

HUBSPOT INC

FORM 10-K (Annual Report)

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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, 2019

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 001-36680

HubSpot, Inc.

(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction of
incorporation or organization)

20-2632791
(I.R.S. Employer
Identification No.)

25 First Street
Cambridge, Massachusetts, 02141
(Address of principal executive offices)

(888) 482-7768

(Registrant's telephone number, including area code)

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

Title of each class	Trading symbol(s)	Name of each exchange on which registered
Common Stock, par value \$0.001 per share	HUBS	New York Stock Exchange

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 whether 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	<input checked="" type="checkbox"/>	Accelerated filer	<input type="checkbox"/>
Non-accelerated filer	<input type="checkbox"/>	Smaller reporting company	<input type="checkbox"/>
		Emerging growth company	<input type="checkbox"/>

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

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

The aggregate market value of common stock held by non-affiliates of the registrant, based on the closing price of the registrant's common stock on June 30, 2019, as reported by the New York Stock Exchange on such date was approximately \$6,810,732,158. Shares of the registrant's common stock held by each executive officer, director and holder of 5% or more of the outstanding common stock have been excluded in that such persons may be deemed to be affiliates. This calculation does not reflect a determination that certain persons are affiliates of the registrant for any other purpose.

On February 7, 2020, the registrant had 43,287,812 shares of common stock outstanding.

DOCUMENTS INCORPORATED BY REFERENCE

Portions of the registrant's definitive Proxy Statement for its 2020 Annual Meeting of Stockholders are incorporated by reference in Part III of this Annual Report on Form 10-K. Such Proxy Statement will be filed with the U.S. Securities and Exchange Commission within 120 days after the end of the fiscal year to which this report relates. Except with respect to information specifically incorporated by reference in this Form 10-K, the Proxy Statement is not deemed to be filed as part of this Form 10-K.

HUBSPOT, INC.
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SPECIAL NOTE REGARDING FORWARD-LOOKING STATEMENTS

This Annual Report on Form 10-K contains forward-looking statements within the meaning of Section 27A of the Securities Act of 1933, as amended, and Section 21E of the Securities Exchange Act of 1934, as amended, and these statements involve substantial risks and uncertainties. All statements other than statements of historical fact contained in this Annual Report on Form 10-K are forward-looking statements. Forward-looking statements generally relate to future events or our future financial or operating performance. In some cases, you can identify forward-looking statements because they contain words such as “may,” “should,” “expects,” “plans,” “anticipates,” “could,” “intends,” “target,” “projects,” “contemplates,” “believes,” “estimates,” “predicts,” “potential” or “continue” or the negative of these words or other similar terms or expressions that concern our expectations, strategy, plans or intentions. Forward-looking statements contained in this Annual Report on Form 10-K include, but are not limited to, statements about:

- our future financial performance, including our expectations regarding our revenue, cost of revenue, gross margin and operating expenses;
- maintaining and expanding our customer base and increasing our average subscription revenue per customer;
- the impact of competition in our industry and innovation by our competitors;
- our anticipated growth and expectations regarding our ability to manage our future growth;
- our anticipated areas of investments, including sales and marketing, research and development, customer service and support, data center infrastructure and service capabilities, and expectations relating to such investments;
- our predictions about industry and market trends;
- our ability to anticipate and address the evolution of technology and the technological needs of our customers, to roll-out upgrades to our existing software platform and to develop new and enhanced applications to meet the needs of our customers;
- our ability to maintain our brand and inbound marketing, selling and servicing thought leadership position;
- the impact of our corporate culture and our ability to attract, hire and retain necessary qualified employees to expand our operations;
- the anticipated effect on our business of litigation to which we are or may become a party;
- our ability to successfully acquire and integrate companies and assets;
- the U.S. federal tax consequences due to dividends received as part of the move to a territorial tax system for foreign subsidiary earnings;
- our plans regarding declaring or paying cash dividends in the foreseeable future; and
- our ability to stay abreast of new or modified laws and regulations that currently apply or become applicable to our business both in the United States and internationally.

We caution you that the foregoing list may not contain all of the forward-looking statements made in this Annual Report on Form 10-K.

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

The forward-looking statements made in this Annual Report on Form 10-K relate only to events as of the date on which the statements are made. We undertake no obligation to update any forward-looking statements made in this Annual Report on Form 10-K to reflect events or circumstances after the date of this Annual Report on Form 10-K or to reflect new information or the occurrence of unanticipated events, except as required by law.

We may not actually achieve the plans, intentions or expectations disclosed in our forward-looking statements and you should not place undue reliance on our forward-looking statements. Our forward-looking statements do not reflect the potential impact of any future acquisitions, mergers, dispositions, joint ventures or investments we may make.

In this Annual Report on Form 10-K, the terms “HubSpot,” “we,” “us,” and “our” refer to HubSpot, Inc. and its subsidiaries, unless the context indicates otherwise.

ITEM I. BUSINESS

Overview

We provide a cloud-based marketing, sales, and customer service software platform, which we refer to in this document as our Growth Platform, that enables businesses to grow better. At HubSpot, we're committed to helping our customers grow better, which means helping them grow without compromise, always solving for the customer, and creating a better experience for customers and company alike. To that end, our Growth Platform, comprised of Marketing Hub, Sales Hub, Service Hub, and a free customer relationship management system, or CRM, features integrated applications and tools that enable businesses to create a relevant and cohesive customer experience throughout the customer lifecycle.

We focus on selling to mid-market business-to-business, or B2B, companies, which we define as companies that have between 2 and 2,000 employees. We sell our Growth Platform on a subscription basis. In 2019, our total revenue was \$674.9 million, and we incurred a net loss of \$53.7 million. As of December 31, 2019, we had 3,387 full-time employees and 73,483 total customers of varying sizes in more than 120 countries.

Our company was formed as a limited liability company in Delaware on April 4, 2005. We converted to a Delaware corporation on June 7, 2007. Our principal executive offices are located at 25 First Street, Cambridge, Massachusetts, and our main telephone number is 888-482-7768. Our website address is <https://www.hubspot.com>. Information contained on or that can be accessed through our website does not constitute part of this Annual Report on Form 10-K, and inclusions of our website address in this Annual Report on Form 10-K are inactive textual references only.

The HubSpot Approach

We provide our Growth Platform to enable businesses to attract, engage, and delight customers throughout the customer lifecycle. Our Growth Platform features a central database of lead and customer interactions and integrated applications to help businesses attract visitors to their websites, convert visitors into leads, close leads into customers, and delight customers so they become promoters of those businesses.

Designed to Help Companies Grow Better. Our Growth Platform was architected from the ground up to enable businesses to transform their marketing, sales, and services playbook to meet the demands of today's customers. Our Growth Platform includes both a system of record for maintaining a unified view of the customer experience and a system of engagement for efficiently engaging customers through search engine optimization (SEO), web content, social, blogging, email, marketing automation, messaging, support ticketing, knowledge base and more.

Ease of Use of an Expansible Platform. We provide a set of integrated applications on a common platform, which offers businesses ease of use and simplicity. Our Growth Platform has one login, one user interface, one database, and one team for support. Our platform starts free and grows with you. It is designed to scale its power and technical sophistication without losing its ease-of-use. In addition to being a comprehensive suite itself, our Growth Platform seamlessly integrates with hundreds of external applications, making it easy to extend the functionality of our Growth Platform and customize it for any business.

Power of a Unified Customer View. At the core of our Growth Platform is a single CRM database for each business that captures its lead and customer activity throughout the customer lifecycle. Our Growth Platform creates a unified timeline incorporating all the interactions with a particular customer. With our Conversations tool, our Growth Platform also centralizes all conversations in a universal inbox that gives sales, marketing, and customer service teams one place to view, manage, and reply to all conversations — regardless of the messaging channel they came from.

Scalability. Our Growth Platform was designed and built to serve a large number of customers and with demanding use cases. Our Growth Platform currently processes billions of data points each week, and we use leading global cloud infrastructure providers and our own automation technology to dynamically allocate capacity to handle processing workloads of all sizes. We have built our Growth Platform on modern technologies, including HBase, Kafka, and Elastic Search, which we believe are more scalable than traditional database technologies. Our scalability gives us flexibility for future growth and enables us to service a large variety of businesses of different sizes across different industries.

Extendable and Open Architecture. Our Growth Platform features a variety of open APIs that allows easy integration of our platform with other applications. We enable our customers to connect our platform to their other applications, such as ecommerce, event management and videoconferencing applications. By connecting third-party applications, our customers can leverage our centralized inbound database to perform additional functions and analysis. With the acquisition of PieSync NV LTD (PieSync) this year, customers also have the option of bi-directionally syncing data across many of these apps so contact data stays accurate and consistent.

Our Competitive Strengths

We believe that our market leadership position is based on the following key strengths:

Leading Platform. We have designed and built a world-class Growth Platform. We believe our customers choose our Growth Platform over others because of its powerful, integrated, and easy-to-use applications.

Market Leadership and Strong Brand. We are a recognized thought leader in the cloud-based marketing, sales, and customer service software industry with a leading brand. Our founders, Brian Halligan and Dharmesh Shah, wrote the best-selling marketing book *Inbound Marketing: Get Found Using Google, Social Media and Blogs*. Our marketing, sales, and service experience attracts, engages, and delights customers by being more relevant, more helpful, more personalized, and less interruptive than traditional marketing and sales tactics. Our INBOUND conference is one of the largest inbound industry conference events with registered attendance increasing from 1,100 in 2011 to over 26,000 in 2019.

Large and Growing Solutions Partner Program. A Solutions Partner is a service provider that helps businesses with strategy, execution, and implementation of go-to-market activities and technology solutions. Our Solutions Partners promote our brand and offer our Growth Platform to their clients. Solutions Partners and customers referred to us by our Solutions Partners represented approximately 36% of our Total Customers, as defined in our Key Business Metrics in Item 7, as of December 31, 2019, and approximately 41% of our revenue for the year ended December 31, 2019. These Solutions Partners help us to promote the vision of the inbound experience, efficiently reach new mid-market businesses at scale, and provide our mutual customers with more diverse and higher-touch services.

Mid-Market Focus. We believe we have significant competitive advantages reaching mid-market businesses and efficiently reach this market at scale as a result of our inbound methodology, freemium pricing strategy, and our Solutions Partner channel. Through our freemium products, our customers are able to receive value from HubSpot before converting to a paid product or engaging with sales.

Powerful Network Effects. We have built a large and growing ecosystem around our Growth Platform and company. Thousands of our customers integrate third-party applications with our Growth Platform. We believe this ecosystem drives more businesses and professionals to embrace the inbound playbook. As our engaged audience grows, more Solutions Partners collaborate with us, more third-party developers integrate their applications with our Growth Platform, and more professionals complete our certification programs, all of which help to drive more businesses to adopt our Growth Platform.

Our Growth Strategy

The key elements to our growth strategy are:

Grow Our Customer Base. The market for our Growth Platform is large and underserved. Mid-market businesses are particularly underserved by existing point application vendors and often lack sufficient resources to implement complex solutions. Our all-in-one Growth Platform allows mid-market businesses to efficiently adopt and execute an effective inbound marketing, sales, and customer service strategy to help them expand and grow. We will continue to leverage our inbound go-to-market approach, freemium pricing strategy and our network of Solutions Partners to keep growing our business.

Increase Revenue from Existing Customers. With 73,483 Total Customers in more than 120 countries spanning many industries, we believe we have a significant opportunity to increase revenue from our existing customers. We plan to increase revenue from our existing customers by expanding their use of our Growth Platform by upselling additional offerings and features, adding additional users, and cross-selling our marketing, sales, and service products to existing customers through touchless or low touch in-product purchases. Our scalable pricing model allows us to capture more spend as our customers grow, increase the number of their customers and prospects managed on our Growth Platform, and offer additional functionality available from our higher price tiers and add-ons, providing us with a substantial opportunity to increase the lifetime value of our customer relationships.

Keep Expanding Internationally. There is a significant opportunity for our Growth Platform outside of the United States. As of December 31, 2019, approximately 45% of our Total Customers were located outside of the United States and these customers generated approximately 40% of our total revenue for the year ended December 31, 2019. We sell to those international customers from our U.S., European, Asia Pacific, and South American based operations. We intend to grow our presence in international markets through additional investments in local sales, marketing and professional service capabilities, as well as by leveraging our Solutions Partner network. We have opened eight international offices and plan to open additional international offices. We already have significant website traffic from regions outside the United States, and we believe that markets outside the United States represent a significant growth opportunity.

Continue to Innovate and Expand Our Growth Platform. Mid-market businesses are increasingly realizing the value of having an integrated marketing, sales, and customer service platform. We believe we are well positioned to capitalize on this opportunity by introducing new products and applications to extend the functionality of our Growth Platform. For example, in 2019, we added email and ads to our free CRM, launched new integrations and acquired PieSync, a software for bi-directionally syncing software for contact data across applications.

Selectively Pursue Acquisitions. We plan to selectively pursue acquisitions of complementary businesses, technologies and teams that would allow us to add new features and functionalities to our platform and accelerate the pace of our innovation. With the acquisition of PieSync in 2019, customers also have the option of bi-directionally syncing data across many of these apps.

Our Growth Platform

Our Growth Platform features integrated applications and tools that enable companies to create a cohesive and adaptable customer experience. Each Hub can be used standalone or in conjunction with the other Hubs. Our Hubs are available in both free and paid tiers (i.e., Starter, Professional and Enterprise) with gradually increasing levels of functionality that support the needs of our customers as they see success with our tools and their businesses grow.



HubSpot CRM

The core of our Growth Platform, the HubSpot CRM, is a single database of lead and customer information that allows businesses to track their interactions with contacts and customers, manage their sales activities, and report on their pipeline and sales. This allows a complete view of lead and customer interactions across all of our integrated applications, giving our Growth Platform substantial power. This integration makes it possible to personalize every aspect of the customer interaction across web content, social media engagement, and email messages across devices, including mobile. The integrated applications on our Growth Platform have a common user interface, are accessed through a single login, and are based on our CRM database. HubSpot CRM is a free product that can be used standalone, or with any combination of Marketing Hub, Sales Hub, and/or Service Hub.

Marketing Hub

Marketing Hub is an all-in-one toolset for marketers to attract, engage, and nurture new leads towards sales readiness over the entire customer lifecycle. Marketing Hub is available in both free and paid tiers, and can be used standalone, with HubSpot CRM, and/or any version of Sales Hub or Service Hub. Features include: marketing automation and email, social media, SEO, CRM Sync, and reporting and analytics.

Sales Hub

We designed Sales Hub to enhance the productivity and effectiveness of sales teams. Businesses can empower their teams with tools that deliver a personalized experience for prospects with less work for sales representatives. Sales Hub is available in both free and paid tiers, and can be used with HubSpot CRM, a third party CRM, and/or any version of Marketing Hub or Service Hub. Features include: email templates and tracking, conversations and live chat, meeting and call scheduling, lead and website visit alerts, sales automation, and lead scoring.

Service Hub

Service Hub is our customer service software that is designed to help businesses manage and connect with customers. Service Hub is available in free and paid tiers, and can be used standalone, with HubSpot CRM Free, and/or any version of Marketing Hub or Sales Hub. Features include: conversations and live chat functionality, conversational bots, tickets and help desk, automation and routing, knowledge base, team emails, feedback and reporting tools, and customer goals.

HubSpot CMS

HubSpot content management system (CMS) combines the power of content relationship management and a content management system into one integrated platform. Our content tools enable businesses to create new and edit existing web content while also personalizing their websites for different visitors and optimizing their websites to convert more visitors into leads and customers. HubSpot CMS can be purchased as a standalone product and/or with any version of Marketing Hub, Sales Hub, or Service Hub. Features include: website pages, business blogging, smart content, landing pages and forms, SEO tools, forms and lead flow, web analytics reporting, calls-to-action, and file manager.

Platform Application (App) Partners

Businesses that use software outside of HubSpot can leverage our ecosystem of certified third-party integrations. We make it easy to find and install new or existing software solutions that complement our Growth Platform. Over 380 certified integrations are available for our users, across a wide range of categories, including integrations with leading social media, email, sales, video, analytics, content and webinar tools.

Our Services

We complement our product offerings with professional services, customer success and support. The majority of our services and support is offered over email, phone, chat applications and via web meeting technology rather than in-person, which is a more efficient business model for us and more cost-effective for our customers.

Professional Services. We offer professional services to educate and train customers on how to leverage our Growth Platform and inbound methodology to transform how their business attracts, engages and delights customers. Depending on which product plan and professional services a customer buys, they receive one-on-one training and advice from one of our onboarding, inbound, or technical specialists by phone and web meeting and can purchase additional group training and education in online or in-person classes. Our professional services are also available to customers who need additional assistance on a one-time or ongoing basis for an additional fee.

Customer Success. Our customers have access to a Customer Success Manager (CSM) or Customer Success Team (CST) which are responsible for our customers' long term success, retention and growth on the HubSpot platform. Our CSMs and CSTs address the unique needs and goals of our customers through a series of ongoing interactions and strategy calls on how to best engage and use our platform.

Support. In addition to assistance provided by our online articles and customer discussion forums, we offer phone and/or email and chat based support, which is included in the cost of a subscription for our Marketing, Sales, and Service Hub products. Phone support is available starting at the Professional product level for each Hub. We strive to maintain an exceptional quality of customer service. We continuously monitor key customer service metrics such as phone hold time, ticket response time and ticket resolution rates, and we monitor the customer satisfaction of our customer support interactions. We believe our customer support is an important reason why businesses choose our Growth Platform and recommend it to their colleagues.

Our Total Customers

As of December 31, 2019, we had 73,483 Total Customers in more than 120 countries, representing many industries. No single customer represented more than one percent of our revenue in 2019, 2018, or 2017.

Our Technology

Our 73,483 Total Customers have chosen us as their marketing, sales, or customer service platform, which we architected and built to be secure, highly distributed and highly scalable. Since our founding, we have embraced rapid, iterative product development lifecycles, cloud automation and open-source technologies, including big data platforms, to power marketing, sales and service programs and provide insights not previously possible or available.

Our Growth Platform is a multi-tenant, single code-based, globally available software-as-a-service delivered through web browsers or mobile applications. Our commitment to a highly available, reliable, and scalable platform for businesses of all sizes is accomplished through the use of these technologies.

Modern Database Architecture. We process billions of data points weekly across various channels, including social media, email, SEO and website visits, and continue to drive nearly real-time analytics across these channels. This is possible because we built our database from the ground up using distributed big data technologies such as HBase, Kafka, and Elastic Search to both process and analyze the large amounts of data we collect in our inbound database. Using modern database technologies, we can provide actionable insights across disparate data-sets in a manner not easily achievable or cost effective, at scale or efficiently, with traditional databases or platform architectures.

Agility. Our infrastructure and development and software release processes allow us to update our platform for specific groups of customers or our entire customer base at any time. This means we can rapidly innovate and deliver new functionality frequently, without waiting for quarterly or annual release cycles. We typically deploy updates to our software platform hundreds of times a week, enabling us to gather immediate customer feedback and improve our product quickly and continuously.

Cost leverage. Because our Growth Platform was built on an almost exclusive footprint of open-source software and designed to operate in cloud-based data-centers, we have benefited from large-scale price reductions by these cloud computing service providers as they continue to innovate and compete for market share. As our processing volume continues to grow, we continue to receive larger volume discounts on a per-unit basis for costs such as storage, bandwidth and computing capacity. We also believe that our extensive use of open-source software will provide additional leverage as we scale our Growth Platform and infrastructure.

Scalability. By leveraging leading cloud infrastructure providers along with our automated technology stack, we are able to scale workloads of varying sizes at any time. This allows us to handle customers of all sizes and demands without traditional operational limitations such as network bandwidth, computing cycles, or storage capacity as we can scale our platform on-demand.

Reliability. Customer data is distributed and processed across multiple data centers within a region to provide redundancy. We built our Growth Platform on a distributed computing architecture with reduced single points of failure and we operate across data-center boundaries daily. In addition to data-center level redundancy, this architecture supports multiple live copies of each data set along with snapshot capabilities for faster, point-in-time data recovery instead of traditional backup and restore methodologies.

Security. We leverage industry standard network and perimeter defense technologies, DDoS protection systems (including web application firewalls) and enterprise grade DNS services across multiple vendors. Our data-center providers operate and certify to high industry compliance levels. Due to the broad footprint of our customer base, we regularly test and evaluate our platform with trusted third-party vendors to ensure the security and integrity of our services.

Marketing and Sales

We believe we are a global leader in implementing an inbound experience in marketing and sales. We believe that our marketing and sales model provides us with a competitive advantage, especially when targeting mid-market businesses, because we can attract and engage these businesses efficiently and at scale.

Inbound Marketing. Our marketing team attracts new leads each month through our industry-leading blog and other content, free tools, large social media following, high search engine rankings and personalized website and email content. In addition, we are generating leads for new and add-on product purchases through content and offers delivered through our Growth Platform to existing customers.

Inbound Direct Sales. Our sales representatives are based in our offices in Cambridge, Massachusetts, Dublin, Ireland, Sydney, Australia, Singapore, Tokyo, Japan, Berlin, Germany, Paris, France, and Bogota, Columbia, and use phone, email, and web meetings to interact with prospects and customers. The majority of revenue generated by our sales representatives originates with inbound leads produced by our marketing efforts. In addition, through our freemium products and in-product cross-sell offerings, we are starting to close new business with little or no interaction by our sales representatives.

Inbound Channel Sales. In addition to our direct sales team, we have sales representatives that manage relationships with our worldwide network of Solutions Partners who both use our platform for their own businesses and also, on a commissioned basis, refer customers to us. These Solutions Partners collaborate with us not only to leverage our software platform and educational resources, but also to build their own business by offering new services and shifting their revenue mix to include more retainer-based business with a recurring revenue stream.

Culture and Employees

Transforming the business world to embrace the inbound experience requires a truly remarkable team. From the very beginning, our company was founded on a fundamental belief in radical transparency, individual autonomy, and enlightened empathy.

We are passionate about creating an inclusive company culture where employees can do their best work. Our Culture Code shares our core values and beliefs, including HEART (Humility, Empathy, Adaptability, Remark-ability, and Transparency), an acronym we use to describe what we believe makes a great employee. By recruiting people with HEART, investing in their personal and professional growth, and making inclusive culture a business priority, we've been named a great place to work globally. HubSpot was named a Best Place to Work by Glassdoor in 2020 and 2019, one of Boston Business Journal's Best Places to Work 2019, a Best Workplace for Women and Parents by Great Place to Work, as well as the #5 Best Workplace in Ireland and the #4 Best Workplace in Singapore by Great Place to Work. We were also honored in a number of categories by Comparably's workplace awards in 2019 including Best CEOs, Best Companies for Women, Best Companies for Diversity, Best Overall Company Culture, and a Best Company for Employee Happiness.

As of December 31, 2019, we had 3,387 full-time employees, including 1,176 full-time employees located outside the United States. Although we have statutory employee representation obligations in certain countries, our U.S. employees are not represented by a labor union. We have not experienced any work stoppages, and we consider our relations with our employees to be good.

Competition

Our market is evolving, highly competitive and fragmented, and we expect competition to increase in the future. We believe the principal competitive factors in our market are:

- vision for the market and product strategy and pace of innovation;
- inbound marketing focus and domain expertise;
- integrated all-in-one platform;
- breadth and depth of product functionality;
- ease of use;
- scalable, open architecture;
- time to value and total cost of ownership;
- integration with third-party applications and data sources; and
- name recognition and brand reputation.

We believe we compete favorably with respect to all of these factors.

We face intense competition from other software companies that develop marketing, sales and service software and from marketing services companies that provide interactive marketing services. Our competitors offer various point applications that provide certain functions and features that we provide, including:

- cloud-based marketing automation providers;
- email marketing software vendors;
- sales force automation and CRM software vendors
- customer service platform vendors; and
- large-scale enterprise suites.

In addition, instead of using our Growth Platform, some prospective customers may elect to combine disparate point applications, such as content management, marketing automation, analytics, social media management, ticketing, and conversational bots. We expect that we will develop and introduce, or acquire, applications serving customer-facing and other front office functions.

Intellectual Property

Our ability to protect our intellectual property, including our technology, will be an important factor in the success and continued growth of our business. We protect our intellectual property through trade secrets law, copyrights, trademarks, patents, and contracts. Some of our technology relies upon third-party licensed intellectual property. We have no issued U.S. patents and eleven U.S. patent applications pending; two are provisional and nine are non-provisional. We intend to pursue and are pursuing additional patent protection to the extent we believe it would be beneficial and cost-effective.

In addition to the foregoing, we have established business procedures designed to maintain the confidentiality of our proprietary information, including the use of confidentiality agreements and assignment of inventions agreements with employees, independent contractors, consultants, and companies with which we conduct business.

Despite our efforts to protect our intellectual property, unauthorized parties may still copy or otherwise obtain and use our technology. In addition, we intend to continue to expand our international operations, and effective intellectual property, copyright, trademark and trade secret protection may not be available or may be limited in foreign countries. Any significant impairment of our intellectual property rights could harm our business or our ability to compete.

Financial Information About Segments

We operate as one operating segment. Operating segments are defined as components of an enterprise for which separate financial information is regularly evaluated by the chief operating decision makers or CODMs, which are our chief executive officer and chief operating officer, in deciding how to allocate resources and assess performance. The CODMs evaluate our financial information and resources and assess the performance of these resources on a consolidated basis. Since we operate in one operating segment, all required financial segment information can be found in the consolidated financial statements. See Footnote 8 within the consolidated financial statements for information by geographic area.

Available Information

Our website is located at <http://www.hubspot.com>, and our investor relations website is located at <https://www.hubspot.com/investor-relations>. Copies of our Annual Reports on Form 10-K, Quarterly Reports on Form 10-Q, Current Reports on Form 8-K, and amendments to these reports filed or furnished pursuant to Sections 13(a) and 15(d) of the Securities Exchange Act of 1934, as amended, are available, free of charge, on our investor relations website as soon as reasonably practicable after such reports are filed with, or furnished to, the Securities and Exchange Commission, or the SEC. The SEC also maintains a website at <http://www.sec.gov> that contains our SEC filings and other information regarding issuers that file electronically with the SEC.

We webcast our earnings calls and certain events we participate in or host with members of the investment community on our investor relations website. Additionally, we provide notifications of news or announcements regarding our financial performance, including SEC filings, investor events, press and earnings releases, and blogs as part of our investor relations website. We have used, and intend to continue to use, our investor relations website as means of disclosing material non-public information and for complying with our disclosure obligations under Regulation FD. Further corporate governance information, including our certificate of incorporation, bylaws, governance guidelines, board committee charters, and code of business conduct and ethics, is also available on our investor relations website under the heading "Corporate Governance." The contents of our websites are not intended to be incorporated by reference into this Annual Report on Form 10-K or in any other report or document we file with the SEC, and any references to our websites are intended to be inactive textual references only.

Item 1A. RISK FACTORS

An investment in our common stock involves a high degree of risk. You should carefully consider the risks described below and the other information in this Annual Report on Form 10-K and in our other public filings before making an investment decision. Our business, prospects, financial condition, or operating results could be harmed by any of these risks, as well as other risks not currently known to us or that we currently consider immaterial. If any such risks and uncertainties actually occurs, our business, financial condition or operating results could differ materially from the plans, projections and other forward-looking statements included in the section titled “Management’s Discussion and Analysis of Financial Condition and Results of Operations” and elsewhere in this report and in our other public filings. The trading price of our common stock could decline due to any of these risks, and, as a result, you may lose all or part of your investment.

Risks Related to Our Business and Strategy

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

We generated net losses of \$53.7 million in 2019, \$63.8 million in 2018, and \$39.7 million in 2017. As of December 31, 2019, we had an accumulated deficit of \$398.1 million. We will need to generate and sustain increased revenue levels in future periods to become profitable, and, even if we do, we may not be able to maintain or increase our level of profitability. We intend to continue to expend significant funds to grow our marketing, sales and customer service operations, develop and enhance our Growth Platform, scale our data center infrastructure and services capabilities and expand into new markets. Our efforts to grow our business may be more costly than we expect, and we may not be able to increase our revenue enough to offset our higher operating expenses. We may incur significant losses in the future for a number of reasons, including the other risks described in this Annual Report on Form 10-K, and unforeseen expenses, difficulties, complications and delays and other unknown events. If we are unable to achieve and sustain profitability, the market price of our common stock may significantly decrease.

We are dependent upon customer renewals, the addition of new customers, increased revenue from existing customers and the continued growth of the market for a Growth Platform.

We derive, and expect to continue to derive, a substantial portion of our revenue from the sale of subscriptions to our Growth Platform. The market for inbound marketing, sales and customer service products is still evolving, and competitive dynamics may cause pricing levels to change as the market matures and as existing and new market participants introduce new types of point applications and different approaches to enable businesses to address their respective needs. As a result, we may be forced to reduce the prices we charge for our platform and may be unable to renew existing customer agreements or enter into new customer agreements at the same prices and upon the same terms that we have historically. In addition, our growth strategy involves a scalable pricing model (including freemium versions of our products) intended to provide us with an opportunity to increase the value of our customer relationships over time as we expand their use of our platform, sell to other parts of their organizations, cross-sell our sales products to existing marketing product customers and vice versa through touchless or low touch in product purchases, and upsell additional offerings and features. If our cross-selling efforts are unsuccessful or if our existing customers do not expand their use of our platform or adopt additional offerings and features, our operating results may suffer.

Our subscription renewal rates may decrease, and any decrease could harm our future revenue and operating results.

Our customers have no obligation to renew their subscriptions for our platform after the expiration of their subscription periods, substantially all of which are one year or less. In addition, our customers may seek to renew for lower subscription tiers, for fewer contacts or seats, or for shorter contract lengths. Also, customers may choose not to renew their subscriptions for a variety of reasons. Our renewal rates may decline or fluctuate as a result of a number of factors, including limited customer resources, pricing changes, the prices of services offered by our competitors, adoption and utilization of our platform and add-on applications by our customers, adoption of our new products, customer satisfaction with our platform, mergers and acquisitions affecting our customer base, reductions in our customers’ spending levels or declines in customer activity as a result of economic downturns or uncertainty in financial markets. If our customers do not renew their subscriptions for our platform or decrease the amount they spend with us, our revenue will decline and our business will suffer. In addition, a subscription model creates certain risks related to the timing of revenue recognition and potential reductions in cash flows. A portion of the subscription-based revenue we report each quarter results from the recognition of deferred revenue relating to subscription agreements entered into during previous quarters. A decline in new or renewed subscriptions in any period may not be immediately reflected in our reported financial results for that period, but may result in a decline in our revenue in future quarters. If we were to experience significant downturns in subscription sales and renewal rates, our reported financial results might not reflect such downturns until future periods.

We face significant competition from both established and new companies offering marketing, sales and customer service software and other related applications, as well as internally developed software, which may harm our ability to add new customers, retain existing customers and grow our business.

