data processing (4) systems integration (5) outsourcing including outsourcing development and design (6) systems design, consulting, development and modification (7) training services relating to computer software or hardware (8) management, repair and maintenance of computer products, networks and systems (9) marketing, selling, servicing, distributing, installing and maintaining computer hardware or software (10) data entry, modification, verification, maintenance, storage, retrieval or preparation of data output.

26.2.7 Supplier shall be responsible for loss to bank property and customer property, directly or indirectly, and shall maintain Fidelity Bond or Crime coverage for the dishonest acts of its employees in a minimum amount of $5,000,000. Supplier shall endorse such policy to include a “Client Coverage” or “Joint Payee Coverage” endorsement Bank of America shall be named as “Loss Payee, As Their Interest May Appear’’ in such Fidelity Bond.

26.3 The failure of Bank of America to obtain certificates, endorsements, or other forms of insurance evidence from Supplier and its Subcontractors is not a waiver by Bank of America of any requirements for the Supplier and its Subcontractors to secure and continuously maintain the specified coverages. Supplier shall notify and shall advise its Subcontractors to notify insurers of the coverages required hereunder. Bank of America’s acceptance of certificates and/or endorsements that in any respect do not comply with the requirements of this Section does not release the Supplier and its Subcontractors from compliance herewith. Should Supplier and/or its Subcontractors fail to secure and continuously maintain the insurance coverage required under this Agreement, Supplier shall itself be responsible to Bank of America for all the benefits and protections that would have been provided by such coverage, including without limitation, the defense and indemnification protections.

27.0 CONFIDENTIALITY AND INFORMATION PROTECTION

27.1 The term “Confidential Information” shall mean this Agreement and all data, trade secrets, business information and other information of any kind whatsoever that a Party (“Discloser’’) discloses, in writing, orally, visually or in any other medium, to the other Party (“Recipient”) or to which Recipient obtains access and that relates to Discloser or, in the case of Supplier, to Bank of America or its Representatives, customers, third-party vendors or licensors. Confidential Information includes Associate Information, Customer information and Consumer information, as defined in the Section entitled ‘‘Definitions.” A “writing” shall include an electronic transfer of information by e-mail, over the internet or otherwise.

27.2 Supplier acknowledges that Bank of America has a responsibility to its customers and other consumers using Its services to keep Associate Information, Customer Information and Consumer Information strictly confidential. Each of the Parties, as Recipient, hereby agrees that it will not, and will cause its Representatives, consultants, Affiliates and independent contractors not to disclose Confidential Information of the other Party, including Associate Information,

Customer Information and Consumer Information, during or after the Term of this Agreement, other than on a "need to know" basis and then only to: (a) Affiliates of Bank of America; (b) Recipient's employees or officers; (c) Affiliates of Recipient, its independent contractors at any level, agents and consultants, provided that all such persons are subject to a written confidentiality agreement that shall be no less restrictive than the provisions of this Section; (d) pursuant to the exceptions set forth in 15 U.S.C 6802(e) and accompanying regulations, which disclosures are made in the ordinary course of business and (e) as required by law or as otherwise expressly permitted by this Agreement. Recipient shall not use or disclose Confidential Information of the other Party for any purpose other than to carry out this Agreement. Recipient shall treat Confidential Information of the other Party with no less care than it employs for its own Confidential Information of a similar nature that it does not wish to disclose, publish or disseminate, but not less than a reasonable level of care. Upon expiration or termination of this Agreement for any reason or at the written request of Bank of America during the Term of this Agreement. Supplier shall promptly return to Bank of America or destroy according to the Information Destruction Requirements described within SCHEDULE E, "Information Security . at Bank of America's election, all Bank of America Confidential Information in the possession of Supplier or Supplier's Subcontractors, subject to and in accordance with the terms and provisions of this Agreement.

27.3 To the extent legally permitted, Recipient shall notify Discloser of any actual or threatened requirement of law to disclose Confidential Information promptly upon receiving actual knowledge thereof and shall cooperate with Discloser's reasonable, lawful efforts to resist, limit or delay disclosure. Nothing in this Section shall require any notice or other action by Bank of America in connection with requests or demands for Confidential Information by bank examiners.

27.4 Supplier shall not remove or download from Bank of America's premises or systems, the original or any reproduction of any notes, memoranda, files, records, or other documents, whether in tangible or electronic form, containing Bank of America's Confidential Information or any document prepared by or on behalf of Supplier that contains or is based on Bank of America's Confidential Information, without the prior written consent of an authorized Representative of Bank of America. Any document or media provided by an authorized Bank of America Representative or notes taken to document discussions with Bank of America Representatives pertaining to the Products provided hereunder will be deemed to fall outside this consent requirement unless otherwise stated by the Bank of America Representative.

27.5 With the exception of Associate Information, Customer Information and Consumer Information, the obligations of confidentiality in this Section shall not apply to any information that (i) Recipient rightfully has in its possession when disclosed to it, free of obligation to Discloser to maintain its confidentiality; (ii) Recipient independently develops without access to Discloser's Confidential Information; (iii) is or becomes known to the public other than by breach of this Section or (iv) is rightfully received by Recipient from a third party without the obligation of confidentiality. Any combination of Confidential Information disclosed with information not so classified shall not be deemed to be within one of the foregoing exclusions merely because individual portions of such combination are free of any confidentiality obligation or are separately known in the public domain.

27.6 Bank of America may disclose Confidential Information of Supplier to independent contractors for the purpose of further handling, processing, modifying and adapting the Products for use by or for Bank of America, provided that such independent contractors have agreed to observe in substance the obligations of Bank of America set forth in this Section.

27.7 All Confidential Information disclosed by Bank of America and any results of processing such Confidential Information or derived in any way therefrom shall at all times remain the property of Bank of America. Supplier shall have the responsibility for and bear all risk of loss or damage to Confidential Information and damages resulting from improper or inaccurate processing of such data arising from the negligence or willful misconduct of Supplier, its Representatives or Subcontractors.

27.8 Supplier acknowledges that Bank of America is required to comply with the information security standards required by the Gramm-Leach-Bliley Act (15 U.S.C. 6801, 6805(b)(1)) and the regulations issued thereunder (12 C.F.R. Part 40), the Fair and Accurate Credit Transactions Act (15 U.S.C. 1681, 1681w) and the regulations issued thereunder (12 C.F.R. Parts 30 and 41) and with other statutory, legal and regulatory requirements (collectively, "Privacy Laws'') If applicable, Supplier shall make commercial best efforts to assist Bank of America to so comply and shall comply and conform with applicable Privacy Laws, as amended from time to time, and with the Bank of America policies for information protection as modified by Bank of America from time to time.

27.9 Bank of America may, in its sole discretion and at any time during the Term of this Agreement, suspend, revoke or terminate Supplier's right to receive Confidential Information upon written notice to Supplier. Upon receipt of that notice, Supplier shall (i) immediately stop accessing and/or accepting Confidential Information and (ii) promptly return to Bank of America or destroy according to the Information Destruction Requirements described within SCHEDULE E, "Information Security," at Bank of America's election, all Bank of America Confidential Information in the possession of Supplier or Suppliers Subcontractors, subject to and in accordance with the terms and provisions of this Agreement.

27.10 As a condition of access to the Confidential Information of Bank of America, Supplier shall make available to Bank of America a copy of its written Information Security Program for evaluation. The program shall be designed to:

A. Ensure the security, integrity and confidentiality of Confidential Information;

B. Protect against any anticipated threats or hazards to the security or integrity of such Confidential Information;

C. Protect against unauthorized access to or use of such Confidential Information that could result in substantial harm or inconvenience to the person or entity that is the subject of such Confidential Information; and

D. Ensure the proper disposal of such Confidential Information.

27.11 At the request of Bank of America, Supplier shall make commercially reasonable modifications to its Information Security Program or to the procedures and practices thereunder to conform at least to the Bank Security Requirements. Supplier shall require any Subcontractors and other persons or entities who provide services to Supplier for delivery to Bank of America directly or indirectly or who hold Confidential Information to implement and administer an information protection program and plan that complies with Bank Security Requirements. Supplier shall include or shall cause to be included in written agreements with such Subcontractors or other persons or entities substantially the terms of this Section and the provisions of SCHEDULE E.

27.12 One aspect of the determination of Supplier compliance with Bank Security Requirements is a review of Supplier Security Controls. As a condition precedent to performance under this Agreement, Supplier agrees to satisfy the following validation requirements:

A. Participation in Bank of America's Supplier testing and assessment process including the completion of online and/or on-site assessment(s), as appropriate, and remediation of any findings;

B. Periodic discussions between Bank of America personnel and Supplier Information Technology security personnel to review Supplier Security Controls; and

C. Delivery to Bank of America of network diagrams depicting Supplier perimeter controls and security policies and processes relevant to the protection of Confidential Information. Examples of these policies include, but are not limited to, access control, physical security, patch management. password standards, encryption standards, and change control.

27.13 During the course of performance under this Agreement, Supplier shall ensure the following:

A. Adequate governance and risk assessment processes are in place to maintain controls over Confidential Information. A security awareness program must be in place or implemented that communicates security policies to all Supplier (and Supplier Subcontractor(s)) personnel having access to Confidential Information.

