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

FORM 10-K

(Mark One)

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

For the fiscal year ended December 31, 2022

or

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

For the transition period from _____ to _____

Commission File Number: 001-39100

Progyny, Inc.
(Exact name of registrant as specified in its charter)

Delaware	**27-2220139**
(State or other jurisdiction of incorporation or organization)	**(I.R.S. Employer Identification No.)**
1359 Broadway New York, New York	**10018**
(Address of principal executive offices)	**(Zip Code)**

(212) 888-3124
(Registrant's telephone number, including area code)

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

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Common Stock, $0.0001 par value per share	PGNY	The Nasdaq Global Select Market

Securities registered pursuant to Section 12(g) of the Act: None

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act. Yes ☒ No ☐

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Act. Yes ☐ No ☒

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

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

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

Large accelerated filer	☒	Accelerated filer	☐
Non-accelerated filer	☐	Smaller reporting company	☐
		Emerging growth company	☐

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

Indicate by check mark whether the registrant has filed a report on and attestation to its management's assessment of the effectiveness of its internal control over financial reporting under Section 404(b) of the Sarbanes-Oxley Act (15 U.S.C. 7262(b)) by the registered public accounting firm that prepared or issued its audit report. Yes ☒ No ☐

If securities are registered pursuant to Section 12(b) of the Act, indicate by check mark whether the financial statements of the registrant included in the filing reflect the correction of an error to previously issued financial statements. ☐

Indicate by check mark whether any of those error corrections are restatements that required a recovery analysis of incentive-based compensation received by any of the registrant's executive officers during the relevant recovery period pursuant to §240.10D-1(b). ☐

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

The aggregate market value of the voting and non-voting common equity held by non-affiliates of the registrant, based on the closing price of the registrant's shares of common stock as reported by The Nasdaq Global Select Market on June 30, 2022 (the last business day of the registrant's second fiscal quarter), was approximately $2.3 billion.

As of January 31, 2023, the registrant had 93,378,243 shares of common stock, $0.0001 par value per share, outstanding.

DOCUMENTS INCORPORATED BY REFERENCE

Portions of the registrant's Definitive Proxy Statement relating to its 2023 Annual Meeting of Stockholders to be filed within 120 days after the end of the fiscal year ended December 31, 2022 are incorporated by reference into Part III of this Annual Report on Form 10-K.

PROGYNY, INC.

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CAUTIONARY NOTE REGARDING FORWARD-LOOKING STATEMENTS

This Annual Report on Form 10-K contains forward-looking statements within the meaning of the Private Securities Litigation Reform Act of 1995. We intend such forward-looking statements to be covered by the safe harbor provisions for forward-looking statements contained in Section 27A of the Securities Act of 1933, as amended, or the Securities Act, and Section 21E of the Securities Exchange Act of 1934, as amended, or the Exchange Act. All statements other than statements of historical fact contained in this Annual Report on Form 10-K are forward-looking statements, including without limitation statements regarding our future results of operations and financial position; our ability to acquire or invest in complementary businesses, products, and technologies; our ability to achieve profitability on an annual basis and sustain such profitability; the sufficiency of our cash and cash equivalents, anticipated sources and uses of cash; our business strategies, plans, objectives and goals; our ability to acquire new clients and successfully engage new and existing clients; our ability to effectively manage our growth; our ability to compete effectively with existing competitors and new market entrants; the impact of recently adopted accounting pronouncements; our ability to attract and retain qualified employees and key personnel; the plans and objectives of management for future operations and capital expenditures; general economic and market trends; the impacts of the COVID-19 pandemic, including variants, on our business, operations, and the markets and communities in which we and our clients, members and providers operate and the potential impact of evolving laws and regulations, including any laws and regulations restricting reproductive rights. These statements are neither promises nor guarantees, but involve known and unknown risks, uncertainties and other important factors that may cause our actual results, performance or achievements to be materially different from any future results, performance or achievements expressed or implied by the forward-looking statements.

In some cases, you can identify forward-looking statements by terms such as “may,” “will,” “should,” “expect,” “plan,” “anticipate,” “could,” “intend,” “target,” “project,” “contemplate,” “believe,” “estimate,” “predict,” “potential," “seek," "assume," "future" or “continue” or the negative of these terms or other similar expressions. The forward-looking statements in this Annual Report on Form 10-K are only predictions. We have based these forward-looking statements largely on our current expectations and projections about future events and financial trends that we believe may affect our business, financial condition and results of operations. These forward-looking statements speak only as of the date of this Annual Report on Form 10-K and are subject to a number of important factors that could cause actual results to differ materially from those in the forward-looking statements, including the factors described under Part I, Item 1A. “Risk Factors” and Part II, Item 7. “Management’s Discussion and Analysis of Financial Condition and Results of Operations.” of this Annual Report on Form 10-K.

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

You should read this Annual Report on Form 10-K and the documents that we reference in this Annual Report on Form 10-K 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. Except as required by applicable law, we do not plan to publicly update or revise any forward-looking statements contained herein, whether as a result of any new information, future events, changed circumstances or otherwise.

SUMMARY OF RISKS AFFECTING OUR BUSINESS

Below is a summary of the principal factors that make an investment in our common stock speculative or risky. This summary does not address all of the risks that we face. Additional discussion of the risks summarized in this risk factor summary, and other risks that we face, can be found under the heading "Risk Factors" in Part I, Item 1.A of this Annual Report on Form 10-K and should be carefully considered, together with other information in this Annual Report on Form 10-K and our other filings with the U.S. Securities and Exchange Commission, or the SEC, before making an investment decision regarding our common stock.

- We may fail to meet our publicly announced guidance or other expectations about our business and future results of operations, which would cause our stock price to decline.
- The COVID-19 pandemic, including variants and resurgences, has had and is expected to continue to have, and similar health epidemics or pandemics could in the future have, an adverse impact on our business, operations, and the markets and communities in which we and our clients, members and providers operate.
- The fertility market in which we participate is competitive, and if we do not continue to compete effectively, our results of operations could be harmed.
- Unfavorable conditions in the global economy or our industry could limit our ability to grow our business and negatively affect our results of operations.
- Our business depends on our ability to retain our existing clients and increase the adoption of our services within our client base. Any failure to do so would harm our business, financial condition and results of operations.
- Our largest clients account for a significant portion of our revenue and a significant number of our clients are in the technology industry. The loss of one or more of these clients, changes to pricing terms with these clients or changes within the technology industry could negatively impact our business, financial condition and results of operations.
- If we are unable to attract new clients, our business, financial condition and results of operations would be adversely affected.
- A significant change in the level or the mix of the utilization of our solutions could have an adverse effect on our business, financial condition and results of operations.
- We have a limited operating history with our current platform of solutions, which makes it difficult to predict our future results of operations.
- Changes or developments in the health insurance markets in the United States, including passage and implementation of a law to create a single-payer or government-run health insurance program, could adversely harm our business, and results of operations.
- The health benefits industry may be subject to negative publicity, which could adversely affect our business, financial condition and results of operations.
- If our information technology systems, or those of our provider clinics, specialty pharmacies or other vendors, lag, fail or suffer security breaches, we may incur a material disruption of our services or suffer a loss or inappropriate disclosure of confidential information, which could materially impact our business and the results of operations.
- Our business depends on our ability to maintain our Center of Excellence network of high-quality fertility specialists and other healthcare providers. If we are unable to do so, our future growth would be limited and our business, financial condition and results of operations would be harmed.
- Our growth depends in part on the success of our strategic relationships with, and monitoring of, third parties, including channel partners, vendors as well as insurance carriers.
- If we fail to maintain an efficient pharmacy distribution network or if there is a disruption to our network of specialty pharmacies or their supply chains, our business, financial condition and results of operations could suffer.

- We operate in a highly regulated industry and must comply with a significant number of complex and evolving legal and regulatory requirements.
- The healthcare regulatory and political framework is uncertain and evolving. Recent and future developments in the healthcare industry could have an adverse impact on our business, financial condition and results of operations.

GENERAL

Unless the context otherwise indicates, references in this Annual Report on Form 10-K to the terms "Progyny," "the Company," "we," "our" and "us" refer to Progyny, Inc. and its wholly owned subsidiaries.

"Progyny®" and our other registered and common law trade names, trademarks and service marks are the property of Progyny, Inc. Other trade names, trademarks and service marks used in this Annual Report on Form 10-K are the property of their respective owners. Solely for convenience, the trademarks and trade names in this Annual Report on Form 10-K may be referred to without the ® and ™ symbols, but such references should not be construed as any indicator that their respective owners will not assert their rights thereto.

MARKET, INDUSTRY AND OTHER DATA

This Annual Report on Form 10-K contains statistical data, estimates and forecasts that are based on independent industry publications, and other publicly available information, as well as other information based on our internal sources. This information involves many assumptions and limitations, and you are cautioned not to give undue weight to these estimates. We have not independently verified the accuracy or completeness of the data contained in these industry publications and other publicly available information. Further, while we believe our internal research is reliable, such research has not been verified by any third party. 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 under Part I, Item 1A. "Risk Factors," of this Annual Report on Form 10-K that could cause results to differ materially from those expressed in these publications and other publicly available information.

PART I

ITEM 1. BUSINESS

Overview

We envision a world where anyone who wants to have a child can do so. Our mission is to make dreams of parenthood come true through healthy, timely and supported fertility journeys. Through our differentiated approach to benefits plan design, patient education and support and active network management, our clients' employees are able to pursue the most effective treatment from the best physicians and achieve optimal outcomes.

Progyny is a leading benefits management company specializing in fertility and family building benefits solutions in the United States. Our clients include many of the nation's most prominent employers across a broad array of industries. We launched our fertility benefits solution in 2016 with our first five employer clients, and we have grown our current base of clients to over 370 employers, each with at least 1,000 covered lives. We currently have contracts to provide coverage to approximately 5.4 million employees and their partners (known in our industry as covered lives), whom we refer to as our members. We have achieved this growth by demonstrating that our purpose-built, data-driven and disruptive platform consistently delivers superior clinical outcomes in a cost-efficient manner while driving exceptional client and member satisfaction. We have retained substantially all of our clients since we launched our fertility benefits solution, and our member satisfaction is evidenced by our most recent industry-leading Net Promoter Score, or NPS, of +82 for our fertility benefits solution and +79 for our integrated pharmacy benefits solution, Progyny Rx as of December 31, 2022.

We are redefining fertility and family building benefits, proving that a comprehensive fertility solution can simultaneously benefit employers, patients and physicians. We believe the differentiated value proposition we deliver to all of these constituents is key to our success and growth. By empowering our members with education, guidance and financial support, and enabling high-quality fertility specialists to use the latest science and technologies, our solution leads to the development of customized treatment plans that result in optimal clinical outcomes for our members and cost savings for our clients.

In order to simplify the process for our members, we position the benefit to them using our proprietary Smart Cycle approach. Smart Cycles are designed by us to include the medical services required for a member's full course of treatment, including all necessary diagnostic testing and access to the latest technology. In conjunction with the Smart Cycle plan design, each of our members who utilizes our benefit has a dedicated Patient Care Advocate, or PCA, who has fertility expertise and provides end-to-end concierge support, including logistical support (i.e., fertility specialist selection, appointment scheduling, treatment authorization and treatment payment), clinical guidance (i.e., treatment options, outcomes statistics and what to expect) and emotional support during the often challenging and unpredictable fertility journey. Additionally, all Progyny members have access to our selective network of high-quality fertility specialists who we equip with a benefits design that enables them to pursue the best treatment pathways, providing our members with tailored treatments that result in optimal clinical outcomes.

In addition to our fertility benefits solution, we offer an integrated pharmacy benefits solution, Progyny Rx, which can be added by our clients. Progyny Rx provides our members with access to the medications needed during their fertility treatment. As part of this solution, we provide care management services, which include our formulary plan design, simplified authorization, assistance with prescription fulfillment and timely delivery of the medications by our network of specialty pharmacies, as well as medication administration training, pharmacy support services and continuing PCA support.

We have demonstrated our ability to drive better outcomes for our clients, members and provider clinics across multiple metrics. Provider clinics within our network produce outcomes that surpass their own reported practice averages when treating Progyny members because of our differentiated solution. Additionally, across our membership, our outcomes compared to national averages have been consistently superior to date.

Industry Background

The prevalence of infertility is high, affecting one in five heterosexual women aged 15 to 49 years with no prior births in the United States, according to the Centers for Disease Control and Prevention, or the CDC, and infertility is gaining attention as individuals are more openly discussing their struggles with fertility. As transparency and dialogue around infertility have increased, there has been a de-stigmatization of the disease. Despite this change in perception of infertility and its high prevalence, it is one of the only high-prevalence medical conditions with limited or non-existent medical insurance. By comparison, medical conditions with a similar prevalence, such as diabetes and asthma, are

comprehensively covered by conventional health insurance carriers and employers. Due to the high prevalence of infertility, its high costs of treatment and the limited insurance coverage provided for the disease, there is a significant unmet need for fertility services in the United States and several macro trends are driving that need for fertility treatments and propelling the overall size of the fertility market higher.

While fertility treatments have been available for over 40 years to help individuals suffering from infertility build their families, access to these treatments has been limited due to the lack of comprehensive coverage and the prohibitive costs. Only a small percentage of employers provide a benefits plan that addresses these costs. As a result, the vast majority of patients who undergo fertility treatment must pay for most or all of their care out-of-pocket, which is cost-prohibitive for many families and individuals.

We believe that the lack of adequate coverage has been the result of both broader public policy issues, as well as conventional health insurance carrier-specific policies. For example, it was not until 2017 that infertility was first recognized as a disease by the American Medical Association and, as of June 2022, only 20 states have mandated insurance coverage for infertility. For the states that do mandate coverage, the mandates vary greatly and may leave patients with inadequate coverage or unable to pursue care at all. When conventional health insurance carriers have chosen to structure fertility coverage for their employer clients, that coverage often has limited lifetime dollar maximums and clinically antiquated "one size fits all" clinical protocols, such as mandated step therapy protocols.

Major cultural shifts and the evolving demographics of the workforce in the United States are driving demand for fertility treatments and adequate coverage to support them. More individuals than ever are making the choice to start their families later in life, increasing the biological likelihood of infertility as an individual's fertility declines with age. Additionally, the increased acceptance of non-traditional paths to parenthood has created an increased need for access to fertility treatments. As employees are demanding more robust fertility benefits coverage, employers are increasingly focused on providing a comprehensive fertility benefits plan that supports an inclusive and diverse workplace in order to attract and retain top employees. Because employers in the same industry are competing for employee talent, once the availability of fertility benefits begins to penetrate a particular industry, a demonstrable network effect occurs in which employees within that industry begin to expect the benefit from their employers, which can cause an employer to adopt the benefit to remain competitive and bolster employee satisfaction.

Driven by these market dynamics, the market for fertility treatments has grown as more individuals pursue treatment. Given this increasing demand coupled with inadequate existing coverage, there is a greater need than ever before for a fertility benefits manager who can provide comprehensive and effective benefits to the employer market.

Industry Challenges

We believe employers are faced with three major challenges relating to providing fertility benefits to their employee bases:

- the lack of a comprehensive fertility benefits solution that optimizes their fertility treatment expenditures;
- the need to reduce the significant maternity and neonatal intensive care unit, or NICU, expenses, and the workplace impact, resulting from multiple births caused by fertility treatments; and
- the desire to find innovative ways to attract and retain highly sought-after talent.

Employers are seeing an increasing demand for fertility and family building benefits solutions from their employees, yet the programs offered by their conventional health insurance carriers do not successfully address these core challenges.

Lack of Effective Fertility Benefits Solutions

The conventional fertility benefits options available to employers have been designed to control the utilization of services (and expenditures) by employees rather than to optimize outcomes. As such, their plan designs have included restrictive features, such as lifetime dollar maximums, mandated step therapy protocols and limited or no coverage for advanced diagnostics and procedures. In addition, these plan designs have failed to provide access to premier fertility specialists, robust patient support and the ability to dispense fertility medication in a timely manner.

When conventional fertility benefits coverage is restrictively structured with a lifetime dollar maximum, the patient often makes poor clinical decisions that ultimately result in greater costs for the employer. Because the dollar maximum can easily be exhausted in the midst of a fertility treatment cycle, patients may elect to transfer multiple embryos because they are under financial pressure and mistakenly believe that it will optimize their chance of becoming pregnant. The common use of multiple embryo transfer belies the fact that this procedure greatly increases the risk of multiple births and health complications among the mother and babies. One of the most common complications associated with multiples is preterm births, which significantly escalates healthcare costs, including maternity care, labor and delivery costs and NICU expenses. Conventional health insurance carriers also often mandate step therapy protocols and restrict access to use of advanced diagnostics and procedures, which exacerbates the inefficient utilization of dollars available under the lifetime dollar maximum and wastes valuable time on less effective treatments.

The fertility process is a long, rigorous journey, both emotionally and physically. Conventional benefits programs lack any meaningful care coordination, education or patient support. Patients and their dependents have no help in understanding the complex choices they are faced with and discerning between treatment alternatives. There is also limited emotional support when patients face setbacks or unexpected outcomes as the current system ignores the emotional burden of patients embarking on the path to pregnancy through assisted reproductive technology, or ART, treatments and the impact that burden has on employee productivity and the workplace.

The conventional pharmacy delivery infrastructure is not designed to address the uniqueness of fertility treatment, which requires highly coordinated and timely delivery of medications. Conventional benefits managers require extensive and multiple authorizations and have inconsistent approval processes, which can complicate and delay the provision of medications that are essential to fertility treatment. We believe that with conventional benefits programs, authorization and delivery times of one to two weeks are typical. If medications are not received on time, patients may have to wait a month or longer to commence another round of fertility treatment, wasting valuable time and money. In addition, the storage, preparation and administration of fertility medication is complex and requires extensive self-administered injections, yet most fertility benefits programs offer limited guidance and clinical support to patients around these issues. Additionally, fertility medications are often self-administered injectable drugs, and the effectiveness of a patient's treatment may be compromised by improper storage and/or incorrect administration of their medications if the patient is not provided access to education and support.

Because of the unique challenges of infertility, including the high costs and complexity of treatment and the variability of outcomes across fertility specialists, conventional benefits solutions have been unable to optimize outcomes and efficiently utilize employers' dollars committed to fertility. As a result, employers are facing increased demand for an expensive benefits program without the availability of an effective solution in the conventional managed care environment.

Costs Associated with Multiple Births and Poor Fertility Treatment Outcomes

Regardless of whether an employer chooses to cover fertility treatments, they end up bearing the significant medical costs associated with unanticipated multiple births and miscarriages, as well as the associated impacts on the workplace. The high number of multiple embryo transfers that conventionally occurs during IVF leads to a significant number of multiple births, which in turn is a primary cause of dangerous and expensive preterm births, the most common complication resulting from multiple births, which lead to extensive maternity and NICU costs. In addition to multiple birth rates, the relatively higher miscarriage rate associated with IVF treatment also results in significant additional medical costs for employers and their employees, as well as emotional and physical strain on patients. As a result of these suboptimal treatment outcomes, employers also bear the related costs of increased employee absenteeism at the workplace, which is common with instances of multiples births. Employers may not be fully aware of the causal effect and ultimate impact of suboptimal fertility care under the current solutions offered by the conventional benefits programs since these programs do not collect outcomes data from their fertility specialists and therefore cannot accurately report on their program's performance in a timely manner.

Ability to Attract and Retain Talent

Employers are facing increasing competition to attract and retain talent. As a result, we believe that employers are enhancing their value proposition to employees by evaluating and providing benefits that are most in demand. Family building solutions are an increasing area of focus for employees, and in turn, employers.

Our Market Opportunity

We believe we have a significant opportunity to provide employers with a superior comprehensive solution that addresses the unique challenges and complexities of fertility treatment and related fertility pharmacy services. We estimate that the market for fertility treatments in the United States will continue to grow, especially as current estimates of the market exclude those individuals who do not have access to a comprehensive family building benefit and, as a result, do not seek treatment for infertility. Furthermore, when comparing the United States to other countries, the percentage of babies born utilizing ART is materially lower, at less than 2% in the United States (where fertility treatment is not adequately covered), compared to approximately 10% in Denmark and 6% in Japan (where there is more public health funding for fertility treatment).

We contract with employers to provide fertility and family building benefits to their employees and covered dependents. We believe our initial addressable market consists of the approximately 8,000 self-insured employers in the United States (excluding but not limited to quasi-governmental entities, such as universities, school systems, and labor unions). These 8,000 employers have a minimum of 1,000 employees, representing approximately 75 million potential covered lives in total. As such, we estimate that our current member base of 5.4 million covered lives under contract represents a mid-single digit percent of our initial market opportunity. If we were to include quasi-governmental entities in our potential addressable market, we believe our market penetration is even lower.

Regardless of whether or not these self-insured employers currently provide a fertility benefit, we believe they are prospective clients of Progyny. Further, 37% of our current clients had no prior fertility coverage before adopting Progyny and 88% of our current clients enhanced their coverage when they switched to Progyny. Overall, we believe our market opportunity is substantial and is continuing to grow as a result of the rising demand for fertility benefits solutions, the lack of adequate offerings in the market today and the increasing awareness of the challenges of infertility we are driving.

Our Solutions

We are redefining effective fertility and family building benefits through our purpose-built, data-driven and disruptive platform through which we offer our fertility benefits and Progyny Rx solutions. Our innovative and comprehensive fertility solution has proven to be simultaneously beneficial for our clients, our members and our network of fertility specialists. Through our differentiated approach to benefits plan design, patient education and support and active network management, our clients' employees are able to pursue the most effective treatment from the best fertility specialists and achieve optimal outcomes in a cost-efficient manner, while our clients and members achieve savings in upfront treatment costs as well as reduced maternity and NICU expenses.

Fertility Benefits Solution

Differentiated Benefits Plan Design

The innovative Smart Cycle is our easy-to-understand fertility benefits design. Our Smart Cycle plan design allows members equitable access to the treatment they need and is designed to drive superior outcomes and reduce both upfront treatment expenses and subsequent costs. Everything needed for a comprehensive fertility treatment is contained within a Smart Cycle treatment bundle, including all necessary diagnostic testing and access to the latest technology (e.g., in the case of IVF treatment, preimplantation genetic testing). We currently offer 19 different Smart Cycle treatment bundles, which may be used independently or in combination depending on the member's need. Each Smart Cycle has a separate unit value (i.e., some have fractional values and some have whole values). Our clients contract to purchase a cumulative Smart Cycle unit value per eligible member. These can range from one to unlimited cumulative Smart Cycles units. Members can choose their preferred provider clinics within our network and utilize their Smart Cycles for whichever treatments they and their fertility specialists determine to be necessary throughout their fertility journey.

The Smart Cycle structure allows our members, together with the advice of their fertility specialists and the support of their PCAs, to select the Smart Cycle treatment bundles that align with their unique treatment needs and their intended family building pathway, without having to follow the "one size fits all" protocols common to conventional health insurance carriers, and without the worry that their desired treatment approach will not be authorized or covered for the full treatment cycle. Our comprehensive Smart Cycles, which are our proprietary treatment bundles, are assessed regularly by our Medical Advisory Board, and include access to the latest science and technologies, enabling our network of fertility specialists to utilize best practices. Our superior clinical outcomes driven by our Smart Cycle plan design include higher rates of pregnancy and live births, as well as lower miscarriage rates and fewer multiple births.

Personalized Concierge-Style Member Support Services

Our fertility benefits solution provides members with access to significant support services that are crucial to the success of the fertility and family building journey. Before the fertility treatment process begins, and throughout every step of the fertility journey, we deliver high-touch member support services through a dedicated PCA, who is paired to a member and interacts with them an average of 15 times over the course of their treatment. Our PCAs have deep fertility expertise and provide extensive clinical education, guidance and emotional support to our members. Additionally, we have an in-house clinical staff, comprised of professionals with substantial expertise in reproductive endocrinology, fertility nursing, clinical psychology and social work that design our PCA training curriculum and direct our comprehensive member experience.

Our comprehensive member portal, accessible via any desktop or mobile device, further supports the member experience by providing key educational resources and easy-to-access benefits information to our members. Our members can use the portal to securely message their PCA or access a curated library of videos, articles, podcasts and webinars on fertility and family building. The portal also offers digital solutions that help our members address the emotional effects that are often associated with infertility, including loss, self-blame, anxiety and depression. Additionally, the portal can be used to review plan coverage, benefit utilization, claim details and account balances. We believe our platform provides our members with best-in-class support services to help them navigate their fertility and family building journeys. In November 2022, we updated our member portal by including a mobile application, that allows for members to view their benefit details, communicate with their Progyny Care Team, pay bills and access fertility and family building education.

Selective Network of High-Quality Fertility Specialists

We have utilized our deep industry knowledge and the insights derived from our data analytics platform to establish and actively manage a national network of the leading fertility specialists in the country. Our members receive access to our selective Center of Excellence network of high-quality providers that includes over 950 fertility specialists who practice at over 650 provider clinic locations throughout the United States. Our network includes 45 of the top 50 fertility practice groups by volume in the United States according to 2020 CDC data, which was published in 2022 and is the most recent data available. Fertility specialists who are invited to join our network must meet and maintain rigorous credentialing standards and quality thresholds that we set for inclusion in our network to ensure that our members receive the highest quality of care. Our national network serves members in virtually every state, providing extensive geographic coverage to our national employers.

Progyny Rx, an Integrated Pharmacy Benefits Solution

Progyny Rx is our integrated pharmacy benefits solution that can be added by clients that utilize our fertility benefits solution. This solution provides our members with access to the medications needed during their treatment. As part of this solution, we provide care management services, which include our formulary plan design, simplified authorization, assistance with prescription fulfillment and timely delivery of the medications by our network of specialty pharmacies, as well as medication administration training, pharmacy support services and continuing PCA support. Our single treatment and medication authorization process reduces the administrative burden, creating an efficient pharmacy solution for our members and their fertility specialists. Progyny Rx reduces dispensing and delivery time to two days to eliminate the risk of missed treatment cycles. Our single medication authorization and delivery process ensures that our members will not miss or delay cycles. We provide access to phone-based, clinical education and support seven days a week to ensure that our members understand any necessary medication storage requirements and administration techniques, including injection training. To further support those members that require additional education, we also offer a library of on-demand videos. Given the importance of the timely use of medication to the success of fertility treatments, and the complexity involved in administering the medications, we believe Progyny Rx provides a differentiated and effective pharmacy solution for our clients and their employees.

Robust Data Collection Process

We believe that we are the only fertility and family building benefits company to collect data in a timely manner directly from providers on adherence to treatment protocols and clinical outcomes, including single embryo transfer rates, pregnancy rates, miscarriage rates, live birth rates, multiple birth rates, practice patterns, treatment timelines and costs per birth. Our data is used to understand the utilization of our benefits, our provider clinics' adherence to best practices and the outcomes produced by each clinic and across our network. This data informs decisions across our platform, from services covered to our fertility network standards. The insights from our data also enable us to actively manage our fertility specialist network and ensure that our fertility specialists are utilizing best practices and optimizing outcomes. The data collection process also includes extensive member surveys, which allow us to understand and improve our member satisfaction. Finally, our data allows us to provide our clients with unique and detailed quarterly reports in order to provide full transparency into the utilization of their benefit program, their expenditures and the outcomes delivered and value created. We believe that we effectively utilize our thorough data collection and analysis process and our unique and robust data set to continuously improve the client and member experience across our platform.

Prestigious Medical Advisory Board

Our Medical Advisory Board is comprised of nationally recognized fertility specialists who are advancing fertility science and research. They are responsible for oversight of key clinical issues, including evaluating new fertility treatment diagnostics and procedures to ensure that our benefits design and overall program is comprehensive and designed to drive to the best outcomes. This review ensures that we are evaluating and covering the latest and most effective fertility treatments and identifying opportunities to improve our plan design, member experience and fertility specialists network standards.

Full Service Client Account Management

We provide a dedicated account management team to ensure that we are delivering superior service. Our account managers support our clients' day-to-day needs and resolve issues that arise. For example, to help our clients ensure that their employees are fully aware of the Progyny program, our account management teams work with our clients to create co-branded materials to support health fairs, open enrollment events and other employee communications. The account management team also attends open enrollment benefits fairs and other health fairs throughout the year and hosts virtual open enrollment webinars for members to attend live or on-demand. Our account management team also reviews all quarterly and annual program reports with our clients to reinforce the transparency we provide to clients into their expenditures and outcomes and to review and quantify the value created by our solutions. We believe our account management services, including our detailed client reporting, play an important role in helping us maintain and strengthen our client relationships.

Ease of Integration for Our Clients

Once we are selected by an employer to manage their fertility and family building benefit, our solution is easy to implement as part of their broader pre-tax medical benefits package. Integrating our solution involves only a small commitment of our client's time (typically only six to ten hours over the course of six weeks). Facilitating the ease of integration is the fact that we have developed multiple integration solutions that allow us to integrate with any health plan or health insurance carrier, reducing significant time and expense for our clients. Our ability to integrate our solution with our clients' health insurance coverage allows our benefit to be offered to employees on a pre-tax basis, providing our members with significant savings in comparison to a post-tax reimbursement. We believe our ability to integrate our benefits solutions with all of the large national health insurance carriers is a differentiating factor within the industry.

Surrogacy and Adoption Reimbursement Program

We also offer a surrogacy and adoption reimbursement program. We can manage the reimbursement of surrogacy and adoption expenses for those clients who offer such reimbursement benefits. For these programs, employers designate a specific lifetime dollar amount toward surrogacy and/or adoption services for their employees. We then administer the expense reimbursement to employees up to this dollar amount. We work with our clients to determine what expenses related to adoption and/or surrogacy will be covered under their plan, thereby alleviating their administrative burden. Examples of reimbursement expenses typically include agency fees, surrogacy fees, travel expenses and healthcare expenses for the surrogate.

Our Value Proposition

We believe that our competitive success is a function of our ability to concurrently: (1) provide tangible financial value to our clients; (2) deliver a better and more supported fertility journey to our members; and (3) provide value to, and work collaboratively with, the nation’s finest fertility specialists.

We Provide Measurable Value to Our Employer Clients

- *Substantial and Measurable Financial Value.* Our superior clinical outcomes drive savings in both upfront fertility treatment costs (due to our higher live birth rates) as well as subsequent maternity and NICU expenses for our clients (due to our lower multiple birth rates).

- *Progyny Rx Savings.* Progyny Rx delivers unit cost savings to our clients based on a reduction in unnecessary quantities of medication dispensed.

- *Employee Productivity and Retention.* Our solution addresses employee absenteeism, poor productivity, and the lack of employee retention driven by the stress of suffering from infertility (and undergoing fertility treatment) as well as the back-to-work issues related to multiple births. Our members are able to receive the most effective treatments more quickly and have access to high-touch member support services through our PCAs, thereby reducing the physical and emotional rigors of infertility and its treatment.

- *Appeal to Existing and Prospective Employees.* Better fertility benefits programs can be a key component of enhancing a company’s overall benefits and an important tool in its recruiting efforts and in helping retain key talent. An appealing feature of the Progyny benefit from an employee retention perspective is that the benefit is both comprehensive and is accessible by all groups across an employee population. The level of employee satisfaction we provide is important for any employer focused on employee retention.

We Provide Meaningful Value to Our Members

- *Superior Clinical Outcomes.* Our members experience healthier pregnancies (with significantly increased utilization of single embryo transfer) and superior rates of pregnancy and live births, as well as reduced rates of miscarriages and multiple births, saving valuable time and money and limiting personal and professional disruption.

Outcome	National Averages for All Provider Clinics	Progyny In-Network Provider Clinic Averages for All Patients	Progyny In-Network Provider Clinic Averages for Progyny Members Only[3]
Single embryo transfer rate[1]	72.5 %	75.6 %	91.0 %
Pregnancy rate per IVF transfer[1]	54.1 %	55.5 %	63.0 %
Miscarriage rate[1]	18.6 %	18.3 %	13.9 %
Live birth rate[2]	42.7 %	44.1 %	54.3 %
IVF multiples rate[2]	7.4 %	6.5 %	2.5 %

(1) Calculated based on the Society for Assisted Reproductive Technology, or SART, 2019 National Summary Report, finalized in 2022.

(2) Calculated based on CDC, 2020 National Summary and Clinic Data Sets, published in 2022.

(3) Calculated based on the 12-month period ended December 31, 2021.

- *Comprehensive Coverage.* We provide all individuals with access to comprehensive coverage. Our Smart Cycle design ensures that members always have coverage for a full treatment cycle as their access to treatment is not limited by a dollar maximum that could be exhausted mid-treatment. Additionally, members have access to the latest technologies and procedures, which are reviewed and approved by our Medical Advisory Board.

- *Access for All Members and Dependents.* Smart Cycles are available to be utilized across all employee groups, including populations not typically covered, such as LGBTQ+ individuals and single mothers by choice.

- *Equitable Access to Care.* Our Smart Cycle design ensures members receive fair and balanced access to care that is not dependent on where members live, how expensive a fertility specialist is or which specific treatments are required.

- *High-Touch Concierge Member Experience.* We provide our members with high-touch, end-to-end concierge support, including logistical assistance, clinical guidance and emotional support through our PCAs and our in-house clinical staff.

- *Access to Selective, Premier Fertility Specialist Network.* Our solution provides members with access to the nation's most desired fertility providers, including over 950 fertility specialists who practice at over 650 provider clinic locations throughout the United States. Our network includes 45 of the top 50 fertility practice groups by volume in the United States according to 2020 CDC data.

- *Integrated Pharmacy Benefits Solution.* Progyny Rx provides members with a simplified authorization process, timely medication delivery and member support from pharmacy clinicians seven days a week.

We Provide Meaningful Value to Our Fertility Specialists

- *Members Supported With a Comprehensive Benefit.* Our solutions allow our members to arrive at their fertility specialist with a fully-covered course of treatment and the flexibility to utilize the latest approved technologies and best practices via our comprehensive Smart Cycle benefits plan design. These members are also educated on the use of best practices and are supported by PCAs along their fertility journey.

- *Eliminate Step Therapy Protocols.* Our network of fertility specialists have access to the latest science and technologies through our innovative Smart Cycles, which free our fertility specialists from having to follow the ineffective protocols common to conventional coverage and allow them to pursue the most effective treatments first, thereby saving time and money.

- *Simplified Administration.* Once a Smart Cycle treatment is authorized, fertility specialists within our network are able to prescribe the optimal treatment plan without any need for pre-certification or pre-authorization.

- *Superior Clinical Outcomes.* Outcomes for Progyny members across our fertility specialist network are superior to the average outcomes that the same provider clinics report to the CDC for all of their patients. Specifically, as shown in the table above, the in-network average live birth rate for Progyny members is 54.3%, as compared to the 44.1% average live birth rate for all of the patients at those same clinics.

- *Eliminating Financial Risk Associated With Collections.* We assume full responsibility for the collection of all members' deductibles and coinsurance, thereby eliminating the burden and cost of collection (and bad debt expense) for member payments that our provider clinics otherwise would experience.

- *Data Sharing and Reporting.* We produce clinic scorecards quarterly with key performance indicators that allow fertility specialists to compare their results with peer averages.

- *Higher Volumes and Improved Financial Performance.* Fertility specialists in our network often experience an increase in patient volume, and because of our comprehensive benefits design, an increase in the number of patients who progress from consultation to treatment.

Our Growth Strategy

Expand Our Client Base

We intend to continue increasing our client base of self-insured employers throughout the United States by leveraging our experienced sales force and strong relationships with benefits consultants. We believe we have an initial addressable market of approximately 8,000 potential self-insured employer clients in the United States (excluding but not limited to quasi-governmental entities, such as universities, school systems, and labor unions), who have a minimum of 1,000 employees and, with our base of over 370 clients under contract, are still in the early stages of our growth trajectory. Importantly, as we have continued to grow, we have meaningfully diversified our client base across an array of different industries. We believe that our employer clients are thought leaders in their respective industries and are creating a network effect that is helping to drive more widespread adoption of fertility benefits in their specific industries. We are expanding our client base within each industry that we serve, and have an industry-specific strategy, which enables us to most effectively target our addressable market. Additionally, we believe that our expanding presence has resulted in a heightened awareness of fertility benefits and has informed the market of the value we provide to our employer clients and our members, which we believe also helps facilitate growth.

Capitalize on Embedded Growth Potential within Our Existing Client Base

Because of how our revenue model is structured, we believe we are positioned to realize organic revenue growth as our clients and their respective employee bases grow and utilize more fertility treatment services as a result. A meaningful portion of our clients have grown, and we believe many of them will continue to grow. In addition, we have historically realized similar utilization trends of fertility services for new members compared with existing members on a same client basis. We believe the combination of these factors results in meaningful and sustainable embedded growth potential well into the future.

Expansion of Progyny Benefits Solutions within Our Existing Client Base

We expect to see further growth from existing clients that add incremental services to their fertility benefits program. For example, a client can expand the fertility benefits they offer to their employees by increasing the number of Smart Cycles they contract for. In addition, our fertility benefits solution clients can purchase our add-on Progyny Rx solution. We introduced Progyny Rx in the third quarter of 2017 and went live with a select number of clients in January 2018. Currently, 90% of our clients under contract are utilizing this solution, including 97% of the clients we signed in fiscal year 2022. We believe our sales and marketing capabilities play an important role in informing and educating clients about the additional value and impact we can provide to them and their members by enhancing their benefit program.

New Services and Addressable Markets to Enhance the Depth and Breadth of Our Comprehensive Family Building Offering

As we continue to grow and expand our client base, we are continuously evaluating the latest evolving trends to find ways we can better serve the needs of existing and new potential clients and their employees. We believe we are uniquely positioned to do this for several reasons. First, we believe the combination of our Medical Advisory Board and our selective network of high-quality fertility specialists, as well as the data we collect and analyze, provides us with differentiated insights into fertility care delivery and support. In addition, we believe we have positive and collaborative relationships with our clients that offer us additional insights into their needs. We believe the combination of these factors, coupled with our demonstrated track record of adding more services to our benefits design, highlights that we are well positioned to do so in the future. To date, we have identified several ways we believe we can potentially expand our comprehensive family building offering, our addressable market, and our client base in the future. We will continue to evaluate opportunities as our platform continues to expand.

Our Clients

We currently have contracts to serve over 370 employers in the United States across more than 40 industries. Our current clients, who are industry leaders across both high-growth and mature industries and range in size from at least 1,000 to 600,000 employees, represent approximately 5.4 million covered lives under contract.

We have clients in the technology, consumer retail, e-commerce, industrial, healthcare, media, insurance, legal, food and beverage, financial services, life sciences, professional services, government services, union, energy, manufacturing, logistics, transportation, aerospace, real estate, nonprofit and hospitality sectors.

Substantially all of our clients have renewed their benefits management contracts since our initial benefits offerings launched in 2016. The majority of our clients have signed multi-year contracts or contracts that renew automatically on an annual basis.

Given that the majority of our clients contract with us for a January 1st benefits plan start date, our sales cycle follows the conventional healthcare benefits cycle, which largely concludes by the end of October of the prior year to allow for benefits education and annual open enrollment to occur. In the 2022 sales cycle, more clients, with benefits going live in 2023, have opted for comprehensive coverage, with substantially all of our new clients electing for Progyny Rx, multiple Smart Cycles and/or egg-freezing.

Our Competitive Landscape

We believe we are the leader in the market for employer-sponsored fertility benefits and family building solutions.

We believe we compete favorably based on the following competitive factors:

- the value and comprehensiveness of the benefits solution and superior outcomes for employees;
- benefits plan design;
- access for all employees and their covered dependents, including LGBTQ+ and single mothers by choice;
- equitable access to care across geographies;
- treatment plans that maximize effectiveness and achieve desired outcomes;
- member experience, including unlimited dedicated patient education, clinical guidance and emotional support;
- access to a network of high-quality fertility specialists;
- data reporting and sharing; and
- access to an integrated pharmacy solution.

While we do not believe any single competitor offers a comparably robust, integrated fertility and family building benefits solution, as to what we provide, there are alternative solutions in the market such as the health insurance companies who are able to provide fertility benefits management services as part of their overall administration of a company's health plan and who are our primary competition. In addition, other competitors include specialty fertility-focused solutions owned or sponsored by the health insurance companies to provide more comprehensive support to fertility patients than their general medical coverage provides, such as case management or educational support, and the venture capital or private equity-backed companies who focus on maternity and reproductive health services more broadly, or who provide fertility-specific benefits solutions.

Our solutions are structured as a pre-tax benefit program integrated into employers' overall employee medical insurance, which is unique compared to the offerings of benefits managers new to the industry that do not have integrated health insurance carrier solutions. In addition to our unique plan design, member support and fertility specialist network, one of the key structural differences between our pre-tax benefit and their post-tax reimbursement programs is that the individual receiving reimbursement for fertility treatments must pay income taxes on the amount of that reimbursement for the post-tax programs.

Sales and Marketing

We sell our solutions through our sales organization and, in many cases, we leverage our relationships with top benefits consultants to establish relationships with potential clients. Our sales team has broad experience in health benefits management and extensive long-term relationships with industry participants and benefits executives at large employers. Our sales team is organized principally by geography and account size and is responsible for identifying potential clients and managing the overall sales process. The success and effectiveness of our sales team is evidenced by the over 105 new clients that we added in 2022, and the fact that a majority of our current clients terminated their existing fertility coverage to switch to Progyny.

We generate client leads, accelerate sales opportunities and build brand awareness through our marketing programs. Our marketing programs target human resource, benefits and finance executives in addition to health professionals and senior business leaders. Our principal marketing programs include learning opportunities for potential members, demand generation, field marketing events, integrated marketing campaigns (including direct email and online advertising) and participation in industry events, trade shows and conferences. We also benefit from strong referrals as several of our prominent clients have publicly endorsed Progyny and discussed the value they and their members receive.

Government Regulation

As a participant in the healthcare industry, we are required to comply with extensive and complex U.S. laws and regulations at the federal and state levels. Although many regulatory and governmental requirements do not directly apply to our business, our clients are required to comply with a variety of U.S. laws, and we may be affected by these laws as a result of our contractual obligations. We have attempted to structure our operations to comply with laws, regulations and other requirements applicable to us directly and to our clients, members, fertility specialists and specialty pharmacies, but there can be no assurance that our operations will not be challenged or impacted by enforcement initiatives.

Healthcare Reform

It is uncertain how our operations will be affected by the changing political, legislative, and regulatory landscapes, as well as other influences impacting the healthcare industry. While the most salient vehicle for healthcare reform, the Patient Protection and Affordable Care Act, as amended by the Health Care and Education Reconciliation Act, or collectively the ACA, does not directly regulate our business, it does affect the coverage and plan designs that are or will be provided by certain insurance carriers and certain of our clients, as well as the overall reimbursement environment for healthcare providers. Since its enactment in 2010, there have been judicial, executive and Congressional challenges to certain aspects of the ACA, and in June 2021, the U.S. Supreme Court dismissed the most recent judicial challenge to the ACA brought by several states without specifically ruling on the constitutionality of the ACA.

Other health reform efforts have been proposed by members of Congress, such as measures that would expand the role of government-sponsored coverage, including further reform to the ACA, which could have far-reaching implications for the healthcare industry if enacted. On January 28, 2021, President Joe Biden issued an Executive Order directing federal agencies to examine all existing regulations, orders, guidance documents, policies and similar agency actions to determine if any such actions are inconsistent with the policy set forth in the Executive Order to protect and strengthen the ACA and make high-quality healthcare accessible and affordable for every American. Most recently, on August 16, 2022, President Joe Biden signed the Inflation Reduction Act of 2022, or IRA, into law. The health reform measures included in

the IRA largely focus on pharmaceutical manufacturers, but are likely to impact the reimbursement and drug pricing environment for healthcare providers and insurers more broadly, in ways that cannot yet be fully determined. As another example of recent healthcare legislative changes, the Consolidated Appropriations Act, or CAA, effective as of December 27, 2021, contains provisions impacting group health plans, including protections for plan participants from surprise medical bills and ensuring health plan price transparency.

The CAA prohibits plans from entering into services agreements that directly or indirectly restrict the plans from disclosing provider-specific costs and quality of care information. It also requires disclosure by health insurance brokers and consultants to plan sponsors regarding reasonably expected direct and indirect compensation for referral of services to group health plans. Additionally, the CAA requires plans to submit reports to the Department of Labor, or DOL, or HHS and the Internal Revenue Services, or the IRS, with certain information on pharmacy benefits and drug costs for participants and beneficiaries and the application of in-network rates to out of network services. The CAA also requires certain service providers for health plans to comply with certain ERISA fee disclosure rules. In addition, effective January 1, 2022, the No Surprises Act (enacted as part of the CAA) provides protection against surprise medical bills by prohibiting plans and providers from balance billing patients for emergency care performed by out-of-network providers as well as non-emergency and ancillary services performed by out-of-network providers at in-network facilities, subject to certain notice and consent exceptions for non-emergency and ancillary services. The new law also grants additional patient protections, including requiring providers to send a good faith estimate of the expected charges for furnishing items or services to an insured patient's health plan (or directly to an uninsured patient) before such items or services are delivered (including items or services reasonably expected to be provided in conjunction with scheduled items or services or that are reasonably expected to be delivered by another provider). The No Surprises Act also provides a dispute resolution process in the event the actual charges for such items and services are substantially higher than the plan's estimate, and will prohibit providers from charging patients an amount beyond the in-network cost sharing amount for services rendered by out-of-network providers, subject to certain exceptions. Several states have also enacted comprehensive balance billing or surprise billing laws and the CAA defers to existing state requirements with respect to state-established payment amounts. Such state laws vary in their approach, resulting in different impacts on the healthcare system as a whole.

We are unable to predict how other healthcare reform initiatives from new legislation, regulation, judicial action and/or executive action, including the CAA and No Surprises Act and state laws, will ultimately impact the healthcare industry and what the potential impact may be on our business and on our relationships with current and future clients, insurance carriers, and healthcare providers.

Licensing and Other Legal Requirements

Many states have licensure or registration requirements for entities providing third-party administrator, or TPA, or pharmacy benefit management, or PBM, services. Given the nature and scope of the solutions and services that we provide, we are required to maintain TPA and/or PBM licenses and registrations in certain jurisdictions and to ensure that such licenses and registrations are in good standing on an annual basis. These licenses require us to comply with the rules and regulations of the governmental bodies that issued such licenses, including maintaining certain solvency or bond requirements. Our failure to comply with such rules and regulations could result in administrative penalties, the suspension of a license, or the loss of a license, all of which could negatively impact our business.

Separately, states impose licensing requirements on insurers, risk-bearing entities, and insurance agents, as well as those entities that provide utilization review services. We do not believe that our services require us to be licensed under these state laws. We are unable to predict, however, how our services may be viewed by regulators over time, how these laws and regulations will be interpreted, or the full extent of their application. If a regulatory authority in any state determines that the nature of our business requires that we be licensed under such state laws, we may need to restructure our business to comply with any related requirements.

Fraud and Abuse Laws. Many of our clients, insurance carriers, and network healthcare providers are impacted directly and indirectly by certain fraud and abuse laws, including the federal anti-kickback and false claims laws. Because the solutions we provide are not reimbursed by government healthcare payors, such fraud and abuse laws generally do not directly apply to our business. However, many states have similar laws and regulations that may differ from each other and federal law in significant ways, thus complicating compliance efforts. For example, certain states have anti-kickback and false claims laws that may be broader in scope than analogous federal laws and may apply regardless of payor.

ERISA. The Employee Retirement Income Security Act of 1974, or ERISA, regulates certain aspects of employee health benefits plans, which includes both insured and self-funded health plans sponsored by our clients, with which we have agreements to provide TPA services. Although health plans and their fiduciaries are subject to the fiduciary obligations of ERISA, we believe that we are not fiduciaries in the conduct of our business vis-a-vis these plans. However,

there can be no assurance the DOL, which is the agency that enforces ERISA, would not in the future assert that the fiduciary obligations imposed by ERISA apply to certain aspects of our operations or courts would not reach such a ruling in private ERISA litigation.

ERISA also imposes civil and criminal liability on service providers and certain other persons with relationships to health plans subject to ERISA if certain forms of illegal or prohibited remuneration are made or received by such service providers or other persons. These provisions of ERISA are similar, but not identical, to the healthcare anti-kickback laws described above, although ERISA lacks the statutory and regulatory "safe harbor" exceptions incorporated into the healthcare anti-kickback laws. Like the healthcare anti-kickback laws, the corresponding provisions of ERISA are broadly written and their application to particular cases can be uncertain.

Employee benefits plans subject to ERISA are subject to certain rules, published by the DOL, including certain reporting requirements for direct and indirect compensation received by plan service providers. Finally, although ERISA has broad preemptive effect with respect to certain state laws that "relate" to benefit plans, it does not preempt state laws imposing transparency requirements on PBMs.

Prompt Pay Laws. Certain states have laws regulating the amount of time that may elapse from when a third-party payor receives a claim for services rendered to when those services are paid. Many of these state laws do not apply to our business as these laws are preempted by ERISA or otherwise exempt entities like us that provide TPA-only services.

Network Adequacy and Access. Certain states and government programs have laws regulating healthcare provider networks in order to ensure adequacy and access for beneficiaries and providers. These laws may affect us and our payor clients in network design and management. If we do not comply, we could face enforcement action or other penalties.

Requirements Regarding the Privacy and Security of Personal Information

Numerous state, federal and foreign laws, regulations and standards govern the collection, use, access to, confidentiality and security of health-related and other personal information, and could apply now or in the future to our operations or the operations of our partners. In the United States, numerous federal and state laws and regulations, including data breach notification laws, health information privacy and security laws and consumer protection laws and regulations govern the collection, use, disclosure, and protection of health-related and other personal information. In addition, certain foreign laws govern the privacy and security of personal data, including health-related data. Privacy and security laws, regulations, and other obligations are constantly evolving, may conflict with each other to complicate compliance efforts, and can result in investigations, proceedings, or actions that lead to significant civil and/or criminal penalties and restrictions on data processing.

Cybersecurity

In the normal course of business, we may collect and store personal information and other sensitive information, including proprietary and confidential business information, trade secrets, intellectual property, information regarding trial participants in connection with clinical trials, sensitive third-party information and employee information. To protect this information, our existing cybersecurity policies require monitoring and detection programs, network security measures, encryption of critical data, and security assessment of vendors. We maintain various protections designed to safeguard against cyberattacks, including firewalls and virus detection software. We have established and test our disaster recovery plan and we protect against business interruption by backing up our major systems. In addition, we periodically scan our environment for any vulnerabilities, perform penetration testing and engage third parties to assess effectiveness of our data security practices. A third party security consultant conducts regular network security reviews, scans and audits. In addition, we maintain insurance that includes cybersecurity coverage.

Our cybersecurity program is led by our chief information security officer and a team of highly skilled cybersecurity professionals. The program incorporates industry-standard frameworks, policies and practices designed to protect the privacy and security of our sensitive information. As needed, our cybersecurity team reports to the Audit Committee of our Board of Directors on information security and cybersecurity matters. The Audit Committee has oversight responsibility for our information security policies and practices.

Despite the implementation of our cybersecurity program, our security measures cannot guarantee that a significant cyberattack will not occur. A successful attack on our information technology systems could have significant consequences to the business. While we devote resources to our security measures to protect our systems and information, these measures cannot provide absolute security. See "Risk Factors – Risks Related to Our Business and Industry" for

additional information about the risks to our business associated with a breach or compromise to our information technology systems.

Intellectual Property

We rely on trademarks, copyrights, trade secrets, intellectual property assignment agreements, confidentiality procedures, non-disclosure agreements, and employee non-disclosure and invention assignment agreements to establish and protect our proprietary rights. Though we rely in part upon these legal and contractual protections, we believe that factors such as our relationships with providers and clients, unique benefits model, ability to track outcomes and creation of resources for all constituents, along with the skills and ingenuity of our employees, are larger contributors to our success our company. Other than the trademark Progyny (and design), Smart Cycle and UnPack It, which are not subject to any known rights of others, including any impairments, assignments or pledges, we do not believe our business is dependent to a material degree on trademarks, patents, copyrights or trade secrets.

Seasonality

Our business experiences moderate seasonality in revenue with a slightly higher proportion of revenue during the second half of the year as compared with the first half. Given that the majority of our clients contract with us for a January 1st benefits plan start date and that the average cost of treatments earlier in the overall treatment process is somewhat lower than the average cost as treatment progresses, our revenue from treatment services tend to grow as the year continues, particularly for new clients. In addition, as with most medical benefits plans, members will typically seek to maximize the use of their benefits once they have reached their annual deductible and/or annual out-of-pocket maximums, thereby increasing treatments in the latter part of the year. For additional information, see Part I, Item 1A. “Risk Factors—Risks Related to Our Business and Industry—Our business experiences seasonality, which may cause fluctuations in our sales and results of operations” of this Annual Report on Form 10-K.

Employees and Human Capital

As of December 31, 2022, we had 400 employees, of which 393 were full-time. Our employees are our most important asset and our culture is a key to our success.

We are united around our mission and committed to our shared values of Passion, Collaboration, Innovation, Integrity and Growth. Our people strategy is focused on employee culture and engagement, competitive compensation and development, diversity, equity and inclusion, and community outreach and support.

- *Culture and Engagement.* Our benefits are designed to help employees and their families stay healthy, meet their financial goals, protect their income and help them balance their work and personal lives. These benefits include access to mental health services, life and financial planning workshops, wellness initiatives, employee assistance programs, and new parent and return to work benefits, in addition to the same type of benefits we offer our clients. We also measure employee engagement on an ongoing basis, including through broad employee satisfaction surveys and pulse surveys on specific issues, intended to assess our success in promoting an environment where employees are engaged, satisfied, productive and possess a strong understanding of our business goals. The results from engagement surveys are used to implement programs and processes designed to enhance employee engagement and improve the employee experience or modify existing programs and benefits offerings.

- *Competitive Compensation and Development.* We invest in our workforce by offering competitive salaries, attractive incentives and innovative benefits. We focus on creating opportunities for employee growth, development and training, including opportunities to cultivate talent and identify candidates for new roles from within the Company, management and leadership development programs, technical skill building initiatives and mentoring programs. We include the Progyny benefit in our own health plan, allowing Progyny employees to realize their dreams of parenthood. We offer paid parental leave for new parents and offer a pregnancy loss leave benefit as an enhancement to our bereavement leave policy, explicitly recognizing the physical, emotional, and mental health impact of a pregnancy loss, or failed adoption or surrogacy, for any employee. We also offer additional paid leave to all employees to support other family health and care challenges. Additionally, we expanded our mental health resources to further support our employees.

- *Diversity, Equity and Inclusion*. We believe diversity, equity and inclusion results in business growth and encourages increased innovation, retention of talent and a more engaged workforce. We strive to create a workplace where all individuals feel valued, empowered and welcomed. Our key initiatives focus on recruiting outreach, internal resource groups representing employees and allies from historically underrepresented and/or marginalized communities, mentoring programs and career development ladders. We are in the process of updating our corporate sustainability report on our website, which highlights our approach to diversity and inclusion, and we also publish EEO-1 reports on our website. Our employees participate in pulse surveys that have deepened our perception of the workforce. We staffed a Vice President whose responsibility is to develop, enhance, and communicate our DEI Initiatives throughout the organization. For example, we highlight aspects of DEI, such as key events, celebrations, memorials and holidays, through recurring company wide communications. Nothing on our website shall be deemed incorporated by reference into this Annual Report on Form 10-K.

- *Community Outreach and Support*. We believe it is important to give back and promote community outreach and support through corporate giving, charitable matching, and employee volunteerism in the communities in which we live and work. We allow flexible work hours to accommodate employee volunteer opportunities, provide corporate sponsored charitable events and have designed initiatives in the fertility and maternal health space to include corporate matching of employee charitable donations.

Our Corporate Information

We were incorporated in Delaware in 2008 under the name Auxogen Bioscience, Inc. In 2010, we changed our name to Auxogen, Inc. and in 2015 we changed our name to Progyny, Inc. Our principal executive offices are located at 1359 Broadway, New York, New York 10018, and our telephone number is (212) 888-3124. Our website address is *www.progyny.com* and we also maintain a mobile application for our members. Information contained on, or that can be accessed through, our website and mobile application is not incorporated by reference into this Annual Report on Form 10-K, and should not consider information on our website and mobile application to be part of this Annual Report on Form 10-K.

Available Information

We file electronically with the SEC, our annual reports on Form 10-K, quarterly reports on Form 10-Q, current reports on Form 8-K (including amendments to those reports), proxy statements, and other information. Our SEC filings are available to the public over the Internet at the SEC's website at *http://www.sec.gov*. We make available on our website at *investors.progyny.com*, under "Financials—SEC Filings," free of charge, copies of these reports as soon as reasonably practicable after filing or furnishing these reports with the SEC. The information contained on the websites referenced in this Annual Report on Form 10-K is not incorporated by reference into this Annual Report on Form 10-K. Further, our references to website URLs are intended to be inactive textual references only.

We announce material information to the public through filings with the SEC, our investor relations website at *investors.progyny.com*, press releases, public conference calls, and webcasts to achieve broad, non-exclusionary distribution of information. We therefore encourage investors and others interested in Progyny to review the information disclosed through such channels. Any updates to the list of disclosure channels through which we will announce information will be posted on the investor relations page on our website.

ITEM 1A. RISK FACTORS

Investing in our common stock involves a high degree of risk. You should carefully consider all of the information contained in this Annual Report on Form 10-K, including the sections titled "Cautionary Note Regarding Forward-Looking Statements," and Part II, Item 7 "Management's Discussion and Analysis of Financial Condition and Results of Operation" and our consolidated financial statements and the accompanying notes included elsewhere in this Annual Report on Form 10-K. The risks described below are not the only ones we face. Any of the following risks could materially and adversely affect our business, financial condition and results of operations, the actual outcome of matters as to which forward-looking statements are made in this Annual Report on Form 10-K and could cause the trading price of our common stock to decline, which would cause you to lose all or part of your investment. Our business, financial condition and results of operations could also be harmed by risks and uncertainties not currently known to us or that we currently do not believe are material.

Risks Related to Our Business and Industry

We may fail to meet our publicly announced guidance or other expectations about our business and future results of operations, which would cause our stock price to decline.

We have provided and may continue to provide guidance about our business and future results of operations. On February 27, 2023, we issued guidance for the first quarter of 2023 and full year 2023. This guidance, which consists of forward-looking statements, is qualified by, and subject to, such assumptions, estimates and expectations as of the date such guidance is given and may be revised at a later time, solely in our discretion, as we learn more information. Such forward-looking statements involve known and unknown risks, uncertainties, and other important factors that may cause our actual results, performance or achievements to be materially different from any future results, performance, or achievements expressed or implied by the forward-looking statements. In developing this guidance, our management must make certain assumptions and judgments, including but not limited to, our business strategy, plans, goals, expectations concerning our market position, future operations and other financial and operating information, as well as the impact of events outside of our control (such as the COVID-19 pandemic or shortages of fertility medications) that are or were at this time inherently difficult to predict. While the guidance may be presented with numerical specificity, it is necessarily speculative in nature. Accordingly, our guidance is only an estimate of what management believes is realizable as of the date of release of such guidance. Furthermore, analysts and investors may develop and publish their own projections of our business, which may form a consensus about our future performance. Our actual business results may vary significantly from such guidance or that consensus due to a number of factors, many of which are outside of our control, and which could adversely affect our business and future results of operations. Furthermore, if we make downward revisions of our previously announced guidance, or if our publicly announced guidance of our future results of operations fails to meet expectations of securities analysts, investors or other interested parties, the price of our common stock would decline.

The COVID-19 pandemic, including variants and resurgences, has had and is expected to continue to have, and similar health epidemics or pandemics could in the future have, an adverse impact on our business, operations, and the markets and communities in which we and our clients, members and providers operate.

The COVID-19 pandemic continues to evolve, with pockets of resurgence and the emergence of variant strains contributing to continued uncertainty about its scope, duration, severity, trajectory and lasting impact. The pandemic has adversely impacted, and may continue to adversely impact, many aspects of our business. Our revenue growth for the twelve months ended December 31, 2022 and 2021 was negatively impacted by COVID-19, including variants, and our revenue growth in future periods may continue to be adversely impacted by COVID-19. Our providers have delayed and may in the future delay new fertility cycles because they operate in areas acutely affected by the COVID-19 pandemic. Many of our members live in communities that have been acutely affected by the COVID-19 pandemic and have delayed and may not want to continue or begin new fertility cycles during the pandemic, including due to resurgences in and the emergence of variant strains. Emerging research and the limited consumer information on the impact of COVID-19 vaccines on pregnancy may also affect member behavior and utilization. Furthermore, as certain of our potential clients experience downturns or uncertainty in their own business operations and revenue because of the economic effects resulting from the COVID-19 pandemic, they have and may continue to decrease their spending on health benefits, which may disproportionately impact fertility benefits, and delay or cancel implementation of fertility benefits. Each of these factors could affect member behavior, our utilization rates and the number of members enrolled in our clients' benefit plans.

In addition to the direct and indirect impacts to our business, the economy may continue to be impacted as a result of the COVID-19 pandemic, including any resurgences in infections, and actions taken in response to it. To the extent a weakened economy impacts clients' or members' ability or willingness to pay for our benefit, or our vendors', including any pharmacy program partners', ability to provide services to us, we could see our business and results of operations negatively impacted.

Our corporate offices are open to employees on a hybrid basis, while implementing additional health and safety measures and protocols in response to the pandemic. We may take further actions that alter our operations as may be required by federal, state, or local authorities, or which we determine are in the best interests of our business, our employees and the communities we serve. Working remotely could increase our cybersecurity risk and make us more susceptible to communication disruptions, which could adversely impact our business operations or delay necessary interactions with our clients, members, providers and other third parties. Furthermore, we may decide to postpone or cancel planned investments in our business in response to changes in our business as a result of the COVID-19 pandemic, which may impact our member utilization and rate of growth, either of which could seriously harm our business.

In addition, the pandemic has resulted in, and may continue to result in, significant disruption of global financial markets, which could reduce our ability to access capital and could negatively affect our liquidity in the future. Moreover, to the extent the COVID-19 pandemic adversely affects our business, financial condition and results of operations, it may also have the effect of heightening many of the other risks described in this "Risk Factors" section, including but not limited to, those related to our ability to expand our customer base and develop and expand our sales and marketing capabilities.

The global impact of COVID-19, due to variants and resurgences of infections, continues to rapidly evolve, and we will continue to monitor the situation closely. We do not yet know the full extent of potential delays or impacts on our business, operations, or the global economy as a whole. The ultimate impact of the COVID-19 pandemic or a similar health epidemic or pandemic is highly uncertain and subject to change; and will depend on numerous evolving factors that we may not be able to accurately predict, including without limitation: the trajectory, duration, scope, severity, and any resurgences of the COVID-19 pandemic; any mandates, in particular as new variants emerge; the public's perception of the safety of the vaccines and other treatments and their willingness to take the vaccines or other treatments; the existence and prevalence of new variants of the virus; the continued impact on worldwide macroeconomic conditions, including interest rates, employment rates and consumer confidence; governmental, business, and individuals' actions that have been, and continue to be, taken in response to the pandemic; the effect on our providers, clients and members; changes in demand for our services; our ability to sell and provide our services; the ability of our clients and members to pay for our services; the health of, and the effect on, our workforce; and the potential effects on our internal controls, including our internal control over financial reporting, as a result of changes in working environments for our employees and business partners. While the effects of the COVID-19 pandemic may eventually be contained or mitigated, there is no guarantee that any future resurgences or future outbreaks of this or any other widespread epidemics or pandemics will not occur, or that the global economy will recover, either of which could seriously harm our business.

The fertility market in which we participate is competitive, and if we do not continue to compete effectively, our results of operations could be harmed.

The market for our solutions is competitive and is likely to attract increased competition, which could make it hard for us to succeed. We compete on the basis of several factors, including the comprehensiveness of our benefits solutions and the Smart Cycle (our unique approach to benefits plan design which ensures that members always have coverage for a full treatment cycle as their access to treatment is not limited by a dollar maximum that could be exhausted mid-treatment), superior clinical outcomes, access for all employee groups (including LGBTQ+ and single mothers by choice), equitable access to care across geographies, quality of the member experience and comprehensive member support, access to our selective Center of Excellence (our proprietary, credentialed network of high-quality fertility specialists), data reporting and sharing and access to an integrated pharmacy solution. While we do not believe any single competitor offers a similarly robust and integrated fertility and family building benefits solution as to what we provide, there are alternative solutions in the market such as the health insurance companies who are able to provide fertility benefits management services as part of their overall administration of a company's health plan and who are our primary competition. In addition, other competitors include specialty fertility-focused solutions owned or sponsored by the health insurance companies to provide more comprehensive support to fertility patients than their general medical coverage provides, such as case management or educational support, and the venture capital or private equity-backed companies who focus on maternity and reproductive health services more broadly, or who provide fertility-specific benefits solutions.

As we market our solutions to potential clients that currently utilize other vendors to manage their employees' fertility benefits, we may fail to convince their internal stakeholders that our offerings and our model are superior to their current solutions. Some of our competitors are more established, benefit from greater brand recognition and have substantially greater financial, technical and marketing resources. Our competitors may seek to develop or integrate solutions and services that may become more efficient or appealing to our existing and potential clients. For example, fertility-focused pharmacy benefits managers, or PBMs, could emerge that would compete with Progyny Rx. In addition, we believe one of our key competitive advantages is our purpose-built, data-driven platform. While we do not believe any competitors have developed a similarly robust data collection, analysis and reporting process at this time, current or future competitors may be successful in doing so in the future.

In addition, as the fertility benefits field gains more attention, more competitors may be drawn into the market. We also could be adversely affected if we fail to identify or effectively respond to changes in market dynamics. As a result of any of these factors, we may not be able to continue to compete successfully against our current or future competitors, and this competition could result in the failure of our platform to continue to maintain market acceptance, which would harm our business, financial condition and results of operations.

Many healthcare industry participants are consolidating to create larger and more integrated healthcare delivery systems with greater market power and we expect regulatory and economic conditions to result in additional consolidation in the healthcare industry. Additionally, financial investors are acquiring fertility practices and this may accelerate consolidation within the industry. Although comprehensive, our solution is a standalone fertility benefit. Clients may prefer a single healthcare solution, which could adversely affect our ability to retain existing clients or grow our client base. In addition, we work with partner organizations to market our benefit to potential clients. As consolidation accelerates, the economies of scale of our partners' organizations may grow. If a partner experiences sizable growth following consolidation, it may determine that it no longer needs to rely on us and may reduce its demand for our services. Furthermore, as healthcare providers consolidate to create larger and more integrated healthcare delivery systems with greater market power, these providers may try to use their market power to negotiate fee increases for their services. Finally, consolidation may also result in the acquisition of our partners by competitors or development by our partners of products and services that compete with our products and services. Any of these potential results of consolidation could have a material adverse effect on our business, financial condition and results of operations.

Unfavorable conditions in the global economy or our industry could limit our ability to grow our business and negatively affect our results of operations.

Market volatility and uncertainty related to general economic conditions remain widespread, making it very difficult for our clients and us to accurately forecast and plan future business activities. Negative conditions in the general economy in the United States, including conditions resulting from changes in gross domestic product growth, financial and credit market fluctuations, inflation, consumer confidence, international trade relations, political turmoil, natural catastrophes, resurgences or outbreaks of contagious diseases or the worsening thereof, including the COVID-19 pandemic, warfare and terrorist attacks on the United States, could cause a decrease in business investments, including spending on employee benefits, and negatively affect the growth of our business. Economic conditions including inflation, interest rate fluctuations, changes in capital market conditions and regulatory changes, such as the taxability of medical benefits like ours, may affect our ability to obtain necessary financing on acceptable terms.

Unfavorable changes in our industry, including reductions in general healthcare spending, or in the United States economy could have a negative effect on our and our clients' and potential clients' results of operations. This could result in the delay or cancellation by certain clients, including if purchases of our solution are perceived by clients and potential clients to be discretionary, if they experience a reduction in their employee headcounts, whether due to reductions in force or turnover, or are unable to grow employee headcounts or there are material defaults by members on past amounts due. An increase in the cost of obtaining fertility medication or general medical cost inflation could also negatively impact our results of operation. In addition, the increased pace of consolidation in the healthcare industry may result in competitors with greater market power. We cannot predict the timing, strength, or duration of any economic slowdown, instability, or recovery, generally or within any particular industry, nor its impact on us or our clients.

Our business depends on our ability to retain our existing clients and increase the adoption of our services within our client base. Any failure to do so would harm our business, financial condition and results of operations.

As part of our growth strategy, we are focused on retaining and expanding our services within our existing client base. A client can expand the fertility benefits they offer to their employees a number of ways, including by adding egg freezing or increasing the number of Smart Cycle units under their benefits plan (i.e., from two to three Smart Cycles per household). In addition, our fertility benefits solution clients can purchase our add-on Progyny Rx solution. We went live with Progyny Rx in 2018 and 90% of our current clients under contract have now launched this solution, including approximately 97% of the clients we signed in 2022.

Factors that may affect our ability to retain our existing clients and sell additional solutions to them include, but are not limited to, the following:

- the price, timeliness and outcomes of our solutions;
- the availability, price, timeliness, outcome, performance and functionality of competing solutions;
- our ability to maintain and appropriately expand our Center of Excellence network of high-quality fertility specialists;
- our ability to offer complementary solutions and services that will enhance our comprehensive family building offering;
- changes in healthcare laws, regulations or the enforcement of such laws and regulations, or trends;

- any material increase in unemployment rate;
- global economic conditions and the business environment of our clients and, in particular, slowing growth or reduction in our clients' headcount; and
- consolidation of our clients, resulting in a change to their benefits program or a shift to one of our competitors.

Any of the above factors, alone or together, could negatively affect our ability to retain existing clients and sell additional solutions to them, which would have an adverse effect on our business, revenue growth and results of operations.

Our largest clients account for a significant portion of our revenue and a significant number of our clients are in the technology industry. The loss of one or more of these clients, changes to pricing terms with these clients or changes within the technology industry could negatively impact our business, financial condition and results of operations.

We currently serve over 370 employers with at least 1,000 covered lives in the United States across more than 40 industries. For the year ended December 31, 2022, two of our clients accounted for 16% and 10%, or a combined 26%, of our total revenue. For the year ended December 31, 2021, two clients accounted for 19% and 15%, or a combined 34%, of our total revenue. No other clients accounted for more than 10% of our total revenue for the years ended December 31, 2022 and 2021. Engagement with these clients is generally covered through contracts that are multi-year in duration. One or both of these clients may terminate early or decline to renew their existing contracts with us upon expiration and any such termination or failure to renew could have a negative impact on our revenue and compromise our growth strategy. Our clients could also renegotiate pricing terms at the time of renewal, which could have a negative impact on our revenue. In addition, we generate a significant portion of our revenue from clients in the technology industry. Any of a variety of changes in that industry, including reductions in workforce or heightened employee attrition, changes in economic conditions, mergers or consolidations, reduced spending on benefits programs and other factors, could adversely affect our business, financial condition and results of operations.

If we are unable to attract new clients, our business, financial condition and results of operations would be adversely affected.

To increase our revenue, we must continue to attract new clients. Our ability to do so depends in large part on the success of our sales and marketing efforts, and the success of attracting industry leaders in diversified sectors, which could prompt others in the same sectors to follow suit to remain competitive. Potential clients may seek out other options; therefore, we must demonstrate that our solutions are valuable and superior to alternatives. If we fail to provide high-quality solutions and convince clients of the benefits of our model and value proposition, we may not be able to attract new clients. The market for our solutions could decline or grow more slowly than we expect, including due to general economic conditions, and high unemployment rates, reductions in workforce or employee attrition, impacts related to outbreaks and resurgences of contagious diseases or worsening thereof, including the COVID-19 pandemic, a decrease in business investments, including spending on employee benefits, and other factors. If the markets for our solutions decline or grow more slowly than we expect, or if the number of clients that contract with us for our solutions declines or fails to increase as we expect, our financial results could be harmed. As the markets in which we participate mature, fertility solutions and services evolve and competitors begin to enter into the market and introduce differentiated solutions or services that are perceived to compete with our solutions, particularly if such competing solutions are adopted by an industry leader in a particular sector, our ability to sell our solutions could be impaired. As a result of these and other factors, we may be unable to attract new clients, which would have an adverse effect on our business, financial condition and results of operations.

A significant change in the level or the mix of the utilization of our solutions could have an adverse effect on our business, financial condition and results of operations.

We do not control nor can we impact the level of utilization of our solutions or the mix of utilization of our solutions for each of our clients, in particular for newer clients. A significant reduction in the number of members using our solutions could adversely affect our business, financial condition and results of operations. Factors that have and could continue to contribute to a reduction in the use of our solutions include: reductions in workforce by existing clients; general economic downturn that results in business failures and high unemployment rates; impacts related to outbreaks and resurgence of contagious diseases and or the worsening thereof, including the COVID-19 pandemic; employers no longer offering comprehensive health coverage or offering alternative solutions such as coverage on a voluntary, employee-funded basis; labor shortages at our clinics; federal and state legal and/or regulatory changes; changes to taxability of medical benefits; failure to adapt and respond effectively to the changing medical landscape, changing laws, regulations and government enforcement priorities, changing client needs, requirements or preferences; premium increases and benefits changes; negative publicity, through social media or otherwise and news coverage.

It is also difficult for us to predict the level or mix of utilization of our services at the member level nor do we have any control over the level or mix of utilization of our services. If the actual utilization of our services by members is significantly greater than budgeted, the client may be responsible for corresponding costs that exceed its planned expenditure. If we cannot help our clients accurately predict the level of utilization by their employees, our clients may turn to alternative solutions, and our business and profitability would be adversely impacted.

We have a limited operating history with our current platform of solutions, which makes it difficult to predict our future results of operations.

We went live with our fertility benefits solution in 2016 and Progyny Rx in 2018. As a result of our limited operating history with the current platform of solutions, as well as a limited amount of time serving a majority of our client base, our ability to accurately forecast our future results of operations is limited and subject to a number of uncertainties, including our ability to plan for and model future growth. Our historical revenue growth should not be considered indicative of our future performance. Further, in future periods, our revenue growth could slow or decline for a number of reasons, including slowing demand for our solutions and fertility benefits in general, change in utilization trends by our members, general economic slowdown, an increase in unemployment, an increase in competition, changes to healthcare trends and regulations, changes to science relating to the fertility market, a decrease in the growth of the fertility market, or our failure, for any reason, to continue to take advantage of growth opportunities. If our assumptions regarding these risks and uncertainties and our future revenue growth are incorrect or change, or if we do not address these risks successfully, our operating and financial results could differ materially from our expectations, and our business could suffer.

We have a history of operating losses and may not sustain profitability in the future.

We experienced net losses from 2015 to 2019. For example, our net loss was $8.6 million for the year ended December 31, 2019. While we have experienced significant revenue growth since 2016, achieved profitability starting in 2020 and currently project future profitability, we cannot guarantee whether we will obtain sufficient levels of sales to sustain our growth or maintain profitability in the future. We also expect our costs and expenses to increase in future periods, which could negatively affect our future results of operations if our revenue does not increase. In particular, we intend to continue to incrementally expand our sales and client account management teams to educate potential clients and drive new client adoption, as well as enhance the scope of Progyny benefits within our existing client base. We also expect to incur additional costs as we introduce new solutions and services to enhance our comprehensive family building offering. We will also face increased compliance costs associated with our growth, and the expansion of our client base. In addition, we incur significant legal, accounting and other expenses related to being a public company. Our efforts to grow our business may be costlier than we expect, and we may not be able to increase our revenue enough to offset our increased operating expenses. We may incur significant losses in the future for a number of reasons, including the other risks described herein, and unforeseen expenses, difficulties, complications and delays, and other unknown events. If we are unable to sustain profitability, the value of our business and common stock may significantly decrease.

Changes or developments in the health insurance markets in the United States, including passage and implementation of a law to create a single-payer or government-run health insurance program, could adversely harm our business and results of operations.

Our business operates within the public and private sectors of the U.S. health insurance system, which are evolving quickly and subject to a changing regulatory environment, and our future financial performance will depend in part on growth in the market for private health insurance, as our solutions are integrated with health insurance plans offered by insurance carriers for our clients or our clients' self-insured plans, as well as our ability to adapt to regulatory developments. Changes and developments in the health insurance system in the United States could reduce demand for our services and harm our business. For example, there has been an ongoing national debate relating to the health insurance system in the United States. Certain elected officials have introduced proposals that would create a new single-payer national health insurance program for all United States residents, replacing virtually all other sources of public and private insurance, to more incremental approaches, or creating a new public health insurance option that would compete with private insurers. Additionally, proposals to establish a single-payer or government-run healthcare system at the state level are regularly introduced, such as in New York and California. At the federal level, President Biden and Congress may consider other legislation and/or executive orders to change elements of the ACA. In June 2021, the U.S. Supreme Court dismissed the most recent judicial challenge to the ACA brought by several states and ruled that the plaintiffs lacked standing to challenge the individual mandate provision, thus leaving the ACA in effect without ruling on the constitutionality of the individual mandate.

On January 28, 2021, President Biden issued an Executive Order that iterates the policy of the Administration to protect and strengthen the ACA, making high-quality healthcare accessible and affordable to all Americans. The Executive

Order directed federal agencies to examine agency actions to determine whether they are consistent with the Administration's commitment regarding the ACA, and begin rulemaking to suspend, revise, or rescind any inconsistent actions. Areas of focus include policies or practices that may reduce affordability of coverage, present unnecessary barriers to coverage, or undermine protections for people with preexisting conditions. We continue to evaluate the effect that the ACA and its possible modifications, repeal and replacement has on our business. We cannot predict the timing or impact of any future rulemaking, court decisions or other changes in the law.

In the event that laws, regulations or rules that eliminate or reduce private sources of health insurance or require such benefits to be taxable are adopted, the subsequent impact on the insurance carriers and/or self-insured plans may in turn adversely impact our ability to accurately forecast future results and harm our business, financial condition and results of operations.

The health benefits industry may be subject to negative publicity, which could adversely affect our business, financial condition and results of operations.

The health benefits industry may be subject to negative publicity, which can arise from, among other things, increases in premium rates, industry consolidation, cost of care initiatives, drug prices and the ongoing debate over the ACA. In addition, negative publicity may result in increased regulation and legislative review of industry practices, which may further increase our costs of doing business and adversely affect our profitability. For example, PBM programs and drug rebates have been criticized as leading to a lack of transparency about the true cost of a drug, and certain members of Congress as well as HHS's Office of Inspector General, or OIG, have proposed regulatory changes that could potentially affect our business and operations. Negative public perception or publicity of the health benefits industry in general, the insurance carriers with whom we integrate our solutions, our self-insured employer clients, or us could adversely affect our business, financial condition and results of operations.

If our information technology systems, or those of our provider clinics, specialty pharmacies or other vendors lag, fail or suffer security breaches, we may incur a material disruption of our services or suffer a loss or inappropriate disclosure of confidential information, which could materially impact our business and the results of operations.

Our business is increasingly dependent on critical, complex and interdependent information technology systems, including cloud-based systems, to support business processes as well as internal and external communications. Our success therefore is dependent in part on our ability to secure, integrate, develop, redesign and enhance our (or contract with vendors to provide) information technology systems that support our business strategy initiatives and processes in a compliant, secure, and cost and resource efficient manner. If we or our provider clinics, specialty pharmacies or other vendors have an issue with our or their respective information technology systems, it may result in a disruption to our operations or downstream disruption to our relationships with our clients or our selective network of high-quality fertility specialists. Additionally, if we choose to in source any of the services currently handled by a third party, it may result in technological or operational disruptions.

In the current environment, there are numerous and evolving risks to cybersecurity and privacy, including criminal hackers, hacktivists, state-sponsored intrusions, industrial espionage, employee malfeasance and human or technological error. High-profile security breaches at other companies and in government agencies have increased in recent years. There is the possibility of targeted cyberattacks by foreign countries or entities that could impact United States government and private companies' technological infrastructures, some of which we utilize to provide our services. The healthcare industry has seen a shift to an accelerated use of digital and technological platforms, especially due to the COVID-19 pandemic, including its variants. As a result of such shift, there have been and may continue to be more targeted cybersecurity attacks and threats on us, our vendors, provider clinics and specialty pharmacies. Despite the implementation of security measures, including steps designed to secure our technology infrastructure and sensitive data, we can provide no assurance that our current information technology system or any updates or upgrades thereto, the current or future information technology systems of our provider clinics, specialty pharmacies or other vendors, are fully protected against malicious intrusion, malware, computer viruses, unauthorized access, natural disasters, terrorism, war, telecommunication and electrical failures, information or data theft or other similar risks. Furthermore, because the techniques used to obtain unauthorized access to, or to sabotage, systems change frequently and often are not recognized until launched against a target, we may be unable to anticipate these techniques or implement adequate preventative measures. We may also experience security breaches that may remain undetected for an extended period. Even if identified, we may be unable to adequately investigate or remediate incidents or breaches due to attackers increasingly using tools and techniques that are designed to circumvent controls, to avoid detection, and to remove or obfuscate forensic evidence.

We have experienced in the past and expect to continue to experience actual and attempted cyber-attacks of our information technology systems, such as through email phishing scams, spoofing attempts and malicious attachments.

Although none of these actual or attempted cyber-attacks has had a material adverse impact on our operations or financial condition, we cannot guarantee that such incidents will not have such an impact in the future. In addition, to the extent that any disruption or security breach were to result in a loss or inappropriate disclosure of confidential information, we could incur liability. We have access to sensitive information relating to members, our employees and our business partners in the ordinary course of our business. Any failure or perceived failure by us, or our third-party contractors on our behalf, to comply with local and foreign laws regarding privacy and data security, as well as contractual commitments in this respect, may result in governmental enforcement claims, fines, or litigation, which could have an adverse effect on our reputation and business. If a significant data breach occurred, our reputation could be materially and adversely affected, confidence among our clients and members may be diminished, or we may be subject to legal claims, any of which may contribute to the loss of customers and have a material adverse effect on us. We maintain cyber liability insurance however, this insurance may not be sufficient to cover the financial, legal, business or reputational losses that may result from an interruption or breach of our systems. To the extent such disruptions or uncertainties result in the theft, destruction, loss or misappropriation or release of our confidential data or our intellectual property, our business and results of operations could be materially and adversely affected. See "—Risks Related to Government Regulation—We operate in a highly regulated industry and must comply with a significant number of complex and evolving legal and regulatory requirements—Data Protection and Breaches."

If we fail to offer high-quality support, our reputation could suffer.

Our clients rely on our client account management personnel and our members rely on our PCAs to resolve issues and realize the full benefits that our solutions and services provide. High-quality support is also important for the renewal and expansion of our services to existing clients. The importance of our support functions will increase as we expand our business and pursue new clients. If we do not help our clients quickly resolve issues and provide effective ongoing support, our ability to maintain and expand our offerings to existing and new clients could suffer, and our reputation with existing or potential clients could suffer. Further, to the extent that we are unsuccessful in hiring, training and retaining adequate PCAs and client account management personnel, our ability to provide adequate and timely support to our members and clients would be negatively impacted, and our members' and clients' satisfaction with our solutions and services would be adversely affected.

Our marketing efforts depend significantly on our ability to receive positive references from our existing clients, channel partners and benefit consultants.

Our marketing efforts depend significantly on our ability to call on our current clients, channel partners and benefit consultants to provide positive references to new, potential clients. Given our limited number of long-term clients, the loss or dissatisfaction of any client, channel partnership or benefit consulting relationship could substantially harm our brand and reputation, inhibit the market adoption of our offering and impair our ability to attract new clients and maintain existing clients. Any of these consequences could have an adverse effect on our business, financial condition and results of operations.

Failure to effectively develop and expand our marketing and sales capabilities could harm our ability to increase our client base and achieve broader market acceptance of solutions we provide.

Our ability to increase our client base and achieve broader market acceptance of solutions we provide will depend to a significant extent on our ability to expand our marketing and sales capabilities. We plan to continue expanding our direct sales force and to dedicate significant resources to sales and marketing programs, including direct sales, inside sales, targeted direct marketing, advertising, digital marketing, e-newsletter and conference sponsorships. All of these efforts will require us to invest significant financial and other resources. Our business and results of operations could be harmed if our sales and marketing efforts do not generate significant increases in revenue. We may not achieve anticipated revenue growth from expanding our sales and marketing efforts if we are unable to hire, develop, integrate and retain talented and effective sales personnel, if our new and existing sales personnel, on the whole, are unable to achieve desired productivity levels in a reasonable period of time, or if our sales and marketing programs are not effective.

Our future revenue may not grow at the rates they historically have, or at all.

We have experienced significant growth since the launch of our fertility benefits solution in 2016. Revenue and our client base may not grow at the same rates they historically have, or they may decline in the future. Our future growth will depend, in part, on our ability to:

- continue to attract new clients and maintain existing clients;

- price our solutions and services effectively so that we are able to attract new clients, expand sales to our existing clients and maintain profitability;
- provide our clients and members with client support that meets their needs, including through dedicated PCAs;
- maintain successful collection of member cost shares and other applicable receivable balances directly from members;
- retain and maintain relationships with high-quality and respected fertility specialists;
- attract and retain highly qualified personnel to support all clients and members;
- maintain satisfactory relationships with insurance carriers; and
- increase awareness of our brand and successfully compete with other companies.

We may not successfully accomplish all or any of these objectives, which may affect our future revenue, and which makes it difficult for us to forecast our future results of operations. In addition, if the assumptions that we use to plan our business are incorrect or change in reaction to changes in our market, it may be difficult for us to maintain profitability. You should not rely on our revenue for any prior quarterly or annual periods as any indication of our future revenue or revenue growth.

In addition, we expect to continue to expend substantial financial and other resources on:

- sales and marketing;
- our technology infrastructure, including systems architecture, scalability, availability, performance and security; and
- general administration, including increased legal and accounting expenses associated with being a public company.

These investments may not result in increased revenue growth in our business. If we are unable to increase our revenue at a rate sufficient to offset the expected increase in our costs, our business, financial position, and results of operations will be harmed, and we may not be able to maintain profitability over the long term. Additionally, we may encounter unforeseen operating expenses, difficulties, complications, delays and other unknown factors that may result in losses in future periods.

If our revenue growth does not meet our expectations in future periods, we may not maintain profitability in the future, our business, financial position and results of operations may be harmed.

If the estimates and assumptions we use to determine the size of the target markets for our services are inaccurate, our future growth rate may be impacted and our business would be harmed.

Market opportunity estimates and growth forecasts, including those we have generated ourselves, are subject to significant uncertainty and are based on assumptions and estimates that may not prove to be accurate, including the risks described herein. Even if the markets in which we compete achieve the forecasted growth, our business could fail to grow at similar rates, if at all.

Our estimates of the market opportunity for our services are based on the assumption that the purpose-built, data-driven and disruptive fertility benefits platform with the Smart Cycle plan design we offer will be attractive to employers. Employers may pursue alternatives or may not see the value in providing enhanced fertility-related coverage and services to their employees. In addition, we believe we are helping to expand the size of the fertility market as we enhance demand and increase awareness for fertility benefits. If these assumptions prove inaccurate, or if the increase in awareness of fertility benefits attracts potential competitors to enter the market and results in greater competition, our business, financial condition and results of operations could be adversely affected.

Furthermore, the healthcare industry is rapidly evolving and the markets for fertility benefits management and the related fertility pharmacy benefits management are relatively immature. It is difficult to predict member utilization rates and demand for our solutions, the entry of competitive solutions or the future growth rate and size of the fertility market, and more specifically the fertility benefits management market and the pharmacy benefits management market. The

expansion of the fertility market depends on a number of factors, including, but not limited to: the continued trend of individuals starting families later in life, increase in number of single mothers by choice, adoption of non-traditional paths to parenthood and continued de-stigmatization of infertility. Further, the expansion of the fertility benefits management market and the pharmacy benefits market both depend on a number of factors, including, but not limited to: the continued trends of a competitive workforce with employers competing for talent based on benefits that they provide and employers' focus on benefits to attract and retain top talent.

Additionally, in June 2022 the U.S. Supreme Court in *Dobbs v. Jackson Women's Health Organization* reversed *Roe v. Wade* by holding that there is no constitutional right to abortion. Consequently, certain states have enacted or proposed restrictive abortion laws that may also implicate fertility procedures and travel reimbursement programs, which may decrease the demand for, or availability of, certain fertility services. Although President Biden issued executive orders and federal agencies have issued guidance intended to protect access to reproductive healthcare services, the enactment of certain state laws restricting abortion care may conflict with, and ultimately limit, the covered benefits offered by a company to its employees and the types of fertility treatment services available at provider clinics. We cannot predict the timing or impact of any future rulemaking, executive orders, court decisions or other changes in the law, or in how such laws, once enacted, would be interpreted and enforced.

If fertility benefits management or pharmacy benefits management do not continue to achieve market acceptance, or if there is a reduction in demand caused by a lack of client or member acceptance, a reduction in employers' focus on enhancing benefits to employees, weakening economic conditions, data security or privacy concerns, governmental regulation, competing offerings or otherwise, the market for our solutions and services might not continue to develop or might develop more slowly than we expect, which would adversely affect our business, financial condition and results of operations. Any losses, costs or liabilities may not be covered by, or may exceed the coverage limits of, any or all applicable insurance policies.

We may not be able to successfully manage our growth, and if we are not able to grow efficiently, our business, financial condition and results of operations could be harmed.

As usage of our solutions grows, we will need to devote additional resources to improving and maintaining our infrastructure. In addition, we will need to appropriately scale our internal business systems and our client account management and member services personnel to serve our growing client base. Any failure of or delay in these efforts could result in reduced client and member satisfaction, resulting in decreased sales to new clients and lower renewal and utilization rates by existing clients, which could hurt our revenue growth and our reputation. Even if we are successful in these efforts, they will require the dedication of management time and attention. We could also face inefficiencies or service disruptions as a result of our efforts to scale our internal infrastructure. We cannot be sure that the expansion and improvements to our internal infrastructure will be effectively implemented on a timely basis, and such failures could harm our business, financial condition and results of operations.

Our business experiences seasonality, which may cause fluctuations in our sales and results of operations.

Our business experiences moderate seasonality in revenue with a slightly higher proportion of revenue during the second half of the year as compared with the first half. Given that the majority of our clients contract with us for a January 1st benefits plan start date and that the average cost of treatments earlier in the overall treatment process is somewhat lower than the average cost as treatment progresses, our revenue from treatment services tend to grow as the year continues, particularly for new clients. In addition, as with most medical benefits plans, members will typically seek to maximize the use of their benefits once they have reached their annual deductible and/or annual out-of-pocket maximums, thereby increasing treatments in the latter part of the year. We expect that this seasonality will continue to affect our revenue and results of operations in the future as we continue to target larger enterprise clients.

In addition, the seasonality of our businesses could create cash flow management risks if we do not adequately anticipate and plan for periods of comparatively decreased cash flow, which could negatively impact our ability to execute on our strategy, which in turn could harm our results of operations. Accordingly, our results for any particular quarter may vary for a number of reasons, and we caution investors to evaluate our quarterly results in light of these factors.

If our new solutions and services are not adopted by our clients or members, or if we fail to innovate and develop new offerings that are adopted by our clients, our revenue and results of operations may be adversely affected.

To date, we have derived a substantial majority of our revenue from sales of our fertility benefits and Progyny Rx solutions. As we operate in an evolving industry and new markets, our long-term results of operations and continued growth will depend on our ability to successfully develop and market new successful solutions and services to our clients.