The marketing, sales and customer service software market is evolving, highly competitive and significantly fragmented. With the introduction of new technologies and the potential entry of new competitors into the market, we expect competition to persist and intensify in the future, which could harm our ability to increase sales, maintain or increase renewals and maintain our prices.

We face intense competition from other software companies that develop marketing, sales and customer service software and from marketing services companies that provide interactive marketing services. Competition could significantly impede our ability to sell subscriptions to our Growth Platform on terms favorable to us. Our current and potential competitors may develop and market new technologies that render our existing or future products less competitive, or obsolete. In addition, if these competitors develop products with similar or superior functionality to our platform, we may need to decrease the prices or accept less favorable terms for our platform subscriptions in order to remain competitive. If we are unable to maintain our pricing due to competitive pressures, our margins will be reduced and our operating results will be negatively affected.

Our competitors include:

- cloud-based marketing automation providers;
- email marketing software vendors;
- sales force automation and CRM software vendors;
- large-scale enterprise suites;
- customer service software providers; and
- content management systems.

In addition, instead of using our platform, some prospective customers may elect to combine disparate point applications, such as content management, marketing automation, CRM, analytics and social media management. We expect that new competitors, such as enterprise software vendors that have traditionally focused on enterprise resource planning or other applications supporting back office functions, will develop and introduce applications serving customer-facing and other front office functions. This development could have an adverse effect on our business, operating results and financial condition. In addition, sales force automation and CRM vendors could acquire or develop applications that compete with our marketing software offerings. Some of these companies have acquired social media marketing and other marketing software providers to integrate with their broader offerings.

Our current and potential competitors may have significantly more financial, technical, marketing and other resources than we have, be able to devote greater resources to the development, promotion, sale and support of their products and services, may have more extensive customer bases and broader customer relationships than we have, and may have longer operating histories and greater name recognition than we have. As a result, these competitors may respond faster to new technologies and undertake more extensive marketing campaigns for their products. In a few cases, these vendors may also be able to offer marketing, sales and customer service software at little or no additional cost by bundling it with their existing suite of applications. To the extent any of our competitors has existing relationships with potential customers for either marketing software or other applications, those customers may be unwilling to purchase our platform because of their existing relationships with our competitor. If we are unable to compete with such companies, the demand for our Growth Platform could substantially decline.

In addition, if one or more of our competitors were to merge or partner with another of our competitors, our ability to compete effectively could be adversely affected. Our competitors may also establish or strengthen cooperative relationships with our current or future strategic distribution and technology partners or other parties with whom we have relationships, thereby limiting our ability to promote and implement our platform. We may not be able to compete successfully against current or future competitors, and competitive pressures may harm our business, operating results and financial condition.

We have experienced rapid growth and organizational change in recent periods and expect continued future growth. If we fail to manage our growth effectively, we may be unable to execute our business plan, maintain high levels of service or address competitive challenges adequately.

Our head count and operations have grown substantially. For example, we had 3,387 full-time employees as of December 31, 2019, as compared with 2,638 as of December 31, 2018 and we have opened 8 international offices since 2013. We also plan to open additional international offices in the future. This growth has placed, and will continue to place, a significant strain on our management, administrative, operational and financial infrastructure. We anticipate further growth will be required to address increases in our product offerings and continued expansion. Our success will depend in part upon our ability to recruit, hire, train, manage and integrate a significant number of qualified managers, technical personnel and employees in specialized roles within our company, including in technology, sales and marketing. If our new employees perform poorly, or if we are unsuccessful in recruiting, hiring, training, managing and integrating these new employees, or retaining these or our existing employees, our business may suffer.

In addition, to manage the expected continued growth of our head count, operations and geographic expansion, we will need to continue to improve our information technology infrastructure, operational, financial and management systems and procedures. Our anticipated additional head count and capital investments will increase our costs, which will make it more difficult for us to address any future revenue shortfalls by reducing expenses in the short term. If we fail to successfully manage our growth, we will be unable to successfully execute our business plan, which could have a negative impact on our business, results of operations or financial condition.

Failure to effectively develop and expand our marketing, sales and customer service capabilities could harm our ability to increase our customer base and achieve broader market acceptance of our platform.

To increase Total Customers and achieve broader market acceptance of our Growth Platform, we will need to expand our marketing, sales and customer service operations, including our sales force and third-party channel partners. We will continue to dedicate significant resources to inbound sales and marketing programs. The effectiveness of our inbound sales and marketing and third-party channel partners has varied over time and may vary in the future and depends on our ability to maintain and improve our Growth Platform. All of these efforts will require us to invest significant financial and other resources. Our business will be seriously harmed if our efforts do not generate a correspondingly significant increase in revenue. We may not achieve anticipated revenue growth from expanding our sales force if we are unable to hire, develop and retain talented sales personnel, if our new sales personnel are unable to achieve desired productivity levels in a reasonable period of time or if our sales and marketing programs are not effective.

The rate of growth of our business depends on the continued participation and level of service of our Solutions Partners.

We rely on our Solutions Partners to provide certain services to our customers, as well as pursue sales of our Growth Platform to customers. To the extent we do not attract new Solutions Partners, or existing or new Solutions Partners do not refer a growing number of customers to us, our revenue and operating results would be harmed. In addition, if our Solutions Partners do not continue to provide services to our customers, we would be required to provide such services ourselves either by expanding our internal team or engaging other third-party providers, which would increase our operating costs.

If we cannot maintain our company culture as we grow, we could lose the innovation, teamwork, passion and focus on execution that we believe contribute to our success and our business may be harmed.

We believe that a critical component to our success has been our company culture, which is based on transparency and personal autonomy. We have invested substantial time and resources in building our team within this company culture. Any failure to preserve our culture could negatively affect our ability to retain and recruit personnel and to effectively focus on and pursue our corporate objectives. As we grow as and continue to develop the infrastructure of a public company, we may find it difficult to maintain these important aspects of our company culture. If we fail to maintain our company culture, our business may be adversely impacted.

If we fail to maintain our inbound thought leadership position, our business may suffer.

We believe that maintaining our thought leadership position in inbound marketing, sales and services is an important element in attracting new customers. We devote significant resources to develop and maintain our thought leadership position, with a focus on identifying and interpreting emerging trends in the inbound experience, shaping and guiding industry dialog and creating and sharing the best inbound practices. Our activities related to developing and maintaining our thought leadership may not yield increased revenue, and even if they do, any increased revenue may not offset the expenses we incurred in such effort. We rely upon the continued services of our management and employees with domain expertise with inbound marketing, sales and services, and the loss of any key employees in this area could harm our competitive position and reputation. If we fail to successfully grow and maintain our thought leadership position, we may not attract enough new customers or retain our existing customers, and our business could suffer.

If we fail to further enhance our brand and maintain our existing strong brand awareness, our ability to expand our customer base will be impaired and our financial condition may suffer.

We believe that our development of the HubSpot brand is critical to achieving widespread awareness of our existing and future inbound experience solutions, and, as a result, is important to attracting new customers and maintaining existing customers. In the past, our efforts to build our brand have involved significant expenses, and we believe that this investment has resulted in strong brand recognition in the B2B market. Successful promotion and maintenance of our brands will depend largely on the effectiveness of our marketing efforts and on our ability to provide a reliable and useful Growth Platform at competitive prices. Brand promotion activities may not yield increased revenue, and even if they do, any increased revenue may not offset the expenses we incurred in building our brand. If we fail to successfully promote and maintain our brand, our business could suffer.

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

Our future success depends on our ability to adapt and innovate our Growth Platform. To attract new customers and increase revenue from existing customers, we need to continue to enhance and improve our offerings to meet customer needs at prices that our customers are willing to pay. Such efforts will require adding new functionality and responding to technological advancements, which will increase our research and development costs. If we are unable to develop new applications that address our customers' needs, or to enhance and improve our platform in a timely manner, we may not be able to maintain or increase market acceptance of our platform. Our ability to grow is also subject to the risk of future disruptive technologies. Access and use of our Growth Platform is provided via the cloud, which, itself, was disruptive to the previous enterprise software model. If new technologies emerge that are able to deliver inbound marketing software and related applications at lower prices, more efficiently, more conveniently or more securely, such technologies could adversely affect our ability to compete.

We rely on our management team and other key employees, and the loss of one or more key employees could harm our business.

Our success and future growth depend upon the continued services of our management team, including our co-founders, Brian Halligan and Dharmesh Shah, and other key employees in the areas of research and development, marketing, sales, services and general and administrative functions. From time to time, there may be changes in our management team resulting from the hiring or departure of executives, which could disrupt our business. We also are dependent on the continued service of our existing software engineers and information technology personnel because of the complexity of our platform, technologies and infrastructure. We may terminate any employee's employment at any time, with or without cause, and any employee may resign at any time, with or without cause. We do not have employment agreements with any of our key personnel. The loss of one or more of our key employees could harm our business.

The failure to attract and retain additional qualified personnel could prevent us from executing our business strategy.

To execute our business strategy, we must attract and retain highly qualified personnel. In particular, we compete with many other companies for software developers with high levels of experience in designing, developing and managing cloud-based software, as well as for skilled information technology, marketing, sales and operations professionals, and we may not be successful in attracting and retaining the professionals we need. Also, inbound sales, marketing and services domain experts are very important to our success and are difficult to replace. We have from time to time in the past experienced, and we expect to continue to experience in the future, difficulty in hiring and difficulty in retaining highly skilled employees with appropriate qualifications. In particular, we have experienced a competitive hiring environment in the Greater Boston area, where we are headquartered. Many of the companies with which we compete for experienced personnel have greater resources than we do. In addition, in making employment decisions, particularly in the software industry, job candidates often consider the value of the stock options or other equity incentives they are to receive in connection with their employment. If the price of our stock declines, or experiences significant volatility, our ability to attract or retain key employees will be adversely affected. If we fail to attract new personnel or fail to retain and motivate our current personnel, our growth prospects could be severely harmed.

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

High-quality education, training and customer support are important for the successful marketing, sale and use of our Growth Platform and for the renewal of existing customers. Providing this education, training and support requires that our personnel who manage our online training resource, HubSpot Academy, or provide customer support have specific inbound experience domain knowledge and expertise, making it more difficult for us to hire qualified personnel and to scale up our support operations. The importance of high-quality customer support will increase as we expand our business and pursue new customers. If we do not help our customers use multiple applications within our Growth Platform and provide effective ongoing support, our ability to sell additional functionality and services to, or to retain, existing customers may suffer and our reputation with existing or potential customers may be harmed.

We may not be able to scale our business quickly enough to meet our customers' growing needs and if we are not able to grow efficiently, our operating results could be harmed.

As usage of our Growth Platform grows and as customers use our platform for additional inbound applications, such as sales and services, we will need to devote additional resources to improving our application architecture, integrating with third-party systems and maintaining infrastructure performance. In addition, we will need to appropriately scale our internal business systems and our services organization, including customer support and professional services, to serve our growing customer base, particularly as our customer demographics change over time. Any failure of or delay in these efforts could cause impaired system performance and reduced customer satisfaction. These issues could reduce the attractiveness of our Growth Platform to customers, resulting in decreased sales to new customers, lower renewal rates by existing customers, the issuance of service credits, or requested refunds, which could impede our revenue growth and harm our reputation. Even if we are able to upgrade our systems and expand our staff, any such expansion will be expensive and complex, requiring management's time and attention. We could also face inefficiencies or operational failures as a result of our efforts to scale our infrastructure. Moreover, there are inherent risks associated with upgrading, improving and expanding our information technology systems. We cannot be sure that the expansion and improvements to our infrastructure and systems will be fully or effectively implemented on a timely basis, if at all. These efforts may reduce revenue and our margins and adversely affect our financial results.

Our ability to introduce new products and features is dependent on adequate research and development resources. If we do not adequately fund our research and development efforts, we may not be able to compete effectively and our business and operating results may be harmed.

To remain competitive, we must continue to develop new product offerings, applications, features and enhancements to our existing Growth Platform. Maintaining adequate research and development personnel and resources to meet the demands of the market is essential. If we are unable to develop our platform internally due to certain constraints, such as high employee turnover, lack of management ability or a lack of other research and development resources, we may miss market opportunities. Further, many of our competitors expend a considerably greater amount of funds on their research and development programs, and those that do not may be acquired by larger companies that would allocate greater resources to our competitors' research and development programs. Our failure to maintain adequate research and development resources or to compete effectively with the research and development programs of our competitors could materially adversely affect our business.

Changes in the sizes or types of businesses that purchase our platform or in the applications within our Growth Platform purchased or used by our customers could negatively affect our operating results.

Our strategy is to sell subscriptions to our Growth Platform to mid-sized businesses, but we have sold and will continue to sell to organizations ranging from small businesses to enterprises. Our gross margins can vary depending on numerous factors related to the implementation and use of our Growth Platform, including the sophistication and intensity of our customers' use of our platform and the level of professional services and support required by a customer. Sales to enterprise customers may entail longer sales cycles and more significant selling efforts. Selling to small businesses may involve greater credit risk and uncertainty. If there are changes in the mix of businesses that purchase our platform or the mix of the product plans purchased by our customers, our gross margins could decrease and our operating results could be adversely affected.

We have in the past completed acquisitions and may acquire or invest in other companies or technologies in the future, which could divert management's attention, fail to meet our expectations, result in additional dilution to our stockholders, increase expenses, disrupt our operations or harm our operating results.

We have in the past acquired, and we may in the future acquire or invest in, businesses, products or technologies that we believe could complement or expand our platform, enhance our technical capabilities or otherwise offer growth opportunities, for example, the acquisition of PieSync in 2019. We may not be able to fully realize the anticipated benefits of these or any future acquisitions. The pursuit of potential acquisitions may divert the attention of management and cause us to incur various expenses related to identifying, investigating and pursuing suitable acquisitions, whether or not they are consummated.

There are inherent risks in integrating and managing acquisitions. If we acquire additional businesses, we may not be able to assimilate or integrate the acquired personnel, operations and technologies successfully or effectively manage the combined business following the acquisition and our management may be distracted from operating our business. We also may not achieve the anticipated benefits from the acquired business due to a number of factors, including: unanticipated costs or liabilities associated with the acquisition; incurrence of acquisition-related costs, which would be recognized as a current period expense; inability to generate sufficient revenue to offset acquisition or investment costs; the inability to maintain relationships with customers and partners of the acquired business; the difficulty of incorporating acquired technology and rights into our platform and of maintaining quality and security standards consistent with our brand; delays in customer purchases due to uncertainty related to any acquisition; the need to integrate or implement additional controls, procedures and policies; challenges caused by distance, language and cultural differences; harm to our existing business relationships with business partners and customers as a result of the acquisition; the potential loss of key employees; use of resources that are needed in other parts of our business and diversion of management and employee resources; the

inability to recognize acquired deferred revenue in accordance with our revenue recognition policies; and use of substantial portions of our available cash or the incurrence of debt to consummate the acquisition. Acquisitions also increase the risk of unforeseen legal liability, including for potential violations of applicable law or industry rules and regulations, arising from prior or ongoing acts or omissions by the acquired businesses which are not discovered by due diligence during the acquisition process. Generally, if an acquired business fails to meet our expectations, our operating results, business and financial condition may suffer. Acquisitions could also result in dilutive issuances of equity securities or the incurrence of debt, which could adversely affect our business, results of operations or financial condition.

In addition, a significant portion of the purchase price of companies we acquire may be allocated to goodwill and other intangible assets, which must be assessed for impairment at least annually. If our acquisitions do not ultimately yield expected returns, we may be required to make charges to our operating results based on our impairment assessment process, which could harm our results of operations.

Because our long-term growth strategy involves further expansion of our sales to customers outside the United States, our business will be susceptible to risks associated with international operations.

A component of our growth strategy involves the further expansion of our operations and customer base internationally. We have opened 8 international offices since 2013. We also plan to open additional offices in the future. These international offices focus primarily on sales, professional services and support. We also have a development team in Dublin, Ireland. Our current international operations and future initiatives will involve a variety of risks, including:

- difficulties in maintaining our company culture with a dispersed and distant workforce;
- more stringent regulations relating to data security and the unauthorized use of, or access to, commercial and personal information, particularly in the European Union;
- unexpected changes in regulatory requirements, taxes or trade laws;
- differing labor regulations, especially in the European Union, where labor laws are generally more advantageous to employees as compared to the United States, including deemed hourly wage and overtime regulations in these locations;
- challenges inherent in efficiently managing an increased number of employees over large geographic distances, including the need to implement appropriate systems, policies, benefits and compliance programs;
- difficulties in managing a business in new markets with diverse cultures, languages, customs, legal systems, alternative dispute systems and regulatory systems;
- currency exchange rate fluctuations and the resulting effect on our revenue and expenses, and the cost and risk of entering into hedging transactions if we chose to do so in the future;
- global economic uncertainty caused by global political events, including the United Kingdom's exit from the European Union, on January 31, 2020, or "Brexit", and similar geopolitical developments;
- limitations on our ability to reinvest earnings from operations in one country to fund the capital needs of our operations in other countries;
- limited or insufficient intellectual property protection;
- political instability or terrorist activities;
- likelihood of potential or actual violations of domestic and international anticorruption laws, such as the U.S. Foreign Corrupt Practices Act and the U.K. Bribery Act, or of U.S. and international export control and sanctions regulations, which likelihood may increase with an increase of sales or operations in foreign jurisdictions and operations in certain industries; and
- adverse tax burdens and foreign exchange controls that could make it difficult to repatriate earnings and cash.

Our limited experience in operating our business internationally increases the risk that any potential future expansion efforts that we may undertake will not be successful. If we invest substantial time and resources to expand our international operations and are unable to do so successfully and in a timely manner, our business and operating results will suffer. We continue to implement policies and procedures to facilitate our compliance with U.S. laws and regulations applicable to or arising from our international business. Inadequacies in our past or current compliance practices may increase the risk of inadvertent violations of such laws and regulations, which could lead to financial and other penalties that could damage our reputation and impose costs on us.

Interruptions or delays in service from our third-party data center providers could impair our ability to deliver our platform to our customers, resulting in customer dissatisfaction, damage to our reputation, loss of customers, limited growth and reduction in revenue.

We currently serve the majority of our platform functions from third-party data center hosting facilities operated by Amazon Web Services located in northern Virginia and Google Cloud Platform located in Frankfurt, Germany. In addition, we serve ancillary functions for our customers from third-party data center hosting facilities operated by Rackspace located in Dallas, Texas, with a backup facility in Chicago, Illinois. Our operations depend, in part, on our third-party facility providers' abilities to protect these facilities against damage or interruption from natural disasters, such as earthquakes and hurricanes, power or telecommunications failures, criminal acts and similar events. In the event that any of our third-party facilities arrangements is terminated, or if there is a lapse of service or damage to a facility, we could experience interruptions in our platform as well as delays and additional expenses in arranging new facilities and services.

Any damage to, or failure of, the systems of our third-party providers could result in interruptions to our platform. Despite precautions taken at our data centers, the occurrence of spikes in usage volume, a natural disaster, such as earthquakes or hurricane, an act of terrorism, vandalism or sabotage, a decision to close a facility without adequate notice, or other unanticipated problems at a facility could result in lengthy interruptions in the availability of our on-demand software. Even with current and planned disaster recovery arrangements, our business could be harmed. Also, in the event of damage or interruption, our insurance policies may not adequately compensate us for any losses that we may incur. These factors in turn could further reduce our revenue, subject us to liability and cause us to issue credits or cause customers to fail to renew their subscriptions, any of which could materially adversely affect our business.

If our Growth Platform has outages or fails due to defects or similar problems, and if we fail to correct any defect or other software problems, we could lose customers, become subject to service performance or warranty claims or incur significant costs.

Our platform and its underlying infrastructure are inherently complex and may contain material defects or errors. We release modifications, updates, bug fixes and other changes to our software several times per day, without traditional human-performed quality control reviews for each release. We have from time to time found defects in our software and may discover additional defects in the future. We may not be able to detect and correct defects or errors before customers begin to use our platform or its applications. Consequently, we or our customers may discover defects or errors after our platform has been implemented. For example, in March 2019, we had a product outage due to the failure of one of the infrastructure systems that supports multiple parts of our platform. Although no data from prior to the outage was lost, our customers experienced disruptions in using our platform during the outage. Defects or errors could result in product outages and could also cause inaccuracies in the data we collect and process for our customers, or even the loss, damage or inadvertent release of such confidential data. We implement bug fixes and upgrades as part of our regular system maintenance, which may lead to system downtime. Even if we are able to implement the bug fixes and upgrades in a timely manner, any history of product outages, defects or inaccuracies in the data we collect for our customers, or the loss, damage or inadvertent release of confidential data could cause our reputation to be harmed, and customers may elect not to purchase or renew their agreements with us. Furthermore, these issues could subject us to service performance credits (whether offered by us or required by contract), warranty claims or increased insurance costs. The costs associated with product outages, any material defects or errors in our platform or other performance problems may be substantial and could materially adversely affect our operating results.

In addition, third-party apps and features on our Growth Platform may not meet the same quality standards that we apply to our own development efforts and, to the extent they contain bugs, vulnerabilities or defects, they may create disruptions in our customers' use of our products, lead to data loss, unauthorized access to customer data, damage our brand and reputation and affect the continued use of our products, any of which could harm our business, results of operations and financial condition.

We are dependent on the continued availability of third-party data hosting and transmission services.

A significant portion of our operating cost is from our third-party data hosting and transmission services. If the costs for such services increase due to vendor consolidation, regulation, contract renegotiation, or otherwise, we may not be able to increase the fees for our Growth Platform or services to cover the changes. As a result, our operating results may be significantly worse than forecasted.

If we do not or cannot maintain the compatibility of our Growth Platform with third-party applications that our customers use in their businesses, our revenue will decline.

A significant percentage of our customers choose to integrate our platform with certain capabilities provided by third-party application providers using application programming interfaces, or APIs, published by these providers. The functionality and popularity of our Growth Platform depends, in part, on our ability to integrate our platform with third-party applications and platforms, including CRM, CMS, e-commerce, call center, analytics and social media sites that our customers use and from which they obtain data. Third-party providers of applications and APIs may change the features of their applications and platforms, restrict our access to their applications and platforms, or alter the terms governing use of their applications and APIs and access to those applications and platforms in an adverse manner. Such changes could functionally limit or terminate our ability to use these third-party applications and platforms in conjunction with our platform, which could negatively impact our offerings and harm our business. If we fail to integrate our platform with new third-party applications and platforms that our customers use for marketing, sales or services purposes, or fail to renew existing relationships pursuant to which we currently provide such integration, we may not be able to offer the functionality that our customers need, which would negatively impact our ability to generate new revenue or maintain existing revenue and adversely impact our business.

We rely on data provided by third parties, the loss of which could limit the functionality of our platform and disrupt our business.

Select functionality of our Growth Platform depends on our ability to deliver data, including search engine results and social media updates, provided by unaffiliated third parties, such as Facebook, Google, LinkedIn and Twitter. Some of this data is provided to us pursuant to third-party data sharing policies and terms of use, under data sharing agreements by third-party providers or by customer consent. In the future, any of these third parties could change its data sharing policies, including making them more restrictive, or alter its algorithms that determine the placement, display, and accessibility of search results and social media updates, any of which could result in the loss of, or significant impairment to, our ability to collect and provide useful data to our customers. These third parties could also interpret our, or our service providers', data collection policies or practices as being inconsistent with their policies, which could result in the loss of our ability to collect this data for our customers. Any such changes could impair our ability to deliver data to our customers and could adversely impact select functionality of our platform, impairing the return on investment that our customers derive from using our solution, as well as adversely affecting our business and our ability to generate revenue.

Privacy concerns and end users' acceptance of Internet behavior tracking may limit the applicability, use and adoption of our Growth Platform.

Privacy concerns may cause end users to resist providing the personal data necessary to allow our customers to use our platform effectively. We have implemented various features intended to enable our customers to better protect end user privacy, but these measures may not alleviate all potential privacy concerns and threats. Even the perception of privacy concerns, whether or not valid, may inhibit market adoption of our platform, especially in certain industries that rely on sensitive personal information. Privacy advocacy groups and the technology and other industries are considering various new, additional or different self-regulatory standards that may place additional burdens on us. The costs of compliance with, and other burdens imposed by these groups' policies and actions may limit the use and adoption of our Growth Platform and reduce overall demand for it, or lead to significant fines, penalties or liabilities for any noncompliance or loss of any such action.

We are subject to governmental regulation and other legal obligations, particularly related to privacy, data protection and information security, and our actual or perceived failure to comply with such obligations could harm our business. Compliance with such laws could also impair our efforts to maintain and expand our customer base, and thereby decrease our revenue.

Our handling of data is subject to a variety of laws and regulations, including regulation by various government agencies, including the U.S. Federal Trade Commission, or FTC, and various state, local and foreign agencies. We collect personally identifiable information and other data from our customers and leads. We also handle personally identifiable information about our customers' customers. We use this information to provide services to our customers, to support, expand and improve our business. We may also share customers' personally identifiable information with third parties as authorized by the customer or as described in our privacy policy.

The U.S. federal and various state and foreign governments have adopted or proposed limitations on the collection, distribution, use and storage of personal information of individuals. In the United States, the FTC and many state attorneys general are applying federal and state consumer protection laws as imposing standards for the online collection, use and dissemination of data. However, these obligations may be interpreted and applied in a manner that is inconsistent from one jurisdiction to another and may conflict with other requirements or our practices. Any failure or perceived failure by us to comply with privacy or security laws, policies, legal obligations or industry standards or any security incident that results in the unauthorized release or transfer of personally identifiable information or other customer data may result in governmental enforcement actions, litigation, fines and penalties and/or adverse publicity, and could cause our customers to lose trust in us, which could have an adverse effect on our reputation and business.

Laws and regulations concerning privacy, data protection and information security are evolving, and changes to such laws and regulations could require us to change features of our platform or restrict our customers' ability to collect and use email addresses, page viewing data and personal information, which may reduce demand for our platform. Our failure to comply with federal, state and international data privacy laws and regulations could harm our ability to successfully operate our business and pursue our business goals. For example, California recently enacted the California Consumer Privacy Act, or CCPA, that will, among other things, require covered companies to provide new disclosures to California consumers and afford such consumers new abilities to opt-out of certain sales of personal information. The CCPA recently was amended, and it is possible that it will be amended again before it goes into effect. We cannot yet predict the impact of the CCPA on our business or operations, but it may require us to modify our data processing practices and policies and to incur substantial costs and expenses in an effort to comply.

In addition, several foreign countries and governmental bodies, including the European Union and Canada, have regulations dealing with the collection and use of personal information obtained from their residents, which are often more restrictive than those in the United States. Laws and regulations in these jurisdictions apply broadly to the collection, use, storage, disclosure and security of personal information that identifies or may be used to identify an individual. In relevant part, these laws and regulations may affect our ability to engage in lead generation activities by imposing heightened requirements, such as affirmative opt-ins or consent prior to sending commercial correspondence or engaging in electronic tracking activities. For example, a recent ruling of the European Court of Justice in Case C-673/17 provides that a pre-checked opt-in is insufficient to constitute a valid active consumer consent to cookie storage.

Within the European Union, legislators have adopted the General Data Protection Regulation, or GDPR, and which became effective in May 2018 which may impose additional obligations and risk upon our business and which may increase substantially the penalties to which we could be subject in the event of any non-compliance. In addition, Brexit could also lead to further legislative and regulatory changes, depending on the final terms of Brexit and the agreements or arrangements negotiated with the European Union. It remains unclear how the United Kingdom data protection laws or regulations will develop in the medium to longer term and how data transfers to and from the United Kingdom will be regulated. We may incur substantial expense in complying with the new obligations to be imposed by the GDPR and we may be required to make significant changes in our business operations, all of which may adversely affect our revenues and our business overall.

On May 23, 2016, the European Parliament adopted a resolution and on July 8, 2016 the European Member State representatives approved the final version of the EU-US Privacy Shield as a successor to the Safe Harbor framework. As of August 1, 2016, interested companies have been permitted to register for the program. We are currently certified to the EU-US Privacy Shield. There continue to be concerns about whether the EU-US Privacy Shield will face additional challenges. Until the remaining legal uncertainties regarding the future of the EU-US Privacy Shield are settled, we will continue to face uncertainty as to whether our efforts to comply with our obligations under European privacy laws will be sufficient. If we are investigated by a European data protection authority, we may face fines and other penalties. Any such investigation or charges by European data protection authorities could have a negative effect on our existing business and on our ability to attract and retain new customers. We may also experience hesitancy, reluctance, or refusal by European or multi-national customers to continue to use our services due to the potential risk exposure to such customers in the event the EU-US Privacy Shield is invalidated. Such customers may view any alternative approaches to compliance as being too costly, too burdensome, too legally uncertain or otherwise objectionable and therefore decide not to do business with us. For example, some of our customers or potential customers in the EU may require their vendors to host all personal data within the EU and may decide to do business with one of our competitors who hosts personal data within the EU instead of doing business with us.

In addition, if our privacy or data security measures fail to comply with current or future laws and regulations, we may be subject to claims, legal proceedings or other actions by individuals or governmental authorities based on privacy or data protection regulations and our commitments to customers or others, as well as negative publicity and a potential loss of business. Moreover, if future laws and regulations limit our subscribers' ability to use and share personal information or our ability to store, process and share personal information, demand for our solutions could decrease, our costs could increase, and our business, results of operations and financial condition could be harmed.

If our or our customers' security measures are compromised or unauthorized access to data of our customers or their customers is otherwise obtained, our Growth Platform may be perceived as not being secure, our customers may be harmed and may curtail or cease their use of our platform, our reputation may be damaged and we may incur significant liabilities.

Our operations involve the storage and transmission of data of our customers and their customers, including personally identifiable information. Our storage is typically the sole source of record for portions of our customers' businesses and end user data, such as initial contact information and online interactions. Security incidents could result in unauthorized access to, loss of or unauthorized disclosure of this information, litigation, indemnity obligations and other possible liabilities, as well as negative publicity, which could damage our reputation, impair our sales and harm our customers and our business. Cyber-attacks and other malicious Internet-based activity continue to increase generally, and cloud-based platform providers of marketing services have been targeted. If our security measures are compromised as a result of third-party action, employee or customer error, malfeasance, stolen or fraudulently obtained log-in credentials or otherwise, our reputation could be damaged, our business may be harmed and we could incur significant liability. If third parties with whom we work, such as vendors or developers, violate applicable laws, our security policies or our acceptable use policy, such violations may also put our customers' information at risk and could in turn have an adverse effect on our business. In addition, if the security measures of our customers are compromised, even without any actual compromise of our own systems, we may face negative publicity or reputational harm if our customers or anyone else incorrectly attributes the blame for such security breaches to us or our systems. We may be unable to anticipate or prevent techniques used to obtain unauthorized access or to sabotage systems because they change frequently and generally are not detected until after an incident has occurred. As we increase our customer base and our brand becomes more widely known and recognized, we may become more of a target for third parties seeking to compromise our security systems or gain unauthorized access to our customers' data. Additionally, we provide extensive access to our database, which stores our customer data, to our development team to facilitate our rapid pace of product development. If such access or our own operations cause the loss, damage or destruction of our customers' business data, their sales, lead generation, support and other business operations may be permanently harmed. As a result, our customers may bring claims against us for lost profits and other damages.