B. Notification to Bank of America of changes that may impact the security of Confidential Information. Such changes requiring notification include, by way of example and not limitation, outsourcing of computer networking, data storage, management and processing or other information technology functions or facilities and the implementation of external web-enabled (internet) access to Confidential Information.

C. Use of strong, industry-standard encryption of Confidential Information transmitted over public networks (e.g. internet, non-dedicated leased lines) and backup tapes residing at off-site storage facilities.

27.14 Bank of America reserves the right to monitor Supplier-maintained platforms that reside on the Bank of America network. The Supplier may be required, at the expense of Bank of America, to assist with installation, support and problem resolution of Bank of America owned equipment or processes, or to provide an information feed from the Supplier Platform to the Bank of America monitoring processes.

27.15 Supplier shall deliver an updated information Security Program or confirm that no changes have been made to the Information Security Program annually.

27.16 Supplier understands and acknowledges its obligation to adhere to the Payment Card Industry Data Security Standards (PCI DSS) for the protection of cardholder data throughout the Term of the contract and any Renewal Terms. The PCI DSS may be found at www.pcisecuritystandards.org. Supplier further understands that it is responsible for the security of cardholder data In its possession or control or in the possession or control of any Subcontractors that it engages to perform under this contract. Such Subcontractors must be identified to and approved by Bank of America in writing prior to sharing cardholder data with the Subcontractor. In support of this obligation, Supplier shall provide appropriate documentation to demonstrate compliance with PCI DSS standards by Supplier and all identified Subcontractors. Failure to discharge this obligation may be considered by Bank of America to be a Termination Event under (a) of subsection 5.2.

28.0 INDEMNITY

28.1 Supplier shall indemnify, defend, and hold harmless Bank of America and its Representatives, successors, permitted assigns and customers from and against any and all claims or legal actions of whatever kind or nature that are made or threatened by any third party and an related losses, expenses, damages, costs and liabilities, including reasonable attorneys' fees and expenses incurred in investigation, defense or settlement ("Damages"), which arise out of, are alleged to arise out of, or relate to the following: (a) any negligent act or omission or willful misconduct by

Supplier, its Representatives or any Subcontractor engaged by Supplier in the performance of Supplier's obligations under this Agreement; or (b) any breach in a representation, covenant or obligation of Supplier contained in this Agreement

28.2 Supplier shall defend or settle at its expense any threat, claim, suit or proceeding arising from or alleging infringement, misappropriation or other violation of any Intellectual Property Rights or any other rights of any third party by Products, Work Product or services furnished under this Agreement Supplier shall indemnify and hold Bank of America, its Affiliates and each of their Representatives, successors, permitted assigns and customers harmless from and against and pay any Damages. including royalties and license fees attributable to such threat, claim, suit or proceeding.

A. If any Product, Work Product or service furnished under this Agreement, including, without limitation, software, system design, equipment or Documentation, becomes, or in Bank of America's or Supplier's reasonable opinion is likely to become, the subject of any claim, suit, or proceeding arising from or alleging facts that if true would constitute infringement, misappropriation or other violation of, or in the event of any adjudication that such Work Product or Product infringes, misappropriates or otherwise violates any Intellectual Property Rights or any other rights of a third party, Supplier shall promptly notify Bank of America and, at Supplier's expense, Supplier shall take the following actions in the listed order of preference: (i) secure for Bank of America the right to continue using the Work Product or Product; or if commercially reasonable efforts are unavailing, (ii) replace or modify the Work Product or Product to make it noninfringing; provided, however, that such modification or replacement shall not degrade the operation or performance of the Work Product or Product.

B. The indemnity in the preceding provision shall not extend to any claim of infringement resulting solely from Bank of America's unauthorized modification or use of the Work Product or Product.

28.3 Bank of America shall give Supplier notice of, and the Parties shall cooperate in, the defense of any such claim, suit or proceeding, including appeals, negotiations and any settlement or compromise thereof, provided that Bank of America must approve the terms of any settlement or compromise that may impose any unindemnified or nonmonetary liability on Bank of America.

## 29.0 LIMITATION OF LIABILITY

29.1 Neither Party shall be liable to the other for any special, indirect, incidental, consequential, punitive or exemplary damages, including, but not limited to, lost profits, even if such Party alleged to be liable has knowledge of the possibility of such damages, provided, however, that the limitations set forth in this Section shall not apply to or in any way limit the obligations of the Section entitled "Indemnity," the Section entitled "Confidentiality and Information Protection," or Supplier's gross negligence or willful misconduct.

## 30.0 DAMAGE TO BANK OF AMERICA SYSTEMS

30.1 Supplier represents and warrants that the Product and any media used to distribute it contain no computer instructions, circuitry or other technological means ("Harmful Code") whose purpose is to disrupt, damage or interfere with Bank of America's use of its computer and telecommunications facilities for their commercial, test or research purposes. Harmful Code shall include, without limitation, any automatic restraint, time-bomb, trap-door, virus, worm, Trojan horse or other harmful code or instrumentality that will cause the Products or any other Bank of America software, hardware or system to cease to operate or to fail to conform to its specifications. Supplier shall indemnify Bank of America and hold Bank of America harmless from all claims, losses, damages and expenses, including attorneys' fees, arising from the presence of Harmful Code in or with the Product or contained on media delivered by Supplier. Supplier further represents and warrants that it will not introduce any Harmful Code, into any computer or electronic data storage system used by Bank of America.

31.0 SUPPLIER DIVERSITY

31.1 Supplier acknowledges and supports the Bank of America Supplier Diversity efforts supporting minority, woman and disabled-owned business enterprises and its commitment to the participation of minority, woman and disabled-owned business enterprises in its procurement of goods and services.

31.2 **Definitions**: For purposes of this Agreement, the following are the definitions of "Minority-Owned Business Enterprise," "Minority Group," "Woman-Owned Business Enterprise," "Disabled-Veteran-Owned Business Enterprise" and "Disabled-Owned Business Enterprise."

A. "Minority-Owned Business Enterprise" is recognized as a "for profit" enterprise, regardless of size, physically located in the United States or its trust territories, which is at least fifty-one (51%) percent owned, operated and controlled, by one or more member(s) of a Minority Group who maintain United States citizenship.

B. "Minority Group" means African Americans, Hispanic Americans, Native Americans (American Indians, Eskimos, Aleuts, and native Hawaiians), Asian-Pacific Americans, and other minority group as recognized by the United States Small Business Administration Office of Minority Small Business and Capital ownership Development.

C. "Woman-Owned Business Enterprise" is recognized as a "for profit" enterprise, regardless of size, located in the United States or its trust territories, which is at least fifty-one (51%) percent owned, operated and controlled by a female of United States citizenship.

D. "Disabled Veteran-Owned Business Enterprise" is recognized as a "for profit" enterprise, regardless of size, located In the United States or its trust territories, which is at least fifty-one (51%) percent owned, operated, and controlled by a disabled veteran. The disabled veteran's ownership and control shall be real and continuing and not created solely to take advantage of special or set aside programs aimed at supplier diversity. The Association of Service Disabled Veterans, www.asdv.org provides certification for this category of business owners throughout the United States.

E. "Disabled-Owned Business Enterprise" is recognized as a "for profit" enterprise, regardless of size, located in the United States or its trust territories, which is at least fifty-one (51%) percent owned, operated and controlled, by an individual of United States citizenship with a permanent mental or physical impairment that substantially limits one or more of the major life activities and which has a significant negative impact upon the company's ability to successfully compete. The ownership and control shall be real and continuing and not created solely to take advantage of special or set aside programs aimed at supplier diversity. Due to the absence of a certifying agency for this category of business owners, the Disabled-Owned Business Enterprise must complete an affidavit and provide supporting documentation to be eligible for consideration towards diverse supplier participation.

31.3 In addition to the above criteria to qualify as a Minority, Woman or Disabled-Owned Business Enterprise under this Agreement, the diverse supplier must be certified by an agency acceptable to Bank of America.

31.4 **Participation Representation**: Supplier represents it is not a Minority-, Woman-, Disabled- or Veteran- Disabled Owned Business Enterprise.

32.0 ENVIRONMENTAL INITIATIVE

32.1 Supplier acknowledges that Bank of America encourages each supplier with which it enters into an agreement for the provision of goods or services to use, consistent with the efficient performance of such agreements, recycled paper goods and other environmentally preferable products, and to implement and adhere to other environmentally beneficial policies and practices. Supplier represents and warrants that Supplier uses environmentally beneficial practices specific to its industry that meet at least the minimum standard recommended for its industry. Upon Bank of America's request, Supplier will provide written information on its environmental policies and procedures.

33.0 AUDIT

33.1 Supplier shall maintain at no additional cost to Bank of America, in a reasonably accessible location, all Records pertaining to its Products and services provided to Bank of America under this Agreement for a period of seven (7) years or as required by law, if longer. Such Supplier Records referenced above may be inspected, audited and copied by Bank of America, its Representatives or by federal or state agencies having jurisdiction over Bank of America, during normal business hours and at such reasonable times as Bank of America and Supplier may determine. Records available for review shall exclude any records pertaining to Supplier's other customers deemed proprietary and confidential and Supplier confidential and proprietary records not associated with the Products and services provided under this Agreement. Supplier will give prior notice to Bank of America of requests by federal or state authorities to examine Supplier's Bank of America Records. At Bank of America's written request, Supplier shall reasonably cooperate with Bank of America in seeking a protective order with respect to such Records.