If our existing clients and members do not value and/or are not willing to make additional payments for such new solutions or services, it could adversely affect our business, financial condition and results of operations. If we are unable to predict clients' or members' preferences, if the markets in which we participate change, including in response to government regulation, or if we are unable to modify our solutions and services on a timely basis, we may lose clients. Our results of operations would also suffer if our innovations are not responsive to the needs of the members, appropriately timed with market opportunity or effectively brought to market.

If we fail to adapt and respond effectively to the changing medical landscape, changing laws, regulations and government enforcement priorities, changing client needs, requirements or preferences, our offerings may become less competitive.

The market in which we compete is subject to a changing medical landscape and changing laws, regulations and government enforcement priorities, as well as changing client needs, requirements and preferences. The success of our business will depend, in part, on our ability to adapt and respond effectively to these changes on a timely basis. Our business strategy may not effectively respond to these changes, and we may fail to recognize and position ourselves to capitalize upon market opportunities. We may not have sufficient advance notice and resources to develop and effectively implement an alternative strategy. There may be scientific or clinical changes that require us to change our solutions or that make our solutions, including the Smart Cycles, less competitive in the marketplace. If there are sensitivities to our model or our existing competitors and new entrants create new disruptive business models and/or develop new solutions that clients and members prefer to our solutions, we may lose clients and members, and our results of operations, cash flows and/or prospects may be adversely affected. The future performance of our business will depend in large part on our ability to design and implement market appropriate strategic initiatives, some of which will occur over several years in a dynamic industry. If these initiatives do not achieve their objectives, our results of operations could be adversely affected.

If we fail to maintain and enhance our brand, our ability to expand our client base will be impaired and our business, financial condition and results of operations may suffer.

We believe that maintaining and enhancing the Progyny brand is important to support the marketing and sale of our existing and future solutions to new clients and expand sales of our solutions to existing clients. We also believe that the importance of brand recognition will increase as competition in our market increases. Successfully maintaining and enhancing our brand will depend largely on the effectiveness of our marketing efforts, our ability to provide reliable services that continue to meet the needs of our clients at competitive prices, our ability to maintain our clients' trust, our ability to continue to develop new solutions, and our ability to successfully differentiate our platform from competitive solutions and services. Our brand promotion activities may not generate client awareness or yield increased revenue, and even if they do, any increased revenue may not offset the expenses we incur in building our brand. If we fail to successfully promote and maintain our brand, our business, financial condition and results of operations may suffer.

If we fail to retain and motivate members of our management team or other key employees, or fail to attract additional qualified personnel to support our operations, our business and future growth prospects could be harmed.

Our success and future growth depend largely upon the continued services of our management team and our other key employees, and on our ability to continue to identify, attract, develop, integrate and retain them. From time to time, there are changes in our executive management team or other key employees. Our executive officers and other key employees are employed on an at-will basis, which means that these personnel could terminate their employment with us at any time. The loss of one or more of our executive officers or other key employees, or the failure by our executive team to effectively work with our employees and lead our company could in the future harm our business.

In addition, to execute our growth plan, we must attract and retain highly qualified personnel. Competition for these personnel is intense, especially for experienced sales and client account management personnel. There is no guarantee we will be able to attract such personnel or that competition among potential employers will not result in us being required to offer increased salaries or other benefits. From time to time, we have experienced, and we expect to continue to experience, difficulty in hiring and retaining employees with appropriate qualifications. Many of the companies with which we compete for experienced personnel have greater resources than we have. If we hire employees from competitors or other companies, their former employers may attempt to assert that these employees or we have breached their legal obligations, resulting in a diversion of our time and resources. In addition, prospective and existing employees often consider the value of the equity awards they receive in connection with their employment. If the perceived value of our equity awards declines, experiences significant volatility, or increases such that prospective employees believe there is limited upside to the value of our equity awards, it may adversely affect our ability to recruit and retain key employees.

Additionally, our performance also depends in part on the successful integration of newly hired executive officers or other key employees into their roles. If we fail to attract new personnel or fail to retain and motivate our current personnel, our business and future growth prospects could be harmed. Further, if members of our management and other key personnel in critical functions across our organization are unable to perform their duties or have limited availability, we may not be able to execute on our business strategy and/or our operations may be negatively impacted.

If we cannot maintain our company culture as we grow, our success and our business and competitive position may be harmed.

We believe our culture has been a key contributor to our success to date and that the critical nature of the mission we are pursuing promotes a sense of greater purpose and fulfillment in our employees. We have invested substantial time and resources in building our culture, and any failure to preserve our culture could negatively affect our ability to retain and recruit personnel, which is critical to our growth, and to effectively focus on and pursue our corporate objectives. As we grow and develop the infrastructure of a public company, we may find it difficult to maintain these important aspects of our culture. If we fail to maintain our company culture, our business and competitive position may be harmed.

Any litigation against us could be costly and time-consuming to defend and could harm our business, financial condition and results of operations.

We have in the past and may in the future become subject to legal proceedings and claims that arise in the ordinary course of business, such as claims brought by our clients or vendors in connection with commercial disputes or employment claims made by our current or former employees. We are unable to predict the outcome of any legal proceedings. Such proceedings might result in substantial costs, regardless of the outcome, and may divert management's attention and resources, which might seriously harm our business, financial condition and results of operations. Insurance might not cover litigation claims, might not provide sufficient payments to cover all the costs to resolve one or more such claims, and might not continue to be available on terms acceptable to us. A claim brought against us that is uninsured or underinsured could result in unanticipated costs, potentially harming our business, financial condition and results of operations.

Risks Related to Our Relationships with Third Parties

Our business depends on our ability to maintain our Center of Excellence network of high-quality fertility specialists and other healthcare providers. If we are unable to do so, our future growth would be limited and our business, financial condition and results of operations would be harmed.

Our success is dependent upon our continued ability to maintain a selective Center of Excellence, our proprietary, credentialed network of high-quality fertility specialists. Fertility specialists and our other network providers could refuse to contract, demand higher payments or take other actions that could result in higher medical costs, less attractive service for our members or difficulty meeting regulatory or accreditation requirements. Identifying high-quality fertility specialists and other healthcare providers, credentialing and negotiating contracts with them and evaluating, monitoring and maintaining our network, requires significant time and resources. Our network provider arrangements generally may be terminated or not renewed by either party without cause upon prior written notice. We cannot provide any assurance that we will be able to continue to renew our existing contracts or enter into new contracts on a timely basis or under favorable terms enabling us to service our members profitably. If we are not successful in maintaining our relationships with top fertility specialists, these fertility specialists may refuse to renew their contracts with us, and potential competitors may be effective in onboarding these or other high-quality fertility specialists to create a similarly high-quality network. Any of these events could have a material adverse effect on the provision of services to our members and our operations.

There may be additional shifts in the fertility specialty provider space as the fertility market matures, and high-quality fertility specialists may become more demanding in re-negotiating to remain in our network. Our ability to develop and maintain satisfactory relationships with high-quality fertility specialists and other healthcare providers also may be negatively impacted by other factors not associated with us, such as legal and regulatory changes, including changes in government enforcement priorities, impacting providers or consolidation activity among hospitals, physician groups and healthcare providers. In addition, in some markets and geographies, certain organizations of physicians or healthcare providers, such as practice management companies (which group together physician practices for administrative efficiency and marketing leverage), accountable care organizations, clinically integrated networks, independent practice associations, and other organizational structures that physicians and other healthcare providers choose may change the way in which these providers do business with us, and may change the competitive landscape. Such organizations or groups of healthcare providers may compete directly with us, which could adversely affect our operations, and our results of operations, financial position, and cash flows by impacting our relationships with these providers or affecting the way that we price our

products and estimate our costs, which might require us to incur costs to change our operations. Healthcare providers in our network may consolidate or merge into other groups or healthcare systems, resulting in a reduction of providers in our network and in the competitive environment. In addition, if these providers refuse to contract with us, use their market position to negotiate contracts unfavorable to us or place us at a competitive disadvantage, our ability to market our solutions or to be profitable in those areas could be materially and adversely affected.

From time to time, our network providers may assert, or threaten to assert, claims seeking to terminate our contractual arrangements. If enough provider agreements were terminated, such termination could adversely impact the adequacy of our network to service our members, and may put us at risk of non-compliance with applicable federal and state laws. If we are unable to retain our current provider contract terms or enter into new provider contracts timely or on favorable terms, our profitability may be harmed. In addition, from time to time, we may in the future be subject to class action or other lawsuits by healthcare providers with respect to claims payment procedures, reimbursement policies, network participation, or similar matters. In addition, regardless of whether any such lawsuits brought against us are successful or have merit, they will be time-consuming and costly, and could have an adverse impact on our reputation. As a result, under such circumstances, we may be unable to operate our business effectively.

In addition, the perceived value of our solutions and our reputation may be negatively impacted if the services provided by one or more of our fertility specialists or another network healthcare provider are not satisfactory to our members, including as a result of provider error that could result in litigation. For example, if a provider within our network experiences an issue with their cryopreservation techniques or releases sensitive information of our members, it could result in us incurring substantial additional expenses, expose us to public scrutiny, adversely affect our brand and reputation, expose us to litigation and/or regulatory action, and otherwise make our operations vulnerable. Further, if a fertility specialist provides services that result in less than favorable outcomes, this could cause us to fail to meet our contractually guaranteed specified service metrics, and we could be obligated to provide the client with a fee reduction. The failure to maintain our selective network of high-quality fertility specialists and other healthcare providers or the failure of those providers to meet and exceed our members' expectations, may result in a loss of or inability to grow or maintain our client base, which could adversely affect our business, financial condition and results of operations.

Our growth depends in part on the success of our strategic relationships with, and monitoring of, third parties, including channel partners, vendors, as well as insurance carriers.

In order to grow our business, we anticipate that we will continue to depend on our relationships with third parties, including channel partners, vendors and insurance carriers among others. As the fertility management market and our client base grow, if we do not successfully maintain our relationships with insurance carriers, they may make integration more difficult or expensive, such as implementing an onerous fee structure in exchange for our ability to continue to integrate our solutions with their platforms. If we are unsuccessful in establishing or maintaining our relationships with third parties, our ability to compete in the marketplace or to grow our revenue could be impaired and our results of operations may suffer.

In addition, our arrangements with these third parties may expose us to public scrutiny, adversely affect our brand and reputation, expose us to litigation and/or regulatory action, and otherwise make our operations vulnerable if we fail to adequately monitor their performance or if they fail to meet their contractual obligations to us or to comply with applicable laws or regulations.

If we fail to maintain an efficient pharmacy distribution network or if there is a disruption to our network of specialty pharmacies or their supply chains, our business, financial condition and results of operations could suffer.

The timely delivery of fertility prescriptions is essential for fertility treatments. If prescriptions are delivered late or become unavailable, it may result in postponement of a member's treatment cycle and member dissatisfaction with our solutions. We believe that our ability to maintain and grow the adoption of Progyny Rx is highly dependent on our success in maintaining an efficient pharmacy distribution network and our record of on-time delivery. The specialty pharmacies in our network could refuse to contract, demand higher drug pricing or take other actions that could result in higher medical costs or less attractive services for our members.

Specialty pharmacies could face supply chain issues or regulatory delays impacting the availability or distribution of certain fertility prescriptions requiring drug substitutions that could result in higher medical costs or negatively impact our revenues, rebates and results of operations. We do not control the pricing strategies or supply chains of our specialty pharmacy partners, each of whom may be impacted by general economic considerations including inflation and other independent considerations and drivers that are outside our control and each of whom has the ability to set or impact market price for different prescription medications. We also cannot provide any assurance that we will be able to continue to renew our existing contracts, current negotiated pricing or discounts, or enter into new contracts on a timely basis or

under favorable terms enabling us to service our members profitably. If we are not successful in maintaining our relationships with the specialty pharmacies in our network, are otherwise unable to maintain an efficient pharmacy distribution network, or if a significant disruption thereto should occur, it may adversely affect our business, financial condition and results of operations. For example, between October 2022 and November 2022 the manufacturer of Menopur temporarily paused delivery of the drug, which created a shortage in supply while they awaited FDA approval to changes that were made in the manufacturing process of one of their suppliers. While we do not currently expect future Menopur shortages, due to the recent supply chain changes and disruptions there is possibility of a prolonged halt to production of medications relied on by Progyny members that could negatively impact our revenue and results of operations.

If we lose our relationship with one or more key pharmacy program partners, or if the rebates provided by pharmacy program partners decline, our business and results of operations could be adversely affected.

We maintain contractual relationships with select pharmacy program partners, which provide us with access to limited distribution specialty pharmaceutical rebates for drugs we purchase. While we have contractual relationships with such pharmacy program partners, they in turn often negotiate complex and multi-party pricing structures with other industry participants, and we have no control over the policies and strategies implemented in negotiating these pricing structures. Such structures may set or significantly impact market prices for prescription drugs we purchase and associated rebates for such drugs. Pharmacy program partners generally direct medication pricing by setting medication list prices and offering rebates and/or discounts for their medications. Various market considerations—such as the number of competitor medications, the availability of fertility medications and alternative treatment options, and negotiated rates among industry participants—impact the list prices for medications. Our ability to obtain and maintain specialty pharmaceutical rebates, our relative bargaining power, the value of any such rebates and our ability to generate revenue are directly affected by the pricing structures in place among the various industry participants, and changes in medication pricing and in the general pricing structures, whether due to regulatory requirements, competitive pressures or otherwise, could have an adverse effect on our business, financial condition and results of operations. Further, the consolidation of pharmaceutical manufacturers, the shortages of drugs provided by such manufacturers, the termination or material alteration of our contractual relationships, or our failure to renew such contracts on favorable terms could have a material adverse effect on our business and results of operations.

Our marketing efforts depend on our ability to maintain our relationship with benefits consultants.

We sell our solutions through our sales organization and, in many cases, we leverage our relationships with top benefits consultants to establish relationships with potential clients. Our sales team has broad experience in health benefits management and extensive pre-existing long-term relationships with industry participants and benefits executives at large employers. If we fail to maintain our relationship with the benefits consultants, our marketing efforts, business and profitability would be adversely impacted.

We are exposed to credit risk from our members.

We collect co-payments, co-insurance and deductibles directly from members. We do not require collateral for such receivables. Our failure to collect a significant portion of the amount due on such receivables directly from members could adversely affect our business, financial condition and results of operations.

Risks Related to Government Regulation

We operate in a highly regulated industry and must comply with a significant number of complex and evolving legal and regulatory requirements.

We have attempted to structure our operations to comply with laws, regulations and other requirements applicable to us directly and to our clients and vendors, but there can be no assurance that our operations will not be challenged or impacted by regulatory authorities or enforcement initiatives. We have been, and in the future may become, involved in governmental investigations, audits, reviews and assessments. Any determination by a court or agency that our corporate structure, solutions or services violate, or cause our clients to violate, applicable laws, regulations or other requirements could subject us or our clients to significant administrative, civil or criminal penalties. Such a determination also could require us to change or terminate portions of our business, disqualify us from serving clients that do business with government entities, or cause us to refund some or all of our service fees or otherwise compensate our clients. In addition, failure to satisfy laws, regulations or other requirements could adversely affect demand for our solutions and could force us to expend significant capital, research and development and other resources to address the failure. Even an unsuccessful challenge by regulatory and other authorities or parties could be expensive and time-consuming, could result in loss of business, exposure to adverse publicity, and injury to our reputation and could adversely affect our ability to retain and

attract clients. If we fail to comply with applicable laws, regulations and other requirements, our business, financial condition and results of operations could be adversely affected. Such non-compliance could also require significant investment to address and may prove costly. There are several additional federal and state statutes, regulations, guidance and contractual provisions related to or impacting the healthcare industry that may apply to our business activities directly or indirectly, including, but not limited to:

- ***Licensing and Licensed Personnel***. Many states have licensure or registration requirements for entities acting as a third-party administrator, or TPA, and/or PBMs. The scope of these laws differs from state to state, and the application of such laws to the activities of TPAs and/or PBMs is often unclear. Given the nature and scope of the solutions and services that we provide, we are required to maintain TPA and PBM licenses and registrations in certain jurisdictions and to ensure that such licenses and registrations are in good standing on an annual basis. We are licensed, have licensure applications pending before appropriate regulatory bodies, are exempt from licensure or registration, or believe that we are otherwise authorized under such laws in those states in which we provide our TPA and PBM services. These licenses require us to comply with the rules and regulations of the governmental bodies that issued such licenses, including maintaining certain solvency or bonds requirements. Our failure to comply with such rules and regulations could result in significant administrative penalties, the suspension of a license, or the loss of a license, all of which could negatively impact our business. Additionally, from time to time, legislation is considered that would purport to declare a PBM a fiduciary with respect to its clients. We cannot predict what effect, if any, such statutes, if enacted, may have on our business and financial results.

  Separately, states impose licensing requirements on insurers, risk-bearing entities, and insurance agents, as well as those entities that provide utilization review services. We do not believe that the nature of our services requires us to be licensed under applicable state law. We are unable to predict, however, how our services may be viewed by regulators over time, how these laws and regulations will be interpreted and enforced, or the full extent of their application. If a regulatory authority in any state determines that the nature of our business requires that we be licensed under applicable state laws, we may need to restructure our business to comply with any related requirements, such as maintaining adequate reserves, creating new compliance processes, hiring additional personnel to manage regulatory compliance, and paying additional regulatory fees or penalties, which could adversely affect our results of operation. Additionally, we may need to cease operations until we are able to obtain appropriate licensure, which may adversely affect our revenue for a period of time that we cannot estimate.

  In addition, we employ PCAs to support and guide our members as part of our fertility benefits management services. The PCAs do not provide any licensed healthcare services, and in turn, are not licensed by any regulatory body to provide these services. We otherwise do not employ individuals to provide any healthcare services requiring licensure. If a professional board in any state determines that the services provided by our employed PCAs require a license to be provided, we may need to conduct additional training and credentialing, replace staff, obtain additional insurance, and pay increased salaries, which could adversely affect our results of operation. We may additionally need to suspend the PCA services we provide while our personnel obtain the necessary licensure, which may adversely affect our relationships with our clients and members and cause us to be in breach of our contracts.

- ***HIPAA Privacy and Security Requirements***. Regulations promulgated pursuant to HIPAA, as amended, and regulations promulgated thereunder, or collectively, HIPAA, establish privacy and security standards that limit the use and disclosure of certain individually identifiable health information (known as "protected health information") and require the implementation of administrative, physical and technological organizational safeguards to protect the privacy of protected health information and ensure the confidentiality, integrity and availability of electronic protected health information. The privacy regulations established under HIPAA also provide patients with rights related to understanding and controlling how their protected health information is used and disclosed. As a provider of services to entities subject to HIPAA, we are directly subject to certain provisions of the regulations as a "Business Associate." When acting as a Business Associate under HIPAA, to the extent permitted by applicable privacy regulations and contracts and associated Business Associate Agreements with our clients, we are permitted to use and disclose protected health information to perform our services and for other limited purposes, but other uses and disclosures, such as marketing communications, require written authorization from the patient or must meet an exception specified under the privacy regulations. We also have downstream Business Associates, which provide us with services and are also subject to HIPAA regulations.

  If we, or any of our downstream Business Associates, are unable to properly protect the privacy and security of protected health information entrusted to us, we could be found to have breached our contracts with our clients and be subject to investigation by HHS, Office for Civil Rights, or OCR. In the event OCR finds that we have failed to comply with applicable HIPAA privacy and security standards, we could face civil and criminal penalties. In addition, OCR performs compliance audits of Covered Entities and Business Associates in order to

proactively enforce the HIPAA privacy and security standards. OCR has become an increasingly active regulator and has signaled its intention to continue this trend. OCR has the discretion to impose penalties and may require companies to enter into resolution agreements and corrective action plans which impose ongoing compliance requirements. OCR enforcement activity, or a third-party audit related to a HIPAA incident regarding us or a third-party vendor, can result in financial liability and reputational harm, and responses to such enforcement activity can consume significant internal resources. In addition to enforcement by OCR, state attorneys general are authorized to bring civil actions under either HIPAA or relevant state laws seeking either injunctions or damages in response to violations that threaten the privacy of state residents. Although we have implemented and maintain policies, processes and compliance program infrastructure to assist us in complying with these laws and regulations and our contractual obligations, we cannot provide assurance regarding how these laws and regulations will be interpreted, enforced or applied to our operations. In addition to the risks associated with enforcement activities and potential contractual liabilities, our ongoing efforts to comply with evolving laws and regulations at the federal and state levels also might require us to make costly system purchases and/or modifications or otherwise divert significant resources to HIPAA compliance initiatives from time to time.

- ***Other Privacy and Security Requirements***. In addition to HIPAA, numerous other federal and state laws govern the collection, dissemination, use, access to and confidentiality of personal information, some of which may be applicable to our business. Certain federal and state laws protect types of personal information that may be viewed as particularly sensitive. For example, New York's Public Health Law, Article 27-F protects information that could reveal confidential HIV-related information about an individual. In many cases, state laws are more restrictive than, and not preempted by, HIPAA, and may allow personal rights of action with respect to privacy or security breaches, as well as fines. State laws are contributing to increased enforcement activity and may also be subject to interpretation by various courts and other governmental authorities. Further, the California Consumer Privacy Act of 2018, or CCPA, went into effect on January 1, 2020 which gives California residents certain rights to access and delete their personal information, opt out of certain personal information sharing, and receive detailed information about how their personal information is used. The CCPA provides for civil penalties for violations, as well as a private right of action for data breaches has increased the likelihood, and risks associated with data breach litigation. Further, the California Privacy Rights Act, or the CPRA generally went into effect on January 1, 2023 and significantly amends the CCPA. It imposes additional data protection obligations on covered businesses, including additional consumer rights processes, limitations on data uses, new audit requirements for higher risk data, and opt outs for certain uses of sensitive data. It also creates a new California data protection agency authorized to issue substantive regulations and could result in increased privacy and information security enforcement. Additional compliance investment and potential business process changes may be required. Similar laws have passed in Virginia, Colorado, Connecticut and Utah, and have been proposed in other states and at the federal level, reflecting a trend toward more stringent privacy legislation in the United States. The enactment of such laws could have potentially conflicting requirements that would make compliance challenging.

  Certain of our solutions and services involve the transmission and storage of client and member data in various jurisdictions, which subjects the operation of those solutions and services to privacy or data protection laws and regulations in those jurisdictions. There can be no assurance that such requirements will not change or that we will not otherwise be subject to legal or regulatory actions. These laws and regulations are rapidly evolving and changing, and could have an adverse impact on our operations. These laws and regulations are subject to uncertainty in how they may be interpreted and enforced by government authorities and regulators. The costs of compliance with, and the other burdens imposed by, these and other laws or regulatory actions may increase our operational costs, prevent us from providing our solutions, and/or impact our ability to invest in or jointly develop our solutions. We also may face audits or investigations by one or more government agencies relating to our compliance with these laws and regulations. An adverse outcome under any such investigation or audit could result in fines, penalties, other liability, or could result in adverse publicity or a loss of reputation, and adversely affect our business. Any failure or perceived failure by us or by our solutions to comply with these laws and regulations may subject us to legal or regulatory actions, damage our reputation or adversely affect our ability to provide our solutions in the jurisdiction that has enacted the applicable law or regulation. Moreover, if these laws and regulations change, or are interpreted and applied in a manner that is inconsistent with our policies and processes or the operation of our solutions, we may need to expend resources in order to change our business operations, policies and processes or the manner in which we provide our solutions. This could adversely affect our business, financial condition and results of operations.

- ***Data Protection and Breaches***. In recent years, there have been a number of well-publicized data breaches involving the improper dissemination of personal information of individuals both within and outside of the healthcare industry. Laws in all 50 states require businesses to provide notice to clients whose personally identifiable information has been disclosed as a result of a data breach. The laws are not consistent, and compliance in the event of a widespread data breach is costly. States are also constantly amending existing laws,

requiring attention to frequently changing regulatory requirements. Most states require holders of personal information to maintain safeguards and take certain actions in response to a data breach, such as providing prompt notification of the breach to affected individuals or the state's attorney general. In some states, these laws are limited to electronic data, but states increasingly are enacting or considering stricter and broader requirements.

Additionally, under HIPAA, Covered Entities must report breaches of unsecured protected health information to affected individuals without unreasonable delay, not to exceed 60 days following discovery of the breach by a Covered Entity or its agents. Notification also must be made to OCR and, in certain circumstances involving large breaches, to the media. Business Associates must report breaches of unsecured protected health information to Covered Entities within 60 days of discovery of the breach by the Business Associate or its agents or such shorter period as set forth in the applicable Business Associate Agreement. A non-permitted use or disclosure of protected health information is presumed to be a breach under HIPAA unless the Covered Entity or Business Associate establishes that there is a low probability the information has been compromised consistent with requirements enumerated in HIPAA.

Despite our security management efforts with respect to physical and technological safeguards, employee training, vendor (and sub-vendor) controls and contractual relationships, our infrastructure, data or other operation centers and systems used in our business operations, including the internet and related systems of our vendors (including vendors to whom we outsource data hosting, storage and processing functions) are vulnerable to, and from time to time, experience, unauthorized access to data and/or breaches of confidential information due to a variety of causes. Techniques used to obtain unauthorized access to or compromise systems change frequently, are becoming increasingly sophisticated and complex, and are often not detected until after an incident has occurred. As a result, we might not be able to anticipate these techniques, implement adequate preventive measures, or immediately detect a potential compromise. If our security measures, some of which are managed by third parties, or the security measures of our service providers or vendors, are breached or fail, it is possible that unauthorized or illegal access to or acquisition, disclosure, use or processing of personal information, confidential information, or other sensitive client, member, or employee data, including HIPAA-regulated protected health information, may occur. A security breach or failure could result from a variety of circumstances and events, including third-party action, human negligence or error, malfeasance, employee theft or misuse, phishing and other social engineering schemes, computer viruses, attacks by computer hackers, failures during the process of upgrading or replacing software, databases or components thereof, power outages, hardware failures, telecommunication failures, and catastrophic events.

If our security measures, or those of our service providers or vendors, were to be breached or fail, our reputation could be severely damaged, adversely affecting client or investor confidence. As a result, clients may curtail their use of or stop using our offering and our business may suffer. In addition, we could face litigation, damages for contract breach, penalties and regulatory actions for violation of HIPAA and other laws or regulations applicable to data protection and significant costs for remediation and for measures to prevent future occurrences. In addition, any potential security breach could result in increased costs associated with liability for stolen assets or information, repairing system damage that may have been caused by such breaches, incentives offered to clients or other business partners in an effort to maintain the business relationships after a breach and implementing measures to prevent future occurrences, including organizational changes, deploying additional personnel and protection technologies, training employees and engaging third-party experts and consultants. Negative publicity may also result from real, threatened or perceived security breaches affecting us or our industry or clients, which could cause us to lose clients or partners and adversely affect our operations and future prospects. While we maintain cyber insurance covering certain security and privacy damages and claim expenses, we may not carry insurance or maintain coverage sufficient to compensate for all liability and such insurance may not be available for renewal on acceptable terms or at all, and in any event, insurance coverage would not address the reputational damage that could result from a security incident.

- ***HIPAA Transaction and Identifier Standards***. HIPAA and its implementing regulations mandate format and data content standards and provider identifier standards (known as the National Provider Identifier) that must be used in certain electronic transactions, such as claims, payment advice and eligibility inquiries. HHS has established standards that health plans must use for electronic fund transfers with providers, has established operating rules for certain transactions, and is in the process of establishing operating rules to promote uniformity in the implementation of the remaining types of covered transactions. The ACA also requires HHS to establish standards for health claims attachment transactions. HHS has modified the standards for electronic healthcare transactions (such as, eligibility, claims submission and payment and electronic remittance) from Version 4010/4010A to Version 5010. Further, HHS requires the use of updated standard code sets for diagnoses and procedures known as the ICD-10 code sets. Enforcement of compliance with these standards falls under HHS and is carried out by CMS.

In the event new requirements are imposed, we will be required to modify our systems and processes to accommodate these changes. We will seek to modify our systems and processes as needed to prepare for and implement changes to the transaction standards, code sets operating rules and identifier requirements; however, we may not be successful in responding to these changes, and any responsive changes we make to our systems and processes may result in errors or otherwise negatively impact our service levels. In addition, the compliance dates for new or modified transaction standards, operating rules and identifiers may overlap, which may further burden our resources.

- ***Fraud and Abuse Laws***. Many of our clients, insurance carriers, and network healthcare providers are impacted directly and indirectly by certain fraud and abuse laws, including the federal Anti-Kickback Statute, the Physician Self-Referral Law, commonly referred to as the Stark Law, and the False Claims Act, as well as their state equivalents. Because the solutions and services we provide are not reimbursed by government healthcare payors, such fraud and abuse laws generally do not directly apply to our business; however, some laws may be applicable to us. For example, certain states have anti-kickback and false claims laws that may be broader in scope than analogous federal laws and may apply to items and services reimbursed by any third-party payor, including private insurers, self-insured employers and on a cash basis by patients.

  The laws, regulations and other requirements in this area are both broad and complex and judicial and regulatory interpretation can also be inconsistent. We review our practices with regulatory experts in an effort to comply with all applicable laws, regulatory and other requirements. However, we are unable to predict how these laws, regulations and other requirements will be interpreted or the full extent of their application, particularly to services that are not directly reimbursed by federal and state healthcare programs. Any determination by a federal or state regulatory authority that any of our activities or those of our clients or vendors violate any of these laws or regulations could subject us to significant administrative, civil or criminal penalties, damages, disgorgement, monetary fines or imprisonment, require us to enter into corporate integrity agreements or similar agreements with ongoing compliance obligations, disqualify us from providing services to clients that are, or do business with, government healthcare programs and/or have an adverse impact on our business, financial condition and results of operations. Even an unsuccessful challenge by a regulatory authority of our activities could result in adverse publicity and could require a costly response from us.

- ***State Corporate Practice and Fee-Splitting Prohibitions.*** There is a risk that regulatory authorities in some jurisdictions may find that our contractual relationships with our fertility specialists violate laws prohibiting the corporate practice of medicine and/or fee-splitting. These laws generally prohibit non-physician entities from practicing medicine, exercising control over physicians or engaging in certain practices such as fee-splitting with physicians. There can be no assurance that these laws will be interpreted in a manner consistent with our practices or that other laws or regulations will not be enacted in the future that could have a material and adverse effect on our business, results of operations, and financial condition. Regulatory authorities, state medical boards, state attorneys general and other parties, including our network physicians, may assert that we are engaged in the prohibited corporate practice of medicine, and/or that our arrangement with our network providers constitutes unlawful fee-splitting. If a state's prohibition on corporate practice of medicine or fee-splitting law is interpreted in a manner that is inconsistent with our practices, we would be required to restructure or terminate our contractual relationship with our network providers to bring our activities into compliance with such laws, disciplinary action, penalties, damages, fines, and/or a loss of revenue, any of which could have a material and adverse effect on our business, results of operations, and financial condition. State corporate practice of medicine doctrines and fee-splitting prohibitions also often impose penalties on physicians themselves for aiding the corporate practice of medicine or unlawful fee-splitting, which could discourage physicians from participating in our network of providers.

- ***ERISA Regulation***. The Employee Retirement Income Security Act of 1974, or ERISA, regulates certain aspects of employee health plans, including both insured and self-funded health plans sponsored by our clients, with which we have agreements to provide TPA services. As part of our agreements with a number of these clients, we offer PBM services through Progyny Rx. Because we believe the conduct of our business vis-à-vis these plans is not of a fiduciary nature, it is not generally subject to the fiduciary obligations of ERISA. However, there can be no assurance the United States Department of Labor, or the DOL, which is the agency that enforces ERISA, would not in the future assert that the fiduciary obligations imposed by ERISA apply to certain aspects of our operations or courts would not reach such a ruling in private ERISA litigation. ERISA also imposes civil and criminal liability on service providers to health plans subject to ERISA and certain other persons with relationships to such plans if certain forms of illegal or prohibited remuneration are made or received by such service providers or other persons. These provisions of ERISA are similar, but not identical, to the healthcare anti-kickback laws described above, although ERISA lacks the statutory and regulatory "safe harbor" exceptions incorporated into the healthcare anti-kickback laws. Like the healthcare anti-kickback laws, the corresponding

provisions of ERISA are broadly written and their application to particular cases can be uncertain. ERISA plans are subject to certain rules, published by the DOL, including certain reporting requirements for direct and indirect compensation received by plan service providers. Separately, although ERISA generally preempts state laws that relate to ERISA plans, the recent Supreme Court ruling in *Rutledge v. Pharm. Care Mgmt. Ass'n* established that ERISA does not preempt all state laws imposing transparency or other requirements on PBMs.

- ***Prompt Pay Laws***. Certain states have laws regulating the amount of time that may elapse from when a third-party payor receives a claim for services rendered to when those services are paid. These "prompt pay" laws may impact us as well as our self-insured clients and insurance carriers. Under these "prompt pay" laws, we may be obligated to pay healthcare providers within established time periods, and such time periods may be shorter than existing contracted terms and/or via electronic transfer. In many states, we are deemed to be exempt from the prompt pay laws, however, we seek to comply with them in each state in which we do business to the extent applicable, and our efforts include the use of controls such as policies and processing systems that ensure we pay claims as quickly as possible and contract language related to timeframes permitted by applicable law. If we do not make payments to healthcare providers in a timely fashion consistent with prompt pay laws, we may be required to pay interest in addition to any amounts owed to such providers. In addition, our reputation may be harmed and our contractual obligations to certain clients may be breached, causing us to lose revenue or otherwise pay penalties under such contracts.

- ***Network Adequacy and Access Requirements***. Network adequacy and access laws require health plans to maintain a network of healthcare providers sufficient to deliver the benefits they contract to provide to their enrollees. In light of the increase in "narrow networks," there has been a legislative push to ensure that commercial payors contract with a sufficient number of healthcare providers to create an "adequate network." Additionally, a majority of states have some form of legislation affecting our payor clients' ability to limit access to a provider network or remove a provider from the network. Such legislation may require our clients to admit any healthcare provider including any pharmacy provider willing to meet the plan's price and other terms for network participation, or any willing provider" legislation, or may provide that a provider may not be removed from a network except in compliance with certain procedures, or due process" legislation. Further, to ensure network adequacy and quality, a network may seek to accredit its healthcare providers through any number of accrediting bodies, such as the National Committee for Quality Assurance, or NCQA, and the Utilization Review Accreditation Commission. We follow NCQA standards to credential the health providers with whom we contract to provide services within our network, and engage Council for Affordable Quality Healthcare to conduct provider credentialing where required. Should any of the states we operate in determine that our network of providers does not meet adequacy or access requirements, we may be subject to administrative penalties and other administrative actions, as well as private litigation. In addition, if we are unable to contract with a sufficient number of providers, we may become subject to administrative penalties or enforcement actions from state regulatory agencies, litigation from consumers, and may be in breach of certain contractual covenants with our partners.

- ***Consumer Protection Laws***. Federal and state consumer protection laws are being applied increasingly by the Federal Trade Commission, or FTC, Federal Communications Commission, or FCC, and states' attorneys general to regulate the collection, use, storage and disclosure of personal or health information, through websites or otherwise, and to regulate the presentation of website content. Courts may also adopt the standards for fair information practices promulgated by the FTC, which concern consumer notice, choice, security and access. Consumer protection laws require us to publish statements to users of our services that describe how we handle personal information and choices consumers may have about the way we handle personal information. If such information that we publish is considered untrue, we may be subject to claims of unfair or deceptive trade practices, which could lead to significant liabilities and consequences, including, costs of defending against litigation, settling claims and loss of willingness of current and future clients to work with us.

- ***Restrictions on Communication***. Communications with our members increasingly may be subject to and restricted by laws and regulations governing communications via telephone, fax, text, and email. We also use email and social media platforms as marketing tools. For example, we maintain social media accounts. As laws and regulations, including FTC enforcement, rapidly evolve to govern the use of these platforms and devices, the failure by us, our employees or third parties acting at our direction to abide by applicable laws and regulations in the use of these platforms and devices could adversely impact our business, financial condition and results of operations or subject us to fines or other penalties.

The healthcare regulatory and political framework is uncertain and evolving. Recent and future developments in the healthcare industry could have an adverse impact on our business, financial condition and results of operations.

All of our revenue is derived from the healthcare industry, which is highly regulated and subject to changing political, legislative, regulatory and other influences. Healthcare laws and regulations are rapidly evolving and may change significantly in the future. For example, the ACA may affect the coverage and plan designs that are or will be provided by certain insurance carriers and certain of our clients with self-insured plans, taxability of benefits under such plans, as well as the overall reimbursement and drug pricing environment for healthcare providers. Since its enactment, there have been judicial, executive and Congressional challenges to certain aspects of the ACA as well as efforts to repeal or replace certain aspects of the ACA. On June 17, 2021, the U.S. Supreme Court dismissed the most recent judicial challenge to the ACA brought by several states without specifically ruling on the constitutionality of the ACA.

Other health reform efforts have been proposed by members of Congress, such as measures that would expand the role of government-sponsored coverage, including further reform to the ACA, which could have far-reaching implications for the healthcare industry if enacted. On January 28, 2021, President Joe Biden issued an Executive Order directing federal agencies to examine all existing regulations, orders, guidance documents, policies and similar agency actions to determine if any such actions are inconsistent with the policy set forth in the Executive Order to protect and strengthen the ACA and make high-quality healthcare accessible and affordable for every American. Most recently, on August 16, 2022, President Biden signed the Inflation Reduction Act of 2022 or IRA into law. The health reform measures included in the IRA largely focus on pharmaceutical manufacturers, but are likely to impact the reimbursement and drug pricing environment for healthcare providers and insurers more broadly, in ways that cannot yet be fully determined.

As another example of recent healthcare legislative changes, the Consolidated Appropriations Act, or CAA, effective December 27, 2021, contains provisions impacting group health plans, including protections for plan participants from surprise medical bills and ensuring health plan price transparency. The CAA prohibits plans from entering into services agreements that directly or indirectly restrict the plans from disclosing provider-specific costs and quality of care information. It also requires disclosure by health insurance brokers and consultants to plan sponsors regarding reasonably expected direct and indirect compensation for referral of services to group health plans. Additionally, the CAA requires plans to submit reports to the Department of Labor, HHS and IRS with certain information on pharmacy benefits and drug costs for participants and beneficiaries and the application of in-network rates to out of network services. The CAA also requires certain service providers for health plans to comply with certain ERISA fee disclosure rules.

In addition, effective January 1, 2022, the No Surprises Act (enacted as part of the CAA) provides protection against surprise medical bills by prohibiting plans and providers from balance billing patients for emergency care performed by out-of-network providers as well as non-emergency and ancillary services performed by out-of-network providers at in-network facilities, subject to certain notice and consent exceptions for non-emergency and ancillary services. The law also grants additional patient protections, including requiring providers to send a good faith estimate of the expected charges for furnishing items or services to an insured patient's health plan (or directly to an uninsured patient) before such items or services are delivered (including items or services reasonably expected to be provided in conjunction with scheduled items or services or that are reasonably expected to be delivered by another provider). The No Surprises Act also provides a dispute resolution process in the event the actual charges for such items and services are substantially higher than the plan's estimate, and will prohibit providers from charging patients an amount beyond the in-network cost sharing amount for services rendered by out-of-network providers, subject to certain exceptions. Several states have also enacted comprehensive balance billing or surprise billing laws and the CAA defers to existing state requirements with respect to state-established payment amounts. Such state laws vary in their approach, resulting in different impacts on the healthcare system as a whole.

We are unable to predict how other healthcare reform initiatives from new legislation, regulation, judicial action and/or executive action, including the CAA and No Surprises Act and state laws, will ultimately impact the healthcare industry and what the potential impact may be on our business and on our relationships with current and future clients, insurance carriers, and healthcare providers. Additionally, we cannot predict the timing or impact of any future rulemaking, court decisions or other changes in the law. If we are unable to comply with these laws or regulations or provide adequate assistance to our clients subject to these laws or regulations, it is reasonably possible that our business operations and results of operations could be materially adversely affected.

We are subject to potential changes in laws, regulations, government enforcement priorities, public policy, industry standards and other requirements, including with respect to Progyny Rx's PBM practices, which create risks and challenges with respect to our compliance efforts and our business strategies, and may adversely affect our business.

The healthcare industry is highly regulated and subject to frequently changing laws, regulations, government enforcement priorities, public policies, industry standards and other requirements. Many healthcare laws and regulations are complex, and their application to specific solutions, services and relationships may not be clear. Because our clients are subject to various requirements, we may be impacted as a result of our contractual obligations even when we are not directly subject to such requirements. In particular, many existing healthcare laws and regulations, when enacted, did not anticipate the solutions and services that we provide, and these laws and regulations may be applied to our solutions and services in ways that we do not anticipate. The ACA, efforts to revise, expand or materially change the ACA, as well as the recently enacted IRA, and other federal and state efforts to reform or revise aspects of the healthcare industry or to revise or create additional legal or and regulatory requirements could impact our operations, the use of our solutions and services, and our ability to market new solutions and services, or could create unexpected liabilities for us. We also may be impacted by laws, industry standards and other requirements that are not specific to the healthcare industry, such as consumer protection laws and payment card industry standards. These requirements may impact our operations and, if not followed, could result in fines, penalties and other liabilities and adverse publicity and injury to our reputation.

In recent years, there have been a number of reform efforts, including from federal and state legislatures as well as the HHS OIG, around PBM program pricing and transparency that could affect our business. Current PBM laws and regulations govern, and proposed legislation and regulations may govern and/or further restrict critical PBM practices, including, among other things, disclosure, receipt and retention of rebates and other payments received from pharmaceutical manufacturers or pharmacy program partners, rules governing contractual provisions between PBMs and their contracted payers and/or pharmacies, and registration or licensing of PBMs. For example, in 2019, the U.S. Senate and House of Representatives proposed a number of bills that would, among other things, require PBMs to submit information on their costs, fees and rebates, requiring 100% of the rebates to be passed on to consumers, and/or impose rebates on manufacturers that chose to increase their drug prices more rapidly than inflation. More recently, in June 2022, the Federal Trade Commission announced an inquiry regarding the role of PBMs and stated its intent to closely scrutinize the impact of PBM rebates and fees on patients and payers.

Further, the U.S. Supreme Court's decision in *Rutledge v. Pharm. Care Mgmt. Ass'n* on December 10, 2020, which held that an Arkansas state law requiring PBMs to reimburse pharmacies at a price equal to or greater than the price pharmacies pay in purchasing medications from a wholesaler, was not preempted by the federal ERISA statute. The Supreme Court's ruling solidifies the legality of state-level legislation regulating PBMs, which may encourage a new wave of legislation aimed at controlling prescription drug costs and providing pricing transparency. In the wake of the *Rutledge* ruling, for example, New York reintroduced previously vetoed PBM legislation and former Governor Andrew Cuomo issued an Executive Budget for 2022 that highlights the need for PBM accountability. Several states have proposed separate PBM bills, and at least 18 states have adopted PBM oversight laws. A number of these proposed laws would require PBMs to submit annual transparency reports or otherwise disclose contractual arrangements with health benefit plans or health insurance issuers, or allow regulators to conduct audits of PBM operations.

Additionally, certain quasi-regulatory organizations, including the National Association of Boards of Pharmacy and the National Association of Insurance Commissioners, have issued model regulations or may propose future model regulations concerning PBM operations. PBM credentialing organizations may also establish voluntary standards regarding PBM activities. While the model regulations and standards of these quasi-regulatory or credentialing organizations are not legal requirements, federal and state lawmakers may be influenced to adopt similar legislation and such model regulations and standards may also impact client expectations or requirements for PBM services. PBM operations may also be subject to federal and state fraud and abuse laws. Some states' anti-kickback and false claims laws may be broader in scope than analogous federal laws and may apply to items and services reimbursed by any third-party payor, including private insurers, self-insured employers and on a cash basis by patients, and may be applicable to us.

Accordingly, it is reasonably possible that our business operations and our results of operations could be materially adversely affected by legislative, regulatory and public policy changes at the federal or state level, increased government involvement in drug reimbursement and pricing, and/or increased regulation of PBMs. Adoption of new laws, rules or regulations or changes in government enforcement priorities of or new interpretations of, existing laws, rules or regulations relating to PBMs could materially adversely affect our business and results of operations with respect to Progyny Rx. Additionally, such legal and regulatory changes may adversely affect our ability to conduct business on commercially reasonable terms in states where PBM legislation is in effect and our ability to standardize its Progyny Rx PBM products and services across state lines. Further, our failure to comply with these laws or regulations could result in material fines and/or sanctions and could have a material adverse effect on our results of operations and/or cash flows.

We are subject to anti-corruption, anti-bribery, anti-money laundering, and similar laws, and non-compliance with such laws can subject us to criminal or civil liability and harm our business, financial condition and results of operations.

While we operate only in the United States, we remain subject to the U.S. Foreign Corrupt Practices Act, U.S. domestic bribery laws, and other anti-corruption and anti-money laundering laws in the countries in which we conduct activities. Anti-corruption and anti-bribery laws have been enforced aggressively in recent years and are interpreted broadly to generally prohibit companies, their employees and their third-party intermediaries from authorizing, offering, or providing, directly or indirectly, improper payments or benefits to recipients in the public or private sector. If we expand our business and sales outside the United States and to the public sector, we may engage with business partners and third-party intermediaries to market our services and to obtain for us the necessary permits, licenses, and other regulatory approvals. In addition, we or our third-party intermediaries may have direct or indirect interactions with officials and employees of government agencies or state-owned or affiliated entities. We can be held liable for the corrupt or other illegal activities of these third-party intermediaries, our employees, representatives, contractors, partners and agents, even if we do not explicitly authorize such activities.

Detecting, investigating, and resolving actual or alleged violations of anti-corruption laws can require a significant diversion of time, resources, and attention from senior management. In addition, noncompliance with anti-corruption, anti-bribery, or anti-money laundering laws could subject us to whistleblower complaints, investigations, prosecution, enforcement actions, sanctions, settlements, fines, damages, other civil or criminal penalties or injunctions, suspension or debarment from contracting with certain persons, reputational harm, adverse media coverage, and other collateral consequences. If any subpoenas or investigations are launched, or governmental or other sanctions are imposed, or if we do not prevail in any possible civil or criminal proceeding, our business, financial condition and results of operations could be harmed. In addition, responding to any action will likely result in a materially significant diversion of management's attention and resources and significant defense costs and other professional fees, which could adversely affect our business, financial condition and results of operations.

Any potential sales to government entities are subject to a number of challenges and risks.

We may sell our services or solutions to U.S. federal, state, and local government, and agency, clients. Sales to such entities are subject to a number of challenges and risks. Selling to such entities can be highly competitive, expensive, and time-consuming, often requiring significant upfront time and expense without any assurance that these efforts will generate a sale. Government contracting requirements may change and in doing so restrict our ability to sell into the government sector until we have attained the revised certification. Government demand and payment for our offerings is dependent on many factors outside our control, including general economic conditions, public sector budgetary constraints and funding authorizations, and general political priorities, with funding reductions or delays adversely affecting public sector demand for our offerings.

Further, governmental and highly regulated entities may demand contract terms that differ from our standard arrangements. Such entities may have statutory, contractual, or other legal rights to terminate contracts with us or our partners due to a default or for other reasons. Any such termination may adversely affect our reputation, business, financial condition and results of operations.

Any failure to protect our intellectual property rights could impair our ability to protect our proprietary technology and our brand.

Our success depends in part on our ability to protect our brand and proprietary trade secret and confidential information, including unpatented know-how, technology and other proprietary information, maintaining, defending and enforcing our intellectual property rights. We rely on our agreements with our clients, and non-disclosure and confidentiality agreements with employees and third parties, and our trademarks, trade secrets, and copyrights to protect our intellectual property rights. However, any of these parties may breach such agreements and disclose our proprietary information, and we may not be able to obtain adequate remedies for such breaches. There is no assurance that we will be able to obtain, maintain, defend and enforce our intellectual property rights, or that such intellectual property rights will not be challenged, narrowed, held unenforceable or circumvented. Therefore, these legal protections and precautions may not prevent infringement, misappropriation or other violations of our intellectual property. Any litigation and any infringement, misappropriation or other violations of our intellectual property could hinder our ability to market and sell our solutions, and our business, financial condition and results of operations could be adversely affected.

If any of our trade secrets were to be lawfully obtained or independently developed by a competitor or other third party, we would have no right to prevent them from using that technology or information to compete with us and our competitive position would be harmed.

Third parties may allege that our products and services, or the conduct of our business, infringe, misappropriate or otherwise violate such third party's intellectual property rights. Even if such claims are without merit, defending such claims would cause us to incur substantial expenses and could cause us to pay substantial damages or seek a costly license if we are found to be infringing, misappropriating, or otherwise violating a third party's intellectual property rights. If we are unable to enter into a license on acceptable terms or at all, we could be forced to cease some aspect of our business operations or be forced to redesign our products or services so that we no longer infringe the third-party intellectual property rights, which may result in significant cost and delay to us, or which redesign could be technically infeasible. Even if resolved in our favor, litigation or other legal proceedings relating to intellectual property claims may cause us to incur significant expenses and could distract our employees and management personnel from their normal responsibilities.

Moreover, although we try to ensure that our employees do not use the proprietary information or know-how of others in their work for us, we may be subject to claims that we or these employees have used or disclosed intellectual property, including trade secrets or other proprietary information, of any third parties, including such individual's former employer. If we fail in defending any such claims, in addition to paying monetary damages, we may lose valuable intellectual property rights or personnel. Even if we are successful in defending against such claims, litigation could result in substantial costs and be a distraction to management.

Furthermore, we currently own registered trademarks. In addition, any of our trademarks or trade names, whether registered or unregistered, may be challenged, opposed, infringed, cancelled, circumvented or declared generic, or determined to be infringing on other marks, as applicable. We may not be able to protect our rights to these trademarks and trade names, which we will need to build name recognition by potential collaborators or clients in our markets of interest.

Acquisitions, strategic investments, partnerships, or alliances could be difficult to identify, pose integration challenges, divert the attention of management, disrupt our business, dilute stockholder value, and adversely affect our business, financial condition and results of operations.

We may in the future seek to acquire or invest in businesses, joint ventures, products and services, or technologies that we believe could complement or expand our platform, enhance our technical capabilities, or otherwise offer growth opportunities. Any such acquisition or investment may divert the attention of management and cause us to incur various expenses in identifying, investigating and pursuing suitable opportunities, whether or not the transactions are completed, and may result in unforeseen operating difficulties and expenditures. In particular, we may encounter difficulties assimilating or integrating the businesses, technologies, products and services, personnel or operations of the acquired companies, particularly if the key personnel of the acquired company choose not to work for us, they are operationally difficult to integrate, or we have difficulty retaining the clients of any acquired business due to changes in ownership, management or otherwise. These transactions may also disrupt our business, divert our resources, and require significant management attention that would otherwise be available for development of our existing business. Any such transactions that we are able to complete may not result in any synergies or other benefits we had expected to achieve, which could result in impairment charges that could be substantial. In addition, we may not be able to find and identify desirable acquisition targets or business opportunities or be successful in entering into an agreement with any particular strategic partner. These transactions could also result in dilutive issuances of equity securities or the incurrence of debt, which could adversely affect our results of operations. In addition, if the resulting business from such a transaction fails to meet our expectations, or we fail to successfully integrate such businesses into our own, our business, financial condition and results of operations may be adversely affected or we may be exposed to unknown risks or liabilities.

Changes in our effective tax rate or tax liabilities may have an adverse effect on our results of operations.

Our effective tax rate could be impacted due to several factors, including, but not limited to:

- changes in the relative amounts of income before taxes in the various jurisdictions in which we operate that have differing statutory tax rates;
- changes in tax laws, tax treaties, and regulations or the interpretation of them (such as the recent Inflation Reduction Act which, among other changes, introduced a 15% corporate minimum tax on certain United States corporations and a 1% excise tax on certain stock redemptions by United States corporations);
- changes to our assessment about our ability to realize our deferred tax assets that are based on estimates of our future results, the prudence and feasibility of possible tax planning strategies, and the economic and political environments in which we do business;
- the outcome of future tax audits, examinations, or administrative appeals;

- limitations or adverse findings regarding our ability to do business in some jurisdictions; and
- discrete impact tax items, including such items resulting from the amount and timing of equity exercises and our share price.

Any of these developments could have an adverse effect on our results of operations.

Certain U.S. state tax authorities may assert that we have a state nexus and seek to impose state and local taxes which could adversely affect our results of operations.

We currently file state tax returns in certain states. There is a risk that certain state tax authorities, where we do not currently file a state tax return, could assert that we are liable for state and local taxes based upon income or gross receipts allocable to such states. States are becoming increasingly aggressive in asserting a nexus for state tax purposes. We could be subject to state and local taxation, including penalties and interest attributable to prior periods, if a state tax authority in which we do not currently file a state tax return successfully asserts that our activities give rise to a taxable nexus. Such tax assessments, penalties and interest may adversely affect our results of operations.

We may not be able to utilize a significant portion of our net operating loss or research tax credit carryforwards, which could adversely affect our profitability.

Under Section 382 of the Internal Revenue Code of 1986, as amended, our ability to utilize net operating loss carryforwards or other tax attributes in any taxable year may be limited if we experience an "ownership change." A Section 382 "ownership change" generally occurs if one or more stockholders or groups of stockholders who own at least 5% of our stock increase their ownership by more than 50 percentage points over their lowest ownership percentage within a rolling three-year period. Similar rules may apply under state tax laws. Future issuances of our stock could cause an "ownership change." Any future ownership change, which could be outside of our control, could also have a material effect on the use of our net operating loss carryforwards or other tax attributes existing at the time of the ownership change, which could adversely affect our profitability.

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

Accounting principles generally accepted in the United States are subject to interpretation by the Financial Accounting Standards Board, or FASB, the SEC and various bodies formed to promulgate and interpret appropriate accounting principles. We adopted ASC No. 2021-04, *Earnings Per Share (Topic 260), Debt-Modifications and Extinguishments (Subtopic 470-50), Compensation- Stock Compensation (Topic 718), and Derivatives and Hedging-Contracts in Entity's Own Equity (Subtopic 815- 40)* and ASC No. 2019-12, *Income Taxes (Topic 740):Simplifying the Accounting for Income Taxes* as of January 1, 2022 and January 1, 2021, respectively. Neither accounting pronouncement had a material impact on our consolidated financial statements. See Note 2 – Significant Accounting Policies included in art II, Item 18 of this Annual Report on Form 10-K for additional information on recently adopted accounting standards. A change in accounting principles or interpretations could have a significant effect on our reported results of operations and could affect the reporting of transactions already completed before the announcement of a change. The adoption of new or revised accounting principles may require us to make changes to our systems, processes and control, which could have a significant effect on our reported financial results, cause unexpected financial reporting fluctuations, retroactively affect previously reported results or require us to make costly changes to our operational processes and accounting systems upon or following the adoption of these standards.

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

The preparation of consolidated financial statements in conformity with U.S. generally accepted accounting principles, or U.S. GAAP, requires management to make estimates and assumptions that affect the amounts reported in our consolidated financial statements and accompanying notes included elsewhere in this Annual Report on Form 10-K. We base our estimates on historical experience and on various other assumptions that we believe to be reasonable under the circumstances, as provided in Part II, Item 7. "Management's Discussion and Analysis of Financial Condition and Results of Operations-Critical Accounting Policies and Estimates" of this Annual Report on Form 10-K. The results of these estimates form the basis for making judgments about the carrying values of assets, liabilities and equity, and the amount of revenue and expenses that are not readily apparent from other sources. We believe that the assumptions and estimates associated with our accrued receivables related to revenue recognition, accrued claims payable, stock-based compensation expense, and accounting for income taxes have the greatest potential impact on our consolidated financial statements and therefore, we consider these to be our critical accounting policies and estimates. Our results of operations may be adversely

affected if our assumptions change or if actual circumstances differ from those in our assumptions, which could cause our results of operations to fall below the expectations of securities analysts and investors, resulting in a decline in the market price of our common stock.

Risks Related to Ownership of Our Common Stock

Our stock price may be volatile, and the value of our common stock may decline.

As tenured investors look to monetize their positions, we have seen large blocks of shares enter the public market over a short period of time. The market price of our common stock may be highly volatile and may fluctuate or decline substantially as a result of this and a variety of factors, some of which are beyond our control, including, but not limited to:

- high volume of direct sales into the market by large investors;
- actual or anticipated fluctuations in our financial condition or results of operations;
- publications of research or other reports about us or our industry, including those which may contain inaccurate or misleading information, financial estimates about us, changes in recommendations or withdrawal of research coverage by securities analysts;
- changes in the pricing of our solutions and services;
- changes in our projected operating and financial results;
- general economic, industry, and market conditions;
- changes in laws or regulations applicable to our products and solutions;
- announcements by us or our competitors of significant business developments, acquisitions, or new offerings;
- rumors and market speculation involving us or other companies in our industry;
- significant data breaches of our company, providers, vendors or pharmacies;
- our involvement in litigation or threats of litigation against us;
- future sales of our common stock by us or our stockholders;
- changes in senior management or key personnel;
- the trading volume of our common stock;
- war, incidents of terrorism, or responses to these events; and
- changes in the anticipated future size and growth rate of our market.

Broad market and industry fluctuations, as well as general economic, political, regulatory, and market conditions, including those related to the COVID-19 pandemic, may also negatively impact the market price of our common stock. Fluctuations in our quarterly operating results and the price of our common stock may be particularly pronounced in the current economic environment, including due to the uncertainty caused by the COVID-19 pandemic. These and other factors may cause the market price and demand for our common stock to fluctuate substantially, which may limit or prevent investors from readily selling their shares of common stock and may otherwise negatively affect the liquidity of our common stock. 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 expenses and divert our management's attention.

An active trading market for our common stock may not be sustained.

An active public trading market for our common stock 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.

We expect fluctuations in our financial results, making it difficult to project future results, and if we fail to meet the expectations of securities analysts or investors with respect to our results of operations, our stock price and the value of your investment could decline.

Our results of operations may fluctuate in the future due to a variety of factors, many of which are outside of our control. As a result, our past results may not be indicative of our future performance. In addition to the other risks described herein, factors that may affect our results of operations include the following:

- fluctuations in demand for or pricing of our solutions;
- level and mix of utilization of our solutions by members;
- our ability to attract new clients;
- our ability to retain our existing clients;
- client expansion rates;
- changes in clients' budgets and in the timing of their budget cycles and purchasing decisions;
- our ability to control costs, including our operating expenses and healthcare costs;
- the amount and timing of payment for operating expenses, particularly sales and marketing expenses;
- the amount and timing of non-cash expenses, including stock-based compensation expense, goodwill impairments and other non-cash charges;
- the amount and timing of costs associated with recruiting, training and integrating new employees and retaining and motivating existing employees;
- general economic conditions, as well as economic conditions specifically affecting industries in which our clients participate, including those related to the COVID-19 pandemic;
- the impact of new accounting pronouncements;
- changes in the competitive dynamics of our market, including consolidation among competitors or clients; and
- significant security breaches of, technical difficulties with, or interruptions to, the delivery and use of our solutions and services.

Any of these and other factors, or the cumulative effect of some of these factors, may cause our results of operations to vary significantly. For example, the long-term impact of the COVID-19 pandemic is unknown at this time, but could result in adverse changes in our results of operations for an unknown period of time. If our quarterly results of operations fall below the expectations of investors and securities analysts who follow our stock, the price of our common stock could decline substantially, and we could face costly lawsuits, including securities class action suits.

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

We are required, pursuant to Section 404 of the Sarbanes-Oxley Act, to furnish a report by management on, among other things, the effectiveness of our internal control over financial reporting and our independent registered public accounting firm is required to attest to the effectiveness of our internal control over financial reporting. To maintain compliance with Section 404, we perform system and process evaluation and testing of our internal control over financial reporting to allow management to report on the effectiveness of our internal control over financial reporting in our Annual Report on Form 10-K filing for each year, as required by Section 404 of SOX. Our existing management team has and will continue to devote a substantial amount of time to these compliance initiatives, and we may need to hire additional accounting and financial staff with appropriate public company experience to assist us in ongoing compliance with these

requirements. Moreover, these rules and regulations have increased and will continue to increase our legal and financial compliance costs and will make some activities more time consuming and costly.

During the evaluation and testing process of our internal control, if we identify one or more material weaknesses in our internal control over financial reporting, we will be unable to certify that our internal control over financial reporting is effective. For example, in connection with our audit of the fiscal year 2018 consolidated financial statements, we and our independent registered public accounting firm identified one material weakness in our controls related to the lack of review and oversight over financial reporting, which we determined we had remediated as of December 31, 2019. 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 or results of operations. 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.

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

Future sales of a substantial number of shares of our common stock in the public market by us or our stockholders, 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. We are unable to predict the effect that such sales may have on the prevailing market price of our common stock.

In addition, as of December 31, 2022, there were an aggregate of 18,808,026 and 2,416,162 shares of our common stock subject to outstanding options and unvested restricted stock units, respectively. We have registered all of the shares of common stock issuable upon exercise of outstanding options or other equity awards we may grant in the future, for public resale under the Securities Act. Accordingly, these shares will be eligible for sale in the public market to the extent such options are exercised and restricted stock units are vested, in compliance with applicable securities laws.

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

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

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

The market price and trading volume of our common stock will be heavily influenced by the way analysts interpret our financial information and other disclosures. We do not have control over these analysts. If securities analysts or if industry analysts cease coverage of us, our stock price would be negatively affected. If securities or industry analysts do not publish research or reports about our business, downgrade our common stock, or publish negative reports about our business, our stock price would likely decline and the trading volume of our common stock could decrease. We have experienced and may in the future experience analyst coverage reduction due to analysts leaving firms, changing firms or going on temporary leaves of absences. Such reduction in analyst coverage, even if temporary, could lead to volatility in our stock price.

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 capital stock, and we do not intend to pay any cash dividends in the foreseeable future. Any determination to pay dividends in the future will be at the discretion of our Board of Directors. Accordingly, you may need to rely on sales of our common stock after price appreciation, which may never occur, as the only way to realize any future gains on your investment.

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

As a public company, we have incurred and will continue to incur significant legal, accounting, and other expenses that we did not incur prior to our initial public offering. The Sarbanes-Oxley Act, the Dodd-Frank Wall Street Reform and Consumer Protection Act, the listing requirements of the Nasdaq Stock Market, or Nasdaq, and other applicable securities rules and regulations impose various requirements on public companies. Our management and other personnel devote a substantial amount of time to compliance with these requirements. Effective January 1, 2021, we became a "large accelerated filer" under SEC reporting rules and are required to file our annual report and quarterly reports more quickly than we previously had been required to file them, which may require us to dedicate additional resources to the timely filing of such reports. Moreover, these rules and regulations have increased and will continue to increase our legal and financial compliance costs and make some activities more time-consuming and costly. We cannot predict or estimate the amount of additional costs we will incur as a public company or the specific timing of such costs.

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

Provisions in our amended and restated certificate of incorporation and amended and restated bylaws may have the effect of delaying or preventing a change of control or changes in our management. Our amended and restated certificate of incorporation and amended and restated bylaws include provisions that:

- authorize our Board of Directors to issue, without further action by the stockholders, shares of undesignated preferred stock with terms, rights, and preferences determined by our Board of Directors that may be senior 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;
- specify that special meetings of our stockholders can be called only by our Board of Directors, the chairperson of our Board of Directors, or our chief executive officer;
- establish an advance notice procedure for stockholder proposals to be brought before an annual meeting, including proposed nominations of persons for election to our Board of Directors;
- establish that our Board of Directors is divided into three classes, with each class serving three-year staggered terms;
- prohibit cumulative voting in the election of directors;
- provide that our directors may be removed for cause only upon the vote of at least 66 and 2/3% of our outstanding shares of voting stock;
- 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; and
- require the approval of our Board of Directors or the holders of at least 66 and 2/3% of our outstanding shares of voting stock to amend our amended and restated bylaws and certain provisions of our amended and restated certificate of incorporation.

These provisions may frustrate or prevent any attempts by our stockholders to replace or remove our current management by making it more difficult for stockholders to replace 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, or the DGCL, which generally, subject to certain exceptions, 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 designates the state courts in the State of Delaware or, if no state court located within the State of Delaware has jurisdiction, the federal court for the District of Delaware, as the sole and exclusive forum for certain types of actions and proceedings that may be initiated by our stockholders, which could discourage lawsuits against us or our directors, officers, or employees.

Our amended and restated certificate of incorporation provides that, to the fullest extent permitted by law, unless we consent in writing to the selection of an alternative forum, the Court of Chancery of the State of Delaware (or, if the Court of Chancery does not have jurisdiction, any state court located within the State of Delaware, or if all such state courts lack jurisdiction, the federal district court for the District of Delaware) will be the sole and exclusive forum for the following types of actions or proceedings under Delaware statutory or common law: (1) any derivative action or proceeding brought on our behalf; (2) any action asserting a breach of a fiduciary duty owed by any current or former director, officer or other employee, to us or our stockholders; (3) any action or proceeding asserting a claim against us or any of our current or former directors, officers or other employees, arising out of or pursuant to any provisions of the DGCL, our amended and restated certificate of incorporation, or our amended and restated bylaws; (4) or any action or proceeding to interpret, apply, enforce or determine the validity of our amended and restated certificate of incorporation or our amended and restated bylaws; (5) any action or proceeding as to which the DGCL confers jurisdiction on the Court of Chancery of the State of Delaware; or (6) any action asserting a claim against us, or any of our directors, officers or other employees, that is governed by the internal affairs doctrine, in all cases to the fullest extent permitted by law and subject to the court's having personal jurisdiction over the indispensable parties named as defendants. For the avoidance of doubt, these choice of forum provisions will not apply to suits brought to enforce a duty or liability created by the Securities Act, the Exchange Act or any other claim for which the federal courts have exclusive jurisdiction. In particular, Section 22 of the Securities Act creates concurrent jurisdiction for federal and state courts over all such Securities Act actions.

These choice of forum provisions may limit a stockholder's ability to bring a claim in a judicial forum that it finds favorable for disputes with us or our directors, officers, or other employees and may discourage these types of lawsuits. A stockholder may, nevertheless, seek to bring a claim in a venue other than that designated in our amended and restated certificate of incorporation. In such instance we would expect to vigorously assert the validity and enforceability of the exclusive forum provisions, which may require significant additional costs. Furthermore, if a court were to find the choice of forum provisions contained in our amended and restated certificate of incorporation to be inapplicable or unenforceable in an action, we may incur additional costs associated with resolving such action in other jurisdictions.

Unstable market and economic conditions may impact our ability to obtain any necessary financing and adversely impact our business, financial condition and share price.

The global economy, including financial and credit markets, has recently experienced volatility and uncertainty, including rising interest and inflation rates, declines in economic growth, and declines in global equity markets. If the equity and credit markets continue to deteriorate, or the United States enters a recession, it may make any necessary debt or equity financing more difficult to obtain in a timely manner or on favorable terms, more costly or more dilutive. As a result, our business, results of operations, and price of our common stock may be adversely affected.

Increased scrutiny and changing expectations from the SEC regarding environmental, social and governance practices, and reporting could cause us to incur additional costs, devote additional resources and expose us to additional risks, which could adversely impact our reputation, or otherwise adversely impact our business.

Companies across all industries are facing increasing scrutiny related to their environmental, social and governance, or ESG practices and reporting. The SEC and investors have focused increasingly on ESG practices and placed increasing importance on the implications and social cost of ESG reporting. With this increased focus and demand, public reporting regarding ESG practices is becoming more broadly expected. Expectations regarding voluntary ESG initiatives and disclosures may result in increased costs, changes in demand for certain offerings, enhanced compliance or disclosure obligations, or other adverse impacts to our business, financial condition or results of operations. We may provide information in this Annual Report on Form 10-K or our other filings with the SEC that are informed by various ESG standards and frameworks (including standards for the measurement of underlying data) and the interest of various stakeholders. Much of this information is subject to assumptions, estimates or third-party information that is still evolving and subject to change, and our disclosures based on any standards may change due to revisions in framework requirements, availability of information, changes in our business or applicable government policies, or other factors, some of which may be beyond our control. If our ESG practices and reporting do not meet or are viewed as not meeting SEC, investor or other industry or stakeholder expectations, which continue to evolve, our brand, reputation and investor retention may be negatively impacted. It is possible that stakeholders may not be satisfied with our ESG practices or the speed of their adoption. We could also incur additional costs and require additional resources to monitor, report, implement, enhance and comply with various ESG practices and standards. Also, our failure, or perceived failure, to meet the standards included in

any ESG disclosure could negatively impact our reputation, employee recruiting and retention, and the willingness of our customers and suppliers to do business with us.

ITEM 1B. UNRESOLVED STAFF COMMENTS

None.

ITEM 2. PROPERTIES

Our corporate headquarters is located at 1359 Broadway, New York, New York 10018, under a sublease that commenced in September 2019 and expires in May 2029. In February 2022, we entered into a lease, which is expected to expire in the first quarter of 2035, for additional space in the same location and also for continued occupancy of our current space after the current sublease expires. We use our headquarters for administration, sales and marketing and client support. For additional information, please refer to Part II, Item 8 "Financial Statements and Supplementary Data — Note 7 — Leases" in this Annual Report on Form 10-K.

ITEM 3. LEGAL PROCEEDINGS

See Part II, Item 8 “Financial Statements and Supplementary Data — Note 14 — Commitments and Contingencies — Arbitration/Litigation.”

ITEM 4. MINE SAFETY DISCLOSURES.

Not applicable.

INFORMATION ABOUT OUR EXECUTIVE OFFICERS AND DIRECTORS

The following table sets forth information regarding our executive officers and directors as of the date of this Annual Report on Form 10-K.

Name	Age	Position
Executive Officers:		
David Schlanger	63	Executive Chairman
Peter Anevski	55	Chief Executive Officer
Allison Swartz	33	Executive Vice President, General Counsel and Secretary
Mark Livingston	57	Chief Financial Officer
Michael Sturmer	46	President
Non- Employee Directors:		
Beth Seidenberg, M.D.	65	Lead Independent Director
Lloyd Dean	72	Director
Fred E. Cohen, D.Phil.	66	Director
Kevin Gordon	60	Director
Roger Holstein	70	Director
Jeff Park	51	Director
Norman Payson, M.D.	74	Director
Cheryl Scott	73	Director

Executive Officers

David Schlanger has served as our Executive Chairman since January 2022 and on our board of directors since March 2017. Mr. Schlanger was previously our Chief Executive Officer from January 2017 to December 2021. From August 2013 until September 2016, he served as the Chief Executive Officer of WebMD, an online provider of information relating to health and well-being. Prior to that, he served as the Interim Chief Executive Officer and in various other senior executive positions at WebMD and predecessor companies for more than 15 years, including as Senior Vice President, Strategic and Corporate Development and Senior Vice President, Corporate Development. Mr. Schlanger received his B.S. from Georgetown University and his J.D. from the University of Michigan Law School. We believe that Mr. Schlanger is

qualified to serve on our board of directors because of his extensive experience at healthcare companies and in executive management.

Peter Anevski has served as our Chief Executive Officer and on our board of directors since January 2022. He previously served as our Chief Operating Officer from January 2017 to December 2021 and our President from June 2019 to December 2021. From January 2017 to September 2020, he also served as our Chief Financial Officer. Mr. Anevski has extensive experience managing financial functions for public companies. From May 2013 until September 2016, he served as the Executive Vice President and Chief Financial Officer of WebMD. Prior to that, Mr. Anevski served in senior finance and operations roles at WebMD and predecessor companies for 14 years, including as Senior Vice President, Finance. Mr. Anevski received his B.A. in Accounting from Montclair State University. We believe that Mr. Anevski is qualified to serve on our board of directors because of his significant experience at healthcare companies and as a member of our executive management team.

Allison Swartz has served as our Executive Vice President, General Counsel since November 2022. Allison was previously the Deputy General Counsel at K Health Inc., a growth-stage digital healthcare company from January 2022 to November 2022 and a Lecturer in Law at the University of Glasgow from September 2021 to June 2022. Prior to that she held multiple senior positions at Centene Corporation, the largest managed care organization in the country, from 2016 until October 2021, including Regional General Counsel and Privacy Officer from July 2020 to October 2021, and General Counsel of their Texas subsidiary Superior HealthPlan Inc. from September 2019 to July 2020. Ms. Swartz holds a B.S. in History from the University of Maryland and received her J.D. from the University of Maryland.

Mark Livingston has served as our Chief Financial Officer since September 2020. Previously, Mr. Livingston had served as our Executive Vice President of Finance from May 2019 to September 2020. Prior to that, he served as Chief Financial Officer of the International Business at Scripps Network Interactive, a media company, where he worked from August 2010 to April 2018, and as Chief Financial Officer of Emerson, Reid & Company, an employee benefits wholesaler, from June 2007 to August 2010. Previously, Mr. Livingston has held senior financial leadership roles at WebMD and Hess Corporation. Mr. Livingston received his B.S. from Tulane University and is a licensed Certified Public Accountant.

Michael Sturmer has served as our President since January 2022 and was previously Executive Vice President, Chief Growth and Strategy Officer from February 2021 to December 2021. Mr. Sturmer has over two decades of operations, sales and strategic experience in the healthcare industry. From September 2016 to February 2021, he was Senior Vice President of Health Services at Livongo. Prior to that, Mr. Sturmer held several senior positions at Cigna, including Chief Operating Officer for the New York/New Jersey Health Plan. Mr. Sturmer received his B.A. degree in Health Administration from Quinnipiac University.

Non-Employee Directors

Beth Seidenberg, M.D. has served on our board of directors since May 2010 and as Lead Independent Director since January 2022. Previously, Dr. Seidenberg served as Chair of our board of directors from June 2015 to December 2021. Dr. Seidenberg has been a partner at Kleiner Perkins, a venture capital firm, since May 2005, where she primarily focuses on life sciences investing. She has also served as the Managing Director of Westlake Village BioPartners, another venture capital firm, since August 2018. Prior to joining Kleiner Perkins, Dr. Seidenberg was the Senior Vice President, Head of Global Development and Chief Medical Officer at Amgen, Inc., a biotechnology company. In addition, Dr. Seidenberg was a senior executive in research and development at Bristol Myers Squibb Company, a biopharmaceutical company, from March 2000 to December 2001 and Merck & Co., Inc., a healthcare company, from June 1989 to February 2000. Dr. Seidenberg has served on the board of directors of Atara Biotherapeutics since August 2012 and Vera Therapeutics, Inc. since June 2016. Dr. Seidenberg previously served on the boards of directors of Epizyme, Inc., from February 2008 to September 2019, Tesaro, Inc., from June 2011 to February 2019, and ARMO BioSciences, Inc. from December 2012 until June 2018. Dr. Seidenberg received a B.S. from Barnard College and an M.D. from the University of Miami School of Medicine and completed her post-graduate training at the Johns Hopkins University, George Washington University and the National Institutes of Health. We believe that Dr. Seidenberg is qualified to serve on our board of directors because of her extensive experience in the life sciences industry as a senior executive and venture capitalist, as well as her training as a physician.

Lloyd Dean has served on our Board of Directors since August 2022. Mr. Dean has served as the Chief Executive Emeritus and the Founding Executive of CommonSpirit Health since August 2022, where he previously served as the Chief Executive Officer from February 2019 to July 2022. Prior to that, Mr. Dean worked at Dignity Health (f/k/a Catholic

Healthcare West) from 2000 to 2019, where he most recently served as Chief Executive Officer and President. Mr. Dean worked at Advocate Health Care as Chief Operating Officer from 1997 to 2000, and as Executive Vice President from 1995 to 1997. Mr. Dean also held executive positions at EHS Healthcare and Consumer Health Services. Since August 2015, Mr. Dean has also served on the board of directors of McDonald's Corporation. Additionally, Mr. Dean currently serves on the board of directors of Cal Poly State University Foundation, Carnegie Hall, CommonSpirit Health Foundation, Golden Arrow Merger Corp and Guidehouse. Mr. Dean holds a Bachelor of Science in Sociology and a Master's in Education from Western Michigan University, an honorary Doctorate of Humane Letters from the University of San Francisco and an honorary Doctor of Science degree from Morehouse School of Medicine, California State University and California Polytechnic State University. CommonSpirit Health has also established the Lloyd H. Dean Institute for Humankindness and Health Justice. We believe that Mr. Dean is qualified to serve on our board of directors because of his extensive knowledge and experience in healthcare.

Fred E. Cohen, M.D. D.Phil. has served on our board of directors since March 2015. Dr. Cohen is currently a Senior Advisor to TPG Capital, where he previously served for over 15 years as a Partner, and founder of TPG Biotechnology, a life science focused venture capital fund. Beginning in July 2021, Dr. Cohen has served as a co-founder and Chairman of Monograph Capital Partners, a biotechnology venture capital fund. Beginning in November 2017, Dr. Cohen has served as a co-founder and senior managing director of Vida Ventures, LLC, a biotechnology venture capital fund. In addition, for three decades throughout his career, Dr. Cohen has been affiliated with University of California, San Francisco where he held various clinical responsibilities, including as a research scientist, an internist for hospitalized patients, a consulting endocrinologist, and the Chief of the Division of Endocrinology and Metabolism. Dr. Cohen currently serves on the boards of directors of the following public companies: Urogen Pharma Ltd. (since May 2017), CareDx, Inc. (since January 2003), and lntellia Therapeutics, Inc. (since January 2019). Dr. Cohen also serves on the board of directors of several privately held companies and previously served on the board of directors of BioCryst Pharmaceuticals, Inc. from July 2013 until January 2019, Quintiles Transnational Holdings, Inc. from May 2007 to November 2015, Roka Bioscience, Inc. from September 2009 to October 2017, Five Prime Therapeutics, Inc. from May 2002 until May 2018, Tandem Diabetes Care, Inc. from June 2013 until June 2019, Genomic Health Inc. from April 2002 until November 2019 and Veracyte, Inc. from 2007 until June 2021. Dr. Cohen received his B.S. in Molecular Biophysics and Biochemistry from Yale University, his D.Phil. in Molecular Biophysics from Oxford on a Rhodes Scholarship, and his M.D. from Stanford. He is a member of the National Academy of Medicine and the American Academy of Arts and Sciences. Dr. Cohen is a California licensed physician. We believe that Dr. Cohen is qualified to serve on our board of directors because of his financial and medical knowledge and experience.

Kevin Gordon has served as a member of our board of directors since October 2019. Mr. Gordon has also served as an advisor to 3i Group’s North American healthcare portfolio companies since January 2022, including currently as a director of privately held Q Holdco Limited, Sanisure, and Cirtec Medical Corp. Mr. Gordon served on the board of directors of Veracyte, Inc., a genomic diagnostics company, from December 2016 until June 2022. From January 2018 until March 2019, he was the President and Chief Financial Officer of Liquidia Technologies Inc., a clinical biopharmaceutical company. Mr. Gordon served as Executive Vice President and Chief Operating Officer of Quintiles Transnational Holdings Inc., or Quintiles, a research, clinical trial and pharmaceutical consulting company, from October 2015 until its merger with IMS Health Holdings, Inc. (forming IQVIA Holdings, Inc.) in October 2016. Prior to that, he was the Executive Vice President and Chief Financial Officer of Quintiles from July 2010 until December 2015. Mr. Gordon served as Executive Vice President and Chief Financial Officer of Teleflex Incorporated, a medical device company, from March 2007 until January 2010 and he held various senior corporate development positions there from 1997 to 2007. Prior thereto he held various senior positions, including Chief Financial Officer, at Package Machinery Company and senior manager and other positions at KPMG LLP. Mr. Gordon holds a B.S. in Accounting from the University of Connecticut. We believe that Mr. Gordon is qualified to serve on our board of directors because of his extensive accounting experience and leadership experience in healthcare companies.

Roger Holstein has served as a member of our board of directors since November 2020. He has been a Managing Director at Vestar Capital Partners, a private equity firm, since 2006. He currently serves on the boards of Quest Analytics, and Friday Health Plans. From 1997 to 2005, Mr. Holstein served as Chief Executive Officer, President or Director of WebMD Health Corp., or WebMD, and helped establish it as the leading source of healthcare information for consumers and professionals. From 1991 to 1996, Mr. Holstein was a member of the Office of the President at Medco, where he helped create the business of prescription benefit management. Prior to that, Mr. Holstein held executive positions at MCI, Warner Amex Cable and Grey Advertising. He began his career in marketing with the Spirits of St. Louis basketball team in the American Basketball Association. Mr. Holstein holds a B.A. with distinction, from Swarthmore College. We believe that Mr. Holstein is qualified to serve on our board of directors because of his extensive leadership and healthcare experience.

Jeff Park has served as a member of our board of directors since October 2019. Mr. Park served from April 2019 until April 2022 as the Chairman and Chief Executive Officer of WellDyneRx, an independent pharmacy benefits manager. Mr. Park has served as a member of the board of directors for WellDyne Rx since April 2019. He has served as a member of the board of directors for P3 Health Partners since December 2021. From January 2018 until May 2018, he was the Interim Chief Executive Officer of Diplomat Pharmacy, Inc., or Diplomat, a provider of specialty pharmacy services. Additionally, from June 2017 to February 2019, he served on the board of directors of Diplomat. Prior to that, from July 2015 until July 2016, he was the Chief Operating Officer of OptumRX, the entity resulting from the merger of Catamaran Corporation, or Catamaran, and OptumRX, UnitedHealthcare Group's free-standing pharmacy care services business. Before the merger, from March 2014 until July 2015, he was Catamaran's Executive Vice President, Operations, and previously served as Catamaran's Chief Financial Officer, beginning in 2006. Mr. Park served as a member of the board of directors for Ray Graham Assoc. Illinois Disability not for profit from January 2010 to June 2016. Mr. Park holds a B.S. in Accounting from Brock University. We believe that Mr. Park is qualified to serve on our board of directors because of his extensive leadership experience in the pharmaceutical industry.

Norman Payson, M.D. has served on our board of directors since December 2016. Dr. Payson was co-founder of Healthsource and its Chief Executive Officer from 1985 to 1997, Chief Executive Officer of Oxford Health Plans from 1998 to 2002, Chairman of Concentra from 2005 to 2008 and Chief Executive Officer of Apria Healthcare Group Inc. from 2008 to 2012. Since 1997, Dr. Payson has served as President and a director of NCP, Inc., his family office, through which he engages in consulting and personal investment activities. Additionally, Dr. Payson served as a strategic advisor for Evolent Health, Inc., or Evolent, from March 2014 through December 2020 and previously served on its board of directors from December 2013 to June 2019. Dr. Payson is currently serving on the board of directors of various private and not-for-profit companies including Access Clinical Partners, Smile Brands, HPM National Advisory Board at the Mailman School of Public Health at Columbia, USC Schaeffer Center Advisory Board and Executive Services Corporation of Southern California. Dr. Payson is also on the board of Kiva Foundation, a private charitable foundation organized by Dr. Payson and his wife in June 1998. Until June 2020, Dr. Payson served on the board for City of Hope, where he now serves as director emeritus. He continues to serve on the boards of AccessHope and Beckman Research Institute which are subsidiaries of City of Hope. Until June 2019, Dr. Payson served as a director at Geisel School of Medicine at Dartmouth, where he now serves as director emeritus. From May 2017 to August 2019 Dr. Payson was a board member of The Center for Orthopaedic and Research Excellence, Inc. Dr. Payson holds a B.S. in Earth and Planetary Sciences from the Massachusetts Institute of Technology and received his M.D. from Dartmouth Medical School. Dr. Payson is a California licensed physician. We believe that Dr. Payson is qualified to serve on our board of directors because of his 30-year career as chief executive officer or chairman of multiple healthcare organizations, including publicly traded companies.

Cheryl Scott has served as a member of our board of directors since October 2019. Since July 2016, Ms. Scott has served as the Main Principal of the McClintock Scott Group. From June 2006 to July 2016, Ms. Scott served as Senior Advisor to the Bill & Melinda Gates Foundation. Previously, she served as President and Chief Executive Officer of the Seattle-based Group Health Cooperative for eight years. Ms. Scott has served as a member of the board of directors of Evolent Health, Inc. since November 2015. She also currently serves on a variety of private company and not-for-profit boards. She was a member of the board of directors of Recreational Equipment, Incorporated (REI) from 2005 to 2017, and served as the board chairperson from 2015 to 2017. Ms. Scott received her B.A. in Journalism and M.H.A. from the University of Washington and is currently a Clinical Professor of Health Services at the University of Washington. We believe that Ms. Scott is qualified to serve on our board of directors because of her extensive career in healthcare, leadership and corporate governance, including her tenure as the Chief Executive Officer of Group Health Cooperative.

PART II

ITEM 5. MARKET FOR REGISTRANT'S COMMON EQUITY, RELATED STOCKHOLDER MATTERS AND ISSUER PURCHASES OF EQUITY SECURITIES.

Market Information

Our common stock is listed on the Nasdaq Global Select Market under the symbol "PGNY".

Holders of Record

As of January 31, 2023, there were approximately 56 stockholders of record of our common stock. Because many of our shares of common stock are held in "street name" by brokers and other institutions on behalf of stockholders, we are unable to estimate the total number of stockholders represented by these record holders.

Dividend Policy

We have never declared or paid cash dividends on our capital stock. We intend to retain any future earnings and do not expect to pay cash dividends in the foreseeable future.

Purchases of Equity Securities by the Issuer and Affiliated Purchasers

Our restricted stock units are subject to vesting and the underlying shares of common stock are issued when the restricted stock units vest.

In the fourth quarter of 2022, we withheld shares through net settlements (where the award holder receives the net of the shares vested, after surrendering a portion of the shares back to the Company for tax withholding) for certain restricted stock units that vested.

The following table provides a summary of shares surrendered back to the Company for tax withholding on restricted stock units that vested under our equity incentive plans in the three months ended December 31, 2022:

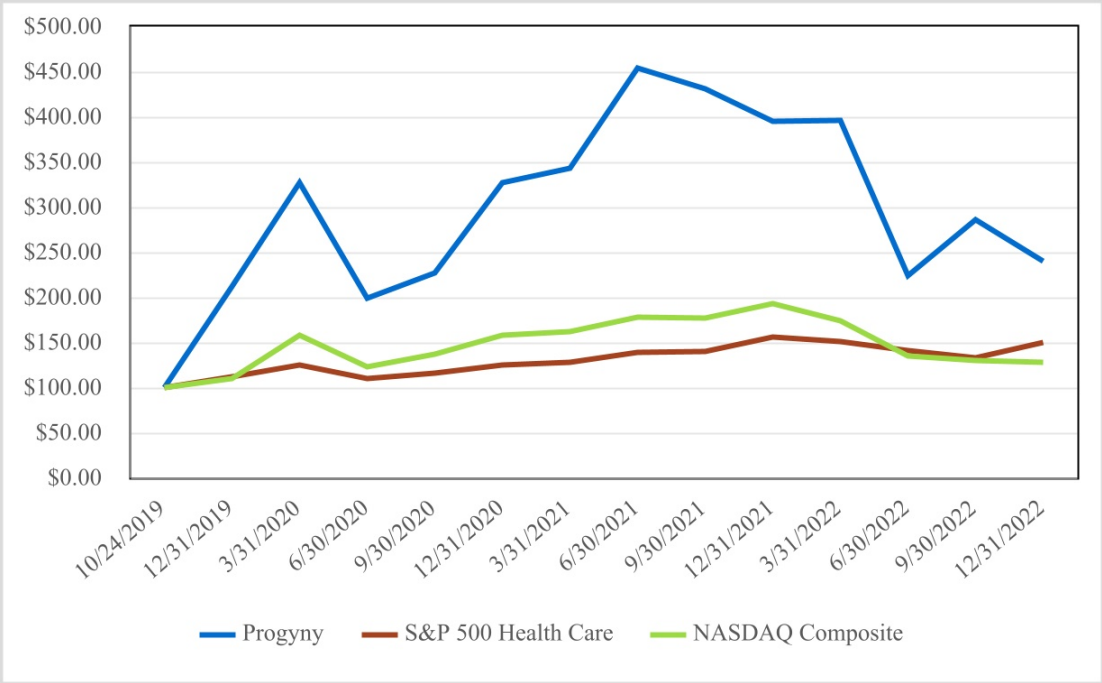
Period	Total Number of Shares Repurchased [1]	Average Price Paid per Share	Total Number of Shares Purchased as Part of Publicly Announced Plans or Programs	Maximum Dollar Amount of Shares That May Yet Be Purchased Under the Program
October 1, 2022 through October 31, 2022	3,825	$ 38.46	—	$ —
November 1, 2022 through November 30, 2022	79,821	39.62	—	—
December 1, 2022 through December 31, 2022	12,323	33.17	—	—
Total shares repurchased	95,969	38.75	—	$ —

[1] Represents shares withheld on net settlements of restricted stock units that vested under our equity incentive plans.

Stock Performance Graph

This performance graph shall not be deemed "soliciting material" or to be "filed" with the SEC for purposes of Section 18 of the Exchange Act, or otherwise subject to the liabilities under that Section, and shall not be deemed to be incorporated by reference into any filing of Progyny, Inc. under the Securities Act or the Exchange Act.

The graph set forth below compares cumulative total return on our common stock with the cumulative total return of the (i) S&P Health Care (Sector) and (ii) the Nasdaq Composite Index resulting from an initial investment of $100 in each and, assuming the reinvestment of any dividends, based on closing prices. Measurement points are from October 24, 2019 (the date our common stock began trading on Nasdaq) through December 31, 2022.



	Cumulative Total Returns since Initial Public Offering				
Company/Index	**10/24/2019**	**12/31/2019**	**12/31/2020**	**12/31/2021**	**12/31/2022**
Progyny, Inc.	$100.00	$211.15	$ 326.08	$ 394.54	$ 239.62
S&P 500 Health Care	$100.00	$111.78	$ 124.56	$ 155.27	$ 149.16
NASDAQ Composite	$100.00	$109.61	$ 157.45	$ 192.30	$ 127.86

Use of Proceeds

On October 29, 2019, in connection with our IPO, we issued and sold 6,700,000 shares of our common stock and certain of our selling stockholders offered and sold 4,800,000 shares of our common stock at a price to the public of $13.00 per share resulting in net proceeds to us of $77.6 million, after deducting the underwriting discount of $5.9 million and offering expenses of $3.6 million. All of the shares issued and sold in our IPO were registered under the Securities Act pursuant to a registration statement on Form S-1 (File No. 333-233965), which was declared effective by the SEC on October 24, 2019. The net proceeds of $77.6 million from our IPO have been invested in investment grade, interest-bearing instruments. There has been no material change in the expected use of the net proceeds from our IPO as described in our final prospectus, filed with the SEC on October 25, 2019 pursuant to Rule 424(b) relating to our Registration Statement.

ITEM 6. [RESERVED]

ITEM 7. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

The following discussion and analysis of our financial condition and results of operations should be read in conjunction with our consolidated financial statements and the related notes and other financial information included elsewhere in this Annual Report on Form 10-K. In addition to historical consolidated financial information, the following discussion contains forward-looking statements that reflect our plans, estimates, and beliefs. Our actual results could differ materially from those expressed or implied by such forward-looking statements. Important factors that could cause or contribute to these differences include, but are not limited to, those identified below and those discussed in Part I, Item 1A. "Risk Factors" of this Annual Report on Form 10-K. A discussion of the fiscal year ended December 31, 2021 compared to the year ended December 31, 2020 has been reported previously in our Annual Report on Form 10-K for the year ended December 31, 2021 filed with the SEC on March 1, 2022 (File No. 001-39100) under the heading "Management's Discussion and Analysis of Financial Condition and Results of Operations – Comparison of Years Ended December 31, 2021 and 2020."