Many governments have enacted laws requiring companies to notify individuals of data security incidents or unauthorized transfers involving certain types of personal data. In addition, some of our customers contractually require notification of any data security compromise. Security compromises experienced by our competitors, by our customers or by us may lead to public disclosures, which may lead to widespread negative publicity. Any security compromise in our industry, whether actual or perceived, could harm our reputation, erode customer confidence in the effectiveness of our security measures, negatively impact our ability to attract new customers, cause existing customers to elect not to renew their subscriptions or subject us to third-party lawsuits, regulatory fines or other action or liability, which could materially and adversely affect our business and operating results.

There can be no assurance that any limitations of liability provisions in our contracts for a security breach would be enforceable or adequate or would otherwise protect us from any such liabilities or damages with respect to any particular claim. We also cannot be sure that our existing general liability insurance coverage and coverage for errors or omissions will continue to be available on acceptable terms or will be available in sufficient amounts to cover one or more large claims, or that the insurer will not deny coverage as to any future claim. The successful assertion of one or more large claims against us that exceed available insurance coverage, or the occurrence of changes in our insurance policies, including premium increases or the imposition of large deductible or co-insurance requirements, could have a material adverse effect on our business, financial condition and operating results.

Risks Related to Intellectual Property

Our business may suffer if it is alleged or determined that our technology infringes the intellectual property rights of others.

The software industry is characterized by the existence of a large number of patents, copyrights, trademarks, trade secrets and other intellectual and proprietary rights. Companies in the software industry, including those in marketing software, are often required to defend against litigation claims based on allegations of infringement or other violations of intellectual property rights. Many of our competitors and other industry participants have been issued patents and/or have filed patent applications and may assert patent or other intellectual property rights within the industry. Moreover, in recent years, individuals and groups that are non-practicing entities, commonly referred to as “patent trolls,” have purchased patents and other intellectual property assets for the purpose of making claims of infringement in order to extract settlements. From time to time, we may receive threatening letters or notices or may be the subject of claims that our services and/or platform and underlying technology infringe or violate the intellectual property rights of others. Responding to such claims, regardless of their merit, can be time consuming, costly to defend in litigation, divert management’s attention and resources, damage our reputation and brand and cause us to incur significant expenses. Our technologies may not be able to withstand any third-party claims or rights against their use. Claims of intellectual property infringement might require us to redesign our application, delay releases, enter into costly settlement or license agreements or pay costly damage awards, or face a temporary or permanent injunction prohibiting us from marketing or selling our platform. If we cannot or do not license the infringed technology on reasonable terms or at all, or substitute similar technology from another source, our revenue and operating results could be adversely impacted. Additionally, our customers may not purchase our Growth Platform if they are concerned that they may infringe third-party intellectual property rights. The occurrence of any of these events may have a material adverse effect on our business.

In our subscription agreements with our customers, we generally do not agree to indemnify our customers against any losses or costs incurred in connection with claims by a third party alleging that a customer’s use of our services or platform infringes the intellectual property rights of the third party. There can be no assurance, however, that customers will not assert a common law indemnity claim or that any existing limitations of liability provisions in our contracts would be enforceable or adequate, or would otherwise protect us from any such liabilities or damages with respect to any particular claim. Our customers who are accused of intellectual property infringement may in the future seek indemnification from us under common law or other legal theories. If such claims are successful, or if we are required to indemnify or defend our customers from these or other claims, these matters could be disruptive to our business and management and have a material adverse effect on our business, operating results and financial condition.

If we fail to adequately protect our proprietary rights, in the United States and abroad, our competitive position could be impaired and we may lose valuable assets, experience reduced revenue and incur costly litigation to protect our rights.

Our success is dependent, in part, upon protecting our proprietary technology. We rely on a combination of copyrights, trademarks, service marks, trade secret laws and contractual restrictions to establish and protect our proprietary rights in our products and services. However, the steps we take to protect our intellectual property may be inadequate. We will not be able to protect our intellectual property if we are unable to enforce our rights or if we do not detect unauthorized use of our intellectual property. Any of our trademarks or other intellectual property rights may be challenged by others or invalidated through administrative process or litigation. Furthermore, legal standards relating to the validity, enforceability and scope of protection of intellectual property rights are uncertain. Despite our precautions, it may be possible for unauthorized third parties to copy our technology and use information that we regard as proprietary to create products and services that compete with ours. Some license provisions protecting against unauthorized use, copying, transfer and disclosure of our offerings may be unenforceable under the laws of certain jurisdictions and foreign countries. In addition, the laws of some countries do not protect proprietary rights to the same extent as the laws of the United States. To the extent we expand our international activities, our exposure to unauthorized copying and use of our technology and proprietary information may increase.

We enter into confidentiality and invention assignment agreements with our employees and consultants and enter into confidentiality agreements with the parties with whom we have strategic relationships and business alliances. No assurance can be given that these agreements will be effective in controlling access to and distribution of our products and proprietary information. Further, these agreements may not prevent our competitors from independently developing technologies that are substantially equivalent or superior to our platform and offerings.

We may be required to spend significant resources to monitor and protect our intellectual property rights. Litigation may be necessary in the future to enforce our intellectual property rights and to protect our trade secrets. Such litigation could be costly, time consuming and distracting to management and could result in the impairment or loss of portions of our intellectual property. Furthermore, our efforts to enforce our intellectual property rights may be met with defenses, counterclaims and countersuits attacking the validity and enforceability of our intellectual property rights. Our inability to protect our proprietary technology against unauthorized copying or use, as well as any costly litigation, could delay further sales or the implementation of our platform and offerings, impair the functionality of our platform and offerings, delay introductions of new features or enhancements, result in our substituting inferior or more costly technologies into our platform and offerings, or injure our reputation.

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

A substantial portion of our cloud-based platform incorporates so-called “open source” software, and we may incorporate additional open source software in the future. Open source software is generally freely accessible, usable and modifiable. Certain open source licenses may, in certain circumstances, require us to offer the components of our platform that incorporate the open source software for no cost, that we make available source code for modifications or derivative works we create based upon, incorporating or using the open source software and that we license such modifications or derivative works under the terms of the particular open source license. If an author or other third party that distributes open source software we use were to allege that we had not complied with the conditions of one or more of these licenses, we could be required to incur significant legal expenses defending against such allegations and could be subject to significant damages, including being enjoined from the offering of the components of our platform that contained the open source software and being required to comply with the foregoing conditions, which could disrupt our ability to offer the affected software. We could also be subject to suits by parties claiming ownership of what we believe to be open source software. Litigation could be costly for us to defend, have a negative effect on our operating results and financial condition and require us to devote additional research and development resources to change our products.

Risks Related to Government Regulation and Taxation

We could face liability, or our reputation might be harmed, as a result of the activities of our customers, the content of their websites or the data they store on our servers.

As a provider of a cloud-based inbound marketing, sales and customer service software platform, we may be subject to potential liability for the activities of our customers on or in connection with the data they store on our servers. Although our customer terms of use prohibit illegal use of our services by our customers and permit us to take down websites or take other appropriate actions for illegal use, customers may nonetheless engage in prohibited activities or upload or store content with us in violation of applicable law or the customer’s own policies, which could subject us to liability or harm our reputation. Furthermore, customers may upload, store, or use content on our Growth Platform that may violate our policy on acceptable use which prohibits content that is threatening, abusive, harassing, deceptive, false, misleading, vulgar, obscene, or indecent. While such content may not be illegal, use of our Growth Platform for such content could harm our reputation resulting in a loss of business.

Several U.S. federal statutes may apply to us with respect to various customer activities:

- The Digital Millennium Copyright Act of 1998, or DMCA, provides recourse for owners of copyrighted material who believe that their rights under U.S. copyright law have been infringed on the Internet. Under the DMCA, based on our current business activity as an Internet service provider that does not own or control website content posted by our customers, we generally are not liable for infringing content posted by our customers or other third parties, provided that we follow the procedures for handling copyright infringement claims set forth in the DMCA. Generally, if we receive a proper notice from, or on behalf, of a copyright owner alleging infringement of copyrighted material located on websites we host, and we fail to expeditiously remove or disable access to the allegedly infringing material or otherwise fail to meet the requirements of the safe harbor provided by the DMCA, the copyright owner may seek to impose liability on us. Technical mistakes in complying with the detailed DMCA take-down procedures could subject us to liability for copyright infringement.
- The Communications Decency Act of 1996, or CDA, generally protects online service providers, such as us, from liability for certain activities of their customers, such as the posting of defamatory or obscene content, unless the online service provider is participating in the unlawful conduct. Under the CDA, we are generally not responsible for the customer-created content hosted on our servers. Consequently, we do not monitor hosted websites or prescreen the content placed by our customers on their sites. However, the CDA does not apply in foreign jurisdictions and we may nonetheless be brought into disputes between our customers and third parties which would require us to devote management time and resources to resolve such matters and any publicity from such matters could also have an adverse effect on our reputation and therefore our business.

- In addition to the CDA, the Securing the Protection of our Enduring and Established Constitutional Heritage Act, or the SPEECH Act, provides a statutory exception to the enforcement by a U.S. court of a foreign judgment for defamation under certain circumstances. Generally, the exception applies if the defamation law applied in the foreign court did not provide at least as much protection for freedom of speech and press as would be provided by the First Amendment of the U.S. Constitution or by the constitution and law of the state in which the U.S. court is located, or if no finding of defamation would be supported under the First Amendment of the U.S. Constitution or under the constitution and law of the state in which the U.S. court is located. Although the SPEECH Act may protect us from the enforcement of foreign judgments in the United States, it does not affect the enforceability of the judgment in the foreign country that issued the judgment. Given our international presence, we may therefore, nonetheless, have to defend against or comply with any foreign judgments made against us, which could take up substantial management time and resources and damage our reputation.

Although these statutes and case law in the United States have generally shielded us from liability for customer activities to date, court rulings in pending or future litigation may narrow the scope of protection afforded us under these laws. In addition, laws governing these activities are unsettled in many international jurisdictions, or may prove difficult or impossible for us to comply with in some international jurisdictions. Also, notwithstanding the exculpatory language of these bodies of law, we may become involved in complaints and lawsuits which, even if ultimately resolved in our favor, add cost to our doing business and may divert management's time and attention. Finally, other existing bodies of law, including the criminal laws of various states, may be deemed to apply or new statutes or regulations may be adopted in the future, any of which could expose us to further liability and increase our costs of doing business.

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

State, local and foreign jurisdictions have differing rules and regulations governing sales, use, value added and other taxes, and these rules and regulations are subject to varying interpretations that may change over time. In particular, the applicability of such taxes to our Growth Platform in various jurisdictions is unclear. Further, these jurisdictions' rules regarding tax nexus are complex and vary significantly. As a result, we could face the possibility of tax assessments and audits, and our liability for these taxes and associated penalties could exceed our original estimates. A successful assertion that we should be collecting additional sales, use, value added or other taxes in those jurisdictions where we have not historically done so and do not accrue for such taxes could result in substantial tax liabilities and related penalties for past sales, discourage customers from purchasing our application or otherwise harm our business and operating results.

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

New income, sales, use or other tax laws, statutes, rules, regulations or ordinances could be enacted at any time. Any new taxes could adversely affect our domestic and international business operations, and our business and financial performance. Further, existing tax laws, statutes, rules, regulations or ordinances could be interpreted, changed, modified or applied adversely to us. These events could require us or our customers to pay additional tax amounts on a prospective or retroactive basis, as well as require us or our customers to pay fines and/or penalties and interest for past amounts deemed to be due. If we raise our prices to offset the costs of these changes, existing and potential future customers may elect not to continue or purchase our Growth Platform in the future. Additionally, new, changed, modified or newly interpreted or applied tax laws could increase our customers' and our compliance, operating and other costs, as well as the costs of our platform. Any or all of these events could adversely impact our business and financial performance.

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

As a multinational organization, we may be subject to taxation in several jurisdictions around the world with increasingly complex tax laws, the application of which can be uncertain. The amount of taxes we pay in these jurisdictions could increase substantially as a result of changes in the applicable tax principles, including increased tax rates, new tax laws or revised interpretations of existing tax laws and precedents, which could have a material adverse effect on our liquidity and operating results. Changes in tax laws, such as tax reform in the United States or changes in tax laws resulting from the Organization for Economic Co-operation and Development's multi-jurisdictional plan of action to address "base erosion and profit shifting," could impact our effective tax rate. In addition, the authorities in these jurisdictions could review our tax returns and impose additional tax, interest and penalties, and the authorities could claim that various withholding requirements apply to us or our subsidiaries or assert that benefits of tax treaties are not available to us or our subsidiaries, any of which could have a material impact on us and the results of our operations.

Failure to comply with laws and regulations could harm our business.

Our business is subject to regulation by various federal, state, local and foreign governmental agencies, including agencies responsible for monitoring and enforcing employment and labor laws, workplace safety, environmental laws, consumer protection laws, anti-bribery laws, import/export controls, federal securities laws and tax laws and regulations. In certain jurisdictions, these regulatory requirements may be more stringent than those in the United States. Noncompliance with applicable regulations or requirements could subject us to investigations, sanctions, mandatory recalls, enforcement actions, disgorgement of profits, fines, damages, civil and criminal penalties or injunctions.

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

As of December 31, 2019, we had federal and state net operating loss carryforwards due to prior period losses, which, if not utilized, will begin to expire in 2027 for federal purposes and begin to expire in 2023 for state purposes. These net operating loss carryforwards could expire unused and be unavailable to offset future income tax liabilities, which could adversely affect our profitability. In addition, under Section 382 of the Internal Revenue Code of 1986, as amended, which we refer to as the Code, our ability to utilize net operating loss carryforwards or other tax attributes, such as research tax credits, in any taxable year may be further 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. It is possible that an ownership change in connection with a future offering, or any future ownership change, could have a material effect on the use of our net operating loss carryforwards or other tax attributes, which could adversely affect our profitability. Net operating loss carryforwards incurred for periods beginning on or after January 1, 2018 would not expire unused as a result of these limitations because they can be carried forward indefinitely.

The standards that private entities use to regulate the use of email have in the past interfered with, and may in the future interfere with, the effectiveness of our Growth Platform and our ability to conduct business.

Our customers rely on email to communicate with their existing or prospective customers. Various private entities attempt to regulate the use of email for commercial solicitation. These entities often advocate standards of conduct or practice that significantly exceed current legal requirements and classify certain email solicitations that comply with current legal requirements as spam. Some of these entities maintain “blacklists” of companies and individuals, and the websites, internet service providers and internet protocol addresses associated with those entities or individuals that do not adhere to those standards of conduct or practices for commercial email solicitations that the blacklisting entity believes are appropriate. If a company’s internet protocol addresses are listed by a blacklisting entity, emails sent from those addresses may be blocked if they are sent to any internet domain or internet address that subscribes to the blacklisting entity’s service or purchases its blacklist.

From time to time, some of our internet protocol addresses may become listed with one or more blacklisting entities due to the messaging practices of our customers. There can be no guarantee that we will be able to successfully remove ourselves from those lists. Blacklisting of this type could interfere with our ability to market our Growth Platform and services and communicate with our customers and, because we fulfill email delivery on behalf of our customers, could undermine the effectiveness of our customers’ email marketing campaigns, all of which could have a material negative impact on our business and results of operations.

Existing federal, state and foreign laws regulate Internet tracking software, the senders of commercial emails and text messages, website owners and other activities, and could impact the use of our Growth Platform and potentially subject us to regulatory enforcement or private litigation.

Certain aspects of how our customers utilize our platform are subject to regulations in the United States, European Union and elsewhere. In recent years, U.S. and European lawmakers and regulators have expressed concern over the use of third-party cookies or web beacons for online behavioral advertising, and legislation adopted recently in the European Union requires informed consent for the placement of a cookie on a user’s device. Regulation of cookies and web beacons may lead to restrictions on our activities, such as efforts to understand users’ Internet usage. New and expanding “Do Not Track” regulations have recently been enacted or proposed that protect users’ right to choose whether or not to be tracked online. These regulations seek, among other things, to allow end users to have greater control over the use of private information collected online, to forbid the collection or use of online information, to demand a business to comply with their choice to opt out of such collection or use, and to place limits upon the disclosure of information to third party websites. These policies could have a significant impact on the operation of our Growth Platform and could impair our attractiveness to customers, which would harm our business.

Many of our customers and potential customers in the healthcare, financial services and other industries are subject to substantial regulation regarding their collection, use and protection of data and may be the subject of further regulation in the future. Accordingly, these laws or significant new laws or regulations or changes in, or repeals of, existing laws, regulations or governmental policy may change the way these customers do business and may require us to implement additional features or offer additional contractual terms to satisfy customer and regulatory requirements, or could cause the demand for and sales of our Growth Platform to decrease and adversely impact our financial results.

In addition, the Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003, or the CAN-SPAM Act, establishes certain requirements for commercial email messages and specifies penalties for the transmission of commercial email messages that are intended to deceive the recipient as to source or content. The CAN-SPAM Act, among other things, obligates the sender of commercial emails to provide recipients with the ability to opt out of receiving future commercial emails from the sender. The ability of our customers' message recipients to opt out of receiving commercial emails may minimize the effectiveness of the email components of our Growth Platform. In addition, certain states and foreign jurisdictions, such as Australia, Canada and the European Union, have enacted laws that regulate sending email, and some of these laws are more restrictive than U.S. laws. For example, some foreign laws prohibit sending unsolicited email unless the recipient has provided the sender advance consent to receipt of such email, or in other words has "opted-in" to receiving it. A requirement that recipients opt into, or the ability of recipients to opt out of, receiving commercial emails may minimize the effectiveness of our platform.

While these laws and regulations generally govern our customers' use of our platform, we may be subject to certain laws as a data processor on behalf of, or as a business associate of, our customers. For example, laws and regulations governing the collection, use and disclosure of personal information include, in the United States, rules and regulations promulgated under the authority of the Federal Trade Commission, the Health Insurance Portability and Accountability Act of 1996, the Gramm-Leach-Bliley Act of 1999 and state breach notification laws, and internationally, the Data Protection Directive in the European Union and the Federal Data Protection Act in Germany. If we were found to be in violation of any of these laws or regulations as a result of government enforcement or private litigation, we could be subjected to civil and criminal sanctions, including both monetary fines and injunctive action that could force us to change our business practices, all of which could adversely affect our financial performance and significantly harm our reputation and our business.

We are subject to governmental export controls and economic sanctions laws that could impair our ability to compete in international markets and subject us to liability if we are not in full compliance with applicable laws.

Our business activities are subject to various restrictions under U.S. export controls and trade and economic sanctions laws, including the U.S. Commerce Department's Export Administration Regulations and economic and trade sanctions regulations maintained by the U.S. Treasury Department's Office of Foreign Assets Control. If we fail to comply with these laws and regulations, we and certain of our employees could be subject to civil or criminal penalties and reputational harm. Obtaining the necessary authorizations, including any required license, for a particular transaction may be time-consuming, is not guaranteed, and may result in the delay or loss of sales opportunities. Furthermore, U.S. export control laws and economic sanctions laws prohibit certain transactions with U.S. embargoed or sanctioned countries, governments, persons and entities. Although we take precautions to prevent transactions with U.S. sanction targets, the possibility exists that we could inadvertently provide our solutions to persons prohibited by U.S. sanctions. This could result in negative consequences to us, including government investigations, penalties and reputational harm.

Risks Related to Our Operating Results and Financial Condition

We may experience quarterly fluctuations in our operating results due to a number of factors, which makes our future results difficult to predict and could cause our operating results to fall below expectations or our guidance.

Our quarterly operating results have fluctuated in the past and are expected to 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, and comparing our operating results on a period-to-period basis may not be meaningful. In addition to the other risks described in this Annual Report on Form 10-K, factors that may affect our quarterly operating results include the following:

- changes in spending on marketing, sales and customer service software by our current or prospective customers;
- pricing our Growth Platform subscriptions effectively so that we are able to attract and retain customers without compromising our profitability;
- attracting new customers for our marketing, sales and customer service software, increasing our existing customers' use of our platform and providing our customers with excellent customer support;
- customer renewal rates and the amounts for which agreements are renewed;
- global awareness of our thought leadership and brand;

- changes in the competitive dynamics of our market, including consolidation among competitors or customers and the introduction of new products or product enhancements;
- changes to the commission plans, quotas and other compensation-related metrics for our sales representatives;
- the amount and timing of payment for operating expenses, particularly research and development, sales and marketing expenses and employee benefit expenses;
- the amount and timing of costs associated with recruiting, training and integrating new employees while maintaining our company culture;
- our ability to manage our existing business and future growth, including increases in the number of customers on our platform and the introduction and adoption of our Growth Platform in new markets outside of the United States;
- unforeseen costs and expenses related to the expansion of our business, operations and infrastructure, including disruptions in our hosting network infrastructure and privacy and data security;
- foreign currency exchange rate fluctuations; and
- general economic and political conditions in our domestic and international markets.

We may not be able to accurately forecast the amount and mix of future subscriptions, revenue and expenses and, as a result, our operating results may fall below our estimates or the expectations of public market analysts and investors. If our revenue or operating results fall below the expectations of investors or securities analysts, or below any guidance we may provide, the price of our common stock could decline.

If we do not accurately predict subscription renewal rates or otherwise fail to forecast our revenue accurately, or if we fail to match our expenditures with corresponding revenue, our operating results could be adversely affected.

Because our recent growth has resulted in the rapid expansion of our business, we do not have a long history upon which to base forecasts of renewal rates with customers or future operating revenue. As a result, our operating results in future reporting periods may be significantly below the expectations of the public market, equity research analysts or investors, which could harm the price of our common stock.

Because we generally recognize revenue from subscriptions ratably over the term of the agreement, near term changes in sales may not be reflected immediately in our operating results.

We offer our Growth Platform primarily through a mix of monthly, quarterly and single-year subscription agreements and generally recognize revenue ratably over the related subscription period. As a result, much of the revenue we report in each quarter is derived from agreements entered into during prior months, quarters or years. In addition, we do not record deferred revenue beyond amounts invoiced as a liability on our balance sheet. A decline in new or renewed subscriptions or marketing solutions agreements in any one quarter is not likely to be reflected immediately in our revenue results for that quarter. Such declines, however, would negatively affect our revenue and deferred revenue balances in future periods, and the effect of significant downturns in sales and market acceptance of our platform, and potential changes in our rate of renewals, may not be fully reflected in our results of operations until future periods. Our subscription model also makes it difficult for us to rapidly increase our total revenue and deferred revenue balance through additional sales in any period, as revenue from new customers must be recognized over the applicable subscription term.

Servicing our debt may require a significant amount of cash. We may not have sufficient cash flow from our business to pay our indebtedness, and we may not have the ability to raise the funds necessary to settle for cash conversions of the 2022 Notes or to repurchase the 2022 Notes for cash upon a fundamental change, which could adversely affect our business and results of operations.

We incurred indebtedness in the aggregate principal amount of \$400.0 million in connection with the issuance of our 0.25% convertible senior notes due June 1, 2022 (the “2022 Notes”). Our ability to make scheduled payments of the principal of, to pay interest on or to refinance our indebtedness, including the 2022 Notes, depends on our future performance, which is subject to economic, financial, competitive and other factors beyond our control. Our business may not continue to generate cash flow from operations in the future sufficient to service our debt and make necessary capital expenditures. If we are unable to generate such cash flow, we may be required to adopt one or more alternatives, such as selling assets, restructuring debt or obtaining additional debt financing or equity capital on terms that may be onerous or highly dilutive. Our ability to refinance any future indebtedness will depend on the capital markets and our financial condition at such time. We may not be able to engage in any of these activities or engage in these activities on desirable terms, which could result in a default on our debt obligations. In addition, any of our future debt agreements may contain restrictive covenants that may prohibit us from adopting any of these alternatives. Our failure to comply with these covenants could result in an event of default which, if not cured or waived, could result in the acceleration of our debt.

In addition, holders of the 2022 Notes have the right to require us to repurchase their 2022 Notes upon the occurrence of a fundamental change at a fundamental change repurchase price equal to 100% of the principal amount of the 2022 Notes to be repurchased, plus accrued and unpaid interest, if any. Upon conversion of the 2022 Notes, unless we elect to deliver solely shares of our common stock to settle such conversion (other than paying cash in lieu of delivering any fractional share), we will be required to make cash payments in respect of the 2022 Notes being converted. We may not have enough available cash or be able to obtain financing at the time we are required to make repurchases of 2022 Notes surrendered therefor or 2022 Notes being converted. In addition, our ability to repurchase the 2022 Notes or to pay cash upon conversions of the 2022 Notes may be limited by law, by regulatory authority or by agreements governing our future indebtedness. Our failure to repurchase 2022 Notes at a time when the repurchase is required by the indenture governing the notes or to pay any cash payable on future conversions of the 2022 Notes as required by such indenture would constitute a default under such indenture. A default under the indenture or the fundamental change itself could also lead to a default under agreements governing our future indebtedness. If the repayment of the related indebtedness were to be accelerated after any applicable notice or grace periods, we may not have sufficient funds to repay the indebtedness and repurchase the 2022 Notes or make cash payments upon conversions thereof.

In addition, our indebtedness, combined with our other financial obligations and contractual commitments, could have other important consequences. For example, it could:

- make us more vulnerable to adverse changes in general U.S. and worldwide economic, industry and competitive conditions and adverse changes in government regulation;
- limit our flexibility in planning for, or reacting to, changes in our business and our industry;
- place us at a disadvantage compared to our competitors who have less debt; and
- limit our ability to borrow additional amounts to fund acquisitions, for working capital and for other general corporate purposes.

Any of these factors could materially and adversely affect our business, financial condition and results of operations. In addition, if we incur additional indebtedness, the risks related to our business and our ability to service or repay our indebtedness would increase.

The conditional conversion feature of the 2022 Notes, if triggered, may adversely affect our financial condition and operating results.

In the event the conditional conversion feature of the 2022 Notes is triggered, holders of 2022 Notes will be entitled to convert the 2022 Notes at any time during specified periods at their option. Because the last reported sale price of our common stock for at least 20 trading days during the period of 30 consecutive trading days ending on the last trading day of the calendar quarter ended December 31, 2019 was equal to or greater than 130% of the applicable conversion price on each applicable trading day, the 2022 Notes are convertible at the option of the holders thereof during the calendar quarter ending December 31, 2019. In 2019, the Company settled approximately \$8 thousand of the principal balance of the 2022 Notes in cash. Whether the 2022 Notes will be convertible following such calendar quarter will depend on the continued satisfaction of this condition or another conversion condition in the future. If one or more holders elect to convert their 2022 Notes, unless we elect to satisfy our conversion obligation by delivering solely shares of our common stock (other than paying cash in lieu of delivering any fractional share), we would be required to settle a portion or all of our conversion obligation through the payment of cash, which could adversely affect our liquidity. In addition, even if holders do not elect to convert their 2022 Notes, we could be required under applicable accounting rules to reclassify all or a portion of the outstanding principal of the 2022 Notes as a current rather than long-term liability, which would result in a material reduction of our net working capital.

The accounting method for convertible debt securities that may be settled in cash, such as the 2022 Notes, could have a material effect on our reported financial results.

Under Financial Accounting Standards Board Accounting Standards Codification 470-20, *Debt with Conversion and Other Options*, which we refer to as ASC 470-20, an entity must separately account for the liability and equity components of convertible debt instruments (such as the 2022 Notes) that may be settled entirely or partially in cash upon conversion in a manner that reflects the issuer's economic interest cost. ASC 470-20 requires the value of the conversion option of the 2022 Notes, representing the equity component, to be recorded as additional paid-in capital within stockholders' equity in our consolidated balance sheet and as a discount to the 2022 Notes, which reduces their initial carrying value. The carrying value of the 2022 Notes, net of the discount recorded, will be accreted up to the principal amount of the 2022 Notes from the issuance date until maturity, which will result in non-cash charges to interest expense in our consolidated statement of operations. Accordingly, we will report lower net income or higher net loss in our financial results because ASC 470-20 requires interest to include both the current period's accretion of the debt discount and the instrument's coupon interest, which could adversely affect our reported or future financial results, the trading price of our common stock and the trading price of the 2022 Notes.

In addition, under certain circumstances, convertible debt instruments (such as the 2022 Notes) that may be settled entirely or partly in cash are currently accounted for utilizing the treasury stock method, the effect of which is that the shares issuable upon conversion of the 2022 Notes are not included in the calculation of diluted earnings per share except to the extent that the conversion value of the 2022 Notes exceeds their principal amount. Under the treasury stock method, for diluted earnings per share purposes, the transaction is accounted for as if the number of shares of common stock that would be necessary to settle such excess, if we elected to settle such excess in shares, are issued. We cannot be sure that the accounting standards in the future will continue to permit the use of the treasury stock method. If we are unable to use the treasury stock method in accounting for the shares issuable upon conversion of the 2022 Notes, then our diluted earnings per share would be adversely affected.

We are exposed to fluctuations in currency exchange rates.

We face exposure to movements in currency exchange rates, which may cause our revenue and operating results to differ materially from expectations. As we have expanded our international operations our exposure exchange rate fluctuations has increased, in particular with respect to the Euro, British Pound Sterling, Australian Dollar, Singapore Dollar, Japanese Yen and Colombian Peso. As exchange rates vary, revenue, cost of revenue, operating expenses and other operating results, when re-measured, may differ materially from expectations. In addition, our operating results are subject to fluctuation if our mix of U.S. and foreign currency denominated transactions and expenses changes in the future. Furthermore, global political events, including Brexit and similar geopolitical developments, fluctuating commodity prices and trade tariff developments, have caused global economic uncertainty, which could amplify the volatility of currency fluctuations. Such volatility, even when it increases our revenues or decreases our expenses, impacts our ability to predict our future results and earnings accurately. Although we may apply certain strategies to mitigate foreign currency risk, these strategies might not eliminate our exposure to foreign exchange rate fluctuations and would involve costs and risks of their own, such as ongoing management time and expertise, external costs to implement the strategies and potential accounting implications. Additionally, as we anticipate growing our business further outside of the United States, the effects of movements in currency exchange rates will increase as our transaction volume outside of the United States increases.

Weakened global economic conditions may harm our industry, business and results of operations.

Our overall performance depends in part on worldwide economic conditions. Global financial developments and downturns seemingly unrelated to us or the software industry may harm us. The United States and other key international economies have been affected from time to time by falling demand for a variety of goods and services, restricted credit, poor liquidity, reduced corporate profitability, volatility in credit, equity and foreign exchange markets, bankruptcies, and overall uncertainty with respect to the economy, including with respect to tariff and trade issues. In particular, the economies of countries in Europe have been experiencing weakness associated with high sovereign debt levels, weakness in the banking sector, uncertainty over the future of the Euro zone and volatility in the value of the pound sterling and the Euro, including instability surrounding Brexit. We have operations, as well as current and potential new customers, throughout most of Europe. If economic conditions in Europe and other key markets for our platform continue to remain uncertain or deteriorate further, it could adversely affect our customers' ability or willingness to subscribe to our platform, delay prospective customers' purchasing decisions, reduce the value or duration of their subscriptions or affect renewal rates, all of which could harm our operating results.