33.2 Supplier shall provide at its expense on an annual basis, a copy of the latest SAS70 (Statement on Auditing Standards No. 70, Service Organizations) Type II independent audit firm report for facilities not managed by Bank of America that are used to provide Products under this Agreement. If not available, Supplier, at its sole cost and expense, will engage a nationally recognized certified public accounting firm to conduct the audit and prepare applicable reports. Each report will cover a minimum six (6) calendar month period each calendar year during the Term. Bank of America reserves the right to expand the scope of the controls to be covered in any SAS70-Type II audit report prepared during the Term. Supplier shall provide Bank of America with the scope of the audit and a complete copy of each report prepared in connection with each such audit within thirty (30) calendar days after it receives such report.

33.3 Supplier shall provide a copy of the latest operational audit for facilities not managed by Bank of America that are used to provide services under this Agreement. If necessary, Supplier, at its sole cost and expense, will engage a nationally recognized certified public accounting firm to conduct the audit and prepare applicable reports. Each report will cover a minimum six (6) calendar month period each calendar year during the Term. Such audits may be on a rotating site basis where operations and procedures of Supplier services provided to Bank of America are in multiple locations in order to confirm that Supplier is in compliance in all aspects of the Agreement Supplier shall provide Bank of America with a copy of each report prepared in connection with each such audit within thirty (30) calendar days after it receives such report.

33.4 During regular business hours but no more frequently than once a year, Bank of America may, at Its sole expense, perform a confidential audit of Supplier's operations as they pertain to the Products or services provided under this Agreement. Such audits shall be conducted on a mutually agreed upon date (which shall be no more than ten (10) Business Days after Bank of America's written notice of time, location and duration), subject to reasonable postponement by Supplier upon Supplier's reasonable request, provided, however, that no such postponement shall exceed twenty (20) Business Days. Bank of America will provide Supplier a summary of the findings from each report prepared in connection with any such audit and discuss results, including remediation plans. If audit results find Supplier Is not in substantial compliance with the

requirements of this Agreement, then Bank of America shall be entitled, at Supplier's expense, to perform up to two (2) additional such audits in that year in accordance with the procedure set forth in this Section. Supplier agrees to promptly take action at Its expense to correct those matters or items identified in any such audit that require correction. Failure to correct such matters shall be considered a material breach of this Agreement.

33.5 Supplier will provide reasonable access to Bank of America's federal and state governmental regulators (at a minimum, to the extent required by law), at Bank of America's expense, to Bank of America's Records held by Supplier and to the procedures and facilities of Supplier relating to the Products and services provided under this Agreement Pursuant to 12 U.S.C. 1867(c), the performance of such services will be subject to regulation and examination by the appropriate federal banking agency to the same extent as if the services were being performed by Bank of America itself. Supplier acknowledges and agrees that regulatory agencies may audit Supplier's performance at any time during normal business hours and that such audits may include both methods and results under this Agreement.

33.6 Upon prior written notice and at a mutually acceptable time, Bank of America personnel or its Representatives (e.g., external audit consultants) may audit, test or inspect Supplier's Information Security Program and its facilities to assure Bank of America's data and Confidential Information are adequately protected. This right to audit is in addition to the other audit rights or assessments granted herein. Bank of America will determine the scope of such audits, tests or inspections, which may extend to Supplier's Subcontractors and other Supplier resources (other systems, environmental support, recovery processes, etc.) used to support the systems and handling of Confidential Information. Supplier will inform Bank of America of any internal auditing capability it possesses and permit Bank of America's personnel to consult on a confidential basis with such auditors at all reasonable times. Bank of America may provide Supplier a summary of the findings from each report prepared in connection with any such audit and discuss results, including any remediation plans. Without limiting any other rights of Bank of America herein, if Supplier is In breach or otherwise not compliant with any of the provisions set forth in the Section of this Agreement entitled "Confidentiality and Information Protection" and/or SCHEDULE E, then Bank of America may conduct additional audits.

33.7 In addition to the requirements under this Section 33.0 and upon Bank of America's request, Supplier shall deliver to Bank of America, within thirty (30) calendar days after its receipt by its board of directors or senior management. a copy of any preliminary or final report of audit of Supplier by any third-party auditors retained by Supplier, including any management letter such auditors submit, and on any other audit or inspection upon which Bank of America and Supplier may mutually agree.

34.0 NON-ASSIGNMENT

34.1 Neither Party may assign this Agreement or any of the rights hereunder or delegate any of its obligations hereunder, without the prior written consent of the other Party, and any such attempted assignment shall be void, except that Bank of America or any permitted Bank of America assignee may assign any of its rights and obligations under this Agreement (including, without limitation, any individual Order) to any Bank of America Affiliate, the surviving corporation with or into which Bank of America or such assignee may merge or consolidate or an entity to which Bank of America or such assignee transfers all, or substantially all, of its business and assets. Bank of America may not unreasonably withhold its consent of assignment in the event the supplier merges or consolidates with another entity.

35.0 GOVERNING LAW

35.1 This Agreement shall be governed by the internal laws, and not by the laws regarding conflicts of laws, of the State of North Carolina. Each Party hereby submits to the exclusive jurisdiction of the courts of such state, and waives any objection to venue with respect to actions brought in such courts. This provision shall not be construed to conflict with the provisions of the Section entitled "Mediation/Arbitration."

36.0 DISPUTE RESOLUTION

36.1 The following procedure will be adhered to in all disputes arising under this Agreement which the Parties cannot resolve informally through their Relationship Managers. The aggrieved Party shall notify the other Party in writing of the nature of the dispute with as much detail as possible about the deficient performance of the other Party. The Relationship Managers shall meet (in person or by telephone) within seven (7) calendar days (or other mutually agreed upon date) after the date of the written notification to reach an agreement about the nature of the deficiency and the corrective action to be taken by the respective Parties. If the Relationship Managers do not meet or are unable to agree on corrective action, senior managers of the Parties having authority to resolve the dispute without the further consent of any other person ("Management") shall meet or otherwise act to facilitate an agreement within fourteen (14) calendar days (or other mutually agreed upon date) of the date of the written notification. If Management do not meet or cannot resolve the dispute or agree upon a written plan of corrective action to do so within seven (7) calendar days (or other mutually agreed upon date) after their initial meeting or other action, or if the agreed-upon completion dates in the written plan of corrective action are exceeded, either Party may request mediation and/or arbitration as provided for in this Agreement. Except as otherwise specifically provided, neither Party shall initiate arbitration, mediation or litigation unless and until this dispute resolution procedure has been substantially compiled with or waived. Failure of a Party to fulfill its obligations in this Section, including failure to meet timely upon the other Party's notice, shall be deemed such a waiver.

37.0 MEDIATION/ARBITRATION

37.1 If the Parties are unable to resolve a dispute arising out of or relating to this Agreement in accordance with the Section entitled "Dispute Resolution," the Parties will in good faith attempt to resolve such dispute through non-binding mediation. The mediation shall be conducted before a mediator acceptable to both sides, who shall be an attorney or retired judge practicing in the areas of banking and/or information technology law. The mediation shall be held In Charlotte, N.C., provided, however, a dispute relating to infringement of Intellectual Property Rights or the Section entitled "Confidentiality and Information Protection" shall not be subject to this Section entitled "Mediation/Arbitration."

37.2 Any controversy or claim, other than those specifically excluded, between or among the Parties not resolved through mediation under the preceding provision, shall at the request of a Party be determined by arbitration. The arbitration shall be conducted by one independent arbitrator who shall be an attorney or retired judge practicing in the areas of banking and/or Information technology law. The arbitration shall be held in Charlotte, N.C. in accordance with the United States Arbitration Act (9 U.S.C. 1 et seq.), notwithstanding any choice of law provision in this Agreement, and under the auspices and the Commercial Arbitration Rules of the American Arbitration Association.

37.3 Consistent with the expedited nature of arbitration, each Party will, upon the written request of the other Party, promptly provide the other with copies of documents relevant to the issues raised by any claim or counterclaim on which the producing Party may rely in support of or in opposition to any claim or defense. At the request of a Party, the arbitrator shall have the discretion to order examination by deposition of witnesses to the extent the arbitrator deems such additional discovery relevant and appropriate. Depositions shall be limited to a maximum of three (3) per Party and shall be held within thirty (30) calendar days of the making of a request. Additional depositions may be scheduled only with the permission of the arbitrator, and for good cause shown. Each deposition shall be limited to a maximum of three (3) hours duration. All objections are reserved for the arbitration hearing except for objections based on privilege and proprietary or confidential information. Any dispute regarding discovery, or the relevance or scope thereof, shall be determined by the arbitrator, which determination shall be conclusive. All discovery shall be completed within sixty (60) calendar days following the appointment of the arbitrator.

37.4 The arbitrator shall give effect to statutes of limitation in determining any claim, and any controversy concerning whether an issue is arbitrable shall be determined by the arbitrator. The arbitrator shall follow the law in reaching a reasoned decision and shall deliver a written opinion setting forth findings of fact, conclusions of law and the rationale for the decision. The arbitrator shall reconsider the decision once upon the motion and at the expense of a Party. The Section of this Agreement entitled "Confidentiality and Information Protection" shall apply to the arbitration proceeding, all evidence taken, and the arbitrator's opinion, which shall be Confidential Information of both Parties. Judgment upon the decision rendered by the arbitrator may be entered in any court having jurisdiction.