Overview

We envision a world where anyone who wants to have a child can do so. Our mission is to make dreams of parenthood come true through healthy, timely and supported fertility journeys. Through our differentiated approach to benefits plan design, patient education and support and active network management, our clients' employees are able to pursue the most effective treatment from the best physicians and achieve optimal outcomes.

Progyny is a leading benefits management company specializing in fertility and family building benefits solutions in the United States. Our clients include many of the nation's most prominent employers across a broad array of industries. We launched our fertility benefits solution in 2016 with our first five employer clients, and we have grown our current base of clients to over 370 with at least 1,000 covered lives. We currently have contracts to provide coverage to approximately 5.4 million employees and their partners (known in our industry as covered lives), whom we refer to as our members. We have achieved this growth by demonstrating that our purpose-built, data-driven and disruptive platform consistently delivers superior clinical outcomes in a cost-efficient manner while driving exceptional client and member satisfaction. We have retained substantially all of our clients since inception, and our member satisfaction over that same time period is evidenced by our most recent industry-leading Net Promoter Score, or NPS, of +82 for our fertility benefits solution and +79 for our integrated pharmacy benefits solution, Progyny Rx as of December 31, 2022. Our members experience healthier pregnancies and superior rates of pregnancy and live births, as well as reduced rates of miscarriages and multiple births, saving valuable time and money and limiting personal and professional disruption.

Fertility Benefits Solution. Our fertility benefits solution includes providing members with access to effective and cost-efficient fertility treatments through our Smart Cycle plan design. Smart Cycles are proprietary treatment bundles designed by us to include those medical services available to our members through our selective network of high-quality fertility specialists. Medical services under our Smart Cycles include everything needed for a comprehensive fertility treatment cycle, including all necessary diagnostic testing and access to the latest technology (such as, in the case of in vitro fertilization, or IVF, preimplantation genetic testing). We currently offer 19 different Smart Cycle treatment bundles, which may be used in various combinations depending on the member's need. Each Smart Cycle treatment bundle has a separate unit value (i.e., some have fractional values and some have whole values). Our clients contract to purchase a cumulative Smart Cycle unit value per eligible member. These can range from one to an unlimited unit value. Members, in consultation with their Patient Care Advocates, or PCAs, can choose their preferred provider clinics within our network and utilize the specific Smart Cycle treatment bundles necessary for the treatment pathway they determine throughout their fertility journey.

In addition, we provide care management services as part of our fertility benefits solution, which include active management of our selective network of high-quality fertility specialists, real-time member eligibility and treatment authorization, member-facing digital solutions, detailed quarterly reporting for our clients supported by our dedicated account management teams and end-to-end comprehensive concierge member support provided by our in-house staff of PCAs. Clients can also add adoption and surrogacy reimbursement programs as part of this solution.

Pharmacy Benefits Solution. We went live with our integrated pharmacy benefits solution in 2018. Progyny Rx can only be purchased by clients that purchase our fertility benefits solution. Progyny Rx provides our members with access to the medications needed during their fertility treatment. As part of this solution, we provide care management services, which include our formulary plan design, simplified authorization, assistance with prescription fulfillment and

timely delivery of the medications by our network of specialty pharmacies, as well as medication administration training, pharmacy support services and continuing PCA support.

Our Clients. We currently serve over 370 employers with at least 1,000 covered lives in the United States across more than 40 industries. Our current clients, who are industry leaders across both high-growth and mature industries and who range in size from approximately 1,000 to 600,000 employees, represent approximately 5.4 million covered lives under contract.

Revenue Model

Our clients primarily contract with us to provide our fertility benefits solution and, where added on by our clients, our Progyny Rx solution. Our revenue has both a utilization-based component and a population-based component, as follows:

- ***Utilization Component.*** Clients pay us for the fertility benefits and Progyny Rx solutions utilized by their employees. With respect to the fertility benefits solution, we bill clients for Smart Cycles in accordance with our bundled case rates, which vary by the type of fertility service rendered and clinic location. Case rates include all third-party fertility specialists, anesthesiology and laboratory services, as well as all of our care management services. With respect to Progyny Rx, we bill the client for the fertility medication dispensed to their employees in connection with the authorized fertility treatments. Medication fees also include our formulary management, drug utilization review and cost containment services and other care management services.

- ***Population-Based Component.*** Clients who purchase our fertility benefits solution also typically pay us a per employee per month fee, or PEPM fee, which is population-based. This allows us to provide access to our PCAs for fertility and family building education and guidance and other digital tools to all of our members, regardless of whether they ultimately pursue fertility treatment. PEPM fees represented 1% of our total revenue for the years ended December 31, 2022 and 2021, respectively.

Our revenue in a given year is determined by the level and mix of the utilization of our fertility benefits and Progyny Rx solutions by our members as well as the number of members enrolled in our clients' benefits plans. Each year, we contract with new clients for our fertility benefits solution and, where added by the client, our Progyny Rx solution. Given that the majority of our clients contract with us for a January 1st benefits plan start date, our sales cycle follows the conventional healthcare benefits cycle, which largely concludes by the end of October of the prior year to allow for benefits education and annual open enrollment to occur in November. For some clients that are considering a start date later in the year, the sales cycle can extend through the next year.

Similarly, for existing clients, any changes in plan designs are typically elected by the end of October so that clients can inform their employees of the benefits during the open enrollment period ahead of a January 1st plan year start.

Key Operational and Business Metrics

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

Member and Client Base. Our addressable market is primarily large self-insured employers. There are approximately 8,000 employers in the United States (excluding but not limited to quasi-governmental entities, such as universities, school systems, and labor unions) who have a minimum of 1,000 employees, representing approximately 75 million potential covered lives in total. Our current member base of approximately 5.4 million covered lives under contract represents a mid-single digit percent of our initial market opportunity. If we were to include quasi-governmental entities in our potential addressable market, we believe our market penetration is even lower. We intend to continue to drive new client acquisition by investing significantly in sales and marketing to engage, educate and drive awareness of the unmet need around fertility solutions among benefits executives. We also increase brand awareness and adoption with employers by leveraging our strong relationships with benefits consultants. In particular, we are focused on expanding the number of clients with more than 2,500 covered lives. As of December 31, 2022 and 2021, we served 288 and 191 clients, respectively, representing 4,585,000 and 2,935,000 members, respectively.

Importantly, as we have continued to grow, we have meaningfully diversified our client base across more than 40 different industries currently from just two industries when we launched our fertility benefits solution in 2016. We are

expanding our client base within each industry and have an industry-specific strategy that enables us to most effectively target our addressable market. Because our clients within an industry compete with each other for employees, we believe our solutions are increasingly viewed as an important way for them to differentiate from, or remain competitive with, one another. Additionally, we believe that our expanding presence has resulted in a heightened awareness of the need to offer fertility benefits and has informed the market of the value we provide to our clients and our members, which we believe also helps facilitate growth. In addition, we are continuously utilizing our established client relationships to evaluate other potential fertility solutions that could benefit our members and simultaneously drive growth. Our ability to attract new clients will depend on a number of factors, including the effectiveness and pricing of our solutions, offerings of our competitors, the effectiveness of our marketing efforts to drive awareness and the demand for fertility benefits solutions overall. We define a client as an organization for which we have an active contract in the period indicated. We count each organization we contract with as a single client including divisions, segments or subsidiaries of larger organizations to the extent we contract separately with them.

	As of December 31,			
	2022		2021	
Client Tier (Members)	Clients	Members	Clients	Members
Up to 2,500	76	145,000	44	79,000
2,501 - 10,000	130	678,000	93	473,000
10,001 - 50,000	64	1,275,000	45	957,000
Greater than 50,000	18	2,487,000	9	1,426,000
Total	**288**	**4,585,000**	**191**	**2,935,000**

Benefits Utilization. A key driver of our revenue is the number of members we serve and the rate at which they utilize their fertility benefits. As our client base has grown, our membership has grown from approximately 110,000 members in 2016 when we launched our fertility benefits solution to 4.6 million members as of December 31, 2022.

The following table highlights the number of ART cycles performed for Progyny members and the member utilization rates for each of the periods presented.

	Three Months Ended December 31,		Year Ended December 31,	
	2022	2021	2022	2021
Assisted Reproductive Treatment (ART) Cycles[1]	12,196	7,623	42,598	28,413
Utilization - All Members[2]	0.51%	0.52%	1.23%	1.30%
Utilization - Female Only[2]	0.46%	0.46%	1.03%	1.07%
Average Members	4,559,000	2,899,000	4,349,000	2,812,000

(1) Represents the number of ART cycles performed, including IVF with a fresh embryo transfer, IVF freeze all cycles/embryo banking, frozen embryo transfers and egg freezing.

(2) Represents the member utilization rate for all services, including but not limited to, ART cycles, initial consultations, IUIs and genetic testing. The utilization rate for all members includes all unique members (female and male) who utilize the benefit during that period while the utilization rate for female only includes only unique females who utilize the benefit during that period. For the purposes of calculating utilization rates in any given period, the results reflect the number of unique members utilizing the benefit for that period. Individual periods cannot be combined as member treatments may span multiple periods.

Impact of COVID-19 on our Business

The COVID-19 pandemic has significantly impacted various markets around the world, including the United States. Restrictions related to COVID-19, including variants, and our responses to them have significantly impacted and may continue to impact how our members use our services, access our providers, and how our employees work and provide services to our clients and members, resulting in an impact on our revenue. We believe we have sufficient liquidity to satisfy our cash needs, however, we continue to monitor liquidity, as necessary, and ensure that our business can continue

to operate during these uncertain times. COVID-19, including variants, and related restrictions continued to have a negative impact on our revenue growth for the twelve months ended December 31, 2022. To the extent that the markets we serve experience increased cases of COVID-19, including variants, state or local governments may reinstitute measures to control its spread, which could again negatively impact our members' access to care, which could in turn impact our business. We will continue to evaluate the nature and extent of these potential impacts to our business, results of operations and liquidity.

For additional information on the various risks posed by the COVID-19 pandemic, please refer to Part I, Item 1A. "Risk Factors" included in this Annual Report on Form 10-K.

Components of Results of Operations

Revenue

Revenue includes fertility benefits solution revenue, pharmacy benefits solution revenue and PEPM fees.

Fertility Benefits Solution Revenue

Fertility benefits solution revenue primarily represents utilization of our fertility benefits solution. Our client contracts are typically for a three-year term and pricing for this solution is established for each Smart Cycle treatment bundle, based in part on when the client first became a client and the number of members covered under the solution. Fertility benefits solution revenue includes amounts we receive directly from members, including deductibles, co-insurance and co-payments associated with the treatments under the fertility benefits solution. Revenue is recognized based on the negotiated price with our clients and includes the portion to be paid directly by the member. Revenue is recognized when Smart Cycle services are completed for a member. Revenue is also accrued for authorized Smart Cycle services rendered based on member appointments scheduled with a fertility specialist in our network but for which no claim has yet been reported, net of expected changes and cancellations of services.

Pharmacy Benefits Solution Revenue

Pharmacy benefits solution revenue primarily represents utilization of Progyny Rx. For clients who contract for the fertility benefits solution, we offer an add-on, separate, fully integrated pharmacy benefits solution designed by us. Progyny Rx provides our members with access to our formulary plan design, simplified authorization, prescription fulfillment and timely delivery of the medications used during treatment through our network of specialty pharmacies, as well as provides our members with medication administration training and other pharmacy support services. Prescription drugs are dispensed by our contracted mail order specialty pharmacies. Revenue related to the dispensing of prescription drugs by the specialty pharmacies in our network includes the prescription fees negotiated with our clients, including the portion that we collect directly from members (deductibles, co-insurance and co-payments). The contractual fees agreed to with our clients are inclusive of the cost of the prescription drug from our specialty providers, less any applicable discounts, as well as the related clinical and care management services. Revenue from these arrangements is recognized when the drugs are dispensed. This solution was introduced in the marketplace in the third quarter of 2017 and went live with a select number of clients on January 1, 2018.

Per employee per month (PEPM) fee

Clients who purchase our fertility benefits solution also pay us a population based PEPM fee which provides access to our PCAs for fertility and family building education and guidance and other digital tools for all of our covered members, regardless of whether or not they ultimately pursue fertility treatment. We earn a PEPM fee for the majority of our clients. Revenue from the PEPM fee is billed and recognized monthly based upon the contractual fee and the number of employees at that specific client for that month.

Cost of Services

Our cost of services has three primary components: (1) fertility benefit services; (2) pharmacy benefit services; and (3) vendor rebates.

Fertility Benefits Services

Fertility benefits services costs include: (1) fees paid to provider clinics within our network, labs and anesthesiologists; (2) costs incurred (including salaries, bonuses, benefits, stock-based compensation, other related costs,

and an allocation of our general overhead, depreciation and amortization) for those employees associated with our care management service functions: Provider Account Management, PCA, Provider Relations and Claims Processing teams; and (3) related information technology support costs. Our contracts with provider clinics are typically for a term of one to two years.

Pharmacy Benefits Services

Pharmacy benefits services costs include: (1) the fees for prescription drugs dispensed and clinical services provided during the reporting period by our specialty pharmacy partners; (2) costs incurred (including salaries, bonuses, benefits, stock-based compensation, other related costs, and an allocation of our general overhead, depreciation and amortization) for those employees associated with our care management service functions: PCA, Provider Relations and Claims Processing teams; and (3) related information technology support costs. Contracts with the specialty pharmacies are typically for a term of one year.

Vendor Rebates

We receive a rebate on certain medications purchased by our specialty pharmacies. Our contractual arrangements with pharmacy program partners provide for us to receive a rebate from established list prices, which is paid subsequent to dispensing. These rebates are recorded as a reduction to cost of services when prescriptions are dispensed.

Gross Profit and Gross Margin

Gross profit is total revenue less total cost of services. Gross margin is gross profit expressed as a percentage of total revenue. We expect that gross profit and gross margin will continue to be affected by various factors including the geographic location where treatments are performed, as well as pricing with each of our clients, provider clinics, labs, specialty pharmacies and pharmaceutical companies, all of which are negotiated separately, have different contracting start and end dates and durations which are not coterminous with each other. Additionally, staffing levels necessary to deliver our care management services will continue to grow as we continue to add clients and their associated members.

Operating Expenses

Our operating expenses consist of sales and marketing and general and administrative expenses.

Sales and Marketing Expense

Sales and marketing expense consists primarily of employee related costs, including salaries, bonuses, commissions, benefits, stock-based compensation, other related costs, and an allocation of our general overhead, depreciation and amortization for those employees associated with sales and marketing. These expenses also include third-party consulting services, advertising, marketing, promotional events, and brand awareness activities. We expect sales and marketing expense to continue to increase in absolute dollars as we continue to invest and grow our business.

General and Administrative Expense

General and administrative expense consists primarily of employee related costs, including salaries, bonuses, benefits, stock-based compensation, other related costs, and an allocation of our general overhead, depreciation and amortization for those employees associated with general and administrative services such as executive, legal, human resources, information technology, accounting, and finance. These expenses also include third-party consulting services and facilities costs. We anticipate that we will incur additional general and administrative expenses on an ongoing basis as a public company and to support growth in the business.

Other Income, net

Other income, net includes investment income and losses as well as interest income and expense.

Benefit for Income Taxes

We are subject to income taxes in the United States. Income tax expense consists of taxes currently payable and changes in deferred tax assets and liabilities calculated according to local tax rules. Deferred income taxes are recorded for the expected tax consequences of temporary differences between the tax basis of assets and liabilities for financial reporting purposes and amounts recognized for income tax purposes. As of each reporting date, management considers new

evidence, both positive and negative, that could affect its view of the future realization of deferred tax assets. As of December 31, 2020, in part because we had achieved three years of cumulative income, along with our projections of profitability**,** management determined that there was sufficient positive evidence to conclude that it was more likely than not that the net deferred tax assets of $38.0 million were realizable and therefore released substantially all of our valuation allowance. We continue to maintain this position as of December 31, 2022.

Results of Operations

The following tables set forth our results of operations for the periods presented and as a percentage of revenue for those periods:

	Year Ended December 31,	
	2022	2021
	(in thousands)	
Consolidated Statements of Operations Data:		
Revenue	$ 786,913	$ 500,621
Cost of services[1]	619,588	388,486
Gross profit	167,325	112,135
Operating expenses:		
Sales and marketing[1]	45,657	20,179
General and administrative[1]	98,327	59,616
Total operating expenses	143,984	79,795
Income from operations	23,341	32,340
Other income, net	1,100	95
Income before income taxes	24,441	32,435
Benefit for income taxes	5,917	33,334
Net income	$ 30,358	$ 65,769
Adjusted EBITDA[2]	$ 125,690	$ 67,347

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

	Year Ended December 31,	
	2022	2021
Cost of services	$ 25,918	$ 8,969
Sales and marketing	21,135	5,462
General and administrative	53,695	19,275
Total stock-based compensation expense	$ 100,748	$ 33,706

(2) Adjusted EBITDA is a non-GAAP financial measure that we define as net income, adjusted to exclude depreciation and amortization, stock-based compensation expense, other income (expense), net, interest income, net, and benefit for income taxes. See “Management’s Discussion and Analysis of Financial Condition and Result of Operations – Non-GAAP Financial Measure – Adjusted EBITDA" below for a reconciliation of Adjusted EBITDA to net income, the most directly comparable measure calculated in accordance with U.S. GAAP.

	Year Ended December 31,	
	2022	2021
Consolidated Statements of Operations Data, as a percentage of revenue:		
Revenue	100.0 %	100.0 %
Cost of services	78.7 %	77.6 %
Gross profit	21.3 %	22.4 %
Operating expenses:		
Sales and marketing	5.8 %	4.0 %
General and administrative	12.5 %	11.9 %
Total operating expenses	18.3 %	15.9 %
Income from operations	3.0 %	6.5 %
Other income, net	0.1 %	0.0 %
Income before income taxes	3.1 %	6.5 %
Benefit for income taxes	0.8 %	6.6 %
Net income	3.9 %	13.1 %
Adjusted EBITDA	16.0 %	13.4 %

Non-GAAP Financial Measure – Adjusted EBITDA

Adjusted EBITDA is a supplemental financial measure that is not required by, or presented in accordance with U.S. GAAP. We believe that Adjusted EBITDA, when taken together with our U.S. GAAP financial results, provides meaningful supplemental information regarding our operating performance and facilitates internal comparisons of our historical operating performance on a more consistent basis by excluding certain items that may not be indicative of our business, results of operations or outlook. In particular, we believe that the use of Adjusted EBITDA is helpful to our investors as it is a measure used by management in assessing the health of our business, determining incentive compensation, evaluating our operating performance, and for internal planning and forecasting purposes.

Adjusted EBITDA is presented for supplemental informational purposes only, has limitations as an analytical tool and should not be considered in isolation or as a substitute for financial information presented in accordance with U.S. GAAP. Some of the limitations of Adjusted EBITDA include: (1) it does not properly reflect capital commitments to be paid in the future; (2) although depreciation and amortization are non-cash charges, the underlying assets may need to be replaced and Adjusted EBITDA does not reflect these capital expenditures; (3) it does not consider the impact of stock-based compensation expense; (4) it does not reflect other non-operating income and expenses, including other income (expense), net and interest income (expense), net; and (5) it does not reflect tax payments that may represent a reduction in cash available to us. In addition, our Adjusted EBITDA may not be comparable to similarly titled measures of other companies because they may not calculate Adjusted EBITDA in the same manner as we calculate the measure, limiting its usefulness as a comparative measure. Because of these limitations, when evaluating our performance, you should consider Adjusted EBITDA alongside other financial performance measures, including our net income from continuing operations and other U.S. GAAP results.

We calculate Adjusted EBITDA as net income, adjusted to exclude depreciation and amortization, stock-based compensation expense, other income (expense), net, interest income, net, and benefit for income taxes. The following table presents a reconciliation of Adjusted EBITDA to net income for each of the periods indicated:

	Year Ended December 31,	
	2022	2021
	(in thousands)	
Net income	$ 30,358	$ 65,769
Add:		
Depreciation and amortization	1,601	1,301
Stock-based compensation expense	100,748	33,706
Other (income) expense, net	(286)	366
Interest income, net	(814)	(461)
Benefit for income taxes	(5,917)	(33,334)
Adjusted EBITDA	$ 125,690	$ 67,347

Comparison of Years Ended December 31, 2022 and 2021

Revenue

	Year Ended December 31,		
	2022	2021	% Change
	(dollars in thousands)		
Revenue	$ 786,913	$ 500,621	57 %

Revenue increased by $286.3 million, or 57%, for the year ended December 31, 2022 compared to the year ended December 31, 2021. This increase is primarily due to a $154.5 million, or 43% increase, in revenue from our fertility benefits solution and a $131.8 million or 91% increase in revenue from our Progyny Rx solution. The increase in revenue from our fertility benefits solution was primarily due to the increase in the number of clients and covered lives. The increase in revenue from our pharmacy benefits solution was also driven by the number of clients and covered lives that added the Progyny Rx benefit. Progyny Rx went live with only a select number of clients on January 1, 2018 and has continued to add both new and existing fertility benefit solution clients since its initial launch. Our revenue growth for the years ended December 31, 2022 and 2021 was negatively impacted by COVID-19.

Cost of Services

	Year Ended December 31,		
	2022	2021	% Change
	(dollars in thousands)		
Cost of services	$ 619,588	$ 388,486	59 %

Cost of services increased by $231.1 million, or 59%, for the year ended December 31, 2022 compared to the year ended December 31, 2021 primarily due to an increase in medical treatment and pharmacy prescription costs associated with fertility treatments delivered. This increase in cost of services was also attributable to an increase in personnel-related costs primarily due to incremental headcount as well as a $16.9 million increase in stock-based compensation expense.

Gross Profit and Gross Margin

	Year Ended December 31,		
	2022	2021	% Change
	(dollars in thousands)		
Gross profit	$ 167,325	$ 112,135	49 %
Gross margin	21.3 %	22.4 %	

Gross profit increased by $55.2 million, or 49%, for the year ended December 31, 2022 compared to the year ended December 31, 2021.

Gross margin decreased 110 basis points for the year ended December 31, 2022 compared to year ended December 31, 2021, primarily due to an increase in stock-based compensation expense for employees supporting our care management service functions, partially offset by ongoing efficiencies realized in the delivery of our care management services.

Operating Expenses

Sales and Marketing Expense

	Year Ended December 31,		
	2022	2021	% Change
	(dollars in thousands)		
Sales and marketing	$ 45,657	$ 20,179	126 %

Sales and marketing expense increased by $25.5 million, or 126%, for the year ended December 31, 2022 compared to the year ended December 31, 2021. This increase was primarily due to a $23.4 million increase in personnel-related costs attributable to an increase in stock-based compensation expense of $15.7 million, incremental headcount and an increase in sales commissions, as well as a $2.1 million increase in other related sales and marketing expenses.

General and Administrative Expense

	Year Ended December 31,		
	2022	2021	% Change
	(dollars in thousands)		
General and administrative	$ 98,327	$ 59,616	65 %

General and administrative expense increased by $38.7 million, or 65%, for the year ended December 31, 2022 compared to the year ended December 31, 2021. This increase was primarily due to a $35.3 million increase in personnel-related costs including an increase in stock-based compensation expense of $34.4 million as well as a $4.0 million increase in bad debt expense, partially offset by $0.6 million decrease in other related general and administrative expenses.

Other Income, Net

	Year Ended December 31,		
	2022	2021	% Change
	(dollars in thousands)		
Other income, net	$ 1,100	$ 95	NM

Other income, net increased by $1.0 million for the year ended December 31, 2022 compared to the year ended December 31, 2021, primarily due to increases in investment and interest income.

Benefit for Income Taxes

	Year Ended December 31,		
	2022	2021	% Change
	(dollars in thousands)		
Benefit for income taxes	$ 5,917	$ 33,334	(82)%

For the year ended December 31, 2022, we recorded a benefit for income taxes of $5.9 million, as compared to a benefit for income taxes of $33.3 million for the year ended December 31, 2021, primarily due to a decrease in discrete tax benefits related to equity compensation activity that occurred during the current year period.

Liquidity and Capital Resources

As of December 31, 2022, we had $120.1 million of cash and cash equivalents and $69.2 million of marketable securities. Since inception, we have financed our operations primarily through sales of our solutions and the net proceeds we have received from sales of equity securities, including our IPO. Our cash and cash equivalents and working capital are affected by the timing of payments to third party providers and collections from clients and have increased as our revenue has increased. In particular, during the ramp up and onboarding of new clients who typically begin their benefits plan year as of January 1st, our accounts receivable has historically increased more than our accounts payable, accrued expenses and other current liabilities in the early part of each calendar year. Historically, these timing impacts have reversed throughout the remainder of the fiscal year. Accordingly, our working capital, and its impact on cash flow from operations, can fluctuate materially from period to period.

We believe that our existing cash and cash equivalents, including the proceeds from our IPO, and cash flow from operations will be sufficient to support working capital and capital expenditure requirements for at least the next 12 months. We also expect these sources of existing cash and cash equivalents will be sufficient to fund our long-term contractual obligations and capital needs. However, this is subject, to a certain extent, to general economic, financial, competitive, regulatory, and other factors that are beyond our control. Moreover, our future capital requirements will depend on many factors, including sales of our solutions and client renewals, the timing and the amount of cash received from clients, the expansion of our sales and marketing activities and the continuing market adoption of our solutions.

Other than the impact on our revenue growth and the related cash flows resulting from the various restrictions on activities due to the COVID-19 pandemic, our sources and uses of cash were not otherwise materially impacted by the COVID-19 pandemic in the three months and year ended December 31, 2022 and, to date, we have not identified any material liquidity deficiencies as a result of the COVID-19 pandemic. Based on the information currently available to us, we do not expect the COVID-19 pandemic to have a material impact on our liquidity. We will continue to monitor and assess the impact the COVID-19 pandemic, including variants, may have on our business and financial results. In addition, while the potential impact and duration of the COVID-19 pandemic on the global economy and our business in particular may be difficult to assess or predict, the pandemic has resulted in, and may continue to result in, significant disruption of global financial markets, which could reduce our ability to access capital and could negatively affect our liquidity in the future. If the disruption persists and deepens, we could experience an inability to access additional capital, which could in the future negatively affect our operations. For additional information on the various risks posed by the COVID-19 pandemic, please refer to Part I, Item 1A. "Risk Factors" included in this Annual Report on Form 10-K.

We may, in the future, enter into arrangements to acquire or invest in complementary businesses, products, and technologies. We may be required to seek additional equity or debt financing. In the event that we require additional financing, we may not be able to raise such financing on terms acceptable to us or at all. If we are unable to raise additional capital or generate cash flows necessary to expand our operations and invest in continued innovation, we may not be able to compete successfully, which would harm our business, operations and financial condition.

In June 2018, we entered into an agreement with Silicon Valley Bank to replace our then-outstanding term loan with a revolving line of credit of up to $15.0 million, which was amended in April 2019, January 2020, June 2020 and February 2021. The line of credit matured on June 8, 2021.

The following table summarizes our cash flows from continuing operations for the periods presented:

	Year Ended December 31,	
	2022	2021
	(in thousands)	
Cash provided by operating activities	$ 80,395	$ 26,037
Cash (used in) provided by investing activities	(43,866)	8,766
Cash used in financing activities	(7,864)	(13,695)
Net increase in cash and cash equivalents	$ 28,665	$ 21,108

Operating Activities

Net cash provided by operating activities was $80.4 million for the year ended December 31, 2022, primarily consisting of net income of $30.4 million adjusted for certain non-cash items, which included $100.7 million of stock-based compensation expense, $13.8 million of bad debt expense, $6.6 million of deferred tax benefits, and $1.6 million of depreciation and amortization. Changes in operating assets and liabilities resulted in cash used in operating activities from an increase in accounts receivable of $119.3 million and other noncurrent assets and liabilities of $1.1 million, partially offset by cash provided by operating activities from increases in accounts payable of $47.7 million and accrued expenses and other current liabilities of $13.1 million and decreases in prepaid expenses and other current assets of $0.1 million. These changes are a result of the impact of revenue growth and our operating results as well as the timing of cash collection and payments to third parties.

Net cash provided by operating activities was $26.0 million for the year ended December 31, 2021, primarily consisting of net income of $65.8 million adjusted for certain non-cash items, which included $33.7 million of stock-based compensation expense, $33.3 million of deferred tax benefits, $9.8 million of bad debt expense, and $1.3 million of depreciation and amortization. Changes in operating assets and liabilities resulted in cash used in operating activities from an increase in accounts receivable of $68.7 million and other noncurrent assets and liabilities of $3.3 million, partially offset by cash provided by operating activities from increases in accounts payable of $17.8 million, accrued expenses and other current liabilities of $2.2 million, and prepaid expenses and other current assets of $0.7 million. These changes are a result of the impact of revenue growth and our operating results as well as the timing of payments to third party providers and collections from customers.

Investing Activities

Net cash used by investing activities was $43.9 million for the year ended December 31, 2022, which primarily consisted of net cash used of $40.6 million for investments in marketable securities. For the year ended December 31, 2021, net cash provided by investing activities was $8.8 million, primarily consisting of net proceeds of $10.9 million from marketable securities. The remainder of the activity for the years ended December 31, 2022 and 2021 consisted of purchases of computers, software, including capitalized software development costs, and leasehold improvements, including leasehold improvements.

Financing Activities

Net cash used in financing activities was $7.9 million for the year ended December 31, 2022, consisting of payments of $12.1 million for employee taxes related to equity awards, partially offset by $3.1 million in proceeds from stock option exercises and $1.2 million in proceeds from contributions to our employee stock purchase plan.

Net cash used in financing activities was $13.7 million for the year ended December 31, 2021, consisting of payments of $18.0 million for employee taxes related to equity awards, partially offset by $2.9 million in proceeds from stock option exercises and $1.3 million in proceeds from contributions to our employee stock purchase plan.

Operating Lease Commitments

In September 2019, we commenced a sublease agreement for our corporate offices in New York, New York. The sublease is for a 25,212 square foot office and will expire in May 2029. Pursuant to the sublease, we will pay the base rent of approximately $1.3 million per year through the end of the fifth lease year and approximately $1.4 million per year thereafter through the expiration date.

In February 2022, we entered into a lease agreement for additional space in our corporate offices in New York, New York, consisting of a 24,099 square foot office and a 21,262 square foot office, and also for continued occupancy of the 25,212 square foot office after the expiration of the current sublease. For the 24,099 square foot office, we will pay the base rent of approximately $1.4 million per year starting in March 2024 for five years and approximately $1.5 million per year thereafter through the first quarter of 2035, the expected expiration date. For the 21,262 square foot office, we will pay the base rent of approximately $1.3 million starting in the first quarter of 2025 for five years and approximately $1.4 million per year thereafter through the first quarter of 2035, the expected expiration date. For our current 25,212 square foot office, we will pay the base rent of approximately $1.6 million per year beginning in June 2029 through the first quarter of 2035, the expected expiration date.

Critical Accounting Estimates

Our consolidated financial statements and accompanying notes have been prepared in accordance with U.S. GAAP. The preparation of these consolidated financial statements requires us to make estimates and assumptions that affect the amounts reported amounts of assets, liabilities, revenue and expenses, and related disclosures. We base our estimates on historical experience and on various other assumptions that we believe are reasonable under the circumstances. We evaluate our estimates and assumptions on an ongoing basis. Actual results may differ from these estimates. To the extent that there are material differences between these estimates and our actual results, our future financial statements will be affected.

We believe that the assumptions and estimates associated with our accrued receivables related to revenue recognition, accrued claims payable, stock-based compensation, and accounting for income taxes have the greatest potential impact on our financial statements. Therefore, we consider these to be our critical accounting estimates.

For additional information about our significant accounting policies and estimates, see Note 1 – Business and Basis of Presentation and Note 2 - Summary of Significant Accounting Policies in the notes to the consolidated financial statements included in Part II, Item 8 of this Annual Report on Form 10-K.

Accrued Receivable and Accrued Claims Payable

Fertility benefits solution revenue is recognized based on the negotiated price with our clients and includes the portion to be paid directly by the member. Revenue is recognized when Smart Cycle services are completed for a member, which includes estimates of accrued receivables. We estimate accrued receivables based on historical experience for those fertility benefit services provided but for which a claim has not been received from the provider clinic, which includes assumptions regarding the lag between the authorization date and service date as well as estimates for changes and cancellations of services. We include accrued receivables within accounts receivable on our consolidated balance sheet. As of December 31, 2022 and 2021, accrued receivables were $54.6 million and $30.2 million, respectively.

At the same time, we estimate cost of services and accrued claims payables based on the amount to be paid to the provider clinic and expected gross margin on fertility benefit services. Accrued claims payable of $31.1 million and $20.0 million as of December 31, 2022 and 2021, respectively, are included within accrued expenses and other current liabilities in the consolidated balance sheet.

Our estimates are adjusted to actual at the time of billing and these adjustments have historically not been material.

Stock-Based Compensation

We recognize stock-based compensation expense based on the fair value of stock-based awards granted to employees and directors on the date of grant. We estimate the fair value of each stock-based award on the measurement date using either the Black-Scholes option-pricing model for stock options and stock purchased under the employee stock purchase plan or the closing market price of our common stock for restricted stock units, including those with performance-based vesting criteria.

The Black-Scholes option-pricing model requires the input of subjective assumptions, including (1) the expected stock price volatility, (2) the expected term of the award, (3) the risk-free interest rate and (4) expected dividends. Due to the lack of historical and implied volatility data of our common stock, the expected stock price volatility is estimated based on the historical volatilities of the daily closing prices of a specified group of companies in our industry for a period equal to the expected term of the option. We selected companies with comparable characteristics to our Company, including enterprise value, risk profiles and position within the industry, that have historical share price information sufficient to

meet the expected term of the stock option. The expected term of the award represents the period of time that options granted are expected to be outstanding and is calculated utilizing the simplified method, which is the mid-point between the vesting date and end of the contractual term for each option. The risk-free interest rate is based on the yield of zero-coupon U.S. Treasury securities for the period that is consistent with the expected term of the stock option. The dividend yield is assumed to be none as we have not paid dividends, nor do we anticipate paying dividends. The weighted-average estimated fair value of stock option awards granted in the year ended December 31, 2022 was $21.84. Changes in these inputs could result in a significant change in the fair value of stock options.

The following assumptions were used to calculate the fair value of stock options granted to employees:

	Year Ended December 31,	
	2022	2021
Expected volatility	49.3% - 53.3%	52.4% - 59.5%
Expected term (years)	4.61 - 6.11	3.00 - 6.11
Risk-free interest rate	1.4% - 4.4%	0.6% - 1.4%
Expected dividend yield	—	—

Our outstanding stock-based awards as of December 31, 2022 are subject to service-based or performance-based vesting. We recognize compensation expense for service-based awards over the vesting period of the award on a straight-line basis. Compensation expense related to awards with performance-based vesting conditions is recognized over the requisite service period when achievement of the performance condition is considered probable. Forfeitures and cancellations of awards are recognized as they occur. For the years ended December 31, 2022 and 2021, stock-based compensation expense was $100.7 million and $33.7 million, respectively. As of December 31, 2022, we had $228.4 million and $100.3 million of unrecognized compensation costs related to unvested options and restricted stock units, respectively, which are expected to be expensed and vest over a weighted-average remaining period of approximately 3.2 years and 2.8 years, respectively.

Income Taxes

We account for income taxes in accordance with FASB ASC Topic 740, Income Taxes, or "ASC 740". Deferred income taxes are recorded for the expected tax consequences of temporary differences between the tax basis of assets and liabilities for financial reporting purposes and amounts recognized for income tax purposes. We periodically review the recoverability of deferred tax assets recorded on the consolidated balance sheet and provide valuation allowances as deemed necessary to reduce such deferred tax assets to the amount that will, more likely than not, be realized. Income tax expense consists of taxes currently payable and changes in deferred tax assets and liabilities calculated according to local tax rules.

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 for each jurisdiction including past operating results, estimates of future taxable income and the feasibility of ongoing tax planning strategies. In the event 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 income tax expense in the period in which such determination is made. As of December 31, 2020, the Company achieved three years of cumulative income, along with projections of profitability, for which management determined that there was sufficient positive evidence to conclude that it is more likely than not that substantially all of the deferred tax assets will be realized. As such, we released almost all of the valuation allowance on our realizable deferred tax assets. Management maintains this position as of December 31, 2022.

The amount of deferred tax provided is calculated using tax rates enacted at the balance sheet date. The impact of tax law changes is recognized in periods when the change is enacted.

As of December 31, 2022 and 2021, we had $77.9 million and $71.3 million of net deferred tax assets, respectively. There was a valuation allowance of $0.2 million as of December 31, 2022 and 2021.

ITEM 7A. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK

Quantitative and Qualitative Disclosures about Market Risk

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

Interest Rate Risk

Interest rate risk is highly sensitive due to many factors, including U.S. monetary and tax policies, U.S. and international economic factors and other factors beyond our control.

At December 31, 2022, we had cash and cash equivalents of $120.1 million and marketable securities of $69.2 million. Interest-earning instruments carry a degree of interest rate risk. We do not enter into investments for trading or speculative purposes and have not used any derivative financial instruments to manage our interest rate risk exposure. Our investments are exposed to market risk due to a fluctuation in interest rates, which may affect our interest income and the fair market value of our investments. A hypothetical 10% change in interest rates would not result in a material impact on our consolidated financial statements.

Inflation Rate Risk

While it is difficult to accurately measure the impact of inflation on our results of operations and financial condition, we do not believe that inflation has had a material effect on our business, financial condition or results of operations. Nonetheless, 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.

ITEM 8. FINANCIAL STATEMENTS AND SUPPLEMENTARY DATA

Index to Consolidated Financial Statements

Report of Independent Registered Public Accounting Firm

To the Stockholders and the Board of Directors of Progyny, Inc.

Opinion on the Financial Statements

We have audited the accompanying consolidated balance sheets of Progyny, Inc. (the Company) as of December 31, 2022 and 2021, the related consolidated statements of operations, comprehensive income, changes in stockholders' equity, and cash flows for each of the three years in the period ended December 31, 2022, and the related notes (collectively referred to as the "consolidated financial statements"). In our opinion, the consolidated financial statements present fairly, in all material respects, the financial position of the Company at December 31, 2022 and 2021, and the results of its operations and its cash flows for each of the three years in the period ended December 31, 2022, in conformity with U.S. generally accepted accounting principles.

We also have audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States) (PCAOB), the Company's internal control over financial reporting as of December 31, 2022, based on criteria established in Internal Control-Integrated Framework issued by the Committee of Sponsoring Organizations of the Treadway Commission “(2013 framework)” and our report dated March 1, 2023 expressed an unqualified opinion thereon.

Basis for Opinion

These financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on the Company's financial statements based on our audits. We are a public accounting firm registered with the PCAOB and are required to be independent with respect to the Company in accordance with the U.S. federal securities laws and the applicable rules and regulations of the Securities and Exchange Commission and the PCAOB.

We conducted our audits in accordance with the standards of the PCAOB. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement, whether due to error or fraud. Our audits included performing procedures to assess the risks of material misstatement of the financial statements, whether due to error or fraud, and performing procedures that respond to those risks. Such procedures included examining, on a test basis, evidence regarding the amounts and disclosures in the financial statements. Our audits also included evaluating the accounting principles used and significant estimates made by management, as well as evaluating the overall presentation of the financial statements. We believe that our audits provide a reasonable basis for our opinion.

Critical Audit Matter

The critical audit matter communicated below is a matter arising from the current period audit of the financial statements that was communicated or required to be communicated to the audit committee and that: (1) relates to accounts or disclosures that are material to the financial statements and (2) involved our especially challenging, subjective or complex judgments. The communication of the critical audit matter does not alter in any way our opinion on the consolidated financial statements, taken as a whole, and we are not, by communicating the critical audit matter below, providing a separate opinion on the critical audit matter or on the accounts or disclosures to which it relates.

Accrued Receivables and Accrued Claims Payable

Description of the Matter

As of December 31, 2022, accrued receivables and accrued claims payable were $54.6 million and $31.1 million, respectively. As discussed in Note 2 to the consolidated financial statements, the Company estimates accrued receivables for those fertility benefit services provided but for which a claim has not been received from the provider clinic based on historical claims experience. The estimated cost of the related services and accrued claims payable are determined based upon the amount to be paid to the provider clinic and expected gross margin on each related fertility benefit service estimated to have been provided.

Auditing the Company's estimates of accrued receivables and the related accrued claims payable was complex and required significant judgment as the estimates were sensitive to changes in the significant assumptions, including management's assumptions regarding the lag between authorization date and service date, service changes and cancellations.

How We Addressed the Matter in Our Audit

We obtained an understanding, evaluated the design, and tested the operating effectiveness of the controls over the Company's process to estimate accrued receivables and the associated claims payable. For example, we tested controls over management's review of the methodology, significant assumptions and the underlying data used to determine these estimates.

To test the accrued receivables and the related claims payable, our audit procedures included, among others, assessing the methodology, evaluating the significant assumptions described above and testing the completeness and accuracy of the underlying data used in the Company's analysis. For example, we tested the Company's assumptions of the lag between the authorization date and service date, service changes and cancellations based on historical claims data, historical gross margin per service and tested the clerical accuracy of management's analysis. Additionally, we evaluated the historical accuracy of management's estimate by testing management's retrospective review analysis that compared the prior period's estimated accrued receivables and accrued claims payable to actual billing and claims data.

/s/ Ernst & Young LLP

We have served as the Company's auditor since 2012.

New York, NY
March 1, 2023

PROGYNY, INC.

Consolidated Balance Sheets

(in thousands, except share and per share amounts)

	December 31,	
	2022	2021
ASSETS		
Current assets:		
Cash and cash equivalents	$ 120,078	$ 91,413
Marketable securities	69,222	28,005
Accounts receivable, net of $28,328 and $17,379 of allowances at December 31, 2022 and 2021, respectively	240,067	134,557
Prepaid expenses and other current assets	4,489	4,564
Total current assets	433,856	258,539
Property and equipment, net	8,371	5,027
Operating lease right-of-use assets	6,903	7,805
Goodwill	11,880	11,880
Intangible assets, net	99	599
Deferred tax assets	77,889	71,274
Other noncurrent assets	3,988	2,941
Total assets	$ 542,986	$ 358,065
LIABILITIES AND STOCKHOLDERS' EQUITY		
Current liabilities:		
Accounts payable	$ 109,287	$ 61,399
Accrued expenses and other current liabilities	50,249	37,425
Total current liabilities	159,536	98,824
Operating lease noncurrent liabilities	6,482	7,419
Total liabilities	166,018	106,243
Commitments and Contingencies *(Note 14)*		
STOCKHOLDERS' EQUITY		
Common stock, $0.0001 par value; 1,000,000,000 shares authorized at December 31, 2022 and 2021, respectively; 93,301,156 and 91,088,781 shares issued and outstanding at December 31, 2022 and 2021, respectively	9	9
Additional paid-in capital	349,533	255,339
Treasury stock, at cost, $0.0001 par value; 615,980 shares outstanding at December 31, 2022 and 2021, respectively	(1,009)	(1,009)
Accumulated earnings (deficit)	27,934	(2,424)
Accumulated other comprehensive income (loss)	501	(93)
Total stockholders' equity	376,968	251,822
Total liabilities and stockholders' equity	$ 542,986	$ 358,065

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

PROGYNY, INC.

Consolidated Statements of Operations

(in thousands, except share and per share amounts)

	Year Ended December 31,		
	2022	2021	2020
Revenue	$ 786,913	$ 500,621	$ 344,858
Cost of services	619,588	388,486	274,799
Gross profit	167,325	112,135	70,059
Operating expenses:			
Sales and marketing	45,657	20,179	15,006
General and administrative	98,327	59,616	46,705
Total operating expenses	143,984	79,795	61,711
Income from operations	23,341	32,340	8,348
Other income, net:			
Other income (expense), net	286	(366)	210
Interest income, net	814	461	121
Total other income, net	1,100	95	331
Income before income taxes	24,441	32,435	8,679
Benefit for income taxes	5,917	33,334	37,780
Net income	$ 30,358	$ 65,769	$ 46,459
Net income per share:			
Basic	$ 0.33	$ 0.74	$ 0.54
Diluted	$ 0.30	$ 0.66	$ 0.47
Weighted-average shares used in computing net income per share:			
Basic	92,195,068	89,105,562	85,722,670
Diluted	99,957,173	100,358,047	99,055,526

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

PROGYNY, INC.

Consolidated Statements of Comprehensive Income

(in thousands)

	Year Ended December 31,		
	2022	2021	2020
Net income	$ 30,358	$ 65,769	$ 46,459
Other comprehensive income (loss):			
Unrealized gain (loss) on marketable securities	594	(94)	1
Total other comprehensive income (loss)	594	(94)	1
Total comprehensive income	$ 30,952	$ 65,675	$ 46,460

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

PROGYNY, INC.

Consolidated Statements of Changes in Stockholders' Equity

(in thousands, except share and per share amounts)

	Common Stock		Treasury Stock	Additional Paid in Capital	Accumulated Earnings (Deficit)	Other Comprehensive Income (Loss)	Total
	Shares	Amount					
Balance at December 31, 2019	**84,188,202**	**$ 8**	**$ (1,009)**	**$ 228,755**	**$ (113,483)**	**$ —**	**$ 114,271**
Issuance of employee equity awards, net of shares withheld	2,688,273	1	—	(5,451)	—	—	(5,450)
Stock-based compensation	—	—	—	12,821	—	—	12,821
Warrant exercise	177,854	—	—	(0)	—	—	(0)
Reduction in initial public offering costs	—		—	14	—	—	14
Impact of adoption of ASU 2016-13	—	—	—	—	(1,169)	—	(1,169)
Other comprehensive income	—	—	—	—	—	1	1
Net income	—	—	—	—	46,459	—	46,459
Balance at December 31, 2020	**87,054,329**	**$ 9**	**$ (1,009)**	**$ 236,139**	**$ (68,193)**	**$ 1**	**$ 166,947**
Issuance of employee equity awards, net of shares withheld	3,209,461	—	—	(14,589)	—	—	(14,589)
Stock-based compensation	—	—	—	33,789	—	—	33,789
Warrant exercise	824,991	—	—	0	—	—	0
Other comprehensive loss	—	—	—	—	—	(94)	(94)
Net income	—	—	—	—	65,769	—	65,769
Balance at December 31, 2021	**91,088,781**	**$ 9**	**$ (1,009)**	**$ 255,339**	**$ (2,424)**	**$ (93)**	**$ 251,822**
Issuance of employee equity awards, net of shares withheld	2,212,375	—	—	(7,327)	—	—	(7,327)
Stock-based compensation	—	—	—	101,521	—	—	101,521
Other comprehensive income	—	—	—	—	—	594	594
Net income	—	—	—	—	30,358	—	30,358
Balance at December 31, 2022	**93,301,156**	**$ 9**	**$ (1,009)**	**$ 349,533**	**$ 27,934**	**$ 501**	**$ 376,968**

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

PROGYNY, INC.

Consolidated Statements of Cash Flows

(in thousands)

	Year Ended December 31,		
	2022	**2021**	**2020**
OPERATING ACTIVITIES			
Net income	$ 30,358	$ 65,769	$ 46,459
Adjustments to reconcile net income to net cash provided by operating activities:			
Deferred tax benefit	(6,615)	(33,303)	(37,971)
Non-cash interest expense	—	38	75
Depreciation and amortization	1,601	1,301	1,906
Stock-based compensation expense	100,748	33,706	12,821
Bad debt expense	13,794	9,783	5,562
Changes in operating assets and liabilities:			
Accounts receivable	(119,304)	(68,676)	(35,336)
Prepaid expenses and other current assets	57	675	(326)
Accounts payable	47,689	17,840	25,008
Accrued expenses and other current liabilities	13,147	2,184	17,400
Other noncurrent assets and liabilities	(1,080)	(3,280)	605
Net cash provided by operating activities	80,395	26,037	36,203
INVESTING ACTIVITIES			
Purchase of property and equipment, net	(3,241)	(2,129)	(1,037)
Purchase of marketable securities	(163,334)	(111,477)	(103,964)
Sale of marketable securities	122,709	122,372	64,970
Net cash provided by (used in) investing activities	(43,866)	8,766	(40,031)
FINANCING ACTIVITIES			
Payment of initial public offering costs	—	—	(892)
Proceeds from exercise of stock options	3,073	2,924	2,329
Payment of employee taxes related to equity awards	(12,089)	(17,966)	(8,930)
Proceeds from contributions to employee stock purchase plan	1,152	1,347	1,244
Net cash used in financing activities	(7,864)	(13,695)	(6,249)
Net increase (decrease) in cash and cash equivalents	28,665	21,108	(10,077)
Cash and cash equivalents, beginning of year	91,413	70,305	80,382
Cash and cash equivalents, end of year	$ 120,078	$ 91,413	$ 70,305
SUPPLEMENTAL DISCLOSURE OF CASH FLOW INFORMATION			
Cash paid for income taxes, net of refunds received	$ 133	$ 97	$ —
SUPPLEMENTAL DISCLOSURE OF NON-CASH INVESTING AND FINANCING ACTIVITIES			
Additions of property and equipment, net included in accounts payable and accrued expenses	$ 636	$ 204	$ 24

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

PROGYNY, INC.

Notes to Consolidated Financial Statements

1. Business and Basis of Presentation

Description of Business

Progyny, Inc. (together with its subsidiaries referred to as "Progyny" or the "Company") was incorporated in the state of Delaware on April 3, 2008, and maintains its corporate headquarters in New York, NY.

Progyny is a provider of a fertility benefits solution and pharmacy benefits solution and operates and manages in one operating segment. The fertility benefits solution consists of a significant service that integrates: (1) the treatment services ("Smart Cycles") that the Company has designed, (2) access to the Progyny network of high-quality fertility specialists that perform the Smart Cycle treatments and (3) active management of the selective network of high-quality provider clinics, real-time member eligibility and treatment authorization, member-facing digital tools and detailed quarterly reporting supported by the Company's dedicated account management teams, and end-to-end comprehensive concierge member support provided by Progyny's in-house staff of Patient Care Advocates ("PCAs") (collectively, the "care management services").

The Company enhanced its fertility benefits solution with the launch of Progyny Rx, its pharmacy benefits solution, effective January 1, 2018. As part of this solution, the Company provides formulary plan design, simplified authorization, assistance with prescription fulfillment, and timely delivery of the medications by the Company's network of specialty pharmacies, as well as medication administration training, pharmacy support services, and continuing PCA support. As a pharmacy benefits solution provider, Progyny manages the dispensing of pharmaceuticals through the Company's specialty pharmacy contracts. The pharmacy benefits solution is only available as an add-on service to its fertility benefits solution.

Basis of Presentation

The accompanying consolidated financial statements include those of the Company and its wholly owned subsidiaries. All intercompany balances and transactions have been eliminated in consolidation. The consolidated financial statements and accompanying notes were prepared in accordance with accounting principles generally accepted in United Sates ("U.S. GAAP").

Additionally, there are many uncertainties regarding the ongoing coronavirus ("COVID-19") pandemic, including variants, and the Company is closely monitoring the impact of the pandemic on all aspects of its business, including how it has impacted and may continue to impact its customers and members, provider network, specialty pharmacy partners, employees, suppliers, vendors, and other business partners. The full extent to which the COVID-19 pandemic will directly or indirectly impact the Company's business, future results of operations and financial condition will depend on future developments that are highly uncertain and cannot be accurately predicted, including new information that may emerge concerning COVID-19 and variants, the actions taken to contain it or treat its impact, vaccine roll-out efforts and impact, including vaccine hesitancy, break-through cases and the economic impact on local, regional and national markets. The overall disruption of the healthcare and fertility markets and the other risks and uncertainties associated with the pandemic could have a material adverse effect on the Company's business, financial condition, results of operations and growth prospects. The Company will continue to assess the evolving impact of the COVID-19 pandemic and will make adjustments to its operations as necessary.

Segment Information

Operating segments are identified as components of an enterprise about which separate discrete financial information is available for evaluation by the chief operating decision maker ("CODM"), or decision-making group, in making decisions on how to allocate resources and assess performance. The Company operates and manages in one operating segment, providing fertility and pharmacy benefits solutions. The Company defines its CODM as its Chief Executive Officer. All long-lived assets are located in the United States and all revenue is attributed to the United States.

Since the Company operates in one operating segment, all required financial segment information can be found in the consolidated financial statements.

Use of Estimates

The preparation of financial statements in conformity with U.S. GAAP generally requires management to make estimates and assumptions that affect the reported amount of certain assets, liabilities, revenue, and expenses, and the related disclosure of contingent assets and liabilities. Such estimates include, but are not limited to, the determination of accrued receivables related to revenue recognition, accrued claims payable, allowance for doubtful accounts, stock-based compensation, lease liabilities, and accounting for income taxes. Management bases its estimates on historical experience and on various other assumptions that are believed to be reasonable under the circumstances, the results of which form the basis for making judgments about the carrying value of assets and liabilities that are not readily apparent from other sources. Actual results may differ from these estimates under different assumptions or conditions.

2. Summary of Significant Accounting Policies

Cash and Cash Equivalents and Marketable Securities

Cash and cash equivalents are stated at fair value. The Company considers all highly liquid investments purchased with original maturities of three months or less at the time of purchase to be cash equivalents. Marketable securities, primarily consisting of U.S. Government and agency securities with original maturities greater than three months but less than one year when purchased, are classified as available-for-sale, and are stated at fair value. Unrealized gains and losses on marketable securities are excluded from earnings and reported as a component of other comprehensive income (loss).

Revenue Recognition

Revenue is recognized when control of the promised goods or services is transferred to clients in an amount that reflects the consideration the Company expects to be entitled to in exchange for those goods or services.

The Company applies the following five-step model to recognize revenue from contracts with clients:

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

Progyny's contracts typically have a stated term of three years and include contractual termination options after the first year, allowing the client to terminate the contract with 30 to 90 days' notice.

Fertility Benefits Solution Revenue

Progyny primarily generates revenue through its fertility benefits solution, in which Progyny provides self-insured enterprise entities (''clients'') and their employees and partners (together, ''members'') with fertility benefits. As part of the fertility benefits solution, Progyny provides access to effective and cost-efficient fertility treatments, referred to as Smart Cycles, as well as other related services. Smart Cycles are proprietary treatment bundles that include certain medical services available to members through Progyny's proprietary, credentialed network of provider clinics. In addition to access to Progyny's Smart Cycle treatment bundles and access to Progyny's network of provider clinics, the fertility benefits solution includes other comprehensive services, which Progyny refers to as care management services, such as active management of the provider clinic network, real-time member eligibility and treatment authorization, member-facing digital tools throughout the Smart Cycle and detailed quarterly reporting all supported by client facing account management and end-to-end comprehensive member support provided by Progyny's in house staff of PCAs.

The promises within Progyny's fertility benefits contract with a client represent a single performance obligation because Progyny provides a significant service of integrating the Progyny designed Smart Cycles and access to the fertility

treatment services provided by provider clinics with the other comprehensive services into the combined fertility benefits solution that the client contracted to receive. Progyny's fertility benefits solution is a stand-ready obligation that is satisfied over the contract term.

Progyny's contracts include the following sources of consideration, which are all variable: a per employee per month (''PEPM'') administration fee (in most, but not all contracts) and a fixed rate per Smart Cycle. The PEPM administration fee is allocated between the fertility benefits solution and the pharmacy benefits solution based on standalone selling price, estimated using an expected cost-plus margin method. The Company allocates the variable consideration related to the fixed rate per Smart Cycle to the distinct period during which the related services were performed as those fees relate specifically to the Company's efforts to provide its fertility benefits solution to its clients in the period and represents the consideration the Company is entitled to for the fertility benefit services provided. As a result, the fixed rate per Smart Cycle is included in the transaction price and recognized in the period in which the Smart Cycle is provided to the member.

Progyny's contracts also include potential service level agreement refunds related to outcome-based service metrics. These service level refunds, which are determined based on results of a full plan year, if met, are based on a percentage of the PEPM fee paid by clients. The Company estimates the variable consideration related to the total PEPM administration fee, less estimated refunds related to service level agreements, and recognizes the amounts allocated to the fertility benefits solution ratably over the contract term. Progyny's estimate of service level agreement refunds, have not historically resulted in significant adjustments to the transaction price.

Clients are typically invoiced on a monthly basis for the PEPM administration fee. Progyny invoices its clients and members for their respective portions of the fixed rate per Smart Cycle bundle when all treatment services within a Smart Cycle are completed by the provider clinic. Once an invoice is issued, payment terms are typically between 30 to 60 days.

The Company assesses whether it is the principal or the agent for each arrangement with a client, since fertility treatment services are provided by a third party—the provider clinics. The Company is the principal in its arrangements with clients and therefore presents revenue gross of the amounts paid to the provider clinics because Progyny controls the specified service (the fertility benefits solution) before it is transferred to the client. Progyny integrates the fertility treatment services provided by the provider clinics into the overall fertility benefits solution that the client contracted to receive. In addition, Progyny defines the scope of the potential services to be performed by the provider clinics and monitors the performance of the provider clinics. Furthermore, Progyny is primarily responsible for fulfilling the promise to the client and has discretion in setting the pricing, as Progyny separately negotiates agreements with the provider clinics, which establish pricing for each treatment service. Pricing of services from provider clinics is independent from the fees charged to clients.

Pharmacy Benefits Solution Revenue

For clients that have the fertility benefits solution, Progyny offers, as an add-on, its pharmacy benefits solution, which is a separate, fully integrated pharmacy benefit. As part of the pharmacy benefits solution, Progyny provides care management services, which include Progyny's formulary plan design, prescription fulfillment, simplified authorization and timely delivery of the medications used during treatment through Progyny's network of specialty pharmacies, and clinical services consisting of member assessments, UnPack It calls, telephone support, online education, medication administration training, pharmacy support services and continuing PCA support.

The pharmacy-related promises represent a single performance obligation because Progyny provides a significant service of integrating the formulary plan design, prescription fulfillment, clinical services and PCA support into the combined pharmacy benefits solution that the client contracted to receive. The pharmacy benefits solution is a stand-ready obligation that is satisfied over the contract term.

Progyny's contracts include the following sources of consideration, all of which are variable: a PEPM administration fee (in most, but not all contracts) and a fixed fee per fertility drug. As described above, the PEPM administration fee, less estimated refunds related to service level agreements, is allocated to the pharmacy benefits solution and recognized ratably over the contract term. The Company allocates the variable consideration related to the fixed fee per fertility drug to the distinct period during which the related services were performed, as those fees relate specifically to the Company's efforts to provide its pharmacy benefits solution to clients in the period and represents the consideration the Company is entitled to for the pharmacy benefit services provided. As a result, the fixed fee per fertility drug is included in the transaction price and recognized in the period in which the Company is entitled to consideration from a client, which is when a prescription is filled and delivered to the members.

As stated above, clients are invoiced on a monthly basis for the PEPM administration fee. Progyny invoices the client and the member for their respective portions of the fixed fee per fertility drug, when the prescription services are completed by the specialty pharmacies. Once an invoice is issued, payment terms are typically between 30 to 60 days.

The Company assesses whether it is the principal or the agent for each arrangement with a client, as prescription fulfillment and clinical services are provided by a third party—the specialty pharmacies. The Company is the principal in its arrangements with clients, and therefore presents revenue gross of the amounts paid to the specialty pharmacies. Progyny controls the specified service (the pharmacy benefits solution) before it is transferred to the client. Progyny integrates the prescription fulfillment and clinical services provided by the pharmacies and PCAs into the overall pharmacy benefits solution that the client contracted to receive. In addition, Progyny defines the scope of the potential services to be performed by the specialty pharmacies and monitors the performance of the specialty pharmacies. Furthermore, Progyny is primarily responsible for fulfilling the promise to the client and has discretion in setting the pricing, as Progyny separately negotiates agreements with pharmacies, which establish pricing for each drug. Pricing of fertility drugs is independent from the fees charged to clients.

The Company does not disclose the transaction price allocated to remaining performance obligations because all of the transaction price is variable and is allocated to the distinct periods to which the services relate, as discussed above. The remaining contract term is typically less than one year, due to the client's contractual termination options.

Accrued Receivable and Accrued Claims Payable

Accrued receivables are estimated based on historical experience for those fertility benefit services provided but for which a claim has not been received from the provider clinic at the end of the reporting period, which includes assumptions regarding the lag between authorization date and service date as well as estimates for changes and cancellations of services. At the same time, cost of services and accrued claims payables are estimated based on the amount to be paid to the provider clinic and expected gross margin on fertility benefit services. Estimates are adjusted to actual at the time of billing. Adjustments to original estimates have not been material.

As of December 31, 2022 and 2021, accrued receivables were $54.6 million and $30.2 million, respectively. Accrued receivables are included within accounts receivable in the consolidated balance sheet.

Accrued claims payable of $31.1 million and $20.0 million as of December 31, 2022 and 2021, respectively, are included within accrued expenses and other current liabilities in the consolidated balance sheet. Claims payable are generally paid within 30 days based on contractual terms.

As of December 31, 2022 and December 31, 2021, unbilled receivables, which represent claims received and approved but unbilled at the end of the reporting period, were $42.9 million and $23.7 million, respectively. Unbilled receivables are typically billed to clients within 30 days of the approved claim based on the contractual billing schedule agreed upon with the client. Unbilled receivables are included in accounts receivable in the consolidated balance sheet.

Accounts Receivable and Allowance for Doubtful Accounts

The accounts receivable balance primarily includes amounts due from clients and members. As a result of the adoption of ASU 2016-13 – *Financial Instruments – Credit Losses (Topic 326)*, beginning January 1, 2020, the Company estimates the allowance for doubtful accounts based on the lifetime expected credit losses for the client and member receivable pools, respectively. Under this current expected credit losses model, the Company determines the allowance for doubtful accounts based on factors such as the age of the receivable balance, historical experience, current economic conditions, and reasonable and supportable forecasts of future economic conditions. The new standard required a change in timing of loss recognition where an allowance for credit losses is now applied at the time the asset is recognized. Prior to the adoption of ASU 2016-13, credit losses were determined based upon historical bad debts, current receivables balances, and the age of the receivables balances. Expected credit losses are recorded as general and administrative expenses on the statements of operations. The Company adopted ASU 2016-13 as of January 1, 2020, using the modified retrospective transition method, which resulted in a cumulative-effect adjustment to accumulated deficit of $1.2 million. The following table provides a summary of the activity in this allowance (in thousands):

	Years Ended December 31, 2022, 2021 and 2020				
December 31, 2022	**Balance at Beginning of Period**	**ASU 2016-13 Adoption Adjustment**	**Charged to Costs and Expenses**	**Write-offs**	**Balance at End of Period**
Allowance for doubtful accounts	$ 17,379	$ —	$ 13,794	$ (2,845)	$ 28,328
December 31, 2021					
Allowance for doubtful accounts	$ 9,502	$ —	$ 9,783	$ (1,906)	$ 17,379
December 31, 2020					
Allowance for doubtful accounts	$ 2,771	$ 1,169	$ 5,562	$ —	$ 9,502

Cost of Services

Fertility Benefit Services

Fertility benefit services costs include: (1) fees paid to provider clinics within the Company's network, labs and anesthesiologists; (2) costs incurred (including salaries, bonuses, benefits, stock-based compensation, other related costs, and an allocation of general overhead, depreciation and amortization) for those employees associated with care management service functions: Provider Account Management, PCA, Provider Relations and Claims Processing teams; and (3) related information technology support costs. Contracts with provider clinics are typically for a term of one to two years.

Pharmacy Benefit Services

Pharmacy benefit services costs include: (1) the fees for prescription drugs dispensed and clinical services provided during the reporting period by specialty pharmacy partners; (2) costs incurred (including salaries, bonuses, benefits, stock-based compensation, other related costs, and an allocation of general overhead, depreciation and amortization) for those employees associated with care management service functions: PCA, Provider Relations and Claims Processing teams; and (3) related information technology support costs. Contracts with the specialty pharmacies are typically for a term of one year.

In the specialty pharmacy contracts, the contractual fees of prescription drugs sold includes the cost of the prescription drugs purchased and shipped to members by the Company's specialty mail service dispensing pharmacies, net of any volume-related or other discounts.

Vendor rebates

The Company receives a rebate on formulations purchased and dispensed by the Company's specialty pharmacies. The Company's contractual arrangements with pharmacy program partners provide for the Company to receive a discount (or rebate) from established list prices paid subsequent to dispensing when products are purchased indirectly from a pharmacy program partners (such as through a specialty pharmacy). These rebates are recognized as a reduction of cost of services when prescriptions are dispensed and are generally estimated and billed to manufacturers within 20 days after the end of each month. The effect of adjustments resulting from the reconciliation of rebates recognized to the amounts billed and collected has not been material to the Company's results of operations.

Concentration of Credit Risk and Off-Balance-Sheet Risk

Financial instruments that potentially subject the Company to concentrations of credit risk consists primarily of cash and cash equivalents, marketable securities, and accounts receivable.

The Company invests its cash and cash equivalents and marketable securities with highly rated financial institutions and management believes that the financial risks associated with its cash equivalents are minimal.

Substantially all of the Company's cash is maintained with one financial institution with a high credit standing. From time to time, such deposits may exceed federally insured limits.

The Company regularly reviews the outstanding account receivable balances and makes estimates of the lifetime expected credit losses based upon consideration of factors such as the age of the receivable balance, historical experience, current economic conditions, and reasonable and supportable forecasts of future economic conditions. In addition, the Company periodically evaluates the financial condition of its clients to manage credit risk related to accounts receivable. As of December 31, 2022, one vendor accounted for 30% of total receivables. One vendor accounted for 24% and one client accounted for 11%, or a combined 35% total receivables, as of December 31, 2021.

Property and Equipment

Property and equipment consist of computer equipment, machinery and equipment, furniture and fixtures, leasehold improvements, and capitalized software development costs. The assets are stated at cost less accumulated depreciation. Depreciation is calculated using the straight-line method based on estimated useful lives and in the case of leasehold improvements, the shorter of the useful life or the remaining term of the lease (see Note 5).

Goodwill and Intangible Assets

Goodwill represents the excess of the consideration transferred over the fair value of the assets acquired and liabilities assumed in a business combination. Other intangible assets consist of trademarks, physician network, and the websites acquired in the Fertility Authority acquisition. Goodwill, including other definite-lived intangible assets, are carried at their initial acquisition date fair value less any impairment. Other intangible assets are recorded at fair value at the date of acquisition, less accumulated amortization. Amortization is calculated using the straight-line method based on estimated useful lives.

Goodwill is reviewed for impairment annually as of October 1st of each year or when an interim triggering event has occurred indicating potential impairment. Events or changes in circumstances which could trigger an impairment review, which are assessed at the reporting unit level, include significant changes in the manner of the Company's use of the acquired assets or the strategy for the Company's overall business, significant negative industry or economic trends, significant underperformance relative to historical or projected future results of operations, a significant adverse change in the business climate, an adverse action or assessment by a regulator, unanticipated competition or a loss of key personnel. The Company has the option to first assess qualitative factors to determine whether the existence of events or circumstances leads to a determination that it is more likely than not that the fair value of the reporting unit is less than its carrying amount. If, after assessing the totality of events or circumstances, an entity determines it is not more likely than not that the fair value of the reporting unit is less than its carrying amount, then additional impairment testing is not required. However, if an entity concludes otherwise, then it is required to perform the first of a two-step impairment test.

The first step involves comparing the estimated fair value of the reporting unit with its respective book value, including goodwill. If the estimated fair value exceeds book value, goodwill is considered not to be impaired and no additional steps are necessary. If the carrying amount of goodwill exceeds the implied fair value of the goodwill, an impairment loss is recognized in an amount equal to the excess.

The Company tests for goodwill impairment for each reporting unit, which is at the operating segment or one level below the operating segment. This analysis requires us to make a series of assumptions to (1) evaluate whether any impairment exists and (2) measure the amount of impairment. There was no impairment of goodwill or intangible assets for the years ended December 31, 2022, 2021, and 2020.

Impairment of Long-Lived Assets

Long-lived assets are reviewed for impairment whenever events or changes in circumstances indicate that the carrying amount of such assets or asset groups may not be recoverable. In such instances, the recoverability of assets to be held and used is measured first by a comparison of the carrying amount of an asset group to future undiscounted net cash flows expected to be generated by the assets. If such assets are considered to be impaired, an impairment loss would be recognized if the carrying amount of the asset exceeds the fair value of the asset or asset group. The fair value is determined based on valuation techniques such as a comparison to fair values of similar assets or using a discounted cash flow analysis. There were no impairments recorded for the years ended December 31, 2022, 2021 and 2020.

Leases

On January 1, 2020, the Company adopted ASU 2016-02, *Leases (Topic 842)* using the modified retrospective transition method, which applies the provisions of the standard at the effective date without adjusting comparative periods presented. The Company elected the package of practical expedients permitted under the transition guidance within the

new standard, which allowed the Company not to reassess (i) whether any expired or existing contracts contained leases, (ii) the lease classification for any expired or existing leases, and (iii) initial direct costs for existing leases. The Company also elected not to reassess lease terms for existing leases using hindsight and to account for each separate lease and non-lease component as a single lease component. As a result of the adoption of the new leasing guidance, the Company recorded right-of-use assets and lease liabilities of $9.5 million and $9.9 million, respectively. The adoption of the standard did not materially impact the Company's statement of operations or statement of cash flows for the year ended December 31, 2020.

The Company determines if an arrangement is a lease at inception. Operating leases are included in operating lease right-of-use assets, accrued expenses and other current liabilities, and operating lease noncurrent liabilities on the consolidated balance sheets. As of December 31, 2022 and 2021, the Company has no financing lease arrangements.

In accordance with ASC 842, the Company records a right-of-use asset ("ROU") and lease liability in connection with its operating leases. Operating lease ROU assets and operating lease liabilities are recognized based on the present value of the future minimum lease payments over the lease term at commencement date. To determine the present value of lease payments, the Company utilizes the rate implicit in the lease, if available. If the rate implicit in the lease is not readily determinable, the Company uses its secured incremental borrowing rate to determine the present value of the lease payments. The determination of the Company's incremental borrowing rate requires judgment and is primarily based on publicly available information for companies within the same industry and with similar credit profiles. The rate is then adjusted for the lease term and other specific terms included in the Company's lease arrangements. The incremental borrowing rate is subsequently reassessed upon a modification to the lease arrangement. The operating lease ROU asset also includes any lease payments made prior to commencement date and excludes lease incentives and initial direct costs incurred. ROU assets are subsequently assessed for impairment in accordance with the Company's accounting policy for long-lived assets.

Stock-Based Compensation

The Company accounts for stock-based compensation awards in accordance with FASB ASC Topic 718, *Compensation—Stock Compensation* (ASC 718). ASC 718 requires all stock-based payments, including restricted stock units and grants of stock options, to be recognized in the consolidated statements of operations based on their respective fair values. For non-employee awards, a measurement date is normally reached when performance is completed, and the fair value is remeasured as the awards vest. The fair value of the Company's restricted stock units has been determined utilizing the closing market price of the Company's common stock on the date of the grant, including those with performance-based vesting criteria.

The fair value of the Company's stock options and stock purchased under the employee stock purchase plan has been determined using the Black-Scholes option-pricing model, which requires the input of subjective assumptions, including (i) the expected stock price volatility, (ii) the expected term of the award, (iii) the risk-free interest rate and (iv) expected dividends. Due to the lack of historical and implied volatility data of the Company's common stock, the expected stock price volatility has been estimated based on the historical volatilities of the daily closing prices of a specified group of companies in Progyny's industry for a period equal to the expected term of the option. Progyny selected companies with comparable characteristics to the Company, including enterprise value, risk profiles and position within the industry, that have historical share price information sufficient to meet the expected term of the stock options. The expected term of the options granted represents the period of time that options granted are expected to be outstanding and is calculated using the simplified method, which is the mid-point between the vesting date and the end of the contractual term for each option. For non-employee service-based awards, the expected term is estimated based on the remaining contractual term of such awards. The risk-free interest rate is based on the yield of zero-coupon, U.S. Treasury securities for the period that is consistent with the expected term of the stock option. The Company has not paid, and does not anticipate paying, cash dividends on its shares of common stock; therefore, the expected dividend yield is zero.

The Company's stock-based awards are subject to service-based or performance-based vesting conditions. The Company recognizes compensation expense for service-based awards over the vesting period of the award on a straight-line basis. Compensation expense related to awards with performance-based vesting conditions is recognized over the requisite service period when achievement of the performance condition is considered probable.

Income Taxes

The Company accounts for income taxes in accordance with FASB ASC Topic 740, Income Taxes ("ASC 740"), including updates in ASU 2019-12, *Income Taxes (Topic 740): Simplifying the Accounting for Income Taxes*, which the Company adopted as of January 1, 2021. Deferred income taxes are recorded for the expected tax consequences of

temporary differences between the tax basis of assets and liabilities for financial reporting purposes and amounts recognized for income tax purposes. The Company periodically reviews the recoverability of deferred tax assets recorded on the consolidated balance sheet and provides valuation allowances as deemed necessary to reduce such deferred tax assets to the amount that will, more likely than not, be realized. Income tax expense consists of taxes currently payable and changes in deferred tax assets and liabilities calculated according to local tax rules.

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

The amount of deferred tax provided is calculated using tax rates enacted at the balance sheet date. The impact of tax law changes is recognized in periods when the change is enacted.

A two-step approach is applied pursuant to ASC 740 in the recognition and measurement of uncertain tax positions taken or expected to be taken in a tax return. The first step is to determine if the weight of available evidence indicates that it is more likely than not that the tax position will be sustained in an audit, including resolution of any related appeals or litigation processes. The second step is to measure the tax benefit as the largest amount that is more than 50% likely to be realized upon ultimate settlement.

The Company's policy is to recognize interest and penalty expenses associated with uncertain tax positions as a component of income tax expense in the consolidated statements of operations and comprehensive income. As of December 31, 2022, 2021 and 2020, the Company had no significant accrued interest or penalties related to uncertain tax positions and no amounts have been recognized in the Company's consolidated statements of operations.

Fair Value of Financial Instruments and Fair Value Measurements

The Company determines the fair value of financial assets and liabilities using the fair value hierarchy established in the accounting standards. The hierarchy describes three levels of inputs that may be used to measure fair value, as follows:

Level 1—Quoted prices in active markets for identical assets and liabilities.

Level 2—Inputs other than Level 1 that are observable, either directly or indirectly, such as quoted prices for similar assets or liabilities, quoted prices in markets that are not active, or other inputs that are observable or can be corroborated by observable market data for substantially the full term of the assets or liabilities.

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

Assets and liabilities measured at fair value are classified in their entirety based on the lowest level of input that is significant to the fair value measurements. The Company's assessment of the significance of a particular input to the fair value measurement in its entirety requires management to make judgments and consider factors specific to the asset or liability.

The carrying amounts of certain of the Company's financial instruments, including cash equivalents, marketable securities, accounts receivable and accounts payable approximate fair value due to their short maturities.

Net Income per Share

Basic net income per share is calculated by dividing the net income by the weighted-average number of shares of common stock outstanding for the period.

Diluted net income per share is computed by dividing the diluted net income by the weighted-average number of common shares outstanding for the period, including potential dilutive common shares assuming dilutive effect of outstanding common stock options, restricted stock units, shares issuable under the employee stock purchase program and

common stock warrants. In periods when the Company has incurred a net loss, diluted net loss per share is the same as basic net loss per share because dilutive common shares are not assumed to have been issued if their effect is anti-dilutive.

Recently Adopted Accounting Pronouncements

In December 2019, the FASB issued ASU 2019-12, *Income Taxes (Topic 740): Simplifying the Accounting for Income Taxes*. The standard is intended to simplify the accounting for income taxes by removing certain exceptions to the general principles in Topic 740, as well as improve consistent application of and simplify U.S. GAAP for other areas of Topic 740 by clarifying and amending existing guidance. The Company adopted this standard as of January 1, 2021. The adoption of this standard did not have a material impact on the Company's consolidated financial statements.

In May 2021, the FASB issued ASU No. 2021-04 ("ASU 2021-04") "*Earnings Per Share (Topic 260), Debt-Modifications and Extinguishments (Subtopic 470-50), Compensation- Stock Compensation (Topic 718), and Derivatives and Hedging-Contracts in Entity's Own Equity (Subtopic 815- 40)*" which provides guidance on modifications or exchanges of a freestanding equity-classified written call options that are not within the scope of another Topic, such as warrants. The Company adopted this standard as of January 1, 2022 on a prospective basis to modifications or exchanges occurring on or after this date. The adoption of this standard did not have a material impact on the Company's consolidated financial statements.

3. Revenue

Disaggregated revenue

The following table disaggregates revenue by service (in thousands):

	Year Ended December 31,		
	2022	2021	2020
Revenue			
Fertility benefit services revenue	$ 510,145	$ 355,616	$ 253,556
Pharmacy benefit services revenue	276,768	145,005	91,302
Total revenue	$ 786,913	$ 500,621	$ 344,858

Concentration of Major Clients

For the year ended December 31, 2022, two clients accounted for 16% and 10%, or a combined 26%, of total revenue. Two clients accounted for 19% and 15%, or a combined 34%, of total revenue for the year ended December 31, 2021. For the year ended December 31, 2020, two clients accounted for 18%, and 17%, or a combined 35% of total revenue. No other clients accounted for more than 10% for the years ended December 31, 2022, 2021, and 2020.

4. Fair Value of Financial Instruments

As of December 31, 2022 and 2021, the Company had $120.6 million and $93.7 million, respectively, in financial assets held in money market accounts and $69.2 million and $28.0 million, respectively, held in marketable securities, including U.S. treasury bills. All were classified as Level 1 in the fair value hierarchy. The Company measured these assets at fair value. The Company classified these assets as Level 1 because the values of these assets are determined using unadjusted quoted prices in active markets for identical assets.

During the year ended December 31, 2022, the Company had gross realized gains and losses related to marketable securities and money market accounts of $0.4 million and $0.1 million, respectively, included within earnings. The gross realized losses included within earnings for the year ended December 31, 2021 was $0.4 million. The gross realized gains for the year ended December 31, 2021 as well as the gross realized gains and losses for the year ended December 31, 2020 were not significant.

The Company reclassified $0.3 million of net unrealized holding gains and $0.4 million of net unrealized holding losses out of other comprehensive income (loss) and into earnings for the years ended December 31, 2022 and 2021, respectively. The amount reclassified out of other comprehensive income for the year ended December 31, 2020 was not significant.

The total gains for marketable securities and money market accounts with net gains in other comprehensive income as of December 31, 2022 was $0.5 million. The total losses for the period as well as the total gains and losses for marketable securities and money market accounts in other comprehensive income (loss) as of December 31, 2021 and 2020 were not significant.

During the years ended December 31, 2022 and December 31, 2021, the Company did not maintain any assets or liabilities classified as Level 2 or Level 3 in the fair value hierarchy.

5. Property and Equipment, Net

Property and equipment consist of the following (in thousands):

	Estimated Useful Life (in years)	December 31, 2022	December 31, 2021
Machinery and equipment	3-5	$ 179	$ 95
Computers and hardware	3	1,252	1,023
Leasehold improvements	lease term	3,394	3,110
Furniture and fixtures	7	1,296	453
Capitalized software	3-5	5,369	2,909
Property and equipment, gross		11,490	7,590
Less: accumulated depreciation		(3,119)	(2,563)
Total property and equipment, net		$ 8,371	$ 5,027

Depreciation expense was approximately $1.1 million for the year ended December 31, 2022. For the years ended December 31, 2021 and 2020, depreciation expense was approximately $0.7 million.

During the years ended December 31, 2022 and December 31, 2021, the Company capitalized $0.8 million and $0.1 million, respectively, in stock-based compensation expense related to the development of internal-use software.

6. Intangible Assets, Net

Intangible assets consist of the following (in thousands):

	Estimated Useful Life (in years)	December 31, 2022	December 31, 2021
Trademarks	8	$ 4,000	$ 4,000
Physician Network	6	3,500	3,500
Website	5	2,000	2,000
Intangible assets, gross		9,500	9,500
Less: accumulated amortization		(9,401)	(8,901)
Total intangible assets, net		$ 99	$ 599

Amortization expense was $0.5 million, $0.6 million, and $1.2 million for the years ended December 31, 2022, 2021 and 2020, respectively.

As of December 31, 2022, the future amortization expense of other intangible assets is as follows (in thousands):

Year ending December 31:	
2023	$ 99
Thereafter	—
Total	$ 99

7. Leases

In September 2019, the Company's sublease agreement for its corporate headquarters in New York, NY commenced and is scheduled to expire in May 2029. Pursuant to the sublease, the Company will pay the base rent of approximately $1.3 million per annum through the end of the fifth lease year and approximately $1.4 million per annum thereafter through the expiration date.

The Company recognizes lease expense on a straight-line basis over the lease term. Lease expense for the Company's operating leases was $1.3 million for the years ended December 31, 2022, 2021, and 2020.

Cash outflows from operating activities attributable to the operating leases for the years ended December 31, 2022 and 2021 was $1.3 million. For the year ended December 31, 2020, cash outflows from operating activities attributable to the operating leases was $0.8 million.

Information related to the Company's leases is as follows (in thousands):

	Balance Sheet Location	December 31, 2022
Operating Leases		
Right-of-use asset	Operating lease right-of-use assets	$ 6,903
Short-term lease liabilities	Accrued expenses and other current liabilities	$ 1,231
Long-term lease liabilities	Operating lease noncurrent liabilities	$ 6,482
Other information		
Weighted average remaining lease term, operating lease		6.4
Weighted average discount rate, operating lease		4.29%

Future minimum facility lease payments as of December 31, 2022, are as follows (in thousands):

Year Ending December 31:	Operating Lease Payments as of December 31, 2022
2023	$ 1,286
2024	1,326
2025	1,407
2026	1,407
2027	1,407
Thereafter	1,993
Total undiscounted lease payments	$ 8,826
Less: imputed interest	1,113
Present value of lease liabilities	$ 7,713
Less: current portion of operating lease liabilities	1,231
Operating lease noncurrent liabilities	$ 6,482

February 2022 Lease Agreement

In February 2022, the Company entered into a lease agreement for additional space in its corporate offices in New York, New York, consisting of a 24,099 square foot office and a 21,262 square foot office, and also for continued occupancy of the 25,212 square foot office after the expiration of the current sublease. The 24,099 square foot office became available to the Company for use in February 2023. The Company is obligated to pay the base rent of approximately $1.4 million per year starting in March 2024 for five years and approximately $1.5 million per year thereafter through the first quarter of 2035, the expected expiration date. For the 21,262 square foot office, the lease commencement date, which is when the premises will become available to the Company for use, is expected to be in the first quarter of 2024. The Company is obligated to pay the base rent of approximately $1.3 million starting in the first quarter of 2025 for five years and approximately $1.4 million per year thereafter through the first quarter of 2035, the current expiration date. For the current 25,212 square foot office, the Company will pay the base rent of approximately $1.6 million per year beginning in June 2029 through the first quarter of 2035, the current expiration date.

8. Accrued Expenses and Other Current Liabilities

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

	December 31,	
	2022	2021
Accrued claims payable	$ 31,139	$ 19,998
Accrued compensation	7,706	10,089
Accrued commission	2,832	3,092
Operating lease current liabilities	1,231	1,231
Professional fees	861	843
Other	6,480	2,172
Total accrued expenses and other current liabilities	$ 50,249	$ 37,425

9. Debt

In June 2018, the Company entered into a loan agreement with Silicon Valley Bank for a revolving line of credit up to $15.0 million based upon an advance rate of 80% on "eligible" accounts receivable to fund its working capital and other general corporate needs, which was amended in April 2019, January 2020, June 2020, and February 2021 ("SVB Line of Credit"). Eligible accounts receivable was defined in the loan agreement as accounts billed with aging 90 days or less and excluded accounts receivable due for member copayments, coinsurance, and deductibles. The SVB Line of Credit matured in June 2021.

The Company was required to pay a revolving line commitment fee of $225,000 in three equal annual installments of $75,000 starting on the one-year anniversary of the revolving line. The Company made the first installment payment of $75,000 in June 2019 and accrued this cost monthly. When the Company held unrestricted cash balances greater than $5.0 million, interest accrued at a floating rate per annum equal to the greater of prime rate or 4.75%. If the unrestricted cash balance was less than $5.0 million, interest accrued at a floating rate per annum equal to the greater of prime rate plus 0.50% or 4.75%, with interest payable monthly. Interest was paid based upon the borrowed funds.

The SVB Line of Credit contained customary affirmative covenants, financial covenants, as well as negative covenants that, among other things, restricted the Company's ability to incur additional indebtedness (including guarantees of certain obligations); create liens; engage in mergers, consolidations, liquidations and dissolutions; sell assets; maintain collateral; pay dividends or make other payments in respect of capital stock; make acquisitions; make investments, loans and advances; enter into transactions with affiliates; make payments with respect to or modify subordinated debt instruments; and enter into agreements with negative pledge clauses or clauses restricting subsidiary distributions. The financial covenant required the Company to achieve a specified minimum quarterly revenue as defined by the SVB Line of Credit.

The Company recorded interest expense on the SVB Line of Credit of $38,000 and $75,000 during the years ended December 31, 2021, and 2020, respectively.

10. Stockholders' Equity

Common Stock

The holders of common stock are entitled to one vote for each share held of record on all matters submitted to a vote of the stockholders. The common stock confers upon its holders the right to receive dividends out of any assets legally available, when and as declared by the Board of Directors.

The Company had 615,980 shares of treasury stock as of December 31, 2022, 2021 and 2020.

Common Stock Warrants

In connection with the IPO on October 25, 2019, all outstanding convertible preferred warrants were converted to common stock warrants. As of December 31, 2022 and 2021, the Company had 565,351 common stock warrants outstanding.

No common stock warrants were exercised during the year ended December 31, 2022. For the year ended December 31, 2021, 854,065 common stock warrants were exercised for 824,991 shares of common stock at a weighted-average exercise price of $1.73. The Company did not recognize compensation expense relating to the common stock warrants for the years ended December 31, 2022, 2021 and 2020 as they were all fully vested.

Stock Incentive Plan

In October 2019, the Company's Board of Directors and stockholders adopted and approved the 2019 Equity Incentive Plan, as amended (the "2019 Plan"), as the successor to the Company's 2017 Equity Incentive Plan, as amended (the "2017 Plan"). No further grants were made under the 2017 Plan from the date that the 2019 Plan became effective. Initially, the maximum number of shares issuable under the 2019 Plan will not exceed 19,198,875 shares of common stock, which is the sum of 1) 2,640,031 new shares and 2) an additional number of shares not to exceed 16,558,844 consisting of (a) shares that remained available for the issuance of awards under the 2017 Plan immediately prior to the effective date of the 2019 Plan and (b) shares of common stock subject to outstanding stock options or other stock awards granted under the 2017 Plan that, on or after the date the 2019 Plan became effective, terminate, expire or are cancelled prior to exercise or settlement; are forfeited or repurchased because of the failure to vest; or are reacquired or withheld (or not issued) to satisfy a tax withholding obligation or the purchase or exercise price, if any, as such shares become available from time to time.

Under the Company's 2017 Plan and consistent with the Company's prior 2008 Equity Incentive Plan, options and other stock awards to purchase shares of common stock may be granted to employees, directors, and consultants. Incentive stock options are granted to employees and non-statutory stock options are granted to consultants and directors at an exercise price not less than 100% of the fair value (as determined by the Board of Directors) of the Company's common stock on the date of grant. The exercise price of options granted to stockholders who hold 10% or more of the Company's common stock on the option grant date shall not be less than 110% of the fair value of the Company's common stock on the date of grant for both incentive and non-qualified stock option grants. These options generally vest over four years and expire ten years from the date of grant. Stock option grants may be exercisable upon grant, and any unvested shares purchased are subject to repurchase. There were no unvested shares subject to repurchase as of December 31, 2022 and 2021.

As of December 31, 2022 and 2021, 1,241,365 and 4,160,618 shares of common stock, respectively, remained available for future grants under the 2019 Plan. Under the 2019 Plan, subject to any adjustments necessary to implement any capitalization adjustments, an annual increase to the number of shares issuable is automatically added on January 1 of each year for a period of ten years commencing on January 1, 2020 and ending on (and including) January 1, 2029, in an amount equal to 4% of the total number of shares of common stock outstanding on December 31 of the preceding year or such smaller amount as determined by the Company's Board of Directors.

Stock Options

Stock options are exercisable based on the terms and conditions outlined in the applicable award agreement. Stock options generally vest over four years and typically expire ten years from the date of grant. A summary of the Company's stock option activity for the year ended December 31, 2022 is as follows:

	Number of Shares	Weighted-Average Exercise Price	Weighted-Average Remaining Contractual Life (Years)	Aggregate Intrinsic Value
				(In thousands)
Outstanding at December 31, 2021	14,924,013	$ 25.11	7.9	$ 439,557
Granted	6,710,394	41.36		
Exercised	(2,014,629)	3.76		
Forfeited	(773,193)	50.28		
Cancelled	(38,559)	35.71		
Outstanding at December 31, 2022	18,808,026	$ 32.13	7.9	$ 188,241
Exercisable at December 31, 2021	6,694,592	$ 4.21	6.6	$ 308,893
Exercisable at December 31, 2022	8,015,001	$ 15.21	6.3	$ 169,601

The total intrinsic value of options exercised was $76.7 million, $175.0 million, and $79.6 million for the years ended December 31, 2022, 2021, and 2020, respectively.

The weighted-average grant date fair value of options granted was $21.84, $30.60, and $26.56 in the years ended December 31, 2022, 2021, and 2020, respectively.

The total grant date fair value of options vested was $62.6 million, $16.0 million, and $9.3 million as of December 31, 2022, 2021, and 2020, respectively.

The total unrecognized compensation cost related to unvested options was approximately $228.4 million at December 31, 2022. The weighted-average remaining recognition period is approximately 3.2 years.

Certain assumptions used in the option-pricing model for options granted to employees, directors, and non-employees are as follows:

	Year Ended December 31,		
	2022	2021	2020
Expected term (in years)	4.61 - 6.11	3.00 - 6.11	5.50 - 6.11
Risk-free interest rate	1.4% - 4.4%	0.6% - 1.4%	0.3% - 1.7%
Expected volatility	49.3% - 53.3%	52.4% - 59.5%	49.2% - 54.7%
Expected dividend rate	—	—	—

Restricted Stock Units

During the year ended December 31, 2020, the Company began granting restricted stock units under the 2019 Plan. Restricted stock units are subject to service-based or performance-based vesting criteria. The restricted stock units vest based on the terms outlined in the applicable award agreement, which, for service-based awards, is generally over a period of 4 years. The Company's performance-vesting awards are based on the achievement of specified revenue targets and continued employment through the date of achievement of such targets. If the targets have not been achieved prior to the fifth anniversary of the grant, the awards will be forfeited. As of December 31, 2022, all of the performance-vesting awards remained unvested. A summary of the Company's restricted stock unit activity is as follows:

	Number of Shares	Weighted-Average Grant Date Fair Value
Outstanding at December 31, 2021	1,765,518	$ 53.25
Granted	1,412,850	$ 44.09
Vested	(572,911)	$ 49.78
Forfeited	(189,295)	$ 52.82
Outstanding at December 31, 2022	2,416,162	$ 48.74

The total intrinsic value of restricted stock units vested was $22.0 million, $11.1 million, and $1.4 million for the years ended December 31, 2022, 2021, and 2020, respectively.