Risks Related to Our Common Stock

Our stock price may be volatile and you may be unable to sell your shares at or above the price you purchased them.

The trading prices of the securities of technology companies, including providers of software via the cloud-based model, have been highly volatile. Since shares of our common stock were sold in our initial public offering in October 2014 at a price of \$25.00 per share, our stock price has ranged from \$25.79 to \$207.98, through December 31, 2019. The market price of our common stock may fluctuate significantly in response to numerous factors, many of which are beyond our control, including:

- actual or anticipated fluctuations in our revenue and other operating results, including as a result of the addition or loss of any number of customers;
- announcements by us or our competitors of significant technical innovations, acquisitions, strategic partnerships, joint ventures or capital commitments;
- the financial projections we may provide to the public, any changes in these projections or our failure to meet these projections;
- failure of securities analysts to initiate or maintain coverage of us, changes in ratings and financial estimates and the publication of other news by any securities analysts who follow our company, or our failure to meet these estimates or the expectations of investors;
- changes in operating performance and stock market valuations of cloud-based software or other technology companies, or those in our industry in particular;

- price and volume fluctuations in the trading of our common stock and in the overall stock market, including as a result of trends in the economy as a whole;
- sales of large blocks of our common stock or the dilutive effect of our 2022 Notes or any other equity or equity-linked financings;
- new laws or regulations or new interpretations of existing laws or regulations applicable to our business or industry, including data privacy and data security;
- lawsuits threatened or filed against us;
- changes in key personnel; and
- other events or factors, including changes in general economic, industry and market conditions and trends.

In addition, the stock markets have experienced extreme price and volume fluctuations that have affected and continue to affect the market prices of equity securities of many technology companies. Stock prices of many technology companies have fluctuated in a manner unrelated or disproportionate to the operating performance of those companies.

In the past, stockholders have instituted securities class action litigation following periods of market volatility. If we were to become involved in securities litigation, it could subject us to substantial costs, divert resources and the attention of management from our business and adversely affect our business.

If we fail to maintain an effective system of disclosure controls and internal control over financial reporting, our ability to produce timely and accurate financial statements or comply with applicable regulations could be impaired.

As a public company we are subject to the reporting requirements of the Securities Exchange Act of 1934, as amended, or the Exchange Act, the Sarbanes-Oxley Act of 2002, or the Sarbanes-Oxley Act, the Dodd-Frank Wall Street Reform and Consumer Protection Act, or the Dodd-Frank Act, and the rules and regulations of the New York Stock Exchange, or NYSE. We expect that compliance with these rules and regulations will continue to increase our legal, accounting and financial compliance costs, make some activities more difficult, time consuming and costly, and place significant strain on our personnel, systems and resources.

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

Furthermore, investor perceptions of our company may suffer if deficiencies are found, and this could cause a decline in the market price of our stock. Irrespective of compliance with Section 404, any failure of our internal control over financial reporting could have a material adverse effect on our stated operating results and harm our reputation. If we are unable to implement these requirements effectively or efficiently, it could harm our operations, financial reporting, or financial results and could result in an adverse opinion on our internal controls from our independent registered public accounting firm.

Our ability to raise capital in the future may be limited, and our failure to raise capital when needed could prevent us from growing.

Our business and operations may consume resources faster than we anticipate. In the future, we may need to raise additional funds to invest in future growth opportunities. Additional financing may not be available on favorable terms, if at all. If adequate funds are not available on acceptable terms, we may be unable to invest in future growth opportunities, which could seriously harm our business and operating results. If we incur debt, the debt holders would have rights senior to common stockholders to make claims on our assets, and the terms of any debt could restrict our operations, including our ability to pay dividends on our common stock. Furthermore, if we issue equity securities, stockholders will experience dilution, and the new equity securities could have rights senior to those of our common stock. The 2022 Notes are and any additional equity or equity-linked financings would be dilutive to our stockholders. Because our decision to issue securities in any future offering will depend on market conditions and other factors beyond our control, we cannot predict or estimate the amount, timing or nature of our future offerings. As a result, our stockholders bear the risk of our future securities offerings reducing the market price of our common stock and diluting their interest.

Anti-takeover provisions in our charter documents and Delaware law may delay or prevent an acquisition of our company.

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

- authorize “blank check” preferred stock, which could be issued by the board without stockholder approval and may contain voting, liquidation, dividend and other rights superior to our common stock;
- provide for a classified board of directors whose members serve staggered three-year terms;
- specify that special meetings of our stockholders can be called only by our board of directors, the chairperson of the board, the chief executive officer or the president;
- prohibit stockholder action by written consent;
- establish an advance notice procedure for stockholder approvals to be brought before an annual meeting of our stockholders, including proposed nominations of persons for election to our board of directors;
- provide that our directors may be removed only for cause;
- 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;
- specify that no stockholder is permitted to cumulate votes at any election of directors;
- authorize our board of directors to modify, alter or repeal our amended and restated bylaws; and
- require supermajority votes of the holders of our common stock to amend specified provisions of our charter documents.

These provisions, alone or together, could delay or prevent hostile takeovers and changes in control or changes in our management.

In addition, because we are incorporated in Delaware, we are governed by the provisions of Section 203 of the Delaware General Corporation Law, which limits the ability of stockholders owning in excess of 15% of our outstanding voting stock to merge or combine with us in certain circumstances.

Any provision of our amended and restated certificate of incorporation or amended and restated bylaws or Delaware law that has the effect of delaying or deterring a change in control could limit the opportunity for our stockholders to receive a premium for their shares of our common stock, and could also affect the price that some investors are willing to pay for our common stock.

ITEM 1B. UNRESOLVED STAFF COMMENTS

None.

ITEM 2. Properties

We occupy approximately 382,000 square feet of office space in Cambridge, Massachusetts pursuant to lease agreements that expire through 2029. We also maintain offices in Portsmouth, New Hampshire, Dublin, Ireland, Sydney, Australia, Singapore, Tokyo, Japan, Berlin, Germany, Bogotá, Colombia, Paris, France, and Ghent, Belgium. We believe that our current facilities are suitable and adequate to meet our current needs. We intend to add new facilities or expand existing facilities as we add employees, and we believe that suitable additional or substitute space will be available as needed to accommodate any such expansion of our operations.

ITEM 3. Legal Proceedings

From time to time we may become involved in legal proceedings or be subject to claims arising in the ordinary course of our business. Although the results of litigation and claims cannot be predicted with certainty, we currently believe that the ultimate costs to resolve any pending matter will not have a material adverse effect on our business, operating results, financial condition or cash flows. Regardless of the outcome, litigation can have an adverse impact on us because of defense and settlement costs, diversion of management resources and other factors.

ITEM 4. Mine Safety Disclosures

Not Applicable.

PART II

ITEM 5. Market for Registrant’s Common Equity, Related Stockholder Matters and Issuer Purchases of Equity Securities

Market Information for Common Stock

Our common stock has been listed on the New York Stock Exchange under the symbol “HUBS” since October 9, 2014. Prior to that date, there was no public trading market for our common stock. Our initial public offering was priced at \$25.00 per share on October 8, 2014.

As of February 7, 2020, we had 36 holders of record of our common stock. The actual number of shareholders is greater than this number of record holders, and includes shareholders who are beneficial owners, but whose shares are held in street name by brokers and other nominees. This number of holders of record also does not include shareholders whose shares may be held in trust by other entities.

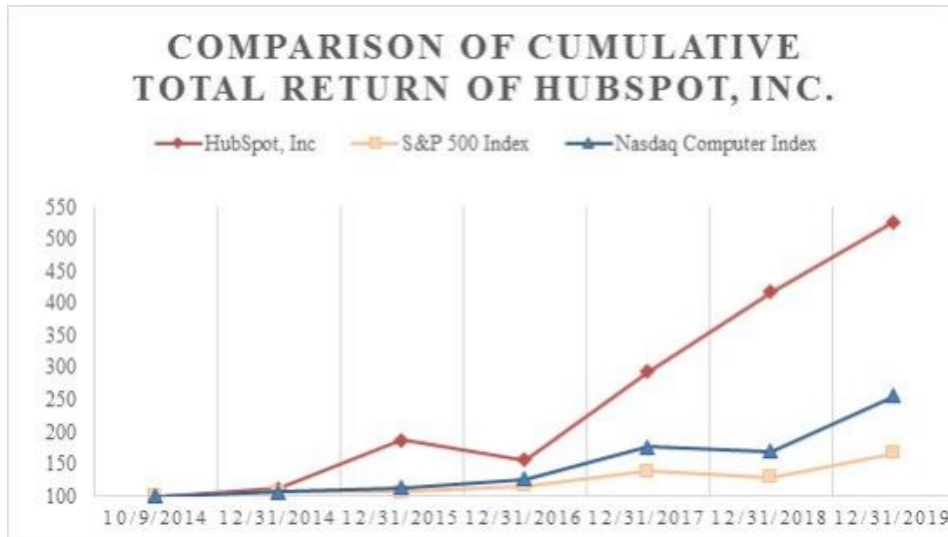
Dividends

We have never declared or paid any cash dividends on our common stock. We currently anticipate that we will retain future earnings to fund development and growth of our business, and do not anticipate declaring or paying cash dividends in the foreseeable future. Any future determination to pay dividends will be, subject to applicable law, at the discretion of our board of directors and will depend upon, among other factors, our results of operations, financial condition, contractual restrictions, and capital requirements.

Performance Graph

The following performance graph shall not be deemed “soliciting material” or to be “filed” with the Securities and Exchange Commission 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 the company under the Securities Act of 1933, as amended (the “Securities Act”) or the Exchange Act.

The following graph shows a comparison from October 9, 2014 (the date our common stock commenced trading on the NYSE) through December 31, 2019 of the cumulative total return for our common stock, the Nasdaq Computer Index and the S&P 500 Index. The graph assumes \$100 was invested in each of the Company’s common stock, the Nasdaq Computer Index and the S&P 500 Index of the market close on October 9, 2014. Such returns are based on historical results and are not intended to suggest future performance.



	10/9/2014	12/31/2014	12/31/2015	12/31/2016	12/31/2017	12/31/2018	12/31/2019
HubSpot	100	112	187	156	294	418	527
S&P 500 Index	100	107	106	116	139	130	168
Nasdaq Computer Index	100	107	113	127	177	170	256

Recent Sales of Unregistered Securities

None.

Purchases of Equity Securities by the Issuer and Affiliated Purchasers

None.

Securities Authorized for Issuance Under Equity Compensation Plans

See Item 12, “Security Ownership of Certain Beneficial Owners and Management and Related Stockholder Matters,” for information regarding securities authorized for issuance.

Outstanding Convertible Senior Notes, Convertible Note Hedge, and Warrant

In May 2017, we issued \$400.0 million aggregate principal amount of 0.25% convertible senior notes (the “2022 Notes”) due June 1, 2022. In connection with the offering of the 2022 Notes, the Company entered into convertible note hedge transactions (the “Convertible Note Hedges”) with certain counterparties in which the Company has the option to purchase (subject to adjustment for certain specified events) a total of approximately 4.2 million shares of the Company’s common stock at a price of approximately \$94.77 per share. In addition, the Company sold warrants to certain bank counterparties whereby the holders of the warrants have the option to purchase initially (subject to adjustment for certain specified events) a total of approximately 4.2 million shares of the Company’s common stock at a price of \$115.8 per share. See Note 7 in the Notes to the Consolidated Financial Statements for more information.

ITEM 6. Selected Consolidated Financial Data

You should read the selected consolidated financial data below in conjunction with “Management’s discussion and analysis of financial condition and results of operations” and the consolidated financial statements, related notes and other financial information included elsewhere in this Annual Report on Form 10-K. The selected consolidated financial data in this section are not intended to replace the consolidated financial statements and are qualified in their entirety by the consolidated financial statements and related notes included elsewhere in this Annual Report on Form 10-K.

The following selected consolidated statements of operations data for the years ended December 31, 2019, 2018, and 2017, and the consolidated balance sheet data as of December 31, 2019 and 2018, have been derived from our audited consolidated financial statements included elsewhere in this Annual Report on Form 10-K. The consolidated statements of operations data for the years ended December 31, 2016 and 2015 and the consolidated balance sheet data as of December 31, 2017, 2016 and 2015 have been derived from our audited consolidated financial statements not included in this Annual Report on Form 10-K.

	Year Ended December 31,				
	2019	2018	2017	2016	2015
(in thousands, except per share data)					
Consolidated Statements of Operations Data:					
Revenue:					
Subscription	\$ 646,266	\$ 487,450	\$ 356,727	\$ 254,775	\$ 167,920
Professional services and other	28,594	25,530	18,885	16,192	14,023
Total revenue	<u>674,860</u>	<u>512,980</u>	<u>375,612</u>	<u>270,967</u>	<u>181,943</u>
Cost of revenue:					
Subscription (1)	98,510	69,718	51,563	41,182	32,271
Professional services and other (1)	31,448	30,639	24,166	20,683	15,652
Total cost of revenue	<u>129,958</u>	<u>100,357</u>	<u>75,729</u>	<u>61,865</u>	<u>47,923</u>
Total gross profit	<u>544,902</u>	<u>412,623</u>	<u>299,883</u>	<u>209,102</u>	<u>134,020</u>
Operating expenses:					
Research and development (1)	158,237	117,603	70,373	45,997	32,457
Sales and marketing (1)	340,685	267,444	212,859	162,647	112,629
General and administrative (1)	92,971	75,834	56,787	45,120	35,408
Total operating expenses	<u>591,893</u>	<u>460,881</u>	<u>340,019</u>	<u>253,764</u>	<u>180,494</u>
Loss from operations	<u>(46,991)</u>	<u>(48,258)</u>	<u>(40,136)</u>	<u>(44,662)</u>	<u>(46,474)</u>
Other (expense) income					
Interest income	19,429	9,176	3,837	854	390
Interest expense	(22,818)	(21,386)	(13,181)	(265)	(185)
Other (expense) income	(393)	(1,492)	(559)	(956)	628
Total other (expense) income	<u>(3,782)</u>	<u>(13,702)</u>	<u>(9,903)</u>	<u>(367)</u>	<u>833</u>
Net loss before income tax (expense) benefit	<u>(50,773)</u>	<u>(61,960)</u>	<u>(50,039)</u>	<u>(45,029)</u>	<u>(45,641)</u>
Income tax (expense) benefit	<u>(2,973)</u>	<u>(1,868)</u>	<u>10,325</u>	<u>(533)</u>	<u>(412)</u>
Net loss	<u>(53,746)</u>	<u>(63,828)</u>	<u>(39,714)</u>	<u>(45,562)</u>	<u>(46,053)</u>
Net loss per common share, basic and diluted (2)	<u>\$ (1.28)</u>	<u>\$ (1.66)</u>	<u>\$ (1.08)</u>	<u>\$ (1.29)</u>	<u>\$ (1.39)</u>
Weighted average common shares used in computing basic and diluted net loss per common share (2)					
	42,025	38,529	36,827	35,197	33,222

(1) Stock-based compensation included in the consolidated statements of operations data above was as follows:

	Year Ended December 31,				
	2019	2018	2017	2016	2015
(in thousands)					
Cost of revenue:					
Subscription	\$ 3,127	\$ 1,476	\$ 658	\$ 512	\$ 341
Professional services and other	2,829	2,924	2,327	1,640	1,216
Research and development	33,748	23,328	12,816	8,828	6,327
Sales and marketing	36,599	31,099	19,016	13,352	7,658
General and administrative	21,451	17,434	12,500	8,343	5,766
Total stock-based compensation	<u>\$ 97,754</u>	<u>\$ 76,261</u>	<u>\$ 47,317</u>	<u>\$ 32,675</u>	<u>\$ 21,308</u>

(2) See Note 2 to our consolidated financial statements for further details on the calculation of basic and diluted net loss per share attributable to common stockholders.

	As of December 31,				
	2019	2018	2017	2016	2015
	(in thousands)				
Consolidated Balance Sheet Data:					
Cash, cash equivalents, and investments	\$ 1,015,280	\$ 603,700	\$ 535,737	\$ 150,068	\$ 145,117
Working capital, excluding deferred revenue	1,018,265	658,714	561,085	144,296	118,854
Total assets	1,569,268	833,953	712,175	259,755	220,379
Deferred revenue	234,088	185,484	139,157	96,597	65,139
Operating lease liabilities	267,829	—	—	—	—
Convertible senior notes	340,564	318,782	298,447	—	—
Total liabilities	919,310	589,312	501,815	141,055	98,671
Total stockholders' equity	\$ 649,958	\$ 244,641	\$ 210,360	\$ 118,700	\$ 121,708

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 related notes that appear elsewhere in this Annual Report on Form 10-K. As discussed in the section titled "Special Note Regarding Forward-Looking Statements," the following discussion and analysis contains forward-looking statements that involve risks and uncertainties, as well as assumptions that, if they never materialize or prove incorrect, could cause our results to differ materially from those expressed or implied by such forward-looking statements. Factors that could cause or contribute to such differences include, but are not limited to, those identified below, and those discussed in the section titled "Risk Factors" included under Part I, Item 1A within this Annual Report on Form 10-K.

Company Overview

We provide a cloud-based marketing, sales, and customer service software platform, which we refer to as our Growth Platform, that enables businesses to grow better. At HubSpot, we're committed to helping our customers grow better, which means helping them grow without compromise, always solving for the customer, and creating a better experience for customers and company alike. To that end, our Growth Platform, comprised of Marketing Hub, Sales Hub, Service Hub, and a free customer relationship management system, or CRM, features integrated applications and tools that enable businesses to create a cohesive and adaptable customer experience throughout the customer lifecycle.

At the core of our Growth Platform is our CRM that our customers use which creates a single view of all interactions a prospective or existing customer has with their marketing, sales and customer service teams. The CRM shares data across every app in the Growth Platform, automatically informing more personalized emails, website content, ads, and conversations, and enables more accurate timing cues for our customer's internal teams. In addition, the Growth Platform was built to easily and seamlessly integrate third party applications to further customize to an individual company's industry or needs. We designed and built our Growth Platform to serve a broad range of customers globally. Our Growth Platform starts completely free and grows with our customers to meet their needs at different stages in their life-cycles. It supports multiple languages and currencies and offers an array of sophisticated features, including content partitioning at the enterprise level for companies operating in or serving multiple countries.

We focus on selling to mid-market business-to-business, or B2B, companies, which we define as companies that have between two and 2,000 employees. While our Growth Platform was built to grow with any company, we focus on selling to mid-market businesses because we believe we have significant competitive advantages attracting and serving this market segment. These mid-market businesses seek an integrated, easy-to-implement and easy-to-use solution to reach customers and compete with organizations that have larger marketing, sales, and customer service budgets. We efficiently reach these businesses at scale through our proven inbound methodology, our Solutions Partners, and our "freemium" model. A Solutions Partner is a service provider that helps businesses with strategy, execution, and implementation of go-to-market activities and technology solutions. Our freemium model attracts customers who begin using our Growth Platform through our free products and then upgrade to our paid products. As of December 31, 2019, we had 3,387 full-time employees and 73,483 Total Customers of varying sizes in more than 120 countries, representing almost every industry.

Our Growth Platform is a multi-tenant, single code-based and globally available software-as-a-service product delivered through web browsers or mobile applications. We sell our Growth Platform on a subscription basis. Our total revenue increased to \$674.9 million in 2019, from \$513.0 million in 2018, and from \$375.6 million in 2017, representing year-over-year increases of 32% in 2019 and 37% in 2018. We had net losses of \$53.7 million in 2019, \$63.8 million in 2018, and \$39.7 million in 2017, primarily due to investments in our growth.

We derive most of our revenue from subscriptions to our cloud-based Growth Platform and related professional services, which consist of customer on-boarding and training services. Subscription revenue accounted for 96% of our total revenue for the year ended December 31, 2019 and 95% of our total revenue for the years ended December 31, 2018. We sell multiple product plans at different base prices on a subscription basis, each of which includes our CRM and integrated applications to meet the needs of the various customers we serve. Customers pay additional fees if the number of contacts stored and tracked in the customer's database exceeds specified thresholds. We also generate additional revenue based on the purchase of additional subscriptions and products, and the number of account users, subdomains and website visits. Most of our customers' subscriptions are one year or less in duration.

Subscriptions are non-cancelable and are billed in advance on various schedules. Because the mix of billing terms for orders can vary from period to period, the annualized value of the orders we enter into with our customers will not be completely reflected in deferred revenue at any single point in time. Accordingly, we do not believe that change in deferred revenue is an accurate indicator of future revenue.

Many of our customers purchase on-boarding and training services which are designed to help customers enhance their ability to attract, engage and delight their customers using our Growth Platform. Professional services and other revenue accounted for 4% of total revenue for the year ended December 31, 2019 and 5% of total revenue for the years ended December 31, 2018 and 2017. We expect professional services and other margins to range from a moderate loss to breakeven for the foreseeable future.

We have focused on rapidly growing our business and plan to continue to make investments to help us address some of the challenges facing us to support this growth, such as demand for our Growth Platform by existing and new customers, significant competition from other providers of marketing, sales and customer service software and related applications and rapid technological change in our industry. We believe that the growth of our business is dependent on many factors, including our ability to expand our customer base, increase adoption of our Growth Platform within existing customers, develop new products and applications to extend the functionality of our Growth Platform and provide a high level of customer service. We expect to increase our investment in sales and marketing as we continue to expand our sales teams, increase our marketing activities and grow our international operations. We also expect to increase our investment in research and development as we continue to introduce new products and applications to extend the functionality of our Growth Platform. We also intend to invest in maintaining a high level of customer service and support which we consider critical for our continued success. We plan to continue investing in our data center infrastructure and services capabilities in order to support continued future customer growth. We also expect to continue to incur additional general and administrative expenses as a result of both our growth and the infrastructure required to be a public company. We expect to use our cash flow from operations and the proceeds from our convertible debt and stock offerings to fund these growth strategies and do not expect to be profitable in the near term.

We believe that these investments will result in an increase in our subscription revenue base. This will result in revenue increasing faster than the increase in sales and marketing, research and development and general and administrative expenses, exclusive of stock-based compensation, as we reach economies of scale. With this increased operating leverage, we expect our operating margins to improve in the long term. However, we will incur losses in the short term. If we are unable to achieve our revenue growth objectives, including a high rate of renewals of our customer agreements, we may not be able to achieve profitability.

Key Business Metrics

The following key business metrics are presented in this Annual Report on Form 10-K or in our press releases announcing our financial results which are furnished on Form 8-K. We use these key business metrics to evaluate our business, measure our performance, identify trends affecting our business and results of operations, formulate financial projections and make strategic decisions. These key business metrics may be calculated in a manner different than similar key business metrics used by other companies.

	Year Ended December 31,	
	2019	2018
Total Customers	73,483	56,628
Total Average Subscription Revenue per Customer	\$ 9,920	\$ 9,904
Total Subscription Dollar Retention Rate	99.9%	100.7%

Total Customers. We believe that our ability to increase our customer base is an indicator of our market penetration and growth of our business as we continue to expand our sales force and invest in marketing efforts. We define our Total Customers at the end of a particular period as the number of business entities or individuals with one or more paid subscriptions to our Growth Platform either paid directly or through a Solutions Partner. We do not include in Total Customers business entities or individuals with one or more paid subscriptions solely for our legacy Sales Hub (\$10) product or any PieSync product. A single customer may have separate paid subscriptions for separate websites, sales licenses or seats, or our Sales Hub, Marketing Hub, or Service Hub products, but we count these as one customer if certain customer-provided information such as company name, URL, or email address indicate that these subscriptions are managed by the same business entity or individual.

Total Average Subscription Revenue per Customer. We believe that our ability to increase the Total Average Subscription Revenue per Customer is an indicator of our ability to grow the long-term value of our existing customer relationships. We define Total Average Subscription Revenue per Customer during a particular period as subscription revenue, excluding revenue from our legacy Sales Hub (\$10) and PieSync products, from our Total Customers during the period divided by the average Total Customers during the same period.

Total Subscription Dollar Retention Rate. We believe that our ability to retain and expand a customer relationship is an indicator of the stability of our revenue base and the long-term value of our customers. We assess our performance in this area using a metric we refer to as our Total Subscription Dollar Retention Rate. We compare the aggregate Total Contractual Monthly Subscription Revenue of our Total Customer base as of the beginning of each month, which we refer to as Total Retention Base Revenue, to the aggregate Total Contractual Monthly Subscription Revenue of the same group of Total Customers at the end of that month, which we refer to as Total Retained Subscription Revenue. We define Total Contractual Monthly Subscription Revenue as the total amount of subscription fees contractually committed to be paid for a full month under all of our Total Customer agreements, excluding any commissions owed to our Solutions Partners. Our Total Subscription Dollar Retention Rate for a given period is calculated by first dividing Total Retained Subscription Revenue by Total Retention Base Revenue for each month in the period, calculating the weighted average of these rates using the Total Retention Base Revenue for each month in the period, and then annualizing the resulting rates.

Key Components of Consolidated Statements of Operations

Revenue

We derive our revenue from two major sources, revenue from subscriptions to our Growth Platform and professional services and other revenue consisting mainly of on-boarding and training services fees.

Subscription based revenue is derived from customers using our Growth Platform for their inbound marketing, sales and service needs. Our Growth Platform features integrated applications that create a cohesive and adaptable customer experience. These integrated applications include a CRM, search engine optimization, blogging, website content management, messaging, chatbots, social media, marketing automation, email, predictive lead scoring, sales productivity, ticketing and helpdesk tools, customer NPS surveys, analytics, and reporting. Subscriptions are non-cancelable and are billed in advance on various schedules. All subscription fees that are billed in advance of service are recorded in deferred revenue. Subscription based revenue is recognized net of consideration paid to Solutions Partners when those Partners purchase a subscription to our Growth Platform.

Professional services and other revenue are derived primarily from customer on-boarding and training services. The on-boarding and training services provided to customers typically involves an implementation specialist. An implementation specialist will typically work with our customers to enhance their understanding of how to attract leads and convert them into customers through search engine optimization, social media, blogging and other content. Training is generally sold in connection with a customer's initial subscription and is billed in advance. The training is also available to be purchased separately following a customer's purchase of its initial subscription and our Solutions Partners routinely provide the same training to customers. The Company recognizes revenue from on-boarding and training services as the services are provided.

Cost of Revenue and Operating Expenses

Cost of Revenue

Cost of subscription revenue consists primarily of managed hosting providers and other third-party service providers, employee-related costs including payroll, benefits and stock-based compensation expense for our customer support team, amortization of capitalized software development costs and acquired technology, and allocated overhead costs, which we define as rent, facilities and costs related to information technology.

Cost of professional services and other revenue consists primarily of personnel costs of our professional services organization, including salaries, benefits, bonuses and stock-based compensation, amortization of capitalized software development costs associated with our internally built software platform, as well as allocated overhead costs.

We expect that cost of subscription and professional services and other revenue will increase in absolute dollars as we continue to invest in growing our business. Over time, we expect to gain benefits of scale associated with our costs of hosting our Growth Platform relative to subscription revenues, resulting in improved subscription gross margin, exclusive of stock-based compensation. We expect professional services and other margins to range from a moderate loss to breakeven for the foreseeable future, exclusive of stock-based compensation.

Research and Development

Research and development expenses consist primarily of personnel costs of our development team, including payroll, benefits and stock-based compensation expense and allocated overhead costs. We capitalize certain software development costs that are attributable to developing new products and adding incremental functionality to our Growth Platform and amortize such costs as costs of subscription revenue over the estimated life of the new product or incremental functionality, which is generally two years. We also capitalize certain development costs that are attributable to developing our internally developed software platforms and amortize such costs throughout the consolidated statement of operations over the estimated life of our internally developed software platforms, which is generally five years. We focus our research and development efforts on improving our products and developing new ones, delivering new functionality and enhancing the customer experience. We believe delivering new functionality for our customers is an integral part of our solution and provides our customers with access to a broad array of options and information critical to their marketing, sales, and customer service efforts. We expect to continue to make investments in and expand our offerings to enhance our customers' experience and satisfaction and attract new customers. We expect research and development expenses to increase in absolute dollars as we continue to increase the functionality of our Growth Platform.

Sales and Marketing

Sales and marketing expenses consist primarily of personnel costs of our sales and marketing employees, including sales commissions and incentives, benefits and stock-based compensation expense, marketing programs, including lead generation, costs of our annual INBOUND conference, other brand building expenses, amortization of capitalized software development costs associated with our internally built software platforms, and allocated overhead costs. We defer certain sales commissions related to acquiring new contracts and amortize them ratably over a period of benefit that we have determined to be approximately one to three years. Sales and marketing expenses also include commissions paid to our Solutions Partners in instances where the end customer purchases and pays for a subscription to our Growth Platform.

We plan to continue to expand sales and marketing to grow our customer base and increase sales to existing customers. This growth will include adding sales personnel and expanding our marketing activities to continue to generate additional leads and build brand awareness. We expect sales and marketing expenses will increase as a result of hiring net new quota-carrying sales representatives in the United States and worldwide, adding to the marketing staff and expanding our annual INBOUND conference. Over time, we expect sales and marketing expenses will decline as a percentage of total revenue, exclusive of stock-based compensation.

General and Administrative

General and administrative expenses consist of personnel costs and related expenses for executive, finance, legal, human resources, employee-related information technology, administrative personnel, including payroll, benefits and stock-based compensation expense; professional fees for external legal, accounting and other consulting services, amortization of capitalized software development costs associated with our internally built software platforms, and allocated overhead costs. We expect that general and administrative expenses will increase on an absolute dollar basis but decrease as a percentage of total revenue, exclusive of stock-based compensation expense, as we focus on processes, systems and controls to enable our internal support functions to scale with the growth of our business. We also anticipate continuing increases to general and administrative expenses as we incur the costs of compliance associated with being a publicly traded company, including audit and consulting fees.

Other Expense

Interest income primarily consists of interest earned on invested cash and cash equivalents balances and investments. Interest expense primarily consists of amortization of the debt discount and issuance costs related to the 2022 Notes that is recorded as interest expense, and contractual interest expense on the 2022 Notes. Other expense primarily consists of the impact of foreign currency transaction gains and losses associated with monetary assets and liabilities.

Income Tax (expense) benefit

The income tax (expense) benefit consists of current and deferred taxes for U.S. and foreign jurisdictions. We have historically had a taxable loss in our most significant jurisdiction, the U.S., and a full valuation allowance against the majority of our deferred tax assets. We expect this to continue in the near term.

Results of Operations

The following tables set forth certain consolidated financial data in dollar amounts and as a percentage of total revenue.