37.5 No provision of this Section shall limit the right of a Party to obtain provisional or ancillary remedies from a court of competent jurisdiction before, after, or during the pendency of any arbitration. The exercise of a remedy does not waive the right of either Party to resort to arbitration. The institution and maintenance of an action for judicial relief or pursuit of a provisional or ancillary remedy shall not constitute a waiver of the right of either Party to submit the controversy or claim to arbitration if the other Party contests such action for judicial relief.

38.0 NON-EXCLUSIVE NATURE OF AGREEMENT

38.1 Supplier agrees that it shall not be considered Bank of America's exclusive provider of any goods or services provided hereunder. Bank of America retains the unconditional right to utilize other vendors in the provision of services and products whether or not similar to the services and Products described in this Agreement.

39.0 OWNERSHIP OF WORK PRODUCT

39.1 Bank of America will own exclusively all Work Product and Supplier hereby assigns to Bank of America all right, title and interest (including all Intellectual Property Rights) in the Work Product. Work Product, to the extent permitted by law, shall be deemed "works made for hire" (as that term is defined in the United States Copyright Act). Supplier shall provide Bank of America upon request with all assistance reasonably required to register, perfect or enforce such right, title and interest, including providing pertinent information and, executing all applications, specifications, oaths, assignments and all other instruments that Bank of America shall deem necessary. Supplier shall enter into agreements with all of its Representatives and Subcontractors necessary to establish Bank of America's sole ownership in the Work Product. Bank of America acknowledges Supplier's and its licensors' claims of proprietary rights in preexisting works of authorship and other intellectual property ("Pre-existing IP") Supplier uses in its work pursuant to this Agreement. Bank of America does not claim any right not expressly granted by this Agreement in such Pre-existing IP, which shall not be deemed Work Product, even if incorporated with Work Product in the Product Supplier delivers to Bank of America. Unless otherwise agreed in an Order, Supplier grants Bank of America a perpetual, worldwide, irrevocable, nonexclusive royalty free license to any Pre-existing IP embedded in the Work Product, which shall permit Bank of America and any transferee or sublicensee of Bank of America, subject to the restrictions in this Agreement, to make, use, import, reproduce, display, distribute, make derivative works and modify such Pre-existing IP as necessary or desirable for the use of the Work Product.

39.2 Supplier shall promptly notify Bank of America in writing, of any threat, or the filing of any action, suit or proceeding, against Supplier, its Affiliates, Subcontractors or Representatives, (i) alleging infringement, misappropriation or other violation of any Intellectual Property Right related to any Product, Work Product or service furnished under this Agreement, or (ii) in which an adverse decision would reasonably be expected to have a material adverse effect on the Supplier or the use by Bank of America of the Products, Work Product or services furnished under this Agreement.

39.3 At all times during the Term, upon request from Bank of America and upon termination of this Agreement for any reason, Supplier shall provide immediately to Bank of America the then-current version of any Work Product in Supplier's possession.

39.4 Supplier understands and acknowledges that Bank of America may (i) manage, modify, maintain and update pre-existing data and information, and (ii) generate, manage, modify, maintain and update additional data and information (collectively, "Bank of America Data") using the Software. Bank of America Data will be treated as Bank of America Confidential Information and Bank of America shall retain all right, title and interest in and to all Bank of America Data.

39.5 Bank of America shall have the right to interface the Software and to use it in conjunction with other software, programs, routines and subroutines developed or acquired by Bank of America. Supplier shall have no ownership interest in any other software, program, routine or subroutine developed by Bank of America or acquired by Bank of America from a third party by virtue of its having been interfaced with or used in conjunction with any Software.

40.0 MISCELLANEOUS

40.1 Bank of America and Supplier represent that they are equal opportunity employers and do not discriminate in employment of persons or awarding of subcontracts because of a person's race, sex, age, religion, national origin, veteran or handicap status. Supplier is aware of and fully informed of Supplier's responsibilities and agrees to the provisions under the following: (a) Executive Order 11246, as amended or superseded in whole or in part, and as contained in Section 202 of the Executive Order as found at 41 C.F.R. § 60-1.4(a)(1-7); (b) Section 503 of the Rehabilitation Act of 1973 as contained in 41 C.F. R. § 60- 741.4; and (c) The Vietnam Era Veterans' Readjustment Assistance Act of 1974 as contained in 41 C.F.R. § 60-250.4.

40.2 Section headings are included for convenience or reference only and are not intended to define or limit the scope of any provision of this Agreement and should not be used to construe or interpret this Agreement.

40.3 No delay, failure or waiver of either Party's exercise or partial exercise of any right or remedy under this Agreement shall operate to limit, impair, preclude, cancel, waive or otherwise affect such right or remedy. Any waiver by either Party of any provision of this Agreement shall not imply a subsequent waiver of that or any other provision of this Agreement.

40.4 If any provision of this Agreement is held invalid, illegal or unenforceable, the validity, legality or enforceability of the remaining provisions shall in no way be affected or impaired thereby.

40.5 No amendments of any provision of this Agreement shall be valid unless made by an instrument in writing signed by both Parties specifically referencing this Agreement. Notwithstanding anything therein to the contrary, the terms of any Order to this Agreement shall supplement and not replace or amend the terms or provisions of this Agreement and the terms and provisions of this Agreement shall control in the event of any conflict between such terms thereof and the terms and provisions of this Agreement and such conflict shall be resolved in favor of the express terms and provisions of this Agreement. The terms and provisions of this Agreement shall be incorporated by reference into any Order to this Agreement.

40.6 Anything in this Agreement to the contrary notwithstanding, the Parties hereby agree that thirty (30) calendar days after written notice by Bank of America of any amendment to this Agreement for compliance with a change in federal law, rule or regulation affecting financial services companies or the suppliers of financial services companies, this Agreement shall be amended by such notice and the amendment contained therein and without need for further action of the Parties, and the Agreement as amended thereby, shall be enforceable against the Parties, their successors and assigns. The notice provided hereunder shall set forth such change and provide

the relevant amendment to the Agreement. Bank of America shall have the right to terminate immediately the Agreement, without further liability to Supplier, in the event of Supplier's failure to comply with the terms and conditions of any such amendment to the Agreement.

40.7 This Agreement may be executed by the Parties in one or more counterparts, and each of which when so executed shall be an original but all such counterparts shall constitute one and the same instrument.

40.8 The remedies under this Agreement shall be cumulative and are not exclusive. Election of one remedy shall not preclude pursuit of other remedies available under this Agreement or at law or in equity. In arbitration a Party may seek any remedy generally available under the governing law.

40.9 To the maximum extent permitted by the governing law, this Agreement and the transactions called for herein shall not be governed or affected by any version of the Uniform Computer Information Transactions Act enacted in any jurisdiction.

40.10 Notwithstanding the general rules of construction, both Bank of America and Supplier acknowledge that both Parties were given an equal opportunity to negotiate the terms and conditions contained in this Agreement, and agree that the identity of the drafter of this Agreement is not relevant to any interpretation of the terms and conditions of this Agreement.

40.11 All notices or other communications required under this Agreement shall be given to the Parties in writing to the applicable addresses set forth on the signature page, or to such other addresses as the Parties may substitute by written notice given in the manner prescribed in this Section as follows: (a) by first class, registered or certified United States mail, return receipt requested and postage prepaid, (b) over-night express courier or (c) by hand delivery to such addresses, Such notices shall be deemed to have been duly given (i) five (5) Business Days after the date of mailing as described above, (ii) one (1) Business Day after being received by an express courier during business hours, or (iii) the same day if by hand delivery.

40.12 Wherever this Agreement requires either Party's approval or consent such approval or consent shall not be unreasonably withheld or delayed.

40.13 Unless the Parties otherwise agree in writing, all services to be provided hereunder shall be processed and/or provided, whether in part or in whole, by Supplier, its employees, Representatives and/or Subcontractors on and from a location or locations in one (1) or more of the fifty (50) states of the United States of America only, all subject to applicable laws and regulations.

40.14 This Agreement shall be binding upon, and inure to the benefit of, the Parties and their respective permitted successors and assigns. Except as expressly set forth in this Agreement and with the exception of the Affiliates of Bank of America, the Parties do not intend the benefits of this Agreement to inure to any third party, and nothing contained herein shall be construed as creating any right, claim or cause of action in favor of any such other third party, against either of the Parties hereto.

40.15 Neither Party shall issue any media releases, public announcements and public disclosures, relating to this Agreement or use the name or logo of the other Party, including, without limitation, in promotional or marketing material or on a list of customers, provided that nothing in this paragraph shall restrict any disclosure required by legal, accounting or regulatory requirements beyond the reasonable control of the releasing Party.

41.0 ENTIRE AGREEMENT

41.1 This Agreement, the Schedules, and other documents Incorporated herein by reference, is the final, full and exclusive expression of the agreement of the Parties and supersedes all prior agreements, understandings, writings, proposals, representations and communications, oral or written, of either Party with respect to the subject matter hereof and the transactions contemplated hereby. The Parties agree to accept a digital image of this Agreement, as executed, as a true and correct original and admissible as best evidence to the extent permitted by a court with proper jurisdiction.