The weighted-average grant date fair value of restricted stock units granted was $44.09, $58.13, and $25.46 for the years ended December 31, 2022, 2021, and 2020, respectively.

The total grant date fair value of restricted stock units vested was $28.5 million and $5.3 million for the years ended December 31, 2022 and December 31, 2021. The total fair value of restricted stock units vested was not significant for the year ended December 31, 2020.

The total unrecognized compensation cost related to unvested restricted stock units was approximately $100.3 million at December 31, 2022. The weighted-average remaining recognition period is approximately 2.8 years.

Employee Stock Purchase Plan

In October 2019, the Board of Directors and stockholders also adopted and approved the 2019 Employee Stock Purchase Plan (the "ESPP"). Following the IPO, the ESPP authorized the issuance of 1,700,000 shares of common stock to purchase rights granted to the Company's employees. Subject to the ESPP, the maximum number of shares of common stock that may be issued under the Plan will not exceed 1,700,000 shares, plus the number of shares that are automatically added on January 1st of each year, in an amount equal to the lesser of 1% of the total number of shares of capital stock outstanding on December 31st of the preceding calendar year, and 2,500,000 shares of common stock, or such smaller amount as determined by the Company's Board of Directors. As of December 31, 2022 and December 31, 2021, 3,306,387 and 1,560,693 shares of common stock remained available to be issued under the ESPP, respectively.

The following table summarizes the purchases that were made for each purchase period of the ESPP through December 31, 2022 (in thousands, except for share amounts):

Purchase Period	Proceeds used for purchase	Shares purchased
October 25, 2019 to July 31, 2020	$ 1,146	103,677
August 1, 2020 to January 31, 2021	481	21,125
February 1, 2021 to July 31, 2021	595	14,505
August 1, 2021 to January 31, 2022	683	19,838
February 1, 2022 to July 31, 2022	412	15,888

The next purchase period commenced on August 1, 2022 and ended on January 31, 2023.

Stock-Based Compensation Expense

The following table summarizes stock-based compensation expense, which was included in the statements of operations as follows (in thousands):

	Year Ended December 31,		
	2022	2021	2020
Cost of services	$ 25,918	$ 8,969	$ 3,056
Sales and marketing	21,135	5,462	2,066
General and administrative	53,695	19,275	7,699
Total stock-based compensation expense	$ 100,748	$ 33,706	$ 12,821

11. Net Income Per Share

A reconciliation of net income and the number of shares in the calculation of basic and diluted net income per share is as follows (in thousands, except share and per share amounts):

	Year Ended December 31,		
	2022	2021	2020
Basic net income per common share:			
Numerator:			
Net income	$ 30,358	$ 65,769	$ 46,459
Denominator:			
Weighted-average shares used in computing basic net income per share	92,195,068	89,105,562	85,722,670
Basic net income per share	$ 0.33	$ 0.74	$ 0.54
Diluted net income per common share:			
Numerator:			
Net income	$ 30,358	$ 65,769	$ 46,459
Denominator:			
Weighted-average shares used in computing basic net income per share	92,195,068	89,105,562	85,722,670
Effect of dilutive securities	7,762,105	11,252,485	13,332,856
Weighted-average shares used in computing diluted net income per share	99,957,173	100,358,047	99,055,526
Diluted net income per share	$ 0.30	$ 0.66	$ 0.47

The following weighted-average outstanding shares of potentially dilutive securities were excluded from the computation of diluted net income per share for the periods presented because including them would have been antidilutive:

	Year Ended December 31,		
	2022	2021	2020
Options to purchase common stock	8,019,010	1,562,029	699,233
Shares issuable under ESPP	—	—	70,184
Restricted stock units	1,733,420	186,547	—
Total potential dilutive shares	9,752,430	1,748,576	769,417

12. 401(k) Plan

The Company sponsors a 401(k) defined contribution plan covering all employees and began employer contributions in 2018. The Company incurred expenses related to employer contributions of $1.0 million, $0.9 million, and $0.5 million for the years ended December 31, 2022, 2021, and 2020 respectively.

13. Income Taxes

A tax benefit of $5.9 million, $33.3 million, and $37.8 million was recorded for the years ended December 31, 2022, 2021, and 2020, respectively.

The benefit from income taxes is composed of the following (in thousands):

	Year Ended December 31,		
	2022	2021	2020
Current			
Federal	$ —	$ —	$ —
State	(695)	31	(191)
Total current benefit (provision) from income taxes	(695)	31	(191)
Deferred:			
Federal	6,880	25,154	28,852
State	(268)	8,149	9,119
Total deferred benefit from income taxes	6,612	33,303	37,971
Total benefit from income taxes	$ 5,917	$ 33,334	$ 37,780

A reconciliation of the U.S. federal statutory income tax rate to the Company's effective tax rate is as follows:

	Year Ended December 31,		
	2022	2021	2020
Income tax provision at statutory rate	21 %	21 %	21 %
State income taxes, net of federal benefit	3	(25)	(38)
Stock-based compensation	(48)	(99)	(100)
Change in valuation allowance	—	—	(317)
Other	—	—	(2)
Effective tax rate	(24)%	(103)%	(436)%

The Company's effective tax rate for the years ended December 31, 2022, 2021, and 2020 was (24)%, (103)%, and (436)%, respectively. For the year ended December 31, 2022 and 2021, the effective tax rate differs from the U.S. federal statutory rate primarily due to permanent tax adjustments, including windfalls upon the exercise of stock options and

vesting of RSUs. For the year ended December 31, 2020, the effective tax rate differs from the U.S. federal statutory rate primarily due to the release of the valuation allowance in this period, in addition to permanent tax adjustments, including windfalls upon the exercise of options and vesting of RSUs.

Deferred Tax Balances

The components of the Company's net deferred tax assets and liabilities are as follows (in thousands):

	December 31,	
	2022	2021
Deferred tax assets:		
Net operating loss carryforwards	$ 41,106	$ 55,180
Capitalized start-up costs	6	8
Research and development credits	1,039	1,039
Stock-based compensation	26,996	9,133
Accruals and reserves	9,373	5,916
Operating lease liabilities	2,062	2,297
Property and equipment	—	164
Intangibles	547	414
Total deferred tax assets	81,129	74,151
Valuation allowance	(224)	(224)
Deferred tax assets after valuation allowance	$ 80,905	$ 73,927
Deferred tax liabilities:		
Property and equipment	(461)	—
Goodwill	(709)	(581)
Operating lease right-of-use assets	(1,846)	(2,072)
Total deferred tax liabilities	(3,016)	(2,653)
Net deferred tax assets	$ 77,889	$ 71,274

Assessing the realizability of deferred tax assets requires the determination of whether it is more-likely-than-not that some portion or all the deferred tax assets will not be realized. In assessing the need for a valuation allowance, the Company considers all available positive and negative evidence, including future reversals of existing taxable temporary differences, projected future taxable income, loss carryback and tax-planning strategies. Generally, more weight is given to objectively verifiable evidence, such as the cumulative loss in recent years, as a significant piece of negative evidence to overcome. As of December 31, 2020, the Company achieved three years of cumulative income, along with projections of profitability, for which management determined that there is sufficient positive evidence to conclude that it is more likely than not that substantially all of the deferred tax assets will be realized. As such, $28.5 million of the valuation allowance had been released. Management continues to maintain this position as of December 31, 2022. During the years ended December 31, 2022 and December 31, 2021, the net change in the valuation allowance was not significant.

As of December 31, 2022, the Company has net operating loss carryforwards for federal and state income tax purposes of approximately $41.8 million and $125.1 million, respectively, which expire beginning in the year 2027. In addition to the above federal net operating losses, the Company has net operating losses of $113.2 million with an indefinite carryforward period. There are certain state net operating losses that follow the federal carryforward period and are indefinite in nature. The federal and California research and development tax credits are approximately $0.7 million and $0.8 million, respectively. The federal research credits will begin to expire in 2030 and the California research and development credits have no expiration date. Utilization of the net operating loss carryforwards and credits may be subject to a substantial annual limitation due to ownership changes that may occur, as provided by Section 382 of the Internal Revenue Code of 1986, as well as similar state provisions. Such annual limitation could result in the expiration of net operating losses and credits before their utilization.

Unrecognized Tax Benefits

A reconciliation of the beginning and ending amount of unrecognized tax benefits is as follows (in thousands):

	December 31,		
	2022	2021	2020
Balance at the beginning of the year	$ 390	$ 390	$ 390
Reductions based upon tax positions related to the current year	—	—	—
Balance at the end of the year	$ 390	$ 390	$ 390

In order for these unrecognized tax benefits to be realized, the net operating loss carryforwards must be utilized first. The Company does not anticipate any material change in its unrecognized tax benefits over the next twelve months.

The Company files U.S. federal and state income tax returns with varying statutes of limitations. All tax years since inception remain open to examination due to the carryover of unused net operating losses and tax credits.

14. Commitments and Contingencies

Arbitration/Litigation

On January 14, 2019, a vendor filed a Demand for Arbitration and Statement of Claim against the Company ("Demand") for alleged breach of the November 10, 2017 Preferred Specialty Pharmacy Agreement ("Agreement") between the Company and the vendor. On March 13, 2019, the Company terminated the Agreement for material breach with the vendor. On April 3, 2019, the vendor filed a Second Amended Demand for Arbitration ("SAD") for breach of the Agreement. The vendor was seeking $25.0 million in damages, fees, interest and cost. Pursuant to a schedule set forth by the Arbitration Panel, on May 3, 2019, the Company filed a Motion to Dismiss the SAD. That Motion was fully briefed on June 14, 2019 and was decided on July 31, 2019. The Arbitration Panel dismissed two of the vendor's four claims. The Arbitration Panel held additional hearings for the two remaining claims between August 17, 2020 and August 26, 2020. Final arguments were held on October 20, 2020. Based on a willingness to expeditiously resolve the matter, the parties proposed settlement to the panel on November 16, 2020. In December 2020, the Company finalized and settled the arbitration for $5.75 million without admission of liability to avoid further legal costs.

The Company believes there is no other litigation pending that could have, individually or in the aggregate, a material adverse effect on the Company's financial position, results of operations, or cash flows.

Indemnifications

The Company indemnifies each of its officers and directors for certain events or occurrences, subject to certain limits, while the officer or director is or was serving at the Company's request in such capacity, as permitted under Delaware law and in accordance with its certificate of incorporation and bylaws. The term of the indemnification period lasts as long as an officer or a director may be subject to any proceeding arising out of acts or omissions of such officer or director in such capacity. The maximum amount of potential future indemnification is unlimited; however, the Company currently holds director and officer liability insurance. This insurance allows the transfer of risk associated with the Company's exposure and may enable it to recover a portion of any future amounts paid. The Company believes that the fair value of these indemnification obligations is minimal. Accordingly, it has not recognized any liabilities relating to these obligations for any period presented.

15. Unaudited Quarterly Results of Operations Data

The following table sets forth the unaudited quarterly consolidated results of operations for each of the eight quarterly periods in the period ended December 31, 2022. The unaudited quarterly results of operations have been prepared on the same basis as the audited consolidated financial statements, and we believe they reflect all normal recurring adjustments necessary for the fair statement of the Company's results of operations for these periods. This information should be read in conjunction with the consolidated financial statements and related notes included elsewhere in this Annual Report. The Company's historical operating data may not be indicative of the Company's future performance.

	Three Months Ended							
	Mar. 31, 2021	Jun. 30, 2021	Sep. 30, 2021	Dec. 31, 2021	Mar. 31, 2022	Jun. 30, 2022	Sep. 30, 2022	Dec. 31, 2022
	(in thousands)							
Revenue	$ 122,133	$ 128,651	$ 122,284	$ 127,553	$ 172,217	$ 195,004	$ 205,371	$ 214,321
Cost of services	93,226	99,030	93,792	102,438	139,268	151,117	159,376	169,827
Gross profit	28,907	29,621	28,492	25,115	32,949	43,887	45,995	44,494
Operating expenses:								
Sales and marketing	4,014	4,028	4,441	7,696	10,015	11,496	11,166	12,980
General and administrative	13,086	13,937	14,986	17,607	22,992	23,553	23,574	28,208
Total operating expenses	17,100	17,965	19,427	25,303	33,007	35,049	34,740	41,188
Income (loss) from operations	11,807	11,656	9,065	(188)	(58)	8,838	11,255	3,306
Other income (expense), net	7	12	(92)	(293)	(96)	25	82	275
Interest income (expense), net	(18)	252	144	83	12	40	202	560
Total other income (expense), net	(11)	264	52	(210)	(84)	65	284	835
Income (loss) before income taxes	11,796	11,920	9,117	(398)	(142)	8,903	11,539	4,141
Benefit (provision) for income taxes	3,370	6,807	7,679	15,478	5,113	(135)	1,672	(733)
Net income	$ 15,166	$ 18,727	$ 16,796	$ 15,080	$ 4,971	$ 8,768	$ 13,211	$ 3,408
Net income per share:								
Basic	$ 0.17	$ 0.21	$ 0.19	$ 0.17	$ 0.05	$ 0.10	$ 0.14	$ 0.04
Diluted	$ 0.15	$ 0.19	$ 0.17	$ 0.15	$ 0.05	$ 0.09	$ 0.13	$ 0.03
Weighted-average shares used in computing net income per share:								
Basic	87,404,287	88,165,158	89,571,226	90,537,077	91,410,368	91,964,978	92,316,022	93,056,297
Diluted	100,106,497	99,808,085	100,370,331	100,321,297	99,935,735	99,672,769	99,819,801	100,059,687

ITEM 9. CHANGES IN AND DISAGREEMENTS WITH ACCOUNTANTS ON ACCOUNTING AND FINANCIAL DISCLOSURE

None.

ITEM 9A. CONTROLS AND PROCEDURES

Limitations on Effectiveness of Controls and Procedures

The Company maintains disclosure controls and procedures (as that term is defined in Rules 13a-15(e) and 15d-15(e) under the Securities Exchange Act of 1934, as amended, or the Exchange Act) that are designed to ensure that information required to be disclosed in the Company's reports under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in the SEC's rules and forms, and that such information is accumulated and communicated to the Company's management, including its Chief Executive Officer and Chief Financial Officer, as appropriate, to allow timely decisions regarding required disclosures. In designing and evaluating our disclosure controls and procedures, management recognizes that any controls and procedures, no matter how well designed and operated, can provide only reasonable assurance of achieving the desired control objectives. In addition, the design of disclosure controls and procedures must reflect the fact that there are resource constraints and that management is required to apply judgment in evaluating the benefits of possible controls and procedures relative to their costs.

Evaluation of Disclosure Controls and Procedures

Our management, with the participation of our principal executive officer and principal financial officer, has evaluated, as of the end of the period covered by this Annual Report on Form 10-K, the effectiveness of our disclosure controls and procedures (as that term is defined in Rules 13a-15(e) and 15d-15(e) under the Exchange Act). Based on this evaluation, our principal executive officer and principal financial officer concluded that our disclosure controls and procedures were effective at the reasonable assurance level as of December 31, 2022.

Management's Annual Report on Internal Control Over Financial Reporting

Our management is responsible for establishing and maintaining adequate internal control over financial reporting (as that term is defined in Rule 13a-15(f) and 15d-15(f) of the Exchange Act). Because of its inherent limitations, internal control over financial reporting may not prevent or detect material misstatements. Also, projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate. Under the supervision and with the participation of the Company's principal executive officer and principal financial officer, our management assessed the effectiveness of our internal control over financial reporting as of December 31, 2022 based on the criteria set forth in Internal Control-Integrated Framework issued by the Committee of Sponsoring Organizations of the Treadway Commission (2013 framework). Based on the assessment, our management concluded that our internal control over financial reporting was effective as of December 31, 2022.

Attestation Report of the Independent Registered Public Accounting Firm

Ernst & Young LLP, an independent registered public accounting firm, has audited the consolidated financial statements included in the Annual Report on Form 10-K and has issued an attestation report on our internal control over financial reporting, which is included in this Item 9A below.

Changes in Internal Control Over Financial Reporting

There were no changes in our internal control over financial reporting (as that term is defined in Rules 13a-15(f) and 15d-15(f) under the Exchange Act) that occurred during the quarter ended December 31, 2022 that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

Report of Independent Registered Public Accounting Firm

To the Stockholders and the Board of Directors of Progyny, Inc.

Opinion on Internal Control over Financial Reporting

We have audited Progyny, Inc.'s internal control over financial reporting as of December 31, 2022, based on criteria established in Internal Control —Integrated Framework issued by the Committee of Sponsoring Organizations of the Treadway Commission (2013 framework) (the COSO criteria). In our opinion, Progyny, Inc. (the Company) maintained, in all material respects, effective internal control over financial reporting as of December 31, 2022, based on the COSO criteria.

We also have audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States) (PCAOB), the consolidated balance sheets of the Company as of December 31, 2022 and 2021, the related consolidated statements of operations, comprehensive income, changes in stockholders' equity and cash flows for each of the three years in the period ended December 31, 2022, and the related notes and our report dated March 1, 2023, expressed an unqualified opinion thereon.

Basis for Opinion

The Company's management is responsible for maintaining effective internal control over financial reporting and for its assessment of the effectiveness of internal control over financial reporting included in the accompanying Management's Annual Report on Internal Control over Financial Reporting. Our responsibility is to express an opinion on the Company's internal control over financial reporting based on our audit. We are a public accounting firm registered with the PCAOB and are required to be independent with respect to the Company in accordance with the U.S. federal securities laws and the applicable rules and regulations of the Securities and Exchange Commission and the PCAOB.

We conducted our audit in accordance with the standards of the PCAOB. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether effective internal control over financial reporting was maintained in all material respects.

Our audit included obtaining an understanding of internal control over financial reporting, assessing the risk that a material weakness exists, testing and evaluating the design and operating effectiveness of internal control based on the assessed risk, and performing such other procedures as we considered necessary in the circumstances. We believe that our audit provides a reasonable basis for our opinion.

Definition and Limitations of Internal Control Over Financial Reporting

A company's internal control over financial reporting is a process designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles. A company's internal control over financial reporting includes those policies and procedures that (1) pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the company; (2) provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles, and that receipts and expenditures of the company are being made only in accordance with authorizations of management and directors of the company; and (3) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use, or disposition of the company's assets that could have a material effect on the financial statements.

Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements. Also, projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate.

/s/ Ernst & Young LLP

New York, NY
March 1, 2023

ITEM 9B. OTHER INFORMATION

None.

ITEM 9C. DISCLOSURE REGARDING FOREIGN JURISDICTIONS THAT PREVENT INSPECTIONS

Not Applicable.

PART III

ITEM 10. DIRECTORS, EXECUTIVE OFFICERS AND CORPORATE GOVERNANCE

Code of Conduct

Our Board of Directors has adopted a Code of Conduct applicable to all officers, directors and employees, including our principal executive officer, principal financial officer, principal accounting officer and controller, and persons performing similar functions. A copy of our Code of Conduct is available at the Investor Relations section of our website, located at *investors.progyny.com*, under "Governance—Documents & Charters." We intend to make all disclosures required by law or Nasdaq Stock Market rules regarding any amendments to, or waivers from, any provisions of the code at the same location of our website. Our website is not incorporated by reference into this Annual Report on Form 10-K, and you should not consider information on our website to be part of this Annual Report on Form 10-K.

Other Information

The remaining information required by this item will be included under the headings "Proposal 1—Election of Directors," "Information Regarding Director Nominees and Current Directors," "Information Regarding the Board of Directors and Corporate Governance," and, if applicable, "Delinquent Section 16(a) Reports" in our definitive proxy statement relating to the 2023 Annual Meeting of Stockholders to be filed with the SEC within 120 days of the fiscal year ended December 31, 2022, which we refer to as our 2023 Proxy Statement, and such required information is incorporated herein by reference into this Annual Report on Form 10-K.

ITEM 11. EXECUTIVE COMPENSATION

The information required by this item will be included under the headings "Executive Compensation," "Director Compensation," and "Information Regarding the Board of Directors and Corporate Governance" in our 2023 Proxy Statement and is hereby incorporated by reference into this Annual Report on Form 10-K.

ITEM 12. SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT AND RELATED STOCKHOLDER MATTERS.

The information required by this item will be included under the heading "Equity Compensation Plan Information" and "Security Ownership of Certain Beneficial Owners and Management" in our 2023 Proxy Statement and is hereby incorporated by reference into this Annual Report on Form 10 K.

ITEM 13. CERTAIN RELATIONSHIPS AND RELATED TRANSACTIONS, AND DIRECTOR INDEPENDENCE

The information required by this item will be included under the headings "Transactions with Related Persons," and "Information Regarding the Board of Directors and Corporate Governance" in our 2023 Proxy Statement and is hereby incorporated by reference into this Annual Report on Form 10-K.

ITEM 14. PRINCIPAL ACCOUNTING FEES AND SERVICES

The information required by this item will be included under the heading "Principal Accountant Fees and Services" in our 2023 Proxy Statement and is hereby incorporated by reference into this Annual Report on Form 10-K.

PART IV

ITEM 15. EXHIBITS, AND FINANCIAL STATEMENT SCHEDULES.

(a) Documents filed as part of this report:

1. List of Financial Statements

The following financial statements are included in Item 8 "Financial Statements and Supplementary Data" herein.

2. List of Financial Statement Schedules

All schedules are omitted because they are not applicable, not required or the required information is shown in the consolidated financial statements or notes thereto.

3. List of Exhibits

The exhibits to this report are listed below.

Exhibit Number	Description	Incorporated by Reference				Filed/Furnished Herewith
		Form	File No.	Exhibit	Filing Date	
3.1	Amended and Restated Certificate of Incorporation of Progyny, Inc.	8-K	001-39100	3.2	10/31/2019	
3.2	Amended and Restated By-laws of Progyny, Inc.	S-1	333-233965	3.4	9/27/2019	
4.1	Form of common stock certificate.	S-1/A	333-233965	4.1	10/15/2019	
4.2	Form of 2013 Preferred Stock Warrant.	S-1/A	333-233965	4.2	10/15/2019	
4.3	Form of 2014 Preferred Stock Warrant.	S-1/A	333-233965	4.3	10/15/2019	
4.4	Form of 2015 Preferred Stock Warrant.	S-1/A	333-233965	4.4	10/15/2019	
4.5	Warrant to Purchase Stock issued to Silicon Valley Bank dated October 9, 2013.	S-1/A	333-233965	4.5	10/15/2019	
4.6	Description of Capital Stock.					*

10.1†	Progyny, Inc. 2008 Stock Plan, as amended, and forms of agreements thereunder.	S-1	333-233965	10.2	9/27/2019	
10.2†	Progyny, Inc. 2017 Equity Incentive Plan and forms of agreements thereunder.	S-8	333-233965	99.2	10/25/2019	
10.3†	Amendment No. 1 to the Progyny, Inc. 2017 Equity Incentive Plan.	10-K	001-39100	10.4	3/10/2020	
10.4†	Progyny, Inc. 2019 Equity Incentive Plan and forms of agreements thereunder.	S-1/A	333-233965	10.4	10/15/2019	
10.5†	Amendment No. 1 to the Progyny, Inc. 2019 Equity Incentive Plan.	10-K	001-3910	10.6	3/10/2020	
10.6†	Progyny, Inc. 2019 Employee Stock Purchase Plan.	S-1/A	333-233965	10.5	10/15/2019	
10.7†	Form of Indemnification Agreement.	S-1	333-233965	10.6	9/27/2019	
10.8†	Amended and Restated Employment Agreement between Progyny, Inc. and David Schlanger, dated December 23, 2021	10-Q	001-39100	10.1	5/6/2022	
10.9†	Amended and Restated Employment Agreement between Progyny, Inc. and Peter Anevski, dated December 23, 2021.	10-Q	001-39100	10.2	5/6/2022	
10.10†	Amended and Restated Employment Agreement between Progyny, Inc. and Mark Livingston dated June 7, 2022	10-Q	001-39100	10.1	8/5/2022	
10.11†	Employment Agreement between Progyny, Inc. and Allison Swartz dated October 27, 2022					*
10.12†	Amended and Restated Employment Agreement between Progyny, Inc. and Michael Sturmer dated December 23, 2021	10-Q	001-39100	10.3	5/6/2022	
10.13	Sublease Agreement, dated as of July 29, 2019 by and between IPREO Holdings, LLC and Progyny, Inc.	S-1	333-233965	10.1	9/27/2019	
10.14	Lease Agreement, dated as of February 25, 2022 by and between ESRT 1359 Broadway, LLC and Progyny, Inc.					*
10.15	Loan and Security Agreement, dated as of June 8, 2018, between Silicon Valley Bank and Registrant.	S-1	333-233965	10.10	9/27/2019	

10.15	Amendments to Loan and Security Agreement, dated as of June 8, 2018, between Silicon Valley Bank and Registrant.	10-Q	001-39100	10.1	8/7/2020		
21.1	List of Subsidiaries.	10-K	001-39100	21.1	3/1/2022		
23.1	Consent of Ernst & Young LLP						*
24.1	Power of Attorney (incorporated by reference to the signature pages of this Annual Report on Form 10-K).						*
31.1	Certification of Chief Executive Officer pursuant to Exchange Act Rule 13a-14(a).						*
31.2	Certification of Chief Financial Officer pursuant to Exchange Act Rule 13a-14(a).						*
32.1	Certification of Principal Executive Officer pursuant to 18 U.S.C. Section 1350.						**
32.2	Certification of Chief Financial Officer pursuant to 18 U.S.C. Section 1350.						**
101.INS	Inline XBRL Instance Document.						
101.SCH	Inline XBRL Taxonomy Extension Schema Document.						*
101.CAL	Inline XBRL Taxonomy Extension Calculation Linkbase Document.						*
101.DEF	Inline XBRL Taxonomy Extension Definition Linkbase Document.						*
101.LAB	Inline XBRL Taxonomy Extension Label Linkbase Document.						*
101.PRE	Inline XBRL Taxonomy Extension Presentation Linkbase Document.						*
104	Cover Page Interactive Data File (embedded within the Inline XBRL document).						*

* Filed herewith.

** Furnished herewith.

† Indicates management contract or compensatory plan or arrangement in which any director or executive officer participates.

ITEM 16. FORM 10-K SUMMARY

None.

SIGNATURES

Pursuant to the requirements of Section 13 or Section 15(d) of the Securities Exchange Act of 1934, the Registrant has duly caused this report to be signed on its behalf by the undersigned thereunto duly authorized.

PROGYNY, INC.

Date: March 1, 2023

By: /s/ PETER ANEVSKI
Peter Anevski
Chief Executive Officer
(Principal Executive Officer)

POWER OF ATTORNEY

KNOW ALL PERSONS BY THESE PRESENTS, that each person whose signature appears below constitutes and appoints Peter Anevski and Mark Livingston, and each one of them, as his or her true and lawful attorneys-in-fact and agents, with full power of substitution and resubstitution, for him or her and in their name, place and stead, in any and all capacities, to sign any and all amendments to this Annual Report on Form 10-K, and to file the same, with all exhibits thereto and other documents in connection therewith, with the Securities and Exchange Commission, granting unto said attorneys-in-fact and agents, and each of them, full power and authority to do and perform each and every act and thing requisite and necessary to be done in connection therewith, as fully to all intents and purposes as he or she might or could do in person, hereby ratifying and confirming all that said attorneys-in-fact and agents or any of them, or his or her substitute or substitutes, may lawfully do or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities Exchange Act of 1934, this report has been signed below by the following persons on behalf of the Registrant and in the capacities indicated as of March 1, 2023.

Signature	**Title**
/s/ PETER ANEVSKI **Peter Anevski**	Chief Executive Officer and Director (principal executive officer)
/s/ MARK LIVINGSTON **Mark Livingston**	Chief Financial Officer (principal financial and accounting officer)
/s/ DAVID SCHLANGER **David Schlanger**	Executive Chairman
/s/ BETH SEIDENBERG **Beth Seidenberg, M.D.**	Lead Independent Director
/s/ LLOYD DEAN **Lloyd Dean**	Director
/s/ FRED COHEN **Fred Cohen, M.D., D.Phil.**	Director
/s/ KEVIN GORDON **Kevin Gordon**	Director
/s/ ROGER HOLSTEIN **Roger Holstein**	Director
/s/ JEFFREY PARK **Jeffrey Park**	Director
/s/ NORMAN PAYSON **Norman Payson, M.D.**	Director
/s/ CHERYL SCOTT **Cheryl Scott**	Director

DESCRIPTION OF PROGYNY, INC. SECURITIES

As of December 31, 2022, Progyny, Inc. had one class of securities registered under Section 12 of the Securities Exchange Act of 1934, as amended, or the Exchange Act: our common stock, par value $0.0001 per share. When we use the words "we," "us," "our" or the "Company," we are referring to Progyny, Inc.

The following description of our capital stock is a summary and does not purport to be complete. It is subject to, and qualified in its entirety by reference to, the applicable provisions of our amended and restated certificate of incorporation, which we refer to as our "certificate of incorporation" and our amended and restated bylaws, which we refer to as our "bylaws." The certificate of incorporation and bylaws are incorporated by reference as Exhibits 3.1 and 3.2, respectively, to our Annual Report on Form 10-K for the year ended December 31, 2022, of which this Exhibit 4.6 is a part. We encourage you to read our certificate of incorporation, our bylaws and the applicable provisions of the Delaware General Corporation Law for more information.

General

Our authorized capital stock consists of 1,100,000,000 shares, all with a par value of $0.0001 per share, consisting of 1,000,000,000 shares of common stock and 100,000,000 shares of preferred stock. Our common stock is listed on the Nasdaq Global Select Market under the symbol "PGNY."

Description of Common Stock

Voting rights. The common stock is entitled to one vote per share on any matter that is submitted to a vote of our stockholders, including the election of directors. Our certificate of incorporation does not provide for cumulative voting for the election of directors. Accordingly, the holders of a majority of the outstanding shares of common stock entitled to vote in any election of directors can elect all of the directors standing for election, if they so choose, other than any directors that holders of any redeemable convertible preferred stock we may issue may be entitled to elect.

Dividend rights. Subject to preferences that may be applicable to any then outstanding redeemable convertible preferred stock, holders of common stock are entitled to receive ratably those dividends, if any, as may be declared by the board of directors out of legally available funds.

Rights upon liquidation. In the event of our liquidation, dissolution, or winding up, the holders of common stock will be entitled to share ratably in the assets legally available for distribution to stockholders after the payment of or provision for all of our debts and other liabilities, subject to the prior rights of any redeemable convertible preferred stock then outstanding.

Other rights. Holders of common stock have no preemptive or conversion rights or other subscription rights and there are no redemption or sinking funds provisions applicable to the common stock. All outstanding shares of common stock are, and the common stock to be outstanding upon the completion of this offering will be, duly authorized, validly issued, fully paid, and nonassessable. The rights, preferences and privileges of holders of common stock are subject to and may be adversely affected by the rights of the holders of shares of any series of redeemable convertible preferred stock that we may designate and issue in the future.

Anti-Takeover Provisions

Certificate of Incorporation and Bylaws

Because our stockholders do not have cumulative voting rights, stockholders holding a majority of the voting power of our shares of common stock will be able to elect all of our directors. Our certificate of incorporation and bylaws provide for stockholder actions at a duly called meeting of stockholders, and not by consent in writing. A special meeting of stockholders may be called only by a majority of our board of directors, the chair of our board of directors, our chief executive officer or our lead independent director. Our bylaws establish an advance notice procedure for stockholder proposals to be brought before an annual meeting of our stockholders, including proposed nominations of persons for election to our board of directors. In accordance with our certificate of incorporation, our board of directors is divided into three classes with staggered three-year terms. Our certificate of incorporation further provides that our directors may be removed for cause only upon the vote of at least two-thirds of our outstanding shares of voting stock. Further, our certificate of incorporation requires the approval of our board of

directors or the holders of at least two-thirds of our outstanding shares of voting stock to amend our bylaws and certain provisions of our certificate of incorporation.

The foregoing provisions will make it more difficult 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 preserve our existing control structure after completion of this offering, facilitate our continued innovation and the risk-taking that it requires, permit us to continue to prioritize our long-term goals rather than short-term results, enhance the likelihood of continued stability in the composition of our board of directors and its policies and to discourage certain types of transactions that may involve an actual or threatened acquisition of us. These provisions are also designed to reduce our vulnerability to an unsolicited acquisition proposal 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 deterring hostile takeovers or 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.

Section 203 of the Delaware General Corporation Law

We are subject to Section 203 of the Delaware General Corporation Law, which prohibits a 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, subject to certain exceptions. The existence of this provision would be expected to have an anti-takeover effect with respect to transactions not approved in advance by our board of directors, including discouraging takeover attempts that might result in a premium over the market price for the shares of our common stock.

Choice of Forum

Our certificate of incorporation provides that the Court of Chancery of the State of Delaware (or, if and only if the Court of Chancery of the State of Delaware lacks subject matter jurisdiction, any state court located within the State of Delaware or, if and only if all such state courts lack subject matter jurisdiction, the federal district court for the District of Delaware) will be the exclusive forum for actions or proceedings brought under Delaware statutory or common law: (1) any derivative action or proceeding brought on our behalf; (2) any action asserting a breach of fiduciary duty; (3) any action asserting a claim against us arising under the Delaware General Corporation Law; (4) any action regarding our certificate of incorporation or our bylaws; (5) any action as to which the DGCL confers jurisdiction to the Court of Chancery of the State of Delaware; or (6) any action asserting a claim against us that is governed by the internal affairs doctrine. This provision would not apply to claims brought to enforce a duty or liability created by the Exchange Act or any other claim for which the federal courts have exclusive jurisdiction.

Transfer Agent and Registrar

The transfer agent and registrar for our common stock is Computershare Trust Company, N.A.

progyny
Smarter Fertility Benefits

Exhibit 10.11

October 26, 2022

Allison Swartz
Via DocuSign

Dear Allison:

Congratulations! You are joining a great team at Progyny ("*Progyny*" or "*Company*"), a leading fertility benefits company that combines service, science, technology and data to provide fertility solutions for self- insured employers. This letter describes the terms and conditions of our offer of employment.

1. Position. You are being hired for the position of Executive Vice President, General Counsel. If you accept, your anticipated start date is November 28th, 2022 (such actual date being the "*Start Date*") or as mutually agreed upon by the Company and you. You will report to Pete Anevski, Chief Executive Officer, or such other officer as may be designated by the Company. Your principal place of employment will be Progyny's New York office. You agree that you will perform your duties faithfully, diligently and in compliance with Progyny's policies and procedures in effect from time to time, including its Employee Handbook and Code of Conduct.

2. Compensation and Benefits: As an employee of Progyny you will receive the following compensation and benefits:

Base Salary. Your annual base salary will be $350,000, less applicable deductions authorized by you and required by law, which will be paid in accordance with the Company's normal payroll practices. The Company, in its sole judgement and discretion, may modify your salary upon periodic review.

Variable Compensation. You are eligible for an annual discretionary bonus with a target of up to 50% of your base salary (the "*Target Bonus*") prorated based on your Start Date provided that if your Start Date is after October 1st, you will not be eligible for a bonus until the following year. In order to receive the Target Bonus or any portion of the Target Bonus, you must achieve certain individual performance goals, Progyny must achieve certain performance targets, and you must be employed with the Company on the date the bonus is paid. The actual amount of your annual bonus will be determined by the Company or its Board of Directors (the "*Board*") in its sole discretion.

Sign On Bonus. You will receive a one-time sign on bonus of $100,000 (the "Sign On Bonus"), conditioned on your signing a Repayment Agreement, which requires that you pay back the Sign On Bonus to the Company if you resign from your employment or are terminated by the Company for Cause (as defined in the Repayment Agreement) within the first twelve (12) months of your employment. The Sign On Bonus will be subject to applicable withholding taxes and withholdings and will be paid to you within 30 days after your Start Date, subject to your signing the Repayment Agreement.]

Exhibit 10.11

Equity. In connection with the commencement of your employment with the Company and subject to approval by the Board, you will be granted an equity award that may be comprised of a non-qualified option to purchase 175,000 shares of the Company's Common Stock and 60,000 restricted stock units (your right to receive shares of the Company's Common Stock in the future), with the form of award, number of shares subject to the award, and the other terms and conditions being determined by the Company in its sole discretion (but shall be consistent with those grants made to similarly situated
employees). Subject to your continued employment on the applicable vesting dates, the award(s) will vest over the four-year period following your Start Date, with 25% vesting on the one-year anniversary of the Start Date and the remaining 75% vesting in equal quarterly installments over the following 36 months (with full vesting on the four-year anniversary of the Start Date). The terms of the grant will be set forth in, and subject to, the Company's standard form of equity award agreement and standard terms and conditions under its equity plan as in effect from time to time. Such grant(s) shall be made as soon as practicable after your Start Date.

Employee Benefits. You will be eligible to participate in the Company's employee benefit plans as in effect from time to time (including its health and welfare benefits) in accordance with their terms and subject to any eligibility requirements imposed by such plans. You will also be eligible to participate in the Company's paid time off programs in accordance with Company policy as in effect from time to time and applicable law. The Company reserves the right to modify or terminate its employee benefit plans, programs and policies, in whole or in part, at any time in its sole discretion.

Business Expenses. The Company will reimburse you for your reasonable and pre-approved business expenses, in accordance with its expense reimbursement policy as in effect from time to time and upon submission of supporting documentation.

3. Non-Disclosure, Non-Solicitation and Non-Competition Agreement. As an employee of the Company, you will have access to certain confidential information of the Company and you may, during the course of your employment, develop certain information or inventions that will be the property of the Company. As a condition of your employment, and to protect the interests of the Company, you are required to sign and comply with the Company's standard Proprietary Information, Inventions and Non-Solicitation/Non- Competition Agreement (the "*Covenant Agreement*") in the form attached hereto as Exhibit A.

4. At-Will Employment. Your employment with the Company is "at will", which means that it is for no specified term or duration and is not a contract of employment (except for the agreement to arbitrate set forth in Section 5 below, which is a binding agreement between you and the Company). As such, you or the Company may terminate the employment relationship at any time and for any reason, with or without cause or notice; and nothing in this offer letter (including your participation in any equity program, incentive bonus, or other benefit program) is to be regarded as assuring you of continuing employment for any particular period of time. Your employment at-will status can only be modified in a written agreement signed by you and by an officer of Progyny.

5. Arbitration. As a condition of your employment with the Company, you and the Company agree to submit to mandatory final, binding and confidential arbitration any and all disputes, claims or controversies arising out of, related to or connected with your employment with the Company (or any termination

thereof), including, but not limited to, claims of discrimination, harassment, unpaid wages, breach of contract (express or implied), wrongful termination, torts, claims for equity, as well as claims based upon any federal, state or local ordinance, statute, regulation or constitutional provision, including, but not limited to, the Age Discrimination in Employment Act, 29 U.S.C. § 621, *et seq.*, the Americans with Disabilities Act, 42 U.S.C. § 12101, *et seq*., the Employee Retirement Income Security Act (ERISA), 29 U.S.C. § 1001, *et seq.,* the Family and Medical Leave Act, 29 U.S.C. § 2601, *et seq.,* Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e, *et seq*., and 42 U.S.C. § 1981, and any and all state or local laws prohibiting discrimination or regulating any terms or conditions of employment "*Arbitrable Claims*"). Arbitration shall be the exclusive method by which to resolve all Arbitrable Claims and shall be final and binding upon the parties. BY AGREEING TO THIS ARBITRATION PROCEDURE, YOU AND THE COMPANY HEREBY WAIVE ANY RIGHTS EITHER MAY HAVE TO TRIAL BY JURY IN REGARD TO ARBITRABLE CLAIMS.

In addition, all claims, disputes, or causes of action under this section, whether by you or the Company, must be brought in an individual capacity, and shall not be brought as a plaintiff (or claimant) or class member in any purported class or representative proceeding, nor joined or consolidated with the claims of any other person or entity. The arbitrator may not consolidate the claims of more than one person or entity and may not preside over any form of representative or class proceeding. To the extent that the preceding sentences regarding class claims or proceedings are found to violate applicable law or are otherwise found unenforceable, any claim(s) alleged or brought on behalf of a class shall proceed in a court of law rather than by arbitration.

Nothing in this Section 5 requires you to arbitrate any claim that the law says cannot be subject to arbitration (including claims of sexual harassment or sexual assault covered by the Ending Forced Arbitration of Sexual Assault and Sexual Harassment Act of 2021 unless you elect to arbitrate such claims). In addition, nothing in this Section 5 is intended to prevent either you or the Company from seeking injunctive relief in court to prevent irreparable harm pending the conclusion of any such arbitration; nor does it prevent either party from seeking injunctive relief in court with respect to a breach or threatened breach of the Covenant Agreement.

The arbitration shall be conducted pursuant to the Federal Arbitration Act, 9 U.S.C. § 1-16, and to the fullest extent permitted by law, in New York, New York by a single arbitrator conducted by JAMS, Inc. ("*JAMS*") under the then-applicable JAMS Employment Arbitration Rules and Procedures (which can be found at https://www.jamsadr.com/adr-rules-procedures/). In any arbitration proceeding, you will have the right to be represented by legal counsel at your own expense (subject to applicable law requiring that the Company pay the fees and/or costs of your legal counsel). The arbitrator shall: (a) have the authority to compel adequate discovery for the resolution of the dispute and to award such relief as would otherwise be available under applicable law in a court proceeding; and (b) issue a written statement signed by the arbitrator regarding the disposition of each claim and the relief, if any, awarded as to each claim, the reasons for the award, and the arbitrator's essential findings and conclusions on which the award is based. The arbitrator, and not a court, shall also be authorized to determine whether the provisions of this Section apply to a dispute, controversy, or claim sought to be resolved in accordance with these arbitration proceedings. The Company shall pay all filing and hearing costs and fees (but not, for the sake of clarity,

your attorneys' fees, and costs) in excess of the amount of court fees that you would be required to incur if the dispute were filed or decided in a court of law.

6. Prior Employment; Other Employment. We wish to impress upon you that we do not want you to, and we hereby direct you not to, use or disclose any confidential or proprietary material of any current or former employer in your work for the Company, bring onto Company premises any unpublished documents or property belonging to any former employer or other person to whom you have an obligation of confidentiality, or violate any other obligations you may have to any current or former employer or other third party. You agree that during your employment with the Company, you will not (i) engage in any other employment, occupation, consulting or business activity without the prior written consent of Human Resources as further described in our Employee Handbook, nor will you engage in any other activity that conflicts with your obligations to the Company, or (ii) assist any other person or organization in competing with the Company or in preparing to engage in competition with the business or proposed business of the Company. You represent that your signing of this offer letter and the Covenant Agreement and your employment with the Company will not violate any agreement currently in place between you and any current or past employers, or between you and any other parties.

7. Conditions to Employment. This offer of employment is conditioned upon your satisfaction of all the Company's pre-employment requirements including, but not limited to, references, background check, and your presentation of acceptable documents establishing your identity and employability as required by the Immigration and Control Act of 1986 and signing of the Covenant Agreement. Therefore, we caution you to not resign any current employment until you have received notification of successful completion of the reference and background check.

8. Tax Matters. All payments made to you pursuant to this offer letter or as part of your employment are subject to applicable withholding taxes and other deductions authorized by you or required by law. It is the intention that this offer letter and the payments being made to you be exempt from or comply strictly with the provisions of Section 409A of the Internal Revenue Code, Treasury regulations and other IRS guidance promulgated thereunder and shall be interpreted and administered accordingly, although the Company makes no representation or warranty and will have no liability to you if any of the payments are determined to constitute deferred compensation subject to Section 409A, but do not satisfy an exemption from, or the conditions of, Section 409A.

9. Entire Agreement. This offer letter, together with the Covenant Agreement and Repayment Agreement, will form the complete and exclusive statement of your offer of employment with the Company. It supersedes any other agreements or promises with respect to your employment made to you by anyone, whether oral or written. The offer letter and the Covenant Agreement and Repayment Agreement can be assigned by the Company to any affiliate or successor without your consent.

[Signature page follows]

Exhibit 10.11

Acceptance:

To indicate your acceptance of the Company's offer, and we hope that you do, please sign and date this letter and the Covenant Agreement and the Repayment Agreement and return the signed copies of these documents to me, by no later than October 31st, 2022.

We are extremely pleased to make this offer to you, Allison, and we are confident you will make a significant contribution to Progyny's success in your new role!

Very truly yours,

/s/ Peter Anevski

Pete Anevski
Chief Executive Officer Progyny, Inc.

I have read and understood this offer letter and hereby acknowledge, accept and agree to the terms as set forth above. I understand that this offer letter does not constitute a contract of employment for any specified period of time and that either I or Progyny may terminate the employment relationship at any time, for any reason, with or without cause or notice.

/s/ Allison Swartz 10/27/2022

SIGNED DATE

AGREEMENT OF LEASE

ESRT 1359 BROADWAY, L.L.C., Landlord

and

PROGYNY, INC., Tenant

Premises: Entire 2nd, 9th and 20th Floors and
a portion of the 3rd Floor
1359 Broadway
New York, New York 10018
Date: As of February 25, 2022

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AGREEMENT OF LEASE, made as of this 25th day of February, 2022 (this "Lease"), between ESRT 1359 BROADWAY, L.L.C., a Delaware limited liability company, with an address c/o ESRT Management, L. L. C., 111 West 33rd Street, New York, New York 10120, hereinafter referred to as "Landlord" and PROGYNY, INC., a Delaware corporation with an address at 1359 Broadway, New York, New York 10018, hereinafter referred to as "Tenant".

WITNESSETH:

WHEREAS, Landlord wishes to demise and let unto Tenant and Tenant desires to hire and take from Landlord, on the terms and subject to the conditions set forth herein, (w) the entire rentable area located on the 2nd floor (the "2nd Floor Premises") as more particularly shown on Exhibit "A-1" attached hereto and made a part hereof, (x) the entire rentable area located on the 9th floor (the "9th Floor Premises") as more particularly shown on Exhibit "A-2" attached hereto and made a part hereof, (y) the entire rentable area located on the 20th floor (the "20th Floor Premises") as more particularly shown on Exhibit "A-3" attached hereto and made a part hereof, and (z) a portion of the rentable area located on the 3rd Floor (the "3rd Floor Premises") as more particularly shown on Exhibit "A-4" attached hereto and made a part hereof, all in the building that is known as and by the street address of 1359 Broadway, New York, New York 10018 (such building, the "Building") (the 2nd Floor Premises, the 9th Floor Premises, the 20th Floor Premises and the 3rd Floor Premises being collectively referred to herein as the "Premises"; the Building together with the plot of land and the tax parcel on which the Building is constructed or installed, the "Real Property"). The 2nd Floor Premises and the 3rd Floor Premises are collectively hereinafter referred to as, the "2nd/3rd Floor Premises"; and

WHEREAS, Tenant currently occupies the entire 2nd/3rd Floor Premises pursuant to that certain Sublease dated as of July 29, 2019 between IPREO Holdings, LLC ("Ipreo"), as sublandlord, and Tenant, as subtenant (the "2nd/3rd Floor Sublease").

NOW, THEREFORE, in consideration of the Premises, and other good and valuable consideration, the mutual receipt and legal sufficiency of which the parties hereto hereby acknowledge, Landlord and Tenant hereby covenant and agree as follows:

1. **DEMISE, TERM AND USE**

A.

(i) Subject to the terms of this Lease, Landlord hereby demises and lets to Tenant and Tenant hereby hires and takes from Landlord, each portion of the Premises for the Term (as hereinafter defined) applicable thereto together with the non-exclusive right to use, in common with others, the public and common areas of the Building, to the extent required for access to the Premises or use and occupancy of the Premises for the uses permitted under this Lease. Subject to the terms hereof, (x) with respect to the 2nd/3rd Floor Premises, the Term shall commence on June 1, 2029 (such date, the "2nd/3rd Floor Commencement Date"), (y) with respect to the 9th Floor Premises, the Term shall commence upon the date on which Landlord's Work (as defined in Article 23 hereof) with respect to the 9th Floor Premises is Substantially Complete (as hereinafter defined) with the Building systems providing service to the 9th Floor Premises in good working order (such date, the "9th Floor Commencement Date"), and (z) with respect to the 20th Floor Premises, the Term shall commence upon the date that is the later to occur of (1) January 1, 2024, and (2) the date on which Landlord's Work with respect to the 20th Floor Premises is Substantially Complete with the Building systems providing service to the 20th Floor Premises in good working order (such date, the "20th Floor Commencement Date") and, in all cases, the Term shall expire on the Fixed Expiration Date (as hereinafter defined). Landlord has no objection to Tenant's occupancy of the 2nd/3rd Floor Premises on May 31, 2029. For purposes hereof, the following terms shall have the following meanings:

(1) "Applicable Commencement Date" shall mean, with respect to the 2nd/3rd Floor Premises, the 2nd/3rd Floor Commencement Date, with respect to the 9th Floor Premises, the 9th Floor Commencement Date and with respect to the 20th Floor Premises, the 20th Floor Commencement Date;

(2) "First Commencement Date" shall mean, the first to occur of the 2nd/3rd Floor Commencement Date, the 9th Floor Commencement Date and the 20th Floor Commencement Date;

(3) "Fixed Expiration Date" shall mean the last day of the month in which the day immediately preceding the tenth (10th) anniversary of the 20th Floor Rent Commencement Date (as hereinafter defined) shall occur;

(4) "Expiration Date" shall mean any earlier or later date than the Fixed Expiration Date that the term of this Lease terminates pursuant to the terms hereof or pursuant to law; and

(5) "Term" shall mean, (i) with respect to the 2nd/3rd Floor Premises, the term commencing on the 2nd/3rd Floor Commencement Date and ending on the Expiration Date, (ii) with respect to the 9th Floor Premises, the term commencing on the 9th Floor Commencement Date and ending on the Expiration Date, and (iii) with respect to the 20th Floor Premises, the term commencing on the 20th Floor Commencement Date and ending on the Expiration Date.

For all purposes of this Lease, the parties agree that the rentable square foot area of the 2nd Floor Premises is deemed to be 24,216 rentable square feet, the rentable square foot area of the 9th Floor Premises is deemed to be 24,099 rentable square feet, the rentable square foot area of the 20th Floor Premises is deemed to be 21,262 rentable square feet, and the rentable square foot area of the 3rd Floor Premises is deemed to be 996 rentable square feet .

(ii) As used throughout this Lease, the term "Substantial Completion" or words of similar import shall mean that the applicable work has been substantially completed in accordance applicable Requirements (it being understood that the obtaining of any required signoffs and approvals for Landlord's Work may occur following the Commencement Date, and not as a condition to the Substantial Completion of Landlord's Work, provided that Tenant shall not be legally prohibited from using the applicable portion of the Premises (and shall not actually be using the applicable portion of the Premises) solely due to such delay in obtaining such signoffs or approvals)) with respect to the applicable portions of the Premises in accordance with the applicable plans and specifications, if any, and the provisions of Article 23 and Exhibits B-1, B-2 and B-3 attached hereto and made a part hereof with respect to Landlord's Work it being agreed that (i) such work shall be deemed substantially complete with respect to each portion of the Premises notwithstanding the fact that minor or insubstantial details of construction or demolition, mechanical adjustment or decorative items remain to be performed in such portion of the Premises ("Punch List Items"), and (ii) with respect to work that is being performed in any applicable portion of the Premises, such work shall be deemed substantially complete only if the incomplete elements thereof do not interfere materially with Tenant's use and occupancy of such portion of the Premises for the conduct of business. Landlord shall deliver notice to Tenant at least ten (10) days prior to the date that Landlord reasonably anticipates Landlord's Work with respect to each portion of the Premises shall be Substantially Complete (such notice, the "Substantial Completion Notice"); it being understood, however, that notwithstanding the provisions of Article 28 hereof to the contrary, Landlord may provide such notice to Tenant's designated representatives via electronic mail, at Brittany.caudle@progyny.com and mfiechter@TPGArchitecture.com (such designated representative, "Tenant's Designated Representative", provided Tenant shall have the right to change Tenant's Designated Representative upon reasonable prior notice to Landlord); it being understood that if Landlord does not elect to send the aforesaid notice via electronic mail as contemplated herein, such notice shall be sent pursuant to Article 28 hereof. Notwithstanding the foregoing to the contrary, in no event shall Landlord have any obligation to notify Tenant as aforesaid if Tenant has taken legal possession of the Premises prior to the date on which Landlord delivers the Substantial Completion Notice; it being understood that if Tenant has taken legal possession thereof, the Commencement Date and the Rent Commencement Date shall in no way be conditioned or otherwise contingent upon the delivery of the Substantial Completion Notice.

(iii) Notwithstanding anything to the contrary contained in the Consent to Sublease dated September 12, 2019 between Landlord, Tenant and Ipreo, if Landlord's lease with Ipreo (the "Ipreo Lease") shall terminate prior to the 2nd/3rd Floor Commencement Date, the 2nd/3rd Floor Sublease shall continue as a direct lease between Landlord and Tenant, provided that, on the date of such termination, Tenant shall not be in default under the terms and provisions of the 2nd/3rd Floor Sublease or this Lease, which default shall continue after notice and the expiration of the applicable grace period. In such event, (i) Tenant shall attorn to and recognize Landlord as the sublandlord under the 2nd/3rd Floor Sublease, (ii) Tenant's subleasehold estate under the 2nd/3rd Floor Sublease shall not be terminated or disturbed by reason of the termination of the Ipreo Lease, (iii) upon the recognition and attornment by Tenant and Landlord, Tenant shall thereafter be obligated to pay fixed annual rent and escalation rent for the 2nd/3rd Floor Premises through the day immediately preceding the 2nd/3rd Floor Commencement Date equal to the fixed annual rent and escalation rent payable for the 2nd/3rd Floor Premises under the Ipreo Lease (as reasonably and equitably determined by Landlord). Notwithstanding the foregoing attornment and recognition provisions of this Lease, in the event the 2nd/3rd Floor Sublease becomes a direct lease between Landlord and Tenant, from and after such attornment and recognition and until the 2nd/3rd Floor Commencement Date, the non-monetary rights and obligations of Landlord and Tenant, as subtenant, with respect to the 2nd/3rd Floor Premises shall be governed by the corresponding provisions of this Lease, rather than the corresponding provisions of the Ipreo Lease and the 2nd/3rd Floor Sublease (provided, however, that in no event shall any amounts that would have been payable to Landlord pursuant to the Ipreo Lease be decreased as a result of the provisions hereof). The provisions of this paragraph are subject to the provisions of Section 4D(xiii) of this Lease. Except as set forth above, the rights and obligations of Landlord and Tenant under this Lease shall not commence with respect to the 2nd/3rd Floor Premises until the occurrence of the 2nd/3rd Floor Commencement Date. Subject to Ipreo's consent and provided that the same shall not be deemed a breach by Landlord of the Ipreo Lease or any other agreement to which Landlord is a party, Landlord hereby agrees that, upon notice from Tenant in each instance referring to the provisions hereof and provided Tenant is not in default under this Lease beyond the expiration of any applicable notice and cure periods, as long as there shall be no monetary adverse implications to Landlord (i.e., any amounts

payable to Landlord would not decrease in any manner), the provisions of Article 8, Article 10, Article 19, Article 22, Article 27, Article 41 and Article 42 shall apply with respect to Tenant's use and occupancy of the 2nd/3rd Floor Premises (as between Landlord and Tenant) during the period commencing on the date hereof until the 2nd/3rd Floor Commencement Date.

B. Tenant shall use the Premises solely as general, administrative and executive offices for the conduct of Tenant's business, and for lawful purposes reasonably incidental thereto (including, without limitation, wellness/mother's rooms and multi-media rooms) and for no other purpose; provided any such incidental use (i) complies with the Building's certificate of occupancy (as the same may be modified from time to time) and other applicable Requirements (as such term is defined in Article 15 hereof), and (ii) does not unreasonably and adversely impact the Building or the use and enjoyment of the Building by other occupants thereof. Without limiting the generality of the foregoing, it is expressly understood that no portion of the Premises shall be used as, by or for (a) a telemarketing agency or call center, (b) the conduct of any retail or wholesale trade or services (including, without limitation, any business with, or which is open to, the general public on an off-the-street retail basis), (c) a travel or tourist agency, (d) an employment agency, executive search firm or similar enterprise, labor union, school, or vocational training center (except for incidental and occasional training of Tenant's employees and invitees), (e) a commercial document reproduction or offset printing service, (f) any Governmental Authority (as such term is defined in Article 15 hereof) or embassy or consular office of any country or other quasi-autonomous or sovereign organization or any Person (as hereinafter defined), organization, association or other agency immune from service or suit in the courts of the State of New York or the assets of which may be exempt from execution by Landlord in any action for damages, (g) a kitchen, cafeteria or restaurant or otherwise for the sale, storage, warming, service or consumption of food or beverages in any manner whatsoever (except that Tenant may store, prepare, warm and serve food and beverages, by reasonable means consistent with typical pantry use (including, without limitation, by means of customary vending machines), for consumption by such Tenants' employees and guests), (h) a firm whose principal business is real estate brokerage, (i) the business of renting office or desk space, except as expressly set forth in this Lease, (j) a factory of any kind, or for any manufacturing purpose, (k) any use to which increased security costs or insurance premiums payable by Landlord may be attributed, (l) a payroll office or check cashing operation, (m) as a pharmacy or clinic (or other facility performing medical, therapeutic or rehabilitative procedures of any type or providing counseling of any kind); it being expressly understood that the Premises may not be used for patient visits, consultations, exams or evaluations of any type (psychological, physical, etc.), (n) clinical and/or experimental or pharmaceutical research, (o) a laboratory of any kind (including, without limitation, a research or pharmaceutical laboratory), (p) focus groups, (q) a film, radio or video production or broadcasting studio, (r) gaming or gambling, or any pornographic or obscene purpose, (s) any commercial sex establishment, any pornographic, obscene, nude or semi-nude performances, modeling or sexual conduct of any kind, (t) public assembly, (u) showrooms of any kind or (v) any manner of use (as distinguished from the mere use as general, executive and administrative offices) which Landlord demonstrates has an adverse impact on the Building, any Building system or any other Building occupant. The term "Person" shall mean any natural person or persons or any legal form of association, including, without limitation, a partnership, a limited partnership, a corporation, and/or a limited liability company.

2. **RENT**

A. General:

(i) Tenant agrees to pay all Rental (as hereinafter defined) as herein provided, in lawful money of the United States of America that is legal tender of all debts and dues, public or private, at the time of payment, and without any notice (except as may be specifically set forth herein), credit, abatement (except as may be specifically set forth herein), set-off, deduction or reduction whatsoever, (1) at the office of Landlord or at such other place as Landlord may designate, (2) by wire transfer of immediately available Federal Reserve Funds (as hereinafter defined) to Landlord or its designee pursuant to the wiring instructions set forth below, which wiring instructions Landlord may change from time to time upon not less than ten (10) days' prior written notice to Tenant, or (3) by electronic payment (ACH) ("ACH Payment") of immediately available Federal Reserve Funds to Landlord or its designee pursuant to the payment instructions below, which wiring instructions Landlord may change from time to time upon not less than ten (10) days' prior written notice to Tenant; provided, however, Tenant's election to make any such payments by ACH Payment shall in no event extend or waive Tenant's obligation to ensure that all amounts of Rental are received by Landlord and available as and when due under this Lease (i.e., delays in posting of funds made by ACH Payment shall not relieve Tenant of its obligations to timely make payments under this Lease nor shall such delays be deemed an Unavoidable Delay). As of the date hereof, Landlord's wiring instructions and ACH Payment instructions are as follows:

Name of Institution: Chase Bank USA NA
Account Number: 517961012
Routing Number: 021000021
Swift Code: CHASUS33
Reference: [Name of Tenant / Tenant ID# / Payment application, etc.]

(ii) The term "Additional Rent" shall mean any and all amounts, sums, fees or other charges payable by Tenant to Landlord hereunder specifically including, without limitation, Escalation Rent (as defined below) but specifically excluding Fixed Annual Rent (as hereinafter defined) and use and occupancy charges following any holdover. Unless otherwise expressly set forth herein, Additional Rent shall be due within thirty (30) days after Landlord gives Tenant notice thereof. Landlord shall have the same rights and remedies provided herein or by law with respect to Tenant's non-payment of Additional Rent as it has with respect to Tenant's non-payment of Fixed Annual Rent.

(iii) The term "Applicable Rate" shall mean, at any particular time, the lesser of (x) four hundred (400) basis points above the Base Rate (as defined below) at such time, and (y) the maximum rate permitted by applicable law at such time.

(iv) The term "Base Rate" shall mean the rate of interest announced publicly from time to time by JP Morgan Chase Bank, N.A., or its successor, as its "prime lending rate" (or such other term as may be used by JP Morgan Chase Bank, N.A. (or its successor), from time to time, for the rate presently referred to as its "prime lending rate").

(v) The term "Escalation Rent" shall mean the Additional Rent payable pursuant to Sections 2.C. and 2.D. hereof.

(vi) The term "Rental" shall mean collectively, Additional Rent and Fixed Annual Rent.

(vii) The term "2nd/3rd Floor Rent Commencement Date" shall mean the 2nd/3rd Floor Commencement Date.

(viii) The term "9th Floor Rent Commencement Date" shall mean, the date which is the three hundred ninety-fifth (395th) day following the 9th Floor Commencement Date.

(ix) The term "20th Floor Rent Commencement Date" shall mean, the date which is the three hundred ninety-fifth (395th) day following the 20th Floor Commencement Date.

(x) The term "Applicable Rent Commencement Date" shall mean collectively (and as applicable) the 2nd/3rd Floor Rent Commencement Date, the 9th Floor Rent Commencement Date and/or the 20th Floor Rent Commencement Date.

B. Fixed Annual Rent:

(i) The annual fixed rent for each portion of the Premises (the annual fixed rent payable hereunder for each portion of the Premises at any particular time being referred to herein as the "Fixed Annual Rent") shall be an amount equal to:

(A) with respect to the 2nd/3rd Floor Premises:

One Million Five Hundred Seventy-Five Thousand Seven Hundred and 00/100 Dollars ($1,575,750.00) per annum ($131,312.50 per month) for the Second 9th Floor Rent Period.

(B) with respect to the 9th Floor Premises:

(1) One Million Three Hundred Eighty-Five Thousand Six Hundred Ninety-Two and 50/100 Dollars ($1,385,692.50) per annum ($115,474.38 per month) for the period commencing on the 9th Floor Commencement Date through and including the day immediately preceding the fifth (5th) anniversary of the 9th Floor Rent Commencement Date (the "First 9th Floor Rent Period"); it being understood and agreed, that if no Default (as such term is defined in Article 5 hereof) has occurred and is then continuing, the Fixed Annual Rent with respect to the 9th Floor Premises only for the period

commencing on the 9th Floor Commencement Date and ending on the day immediately preceding the 9th Floor Rent Commencement Date shall be abated (provided, however, that if during the period commencing on the 9th Floor Commencement Date and ending on the day immediately preceding the 9th Floor Rent Commencement Date, Tenant shall be in Default, if Tenant cures such Default prior to any termination of this Lease by Landlord due to such Default pursuant to the terms hereof, then Tenant shall then be entitled to any remaining abatement of Fixed Annual Rent for the 9th Floor Premises with respect to such initial period that was not previously received by Tenant pursuant to this Section 2.B(i)(B)(1)); it being expressly acknowledged and agreed however, that except as otherwise expressly provided below, Tenant shall continue to be responsible for paying all other Rental (specifically including, without limitation, any and all charges for electricity) without any credit, set off, deduction or reduction during the aforesaid period; and

(2) One Million Five Hundred Six Thousand One Hundred Eighty-Seven and 50/100 Dollars ($1,506,187.50) per annum ($125,515.63 per month) for the period commencing on the day immediately following the end of the First 9th Floor Rent Period through and including the Fixed Expiration Date (the "Second 9th Floor Rent Period").

(C) with respect to the 20th Floor Premises:

(1) One Million Three Hundred Eighteen Thousand Two Hundred Forty-Four and 00/100 Dollars ($1,318,244.00) per annum ($109,853.67 per month) for the period commencing on the 20th Floor Commencement Date through and including the day immediately preceding the fifth (5th) anniversary of the 20th Floor Rent Commencement Date (the "First 20th Floor Rent Period"); it being understood and agreed, that if no Default (as such term is defined in Article 5 hereof) has occurred and is then continuing, the Fixed Annual Rent with respect to the 20th Floor Premises only for the period commencing on the 20th Floor Commencement Date and ending on the day immediately preceding the 20th Floor Rent Commencement Date shall be abated (provided, however, that if during the period commencing on the 20th Floor Commencement Date and ending on the day immediately preceding the 20th Floor Rent Commencement Date, Tenant shall be in Default, if Tenant cures such Default prior to any termination of this Lease by Landlord due to such Default pursuant to the terms hereof, then Tenant shall then be entitled to any remaining abatement of Fixed Annual Rent for the 9th Floor Premises with respect to such initial period that was not previously received by Tenant pursuant to this Section 2.B(i)(C)(1)); it being expressly acknowledged and agreed however, that except as otherwise expressly provided below, Tenant shall continue to be responsible for paying all other Rental (specifically including, without limitation, any and all charges for electricity) without any credit, set off, deduction or reduction during the aforesaid period; and

(2) One Million Four Hundred Twenty-Four Thousand Five Hundred Fifty-Four and 00/100 Dollars ($1,424,554.00) per annum ($118,712.83 per month) for the period commencing on the day immediately following the end of the First 20th Floor Rent Period through and including the Fixed Expiration Date.

(ii) Tenant shall pay to Landlord Fixed Annual Rent with respect to each portion of the Premises in advance commencing on the Applicable Commencement Date (subject to Sections 2.B.(i)(B)(1) and 2.B.(i)(C)(1) hereof) and on the first (1st) day of each month thereafter throughout the Term, in equal monthly installments, without notice, credit, set off, deduction, counterclaim or reduction (except to extent otherwise expressly set forth herein).

(iii) Simultaneously with Tenant's execution hereof, Tenant shall pay to Landlord an amount equal to $225,328.00, which Landlord shall apply to the first monthly installment of Fixed Annual Rent first becoming due hereunder with respect to the 9th Floor Premises and the 20th Floor Premises (i.e., $115,474.33 with respect to the first installment of Fixed Annual Rent due for the 9th Floor Premises and $109,853.67 per month with respect to the first installment of Fixed Annual Rent due for the 20th Floor Premises).

(iv) Should the date on which Tenant is obligated to commence paying Fixed Annual Rent hereunder occur on any day other than the first day of a month, then (i) the Fixed Annual Rent due hereunder for the calendar month during which such date occurs shall be adjusted appropriately based on the number of days in such calendar month and (ii) subject to Section 2.B.(iii) hereof, Tenant shall pay to Landlord such amount (adjusted as aforesaid for such calendar month) on such date. Provided that no Default has occurred and is then continuing, if the Expiration Date is not the last day of a calendar month, then the Fixed Annual Rent due hereunder for the calendar month during which the Expiration Date occurs shall be adjusted appropriately based on the number of days in such calendar month.

C. Operating Expense Escalations:

(i) Tenant shall pay to Landlord, as Additional Rent, operating expense escalations in accordance with this Section 2.C.

(ii) The following terms shall have the following meanings:

(a) The term "Base Expenses" shall mean the Expenses (defined below) for the Base Expense Year.

(b) The term "Base Expense Year" shall mean, (A) with respect to the 2nd/3rd Floor Premises and the 9th Floor Premises, the calendar year 2022, and (B) with respect to the 20th Floor Premises, the calendar year 2024.

(c) The term "Building Electricity Payment" shall mean fifty percent (50%) of the Building's payment to the utility company or companies for the provision, supply and distribution of electricity to the entire Building irrespective of the actual allocation of electric service between leasable space and other portions of the Building and Building systems.

(d) The term "Comparative Year" shall mean, (A) with respect to the 2nd/3rd Floor Premises and the 9th Floor Premises, each calendar year commencing on or after January 1, 2023, in which occurs any part of the Term, and (B) with respect to the 20th Floor Premises, each calendar year commencing on or after January 1, 2025, in which occurs any part of the Term.

(e) The term "Expenses" shall mean the total of all costs and expenses paid, incurred or borne by or on behalf of Landlord in insuring, maintaining, repairing, managing and operating the Real Property and providing services therein (including all amounts payable with respect to New York City Local Law 97 except as otherwise expressly provided herein); it being understood that Expenses shall include, without limitation, the Building Electricity Payment and management fees to the extent such management fees are reasonably consistent with rates then customarily charged for building management for buildings of like class and character (and which are computed on the same basis during the Base Expense Year and each Comparative Year so that, by way of example, if management fees are not based on actual costs but rather based on 3% of Building revenue during the Base Expense Year, they shall then be computed on the basis of 3% of Building revenue during each Comparative Year; provided, however, that the foregoing shall not be deemed to limit the amount of any actual management fees and other expenses incurred by Landlord and that can be included in Expenses). Expenses shall exclude or have deducted from them, as the case may be and as shall be appropriate the Standard Expense Exclusions (as hereinafter defined).

(f) The "Expense Statement" shall mean a reasonably detailed statement in writing issued by Landlord or the Building's managing agent from time to time during

the Term, setting forth the amount payable by Tenant for a specified Comparative Year pursuant to Section 2.C.(v) below.

(g) The term "Standard Expense Exclusions" shall have the meaning set forth on Exhibit "C" attached hereto and made a part hereof.

(h) The term "Tenant's Expense Share" shall mean, (A) with respect to the 2nd/3rd Floor Premises, 5.512 % which represents a fraction, the numerator of which is the rentable square foot area of the 2nd/3rd Floor Premises (25,212) and the denominator of which is the rentable square foot area of the Building excluding the retail portion thereof (457,421) as of the date hereof, (B) with respect to the 9th Floor Premises, 5.268 % which represents a fraction, the numerator of which is the rentable square foot area of the 9th Floor Premises (24,099) and the denominator of which is the rentable square foot area of the Building excluding the retail portion thereof (457,421) as of the date hereof, and (C) with respect to the 20th Floor Premises, 4.648% which represents a fraction, the numerator of which is the rentable square foot area of the 20th Floor Premises (21,262) and the denominator of which is the rentable square foot area of the Building excluding the retail portion thereof (457,421) as of the date hereof.

(iii) If (i) Landlord makes an improvement to the Building or the land upon which the Building is constructed, or a replacement of equipment at the Building or the land upon which the Building is constructed, in either case, in connection with the maintenance, repair, management or operation thereof, (ii) generally accepted accounting principles ("GAAP") require Landlord to capitalize the cost of such improvement or such replacement, and (iii) such improvement or replacement is made (a) to comply with a Requirement that is either first enacted or made applicable to the Building after the First Commencement Date, or the compliance with which is only required or applicable to the Building following the First Commencement Date, (b) in lieu of a repair, or (c) for the purpose of saving or reducing Expenses (such as, for example, an improvement that reduces labor costs or an improvement that saves energy costs or an improvement that reduces the penalties and/or other amounts payable with respect to the Building pursuant to New York City Local Law 97), then Landlord shall have the right to include in Expenses the amount that amortizes the cost of such improvement or such replacement, together with interest on the unamortized portion thereof that is calculated at the Base Rate from the time of Landlord's having incurred said expenditure, in equal annual installments over the useful life of such improvement or such equipment as determined in accordance with GAAP, or (z) the Payback Period (as defined below) (in any case, until the cost of such improvement or such equipment is amortized fully); provided, however, that for any such improvement or replacement that Landlord makes in lieu of a repair (and that Landlord does not make to comply with a Requirement or for the purpose of saving or reducing Expenses), the aforesaid amount that Landlord includes in Base Expenses or any particular Comparative Year shall not exceed the cost of the repairs that Landlord would have otherwise made if Landlord did not make such improvement or replacement, as reasonably estimated by Landlord, and provided further, in no event shall the amount included in Expenses for any cost saving or reducing purpose exceed, in any Comparative Year, the amount of the savings or reduction actually realized in respect of such Comparative Year. Notwithstanding anything to the contrary contained in this Lease, Landlord shall have the right, in Landlord's sole discretion, to exclude from Expenses the costs of certain non-recurring capital expenditures and/or the costs of certain non-recurring repairs (including the then remaining unamortized costs of any such non-recurring expenditure or repair incurred prior to the Term) which Landlord would otherwise have the right to include in Expenses pursuant to the terms of this Article 2; it being understood and agreed, however, that if Landlord elects to exclude any such costs, the same shall be excluded from the Base Expense Year and any subsequent Comparative Years occurring during the Term. As used herein, the term "Payback Period" means the length of time (expressed in months) obtained by multiplying (x) the quotient of (i) the aggregate costs of any such capital improvement, divided by (ii) the Projected Annual Savings, times (y) twelve (12). By way of example: if the aggregate costs of such capital improvement are $2,000,000 and the Projected Annual Savings are $500,000, then the simple payback period for such capital improvement is forty-eight (48) months. The term "Projected Annual Savings" means the anticipated or estimated average annual savings (whether or not actually realized) in Expenses (subject to reasonable assumptions and qualifications of the Building's operating costs (such as utility costs, steam costs, etc.),

determined using commonly applied engineering methods by an independent engineer selected by Landlord.

(iv) If during all or part of the Base Expense Year or any Comparative Year, Landlord shall not furnish any particular item(s) of work or service (which would constitute an Expense hereunder) to portions of the Building due to the fact that such portions are not occupied or leased, or because such item of work or service is not required or desired by the tenant of such portion, or such tenant is itself obtaining and providing such item of work or service, or for other reasons, then, for the purposes of computing the Additional Rent payable under this Section 2.C, the amount of the Base Expenses and/or the Expenses for any such Comparative Year, as applicable, shall be increased by an amount equal to the Expenses which would reasonably have been incurred during such period by Landlord if it had at its own expense furnished such item of work or services that had not been provided to such portion of the Real Property; it being understood and agreed that if Landlord increases the Expenses for a particular Comparative Year as contemplated herein, Landlord shall also increase the Base Expenses by such amount.

(v) Tenant shall pay the Expense Payment (as hereinafter defined) to Landlord as Additional Rent in accordance with the terms of this Section 2.C.(v). The term "Expense Payment" shall mean an amount equal to the product obtained by multiplying (A) the excess (if any) of (i) the Expenses for such Comparative Year, over (ii) the Base Expenses, by (B) Tenant's Expense Share. Landlord shall have the right to give a statement to Tenant from time to time pursuant to which Landlord sets forth Landlord's good faith estimate of the Expense Payment for a particular Comparative Year (any such statement that Landlord gives to Tenant being referred to herein as a "Prospective Expense Statement"; one-twelfth (1/12th) of the Expense Payment shown on a Prospective Expense Statement being referred to herein as the "Monthly Expense Payment Amount"). If Landlord gives to Tenant a Prospective Expense Statement, Tenant shall pay to Landlord, as Additional Rent, on account of the Expense Payment due hereunder for such Comparative Year, the Monthly Expense Payment Amount, on the first (1st) day of each subsequent calendar month for the remainder of such Comparative Year, provided that Landlord has given Tenant at least thirty (30) days' notice prior to the first estimate becoming due (without Landlord being required to send any further notice thereof), unless and until a new adjustment of the Expense Payment becomes effective pursuant to the provisions of this Section 2.C.(v) based upon Landlord's issuance of an updated Expense Statement. Tenant shall pay the Monthly Expense Payment Amount in the same manner as the monthly installments of the Fixed Annual Rent hereunder. If Landlord gives Tenant a Prospective Expense Statement after the first (1st) day of the applicable Comparative Year to which it relates, then Tenant shall also pay to Landlord, within thirty (30) days after the date that Landlord gives the Prospective Expense Statement to Tenant, an amount equal to the excess of (I) the product obtained by multiplying (x) the Monthly Expense Payment Amount, by (y) the number of calendar months that have theretofore elapsed during such Comparative Year, over (II) the aggregate amount theretofore paid by Tenant to Landlord on account of the Expense Payment for such Comparative Year.

(vi) Following the expiration of the Base Expense Year and each Comparative Year, Landlord shall submit to Tenant an Expense Statement setting forth the Base Expenses, and the Expense Payment, if any, due to Landlord from Tenant for such Comparative Year under this Section 2.C (i.e., a true-up statement). Within thirty (30) days after Landlord's rendering of such Expense Statement, Tenant shall pay to Landlord as part of the Expense Payment for the Comparative Year to which such Expense Statement relates, an amount equal to the excess (if any) of the Expense Payment for such Comparative Year, as set forth in the Expense Statement, over the Expense Payment previously collected from Tenant for such Comparative Year pursuant to the terms of this Section 2.C. Provided that no Default has occurred and is then continuing, if the Expense Payment for any Comparative Year, as set forth in the true-up statement, shall be less than the amount of the Expense Payment previously paid by Tenant pursuant to this Section 2.C for such Comparative Year, the difference shall be credited against amounts thereafter payable by Tenant pursuant to this Section 2.C. If (x) Tenant is entitled to a credit pursuant to this subparagraph (vi), and (y) the Expiration Date occurs prior to the date that such credit is exhausted, then Landlord shall pay to Tenant the unused portion of such credit (less any amounts that may then remain due and payable pursuant to the terms of this Lease) on or prior to the thirtieth (30th) day after the Expiration Date (and Landlord's obligation to make such payment shall survive the Expiration Date). Notwithstanding the foregoing to

the contrary, Landlord shall have no obligation to credit or refund to Tenant any amounts paid hereunder which were paid by or on behalf of a Person other than Tenant (i.e. a predecessor tenant under this Lease, other than an assignee under a transaction as to which Landlord's consent was not required).

(vii)

(a) Any Expense Statement that Landlord gives to Tenant shall be binding upon Tenant conclusively unless, within one hundred eighty (180) days after the date that Landlord gives Tenant such Expense Statement, Tenant gives a notice (an "Audit Notice") to Landlord objecting to such Expense Statement which notice shall specify the particular respects in which Tenant objects to such Expense Statement (if then known by Tenant). Tenant's right to give an Audit Notice (and conduct the audit contemplated by this subparagraph 2.C.(vii)) shall survive the Expiration Date (to the extent that the Expiration Date occurs earlier than the one hundred eightieth (180th) day after the date that Landlord gives the applicable Expense Statement to Tenant). Tenant shall have the right to audit the Base Expenses as contemplated by this subparagraph 2.C.(vii) (1) after receiving the first Expense Statement that sets forth the Base Expenses and (2) together with Tenant's first audit of any Expense Statement (provided that such first audit of the Base Expenses shall occur together with the an audit of the first Comparative Year or the second Comparative Year occurring after the Base Expense Year), and, accordingly, once Tenant's right to so audit the Base Expenses lapses (i.e., if Tenant shall not audit the first Comparative Year or the Second Comparative Year after such Base Expense Year), Tenant shall not have the right to thereafter audit the Base Expenses (unless Landlord sends a revised statement of Base Expenses), notwithstanding that the Base Expenses are included in the calculation of the Expense Payment for Comparative Years. For the avoidance of doubt, Tenant shall only have the right to audit the Base Expenses once for each portion of the Premises (i.e., if such Expenses were already audited as a Comparative Year for a portion of the Premises, Tenant shall not then have the right to audit the space Expenses merely because they are the Base Expenses for a different portion of the Premises). If Tenant gives an Audit Notice to Landlord, then, subject to the terms of this subparagraph 2.C.(vii), Tenant may examine Landlord's books and records relating to such Expense Statement to determine the accuracy thereof, provided that (x) Tenant commences such audit within sixty (60) days following the date Tenant gives Landlord an Audit Notice and (y) such audit is completed within sixty (60) days following the date Tenant gives Landlord an Audit Notice. Time shall be of the essence with respect to all time periods set forth in this Section 2.C.(vii). Tenant may perform such examination on reasonable advance notice to Landlord, at reasonable times, in Landlord's office or, at Landlord's option, at the office of Landlord's managing agent or accountants (all of which offices shall be in New York City); it being expressly understood that Tenant shall not be permitted to copy, reproduce or otherwise transcribe any portion of Landlord's books and records. Tenant shall not have the right to conduct an audit of Landlord's books and records as described in this subparagraph Section 2.C. (vii) during the period that a monetary default or material non-monetary default with respect to which Tenant has been given notice has occurred and is continuing. Tenant shall have the right to conduct such examination using Tenant's own employees. Tenant, in performing such examination, shall also have the right to be accompanied by a certified public accountant from one of the "big-4" firms of certified public accountants (or their successors), or, at Tenant's option, a certified public accountant from a reputable firm that is reasonably acceptable to Landlord or a certified auditor from a reputable auditing firm reasonably acceptable to Landlord; provided, however, that Tenant shall not be entitled to be so accompanied by any certified public accountant or certified auditor unless Tenant and such certified public accountant or certified auditor certify to Landlord in a written instrument that is reasonably satisfactory to Landlord that the compensation being paid by Tenant to such certified public accountant or certified auditor is not conditioned or otherwise contingent (in whole or in part) on the extent of any reduction in the Expense Payment that derives from such examination. Tenant shall not have the right to conduct any such audit unless and until Tenant delivers to Landlord an executed confidentiality agreement, in a form reasonably designated by Landlord, signed by Tenant and Tenant's certified public accountant or certified auditor to which such books and records are proposed to be disclosed, pursuant to which Tenant and such certified public accountants or certified auditors agree to maintain the information obtained from such examination in confidence (subject, however, to the disclosure of the information that Tenant or Tenant's certified public accountant derive from such examination as

required by law or to Tenant's counsel or other professional advisors that, in either case, agree to maintain such information in confidence).

(b) If it is determined ultimately that (i) Landlord, in an Expense Statement, overstated the Expense Payment, and (ii) Tenant overpaid the Expense Payment for a particular Comparative Year, then Tenant shall be entitled to credit the amount of such overpayment of the Expense Payment against the Fixed Annual Rent thereafter coming due hereunder. If (x) Tenant is entitled to a credit against Fixed Annual Rent pursuant to this subparagraph (vii)(b), and (y) the Expiration Date occurs prior to the date that such credit is exhausted, then Landlord shall pay to Tenant the unused portion of such credit (less any amounts that may then remain due and payable pursuant to the terms of this Lease) on or prior to the thirtieth (30th) day after the Expiration Date (and Landlord's obligation to make such payment shall survive the Expiration Date); it being agreed that if it is finally determined that the Expenses reported by Landlord in any particular Expense Statement are in excess of one hundred five percent (105%) of the actual amount of Expenses for the Comparative Year in question, then (1) Tenant's reasonable out-of-pocket costs of said audit shall be payable by Landlord within forty-five (45) days after written demand (it being understood that Landlord shall pay such amount within forty-five (45) days after Tenant gives to Landlord reasonable supporting documentation describing the aforesaid costs of Tenant's audit), and (2) the credit that Tenant is entitled to pursuant to the Section shall include interest on such overpaid amount at the Applicable Rate calculated from the date such overpayment was made by Tenant.

(c) Pending the resolution of any audit contemplated in this subparagraph (vii), Tenant shall pay the Expense Payment to Landlord in accordance with the Expense Statement furnished by Landlord.

(viii) Notwithstanding anything contained herein to the contrary, provided that no Default has then occurred and is continuing, Tenant shall have no obligation to make any Expense Payments (A) with respect to the 9th Floor Premises, with respect to periods prior to the 9th Floor Rent Commencement Date, and (B) with respect to the 20th Floor Premises, with respect to periods prior to the 20th Floor Rent Commencement Date.

(ix) Any delay or failure of Landlord in billing or tendering any Expense Statement shall not constitute a waiver of or in any way impair (a) Landlord's right to bill Tenant at any subsequent time (during or subsequent to the Term) retroactively for the entire amount so unbilled (which previously unbilled amount shall be payable within thirty (30) days after demand therefor), and to collect any such amount or (b) Tenant's continuing obligation to pay the same hereunder, which obligation shall survive the Expiration Date, provided however, notwithstanding any of the foregoing, Landlord shall not have the right to bill Tenant, nor shall Tenant have an obligation to pay any Additional Rent provided for in this Section 2.C that Landlord fails to bill Tenant for more than twenty-four (24) months following the expiration of the Comparative Year in which the applicable Expenses were incurred.

D. **Tax Escalation**. Tenant shall pay to Landlord, as Additional Rent, tax escalation in accordance with this Section 2.D.

(i) For the purposes of this Section 2.D, the following definitions shall apply:

(a) The term "Base Year Taxes" shall mean the Real Estate Taxes for the Base Tax Year.

(b) The term "Base Tax Year" shall mean (A) with respect to the 2nd/3rd Floor Premises and the 9th Floor Premises, the Tax Year commencing on July 1, 2022 and ending on June 30, 2023, and (B) with respect to the 20th Floor Premises, the second (2nd) half of the Tax Year commencing on July 1, 2023 and ending on June 30, 2024 and the first (1st) half of the Tax Year commencing on July 1, 2024 and ending on June 30, 2025 (i.e., calendar year 2024).

(c) The term "Comparative Tax Year" shall mean, (A) with respect to the 2nd/3rd Floor Premises and the 9th Floor Premises, each Tax Year commencing on or after July 1, 2023 (or such other twelve (12) month period commencing on or after July 1, 2023 adopted by the City of New York as its fiscal Tax Year), and (B) with respect to the 20th Floor Premises, the second (2nd) half of the Tax Year commencing on July 1, 2024 and

ending on June 30, 2025 and the first (1st) half of the Tax Year commencing on July 1, 2025 and ending on June 30, 2026 (i.e., calendar year 2025), and each subsequent calendar year thereafter.

(d) The term "Comparative Year Taxes" shall mean the Real Estate Taxes for the Comparative Tax Year.

(e) The term "Excluded Amounts" shall mean (w) any taxes imposed on Landlord's income, (x) franchise, estate, inheritance, capital stock, excise, excess profits, gift, payroll or stamp taxes imposed on Landlord, (y) any transfer taxes or mortgage taxes that are imposed on Landlord in connection with the conveyance of the Real Property or granting or recording a mortgage lien thereon, and (z) any other similar taxes imposed on Landlord.

(f) The term "Real Estate Taxes" shall mean the total of all taxes, fees and special or other assessments levied, assessed or imposed at any time by any Governmental Authority upon or against the Real Property (including, without limitation, any taxes, fees and assessments that are levied based on the use of water or energy by Landlord and/or the Building provided they are not included in Expenses). Notwithstanding the foregoing, Real Estate Taxes shall be calculated without taking into account (i) any discount that Landlord receives by virtue of any early payment of Real Estate Taxes, (ii) any penalties or interest that the applicable Governmental Authority imposes for the late payment of such real estate taxes or assessments, (iii) any abatement, exemption, deferral or credit of Real Estate Taxes to which the Real Property is entitled to, or (iv) any Excluded Amounts. If because of any change in the taxation of real estate or in the taxing authority, or for any other reason, any other tax or assessment, however denominated (including, without limitation, any franchise, income, profits, sales, use, occupancy, gross receipts or rental tax), is imposed upon the Real Property, the owner thereof, or the occupancy, rents or income derived therefrom, in substitution in whole or in part for the Real Estate Taxes, or in lieu of additions to or increases of said Real Estate Taxes (whether or not the enabling legislation states that such tax is in substitution in whole or in part for the Real Estate Taxes, or in lieu of additions to or increases of said Real Estate Taxes), then such other tax or assessment to the extent substituted shall be included within the definition of Real Estate Taxes for the purposes hereof. As to special assessments which are payable over a period of time extending beyond the Term, only a pro rata portion thereof covering the portion of the Term unexpired at the time of the imposition of such assessment, shall be included in Real Estate Taxes. If by law, any assessment may be paid in installments, then, for the purposes hereof (i) such assessment shall be deemed to have been payable in the maximum number of installments permitted by law and (ii) there shall be included in Real Estate Taxes, for the Base Tax Year and each Comparative Tax Year in which such installments may be paid, the installments of such assessment so becoming payable during such Comparative Tax Year, together with interest payable during such Comparative Tax Year in respect of any such installment.

(g) The term "Tax Payment" shall mean, with respect to any Comparative Tax Year, the product obtained by multiplying (i) the excess of (A) the applicable Comparative Year Taxes, over (B) the Base Year Taxes, by (ii) Tenant's Tax Share.

(h) The term "Tax Year" means each period from July 1 through June 30 (or such other period as hereinafter may be duly adopted by the Governmental Authority then imposing Real Estate Taxes as its fiscal year for real estate tax purposes).

(i) The term "Tenant's Tax Share" shall mean (A) with respect to the 2nd/3rd Floor Premises, 5.199% which represents a fraction, the numerator of which is the rentable square foot area of the 2nd/3rd Floor Premises (25,212) and the denominator of which is the rentable square foot area of the Building (484,927) as of the date hereof, (B) with respect to the 9th Floor Premises, 4.970% which represents a fraction, the numerator of which is the rentable square foot area of the 9th Floor Premises (24,099) and the denominator of which is the rentable square foot area of the Building (484,927) as of the date hereof, and (C) with respect to the 20th Floor Premises, 4.385% which represents a fraction, the numerator of which is the rentable square foot area of the 20th Floor Premises (21,262) and the denominator of which is the rentable square foot area of the Building (484,927) as of the date hereof.

(ii)

(a) Subject to the terms of this Section 2.D., Tenant shall pay the Tax Payment to Landlord, as Additional Rent. Before or after the start of each Comparative Tax Year, Landlord shall furnish to Tenant a statement of the Comparative Year Taxes, and a statement of the Base Year Taxes. If the Comparative Year Taxes exceed the Base Year Taxes, an amount equal to the Tax Payment shall be due from Tenant to Landlord, and such Additional Rent shall be payable by Tenant to Landlord in equal monthly installments each equal to one-twelfth (1/12th) of the Tax Payment, each payable with the monthly installment of Fixed Annual Rent. If such statement is tendered to Tenant after the commencement of any Comparative Tax Year, Tenant shall pay to Landlord within thirty (30) days after such statement is tendered, a lump sum equal to the product resulting from multiplying the Tax Payment, by a fraction the numerator of which is the number of full and partial months elapsed from the commencement of the relevant Comparative Tax Year and the denominator of which is twelve (12). Thereafter, Tenant shall commence paying the monthly installments of the Tax Payment with the next installment of Fixed Annual Rent next due and continue paying the same on a monthly basis in accordance with the terms hereof until a subsequent statement with respect thereto is rendered by Landlord.

(b) Should the Base Year Taxes be reduced by final determination of legal or administrative proceedings, settlement or otherwise, then the Base Year Taxes shall be correspondingly revised, the Additional Rent theretofore paid or payable hereunder for all Comparative Tax Years shall be recomputed on the basis of such reduction, and Tenant shall pay to Landlord as Additional Rent, within thirty (30) days after being billed therefor, any deficiency between the amount of such Additional Rent as theretofore computed and the amount thereof due as the result of such recomputations.