	Year Ended December 31,		
	2019	2018	2017
	(in thousands)		
Revenue:			
Subscription	\$ 646,266	\$ 487,450	\$ 356,727
Professional services and other	28,594	25,530	18,885
Total revenue	<u>674,860</u>	<u>512,980</u>	<u>375,612</u>
Cost of revenue:			
Subscription	98,510	69,718	51,563
Professional services and other	31,448	30,639	24,166
Total cost of revenue	<u>129,958</u>	<u>100,357</u>	<u>75,729</u>
Gross profit	<u>544,902</u>	<u>412,623</u>	<u>299,883</u>
Operating expenses:			
Research and development	158,237	117,603	70,373
Sales and marketing	340,685	267,444	212,859
General and administrative	92,971	75,834	56,787
Total operating expenses	<u>591,893</u>	<u>460,881</u>	<u>340,019</u>
Loss from operations	<u>(46,991)</u>	<u>(48,258)</u>	<u>(40,136)</u>
Other expense:			
Interest income	19,429	9,176	3,837
Interest expense	(22,818)	(21,386)	(13,181)
Other expense	(393)	(1,492)	(559)
Total other expense	<u>(3,782)</u>	<u>(13,702)</u>	<u>(9,903)</u>
Loss before income tax (expense) benefit	<u>(50,773)</u>	<u>(61,960)</u>	<u>(50,039)</u>
Income tax (expense) benefit	<u>(2,973)</u>	<u>(1,868)</u>	<u>10,325</u>
Net loss	<u>\$ (53,746)</u>	<u>\$ (63,828)</u>	<u>\$ (39,714)</u>

	Year Ended December 31,		
	2019	2018	2017
Revenue:			
Subscription	96%	95%	95%
Professional services and other	4	5	5
Total revenue	<u>100</u>	<u>100</u>	<u>100</u>
Cost of revenue:			
Subscription	15	14	14
Professional services and other	5	6	6
Total cost of revenue	<u>19</u>	<u>20</u>	<u>20</u>
Gross profit	<u>81</u>	<u>80</u>	<u>80</u>
Operating expenses:			
Research and development	23	23	19
Sales and marketing	50	52	57
General and administrative	14	15	15
Total operating expenses	<u>88</u>	<u>90</u>	<u>91</u>
Loss from operations	<u>(7)</u>	<u>(9)</u>	<u>(11)</u>
Total other expense	<u>(1)</u>	<u>(3)</u>	<u>(3)</u>
Loss before income tax (expense) benefit	<u>(8)</u>	<u>(12)</u>	<u>(13)</u>
Income tax (expense) benefit	<u>(0)</u>	<u>—</u>	<u>3</u>
Net loss	<u>(8)%</u>	<u>(12)%</u>	<u>(11)%</u>

* Percentages are based on actual values. Totals may not sum due to rounding.

Year Ended December 31, 2019 Compared to the Year Ended December 31, 2018

Revenue

	Year Ended December 31,		Change	
	2019	2018	Amount	%
	(dollars in thousands)			
Subscription	\$ 646,266	\$ 487,450	\$ 158,816	33%
Professional services and other	28,594	25,530	3,064	12%
Total revenue	\$ 674,860	\$ 512,980	\$ 161,880	32%

Subscription revenue increased during 2019 due to an increase throughout the year in Total Customers, which grew from 56,628 as of December 31, 2018 to 73,483 as of December 31, 2019. Total Average Subscription Revenue per Customer increased from \$9,904 for the year ended December 31, 2018 to \$9,920 for the year ended December 31, 2019. The growth in Total Customers was primarily driven by our increased sales representative capacity to meet market demand as well as the freemium model. The increase in average subscription revenue per customer was driven primarily by existing customers increasing their use of our products, existing customers purchasing additional subscriptions, and new customers purchasing our higher price product plans. The increase in average subscription revenue per customer was partially offset by the continued adoption of our freemium model.

The 12% increase in professional services and other revenue resulted primarily from the increase in Total Customers and from delivery of on-boarding and training services for the additional subscriptions sold.

Total Cost of Revenue, Gross Profit and Gross Margin

	Year Ended December 31,		Change	
	2019	2018	Amount	%
	(dollars in thousands)			
Total cost of revenue	\$ 129,958	\$ 100,357	\$ 29,601	29%
Gross profit	544,902	412,623	132,279	32%
Gross margin	81%	80%		

Total cost of revenue increased 29% during 2019 primarily due to an increase in subscription and hosting costs, employee-related costs, amortization of capitalized software development costs, amortization of acquired technology, and allocated overhead expenses. The increase in gross margin was primarily driven by changes to our service offerings for our products offset by increased hosting costs in subscription revenue as we focus on the reliability of our Growth Platform.

	Year Ended December 31,		Change	
	2019	2018	Amount	%
	(dollars in thousands)			
Subscription cost of revenue	\$ 98,510	\$ 69,718	\$ 28,792	41%
Percentage of subscription revenue	15%	14%		

The increase in subscription cost of revenue for the year ended December 31, 2019 compared to the year ended December 31, 2018 was primarily due to the following:

	Change
	(in thousands)
Subscription and hosting costs	\$ 15,857
Employee-related costs	7,234
Amortization of capitalized software development costs	2,864
Amortization of acquired technology	1,808
Allocated overhead expenses	1,029
	<u>\$ 28,792</u>

Subscription and hosting costs increased primarily due to growth in our Total Customer base from 56,628 at December 31, 2018 to 73,483 at December 31, 2019, as we focus on the reliability of our Growth Platform. Employee-related costs increased as a result of increased headcount as we continue to grow our customer support organization to support our customer growth and improve service levels and offerings. Amortization of capitalized software development costs increased due to the increased number of developers working on our software platform as we continue to develop new products and increased functionality. Amortization of acquired technology increased due to a full year of amortization of acquired technology that was placed into service the second half of 2018. Allocated overhead expenses increased due to expansion of our leased space and infrastructure as we continue to grow our business and expand headcount.

	Year Ended December 31,		Change	
	2019	2018	Amount	%
	(dollars in thousands)			
Professional services and other cost of revenue	\$ 31,448	\$ 30,639	\$ 809	3%
Percentage of professional services and other revenue	110%	120%		

The increase in professional services and other cost of revenue for the year ended December 31, 2019 compared to the year ended December 31, 2018 was primarily due to the following:

	Change
	(in thousands)
Employee-related costs and allocated overhead expenses	\$ 809
	\$ 809

Employee-related costs increased as a result of increased headcount as we continue to grow our professional services organization to support our customer growth.

Research and Development

	Year Ended December 31,		Change	
	2019	2018	Amount	%
	(dollars in thousands)			
Research and development	\$ 158,237	\$ 117,603	\$ 40,634	35%
Percentage of total revenue	23%	23%		

The increase in research and development expense for the year ended December 31, 2019 compared to the year ended December 31, 2018 was primarily due to the following:

	Change
	(in thousands)
Employee-related costs	\$ 35,942
Allocated overhead expenses	4,692
	\$ 40,634

Employee-related costs increased as a result of increased headcount as we continue to grow our engineering organization to develop new products, increase functionality and to maintain our existing Growth Platform. Allocated overhead expense increased due to expanding our leased space and infrastructure as we continue to grow our business and expand headcount.

Sales and Marketing

	Year Ended December 31,		Change	
	2019	2018	Amount	%
	(dollars in thousands)			
Sales and marketing	\$ 340,685	\$ 267,444	\$ 73,241	27%
Percentage of total revenue	50%	52%		

The increase in sales and marketing expense for the year ended December 31, 2019 compared to the year ended December 31, 2018 was primarily due to the following:

	<u>Change</u> (in thousands)
Employee-related costs	\$ 49,875
Solutions Partner commissions	9,900
Allocated overhead expense	6,686
Marketing programs	6,780
	<u>\$ 73,241</u>

Employee-related costs increased as a result of increased headcount as we continue to expand our selling and marketing organizations to grow our customer base. Solutions Partner commissions increased as a result of increased revenue generated through our Partners. Allocated overhead expenses increased due to expanding our leased space and infrastructure as we continue to grow our business and expand headcount. Marketing programs increased due to the timing and size of certain marketing efforts as we continue to make investments in attracting new customers.

General and Administrative

	<u>Year Ended December 31,</u>		<u>Change</u>	
	<u>2019</u>	<u>2018</u>	<u>Amount</u>	<u>%</u>
	(dollars in thousands)			
General and administrative	\$ 92,971	\$ 75,834	\$ 17,137	23%
Percentage of total revenue	14%	15%		

The increase in general and administrative expense for the year ended December 31, 2019 compared to the year ended December 31, 2018 was primarily due to the following:

	<u>Change</u> (in thousands)
Employee-related costs	\$ 11,619
Customer credit card fees	2,961
Allocated overhead expense	2,557
	<u>\$ 17,137</u>

Employee-related costs increased as a result of increased headcount as we continue to grow our business and require additional personnel to support our expanded operations. Customer credit card fees increased due to increased customer transactions as we continue to grow our business. Allocated overhead expenses increased due to expanding our leased space and infrastructure as we continue to grow our business and expand headcount.

Other Expense

	<u>Year Ended December 31,</u>		<u>Change</u>	
	<u>2019</u>	<u>2018</u>	<u>Amount</u>	<u>%</u>
	(dollars in thousands)			
Interest income	\$ 19,429	\$ 9,176	\$ 10,253	112%
Percentage of total revenue	3%	2%		
Interest expense	\$ (22,818)	\$ (21,386)	\$ (1,432)	7%
Percentage of total revenue	(3)%	(4)%		
Other expense	\$ (393)	\$ (1,492)	\$ 1,099	(74)%
Percentage of total revenue	*	*		

* not meaningful

Interest income primarily consists of interest earned on invested cash and cash equivalents balances and investments. The increase is primarily due to the increase in the amount of investment holdings from the proceeds received from the common stock offering that occurred during the first quarter of 2019.

Interest expense primarily consists of amortization of the debt discount and issuance costs related to the 2022 Notes that is recorded as interest expense and contractual interest expense on the 2022 Notes. The increase was primarily due to the use of the effective-interest method to amortize the debt discount and issuance costs related to the 2022 Notes.

Other expense primarily consists of the impact of foreign currency transaction gains and losses associated with monetary assets and liabilities. The decrease was primarily due to exchange rate fluctuations.

Income Tax expense

	Year Ended December 31,		Change	
	2019	2018	Amount	%
	(dollars in thousands)			
Income tax expense	\$ (2,973)	\$ (1,868)	\$ (1,105)	59%
Effective tax rate	6%	3%		

Income tax expense consists of current and deferred taxes for U.S. and foreign income taxes. The increase in the income tax expense was primarily driven by increased income in jurisdictions outside of the United States that are profitable from a tax perspective.

Year Ended December 31, 2018 Compared to the Year Ended December 31, 2017

Revenue

	Year Ended December 31,		Change	
	2018	2017	Amount	%
	(dollars in thousands)			
Subscription	\$ 487,450	\$ 356,727	\$ 130,723	37%
Professional services and other	25,530	18,885	6,645	35%
Total revenue	\$ 512,980	\$ 375,612	\$ 137,368	37%

Subscription revenue increased 37% during 2018 due to an increase throughout the year in Total Customers, which grew from 41,593 as of December 31, 2017 to 56,628 as of December 31, 2018. Total Average Subscription Revenue per Customer decreased from \$10,180 for the year ended December 31, 2017 to \$9,904 for the year ended December 31, 2018. The growth in Total Customers was primarily driven by our increased sales representative capacity to meet market demand. The decrease in Average Subscription Revenue per Customer was driven primarily by our continued adoption of our freemium model.

The 35% increase in professional services and other revenue resulted primarily from the increase in Total Customers and from delivery of on-boarding and training services for the additional subscriptions sold.

Total Cost of Revenue, Gross Profit and Gross Margin

	Year Ended December 31,		Change	
	2018	2017	Amount	%
	(dollars in thousands)			
Total cost of revenue	\$ 100,357	\$ 75,729	\$ 24,628	33%
Gross profit	412,623	299,883	112,740	38%
Gross margin	80%	80%		

Total cost of revenue increased 33% during 2018 primarily due to an increase in subscription and hosting costs, employee-related costs, amortization of capitalized software development costs, amortization of acquired technology, and allocated overhead expenses. Gross margins remained consistent year-over-year.

	Year Ended December 31,		Change	
	2018	2017	Amount	%
	(dollars in thousands)			
Subscription cost of revenue	\$ 69,718	\$ 51,563	\$ 18,155	35%
Percentage of subscription revenue	14%	14%		

The increase in subscription cost of revenue for the year ended December 31, 2018 compared to the year ended December 31, 2017 was primarily due to the following:

	<u>Change</u> (in thousands)
Subscription and hosting costs	\$ 6,972
Employee-related costs	\$ 6,123
Amortization of capitalized software development costs	3,022
Amortization of acquired technology	1,297
Allocated overhead expenses	741
	<u>\$ 18,155</u>

Subscription and hosting costs increased due to growth in our Total Customer base from 41,593 at December 31, 2017 to 56,628 at December 31, 2018. Employee-related costs increased as a result of increased headcount as we continue to grow our customer support organization to support our customer growth and improve service levels and offerings. Amortization of capitalized software development costs increased due to the increased number of developers working on our software platform as we continue to develop new products and increased functionality. Amortization of acquired technology increased due to acquired technology being placed into service during the year ended December 31, 2018. Allocated overhead expenses increased due to expansion of our leased space and infrastructure as we continue to grow our business and expand headcount.

	<u>Year Ended December 31,</u>		<u>Change</u>	
	<u>2018</u>	<u>2017</u>	<u>Amount</u>	<u>%</u>
	(dollars in thousands)			
Professional services and other cost of revenue	\$ 30,639	\$ 24,166	\$ 6,473	27%
Percentage of professional services and other revenue	120%	128%		

The increase in professional services and other cost of revenue for the year ended December 31, 2018 compared to the year ended December 31, 2017 was primarily due to the following:

	<u>Change</u> (in thousands)
Employee-related costs	\$ 5,138
Allocated overhead expenses	1,335
	<u>\$ 6,473</u>

Employee-related costs increased as a result of increased headcount as we continue to grow our professional services organization to support our customer growth. Allocated overhead expenses increased due to expansion of our leased space and infrastructure as we continue to grow our business and expand headcount.

Research and Development

	<u>Year Ended December 31,</u>		<u>Change</u>	
	<u>2018</u>	<u>2017</u>	<u>Amount</u>	<u>%</u>
	(dollars in thousands)			
Research and development	\$ 117,603	\$ 70,373	\$ 47,230	67%
Percentage of total revenue	23%	19%		

The increase in research and development expense for the year ended December 31, 2018 compared to the year ended December 31, 2017 was primarily due to the following:

	<u>Change</u> (in thousands)
Employee-related costs	\$ 42,998
Allocated overhead expenses	4,232
	<u>\$ 47,230</u>

Employee-related costs increased as a result of increased headcount as we continue to grow our engineering organization to develop new products, increase functionality and to maintain our existing Growth Platform. Allocated overhead expense increased due to expanding our leased space and infrastructure as we continue to grow our business and expand headcount.

Sales and Marketing

	Year Ended December 31,		Change	
	2018	2017	Amount	%
	(dollars in thousands)			
Sales and marketing	\$ 267,444	\$ 212,859	\$ 54,585	26%
Percentage of total revenue	52%	57%		

The increase in sales and marketing expense for the year ended December 31, 2018 compared to the year ended December 31, 2017 was primarily due to the following:

	Change (in thousands)
Employee-related costs	\$ 37,213
Allocated overhead expenses	4,427
Solutions Partner commissions	9,898
Marketing programs	3,047
	<u>\$ 54,585</u>

Employee-related costs increased as a result of increased headcount as we continue to expand our selling and marketing organizations to grow our customer base. The increase in employee-related costs was partially offset by lower sales commissions expense due to amortizing deferred commission expense over a longer period of time compared to 2017 as a result of our adoption of new guidance related to revenue recognition. Solutions Partner commissions increased as a result of increased revenue generated through our Partners. Allocated overhead expenses increased due to expanding our leased space and infrastructure as we continue to grow our business and expand headcount. Marketing programs increased as we continue to make investments in attracting new customers and increased the size of our annual INBOUND event.

General and Administrative

	Year Ended December 31,		Change	
	2018	2017	Amount	%
	(dollars in thousands)			
General and administrative	\$ 75,834	\$ 56,787	\$ 19,047	34%
Percentage of total revenue	15%	15%		

The increase in general and administrative expense for the year ended December 31, 2018 compared to the year ended December 31, 2017 was primarily due to the following:

	Change (in thousands)
Employee-related costs	\$ 12,704
Customer credit card fees	2,119
Professional fees	1,272
Allocated overhead expenses	2,952
	<u>\$ 19,047</u>

Employee-related costs increased as a result of increased headcount as we continue to grow our business and require additional personnel to support our expanded operations. Customer credit card fees increased due to increased customer transactions as we continue to grow our business. Professional fees increased due to increased accounting, legal and consulting costs due to growth in the business. Allocated overhead expenses increased due to expanding our leased space and infrastructure as we continue to grow our business and expand headcount.

Other Expense

	Year Ended December 31,		Change	
	2018	2017	Amount	%
	(dollars in thousands)			
Interest income	\$ 9,176	\$ 3,837	\$ 5,339	139%
Percentage of total revenue	2%	*		
Interest expense	\$ (21,386)	\$ (13,181)	\$ (8,205)	62%
Percentage of total revenue	(4)%	*		
Other expense	\$ (1,492)	\$ (559)	\$ (933)	167%
Percentage of total revenue	*	*		

* not meaningful

Interest income primarily consists of interest earned on invested cash and cash equivalents balances and investments. The increase is primarily due to increased investment holdings from the proceeds received from the 2022 Notes and an increase in yields on our investment balances.

Interest expense primarily consists of amortization of the debt discount and issuance costs related to the 2022 Notes that is recorded as interest expense, contractual interest expense on the 2022 Notes, and interest on finance leases. The increase was primarily due to the 2022 Notes being outstanding for the entire year in 2018 and the use of the effective-interest method to amortize the debt discount and issuance costs related to the 2022 Notes.

Other expense primarily consists of the impact of foreign currency transaction gains and losses associated with monetary assets and liabilities. The increase was primarily due to exchange rate fluctuations.

Income Tax (Expense) Benefit

	Year Ended December 31,		Change	
	2018	2017	Amount	%
	(dollars in thousands)			
Income tax (expense) benefit	\$ (1,868)	\$ 10,325	\$ (12,193)	(118)%
Effective tax rate	3%	(21)%		

Income tax (expense) benefit consists of current and deferred taxes for U.S. and foreign income taxes. The decrease in the income tax benefit was primarily due to the deferred tax impact of the acquisition of a business and the issuance of the 2022 Notes in the year ended December 31, 2017.

Liquidity and Capital Resources

Our principal sources of liquidity to date have been cash and cash equivalents, net accounts receivable, our common stock offerings, and our convertible notes offering.

The following table shows cash and cash equivalents, working capital, net cash and cash equivalents provided by operating activities, net cash and cash equivalents used in investing activities, and net cash and cash equivalents provided by financing activities for the years ended December 31, 2019, 2018 and 2017:

	Year Ended December 31,		
	2019	2018	2017
	(in thousands)		
Cash and cash equivalents	\$ 269,670	\$ 111,489	\$ 87,680
Working capital	787,235	475,409	424,205
Net cash and cash equivalents provided by operating activities	118,973	84,851	49,614
Net cash and cash equivalents used in investing activities	(316,194)	(71,230)	(396,611)
Net cash and cash equivalents provided by financing activities	359,342	12,778	376,806

Our cash and cash equivalents at December 31, 2019 was held for working capital purposes. We believe our working capital is sufficient to support our operations for at least the next 12 months. At December 31, 2019, \$49.4 million of our cash and cash equivalents was held in accounts outside the United States. As of December 31, 2018, we no longer assert indefinite reinvestment of our foreign earnings because these earnings have been subject to United States Federal tax. While we have concluded that any incremental tax incurred upon ultimate distribution of these earnings to be immaterial, our current plans do not demonstrate a need to repatriate undistributed earnings to fund our U.S. operations.

Net Cash and Cash Equivalents Provided by Operating Activities

Net cash and cash equivalents provided by operating activities consists primarily of net loss adjusted for certain non-cash items, including stock-based compensation, depreciation and amortization and other non-cash charges, net.

Net cash and cash equivalents provided by operating activities during the year ended December 31, 2019 primarily reflected our net loss of \$53.7 million and accretion of bond discount of \$14.2 million offset by non-cash expenses that included \$28.8 million of depreciation and amortization, \$97.8 million in stock-based compensation, and \$21.8 million of amortization of debt discount and issuance costs. Working capital sources of cash and cash equivalents primarily included a \$49.3 million increase in deferred revenue primarily resulting from the growth in the number of customers invoiced during the period, a \$7.8 million increase in accrued expenses, a \$3.9 million increase in accounts payable related to timing of bill payments, and a \$22.7 million increase in right-of-use asset. These sources of cash and cash equivalents were offset by a \$15.8 million decrease in lease liabilities, a \$15.4 million increase in accounts receivable as a result of increased billings to customers consistent with the overall growth of the business, \$9.7 million increase in deferred commissions and a \$3.3 million increase in prepaid and other assets.

Net cash and cash equivalents provided by operating activities during the year ended December 31, 2018 primarily reflected our net loss of \$63.8 million and accretion of bond discount of \$6.8 million offset by non-cash expenses that included \$23.4 million of depreciation and amortization, \$76.3 million in stock-based compensation, \$2.3 million of non-cash rent expense and \$20.3 million of amortization of debt discount and issuance costs. Working capital sources of cash and cash equivalents primarily included a \$49.3 million increase in deferred revenue primarily resulting from the growth in the number of customers invoiced during the period and a \$11.9 million increase in accrued expenses, a \$5.8 million increase in deferred rent, a \$3.9 million decrease in prepaid and other assets, and a \$3.3 million increase in accounts payable related to timing of bill payments. These sources of cash and cash equivalents were offset by a \$17.7 million increase in accounts receivable as a result of increased billings to customers consistent with the overall growth of the business, and a \$23.9 million increase in deferred commissions.

Net cash and cash equivalents provided by operating activities during the year ended December 31, 2017 primarily reflected our net loss of \$39.7 million, deferred income tax benefit of \$11.5 million, and accretion of bond discount of \$1.6 million offset by non-cash expenses that included \$15.8 million of depreciation and amortization, \$47.3 million in stock-based compensation, \$5.0 million of non-cash rent expense and \$12.4 million of amortization of debt discount and issuance costs. Working capital sources of cash and cash equivalents primarily included a \$39.0 million increase in deferred revenue primarily resulting from the growth in the number of customers invoiced during the period and a \$8.2 million increase in accrued expenses, a \$3.6 million increase in deferred rent related to a tenant improvement allowance received and a \$1.1 million increase in accounts payable as a result of increased expense related to overall growth of the Company. These sources of cash and cash equivalents were offset by a \$20.2 million increase in accounts receivable as a result of increased billings to customers consistent with the overall growth of the business, a \$5.6 million increase in prepaid expenses and other assets, and a \$4.0 million increase in deferred commissions.

Net Cash and Cash Equivalents Used in Investing Activities

Our investing activities have consisted primarily of purchases and maturities of investments, property and equipment purchases, an acquisition of a business, strategic investments, and capitalization of software development costs. Capitalized software development costs are related to new products or improvements to our existing software platform that expands the functionality for our customers.

Net cash and cash equivalents used in investing activities during the year ended December 31, 2019 consisted primarily of \$1.3 billion of purchases of investments, \$40.4 million of purchased property and equipment, \$13.5 million of capitalized software development costs, a \$23.3 million business acquisition and \$0.6 million related to the purchase of strategic investments. These uses of cash were offset by \$1.1 billion received related to the maturity of investments.

Net cash and cash equivalents used in investing activities during the year ended December 31, 2018 consisted primarily of \$681.6 million of purchases of investments, \$22.3 million of purchased property and equipment, \$11.2 million of capitalized software development costs and \$0.5 million related to the purchase of strategic investments. These uses of cash were offset by \$644.4 million received related to the maturity of investments.

Net cash and cash equivalents used in investing activities during the year ended December 31, 2017 consisted primarily of \$890.0 million of purchases of investments, \$20.3 million of purchased property and equipment, \$7.1 million of capitalized software development costs, \$9.4 million for the acquisition of a business, and \$3.5 million related to strategic investments. These uses of cash were offset by \$533.7 million received from the maturity of investments.

Net Cash and Cash Equivalents Provided by Financing Activities

Our financing activities have consisted primarily of our stock offerings, the various components of our 2022 Notes offering, the issuance of common stock under our stock plans, payments of employee taxes related to the net share settlement of stock-based awards, and repayments of our finance lease obligations.

For the year ended December 31, 2019, cash and cash equivalents provided by financing activities consisted primarily of \$342.6 million of net proceeds related to common stock offering and \$23.6 million of proceeds related to issuance of common stock under stock plans. These sources of cash were offset by \$6.2 million used for payment of employee taxes related to the net share settlement of stock-based awards, \$0.3 million for repayment of debt associated with our business acquisition and \$0.3 million used for repayments of finance leases.

For the year ended December 31, 2018, cash and cash equivalents provided by financing activities consisted primarily of \$21.6 million of proceeds related to issuance of common stock under stock plans. These sources of cash were offset by \$8.0 million used for payment of employee taxes related to the net share settlement of stock-based awards and \$0.7 million used for repayments of finance leases.

For the year ended December 31, 2017, cash and cash equivalents provided by financing activities consisted primarily \$389.2 million of net proceeds from the issuance of the 2022 Notes, \$58.9 million of proceeds from the issuance of warrants related to the 2022 Notes, and \$13.1 million of proceeds related to issuance of common stock under stock plans. These sources of cash were offset by \$78.9 million used for the purchase of a note hedge related to 2022 Notes, \$4.4 million used for payment of employee taxes related to the net share settlement of stock-based awards and \$1.1 million used for repayments of finance leases.

Critical Accounting Policies and Estimates

Our management's discussion and analysis of financial condition and results of operations is based on our consolidated financial statements which have been prepared in accordance with accounting principles generally accepted in the United States of America. In preparing our financial statements, we make estimates, assumptions and judgments that can have a significant impact on our reported revenues, results of operations and net income or loss, as well as on the value of certain assets and liabilities on our balance sheet during and as of the reporting periods. These estimates, assumptions and judgments are necessary because future events and their effects on our results and the value of our assets cannot be determined with certainty and are made based on our historical experience and on other assumptions that we believe to be reasonable under the circumstances. These estimates may change as new events occur or additional information is obtained, and we may periodically be faced with uncertainties, the outcomes of which are not within our control and may not be known for a prolonged period of time. Because the use of estimates is inherent in the financial reporting process, actual results could differ from those estimates.

Revenue Recognition

We generate revenue from arrangements with multiple performance obligations, which typically include subscriptions to our online software solutions and professional services which include on-boarding and training services. Our customers do not have the right to take possession of the online software products. Revenue from online software products is recognized ratably over the subscription period beginning on the date the online software product is made available to customers. We recognize revenue from on-boarding and training services as the services are provided. Amounts billed that have not yet met the applicable revenue recognition criteria are recorded as deferred revenue.

As part of accounting for arrangements with multiple performance obligations, we must assess whether each performance obligation we have with a customer is distinct. A good or service that is promised to a customer is distinct if the customer can benefit from the good or service either on its own or together with other resources that are readily available to the customer, and a company's promise to transfer the good or service to the customer is separately identifiable from other promises in the contract. We have determined that subscriptions for our online software products are distinct because, once a customer has access to the online software product it purchased, the online software product is fully functional and does not require any additional development, modification, or customization. Professional services sold are distinct because the customer benefits from the on-boarding and training to make better use of the online software products it purchased.

We allocate the transaction price to each distinct performance obligation based on the standalone selling price (“SSP”) of each good or service. We calculate SSP for each type of online software product and professional service offering by averaging the selling price of all purchases within the trailing four calendar quarters. We use four quarters of transaction data to determine SSP as most of our customer arrangements are one year or less and pricing may be subject to change upon each customer’s renewal. In instances where there are not sufficient data points, or the average selling prices for a particular online software product or professional service offering are disparate, we estimate the SSP using other observable inputs, such as similar products or services. If the actual selling price for the sale of an online software product or professional service offering within a multiple performance obligation arrangement substantially differs from the SSP of that offering, we use the relative SSP to allocate the transaction price to the performance obligations in the contract.

We pay our Solutions Partners a commission based on the online software product sales price for sales to end-customers. The classification of the commission paid in our consolidated statements of operations depends on who purchases the online software product. In instances where an end-customer purchases from us, the commission paid to the Solutions Partner is recorded as sales and marketing expense. When a Solutions Partner purchases from us, we net the commission paid to the Solutions Partner against the associated revenue recognized.

Costs to Obtain a Contract with a Customer

Sales commissions earned by our sales force are considered incremental, recoverable costs of obtaining a contract with a customer. Sales commissions for initial contracts are deferred and then amortized on a straight-line basis over a period of benefit that we have determined to be approximately one to three years. The one to three-year period has been determined by taking into consideration the type of product sold, the commitment term of the customer contract, the nature of the Company’s technology development life-cycle, and an estimated customer relationship period. Sales commissions for upgrade contracts are deferred and amortized on a straight-line basis over the remaining estimated customer relationship period of the related customer. While we do not anticipate any significant changes to the one to three year amortization period, if a change did occur it could produce a material impact on our financial statements. For example, if the commitment term of our customer contracts significantly increased, our deferred commission expense asset would increase, and our amortization expense would decrease in the period in which the change occurs.

Capitalized Software Development Costs

Software development costs consist of certain payroll and stock compensation costs incurred to develop functionality for our Growth Platform and internally built software platforms, as well as certain upgrades and enhancements that are expected to result in enhanced functionality. We capitalize certain software development costs for new offerings as well as upgrades to our existing software platforms. We amortize these development costs over the estimated useful life of two to five years on a straight-line basis. We believe there are two key estimates within the capitalized software balance, which are the determination of the useful life of the software and the determination of the amounts to be capitalized.

We determined that a two to five year life is appropriate for our internal-use software based on our best estimate of the useful life of the internally developed software after considering factors such as continuous developments in the technology, obsolescence and anticipated life of the service offering before significant upgrades. Based on our prior experience, internally generated software will generally remain in use for a minimum of two to five years before being significantly replaced or modified to keep up with evolving customer and company needs. While we do not anticipate any significant changes to this two to five year estimate, a change in this estimate could produce a material impact on our financial statements. For example, if we received information that indicated the useful life of all internally developed software was one year rather than two to five, our capitalized software balance would materially decrease and our expense would materially increase.

We determine the amount of internal software costs to be capitalized based on the amount of time spent by our developers on projects in the application stage of development. Costs associated with building or significantly enhancing our Growth Platform and internally built software platforms are capitalized, while costs associated with planning new developments and maintaining our Growth Platform software and internally built software platforms are expensed as incurred. There is judgment involved in estimating the time allocated to a particular project in the application stage. A significant change in the time spent on each project could have a material impact on the amount capitalized and related amortization expense in subsequent periods.

Stock-Based Compensation

We recognize compensation expense for option awards based on the fair value of the award and on a straight-line basis over the vesting period of the award based on the estimated portion of the award that is expected to vest.