**SCHEDULE B**

Customization Schedule

This Customization Schedule is attached to the Software License, Customization and Maintenance Agreement (the "Agreement") executed by and between Bank of America, N.A. ("Bank of America") and **<<enter Company Name»** ("Supplier"). The Customizations identified hereunder shall be subject to the terms and conditions of that Software License, Customization and Maintenance Agreement referenced above.

Bank of America wishes to obtain the Customizations herein defined, and Supplier wishes to delivery those Customizations, on the terms and conditions of the Agreement and this Customization Schedule.

1. The Customizations shall fulfill or exceed all of the functional, performance and other specifications described in the Program Materials and the documents prepared either by Bank of America or Supplier pursuant to this Agreement. as indicated below.

   No later than **<<enter Customization Documents Delivery Date**>>, Supplier shall deliver to Bank of America the documents described below for this Customization. The detailed specifications so delivered shall be incorporated herein when approved by Bank of America.

   System Solution

   Functional Specifications

   System Design Specifications

   Test Specifications

   _____

   _____

   Supplier acknowledges receipt of the following documents from Bank of America:

   Detailed Requirements

   _____

   _____

2. Bank of America Customizations:

   _____

   _____

3. Supplier Customizations:

   _____

   _____

4. Fees for Customizations:

**[SPECIFY TIME AND MATERIALS RATES ([Indicate any "not to exceed" limit on T&M Customization costs) OR FIXED PRICE]**

If the proposed price Is Increased by Supplier upon delivery to Bank of America of detailed specifications or at any other time hereafter, Bank of America may terminate this Schedule and shall receive a refund of all amounts previously paid hereunder.

5. Unless otherwise specified herein, the environment for this Customization Is the same as described on Product License Schedule A to this Agreement.

6 The Delivery and Installation Schedule for this Customization is:

Delivery Date: _____

Installation Date: _____

**[Insert any other Schedule Information pertaining to the Delivery or Installation of the Product]**

7. [Add any special items. e.g., special payment Schedule, for this Schedule.]

8. Project Personnel:

| Bank of America Project Administrator: | Supplier Project Administrator: |
|---|---|
| _____ | _____ |
| _____ | _____ |
| _____ | _____ |
| Bank of America Project Manager: | Supplier Project Manager: |
| _____ | _____ |
| _____ | _____ |
| _____ | _____ |

THE FOREGOING IS UNDERSTOOD AND AGREED TO BY:

| **<<enter Company Name>>** ("Supplier") | | **Bank of America, N.A.** ("Bank of America") | |
|---|---|---|---|
| By: | _____ | By: | _____ |
| Name: | _____ | Name: | _____ |
| Title: | _____ | Title: | _____ |
| Date: | _____ | Date: | _____ |

| | |
|---|---|
| **Bank of America –**<br><br>**_____ Project**<br><br>**Software and Hardware**<br>**Change Order Request and Authorization**<br><br>**Requested by: (please print)**<br>**Name: _____**<br>**Dept. #: _____**<br>**Phone #: _____**<br><br>**Description of change:**<br>-<br>- | **Change number:**<br><br>**Date of request: _____**<br>**Date required: _____**<br>**Priority: _____**<br>**○ Low ○ Medium ○ High**<br><br>**See Attachment ○** |

**Response: ○ Bank of America or ○ Supplier Enhancement**

**See Attachment ○**

**Estimated effort (to be filled in by Systems Analyst)** **Estimate for CO Request Only ○**

| Function | Hours required | Estimated Cost | Target date | Comments |
|---|---|---|---|---|
| **Analysis/Design** | | | | |
| **Programming** | | | | |
| **Testing** | | | | |
| **Implementation** | | | | |

**Estimated by:** **Date:**

**Approved by:**

_____

**Bank of America Project Manager** **Date**

_____

**Supplier Project Manager** **Date**

**Change Control Procedures**

The procedure steps In Table 1 shall be employed to achieve the desired objectives for this Change Order.

***Table 1 Change Control Procedure Steps***

| Step | Individual | Sub-step | Action |
|---|---|---|---|
| 1) | Originator | a) | Fills out Change Order Request & Authorization Form |
| | | b) | Submits form to Bank of America Project Administrator |
| 2) | Bank of America Project Administrator | a) | Assign unique Change number to form log. |
| | | b) | Logs from into CO log. |
| | | c) | Make one copy of form and attachments. |
| | | d) | File copy in “In Process-Review” CO file. |
| | | e) | Deliver form (with attachments, if any) to Supplier Project Manager |
| 3) | Supplier Project Manager | a) | Reviews form |
| | | b) | Arranges for Analyst to review form |
| 4) | Analyst | a) | Reviews form and analyzes changes required.<br>*If time to evaluate CO is more than four hours, returns form to Supplier Project Manager with estimate of number of hours required (including expected additional participants and their respective hours) to evaluate the CO Request. Check “Estimate for CO Request Only” box on form. (Supplier Project Manager will get prior approval for Bank of America funding cost of CO Request evaluation, before Systems Analyst begins actual review.)* |
| | | b) | Fills out “Responses” section of form including “Estimated effort” |
| | | c) | Returns form to Supplier Project Manager. |
| 5) | Supplier Project Manager | a) | Review form for completeness of response, evaluates available resources. |
| | | b) | Signs & dates form at bottom signifying approval. |
| | | c) | Returns form to Project Administrator. |

| | | | |
|---|---|---|---|
| 6) | Bank of America Project Administrator | a) | Makes two copies of CO form |
| | | b) | Files one copy in CO “Returned” file. |
| | | c) | Removes and destroys “In Process” copy. |
| | | d) | Returns a copy to Supplier Project Manager. |
| | | e) | Returns originals CO form to Originator. |
| 7) | Bank of America Project Manager | a) | Evaluates CO Response. |
| | | b) | Negotiates with Supplier any differences regarding licensing status of deliverables. |
| | | c) | Signs & dates form at bottom signifying approval. If declined, writes “Cancelled” in “Bank of America Project Manager” signature area of form. |
| | | d) | Makes appropriate copies for Bank of America use (to TAM, etc.) |
| | | e) | Returns original signed copy to Project Administrator. |
| 8) | Project Administrator | a) | If CO approved, makes two copies: one to Supplier Project Manager, one for person to be assigned. Delivers both to Supplier Project Manager. Updates log. |
| | | b) | If CO cancelled, original from is filed in CO “Cancelled” file, updates log, removes copy from “Returned to Bank of America” file. |
| 9) | Supplier Project Manager | a) | Reviews form, arranges for Supplier to assign Systems Analyst |
| | | b) | Updates project plan (may be done by Implementation Manager) |
| 10) | Supplier’s Analyst | | When CO completed, form is returned to Supplier Project Manager |
| 11) | Supplier Project Manager | a) | Reviews the results of the CO (deliverables, activities …) and concurs that CO was completed. Signs form. |
| | | b) | Returns form to Project Administrator. |
| 12) | Project Administrator | a) | Makes two copies of completed form. |
| | | b) | Sends one copy to Supplier Accounting. |
| | | c) | Files one copy in “CO Completed” file. |
| | | d) | Sends original back to Bank of America Project Manager. |
| | | e) | Updates log. |
| 13) | Bank of America Project Manager | a) | Reviews form and results. |
| | | b) | Files in Bank of America’s “CO Completed” file. |

MAINTENANCE SERVICES

A. During the Warranty Period, Supplier shall provide Bank of America Maintenance Services at no additional charge, provided that if a Customization is not Operative at the end of the applicable Warranty Period, Maintenance Services shall continue to be provided without additional charge until the Customization is Operative.

B. Supplier shall provide the Maintenance Services described in this for Software, Updates and Upgrades provided to Bank of America pursuant to this Agreement.

C. As part of Maintenance Services, Supplier shall provide the following:

(1) help desk support available twenty-four (24) hours a day, seven (7) days a week via toll-free telephone number with help desk technicians sufficiently trained and experienced to identify or resolve most support issues and who shall respond to all Bank of America requests for support within fifteen (15) minutes after receiving a request for assistance;

(2) a current list of persons and telephone numbers. including pager numbers, (the "Calling List") for Bank of America to contact to enable Bank of America to escalate its support requests for issues that cannot be resolved by a help desk technician or for circumstances where a help desk technician does not respond within the time specified.

D. Supplier shall deliver to Bank of America and keep current a list of persons and telephone numbers ("Calling List") for Bank of America to contact in order to obtain answers to questions about the Equipment or to obtain Corrections. The Calling List shall include (1) the first person to contact if a question arises or problem occurs and (2) the persons in successively more responsible or qualified positions to provide the answer or assistance desired. If Supplier does not respond promptly to any request by Bank of America for telephone consultative service, then Bank of America may attempt to contact the next more responsible or qualified person on the Calling List until contact is made and a designated person responds to the call.

ERROR CORRECTION

A. Supplier shall make reasonable efforts to respond within two (2) hours to Bank of America's initial request for assistance in correcting or creating a workaround for an Error. Supplier's response shall include assigning fully-qualified technicians to work with Bank of America to diagnose and correct or create a workaround for the Error and notifying the Bank of America Representative making the initial request for assistance of Supplier's efforts, plans for resolution of the Error, and estimated time required to resolve the Error. Supplier shall correct Errors caused by the Object Code by modifying Source Code and distributing the modified Software to Bank of America on the schedule called for in this Section.