(c) If Tenant shall have made a payment of Additional Rent under this Section 2.D and Landlord shall receive during the Term a refund of any portion of the Real Estate Taxes paid for any Comparative Tax Year after the Base Tax Year on which such payment of Additional Rent shall have been based, as a result of a reduction of such Real Estate Taxes by final determination of legal proceedings, settlement or otherwise, Landlord shall, promptly after receiving the refund, credit to Tenant, Tenant's Tax Share of the refund less Tenant's Tax Share of expenses (including reasonable attorneys', consultants' and appraisers' fees) incurred by Landlord in connection with any such application, settlement, negotiation or proceeding (unless previously included in Real Estate Taxes for the Comparative Tax Year to which such expenses relate). If prior to the payment of Real Estate Taxes for any Comparative Tax Year, Landlord shall have obtained a reduction of that Comparative Tax Year's assessed valuation of the Real Property, and therefore of said Real Estate Taxes, then the Real Estate Taxes for that Comparative Tax Year shall be deemed to include the amount of Landlord's expenses in obtaining such reduction in assessed valuation, including reasonable attorneys', consultants' and appraisers' fees. If (i) Tenant is entitled to a credit pursuant to this subparagraph (c), and (ii) the Expiration Date occurs prior to the date that such credit is exhausted, then Landlord shall pay to Tenant the unused portion of such credit (less any amounts that may then remain due and payable pursuant to the terms of this Lease) on or prior to the thirtieth (30th) day after the Expiration Date (and Landlord's obligation to make such payment shall survive the Expiration Date). Notwithstanding the foregoing to the contrary, Landlord shall have no obligation to credit or refund to Tenant any amounts paid hereunder which were paid by or on behalf of a Person other than Tenant (i.e. a predecessor tenant under this Lease), other than an assignee under a transaction as to which Landlord’s consent was not required.

(d) Additionally, Tenant shall pay to Landlord, within thirty (30) days after demand, a sum equal to Tenant's Tax Share of any business improvement district assessment (whether currently existing or established at any time hereafter) payable with respect to or imposed upon Landlord and/or the Real Property in any year.

(e) Tenant hereby agrees to comply and cooperate with Landlord's efforts, if any, to obtain any current or future tax incentive benefits, exemptions or abatements which Landlord may now or hereafter be entitled to at law or otherwise.

(f) Notwithstanding anything contained herein to the contrary, provided that no Default has then occurred and is continuing, Tenant shall have no obligation to make any payments on account of escalations in Real Estate Taxes (A) with respect to the 9th Floor Premises, with respect to periods prior to the 9th Floor Rent Commencement Date,

and (B) with respect to the 20th Floor Premises, with respect to periods prior to the 20th Floor Rent Commencement Date.

(g) Any delay or failure of Landlord in billing or tendering any invoice or statement provided for in this Section 2.D for all or any portion of any amount payable for Real Estate Taxes shall not constitute a waiver of or in any way impair (i) Landlord's right to bill Tenant at any subsequent time (during or subsequent to the Term) retroactively for the entire amount so unbilled (which previously unbilled amount shall be payable within thirty (30) days after demand therefor), and to collect any such amount or (ii) Tenant's continuing obligation to pay the same hereunder, which obligation shall survive the Expiration Date; provided however, notwithstanding any of the foregoing, Landlord shall not have the right to bill Tenant, nor shall Tenant have an obligation to pay any Additional Rent provided for in this Section 2.D if and to the extent that Landlord fails to bill Tenant for more than twenty-four (24) months following the Tax Closure Date (as defined herein) for the Comparative Tax Year in which the applicable Real Estate Taxes were incurred. The "Real Estate Taxes" shall mean, for any Comparative Tax Year, the date upon which all tax reduction proceedings in respect of Real Estate Taxes for the Tax Years occurring during such Comparative Tax Year shall have been finally resolved (or, if no such proceedings shall have been timely instituted for any Tax Year occurring during such Comparative Tax Year, then the date upon which the right to bring such proceedings shall have lapsed).

E. No Right to Apply Security: Tenant shall not have the right to apply any security deposited to assure Tenant's faithful performance of Tenant's obligation hereunder to the payment of any installment of Fixed Annual Rent or Additional Rent.

F. No Reduction in Fixed Annual Rent, Etc.: In no event shall the Fixed Annual Rent under this Lease be reduced by virtue of any decrease in the amount of any Additional Rent payment under this Article or any other provision of this Lease.

G. Failure to Pay Rental in Full: If Landlord receives from Tenant any payment less than the total Rental then due and owing pursuant to this Lease, Tenant hereby waives its right, if any, to designate the items to which such payment shall be applied and agrees that Landlord in its sole discretion may apply such payment in whole or in part to any Fixed Annual Rent, Escalation Rent, or any other item of Rental payable hereunder or to any combination thereof then due and payable hereunder; it being understood and agreed that the foregoing shall not limit or impair Landlord's rights or remedies in the event of any Default.

H. Payment of Rental by Another Person: Unless Landlord shall otherwise expressly agree in writing, acceptance of any portion of the Rental from any Person other than Tenant shall not relieve Tenant of any of its other obligations under this Lease, including the obligation to pay other Rental, and Landlord shall have the right at any time, upon notice to Tenant, to require Tenant (rather than someone other than Tenant) to pay the Rental payable hereunder directly to Landlord. Furthermore, such acceptance of Rental shall not be deemed to constitute an assignment of this Lease, a subletting of the Premises or Landlord's consent to an assignment of this Lease or a subletting or other occupancy of the Premises by any Person other than Tenant, nor a waiver of any of Landlord's rights or Tenant's obligations under this Lease.

I. Partial Comparative Year: If any Applicable Commencement Date shall occur during a Comparative Year or a Comparative Tax Year commencing prior to the Term applicable thereto, then the Additional Rent due under any paragraph of this Article 2 for such first Comparative Year or Comparative Tax Year (as the case may be) shall be prorated based upon the length of time that the Term will be in existence during such first Comparative Year or Comparative Tax Year, as the case may be. Subject to the provisions of Article 6 hereof, if the Expiration Date is not the last day of a Comparative Tax Year or the last day of a Comparative Year, then upon the Expiration Date, the Additional Rent due under any paragraph of this Article 2 shall be prorated based upon the length of time that the Term will be in existence during such Comparative Year or Comparative Tax Year, as the case may be and such prorated amount shall immediately become due and payable by Tenant to Landlord, if it was not theretofore already billed and paid. Landlord shall, as soon as reasonably practicable, compute the Additional Rent due from Tenant, as aforesaid, which computations shall either be based on the particular Comparative Year's or Comparative Tax Year's actual figures or be estimated based upon the most recent statements theretofore prepared by Landlord and furnished to Tenant as may be required under any paragraph in this Article. If an estimate is used, then Landlord shall cause statements to be prepared on the basis of the particular Comparative Year's or Comparative Tax Year's actual figures promptly after they are available, and thereupon, Landlord and Tenant shall make appropriate adjustments of any estimated payments theretofore made.

3. **ELECTRICITY**

A. Intentionally omitted.

B. Intentionally omitted.

C. Submetering:

(i) For the purposes of this Section 3.C., the following definitions shall apply:

(a) "Landlord's Cost" for redistributed electricity means the product of (1) Landlord's Cost Rates for the relevant Utility Billing Period multiplied by (2) Tenant's electricity consumption (i.e., energy and demand) based on the meter readings referred to below.

(b) "Landlord's Cost Rates" means the sum of "Landlord's Electricity Consumption Cost" and "Landlord's Electricity Demand Cost".

(c) "Landlord's Electricity Consumption," for any given Utility Billing Period means the number of kilowatt-hours of electricity consumed in and for the Building (including common areas, tenantable areas and mechanical areas) during said Utility Billing Period, as indicated on the applicable utility bills.

(d) "Landlord's Electricity Consumption Cost," (Landlord's cost per KWH) for any given Utility Billing Period means the amount arrived at by dividing (x) Landlord's KWH cost, as imposed by the utility company (inclusive of any taxes, including any taxes included in the computation of said utility bills) for Landlord's Electricity Consumption for said Utility Billing Period, inclusive of any fuel adjustments or rate adjustments contained in said utility bill allocable to Landlord's Electricity Consumption, by (y) Landlord's Electricity Consumption (KWH) as indicated on said bills.

(e) "Landlord's Electricity Demand" for any given Utility Billing Period means the number of kilowatts of electricity demanded in and for the Building (including, without limitation, common areas, tenantable areas and mechanical areas) during said Utility Billing Period, as indicated on the applicable utility bill.

(f) "Landlord's Electricity Demand Cost" (Landlord's Cost per KW) for any given Utility Billing Period means the amount arrived at by dividing (x) Landlord's KW cost, as imposed by the utility company (inclusive of any taxes, including any taxes included in the computation of said utility bill) for Landlord's Electricity Demand for said Utility Billing Period, inclusive of any rate adjustments allocable to Landlord's Electricity Demand (provided that same have not been included in the computation of Landlord's Electricity Consumption Cost), by (y) Landlord's Electricity Demand (KW) as indicated on said bill.

(g) "Utility Billing Period" means the respective period of electricity consumption and demand for which Landlord is charged on each successive bill from the utility company furnishing electricity to the Building.

(ii) Subject to the terms of this Lease**,** Landlord shall, during the Term, provide electricity to each portion of the Premises (with Landlord providing an average demand load of four (4) watts of electricity per usable square foot of the Premises exclusive of the electrical capacity that is required to operate the base Building HVAC system (the "Maximum Capacity"), which shall be the maximum electric service Landlord shall be obligated to redistribute to the Premises) on a submetering basis. Tenant covenants and agrees to purchase the same from Landlord or Landlord's designated agent at Landlord's Cost plus six percent (6%) thereof. Notwithstanding the foregoing to the contrary, if during the Term, Tenant demonstrates to Landlord's reasonable satisfaction (as evidenced by a load letter reasonably acceptable to Landlord and prepared by an electrical consultant reasonably acceptable to Landlord) that it requires electrical capacity in excess of that then being provided by Landlord to Tenant, then Landlord, at Landlord's sole cost and expenses, shall make available to Tenant the additional electricity demonstrated by Tenant to be required by it (it being agreed that such increase in the Maximum Capacity pursuant to the provision hereof shall be subject to any reduction pursuant to Section 3.D(vi) below); provided, however, that in no event shall the electrical capacity being provided by Landlord to Tenant with respect to any portions of the Premises (i.e., the Maximum Capacity) exceed an average demand load of six (6) watts of electricity per usable square foot of the Premises exclusive of the electrical capacity that is required to operate the base Building HVAC system.

Where more than one meter measures the service of Tenant in the Building, the KWH and KW recorded by each meter shall be added and the aggregate shall be billed as if measured by a single meter. Bills therefor shall be rendered at such times as Landlord may elect and the amount, as computed from a meter or meters and determined by a reputable electrical consultant, selected by Landlord ("Landlord's Electrical Consultant") in accordance with this Article 3, shall be deemed to be, and be paid as, Additional Rent. For purposes of determining Landlord's Electricity Consumption Cost and Landlord's Electricity Demand Cost, each amount appearing on any utility bill for demand, energy, fuel or rate adjustments shall be taken into account (where it cannot be determined from the utility bill whether such amount relates to consumption or to demand, it shall be deemed to relate to demand).

(iii) If the submeter or submeters to measure Tenant's KW and KWH has not or have not been installed, connected and/or is not or are not yet functioning, Tenant shall pay for the distribution of electric power and use of Landlord's facilities to provide electrical power to the Premises, a charge equal to the amount that results from (a) multiplying One and 50/100 Dollars ($1.50) by the number of rentable square feet within the Premises, (b) dividing such result by 365 and (c) multiplying the result of (b) by the number of days until the date on which the appropriate submeter(s) are installed, connected and functioning.

D. **General Conditions**:

(i) All determinations (which may be presented or communicated in the form of an invoice, report, survey or letter notification to Tenant) by Landlord's Electrical Consultant shall be binding and conclusive on Tenant from and after the delivery of a copy of each presentation or communication of the relevant determination to Tenant, unless, within ninety (90) days after delivery thereof, time being of the essence, Tenant notifies Landlord that Tenant disputes such determination (such notice, an "Electricity Dispute Notice"). If Tenant so disputes any such determination, within thirty (30) days following the date Tenant gives Landlord the Electricity Dispute Notice, Tenant shall, at Tenant's own cost and expense, obtain from a reputable, independent electrical consultant Tenant's own determination in accordance with the provisions of this Article 3 and deliver a copy of such determination (showing all calculations, data and describing all assumptions and criteria used to make such determination) to Landlord. Tenant's consultant and Landlord's Electrical Consultant then shall seek to agree on the disputed items set forth in the Electricity Dispute Notice. If they cannot agree within thirty (30) days after the day Tenant gives Landlord Tenant's determination as provided above, Landlord and Tenant shall choose a third reputable electrical consultant, whose cost shall be shared equally by the parties, to make similar determinations that shall be controlling. If Landlord and Tenant cannot agree on such third consultant within ten (10) days, then either party may apply to the Supreme Court in the County of New York for such appointment. TENANT AGREES THAT IF TENANT SHALL FAIL TO DISPUTE WITHIN THE AFORESAID NINETY (90) DAY PERIOD ANY DETERMINATION BY LANDLORD'S ELECTRICAL CONSULTANT, OR SHALL FAIL TO COMPLY WITH ANY OTHER TIME PERIOD SET FORTH IN THIS SECTION 3.D (E.G., THE THIRTY (30) DAY PERIOD TO DELIVER TENANT'S OWN DETERMINATION AS AFORESAID), TIME BEING OF THE ESSENCE, TENANT SHALL HAVE IRREVOCABLY AND CONCLUSIVELY WAIVED THE RIGHT TO DISPUTE THE RELEVANT DETERMINATION. THE FACT THAT LANDLORD'S ELECTRICAL CONSULTANT IS OR HAS BEEN EMPLOYED BY OR IS OR HAS BEEN RETAINED BY LANDLORD OR LANDLORD'S AFFILIATES TO PERFORM SERVICES FOR IT OR THEM (AND IRRESPECTIVE OF HOWEVER LONG SUCH RELATIONSHIP MAY HAVE EXISTED), SHALL NOT BE A REASON TO DISPUTE (OR BE A DEFENSE TO) ANY DETERMINATION MADE BY SUCH LANDLORD'S ELECTRICAL CONSULTANT OR DISQUALIFY LANDLORD'S CONSULTANT FROM PERFORMING ANY ACT OR SERVICE CONTEMPLATED BY THIS ARTICLE 3.

(ii) As a condition to Tenant's right to initiate and maintain any such dispute of any such determination, bill or charge made or rendered by or for the benefit of Landlord, Tenant shall pay to Landlord the amount of Additional Rent in accordance with the determinations made by Landlord's Electrical Consultant or pursuant to any other Landlord's bill until any such dispute has been finally determined in accordance with procedures specified in this Section 3.D. If the controlling determinations differ from Landlord's Electrical Consultant or Landlord's bill or charge, then the parties shall promptly make adjustment for any deficiency owed by Tenant or overage paid by Tenant. Notwithstanding anything to the contrary contained herein, Tenant shall not have the right to initiate any dispute hereunder during the period that a monetary default or material non-monetary default with respect to which Tenant has been given notice has occurred and is continuing.

(iii) At the option of Landlord, Tenant agrees to purchase from Landlord or its agents (at commercially reasonable rates) all lamps and bulbs used in the Premises and to pay for the cost of installation thereof (except for any lamps and bulbs installed as part of Landlord's Work with respect to the 9th Floor Premises and the 20th Floor Premises, which shall be at Landlord's sole cost and expense except as otherwise provided in Article 23 to the contrary). Landlord shall install, repair, maintain and replace (as necessary) any meter or sub-meter serving the Premises at Landlord's sole cost and expense; provided, however, the costs thereof shall be payable by Tenant as Additional Rent hereunder if the required repairs, maintenance or replacement is due to Tenant's negligence, willful misconduct or misuse of such meters or sub-meters. If all or part of the submetering

Additional Rent payable in accordance with this Article 3 becomes uncollectable or reduced or refunded by virtue of any Requirements, the parties agree that, at Landlord's option, in lieu of submetering Additional Rent, and in consideration of Tenant's use of the Building's electrical distribution system and receipt of redistributed electricity and payment by Landlord of consultants' fees and other redistribution costs, the Fixed Annual Rent shall be increased by an "alternative charge" which shall be an amount equal to the average cost per rentable square foot of the Premises per year, as was paid by Tenant for electricity on a submetered basis during the immediately preceding twelve (12) month period (unless Tenant was not operating its business in the Premises for the duration of the immediately preceding twelve (12) month period, in which case, the aforesaid "alternative charge" shall be an amount equal to the average cost per rentable square foot as was paid for comparable sized office tenants in comparable industries during the immediately preceding twelve (12) months) which amount shall be increased in the same percentage as any increases in the actual cost to Landlord for electricity for the entire Building subsequent thereto because of electric rate or service classification or market price changes, as hereinabove provided. Notwithstanding anything herein set forth to the contrary, Additional Rent under this Article 3 shall commence on the Applicable Commencement Date for each portion of the Premises.

(iv) Subject to Article 22 and Section 42.G. hereof, Landlord shall not be liable to Tenant for any failure or defect in the supply or character of electricity furnished to the Building, except to the extent that such failure or defect results from Landlord's negligence or willful misconduct. Tenant covenants and agrees that at all times its use of electric current shall never exceed (x) the Maximum Capacity or (y) the capacity of existing feeders to the Building or the risers or wiring installation. Tenant agrees not to connect any additional electrical equipment to the Building electric distribution system which shall increase consumption or demand beyond the Maximum Capacity, and the capacity and rating of the electrical system directly servicing the Premises. The parties acknowledge that they understand that it is anticipated that electric rates, charges, etc., may be changed by virtue of time-of-day rates, or other methods of billing, electricity purchases and the redistribution thereof, and fluctuations in the market price of electricity, and that the references in the foregoing paragraphs to changes in methods of or rules on billing are intended to include any such change. Notwithstanding anything to the contrary contained in this Section 3.D, in no event is the submetering Additional Rent, or any "alternative charge", to be less than an amount equal to the total of Landlord's payments to public utilities and/or others for the electricity consumed by Tenant (and any taxes on Landlord's purchase of the same or on redistribution of same) plus six (6%) percent.

(v) Notwithstanding anything to the contrary contained in this Lease, Landlord reserves the right to terminate the furnishing of electricity on a submetering basis, at any time if and to the extent required by applicable Requirements, in which event Landlord shall notify Tenant thereof and Tenant shall make application directly to the public utility and/or other providers for Tenant's entire separate supply of electric current and Landlord shall permit its wires and conduits, to the extent available and safely capable, to be used for such purpose and only to the extent of Tenant's then authorized demand load. Any meters, risers, or other equipment or connections necessary to enable Tenant to obtain electric current directly from such utility shall be installed at Tenant's sole cost and expense, subject to and in accordance with all applicable provisions of this Lease; it being expressly understood that Landlord shall have no obligations or liability with respect to any such meters, risers, or other equipment or connections unless Landlord voluntarily discontinues furnishing electricity to the Premises pursuant to this subclause (v) (and is not required to discontinue the same due to Requirements, Unavoidable Delay or otherwise). Only rigid conduit or electricity metal tubing (EMT) will be allowed. If Landlord is required by any Requirement to discontinue or otherwise discontinues furnishing electricity to the Premises as contemplated by this Lease, then this Lease shall continue in full force and effect and shall be unaffected thereby, except that from and after the effective date of any such Requirement or such later date that Landlord discontinues providing electricity to Tenant, as the case may be, (x) Landlord shall not be obligated to furnish electricity to the Premises, and (y) Tenant shall not be obligated to pay to Landlord the charges for electricity as described in this Article 3. Landlord shall provide Tenant with notice at least thirty (30) days prior to the effective date of any such Requirement or such earlier date as may be mandated by such Requirement. Landlord shall not discontinue furnishing electricity to the Premises as contemplated by this Section 3.D(v) (to the extent permitted by applicable Requirements) until Tenant obtains electric service directly from the utility company; it being understood, however, that Tenant shall use Tenant's diligent efforts to obtain electricity for the Premises directly from the utility company as contemplated herein.

(vi) Landlord may, from time to time, following the expiration of the twelfth (12th) full month of the Term with respect to each portion of the Premises (but not more frequently than one (1) time in any twelve (12) month period), cause Landlord’s Electrical Consultant to determine Tenant’s electrical requirements for the Premises over the twelve (12) months immediately preceding each such determination. If Landlord’s Electrical Consultant shall determine that Tenant’s maximum demand over a reasonable period of time shall not have exceeded the Maximum Capacity (the difference between the Maximum Capacity and such highest demand being the "excess electrical capacity"), then Landlord may, in its sole discretion and at its sole cost and expense, at any time following the thirtieth (30th) day after giving Tenant notice (hereinafter referred to as the "Electric Recapture Notice") of Landlord’s intent to do so, reduce the available electric service to the Premises so that the service to be provided shall be not less (but need not be more) than the capacity represented by the highest demand recorded or

determined to have been required by Tenant during such twelve (12) month period, unless Tenant shall have objected to such reduction in the manner hereinafter provided within such thirty (30) day period, time being of the essence. The Electric Recapture Notice shall be (a) given not later than six (6) months following the determination of such excess electrical capacity and (b) accompanied by an explanation in reasonable detail of how the determination of such excess electrical capacity was made. Any objection to such reduction of all or any portion of excess electrical capacity shall be in writing specifying in reasonable detail the reasons for such objection, including, without limitation, calculations of Tenant's electrical requirements prepared by a licensed electrical engineer. Any such dispute shall be resolved pursuant to the dispute resolution provisions of Section 3.D.(i) above. If it then shall be determined that excess electrical capacity exists, then Landlord, at Landlord's expense, may then take such steps as it deems appropriate to effect such reduction in electric service. Such reduction may be effected by Landlord replacing or otherwise changing any component of the electrical system serving the Premises. From and after the date of such reduction, the Maximum Capacity shall be deemed reduced by the excess electrical capacity for all purposes of this Lease; provided, however, that if Tenant subsequently demonstrates to Landlord's reasonable satisfaction (as evidenced by a load letter reasonably acceptable to Landlord and prepared by an electrical consultant reasonably acceptable to Landlord) that it requires electrical capacity in excess of that then being provided by Landlord to Tenant, then Landlord, at Landlord's sole cost and expenses, shall again make available to Tenant the additional electricity demonstrated by Tenant to be required by it, subject, however, to the Maximum Capacity that Landlord has agreed to provide pursuant to this Article 3. Tenant acknowledges that the purpose of this subsection (vi) is to foster conservation of electric consumption in the Building and to reserve electric capacity in the Building for future planning and leasing and that Landlord's recapturing such excess capacity is a reasonable means to accomplish such goals. Notwithstanding anything contained herein to the contrary, if at any time the electrical service available to the Premises shall exceed the Maximum Capacity, Landlord may at any time (without being subject to dispute and irrespective of Tenant's actual use or peak demand) reduce the electric service available to the Premises, provided that the electric service shall not be less than the Maximum Capacity. If such required electric service shall also result in excess electrical capacity, Landlord may further reduce such electric service pursuant to the terms of the preceding provisions of this subsection (vi). Nothing contained in this Section 3.D.(vi) (including, without limitation, references herein to excess electrical capacity) shall be construed to grant Tenant permission or any rights to use any electrical capacity in excess of the Maximum Capacity.

(vii) Tenant acknowledges that amounts payable pursuant to this Article 3 are not intended merely to reimburse Landlord for Landlord's actual costs.

(viii) Notwithstanding anything herein set forth to the contrary, if permitted by Requirements, Landlord may (x) contract separately with one or more other providers to provide one or more of the component services which together make up the entire package of electric service (e.g., transmission, generation, distribution and ancillary services) to the Building or (y) make other arrangements to transmit, generate and/or distribute electricity to satisfy all or a portion of the requirements of the Building (any such other provider or Landlord (or Landlord's designee), if Landlord makes such arrangements, as the case may be, is hereinafter referred to as an "Alternative Service Provider"); provided, however, that in either event, (i), the charges imposed by such Alternative Service Provider shall be included in the calculation of Landlord's Electricity Consumption Cost and Landlord's Electricity Demand Cost to the extent that such charges do not exceed the charges that Landlord would have otherwise incurred if Landlord had made arrangements to satisfy all of the Building's electrical requirements from a local electrical energy distribution company and a competitive energy provider and (ii) references throughout this Lease to "utility company" or the "public utility" shall be deemed to refer to such Alternative Service Provider. If Landlord elects to contract with another Alternative Service Provider, Tenant shall cooperate with Landlord and each such Alternative Service Provider to effect any change to the method or means of providing and distributing electricity service to the Premises or any other portion of the Building by reason of such change in the provision of electricity. Such cooperation shall include but not be limited to providing Landlord or any such Alternative Service Provider and either of their respective designees reasonable access to the Premises at reasonable times and to all wiring, conduit, lines, feeders, cable, electricity panel boxes and any other component of the electrical distribution system within or adjacent to the Premises. Subject to Article 22 and Section 42.G. hereof, Landlord shall not be liable to Tenant for any loss or damage or expense which Tenant may sustain or incur if such change shall interfere with Tenant's business except to the extent that loss or damage or expense results from Landlord's negligence or willful misconduct, nor shall any such interference, change, interruption, constitute an actual or constructive eviction of Tenant; provided, however, that Landlord shall (or shall cause any Alternative Service Provider) to repair any damage to the Premises caused by Landlord's (or such Alternative Service Provider's) access to the Premises pursuant to the terms of this clause (viii).

(ix) Landlord reserves the right to install a separate submeter or submeter(s) on any high electrical load consuming equipment (e.g. heavy server loads connected to an uninterrupted power supply) to separately measure Tenant's demand for and consumption of electricity in connection therewith; it being understood, that if any such separate submeter is required, Landlord shall notify Tenant thereof and thereafter, Landlord shall install the same, at Tenant's sole cost and expense, and Tenant shall reimburse Landlord for all of

Landlord's actual and reasonable out-of-pocket costs incurred in connection therewith within thirty (30) days following receipt of Landlord's invoice therefor. For the avoidance of any doubt, Tenant shall continue to pay for Tenant's demand for and consumption of electricity in connection with any such high electrical load consuming equipment as contemplated in Section 3.C. hereof.

4. **ASSIGNMENT AND SUBLETTING**

A. Tenant, for itself, its heirs, distributees, executors, administrators, legal representatives, successors and assigns, expressly covenants that it shall not assign, mortgage or encumber this Lease, nor underlet, or suffer or permit the Premises or any part thereof to be used or occupied by others, without the prior written consent of Landlord in each instance, which consent shall be granted or withheld by Landlord in accordance with the provisions of Sections 4.D. hereof and the other provisions of this Article 4. Subject to Section 4.H. hereof, the direct or indirect transfer of the beneficial or record ownership of (i) a majority of the issued and outstanding capital stock of any corporate tenant of this Lease or (ii) a majority of the total equity or voting interests or rights in any partnership or limited liability company tenant or any other form of entity or organization, however accomplished, and whether in a single transaction or in a series of related or unrelated transactions, or the conversion of a tenant entity to another form of entity, including, without limitation, a limited liability company or a limited liability partnership (unless such conversion does not result in a change of Control), or any transfer of Control (as hereinafter defined) of any entity shall, in each case, be deemed an assignment of this Lease or of such sublease. Notwithstanding the foregoing to the contrary, as Tenant is currently a publicly-traded entity, the transfer of outstanding capital stock of Tenant (or any corporate tenant), for purposes of this Article, shall not include any sale of such stock effected through the "over-the-counter market" or through any recognized stock exchange (provided the foregoing shall not apply to transfers by persons deemed "insiders" within the meaning of the Securities Exchange Act of 1934 as amended provided the same is made for an independent business purposes and not primarily to circumvent Landlord's rights hereunder). Subject to Section 4.I hereof, the merger or consolidation of a tenant, whether a corporation, partnership, limited liability company or other form of entity or organization (other than through the "over-the-counter market"), shall be deemed an assignment of this Lease. If this Lease be assigned, or if the Premises or any part thereof be underlet or occupied by anybody other than Tenant, Landlord may, upon the effective date of such assignment, or, with respect to an underletting, after a Default by Tenant, collect rent from the assignee, undertenant or occupant, and apply the net amount collected to the Rental herein reserved, but no assignment, underletting, occupancy or collection shall be deemed a waiver of the provisions hereof, the acceptance of the assignee, undertenant or occupant as tenant, or a release of Tenant from the further performance by Tenant of covenants on the part of Tenant herein contained. Any agreement pursuant to which (x) Tenant is relieved from the obligation to pay, or a third party agrees to pay on Tenant's behalf, all or a part of the Fixed Annual Rent or Additional Rent under this Lease, and/or (y) such third party undertakes or is granted any right to assign or attempt to assign this Lease or sublet or attempt to sublet all or any portion of the Premises, shall be deemed an assignment of this Lease or a sublease, as applicable, which shall be subject to the provisions of this Article 4. The consent by Landlord to an assignment or underletting shall not in any way be construed to relieve Tenant from obtaining the express consent in writing of Landlord to any further assignment or underletting. In no event shall any permitted subtenant assign or encumber its sublease or further sublet all or any portion of its sublet space, or otherwise suffer or permit the sublet space or any part thereof to be used or occupied by others (except with respect to the first such assignment of a sublease by a permitted subtenant or the first such sub-sublease, in which case Landlord's consent thereto shall be granted or withheld in accordance with the provisions of this Article 4 as if such sub-sublease or assignment of a sublease was being made by Tenant). A modification, amendment or extension of a sublease (but not a termination) shall be deemed a sublease (other than a modification, amendment or extension expressly set forth in such sublease and such sublease has previously been approved by Landlord). No assignment or subletting shall be made by the legal representatives of Tenant or by any person to whom Tenant's interest under this Lease passes by operation of law, except in compliance with the provisions of this Article 4. For the purposes of this Article, an "interest" shall mean an estate, license, easement, use, profit or other claim with respect to real property or a right to participate, directly or indirectly, through one or more intermediaries, nominees, trustees or agents, in the decision making respecting any entity or other organization or any of the profits, losses, dividends, distributions, income, gain, losses or capital of any entity or other organization.

B.

(i) Except as otherwise expressly set forth in Sections 4.F, G, H I and T hereof, if Tenant desires to assign this Lease or to sublet all or any portion of the Premises, Tenant (shall notify Landlord of such proposed transaction (each, a "Proposed Transfer"), which notice (the "Transfer Notice") must (I) reference this Section 4.B. and indicate that such notice constitutes a Transfer Notice, (II) set forth a description of the Premises (or the portion thereof) that is involved in the Proposed Transfer, (III) if the Proposed Transfer is an assignment of this Lease or a sublease of all or any portion of the Premises by Tenant, include either (X) a final, fully negotiated term sheet (a "Term Sheet") executed by Tenant and the proposed assignee or sublessee (as applicable) setting forth all of the material terms and conditions of such Proposed Transfer including, without limitation, (i) the proposed sublet term (if applicable), (ii) the rent and other consideration to be paid to Tenant in connection with the Proposed

Transfer, (iii) the various concessions offered by Tenant to the proposed transferee (*e.g.*, rent abatements, moving allowances, base building work, alterations and tenant improvement allowances), and (iv) the effective or commencement date of the Proposed Transfer (which date shall not be earlier than thirty (30) days nor later than one hundred eighty (180) days after Landlord's receipt of the Transfer Notice), or (Y) a final, fully executed copy of the applicable sublease or assignment (the commencement date or effective date of which shall not be earlier than thirty (30) days nor later than one hundred eighty (180) days after Landlord's receipt of the Transfer Notice), (IV) if the Proposed Transfer is an assignment of a sublease or a further sublease of all or any portion of a sublet premises, include a final, fully executed copy of the applicable assignment or sublease agreement, as the case may be (the commencement date or effective date of which shall not be earlier than thirty (30) days nor later than one hundred eighty (180) days after Landlord's receipt of the Transfer Notice) (i.e. a Term Sheet is not acceptable). Any Transfer Notice must also include (1) reasonably satisfactory information as to the nature and character of the business of the proposed transferee, and as to the nature of its proposed use of the space, (2) a detailed calculation confirming the amount of profit, if any, that the applicable Proposed Transfer is expected to generate as contemplated in Section 4.J. hereof, or in the alternative, a written certification that the Proposed Transfer will not generate any profit, and (3) banking, financial or other credit information relating to the proposed transferee reasonably sufficient to enable Landlord to determine the financial responsibility and character of the proposed transferee.

(ii) If the Proposed Transfer described in the Transfer Notice is a bona fide intention to (w) assign this Lease, (x) sublet all or substantially all of the Premises for all or substantially all of the remainder of the Term, (y) assign any sublease covering all or substantially all of the Premises which extends for all or substantially all of the remainder of the Term, or (z) further sublet all or substantially all of the Premises for all or substantially all of the remainder of the Term, Landlord may then, by notice to such effect given within thirty (30) days after the receipt of Tenant's Transfer Notice (which includes all of the required deliverables set forth in Section 4.B.(i) hereof), terminate this Lease on the date which shall be the later to occur of (1) the effective date of the Proposed Transfer, as specified by Tenant in such Term Sheet (or as specified in the applicable assignment agreement sublease agreement, as the case may be), and (2) the date which is thirty (30) days following the date Landlord's termination notice is given (such later date, the "Recapture Termination Date"). Tenant shall then vacate and surrender the Premises on or before the Recapture Termination Date and the Term shall end on the Termination Date as if that were the original expiration date of the Term hereof, and neither Landlord nor Tenant shall have further obligations or liability hereunder, except for such obligations and liabilities as may expressly survive the expiration or termination of the Term. Tenant shall vacate the Premises and surrender possession thereof to Landlord, on or before the Recapture Termination Date, in broom clean condition, and otherwise in the condition required hereunder. For all purposes hereof, the term "all or substantially all of the remainder of the Term" when used throughout this Article 4 shall mean a term ending anytime during the last twelve (12) months of the Term.

(iii) If the Proposed Transfer is a bona fide intention to (x) sublet, in a single transaction, any portion of the Premises for all or substantially all of the remainder of the Term, (y) further sublet in a single transaction, any portion of the Premises for all or substantially all of the remainder of the Term, or (z) assign any sublease which covers any portion of the Premises for all or substantially all of the remainder of the Term (each, a "Proposed Partial Sublease"), then Landlord may, by notice to such effect given within thirty (30) days after the receipt of Tenant's Transfer Notice (which includes all of the required deliverables set forth in Section 4.B.(i) hereof), terminate this Lease with respect to only the space proposed to be subleased or further subleased, as the case may be (or with respect to only the space previously sublet if the Proposed Transfer is an assignment of a sublease) (such space, the "Deleted Portion"), on the date which shall be the later to occur of (1) the effective date of the Proposed Partial Sublease, as specified by Tenant in such Term Sheet (or as specified in the applicable assignment agreement, sublease agreement or further sublease agreement, as the case may be), and (2) the date which is thirty (30) days following the date Landlord's deletion notice is given (such later date, the "Deletion Date"). Upon such Deletion Date, the Fixed Annual Rent and Additional Rent due under this Lease shall be appropriately proportionately adjusted, and all other provisions of this Lease shall be deemed modified, so as to reflect the termination of this Lease with respect to the Deleted Portion only. Tenant shall vacate and surrender the Deleted Portion on or before the Deletion Date, in broom clean condition, and the term of the leasing of the Deleted Portion shall end on the Deletion Date as if that were the original Expiration Date of the leasing of such space and neither Landlord nor Tenant shall have any further obligations or liabilities with respect to the Deleted Portion, except for those which expressly survive the expiration or termination of the Term. Landlord shall accept the Deleted Portion "as is", except that Landlord, at Tenant's expense, shall perform all such work and make all such alterations as may be required (a) physically to demise the Deleted Portion from the remainder of the Premises (including, without limitation, separation of building systems and associated wiring, duct work and piping), and to permit lawful occupancy, and (b) if applicable, to make the floor properly and legally usable as a multi-tenanted floor, including, without limitation, any work needed to restore public corridors and bathrooms (using Building standard fixtures and finishes). Tenant shall reimburse Landlord for such costs as Additional Rent within thirty (30) days following receipt of Landlord's invoice, therefore, which shall include reasonable supporting documentation for the charges set forth herein. Tenant shall (or Tenant shall cause its subtenant) to reasonably

cooperate with Landlord in connection with any such work, including, without limitation, by providing Landlord and its contractors with such access to the remaining Premises as is necessary to perform such work.

(iv) If the Proposed Transfer described in the Transfer Notice is a bona fide intention to (x) sublet (or to further sublet), in a single transaction, all or any portion of the Premises or (y) assign any sublease, then Landlord may, by notice to such effect given within thirty (30) days after receipt of the Transfer Notice (which includes all of the required deliverables set forth in Section 4.B.(i) hereof), sublease (either directly or through its designee) the Premises or the applicable portion thereof involved in the Proposed Transfer (the Premises, or the applicable portion thereof, as the case may be, is hereinafter referred to as the "Leaseback Area") for the term specified in such Term Sheet (or as specified in the applicable assignment agreement, sublease agreement or further sublease agreement, as the case may be), and at Tenant's proposed sublease rental (including provisions relating to escalation rents), and except as otherwise provided herein, on the same terms, covenants and conditions, as are contained herein and as are allocable and applicable to the portion of the Premises to be covered by such subletting. The Transfer Notice shall specify the date when the Leaseback Area will be made available to Landlord (or its designee), which date shall be in no event earlier than thirty (30) days nor later than one hundred eighty (180) days following Landlord's receipt of the Transfer Notice (which includes all of the required deliverables set forth in Section 4.B.(i) hereof).

(v) If a sublease with Landlord or its designee is so made (as "Recapture Sublease") it shall expressly:

(a) permit Landlord or its designee, at Landlord's option, to make further subleases of all or any part of the Leaseback Area and to make and authorize any and all changes, alterations, installations and improvements in such space as necessary or desirable, including, without limitation, the changes, alterations, installations and improvements if any, that the proposed sublease contemplated would be made to prepare the Leaseback Area for the transferee's initial occupancy or otherwise (such changes, alterations, installations and improvements contemplated in the proposed sublease, the "Proposed Sublease Alterations");

(b) provide that Tenant will at all times permit reasonably appropriate means of ingress to and egress from the Leaseback Area;

(c) negate any intention that the estate created under such Recapture Sublease be merged with any other estate held by either of the parties;

(d) except to the extent otherwise expressly set forth in the Term Sheet provided as part of the Transfer Notice (which terms of such Term Sheet shall be deemed material and shall be included in any sublease entered into by Tenant as a condition to Landlord's consent thereto), provide that Landlord (or its designee) shall accept the Leaseback Area "as is" except that Landlord (or its designee), at Tenant's expense, shall perform all such work and make all such Alterations (as hereinafter defined) as may be required (i) to physically separate the Leaseback Area from the remainder of the Premises (including, without limitation, separation of building systems and associated wiring, duct work and piping) and to permit lawful occupancy and (ii) if applicable, to make the floor properly and legally usable as a multi-tenanted floor, including, without limitation, any work needed to restore public corridors and bathrooms (using Building standard fixtures and finishes), except to the extent Tenant otherwise pays Landlord for the cost of such work (or those portions thereof which Tenant has previously paid Landlord for pursuant to Section 4.B.(vii) hereof, as the case may be), as contemplated in Section 4.B.(ii) hereof, in which event Landlord shall perform such work, at Landlord's own cost and expense, and

(e) except to the extent otherwise expressly set forth in the Term Sheet provided as part of the Transfer Notice (which terms of such Term Sheet shall be deemed material and shall be included in any sublease entered into by Tenant as a condition to Landlord's consent thereto), provide that at the expiration of the term of such Recapture Sublease, Tenant will accept the Leaseback Area in its then existing condition "as-is", casualty and ordinary wear and tear excepted and subject to the obligations of Landlord (or its designee) to restore only those changes, alterations, installations and improvements, if any, made by Landlord or its designee, which exceed the scope of the Proposed Sublease Alterations; it being expressly understood that subject to and in accordance with the provisions of Article 8 hereof, Tenant shall, at Tenant's sole cost and expense at the expiration of the term of this Lease, remove any Proposed Sublease Alterations that

Landlord or its designee elected to perform together with any and all demising walls erected in the Premises to separately demise the Leaseback Area and repair and restore in good and workmanlike manner any damage to the Premises and/or the Building caused by such removal. Notwithstanding the foregoing to the contrary, provided that the Recapture Sublease is for all or substantially all of the then-remaining term of this Lease (for the Leaseback Area), Tenant acknowledges and agrees that Landlord (or its designee) shall have no obligation to restore any changes, alterations, installations and improvements, if any, made by Landlord or its designee, regardless of whether the same exceed the scope of the Proposed Sublease Alterations, unless the same would have otherwise constituted Specialty Alterations hereunder for which Tenant would have otherwise been obligated to remove and restore (unless Landlord agrees to waive such removal and restoration in writing), and Landlord similarly acknowledges and agrees that Tenant shall have no obligation to restore any changes, alterations, installations or improvements, if any (including Proposed Sublease Alterations), made by Landlord or its designee which Landlord or its designee would not have been obligated to remove or restore hereunder.

(vi) Subject to the foregoing, performance by Landlord, or its designee, under a Recapture Sublease shall be deemed performance by Tenant of any similar obligation under this Lease and any default under any such Recapture Sublease shall not give rise to a default under a similar obligation contained in this Lease, nor shall Tenant be liable for any default under this Lease or deemed to be in default hereunder if such default is occasioned by or arises from any act or omission of the subtenant under such Recapture Sublease or is occasioned by or arises from any act or omission of any occupant holding under or pursuant to any such Recapture Sublease. Notwithstanding anything to the contrary contained herein, provided that Tenant is not in default under the terms of this Lease beyond the expiration of any applicable notice and cure periods, if Landlord shall fail to timely make any payment required of Landlord under the Recapture Sublease after the expiration of any notice and cure periods provided for in the Recapture Sublease, then Tenant shall have the right to give Landlord a second notice requesting such payment and specifically referencing this Section 4.B.(vi) and if Landlord shall fail to make such payment within five (5) Business Days after receipt of such second (2nd) notice and provided Landlord has not disputed such payment, then Tenant shall be permitted to credit any unpaid amounts against the then next installment(s) of Fixed Annual Rent payable under this Lease.

(vii) For the avoidance of any doubt, the thirty (30) day time period set forth in Section 4.B.(ii), (iii) and (iv) for Landlord to exercise Landlord's applicable right of recapture, shall not commence unless and until Landlord receives the Transfer Notice together with all required documents (i.e. a Term Sheet or a fully executed sublease or assignment which complies with the terms hereof) and the information specified in Section 4.B.(i) hereof.

C. (i) Simultaneously with Tenant's delivery of a Transfer Notice to Landlord with respect to a sublease or assignment, Tenant shall have the right to request Landlord's consent to the Proposed Transfer described therein by including an express request in bold and capital letters that provides*: **"THIS NOTICE CONSTITUTES BOTH A TRANSFER NOTICE AND A REQUEST FOR LANDLORD'S CONSENT TO THE PROPOSED TRANSFER DESCRIBED HEREIN".*** If Tenant makes such request and any such Transfer Notice includes a Term Sheet in lieu of a fully executed sublease or assignment as contemplated in this Article 4 (subject to the limitations set forth herein), if Landlord does not exercise its recapture rights set forth in Section 4.B. hereof, Landlord shall not unreasonably withhold, condition or delay Landlord's preliminary approval of the Proposed Transfer described in a Term Sheet, provided that the Proposed Transfer as described therein satisfies the requirements set forth in clauses (ii), (iii), (iv), (v), (vi), (vii), (viii), (ix), (x), and (xi), of Section 4.D hereof. Landlord shall have a period of thirty (30) days from receipt of Tenant's Transfer Notice (which includes all of the required deliverables set forth in Section 4.B.(i) hereof) to respond to any such request for preliminary approval. Tenant acknowledges that the applicable Proposed Transfer shall remain subject to Landlord's approval pursuant to Section 4.D hereof (except that the scope of Landlord's review of the applicable Proposed Transfer under Section 4.D hereof shall be limited as provided in this Section 4.C). If (I) Tenant gives Landlord a Transfer Notice which includes a Term Sheet in respect of a particular Proposed Transfer as contemplated by Section 4.B.(i) and this Section 4.C, (II) Landlord does not exercise any of the recapture rights set forth in Section 4.B. hereof, with respect to the Proposed Transfer, (III) Landlord approves such Proposed Transfer under this Section 4.C, (IV) Tenant submits to Landlord a copy of the fully executed sublease or assignment agreement, as applicable, within one hundred eighty (180) days after the date that Tenant submits the Term Sheet to Landlord, and (V) the net effective rent of such specific sublease agreement or assignment is within five percent (5%) of the net effective rent set forth in Term Sheet and the terms of the executed sublease or assignment agreement, as the case may be, are otherwise consistent in all material respects with the terms set forth in the Term Sheet, then Landlord shall not have the right to withhold consent to the applicable Proposed Transfer pursuant to clauses (ii), (iii), (iv), (v), (vii), (viii), (x), and (xi), of Section 4.D hereof (it being understood, however, that Landlord shall retain the right to object to the Proposed Transfer for a period of thirty (30) days following receipt of the fully executed sublease agreement, as the case may

be, to the extent that the applicable Proposed Transfer does not then satisfy the requirements set forth in clauses (i), (vi),(ix), (xii) and (xiii) of Section 4.D. hereof); it being the intent and purpose hereof that Landlord shall be entitled to withhold consent to a Proposed Transfer in its sole discretion if a monetary or material non-monetary Default has occurred and is then continuing either on or about the date that Landlord receives a Transfer Notice or on or about the date that Landlord receives the executed definitive documents for the Proposed Transfer, as the case may be. Nothing contained in this Section 4.C. limits Landlord's rights under Section 4.B hereof or under Articles 5 and 6 hereof.

5. (ii) In the event Landlord has granted its preliminary approval to a Proposed Transfer described in a Term Sheet but (a) the specific sublease agreement is not fully executed and delivered within one hundred eighty (180) days after the delivery of a Transfer Notice to Landlord, or (b) the net effective rent of such specific sublease agreement varies by more than five percent (5%) from the net effective rent set forth in the Term Sheet or (c) the terms of such specific sublease are not consistent in all other material respects with the terms set forth in the Term Sheet, then, in any case, Tenant must deliver another Transfer Notice to Landlord pursuant to subsection 4.B (which Transfer Notice shall include all of the documents and additional information required pursuant to subsection 4.B.(i) hereof), and Landlord shall have an additional period of ten (10) Business Days from the receipt of such second Transfer Notice to exercise any of its options set forth in subsections 4.B (ii), and/or (iii) hereof, as applicable, provided, however, that such reoffering to Landlord under this Section 4.C(ii) must include the final, fully executed sublease (in lieu of the Term Sheet described in subsection 4.B(i) above), along with all of the documents and additional information required under subsection 4.B(i) hereof. Landlord shall also have the same consent rights with respect to the Proposed Transfer as re-offered (subject to the same criteria set forth in Section 4.D below).

D. Notwithstanding anything to the contrary set forth herein, in the event that Tenant does not request preliminary approval to a Proposed Transfer on the basis of a Term Sheet, and instead requests Landlord's consent to a fully executed assignment or fully executed sublease, as the case may be, then if Landlord does not exercise its recapture rights set forth in Section 4.B. hereof, then Landlord shall not unreasonably withhold, condition or delay its consent to Tenant's request for consent to a specific Proposed Transfer provided that:

(i) Other than the payment of Fixed Annual Rent and Additional Rent (which shall be pursuant to the terms of the sublease and any consent or other agreement between the parties) any such sublease expressly provides that the subtenant shall comply with all applicable terms and conditions of this Lease to be performed by Tenant hereunder with respect to the subleased premises and any assignment of this Lease shall contain an assumption by the assignee of all of the obligations of Tenant under this Lease accruing from and after the effective date of such assignment (provided that Tenant acknowledges and agrees that Tenant shall be liable for all obligations accruing prior to and after the effective date of such assignment);

(ii) Tenant shall not advertise (but may list with brokers) its space for assignment or subletting at a rental rate lower than the prevailing rental rate set by Landlord for comparable space in the Building, or, if there is no comparable space, the prevailing rental rate reasonably determined by Landlord;

(iii) the proposed subtenant or assignee or any Affiliate of the proposed subtenant or assignee, does not lease or occupy any space in the Building unless Landlord does not then have, and does not reasonably expect to have within six (6) months thereafter, space available in the Building that is reasonably comparable to the Premises (or the portion thereof involved in the Transfer). In no event shall Landlord have any obligation to consent to any proposed transferee if such proposed transferee or any Affiliate of such proposed transferee leases or occupies any space in the Building and is a Person with whom Landlord is then engaged in bona fide negotiations regarding the leasing or subleasing of additional space in the Building;

(iv) the proposed subtenant or assignee or any Affiliate of the proposed subtenant or assignee has not dealt (as evidenced by written or electronic communications) with Landlord or its Affiliates or any agent thereof (directly or through a broker) with respect to space in the Building during the six (6) months immediately preceding Tenant's request for Landlord's consent, unless Landlord does not then have, nor reasonably expect to have within six (6) months thereafter, space available in the Building that is reasonably comparable to the Premises (or the portion thereof involved in the Transfer). In no event shall Landlord have any obligation to consent to any proposed transferee with whom Landlord is then engaged in bona fide negotiations regarding leasing or subleasing of space in the Building;

(v) intentionally omitted;

(vi) the proposed assignee or subtenant (or any Affiliate of the proposed subtenant or assignee) is not primarily engaged in the ownership, management, leasing, operation and/or development of commercial real estate;

(vii) no monetary or material non-monetary default has occurred and is then continuing;

(viii) the proposed subtenant or assignee is engaged in and will conduct business in a manner which is in keeping with the standards and the general character of the Building and the business of such proposed subtenant or assignee will not violate any then existing restrictive covenant or use restriction contained in any lease or other agreement affecting the Building (of which Landlord shall advise Tenant upon Tenant's request);

(ix) if the proposed transfer is a sublease, the proposed transfer will not result in more than four (4) occupants (including Tenant) occupying any full floor of the Premises**;**

(x) the proposed assignee or subtenant has a financial standing that is reasonably satisfactory to Landlord taking into account, in the case of a sublease, the obligations under such sublease and, in the case of an assignment or a sublease, Tenant's continuing liability under this Lease;

(xi) if the proposed transfer is a sublease, the sublease term shall expire at least one (1) day prior to the Fixed Expiration Date;

(xii) the proposed assignee or subtenant will not use the Premises for any use other than the uses expressly permitted pursuant to Article 1 hereof;

(xiii) any sublease shall provide that such sublease is subject and subordinate to the terms of this Lease and if this Lease is terminated for any reason whatsoever, Landlord, at Landlord's option may take over all of the right, title and interest of the transferor under the sublease and the transferee, at Landlord's option, shall attorn to Landlord and perform for Landlord's benefit all the terms, covenants and conditions of such sublease as if such sublease were a direct lease between Landlord and such subtenant provided however, Landlord shall not be (1) liable for any act or omission of the transferor under such sublease (except for any such acts or omissions that (x) continue after the date that Landlord succeeds to the interest of the transferor under such sublease, and (y) may be remedied by providing a service or performing a repair), (2) subject to any defense or offsets which the transferee may have against the transferor that accrue prior to the date that Landlord succeeds to the interest of the transferor, (3) bound by any previous payment that the transferee made to the transferor more than thirty (30) days in advance of the date that such payment was due, (4) bound by any obligation to make any payment to or on behalf of the transferee that accrues prior to the date that Landlord succeeds to the interest of the transferor under such sublease, (5) bound by any obligation to perform any work or to make improvements to the Premises, or the applicable portion thereof demised by such sublease (other than the obligation to perform maintenance, repairs or restoration that in each case first becomes necessary from and after the date that Landlord succeeds to the interest of the transferor under such sublease), (6) bound by any amendment or modification (but not a termination) of such sublease made without Landlord's consent (other than a modification, amendment or extension expressly set forth in such sublease and such sublease has previously been approved by Landlord), and (7) bound to return the transferee's security deposit, if any, until such deposit has come into Landlord's actual possession and the transferee is entitled to such security deposit pursuant to the terms of such sublease (the requirements of a proposed sublease as set forth in this Section 4.D.(xiii) being collectively referred to herein as the "Basic Sublease Provisions"). If this Lease shall be rejected pursuant to Section 365 of the Bankruptcy Code (as hereinafter defined) or any similar or successor statute, such rejection shall be treated by the subtenant as a termination of the Term notwithstanding any contrary interpretation given by law to such rejection and the provisions of this Section 4.D.(xiii) shall be applicable thereto; and

(xiv) the applicable transferor and transferee executes and delivers to Landlord a consent to the applicable sublease or assignment in a form reasonably designated by Landlord.

If Landlord fails to respond to any request for its consent to a specific proposed assignment or sublease by Tenant within the thirty (30) days following the date of Landlord's receipt of a Transfer Notice and all required documentation, then Tenant may notify Landlord of such fact (a "Transfer Reminder Notice"). If Landlord's failure to respond continues for more than five (5) Business Days after Landlord's receipt of the Transfer Reminder Notice, then Landlord shall be deemed (i) to have consented to such proposed assignment or sublease and (ii) to have waived its recapture rights under Section 4.B hereof, provided and on condition that Transfer Reminder Notice from Tenant shall have specified in bold face type and capital letters as follows: "**IF LANDLORD SHALL FAIL TO RESPOND TO TENANT'S REQUEST FOR CONSENT TO A SPECIFIC ASSIGNMENT OR SUBLETTING WITHIN FIVE (5) BUSINESS DAYS AFTER THE GIVING OF THIS NOTICE, SUCH FAILURE SHALL BE DEEMED TO BE LANDLORD'S CONSENT TO SUCH SPECIFIC ASSIGNMENT OR SUBLETTING**". For the avoidance of doubt, it is understood that the foregoing provisions of this paragraph shall only apply to a Proposed Transfer by Tenant, and shall not apply to a Proposed Transfer by any subtenant or sub-subtenant of Tenant.

E. Notwithstanding anything to the contrary set forth in this Lease, no assignment of less than all of Tenant's interest in this Lease shall be permitted under any circumstance.

F. Notwithstanding anything to the contrary contained herein (but subject to the provisions of Sections 4.E. above and 4.R. below), Tenant shall have the right to assign Tenant's entire interest under this Lease to an Affiliate of Tenant without (i) Landlord's prior approval, (ii) Landlord having the rights set forth in Section 4.B. above (offer back provisions) and (iii) Tenant being required to pay the amounts set forth in Section 4.J below (profit sharing), provided that in each case (w) no monetary or material non-monetary default has occurred and is then continuing as of the effective date of any such assignment, (x) Tenant gives notice thereof to Landlord, not later than the tenth (10^{th}) Business Day prior to the effective date of any such assignment together with an instrument, duly executed by Tenant and the aforesaid Affiliate, in form reasonably satisfactory to Landlord, to the effect that such Affiliate assumes all of the obligations of Tenant under this Lease to the extent arising from and after the effective date of such assignment, and (y) Tenant, together with the copy of such assignment, provides Landlord with evidence that such entity constitutes an Affiliate of Tenant. The term "Affiliate" shall mean an individual or an entity that (A) Controls, (B) is under the Control of, or (C) is under common Control with, the individual or entity in question. The term "Control" shall mean the direct or indirect ownership of more than fifty percent (50%) of the outstanding voting stock of a corporation or other majority equity interest if not a corporation and the possession of power to direct or cause the direction of the management and policy of such corporation or other entity, whether through the ownership of voting securities, by statute or by contract.

G. Notwithstanding anything to the contrary contained herein (but subject to the provisions of Sections 4.D.(ix), and 4.R. and 4.S. below), Tenant shall have the right to sublease or license all or any portion of the Premises to an Affiliate of Tenant, without (i) Landlord's prior approval, (ii) Landlord having the rights set forth in Section 4.B. above (offer back provisions) and (iii) Tenant being required to pay the amounts set forth in Section 4.J below (profit sharing), provided that in each case, (v) if Tenant subleases or licenses only a portion of the rentable area of the Premises to an Affiliate and erects a demising wall in connection therewith, the provisions of Section 4.D.(ix) are satisfied in connection therewith, (w) no monetary or material non-monetary default has occurred and is then continuing as of the effective date of any such sublease or license, as the case may be, (x) Tenant gives to Landlord a copy of such sublease or license, not later than the tenth (10th) Business Day prior to the effective date of any such sublease or license, (y) Tenant, with such copy of such sublease or license, provides Landlord with reasonable evidence to the effect that the Person to which Tenant is so subleasing or licensing the Premises constitutes an Affiliate of Tenant, and (z) such sublease includes the Basic Sublease Provisions.

H. Notwithstanding anything to the contrary contained herein (but subject to the provisions of Sections 4.E. above and 4.R. below), the assignment of Tenant's entire interest under this Lease in connection with the sale of all or substantially all of the assets or stock of Tenant shall be permitted without (i) Landlord's prior approval, (ii) Landlord having the rights set forth in Section 4.B. above (offer back provisions) and (iii) Tenant being required to pay the amounts set forth in Section 4.J below (profit sharing), provided that in each case (w) no monetary or material non-monetary default has occurred and is then continuing as of the effective date of any such assignment, (x) Tenant gives notice thereof to Landlord, not later than the tenth (10^{th}) Business Day prior to the date of any such assignment is consummated (unless prohibited by confidentiality obligations or Requirements, in which case Tenant shall give notice to Landlord of such transfer no later than the fifth (5th) Business Day following the date such transfer is consummated), together with an instrument, duly executed by the Tenant and such assignee, in form reasonably satisfactory to Landlord, to the effect that such assignee assumes all of the obligations of Tenant to the extent arising under the Lease from and after the effective date of such assignment, (y) such sale of all or substantially all of the assets or stock of Tenant is not principally for the purpose of transferring Tenant's interest in this Lease, and (z) the Net Worth Requirement is satisfied. The term "Net Worth Requirement" shall mean the requirement that Tenant has provided to Landlord, not later than the tenth (10th) Business Day prior to the effective date of the applicable assignment (subject to subclause (x) of Section 4.I. hereof), the most recently filed financial statements for Tenant and the assignee (which, in any case, may be one merged or consolidated entity) reported to the United States Securities and Exchange Commission (so long as Tenant and/or the assignee is publically traded) or, if not publically traded, Tenant's and/or the assignee's most recent financial statements that is either audited or certified by the chief financial officer of the Tenant and/or the assignee (as applicable) (or, if Tenant or the assignee does not have a chief financial officer, an executive level officer whose job responsibilities include primary oversight of the preparation of financial statements) and that, in any case, reflects that both (I) the assignee's total stockholder's equity (including goodwill and intangible assets) immediately following the effective date of the proposed assignment, as determined in accordance with GAAP, is (or will be immediately following the effective date of the proposed assignment) equal to or greater than $224,000,000.00 and (II) the assignee's operating cash flow immediately following the effective date of the proposed assignment, as determined in accordance with GAAP, is (or will be immediately following the effective date of the proposed assignment) equal to or greater than $36,000,000.00.

I. Notwithstanding anything to the contrary contained herein (but subject to the provisions of Sections 4.E. above and 4.R. below), the merger or consolidation of Tenant into or with another Person shall be

permitted without (i) Landlord's prior approval, (ii) Landlord having the rights set forth in Section 4.B. above (offer back provisions) and (iii) Tenant being required to pay the amounts set forth in Section 4.J below (profit sharing), provided that in each case (w) no monetary or material non-monetary default has occurred and is then continuing as of the effective date of any such merger or consolidation, (x) Tenant gives Landlord notice of such merger or consolidation not later than the tenth (10^{th}) Business Day prior to the date such merger or consolidation is anticipated to be consummated (unless prohibited by confidentiality obligations or Requirements, in which case, Tenant shall give notice to Landlord of such merger or consolidation no later than the fifth (5^{th}) Business Day following the date such merger or consolidation is consummated), (y) such merger or consolidation is not principally for the purpose of transferring Tenant's interest in this Lease, and (z) the Net Worth Requirement is satisfied; it being understood and agreed that the surviving entity shall be deemed the assignee for all purposes of the Net Worth Requirement and the merger or consolidation, as the case may be, shall be deemed the assignment.

J. If Landlord shall not have accepted any required Tenant's offer pursuant to Section 4.B and if Tenant effects any assignment or subletting, then except as otherwise expressly set forth herein, Tenant thereafter shall pay to Landlord a sum equal to fifty percent (50%) of (i) any rent or other consideration (including, without limitation, sums paid for fixtures, furniture, equipment and other personal property less the then fair market value thereof) paid to Tenant by any subtenant or assignee which (after deducting the reasonable out-of-pocket costs, if any, in effecting the assignment or sublease, including reasonable hard and soft alteration costs, work allowances, real property transfer taxes, commissions , architects fees and legal fees (including payable to Landlord's counsel), which costs shall be amortized on a straight line basis over the term of the sublease or then remaining term of this Lease if the applicable transfer is an assignment) is in excess of the Rental allocable strictly on a per square foot basis (calculated by dividing aggregate consideration by the number of rentable square feet in the area so subleased, without regard to any other allocation of value, which is then being paid by Tenant to Landlord pursuant to the terms hereof with respect to the same area, allocable strictly on a per square foot basis utilizing the same methodology which Landlord is then using in the Building to determine space measurements), and (ii) any other net profit or gain realized by Tenant from any such subletting or assignment. All sums payable hereunder by Tenant shall be payable to Landlord as Additional Rent upon receipt thereof by Tenant.

K. Notwithstanding any subletting to any subtenant and/or acceptance of Rental by Landlord from any subtenant, Tenant shall and will remain fully liable for the payment of the Fixed Annual Rent, Additional Rent and any other charge due and to become due hereunder and for the performance of all of the covenants, agreements, terms, provisions and conditions contained in this Lease on the part of Tenant to be observed and performed and for all of the acts and omissions of any licensee, subtenant, or any other person claiming under or through any subtenant that shall be in violation of any of the obligations of this Lease, and any such violation shall be deemed to be a violation by Tenant.

L. Tenant covenants that, notwithstanding any assignment or transfer whether or not in violation of the provisions hereof, and notwithstanding the acceptance of Fixed Annual Rent and/or Additional Rent by Landlord from an assignee, transferee or any other party, Tenant shall not be released and shall remain fully liable for the payment of the Rental and for the other obligations of this Lease on the part of Tenant to be performed or observed.

M. If Landlord shall decline to give consent to any proposed assignment or sublease, or if Landlord shall exercise any of Landlord's rights under Section 4.B of this Article, Tenant shall indemnify, defend and hold Landlord harmless from and against any and all losses, liabilities, costs and expenses (including reasonable attorneys' fees) resulting from any claims that may be made against Landlord by the proposed assignee or subtenant or by any brokers or other persons claiming a commission or similar compensation in connection with the proposed assignment or sublease. This provision shall survive the expiration or sooner termination of the Term. Tenant shall pay to Landlord on demand Landlord's reasonable, out-of-pocket costs (including, without limitation, reasonable architectural, engineering and legal fees) incurred in connection with reviewing Tenant's request for any such consent.

N. The joint and several liability of Tenant and any immediate or remote successor in interest to Tenant, and the due performance of the obligations of this Lease on Tenant's part to be performed or observed, shall not be discharged, released or impaired in any respect by any agreement or stipulation made by Landlord extending the time of, or modifying any of the obligations of, this Lease, or by any waiver or failure of Landlord to enforce any of the obligations of this Lease.

O. Neither the listing of a name other than that of Tenant named herein, whether on the doors of the Premises, the Building directory or otherwise, nor the issuance of an ID badge or Building pass, shall vest any right or interest in this Lease or the Premises, and shall not be deemed to be the consent of Landlord to any assignment or transfer of this Lease, to any sublease or licensing of the Premises, or to any use or occupancy thereof by anyone other than Tenant named herein.

P. Under no circumstance may this Lease be assigned or the Premises be sublet in whole or in part to a Prohibited Person (as defined in Article 47).

Q. The term "Tenant" when used in this Article shall include the originally denominated Tenant and each proximate or remote assignee thereof or successor in interest thereto. Wherever in this Article Tenant or any other person is required to provide Landlord with banking, financial or other credit information such information shall include, without limitation, a balance sheet (in reasonable detail, listing all assets and liabilities and prepared in accordance with generally accepted accounting principles) of each relevant party to the transaction in question certified to Landlord by an independent certified public accountant to the extent such information is so certified in the regular course of such party's business and, if not, certified to be true and correct in all material respects by the chief financial officer of such entity (or, if such entity does not have a chief financial officer, an executive level officer whose job responsibilities include primary oversight of the preparation of financial statements).

R. Notwithstanding anything to the contrary contained herein, Tenant shall not, and Tenant shall not permit any other party permitted to occupy the Premises pursuant to this Article 4 to, enter into any lease, sublease, license, concession or other agreement for use or occupancy of the Premises or any portion thereof which provides for a rental or other payment for such use or occupancy based in whole or in part on the net income or profits derived by any Person from the property leased, occupied or used, or which would require the payment of any consideration that would not qualify as "rents from real property," as that term is defined in Section 856(d) of the Internal Revenue Code of 1986, as amended.

S. On or prior to the Expiration Date, Tenant shall, at Tenant's sole cost and expense, remove any demising walls erected in the Premises made in connection with any sublease and repair any and all damage resulting from such removal; it being understood and agreed that any such work shall be performed subject to and in accordance with the provisions of this Article 4 and Article 8 hereof.

T. Tenant may permit portions of the Premises to be occupied, at any time and from time to time, by Persons who are not members, officers or employees of Tenant (each such Person who is permitted to occupy portions of the Premises pursuant to this Section 4.T. being referred to herein as a "Special Occupant"), without (i) Landlord's prior approval, (ii) Landlord having the rights set forth in Section 4.B. above (offer back provisions) and (iii) Tenant being required to pay the amounts set forth in Section 4.J above (profit sharing), provided that, in each case, (a) no demising walls are erected in the Premises separating the space used by a Special Occupant from the remainder of the Premises, (b) the Special Occupant uses the Premises in conformity with all applicable provisions of this Lease, (c) the use of any portion of the Premises by any Special Occupant shall not create any right, title or interest of the Special Occupant in or to the Premises, (d) the portion of the Premises used by all Special Occupants at any given time shall not exceed fifteen percent (15%) of the rentable area of the Premises, (e) such Person maintains a business relationship with Tenant (other than by virtue of such occupancy) and such business relationship extends during the term of such occupancy, (f) the Special Occupant does not pay for its occupancy rights an amount greater than the Rental that is reasonably allocable to the portion of the Premises that the Special Occupant has the right to occupy (but may pay Tenant additional fees for special services, such as use of a receptionist, telephone, cable and internet), (g) such arrangement with a Special Occupant shall terminate automatically upon the expiration or earlier termination of this Lease and (h) at least five (5) Business Days prior to a Special Occupant taking occupancy of a portion of the Premises, Tenant gives notice to Landlord advising Landlord of (1) the name and address of such Special Occupant, (2) the character and nature of the business to be conducted by such Special Occupant, (3) the number of square feet of rentable area to be occupied by such Special Occupant, (4) the anticipated duration of such occupancy, and (5) the rent, if any, to be paid by such Special Occupant for its use of the applicable portion of the Premises. Within ten (10) Business Days after request by Landlord from time to time, Tenant shall provide Landlord with a list of the names of all Special Occupants then occupying any portion of the Premises and a description of the spaces occupied thereby.

6. INSOLVENCY & DEFAULT

A. This Lease shall terminate automatically upon the occurrence of any Insolvency Event (as hereinafter defined). The term "Insolvency Event" shall mean any of the following events: (i) a Tenant Obligor (as hereinafter defined) commences or institutes any case, proceeding or other action (a) seeking relief on its behalf as debtor, or to adjudicate it a bankrupt or insolvent, or seeking reorganization, arrangement, adjustment, winding-up, liquidation, dissolution, composition or other relief with respect to it or its debts under any existing or future law of any jurisdiction, domestic or foreign, relating to bankruptcy, insolvency, reorganization or relief of debtors, or (b) seeking appointment of a receiver, trustee, custodian or other similar official for it or for all or any substantial part of its property; or (ii) a Tenant Obligor makes a general assignment for the benefit of creditors; or (iii) any case, proceeding or other action is commenced or instituted against a Tenant Obligor (a) seeking to have an order for relief entered against it as debtor or to adjudicate it a bankrupt or insolvent, or seeking reorganization, arrangement, adjustment, winding-up, liquidation, dissolution, composition or other relief with respect to it or its debts under any

existing or future law of any jurisdiction, domestic or foreign, relating to bankruptcy, insolvency, reorganization or relief of debtors, or (b) seeking appointment of a receiver, trustee, custodian or other similar official for it or for all or any substantial part of its property, which in either of such cases (I) results in any such entry of an order for relief, adjudication of bankruptcy or insolvency or such an appointment or the issuance or entry of any other order having a similar effect, and (II) remains undismissed for a period of sixty (60) days; or (iv) any case, proceeding or other action is commenced or instituted against a Tenant Obligor seeking issuance of a warrant of attachment, execution, distraint or similar process against all or any substantial part of its property which results in the entry of an order for any such relief which is not vacated, discharged, or stayed or bonded pending appeal within sixty (60) days from the entry thereof; or (v) a Tenant Obligor takes any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the acts set forth in clauses (i), (ii), (iii), or (iv) above; or (vi) a trustee, receiver or other custodian is appointed for any substantial part of a Tenant Obligor's assets, and such appointment is not vacated or stayed within fifteen (15) Business Days. The term "Tenant Obligor" shall mean (a) Tenant, (b) any Person that comprises Tenant (if Tenant is comprised of more than one (1) Person), (c) any partner in Tenant (if Tenant is a general partnership), (d) any general partner in Tenant (if Tenant is a limited partnership), (e) any Person that has guaranteed all or any part of the obligations of Tenant hereunder, and (f) any Person that previously constituted Tenant hereunder; provided that if a predecessor to Tenant is involved in an Insolvency Event, but Tenant is not, this Lease shall not be affected thereby, as long as Tenant's tangible net worth, immediately following such Insolvency Event, as determined in accordance with GAAP, is substantially the same as it was on the date when such tenant originally became the tenant under this Lease and Tenant provides Landlord with evidence thereof which is reasonably acceptable to Landlord (within ten (10) Business Days following such Insolvency Event). If this Lease terminates pursuant to this Section 5.A, then (I) Tenant shall immediately quit and surrender the Premises, and (II) Tenant shall nonetheless remain liable for all of its obligations hereunder, as provided in Article 6 hereof.

B. If (i) Tenant is not the Person that constituted Tenant initially, and (ii) either (I) this Lease is disaffirmed or rejected pursuant to the Bankruptcy Code, or (II) this Lease terminates by reason of occurrence of an Insolvency Event, then, subject to the terms of this Section 5.B, the Persons that constituted Tenant hereunder previously, including, without limitation, the Person that constituted Tenant initially (each such Person that previously constituted Tenant hereunder (but does not then constitute Tenant hereunder), and with respect to which Landlord exercises Landlord's rights under this Section 5.B, being referred to herein as a "Predecessor Tenant") shall (1) pay to Landlord the aggregate Rental that is then due and owing by Tenant to Landlord under this Lease to and including the date of such disaffirmance, rejection or termination, and (2) enter into a new lease, between Landlord, as landlord, and the Predecessor Tenant, as tenant, for the Premises, and for a term commencing on the effective date of such disaffirmance, rejection or termination and ending on the Fixed Expiration Date (or the last day of the Renewal Term, if such disaffirmance, rejection or termination occurs during the Renewal Term), at the same Fixed Annual Rent and upon the then executory terms that are contained in this Lease, except that (a) the Predecessor Tenant's rights under the new lease shall be subject to the possessory rights of Tenant under this Lease and the possessory rights of any Person claiming by, through or under Tenant or by virtue of any statute or of any order of any court, and (b) such new lease shall require all defaults existing under this Lease to be cured by the Predecessor Tenant with reasonable diligence. Landlord shall have the right to require the Predecessor Tenant to execute and deliver such new lease on the terms set forth in this Section 5.B only by giving notice thereof to the Predecessor Tenant within thirty (30) days after Landlord receives notice of any such disaffirmance or rejection (or, if this Lease terminates by reason of Landlord making an election to do so, then Landlord may exercise such right only by giving such notice to the Predecessor Tenant within thirty (30) days after this Lease so terminates). If the Predecessor Tenant defaults in its obligation to enter into said new lease for a period of ten (10) days following Landlord's request therefor, then, in addition to all other rights and remedies by reason of such default, either at law or in equity, Landlord shall have the same rights and remedies against such Predecessor Tenant as if such Predecessor Tenant had entered into such new lease and such new lease had thereafter been terminated as of the commencement date thereof by reason of such Predecessor Tenant's default thereunder. The term "Bankruptcy Code" shall mean 11 U.S.C. Section 101 et seq., or any statute of similar nature and purpose.

C. The term "Default" shall mean any of the following events: (i) if any installment of Fixed Annual Rent or Additional Rent or any other payment due hereunder is not paid when due and such failure continues for five (5) Business Days after the date Landlord gives Tenant notice thereof; (ii) intentionally deleted**;** (iii) if Tenant defaults in respect of Tenant's obligations under Section 8.F.(ii) and such default continues for more than five (5) Business Days following Landlord's notice thereof; (iv) if Tenant defaults in respect of Tenant's obligations under Sections 8.E., Article 9, and/or Article 13 hereof and such default continues for more than ten (10) Business Days following notice thereof; (v) an Insolvency Event occurs; (vi) if Tenant's interest under this Lease passes to any other Person, whether by operation of law, or otherwise, except as expressly permitted in Article 4 hereof, and such transfer is not reversed within ten (10) days after the date such transfer occurs; (vii) if Tenant shall default beyond any grace period under any other lease, license or occupancy agreement between Tenant and Landlord or any affiliate of Landlord*;* (viii) intentionally deleted; (ix) intentionally deleted and/or (x) unless otherwise specified elsewhere in this Lease, if Tenant defaults in the observance or performance of any other covenant of this Lease on Tenant's part to be observed or performed and Tenant fails to remedy such default within twenty (20) days after Landlord gives Tenant notice thereof, except that if (a) such default cannot be remedied using reasonable diligence

during such period of twenty (20) days, (b) Tenant takes reasonable steps during such period of twenty (20) days to commence Tenant's remedying of such default, and (c) Tenant diligently and continuously prosecutes Tenant's remedying of such default to completion, then a Default shall not occur by reason of such default. For all purposes of this Lease other than Section 5.D. and Article 6 hereof, the term "Default" as referred to in this Section 5.C. shall be deemed to include Tenant's failure to pay any item of Rental following receipt of a rent demand therefor and the lapse of any cure period specified therein.

D. If (i) a Default (other than an Insolvency Event) occurs, and Landlord, at any time thereafter prior to the cure thereof, at Landlord's option, gives a notice to Tenant stating that this Lease and the Term shall expire and terminate on the third (3rd) Business Day after the date that Landlord gives Tenant such notice, or (ii) an Insolvency Event occurs, then this Lease and the Term and all rights of Tenant under this Lease shall expire and terminate as of the third (3rd) Business Day after the date that Landlord gives Tenant such notice, or on the date that the Insolvency Event occurs, as the case may be, without the need for any further act as if such date were the Fixed Expiration Date, and Tenant immediately shall quit and surrender the Premises, but Tenant shall nonetheless remain liable for all of its obligations hereunder, and Landlord may institute summary or other proceedings to repossess the Premises or re-enter and take possession of the Premises by any means permitted by law.

7. **REMEDIES AND DAMAGES**.

A. Tenant, on its own behalf and on behalf of all Persons claiming by, through or under Tenant, including all creditors, does hereby waive any and all rights which Tenant and all such Persons might have under any present or future law to redeem the Premises, or to re-enter or repossess the Premises, or to restore the operation of this Lease, after (i) Tenant has been dispossessed by a judgment or by warrant of any court or judge, or (ii) any re-entry by Landlord, or (iii) any expiration or termination of this Lease and the Term, whether such dispossess, re-entry, expiration or termination is by operation of law or pursuant to the provisions of this Lease. The words "re-enter," "re-entry" and "re-entered" as used in this Lease shall not be deemed to be restricted to their technical legal meanings.

B. In the event of a breach or threatened breach by Tenant, or any Persons claiming by, through or under Tenant, of any term, covenant or condition of this Lease, Landlord shall have the right to (i) enjoin or restrain such breach, (ii) invoke any other remedy allowed by law or in equity as if re-entry, summary proceedings and other special remedies were not provided in this Lease for such breach, and (iii) seek any declaratory, injunctive or other equitable relief, and specifically enforce this Lease.

C. If a Default occurs and this Lease and the Term terminate as provided in Article 5 hereof or by or under any summary proceeding or any action or proceeding, then in any of said events:

(i) Tenant shall immediately quit and peacefully surrender the Premises to Landlord, and Landlord and its agents may, without prejudice to any other remedy which Landlord may have, (x) re-enter the Premises or any part thereof, without notice, either by summary proceedings, or by any other applicable action or proceeding, (without being liable to indictment, prosecution or damages therefor), (y) repossess the Premises and dispossess Tenant and any other Persons from the Premises, and (z) remove any and all of their property and effects from the Premises; and

(ii) Landlord, at Landlord's option, may relet the whole or any portion or portions of the Premises from time to time, either in the name of Landlord or otherwise, to such tenant or tenants, for such term or terms ending before, on or after the Fixed Expiration Date, at such rental or rentals and upon such other conditions, which may include concessions and free rent periods, as Landlord, in its sole discretion, may determine; provided, however, that Landlord shall have no obligation to relet the Premises or any part thereof and shall not be liable for refusal or failure to relet the Premises or any part thereof, or, in the event of any such reletting, for refusal or failure to collect any rent due upon any such reletting. Any such refusal or failure on Landlord's part shall not relieve Tenant of any liability under this Lease or otherwise affect any such liability. Landlord, at Landlord's option, may make such repairs, replacements, alterations, additions, improvements, decorations and other physical changes in and to the Premises as Landlord, in its sole discretion, considers advisable or necessary in connection with any such reletting or proposed reletting, without relieving Tenant of any liability under this Lease or otherwise affecting any such liability.

D. If this Lease and the Term shall terminate and come to an end as provided in Article 5 hereof, or by or under any summary proceeding or any other action or proceeding, then, in any of said events, then Tenant shall pay to Landlord, on demand, and Landlord shall be entitled to recover:

(i) all Rental payable under this Lease by Tenant to Landlord (x) to the date that this Lease terminates, or (y) to the date of re-entry upon the Premises by Landlord, as the case may be;

(ii) the excess of (x) the Rental for the period which otherwise would have constituted the unexpired portion of the Term, over (y) the net amount, if any, of rents collected under any reletting effected pursuant to the provisions of clause (ii) of Section 6.C. hereof for any part of such period, but subject to Section 6.E. hereof (such excess being referred to herein as a "Deficiency"), as damages (it being understood and agreed that (I) such net amount described in clause (y) above shall be calculated by deducting from the rents collected under any such reletting all of Landlord's expenses in connection with the termination of this Lease, Landlord's re-entry upon the Premises and such reletting, including, but not limited to, all repossession costs, brokerage commissions, legal expenses, reasonable attorneys' fees and disbursements, alteration costs, contributions to work and other expenses of preparing the Premises for such reletting, including without limitation, advertising expenses; (II) any such Deficiency shall be paid in monthly installments by Tenant on the days specified in this Lease for payment of installments of Fixed Annual Rent or Escalation Rent (as the case may be), and (III) Landlord shall be entitled to recover from Tenant each monthly Deficiency as it arises, and no action or proceeding to collect the amount of the Deficiency for any month shall prejudice Landlord's right to collect the Deficiency for any subsequent month by a similar action or proceeding); and

(iii) regardless of whether Landlord has collected any monthly Deficiency as aforesaid, and in lieu of any further Deficiency, as and for liquidated and agreed final damages, an amount equal to the excess (if any) of (x) the Rental for the period which otherwise would have constituted the unexpired portion of the Term (commencing on the date immediately succeeding the last date with respect to which a Deficiency, if any, was collected), over (y) the then fair and reasonable net effective rental value of the Premises for the same period (which is calculated by (I) deducting from the fair and reasonable rental value of the Premises the expenses that Landlord would reasonably expect to incur in reletting the Premises, including, but not limited to, all repossession costs, brokerage commissions, legal expenses, reasonable attorneys' fees and disbursements, alteration costs, contributions to work and other expenses of preparing the Premises for such reletting, and (II) taking into account the time period that Landlord would reasonably require to consummate a reletting of the Premises to a new tenant), both discounted to present value at the Base Rate. Any such valuation of the then fair and reasonable net effective rental value of the Premises made by Landlord which is based upon a valuation made by any of the ten (10) largest (as measured by gross leasable square feet for which leasing commissions were earned during the most recent calendar year preceding the date of Tenant's default) brokerage/leasing companies in the City of New York shall be conclusive and binding upon Tenant and not subject to review by any court or arbitration panel.

E. If the Premises, or any part thereof, are relet together with other space in the Building, then the rents collected or reserved under any such reletting and the expenses of any such reletting shall be equitably apportioned for the purposes of Section 6.D hereof. In no event shall Tenant be entitled to a credit or repayment for re-rental income which exceed the sums payable by Tenant hereunder or which covers a period after the original Term. Nothing contained in this Article 6 shall be deemed to limit or preclude the recovery by Landlord from Tenant of the maximum amount allowed to be obtained as damages by any applicable statute or rule of law, or of any sums or damages to which Landlord may be lawfully entitled in addition to the damages set forth in Section 6.D hereof.

F. The exercise of any remedy under this Lease whether in this Article 6 or elsewhere shall not preclude Landlord from simultaneously therewith or subsequent thereto, exercising any and all other remedies permitted by law or in equity. Any and all such remedies are deemed to be cumulative and non-exclusive. Landlord need not apply any security hereunder to cure a default by Tenant as a condition precedent to exercising any other right or remedy and the application of any such security shall not preclude the exercise of any other remedy.

G. The provisions of this Article 6 shall survive the Expiration Date.

8. **LANDLORD'S COSTS.**

A. If Tenant shall default in performing any covenant or condition of this Lease, Landlord may, in addition to the rights heretofore set forth in Articles 5 and 6, exercise any other remedy provided in this Lease, at law or in equity and/or perform the same for the account of Tenant after notice from Landlord, and if Landlord, in connection therewith, or in connection with any default by Tenant, makes any expenditures or incurs any obligations for the payment of money, including, but not limited, to reasonable attorneys' fees and disbursements, Tenant shall pay to Landlord an amount equal to such expenditures so paid and/or the obligations so incurred together with interest thereon calculated at the Applicable Rate from the date that Landlord incurs such expenditures or obligations, within ten (10) Business Days after Landlord gives to Tenant an invoice therefor (it being understood and agreed that Landlord shall have the right to collect such amount from Tenant as Additional Rent to the extent that Landlord incurs such costs during the Term and as damages to the extent that Landlord incurs such costs after the Expiration Date).

B. Tenant shall pay to Landlord an amount equal to the actual reasonable costs (including, but not limited, to reasonable attorneys' fees and disbursements) that Landlord incurs in defending successfully against a

claim made by Tenant (or any other Person claiming by, through or under Tenant) against Landlord that relates to this Lease in a legal action or proceeding, together with interest thereon calculated at the Applicable Rate from the date that Landlord incurs such costs, within ten (10) Business Days after Landlord gives to Tenant an invoice therefor (it being understood and agreed that (i) Landlord shall have the right to collect such amount from Tenant as Additional Rent to the extent that Landlord incurs such costs during the Term and as damages to the extent that Landlord incurs such costs after the Expiration Date, and (ii) the amount that Landlord has the right to collect from Tenant under this Section 7.B. shall be adjusted appropriately to reflect the extent to which Landlord is successful in such legal proceeding).

C. Landlord shall pay to Tenant an amount equal to the actual reasonable costs (including, but not limited to, reasonable attorneys' fees and disbursements) that Tenant incurs in defending successfully against a claim made by Landlord (or any other Person claiming on behalf of Landlord) against Tenant that relates to this Lease in a legal proceeding, together with interest thereon calculated at the Applicable Rate from the date that Tenant incurs such actual reasonable costs, within thirty (30) days after Tenant gives to Landlord an invoice therefor (it being understood that the amount that Tenant has the right to collect from Landlord under this Section 7.C shall be adjusted appropriately to reflect the extent to which Tenant is successful in defending against such claim).

D. The provisions of this Article 7 shall survive the Expiration Date.

9. **ALTERATIONS**

A. Except as otherwise provided in this Article 8, no Alterations shall be made without the prior written consent of Landlord subject to the provisions of Section 8.C hereof, and then only with such materials as shall be approved by Landlord. Notwithstanding the foregoing to the contrary, Tenant may make Decorative Alterations (as hereinafter defined) without Landlord's prior written consent subject to the terms of this Article 8.

B. (i) The term "Alterations" shall mean alterations, installations, improvements, additions or other physical changes, in each case, in or to the Premises that are made by, or on behalf of Tenant or any other Person claiming by, through or under Tenant (or otherwise engaged by or on behalf of Tenant or any other Person claiming by, through or under Tenant). Except as the same may be expressly included as part of Specialty Alterations, Alterations shall not include Landlord's Work for purposes of this Article 8.

(ii) The term "Decorative Alterations" shall mean Alterations that constitute merely decorative and cosmetic changes to the Premises (such as, for example, the installation of carpeting or other customary floor coverings or painting or the installation of customary wall coverings) that in each case do not involve electrical, plumbing or mechanical connections or require any permits from any Governmental Authority; it being understood and agreed, however, that Decorative Alterations shall specifically exclude window film/glass film and white boards.

(i) Intentionally Deleted.

(ii) The term "Specialty Alterations" shall mean Alterations that (a) perforate a floor slab in the Premises or a wall that encloses the core of the Building, (b) require the reinforcement of a floor slab in the Premises, (c) consist of the installation of a raised flooring system, (d) consist of the installation of a vault or other similar device or system that is intended to secure the Premises or a portion thereof in a manner that exceeds the level of security that a reasonable Person uses for ordinary office space, (e) involve material plumbing connections (such as kitchens, showers and executive bathrooms), or (f) constitute non-customary office installations which are materially more expensive to remove than the type of improvement that is customarily found in a standard office installation; provided, that wires, conduits or cables that are installed exclusively within the Premises and behind walls, below floors or above drop ceilings shall not be deemed Specialty Alterations. Landlord hereby expressly acknowledges and agrees that Landlord's 9th Floor Premises Work as shown on the Final Space Plan attached to this Lease and the Work Letter attached to this Lease does not include any Specialty Alterations; it being agreed that the foregoing shall not be deemed to include any portions of Landlord's 9th Floor Premises Work that may be performed by Landlord that is not shown on the Final Space Plan or the Work Letter (e.g., Change Orders, Tenant's Extra Work, etc).

(iii) The term "Tenant's Property" shall mean Tenant's personal property (other than non-movable fixtures and built-ins), including, without limitation, Tenant's movable fixtures, movable partitions, telephone equipment, computer equipment, furniture, furnishings and decorations.

C. Subject to the terms of this Article 8, Landlord shall not unreasonably withhold, condition or delay its consent to any proposed Alteration provided that such Alteration (i) is not visible from the outside of the Building at street level, (ii) does not affect adversely any part of the Building, (iii) does not require any alterations,

installations, improvements, additions or other physical changes to be performed in or made to any portion of the Building other than the Premises, (iv) does not affect any Building system (other than to a de minimis extent), (v) does not reduce the value or utility of the Building, (vi) does not affect the structure of the Building and does not require the installation of floor support or other structural support, (vii) does not impede Landlord's access to Reserved Areas (as hereinafter defined) in any material respect, and (viii) does not violate (or require any amendment to) or render invalid the certificate of occupancy for the Building or any part thereof (any Alteration that satisfies the requirements described in clauses (i) through (viii) above being referred to herein as a "Basic Alteration"). Nothing in this Section 8.C. limits the provisions of Section 8.H. hereof.

D.

(i) Tenant shall not perform any Alteration (other than Decorative Alterations) unless Tenant first gives to Landlord a notice thereof (an "Alterations Notice") that (a) refers specifically to this Section 8.D., (b) includes three (3) copies of the plans and specifications for the proposed Alteration (including, without limitation, layout, architectural, mechanical and structural drawings, to the extent applicable) that contain sufficient detail for Landlord and Landlord's consultants to reasonably assess the proposed Alteration, and that are otherwise suitable for filing, stamped and certified by an architect or engineer duly licensed in the State of New York and approved by Landlord pursuant to the provisions hereof, and (c) indicates whether Tenant considers the proposed Alterations to constitute a Basic Alteration. Tenant acknowledges and agrees that specific delivery requirements apply with respect to Alterations Notices, as set forth in Article 28 hereof.

(ii) Landlord shall have the right to (a) disapprove any plans and specifications for a particular Alteration in part, (b) reserve Landlord's approval of items shown on such plans and specifications pending Landlord's review of other plans and specifications that Tenant is otherwise required to provide to Landlord hereunder, and (c) condition Landlord's approval of such plans and specifications upon Tenant's making revisions to the plans and specifications or supplying additional information (which Landlord shall have the right to request only reasonably if the applicable Alteration constitutes a Basic Alteration). Nothing contained in this Section 8.D.(ii) limits the provisions of Section 8.C. hereof. To the extent that Landlord disapproves any Alteration, in whole or in part, Landlord shall specify the reasons therefor.

(iii) Tenant acknowledges that (a) the review of plans or specifications for an Alteration by or on behalf of Landlord, or (b) the preparation of plans or specifications for an Alteration by Landlord's architect or engineer (or any architect or engineer designated by Landlord), is solely for Landlord's benefit, and, accordingly, Landlord makes no representation or warranty that such plans or specifications comply with any Requirements or are otherwise adequate or correct.

(iv) If (a) Tenant gives Landlord an Alterations Notice, and (b) Landlord fails to respond within ten (10) Business Days after Tenant gives the Alterations Notice to Landlord, then Tenant, following the expiration of such ten (10) Business Day period, shall be entitled to give a second Alterations Notice to Landlord that provides in bold and capital letters: "**SECOND NOTICE: LANDLORD'S FAILURE TO RESPOND TO THIS SECOND ALTERATIONS NOTICE WITHIN FIVE (5) BUSINESS DAYS AFTER THE DATE THAT TENANT GIVES THIS SECOND ALTERATIONS NOTICE TO LANDLORD SHALL BE DEEMED TO BE LANDLORD'S CONSENT TO THE BASIC ALTERATIONS DESCRIBED HEREIN**". If Tenant gives such second Alterations Notice to Landlord as aforesaid and Landlord fails to so respond to the first or second Alterations Notice within five (5) Business Days after Tenant gives the second Alterations Notice to Landlord, then Landlord shall be deemed to have consented to the Alteration(s) described in such Alterations Notice only to the extent such Alterations constitute Basic Alterations. In no event shall Landlord's consent be deemed granted to any Specialty Alterations.

(v) If (a) Tenant resubmits any Alterations Notice to Landlord in accordance with this Section 8.D., and (b) Landlord fails to respond within five (5) Business Days after Tenant gives the resubmitted Alterations Notice to Landlord, then Tenant, following the expiration of such five (5) Business Day period, shall be entitled to give a second resubmitted Alterations Notice to Landlord that provides in bold and capital letters: "**SECOND NOTICE: LANDLORD'S FAILURE TO RESPOND TO THIS SECOND RESUBMITTED ALTERATIONS NOTICE WITHIN FIVE (5) BUSINESS DAYS AFTER THE DATE THAT TENANT GIVES THIS SECOND RESUBMITTED ALTERATIONS NOTICE TO LANDLORD SHALL BE DEEMED TO BE LANDLORD'S CONSENT TO THE BASIC ALTERATIONS DESCRIBED THEREIN**." If Tenant gives such second resubmitted Alterations Notice to Landlord as aforesaid and Landlord fails to respond to the first or second resubmitted Alterations Notice within five (5) Business Days after Tenant gives the second resubmitted Alterations Notice to Landlord, then Landlord shall be deemed to have consented to the Alteration(s) described in such resubmitted Alterations Notice only to the extent such Alterations constitute Basic Alterations. In no event shall Landlord's consent be deemed granted to any Specialty Alterations.