Inherent in the valuation and recording of stock-based compensation for option awards, there are several estimates that we make in regard to valuation and expense that will be incurred. We use the Black-Scholes option pricing model to measure the fair value of our option awards when they are granted. For stock options and RSUs granted, our board of directors determines the fair value based on the closing price of our common stock as reported on the New York Stock Exchange on the date of grant. We use the daily historical volatility of companies we consider to be our peers. To determine our peer companies, we use the following criteria: software or software-as-a-service companies; similar histories and relatively comparable financial leverage; sufficient public company trading history; and in similar businesses and geographical markets. We use the peers' stock price volatility over the expected life of our granted options to calculate the expected volatility. The expected term of employee option awards is determined using the average midpoint between vesting and the contractual term for outstanding awards, or the simplified method, because we do not yet have a sufficient history of option exercises. We consider this appropriate as we plan to see changes to our equity structure in the future and there is no other method that would be more indicative of exercise activity. The risk-free interest rate is based on the rate on U.S. Treasury securities with maturities consistent with the estimated expected term of the awards. We have not paid dividends and do not anticipate paying a cash dividend in the foreseeable future and, accordingly, use an expected dividend yield of zero.

The following table summarizes the assumptions, other than fair value of our common stock, relating to our stock options granted in the years ended December 31, 2019, 2018, and 2017:

	Year Ended December 31,		
	2019	2018	2017
Dividend yield	—	—	—
Expected volatility (%)	39.46-41.41	41.34-43.55	39.4 - 43.7
Risk-free interest rate (%)	1.95-2.55	2.62-2.85	1.74 - 2.09
Expected term (years)	5.50-6.02	5.06-6.42	5.18 - 6.21

We will continue to use judgment in evaluating the expected volatility and expected term utilized in our stock-based compensation expense calculations on a prospective basis. As we continue to accumulate additional data related to our common stock, we may refine our estimates of expected volatility and expected term, which could materially impact our future stock-based compensation expense.

Goodwill Impairment

Goodwill represents the excess of the cost of an acquired entity over the net fair value of the identifiable assets acquired and liabilities assumed. Goodwill is not amortized, but rather is assessed for impairment at least annually. We performed our annual impairment assessment on November 30, 2019. We operate under one reporting unit and as a result, evaluate goodwill impairment based on our fair value as a whole.

To determine the number of operating segments and reporting units that are present, we analyzed whether there is any customer, product or geographic information that drives the chief operating decision makers (our chief executive and operating officers) decisions on how to allocate resources and whether any segment management exists. Management has concluded that operating decisions are made at the consolidated company level and there is no segment management in place that reviews results of operations with the chief operating decision maker.

In assessing goodwill for impairment, an entity has the option to assess qualitative factors to determine whether events or circumstances indicate that it is more likely than not that the fair value of a reporting unit is less than its carrying amount. If, after assessing the totality of events or circumstances, it is more likely than not that the fair value of the reporting unit is greater than its carrying value, then performing the two-step impairment test is unnecessary. An entity can choose not to perform a qualitative assessment for any of its reporting units and proceed directly to the use of the two-step impairment test.

When assessing goodwill for impairment for the year ended December 31, 2019, we first performed a qualitative assessment to determine whether it was necessary to perform the two-step quantitative analysis. Based on the qualitative assessment we determined it was unlikely that our reporting unit fair value was less than its carrying value and the two-step impairment test was not required, and therefore, there was no impairment of goodwill recorded.

Business Combinations

We account for business acquisitions using the purchase method of accounting, in accordance with which assets acquired and liabilities assumed are recorded at their respective fair values at the acquisition date. Goodwill represents the excess of the purchase price over the estimated fair values of the assets acquired and liabilities assumed.

Significant judgment is used in determining fair values of assets acquired and liabilities assumed, as well as intangible assets and their estimated useful lives. Fair value and useful life determinations are based on, among other factors, estimates of future expected cash flows attributable to the acquired intangible assets and appropriate discount rates used in computing present values. Particularly for the acquisition of PieSync, management applied significant judgement in estimating the fair value of the acquired developed technology intangible asset, which involved significant estimates and assumptions with respect to forecasted revenue growth rates, the revenue attributable to the acquired intangible asset over its estimated economic life and the discount rate. These judgments may materially impact the estimates used in allocating the purchase price consideration to the fair value of assets acquired and liabilities assumed, as well as our current and future operating results. Actual results may vary from these estimates that may result in adjustments to goodwill and acquisition date fair values of assets and liabilities during a measurement period or upon a final determination of asset and liability fair values, whichever occurs first. Adjustments to the fair value of assets acquired and liabilities assumed made after the end of the measurement period are recorded within our operating results.

Leases

On January 1, 2019, we adopted the new lease guidance using a modified retrospective transition method applied to those leases which were not completed as of January 1, 2019.

We lease office facilities under non-cancelable operating leases that expire at various dates through May 2031. Certain leases contain optional termination dates.

We determine if an arrangement contains a lease at inception and does not separate lease and non-lease components of an arrangement determined to contain a lease. Operating and finance leases with a duration of less than 12 months are excluded from right-of-use-assets and lease liabilities and related expense is recorded as incurred.

We use our estimated incremental borrowing rate, which is derived from information available at the lease commencement date, in determining the present value of operating lease payments. To determine the estimated incremental borrowing rate, we use publicly available credit ratings for peer companies. The Company estimates the incremental borrowing rate using yields for maturities that are in line with the duration of the lease payments. A hypothetical 100 basis point decrease in our estimate of the incremental borrowing rate at January 1, 2019 (the date of our adoption) would increase our operating lease liability by approximately \$7.4 million.

Contractual Obligations and Commitments

Contractual obligations are cash that we are obligated to pay as part of certain contracts that we have entered during our course of business. Certain of our leases contain optional termination dates. The table below only includes payments up to the optional termination date. If we were to extend leases beyond the optional termination date, the future commitments would increase by approximately \$83.0 million. Below is a table that shows the projected outlays as of December 31, 2019:

	Total	Payments due in:			
		Less than 1 Year	1-3 Years	3-5 Years	More than 5 Years
Finance lease obligations	\$ 28	\$ 28	\$ -	\$ —	\$ —
Operating leases obligations	412,719	42,466	97,221	94,474	178,558
Vendor commitments	33,525	19,403	13,469	653	—
Total	<u>\$ 446,272</u>	<u>\$ 61,897</u>	<u>\$ 110,690</u>	<u>\$ 95,127</u>	<u>\$ 178,558</u>

Letters of Credit

As of December 31, 2019, we had a total of \$8.8 million in letters of credit outstanding substantially in favor of certain landlords for office space. These irrevocable letters of credit, which are not included in the table of contractual obligations above, are secured by Certificate of Deposits and are expected to remain in effect, in some cases, until 2029.

Off Balance Sheet Arrangements

We have no material off-balance sheet arrangements at December 31, 2019 or 2018 exclusive of items described above and indemnifications of officers, directors and employees for certain events or occurrences while the officer, director or employee is, or was, serving at our request in such capacity.

Recent Accounting Pronouncements

For information on recent accounting pronouncements, see *Recent Accounting Pronouncements* in the notes to the consolidated financial statements appearing elsewhere in this Annual Report on Form 10-K.

ITEM 7A. Qualitative and Quantitative Disclosures About Market Risk

Foreign Currency Exchange Risk

We have foreign currency risks related to our revenue and operating expenses denominated in currencies other than the U.S. dollar, primarily the Euro, British Pound Sterling, Australian dollar, Singaporean dollar, Japanese Yen, and Colombian Peso. Since we translate foreign currencies into U.S. dollars for financial reporting purposes, currency fluctuations can have an impact on our financial results.

We have experienced and will continue to experience fluctuations in our net loss as a result of transaction gains or losses related to revaluing certain current asset and current liability balances that are denominated in currencies other than the functional currency of the entities in which they are recorded. We recognized immaterial amounts of foreign currency gains and losses in each of the periods presented. We have not engaged in the hedging of our foreign currency transactions to date, we are evaluating the costs and benefits of initiating such a program and may in the future hedge selected significant transactions denominated in currencies other than the U.S. dollar as we expand our international operation and our risk grows.

Interest Rate Sensitivity

Our portfolio of cash and cash equivalents and short- and long-term investments is maintained in a variety of securities, including government agency obligations, corporate bonds and money market funds. Investments are classified as available-for-sale securities and carried at their fair market value with cumulative unrealized gains or losses recorded as a component of accumulated other comprehensive loss within stockholders' equity. A sharp rise in interest rates could have an adverse impact on the fair market value of certain securities in our portfolio. We do not currently hedge our interest rate exposure and do not enter into financial instruments for trading or speculative purposes.

Inflation Risk

We do not believe that inflation has had a material effect on our business. However, if our costs, in particular personnel, sales and marketing and hosting 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, operating results and financial condition.

Market Risk and Market Interest Risk

In May 2017, we issued \$400 million aggregate principal amount of 0.25% convertible senior notes due 2022. The fair value of our convertible senior notes is subject to interest rate risk, market risk and other factors due to the convertible feature. The fair value of the convertible senior notes will generally increase as our common stock price increases and will generally decrease as our common stock price declines in value. The interest and market value changes affect the fair value of our convertible senior notes but do not impact our financial position, cash flows or results of operations due to the fixed nature of the debt obligation. Generally, the fair values of 2022 Notes will increase as interest rates fall and decrease as interest rates rise. Additionally, we carry the convertible senior notes at face value less unamortized discount on our balance sheet, and we present the fair value for required disclosure purposes only.

The table below provides a sensitivity analysis of hypothetical 10% changes of our stock price as of December 31, 2019 and the estimated impact on the fair value of the 2022 Notes. The selected scenarios are not predictions of future events, but rather are intended to illustrate the effect such event may have on the fair value of the 2022 Notes.

Hypothetical change in HubSpot stock price	Fair value	Estimated change in fair value	Hypothetical percentage increase (decrease) in fair value
10% increase	\$ 754,752	\$ 61,572	9%
No change	\$ 693,180	\$ —	—
10% decrease	\$ 630,728	\$ (62,452)	(9)%

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REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

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

Opinions on the Financial Statements and Internal Control over Financial Reporting

We have audited the accompanying consolidated balance sheets of HubSpot, Inc. and its subsidiaries (the “Company”) as of December 31, 2019 and 2018, and the related consolidated statements of operations, of comprehensive loss, of stockholders’ equity and of cash flows for each of the three years in the period ended December 31, 2019, including the related notes (collectively referred to as the “consolidated financial statements”). We also have audited the Company’s internal control over financial reporting as of December 31, 2019, based on criteria established in Internal Control - Integrated Framework (2013) issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO).

In our opinion, the consolidated financial statements referred to above present fairly, in all material respects, the financial position of the Company as of December 31, 2019 and 2018, and the results of its operations and its cash flows for each of the three years in the period ended December 31, 2019 in conformity with accounting principles generally accepted in the United States of America. Also in our opinion, the Company maintained, in all material respects, effective internal control over financial reporting as of December 31, 2019, based on criteria established in Internal Control - Integrated Framework (2013) issued by the COSO.

Change in Accounting Principle

As discussed in Note 2 to the consolidated financial statements, the Company changed the manner in which it accounts for leases in 2019 and the manner in which it accounts for revenues from contracts with customers in 2018.

Basis for Opinions

The Company’s management is responsible for these consolidated financial statements, for maintaining effective internal control over financial reporting, and for its assessment of the effectiveness of internal control over financial reporting, included in Management’s Report on Internal Control over Financial Reporting appearing under Item 9A. Our responsibility is to express opinions on the Company’s consolidated financial statements and on the Company’s internal control over financial reporting based on our audits. We are a public accounting firm registered with the Public Company Accounting Oversight Board (United States) (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 audits to obtain reasonable assurance about whether the consolidated financial statements are free of material misstatement, whether due to error or fraud, and whether effective internal control over financial reporting was maintained in all material respects.

Our audits of the consolidated financial statements included performing procedures to assess the risks of material misstatement of the consolidated 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 consolidated 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 consolidated financial statements. Our audit of internal control over financial reporting included obtaining an understanding of internal control over financial reporting, assessing the risk that a material weakness exists, and testing and evaluating the design and operating effectiveness of internal control based on the assessed risk. Our audits also included performing such other procedures as we considered necessary in the circumstances. We believe that our audits provide a reasonable basis for our opinions.

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 (i) pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the company; (ii) 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 (iii) 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.

Critical Audit Matters

The critical audit matters communicated below are matters arising from the current period audit of the consolidated financial statements that were communicated or required to be communicated to the audit committee and that (i) relate to accounts or disclosures that are material to the consolidated financial statements and (ii) involved our especially challenging, subjective, or complex judgments. The communication of critical audit matters 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 matters below, providing separate opinions on the critical audit matters or on the accounts or disclosures to which they relate.

Capitalized software – estimate of time and related costs eligible for capitalization

As described in Note 2 to the consolidated financial statements, the Company's consolidated capitalized software development costs, net balance was \$16.8 million as of December 31, 2019, and the Company capitalized software development costs, exclusive of costs recorded within property and equipment, of \$15.5 million for the year ended December 31, 2019. Management capitalizes certain software development costs for new offerings as well as upgrades to existing software platforms. Management determines the amount of internal software costs to be capitalized based on the amount of time spent by developers on projects in the application stage of development. As disclosed by management, there is judgment involved in estimating time allocated to a particular project in the application stage.

The principal considerations for our determination that performing procedures relating to the estimate of time and related costs eligible for capitalization as software development costs is a critical audit matter are there was significant judgment by management when determining the amount of time to capitalize for projects. This in turn led to a high degree of auditor judgment, subjectivity, and effort in performing procedures and evaluating management's determination of capitalized costs, including the assessment of management's judgment related to the amount of time incurred by developers on projects in the application stage.

Addressing the matter involved performing procedures and evaluating audit evidence in connection with forming our overall opinion on the consolidated financial statements. These procedures included testing the effectiveness of controls relating to capitalized software development costs, including controls over management's estimate of time and related costs eligible for capitalization. These procedures also included, among others, testing management's process for determining the time eligible for capitalization in the current year; evaluating whether the time and related costs were eligible for capitalization; testing the completeness, accuracy, and relevance of underlying data used in management's estimate of eligible time and related costs; and evaluating the reasonableness of significant assumptions used by management in estimating eligible time and related costs. Evaluating management's assumptions related to eligible software development time for capitalization involved evaluating whether the assumptions used by management were reasonable considering (i) inquiries with management and IT product development managers in evaluating the software development costs capitalized for a sample of capitalized projects, and (ii) evaluating management's estimate of hours through inquiry with a sample of individual software developers regarding the nature, timing and extent of time worked on development activities.

Acquisition of PieSync N.V. LTD ("PieSync") – Valuation of Developed Technology Intangible Asset

As described in Note 5 to the consolidated financial statements, on October 31, 2019, the Company acquired 100% of the equity interests of PieSync for a total cash purchase price of \$23.3 million, net of cash acquired, which included a working capital settlement of \$0.3 million. As part of the purchase price allocation, management recorded \$9.8 million for the acquired developed technology intangible asset using an excess earnings method for which management applied significant estimates and assumptions with respect to forecasted revenue growth rates, the revenue attributable to the acquired technology intangible asset over its estimated economic life and the discount rate.

The principal considerations for our determination that performing procedures relating to the valuation of the developed technology intangible asset is a critical audit matter are there was significant judgment by management when estimating the fair value of the acquired developed technology intangible asset. This in turn led to a high degree of auditor judgment, subjectivity, and effort in performing procedures and evaluating audit evidence relating to management's estimates and assumptions with respect to forecasted revenue growth rates, the revenue attributable to the acquired technology intangible asset over its estimated economic life and the discount rate. In addition, the audit effort involved the use of professionals with specialized skill and knowledge to assist in performing procedures over the discount rate.

Addressing the matter involved performing procedures and evaluating audit evidence in connection with forming our overall opinion on the consolidated financial statements. These procedures included testing the effectiveness of controls relating to the acquisition accounting, including controls over management's valuation of the acquired developed technology intangible asset and assumptions related to forecasted revenue growth rates, the revenue attributable to the acquired technology intangible asset over its estimated economic life, and the discount rate. These procedures also included, among others, testing management's process for determining the fair value of the acquired developed technology intangible asset. This included evaluating the appropriateness of the valuation method, testing the completeness, accuracy, and relevance of underlying data used in the valuation method, and evaluating the reasonableness of significant assumptions used by management, including forecasted revenue growth rates, the revenue attributable to the acquired technology intangible asset over its estimated economic life and the discount rate. Evaluating the assumptions related to the forecast forecasted revenue growth rates and the revenue attributable to the acquired technology intangible asset over its estimated economic life involved whether the assumptions used were reasonable considering the past performance of the acquired entity and industry data. Professionals with specialized skill and knowledge were used to assist in evaluating the reasonableness of the discount rate.

/s/ PricewaterhouseCoopers LLP

Boston, Massachusetts
February 12, 2020

We have served as the Company's auditor since 2016.

HUBSPOT, INC.
CONSOLIDATED BALANCE SHEETS
(In thousands, except per share amounts)

	December 31, 2019	December 31, 2018
Assets		
Current assets:		
Cash and cash equivalents	\$ 269,670	\$ 111,489
Short-term investments	691,834	480,761
Accounts receivable—net of allowance for doubtful accounts of \$1,584 and \$1,317 at December 31, 2019 and 2018, respectively	92,517	77,100
Deferred commission expense	32,078	23,664
Restricted cash	5,816	5,175
Prepaid expenses and other current assets	17,809	14,229
Total current assets	1,109,724	712,418
Long-term investments	53,776	11,450
Property and equipment, net	83,649	52,468
Capitalized software development costs, net	16,793	12,746
Right-of-use assets	234,390	—
Deferred commission expense, net of current portion	19,110	18,114
Other assets	9,824	6,888
Intangible assets, net	11,752	4,919
Goodwill	30,250	14,950
Total assets	1,569,268	833,953
Liabilities and stockholders' equity		
Current liabilities:		
Accounts payable	12,842	7,810
Accrued compensation costs	26,318	23,589
Accrued expenses and other current liabilities	28,686	22,305
Operating lease liabilities	23,613	—
Deferred revenue	231,030	183,305
Total current liabilities	322,489	237,009
Operating lease liabilities, net of current portion	244,216	—
Deferred rent, net of current portion	—	26,445
Deferred revenue, net of current portion	3,058	2,179
Other long-term liabilities	8,983	4,897
Convertible senior notes	340,564	318,782
Total liabilities	919,310	589,312
Commitments and contingencies (Note 9)		
Stockholders' equity:		
Common stock, \$0.001 par value—authorized, 500,000 shares; 42,955 and 39,300 shares issued and outstanding at December 31, 2019 and 2018, respectively	44	40
Additional paid-in capital	1,048,380	589,708
Accumulated other comprehensive loss	(336)	(723)
Accumulated deficit	(398,130)	(344,384)
Total stockholders' equity	649,958	244,641
Total liabilities and stockholders' equity	\$ 1,569,268	\$ 833,953

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

HUBSPOT, INC.
CONSOLIDATED STATEMENTS OF OPERATIONS
(In thousands, except per share amounts)

	Year Ended December 31,		
	2019	2018	2017
Revenue:			
Subscription	\$ 646,266	\$ 487,450	\$ 356,727
Professional services and other	28,594	25,530	18,885
Total revenue	<u>674,860</u>	<u>512,980</u>	<u>375,612</u>
Cost of Revenue:			
Subscription	98,510	69,718	51,563
Professional services and other	31,448	30,639	24,166
Total cost of revenue	<u>129,958</u>	<u>100,357</u>	<u>75,729</u>
Gross profit	<u>544,902</u>	<u>412,623</u>	<u>299,883</u>
Operating expenses:			
Research and development	158,237	117,603	70,373
Sales and marketing	340,685	267,444	212,859
General and administrative	92,971	75,834	56,787
Total operating expenses	<u>591,893</u>	<u>460,881</u>	<u>340,019</u>
Loss from operations	<u>(46,991)</u>	<u>(48,258)</u>	<u>(40,136)</u>
Other expense:			
Interest income	19,429	9,176	3,837
Interest expense	(22,818)	(21,386)	(13,181)
Other expense	(393)	(1,492)	(559)
Total other expense	<u>(3,782)</u>	<u>(13,702)</u>	<u>(9,903)</u>
Loss before income tax (expense) benefit	<u>(50,773)</u>	<u>(61,960)</u>	<u>(50,039)</u>
Income tax (expense) benefit	<u>(2,973)</u>	<u>(1,868)</u>	<u>10,325</u>
Net loss	<u>(53,746)</u>	<u>(63,828)</u>	<u>(39,714)</u>
Net loss per common share, basic and diluted	\$ (1.28)	\$ (1.66)	\$ (1.08)
Weighted average common shares used in computing basic and diluted net loss per common share:	42,025	38,529	36,827

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

HUBSPOT, INC.
CONSOLIDATED STATEMENTS OF COMPREHENSIVE LOSS
(In thousands)

	<u>Year ended December 31,</u>		
	<u>2019</u>	<u>2018</u>	<u>2017</u>
Net loss	\$ (53,746)	\$ (63,828)	\$ (39,714)
Other comprehensive loss:			
Foreign currency translation adjustments	(213)	(776)	968
Changes in unrealized gain (loss) on investments, net of income taxes of \$156 in 2019, \$0 in 2018, and \$0 in 2017.	600	110	(161)
Comprehensive loss	<u>\$ (53,359)</u>	<u>\$ (64,494)</u>	<u>\$ (38,907)</u>

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

HUBSPOT, INC.
CONSOLIDATED STATEMENTS OF STOCKHOLDERS' EQUITY
(In thousands, except per share amounts)

	Common Stock, \$0.001 Par Value		Additional Paid-In Capital	Accumulated Other Comprehensive Loss	Accumulated Deficit	Total
	Shares	Amount				
Balances at January 1, 2017	35,784	\$ 36	\$ 365,444	\$ (864)	\$ (245,916)	\$ 118,700
Issuance of common stock under stock plans, net of shares withheld for employee taxes	1,719	2	7,919	—	—	7,921
Stock-based compensation	—	—	48,933	—	—	48,933
Cumulative adjustment from adoption of stock compensation standard	—	—	452	—	(452)	—
Unrealized loss on investments, net of income taxes of \$0	—	—	—	(161)	—	(161)
Cumulative translation adjustment	—	—	—	968	—	968
Equity component of 2022 Notes (Note 7)	—	—	73,713	—	—	73,713
Net loss	—	—	—	—	(39,714)	(39,714)
Balances at December 31, 2017	37,503	38	496,461	(57)	(286,082)	210,360
Issuance of common stock under stock plans, net of shares withheld for employee taxes	1,797	2	14,729	—	—	14,731
Stock-based compensation	—	—	78,518	—	—	78,518
Cumulative adjustment from adoption of revenue recognition standard (Note 2)	—	—	—	—	5,526	5,526
Cumulative translation adjustment	—	—	—	(776)	—	(776)
Unrealized gain on investments, net of income taxes of \$0	—	—	—	110	—	110
Net loss	—	—	—	—	(63,828)	(63,828)
Balances at December 31, 2018	39,300	40	589,708	(723)	(344,384)	244,641
Issuance of common stock under stock plans, net of shares withheld for employee taxes	1,504	2	16,859	—	—	16,861
Stock-based compensation	—	—	99,185	—	—	99,185
Issuance of common stock in relation to common stock offering, net of offering costs incurred \$365	2,151	2	342,628	—	—	342,630
Cumulative translation adjustment	—	—	—	(213)	—	(213)
Unrealized gain on investments, net of income taxes of \$156	—	—	—	600	—	600
Net loss	—	—	—	—	(53,746)	(53,746)
Balances at December 31, 2019	42,955	\$ 44	\$ 1,048,380	\$ (336)	\$ (398,130)	\$ 649,958

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

HUBSPOT, INC.
CONSOLIDATED STATEMENTS OF CASH FLOWS
(In thousands)

	Year Ended December 31,		
	2019	2018	2017
Operating Activities:			
Net loss	\$ (53,746)	\$ (63,828)	\$ (39,714)
Adjustments to reconcile net loss to net cash and cash equivalents provided by operating activities:			
Depreciation and amortization	28,793	23,428	15,786
Stock-based compensation	97,754	76,261	47,317
Deferred income tax (benefit) expense	(799)	36	(11,546)
Amortization of debt discount and issuance costs	21,790	20,335	12,366
Accretion of bond discount premium	(14,160)	(6,787)	(1,576)
Non-cash rent expense	—	2,336	5,039
Unrealized currency translation	(156)	483	(139)
Changes in assets and liabilities, net of acquisition			
Accounts receivable	(15,428)	(17,726)	(20,180)
Prepaid expenses and other assets	(3,296)	3,880	(5,588)
Deferred commission expense	(9,666)	(23,900)	(4,004)
Right-of-use assets	22,657	—	—
Accounts payable	3,927	3,298	1,100
Accrued expenses and other current liabilities	7,819	11,920	8,195
Lease liabilities	(15,781)	—	—
Deferred rent	—	5,799	3,559
Deferred revenue	49,265	49,316	38,999
Net cash and cash equivalents provided by operating activities	<u>118,973</u>	<u>84,851</u>	<u>49,614</u>
Investing Activities:			
Purchases of investments	(1,304,847)	(681,632)	(890,009)
Maturities and sales of investments	1,066,366	644,375	533,660
Purchases of property and equipment	(40,372)	(22,305)	(20,276)
Capitalization of software development costs	(13,474)	(11,168)	(7,071)
Acquisition of a business, net of cash acquired	(23,314)	—	(9,415)
Purchase of strategic investments	(553)	(500)	(3,500)
Net cash and cash equivalents used in investing activities	<u>(316,194)</u>	<u>(71,230)</u>	<u>(396,611)</u>
Financing Activities:			
Proceeds from common stock offering, net of offering costs paid of \$365	342,628	—	—
Repayment of debt	(333)	—	—
Employee taxes paid related to the net share settlement of stock-based awards	(6,247)	(8,033)	(4,419)
Proceeds related to the issuance of common stock under stock plans	23,578	21,555	13,086
Proceeds from issuance of convertible notes, net of issuance costs paid of \$10,767	—	—	389,233
Purchase of note hedge related to convertible notes	—	—	(78,920)
Proceeds from the issuance of warrants related to convertible notes, net of issuance costs paid of \$200	—	—	58,880
Repayment of finance lease obligations	(284)	(744)	(1,054)
Net cash and cash equivalents provided by financing activities	<u>359,342</u>	<u>12,778</u>	<u>376,806</u>
Effect on exchange rate changes on cash and cash equivalents	(720)	(2,069)	2,790
Net increase in cash, cash equivalents and restricted cash	161,401	24,330	32,599
Cash, cash equivalents and restricted cash, beginning of year	117,114	92,784	60,185
Cash, cash equivalents and restricted cash, end of year	<u>\$ 278,515</u>	<u>\$ 117,114</u>	<u>\$ 92,784</u>
Supplemental cash flow disclosure:			
Cash paid for interest	\$ 1,014	\$ 1,036	\$ 762
Cash paid for income taxes	\$ 3,090	\$ 1,842	\$ 855
Right-of-use assets obtained in exchange for operating lease facilities	\$ 105,496	\$ —	\$ —
Non-cash investing and financing activities:			
Capital expenditures incurred but not yet paid	\$ 4,606	\$ 666	\$ 680
Asset retirement obligations	\$ 2,014	\$ 216	\$ 575

The accompanying notes are an integral part of the consolidated financial statements

HUBSPOT, INC.
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

1. Organization and Operations

HubSpot, Inc. (the “Company”) provides a cloud-based inbound marketing, sales and customer service platform, which is referred to in this document as the Company’s Growth Platform, that enables businesses to grow better. The Company’s Growth Platform, comprised of Marketing Hub, Sales Hub, Service Hub, and a free customer relationship management system, or CRM, features integrated applications and tools that enable businesses to create a cohesive and adaptable customer experience throughout the customer lifecycle.

On February 19, 2019, the Company closed a common stock offering whereby 2.2 million shares of common stock were sold. The Company received aggregate proceeds of approximately \$343.0 million from the offering, net of underwriters’ discounts and commissions, but before deduction of offering expenses of approximately \$0.4 million.

2. Summary of Significant Accounting Policies

Basis of Presentation —The consolidated financial statements have been prepared in U.S. dollars, in accordance with accounting principles generally accepted in the United States of America (“GAAP”). The accompanying consolidated financial statements include the accounts of the Company and its wholly owned subsidiaries. All intercompany transactions have been eliminated in consolidation.

Use of Estimates —The preparation of consolidated financial statements in conformity with GAAP requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities, disclosure of contingent assets and liabilities at the date of the financial statements, and the reported amounts of revenue and expenses during the reporting period. Actual results could differ from those estimates.

Operating Segments —The Company operates as one operating segment. Operating segments are defined as components of an enterprise for which separate financial information is regularly evaluated by the chief operating decision makers (“CODMs”), which are the Company’s chief executive officer and chief operating officer, in deciding how to allocate resources and assess performance. The Company’s CODMs evaluate the Company’s financial information and resources and assess the performance of these resources on a consolidated basis. Since the Company operates in one operating segment, all required financial segment information can be found in the consolidated financial statements.

Loss Per Share — Basic net loss per share is computed by dividing net loss by the weighted average number of common shares outstanding for the period. Diluted net loss per share is computed by giving effect to all potential dilutive common stock equivalents outstanding for the period. For purposes of this calculation, options to purchase common stock, restricted stock units (“RSUs”), the shares issuable under the Employee Stock Purchase Plan (“ESPP”), and the Conversion Option and warrants of the 2022 Notes are considered to be potential common stock equivalents.

A reconciliation of the denominator used in the calculation of basic and diluted loss per share is as follows:

	Year Ended December 31,		
	2019	2018	2017
	(in thousands, except per share amounts)		
Net loss	\$ (53,746)	\$ (63,828)	\$ (39,714)
Weighted-average common shares outstanding—basic	42,025	38,529	36,827
Dilutive effect of share equivalents resulting from stock options, RSUs, ESPP, Conversion Option and warrants of the 2022 Notes	—	—	—
Weighted-average common shares outstanding-diluted	42,025	38,529	36,827
Net loss per common share, basic and diluted	\$ (1.28)	\$ (1.66)	\$ (1.08)

Since the Company incurred net losses for each of the periods presented, diluted net loss per share is the same as basic net loss per share. The Company's outstanding stock options, RSUs, shares issuable under the ESPP, and Conversion Option and Warrants of the 2022 Notes were not included in the calculation of diluted net loss per share as the effect would be anti-dilutive. The following table contains all potentially dilutive common stock equivalents.