B. For Class 1 Errors, Supplier shall provide a Correction or workaround reasonable in Bank of America's judgment within the Repair Period after Bank of America reports the Error, or within four (4) hours after Bank of America first reports the Error if no other Repair Period is specified. These steps shall include assigning fully-qualified technicians to work with Bank of America without interruption or additional charge, twenty-four (24) hours per day, until Supplier provides a Correction or workaround reasonable in Bank of America's judgment.

C. For Class 2 Errors, Supplier shall take reasonable steps to provide a Correction or a workaround reasonable in Bank of America's judgment by the opening of business on the second Business Day after Bank of America reports the Error. These steps shall include assigning fully-qualified

technicians to work with Bank of America during Bank of America's regular business hours until Supplier provides a workaround reasonable in Bank of America's judgment or a Correction or Bank of America determines after consultation with Supplier that such a workaround or Correction cannot be produced by Supplier's technicians. Supplier shall provide a Correction within thirty (30) calendar days after Bank of America's report of the Error.

D. For Class 3 Errors, Supplier shall correct the Errors by all reasonable means. Supplier shall correct the Errors and distribute the modified Software to Bank of America no later than the next Update, unless Supplier has scheduled release of such Update less than thirty (30) calendar days after Bank of America's notice, in which case Supplier shall correct the Error no later than the following Update.

E. Without limiting Supplier's obligations under this Section, if Supplier does not deliver a Correction for an Error within the times allowed by this Section (whether Supplier has delivered a reasonable workaround or not), Supplier shall provide a written analysis of the problem and a written plan to supply Bank of America with a Correction.

PRODUCTION ERRORS

Notwithstanding the previous Section, "Error Correction," if an Error prevents Bank of America from making productive use of the Software, Supplier shall use its best efforts to provide an effective workaround or a Correction by the time Bank of America opens for business on the Business Day after the Business Day on which Bank of America first reports the Error.

REMEDIES

A. Without limitation of Supplier's obligations above, Bank of America may fall back, at its option, to any previous version or release of the Software in which a Class 1 or Class 2 Error does not occur or can be worked around, and Supplier shall provide Maintenance Services at no charge, with respect to that version until Supplier provides a Correction.

DIAGNOSTIC INFORMATION

Bank of America shall submit to Supplier a listing of output and such other data as Supplier reasonably may request in order to reproduce operating conditions similar to those present when Bank of America detected the Error.

BANK OF AMERICA MODIFIED SOFTWARE

If Bank of America modifies the Software under the terms hereof, any additional maintenance costs or expenses to Supplier which result directly from such modification may be billed to Bank of America at the Time and Materials Rates.

UPDATES

Supplier shall provide all Updates to Bank of America at no additional charge when Updates are made generally available to Supplier's other customers.

Supplier will complete two (2) dedicated releases/year for Bank of America during the initial Term. The parties will work together every 6 months during the Term to define and agree upon the timelines and features for the next dedicated release. During the Term, six (6) weeks prior to each release. Cardlytics will provide Bank of America with code release notes or other technical documentation (describing features and functionality).

Supplier’s TMS provides marketing services across multiple financial Institutions in addition to Bank of America. For the TMS service to function properly, the OPS system must be upgraded periodically. The supplier will provide no more than two major code releases of OPS during a calendar year without Bank of America’s consent. Bank of America may implement these releases when appropriate and convenient for Bank of America. However, The TMS will support the current and previous release of OPS. If Bank of America does not upgrade to the current or previous release of OPS, some or all of TMS functionality may be impacted.

INFORMATION SECURITY PROGRAM

Bank of America shall have the opportunity to evaluate the Supplier's Information Security Program and Supplier Security Controls to ensure Supplier's Compliance with the Section entitled "Confidentiality and Information Protection." The Supplier's Information Security Program (the "Program") shall address the Bank Security Requirements described below. This Program shall, at a minimum, prescribe the architecture of Supplier's system, Confidential Information placement within the system, the security controls in place (e.g. firewalls, web page security, intrusion detection, incident response process, etc.) and contain the information called for in the Subsection entitled "Security Program Features" below. The Program shall also describe physical security measures in place to protect Confidential Information received or processed by Supplier, including those that will protect Confidential Information that has been printed or otherwise displayed in forms perceptible with or without the aid of equipment. Bank of America shall provide Supplier with the Service Provider Security Requirements document outlining such Bank Security Requirements and Supplier Security Controls which shall be deemed a part of Bank of America's Confidential Information under this Agreement Supplier acknowledges that upon request in order to be allowed continued access to Confidential Information, it will make modifications to its Information Security Program to add additional measures necessary to retain Information Security standards consistent with the Bank Security Requirements.

PRIVACY POLICY

With respect to Confidential Information and the services provided to or on behalf of Bank of America, Supplier promptly shall conform its publicly available privacy and security policies, in Bank of America's reasonable judgment, to those of Bank of America, as they may exist from time to time.

PROTECTION

Supplier shall install and use a reasonable change control process to ensure that access to its systems and to Confidential Information is controlled and recorded. Supplier shall notify Bank of America of any planned system configuration changes or other changes affecting the Program applicable to Confidential Information, setting forth how such change will impact the security and protection of Confidential Information. No such change, which could reasonably be expected by Bank of America to have a material adverse impact on the security and protection of Confidential Information, may be implemented without the prior written consent of a Bank of America security representative. Bank of America may approve these types of changes prior to their becoming effective, such approval not to be unreasonably withheld or delayed.

Supplier shall permit Bank of America, at the election of Bank of America, to conduct security vulnerability (penetration) testing on those portions of the Supplier network, and any application servers that Supplier hosts on behalf of Bank of America, on which Confidential Information is stored or processed. Such vulnerability testing shall be conducted in a non-production environment with production equivalent security controls and with prior notice to Supplier. Supplier also agrees to make available to Bank of America the results of any vulnerability testing conducted by Supplier or a qualified third party provider of this service.

Supplier shall permit Bank of America to inspect the physical system equipment, operational environment, and Confidential Information handling procedures. Supplier's agreement with any independent contractor to provide services to Bank of America in support of this Agreement shall likewise permit Bank of America to conduct the same inspections.

Subject to the terms of this Agreement and the Schedules attached hereto, Supplier will take commercial best measures to prevent the unintended or malicious loss, destruction or alteration of Bank of America's files, Confidential Information, software and other property received and held by Supplier. Supplier shall maintain back-up files (including off-site back-up copies) thereof and of resultant output to facilitate their reconstruction in the case of such loss, destruction or alteration, in order to ensure uninterrupted services in accordance with the terms of this Agreement, its Schedules, Bank of America's written policies and Supplier's disaster recovery plans.

DETECTION AND RESPONSE

Supplier shall notify Bank of America immediately (within 24 hours or as soon thereafter as practicable) following discovery of any suspected breach or compromise of the security, confidentiality, or integrity of nonpublic personal information of any current or former Bank of America employee or customer (''Affected Persons") or otherwise provided to Supplier by Bank of America under this agreement through the defined security escalation channel of Bank of America, the Bank of America Incident Response Team ("InfoSafe") by calling (800) 207-2322, option 1. Callers will be asked to identify themselves as Supplier. Such notification to Bank of America shall precede notifications to any other party. Supplier shall cooperate fully with all Bank of America security investigation activities consistent with the lnfoSafe guidelines for escalation and control of significant security incidents.

Bank of America reserves the right in its sole discretion to make appropriate privacy breach notifications to Affected Persons and regulators pursuant to federal or state guidelines, including but not limited to the Interagency Guidance on Response Programs for Unauthorized Access to Customer Information and Customer Notice. To assist Bank of America in such notifications, Supplier shall include a brief summary of the available facts, the status of any investigation, and, if known, the potential number of Affected Persons. Supplier agrees to provide at no charge, to Affected Persons appropriate credit monitoring services for two years. All costs associated with any security breach, including but not limited to, the costs of the notices to, and credit monitoring for, Affected Persons shall be the sole responsibility of Supplier. Supplier agrees that it shall not communicate with any third party, including, but not limited to the media, vendors, consumers. and Affected Persons regarding any security breach without the express written consent of Bank of America.

Supplier shall maintain for a mutually agreed-upon length of time, and afford Bank of America reasonable access to, all records and logs of that portion of Supplier's network that stores or processes Confidential Information. Bank of America may review and Inspect any record of system activity or Confidential Information handling upon reasonable prior notice. Supplier acknowledges and agrees that records of system activity and of Confidential Information handling may be evidence (subject to appropriate chain of custody procedures) in the event of a Security Breach or other inappropriate activity. Upon the Bank of America, Supplier shall deliver the original copies of such records to Bank of America for use in any legal, investigatory or regulatory proceeding.

Supplier shall monitor industry-standard information channels (bugtraq, CERT, OEMs, etc.) for newly identified system vulnerabilities regarding the technologies and services provided to Bank of America and fix or patch any identified security problem in an adequate and timely manner. Unless otherwise expressly agreed in writing, "timely" shall mean that Supplier shall Introduce such fix or patch as soon as commercially reasonable after Supplier becomes aware of the security problem. This obligation extends to all devices that comprise Supplier's system, e.g., application software, databases, servers, firewalls, routers and switches, hubs, etc., and to all of Supplier's other Confidential Information handling practices.