E.

(i) All Alterations (other than Decorative Alterations) shall be performed in accordance with the plans and specifications therefor as approved by Landlord. No Alteration(s) may result in the reduction of any environmental rating for the Building which may now or hereafter be made, such as any rating made pursuant to LEED (Leadership in Energy and Environmental Design), Green Globes or Energy Star.

(ii) All Alterations shall be performed (x) in a good and workmanlike manner and (y) subject to and in accordance with all Building rules and regulations (including the specific rules and regulations governing construction, and the rules and regulations governing materials and finishes criteria adopted by Landlord for the Building) as the same may be amended from time to time, all applicable Requirements, and all other applicable provisions of this Lease (including, without limitation, the ESRT High Performance Design and Construction Guidelines set forth on Exhibit "D" attached hereto and made a part hereof, as the same may be amended from time to time (the "Design Guidelines")). In performing any Alterations, Tenant shall use, to the fullest extent feasible, materials from sustainable sources at commercially competitive rates. Tenant shall not bring or permit any Person engaged by or on behalf of Tenant or any Person claiming by, through or under Tenant, to bring any hazardous materials into the Premises or the Building.

(iii) Tenant shall, at Tenant's sole cost and expense, ensure that the Premises comply, at all times during the Term, with the Design Guidelines; provided, however, Tenant shall not be obligated to perform Alterations solely to comply with the Design Guidelines, unless (a) such Alteration or other change is required by reason of Alterations having been performed by Tenant (or another Person claiming by, through or under Tenant), or (b) such Alteration or other change is required by reason of the specific nature or manner of use of the Premises or type of business operated by Tenant (or another Person claiming by, through or under Tenant) in the Premises (as opposed to the use of the Premises for the general purposes otherwise permitted under Section 1.B. hereof), or (c) such Alteration or other change is required or necessitated by Tenant's acts or omissions and/or the acts or omissions of any other Person claiming by, through or under Tenant, or (d) such Alteration or other change is required by Requirements. Within ten (10) Business Days following request from Landlord (or any member of Landlord's property management team) or Landlord's agent, which request may be made, from time to time, and may be made verbally or via electronic mail to the Person employed by Tenant with whom Landlord's representative ordinarily discusses matters relating to the Premises, Tenant shall confirm in a writing reasonably acceptable to Landlord and signed by an authorized representative of Tenant, that (x) any Alterations theretofore made in the Premises comply with the Design Guidelines (or in the alternative, that no Alterations have theretofore been made in the Premises), (y) Tenant has not taken any action (or allowed any Person claiming by, through or under Tenant to take any such action) to override, inhibit, preempt or otherwise reduce the efficacy of any energy efficiency or sustainability measures which have theretofore been implemented in the Building and/or the Premises and (z) the Premises are then in compliance with the Design Guidelines to the extent required by this Section 8.E.(iii). Landlord (and/or its designee) shall have the right to enter the Premises (which entry shall be subject to the provisions of Article 19 hereof) for purposes of confirming Tenant's compliance with the foregoing; it being understood and agreed that in the event that Landlord determines the Premises do not then comply with the Design Guidelines to the extent required by this Section 8.E.(iii) and/or that Tenant has taken any action (or allowed any Person claiming by, through or under Tenant to take any such action) to override, inhibit, preempt or otherwise reduce the efficacy of any energy efficiency or sustainability measures which have theretofore been implemented in the Building and/or the Premises, Landlord shall have the right to perform any and all work necessary to cause the Premises to comply with the Design Guidelines, and Tenant shall reimburse Landlord for any and all out-of-pocket costs incurred in connection therewith, together with all of Landlord's out-of-pocket costs incurred in making such determination within thirty (30) days following receipt of Landlord's invoice therefor.

(iv) Prior to the commencement of any Alteration(s), Tenant, at Tenant's sole cost and expense, shall obtain all permits, approvals and certificates required by any Governmental Authorities in connection therewith and provide copies thereof to Landlord's property management team for the Building; it being expressly understood however, that (x) Landlord shall designate the expeditor to be used by Tenant to obtain any required certifications provided that such expeditor charges rates that are reasonably competitive with expeditors of comparable skill and experience operating within the vicinity of the Building that are reasonably available to perform the services required by Tenant in a timely manner and (y) "self-certification" procedures shall not be accepted.

(v) Prior to performing any Alteration (and for the duration of the performance thereof), Tenant shall maintain on behalf of its contractors (of any tier) and vendors or cause its contractors (of any tier) and vendors to maintain the following insurance, (a) worker's compensation and disability insurance in amounts not less than the statutory limits required by Requirements (covering all persons to be employed by Tenant, and Tenant's contractors, subcontractors, and vendors in connection with such Alteration); (b) commercial general liability insurance (covering bodily injury including death, personal injury and property damage), in each case in customary form, and in amounts that are not less than Five Million Dollars ($5,000,000) per occurrence and in the annual policy aggregate with respect to general contractors and Three Million Dollars ($3,000,000) per occurrence and in the annual policy aggregate with respect to subcontractors (or such higher amounts as Landlord may

reasonably elect given the scope of the particular Alteration); it being understood and agreed that the foregoing insurance shall be required in addition to Tenant's Liability Policy; (c) builder's risk insurance in an amount reasonably satisfactory to Landlord; and (d) commercial automobile liability insurance if the contractor or vendor uses a vehicle at the Real Property, covering all vehicles with a minimum combined single limit of One Million Dollars ($1,000,000). The policies set forth in (b) through (d) of this Section 8.E.(v) shall be endorsed to name the specific Landlord Parties designated by Landlord or Landlord's representative as additional insureds (the "Designated Landlord Parties"). A contractor's or vendor's liability shall in no way be limited by the amount of insurance recovery or the amount of insurance in force, or available, or required by any provisions of this Lease. The limits listed above are minimum requirements only. The liabilities of any contractor or vendor shall survive and not be terminated, reduced or otherwise limited by any expiration or termination of such insurance coverage. Prior to the start of any such Alterations and prior to the expiration of any policy, Tenant shall deliver to Landlord certificates of insurance (on a form reasonably acceptable to Landlord) along with copies of endorsements naming the Designated Landlord Parties as additional insureds. Neither approval nor failure to disapprove insurance furnished by the contractor or vendor shall relieve the contractor, its subcontractors or vendors from responsibility to provide insurance as required herein.

(vi) Notwithstanding anything herein set forth to the contrary, within sixty (60) days after Substantial Completion of any Alteration (subject to extension due to Unavoidable Delays), Tenant, at Tenant's own cost and expense, shall deliver to Landlord (a) hard copies of the final "as-built" record drawings of the Alteration which indicate accurately the layout and systems of the Premises together with a furniture plan, if available; it being understood and agreed that Tenant shall also require its architect to load and maintain such record drawings in CAD and portable document format (or in another electronic format so designated by Landlord), (b) a summary by trade of the costs incurred in performing such work and such other records as Landlord may require to document such costs, (c) evidence reasonably satisfactory to Landlord that Tenant has obtained all required final approvals from applicable Governmental Authorities in connection with the Alterations, including, without limitation, letters of completion from the New York City Department of Buildings for all work permits Tenant has obtained in connection with the performance of the Alteration, (d) to the extent applicable, any owner and/or maintenance manuals and any warranties received by Tenant in connection with the Alterations and (e) final, unconditional waivers of lien from all contractors, subcontractors, materialmen, architects, engineers and other Persons who may file a lien against the Real Property in connection with such Alterations. For the avoidance of doubt, the requirements set forth in clauses (a)-(c) shall not apply with respect to Decorative Alterations.

(vii) No demolition, trenching, or welding shall be permitted between the hours of 7:00 a.m. and 6:00 p.m. on Business Days; it being expressly understood, however, that core drilling is not permitted. If the performance of any other Alterations during the aforesaid time periods interferes with or interrupts the maintenance, repair, management or operation of the Building in any material respect or interferes with or interrupts the use and occupancy of the Building by other tenants in the Building in any material respect, then Landlord shall have the right to require Tenant to perform such Alteration at such other times that Landlord designates from time to time on a non-discriminatory basis.

F.

(i) All Alterations shall be performed only under the supervision of a licensed architect that Landlord approves, which approval Landlord shall not unreasonably withhold, condition or delay. All work shall be performed with union labor having the proper jurisdictional qualifications and only by contractors, subcontractors, mechanics, engineers and laborers approved by Landlord, which approval Landlord shall not unreasonably withhold, condition or delay; it being understood and agreed, however, that (x) if an Alteration affects any structural portion of the Building, any Building system, or any portion of the Building outside of the Premises, Landlord (if Landlord has consented thereto) shall have the right to designate (i) the engineer that designs the applicable Alteration (or the portion thereof that affects such structural portion of the Building, Building system, or portion of the Building outside of the Premises), and (ii) the contractors, subcontractors and/or laborers that performs the Alteration (or the portion thereof that affects such structural portion of the Building, Building system, or portion of the Building outside of the Premises), provided that any such engineer, contractor, subcontractor or laborer, as applicable, charges rates that are reasonably competitive with engineers, contractors, subcontractors or laborers (as applicable) of comparable skill and experience operating within the vicinity of the Building and can perform the services on a timely basis. If Landlord and Tenant cannot agree on whether the prices being charged by the engineer, contractor, subcontractor or laborer (as applicable) designated by the Landlord are reasonably competitive to those charged by such other engineers, contractors, subcontractors or laborers (as applicable), Landlord or Tenant may submit such dispute to a Streamlined Arbitration Proceeding (as hereinafter defined) pursuant to Article 41 hereof.

(ii) If (a) Tenant employs, or permits the employment of, any contractor, subcontractors, engineer, mechanic or laborer in the Premises, whether in connection with any Alteration or otherwise, and

regardless of whether Landlord has approved such contractor, subcontractor, mechanic, or laborer, (b) such employment interferes or causes any conflict with other contractors, subcontractors, engineers, mechanics or laborers engaged in the maintenance, repair, management or operation of the Building or any adjacent property owned or managed by Landlord, and (c) Landlord gives Tenant notice thereof (which notice may be given verbally to the Person employed by Tenant with whom Landlord's representative ordinarily discusses matters relating to the Premises), then Tenant shall cause all contractors, subcontractors, mechanics or laborers causing such interference or conflict to leave the Building promptly and shall take such other immediate action as may be reasonably necessary to resolve such conflict.

(iii) In any case under this Article 8 or any other provision of this Lease it shall be required that Landlord's consent is required for the use or employment of any contractor, subcontractor, vendor or other supplier of labor or material, Tenant acknowledges and agrees that any such consent shall under no circumstance be deemed a warranty, assurance or guarantee that such contractor, subcontractor, vendor or supplier is qualified for the work or engagement for which Tenant is retaining such contractor, vendor or supplier or that the work, services or materials being provided shall be in compliance with Tenant's plans and specifications or comply with Requirements or that any work shall be performed in a workmanlike fashion free of any defect. Tenant specifically disclaims and waives any right, claim or cause of action against Landlord based upon any such contractor, vendor or supplier's defective work, material or service or failure to perform any work in accordance with any agreement, Requirement or professional standard. The provisions of this Section 8.F.(iii) shall be controlling whether or not any consent by Landlord to any such contractor, subcontractor, vendor or supplier contains any such or similar disclaimer or waiver of liability or any such contractor, vendor or supplier is related to Landlord or its managing agent.

G. Tenant shall pay to Landlord, as Additional Rent, the reasonable, actual out-of-pocket costs and expenses incurred by Landlord and paid to unrelated third parties in connection with any Alterations (including without limitation, the reasonable, actual out-of-pocket costs and expenses that Landlord incurs and pays to unrelated third parties in reviewing the plans and specifications for any such Alterations and inspecting the progress of such Alterations) within thirty (30) days after Landlord gives Tenant an invoice therefore together with reasonable supporting documentation for the charges set forth therein. If (I) as a result of any Alterations, any alterations, installations, improvements, additions or other physical changes are required to be performed (x) to any Building systems, or (y) in order to comply with any Requirements, to any portion of the Building other than the Premises (any such alterations, installations, improvements, additions or changes being referred to herein as an "Additional Change"), and (II) such Additional Change would not otherwise have had to be performed or made at such time, then (a) Landlord may perform such Additional Change, and (b) Tenant shall pay to Landlord the reasonable out-of-pocket costs thereof, as Additional Rent, within thirty (30) days after Landlord gives to Tenant an invoice therefor together with reasonable supporting documentation for the charges set forth therein. Landlord shall seek to accomplish any such Additional Change in a manner that minimizes the cost thereof to the extent reasonably practicable. Landlord shall give Tenant reasonable advance notice of Landlord's performance of the Additional Change (which notice (notwithstanding the provisions of Article 28 hereof to the contrary) may be provided verbally or via electronic mail by any member of Landlord's property management team to Tenant's representative with whom Landlord's property management team ordinarily discusses matters pertaining to the Premises).

H. Notwithstanding anything to the contrary contained in this Lease, (i) under no circumstances may Tenant or any other Person claiming by, through or under Tenant, install roll down gates and/or any other kind of exterior gates in or about the Premises or the Building or any exterior portion thereof and (ii) Tenant shall install on the windows of the Premises only the curtains, blinds, shades, or screens that Landlord designates reasonably (other than such blinds and shades that are being installed in the applicable portions of the Premises as part of Landlord's Work).

I. Subject to the provisions of Article 27 hereof, Tenant shall not affix any sign, logo, emblem, banner, plaque or symbol on any exterior window, on any door opening on to a corridor on partial floors, on any exterior wall demising the Premises or on or about any portion of the Premises in such a fashion as any sign, logo, emblem, banner, plaque or symbol is visible beyond the Premises (except in elevator lobbies on full floors).

J. (i) Subject to the terms of this Section 8.J., Tenant acknowledges and agrees on or prior to the Expiration Date, Tenant shall remove, at Tenant's sole cost and expense, Tenant's Property from the Premises, and all Specialty Alterations, it being acknowledged and agreed that Tenant shall not be obligated to remove any Alterations other than Specialty Alterations) if any, made to the Premises during the Term; it being understood and agreed that Tenant, at Tenant's sole cost and expense, shall repair and restore in a good and workmanlike manner to good condition any damage to the Premises or the Building caused by such removal and such restoration work shall be performed subject to and in accordance with the provisions of this Article 8. Any Tenant's Property, and/or any Specialty Alterations, that remain in the Premises after the Expiration Date shall be deemed to be the property of Landlord (with the understanding, however, that Tenant shall remain liable to Landlord for any default of Tenant in respect of Tenant's obligations under this Section 8.J) and Landlord shall have the right to remove such Tenant's

Property and/or such Specialty Alterations and restore such damage, at Tenant's sole cost and expense; it being understood and agreed that Tenant shall pay the costs thereof as Additional Rent, upon demand therefor.

(ii) Prior to Tenant's performance of any Alteration, Tenant shall have the right to request (simultaneously with Tenant's submission to Landlord of an Alterations Notice) that Landlord advise Tenant if Tenant shall be required to remove (or pay the cost to remove) such Alteration upon the Expiration Date or earlier termination of the Term (in which event such Alteration shall be deemed a "Specialty Alteration" for all purposes hereunder), provided, however, that such request shall state in bold capital letters as follows: **"LANDLORD TO ADVISE TENANT IF TENANT SHALL BE OBLIGATED TO REMOVE THE ALTERATION(S) DESCRIBED HEREIN".**

(iii) The provisions of this Section 8.J shall survive the Expiration Date.

(iv) Landlord hereby acknowledges and agrees that as of the date of this Lease, there are no Specialty Alterations existing the 2nd/3rd Floor Premises that will be required to be removed by Tenant prior to the Expiration Date.

K. Tenant hereby acknowledges and agrees that if any Alterations are discontinued or abandoned, then promptly following Landlord's request therefor, Tenant shall, at Tenant's sole cost and expense, cause all of its contractors and subcontractors (of any level), architects, engineers, designers and consultants, as the case may be, to remove any and all plans and specifications for the applicable Alterations from filings with any Governmental Authorities and otherwise cooperate reasonably with Landlord in connection with closing out the applicable work.

L. Notwithstanding anything to the contrary contained herein, including, without limitation, the provisions of Section 8.J. hereof, if and to the extent that any telecom equipment and/or wiring are installed in or about the Premises (it being acknowledged and agreed that Tenant shall not be obligated to remove any horizontal telecom equipment and/or wiring located exclusively within the Premises), then on or prior the Expiration Date, Tenant, at Tenant's sole cost and expense, shall remove such installations, and repair any damage to the Premises or the Building caused by such removal; it being understood and agreed that the provisions of this Article 8 shall govern with respect to the installation and/or removal of any such items. In the event that Tenant fails to comply with the provisions of this Section 8.L, Landlord shall have the right to remove such Tenant's Property and Alterations and restore such damage, at Tenant's sole cost and expense; it being understood and agreed that Tenant shall pay the costs thereof as Additional Rent, upon demand and Tenant shall remain liable to Landlord for any default of Tenant in respect of Tenant's obligations hereunder. The provisions of this Section 8.L shall survive the Expiration Date.

10. LIENS

Tenant shall not permit any materials or equipment that are incorporated as fixtures into the Premises in connection with any Alterations to be subject to any lien, encumbrance, chattel mortgage or title retention or security agreement. Notwithstanding the foregoing, Tenant shall discharge of record any mechanic's lien or other lien that is filed against the Real Property for work claimed to have been done for, services performed for, or for materials claimed to have been furnished to, Tenant (or any Person claiming by, through or under Tenant) within thirty (30) days after Tenant has received notice thereof, at Tenant's expense, by payment or filing the bond required by law. Nothing contained in this Article 9 (x) limits Tenant's right to challenge the claim that is made by the Person that files such a lien, provided that Tenant discharges such lien of record as aforesaid, or (y) obligates Tenant to discharge of record any lien that derives from Landlord's acts or omissions.

11. REPAIRS

A. Subject to the terms of this Article 10 and to Articles 11, 14 and 31 hereof, Tenant, at Tenant's expense, shall make all required repairs to the interior of the Premises (including, without limitation, (i) the fixtures and equipment that are installed in the applicable portion of the Premises on or after the Applicable Commencement Date, (ii) the Alterations, and (iii) the components of the systems within the Premises that distribute heat, ventilation, and air-conditioning ("HVAC"), electricity and water within the Premises). Tenant shall make all such repairs to the Premises as and when needed to preserve the Premises in good condition, except for reasonable wear and tear, obsolescence and damage and repairs for which Tenant is not responsible pursuant to the provisions of Article 11 hereof. Notwithstanding anything herein to the contrary set forth, Tenant shall not commit waste or cause any damage to any portion of the Building irrespective of whether within or without the Premises. Tenant shall perform any repairs required to be performed by Tenant pursuant to this Article 10 in accordance with the provisions of Article 8 hereof, including, without limitation, Sections 8.C. and 8.F. thereof. Nothing contained in this Section 10.A shall require Tenant to perform any repairs to the Premises that are Landlord's obligation to perform under Section 10.B hereof. All repairs made by Tenant as contemplated by this Section 10.A shall be in conformity with the standards applicable to comparable office buildings in Manhattan. Tenant shall give Landlord prompt notice of

any defective condition in the Building or in any Building system located in, servicing or passing through the Premises.

B. Subject to the terms of this Article 10 and to Articles 11, 14 and 31 hereof, Landlord shall maintain and make all necessary repairs to and replacements of (i) the part of the Building systems which provide electricity, HVAC and water service to the Premises (but not to the distribution portions of such Building systems located within the Premises), (ii) the structural portions of the Building, (iii) the roof of the Building, (iv) the sidewalks that are adjacent to the Building, (v) the exterior walls of the Premises, (vi) the exterior perimeter windows of the Premises, and (vii) the public portions of the Building, in each case, in conformance with standards applicable to comparable office buildings in Manhattan. Nothing contained in this Section 10.B requires Landlord to maintain or repair the systems within the Premises that distribute electricity, HVAC (except that, subject to the provisions of Article 31 hereof, Landlord shall maintain and repair the A/C Equipment at Tenant's sole cost and expense) and water within the Premises. Landlord shall have no obligation to employ contractors or labor at overtime or premium pay rates in connection with Landlord's making repairs as contemplated by this Article 10; provided, however, that Landlord's making of such repairs shall be in accordance with the last sentence of Section 19.A. hereof.

C. Notwithstanding the provisions of Section 10.A. hereof and Section 10.B. hereof to the contrary, (I) all damage or injury to the Premises or to any other part of the Building and Building systems, whether requiring structural or nonstructural repairs, to the extent caused by or resulting from the acts or omissions of Tenant (or any Person claiming by, through or under Tenant), or the performance of any Alterations, shall be repaired, at Tenant's sole cost and expense, (x) by Tenant, to the reasonable satisfaction of Landlord, if Tenant is obligated to perform such repair pursuant to Section 10.A. hereof, or (y) by Landlord, if Tenant is not otherwise obligated to perform such repair pursuant to Section 10.A. hereof, in which case, Tenant shall reimburse Landlord for all reasonable and actual out-of-pocket costs incurred in connection with the performance of any such repairs as Additional Rent within thirty (30) days following receipt of Landlord's invoice therefor and such obligation shall survive the Expiration Date and (II) all damage or injury to the Premises, whether requiring structural or nonstructural repairs, to the extent caused by or resulting from negligence or willful misconduct of Landlord, or Landlord's entry into the Premises for purposes of making repairs or replacements made as contemplated in Article 19 hereof, shall be repaired, at Landlord's sole cost and expense, by Landlord to the reasonable satisfaction of Tenant; provided, however, that nothing contained in this Section 10.C. limits the provisions of Section 42.G. hereof.

12. CASUALTY; DESTRUCTION

A. Tenant shall give Landlord prompt notice of any fire or other casualty in or to the Premises. Subject to the terms of this Article 11, if the Premises (including Alterations that Tenant has theretofore completed in accordance with Article 8 hereof and/or Landlord's Work) are damaged by fire or other casualty, then, subject to the provisions of this Article 11, Landlord shall diligently repair the damage, with such modifications required to comply with Requirements, to substantially the condition which existed immediately prior to such fire or other casualty; it being understood and agreed that (i) Landlord shall have the right to make such modifications to the Premises required to comply with Requirements, (ii) Landlord shall have no liability to Tenant for Landlord's failure to commence any such repair to the extent Tenant fails to give such notice to Landlord of such fire or other casualty and (iii) Landlord shall not be required to repair or restore any of Tenant's Property. From and after the date of such fire or casualty until such repairs which are required to be performed by Landlord are Substantially Completed, the Fixed Annual Rent and the Escalation Rent payable pursuant to Article 2 hereof shall be reduced in the proportion which the area of the part of the Premises which is not usable by Tenant bears to the total area of the Premises immediately prior to such casualty; it being understood that the Substantial Completion of such repairs shall be deemed to have occurred on the date the same would have otherwise occurred but for the acts or omissions of Tenant, its agents, employees, contractors (of any tier) or any other Person claiming by, through, or under Tenant that delay Landlord in the performance thereof, provided Landlord has notified Tenant of such delay. Landlord shall not be obligated to repair any damage to, or to replace, any Alterations if Landlord's insurer fails to make insurance proceeds available to Landlord to cover the cost of repairing such Alterations (excluding Landlord's deductible) by reason of the failure of Tenant to have notified Landlord of the completion of such Alterations and the cost thereof or to have maintained adequate records with respect to such Alterations. In the event of a fire or casualty which affects a portion of the Premises only, Landlord shall use reasonable efforts to minimize interference with Tenant's use and occupancy of the balance of the Premises in making any repairs pursuant to this Article 11. Landlord shall not be obligated to restore the Premises as provided in this Section 11.A. to the extent that this Lease terminates by reason of such fire or other casualty subject to and in accordance with the terms of this Article 11.

B. If (i) the Premises are rendered wholly or substantially untenantable by fire or other casualty and if Landlord shall decide not to restore the Premises (as contemplated hereby), or (ii) if the Building is so damaged by fire or other casualty that that Landlord shall decide to substantially alter, demolish or reconstruct the Building (regardless of whether the Premises have been damaged or rendered untenantable), then Landlord may terminate this Lease, by giving Tenant notice thereof on or prior to the ninetieth (90th) day following such damage, provided that,

in the case of clause (i) and (ii), Landlord is also terminated the leases of at least sixty percent (60%) of other similarly-situated office tenants at the Building. If Landlord elects to terminate this Lease as aforesaid, then the Term shall expire upon a date set by Landlord, but not sooner than the tenth (10th) day after Landlord gives such notice and Tenant, on such date, shall vacate and surrender possession of the Premises to Landlord in accordance with the provisions of Article 12 hereof.

C. Subject to the terms of this Section 11.C, if the Premises are substantially damaged by a fire or other casualty that occurs during the period of twelve (12) months immediately preceding the Fixed Expiration Date, or preceding the last day of the Renewal Term, as the case may be**,** then either Landlord or Tenant may elect to terminate this Lease by notice given to the other party within thirty (30) days after such fire or other casualty occurs. If either party makes such election, then the Term shall expire on the tenth (10^{th}) day after the notice of such election is given, and, accordingly, Tenant, on or prior to such tenth (10^{th}) day, shall vacate the Premises and surrender the Premises to Landlord in accordance with Article 12 hereof. For purposes of this Section 11.C, the term "substantially damaged" shall mean that in Landlord's reasonable judgment: (a) a fire or other casualty precludes Tenant from using more than thirty percent (30%) of the Premises for the conduct of its business, and (b) Tenant's inability to so use the Premises (or the applicable portion thereof) is reasonably expected to continue until at least the earlier to occur of (i) the Fixed Expiration Date, or the last day of the Renewal Term, as the case may be, and (ii) the ninetieth (90th) day after the date that such fire or other casualty occurs.

D. Landlord, within ninety (90) days after the earlier to occur of (x) the date that Tenant gives Landlord notice of the occurrence of a fire or other casualty as contemplated by Section 11.A. hereof, and (y) the date that Landlord otherwise has actual notice of such fire or other casualty, shall give to Tenant a statement prepared by a reputable and independent contractor setting forth such contractor's estimate in good faith as to the time required for Landlord to Substantially Complete the restoration described in Section 11.A hereof (such statement that Landlord gives to Tenant being referred to herein as the "Casualty Statement"); provided, however, that Landlord shall not be required to give Tenant a Casualty Statement if Landlord has theretofore exercised Landlord's right to terminate this Lease under Section 11.B. hereof or if the fire or other casualty occurs during the last twelve months of the Term as contemplated in Section 11.C. hereof. If either (i) the estimated time period as set forth in the Casualty Statement exceeds twelve (12) months from the date of the applicable fire or other casualty, or (ii) the restoration described in Section 11.A has not been Substantially Completed by Landlord on or before the later to occur of (x) ninety (90) days following the end of the estimated time period set forth in the Casualty Statement, or (y) fifteen (15) months following the date of the applicable fire or other casualty, then Tenant may elect to terminate this Lease by giving notice to Landlord not later than the thirtieth (30^{th}) day after the date that Landlord gives the Casualty Statement to Tenant. If Tenant makes such election to so terminate this Lease, then the Term shall expire on the thirtieth (30^{th}) day after Tenant gives such notice to Landlord.

E. Upon the termination of this Lease under this Article 11, provided that no Default has occurred and is then continuing, the Rental shall be apportioned as of the date of such termination and any prepaid portion of Fixed Annual Rent and Escalation Rent that relates to the period after the date that the abatement of Fixed Annual Rent and Escalation Rent as described in Section 11.A. hereof becomes effective shall be refunded promptly by Landlord to Tenant less any amounts that may be then be due and payable by Tenant pursuant to the terms of this Lease (and Landlord's obligation to make such refund shall survive the Expiration Date).

F. Tenant shall have no right to cancel this Lease by virtue of a fire or other casualty except to the extent specifically set forth herein. This Article 11 is intended to constitute an "express agreement to the contrary" for purposes of Section 227 of the New York Real Property Law.

13. **END OF TERM**

Subject to Article 8 hereof, Tenant shall surrender the Premises to Landlord on the Expiration Date in good order and condition, except for reasonable wear and tear and damage by fire or other casualty, and Tenant shall remove all Tenant’s Property and any personal property of any Person claiming by, through or under Tenant and all Specialty Alterations. Tenant agrees that any personal property remaining in the Premises following the Expiration Date shall for all purposes be deemed abandoned and Landlord shall be free to dispose of such property, at Tenant's sole cost and expense, in any manner Landlord deems desirable. Landlord may retain or assign any salvage or other residual value of such property. In consideration of Landlord’s disposing of such property, Tenant shall reimburse Landlord or pay to Landlord any cost that Landlord may incur in disposing of such property within ten (10) days after demand therefor. Tenant shall indemnify, defend and save Landlord harmless against (and shall pay to Landlord the amount of) all costs, claims, loss or liability resulting from delay or failure by Tenant in so surrendering the Premises, including, without limitation, if such holdover lasts more than thirty (30) days following the Expiration Date, any claims made by any succeeding tenant arising directly or indirectly from such delay. If vacant and exclusive possession of the Premises is not surrendered to Landlord on the Expiration Date, then Tenant shall pay to Landlord on account of use and occupancy of the Premises, for each month (or any portion thereof) during which Tenant (or a Person claiming by, through or under Tenant) holds over in the Premises after the

Expiration Date, an amount equal to (a) one hundred fifty percent (150%) of the Fixed Annual Rental that was payable under this Lease with respect to the entire Premises during the last month of the Term (without taking into consideration any abatements or credits) for the first sixty (60) days of such holdover, and (b) two hundred percent (200%) of the Fixed Annual Rental that was payable under this Lease with respect to the entire Premises during the last month of the Term (without taking into consideration any abatements or credits) thereafter plus, in either case, one hundred percent (100%) of the Escalation Rent and all other Additional Rent that was payable under this Lease during the last month of the Term; it being understood and agreed, however, that if Tenant pays Expenses or Real Estate Taxes on any basis other than a monthly basis, Landlord shall have the right to calculate the amount of such payments on a monthly basis for purposes of calculating the aforesaid amounts. Anything in this Lease to the contrary notwithstanding, the acceptance of any Rental shall not preclude Landlord from commencing and prosecuting a holdover or summary eviction proceeding, and the preceding sentence shall be deemed to be an agreement expressly "providing otherwise" within the meaning of Section 232-c of the Real Property Law of the State of New York and any successor law of like import. Tenant expressly waives, for itself and for any person claiming through or under the Tenant, any rights which the Tenant or any such Person may have under the provisions of Section 2201 of the New York Civil Practice Law and Rules and of any successor law of like import then in force in connection with any holdover summary proceedings which the Landlord may institute. The obligations set forth in this Article 12 shall survive the Expiration Date.

14. **SUBORDINATION AND ESTOPPEL**, **ETC**.

A. This Lease and Tenant's rights hereunder are and shall be subject and subordinate to any and all master leases of the Real Property, ground or underlying leases and subleases and to all mortgages, building loan agreements, leasehold mortgages, spreader and consolidation agreements and other similar documents and instruments together with all renewals, modifications, spreaders, consolidations, replacements, extensions, assignments, and refinancings thereof and to all advances made or hereafter made thereunder (hereinafter referred to individually, as a "Superior Interest" and collectively, as "Superior Interests"), which may now or hereafter affect such leases or subleases or the Real Property of which the Premises form a part and to. This Article shall be self-operative and no further instrument of subordination shall be necessary. In confirmation of such subordination, Tenant shall within ten (10) Business Days after written request execute any instrument in recordable form that Landlord or the holder of any Superior Interest may reasonably request. In the event that any ground or underlying lease is terminated, or any mortgage foreclosed, this Lease shall not terminate or be terminable by Tenant unless Tenant was specifically named in any termination or foreclosure judgment or final order for the purposes of terminating this Lease or the interest of Tenant in the Premises.

B. Any holder of a Superior Interest may elect that this Lease shall have priority over such Superior Interest and, upon notification by such holder of a Superior Interest to Tenant, this Lease shall be deemed to have priority over such Superior Interest, whether this Lease is dated prior to or subsequent to the date of such Superior Interest. In the event that , after the occurrence of the Applicable Commencement Date, any master lease or any other ground or underlying lease is terminated as aforesaid, or if the interests of Landlord under this Lease are transferred by reason of or assigned in lieu of foreclosure or other proceedings for enforcement of any mortgage, or if the holder of any mortgage acquires a lease in substitution therefor, or if the holder of any Superior Interest shall otherwise succeed to Landlord's estate in this Lease or the Building, or the rights of Landlord under this Lease, then Tenant will, notwithstanding anything to the contrary in Section 13.A above, at the option of the lessor under any such master lease or other ground or underlying lease, the holder of any other Superior Interest or such purchaser, assignee or lessee, as the case may be, to be exercised in writing, (i) attorn to it and perform for its benefit all the terms, covenants and conditions of this Lease on the Tenant's part to be performed with the same force and effect as if said lessor, mortgagee or such purchaser, assignee or lessee, were the landlord originally named in this Lease, or (ii) enter into a new lease with said lessor, mortgagee or such purchaser, assignee or lessee, as landlord, for the remaining Term (as the same may be extended pursuant to Article 53 hereof) and otherwise on the same terms, conditions and rentals as herein provided. The foregoing provisions shall inure to the benefit of any such successor landlord, shall apply notwithstanding that, as a matter of law, this Lease may terminate upon the termination of any Superior Interest, shall be self-operative upon any such request and no further instrument shall be required to give effect to said provisions; provided, however, that upon request of any such successor landlord, Tenant shall promptly execute and deliver, from time to time, any instrument in recordable form that any successor landlord may reasonably request to evidence and confirm the foregoing provisions of this Section 13.B, in form and content reasonably satisfactory to each such successor landlord, acknowledging such attornment and setting forth the terms and conditions of its tenancy. Upon such attornment, this Lease shall continue in full force and effect as a direct lease between such successor landlord and Tenant upon all of the then executory terms of this Lease except that such successor landlord shall not be: (a) liable for any previous act or omission or negligence of any prior landlord under this Lease (including, without limitation, Landlord) except to the extent that (i) such act or omission continues after the date that the successor succeeds to Landlord’s interest in the Real Property, and (ii) such act or omission of such prior landlord is of a nature that the successor can cure by performing a service or making a repair; (b) subject to any counterclaim, demand, defense, deficiency, credit or offset which Tenant might have against any prior landlord under this Lease (including, without limitation, Landlord); (c) bound by any modification, amendment, cancellation

or surrender of this Lease, unless such modification, cancellation, surrender shall have been approved in writing by the successor landlord other than cancellations expressly set forth in this Lease and modifications which are purely ministerial in nature or which memorialize the exercise of an option by Tenant pursuant to the provisions of this Lease; (d) bound by any payment of Rental made by Tenant to a prior landlord (including, without limitation, the then defaulting landlord) more than thirty (30) days in advance of the date such payment is due (other than the first month's installment of Fixed Annual Rent paid by Tenant upon the execution of this Lease and Escalation Rent that Tenant pays in advance pursuant to Article 2 hereof) except to the extent that such successor landlord actually receives payment thereof, (e) bound by any security deposit, cleaning deposit or other prepaid charge which Tenant might have paid in advance to any prior landlord under this Lease (including, without limitation, Landlord), unless such payments have been received by the successor landlord; or (f) bound by any agreement of any landlord under this Lease (including, without limitation, Landlord) with respect to the completion of any improvements affecting the Premises, the Building, the land or any part thereof or for the payment or reimbursement to Tenant of any contribution to the cost of the completion of any such improvements, provided that, in such case, Tenant shall not be obligated to attorn to such successor landlord and pay successor landlord the Rental payable under this Lease for any portion of the Premises as to which the Applicable Commencement Date has not occurred.

C. Intentionally omitted.

D. (i) From time to time, Tenant, on ten (10) Business Days' prior written request by Landlord, time being of the essence, will deliver to Landlord and the holder of any Superior Interest a statement in writing (on which any person to whom it is addressed or certified may rely) certifying that this Lease is unmodified and is in full force and effect (or if there have been modifications, that the same is in full force and effect as modified and identifying the modifications) and the dates to which the Rental has been paid, the amounts of Fixed Annual Rent and Escalation Rent, stating the Fixed Expiration Date and whether any renewal option exists (and if so, the terms thereof), stating whether any defense or counterclaim to the payment of any Rental exists, whether any allowance or work is due to Tenant from Landlord, stating whether or not , to Tenant's knowledge, the Landlord is in default in performance of any covenant, agreement or condition contained in this Lease and, if so, specifying each such default of which Tenant may have knowledge, stating whether any bankruptcy case has been commenced with respect to Tenant, and containing such other non-confidential information as the holder of any Superior Interest may reasonable request. Nothing contained herein will be deemed to impair any right, privilege or option of the holder of any Superior Interest.

(ii) From time to time, if required by Tenant in connection with a proposed assignment, subletting or if required to comply with any Requirements, Landlord, on ten (10) Business Days' prior written request by Tenant, will deliver to Tenant a statement in writing (on which any person to whom it is addressed or certified may rely) certifying that this Lease is unmodified and is in full force and effect (or if there have been modifications, that the same is in full force and effect as modified and identifying the modifications) and the dates to which the Rental has been paid, the amounts of Fixed Annual Rent and Escalation Rent, stating the Fixed Expiration Date and whether any renewal option exists (and if so, the terms thereof), stating whether or not, to the knowledge of Landlord, Tenant is in default in performance of any covenant, agreement or condition contained in this Lease and, if so, specifying each such default of which Landlord may have knowledge, and containing such other information as Tenant may reasonably request. In no event shall the delivery of any such statement by Landlord be construed as allowing any third party access to the Premises or any other part of the Building to take possession of any personal property in which such party has a secured interest, or for any other purpose, without Landlord's prior written consent.

E. If, in connection with obtaining, continuing or renewing financing or refinancing for the Building, the land and/or any leasehold estate of Landlord under any master, ground or underlying lease, the lender shall request reasonable modifications to this Lease as a condition to such financing or refinancing, Tenant will execute and deliver such modifications, except that Tenant shall not be required to agree to any such modifications to this Lease that (i) increase Tenant's monetary obligations under this Lease, (ii) adversely affect or diminish Tenant's rights under this Lease (except in either case to a de minimis extent) or (iii) increase Tenant's other obligations under this Lease (except to a de minimis extent) (it being understood that Tenant may be required to give notices of any defaults by Landlord to such lender with the granting of such additional time for such curing as may be required for such lender to get possession of the said building and/or land).

F. If any act or omission by Landlord shall give Tenant the right, immediately or after the lapse of time, to cancel or terminate this Lease (except in connection with a casualty or a condemnation) or to claim a partial or total eviction, Tenant shall not exercise any such right until: (i) it shall have given written notice of such act or omission to each holder of any Superior Interest of which it has written notice, and (ii) a reasonable period for remedying such act or omission shall have elapsed following such notice (which reasonable period shall be equal to the period to which Landlord would be entitled under this Lease to effect such remedy, plus an additional thirty (30) day period), provided such holder or lessor shall, with reasonable diligence, give Tenant notice of its intention to remedy such act or omission and shall commence and continue to act upon such intention.

G. Landlord hereby advises Tenant that as of the date hereof, there is no mortgage financing or ground, master or underlying lease encumbering the Building. Notwithstanding anything contained hereinabove to the contrary, Landlord shall obtain from the holder of any mortgage or the lessor under any ground, master or underlying lease hereafter encumbering the Real Property of which the Premises form a part, for the benefit of Tenant, a subordination, non-disturbance and attornment agreement ("SNDA"), in the form then customarily used by such entity, but in any event providing in substance that so long no Default has occurred and is continuing, the grantor of such SNDA will not take any action to terminate this Lease or disturb Tenant's possession of the Premises, notwithstanding any foreclosure of such mortgage. Tenant shall execute and deliver such SNDA and shall pay any reasonable legal fees and other costs imposed by the grantor of such SNDA and/or its attorneys in connection with the negotiation and execution of such SNDA.

15. **CONDEMNATION**

A. Subject to the terms of this Article 14, in the event that the entire Building, Real Property or Premises shall be lawfully condemned or taken in any manner for any use or purpose, this Lease and the Term and estate hereby granted shall forthwith cease and terminate as of the date of vesting of title (hereinafter referred to as the "date of taking").

B. If only a part of the Building or the Real Property is so condemned or taken and not the entire Premises, then (i) except as hereinafter provided, this Lease shall be and remain unaffected by such condemnation or taking and the Term shall continue in force and effect, but if a part of the Premises is included in the part of the Building or Real Property so acquired or condemned, then, from and after the date of the vesting of title, (x) the Fixed Annual Rent shall be reduced in the proportion which the area of the part of the Premises so acquired or condemned bears to the total area of the Premises immediately prior to such condemnation or taking, and (y) Tenant's Tax Share shall be redetermined based upon the proportion which the rentable area of the Premises remaining after such acquisition or condemnation bears to the rentable area of the Building remaining after such condemnation or taking; and (z) the Tenant's Expense Share shall be redetermined based upon the proportion which the rentable area of the Premises remaining after such condemnation or taking bears to the rentable area of the Building (excluding any retail portion thereof) remaining after such condemnation or taking, (ii) if at least twenty-five percent (25%) of the rentable area of the Building is affected thereby, then Landlord may give to Tenant, within sixty (60) days following the date that Landlord receives notice of vesting of title, a notice of termination of this Lease; and (iii) if the part of the Building or the Real Property so condemned or acquired contains more than twenty-five (25%) percent of the rentable area of Premises immediately prior to such condemnation or taking, or, if by reason of such condemnation or taking, Tenant no longer has reasonable means of access to the Premises as determined by Landlord, in Landlord's reasonable discretion, then Tenant shall have the right to terminate this Lease by giving notice thereof to Landlord on or prior the sixtieth (60^{th}) day after Tenant receives notice of the taking. Landlord shall promptly give Tenant copies of any notice received from the condemning authority as to vesting. If Landlord or Tenant gives any such notice to terminate this Lease, then this Lease and the Term shall come to an end and expire upon the thirtieth (30th) day after the date that such notice is given. If this Lease shall not be terminated as a result of a partial taking, if any part of the Premises not so taken is damaged, Landlord, at Landlord's own expense, but subject to the extent of the net proceeds (after deducting reasonable expenses including reasonable attorneys' and appraisers' fees and any sums payable to the holder of a Superior Interest) of the award, shall perform the work necessary to restore the damaged portion thereof to substantially the same condition existing immediately prior to the taking with reasonable diligence and with such modifications as may be required by Requirements. Tenant shall be entitled to a proportionate abatement of Fixed Annual Rent and Escalation Rent for that portion of the Premises which is being so restored and which is not usable during the period commencing on the date such damage occurred and ending on the earlier of the date such restoration is Substantially Complete and the date on which such portion of the Premises is used by Tenant.

C. Upon the termination of this Lease and the Term pursuant to the provisions of Section 14.A or 14.B. hereof, the Fixed Annual Rent and Escalation Rent shall be apportioned and any prepaid portion of Fixed Annual Rent and Escalation Rent for any period after such date (less any amounts that may then remain due and payable pursuant to the terms of this Lease) shall be refunded by Landlord to Tenant (and the obligation to make such refund shall survive the Expiration Date).

D. Subject to Section 14.E. hereof, Landlord shall be entitled to receive the entire award for any condemnation or taking of all or any part of the Real Property. Tenant shall have no claim against Landlord or any condemning authority or entity for, nor shall Tenant make any claim for, the value of any unexpired portion of Term and Tenant hereby expressly assigns to Landlord all of its right in and to such award. Nothing contained in this Section 14.D. shall preclude Tenant from making a separate claim in any condemnation proceedings, for the then value of any Tenant's fixtures or personal property included in such taking, and for any moving expenses, provided that such proceedings do not result in a reduction in Landlord's award.

E. If the whole or any part of the Premises is acquired or condemned temporarily during the Term for any use or purpose, then the Term shall not be reduced or affected in any way and, accordingly, Tenant shall continue to pay in full all items of Rental payable by Tenant hereunder without reduction or abatement. Tenant shall be entitled to receive for itself any award or payments for such use; provided, however, that if the acquisition or condemnation is for a period extending beyond the Term, such award or payment shall be apportioned equitably between Landlord and Tenant. Tenant, at Tenant's sole cost and expense, shall make Alterations (subject to and in accordance with all applicable provisions of this Lease) to restore the Premises to the condition existing prior to any such temporary acquisition or condemnation.

16. **REQUIREMENTS OF LAW**

A.

(i) Tenant, at Tenant's sole cost and expense, shall comply with all Requirements (as hereinafter defined) applicable to the Premises, including, without limitation, (i) Requirements that are applicable to the performance of Alterations, (ii) other than an Impeding Building Violation, Requirements that become applicable by reason of Alterations having been performed by (or on behalf of) Tenant, (iii) Requirements applicable to recycling of waste generated or stored by Tenant or any Person claiming by, through or under Tenant and (iv) Requirements that are applicable by reason of the specific nature or manner of use of the Premises or type of business operated by Tenant (or any other Person on behalf of Tenant or claiming by, through or under Tenant) in the Premises. Subject to Article 30 hereof, Tenant shall not be required to make any Alteration or other changes to the structural components of the Building or the base Building systems to comply with any Requirement unless (a) such Alteration or other change is required by reason of Alterations having been performed by Tenant (or another Person on behalf of Tenant or claiming by, through or under Tenant), or (b) such Alteration or other change is required by reason of the specific nature or manner of use of the Premises or type of business operated by Tenant (or such other Person on behalf of Tenant or claiming by, through or under Tenant) in the Premises (as opposed to the use of the Premises for the general purposes otherwise permitted under Section 1.B. hereof)), or (c) such Alteration or other change is required or necessitated by Tenant's acts or omissions (where there is a duty to act) and/or the acts or omissions of any such other Person on behalf of Tenant or claiming by, through or under Tenant. Notwithstanding the foregoing, Tenant shall not be obligated to cure any violation of Requirements that affects the Premises prior to the Applicable Commencement Date with respect to the 9th Floor Premises and the 20th Floor Premises.

(ii) The term "Requirements" shall mean, collectively, (i) all present and future laws, rules, orders, ordinances, regulations, statutes, requirements, codes and directives and executive orders of all Governmental Authorities, and of any applicable fire rating bureau, or any other body exercising similar functions, as the same may be amended from time to time and (ii) all requirements that the issuer of Landlord's property insurance policy imposes (including, without limitation, any such requirements that such issuer requires as the basis for the premium that such issuer charges Landlord for Landlord's property policy), provided that such requirements that the issuer of Landlord's property policy imposes are reasonably consistent with the requirements imposed by reputable insurers of comparable properties in The City of New York and Tenant shall have been notified of any specific insurance requirement.

(iii) The term "Governmental Authority" shall mean the United States of America, the State of New York, the City of New York, any political subdivision thereof and any agency, department, commission, board, bureau or instrumentality of any of the foregoing, or any quasi-governmental authority, now existing or hereafter created, having jurisdiction over the Real Property or any portion thereof.

(iv) Subject to the terms of this Section 15.A.(iv), if (x) any asbestos or asbestos containing materials ("ACMs") are located in the 9th Floor Premises and/or the 20th Floor Premises on the Applicable Commencement Date and/or in the Expansion Space on the Expansion Space Commencement Date, and (y) applicable Requirements mandate that such asbestos or ACMs be abated, remediated or encapsulated in connection with Landlord's Work, then Landlord, at Landlord's expense, shall perform such abatement, remediation or encapsulation with reasonable diligence, in accordance with good construction practice and in compliance with all applicable Requirements. Landlord shall not be required to remove any such asbestos or ACMs to the extent that such asbestos or ACMs are installed in the applicable portion of the Premises by Tenant, or any other Person claiming by, through or under Tenant, after the Applicable Commencement Date (or such earlier date that Tenant is allowed access to such portion of the Premises).

(v) Landlord may elect to perform, at Tenant's sole cost and expense, any work necessary to comply with Requirements as required pursuant to Section 15.A.(i) hereof and Tenant shall reimburse Landlord for the actual and reasonable out-of-pocket costs of performing the same within thirty (30) days following receipt of Landlord's invoice therefor which invoice shall include reasonable supporting documentation for the charges set forth therein.

(vi) Subject to the terms of this Section 15.A.(vi), if there exists a violation of applicable Requirements at the Building (which includes the applicable portion of the Premises) on any Applicable Commencement Date that delays or prevents Tenant's occupying the applicable portion of the Premises for the conduct of business (any such violation being referred to herein as an "Impeding Building Violation"), then Landlord, at Landlord's expense, shall use diligent efforts to cause the Impeding Building Violation to be removed as promptly as reasonably practicable after Tenant gives Landlord notice thereof. Nothing contained in this Section 15.A.(vi) shall require Landlord to remove any such Impeding Building Violation to the extent that Section 15.A.(i) hereof requires Tenant to comply therewith. If Landlord is required to cause the Impeding Building Violation to be removed pursuant to this Section 15.A.(vi), then Tenant shall be entitled to apply (until exhausted) a credit against the Rental that is otherwise due hereunder in an amount equal to the product obtained by multiplying (I) the number of Business Days that Landlord's curing of such Impeding Building Violation as provided in this Section 15.A.(vi) actually delays, impedes or prohibits Tenant from legally occupying the Premises for the conduct of business, by (II) the quotient obtained by dividing (a) the Fixed Annual Rent that is due hereunder for the first (1st) year after the Commencement Date (without taking into account any rent abatement or credit applicable thereto), by (b) the number of square feet of rentable area in the Premises, by (c) three hundred sixty-five (365) (or three hundred sixty-six (366), if the applicable period occurs in a leap year), by (III) the number of square feet of rentable area in the Premises in or to which Tenant is actually delayed or prohibits from legally occupying the Premises for the conduct of business, as aforesaid; provided, however, that Tenant shall not have the right to apply such credit against the Rental that is otherwise due hereunder unless (x) Tenant gives Landlord notice of such delay not later than the third (3rd) Business Day after the earlier to occur of (1) date that such delay first occurs, and (2) the date on which Tenant is notified that such delay shall occur (whether by Tenant's contractor(s) (of any tier) or any other Person engaged by or on behalf of Tenant or otherwise performing under or on behalf of Tenant) and (y) Tenant includes in such notice to Landlord a reasonable description of the extent of the impact of such actual delay on Tenant occupying the Premises for the conduct of business, and expressly makes reference therein to this Section 15.A.(vi) and Tenant's right to a credit against the Rental in connection therewith. For the avoidance of any doubt, and notwithstanding anything contained herein to the contrary, an actual delay in Tenant legally occupying the Premises for the conduct of business shall not be deemed to have occurred unless Tenant demonstrates that Tenant was otherwise ready, willing and able to occupy the same for the conduct of business. Furthermore, the time period described in subclause (I) above shall be reduced by that number of days and partial days during which Landlord's performance of that abatement, remediation, or encapsulation work required pursuant to this Section 15.A.(vi) is delayed as a result of any acts or omissions (where there is a duty to act) of Tenant and/or an Unavoidable Delay.

B. Tenant shall not use the Premises in a manner which shall increase the rate of fire insurance of Landlord or of any other tenant, over that in effect prior to this Lease. If Tenant's use of the Premises increases the fire insurance rate, Tenant shall reimburse Landlord for all such increased costs; it being understood and agreed that the use of the Premises for ordinary general, administrative, and executive offices will not be deemed to increase the fire insurance rate. That the Premises are being used for the purpose set forth in Article 1 hereof shall not relieve Tenant from the foregoing duties, obligations and expenses.

C. By way of supplementing and not in limitation of the preceding provisions of this Article 15, if the Building or any portion thereof (i) is now subject to, or Landlord shall hereafter subject the Building or any portion thereof to, any easement, covenant or restriction to (a) preserve or regulate the historical nature or landmark status thereof, (b) designate it as a historical building, historical site or landmark or (c) incorporate it in any historical, landmark or other similar district or (ii) is now or hereafter becomes subject to any Requirement designating it a historical building, historical site, landmark or incorporating it in any historical, landmark or other similar district, whereby, in any such case, any Alteration or change in its physical appearance shall be subject to regulation or approval by any Governmental Authority or other third party, Tenant shall not take or suffer any action that would have the effect of violating any such easement, covenant, restriction or Requirement.

D. Except to the extent that Tenant is required by the express provisions of this Lease (or another tenant or occupant of the Building is required by the provisions of its lease or occupancy agreement) to comply therewith, Landlord, at its expense, shall comply with all Requirements in respect of the Building, the common areas, the Land and the base Building systems, as same shall affect the Premises or Tenant's use and/or occupancy thereof, but may defer compliance so long as Landlord shall be contesting the validity or applicability thereof, provided that deferring such compliance does not adversely affect Tenant's ability to construct, use and/or occupy the Premises and conduct its business therein for the Permitted Use, for access to the Premises or for the performance of Alterations to the Premises, in accordance with all of the terms and conditions of this Lease including, without limitation, Tenant's ability to obtain permits and licenses to perform Tenant's Initial Installation Work or other Alterations.

17. **CERTIFICATE OF OCCUPANCY**

Tenant will at no time use or occupy the Premises in violation of any certificate of occupancy issued for or statute governing the use of the Building. Nothing contained herein constitutes Landlord's covenant, representation or warranty that the Premises or any part thereof lawfully may be used or occupied for any particular purpose or in any particular manner; provided, however, that during the Term, Landlord shall not modify any existing certificate of occupancy covering the Premises or the Building in a manner which would prohibit the use of the Premises for general, administrative and executive offices or would materially reduce the floor load or the number of permitted occupants permitted in the Premises.

18. **POSSESSION**

A. Tenant waives any right to rescind this Lease under Section 223-a of the New York Real Property Law or any successor statute of similar nature and purpose then in force and further waives the right to recover any damages which may result from Landlord's failure for any reason to deliver possession of any portion of the Premises to Tenant on the Applicable Commencement Date**.** The provisions of this Article are intended to constitute an "express provision to the contrary" within the meaning of Section 223-a of the New York Real Property Law. Except with respect to the 2nd/3rd Floor Premises (which Tenant currently occupies pursuant to the 2nd/3rd Floor Sublease), if Tenant takes possession of any portion of the Premises for the performance of Alterations or for the conduct of its business therein, all of the terms, covenants and conditions of this Lease shall be applicable to such possession or entry (specifically, including without limitation, the provisions of Article 21 hereof) and subject to Section 23.O. hereof, Landlord reserves the right to accelerate the Applicable Commencement Date to the date that Tenant takes possession thereof (and the Applicable Rent Commencement Date shall be accelerated by the same number of days); it being expressly understood that the foregoing shall not be construed to permit Tenant to access or otherwise take possession of any portion of the Premises prior to the Applicable Commencement Date.

B. If Landlord's Work is not Substantially Complete with respect to the 9th Floor Premises on or before to the date that is two hundred seventy (270) days following the date of this Lease (as such date may be extended by periods of Unavoidable Delays, Tenant Work Delays, periods of delays in connection with items of Long Lead Work, periods of delay in connection with any Tenant Acts (as such terms are hereinafter defined), periods of delay in connection with repair, rebuilding or restoration following casualty, and periods of delay due to any reason beyond Landlord's reasonable control, the "9th Floor Outside Date"), then, as Tenant's sole remedy in connection therewith, the 9th Floor Rent Commencement Date shall be adjourned (i.e., the three hundred ninety-five (395) day period set forth in the definition of "9th Floor Rent Commencement Date" shall be increased by one (1) day for each day in the period beginning on the 9th Floor Outside Date and ending on the day on which Landlord's Work with respect to the 9th Floor Premises is Substantially Complete.

C. (i) If Landlord's Work is not Substantially Complete with respect to the 20th Floor Premises on or before to the date that is two hundred seventy (270) days following the date Landlord receives vacant possession of the 20th Floor Premises from the existing tenant or occupant thereof free of all tenancies and rights of occupancy (other than Tenant's rights under this Lease) and in the condition required under any existing lease or occupancy agreement (as such date may be extended by periods of Unavoidable Delays, Tenant Work Delays, periods of delays in connection with items of Long Lead Work, periods of delay in connection with any Tenant Acts (as such terms are hereinafter defined), periods of delay in connection with repair, rebuilding or restoration following casualty, and periods of delay due to any reason beyond Landlord's reasonable control, the "20th Floor Outside Date"), then, as Tenant's sole remedy in connection therewith, the 20th Floor Rent Commencement Date shall be adjourned (i.e., the three hundred ninety-five (395) day period set forth in the definition of "20th Floor Rent Commencement Date" shall be increased by one (1) day for each day in the period beginning on the 20th Floor Outside Date and ending on the day on which Landlord's Work with respect to the 20th Floor Premises is Substantially Complete.

(ii) If any prior tenant or occupant of the 20th Floor Premises (prior to the date Landlord receives vacant possession thereof) shall fail to vacate such space on or before the expiration or termination of its lease or occupancy agreement, Landlord shall use commercially reasonable efforts (at no additional cost to Landlord, except for the cost of any holdover proceeding) to minimize such holdover period including, without limitation, by commencing, within a reasonable period, a holdover or other appropriate proceeding.

19. **QUIET ENJOYMENT**

Landlord covenants that if Tenant pays the Rental when due and payable and timely performs all of Tenant's other obligations under this Lease, Tenant may peaceably and quietly enjoy the Premises, subject to the terms, covenants and conditions of this Lease and to any master lease and other Superior Interests.

20. **RIGHT OF ENTRY AND TENANT'S RIGHT TO ACCESS AND BUILDING SECURITY**

A. Tenant shall provide Landlord, from time to time, with the keys to the Premises (or with the appropriate means to access the Premises using Tenant's electronic security systems). Subject to the terms of this Section 19.A., Landlord, its employees, designees and/or its agents shall have the right to enter or pass through the Premises at all reasonable times, upon reasonable prior notice (which notice may be given verbally to the person employed by Tenant with whom Landlord's representatives ordinarily discusses matters pertaining to the Premises), (a) to examine the same, (b) to exhibit the Premises to prospective purchasers, tenants, investors, mortgagees, and/or the holders of any Superior Interest (but as to prospective tenants, only during the last twenty-four (24) months of the Term), (c) to make such repairs, installations, improvements, alterations or additions to the Building (whether or not the work to be performed is within the Premises or for its benefit) or the Premises, as may be required by Requirements or as Landlord may deem necessary or, for any reason, desirable, (d) to perform any work permitted or expressly required by the terms of this Lease, (e) to gain access to Reserved Areas and/or (f) to take into and store within and upon the Premises all material that may be used in connection with any such repair, installation, improvement, alteration or addition work (provided such storage does not interfere with the conduct of Tenant's business). Notwithstanding the foregoing to the contrary, Landlord shall not be required to give Tenant advance notice of any such entry to the extent necessary by reason of the occurrence of an emergency (with the understanding, however, that Landlord shall give Tenant notice of such emergency access as promptly as reasonably practicable thereafter). Such entry, storage, or work in connection with any of the purposes set forth herein shall not constitute an eviction (whether actual or constructive) of Tenant, in whole or in part, or breach of the covenant of quiet enjoyment, shall not be grounds for any abatement of rent (except as otherwise set forth in this Lease), and shall not impose any liability on Landlord to Tenant by reason of inconvenience or injury to Tenant's business or to the Premises. Notwithstanding the foregoing to the contrary, Landlord will repair the Premises to the extent that the necessity for such repair derives from Landlord's access to the Premises as contemplated in this Article 19. Subject to Section 42.G. hereof, Landlord will remain liable to Tenant for personal injury or property damage that derives from Landlord's negligence or willful misconduct in connection with any entry upon the Premises. Tenant shall permit Landlord to erect and maintain concealed pipes, ducts and conduits in and through the Premises provided such erection does not reduce the usable area of the Premises (except to a de minimis extent). Landlord shall have the right at any time, without the same constituting an actual or constructive eviction, and without incurring any liability to Tenant, to change the arrangement and/or location of entrances or passageways, windows, corridors, elevators, stairs, toilets, or other public parts of the Building, and/or to change the name or number by which the Building is known. The Premises shall not include (i) the exterior walls of the Building, (ii) the demising walls of the Premises (except for the interior face thereof), (iii) set-backs, balconies, terraces and roofs that are adjacent to the Premises, (iv) the windows and the portions of all window sills outside same, and (v) space that is now or hereafter used for Building systems or other purposes associated with the operation, repair, management or maintenance of the Real Property, including, without limitation, shafts, stacks, stairways, chutes, pipes, conduits, ducts, fan rooms, mechanical rooms (except for mechanical rooms that exclusively serve the Premises), plumbing facilities, service closets and areas above any hung ceiling, and Landlord hereby reserves all rights to such parts of the Building (the areas described in clauses (iii) and (v) above together with any mechanical rooms that exclusively serve the Premises being collectively referred to herein as the "Reserved Areas"). Landlord shall use commercially reasonable efforts to minimize interference with Tenant's use of the Premises in connection with Landlord's accessing the Premises as contemplated by this Section 19.A; provided, however, that Landlord shall have no obligation to employ contractors or labor at overtime or premium pay rates in connection therewith.

B. Without further consent by Tenant, Landlord, its managing agent or Landlord's designee may, after reasonable written or oral notice, at reasonable times, enter the Premises (whether prior or subsequent to the Applicable Commencement Date) to take photographs of the interior thereof (which may not include Tenant's name or logo) for use in print and electronic marketing materials for any one or more of the Building, Landlord, Landlord's managing agent or any affiliate thereof. Tenant hereby consents to such use. Notwithstanding the foregoing, no such material shall contain the image or likeness of any individual without first obtaining such individual's consent thereto. Tenant represents and warrants that the use of such photographs will not violate any copyright or trademark rights of any person with respect to the design, furnishing, layout or construction of the Premises.

A. Subject to the terms of this Lease, Tenant, during the Term, shall have access to the Premises at all times, twenty-four (24) hours per day, every day of the year.

B. (i) Subject to the terms of this Section 19.D and all other applicable provisions of this Lease, Landlord shall arrange for one (1) concierge or security guard or porter to staff the lobby of the Building at all times, twenty-four (24) hours per day, seven (7) days per week, at no additional cost to Tenant (provided the costs thereof may be included in Expenses). Tenant acknowledges that (i) Landlord, in agreeing to arrange for such security personnel, does not ensure the security of the Building, and (ii) accordingly, Tenant remains responsible for making the Alterations in, and adopting procedures for, the Premises that Tenant considers adequate to provide for Tenant's security.

(ii) Tenant may, at its sole cost and expense and subject to the provisions of Article 8 hereof, install a private security system (which may be a card access security system) within the Premises, and Landlord shall permit Tenant, at Tenant's sole cost expense, to integrate (if possible) any card access system used for entry to the Premises with the Building-wide card key security system so that the permitted occupants of the Premises would only need to carry a single access card to gain entry to the Premises and the Building-wide security system so long as such systems are compatible; it being understood and agreed that (x) Landlord shall not be required to delay any installation of a Building-wide security system until Tenant provides plans and specifications for Tenant's proposed security systems, (y) Tenant's card access system for the Premises may not be compatible with the Building-wide security system if Tenant provides specifications for Tenant's proposed security system after Landlord chooses its own security system for the Building, or (z) if Landlord is unable to reasonably accommodate Tenant's request to install a Building-wide card key system that can interface with Tenant's own security system, and in case of any of (x) through (z) above or any other failure to provide a Building-wide security system that is compatible with Tenant's security system, Landlord shall not be liable to Tenant and such failure shall not reduce, diminish or otherwise affect any of Tenant's covenants and obligations under this Lease and Landlord shall not be liable for any damages therefor. Notwithstanding the foregoing, any such private security system shall be deemed a Specialty Alteration hereunder without any further notice to Tenant.

E. Notwithstanding anything contained in this Article 19 to the contrary, but subject to the provisions of this Section 19.E., Landlord may not enter or pass through those portions of the Premises, which are from time to time, in writing from Tenant to Landlord given at least ten (10) Business Days prior thereto, reasonably designated as "Secured Areas," and appropriately secured by Tenant, without an authorized representative of Tenant; provided, no more than 1,000 rentable square feet in the aggregate may be designated as Secured Areas. The designation by Tenant of a portion of the Premises as a "Secured Area" shall set forth in reasonable detail the exact location of such portion and the reason for such designation, which reason shall be for legitimate security reasons consistent with the operation of the businesses being conducted in the Premises and not primarily for the purpose of excluding Landlord therefrom. Tenant shall from time to time furnish Landlord with a list of such authorized representatives, including the telephone numbers and addresses of such persons in the event that Landlord requires such access at times when no authorized representative is in the Building. If in Landlord's reasonable judgment no authorized representative is available or no authorized representative is available when needed (e.g., in the case of an emergency), then Landlord shall have the right to enter the Secured Area without a representative of Tenant. In addition, and notwithstanding anything to the contrary contained in this Section 19.E., in an emergency or if entering or passing through the Premises (or any portions thereof, including a Secured Area) is required by, or is pursuant to, any applicable Requirement (for example, an inspection by the New York City Fire Department), and if a representative of Tenant is not available, Landlord or Landlord's agent, and/or such persons who are reasonably required to enter or pass through the Premises (or any portions thereof) in connection with such emergency or Requirement, shall have the right, without notice to, or request of, or accompaniment by, Tenant or Tenant's representative, to so enter or pass through the Premises (or any portions thereof, including such Secured Areas). Notwithstanding anything to the contrary contained in this Lease, Landlord shall have no obligation to provide cleaning services to any Secured Area unless Tenant provides reasonable access during the times such cleaning services are being performed by Landlord's cleaning contractor, and Tenant shall not be entitled to any rent credit as a result thereof.

21. VAULT SPACE

Anything contained in any plan or blueprint to the contrary notwithstanding, no vault or other space not within the Building property line is demised hereunder. Any use of such space by Tenant shall be deemed to be pursuant to a license, revocable at will by Landlord, without diminution of the Rental payable hereunder. If Tenant shall use such vault space, any fees, taxes or charges made by any Governmental Authority for such space shall be paid by Tenant.

22. INDEMNITY

The term "Landlord Parties" shall mean collectively, Landlord, Landlord's managing agent, each holder of a Superior Interest and each of their respective partners, members, managers, officers, directors, employees, principals, trustees and agents. The term "Landlord Party" shall mean any of the foregoing individually. To the fullest extent of the law, Tenant shall indemnify, defend and hold the Landlord Parties harmless from and against any and all claims, demands, liability, losses, damages, costs and expenses (including, without limitation, reasonable attorneys' fees and disbursements) arising from or in connection with: (a) any breach or default by Tenant in the full and prompt payment and performance of Tenant's obligations hereunder; (b) the use or occupancy or manner of use or occupancy of the Premises by Tenant or any Person claiming by, under or through Tenant; (c) any negligence or willful misconduct of Tenant or any of its subtenants, assignees or licensees or its or their partners, principals, directors, officers, agents, invitees, employees, guests, customers or contractors (of any tier) while in the Building; (d) any accident, injury or damage occurring in or about the Premises; (e) the performance by Tenant (or any Person on behalf of Tenant, or any Person claiming by, through, or under, Tenant, including, without limitation, any Person engaged by or on behalf of Tenant) of any Alteration in, to or about the Premises, including, without limitation, the

failure of Tenant or any such Person to obtain any permit, authorization or license or failure to pay in full any contractor, subcontractor or materialmen performing such Alteration; (f) a misrepresentation made by Tenant hereunder (including, without limitation, a misrepresentation of Tenant under Article 40 hereof);and (g) any mechanics lien filed, claimed or asserted in connection with any Alteration or any other work, labor, services or materials done for or supplied to, or claimed to have been done for or supplied to Tenant, or any Person claiming through or under Tenant. Tenant shall not be required to indemnify the Landlord Parties, and hold the Landlord Parties harmless, in either case as aforesaid, to the extent that it is finally determined that the negligence or willful misconduct of a Landlord Party contributed to the loss or damage sustained by the Person making the claim against Landlord. If any claim, action or proceeding is brought against any of the Landlord Parties for a matter covered by this indemnity, Tenant, upon notice from the indemnified Person shall defend such claim, action or proceeding with counsel reasonably satisfactory to Landlord and the indemnified Person (which shall include counsel reasonably designated by Tenant's insurer). The parties intend that the Landlord Parties (other than Landlord) shall be third-party beneficiaries of this Section 21.A.

B. The term "Tenant Parties" shall mean collectively, Tenant and its respective partners, members, managers, officers, directors, employees, principals, trustees and agents. The term "Tenant Party" shall mean any of the foregoing individually. Subject to the terms of this Section 21.B., to the fullest extent permitted by law (but subject to the last sentence of Article 25 below), Landlord shall indemnify, defend and hold the Tenant Parties harmless, from and against, all losses, damages, liabilities, costs and expenses (including, without limitation, reasonable attorneys' fees and disbursements) that are incurred by a Tenant Party arising from or alleged to arise from (i) any negligence or willful misconduct of Landlord (or the negligence or willful misconduct of the Person that has the right to occupy the Premises by virtue of Landlord's exercising Landlord's rights under Section 4.B. hereof); (ii) any breach by Landlord under this Lease, (iii) any accident, injury or damage occurring in or about the common areas or unoccupied portions of the Building during the Term hereof, and (iv) a misrepresentation made by Landlord hereunder (including, without limitation, a misrepresentation made pursuant to Article 40 hereof). Landlord shall not be required to indemnify the Tenant Parties, and hold the Tenant Parties harmless, in either case as aforesaid, to the extent that it is finally determined that the negligence or willful misconduct of a Tenant Party contributed to the loss or damage sustained by the Person making the claim against Tenant or to the extent the loss or damage is covered or would be covered by the insurance Tenant is required to maintain pursuant to Article 42 hereof. If any claim, action or proceeding is brought against any of the Tenant Parties for a matter covered by this indemnity, Landlord, upon notice from the indemnified person or entity, shall defend such claim, action or proceeding with counsel reasonably satisfactory to Tenant and the indemnified person or entity. The parties intend that the Tenant Parties (other than Tenant) shall constitute third-party beneficiaries of this Section 21.B

C. The provisions of this Article 21 shall survive the Expiration Date.

23. INABILITY TO PERFORM; LIMITATION OF LIABILITY

A. Subject to Articles 11 and 14 hereof and Section 22.E below, this Lease and the obligation of Tenant to pay Rental hereunder and to perform all of Tenant's other covenants shall not be affected, impaired or excused, and Landlord shall not have any liability to Tenant, to the extent that Landlord is unable to perform Landlord's covenants under this Lease by reason of any cause beyond Landlord's control, including without limitation (i) strikes, (ii) labor troubles, (iii) governmental pre-emption in connection with a national emergency, (iv) any Requirement, (v) conditions of supply or demand, (vi) conditions affected by, or actions (including without limitation any evacuation or closure of the Building) taken by Landlord or others reasonably intended to assure the health, security or safety of the Building or any person in response to, war, any act of terrorism or violence (even if not directed at the Building or any occupant thereof), or other national, state or municipal emergency (whether or not officially proclaimed by any Governmental Authority), (vii) the occurrence of an act of God, or (vii) unavailability of power or any disruption of electrical or any other utility service (such events collectively, "Unavoidable Delays"); provided, however, that Landlord shall not have the right to claim under this Section 22.A. that Landlord's failure to have funds available to make a payment of money constitutes an excuse for Landlord's performance of an obligation of Landlord hereunder. Subject to Articles 11 and 14 hereof and Section 22.E below, this Lease and the obligation of Landlord to perform all of Landlord's covenants hereunder shall not be affected, impaired or excused, and Tenant shall not have any liability to Landlord, to the extent that Tenant is unable to perform Tenant's covenants under this Lease by reason of any Unavoidable Delay; provided, however, that Tenant's failure to make a payment of money (including any failure to satisfy a lien, judgment or other monetary obligation), or any other event that derives from Tenant's lack of funds shall not constitute an Unavoidable Delay for purposes hereof.

B. Subject to the provisions of Section 22.E hereof, Landlord shall have the right, without incurring any liability to Tenant, to stop any service because of accident or emergency, or for repairs, alterations or improvements, necessary or desirable in the judgment of Landlord to the Building or the Premises, until such repairs, alterations or improvements shall have been completed, provided Landlord shall use reasonable efforts to perform such repairs, alterations or improvements in a manner reasonably intended to limit the duration of any such

repairs, alterations or improvement that unreasonably interfere with Tenant's business operations (provided the foregoing shall not obligate Landlord to engage overtime or premium pay labor).

C. The Landlord Parties (other than Landlord) shall not be liable for the performance of Landlord's obligations under this Lease. Tenant shall look solely to Landlord to enforce Landlord's obligations hereunder. The liability of Landlord for Landlord's obligations under this Lease shall be limited to Landlord's interest in the Real Property and the proceeds thereof (including, without limitation, proceeds of a sale or refinancing of Landlord's interest in the Real Property, casualty insurance proceeds, and condemnation awards). Tenant shall not look to any property or assets of Landlord (other than Landlord's interest in the Real Property and such proceeds thereof) in seeking either to enforce Landlord's obligations under this Lease or to satisfy a judgment for Landlord's failure to perform such obligations. The Tenant Parties (other than Tenant) shall not be liable for the performance of Tenant's obligations under this Lease. Landlord shall look solely to Tenant to enforce Tenant's obligations hereunder.

D. The Landlord Parties (other than Landlord) shall not be liable to Tenant for any loss or damage to person, property or business. Landlord shall not be liable to Tenant for any loss or damage to person, property or business, unless due to the negligence or willful misconduct of Landlord (it being understood and agreed that the provisions of Section 42.G. hereof shall apply with respect to any such liability). The Landlord Parties shall not be liable for any damage to property of Tenant or of others entrusted to employees of the Building nor for the loss of or damage to any property of Tenant by theft or otherwise.

E. Notwithstanding anything contained in this Lease to the contrary, but subject to the provisions of Articles 11 and 14 hereof, if as a result of the failure of Landlord to provide any Essential Service (as hereinafter defined) to the Premises which Landlord is obligated to provide under this Lease (except if such failure is due to any Unavoidable Delay, including, without limitation, a failure by any utility company to provide service to the Building or due to any negligence or willful misconduct of Tenant or any Person claiming by, through or under Tenant (each a "Tenant Act"; collectively, "Tenant Acts")), Tenant is unable for at least five (5) consecutive Business Days to operate Tenant's business and Tenant in fact ceases to operate Tenant's business in the Premises or a portion thereof in substantially the same manner that Tenant conducted its business prior to such event, then, provided and upon the conditions that this Lease is in full force and effect, Tenant is not in Default hereunder and Tenant notifies Landlord of the onset of any such event described herein, Tenant shall be entitled to a pro rata abatement of Fixed Annual Rent and Escalation Rent for each day after the later of (i) such five (5) consecutive Business Day period, and (ii) the date on which Tenant so notifies Landlord of the onset of any such event described herein, in each instance, for such portion of the Premises which is unusable as set forth above, until such service is restored (or such earlier date that Tenant recommences its business operations in the Premises). In the event Landlord is unable to restore service or access because of any Unavoidable Delay and/or any Tenant Acts, then the five (5) consecutive Business Day period shall be extended one (1) day for each day of such Unavoidable Delay or Tenant Act. The provisions of Articles 11 and 14 shall govern in lieu of this Section 22.E. in the event of a casualty or condemnation. The term "Essential Service" shall mean electricity, water, elevator service, HVAC service and sprinkler and fire safety and alarm services.

24. CONDITION OF PREMISES & LANDLORD'S WORK

A. 2nd/3rd Floor Premises. Tenant currently occupies the 2nd/3rd Floor Premises pursuant to the 2nd/3rd Floor Sublease, is fully familiar with the physical condition thereof and (a) Tenant shall accept possession of the 2nd/3rd Floor Premises in the condition that exists on the 2nd/3rd Floor Commencement Date "as is," and (b) Landlord shall have no obligation to perform any work (including, without limitation, Landlord's Work) or make any installations in order to prepare the Building or the 2nd/3rd Floor Premises for Tenant's occupancy. The foregoing shall not relieve Landlord from its ongoing maintenance, repair, compliance with Requirements and restoration obligations as set forth in this Lease.

B. 9th Floor Premises.

(i) Tenant expressly acknowledges that it has inspected the 9th Floor Premises and is fully familiar with the physical condition thereof. Subject to Article 10 hereof, (a) Tenant shall accept possession of the 9th Floor Premises in the condition that exists on the 9th Floor Commencement Date "as is," (subject to the Substantial Completion of Landlord's Work therein) and (b) Landlord shall have no obligation to perform any work or make any installations in order to prepare the Building or the 9th Floor Premises for Tenant's occupancy other than Landlord's Work. On or prior to the 9th Floor Commencement Date with respect to the 9th Floor Premises only, Landlord shall provide Tenant with a "clean" Form ACP-5 (or the then current equivalent thereof), duly executed by an appropriate party and covering the 9th Floor Premises (as modified by Landlord's Work in the 9th Floor Premises). Tenant acknowledges that except as expressly set forth herein, Landlord has made no representations or promises with respect to the Building, the Real Property or the Premises.

(ii) Landlord shall, at Landlord's expense, perform the work described on Exhibit "B-1", attached hereto and made a part hereof, in the 9th Floor Premises using Building Standard Installations (as hereinafter defined) (such work collectively, "Landlord's Base Building Work").

(iii) Landlord shall, at Landlord's expense, but subject to the provisions of Section 23.K and as otherwise expressly provided in this Lease, perform the work to construct the 9th Floor Premises to prepare the same for Tenant's initial occupancy thereof, in accordance with the Final Plans (as hereinafter defined) to be prepared by TPG Architecture, LLP ("Architect"), at Landlord's expense (except as otherwise herein set forth), which Final Plans shall be based upon those certain drawings identified as Test Fit 1 – Revision 6, prepared by Architect and dated February 9, 2022 (the "Final Space Plan"), a copy of which is attached hereto as Exhibit "B-3" and made a part hereof (the aforesaid work (the "Landlord's 9th Floor Turn-Key Work"), together with Landlord's Base Building Work on the 9th Floor Premises, "Landlord's 9th Floor Premises Work"). Notwithstanding anything contained herein to the contrary (including Landlord's agreement to retain the Architect at Landlord's expense), any costs payable to Architect to any other party associated with Tenant's security system, audio/visual system and consultation and any other work related to furniture coordination and procurement shall be payable by Tenant. Landlord shall perform Landlord's 9th Floor Premises Work using those materials and finishes more particularly set forth in that certain work specification letter attached hereto and made a part hereof as Exhibit "B-2"; provided, however, if such materials and/or finishes are not then readily available or Landlord reasonably determines that using such materials and/or finishes would delay the Substantial Completion of Landlord's 9th Floor Premises Work, then Landlord shall have the right to substitute such materials and/or finishes with materials and/or finishes that are then being utilized by Landlord with respect to the construction of other space in the Building and which are reasonably comparable in quality and price to those set forth in such letter (such materials and finishes then being utilized by Landlord with respect to the construction of other space in the Building are hereinafter referred to as the "Building Standard Installations"; such letter, the "Work Letter"). Notwithstanding the foregoing to the contrary, if Landlord shall determine that a Building Standard Installation needs to be substituted for any materials and/or finishes shown in the Work Letter and such substitution would result in any material difference in the aesthetic of the 9th Floor Premises upon Substantial Completion of Landlord's 9th Floor Premises Work, then Landlord shall first notify Tenant thereof (which notice may be by email to Brittany.caudle@progyny.com and mfiechter@TPGArchitecture.com) and Tenant shall have the right, by notice given within two (2) Business Days, time being of the essence, to require that Landlord utilize the materials and/or finishes described in the Work Letter (instead of Landlord's suggested Building Standard Installation); provided, if Tenant makes such election not to use the Building Standard Installation suggested by Landlord, any delay in the Substantial Completion of Landlord's 9th Floor Premises Work due to utilizing the materials and finishes in the Work Letter (or any other materials and/or finishes selected by Tenant that are not the Building Standard Installations) shall be deemed a Tenant Work Delay and any additional cost incurred in connection therewith shall be pursuant to Section 23.I. Tenant hereby agrees that any supplemental air-conditioning system included as part of Landlord's 9th Floor Premises Work shall be installed by Landlord as part of Landlord's 9th Premises Work, but the cost thereof shall be payable by Tenant to Landlord within thirty (30) days after Landlord's written demand therefor. Tenant hereby approves the Final Space Plan and the Work Letter and the acknowledges and agrees that subject to any Change Orders (as hereinafter defined), the Final Space Plan and the Work Letter are final and Tenant shall not have the right to make any changes thereto from and after the date hereof. Notwithstanding the foregoing to the contrary, (I) Landlord shall not be obligated to install any (x) furniture or built-ins, (y) security systems, and/or (z) artwork, in any case, even if same are shown on the Final Space Plan or the Final Plans, and (II) Tenant shall pay for any and all items of Tenant Extra Work subject to and in accordance with the provisions of this Section 23 below. Tenant hereby acknowledges and agrees that notwithstanding the foregoing to the contrary, any telecommunication wiring, cabling, or equipment installed by Landlord as part of Landlord's 9th Floor Premises Work (even if shown on the Final Space Plan or the Final Plans) shall be installed at Tenant's sole cost and expense (and Tenant shall reimburse for all actual and reasonable out-of-pocket costs associated therewith within thirty (30) days after receipt of Landlord's invoice therefor). During the performance of Landlord's 9th Floor Work, at no additional cost to Landlord, Landlord shall reasonably cooperate with Tenant to cause the general contractor performing Landlord's 9th Floor Work to coordinate the installation of all cabling and wiring in the 9th Floor Premises with Tenant's designated vendor with respect thereto (provided that the same shall not result in any delay in the Substantial Completion of Landlord's 9th Floor Work).

(iv) Tenant shall provide the Architect with all input and information necessary to enable the Architect to prepare and deliver to Landlord on or prior to the date that is forty-five (45) days following the date of this Lease (the "Plan Deadline"), in the manner set forth in this Section 23, the plans ("Tenant's Initial Plans"), which shall be (i) based upon the Final Space Plan, (ii) one hundred percent (100%) complete and ready to bid and build (including, without limitation, layout, architectural, mechanical, structural, engineering and plumbing drawings, to the extent applicable), (iii) stamped and approved by

Architect, and (iv) in format containing sufficient detail (x) for Landlord and Landlord's consultants to reasonably assess the proposed work to prepare the 9th Floor Premises for Tenant's initial occupancy, and (y) to permit Landlord to make all necessary filings with Governmental Authorities to obtain the required permits, approvals and certificates to allow Landlord to commence Landlord's 9th Floor Premises Work (the requirements set forth in clauses (i)-(iv) hereof, the "Plan Requirements").

(v) Tenant shall provide the Architect with all input and information necessary to enable the Architect to revise Tenant's Initial Plans if and to the extent that Landlord objects or comments thereto and deliver to Landlord in the manner set forth in this Section 23 hereof, the Tenant's Initial Plans, as so revised, which revised plans shall (i) address all of Landlord's objections and comments to Landlord's reasonable satisfaction and (ii) satisfy all of the Plan Requirements (the Tenant's Initial Plans either (x) revised to Landlord's reasonable satisfaction as aforesaid, or (y) if Landlord shall confirm in writing that Landlord does not have any objections thereto, as applicable, shall constitute the "Final Plans"). If Landlord objects or comments on Tenant's Initial Plans as contemplated herein, Tenant shall cause Architect to deliver the Final Plans to Landlord on or prior to the date which is five (5) Business Days following the date that Landlord gives Tenant Landlord's objections and/or comments, if any, to Tenant's Initial Plans (such date, the "Revision Deadline").

(vi) If Tenant requests any modifications to Landlord's Work and/or the Final Space Plan and/or the Work Letter (or Tenant's Initial Plans or the Final Plans), which request shall be made in writing to Landlord specifying in detail the scope of such modification, any such deviation or modification shall be subject to Landlord's approval in accordance with the provisions with Article 8 hereof. Any deviation in Landlord's Work from the Final Space Plan and/or the Work Letter (or Tenant's Initial Plans or the Final Plans) that is requested by Tenant (including, without limitation, any Long Lead Work) shall be referred to as a "Change Order". Promptly following Landlord's receipt of a Change Order request from Tenant, Landlord shall notify Tenant of (i) the estimated additional costs (if any) that Landlord would incur in connection with the performance of such Change Order and (ii) the estimated additional time, if any, to be incurred by Landlord in connection with the performance of the Landlord's Work due to such Change Order. Within three (3) Business Days following Landlord's notice pursuant to the preceding sentence, Tenant shall notify (a "Change Order Notice") Landlord if Tenant wants Landlord to proceed with the Change Order, in which case (x) Tenant shall be solely responsible for the all additional cost thereof and shall pay same to Landlord as Additional Rent hereunder within thirty (30) days after Landlord's written demand therefor (even if such additional costs exceed the estimate provided by Landlord) and (y) any actual delay in the Substantial Completion of Landlord's Work to the extent due to such Change Order shall be deemed a Tenant Work Delay hereunder (even if such delay exceeds the estimate provided by Landlord). If Tenant fails to send a Change Order Notice within the time period set forth above or if Tenant elects that Landlord not perform the Change Order or if a Change Order request has not been approved by Landlord, Landlord shall have no obligation to perform the Change Order as part of the Landlord's Work. Further, if and to the extent Landlord is actually delayed in performing Landlord's Work due to a Change Order (e.g., if Landlord stops work already in progress due to a Change Order request), the aggregate time elapsed after the submission of a Change Order request by Tenant through and including the later to occur of (a) the date Tenant sends a Change Order Notice or the date Tenant notifies Landlord that Tenant is electing not to proceed with such Change Order or (b) the expiration of the date on which Tenant may send a Change Order Notice shall constitute a Tenant Work Delay hereunder.

C. 20th Floor Premises.

(i) Tenant expressly acknowledges that it has inspected the 20th Floor Premises and is fully familiar with the physical condition thereof. Subject to Article 10 hereof, (a) Tenant shall accept possession of the 20th Floor Premises in the condition that exists on the 20th Floor Commencement Date "as is," (subject to the Substantial Completion of Landlord's Work therein) and (b) Landlord shall have no obligation to perform any work or make any installations in order to prepare the Building or the 20th Floor Premises for Tenant's occupancy other than Landlord's 20th Floor Premises Work. On or prior to the 20th Floor Commencement Date with respect to the 20th Floor Premises only, Landlord shall provide Tenant with a "clean" Form ACP-5 (or the then current equivalent thereof), duly executed by an appropriate party and covering the 20th Floor Premises (as modified by Landlord's Work in the 20th Floor Premises).

(ii) Landlord shall, at Landlord's expense, perform Landlord's Base Building Work (as described on Exhibit "B-1" attached hereto and made a part hereof), in the 20th Floor Premises using Building Standard Installations.

(iii) Landlord shall, at Landlord's expense (but subject to the 20th Floor Maximum Contribution Amount and subject to the provisions of Section 23.K and as otherwise expressly provided in this Lease), perform the work to construct the 20th Floor Premises to prepare the same for Tenant's initial

occupancy thereof, in accordance with the Final 20th Floor Plans (as hereinafter defined) to be prepared by a reputable architect selected by Tenant and reasonably acceptable to Landlord ("Architect") (it being agreed that TPG Architecture, LLP shall be deemed to be acceptable to Landlord), which Final Plans shall be based upon drawings (the "20th Floor Final Space Plan") and a work letter identifying materials and finishes and fixtures (the "20th Floor Work Letter") to be provided by Tenant to Landlord on or before June 30, 2023, time being of the essence (the aforesaid work (the "Landlord's 20th Floor Turn-Key Work"), together with Landlord's Base Building Work on the 20th Floor Premises, "Landlord's 20th Floor Premises Work"). Landlord shall perform Landlord's 20th Floor Premises Work using those materials and finishes more particularly set forth in the 20th Floor Work Letter; provided, however, if such materials and/or finishes are not then readily available or Landlord reasonably determines that using such materials and/or finishes would delay the Substantial Completion of Landlord's 20th Floor Work, then Landlord shall have the right to substitute such materials and/or finishes with Building Standard Installations. Notwithstanding the foregoing to the contrary, if Landlord shall determine that a Building Standard Installation needs to be substituted for any materials and/or finishes shown in the 20th Floor Work Letter and such substitution would result in any material difference in the aesthetic of the 20th Floor Premises upon Substantial Completion of Landlord's 20th Floor Work, then Landlord shall first notify Tenant thereof (which notice may be by email to Brittany.caudle@progyny.com and mfiechter@TPGArchitecture.com) and Tenant shall have the right, by notice given within two (2) Business Days, time being of the essence, to require that Landlord utilize the materials and/or finishes described in the 20th Floor Work Letter (instead of Landlord's suggested Building Standard Installation); provided, if Tenant makes such election not to use the Building Standard Installation suggested by Landlord, any delay in the Substantial Completion of Landlord's 20th Floor Work due to utilizing the materials and finishes in the 20th Floor Work Letter (or any other materials and/or finishes selected by Tenant that are not the Building Standard Installations) shall be deemed a Tenant Work Delay. Tenant hereby agrees that any supplemental air-conditioning system included as part of Landlord's 20th Floor Premises Work shall be installed by Landlord as part of Landlord's 20th Premises Work, but the cost thereof shall be payable by Tenant to Landlord within thirty (30) days after Landlord's written demand therefor. Tenant hereby acknowledges and agrees that subject to any Change Orders (as hereinafter defined), the 20th Floor Final Space Plan and the 20th Floor Work Letter shall be final once submitted to Landlord and Tenant shall not have the right to make any changes thereto from and after the date hereof. Notwithstanding the foregoing to the contrary, (I) Landlord shall not be obligated to install any (x) furniture or built-ins, (y) security systems, and/or (z) artwork, in any case, even if same are shown on the 20th Floor Final Space Plan or the 20th Floor Final Plans, and (II) Tenant shall pay for any and all items of Tenant Extra Work subject to and in accordance with the provisions of this Section 23 below. Tenant hereby acknowledges and agrees that notwithstanding the foregoing to the contrary, any telecommunication wiring, cabling, or equipment installed by Landlord as part of Landlord's 20th Floor Premises Work (even if shown on the 20th Floor Final Space Plan or the or the 20th Floor Final Plans) shall be installed at Tenant's sole cost and expense (and Tenant shall reimburse for all actual and reasonable out-of-pocket costs associated therewith within thirty (30) days after receipt of Landlord's invoice therefor). During the performance of Landlord's 20th Floor Work, at no additional cost to Landlord, Landlord shall reasonably cooperate with Tenant to cause the general contractor performing Landlord's 20th Floor Work to coordinate the installation of all cabling and wiring in the 20th Floor Premises with Tenant's designated vendor with respect thereto (provided that the same shall not result in any delay in the Substantial Completion of Landlord's 20th Floor Work).