	Year Ended December 31,		
	2019	2018	2017
	(in thousands)		
Options to purchase common shares	1,489	1,824	2,085
RSUs	1,207	1,732	2,315
Conversion option and warrants of the 2022 Notes	3,104	1,211	—
ESPP	2	—	10

The Company expects to settle the principal amount of the 2022 Notes (Note 7) in cash, and therefore, the Company uses the treasury stock method for calculating any potential dilutive effect of the Conversion Option on diluted net income per share, if applicable. The Conversion Option will have a dilutive impact on net income per share when the average market price of the Company's common stock for a given period exceeds the conversion price of the 2022 Notes of \$94.77 per share. The common stock warrants will have a dilutive impact on net income per share when the average price of the Company's common stock for a given period exceeds \$115.83. Because the last reported sale price of the Company's common stock for at least 20 trading days during the period of 30 consecutive trading days ending on the last trading day of the calendar quarter ended December 31, 2019 was equal to or greater than 130% of the applicable conversion price on each applicable trading day, the 2022 Notes are convertible at the option of the holders thereof during the calendar quarter ending March 31, 2020. In 2019, the Company settled approximately \$8 thousand of the principal balance of the 2022 Notes in cash.

Cash and Cash Equivalents — The Company considers all highly liquid investments purchased with original maturity of three months or less to be cash equivalents. Cash and cash equivalents consist of cash held in bank deposit accounts and short-term, highly-liquid investments with remaining maturities of three months or less at the date of purchase, consisting primarily of money-market funds.

Investments — Investments consist of commercial paper, corporate debt securities and U.S. Treasury securities. Securities having remaining maturities of more than three months at the date of purchase and less than one year from the date of the balance sheets are classified as short-term, and those with maturities of more than one year from the date of the balance sheet are classified as long-term in the consolidated balance sheets. The Company classifies its debt investments with readily determinable market values as available-for-sale. These investments are classified as investments on the consolidated balance sheets and are carried at fair market value, with unrealized gains and losses considered to be temporary in nature reported as accumulated other comprehensive loss, a separate component of stockholders' equity. The Company reviews all investments for reductions in fair value that are other-than-temporary. When such reductions occur, the cost of the investment is adjusted to fair value through recording a loss on investments in the consolidated statements of operations. Gains and losses on investments are calculated on the basis of specific identification.

Investments are considered to be impaired when a decline in fair value below cost basis is determined to be other-than-temporary. The Company periodically evaluates whether a decline in fair value below cost basis is other-than-temporary by considering available evidence regarding these investments including, among other factors: the duration of the period that, and extent to which, the fair value is less than cost basis; the financial health of, and business outlook for the issuer, including industry and sector performance and operational and financing cash flow factors; overall market conditions and trends and the Company's intent and ability to retain its investment in the security for a period of time sufficient to allow for an anticipated recovery in market value. Once a decline in fair value is determined to be other-than-temporary, a write-down is recorded and a new cost basis in the security is established.

Strategic investments — Strategic investments consist of non-controlling equity investments in privately held companies. These investments without readily determinable fair values for which the Company does not have the ability to exercise significant influence are accounted for using the measurement alternative. Under the measurement alternative, the non-marketable securities are carried at cost less any impairments, plus or minus adjustments resulting from observable price changes in orderly transactions for identical or similar investments of the same issuer.

Accounts Receivable and Allowance for Doubtful Accounts — Accounts receivable are carried at the original invoiced amount less an allowance for doubtful accounts based on the probability of future collection. The probability of future collection is based on specific considerations of historical loss patterns and an assessment of the continuation of such patterns based on past collection trends and known or anticipated future economic events that may impact collectability. The probability of future collection is also assessed by geography. To date, losses resulting from uncollected receivables have not exceeded management's expectations.

The following is a roll forward of the Company's allowance for doubtful accounts (in thousands):

	Balance Beginning of Period	Charged to Statement of Operations	Deductions ⁽¹⁾	Balance at End of Period
Allowance for doubtful accounts				
Year ended December 31, 2019	\$ 1,317	\$ 7,895	\$ (7,628)	\$ 1,584
Year ended December 31, 2018	\$ 638	\$ 5,514	\$ (4,835)	\$ 1,317
Year ended December 31, 2017	\$ 617	\$ 3,353	\$ (3,332)	\$ 638

(1) Deductions include actual accounts written-off, net of recoveries.

Restricted Cash—The Company had restricted cash of \$8.8 million at December 31, 2019 and \$5.6 million at December 31, 2018 related to letters of credit for it leased facilities. The following table provides a reconciliation of the cash, cash equivalents and restricted cash within the consolidated balance sheets that sum to the total of the same such amounts shown in the statement of cash flows for the year ended December 31, 2019 and 2018.

	December 31, 2019	December 31, 2018
	(in thousands)	
Cash and cash equivalents	\$ 269,670	\$ 111,489
Restricted cash	5,816	5,175
Restricted cash included in other assets	3,029	450
Total cash, cash equivalents, and restricted cash	<u>\$ 278,515</u>	<u>\$ 117,114</u>

Property and Equipment—Property and equipment are stated at cost and depreciated using the straight-line method over the estimated useful lives of the related assets. Expenditures for maintenance and repairs are charged to expense as incurred, whereas major betterments are capitalized as additions to leasehold improvements. Depreciation is recorded over the following estimated useful lives:

	Estimated Useful Life
Employee related computer equipment	2 - 3 years
Computer equipment and purchased software	3 years
Furniture and fixtures	5 years
Internal use software	5 years
Leasehold improvements	Lesser of lease term or useful life

The Company capitalizes certain payroll and stock compensation costs incurred to develop functionality for certain of the Company's internally built software platforms. The costs incurred during the preliminary stages of development are expensed as incurred. Once a piece of incremental functionality has reached the development stage certain internal costs are capitalized until the functionality is ready for its intended use. Internal use software is included within property and equipment on the balance sheet. The costs are generally amortized on a straight-line basis over an estimated useful life of approximately five years.

Impairment of Long-Lived Assets—Long-lived assets are reviewed for impairment whenever events or changes in circumstances indicate that the carrying amount of the asset may not be recoverable or that the useful lives of those assets are no longer appropriate. Management considers the following potential indicators of impairment of its long-lived assets (asset group): a substantial decrease in the Company's stock price, a significant adverse change in the extent or manner in which a long-lived asset (asset group) is being used, a significant adverse change in legal factors or in the business climate that could affect the value of the long-lived asset (asset group), an accumulation of costs significantly in excess of the amount originally expected for the acquisition or construction of a long-lived asset (asset group), and a current expectation that, more likely than not, a long lived asset (asset group) will be sold or otherwise disposed of significantly before the end of its previously estimated useful life. When such events occur, the Company compares the carrying amounts of the assets to their undiscounted expected future cash flows. If this comparison indicates that there may be an impairment, the amount of the impairment is calculated as the difference between the carrying value and fair value. For the years presented, the Company did not recognize an impairment charge.

Intangible Assets — Intangible assets consist of acquired technology, trade name and customer relationships. The Company records acquired intangible assets at fair value on the date of acquisition and amortize such assets in a pattern reflective of the expected economic benefits consumption over the expected useful life of the asset. If this pattern cannot be reliably determined, a straight-line amortization method is used. The estimated useful life of acquired technology is two to seven years and is based on the period over which economic benefits will be derived from each acquired intangible asset. The Company evaluates the useful lives of these assets on an annual basis and tests for impairment whenever events or changes in circumstances occur that could impact the recoverability of these assets. If the estimate of an intangible asset's remaining useful life is changed, the remaining carrying value of the intangible asset is amortized prospectively over the revised remaining useful life.

Goodwill — Goodwill represents the excess of cost over the fair value of the net tangible and identifiable intangible assets acquired in a business combination. Goodwill is not subject to amortization but is monitored annually for impairment or more frequently if there are indicators of impairment. Management considers the following potential indicators of impairment: significant underperformance relative to historical or projected future operating results, significant changes in the Company's use of acquired assets or the strategy of the Company's overall business, significant negative industry or economic trends and a significant decline in the Company's stock price for a sustained period. The Company performs its annual impairment test on November 30. Currently, the Company's goodwill is evaluated at the entity level as it has been determined there is one reporting unit. When assessing goodwill for impairment the Company first performs a qualitative assessment to determine whether it is necessary to perform the two-step quantitative analysis. If the Company determines it is unlikely that the reporting unit fair value is less than its carrying value then no two-step impairment test is performed. If the Company cannot determine that it is likely that the reporting unit fair value is more than its carrying value, then the Company performs a two-step impairment test. Based on the qualitative assessment performed on November 30, 2019, the Company determined it was unlikely that its reporting unit fair value was less than its carrying value and no two-step impairment test was required. There were no indicators that the Company's goodwill had become impaired since that date, and as such, there was no impairment of goodwill as of November 30, 2019 or December 31, 2019.

For the years ended December 31, 2019, 2018 and 2017, the Company did not recognize an impairment charge.

Business Combinations — The Company uses its best estimates and assumptions to assign fair value to the assets acquired and liabilities assumed. Significant judgment is used in determining fair values of assets acquired and liabilities assumed, as well as intangible assets and their estimated useful lives. Fair value and useful life determinations are based on, among other factors, estimates of future expected cash flows attributable to the acquired intangible assets and appropriate discount rates used in computing present values. Goodwill represents the excess of the purchase price over the estimated fair values of the assets acquired and liabilities assumed.

The Company's estimates are inherently uncertain and subject to refinement. During the measurement period, which may be up to one year from the acquisition date, the Company may record adjustments to the fair value of these tangible and intangible assets acquired and liabilities assumed, with the corresponding offset to goodwill. The Company continues to collect information and reevaluates these estimates and assumptions quarterly and records any adjustments to the Company's preliminary estimates to goodwill provided that the Company is within the measurement period. Upon the conclusion of the measurement period or final determination of the fair value of assets acquired or liabilities assumed, whichever comes first, any subsequent adjustments are recorded to the Company's consolidated statement of operations.

Advertising Expense — The Company expenses advertising as incurred, which is included in sales and marketing expense in the accompanying consolidated statements of operations. The Company incurred \$14.9 million of advertising expense in 2019, \$8.4 million in 2018, and \$5.5 million in 2017.

Leases — On January 1, 2019, the Company adopted the new lease guidance using a modified retrospective transition method applied to those leases which were not completed as of January 1, 2019.

The Company leases office facilities under non-cancelable operating leases that expire at various dates through May 2031 and leases office equipment under a non-cancelable finance lease that expires in March 2020. Certain operating leases contain optional termination dates, and the Company is not reasonably certain to extend its lease agreements beyond those dates.

The Company determines if an arrangement contains a lease at inception and does not separate lease and non-lease components of an arrangement determined to contain a lease. Operating leases are included in right-of-use ("ROU") assets, current operating lease liabilities and operating lease liabilities, net of current portion, on the Company's consolidated balance sheet. Finance leases are included in property and equipment, net, accrued expenses, and other current liabilities on the Company's consolidated balance sheet. Operating and finance leases with a duration of less than 12 months are excluded from right-of-use-assets and operating lease liabilities and related expense is recorded as incurred.

ROU assets represent the Company's right to use an underlying asset for the lease term and the corresponding lease liabilities represent its obligation to make lease payments arising from the lease. Lease ROU assets and lease liabilities are recognized based on the present value of the future minimum lease payments over the lease term at the lease commencement date. The lease ROU asset includes any initial direct costs incurred and is reduced for tenant incentives. As the Company's operating leases do not provide an implicit rate, the net present value of future minimum lease payments is determined using the Company's incremental borrowing rate.

Lease expense for minimum lease payments for operating leases are recognized on a straight-line basis over the lease term. Finance leases use the effective interest method to record expense which results in a front-loaded expense recognition pattern.

The following table provides a summary of lease assets and liabilities as of December 31, 2019:

Leases	Balance sheet classification	Amount (in thousands)
Assets:		
Operating lease assets	Right-of-use assets	\$ 234,390
Finance lease assets	Fixed assets	68
Total leased assets		<u>\$ 234,458</u>
Liabilities:		
Current		
Operating lease liabilities	Lease liabilities	\$ 23,613
Finance lease liabilities	Accrued expenses and other current liabilities	28
Noncurrent		
Operating	Lease liabilities, net of current portion	244,216
Total lease liabilities		<u>\$ 267,857</u>

Operating lease expense costs was \$32.2 million for 2019, net of \$2.5 million of operating sublease income related to certain office facilities subleased to third parties. Finance lease costs consisted of \$0.2 million related to the amortization finance lease assets and \$0.1 million of interest expense for 2019.

The following table provides a reconciliation between non-cancelable lease commitments and lease liabilities as of December 31, 2019:

	Operating leases	Finance Leases
Lease commitments (Note 9)	\$ 412,719	\$ 28
Less: Legally binding minimum lease payments for leases signed but not yet commenced	(70,928)	—
Less: Present value discount	(73,962)	—
Total lease liabilities	<u>\$ 267,829</u>	<u>\$ 28</u>

Certain leases contain optional termination dates. If the Company were to extend leases beyond the optional termination date, the future commitments would increase by approximately \$83.0 million.

Lease Term and Discount Rate

The Company uses its estimated incremental borrowing rate, which is derived from information available at the lease commencement date, in determining the present value of operating lease payments. To determine the estimated incremental borrowing rate, the Company uses publicly available credit ratings for peer companies. The Company estimates the incremental borrowing rate using yields for maturities that are in line with the duration of the lease payments.

The following table provides weighted average remaining lease terms and weighted average discount rate for operating and finance leases as of December 31, 2019:

Weighted-average remaining lease term:		
Operating leases		9.2 years
Finance leases		0.25 years
Weighted-average discount rate:		
Operating leases		5.6%
Finance leases		3.8%

Other Information

In 2019, cash payments were \$28.8 million for operating lease liabilities and \$0.3 million for finance lease liabilities.

Asset retirement obligations ("ARO")

On the lease commencement date the Company establishes an ARO based on the present value of contractually required estimated future costs to retire long-lived assets at the termination or expiration of a lease. The asset associated with the ARO is amortized over the corresponding lease term to operating expense and the ARO is accreted to the end of lease obligation value over the same term.

The changes in the ARO balance during the year ending December 31, 2019 and December 31, 2018 are as follows:

	Year Ended December 31,	
	2019	2018
	(in thousands)	
Beginning balance	\$ 1,424	\$ 1,191
Additions	2,028	459
Accretion	103	92
Updates to estimated cash flows	(22)	(318)
Ending balance	<u>\$ 3,533</u>	<u>\$ 1,424</u>

Revenue Recognition — The Company generates revenue from arrangements with multiple performance obligations, which typically include subscriptions to its online software products and professional services which include on-boarding and training services. The Company's customers do not have the right to take possession of the online software products. The Company recognizes revenue from contracts with customers using a five-step model, which is described below:

- Identify the customer contract;
- Identify performance obligations that are distinct;
- Determine the transaction price;
- Allocate the transaction price to the distinct performance obligations; and
- Recognize revenue as the performance obligations are satisfied.

Identify the customer contract

A customer contract is generally identified when the Company and a customer have executed an arrangement that calls for the Company to grant access to its online software products and provide professional services in exchange for consideration from the customer.

Identify performance obligations that are distinct

A performance obligation is a promise to provide a distinct good or service or a series of distinct goods or services. A good or service that is promised to a customer is distinct if the customer can benefit from the good or service either on its own or together with

other resources that are readily available to the customer, and a company's promise to transfer the good or service to the customer is separately identifiable from other promises in the contract. The Company has determined that subscriptions for its online software products are distinct because, once a customer has access to the online software product that it purchased, the online software product is fully functional and does not require any additional development, modification, or customization. Professional services sold are distinct because the customer benefits from the on-boarding and training to make better use of the online software products it purchased.

Determine the transaction price

The transaction price is the amount of consideration to which the Company expects to be entitled in exchange for transferring goods or services to a customer, excluding sales taxes that are collected on behalf of government agencies. The Company estimates any variable consideration to which it will be entitled at contract inception, and reassesses at each reporting date, when determining the transaction price. The Company does not include variable consideration to the extent that it is probable that a significant reversal in the amount of cumulative revenue recognized will occur when any uncertainty associated with the variable consideration is resolved.

Allocate the transaction price to the distinct performance obligations

The transaction price is allocated to each performance obligation based on the relative standalone selling prices ("SSP") of the goods or services being provided to the customer. The Company determines the SSP of its goods and services based upon the average sales prices for each type of online software product and professional services sold. In instances where there are not sufficient data points, or the selling prices for a particular online software product or professional service are disparate, the Company estimates the SSP using other observable inputs, such as similar products or services.

Recognize revenue as the performance obligations are satisfied

Revenues are recognized when or as control of the promised goods or services is transferred to customers. Revenue from online software products is recognized ratably over the subscription period beginning on the date the Company's online software products are made available to customers. Most subscription contracts are one year or less. The Company recognizes revenue from on-boarding and training services as the services are provided. Cash payments received in advance of providing subscription or services are recorded to deferred revenue until the performance obligation is satisfied.

Solutions Partner Commissions

The Company pays its Solutions Partners a commission based on the online software product sales price for sales to end-customers. The classification of the commission paid in the Company's consolidated statements of operations depends on who purchases the online software product. In instances where an end-customer purchases from the Company, the commission paid to the Solutions Partner is recorded as sales and marketing expense. When a Solutions Partner purchases from the Company, the commission paid to the Solutions Partner is netted against the associated revenue recognized.

Disaggregation of Revenue

The Company provides disaggregation of revenue based on geographic region (Note 9) and based on the subscription versus professional services and other classification on the consolidated statements of operations as it believes these best depict how the nature, amount, timing and uncertainty of revenue and cash flows are affected by economic factors.

Deferred Revenue and Deferred Commission Expense

Amounts that have been invoiced are recorded in accounts receivable and deferred revenue or revenue, depending on whether the revenue recognition criteria have been met. Deferred revenue represents amounts billed for which revenue has not yet been recognized. Deferred revenue that will be recognized during the succeeding 12-month period is recorded as current deferred revenue, and the remaining portion is recorded as long-term deferred revenue. Deferred revenue during the year ended December 31, 2019 increased by \$48.6 million resulting from \$723.5 million of calculated billings and was offset by revenue recognized of \$674.9 million during the same period. \$183.7 million of revenue was recognized during the year ended December 31, 2019 that was included in deferred revenue at the beginning of the period. As of December 31, 2019, approximately \$178.4 million of revenue is expected to be recognized from remaining performance obligations for contracts with original performance obligations that exceed one year. The Company expects to recognize revenue on approximately 94% of these remaining performance obligations over the next 24 months, with the balance recognized thereafter.

Additional contract liabilities \$1.4 million and \$1.6 million were included in accrued expenses and other current liabilities as of December 31, 2019 and December 31, 2018.

The incremental direct costs of obtaining a contract, which primarily consist of sales commissions paid for new subscription contracts, are deferred and amortized on a straight-line basis over a period of approximately one to three years. The one to three-year period has been determined by taking into consideration the type of product sold, the commitment term of the customer contract, the nature of the Company's technology development life-cycle, and an estimated customer relationship period. Sales commissions for upgrade contracts are deferred and amortized on a straight-line basis over the remaining estimated customer relationship period of the related customer. Deferred commission expense that will be recorded as expense during the succeeding 12-month period is recorded as current deferred commission expense, and the remaining portion is recorded as long-term deferred commission expense.

Deferred commission expense during the year ended December 31, 2019 increased by \$9.4 million as a result of deferring incremental costs of obtaining a contract of \$42.2 million and was offset by amortization of \$32.8 million during the same period.

Concentrations of Credit Risk and Significant Customers—Financial instruments that potentially expose the Company to concentrations of credit risk consist primarily of cash, investments and accounts receivable.

The Company's cash and cash equivalents are generally held with large financial institutions. Although the Company's deposits may exceed federally insured limits, the financial institutions that the Company uses have high investment-grade credit ratings and, as a result, the Company believes that, as of December 31, 2019, its risk relating to deposits exceeding federally insured limits was not significant.

The Company's investments consist of highly rated corporate debt securities and U.S. Treasury securities. The Company limits the amount of investments in any single issuer, except U.S. Treasuries. The Company believes that, as of December 31, 2019, its concentration of credit risk related to investments was not significant.

The Company has no significant off-balance sheet risk such as foreign exchange contracts, option contracts, or other hedging arrangements.

The Company generally does not require collateral from its customers and generally requires payment 30 days from the invoice date. The Company maintains an allowance for doubtful accounts based on its assessment of the collectability of accounts receivable. Credit risk arising from accounts receivable is mitigated as a result of transacting with a large number of geographically dispersed customers spread across various industries.

At December 31, 2019 and 2018, there were no customers that represented more than 10% of the net accounts receivable balance. There were no customers that individually exceeded 10% of the Company's revenue in any of the periods presented.

Foreign Currency—The functional currency of the Company's foreign subsidiaries is the local currency. Assets and liabilities denominated in a foreign currency are translated into U.S. dollars at the exchange rates in effect at the balance sheet dates, with the resulting translation adjustments directly recorded to a separate component of accumulated other comprehensive loss. Income and expense accounts are translated at the weighted-average exchange rates during the period. Foreign currency transaction gains and losses are recorded in other expense.

Research and Development—Research and development expenses include payroll, employee benefits and other expenses associated with product development.

Capitalized Software Development Costs—Certain payroll and stock compensation costs incurred to develop functionality for the Company's software and internally built software platforms, as well as certain upgrades and enhancements that are expected to result in enhanced functionality are capitalized. The costs incurred in the preliminary stages of development are expensed as incurred. Once an application has reached the development stage, the Company capitalizes certain software development costs for new offerings as well as upgrades to existing software platforms. Capitalized software development costs are amortized on a straight-line basis over their estimated useful life of two to five years. Management evaluates the useful lives of these assets on a quarterly basis and tests for impairment whenever events or changes in circumstances occur that could impact the recoverability of these assets.

The Company determines the amount of internal software costs to be capitalized based on the amount of time spent by the developers on projects in the application stage of development. There is judgment involved in estimating time allocated to a particular project in the application stage. Costs associated with building or significantly enhancing the Growth Platform and internally built software platforms are capitalized, while costs associated with planning new developments and maintaining the Growth Platform software and internally built software platforms are expensed as incurred.

Capitalized software development costs, exclusive of those costs recorded within property and equipment, consisted of the following:

	December 31, 2019	December 31, 2018
	(in thousands)	
Gross capitalized software development costs	\$ 61,641	\$ 46,169
Accumulated amortization	(44,848)	(33,423)
Capitalized software development costs, net	<u>\$ 16,793</u>	<u>\$ 12,746</u>

The Company capitalized software development costs, exclusive of costs recorded within property and equipment, of \$15.5 million in 2019, \$12.8 million in 2018, and \$8.2 million in 2017. Stock-based compensation costs included in capitalized software were \$2.1 million in 2019, \$2.4 million in 2018, and \$1.6 million in 2017.

Amortization of capitalized software development costs, exclusive of costs recorded within property and equipment, was \$11.6 million in 2019, \$9.2 million in 2018, and \$6.3 million in 2017. Amortization expense is included in cost of revenue in the consolidated statements of operations.

Income Taxes—Deferred tax assets and liabilities are recognized for the differences between the financial statement carrying amounts and the tax bases of existing assets and liabilities using tax rates expected to be in effect in the years in which the differences are expected to reverse. Deferred tax assets are reduced by a valuation allowance if it is more likely than not that some portion or all of the deferred tax assets will not be realized.

Accounting for uncertainty in income taxes recognized in the financial statements is in accordance with accounting authoritative guidance, which prescribes a two-step process to determine the amount of tax benefit to be recognized. First, the tax position must be evaluated to determine the likelihood that it will be sustained upon external examination. If the tax position is deemed “more-likely-than-not” to be sustained, the tax position is then assessed to determine the amount of benefit to recognize in the financial statements. The amount of the benefit that may be recognized is the largest amount that has a greater than 50 percent likelihood of being realized upon ultimate settlement.

Stock-Based Compensation—The Company accounts for all stock options and awards granted to employees and nonemployees using a fair value method. Stock-based compensation is recognized as an expense and is measured at the fair value of the award. The measurement date for awards is generally the date of the grant. For stock options, the Black-Scholes option pricing model is used to measure the fair value of the grant. Stock-based compensation costs are recognized as expense over the requisite service period, which is generally the vesting period for awards, on a straight-line basis.

Recent Accounting Pronouncements—Recent accounting standards not included below are not expected to have a material impact on our consolidated financial position and results of operations.

Accounting Pronouncements Adopted in 2018:

On January 1, 2018, the Company adopted new revenue guidance using the modified retrospective method applied to those contracts which were not completed as of January 1, 2018. Results for reporting periods beginning after December 31, 2017 are presented under the new guidance, while prior period amounts are not adjusted and continue to be reported in accordance with historic revenue guidance.

The Company recorded a net increase to opening retained earnings of \$5.5 million as of January 1, 2018 due to the cumulative impact of adopting the new revenue guidance, with the impact primarily related to the recognition of costs associated with obtaining customer contracts. The Company had previously recorded a net increase of \$5.8 million to opening retained earnings as of January 1, 2018 to reflect the adoption of the new revenue guidance and an additional \$274 thousand adjustment to the initial opening retained earnings adjustment to account for the deferred tax impact of the adoption of the new revenue standard.

The resulting impact to the consolidated statements of operations and comprehensive loss of applying the new guidance for the year ended December 31, 2018 versus the prior guidance was a decrease to subscription revenue of \$613 thousand, an increase to professional services and other revenue of \$372 thousand, a decrease to total revenues of \$241 thousand, and a decrease to selling and marketing expense and total operating expenses of \$16.7 million for the year ended December 31, 2018, and a decrease to income tax (expense) benefit of \$168 thousand. The resulting impact to loss from operations and loss before income tax (expense) benefit was \$16.5 million. The resulting impact to net loss and comprehensive loss was \$16.7 million. The resulting impact on basic earnings per share was \$0.43.

The resulting impact to the consolidated balance sheet of applying the new guidance in 2018 versus the prior guidance was a increase to short-term deferred commissions and total current assets of \$4.1 million, an increase to long-term deferred commissions of

\$18.1 million, a decrease to other assets of \$98 thousand, an increase in total assets of \$22.1 million, a decrease to short-term deferred revenue, and total current liabilities of \$89 thousand, an increase to other liabilities of \$8 thousand, a decrease to total liabilities of \$81 thousand, a decrease to accumulated deficit and increase to total stockholders' equity of \$22.2 million, and an increase to total liabilities and stockholders' equity of \$22.1 million. There was no impact to total cash flow from operations of applying the new guidance in 2018 versus the prior guidance because the decrease in net loss of \$16.7 million, increase in the change in deferred commission expense of \$16.7 million, increase in the change in deferred revenue of \$0.2 million, and decrease in deferred taxes of \$0.2 million net to \$0 within cash flows from operations.

Recent Accounting Pronouncements Adopted in 2019:

In June 2018, the Financial Accounting Standards Board ("FASB") issued guidance for stock-based compensation to include share-based payment transactions for acquiring goods and services from nonemployees. The guidance was adopted on January 1, 2019 and did not have a material impact on the consolidated financial statements.

On January 1, 2019, the Company adopted the lease guidance using a modified retrospective transition method applied to those leases which were not completed as of January 1, 2019. Results for reporting periods beginning after December 31, 2018 are presented under the new guidance, while prior period comparative amounts are not adjusted and continue to be reported in accordance with historical guidance. The Company applied the new standard using the package of practical expedients permitted under the transition guidance where the Company:

- did not reassess whether any expired or existing contracts contain a lease;
- did not reassess the classification of existing leases; and
- did not reassess initial direct costs for any existing leases.

In addition, the Company elected the hindsight practical expedient to determine the lease term for existing leases.

The resulting impact, as of the adoption date, to the consolidated balance sheet of applying the new guidance in 2019 versus the prior guidance was an increase to right-of-use assets of \$152.2 million, a decrease to other assets of \$0.3 million, an increase to total assets of \$151.9 million, an increase to short-term lease liabilities of \$14.1 million, a decrease to accrued expenses and other current liabilities of \$0.5 million, an increase to total current liabilities of \$13.5 million, an increase to long-term lease liabilities of \$164.8 million, a decrease to deferred rent, net of current portion of \$26.4 million and an increase to total liabilities of \$151.9 million. There was no impact to stockholders' equity or the consolidated statements of operations as a result of adopting the new guidance. There was no impact to total operating or financing cash flows of applying the new guidance in 2019 versus the prior guidance other than renaming or adding line items to the statements of cash flows to conform to the accounting for, and presentation of, the new standard.

Recent Accounting Pronouncements to be Adopted in 2020:

In January 2017, the FASB issued guidance simplifying the accounting for goodwill impairment by removing Step 2 of the goodwill impairment test. Under current guidance, Step 2 of the goodwill impairment test requires entities to calculate the implied fair value of goodwill in the same manner as the amount of goodwill recognized in a business combination by assigning the fair value of a reporting unit to all of the assets and liabilities of the reporting unit. The carrying value in excess of the implied fair value is recognized as goodwill impairment. Under the new guidance, goodwill impairment is recognized based on Step 1 of the current guidance, which calculates the carrying value in excess of the reporting unit's fair value. The guidance will be effective for the Company on January 1, 2020. The Company does not believe the adoption of this guidance will have a material impact on the consolidated financial statements.

In June 2016, the FASB issued guidance that introduces a new methodology for accounting for credit losses on financial instruments. The guidance establishes a new forward-looking "expected loss model" that requires entities to estimate current expected credit losses on accounts receivable and financial instruments by using all practical and relevant information. The guidance will be effective for the Company on January 1, 2020. Adoption of the guidance will be applied using a modified retrospective approach through a cumulative-effect adjustment to retained earnings as of the effective date. The Company does not believe the adoption of this guidance will have a material impact on the consolidated financial statements.

Recent Accounting Pronouncements to be Adopted in 2021:

In December 2019, the FASB issued guidance simplifying the accounting for incomes taxes by removing the exception to the incremental approach for intraperiod tax allocation when there is a loss from continuing operations and income or a gain from other items, the exception to recognize a deferred tax liability for equity method investments when a foreign subsidiary becomes an equity method investment, and the exception to the general methodology for calculating income taxes in an interim period when a year-to-date loss exceeds the anticipated loss for the year. The guidance also improves consistent application of and simplifies GAAP for

other areas of Topic 740, *Income Taxes*. This guidance will be effective for the Company on January 1, 2021, with early adoption permitted. The Company is currently evaluating the impact of this guidance on the consolidated financial statements.

3. Fair Value of Financial Instruments

The Company measures certain financial assets at fair value. Fair value is determined based upon the exit price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants, as determined by either the principal market or the most advantageous market. Inputs used in the valuation techniques to derive fair values are classified based on a three-level hierarchy, as follows:

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

Level 2 — Observable inputs other than Level 1 prices such as quoted prices for similar assets or liabilities; quoted prices in markets with insufficient volume or infrequent transactions (less active markets); or model-derived valuations in which all significant inputs are observable or can be derived principally from or corroborated by observable market data for substantially the full term of the assets or liabilities.

Level 3 — Unobservable inputs to the valuation methodology that are significant to the measurement of fair value of assets or liabilities.