Bank of America may perform vulnerability testing of Supplier's system to test the remediation measures implemented after a security incident or event to protect Confidential Information.

SECURITY PROGRAM FEATURES

At the request of Bank of America, Supplier shall meet with the Bank of America information security team to discuss information security issues In much greater detail at mutually agreeable times and locations.

Bank of America acknowledges and agrees that the information Supplier so provides is Supplier's Confidential Information, as defined In this Agreement, and is valuable proprietary information of Supplier. Supplier shall provide detailed information including, but not limited to, the following topics, which also shall be addressed in Supplier's Program.

1. Diagrams. The diagrams shall show the detail of the system architecture including, without limitation, the logical topology of routers, switches, internet firewalls, management or monitoring firewalls, servers (web, application and database), intrusion detection systems, network and platform redundancy. The diagrams shall include all hosting environments including those provided by Supplier's Subcontractors.

2. Firewalls. Slate the specifications of the firewalls in use and who manages them. Specify the services, tools and connectivity required to manage the firewalls.

3. Intrusion Detection Systems. Describe the intrusion detection system ("lDS") environment and the Security Breach and event escalation process. Indicate who manages the IDS environment. Specify the services, tools and connectivity required to manage the IDS environment, and if the IDS network is host based.

4. Change Management. Describe the change management process for automated systems used to provide services. Describe the process for information handling policies and practices.

5. Business Continuity. Describe the business and technical disaster recovery management process.

6. System Administration Access Control. Describe the positions that perform administration functions on servers, firewalls or other devices within the application and network infrastructure. Detail level of access needed to perform functions. Explain the access control mechanisms. Describe the process by which recurring access of the system(s) is conducted to ensure permissions are granted on a "need to know" basis. Detail access reports generated and when reports are reviewed periodically. Describe methods used to track/log the usage of each account.

7. Customer Access Control. Describe each logon process to be followed by Bank of America Customers (including Bank of America employees) to obtain access to services Supplier provides to Bank of America. Describe the initial enrollment process for such Customers. Describe the password policies and procedures Supplier's system enforces, including, without limitation, password expiration, length of password, password revocation, invalid logon attempt threshold, etc. Describe methods used to track/log the usage of each account Supplier shall demonstrate how a customer or end user authenticates to each application.

8. Access to Confidential Information in Human-Perceptible Forms. Describe policies, procedures and controls used to protect Confidential Information when it is printed or in other perceptible forms; how and how often these policies and procedures are reviewed and tested; and what methods are used to ensure destruction of Confidential Information on hard copy.

9. Operating System Baselines. Describe Supplier's operating system security controls and configurations. Examples: Operating system services that have been removed because not required by Supplier's services to Bank of America. Identify and provide current operating system fixes that have not been applied, if any.

10. Encryption. Describe in detail the technology and usage of encryption for protecting Confidential Information, including passwords and authentication information, during transit and in all forms and locations where it may be stored.

11. Application and Network Management. Specify the services, tools and connectivity required to manage the application and network environments: who carries out the management functions; and what level of physical security applies to managed devices.

12. Physical Security. For each location where Confidential Information will be processed or stored or services for Bank of America produced by Supplier, describe in detail the arrangements in place for physical security.

13. Privacy: Describe Supplier's privacy and security policies; indicate if they are in writing; and whether they are compatible with Bank of America's policies.

14. Location of Servers. Are web servers on a separate segment of the network from the application and database servers? If not, explain the reason this has not been done. At Bank of America's request, Supplier shall make reasonable efforts to create this separation.

15. Portable Media and Devices. Bank of America's Confidential Information shall not be stored on any portable media or devices to include notebook/laptop computers, USB storage devices, approved by Bank of America and security precautions such as encryption of data and remote network connectivity will be addressed in the Supplier's Information Security Program.

INFORMATION DESTRUCTION REQUIREMENTS

Overall Requirements

At Bank of America's direction, Supplier shall destroy all Confidential Information at all locations where it is stored after it is no longer needed for performance under this Agreement or to satisfy regulatory requirements. Supplier must have in place or develop information destruction schedules and processes that meet Bank of America standards and that must be used in all cases when Confidential Information is no Longer needed. These information destruction requirements are to be applied to paper, microfiche, disks, disk drives, tape and other destroyable electronic or digital media containing Confidential Information.

Paper and Other Shreddable Media

Paper and other shreddable media includes paper, microfiche, microfilm, compact disks (CDs) and any other media that can be shredded. This media must be shredded using shredding techniques or machines such that Confidential Information in this media is completely destroyed as set forth herein when Supplier is finished with the Confidential Information contained thereon and it is no longer needed. This media may be shredded immediately or temporarily stored In a highly secured, locked container. The media may be shredded at a location other than Supplier's facilities; however it must be transferred in a highly secured. locked container. Supplier is responsible for supervising the shredding regardless of where the shredding activity occurs and by whom the shredding is performed. Confidential Information In this media must be completely destroyed by shredding such that the results are not readable or useable for any purpose.

Electronic Media

Electronic media includes, but Is not limited to, disk drives, diskettes. tapes, universal serial bus (USB) and other media that is used for electronic recording and storage. This media is to be wiped or degaussed using a Bank of America approved wipe or degaussing tool. Wiping uses a program that repeatedly writes data to the media and thereby destroys the original content. Degaussing produces an electronic field that electronically eliminates the original data and clears the media. These techniques must meet Bank of America standards and baselines. The resulting media must be free from any machine or computer content readable for any purpose.

Certification

These processes must be documented as a procedure by Supplier and should outline the techniques and methods to be used. The procedure must also indicate when and where Confidential Information is to be destroyed. Supplier shall keep records of all Confidential Information destruction completed and provide such records to Bank of America upon demand.

BACKGROUND SCREENING GUIDELINES

In accordance with and subject to the terms and conditions of this Agreement, prior to any person being assigned and beginning work for Bank of America under this Agreement, the following background screening guidelines must be administered and successfully passed by that person ("Contract Person"):

1. Search of the Contract Person's social security number to verify the accuracy of the individual's identity and current and previous addresses.
2. A criminal background search of all court records in each venue of the Contract Person's current and previous addresses over the past ten (10) years.
3. A minimum of at least two (2) confirmed work references prior to assignment at Bank of America.
4. Verification of any post high school education or degrees, i.e. B.A.. B.S., Associate, or professional certifications.
5. Validate authorization to work in the United States in compliance with I-9 requirements.6. Where required by state and/or federal law. enroll in and participate in a federal work authorization program and process employee information according to all applicable E-Verify rules and procedures.

Supplier shall keep copies of background screening documentation and provide certification of their completion to Bank of America when requested.

1. Supplier shall establish, maintain and implement per the terms thereof, a Business Continuity Plan. The Business Continuity Plan must be in place within forty-five (45) calendar days after the assumption of Service and shall include, but not be limited to, recovery strategy, loss of critical personnel, documented recovery plans covering all areas of operations necessary to delivering Supplier's services pursuant to this Agreement, vital records protection and testing plans. The plans shall provide, without limitation, for off-site backup of critical data files, Confidential Information, software, documentation, forms and supplies as well as alternative means of transmitting and processing Confidential Information.

2. The recovery strategy shall provide for recovery after both short and long term disruptions in facilities, environmental support, workforce availability, and data processing equipment. Although short term outages can be protected with redundant resources and network diversity, the long term strategy must allow for total destruction of Supplier's business operations for a period of six (6) months or longer and set forth a recovery strategy.

3. Supplier's recovery objectives shall not exceed the following during any recovery period:

   A. Time to Full Restoration from time of disruption event: 4 hours

   B. Maximum Data Loss (stated in hours) from time of disruption event: 24 hours

   C. Percentage Reduction of Service levels: 50% during the 24 hour recovery period

   In the event of a change, Bank of America agrees to work with Supplier to determine a mutually agreeable date for Supplier to match the new objectives if necessary.

4. Supplier shall continue to provide service to Bank of America if Bank of America activates its contingency plan or moves to an interim site to conduct its business, including during tests of Bank of America's contingency operations plans.

5. Supplier shall furnish contingency recovery plans, contingency exercise and testing schedules annually or upon request. Supplier shall provide to Bank of America, annually, or upon request, copies of all contingency exercise final reports and shall Include, but not be limited to, disaster scenario description, exercise scope and objectives, detailed tasks, exercise issues list and remediation, and exercise results. If requested, Supplier shall allow Bank of America, at its own expense, to observe a contingency test.

6. If Supplier provides electronic interchange of data with Bank of America, Supplier shall participate, if requested, in the recovery exercise of Bank of America to validate recovery capability.

7. Supplier must provide evidence of capability to meet any applicable regulatory requirements concerning business continuity.

8. Supplier shall be required to participate, if requested by Bank of America, in recovery testing of a mutually agreed upon scope and frequency.

**SCHEDULE TO Software License, Customization and Maintenance Agreement**

| | | | |
|---|---|---|---|
| **Supplier Name:** | Cardlytics, Inc. | **Agreement Number:** | CW251207 |
| **Supplier Address:** | 621 North Avenue NE<br>Suite C-30<br>Atlanta, GA 30308 | **Addendum Number:** | CW255039 |
| **Supplier Telephone:** | 888.798.5802 | **Addendum Effective Date** | March 3, 2011 |

This Schedule ("Schedule") is made as of the effective date set forth above to that Software License, Customization, and Maintenance Agreement, by and between Cardlytics, Inc. ("Supplier") and Bank of America, N. A, ("Bank of America"), dated November 5, 2010, as amended ("SLCMA"). Each capitalized term used but not defined herein shall have the meaning assigned in the SLCMA.