(iv) Notwithstanding anything contained herein, if the hard and soft costs to perform Landlord's 20th Floor Turn-Key Work shall exceed the 20th Floor Maximum Contribution Amount, Tenant shall pay to Landlord the amount of such excess within thirty (30) days after Landlord's demand therefor (it being agreed that Landlord shall be permitted to submit such request for payment based on the estimated cost of Landlord's 20th Floor Turn-Key Work and if the actual cost shall exceed the estimated amount, Landlord shall promptly credit such excess against the next installment(s) of Fixed Annual Rent payable under this Lease and if there shall have been an underpayment, Tenant shall pay the amount of the underpayment within thirty (30) days after Landlord's demand therefor). For purposes hereof, the "20th Floor Maximum Contribution Amount" shall be an amount equal to (a) the rentable square foot area of the 20th Floor Premises (i.e., 21,262), multiplied by (b) the actual out-of-pocket cost, on a rentable square foot basis, incurred by Landlord to perform Landlord 9th Floor Turn Key Work (expressly excluding any Landlord's Base Building Work in the 9th Floor Premises), which amount shall be increased or decreased by a percentage equal to the percentage increase or decrease in the CPI (as hereinafter defined) from the 9th Floor Premises Commencement Date until the date Landlord shall commence Landlord's 20th Floor Premises Work. For example, if the Landlord's 9th Floor Turn Key Work cost $1,204,950.00 (i.e., $50 per rentable square foot of the 9th Floor Premises), then the 20th Floor Maximum Contribution Amount shall be $1,063,100.00 (i.e., 21,262 multiplied by $50), as such amount shall be increased or decreased by the percentage increase or decrease in the CPI between the 9th Floor Premises Commencement Date and the date Landlord shall commence Landlord's 20th Floor Premises Work. In addition to the foregoing, any

delays in performing Landlord's 20th Floor Turn Key Work in excess of the time that it would take to perform Building Standard Installations shall be deemed a Tenant's Work Delay for purposes hereof.

(v) Tenant shall provide the Architect with all input and information necessary to enable the Architect to prepare and deliver to Landlord on or prior to August 11, 2023 (the "20th Floor Plan Deadline"), in the manner set forth in this Section 23, the plans ("Tenant's Initial 20th Floor Plans"), which shall be (i) based upon the 20th Floor Final Space Plan, (ii) one hundred percent (100%) complete and ready to bid and build (including, without limitation, layout, architectural, mechanical, structural, engineering and plumbing drawings, to the extent applicable), (iii) stamped and approved by Architect, and (iv) in format containing sufficient detail (x) for Landlord and Landlord's consultants to reasonably assess the proposed work to prepare the 20th Floor Premises for Tenant's initial occupancy, and (y) to permit Landlord to make all necessary filings with Governmental Authorities to obtain the required permits, approvals and certificates to allow Landlord to commence Landlord's 20th Floor Premises Work (the requirements set forth in clauses (i)-(iv) hereof, the "20th Floor Plan Requirements").

(vi) Tenant shall provide the Architect with all input and information necessary to enable the Architect to revise Tenant's Initial 20th Floor Plans if and to the extent that Landlord objects or comments thereto and deliver to Landlord in the manner set forth in this Section 23, the Tenant's Initial 20th Floor Plans, as so revised, which revised plans shall (i) address all of Landlord's objections and comments to Landlord's reasonable satisfaction and (ii) satisfy all of the 20th Floor Plan Requirements (the Tenant's Initial 20th Floor Plans either (x) revised to Landlord's reasonable satisfaction as aforesaid, or (y) if Landlord shall confirm in writing that Landlord does not have any objections thereto, as applicable, shall constitute the "20th Floor Final Plans"). If Landlord objects or comments on Tenant's Initial 20th Floor Plans as contemplated herein, Tenant shall cause Architect to deliver the 20th Floor Final Plans to Landlord on or prior to the date which is five (5) Business Days following the date that Landlord gives Tenant Landlord's objections and/or comments, if any, to Tenant's Initial 20th Floor Plans (such date, the "20th Floor Revision Deadline").

(vii) Tenant shall have the right to request modifications to Landlord's Work with respect to the 20th Floor Premises and/or the 20th Floor Final Space Plan and/or the 20th Floor Work Letter (or Tenant's Initial 20th Floor Plans or the 20th Floor Final Plans), which request shall be made in writing in accordance with Section 23.B.(vi) and the terms of such Section 23.B(vi) shall be applicable thereto.

(viii) The term "CPI" shall mean the Consumer Price Index for All Urban Consumers ("CPI-AUC"), New York, New York-Northeastern New Jersey, All Items (1982-1984=100), issued and published by the Bureau of Labor Statistics of the United States Department of Labor. In the event that CPI-AUC ceases to use a 1982-84 base rate of 100 as the basis of calculation, then the CPI-AUC shall be adjusted to the figure that would have been arrived at had the manner of computing the CPI-AUC in effect at the date of this Lease not been altered. If CPI-AUC is not available or may not lawfully be used for the purposes herein stated, the term "Consumer Price Index" shall mean (i) a successor or substitute index to CPI-AUC, appropriately adjusted; or (ii) if such a successor or substitute index is not available or may not lawfully be used for the purposes herein stated, a reliable governmental or other non-partisan publication, selected by Tenant and approved by Landlord (which approval shall not be unreasonably withheld or delayed), evaluating the information theretofore used in determining CPI-AUC.

D. For purposes of this Lease, "Landlord's Work" shall mean Landlord's 9th Floor Premises Work or Landlord's 20th Floor Premises Work, as applicable.

E. Landlord shall perform Landlord's Work in a good and workmanlike manner and in accordance with all applicable Requirements.

F. Landlord shall have the right to delegate Landlord's obligations to perform all or any portion of Landlord's Work to an Affiliate of Landlord (it being understood and agreed, however, that Landlord's delegating such obligations to an Affiliate of Landlord shall not diminish Landlord's liability for the performance of Landlord's Work in accordance with the terms of this Article 23). Landlord shall also have the right to assign to such Affiliate of Landlord the rights of Landlord hereunder to receive from Tenant the payments for the performance of the portions of Landlord's Work pursuant to Section 23.K hereof and as otherwise provided in this Lease (it being understood and agreed that if (i) Landlord so assigns such rights to such Affiliate of Landlord, and (ii) Landlord gives Tenant notice thereof, then Tenant shall pay directly to such Affiliate any such amounts otherwise due and payable to Landlord hereunder). Landlord shall not be required to maintain or repair during the Term any items of Landlord's Work except as otherwise expressly provided in this Lease and, to the extent that such maintenance and repair obligations are Tenant's responsibility, Landlord shall assign to Tenant any warranties actually received by Landlord with respect to such items of Landlord's Work (if any).

G. The following terms shall have the following meanings as used herein:

(i) "Long Lead Work" shall mean any item (including, without limitation, any item of Tenant Extra Work), which is not a stock item and/or must be specially manufactured, fabricated or installed or is of such an unusual, delicate or fragile nature that there is a substantial risk that (x) there will be a delay in its manufacture, fabrication, delivery or installation, or (y) after delivery of such item will need to be reshipped or redelivered or repaired so that, in Landlord's reasonable judgment, the item in question cannot be completed when the standard items are completed even though the items of Long Lead Work in question are (1) ordered together with the other items required and (2) installed or performed (after the manufacture or fabrication thereof) in order and sequence that such Long Lead Work and other items are normally installed or performed in accordance with good construction practice. In addition, Long Lead Work shall include any standard item, which in accordance with good construction practice should be completed after the completion of any item of work in the nature of the items described in the immediately preceding sentence. Notwithstanding the foregoing, (a) with respect to Landlord's 9th Floor Turn-Key Work, nothing contained in the Work Letter shall be deemed to be Long Lead Work unless the same has been identified as such in the Work Letter, and (b) with respect to Landlord's 20th Floor Turn-Key Work, nothing contained in the 20th Floor Work Letter shall be deemed to be Long Lead Work except for any items that are not Building Standard Installations (i.e., any items included in the 20th Floor Work Letter that are Building Standard Installations may not be deemed to be Long Lead Work).

(ii) "Tenant Work Delays" shall mean the acts or omissions of Tenant, its agents, employees, contractors (of any tier) or any other Person claiming by, though, or under Tenant (including, without limitation, (v) any changes or Change Orders to plans or finishes, including, without limitation, requests for items of Tenant Extra Work, (w) the performance of any other work by or on behalf of Tenant or any Person claiming by, through or under Tenant, (x) the failure to deliver the information required for the Architect to deliver Tenant's Initial Plans or Tenant's Initial 20th Floor Plans to Landlord on or prior to the applicable deadline therefor, and/or the failure to deliver the information required for the Architect to deliver the Final Plans or the 20th Floor Final Plans to Landlord on or prior to the applicable deadline therefor, in either case, in compliance with the applicable requirements therefor and in accordance with the provisions of this Article 23, (y) delays or failures to promptly notify or promptly respond to requests of Landlord and/or (z) the failure to make any of the payments required by this Article 23 within the time periods specified therein) that delay Landlord in the performance of Landlord's Work provided that Landlord shall notify Tenant of such delay promptly after Landlord determines that such a delay exists. Notwithstanding the foregoing, no Tenant Work Delay shall have occurred with respect to the 20th Floor Premises unless such delay causes a delay in the Substantial Completion of Landlord's Work beyond January 1, 2024.

A. Tenant, during the Term, shall not have the right to remove Landlord's Work or any portion thereof (or Alterations that replace Landlord's Work (or such portion thereof) unless Tenant replaces Landlord's Work (or such portion thereof), or such Alterations, as the case may be, with Alterations that have a fair value that is equal to or greater than such portion of Landlord's Work (it being understood and agreed that such Alterations that Tenant performs to replace Landlord's Work (or such portion thereof), or such other Alterations, as the case may be, shall constitute the property of Landlord as contemplated by this Section 23.H). The foregoing shall not apply to items of Tenant Extra Work; it being understood and agreed that nothing contained herein shall be deemed to modify or impair Tenant's obligations to restore portions of Landlord's Work that constitute Tenant Extra Work.

B. Notwithstanding the provisions of Section 1.A. of this Lease to the contrary, in the event that Substantial Completion of Landlord's Work in any portion of the Premises shall be delayed by reason of any Tenant Work Delays and/or items of Long Lead Work, then only for purposes of determining the date on which the Applicable Rent Commencement Date shall occur with respect to such portion of the Premises, the Applicable Commencement Date, and the Substantial Completion of Landlord's Work with respect to such portion of the Premises shall each be deemed to have occurred on the date the same would have otherwise occurred but for such Tenant Work Delays and/or such items of Long Lead Work, notwithstanding that Landlord has not yet delivered possession of the Premises to Tenant (but not before January 1, 2024 with respect to the 20th Floor Premises). In addition, Tenant shall pay to Landlord any increases in the cost of Landlord's Work caused by or resulting from a Tenant Work Delay.

C. (i) If Landlord so requests, Tenant agrees to inspect the 9th Floor Premises and/or the 20th Floor Premises on or about the Applicable Commencement Date with respect thereto and to execute, at the time of such inspection, a list identifying items of Landlord's Work that Landlord and Tenant, in good faith, agree are not yet completed (such list, the "Punch List"). Landlord shall perform any items on the Punch List within thirty (30) days following the date on which the Punch List is initially initialed by Tenant to the extent such item is capable of completion within such period and otherwise promptly thereafter provided that Landlord shall use diligent efforts to complete same. Tenant agrees that, at the request of Landlord from time to time thereafter, Tenant shall initial the Punch List or a revised version thereof to reflect completion or partial completion of items on the prior version of the Punch List.

(ii) If there are any items of Landlord's Work with respect to any portion of the Premises that were not performed by Landlord in accordance with its obligations under this Lease and provided the same were not reasonably discoverable on the Applicable Commencement Date, and provided Tenant identifies in a written notice to Landlord such items of Landlord's Work (such items, the "Latent Defects") (which such notice shall set forth the Latent Defect and shall include in reasonable detail the specific nature of such Latent Defect) on or before the date that is one hundred eighty (180) days after the Applicable Commencement Date, time being of the essence, then Landlord shall diligently remedy the Latent Defect in accordance with this Lease. Tenant shall provide Landlord and its agents and contractors reasonable access to the applicable portions of the Premises to complete any work.

K.

(i) For purposes hereof, the term "Tenant Extra Work" shall mean collectively, (i) any above Building Standard Installations (to the extent the hard and soft costs incurred in connection with performing the applicable portion of Landlord's Work in connection therewith exceed the hard and soft costs which Landlord would have incurred in performing such portion of Landlord's Work using Building Standard Installations), and/or (ii) any portion of Landlord's Work that is denoted on the Final Plans or in the Work Letter (including, without limitation, the "Note" and "Legends" sections of the Final Plans) as "Alternate Pricing", "Alt. Pricing", "Tenant Extra Work" or similar language denoting any alternatives from the Final Space Plan and/or (iii) additional installations that exceed the scope of Landlord's Work. The cost for performing any Tenant Extra Work shall be determined in accordance with Landlord's standard bidding procedure. Notwithstanding the foregoing to the contrary, Landlord shall have the right to let the construction contract to the lowest responsible qualified bidder without taking into account the cost of any items of Tenant Extra Work (with the understanding that Landlord shall have the right to exercise Landlord's reasonable business judgment in selecting the form of contractual arrangement for the construction contract).

(ii) Landlord shall notify Tenant pursuant to Section 23.L hereof after Landlord's bidding procedure is completed of the estimated price for each item of Tenant Extra Work. On or prior to three (3) Business Days after Landlord gives Tenant notice of such estimated price (the "Tenant Extra Estimate"), Tenant shall pay Landlord an amount equal to fifty percent (50%) of the Tenant Extra Estimate for such Tenant Extra Work (such payment received by Landlord, the "Initial Tenant Extra Work Estimate Payment"; it being understood and agreed that (x) if Tenant fails to pay such Initial Tenant Extra Work Estimate Payment within the aforesaid three (3) Business Day period, or (y) if Tenant notifies Landlord not to perform such item of Tenant Extra Work, then, in either event, (i) Landlord shall have the right (but not the obligation) to substitute a Building Standard Installation for such item of Tenant Extra Work if the same is capable of being so substituted and if Landlord is unable or unwilling to substitute a Building Standard Installation for such item of Tenant Extra Work, then such item shall be excluded from Landlord's Work and Landlord shall have no obligation to perform the same and (ii) Tenant shall reimburse Landlord for any and all soft costs that may have been actually incurred by Landlord in connection with such item(s) of Tenant Extra Work within ten (10) days following receipt of Landlord's invoice therefor (including, without limitation, any softs costs incurred for items of Tenant Extra Work which Tenant elected for Landlord not to perform or with respect to which Tenant failed to respond as contemplated herein, as the case may be). The remaining portion of the Tenant Extra Estimate (i.e., fifty percent (50%) of the Tenant Extra Estimate) (the "Second Tenant Extra Work Estimate Payment") shall be payable by Tenant ten (10) days prior to the date Landlord to obligated to make such payment to its contractor or to any other party (it being agreed that Landlord shall provide Tenant with at least thirty (30) days' notice prior to such required payment date). In the event that any item of Tenant Extra Work creates a field condition that requires a change to Landlord's Work resulting in an increase of the cost of Landlord's Work, Landlord shall have the right before proceeding with such change to require Tenant (a) to agree in writing to pay such increase in cost within three (3) Business Days from the date of Landlord's request (which request may be verbal) for Tenant's agreement and (b) to pay such increase within three (3) Business Days of Landlord's invoice therefor, which invoice may be based upon a reasonable estimate thereof. If Tenant shall fail or refuse to so agree to and/or pay for such increase then Landlord shall have the right (but not the obligation) to either refuse to perform such Tenant Extra Work, and continue the performance of Landlord's Work without making the changes thereto contemplated by such Tenant Extra Work or to revise the scope of Landlord's Work so as not to require a change resulting from a field condition (it being understood that Tenant shall reimburse Landlord for any and all costs (including soft costs) that may have been actually incurred by Landlord in connection with or as a result of such item(s) of Tenant Extra Work within thirty (30) days following receipt of Landlord's invoice therefor). Landlord shall give to Tenant, within sixty (60) days after the date that Landlord Substantially Completes Landlord's Work, a notice that sets forth the actual hard and soft costs incurred by or on behalf of Landlord in performing all items of Tenant Extra Work, if any (the "Actual Tenant Extra Work Cost") (such notice being referred to herein as the "Final Cost Notice"). Tenant shall pay to Landlord, within thirty (30) days after the date that Landlord gives the Final Cost Notice to Tenant, an amount equal to the excess (if any) of (I) the Actual Tenant Extra Work Cost, as reflected in the Final Cost Notice, over (II) the Initial Tenant Extra Work Estimate Payment (if any) and the Second Tenant Extra Work Estimate Payment (if any). Landlord shall pay to Tenant, within thirty (30) days after the date that Landlord gives the Final Cost Notice to Tenant, an amount equal to the excess (if any) (I) the Initial Tenant

Extra Work Estimate Payment and the Second Tenant Extra Work Estimate Payment, over (II) the Actual Tenant Extra Work Cost, as reflected in the Final Cost Notice.

L. Notwithstanding the provisions of Article 28 hereof to the contrary, any notices required to be given pursuant to this Article 23 shall be deemed given if sent to Tenant via electronic mail to the attention of Brittany.caudle@progyny.com and mfiechter@TPGArchitecture.com.

M. Notwithstanding anything to the contrary contained herein, if, and to the extent permitted by applicable Requirements, Tenant shall have the right to enter the 9th Floor Premises and the 20th Floor Premises prior to the Applicable Commencement Date at times to be coordinated and approved in advance with Landlord and the property management team for the Building in order to (x) install its computer equipment, audio/visual equipment and voice and data telecommunications equipment, including, any related cabling and wiring, and (y) to take measurements for space planning and furniture purposes and for any other reasonable purpose, provided that during said period (the "Early Access Period") (i) subject to the penultimate sentence of this Section 23.M, Tenant shall comply with all terms and conditions of this Lease, including without limitation, the provisions of Article 21 hereof; it being understood and agreed that subject to the penultimate sentence of this Section 23.M, all provisions of this Lease shall govern and apply during the Early Access Period notwithstanding that the Applicable Commencement Date has not yet occurred; (ii) Tenant shall coordinate the timing and scheduling of the aforesaid work so as not to (x) interfere with the operation of the Building or Landlord's performance of Landlord's Work, or (y) delay Landlord's completion of Landlord's Work (it being understood and agreed, however, that to the extent Landlord's Work is delayed by or in connection with Tenant's early access to the Premises as aforesaid, the same shall constitute a Tenant Work Delay), and (iii) Tenant shall not begin operation of its business in the applicable portion of the Premises or the performance of any Alterations (except the installation of certain equipment, as expressly contemplated by this Section 23.M) prior to the Applicable Commencement Date. Notwithstanding the provisions of clause (i) hereof to the contrary, during the Early Access Period, Tenant shall not be obligated to pay Fixed Annual Rent, or Escalation Rent with respect to the applicable portion of the Premises. Notwithstanding anything to the contrary contained herein, any equipment or other installations whatsoever installed by or on behalf of Tenant during the Early Access Period as permitted herein shall be installed at Tenant's sole risk, cost and expense; it being expressly understood that Landlord shall not have any liability whatsoever to Tenant in connection with such equipment or installations (including, without limitation, liability for any damage thereto or theft thereof).

N. In addition to the Landlord's obligations with respect to Landlord's Work, within one hundred eighty (180) days following the date of this Lease (and not as a condition to the occurrence of any Applicable Commencement Date), Landlord shall install turnstiles (in an amount determined by Landlord) in the main lobby of the Building in a location determined by Landlord and in a Building standard manner (as determined by Landlord).

O. Promptly following the date of this Lease, Landlord shall install Landlord's Building-standard bipolar ionization equipment within the HVAC systems servicing the 2nd Floor Premises.

P. Landlord shall provide Tenant with shaft space in the Building sufficient to accommodate one (1) dedicated Building standard four inch (4") conduit, which conduit shall be installed by Landlord at Tenant's sole cost and expense (which amount shall be payable by Tenant to Landlord as Additional Rent within thirty (30) days after Landlord's demand therefor) in a location reasonably determined by Landlord from the 2nd floor of the Building to the 20th floor of the Building for the purpose of Tenant running data and telecommunications wiring between the floors of the Premises (such conduit installation, "Landlord's Conduit Work"). Notwithstanding the foregoing, prior to commencing Landlord's Conduit Work, Landlord shall provide Tenant with an estimate of the cost thereof and Tenant shall have the right, within three (3) Business Days after receipt of such notice, time being of the essence, to elect (by written notice to Landlord) not to have Landlord perform Landlord's Conduit Work (it being agreed that if Tenant fails to timely advise Landlord not to perform Landlord's Conduit Work, then Landlord shall perform such work and Tenant shall reimburse Landlord therefor in accordance with the terms hereof).

25. CLEANING

A. Subject to the terms of this Lease, Landlord shall cause the Premises to be cleaned on Business Days in accordance with cleaning specifications (set forth on Exhibit "E" annexed hereto and made part hereof), provided they are kept in order by Tenant. Landlord, its cleaning contractor and their employees shall have after-hours access to the Premises and the use of Tenant's light, power and water in the Premises as may be reasonably required for the purpose of cleaning the Premises. Tenant shall pay to Landlord, as Additional Rent, the reasonable costs incurred by Landlord in removing from the Building any of Tenant's refuse and rubbish to the extent exceeding the amount of refuse and rubbish usually generated by a tenant that uses the Premises for ordinary office purposes.

B. Tenant acknowledges that it has been advised that the cleaning contractor for the Building may be a subdivision or affiliate of Landlord. Tenant agrees to employ said contractor, or such other contractor as Landlord may from time to time designate, for any additional cleaning services such as waxing, polishing and other

maintenance cleaning, rubbish removal and similar work in or to the Premises and/or Tenant's furniture, fixtures and equipment, provided that the prices charged by said contractor are reasonably competitive with the prices charged by other contractors of comparable skill and experience operating within the vicinity of the Building for comparable work. Tenant agrees that, other than Tenant's own employees (but subject to any applicable union requirements), under no circumstance shall it employ any other cleaning and maintenance contractor, nor any individual, firm or organization for such purposes other than Landlord's contractor without Landlord's prior written consent, which may be withheld for any reason.

C. Tenant, at Tenant's expense, shall exterminate the Premises against infestation by insects and vermin, regularly, and whenever there is evidence of infestation, in both cases, in a manner reasonably acceptable to Landlord. Tenant shall engage Landlord's designated contractor to perform such extermination services, provided that the prices charged by said contractor are reasonably competitive with the prices charged by other contractors of comparable skill and experience operating within the vicinity of the Building for comparable work.

D. In each instance where Tenant is obligated to engage Landlord's designated contractor for a particular service, as contemplated in this Article 24, if Landlord and Tenant cannot agree on whether the prices being charged by the applicable contractor designated by Landlord are reasonably competitive to those charged by such other contractors, Landlord or Tenant may submit such dispute to a Streamlined Arbitration Proceeding (as hereinafter defined) pursuant to Article 41 hereof. While such dispute is pending resolution and as a condition to its initiation and the maintenance thereof, Tenant shall pay the charges billed by Landlord or its designated contractor, as the case may be; it being understood and agreed, that following resolution of any such dispute, such charges shall be adjusted as determined in such Streamlined Arbitration Proceeding.

26. **JURY WAIVER**, **DAMAGES**

THE PARTIES HERETO HEREBY WAIVE TO THE FULLEST EXTENT PERMITTED BY REQUIREMENTS, TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM BROUGHT BY EITHER OF SUCH PARTIES AGAINST THE OTHER WITH RESPECT TO ANY MATTER WHATSOEVER ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS LEASE, THE RELATIONSHIP OF LANDLORD AND TENANT, TENANT'S USE OR OCCUPANCY OF THE PREMISES, OR FOR THE ENFORCEMENT OF ANY REMEDY, WHETHER PURSUANT TO STATUTE, IN CONTRACT OR TORT, AND IRRESPECTIVE OF THE NATURE OR BASIS OF THE CLAIM INCLUDING BREACH OF AN OBLIGATION TO MAKE ANY PAYMENT, FRAUD, DECEIT, MISREPRESENTATION OF FACT, FAILURE TO PERFORM ANY ACT, NEGLIGENCE, MISCONDUCT OF ANY NATURE OR VIOLATION OF STATUTE, RULE, REGULATION OR ORDINANCE. IF LANDLORD COMMENCES AGAINST TENANT ANY SUMMARY PROCEEDING OR OTHER ACTION TO RECOVER POSSESSION OF THE PREMISES OR TO RECOVER ANY RENT, TENANT SHALL NOT INTERPOSE ANY COUNTERCLAIM OF WHATEVER NATURE OR DESCRIPTION IN ANY SUCH PROCEEDING OR ACTION (EXCEPT TO THE EXTENT THAT APPLICABLE LAW PRECLUDES TENANT FROM ASSERTING SUCH COUNTERCLAIM IN ANOTHER PROCEEDING), AND SHALL NOT SEEK TO CONSOLIDATE SUCH PROCEEDING WITH ANY OTHER ACTION WHICH MAY HAVE BEEN OR WILL BE BROUGHT IN ANY OTHER COURT BY TENANT. TENANT HEREBY WAIVES ANY AND ALL CLAIMS AGAINST LANDLORD FOR LANDLORD'S UNREASONABLY WITHHOLDING, UNREASONABLY CONDITIONING OR UNREASONABLY DELAYING ANY CONSENT OR APPROVAL REQUESTED BY TENANT IN CASES WHERE LANDLORD EXPRESSLY AGREED HEREIN NOT TO UNREASONABLY WITHHOLD, UNREASONABLY CONDITION OR UNREASONABLY DELAY SUCH CONSENT OR APPROVAL; IT BEING UNDERSTOOD AND AGREED THAT TENANT'S SOLE REMEDY THEREFOR BEING AN ACTION OR PROCEEDING , INCLUDING IN A STREAMLINED ARBITRATION PROCEEDING, FOR SPECIFIC PERFORMANCE, INJUNCTION OR DECLARATORY JUDGMENT, EXCEPT THAT TENANT IS NOT WAIVING A CLAIM FOR DAMAGES IF LANDLORD HAS BEEN DETERMINED BY UN-APPEALABLE JUDGMENT OF A COURT OF COMPETENT JURISDICTION TO HAVE ACTED MALICIOUSLY OR IN BAD FAITH. NEITHER LANDLORD NOR TENANT SHALL HAVE ANY LIABILITY FOR ANY CONSEQUENTIAL, INDIRECT OR PUNITIVE DAMAGES THAT ARE SUFFERED BY LANDLORD OR TENANT OR ANY PERSON CLAIMING BY, THROUGH OR UNDER LANDLORD OR TENANT, AS THE CASE MAY BE, OTHER THAN AS SET FORTH IN SECTION 12 OF THIS LEASE.

27. **NO WAIVER**, **CONSTRUCTIVE EVICTION, SURVIVAL OF OBLIGATIONS, ETC**.

A. No act or omission of Landlord or its agents (including, without limitation, the exercise of the rights set forth in Section 22.B. hereof) shall constitute an actual or constructive eviction, in whole or in part, or entitle Tenant to any compensation or to any abatement or diminution of the Rental (except as otherwise set forth in this Lease), or relieve Tenant from any of Tenant's obligations under this Lease, or impose any liability upon Landlord or any of the Landlord Parties by reason of inconvenience or annoyance to Tenant, or injury to or interruption of Tenant's business, or otherwise. No act or omission of Landlord or its agents shall constitute

acceptance of a surrender of the Premises, except a writing signed by Landlord. The delivery of keys to Landlord or its agents shall not constitute a termination of this Lease or a surrender of the Premises. Acceptance by Landlord of less than the Rental herein provided shall at Landlord's option be deemed on account of earliest Rental remaining unpaid. No endorsement on any check, or letter accompanying rent, shall be deemed an accord and satisfaction, and such check may be cashed without prejudice to Landlord. No waiver of any provision of this Lease shall be effective, unless such waiver be in writing signed by Landlord. FOR THE AVOIDANCE OF DOUBT, NO COURSE OF CONDUCT (FOR HOWEVER LONG IT MAY HAVE CONTINUED) THAT MAY HAVE DEVIATED FROM THE EXPRESS TERMS OF THIS LEASE OR CHANGE IN THE COURSE OF CONDUCT (HOWEVER LONG THE PREVIOUS COURSE OF CONDUCT MAY HAVE CONTINUED) OF LANDLORD (SUCH AS THE ACCEPTANCE OF LATE PAYMENT OF RENT WITHOUT COMPELLING PAYMENT OF A LATE CHARGE OR INSTITUTING ANY LEGAL PROCEEDING) SHALL BE DEEMED TO BE A WAIVER OR AMENDMENT OF ANY TERM OF THIS LEASE AND SHALL BE CONSTRUED SOLELY AS A TEMPORARY AND NON-BINDING ACCOMMODATION OF TENANT AT TENANT'S REQUEST AND MADE WITHOUT PREJUDICE TO LANDLORD'S RIGHTS AND REMEDIES. No provision of this Lease shall be deemed to have been waived by Tenant, unless such waiver is in writing signed by the Tenant. Tenant's failure to seek redress for violation of, or to insist upon the strict performance of, any covenant or condition of this Lease on Landlord's part to be performed, shall not be deemed to be a waiver. The payment by Tenant of any item of Rental or performance of any obligation of Tenant hereunder with knowledge of any breach by Landlord of any covenant of this Lease shall not be deemed a waiver of such breach, nor shall it prejudice Tenant's right to pursue any remedy against Landlord in this Lease provided or otherwise available to Tenant in law or in equity. This Lease contains the entire agreement between the parties, and no modification thereof shall be binding unless in writing and signed by both parties.

B. Tenant shall comply with (and shall cause any Person claiming by, through or under Tenant to comply with) the rules and regulations set forth in the Rider attached hereto and made a part hereof, and any reasonable modifications thereof or additions thereto. Landlord shall not be liable to Tenant for the violation of such rules and regulations by any other tenant. Landlord shall not enforce any rule or regulation against Tenant in a discriminatory manner. To the extent there exists a conflict between the provisions in the body of this Lease and any rule or regulation, the provision in the body of this Lease shall govern.

C. Failure of Landlord to enforce any provision of this Lease, or any rule or regulation, shall not be construed as the waiver of any subsequent violation of a provision of this Lease, or any rule or regulation. This Lease shall not be affected by nor shall Landlord in any way be liable for the closing, or darkening of windows in the Premises to make repairs or to comply with Requirements, including as the result of construction on adjacent property to the Building (but shall make reasonable efforts to minimize the duration of any such closing or darkening). No easement for light and air is conveyed by this Lease.

D. Landlord's and Tenant's obligation to make any and all adjustments and payments required by this Lease, including, without limitation, the adjustments and payments referred to in Articles 2 and 3 hereof, shall survive any expiration, termination or cancellation of this Lease, except as otherwise expressly provided in this Lease by written agreement between Landlord and Tenant.

E. Subject to any limitation expressly set forth in this Lease, any delay or failure of Landlord in billing or tendering any invoice or statement provided for in any provision of this Lease for all or any portion of any amount payable pursuant to this Lease (whether denominated Additional Rent or otherwise), including, without limitation, any provision of Article 2 or Article 3 hereof (including, without limitation, any statement, invoice, bill, or notice of cost of living adjustment, operating expense escalation, tax escalation, or fuel and/or rate adjustment), shall not constitute a waiver of or in any way impair (i) Landlord's right to bill Tenant at any subsequent time (during or subsequent to the Term), retroactively for the entire amount so unbilled (which previously unbilled amount shall be payable within thirty (30) days after demand therefor), and to collect any such amount or (ii) Tenant's continuing obligation to pay the same hereunder, which obligation shall survive the Expiration Date.

28. **OCCUPANCY AND USE BY TENANT; SIGNAGE**

A. Tenant shall not obstruct or permit the obstruction of the light, halls, common areas, roof, stairway or entrances to the Building.

B.

(i) Except as otherwise expressly permitted herein, Tenant will not affix, erect or inscribe any signage, lettering, projections, awnings, signals or advertisements or notices of any kind to any part of the Premises, including the inside or outside of the windows or doors thereof, or the Building or any portion thereof; it being understood and agreed that Tenant shall not have the right to use any window in the Premises for any sign or other display that is designed principally for advertising or promotion.

(ii) Tenant will not paint the outside of the doors thereof or the inside or outside of the windows thereof. Any signage, lettering, projections, awnings, signals, advertisements, or notices which shall be exhibited, inscribed, painted or affixed by or on behalf of Tenant in violation of the provisions of this Section 27.B may be removed by Landlord and the cost of any such removal shall be paid by Tenant as Additional Rent.

(iii) Subject to Landlord's prior written approval thereof, which approval shall not be unreasonably withheld or delayed, Tenant shall have the right, at Tenant's own cost and expense, to install and maintain signage containing Tenant's name and/or logo on or affixed to the entry doors (the "Entry Door Signage") to the Premises (and in the elevator lobbies, but only for such period that the applicable portions of the Premises compromise full floors), provided that Tenant complies in all respects with all applicable provisions of this Lease (including, without limitation, Article 8 hereof), in connection therewith. Entry Door Signage and elevator lobby signage (and any removal thereof or changes thereto) shall constitute an Alteration for all purposes of this Lease. For the avoidance of any doubt, in the event that any portions of the Premises constitute less than a full floor at any time, or in the event that Tenant leases additional space in the Building which is comprised of less than the entire rentable area on such particular floor, following Tenant's request therefor, Landlord shall, at Tenant's cost and expense, install Building standard signage containing Tenant's name only, on or affixed to the entry doors to such portion of the Premises and the same shall constitute the Entry Door Signage; it being understood that (i) the foregoing shall not be construed as granting Tenant any rights to surrender any portion of the Premises or to lease additional space in the Building and (ii) with respect to Entry Door Signage on any multi-tenanted floor only, (x) upon installation thereof, such signage shall not be removed, changed or otherwise modified in any way without Landlord's prior written approval, which consent shall not be unreasonably withheld, conditioned or delayed provided such change or other modification is then consistent with the Building standard signage program then in effect for the Building, and the removal, change or modification of the Entry Door Signage or any lettering contained therein shall be performed solely by Landlord, at Tenant's sole cost and expense and (y) notwithstanding the provisions of clause (x) to the contrary, if the Building standard signage program for the Building or the floor on which the Premises is located changes during the Term from the Building standard signage program in effect and applicable thereto on the date such Entry Door Signage is initially installed, Landlord reserves the right, at Landlord's own cost and expense, to remove the existing Entry Door Signage and replace the same with the signage containing Tenant's name only which replacement signage shall conform to the then current Building standard signage program in effect for the Building or the floor on which the Premises is located. Landlord hereby approves, for purposes hereof and subject to the terms hereof, the use of Tenant's logo presently existing in the 2nd/3rd Floor Premises and approves the use of Tenant's logo for purposes of signage with respect to the remainder of the Premises.

C.

(i) If Tenant shall install a wireless intranet, Internet, communications network or "Wi-Fi" (or other iteration thereof) capability (any of the foregoing being hereinafter referred to as a "Network") within the Premises, such Network shall be for the use by and only by Tenant (and any other permitted users of the Premises) and its employees subject to the terms hereof. No antennas shall be installed on any roof or setback of the Building or anywhere else on the exterior of the Building in connection with the Network or otherwise.

(ii) Tenant shall not solicit, suffer, or permit other tenants or occupants of the Building to use the Network or any other communications service, including, without limitation, any wired or wireless Internet service that passes through, is transmitted through, or emanates from the Premises.

(iii) Tenant agrees that Tenant's communications equipment and the communications equipment of Tenant's service providers and contractors retained to service the Premises including, without limitation, any switches, or other equipment (collectively, "Tenant's Communications Equipment") shall be of a type and, if applicable, a frequency, that will not cause radio frequency, electromagnetic, or other interference to any other party or any equipment of any other party including, without limitation, Landlord, other tenants, or occupants of the Building or any other party, in violation of FCC specifications concerning radio frequency interference (hereinafter referred to as "RFI"). In the event that Tenant's Communications Equipment causes or is believed to cause any such prohibited RFI, upon receipt of notice from Landlord of such interference, Tenant will take all steps necessary to correct and eliminate the interference. If the prohibited RFI is not eliminated within twenty-four (24) hours (or a shorter period if Landlord believes a shorter period to be appropriate) then, upon request from Landlord, Tenant shall shut down Tenant's Communications Equipment pending resolution of the interference, with the exception of intermittent testing upon prior notice to and with the approval of Landlord. No Network, or Tenant's Communication Equipment may be installed in any lobby, corridor, building common area or any other area not within the exclusive control of Tenant.

(iv) Tenant acknowledges that Landlord has granted and/or may grant lease rights, licenses, and other rights to various other tenants and occupants of the Building and to telecommunications service providers. As of the date hereof, the following telecom providers currently provide communication services to the

tenants in the Building (it being acknowledged, however, that in no event shall Landlord be obligated to permit any particular telecommunication provider to provide service in the Building): RNY Connect, Time Warner Cable, Verizon and Verizon FiOS.

29. **NOTICES**

A. Except as otherwise expressly provided in this Lease, any bills, statements, consents, notices, demands, requests or other communications that a party desires or is required to give to the other party under this Lease shall (1) be in writing, (2) be deemed sufficiently given if (a) delivered by hand (against a signed receipt), (b) sent by registered or certified mail (return receipt requested), or (c) sent by a nationally-recognized overnight courier (with verification of delivery), and (3) be addressed in each case:

If to Tenant: Progyny Inc.
1359 Broadway
New York, New York 10018,
Attention: Jennifer Bealer, EVP and General Counsel
Email: jennifer.bealer@progyny.com

And

Progyny, Inc.
1359 Broadway
New York, New York 10018
Attention: Brittany Caudle
Email: brittany.caudle@progyny.com

If to Landlord: ESRT 1359 Broadway, L.L.C.
c/o ESRT Management, L.L.C.
1359 Broadway
New York, New York 10018
Attn: Property Manager

and

Empire State Realty Trust, Inc.
111 West 33rd Street
New York, New York 10120
Attn: Lease Administration Department

with copies of any default notice to Landlord only to:

Holland & Knight LLP
31 West 52nd Street
New York, New York 10019
Attn: Noah Shapiro, Esq.

and

Empire State Realty Trust, Inc.
111 West 33rd Street
New York, New York 10120
Attn: Legal- Leasing

with a copy of any Alterations Notice also to:

ESRT 1359 Broadway, L.L.C.
c/o ESRT Management, L.L.C.
1359 Broadway
New York, New York 10018
Attn: Project Manager

and

via electronic mail to Landlord with a request for a "Read Receipt", sent to LeaseAdministration@esrtreit.com; it being understood and agreed that the copy of the plans included with such electronic transmission of the Alterations Notice must be legible both electronically and when printed,

or to such other address or addresses as Landlord or Tenant may designate from time to time on at least ten (10) Business Days of advance notice given to the other in accordance with the provisions of this Article 28. Any such bill, statement, demand, notice, request or other communication shall be deemed to have been rendered or given (x) on the date that it is hand delivered, as aforesaid, or (y) three (3) days after being sent by registered or certified mail or (z) one (1) Business Day after being sent by nationally recognized overnight courier. Notwithstanding anything to the contrary contained herein, an Alterations Notice shall be deemed given on the later to occur of (i) the applicable date specified in the immediately preceding sentence and (y) the date on which Tenant receives a "Read Receipt" on Tenant's electronic transmission thereof. TENANT HEREBY EXPRESSLY WAIVES THE BENEFITS OF ANY LAW, STATUTE OR OTHER LEGAL AUTHORITY REQUIRING A PERIOD OF TIME (SUCH AS 5 DAYS) TO BE ADDED TO THE TIME REQUIRED HEREIN TO BE GIVEN FOR NOTICES.

B. Notwithstanding the foregoing, (i) all bills, statements, notices, demands, requests and other communications from Landlord to Tenant pursuant to Article 2 or Article 3 and any notices changing any of the addresses set forth herein, may be given, at Landlord's option, by regular first class United States mail or via electronic mail sent to the party to whom Landlord's representative was so instructed to send such bills, statements, notices, demands, requests and other communications and (ii) bills and statements issued by Landlord and/or Landlord's agents or representatives, may be sent in the manner specified herein without copies to any other party. Tenant acknowledges and agrees that if any notices of default or demands for the payment of Rental or performance of any other obligations hereunder that are sent to the address(es) set forth herein are returned as undeliverable, then such notices and demands may thereafter be sent or delivered to the Premises and, notwithstanding that Tenant may have another office or place of business (of which Landlord may have knowledge) or may have vacated the Premises, delivery of any such notice or demand or delivery of service of process to the Premises shall be sufficient for all purposes (including, without limitation, obtaining jurisdiction over and entry of judgement against Tenant) in any action or proceeding.

C. Landlord hereby authorizes and appoints as Landlord's agents, the then current property manager, the then current managing agent of the Building, if any, and any attorney retained by Landlord at any time (in each case identified to Tenant), jointly and severally, to act on Landlord's behalf to make demands on and give notices to Tenant hereunder, including without limitation, (i) demands for payment of Rental, performance of any obligation, or curing of any default, (ii) notices of Default or notices of termination of this Lease, and (iii) all other notices that may be required by Requirements or this Lease in connection with or as a predicate to any action or proceeding whether for rent, possession of the Premises or enforcement of any other right or remedy. Tenant acknowledges and agrees that (x) such managing agent and attorney, either together or individually, are authorized to give such notices and (y) Tenant shall not (and hereby waives the right to) contest such authorization on the grounds that any such notice was not given by Landlord or raise any defense to any action or proceeding predicated on any allegation of lack of such authorization. No notice given by such agent or attorney shall be required to state or evidence the authority for giving the same, and it shall be conclusively presumed that any notice from any such managing agent or attorney was properly authorized.

D. This Article 28 has been specifically negotiated between the parties hereto.

30. **WATER**

Tenant shall not use water other than for ordinary drinking, cleaning, and pantry and lavatory uses. If Tenant uses water for any purpose in addition to ordinary drinking, cleaning, or pantry or lavatory purposes, then Landlord may install a water meter at Tenant's expense and thereby measure Tenant's water consumption for all such additional purposes. Tenant shall pay Landlord for the cost of the meter and the cost of the installation thereof and through the duration of Tenant's occupancy Tenant shall keep said meter and equipment in good working order and repair at Tenant's own cost and expense. Tenant shall pay Landlord for water consumed as shown on said meter, as additional rent, calculated at the cost imposed on Landlord by the public utility. Tenant shall make such payment to Landlord not later than the thirtieth (30th) day after the date that Landlord gives Tenant an invoice therefor. Tenant shall pay the sewer rent, charge or any other tax, rent, levy or charge which now or hereafter is imposed in connection with any such metered consumption.

31. **SPRINKLER SYSTEM**

On each Applicable Commencement Date with respect to the 9th Floor Premises and the 20th Floor Premises, Landlord shall deliver such portion of the Premises with a sprinkler system in good working order and in

compliance with Requirements. If such sprinkler system (or any other sprinkler system in any other portions of the Premises) is damaged by any act or omission of Tenant or its agents, employees, licensees or visitors, Tenant shall restore the system to good working condition at its own expense. Supplementing Article 15 and not in lieu thereof, if the New York Board of Fire Underwriters, the New York Fire Insurance Exchange, the Insurance Services Office, any successor to any of them, any other organization hereafter performing any function of any of them or any Governmental Authority requires the installation or any alteration or other modification to a sprinkler system (including any alteration or modification necessary to obtain the full allowance for a sprinkler system in the fire insurance rate of Landlord) by reason of Tenant's occupancy or use of the Premises (other than for general office use) or any Alterations therein, or for any other reason, Tenant shall make such installation or alteration or other modification promptly and in accordance with the provisions of Article 8 hereof, and at its own expense. Landlord may elect to perform, at Tenant's sole cost and expense, any work necessary to comply with this Article 30 and Tenant shall reimburse Landlord for the actual and reasonable out-of-pocket costs of performing the same within thirty (30) days following receipt of Landlord's invoice therefor which invoice shall include reasonable supporting documentation for the charges set forth therein.

32. **HEAT AND AIR-CONDITIONING**.

A. Landlord shall furnish heat to the Premises during Business Hours (as hereinafter defined) during the cold season in each year.

B. During the Term, Tenant may use any air conditioning equipment and appurtenances located in and/or servicing the Premises (hereinafter referred to collectively as the "A/C Equipment"), for normal office usage during the cooling season for each year (it being agreed that all electricity utilized to operate such A/C Equipment shall be payable by Tenant). Subject to Article 10 hereof, Landlord shall, at Tenant's cost and expense, maintain and repair the A/C Equipment and Tenant shall reimburse Landlord, as Additional Rent, for all of Landlord's out-of-pocket costs incurred in connection therewith within thirty (30) days following receipt of Landlord's invoice therefor; it being understood that the costs incurred by Landlord to maintain and repair the A/C Equipment shall be reasonably competitive in the market for comparable work**.** Notwithstanding the foregoing to the contrary, any required replacement of such A/C Equipment shall be performed by Landlord at Landlord's sole cost and expense (if Landlord determines, in its reasonable judgment, that such A/C Equipment has to be replaced in order to properly function and can no longer be repaired). Tenant shall reimburse Landlord for all electricity consumed in connection with the A/C Equipment in accordance with the provisions of Article 3 of this Lease. The A/C Equipment is and shall remain the property of Landlord. In no event shall Tenant have any right to remove the A/C Equipment. Tenant shall not abuse the A/C Equipment and shall operate the A/C Equipment only in accordance with the operating instructions that may accompany such equipment and the design and performance specifications therefor; it being understood and agreed that upon the Expiration Date, the A/C Equipment (including all material components thereof) must be in good working order and to the extent the A/C Equipment (or any material component thereof) is not in good working order Tenant shall reimburse Landlord upon demand for any and all costs incurred by Landlord to repair or replace the same following the Expiration Date and this obligation shall survive the Expiration Date. If Tenant shall install (or has Landlord install at Tenant's cost), any supplemental or additional air conditioning units of any kind in the Premises; Landlord shall maintain, repair or replace such supplemental systems at Tenant's cost.

C. In no event shall Landlord be required to furnish heat, air-conditioning or ventilation at times other than Business Hours, unless, with respect to heating services, requested by Tenant in accordance with the terms hereof. Tenant shall be permitted to operate the A/C Equipment at all times as determined by Tenant (provided that the electricity consumed in connection therewith shall be payable by Tenant pursuant to Section 31.B above). Notwithstanding the foregoing, Landlord shall provide after-hours heating service at Landlord's then existing schedule of rates for after-hours heating for tenants in the Building, provided that Tenant shall give notice to Landlord requesting such after-hours services prior to 3:00 P.M. in the case of after-hours service on weekdays and prior to 1:00 P.M. on Fridays in the case of after-hours service of weekends.

33. **SECURITY DEPOSIT; LETTER OF CREDIT**

A. Simultaneously with Tenant's execution and delivery hereof, Tenant shall deliver to Landlord an unconditional, irrevocable Letter of Credit (the "Letter of Credit") that (i) is in the amount of $1,351,968.25, (ii) is in a form that is reasonably acceptable to Landlord, (iii) is issued for an initial term of not less than one (1) year and automatically renews for periods of not less than one (1) year, (iv) allows Landlord the right to draw thereon in part from time to time or in full, (v) names Landlord as the beneficiary thereof and is issued from the account of Tenant, (vi) is transferable by Landlord without cost (with any and all fees associated therewith being for the account of Tenant and the effectiveness of such transfer shall not be conditioned upon the payment of such fees), (vii) provides that issuer shall deliver not less than sixty (60) days' prior written notice to Landlord (and an additional notice party designated by Landlord) of issuer's intention to cancel or not to renew the Letter of Credit, which notice shall be delivered via certified mail (return receipt requested) or overnight courier (signature required) and (viii) is issued by,

or drawn on, a bank that (a) is insured by the Federal Deposit Insurance Corporation (b) has either a Standard & Poor's long term rating of at least "AA-" or a Moody's long term rating of at least "Aa3" (or, if Standard & Poor's or Moody's, as the case may be, hereafter ceases the publication of ratings for banks, a rating of a reputable rating agency as reasonably designated by Landlord that most closely approximates a Standard & Poor's long term rating of "AA-" or Moody's long term rating of "Aa3", as applicable, as of the date hereof), (c) has not been declared insolvent or placed into receivership in either case by the Federal Deposit Insurance Corporation or another governmental entity that has regulatory authority over such bank, and (d) that either (I) has an office in the city where the Building is located at which Landlord can present the Letter of Credit for payment, or (II) has an office in the United States and allows Landlord to draw upon the Letter of Credit without presenting a draft in person (such as, for example, by submitting a draft by fax or overnight delivery service) (the aforesaid requirements for the bank that issues the Letter of Credit being collectively referred to herein as the "Bank Requirements"). In no event shall the Letter of Credit have a final expiration date occurring any earlier than the date which is sixty (60) days after the Fixed Expiration Date. In case the bank issues a notice of non-renewal or cancellation of the Letter of Credit, Tenant shall immediately notify Landlord of same pursuant to the notice provisions of this Lease. In the event that Tenant exercises the Renewal Option, prior to the first day of the Renewal Term, Tenant shall cause the Letter of Credit to be extended to a final expiration date occurring no earlier than the date which is sixty (60) days after the last day of the Renewal Term. Landlord hereby approves Silicon Valley Bank as the bank issuing the Letter of Credit being provided by Tenant together with this Lease.

A. If (a) Default occurs and is continuing, or (b) Tenant fails to vacate the Premises and surrender possession thereof in accordance with the terms of this Lease upon the Expiration Date, then Landlord may present the Letter of Credit for payment and apply the proceeds thereof (i) to the payment of any Fixed Annual Rent, Additional Rent or any other sums hereunder that then remain unpaid, or (ii) to any damages to which Landlord is entitled hereunder and that Landlord incurs by reason of such Default or Tenant's aforesaid failure to vacate the Premises or surrender possession thereof in accordance with the terms of this Lease upon the Expiration Date. If Landlord so applies any part of the proceeds of the Letter of Credit, then Tenant, upon demand, shall provide Landlord with a replacement Letter of Credit so that Landlord has the full amount of the required security at all times during the Term. If at any time during the Term the issuer of the Letter of Credit shall cease to satisfy the Bank Requirements or such issuer shall be placed on the Federal Deposit Insurance Corporation's "Watch List,", Tenant shall, within thirty (30) days after notice from Landlord, replace such Letter of Credit with a new Letter of Credit issued by a banking organization that satisfies the Bank Requirements and the other criteria set forth in this Article 32. If Tenant fails to do so, then Landlord, in addition to Landlord's other rights at law, in equity or as otherwise set forth herein, shall have the right to present the Letter of Credit for payment and hold the proceeds thereof as security in lieu of the Letter of Credit (it being agreed that Landlord shall have the right to use, apply and transfer such proceeds in the manner described in this Article 32). If such Letter of Credit is not honored, Tenant within five (5) Business Days after notice that the Letter of Credit was not honored, shall replace the Letter of Credit with a cash security deposit (it being agreed that Landlord shall have the right to use, apply and transfer such cash security in the manner described in this Article 32). Time shall be of the essence with respect to the time periods set forth in this Section 32.B Tenant shall reimburse Landlord for any reasonable costs that Landlord incurs in so presenting the Letter of Credit for payment within thirty (30) days after Landlord submits to Tenant an invoice therefor. The provisions of this Section 32.B shall survive the Expiration Date. Nothing contained in this Section 32.B limits Landlord's rights or remedies in equity, at law, or as otherwise set forth herein.

B. Tenant, at Tenant's expense, shall cause the issuer of the Letter of Credit to amend the Letter of Credit to name a new beneficiary thereunder in connection with Landlord's assignment of Landlord's rights under this Lease to a Person that succeeds to Landlord's interest in the Real Property; it being understood and agreed that any costs in connection with such transfer shall be payable by Tenant and shall not be a condition to such transfer. The provisions of this Section 32.C shall survive the Expiration Date.

C. If Tenant fails to provide Landlord with a replacement Letter of Credit that complies with the requirements of this Article 32 on or prior to the thirtieth (30th) day before the expiration date of the Letter of Credit that is then expiring, then Landlord may present the Letter of Credit for payment and retain the proceeds thereof as security in lieu of the Letter of Credit (it being agreed that Landlord shall have the right to use, apply and transfer such proceeds in the manner described in this Article 32). Tenant shall reimburse Landlord for any reasonable costs that Landlord incurs in so presenting the Letter of Credit for payment within thirty (30) days after Landlord submits to Tenant an invoice therefor. Landlord also shall have the right to so present the Letter of Credit and so retain the proceeds thereof as security in lieu of the Letter of Credit at any time from and after the thirtieth (30th) day before the Expiration Date if the Letter of Credit expires earlier than the sixtieth (60th) day after the Fixed Expiration Date.

D. Provided that no Default exists, Landlord shall return to Tenant the Letter of Credit (to the extent not theretofore presented for payment in accordance with the terms hereof) promptly following the Expiration Date. Landlord's obligations under this Section 32.E shall survive the Expiration Date.

E. Notwithstanding anything to the contrary herein, provided and on the condition that (A) Tenant shall not then be in default under this Lease after notice and the expiration of any applicable cure and grace periods, and (B) the Security Reduction Conditions (as hereinafter defined) are satisfied, then Tenant may request that the amount of the Letter of Credit deposited under this Article 3 be reduced to an amount (the "Reduced Security Amount") equal to three (3) monthly installments of the Fixed Annual Rent then payable with respect to the 9th Floor Premises and the 20th Floor Premises (but in no event shall the Reduced Security Amount be less than $675,984.12), in which case Tenant shall deliver to Landlord a replacement Letter of Credit in the Reduced Security Amount in exchange for the existing Letter of Credit or a modification to the existing Letter of Credit reducing the required amount to the Reduced Security Amount in accordance with the terms of this Article 32, which Landlord shall promptly countersign. Landlord shall, at no cost to Landlord, cooperate with Tenant (including execution of any reasonably required documentation) to amend the existing Letter of Credit as permitted hereunder. For purposes hereof, the "Security Reduction Conditions" shall be satisfied if either (A) at any time following the fifth (5th) anniversary of the 9th Floor Rent Commencement Date, Tenant shall have, for one (1) full calendar year, all of the following, (i) a minimum annual revenue of least $400,000,000.00, (ii) a ratio of net debt to adjusted earnings before interest, taxes, depreciation and amortization ("Adjusted EBITDA") of no more than 2:1, (iii) operating cash flow in excess of $15,000,000.00, and (iv) cash on hand in excess of $45,000,000.00, or (B) at any time during the Term, Tenant shall have, for one (1) full calendar year, all of the following, (w) a minimum annual revenue of least $600,000,000.00, (ii) a ratio of net debt to Adjusted EBITDA of no more than 1:1, (iii) operating cash flow in excess of $20,000,000.00, and (iv) Adjusted EBITDA of more than $65,000,000.00. In all cases, prior to any reduction of the security deposit hereunder, Tenant shall provide to Landlord reasonable evidence, including a certification by a financial officer of Tenant, that the Security Reduction Conditions have all been satisfied. All amounts described in the Security Reduction Conditions shall be calculated in accordance with GAAP, consistently applied. For purposes of clarification, in no event shall the Security Reduction Conditions pursuant to clause (A) above be deemed to be satisfied prior to the fifth (5th) anniversary of the 9th Floor Rent Commencement Date (i.e., if the Security Deposit Conditions pursuant to clause (A) above are satisfied with respect to the first full calendar year immediately following the fourth (4th) anniversary of the 9th Floor Rent Commencement Date, then the Security Deposit Conditions shall be deemed to have been satisfied as of the date immediately following such calendar year).

34. **RENT CONTROL**

In the event the Fixed Annual Rent or Additional Rent or any part thereof provided to be paid by Tenant under the provisions of this Lease during the Term shall become uncollectable or shall be reduced or required to be reduced or refunded by virtue of any Requirement, or the orders, rules, codes or regulations of any organization or entity formed pursuant to Requirements, whether such organization or entity be public or private, then Landlord, at its option, may at any time thereafter, terminate this Lease, by not less than thirty (30) days' written notice to Tenant, on a date set forth in said notice, in which event this Lease and the Term shall terminate and come to an end on the date fixed in said notice as if the said date were the date originally fixed herein for the termination of the Term. Landlord shall not have the right to so terminate this Lease if Tenant within such period of thirty (30) days shall in writing lawfully agree that the rentals herein reserved are a reasonable rental and agree to continue to pay said rentals, and if such agreement by Tenant shall then be legally enforceable by Landlord.

35. **SHORING**

Tenant shall permit any person authorized to make an excavation on land adjacent to the Building containing the Premises to do any work within the Premises necessary to preserve the wall of the Building from injury or damage, and Tenant shall have no claim against Landlord for damages or abatement of Rental by reason thereof.

36. **EFFECT OF CONVEYANCE, ETC.**

If the Building shall be sold, transferred or leased, or the lease thereof transferred or sold, Landlord shall be relieved of all future obligations and liabilities hereunder and the purchaser, transferee or tenant of the Building shall be deemed to have assumed and agreed to perform all such obligations and liabilities of Landlord hereunder. In the event of such sale, transfer or lease, Landlord shall also be relieved of all existing obligations and liabilities hereunder, provided that the purchaser, transferee or tenant of the Building assumes in writing or is deemed to have assumed by operation of law or otherwise, such obligations and liabilities.

37. **RIGHTS OF SUCCESSORS AND ASSIGNS; PARTIAL INVALIDITY**

This Lease shall bind and inure to the benefit of the heirs, executors, administrators, successors, and, except as otherwise provided herein, the assigns of the parties hereto. If any provision of any Article of this Lease or the application thereof to any person or circumstances shall, to any extent, be invalid or unenforceable, the remainder of that Article, or the application of such provision to persons or circumstances other than those as to which it is held

invalid or unenforceable, shall not be affected thereby, and each provision of said Article and of this Lease shall be valid and be enforced to the fullest extent permitted by Requirements.

38. **CAPTIONS**

The captions herein are inserted only for convenience, and are in no way to be construed as a part of this Lease or as a limitation of the scope of any provision of this Lease.

39. **LEASE SUBMISSION**

A. Landlord and Tenant agree that this Lease is submitted to Tenant on the understanding that it shall not be considered an offer and shall not bind Landlord or Tenant unless and until Landlord and Tenant have executed and unconditionally delivered to the other a fully executed counterpart of this Lease.

B. If Tenant is a corporation, partnership, limited liability company or other form of organization or association, Tenant represents and warrants that each individual executing this Lease on behalf of Tenant is duly authorized to do so, that Tenant is a duly formed and validly existing entity and that Tenant has full right and authority to execute and deliver this Lease.

40. **ELEVATORS AND LOADING**

A. Except in the event of an emergency or as otherwise provided in and subject to the terms of this Lease, Landlord shall provide passenger elevator service twenty-four (24) hours a day, seven (7) days a week and freight elevator service on a non-exclusive basis 8:00 a.m. to 5:00 p.m. during all Business Days. Any use of freight elevator service on other days and times (collectively, "Freight Overtime Periods") shall be on a first-come, "as available" basis and shall be scheduled in advance with Landlord, and Tenant shall pay Landlord's customary building standard charge therefor, which as of the date of this Lease are $207.00 per hour. There shall be no major loading or unloading in the Building between 8:00 a.m. and 6:00 p.m. on Business Days. Tenant acknowledges it has been advised that, subject to availability, and on a first come "as-available" basis, the freight elevators servicing the Building can be used from 8:00 a.m. to 5:00 p.m. on Business Days for less than truck load deliveries which will not unreasonably interfere with use of the freight elevator by or on behalf of Landlord and the other tenants of the Building. Notwithstanding the foregoing, Landlord shall provide Tenant, at no additional cost to Tenant, with up to sixty (60) hours of freight elevator service during Freight Overtime Periods solely for use in connection with Tenant's move-in to the Premises, which freight elevator use shall be scheduled on such days and during such hours (in no less than four (4) hour blocks of time or such shorter blocks as shall be permitted pursuant to applicable union requirements if such freight use is immediately prior or immediately following the non-Freight Overtime Periods) as is scheduled in advance with, and reasonably approved by, Landlord's property management team for the Building. Tenant expressly acknowledges and agrees that any portion of such hours allotted to Tenant for free freight elevator service during Freight Overtime Periods which are remaining after Tenant's completion of Tenant's initial move to the Premises shall be deemed forfeited (but recognizing that Tenant shall move into the 9th Floor Premises and the 20th Floor Premises at different times) and that in no event shall any such hours be applied to Tenant's use of the freight elevator service in connection with the ordinary conduct of Tenant's business.

B. It is the intention of Landlord to maintain in the Building, operatorless automatic control elevators. However, Landlord may, at its option, maintain in the Building either manually operated elevators or operatorless automatic control elevators or part one and part the other, and Landlord shall have the right from time to time during said term, to change, in whole or in part, from one to the other without notice to Tenant and without such change in any way constituting an eviction of Tenant or affecting the obligations of Tenant hereunder or incurring any liability to Tenant hereunder.

41. **BROKERAGE**

Tenant represents and warrants that it neither consulted nor negotiated with any broker or finder with regard to the Premises other than Newmark & Company Real Estate, Inc. d/b/a Newmark ("Broker") and CBRE, Inc. ("Landlord's Agent"). Tenant agrees to indemnify, defend and save Landlord harmless from and against any claims for fees or commissions from any Person other than Broker and Landlord's Agent claiming to have dealt with Tenant in connection with the Premises and/or this Lease. Landlord represents and warrants that it neither consulted nor negotiated with any broker or finder with regard to the Premises other than Broker and Landlord's Agent. Landlord agrees to pay any commission or fee owing to Broker and Landlord's Agent pursuant to separate agreements with Broker and Landlord's Agent. Landlord agrees to indemnify, defend and save Tenant harmless from and against any claims or fees or commissions from any Person, including Broker and Landlord's Agent, claiming to have dealt with Landlord in connection with the Premises or this Lease. If any claim, action or proceeding is brought against Landlord or Tenant for a matter covered by this indemnity, the indemnitor, upon notice from the indemnified Person, shall defend such claim, action or proceeding with counsel reasonably satisfactory to the respective party

and the indemnified Person. Nothing in this Article 40 shall be construed to be a third party beneficiary contract. The provisions of this Article 40 shall survive the Expiration Date.

42. **ARBITRATION**

The term "Streamlined Arbitration Proceeding" shall mean a binding arbitration proceeding conducted in The City of New York under the Streamlined Arbitration Rules & Procedures of JAMS (or its successor); provided, however, that with respect to any such arbitration, (i) the list of arbitrators referred to in Rule 12(d) of JAMS Streamlined Arbitration Rules & Procedures shall be returned within five (5) Business Days from the date of service; (ii) the parties shall notify JAMS (or its successor) by telephone, within four (4) Business Days, of any objections to the arbitrator appointed and, subject to clause (vii) below, shall have no right to object if the arbitrator so appointed was on the list submitted by JAMS (or its successor) and was not struck in accordance with Rule 12(d) as modified by clause (i) above; (iii) the parties shall be notified of the hearing date four (4) Business Days in advance of the hearing; (iv) the hearing shall be held within seven (7) Business Days after the appointment of the arbitrator; (v) the arbitrator shall have no right to award damages or vary, modify or waive any provision of this Lease; (vi) the decision of the arbitrator shall be final and binding on the parties; and (vii) the arbitrator shall not have been employed by either party (or their respective Affiliates) during the period of three (3) years prior to the date of the Streamlined Arbitration Proceeding. The arbitrator shall determine the extent to which each party is successful in such Streamlined Arbitration Proceeding in addition to rendering a decision on the dispute submitted. If the arbitrator determines that one (1) party is entirely unsuccessful, then such party shall pay all of the fees of such arbitrator. If the arbitrator determines that both parties are partially successful, then each party shall be responsible for such arbitrator's fees only to the extent such party is unsuccessful (e.g., if Landlord is eighty percent (80%) successful and Tenant is twenty percent (20%) successful, then Landlord shall be responsible for twenty percent (20%) of such arbitrator's fees and Tenant shall be responsible for eighty percent (80%) of such arbitrator's fees).

43. **INSURANCE**

A. At all times during the Early Access Period and the Term, Tenant shall maintain, at Tenant’s expense, the following insurance coverage:

(i) an insurance policy for Tenant's Property, and the Alterations, in either case to the extent insurable under "all-risk" property insurance policies, covering the perils listed in the current edition of the Insurance Services Office, Inc. ("ISO"), special causes of loss form CP 10 30 including, without limitation, coverage for acts of terrorism (if such coverage for acts of terrorism is available on commercially reasonable terms), in an amount equal to one hundred percent (100%) of the replacement value thereof (subject, however, at Tenant’s option, to a reasonable deductible) (the insurance policy described in this clause (i) being referred to herein as "Tenant's Property Policy"); Tenant's Property Policy shall include business interruption insurance that is sufficient in amount to pay the Fixed Annual Rent and the Escalation Rent due hereunder for a period of at least one (1) year;

(ii) a policy of commercial general liability insurance on an occurrence basis, providing coverage that is at least as broad as the current edition of IS0 Form CG 00 01 ("Tenant's Liability Policy") with minimum limits of Five Million and 00/100 Dollars ($5,000,000**)** per occurrence for bodily injury (or death), personal injury and/or damage to property;

(iii) a commercial automobile liability policy covering any vehicle that Tenant brings upon the Real Property (regardless of whether Tenant owns or hires such vehicle) with a combined single limit of not less than One Million Dollars ($1,000,000) (such policy being referred to herein as "Tenant's Auto Policy");

(iv) worker’s compensation insurance in statutory limits, and New York State disability insurance as required by Requirements, covering all employees; and

(v) such other coverage in such amounts as Landlord may reasonably require with respect to the Premises, its use and occupancy and the conduct or operation of business therein provided such other coverages and amounts are generally consistent with the coverages and amounts required by Landlord of similarly-situated office tenants within the Building.

Landlord may, from time to time, but not more frequently than once every three (3) years adjust the minimum limits set forth above to limits that in Landlord's reasonable judgment are then being customarily required by prudent landlords of comparable buildings in New York City. Tenant shall not obtain any property insurance (under Tenant's Property Policy or otherwise) that covers the property that is covered by Landlord's Property Policy.

B. All insurance policies to be maintained as set forth above (i) shall be issued by companies of recognized responsibility, authorized and admitted to do business in the State of New York, reasonably acceptable to

Landlord, and maintaining a rating of A/VIII or better in Best's Insurance Reports-Property-Casualty (or an equivalent rating in any successor index adopted by Best's or its successor), (ii) shall provide that they may not be canceled or modified unless Landlord and all additional insureds thereunder are given at least thirty (30) days prior written notice of such cancellation or modification, except that such period of thirty (30) days may be reduced to no less than ten (10) days for non-payment of premium and (iii) shall be primary and non-contributory in all respects. Tenant's Property Policy and Tenant's Liability Policy shall name Tenant as the insured. Tenant's Liability Policy (including, without limitation, any policy that Tenant obtains as described in Section 42.D. hereof) and Tenant's Auto Policy shall be endorsed to name the Designated Landlord Parties as additional insureds thereunder. Tenant's Property Policy shall contain a provision that no act or omission of Tenant shall affect or limit the obligation of the insurer to pay the amount of any loss sustained. If Tenant receives any notice of cancellation or any other notice from the insurance carrier which may adversely affect the coverage of the insureds under Tenant's Property Policy or Tenant's Liability Policy, then Tenant shall immediately deliver to Landlord a copy of such notice. Tenant's Liability Policy shall have no exclusions limiting liability assumed under an insured's contract (including, without limitation, tort liability of another assumed by the insured in a business contract).

C. Prior to the commencement of the Early Access Period and the First Commencement Date, Tenant shall deliver to Landlord certificates of insurance for the insurance coverage required by Paragraph 42.A and copies of the endorsements to such policies designating the Designated Landlord Parties as additional insureds. Tenant shall procure and pay for renewals of such insurance from time to time before the expiration thereof, and Tenant shall deliver to Landlord certificates of renewal at least ten (10) days before the expiration of any existing policy. Under no circumstances shall Landlord be obligated to advise Tenant of Tenant's failure to procure or maintain any insurance required hereunder.

D. Tenant has the right to satisfy Tenant's obligation to carry Tenant's Liability Policy with an umbrella insurance policy. Tenant has the right to satisfy Tenant's obligation to carry Tenant's Property Policy with a blanket insurance policy.

E. Tenant's liability hereunder is not limited to the amount of Tenant's insurance recovery, to the amount of insurance that Tenant maintains in force, to the amount of insurance that Tenant is required to maintain in accordance with the terms of this Article 42, or to the amount of any insurance that Tenant is required to carry, or that Tenant is permitted to carry, under applicable Requirements. Landlord's review of, or approval of, any insurance that Tenant carries shall not limit Tenant's obligation to carry the insurance that this Article 42 requires Tenant to carry.

F. Subject to the terms of this 42.F., Landlord shall obtain and keep in full force and effect covering the Building, to the extent insurable on commercially reasonable terms under then available standard forms of "all-risk" insurance policies, covering the perils listed in the current edition of the ISO special causes of loss form CP 10 30 including, without limitation, coverage for acts of terrorism (if such coverage for acts of terrorism is available on commercially reasonable terms), in an amount equal to one hundred percent (100%) of the replacement value thereof or, at Landlord's option, in such lesser amount as will avoid co-insurance (such insurance being referred to herein as "Landlord's Property Policy"). Tenant acknowledges that (i) Landlord's Property Policy may encompass rent insurance, and (ii) Landlord may also obtain a commercial general liability insurance policy. Landlord shall not be liable to Tenant for any failure to insure any Alterations unless Tenant notifies Landlord of the completion of such Alterations and the cost thereof, and maintains adequate records with respect to such Alterations to facilitate the adjustment of any insurance claims with respect thereto. Landlord shall have the right to provide that the coverage of Landlord's Property Policy is subject to a reasonable deductible. Tenant shall cooperate with Landlord and Landlord's insurance companies in the adjustment of any claims for any damage to the Building. Landlord shall not be required to carry insurance on Tenant's Property or the Alterations. Landlord shall not be required to carry insurance against, nor shall Landlord have any liability to Tenant for, any loss suffered by Tenant due to the interruption of Tenant's business.

G. Tenant shall obtain an appropriate clause in, or endorsement on, Tenant's Property Policy and Landlord shall obtain an appropriate clause in, or endorsement on Landlord's Property Policy pursuant to which the insurance companies waive subrogation or consent to a waiver of right of recovery. Landlord and Tenant also agree that, having obtained such clauses or endorsements of waiver of subrogation or consent to a waiver of right of recovery, they shall not make any claim against or seek to recover from the Landlord Parties or the Tenant Parties (as the case may be) for any loss or damage to its property or the property of others (including any subtenants) resulting from fire or other hazards covered by Landlord's Property Policy or Tenant's Property Policy (as the case may be) (with the understanding, therefore, that the party that sustains such loss or damage shall not have a claim against the other party to reimburse the party that sustains such loss or damage for the amount of such party's deductible or self-insured retention); provided, however, that the release, discharge, exoneration and covenant not to sue herein contained shall be limited by and be coextensive with the terms and provisions of the waiver of subrogation clause or endorsements or clauses or endorsements consenting to a waiver of right of recovery.

44. **INTENTIONALLY OMITTED**

45. **LATE CHARGES**

If Tenant fails to pay any item of Rental on or prior to the fifth (5^{th}) day after the date that such payment is due, then Tenant shall pay to Landlord, in addition to such item of Rental, as a late charge and as liquidated damages, an amount equal to interest at the Applicable Rate on the amount unpaid, computed from the date such payment was due through and including the date of payment. Notwithstanding the foregoing, no such late charge shall be payable for the first (1st) late payment in any twelve (12) month period during the Term provided Tenant makes such payment within ten (10) days following notice from Landlord thereof. Tenant acknowledges that the payment of Rental after the date when first due shall result in loss and injury to Landlord the exact amount of which is not susceptible of reasonable calculation and that the aforesaid amount(s) of late charge represents a reasonable estimate of such losses and injury under the circumstances, especially after taking into account the grace period hereby afforded Tenant before such late charge is to be imposed. The amounts payable pursuant to this Article 44 shall be in addition to, and without prejudice to, any of Landlord's rights and remedies hereunder at law and equity for non-payment or late payment of Rental (including, without limitation, the right to institute a proceeding under Article 7 of the Real Property Actions and Proceedings Law). Nothing contained in this Article 44 limits Landlord's rights and remedies, by operation of law or otherwise, after the occurrence of a Default. No failure by Landlord to insist upon the strict performance by Tenant of Tenant's obligation to pay liquidated damages as provided in this Article shall constitute a waiver by Landlord of its right to enforce the provisions of this Article in any instance thereafter occurring. If Landlord receives only a portion of the amount due for any month, Landlord may, at its option, elect to apply such payment first to Rental and then to late charges notwithstanding any contrary direction from Tenant. The provisions of this Article 44 shall not be construed in any way to extend the grace periods or notice periods provided for elsewhere in this Lease.

46. **LEED COMPLIANCE AND RECYCLING.**

A. Tenant shall cooperate with any and all efforts by Landlord to obtain and maintain LEED, Green Globes, Energy Star (or similar) certifications for the Building. Tenant covenants and agrees not to take any action or do anything (or allow any action to be taken by any Person claiming by, through or under Tenant) that may reduce any environmental rating for the Building which may now or hereafter be made, such as any rating made pursuant to LEED, Green Globes, Energy Star (or similar programs).

B. Tenant shall comply with and participate in Landlord’s recycling program for the Building, if any, as from time to time implemented with respect to all recyclable waste generated or stored in the Premises and if Landlord shall not have implemented such a program, Tenant shall promptly implement one for such recyclable waste, subject to and in accordance with Article 15 hereof.

47. **LEASE FULLY NEGOTIATED**

In construing this Lease, it shall be deemed to be a document fully negotiated and drafted jointly by counsel to Landlord and counsel to Tenant and the authorship of any term or provision hereof shall not be deemed germane to its meaning. The existence or non-existence in any prior draft hereof of any term or provision whether included herein or not shall not be relevant to the establishment of the intent of the parties hereto or the meaning of any term or provision hereof and may not be used as evidence to establish any such intent or meaning.

48. **ANTI-TERRORISM REQUIREMENTS**

Tenant represents and warrants that (a) neither Tenant nor any person, group or entity who owns any direct or indirect beneficial interest in Tenant or any of them, is listed on the list maintained by the United States Department of the Treasury, Office of Foreign Assets Control (commonly known as the OFAC List) or otherwise qualifies as a terrorist, Specially Designated National and Blocked Person or a person with whom business by a United States citizen or resident is prohibited (each referred to herein as a "Prohibited Person"); (b) neither Tenant nor any person, group or entity who owns any direct or indirect beneficial interest in Tenant or any of them is in violation of any anti-money laundering or anti-terrorism statute, including, without limitation, the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, U.S. Public Law 107-56 (commonly known as the USA PATRIOT Act), and the related regulations issued thereunder, including temporary regulations, and Executive Orders (including, without limitation, Executive Order 13224) issued in connection therewith, all as amended from time to time; and (c) neither Tenant nor any person, group or entity who owns any direct or indirect interest in Tenant is acting on behalf of a Prohibited Person. Tenant shall indemnify and hold Landlord harmless from and against all claims, damages, losses, risks, liabilities and costs (including fines, penalties and legal costs) arising from any misrepresentation in this Article 47 or Landlord’s reliance thereon. Notwithstanding anything contained above, Tenant is making no representation and shall have no

liability with respect to a Person that is a shareholder of Tenant so long as Tenant is a publicly-traded entity. Tenant's obligations under this Article 47 shall survive the Expiration Date.

49. **CONDOMINIUM PROVISIONS**

A. Landlord reserves (and Tenant acknowledges that Landlord has) the right to convert (or join or acquiesce in the conversion of) the Building or Real Property to condominium form of ownership (hereinafter referred to as a "Conversion") of which the Premises may, in the sponsor's and Landlord's sole discretion, constitute all or a portion of a condominium unit (hereinafter referred to as the "Unit"). If the Building is converted to condominium form of ownership, then this Lease shall not be affected thereby and shall continue in full force and effect, except as follows:

(i) Except as otherwise specifically set forth herein, references to the Building or Real Property shall be deemed to be references to the Unit;

(ii) Rents based upon increases in Expenses and/or Real Estate Taxes shall be payable upon the following terms:

(a) Tenant's Tax Share and/or Tenant's Expense Share, as the case may be, shall be recomputed as a decimal fraction carried to four places beyond the decimal point by dividing the rentable square feet of the Premises by the rentable square feet of the Unit (as each such area is determined by Landlord in accordance with REBNY standards) (provided the foregoing shall not increase Tenant's monetary obligations hereunder);

(b) Expenses shall include all expenses and all charges, assessments and special assessments payable by the owner of or attributable to the Unit pursuant to the condominium's declaration of condominium, its bylaws or resolution of the board of managers or condominium association having jurisdiction of the Unit, including without limitation, common charges;

(c) Base Expenses and Base Year Taxes shall be recomputed by Landlord using its reasonable judgment to allocate to the Unit the actual Expenses and Real Estate Taxes as would have been allocated to the Unit for the Base Expense Year and Base Tax Year had the condominium then been in existence and such amounts as Landlord shall have determined shall be deemed the Base Expenses and the Base Year Taxes , respectively; and

(d) If any such conversion shall be effective on a date that is not the first day of a relevant comparative year, Additional Rent for increases in Expenses and Real Estate Taxes, as the case may be, shall be calculated for the periods before and following the effective date of such conversion according to the appropriate methodology for such period and accordingly prorated for each such period.

B. Regardless of whether or not Tenant may have a sufficient interest in the Real Property pursuant to Requirements to require its consent to the declaration of condominium, its bylaws, floor plans or any other document required to effect a Conversion (hereinafter collectively referred to as "Condominium Documents") and all applications and filings involved in the Conversion, Tenant does hereby specifically waive such rights, and if such rights cannot be waived, does hereby consent to such matters in advance and to the Conversion itself to create a condominium form of ownership for the Building (herein referred to as a "Condominium").

C. In the event of a Conversion in which the Premises are converted into one or more separately saleable units, Tenant does hereby agree in advance to attorn to any purchaser of any unit(s) which shall consist of the Premises and recognizes such purchaser as landlord under the terms and provisions of this Lease and no further consent of Tenant shall be required as long as the purchaser of any such unit(s) agrees in writing to honor the rights and obligations of Tenant hereunder.

D. This Lease shall be subordinate to all Condominium Documents. Landlord shall not permit any such Condominium Documents to impair Tenant's rights under this Lease, or to expand Tenant's obligations under this Lease, except, in either case, to a de minimis extent. Upon such Conversion, if the Condominium Documents provide for the performance by the Condominium of any obligations that would have been Landlord's obligations under this Lease, Landlord will cause the board of managers of the Condominium or the owner of the Unit of which the Premises are a part to perform such obligations, but in no event shall any rights or remedies of Tenant hereunder be diminished, conditioned or negated or its obligations increased by such operation of the Condominium Documents. It is expressly understood and agreed that the Premises are intended to be a part of the Condominium, and to be subject to the Condominium Documents. Tenant agrees that the aforesaid subordination shall be self-

operative without the need for any further action but Tenant shall execute and deliver such documents as Landlord may require to confirm or further effect such subordination. If the Condominium shall be formed, Tenant shall not perform any act, or fail to perform any act, if such performance or failure to perform would be a violation of, or cause Landlord to be in default under, any of the Condominium Documents provided that, so long as Tenant complies with its obligations under this Lease, no such default shall be deemed to exist. During the Term, Tenant agrees to be bound by all of the terms contained in the Condominium Documents that pertain to an occupant of the Condominium Unit of which the Premises form a part or of the common elements of such Condominium, except if and to the extent that compliance with such terms and obligations shall be Landlord's obligation pursuant to one or more express provisions of this Lease and in no event shall Tenant be responsible for common charges or maintenance payments under the Condominium Documents, except as hereinabove provided. Tenant agrees to observe all of the rules and regulations of the Condominium provided that the same shall not increase Tenant's obligations provided for in this Lease or decrease Tenant's rights under this Lease. Tenant expressly agrees that the board of managers of the Condominium and/or the Unit of which the Premises form a part (each, a "Board"), as applicable, shall have the power to enforce against Tenant (and each and every immediate and remote assignee or subtenant of Tenant) the terms of the Condominium Documents, if the actions of Tenant (or such assignee or subtenant) shall be in breach of the Condominium Documents, to the extent that the same would entitle the applicable Board to enforce the terms of the Condominium Documents against Landlord.

E. Notwithstanding anything to the contrary contained elsewhere in this Lease, any provision of this Lease that requires Landlord to "cause the Board" to provide services or perform any other act shall be deemed to require Landlord to use commercially reasonable efforts to cause the Board to do the same but Landlord shall not be liable to Tenant for any failure in performance resulting from the failure in performance by the Board, Landlord's obligations hereunder are accordingly conditional where such obligations require such parallel performance by the Board, provided that Landlord shall, at Tenant's cost and expense, expeditiously and diligently use commercially reasonable efforts to enforce such rights as Landlord may have against the Board under the Condominium Documents for the benefit of Tenant upon Tenant's written request therefor (and to forward to the Board any notices or requests for consent as Tenant may reasonably request), but nothing herein shall require Landlord to institute any legal action or proceeding or arbitration to enforce the Board's obligations. Landlord agrees that the Condominium declaration recorded for the Building shall obligate the Board to perform Landlord's maintenance, repair and replacement obligations hereunder that relate to "common elements" or shall give the Landlord access and the privilege to perform the same. Nothing herein shall be deemed to limit or waive any right or remedy Tenant may have against Landlord for any breach of Landlord's obligations under this Lease, whether to be performed by Landlord or the Condominium under the Condominium Documents.

F. In the event of a Conversion, Landlord shall obtain from the Condominium, for the benefit of Tenant, a subordination, non-disturbance and attornment agreement ("Condo SNDA"), in the form then customarily used by the Condominium. Tenant shall execute and deliver such Condo SNDA and shall pay any reasonable fees or costs imposed by the grantor of such Condo SNDA and/or its attorneys in connection with the negotiation and execution of such Condo SNDA.

50. **NO OTHER SERVICES.**

Landlord shall provide no services not specifically set forth in this Lease.

51. **ADDITIONAL DEFINITIONS/MISCELLANEOUS**

"Business Days" shall mean all days, except Saturdays, Sundays, and all days celebrated as holidays under union contracts applicable to the Building. "Business Hours" shall mean 8:00 A.M. to 6:00 P.M. on Business Days. The words "herein," "hereof," "hereto," "hereunder" and similar words shall be interpreted as being references to this Lease as a whole and not merely the clause, paragraph, Section or Article in which such word appears. The words "shall" and "will" are interchangeable, each imposing a mandatory obligation upon the party to whom such verb applies. The words "include" and "including" shall be interpreted to mean "including, without limitation." Whenever appropriate in this Lease, personal pronouns shall be deemed to include the other genders and the singular or plural of any defined term or other word shall, as the context may require, be deemed to include, as the case may be, either the singular or the plural. References herein to "Building systems" or "systems of the Building" shall mean the service systems of the Building, including, without limitation, the mechanical, gas, steam, electrical, sanitary, HVAC, elevator, plumbing, telecommunications (including cellular data) systems and life-safety systems of the Building. All Article and paragraph and subsection references set forth herein shall, unless the context otherwise specifically requires, be deemed references to the Articles, paragraphs and subsections of this Lease. No advertising of any kind or other public statement by or on behalf of Tenant shall refer to the Building or this Lease, unless first approved in writing by Landlord.. References to Landlord as having no liability to Tenant or being without liability to Tenant shall mean that, except as otherwise provided in this Lease, Tenant is not entitled to terminate this Lease, or to claim actual or constructive eviction, partial or total, or to receive any abatement or

diminution of rent, or to be relieved in any manner of any of its other obligations hereunder, or to be compensated for loss or injury suffered or to enforce any other kind of liability whatsoever against Landlord under or with respect to this Lease or with respect to tenant's use or occupancy of the Premises. The term "termination of this Lease" or any variant thereof shall mean the "termination of the Term."

52. **MEMORANDUM OF LEASE**

Tenant shall not record this Lease. Tenant shall not record a memorandum of this Lease. Landlord shall have the right to record a memorandum of this Lease. If Landlord submits to Tenant a memorandum hereof that is in reasonable form, then Tenant shall execute, acknowledge and deliver such memorandum promptly after Landlord's submission thereof to Tenant.

53. **APPLICABLE LAW**

This Lease shall be deemed to have been made in New York County, New York, and shall be construed in accordance with the laws of New York. ALL ACTIONS OR PROCEEDINGS RELATING, DIRECTLY OR INDIRECTLY, TO THIS LEASE SHALL BE LITIGATED ONLY IN COURTS LOCATED WITHIN THE COUNTY OF NEW YORK. LANDLORD AND TENANT, AND THEIR RESPECTIVE SUCCESSORS AND ASSIGNS, HEREBY SUBJECT THEMSELVES TO THE JURISDICTION OF ANY STATE OR FEDERAL COURT LOCATED WITHIN SUCH COUNTY. TENANT HEREBY WAIVES THE RIGHT TO RAISE ANY DEFENSE BASED UPON INCONVENIENT FORUM OR MAKE ANY PLEA OR MOTION SEEKING TO REMOVE ANY CASE TO ANOTHER VENUE.

54. **COUNTERPARTS**

This Lease may be executed in one (1) or more counterparts, each of which counterpart shall be an original and all such executed counterparts shall constitute one agreement, binding on all parties hereto, notwithstanding that all parties are not signatories to the original or the same counterpart. Delivery of an executed counterpart of this Lease by facsimile or electronic transmission in a Portable Document Format ("PDF") or other digital format shall be equally effective as manual delivery of an executed counterpart of this Lease, and each such counterpart, whether delivered manually, by facsimile or PDF or such other digital format shall be deemed an original. Any party delivering an executed counterpart of this Lease by facsimile or PDF or other digital format shall also manually deliver an executed counterpart of this Lease; however the failure to do so shall have no effect on the validity, enforceability or binding nature and effect of this Lease.

55. **RENEWAL OPTION.**

A. For purposes hereof, the following terms shall have the following meanings:

(i) The term "Minimum Demise Requirement" shall mean the requirement that this Lease demises at least the entire rentable area of the 2nd/3rd Floor Premises, the 9th Floor Premises and the 20th Floor Premises.

(ii) The term "Minimum Occupancy Requirement" shall mean the requirement that Tenant (which, for the purposes hereof, shall include Special Occupants and Affiliates of Tenant) occupies (i.e., has not subleased or vacated such portion of the Premises and listed the same for sublease) at least eighty-five percent (85%) the rentable area of the Renewal Premises (subject to vacancy due to casualty, condemnation or Unavoidable Delays).

(iii) The term "Renewal Premises" shall mean either (a) the entire Premises then being leased under this Lease, or (b) a portion of the Premises then being leased comprising at least two (2) or more full floors (in full floor increments only) designated by Tenant and identified in the Renewal Notice (it being agreed that if Tenant shall fail to designate the Renewal Premises in an otherwise properly and timely given Renewal Notice, then Tenant shall be deemed to have exercised the Renewal Option with respect to the entire Premises then being leased under this Lease.

B. Subject to the terms of this Article 54, Tenant shall have the option (the "Renewal Option") to extend the term of this Lease for the Renewal Premises for one (1) additional period of five (5) years (the "Renewal Term"), which Renewal Term shall commence on the day immediately succeeding the Fixed Expiration Date and end on the day that is the fifth (5th) anniversary of the Fixed Expiration Date, provided that on the date that Tenant gives Landlord notice (the "Renewal Notice") of Tenant's election to exercise the Renewal Option (i) this Lease has not been previously terminated, (ii) no monetary or material non-monetary Default has occurred and is continuing , (iii) the Minimum Occupancy Requirement is satisfied, (iv) the Minimum Demise Requirement is satisfied and (v)

Tenant is the Person that executed and delivered this Lease initially (or Tenant's Affiliate or successor entity pursuant to a transaction as to which Landlord's consent was not required of such Person that executed and delivered this Lease initially) as the tenant hereunder (the "Initial Tenant Requirement").

C. The Renewal Option shall be exercisable only by Tenant's delivering the Renewal Notice to Landlord not later than the four hundred fifty-fifth (455th) day before the Fixed Expiration Date (as to which date time shall be of the essence). Landlord shall have the right to declare Tenant's exercise of the Renewal Option ineffective if, at any time, on or prior to the first day of the Renewal Term (i) a monetary or material non-monetary Default has occurred and is then continuing, (ii) the Minimum Occupancy Requirement is not satisfied, (iii) the Minimum Demise Requirement is not satisfied, or (iv) the Initial Tenant Requirement is not satisfied, in any case, by giving notice thereof to Tenant (an "Ineffective Renewal Notice") on or prior to the date which is fifteen (15) days after the first day of the Renewal Term provided that the same has not been cured within such fifteen (15) day period (it being understood that (x) if Landlord gives an Ineffective Renewal Notice to Tenant, then the Term shall terminate on the Fixed Expiration Date (unless the Term sooner terminates pursuant to the terms hereof or pursuant to law) except that if Landlord gives Tenant an Ineffective Renewal Notice after the Fixed Expiration Date, the Term shall terminate on the fifteenth (15th) day after the date that Landlord gives Tenant the Ineffective Renewal Notice (in which case Tenant shall pay the Rental that would have otherwise been due hereunder in respect of the Renewal Term had Landlord not given Tenant the Ineffective Renewal Notice, to the extent accruing during the period commencing on the first day of the Renewal Term and ending on the date that the Term so terminates), and (y) nothing contained in this Section 54.C. limits Landlord's other rights or remedies after the occurrence of a Default). For the avoidance of any doubt, if Landlord delivers an Ineffective Renewal Notice to Tenant, Tenant shall have no further rights to renew or extend the term of this Lease.

D. If Tenant effectively exercises the Renewal Option, then the leasing of the Premises during the Renewal Term shall be upon the terms set forth herein, except that:

(i) the Fixed Annual Rent for the Premises during the Renewal Term shall be the Fair Market Rent (as hereinafter defined) thereof;

(ii) Landlord shall have no obligation to perform any work in connection with Tenant's exercise of the Renewal Option;

(iii) Landlord shall have no obligation to grant to Tenant any work allowance or free rent (or abatement of rent) in connection with Tenant's exercise of the Renewal Option; and

(iv) the provisions of this Article 54 shall not be applicable to permit Tenant to further extend the Term.

56. **EXPANSION OPTION**

A. The following terms shall have the following meanings :

(i) The term "Expansion Space" shall mean the entire rentable area of both the 21st and 22nd floors of the Building, as more particularly shown on Exhibit "F" attached hereto and made a part hereof.

(ii) The term "Scheduled Expansion Space Commencement Date" shall mean July 1, 2025 (provided that such date shall be deemed extended by sixty (60) days if Landlord is performing only Landlord's Base Building Work therein or by two hundred seventy (270) days if Landlord is performing Landlord's Work therein); provided, however, that if the existing tenant's lease for the Expansion Space terminates (or will terminate) earlier than the expiration of the term thereof solely by reason of the insolvency or default of such tenant, then Landlord shall have the right to accelerate the Scheduled Expansion Space Commencement Date by giving notice thereof to Tenant (provided that in no event shall the lease of the Expansion Space occur earlier than sixty (60) days after the date of such notice).