WHEREAS, Bank of America and Supplier entered into the SLCMA in order to set forth the terms and conditions pursuant to which Supplier provides certain Software to Bank of America,

WHEREAS, the parties desire to add to the SLCMA the Supplier Offer Placement System Software;

NOW THEREFORE, in consideration of the promises and accords made herein, and the exchange of such good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Bank of America and Supplier agree as follows:

The attached Schedule [A] is hereby incorporated into the SLCMA describing the Offer Placement System Software for use by Bank of America.

THE FOREGOING IS UNDERSTOOD AND AGREED TO BY:

| **Cardlytics, Inc.**<br>("Supplier") | | **Bank of America, N.A.**<br>("Bank of America") | |
|---|---|---|---|
| By: | /s/ Scott Grimes | By: | /s/ Chandra Torrence |
| Name: | Scott Grimes | Name: | Chandra Torrence |
| Title: | Chief Executive Officer | Title: | V.P., Sourcing Manager |
| Date: | 3/4/11 | Date: | 3/3/11 |

This Product License Schedule is issued pursuant to the Software License, Customization and Maintenance Agreement (the "Agreement") executed by and between Bank of America, N.A. ("Bank of America") and Cardlytics, ("Supplier") and incorporates by reference all of the terms and conditions of the Agreement.

**TERM FOR ORDERING**

**A. Software**

This Schedule constitutes an Order in accordance with the terms of the Agreement.

**B. Payment Schedule for Source Code delivery as outlined in Section 2.7**

- Beginning three (3) years after the General Services Agreement Effective Date, the Supplier Software version in place one (1) year following the Service reaching 10,000,000 Users $[***]
- The latest commercially available version, or earlier versions at Bank of America's option, of the Supplier Software:
  - Beginning 3 years after the General Services Agreement Effective Date or one (1) year following the Service reaching 10,000,000 Users, whichever is later, if Supplier has failed to meet either of the Performance Adjustments as outlined in Schedule B of the General Services Agreement for six (6) consecutive months. $[***]
  - Beginning 3 years after the General Services Agreement Effective Date and one (1) year following the National Launch date and Supplier has met both of the Performance Adjustments as outlined in Schedule B of the General Services Agreement. Bank of America Total Revenue Share minus Supplier Total Revenue share for the preceding twelve (12) months
- At any time if Supplier materially breaches either Agreement $[***]

**C. Maintenance Services**

No-charge Maintenance Services shall be provided from the Delivery Date through the Warranty Period. The first paid (Initial) Maintenance Term shall commence upon expiration of the Warranty Period and shall continue for twelve (12) months thereafter. Thereafter, the Maintenance Term shall automatically renew for successive period, 12 months, on the terms and conditions of this Agreement unless Bank of America terminates Maintenance Services pursuant to this Agreement. Bank of America may terminate Maintenance Services for convenience at any time in accordance with the Section entitled "Termination" of the Agreement. If Bank of America terminates the Maintenance Services, Bank of America shall have the right to reinstate the Maintenance Services without paying any reinstatement fee. During the initial Maintenance Term and any renewal term, Maintenance Fees shall be paid in the increments described below under "Payment Terms."

**PRODUCTS**

| LICENSED PROGRAMS: | PROGRAM MATERIALS: | PLATFORM: |
|---|---|---|
| The Software consists of the following: | The Program Materials include the following: | The Platform consists of the following: |
| Cardlytics OPS (Offer Placement System) Version 3.0 | Installation Guides<br>Operational Guides | Computer: database servers, application servers and web servers<br><br>Operating System: Microsoft.net and SQL 2008<br><br>Other Required Components Client side ad serving technology |

**PAYMENT TERMS**

The Software License and Maintenance will be provided at no charge.

**PAYMENT TERMS**

| DELIVERY/INSTALLATION DATES | ACCEPTANCE PERIOD | MAINTENANCE PERIOD | WARRANTY PERIOD DURATION |
|---|---|---|---|
| Delivery Date:<br>TBD<br>Installation Date:<br>TBD | The period commencing on the Installation Date and continuing for the number of days specified:<br>120 days | Notwithstanding anything set forth elsewhere in this Agreement (or below), the Maintenance Period shall be twenty- four (24) hours per day, seven (7) days per week, including Bank of America holidays. | 120 days |

**METHOD OF DELIVERY AND STATE WHERE SOFTWARE AND DOCUMENTATION ARE RECEIVED**

The method of delivery and name of the State where Supplier shall deliver and Bank of America shall receive Software and Documentation:

TBD

**TRAINING**

Supplier shall provide the following training classes pursuant to this Agreement in connection with installation of the first copy of the Software.

Date: _____

**INSTALLATION SUPPORT**

In addition to the installation support provided pursuant to the Section entitled “Ordering, Delivery and Installation,” Supplier shall provide Bank of America the following installation services:

Installation Support will be handled in a separate agreement

**NON-MAINTENANCE SERVICES SUPPORT**

Support services shall be provided at the Time and Materials rates set forth in the Price List.

**RELATIONSHIP MANAGERS**

The following shall be the Relationship Managers for the parties:

| | Bank of America: | Cardlytics: |
|---|---|---|
| | Brian Woodward | Jason Brooks |
| Address: | [***] | [***] |

**SOURCE CODE INSTALLATION SITE**

Bank of America shall maintain its copy of the Source Code on the terms of this Agreement at the following address:

Address: TBD

**INSTALLATION SITE**

Address: TBD

**INVOICE ADDRESS(ES)**

Licenses:

N/A

Maintenance:

N/A

**Exhibit 21.1**

List of Subsidiaries of Cardlytics, Inc.

| **Company Name** | **Jurisdiction** |
| --- | --- |
| Cardlytics UK Limited | England and Wales |

**Exhibit 23.1**

**CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM**

We consent to the use in this Registration Statement on Form S-1 of our report dated April 5, 2017 (except for Note 16, as to which the date is May 12, 2017) relating to the financial statements of Cardlytics, Inc. and its wholly-owned subsidiary appearing in the Prospectus, which is part of this Registration Statement.

We also consent to the reference to us under the heading “Experts” in such Prospectus.

/s/ DELOITTE & TOUCHE LLP

Atlanta, Georgia

January 12, 2018

**Exhibit 99.1**

FROST & SULLIVAN

Cardlytics, Inc.
675 Ponce de Leon Ave NE,
Suite 6000
Atlanta, GA 30308

May 5th, 2017

Dear Cardlytics, Inc.:

We, Frost & Sullivan of 3211 Scott Blvd, Suite 203, Santa Clara CA, 95054, hereby consent to the filing with the Securities and Exchange Commission of a Registration Statement on Form S-1, and any amendments thereto (the "*Registration Statement*") of Cardlytics, Inc., and any related prospectuses of (i) our name and all references thereto, and (ii) the statements set out in the Schedule hereto. We also hereby consent to the filing of this letter as an exhibit to the Registration Statement.

We further consent to the reference to our firm, under the caption "Industry and Market Data" in the Registration Statement, as acting in the capacity of an author of independent industry publications.

Yours faithfully,

/s/ Aravindh Vanchesan

Name: Aravindh Vanchesan
Designation: Industry Consulting Manager
For and on behalf of Frost & Sullivan

SCHEDULE

1) According to Frost & Sullivan in an independent study commissioned by us, it was estimated that, under a conservative scenario, Cardlytics' Native Bank Advertising Channel represents a $9.5 billion U.S. opportunity in 2015 and is expected to grow at a compound annual growth rate of 9.9% to $16.7 billion in 2021.
2) According to Frost & Sullivan in an independent study commissioned by us, it was estimated that, under an optimistic scenario, Cardlytics' Native Bank Advertising Channel represents a $9.5 billion U.S. opportunity in 2015 and is expected to grow at a compound annual growth rate of 26.4% to $38.8 billion in 2021.
3) According to Frost & Sullivan in an independent study commissioned by us, it was estimated that Cardlytics' Native Bank Advertising Channel represents a $9.5 billion U.S. opportunity in 2015 and is expected to grow at a compound annual growth rate of 18.4% to $26.2 billion in 2021.
4) According to Frost & Sullivan in an independent study commissioned by us, it was estimated that, under a conservative scenario, Cardlytics' Platform Solutions (excluding the Native Bank Advertising Channel) represents a $14.5 billion U.S. opportunity in 2015 and is expected to grow at a compound annual growth rate of 4.7% to $19.1 billion in 2021.
5) According to Frost & Sullivan in an independent study commissioned by us, it was estimated that, under an optimistic scenario, Cardlytics' Platform Solutions (excluding the Native Bank Advertising Channel) represents a $14.5 billion U.S. opportunity in 2015 and is expected to grow at a compound annual growth rate of 10.0% to $25.7 billion in 2021.
6) According to Frost & Sullivan in an independent study commissioned by us, it was estimated that Cardlytics' Platform Solutions (excluding the Native Bank Advertising Channel) represents a $14.5 billion U.S. opportunity in 2015 and is expected to grow at a compound annual growth rate of 7.7% to $22.6 billion in 2021.