B. Subject to the terms of this Article 55, Tenant shall have the one-time only option (the "Expansion Space Option") to lease the entire Expansion Space for a term (the "Expansion Space Term") commencing on the Expansion Space Commencement Date and expiring on the date that shall be the later to occur of (x) the date immediately preceding the seventh (7th) anniversary of the Scheduled Expansion Space Commencement Date (or such later date that the commencement of the term with respect to the Expansion Space shall occur), and (y) the Expiration Date by giving notice thereof (the "Expansion Space Notice") to Landlord on or prior to the earlier to occur of (x) December 31, 2023, and (y) the tenth (10th) Business Day after the date that Landlord gives Tenant notice to the effect that Landlord exercises its right pursuant to Section 55A.(ii) hereof to accelerate the Scheduled Expansion Space Commencement Date. Time shall be of the essence as to the date by which Tenant must give the

Expansion Space Notice to Landlord to exercise the Expansion Space Option. If Tenant does not give the Expansion Space Notice to Landlord on or prior to such date, then Landlord shall thereafter have the right to lease the Expansion Space (or any part thereof) to any other Person on terms acceptable to Landlord in Landlord's sole discretion without Tenant having any further rights whatsoever regarding the Expansion Space under this Article 55. Tenant shall not have the right to exercise the Expansion Space Option for only a portion of the Expansion Space.

C. Tenant shall not have the right to revoke an Expansion Space Notice given to Landlord pursuant to this Article 55. Tenant shall have the right to exercise the Expansion Space Option only during the period that (x) Tenant (together with any Affiliates of Tenant and Special Occupants) occupies the entire 20th Floor Premises (subject to vacancy due to casualty, condemnation or Unavoidable Delays), (y) Tenant (together with any Affiliates of Tenant and Special Occupants) occupies at least 45,000 rentable square feet of the Premises (subject to vacancy due to casualty, condemnation or Unavoidable Delays) (it being agreed that Tenant's occupancy of the 2nd/3rd Floor Premises pursuant to the 2nd/3rd Floor Sublease shall be included for purposes of determining Tenant's occupancy hereunder), and (z) the Initial Tenant Requirement is satisfied. Tenant's exercise of the Expansion Space Option shall be ineffective if, on the date that Tenant gives the Expansion Space Notice to Landlord, a monetary or material non-monetary Default has occurred and is continuing. If (i) Tenant exercises the Expansion Space Option, and (ii) at any time prior to the Expansion Space Commencement Date, a monetary or material non-monetary Default has occurred and is continuing, or the conditions described in clause (x), (y) and (z) are not all satisfied, then, at any time prior to the Expansion Space Commencement Date, Landlord shall have the right to declare Tenant's exercise of the Expansion Space Option ineffective by giving notice thereof to Tenant, in which case, Landlord shall have the right to lease the Expansion Space (or any portion thereof) to any other Person on terms acceptable to Landlord in Landlord's sole discretion and Tenant shall have no further rights with respect to the Expansion Space.

D. If Tenant effectively exercises the Expansion Space Option in accordance with the provisions of this Article 55, then, on the Expansion Space Commencement Date, the following provisions shall become effective:

(i) the Expansion Space shall be added to the Premises for purposes of this Lease (except as otherwise provided in this Section 55.D);

(ii) from and after the Expansion Space Commencement Date, Tenant shall make payments for escalations in Real Estate Taxes with respect to the Expansion Space which shall be an amount equal to the product obtained by multiplying (X) the ratio (expressed as a percentage) that the number of square feet of rentable area in the Expansion Space bears to the number of square feet of rentable area in the Building, by (Y) the excess of (i) Real Estate Taxes for the applicable Comparative Tax Year over (ii) the Taxes for the Base Tax Year (as defined in Section 2.C. above) with respect to the 20th Floor Premises;

(iii) from and after the Expansion Space Commencement Date, Tenant shall make Expense Payments with respect to the Expansion Space which shall be an amount equal to the product obtained by multiplying (I) the ratio (expressed as a percentage) that the number of square feet of rentable area in the Expansion Space bears to the number of square feet of rentable area in the Building (other than any retail portion thereof), by (II) the excess of (x) the Expenses for the applicable Comparative Year, over (y) the Expenses for the Base Expense Year (as defined in Section 2.C. above) with respect to the 20th Floor Premises;

(iv) Landlord shall not be obligated to perform any work or make any installations in the Expansion Space, it being expressly acknowledged and agreed that except as hereinafter otherwise provided, the Expansion Space shall be delivered in its then "as is" condition. Notwithstanding the foregoing to the contrary, if Tenant shall desire for Landlord to perform Landlord's Work in the Expansion Space (in lieu of Landlord delivering the Expansion Space "as is") and provided that the Expansion Space Financial Requirement (as hereinafter defined) is then satisfied (and provided that Tenant provides Landlord with evidence thereof reasonably acceptable to Landlord), then Tenant shall notify Landlord thereof in the Expansion Space Notice specifically referring to this Section 55.D.(iv) (it being agreed that Tenant's failure to so notify Landlord in the Expansion Space Notice shall be deemed to be Tenant's election not to have Landlord perform Landlord's Work in the Expansion Space) and Landlord shall be required to perform Landlord's Work in the Expansion Space upon such terms and conditions as shall be mutually and reasonably agreed to by Landlord and Tenant (which terms and conditions shall be based upon the provisions of Section 23.C of this Lease as and to the extent applicable (including, without limitation, timing for delivery of plans and specifications from Tenant, etc.) and which shall include, if required by Landlord, a maximum contribution amount with respect to such Landlord's Work determined in the same manner as the 20th Floor Maximum Contribution Amount was determined pursuant to Section 23.C (including adjusting the amount as set forth therein by a percentage equal to the percentage increase or decrease in the CPI from the 9th Floor Premises Commencement Date until the date Landlord shall commence Landlord's Work in the Expansion Space). For purposes of clarification, if Tenant shall not satisfy the Expansion Space Financial Requirement contained in the preceding sentence, then except as hereinafter provided with respect to Landlord's Base Building Work and the installation of ionization equipment, Landlord shall not be required to perform Landlord's Work in the Expansion Space (unless Landlord agrees to do so in Landlord's sole discretion). Landlord and Tenant expressly acknowledge

and agree that the requirement for Landlord to perform Landlord's Work in the Expansion Space (including the cost thereof, the time to perform such work, etc.) shall be deemed to be relevant factors for purposes of determining the Fair Market Rent with respect to the Expansion Space. If Tenant shall not satisfy the Expansion Space Financial Requirement contained herein then notwithstanding the foregoing to the contrary, Landlord shall still be required to deliver the Expansion Space to Tenant with Landlord's Base Building Work completed and with Landlord's Building-standard bipolar ionization equipment within the HVAC systems servicing the Expansion Space (it being agreed that the performance of such work by Landlord shall expressly be deemed to be a relevant factor for purposes of determining the Fair Market Rent for the Expansion Space). For purposes hereof, the term "Expansion Space Financial Requirement" shall mean the requirement that Tenant (as evidenced by Tenant's most recently filed financial statements for Tenant reported to the United States Securities and Exchange Commission (as long as Tenant is publically traded) or, if not publically traded, Tenant's most recent financial statement that is either audited or certified by the chief financial officer of the Tenant (or, if Tenant does not have a chief financial officer, an executive level officer whose job responsibilities include primary oversight of the preparation of financial statements)) then both (I) has total stockholder's equity (including goodwill and intangible assets), as determined in accordance with GAAP, equal to or greater than $224,000,000.00 and (II) Tenant's operating cash flow, as determined in accordance with GAAP, is equal to or greater than $36,000,000.00.

(v) the Fixed Annual Rent for the Expansion Space shall be shall be the Fair Market Rent (as hereinafter defined) thereof; and

(vi) the amount of the Letter of Credit shall be increased on a per rentable square foot basis to reflect the addition of the Expansion Space to the Premises.

E. If Tenant effectively exercises the Expansion Space Option pursuant to this Article 55, then Landlord shall deliver vacant and exclusive possession of the Expansion Space to Tenant on the Scheduled Expansion Space Commencement Date; provided, however, that (x) if a Person remains in occupancy of the Expansion Space (or any portion thereof) on the Scheduled Expansion Space Commencement Date, then Landlord, at Landlord's expense, shall use reasonable diligence to cause vacant and exclusive possession of the Expansion Space to be delivered to Tenant as promptly as reasonably practicable thereafter (the Scheduled Expansion Space Commencement Date, or such later date on which Landlord delivers vacant and exclusive possession of the Expansion Space to Tenant as contemplated by this Section 55.F., being referred to herein as the "Expansion Space Commencement Date"), and (y) if such Person's right to remain in occupancy of the Expansion Space (or a portion thereof) terminates prior to the Scheduled Expansion Space Commencement Date, then Landlord shall have no liability to Tenant (except as otherwise set forth in clause (x) above), and Tenant shall have no right to terminate or rescind this Lease or Tenant's exercise of the Expansion Space Option or reduce the Rental, in each case deriving from Landlord's failure to deliver vacant and exclusive possession of the Expansion Space to Tenant on the Scheduled Expansion Space Commencement Date. Landlord and Tenant intend that this Section 55.E. constitutes an "express provision to the contrary" for purposes of Section 223-a of the New York Real Property Law.

F. If Tenant shall lease the 20th, the 21st and 22nd floors pursuant to the terms hereof (or any other contiguous floors in the Building), then subject to the terms of this Article 8 (including, without limitation, Landlord's approval of materials, size, location, method of installation, power requirements, etc.), Landlord hereby approves, in concept only, the installation by Tenant in the Premises of one (1) set of internal stairs connecting contiguous floors of the Premises.

G. If Tenant shall lease the 20th, the 21st and 22nd floor of the Building (or any other contiguous floors in the Building), Tenant has requested that Landlord grant Tenant permission to use the portion of the Building fire stairs designated as fire stair "A" (the "Fire Stairs") between any contiguous floors of the Premises leased by Tenant solely for access between such contiguous floors of the Premises by Tenant and its employees and invitees. Provided and on the express condition that (a) the Initial Tenant Requirement is satisfied and (b) Tenant then leases the 20th, the 21st and 22nd floors, Landlord is willing to grant such permission to Tenant upon the following terms, conditions and provisions:

(i) Tenant may use the Fire Stairs, on a non-exclusive basis, throughout the Term of this Lease with respect to such contiguous floors, or until such earlier date that the permission granted under this Article is terminated or revoked pursuant to the terms hereof, solely for access between such contiguous floors and for no other use or purpose. Without limiting the generality of the foregoing, Tenant expressly acknowledges and agrees that the Fire Stairs may not be used for storage of any kind and that no loitering shall be permitted therein. Except as otherwise provided in this Article, Tenant's use of the Fire Stairs and its obligations with respect thereto shall be subject to and in accordance with all applicable Requirements, the Rules and Regulations applicable thereto and such other rules and regulations established by Landlord governing such use from time to time (as reasonably enacted, and communicated to Tenant by not less than thirty (30) days' prior written notice, from time to time) and the applicable terms, provisions, conditions and agreements contained in this Lease;

(ii) Tenant's use of the Fire Stairs shall be permitted provided and on the express condition that: (1) such use shall be permitted by, and at all times in accordance with, all applicable Requirements; (2) Tenant shall obtain all necessary governmental and regulatory approvals for the use of the Fire Stairs (if any); (3) Tenant shall comply with all of Landlord's reasonable rules and regulations adopted from time to time with respect thereto; (4) access doors to the Fire Stairs shall never be propped or blocked open; (5) Tenant shall not store or place anything in the Fire Stairs or otherwise impede ingress thereto or egress therefrom; (6) Tenant shall not permit or suffer any of its employees, agents or contractors to use any portion of the Fire Stairs other than for access between the different floors of the demised premises, except in case of emergency, and shall be responsible for assuring that Tenant's employees do not use the Fire Stairs for loitering or any other purpose other than access between the different floors of the demised premises and use in the event of a fire or other emergency; (7) Tenant shall, at its sole cost and expense, (i) install automatic door closing devices reasonably satisfactory to Landlord on all doors between the Fire Stairs and the floors of the demised premises; and (ii) tie such devices into the base Building fire alarm and life safety system; provided, in no event, shall the doors and/or frames have the fire rating thereof modified; (8) subject to applicable re-entry rules and regulations from time to time in effect, Tenant shall, at its sole cost and expense, install a key card locking system reasonably satisfactory to Landlord on all doors between the Fire Stairs and the floors of the demised premises; and (9) Tenant shall tie Tenant's security system into the Building security system so that, among other things, the Building security system can distinguish between an authorized entry into the Fire Stairs by one of Tenant's employees and an unauthorized entry by another party. Tenant shall provide Landlord with a "master" card key so that Landlord shall have access through each entry door. Tenant shall be solely responsible for the operation of the locking system on the doors from the Fire Stairs to the demised premises and hereby waives any and all claims against Landlord arising out of or in connection with parties gaining access to and from the demised premises through the Fire Stairs, except to the extent any such claims arise as a direct result of Landlord's (or Landlord's agents, employees or contractors) negligence or willful misconduct;

(iii) Subject to Landlord's prior review and approval of the same, which may be granted or withheld in Landlord's reasonable discretion, Tenant may, at its sole cost and expense, perform decorative or cosmetic upgrades to the Fire Stairs (e.g., painting), that do not require any permits from any Governmental Authority, subject to compliance with applicable Requirements and the applicable provisions of this Lease; All of the provisions of the Lease in respect of insurance and indemnification (but only with respect to Tenant, its employees, guests, invitees, contractors, agents, representative or other persons authorized or permitted by Tenant to utilize said Fire Stairs) shall apply to the portion of the Fire Stairs between the floors of the Premises, as if same were part of the Premises;

(iv) Notwithstanding that Tenant's use of the Fire Stairs shall be subject at all times to and shall be in accordance with the terms, covenants, conditions and agreements contained in this Lease (except as provided in this Article), Tenant acknowledges that Tenant's use of the same shall be pursuant to a license granted by Landlord that can be terminated or revoked by Landlord at any time if (a) Tenant's use of the Fire Stairs or any Alterations thereto violate any Requirements applicable to the Fire Stairs, the Premises or the Building or any portion thereof, including, without limitation, the Certificate of Occupancy issued for the Building (such termination or revocation shall void when such violation is cured to Landlord's reasonable satisfaction), or (b) this Lease no longer demises at least two (2) contiguous floors serviced by the applicable Fire Stairs;

(v) Landlord shall not be obligated to perform any work or incur any expenses to prepare the Fire Stairs for Tenant's use thereof, but Landlord shall be responsible for the ongoing repair and maintenance of the Fire Stairs and for the compliance thereof with Requirements for use of the Fire Stairs as a fire stairs, subject to reimbursement from Tenant of the costs of such work if and to the extent incurred by reason of the wrongful acts, omissions (where there is a duty to act), negligence or willful misconduct of Tenant or Tenant's agents employees, contractors, representatives or other Persons acting by, through or under Tenant, and not Landlord, or to the extent arising from Tenant's use of the Fire Stairs for non-emergency access between floors of the Premises and/or by reason of any Alterations performed by Tenant thereto. Tenant shall be responsible for any additional cleaning costs with respect to the use of the portion of the Fire Stairs between the floors of the demised premises by Tenant; and

(vi) Upon the expiration or earlier termination or revocation of the permission granted under this Article, upon Landlord's request, Tenant agrees to promptly, and at Tenant's sole cost and expense, remove any Alterations and installations identified by Landlord and made by Tenant to the Fire Stairs and to generally restore any portions of the Fire Stairs altered by Tenant to the condition existing on the date hereof at Tenant's sole cost and expense.

57. **FAIR MARKET RENT PROCEDURES**

A. The following terms shall have the following meanings:

(i) The term "Applicable Area" shall mean:

a) the Premises, in connection with the determination of the Fair Market Rent thereof, and

b) the Expansion Space, in connection with the determination of the Fair Market Rent thereof.

(ii) The term "Applicable Date" shall mean:

a) the Fixed Expiration Date, in connection with the determination of the Fair Market Rent of the Premises, and

b) the Scheduled Expansion Space Commencement Date, in connection with the determination of the Fair Market Rent for the Expansion Space.

(iii) The term "Fair Market Rent" shall mean annual fair market rental.

B. The Fair Market Rent shall be determined as of the Applicable Date assuming that the Applicable Area is free and clear of all leases and tenancies (including this Lease), that the Applicable Area is available for the purposes permitted by this Lease in the then rental market, that Landlord has had a reasonable time to locate a tenant, and that neither Landlord nor the prospective tenant is under any compulsion to rent, and taking into account all relevant factors, whether favorable to Landlord or Tenant.

C. If Tenant exercises the Renewal Option or Tenant exercises the Expansion Space Option, then Landlord and Tenant shall each deliver simultaneously to the other, at Landlord's office, a notice (each, a "Rent Notice"), on a date mutually agreed upon, but in no event later than:

(i) one hundred eighty (180) days before the Fixed Expiration Date, with respect to the Rent Notice for the determination of the Fair Market Rent for the Renewal Premises, and

(ii) the later to occur of (X) three (3) months before the Scheduled Expansion Space Commencement Date, as the same may be accelerated, and (Y) the thirtieth (30^{th}) day after the date that Tenant gives the Expansion Space Notice to Landlord, with respect to the Rent Notice for the determination of the Fair Market Rent for the Option Space,

as the case may be, which Rent Notice shall set forth each of their respective determinations of the Fair Market Rent (Landlord's determination of the Fair Market Rent is referred to as "Landlord's Determination" and Tenant's determination of the Fair Market Rent is referred to as "Tenant's Determination"; the date on which Landlord and Tenant agree to simultaneously deliver Landlord's Determination and Tenant's Determinations, respectively, the "Blind Swap Date"). For the avoidance of doubt, if the parties are unable to agree on the Blind Swap Date, the same shall be deemed to be the latest dates set forth above respectively with respect to the Rent Notices for the determination of the Fair Market Rent for the Renewal Premises and the Option Space. If (i) Tenant fails to give Tenant's Determination on the Blind Swap Date as contemplated herein, and (ii) Landlord tenders Landlord's Determination to Tenant on the Blind Swap Date, then the Fair Market Rent for the Applicable Area shall be Landlord's Determination; it being expressly understood however, that if Tenant fails to attend the meeting scheduled for the simultaneous exchange of Landlord's Determination and Tenant's Determination on the Blind Swap Date at Landlord's office, Landlord shall be deemed to have tendered Landlord's Determination to Tenant on the Blind Swap Date for all purposes hereof and Landlord shall promptly thereafter deliver a copy of Landlord's Determination to Tenant in accordance with the provisions of Article 28 hereof. If (i) Landlord fails to give Landlord’s Determination on the Blind Swap Date as contemplated herein, and (ii) Tenant tenders Tenant’s Determination to Landlord on the Blind Swap Date, then the Fair Market Rent for the Applicable Area shall be Tenant's Determination; it being expressly understood however, that if Landlord fails to attend the meeting scheduled for the simultaneous exchange of Landlord's Determination and Tenant's Determination on the Blind Swap Date at Landlord's office, Tenant shall be deemed to have tendered Tenant's Determination to Tenant on the Blind Swap Date for all purposes hereof and Tenant shall promptly thereafter deliver a copy of Tenant's Determination to Tenant in accordance with the provisions of Article 28 hereof.

D. If Tenant's Determination is higher than Landlord's Determination, then the Fair Market Rent for the Applicable Area shall be the average of Landlord's Determination and Tenant's Determination. If Tenant's Determination is lower than Landlord's Determination, then Landlord and Tenant shall attempt in good faith to agree upon the Fair Market Rent for a period of thirty (30) days after the date that Landlord gives Landlord's Determination to Tenant, and Tenant gives Tenant's Determination to Landlord. If Landlord and Tenant do not agree on the Fair Market Rent for the Applicable Area within thirty (30) days after the date that Landlord gives Landlord's Determination to Tenant, and the date that Tenant gives Tenant's Determination to Landlord, then Landlord and Tenant shall select jointly an appraiser who is an independent, licensed real estate broker that (i) neither Landlord nor Tenant, nor any of their respective Affiliates, has engaged during the immediately preceding period of three (3) years, and (ii) has at least ten (10) years of experience in leasing properties that are similar in character to the Building (such broker being referred to herein as the "Broker Appraiser"). Landlord and Tenant shall each pay fifty percent (50%) of the Broker Appraiser's fee. If Landlord and Tenant do not agree on the Broker Appraiser within ten (10) days after the last day of such period of thirty (30) days, then either party shall have the right to institute an Expedited Arbitration Proceeding (as hereinafter defined) for the sole purpose of designating the Broker Appraiser. The term "Expedited Arbitration Proceeding" shall mean a binding arbitration proceeding conducted in The City of New York under the Commercial Arbitration Rules of the American Arbitration Association (or its successor) and administered pursuant to the Expedited Procedures provisions thereof; provided, however, that with respect to any such arbitration, (i) the list of arbitrators referred to in Section E-4(b) shall be returned within five (5) Business Days from the date of mailing; (ii) the parties shall notify the American Arbitration Association (or its successor) by telephone, within four (4) Business Days, of any objections to the arbitrator appointed and, subject to clause (vii) below, shall have no right to object if the arbitrator so appointed was on the list submitted by the American Arbitration Association (or its successor) and was not objected to in accordance with Section E-4(c) as modified by clause (i) above; (iii) the notification of the hearing referred to in Section E-7 shall be four (4) Business Days in advance of the hearing; (iv) the hearing shall be held within seven (7) Business Days after the appointment of the arbitrator; (v) the arbitrator shall have no right to award damages or vary, modify or waive any provision of this Lease; (vi) the decision of the arbitrator shall be final and binding on the parties; and (vii) the arbitrator shall not have been employed by either party (or their respective Affiliates) during the period of three (3) years prior to the date of the Expedited Arbitration Proceeding.

E. The parties shall instruct the Broker Appraiser to (i) conduct the hearings and investigations that he or she deems appropriate, and (ii) choose either Landlord's Determination or Tenant's Determination as the better estimate of Fair Market Rent for the Applicable Area, within thirty (30) days after the date that the Broker Appraiser is designated. The Broker Appraiser's aforesaid choice shall be conclusive and binding upon Landlord and Tenant. Each party shall pay its own counsel fees and expenses, if any, in connection with the procedure described in this Article 56. The Broker Appraiser shall not have the power to supplement or modify any of the provisions of this Lease.

F. If the final determination of the Fair Market Rent is not made on or before the Applicable Date in accordance with the provisions of this Article 56 then, pending such final determination, the Fair Market Rent shall be deemed to be an amount equal to the average of Landlord's Determination and Tenant's Determination. If, based upon the final determination hereunder of the Fair Market Rent, the payments made by Tenant on account of the Rental for the period prior to the final determination of the Fair Market Rent were less than the Rental payable for such period, then Tenant, not later than the tenth (10^{th}) day after Landlord's demand therefor, shall pay to Landlord the amount of such deficiency. If, based upon the final determination of the Fair Market Rent, the payments made by Tenant on account of the Rental for the period prior to the final determination of the Fair Market Rent were more than the Rental due hereunder for such period, then Landlord, not later than the tenth (10^{th}) day after Tenant's demand therefor, shall pay such excess to Tenant.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK.]

IN WITNESS WHEREOF, Landlord and Tenant have executed this Lease as of the day and year first above written.

LANDLORD:

ESRT 1359 BROADWAY, L.L.C.

By: Empire State Realty OP, L.P., as its sole member

By: Empire State Realty Trust, Inc., as its general partner

By: /s/ Thomas P. Durels
Name: Thomas P. Durels
Title: Executive Vice President, Real Estate

TENANT:

PROGYNY, INC.

By: /s/ Peter Anevski
Name: Peter Anevski
Title: Chief Executive Officer

EXHIBIT A-1

to Lease

between

ESRT 1359 BROADWAY, L.L.C., Landlord

and

PROGYNY, INC., Tenant

Floor Plan of the 2nd Floor Premises

Note that these plans are is annexed to and made a part of this Lease solely to indicate the approximate shape and location of the 2nd Floor Premises. All measures, dimensions and distances are not to scale. The depiction herein does not constitute a warranty or representation of any kind, and nothing herein should be construed as a representation as to any specific tenancy, construction, access, or the quality or quantity of Landlord's title to the Building.

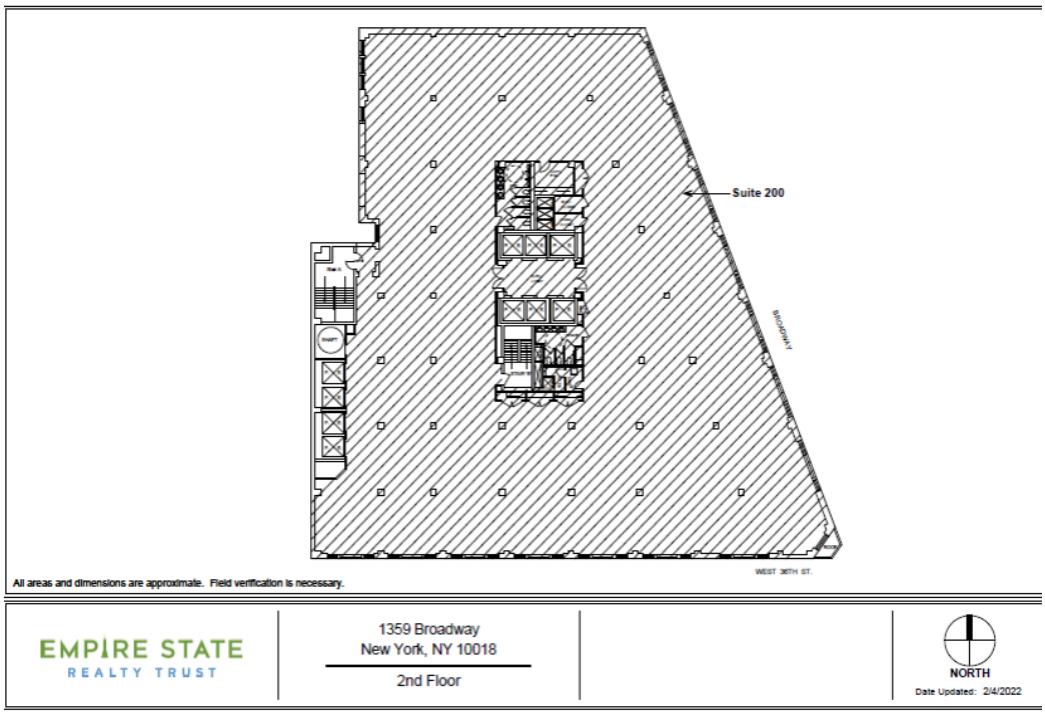

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EXHIBIT A-2

to Lease

between

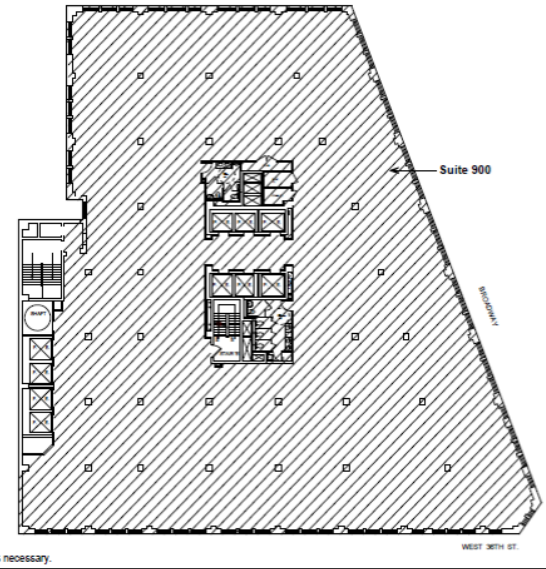
ESRT 1359 BROADWAY, L.L.C., Landlord

and

PROGYNY, INC., Tenant

Floor Plan of the 9th Floor Premises

Note that these plans are is annexed to and made a part of this Lease solely to indicate the approximate shape and location of the 9th Floor Premises. All measures, dimensions and distances are not to scale. The depiction herein does not constitute a warranty or representation of any kind, and nothing herein should be construed as a representation as to any specific tenancy, construction, access, or the quality or quantity of Landlord's title to the Building.



All areas and dimensions are approximate. Field verification is necessary.

EMPIRE STATE REALTY TRUST

1359 Broadway
New York, NY 10018

9th Floor

NORTH

Date Updated: 2/4/2022

#152719409_v7

EXHIBIT A-3

to Lease

between

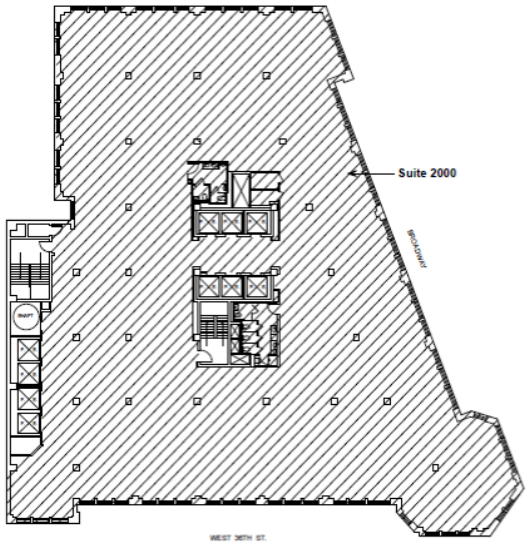
ESRT 1359 BROADWAY, L.L.C., Landlord

and

PROGYNY, INC., Tenant

Floor Plan of the 20th Floor Premises

Note that these plans are is annexed to and made a part of this Lease solely to indicate the approximate shape and location of the 20th Floor Premises. All measures, dimensions and distances are not to scale. The depiction herein does not constitute a warranty or representation of any kind, and nothing herein should be construed as a representation as to any specific tenancy, construction, access, or the quality or quantity of Landlord's title to the Building.



All areas and dimensions are approximate. Field verification is necessary.

EMPIRE STATE REALTY TRUST

1359 Broadway
New York, NY 10018

20th Floor

NORTH

Date Updated: 2/4/2022

#152719409_v7

EXHIBIT A-4

to Lease

between

ESRT 1359 BROADWAY, L.L.C., Landlord

and

PROGYNY, INC., Tenant

Floor Plan of the 3rd Floor Premises

Note that these plans are is annexed to and made a part of this Lease solely to indicate the approximate shape and location of the 3rd Floor Premises. All measures, dimensions and distances are not to scale. The depiction herein does not constitute a warranty or representation of any kind, and nothing herein should be construed as a representation as to any specific tenancy, construction, access, or the quality or quantity of Landlord's title to the Building.

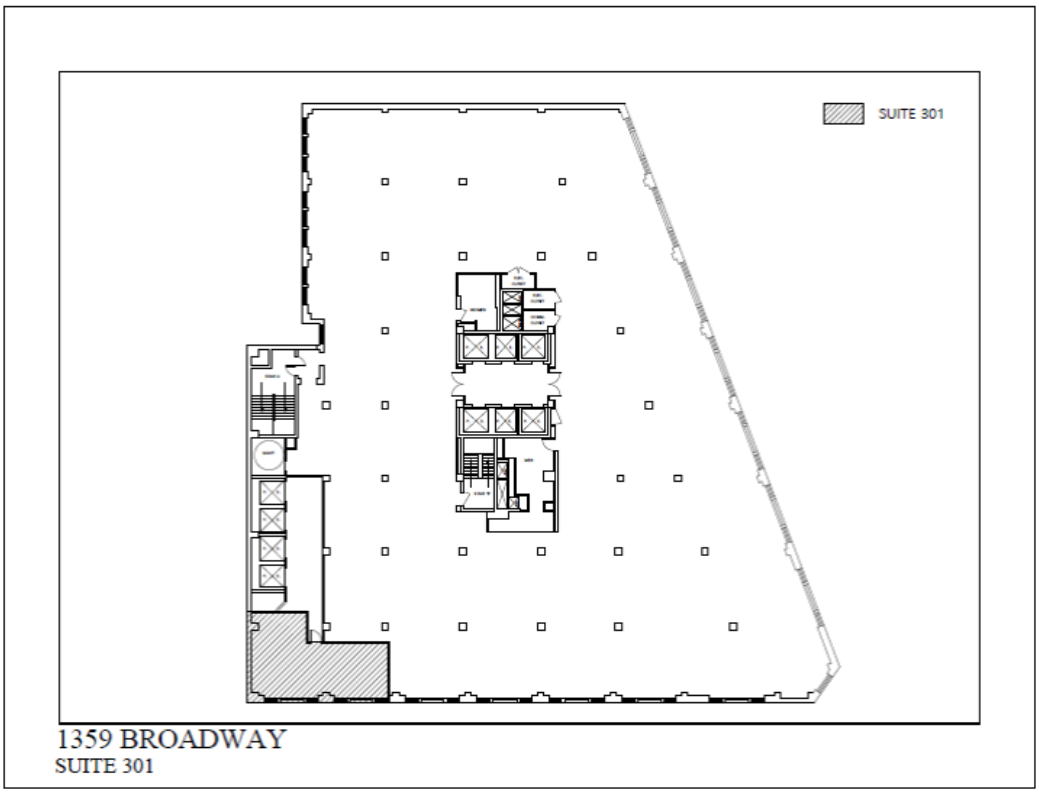


EXHIBIT B-1

to Lease
between
ESRT 1359 BROADWAY, L.L.C., Landlord

and
PROGYNY, INC., Tenant

Landlord's Base Building Work

1. Delivery of the applicable portion of the Premises demolished and in broom clean condition including removal of all abandoned or inactive piping, risers, conduits, etc.;
2. 75% of all construction waste shall be recycled
3. Provide existing in good working order or install new HVAC unit(s);
4. Existing electric panels and transformers shall be left in place "as-is" condition;
5. All interior columns are stripped and will be finished with intumescent paint;
6. Construct Building Standard code compliant restrooms (shall be a condition of Commencement);
7. Floors will be delivered reasonably smooth to accept Tenant's flooring;
8. Landlord will provide code compliant fire proofing;
9. Connection "stub outs" shall be available for water at all wet columns;
10. Landlord to provide Class E availability of connection points for Tenant's strobes and related Class E connections. Landlord, at Tenant's expense, shall provide all points, tie-ins and software reprogramming. Tenant to determine its requirements relative to the existing Class E system. All fire and safety systems, including alarms, speakers, communications, etc. shall be in full service and available on all floors of the Premises; and
11. Provide existing convector covers in good condition or install new

EXHIBIT B-2

to Lease
between

ESRT 1359 BROADWAY, L.L.C., Landlord

and

PROGYNY, INC., Tenant

Work Letter

(see attached)

#152719409_v7

EMPIRE STATE REALTY TRUST
BUILDING STANDARDS WORK LETTER SCOPE
1359 Broadway

February 9th, 2022

1. Partitions		NOTE
1.1.	Demising walls to be as required by code.	
1.2.	Slab to slab partition with 2-1/2" metal studs, one layer of 5/8" gypsum board on each side (total two layers) without batt insulation space throughout except detailed on 1.3, 1.4, 1.5, 1.6. 1.7, 1.8 and 1.9.	
1.3.	One (1) training room, two (2) conference rooms to receive building standard - A full-length metal and single glazed glass partitions, "Infinium quantum, black finish". - A slab-to-slab drywall partition with 2-1/2" metal studs, one (1) layer of 5/8" gypsum board on each side of wall (total two layers) and batt insulation (Owen Corning EcoThouch batt insulation). - Drywall header above glass partition to receive 2-1/2" metal studs, one layer of 5/8" gypsum board on each side (total two layers) and batt insulation (Owen Corning EcoThouch batt insulation or equal).	
1.4.	Offices and meeting rooms to receive building standard - A full-length metal and single glazed glass partitions, "Infinium quantum, black finish". - Drywall partition between offices and huddle rooms to receive slab to slab partition with 2-1/2" metal studs, one (1) layer of 5/8" gypsum board on each side of wall (total two layers) with batt insulation (Owen Corning EcoThouch batt insulation). - Drywall header above glass partition to receive 2-1/2" metal studs, one layer of 5/8" gypsum board on each side (total two layers) with batt insulation (Owen Corning EcoThouch batt insulation or equal).	
1.5.	Phone rooms to receive building standard - A full-length metal and single glazed glass partitions, "Infinium quantum, black finish". - Drywall partition between offices and huddle rooms to receive slab to slab partition with 2-1/2" metal studs, one (1) layer of 5/8" gypsum board on each side of wall (total two layers) with batt insulation (Owen Corning EcoThouch batt insulation or equal). - Drywall header above glass partition to receive 2-1/2" metal studs, one layer of 5/8" gypsum board on each side (total two layers) with batt insulation (Owen Corning EcoThouch batt insulation or equal).	
1.6.	Mechanical rooms to receive slab to slab partition with 2-1/2" metal studs, two layers of 5/8" gypsum board on mechanical room side, one layer of 5/8" on adjacent room side (total three layers) and batt insulation (Owen Corning EcoThouch batt insulation or equal).	
1.7.	Core restrooms to receive slab to slab partition with metal studs (thk. of metal studs to be determined by plumbing fixture), one layout of 5/8" moisture resistant gypsum board on plumbing side and one layer of 5/8" gypsum board on the other side (total two layers) with bath insulation (Owen Corning EcoThouch batt insulation or equal).	
1.8.	Wellness room to receive slab to slab partition with 2-1/2" metal studs, one layer of 5/8" gypsum board on each side (total two layers) with batt insulation (Owen Corning EcoThouch batt insulation or equal).	

1.9.	One (1) unisex ADA restroom to receive slab to slab partition with metal studs (thk. of metal studs to be determined by plumbing fixture), one layout of 5/8" moisture resistant gypsum board on plumbing side and one layer of 5/8" gypsum board on the other side (total two layers) with bath insulation (Owen Corning EcoThouch batt insulation or equal).	
2.	**Doors and Hardware**	**NOTE**
2.1.	Offices to receive - A single glazed glass swing door by office front manufacturer, "Infinium quantum". - A office lockset, recommended hardware by office front manufacturer "Infinium quantum", black finish.	Total (2) rooms
2.2.	Training room, conference rooms and meeting rooms to receive - A single glazed glass swing door by office front manufacturer, "Infinium quantum". - A passage latch set recommended hardware by office front manufacturer "Infinium quantum," black finish.	Total (10) rooms
2.3.	Phone rooms to receive - A single glazed glass swing door by office front manufacturer, "Infinium quantum", (5) locations. - A single glazed glass sliding door by office front manufacturer, "Infinium quantum", (5) locations. - With a swing door: a passage latch set, recommended hardware by office front manufacturer "Infinium quantum," black finish. - With a sliding door: back-to-back ladder pulls, recommended hardware by office front manufacturer "Infinium quantum," black finish.	Total (10) rooms
2.4.	Each main entry door to receive building standard - Double glass herculite doors with top/bottom shoe, black finish - Back-to-back ladder door pulls, black finish. - Door closers. - Mag Lock, tie into building Class "E" system. - One (1) security backbox with one (1) conduit stub-ups on elevator lobby side. - One (1) backbox and conduit stub-up for wall mounted security camera on elevator lobby side. - One (1) backbox with one (1) conduit stub-ups for door release button on tenant side. - Security devices, wiring and termination by Tenant.	Two (2) locations
2.5.	Freight lobby entrance door to receive a building standard - A painted single hollow metal swing door over welded hollow metal frame. - Mortise lockset, "Schlage" L series with lever handle, black finish. - Door closers, black finish. - Top/bottom flush bolts.	One (1) location
2.6.	Storage room and storage closets to receive building standard - Painted hollow metal swing door over painted hollow metal K.D. frame. - With double doors: classroom lockset, top and bottom flush bolt, black finish.	

	- With a single door: classroom locket, black finish.	
2.7.	Coat closet to receive building standard - Painted hollow metal double doors over painted hollow metal K.D. frame. - Dummy set, black finish, and magnetic catch to keep doors secure against the door frame.	
2.8.	IT room to receive building standard - Painted hollow metal single door with louver over painted hollow metal K.D. frame. - Classroom lockset, black finish. - A door closer, black finish.	
2.9.	Wellness room to receive building standard - Painted hollow metal a single door over painted hollow metal K.D. frame. - A lockset with vacancy/occupancy indicator, black finish.	
2.10.	Mechanical room to receive building standard - A painted hollow metal door over painted hollow metal K.D. frame. - Storage room locket, black finish. - A door closer, black finish. - Acoustical seals (bottom/sides/head).	
2.11.	Core restrooms to receive a building standard - A painted hollow metal single door over painted hollow metal K.D. frame. - Passage latch set, black finish. - A door closer, black finish. - Kickplate on corridor side.	
2.12.	Fire stair doors to receive a building standard lock set with panic push bar, satin chrome finish (US26D).	
2.13.	One (1) unisex ADA rest room to receive building standard - Painted hollow metal a single door over painted hollow metal K.D. frame. - A lockset with vacancy/occupancy indicator, black finish. - A door closer, black finish.	
2.14.	All Hollow metal doors to receive building standard - Full mortise ball bearing butt hinges, black finish. - Doorstop, black finish. - Rubber door silencers, grey finish.	
3.	**Ceilings**	
3.1.	Exposed slab/beam as is condition space throughout except as detailed in 3.2. Exposed slab/beam to be painted with building standard Ecospec flat paint, (BM, "super-white").	
3.2.	One (1) training room and two (2) conference rooms to receive building standard floating suspended acoustical ceiling system, "Armstrong, Formation accent cloud" with Axiom Vector trim and "Armstrong, Optima series" oversized lay-in ceiling tiles.	Total (3) rooms
3.1.	Two (2) unisex ADA rest rooms to receive building standard - 2'x2' accessible ceiling system, "Armstrong, Silhouette grid with Ultima series no. 1912 HRC Beveled tegula lay-in ceiling tiles".	
3.3.	Ceiling to be installed as per codes and requirements.	
4.	**Electrical**	

EMPIRE STATE REALTY TRUST
BUILDING STANDARDS WORK LETTER SCOPE
1359 Broadway

February 9th, 2022

4.1.	All lighting designs shall comply with New York City Energy Code.	
4.2.	All Emergency and exit lights to be provided with New York City approved battery ballast.	
4.3.	Open work area, offices, meeting rooms and phone rooms to receive building standard - LED linear pendant light fixtures space throughout, "Axis, Sculpt" direct/indirect, black finish, 120v.	
4.4.	One (1) board room and two (2) conference rooms to receive building standard - LED linear recessed light fixtures, "Axis, Beam" recessed, white finish, 120v.	
4.5.	Wellness room to receive Building standard - LED linear pendant light fixtures space throughout, "Axis, Sculpt" direct/indirect, black finish, 120v.	
4.6.	Storage room and storage closets to receive building standard LED surface mounted light fixture, "Saylight Texas Fluorescent", white finish, 120v.	
4.7.	IT room to receive building standard LED surface mounted light fixture, "Saylight Texas Fluorescent", white finish, 120v.	
4.8.	Pantry to receive building standard - LED linear pendant light fixtures, "Axis, Sculpt" direct/indirect, black finish, 120v. - LED undershelf light fixture, "Acolyte, RAC", white finish, 120v.	
4.9.	Two (2) unisex ADA rest rooms to receive building standard - 2' x 2' LED light fixture, "Axis, DIA", white finish, 120v.	
4.10.	Perimeter areas/rooms lighting to be controlled by building standard "Lutron" ceiling mounted daylight sensors and ceiling/wall mounted motion sensor.	
4.11.	Interior areas/rooms lighting to be controlled by building standard "Lutron" ceiling/wall mounted motion sensor.	
4.12.	Electrical receptacles to be building standard "Lutron" Designer Series, 110v wall mounted at 18" A.F.F., unless otherwise indicated on drawings.	
4.13.	Each office to receive - One (1) quad electrical outlet and one (1) communications back box with stub-ups.	Total (2) rooms
4.14.	Training room to receive - Two (2) duplex electrical outlets and two (2) communications back boxes with stub-ups on wall at standard height (18" A.F.F.) - In-wall plywood blocking (4'-0" W x 2'-6" H) for wall mounted TV. - Two (2) electrical outlets, one (2) communication back box with stub-ups and two (2) single gang AV backbox with stub-ups for wall mounted TV - One (1) floor mounted outlet including one (1) duplex electrical outlet/one (1) communication outlet with one (1) 1" dia. conduit/one (1) AV outlet with two (2) 1" dia. conduits (or one (1) 1-1/4" dia. conduit (final size of conduit TBD pending location and slab condition), trenched slab from floor outlet to in-wall electrical and communication/AV junction boxes.	Total (1) room
4.15.	Each conference rooms to receive - Two (2) duplex electrical outlets and two (2) communications back boxes with stub-ups.	Total (2) rooms

	- In-wall plywood blocking (4'-0" W x 2'-6" H) for wall mounted TV. - One (1) electrical outlet, one (1) communication back box with stub-ups and one (1) single gang AV backbox with stub-ups for wall mounted TV - One (1) floor mounted outlet including one (1) duplex electrical outlet/one (1) communication outlet with one (1) 1" dia. conduit/one (1) AV outlet with two (2) 1" dia. conduits (or one (1) 1-1/4" dia. conduit, final size of conduit TBD pending location and slab condition), trenched slab from floor outlet to in-wall electrical and communication/AV junction boxes.	
4.16.	Each meeting room to receive - One (1) duplex electrical outlet and one (1) communications back box with stub-up.	Total (7) rooms
4.17.	Each phone room to receive - One (1) duplex electrical outlet and one (1) communications back box with stub-up.	Total (11) rooms
4.18.	Each wellness room to receive - One (1) quad electrical outlet and one (1) communications back box with stub-up.	
4.19.	Large storage room to receive one (1) duplex electrical outlet.	
4.20.	Each workstation cluster to receive - In wall/column/radiator cover electrical and communications junction box ("pig-tail"). - One (1) electrical circuit per every three (3) to four (4) workstations. - Electrification of workstations by tenant.	
4.21.	IT room to receive - Four (4) 20 amps dedicated quad electrical outlets.	
4.22.	Copy/printer area to receive - One (1) 20amps dedicated 120v duplex electrical outlet and one (1) communication back boxed with stub-up at copier location.	Total (3) locations
4.23.	Shedder area to receive - One (1) quad. electrical outlet.	Total (2) locations
4.24.	Pantry to receive - One (1) 20amps dedicated duplex electrical outlet per appliance. - Three (3) convenience GFCI electrical outlets above countertop. - One (1) duplex convenience electrical outlet on wall. - Two (2) duplex electrical outlets on wall for vending machines (vending machine to be furnished and installed by tenant).	
4.25.	Open collaboration area to receive: - Two (2) duplex electrical outlet and two (2) communication backbox with stub-up at waiting area.	
4.26.	Each core restroom to receive - Two (2) duplex GFCI electrical outlets above vanity top. - Two (2) convenience duplex electrical outlets on wall.	
4.27.	Cleaning convenience electrical receptacles where required.	
4.28.	Communications outlet with a backbox to receive one (1) 1" diameter conduit/flex stub-ups unless otherwise noted. Wiring, jacks, and face plates by tenant.	
5. Flooring & Base		

5.1.	All gypsum board partitions to receive 4-1/4" H. rubber base (see specification attached).	
5.2.	Building standard polished exposed concrete flooring space throughout except detail in 5.3.	
5.3.	Building standard carpet tile flooring at offices, training, conference rooms, meeting rooms, phone room, wellness room and workstation areas (see specification attached).	
5.4.	Carpet to be direct glue down installation (see specification attached).	
6.	**Wall/Column/Metal Finishes**	
6.1.	All drywalls & enclosed columns to be painted with two (2) coats of Ecospec flat paint over one (1) coat of Ecospec primer, Total (3) coats. The color to be selected by tenant, max. four (4) paint colors.	
6.2.	All hollow metal surface to be painted with two (2) coats of Ecospec Semi-gloss paint over one (1) coat of Ecospec primer, Total (3) coats. The color to be selected by tenant.	
6.3.	Exposed intumescent painted interior columns. The color to be selected by tenant.	
6.4.	All radiator enclosures to be painted with two (2) coats of Ecospec Semi-gloss paint over one (1) coat of Ecospec primer, Total (3) coats. The color to be selected by tenant.	
7.	**Architectural Woodwork**	
7.1.	Coat closets to receive building standard chrome hang rod and birch veneer hat shelf.	Total (1) location
7.2.	Pantry to receive building standard: - Plastic laminate base cabinet and overhead open shelving (see specification). - Stone countertop and a full height porcelain tile or glass tile backsplash (see specification attached). - Two (2) 6 LF furniture island (Color: TBD, total 12' length). - Plastic laminate 5H shelving for snack.	Per test fit
7.3.	Entrance foyer by men's room to receive building standard - Built in plastic laminate base countertop with support panels.	Total (1) location
7.4.	Adhesives shall not contain urea-formaldehyde resins and be able to achieve Greenguard indoor air quality certification.	
8.	**HVAC**	
8.1.	Building standard air-cooled units with VAV zoned control with building standard BMS control and medium/low pressure duct distribution system. Units to receive active air purification (bi-polar ionization).	
8.2.	Building standard side mount or ceiling mount rectangular supply and return diffuser.	
8.3.	Building standard exposed flat oval metal duct space throughout.	
8.4.	Building standard A/C control. One temperature sensor thermostat will be installed per VAV box zone as required by code.	
8.5.	Building standard exhaust fan with control switch in IT room.	
8.6.	Air balancing by building approved balancing contractor.	

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8.7. One (1) training room and two large conference rooms to receive 90-degree elbow internally acoustic lined return air transfer duct from ceiling to outside room.	
9. Fire Alarm/Sprinkler	
9.1. Exit light as required by code.	
9.2. Strobe/speaker combination devices as required by code.	
9.3. Sprinkler coverage as required by code.	
10. Plumbing	
10.1. Pantry to receive building standard: - One (1) stainless steel under counter mounted sink with one (1) faucet/spray. - Three (3) cold water lines and valves for coffee maker and/or water dispenser on wall above countertop, to be connected to building standard water filter. - Coffee maker and/or water dispenser by tenant.	
10.2. Cold and hot water piping shall be type L copper tubing, with 1" insulation.	
10.3. Sanitary piping above ground shall be standard weight, no-hub system.	
10.4. Bottle filler/water fountain stations with all required and associated scopes.	(1) location
11. Miscellaneous	
11.1. Building standard painted metal radiator enclosure as detailed in 6.4.	
11.2. Building standard window treatments manual solar shades (see specifications attached).	
11.3. Pantry to receive building standard energy star appliances: - Two (2) "Summit 55" W. 49 cu. ft. commercial reach-in" refrigerators. - One (1) "Asko" dishwasher. - Four (4) "GE Monogram" microwave.	
11.4. PVC wrap on all piping requires insulation (building vertical piping adjacent to exposed columns only).	
11.5. IT room to receive a painted F.R. plywood (7'-0" H x 4'-0" W) on wall.	
11.6. Building standard distraction markers on glass office fronts space throughout.	
11.7. Building standard finish/installation at elevator lobby (similar as 17th floor elevator lobby finish/installation).	
11.8. Building standard finish/installation at core restrooms (similar as 17th floor core restroom finish/installation).	
12. Tenant Alternates	
12.1. Security for freight lobby single door: - Electric strike and one (1) backbox with one (1) conduit stub-up for card reader. - Security devices, wiring and termination by tenant/tenant vendor.	
12.2. Security for IT room single door: - Electric strike and one (1) backbox with one (1) conduit stub-up for card reader. - Security devices, wiring and termination by tenant/tenant vendor.	
12.3. Security for wellness room single door: - Electric strike and one (1) backbox with one (1) conduit stub-up for card reader.	

- Security devices, wiring and termination by tenant/tenant vendor.	
12.4. Security for fire stair doors: - One (1) backbox and conduit stub-up for wall mounted security camera on - Security devices, wiring and termination by tenant/tenant vendor.	
12.5. Pantry to receive: - Decorative custom light fixtures in lieu of ESRT standard linear pendant light fixtures. - Decorative custom light fixture specification and locations to be provided by tenant/tenant vendor.	
12.6. Addition to detailed in 4.14, training room to receive: - Floor mounted outlet including one (1) quad electrical outlet and one (1) communication outlet with one (1) 1" dia. conduit sub-ups, trenched slab from floor outlet to in-wall electrical and communication junction boxes	Total (2) locations
12.7. Addition to detailed in 4.16, each meeting room to receive: - Floor mounted outlet including one (1) quad electrical outlet and one (1) communication outlet with one (1) 1" dia. conduit sub-ups, trenched slab from floor outlet to in-wall electrical and communication junction boxes	Total (7) locations
12.8. Addition to detailed in 4.25, open collaboration area to receive: - Floor mounted outlet including one (1) quad electrical outlet and one (1) communication outlet with one (1) 1" dia. conduit sub-ups, trenched slab from floor outlet to in-wall electrical and communication junction boxes.	Total (5) locations
12.9. Addition to detailed in 4.21, IT room to receive - Two (2) 30amps L6-30P twist lock receptables on the top of the IT racks. - Final locations to be provided by tenant/tenant vendor.	
12.10. Addition to detailed in 4.13, each office to receive: - In-wall plywood blocking (4'-0" W x 2'-6" H) for wall mounted TV. - One (1) electrical outlet and one (1) communication back box with stub-ups for wall mounted TV.	Total (2) rooms
12.11. Meeting rooms, open collaboration area and open work area to receive: - In-wall plywood blocking (4'-0" W x 2'-6" H) for wall mounted TV. - One (1) electrical outlet and one (1) communication back box with stub-ups for wall mounted TV.	Total (15) locations
12.12. Individual wellness room: - In-wall plywood blocking (4'-0" W x 2'-6" H) for wall mounted TV. - One (1) electrical outlet and one (1) communication back box with stub-ups for wall mounted TV.	Total (2) locations
12.13. Pantry to receive plastic laminate overhead cabinet in lieu of overhead open shelving.	
12.14. Storage and storage closet to receive - Built-in plastic laminate 5H adjustable shelving on heavy duty standards and brackets	Total (6) rooms
12.15. Pantry to receive under counter icemaker with associated plumbing scope and electrical outlet.	
12.16. Wellness room foyer to receive - Plastic laminate base cabinet, stone countertop and 4"H stone backsplash. - Undercounter refrigerator and one (1) 20amps dedicated electrical outlet. - One (1) stainless steel under counter mounted sink with one (1) faucet.	One (1) location

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12.17. Individual wellness room to receive - Built in plastic laminate countertop with support panels. - In wall blocking for curtain rods. - Curtain rods/curtains to furnish and installed by tenant/tenant vendor.	Total (2) rooms
12.18. Interior meeting room to receive - Built-in credenza. - Finish/design to be provided by tenant/tenant vendor.	Total (3) rooms
12.19. Large conference room to receive - Built-in credenza. - Finish/design to be provided by tenant/tenant vendor.	Total (1) room
12.20. Southern open work area to receive - Built-in open bar counter. - Finish/design to be provided by tenant/tenant vendor.	
12.21. Custom logo distraction markers on glass office front in lieu of building standard distraction markers.	
12.22. IT room to receive: (3) tons air cooled supplemental A/C unit with all associated scopes.	
12.23. Furnish and install one (1) unisex ADA restroom with all required and associated scope.	
12.24. Furnish and install folding partition with all associated scopes in between training room and open collaboration area	
12.25. Pantry to receive - Instant hot/cold water dispenser with required and associated scope - A cold brew tap with required and associated scope.	

*Note: Any deviation from these Building Standards are subject to Landlord's approval

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BUILDING STANDARDS FINISH SPECIFICATION

General Paint
Benjamin Moore, Color TBD
Ready Mix Series, Ecospec Latex flat finish for wall surface
Ready Mix series: Ecospec Latex Semi gloss finish for metal surface

Carpet – Office, Training Room, Meeting Room, Phone Room, Wellness room
Bentley Mills
Multiplay Collection, hardback Carpet Tiles 24" x 24", Color T.B.D
Direct glue down installation

Carpet – Open work area
Bentley Mills
Multiplay Collection, hardback Carpet Tiles 24" x 24", Color T.B.D
Direct glue down installation

Rubber Base, 4-1/4" H.
Johnsonite,
Millwork Reveal Base, Color T.B.D

Plastic Laminate – Pantry
Wilsonart laminate
Premium Aeon, Color T.B.D
High gloss Finish

Stone countertop – Pantry
HANWAH Surfaces
Han Stone Quartz, Royale Blanc, 1-1/4" Thk.

Backsplash – Pantry
Walker Zanger, Studio Glass White Filed, 2" x 6" Gloss off
Or
NEMO tiles, Abstract light gray-glossy or dark gray- glossy
2" x 9"

Plastic Laminate – Snack area/Core restroom foyer
Wilsonart laminate
Premium Aeon, D354K-01, Designer White
Matte Finish

Window Treatment
Phifer Sheerweeve
Style 2000, 5% openness
P02 White

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BUILDING STANDARDS Elevator LOBBY FINISH SPECIFICATION

Carpet – Elevator Lobby
MFR.: Bentley Mills
Item: Manifesto, hardback Carpet Tiles
Color: Catalyst 801480
Size: 24" x 24" (monolithic installation)

Wallcovering
MFR.: Knoll Textile
Style: Repertoire, screenplay series (WC1786/1B)
Color: Flood Light

Rubber Base, 4-1/4" H.
MFR.: Johnsonite
Item: Millwork wall reveal (MW-XX-F)
Color: Burnt Umber (#63)

Paint (S/R header, ceiling, and soffit)
MFR.: Benjamin Moore
Color: Super white
Ecospec Latex flat finish

Paint (Metal surface: Building HM door/Frame)
MFR.: Benjamin Moore
Color Super: TBD
Ready Mix series: Ecospec Latex Semi gloss finish

Paint (Elevator door and frame)
MFR.: Scuff Master
Color: Solid metal #SM8124

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BUILDING STANDARDS FINISH SPECIFICATION (CORE RESTROOM)

Ceramic Wall tile
MFR: Dal Tile
Series: Modern Dimensions
Size: 4" x 12"
Color: Artic White 0190
Finish: Grossy
Grout: Laticrete 45 Raven

Accent wall
MFR: Clarus Glass Board
Style/Color: Clarus #CBC-102
¼" low iron temp. back painted glass, installed at sink wall

Porcelain Flooring tile
MFR: Crossville
Series: Color Bllox 2.0
Size: 12" x 24"
Color: Boot Black
Grout: Laticrete Midnight Black #22

Ceramic cove wall base
MFR: Dal Tile
Series: Modern dimensions
Size: 4" x 4"
Color: Artic white 0190 flat top cove base A-34C1
Finish: Grossy
Grout: Laticrete 45 Raven

Note: Cove corner PCS outside
MFR: Dal Tile
Series: Modern dimensions
Size: 4" x 4"
Color: Artic white 0190 wall bullnose corner
Finish: Glossy
Grout: Laticrete 45 Raven

Porcelain Vanity top
MFR: Stone Source
Item: Laminam 12+
Color: Cava Nero Greco
Finish: Polished

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BUILDING STANDARD PLUMBING FIXTURE SPECIFICATION (CORE RESTOOM)

Water Closet (1.0 GPF)
MFR: TOTO
Item:
- Floor Mounted: Commercial Flushometer ADA, CT705ULNG
- Wall Mounted: Commercial Flushometer ADA, CT708UG

Finish: #01 Cotton
Seat: SC 534

Flush Valve (1.0 GPF)
MFR: TOTO
Item: ECOPOWER Ultra High Efficiency Toilet Flush Valve, TET1USA32#CP
Finish: Polished Chrome

Urinal (0.125 GPF)
MFR: TOTO
Item: High Efficiency Washout Urinal
- UT445U (3/4" top spud inlet)
- UT445UV (3/4" back spud inlet)

Finish: #01 Cotton

Flush Valves (0.0125 GPF)
MFR: TOTO
Item: ECOPOWER Ultra High Efficiency Urinal Flush Valve, TEU1UA12#CP
Finish: Polished Chrome

Vanity Sink
MFR: AMERICAN STANDADARD
Item: OVALYN Undercounter Sink, #0496.221 (Unglazed rim)
Size: 19-1/4" x 16-1/4"
Color: White

Sensor Activated Faucet (0.35 GPF)
MFR: TOTO
Item: Standard EcoPower Faucet, TEL103-D20ET#CP
Finish: Polished Chrome

Sensor Activated Soap Dispenser
MFR: SLOAN
Item: Deck mounted Foam Soap Dispenser, ESD-2100-CP (#3346098)
Finish: Polished Chrome
Note: Battery Operated

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EXHIBIT B-3

to Lease
between

ESRT 1359 BROADWAY, L.L.C., Landlord

and

PROGYNY, INC., Tenant

Final Space Plans

(see attached)

#152719409_v7

2	OFFICES
189	WORKSTATIONS
1	CONFERENCE, 8P
2	MEETING, 6P
6	MEETING, 4P
11	PHONE ROOMS
1	CAFE, 45P

EXHIBIT C

to Lease
between

ESRT 1359 BROADWAY, L.L.C., Landlord

and

PROGYNY, INC., Tenant

Standard Expense Exclusions

The term "Standard Expense Exclusions" shall mean:

(1) Real Estate Taxes and Excluded Amounts;

(2) expenses related to leasing space (including, without limitation, leasing and/or brokerage commissions, the cost of tenant improvements (or allowances that Landlord provides to a tenant therefor), legal fees, lease buy-out costs, rent concessions, takeover expenses, costs of relocating or moving tenants and advertising expenses);

(3) wages, salaries, bonuses or other compensation and the cost of any benefits, in any case, for executives' above the grade of Building or general manager;

(4) debt service (including both principal and interest) under any mortgage loan or rent under any underlying or ground lease of the Building;

(5) subject to the terms of Section 2.C.(iii) of this Lease, the cost of any repairs, replacements or improvements to the Building that are required to be capitalized under GAAP;

(6) amounts received by Landlord through proceeds of insurance to the extent the proceeds are compensation for expenses which were previously included in Expenses hereunder;

(7) costs that Landlord incurs in restoring the Building after the occurrence of a fire or other casualty (except that Landlord shall be permitted to include the amount of Landlord's insurance deductible paid in connection therewith to the extent the same is commercially reasonable) or after a partial condemnation thereof;

(8) advertising and promotional expenditures that are paid or incurred for the Building;

(9) legal, auditing and other third-party fees incurred in connection with actual or anticipated litigation with any Building tenant or group of tenants to enforce any provision of their respective lease;

(10) the incremental cost of furnishing services such as overtime HVAC to any tenant at such tenant's expense; costs incurred in performing work or furnishing services for individual tenants (including Tenant) at such tenant's expense; and costs of performing work or furnishing services for tenants other than Tenant at Landlord's expense to the extent that such work or service is in excess, on a per rentable square foot basis, of any work or service Landlord is obligated to furnish to Tenant at Landlord's expense;

(11) interest, penalties and late charges that in either case are paid or incurred as a result of late payments made by Landlord or by reason of Landlord's failure to comply with Requirements (it being agreed that the foregoing exclusion shall not preclude any

penalties imposed in connection with New York City Local Law 97, which penalties shall be included as Expenses);

(12) costs incurred by Landlord to remedy presently existing conditions at the Building in respect of which a Governmental Authority has issued a notice of violation on or prior to the date hereof or costs incurred to remedy any other violations of applicable Requirements of which Landlord otherwise has actual knowledge of, as of the date hereof;

(13) costs incurred by Landlord which result from (x) Landlord's breach of a lease or other occupancy agreement for space in the Building (including, without limitation, this Lease), or (y) Landlord's negligence or willful misconduct, or (z) Landlord's breach of any mortgage loan or ground lease;

(14) costs associated with the operation of the legal entity which constitutes the Landlord, as such costs are separate and apart from costs associated with the operation of the Building, including, without limitation, legal entity formation, costs that Landlord incurs in organizing or maintaining in good standing the entity that constitutes Landlord, or in authorizing Landlord to do business in the jurisdiction where the Building is located;

(15) expenses that Landlord incurs in selling, purchasing, financing or refinancing the Real Property or converting the Real Property to condominium ownership;

(16) subject to Section 2.C.(iii) of this Lease, depreciation or amortization expense;

(17) Landlord's entertainment expenses and related travel expenses;

(18) any expense for which Landlord is otherwise compensated whether by virtue of condemnation proceeds, claims under warranties, Tenant or other tenants in the Building making payment directly to Landlord for Landlord's services in the Building or otherwise (it being understood that the foregoing shall not preclude Landlord from including the Building Electricity Payment in Expenses), other than by virtue of Tenant and/or other tenants in the Building making payments to Landlord for additional rent or escalation rent to Landlord based upon increases in operating expenses pursuant to provisions comparable in nature to those contained in Section 2.C. of this Lease;

(19) costs incurred in connection with expanding the rentable area of the Building;

(20) subject to the proviso at the end of this clause (20), costs incurred to investigate, test, characterize, remove, encapsulate or otherwise remediate or abate hazardous, toxic, controlled, dangerous or radioactive substances, materials or wastes regulated under Requirements (collectively, "Hazardous Materials") and that are located in the Building, as of the date hereof, to the extent that a Requirement requires such removal, encapsulation, remediation or abatement as of the date hereof (provided, however, that nothing in this clause (20) limits Landlord's right to include in Expenses the costs that Landlord incurs to routinely test and routinely monitor such Hazardous Materials);

(21) a pro-rata portion of wages and benefits of any employee who is employed at more than one building which pro-rata share shall be based on Landlord's reasonable estimate of the percentage of time spent by such employees at such other buildings;

(22) costs incurred in acquiring, installing and operating any sign or other similar device designed principally for advertising or promotion, to the extent Landlord leases or licenses such sign or device to a third party; it being expressly understood that nothing contained in this exception (22) or elsewhere in Article 2 of this Lease shall be deemed to exclude the costs of maintaining, repairing and/or operating any electronic screens in elevator cabs of the Building and/or any modifications or replacements thereof;

(23) initial build-out costs for any daycare center, conference center, health club, eating establishment, or library installed in the Building; it being expressly understood that the foregoing shall not prevent Landlord from including in Expenses any maintenance and/or operating costs for any daycare center, conference center, health club, eating

establishment, library and/or any other amenities from time to time constructed, created or designated for the general benefit of tenants in the Building without separate charge to tenants;

(24) the cost of any judgment, settlement or arbitration award resulting from any liability of Landlord and all expenses incurred in connection therewith except to the extent that such costs and expenses incurred to comply with a court order, judgment, settlement, or arbitration award would have been otherwise includable as an Expense if not incurred to comply with such court order, judgment, settlement or arbitration award;

(25) amounts payable for withdrawal liability or unfunded pension liability to a multi-employer pension (under Title IV of the Employee Retirement Income Security Act of 1974, as amended);

(26) the cost of acquiring, leasing or replacing objects of fine art in the Building; provided, however, that the foregoing shall not preclude Landlord from including in Expenses, (x) the cost of maintaining or repairing such objects of fine art that Landlord installs in the common areas of the Building, or (y) those costs of acquiring, leasing, maintaining, or replacing decorative works to the extent not in excess of amounts typically spent for such items in comparable buildings in New York City;

(27) fees, dues, or contributions that Landlord pays voluntarily to charities, political parties or political action committees, other than association fees or dues payable to the Real Estate Board of New York, Inc. and other professional associations organized to promote the interests of commercial landlords;

(28) the cost of obtaining and maintaining title insurances (including, without limitation, any mortgagee policies);

(29) costs incurred in connection with the acquisition or sale of air rights, transferable development rights, easements, or other real property interests;

(30) costs solely relating to retail space in the Building;

(31) costs to obtain Property Assessed Clean Energy Financing for the Real Property (provided the foregoing shall not limit Landlord's right to include the cost of capital expenditures in accordance with Section 2.C.(iii)(iii) of this Lease); and

(32) capital expenditures to comply with New York City Local Law 97 pursuant to Section 2.C.(iii)(iii)(a) of this Lease, but shall not limit Landlord's right to include the cost of such capital expenditures in amounts and to the extent permitted under Section 2.C.(iii)(iii)(c) of this Lease (capital expenditures that result in savings in Expenses, to the extent of such savings).

EXHIBIT D

to Lease
between

ESRT 1359 BROADWAY, L.L.C., Landlord

and

PROGYNY, INC., Tenant

ESRT High Performance Design and Construction Guidelines

Energy Efficiency:

Exceed ASHRAE 90.1-2016 and IECC 2018 standards, meeting or exceeding NYStretch Energy Code 2020.

Lighting:

Target LPD of 0.5W/SF or less. This can be achieved in most cases through efficient lighting design, use of low wattage fixtures and lamps and reflective surfaces as well as LED task lights.

Implement continuous dimming throughout.

Implement lighting controls, including daylight dimming controls for all daylit areas and vacancy/occupancy sensors for all of connected lighting load. Daylight-responsive controls shall be provided to control lighting within 15 feet of windows and under skylights.

Vacancy sensor controls shall be installed to control lights in enclosed offices, training rooms, conference/meeting/multipurpose rooms, copy/print rooms, lounges, employee lunch and break rooms, storage rooms, closets, other spaces enclosed by floor-to-ceiling height partitions.

Occupancy sensor (dual technology) controls shall be installed to control lights in open plan office areas and restrooms.

All lights in the space are to be tied into occupancy sensor-based controls to ensure all lights are turned off following 15 minutes of all occupants leaving the space.

Tie in lighting controls to base building BMS for energy data reporting and monitoring.

HVAC:

All HVAC systems exceed ASHRAE 90.1-2016 or IECC 2018, meet or exceed NYStretch Energy Code 2020.

Air or waterside economizer to be included in all applicable work.

Motorized outside air dampers must be designed, installed, tied into BMS and commissioned.

Tie in radiators or perimeter heating/cooling system to VAV box controls and BMS. Program to eliminate simultaneous heating and cooling.

Where a zone has a separate heating and a separate cooling thermostatic control, a limit switch, mechanical stop, or direct digital control system with software programming shall be provided to prevent the heating set point from exceeding the cooling set point and to maintain a deadband.

Multiple-zone VAV systems shall have automatic controls configured to reduce outdoor air intake flow below design rates in response to changes in system ventilation efficiency (Ev).

Implement Demand Controlled Ventilation for the space through the use of CO2 sensors in densely occupied areas, throughout the space (CO2 monitors must be between 3 and 6 feet above the floor in open office areas) and in the return air stream to the Air Handling Unit serving the space and tie in to controls including an air-side economizer and automatic modulating control of the outdoor air damper.

Right size equipment based on efficient lighting and plug loads (As stated in the plug load section below target lighting and plug load of 2.0-2.5 Watts per square foot or less of demand load).

Static pressure sensors used to control VAV fans shall be located such that the controller set points is not greater than 1.2 inches w.c. (200 Pa). Not less than one sensor shall be located on each major branch to ensure that static pressure can be maintained in each branch.

Specify CFC and HCFC-free refrigerants. Montreal Protocol called for a complete phase-out of CFC-based refrigerants by 1995 and HCFCs by 2030. Do not use CFC-based refrigerants in new HVAC&R systems.

Install local instantaneous hot water heaters. Hot water storage tanks must be separately called out along with an explanation for their requirement versus instantaneous hot water heaters. High efficiency service water heating to be in accordance with IECC 2018 Section C406.7.

Submeter and pay for utilities based on usage. Submeter HVAC, plug loads, and lighting loads separately.
Assign circuits for lighting, HVAC, and plug loads (for example, circuits 1-4 lighting, 5-8 HVAC, and 9-12 plug load. Submetering approach shall be detailed on tenant's final Load Letter. Ensure compatibility of submeters for 15 minute interval data reporting and monitoring through base building BMS.

Plug Loads:

ESRT's standard Load Letter formal shall be utilized and completed for ESRT review prior to CD phase.

Reduce plug loads by specifying equipment and appliances including, without limitation: computers, monitors, printers, refrigerators, dishwashers, water coolers, food service and pantry equipment, copiers, and A/V and IT equipment that meet or exceed Energy Star and California Energy Commission's 2019 appliance standards.

Implement automatically controlled plug load management strategies including occupancy sensors, outlet-based controls, circuited controls, and/or software programs for 50% of all 125 volt 15- and 20-amp receptacles in the space, other than critical server loads, which may be controlled through software-based technology. Controlled receptacles must be visually marked to differentiate from uncontrolled receptacles and uniformly distributed throughout the space.

Enable sleep/hibernate mode on all equipment. Computers are enabled for overnight software updates in this mode.

Target lighting and plug load of 2.0-2.5 Watts per square foot or less average demand during operating hours.

Commissioning:
A third party commissioning agent shall perform commissioning of energy systems within the tenant space or installed as part of the tenant's lease agreement including, without limitation, lighting, lighting controls, HVAC systems, BMS (including, but not limited to, VFD's, CO2 sensor calibration and DCV BMS and OA tie-in, motorized OA damper tied into DCV and BMS, static pressure or discharge air temperature reset, supply and return air setback schedules, air and water side economizers), Testing and Balancing of air and hydronic systems, functional testing of applicable equipment, and electrical to ensure design optimizes performance and systems are constructed and function per efficient design.

Commissioning Report shall be submitted to ESRT for review prior to occupancy of the space and shall include, but not be limited to, all systems listed above.

Water Efficiency

Specify WaterSense fixtures for any fixture type that is eligible
- Water closet rate 1.0 GPF
- Urinal flow rate is 0.125 GPF
- Pantry sink flow rate is 1.0 GPM and include specification for an aerator

- Lavatory faucet flow rate is 0.25 GPM.
- Shower flow rate is 1.5 GPM.

Materials and Resources

Provide dedicated clearly labeled areas for the collection and storage of recyclable materials.

Recyclable materials must include mixed paper, corrugated cardboard, glass, plastics, and metals. Take appropriate measures for the safe collection, storage, and disposal of batteries, mercury-containing lamps, and electronic waste. All eligible materials must be properly disposed of in receptacles labeled per NYC Department of Sanitation regulations. Post educational signs in common areas routinely visited to educate employees on requirements.

Divert construction waste from landfills through aggressive recycling and donation programs. Develop and implement a construction demolition waste management plan. Include target recycling and diversion percentages (75%) in waste hauler contracts. Monthly records by weight to be provided to ESRT.

Specify recycled content materials whenever possible, which may include, without limitation, gypsum board, acoustical tiles, carpet and carpet backing.

Specify regionally produced and extracted materials (within a 500 mile radius) whenever possible.

Specify rapidly renewable resources whenever possible, such as bamboo, wool, linoleum and cork. Products must meet the Sustainable Agriculture Standard.

Specify and use wood products certified by the Forest Stewardship Council (FSC).

Specify products that have Environmental Product Declarations (EPD) and Health Product Declarations (HPD).

Indoor Environmental Quality

Monitor delivery of outside air to ensure indoor air quality and outdoor airflow compliance with ASHRAE 62.1-2016 and ASHRAE 55 requirements.

Smoking and vaping shall not be permitted indoors.

Implement Construction Indoor Air Quality Management Plans during performance of work and prior to occupancy to minimize the presence and spread of air pollutants.

Consider conducting indoor air quality testing after construction is complete and prior to occupancy to demonstrate that contaminant maximum concentrations are not exceeded.

Install MERV 13 or better filters.

Specify and install low-emitting (low or no Volatile Organic Compounds) adhesives, sealants, paints, coatings, flooring systems, ceiling systems, composite wood and agrifiber products, systems furniture and seating. Specify and install composite wood and agrifiber products and associated adhesives to contain no added urea-formaldehyde (NAUF).

Do not specify materials listed on the International Living Future Institute Red List.

Design and build to optimize daylight and views for occupants, which may be achieved through a design that includes interior rather than perimeter offices or perimeter offices with glass fronts if perimeter offices are a design requirement.

Lighting calculations to demonstrate alignment with circadian rhythm and electric lights maintain illuminance equivalent melanopic lux of 150-200 at workstations (measured on the vertical plane facing forward four feet above the finished floor to simulate the view of the occupant).

Consider furniture partitions to be 42” or lower in height in order to allow for access to daylight and views. Additional privacy may be achieved through clear partition glass installed above the furniture panels.

Consider installing an air purification system and IEQ monitoring to reduce particles, spores, odors and microorganism levels such as bacteria, mold and viruses. The monitoring system should be designed to measure and track the following parameters: CO2, PM2.5, TVOC, illumination, noise, temperature, and relative humidity. The monitoring system should ensure no or negligible ozone production.

Design and build to offer occupants control of lighting (task lights at workstations).

Design and build to offer occupants control of temperature balanced with efficiency.

General

Tenant shall comply with Energy Star for Tenant Spaces requirements for design, construction and data sharing. Tenant shall cooperate with Landlord to follow and implement the Tenant Energy Optimization Process (TEOP) including development of an energy model during early schematic design and integration of recommended energy measures package into final design and construction.

For the avoidance of any doubt, nothing contained in these ESRT High Performance Design and Construction Guidelines shall be construed to modify the provisions of Article 1 of this Lease or impair any of Landlord's consent rights pursuant to Article 8 of this Lease.

EXHIBIT E

to Lease
between

ESRT 1359 BROADWAY, L.L.C., Landlord

and

PROGYNY, INC., Tenant

Cleaning Specifications

(a) General
All flooring swept nightly.
All carpeted areas and rugs carpet-swept nightly and vacuum cleaned weekly.
Wastepaper baskets emptied nightly (excluding kitchen and kitchenette areas and all so-called "wet" garbage) and damp dusted when necessary.
All baseboards, chair rails and trim dusted nightly.
Slopsink rooms cleaned nightly.

(b) Lavatories (other than Tenant's private and executive lavatories)
All flooring swept and washed nightly.
All basins, bowls, urinals and toilet seats (both sides) washed nightly.
All partitions, tile walls, dispensers and receptacles dusted nightly.
Paper towel and sanitary disposal receptacles emptied and cleaned nightly (and replenished at Tenant's expense).

(c) High Dusting - Office Area
Do all high dusting approximately quarterly, including the following:
Dust all pictures, frames, charts, graphs and panel wall hangings not reached in nightly cleaning.
Dust all vertical surfaces such as walls, partitions, ventilating louvers and other surfaces not reached in nightly cleaning.
Dust all lighting fixtures (exterior only).
Dust all overhead pipes, sprinklers, etc.
Dust all Venetian blinds (if any) and window frames approximately once every two months.

(d) Periodic Cleaning - Office Area
Wipe clean all interior metal as necessary.
Dust all door louvers and other ventilating louvers within reach weekly.

(e) Periodic Cleaning - Lavatories (other than Tenant's private and executive lavatories)
Machine-scrub flooring when necessary.
Wash all partitions, tile walls and enamel surfaces monthly with proper disinfectant when necessary.
Dust exterior of lighting fixtures monthly.

(f) Windows
Clean outside perimeter windows, when necessary, approximately 2 times a year, weather and scaffold conditions permitting.

EXHIBIT F

to Lease

between

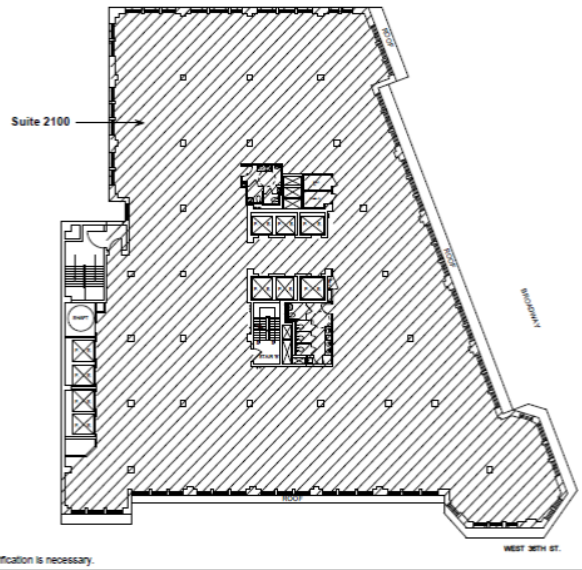
ESRT 1359 BROADWAY, L.L.C., Landlord

and

PROGYNY, INC., Tenant

Expansion Space

Note that these plans are is annexed to and made a part of this Lease solely to indicate the approximate shape and location of the Expansion Space. All measures, dimensions and distances are not to scale. The depiction herein does not constitute a warranty or representation of any kind, and nothing herein should be construed as a representation as to any specific tenancy, construction, access, or the quality or quantity of Landlord's title to the Building.



All areas and dimensions are approximate. Field verification is necessary.

EMPIRE STATE REALTY TRUST

1359 Broadway
New York, NY 10018

21st Floor

NORTH

Date Updated: 2/4/2022

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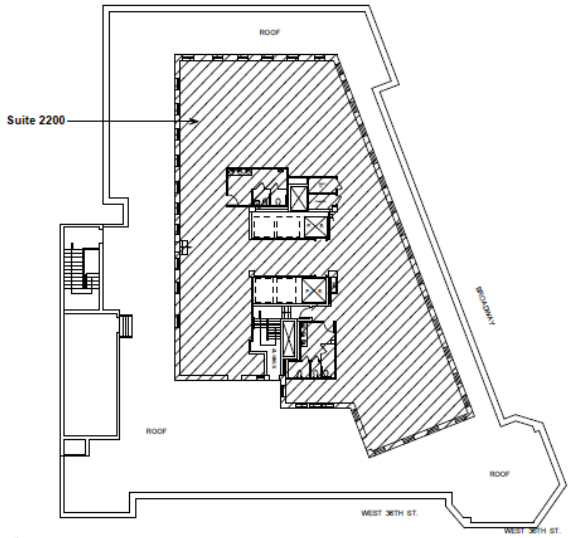

All areas and dimensions are approximate. Field verification is necessary.

EMPIRE STATE REALTY TRUST

1359 Broadway
New York, NY 10018

22nd Floor

NORTH

Date Updated: 2/4/2022

#152719409_v7

RIDER ANNEXED TO AND MADE A PART OF LEASE BETWEEN
ESRT 1359 BROADWAY, L.L.C., Landlord
and
PROGYNY, INC., Tenant

RULES AND REGULATIONS
REFERRED
TO IN THIS LEASE

In case of any conflict or inconsistency between any provisions of this Lease and any of the rules and regulations as originally or as hereafter adopted, the provisions of this Lease shall control.

1. No animals, bicycles or vehicles shall be brought into or kept in the Premises (except for (x) service animals, and (y) bicycles or other vehicles that Tenant has the right to bring into the Building in accordance with applicable Requirements, with the understanding, however, that Tenant shall bring such bicycles and other vehicles into the Building only in a manner that conforms with reasonable rules that Landlord establishes therefor in accordance with applicable Requirements).
2. Tenant shall not use the Premises in any manner that materially and unreasonably interferes with the use of any other portion of the Building for ordinary business purposes. Congregating, loitering, and/or sitting in common corridors is prohibited.
3. Tenant shall not permit any cooking (including barbequing) or objectionable odors in the Premises.
4. Tenant shall not at any time bring or store in the Premises any flammable, combustible or explosive substance, except for any such substances that are incidental to the use or maintenance of the Premises for ordinary office purposes or the performance of Alterations that are performed in accordance with the terms of this Lease.
5. Canvassing, soliciting and peddling in the Building are prohibited, and each tenant shall cooperate so as to prevent the same.
6. The toilet rooms and other water apparatus shall not be used for any purposes other than those, for which they were constructed or installed, and no feminine products, sweepings, rags, ink, chemicals or other unsuitable substances shall be thrown therein. With respect to the use of any common restrooms, all building occupants shall (w) properly discard waste in the appropriate waste receptacles, (x) flush toilets and/or urinals after use, (y) otherwise leave bathroom stalls and/or urinals and sinks in clean condition and (z) avoid creating any objectionable condition in such restrooms.
7. Tenant shall not throw anything out of doors, windows or skylights or into hallways, stairways or elevators, nor place food or objects on outside windowsills. Tenant shall not obstruct or cover the halls, stairways and elevators, or use them for any purpose other than ingress and egress to or from the Premises, nor shall skylights, windows, doors and transoms that reflect or admit light into the Building be covered or obstructed in any way.
8. Tenant shall not place a load upon any floor of the Premises in excess of the load per square foot, which such floor was designed to carry and which is allowed by Requirements. Landlord reserves the right to prescribe the weight and position of all safes and/or fireproof file cabinets in the Premises. Business machines and mechanical equipment shall be placed and maintained by Tenant, at Tenant's expense, only with Landlord's consent and in settings approved by Landlord to control weight, vibration, noise and annoyance.
9. Smoking or carrying lighted cigars, pipes or cigarettes, tobacco use and use of vapes anywhere in the Building (including, without limitation, directly in front of any entrance to the Building) is prohibited. The foregoing prohibition on tobacco use, includes without limitation, e-cigarettes, and chewing and/or dipping tobacco. Growing, manufacturing, administering, and distributing (including without limitation, any retail or wholesale sales or delivery), use or consumption of any cannabis, marijuana or cannabinoid product, compound or produce anywhere in the Building (including, without limitation, directly in front of any entrance to the Building) is prohibited. Tenant shall implement a policy that precludes its personnel from engaging in any of the foregoing activities and/or uses in the Building and shall use reasonable efforts to enforce such policy.
10. If the Premises are on the ground floor of the Building the tenant thereof at its expense shall keep the sidewalks and curb in front of the Premises clean and free from ice, snow, dirt and rubbish.
11. Tenant shall not move any heavy or bulky materials into or out of the Building without Landlord's prior written consent, and then only during such hours and in such manner as Landlord shall approve. If any material or equipment requires special handling, Tenant shall employ only persons holding a Master Rigger's License to do such work, and all such work shall comply with all Requirements. Landlord reserves the right to inspect all freight to be brought into the Building, and to exclude any freight which violates any rule, regulation or other provision of this Lease.

12. Tenant shall use (x) the passenger elevators only for purposes of transporting persons to and from the Premises and (y) the freight elevators only for purposes of transporting deliveries to and from the Premises. Landlord reserves the right to prescribe additional reasonable rules and regulations governing the use of elevators at the Building. Stairwells of the Building may only be used for purposes of ingress and egress to and from the Premises during an emergency.
13. Subject to Section 26.B. of this Lease, Tenant shall comply with the security procedures that Landlord reasonably adopts from time to time for the Building. Tenant acknowledges that Landlord's security procedures may include, without limitation, (x) Landlord's denying entry to the Building by any person who does not present a Building pass or who does not comply with Landlord's procedures regarding the registration of visitors to the Building, and (y) procedures governing the inspection of freight that arrives at the loading facilities and/or service entrances for the Building. Tenant shall be responsible for the acts of all persons to whom passes are issued at Tenant's request. Tenant shall subject all items being brought into the Building by or on behalf of Tenant (including, without limitation, packages, boxes, bags, handbags, attaché cases, and suitcases) to inspection by Landlord or Landlord's designee. Landlord may refuse entry into the Building to any Person who refuses to cooperate with such inspection or who is carrying any item which has a reasonable likelihood of being dangerous to persons or property.
14. No advertising of any kind or other public statement by or on behalf of Tenant or any person or entity claiming by, through or under Tenant shall refer to this Lease, or the Building (or otherwise depict the Building in any way) without Landlord's prior written consent.
15. Except as otherwise set forth in this Lease, no article shall be fastened to, or holes drilled or nails or screws driven into, the ceilings, walls, doors or other portions of the Premises, nor shall any part of the Premises be painted, papered or otherwise covered, or in any way marked or broken, without the prior written consent of Landlord.
16. No existing locks shall be changed, nor shall any additional locks or bolts of any kind be placed upon any door or window by Tenant, without the prior written consent of Landlord. At the termination of this Lease, Tenant shall deliver to Landlord all keys for any portion of the Premises or Building. Before leaving the Premises at any time, Tenant shall close all windows and close and lock all doors.
17. Tenant, at Tenant's expense, shall operate its interior lights for the employees of Landlord during the period that such employees make repairs in the Premises or perform cleaning services in accordance with the terms of this Lease.
18. The use in the Premises of auxiliary heating devices, such as portable electric heaters, heat lamps or other devices whose principal function at the time of operation is to produce space heating, is prohibited.
19. Furniture may not block perimeter induction units or radiators. Furniture must be a minimum of 18” from perimeter induction units or radiators.
20. Hand trucks and hand carts may only be used in areas of the Building specifically designated by Landlord provided that in either case, the same are equipped with rubber tires and side guards. In no event may hand trucks and/or hand carts be used in any lobbies or passenger elevators of the Building.
21. Tenant shall not take any action to override, inhibit, preempt or otherwise reduce the efficacy of any energy efficiency or sustainability measures which may now or hereinafter may be implemented in the Building and/or the Premises.
22. Landlord shall have the right to require Tenant to (x) direct Persons who are delivering packages to the Premises to make delivery to an office in the Building that Landlord designates (in which case Landlord shall make arrangements for such packages to be delivered to Tenant using other personnel that Landlord engages), or (y) arrange for such Persons to be escorted by a representative of Tenant while such Person makes delivery to the Premises.
23. Active mail chutes cannot be covered or blocked; full access must be maintained at all times.
24. All doors opening on to corridors must be kept closed at all times and locked when the Premises are unoccupied.
25. Food may not be consumed in any public areas of the Building, including, without limitation, elevators, common corridors and/or lobbies.
26. Use of any common amenities at the Building (whether currently existing or hereinafter designated, constructed or created) shall be subject to the reasonable rules and regulations imposed thereon by Landlord.

Exhibit 23.1

Consent of Independent Registered Public Accounting Firm

We consent to the incorporation by reference in the following Registration Statements:

(1) Registration Statement on Form S-8 (No. 333-263240)
- 2019 Equity Incentive Plan, as amended
- 2019 Employee Stock Purchase Plan

(2) Registration Statement on Form S-8 (No. 333-253787) pertaining to the following plans:
- 2019 Equity Incentive Plan, as amended
- 2019 Employee Stock Purchase Plan

(3) Registration Statement on Form S-8 (No. 333-237072) pertaining to the following plans:
- 2019 Equity Incentive Plan

(4) Registration Statement on Form S-8 (No. 333-234342) pertaining to the following plans:
- 2019 Equity Incentive Plan
- 2019 Employee Stock Purchase Plant
- 2017 Equity Incentive Plan
- 2008 Stock Plan

of our reports dated March 1, 2023, with respect to the consolidated financial statements of Progyny, Inc. and the effectiveness of internal control over financial reporting of Progyny, Inc. included in this Annual Report (Form 10-K) of Progyny, Inc. for the year ended December 31, 2022.

/s/ Ernst & Young LLP

New York, New York

March 1, 2023

Exhibit 31.1

CERTIFICATION

I, Peter Anevski, certify that:

1. I have reviewed this Annual Report on Form 10-K of Progyny, Inc.;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

   a. Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

   b. Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

   c. Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

   d. Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant’s fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

   a. All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

   b. Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: March 1, 2023 By: /s/ Peter Anevski

Peter Anevski

Chief Executive Officer

(principal executive officer)

Exhibit 31.2

CERTIFICATION

I, Mark Livingston, certify that:

1. I have reviewed this Annual Report on Form 10-K of Progyny, Inc.;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

   a. Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

   b. Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

   c. Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

   d. Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant’s fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

   a. All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

   b. Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: March 1, 2023 By: /s/ Mark Livingston

Mark Livingston

Chief Financial Officer

(*principal financial officer*)

Exhibit 32.1

CERTIFICATION PURSUANT TO
18 U.S.C. SECTION 1350, AS ADOPTED PURSUANT TO
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

In connection with the Annual Report on Form 10-K of Progyny, Inc. (the "Company") for the period ended December 31, 2022, as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, hereby certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, as amended, that, to my knowledge:

(1) the Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended; and

(2) the information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: March 1, 2023 By: /s/ Peter Anevski

Peter Anevski
Chief Executive Officer
(*principal executive officer*)

Exhibit 32.2

CERTIFICATION PURSUANT TO
18 U.S.C. SECTION 1350, AS ADOPTED PURSUANT TO
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

In connection with the Annual Report on Form 10-K of Progyny, Inc. (the "Company") for the period ended December 31, 2022, as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, hereby certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, as amended, that to my knowledge:

(1) the Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended; and

(2) the information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: March 1, 2023 By: /s/ Mark Livingston

Mark Livingston

Chief Financial Officer

(*principal financial officer)*