The following table details the fair value measurements within the fair value hierarchy of the Company's financial assets and liabilities at December 31, 2019 and December 31, 2018 :

	December 31, 2019			
	Level 1	Level 2	Level 3	Total
	(in thousands)			
Cash equivalents and investments:				
Money market funds	\$ 96,618	\$ —	\$ —	\$ 96,618
Commercial paper	—	87,185	—	87,185
Corporate bonds	—	87,138	—	87,138
U.S. Treasury securities	—	631,174	—	631,174
Restricted cash:				
Certificates of deposit	—	5,816	—	5,816
Money market funds	—	3,029	—	3,029
Total	\$ 96,618	\$ 814,342	\$ —	\$ 910,960

	December 31, 2018			
	Level 1	Level 2	Level 3	Total
	(in thousands)			
Cash equivalents and investments:				
Money market funds	\$ 1,579	\$ —	\$ —	\$ 1,579
Commercial paper	—	8,242	—	8,242
Corporate bonds	—	70,728	—	70,728
U.S. Treasury securities	—	413,241	—	413,241
Restricted cash:				
Certificates of deposit	—	5,625	—	5,625
Total	\$ 1,579	\$ 497,836	\$ —	\$ 499,415

The Company considers all highly liquid investments purchased with a remaining maturity of three months or less to be cash equivalents. The fair value of the Company's investments in certain money market funds is their face value and such instruments are classified as Level 1 and are included in cash and cash equivalents, and restricted cash (within other long-term assets) on the consolidated balance sheets. At December 31, 2019 and 2018, Level 2 securities were priced by pricing vendors. These pricing vendors utilize the most recent observable market information in pricing these securities or, if specific prices are not available for these securities, use other observable inputs like market transactions involving identical or comparable securities.

As of December 31, 2019, the fair value of the 2022 Notes (Note 7) was \$693.2 million. The fair value was determined based on the quoted price of the 2022 Notes in an inactive market on the last trading day of the reporting period and has been classified as Level 2 within the fair value hierarchy.

For certain other financial instruments, including accounts receivable, accounts payable, finance leases and other current liabilities, the carrying amounts approximate their fair value due to the relatively short maturity of these balances.

Restricted cash is comprised of money market funds and certificates of deposit related to landlord guarantees for leased facilities. These restricted cash balances have been excluded from our cash and cash equivalents balance on our consolidated balance sheets.

Strategic investments consist of non-controlling equity investments in privately held companies. The Company elected the measurement alternative for these investments without readily determinable fair values and for which the Company does not have the ability to exercise significant influence. These investments are accounted for under the cost method of accounting. Under the cost method of accounting, the non-marketable equity securities are carried at cost less any impairment, plus or minus adjustments resulting from observable price changes in orderly transactions for the identical or a similar investment of the same issuer, which is recorded within the statement of operations. The Company holds \$4.4 million of strategic investments without readily determinable fair values at December 31, 2019 and \$4.0 million of strategic investments without readily determinable fair values at December 31, 2018. These investments are included in other assets on the consolidated balance sheets. There have been no adjustments to the carrying value of strategic investments resulting from impairments or observable price changes.

The following tables summarize the composition of our short- and long-term investments at December 31, 2019 and 2018:

	December 31, 2019			
	Amortized Cost	Unrealized Gains	Unrealized Losses	Aggregate Fair Value
	(in thousands)			
Commercial paper	\$ 77,214	\$ —	\$ —	\$ 77,214
Corporate bonds	86,900	251	(13)	87,138
U.S. Treasury securities	581,066	207	(15)	581,258
Total	<u>\$ 745,180</u>	<u>\$ 458</u>	<u>\$ (28)</u>	<u>\$ 745,610</u>

	December 31, 2018			
	Amortized Cost	Unrealized Gains	Unrealized Losses	Aggregate Fair Value
	(in thousands)			
Commercial paper	\$ 8,256	\$ —	\$ (14)	\$ 8,242
Corporate bonds	70,958	3	(233)	70,728
U.S. Treasury securities	413,323	56	(138)	413,241
Total	<u>\$ 492,537</u>	<u>\$ 59</u>	<u>\$ (385)</u>	<u>\$ 492,211</u>

For all of our securities for which the amortized cost basis was greater than the fair value at December 31, 2019 and 2018, the Company has concluded that there is no plan to sell the security nor is it more likely than not that the Company would be required to sell the security before its anticipated recovery. In making the determination as to whether the unrealized loss is other-than-temporary, the Company considered the length of time and extent the investment has been in an unrealized loss position, the financial condition and near-term prospects of the issuers, the issuers' credit rating and the time to maturity.

Contractual Maturities

The contractual maturities of short-term and long-term investments held as follows:

	December 31, 2019		December 31, 2018	
	Amortized Cost Basis	Aggregate Fair Value	Amortized Cost Basis	Aggregate Fair Value
	(in thousands)			
Due within one year	\$ 691,556	\$ 691,834	\$ 481,071	\$ 480,761
Due after 1 year and within 2 years	53,624	53,776	11,466	11,450
Total	<u>\$ 745,180</u>	<u>\$ 745,610</u>	<u>\$ 492,537</u>	<u>\$ 492,211</u>

4. Property and Equipment

Property and equipment consists of the following:

	December 31.	
	2019	2018
	(in thousands)	
Computer equipment & purchased software	\$ 13,028	\$ 10,714
Employee computer equipment	13,829	8,972
Furniture and fixtures	14,319	13,019
Leasehold improvements	56,618	42,894
Equipment under finance lease	3,450	3,450
Internal-use software	7,770	5,363
Construction in progress	23,714	2,498
Total property and equipment	132,728	86,910
Less accumulated depreciation	(49,079)	(34,442)
Property and equipment, net	\$ 83,649	\$ 52,468

Depreciation and amortization expense was \$15.0 million in 2019, \$12.9 million in 2018, and \$9.4 million in 2017.

Accumulated depreciation for equipment under finance lease was \$3.4 million as of December 31, 2019 and \$3.1 million as of December 31, 2018.

The Company capitalized asset retirement costs of \$3.3 million at December 31, 2019 and \$1.3 million at December 31, 2018 within leasehold improvements and the related liability is within other long-term liabilities on the consolidated balance sheet. These costs represent future lease restoration obligations as required by Company's leases.

5. Business Acquisitions

On October 31, 2019, the Company acquired 100% of the equity interests of PieSync, a Belgian-based technology company that operates an integration platform as a service ("iPaaS") solution which continuously syncs customer data bi-directionally across various software applications. PieSync is one of the only iPaaS technologies that provides both a current and historical two-way sync of customer data that operates in the background, which will offer customers a more efficient way of managing multiple applications. The total cash purchase price for the acquisition was \$23.3 million, net of cash acquired, which includes a working capital settlement of \$0.3 million. Other liabilities assumed includes \$333 thousand of debt, which the Company repaid in 2019. There was approximately \$2.7 million of potential consideration that was not included in the purchase price allocation as it is not associated with pre-combination services. This potential additional payment is contingent upon post-acquisition employment and will be recognized as compensation expense in the consolidated statement of operations over a period of 2 years. The transaction costs associated with the acquisition were approximately \$527 thousand and were recorded in general and administrative expense.

The following table summarizes the fair value of assets acquired and liabilities assumed as of the date of acquisition:

	Fair value	
	(in thousands)	
Cash	\$	646
Accounts receivable		133
Other current and noncurrent assets		218
Acquired developed technology		9,800
Other intangible assets		70
Goodwill		15,219
Accounts payable, accrued expenses, and other liabilities		(731)
Deferred revenue		(210)
Deferred tax liability		(1,324)
Total purchase price	\$	23,821

The excess of the purchase consideration over the fair value of net tangible and identifiable intangible assets and liabilities acquired was recorded as goodwill. The Company will derive significant value from this acquisition through synergies such as cross

selling opportunities and a stronger platform that offers a suite of products not directly matched by competitors. The goodwill recognized is not deductible for U.S. or foreign income tax purposes.

The Company applied variations of the income approach to estimate the fair values of the intangible assets acquired. The primary intangible asset acquired in the business combination was developed technology and the fair value of the developed technology of \$9.8 million was determined based on the estimated present value of expected after-tax cash flows attributable to the technology using an excess earnings method. The Company applied significant estimates and assumptions with respect to forecasted revenue growth rates, the revenue attributable to the acquired intangible asset over its estimated economic life and the discount rate. The fair values assigned to the other tangible and identifiable intangible assets acquired and liabilities assumed as part of the business combination were based on management's estimates and assumptions.

The Company began amortizing the acquired technology on the date of acquisition. The acquired technology is being amortized over seven years using a method reflective of the expected economic benefit consumption over the expected useful life of the asset. The weighted average amortization period for the acquired technology is approximately 4.3 years. The amortization expense is recorded to cost of subscription revenue in the consolidated statements of operations.

The Company has included the operating results of PieSync, which are not material, in its consolidated financial statements since the date of the acquisition. The acquisition did not have a material effect on the revenue or earnings in the consolidated income statement for the reporting periods presented. The pro forma results of the Company as if the acquisition had taken place on the first day of 2018 were not materially different from the amounts reflected in the accompanying consolidated financial statements.

In 2017, the Company acquired 100% of the equity interests of Motion AI, Inc., a Delaware technology corporation that allows users to scale one-to-one communications. The acquisition strengthened the Company's position in the one-to-one communication space. Under the terms of the purchase agreement, the Company paid \$9.0 million. The excess of the purchase consideration over the fair value of net tangible and identifiable intangible assets and liabilities acquired was recorded as goodwill and is primarily attributable to expanded market opportunities. The goodwill recognized was not deductible for U.S. income tax purposes.

The fair values assigned to tangible and identifiable intangible assets acquired and liabilities assumed as part of the business combination were determined based on the replacement costs and present value of expected after-tax cash flows attributable to the business which were derived from management's estimates and assumptions. The sole intangible asset acquired in the business combination was developed technology and the estimate of fair value of the developed technology was determined using a replacement cost approach and the useful life of the technology was estimated to be two years. The Company began amortizing the acquired technology in 2018 when the technology is placed in use.

The allocation of the purchase price to the estimated fair value of acquired assets and assumed liabilities was \$32 thousand of tangible assets, \$6.0 million of acquired technology, and \$5.2 million of goodwill. As part of the purchase price allocation, the Company recorded a deferred tax benefit of \$2.2 million from a partial release of its deferred tax asset valuation allowance. The net deferred tax liability from this acquisition provided a source of additional income to support the realizability of the Company's pre-existing deferred tax assets and as a result, the Company released a portion of its valuation allowance. Lastly, there was approximately \$4.0 million of potential consideration that was not included in the purchase price allocation as it is not associated with pre-combination services.

6. Intangible Assets and Goodwill

Intangible assets acquired through business combinations

Intangible assets as of December 31, 2019 and 2018 consist of the following:

	Weighted Average Remaining Useful Life	December 31,	
		2019	2018
		(in thousands)	
Acquired technology	44 Months	\$ 17,297	\$ 7,252
Other intangible assets	22 Months	70	-
Accumulated amortization		(5,615)	(2,333)
Total		<u>\$ 11,752</u>	<u>\$ 4,919</u>

Other intangible assets include trade name and customer relationship.

The estimated useful life of acquired technology is two to seven years. The Company evaluates the useful lives of these assets on an annual basis and tests for impairment whenever events or changes in circumstances occur that could impact the recoverability of these assets.

Amortization expense related to intangible assets was \$3.2 million in 2019, \$1.4 million in 2018, and \$103 thousand in 2017. Amortization expense of acquired technology is included in cost of subscription revenue in the consolidated statements of operations.

Estimated future amortization expense for intangible assets as of December 31, 2019 is as follows:

<u>Years ended December 31,</u>	<u>Amortization Expense</u> (in thousands)
2020	\$ 2,414
2021	927
2022	1,286
2023	1,686
2024	1,966
Thereafter	3,473
Total	\$ 11,752

Goodwill

Goodwill represents the excess of the purchase price in a business combination over the fair value of net assets acquired and is generally not deductible for tax purposes. Goodwill amounts are not amortized, but rather tested for impairment annually.

There was no change in the carrying amount of goodwill in 2018. The changes in the carrying amounts of goodwill in 2019, consist of the following:

	<u>(in thousands)</u>
Balance as of December 31, 2018	\$ 14,950
PieSync acquisition	15,219
Effect of foreign currency translation	81
Balance as of December 31, 2019	\$ 30,250

7. 0.25% Convertible Senior Notes, Convertible Note Hedge and Warrant

In May 2017, the Company issued \$350 million aggregate principal amount of 0.25% convertible senior notes due June 1, 2022 (the "Maturity Date") in a private offering and an additional \$50 million aggregate principal amount of such notes pursuant to the exercise in full of the over-allotment options of the initial purchasers (the "2022 Notes"). The interest rates are fixed at 0.25% per annum and are payable semi-annually in arrears on June 1 and December 1 of each year, commencing on December 1, 2017. The total net proceeds from the debt offering, after deducting initial purchase discounts and debt issuance costs, were approximately \$389.2 million.

Each \$1,000 principal amount of the 2022 Notes will initially be convertible into 10.5519 shares of the Company's common stock (the "Conversion Option"), which is equivalent to an initial conversion price of approximately \$94.77 per share, subject to adjustment upon the occurrence of specified events. The 2022 Notes will be convertible at the option of the holders at any time prior to the close of business on the business day immediately preceding February 1, 2022, only under the following circumstances: (1) during any calendar quarter commencing after the calendar quarter ending on June 30, 2017, if the last reported sale price of the Company's common stock for at least 20 trading days (whether or not consecutive) during a period of 30 consecutive trading days ending on the last trading day of the immediately preceding calendar quarter is greater than or equal to 130% of the conversion price on each applicable trading day; (2) during the five business day period after any five consecutive trading day period (the "Measurement Period") in which the trading price per \$1,000 principal amount of notes for each trading day of the Measurement Period was less than 98% of the product of the last reported sale price of the Company's common stock and the conversion rate on each such trading day; or (3) upon the occurrence of specified corporate events. At December 31, 2019 and 2018 the Company has reserved approximately 4.2 million shares of common stock for issuance upon conversion of the 2022 Notes. On or after February 1, 2022 until the close of business on the second scheduled trading day immediately preceding the Maturity Date, holders may convert

their 2022 Notes at any time, regardless of the foregoing circumstances. Upon conversion, the Company will pay or deliver, as the case may be, cash, shares of the Company's common stock or a combination of cash and shares of the Company's common stock, at the Company's election. If the Company undergoes a fundamental change prior to the maturity date, holders of the notes may require the Company to repurchase for cash all or any portion of their notes at a repurchase price equal to 100% of the principal amount of the notes to be repurchased, plus accrued and unpaid interest to, but excluding, the fundamental change repurchase date. In addition, if specific corporate events occur prior to the applicable maturity date, the Company will increase the conversion rate for a holder who elects to convert their notes in connection with such a corporate event in certain circumstances. Because the last reported sale price of the Company's common stock for at least 20 trading days during the period of 30 consecutive trading days ending on the last trading day of the calendar quarter ended December 31, 2019 was equal to or greater than 130% of the applicable conversion price on each applicable trading day, the 2022 Notes are convertible at the option of the holders thereof during the calendar quarter ending March 31, 2020. As of December 31, 2019, the Company settled approximately \$8 thousand of the principal balance of the 2022 Notes in cash.

In accounting for the issuance of the convertible senior notes, the Company separated the 2022 Notes into liability and equity components. The carrying amount of the liability component was calculated by measuring the fair value of a similar debt instrument that does not have an associated convertible feature. The carrying amount of the equity component representing the Conversion Option was \$106 million and was determined by deducting the fair value of the liability component from the par value of the 2022 Notes. The equity component is not remeasured as long as it continues to meet the conditions for equity classification. The excess of the principal amount of the liability component over its carrying amount (the "Debt Discount") is amortized to interest expense over the term of the 2022 Notes expense at an effective interest rate of 6.95% over the contractual term of the 2022 Notes.

In accounting for the debt issuance costs of \$10.8 million related to the 2022 Notes, the Company allocated the total amount incurred to the liability and equity components of the 2022 Notes based on their relative values. Issuance costs attributable to the liability component were \$7.9 million and will be amortized to interest expense using the effective interest method over the contractual terms of the 2022 Notes. Issuance costs attributable to the equity component were \$2.9 million and are netted with the equity component in stockholders' equity.

The net carrying amount of the liability component of the 2022 Notes is as follows:

	As of December 31, 2019	As of December 31, 2018
	(in thousands)	
Principal	\$ 399,992	\$ 400,000
Unamortized debt discount	(55,299)	(75,575)
Unamortized issuance costs	(4,129)	(5,643)
Net carrying amount	<u>\$ 340,564</u>	<u>\$ 318,782</u>

The net carrying amount of the equity component of the 2022 Notes is as follows:

	As of December 31, 2019	As of December 31, 2018
	(in thousands)	
Debt discount for conversion option	\$ 106,006	106,006
Issuance costs	(2,854)	(2,854)
Net carrying amount	<u>\$ 103,152</u>	<u>\$ 103,152</u>

Interest expense related to the 2022 Notes is as follows:

	Year Ended December 31,		
	2019	2018	2017
	(in thousands)		
Contractual interest expense	\$ 1,000	\$ 1,000	\$ 639
Amortization of debt discount	20,277	18,923	11,507
Amortization of issuance costs	1,513	1,412	859
Total interest expense	<u>\$ 22,790</u>	<u>\$ 21,335</u>	<u>\$ 13,005</u>

In connection with the offering of the 2022 Notes, the Company entered into convertible note hedge transactions (the “Convertible Note Hedges”) with certain counterparties in which the Company has the option to purchase (subject to adjustment for certain specified events) a total of approximately 4.2 million shares of the Company’s common stock at a price of approximately \$94.77 per share. The Convertible Note Hedges will be settled in cash or shares, or any combination thereof, in accordance with the settlement method of the 2022 Notes in excess of the par amount, and are expected to settle upon conversion of the 2022 Notes. The total cost of the Convertible Note Hedges was \$78.9 million. In addition, the Company sold warrants to certain bank counterparties whereby the holders of the warrants have the option to purchase initially (subject to adjustment for certain specified events) a total of approximately 4.2 million shares of the Company’s common stock at a price of \$115.80 per share. The amount by which the settlement price exceeds the strike price may be settled in shares or cash at the Company’s election. The warrants are expected to settle three business days from each trading day commencing on September 1, 2022 and ending on the 79th trading day thereafter. The Company received \$58.9 million in cash proceeds, net of issuance costs of \$200 thousand, from the sale of these warrants. Taken together, the purchase of the Convertible Note Hedges and the sale of warrants are intended to offset any actual dilution from the conversion of these notes and to effectively increase the overall conversion price from \$94.77 to \$115.83 per share. As these transactions meet certain accounting criteria, the Convertible Note Hedges and warrants are recorded in stockholders’ equity and are not accounted for as derivatives. The net cost of \$20 million incurred in connection with the Convertible Note Hedges and warrant transactions was recorded as a reduction to additional paid-in capital on the consolidated balance sheet.

The number of shares of our common stock underlying the warrants is 4.2 million, the same number of shares originally underlying the 2022 Notes and the Convertible Note Hedge transactions. The Company has reserved 4.2 million shares of common stock for the underlying warrants.

The difference between the Debt Discount and the total cost of the Convertible Note Hedges, and the difference between the calculation of the book and tax allocation of debt issuance costs between the liability and equity components of the 2022 Notes, resulted in a difference between the carrying amount and tax basis of the 2022 Notes. This taxable temporary difference resulted in the Company recognizing a \$9.4 million deferred tax liability which was recorded as an adjustment to additional paid-in capital on the consolidated balance sheet. The creation of the deferred tax liability is recognized as a component of equity and represents a source of future taxable income which supports realization of a portion of the income tax benefit associated with the 2017 loss from operations. Therefore, the Company recorded a corresponding income tax benefit in its consolidated statement of operations in 2017.

The net equity impact, included in additional paid-in capital, of the above components of the 2022 Notes is as follows:

	(in thousands)
Conversion Option	\$ 106,006
Purchase of Convertible Note Hedges	(78,920)
Sales of warrants	59,080
Issuance costs	(3,054)
Deferred tax liability	(9,399)
Total	<u>\$ 73,713</u>

8. Segment Information and Geographic Data

As more fully described in the Company’s Summary of Significant Accounting Policies, the Company operates in one operating segment. Revenue and long-lived assets by geographic region, based on physical location of the operations recording the sale or the assets are as follows:

Revenues by geographical region:

	Year Ended December 31,		
	2019	2018	2017
	(In thousands)		
Americas	\$ 456,568	\$ 361,136	\$ 283,696
Europe	168,452	117,670	70,895
Asia Pacific	49,840	34,174	21,021
Total	<u>\$ 674,860</u>	<u>\$ 512,980</u>	<u>\$ 375,612</u>
Percentage of revenues generated outside of the Americas	<u>32%</u>	<u>30%</u>	<u>24%</u>

Revenue derived from customers outside the United States (international) was approximately 40% of total revenue in 2019, 37% of total revenue in 2018 and 33% of total revenue in 2017.

Total long-lived assets by geographical region:

	As of December 31, 2019	As of December 31, 2018
	(In thousands)	
Americas	\$ 175,821	\$ 35,186
Europe	127,395	13,913
Asia Pacific	14,823	3,369
Total long lived assets	<u>\$ 318,039</u>	<u>\$ 52,468</u>
Percentage of long lived assets held outside of the Americas	<u>45%</u>	<u>33%</u>

9. Commitments and Contingencies

The Company leases its office facilities under non-cancelable operating leases that expire at various dates through May 2031. Rent expense for non-cancelable operating leases with free rental periods or scheduled rent increases is recognized on a straight-line basis over the terms of the leases. Improvement reimbursements from landlords of \$16.0 million are being amortized on a straight-line basis into rent expense over the terms of the corresponding leases. Certain leases contain optional termination dates. The table below only includes payments up to the optional termination date. If the Company were to extend leases beyond the optional termination date the future commitments would increase by approximately \$83.0 million.

Rent expense was \$32.9 million in 2019, \$23.1 million in 2018, and \$18.9 million in 2017.

Future minimum payments under all operating and finance lease agreements as of December 31, 2019, are as follows:

	Operating	Finance
	(in thousands)	
2020	\$ 42,466	\$ 28
2021	48,935	—
2022	48,286	—
2023	47,893	—
2024	46,581	—
Thereafter	178,558	—
Total	<u>\$ 412,719</u>	<u>28</u>
Less: Portion representing interest		—
Finance lease obligation		<u>\$ 28</u>

As previously disclosed in our 2018 Annual Report on Form 10-K and under the previous lease accounting standard, the future minimum payments under all operating and capital lease agreements as of December 31, 2018 are as follows:

	Operating	Capital
	(in thousands)	
2019	\$ 27,755	\$ 298
2020	33,769	33
2021	35,414	—
2022	35,314	—
2023	35,686	—
Thereafter	184,341	—
Total	<u>\$ 352,279</u>	<u>331</u>
Less: Portion representing interest		(20)
Finance lease obligation		<u>\$ 311</u>

The Company has entered into certain non-cancelable arrangements (“Vendor Commitments”), which require the future purchase of goods or services.

Future minimum payments under all Vendor Commitments as of December 31, 2019, are as follows:

	Product related obligations	INBOUND event obligations
	(in thousands)	
2020	\$ 18,750	\$ 653
2021	12,500	653
2022	—	316
2023	—	653
2024	—	—
Total	<u>\$ 31,250</u>	<u>\$ 2,275</u>

Legal Contingencies

From time to time the Company may become involved in legal proceedings or be subject to claims arising in the ordinary course of its business. Although the results of litigation and claims cannot be predicted with certainty, the Company currently believes that the final outcome of these ordinary course matters will not have a material adverse effect on its business, operating results, financial condition or cash flows. Regardless of the outcome, litigation can have an adverse impact on the Company because of defense and settlement costs, diversion of management resources and other factors.

10. Changes in Accumulated Other Comprehensive Loss

The following table summarizes the changes in accumulated other comprehensive loss, which is reported as a component of stockholders' equity, for the years ended December 31, 2019 and 2018:

	Cumulative Translation Adjustment	Unrealized Gain (Loss) on Investments	Total
	(in thousands)		
Beginning balance at January 1, 2018	\$ 379	\$ (436)	\$ (57)
Other comprehensive (loss) income before reclassifications	(776)	110	(666)
Amounts reclassified from accumulated other comprehensive loss	—	—	—
Ending balance at December 31, 2018	<u>\$ (397)</u>	<u>\$ (326)</u>	<u>\$ (723)</u>
Other comprehensive (loss) income before reclassifications	(213)	600	387
Amounts reclassified from accumulated other comprehensive loss	—	—	—
Ending balance at December 31, 2019	<u>\$ (610)</u>	<u>\$ 274</u>	<u>\$ (336)</u>

11. Stockholders' Equity and Stock-Based Compensation

Common Stock Reserved — As of December 31, 2019 and 2018, the Company has authorized 500 million shares of common stock. The number of shares of common stock reserved for the vesting of RSUs and exercise of common stock options are as follows (in thousands):

	December 31, 2019	December 31, 2018
RSUs	1,529	1,983
Common stock options	1,494	1,840
	<u>3,023</u>	<u>3,823</u>

For shares reserved for issuance for the Conversion Option of the 2022 Notes and common stock warrants see Note 7.

Equity Incentive Plan —The Company’s 2007 Equity Incentive Plan (the “2007 Plan”) was terminated in connection with the IPO, and accordingly, no shares are available for issuance under the 2007 Plan. The 2007 Plan will continue to govern outstanding awards granted thereunder, the 2007 Plan provided for the grant of qualified incentive stock options and nonqualified stock options or other awards such as RSUs to the Company’s employees, officers, directors and outside consultants. The term of each option is fixed by the Company’s compensation committee and may not exceed 10 years from the date of grant. As of December 31, 2019, 1.0 million options to purchase common stock and no RSUs remained outstanding under the 2007 Plan.

On September 25, 2014, the Company’s board of directors adopted and the Company’s stockholders approved the 2014 Stock Option and Incentive Plan (the “2014 Plan”). The 2014 Plan became effective upon the closing of the Company’s IPO in the fourth quarter of 2014. The Company initially reserved 1,973,551 shares of its common stock, or the Initial Limit, for the issuance of awards under the 2014 Plan. The 2014 Plan provides that the number of shares reserved and available for issuance under the plan automatically increases each January 1, beginning on January 1, 2015, by 5% of the outstanding number of shares of the Company’s common stock on the immediately preceding December 31 or such lesser number of shares as determined by the compensation committee. This number is subject to adjustment in the event of a stock split, stock dividend or other change in the Company’s capitalization. The term of each option is fixed by the Company’s compensation committee and may not exceed 10 years from the date of grant. As of December 31, 2019, 526 thousand options to purchase common stock and 1.5 million RSUs remained outstanding under the 2014 Plan.

Equity Compensation Expense —The Company’s equity compensation expense is comprised of awards of options to purchase common stock, RSUs, and stock issued under the Company’s ESPP.

The following two tables show stock compensation expense by award type and where the stock compensation expense is recorded in the Company’s consolidated statements of operations:

	Year Ended December 31,		
	2019	2018	2017
	(in thousands)		
Options	\$ 5,078	\$ 5,108	\$ 4,948
ESPP	4,866	2,833	1,233
RSUs	87,810	68,320	41,136
Total stock-based compensation	<u>\$ 97,754</u>	<u>\$ 76,261</u>	<u>\$ 47,317</u>
	(in thousands)		
Cost of revenue, subscription	\$ 3,127	\$ 1,476	\$ 658
Cost of revenue, service	2,829	2,924	2,327
Research and development	33,748	23,328	12,816
Sales and marketing	36,599	31,099	19,016
General and administrative	21,451	17,434	12,500
Total stock-based compensation	<u>\$ 97,754</u>	<u>\$ 76,261</u>	<u>\$ 47,317</u>

Excluded from stock-based compensation expense is \$2.4 million of capitalized software development costs in 2019, \$2.4 million in 2018, and \$1.6 million in 2017.

Stock Options —The fair value of employee options is estimated on the date of each grant using the Black-Scholes option-pricing model with the following assumptions:

	Year Ended December 31,		
	2019	2018	2017
Risk-free interest rate (%)	1.95-2.55	2.62-2.85	1.74-2.09
Expected term (years)	5.50-6.02	5.06-6.42	5.18-6.21
Volatility (%)	39.46-41.41	41.34-43.55	39.4-43.7
Expected dividends	—	—	—

The weighted-average grant-date fair value of options granted was \$69.44 per share in 2019, \$51.48 per share in 2018, and \$24.56 per share in 2017.

The interest rate was based on the U.S. Treasury bond rate at the date of grant with a maturity approximately equal to the expected term. The expected term of options granted to employees was calculated using the simplified method, which represents the average of the contractual term of the option and the weighted-average vesting period of the option. The expected volatility for the Company's common stock was based on an average of the historical volatility of a peer group of similar public companies. The assumed dividend yield is based upon the Company's expectation of not paying dividends in the foreseeable future. Forfeitures of share-based awards prior to vesting results in a reversal of previously recorded stock-compensation expense associated with such forfeited awards. The fair value of the Company's common stock is the closing price of the stock on the date of grant.

The stock option activity for the year ended December 31, 2019 is as follows:

	Options (in thousands)	Weighted- Average Exercise Price	Weighted- Average Remaining Life (in years)	Aggregate Intrinsic Value (in thousands)
Outstanding—January 1, 2019	1,840	\$ 23.89	4.6	\$ 187,342
Granted	106	160.15		
Exercised	(416)	20.95		
Forfeited/expired	(36)	77.31		
Outstanding—December 31, 2019	<u>1,494</u>	33.09	4.0	\$ 187,398
Options vested or expected to vest—December 31, 2019	1,494	\$ 33.09	4.0	\$ 187,398
Options exercisable—December 31, 2019	1,294	\$ 19.63	3.3	\$ 179,688

Total unrecognized compensation cost related to the nonvested options was \$8.6 million at December 31, 2019. That cost is expected to be recognized over a weighted-average period of 2.5 years as of December 31, 2019.

Restricted Stock Units—RSUs vest upon achievement of a service condition. The service condition is a time-based condition met over a period of four years, with 25% met after one year, and then in equal monthly or quarterly installments over the succeeding three years, or over a period of four years, with equal quarterly installments over those four years. As soon as practicable following each vesting date, the Company will issue to the holder of the RSUs the number of shares of common stock equal to the aggregate number of RSUs that have vested. Notwithstanding the foregoing, the Company may, in its sole discretion, in lieu of issuing shares of common stock to the holder of the RSUs, pay the holder an amount in cash equal to the fair market value of such shares of common stock. The service condition is a time-based condition met over a period of four years, with 25% met after one year, and then in equal monthly or quarterly installments over the succeeding three years, or over a period of four years, with equal quarterly installments over those four years. The total stock-based compensation expense expected to be recorded over the remaining life of outstanding RSUs is approximately \$163.2 million at December 31, 2019. That cost is expected to be recognized over a weighted-average period of 2.6 years. As of December 31, 2019, there are 1.5 million RSUs expected to vest with an aggregate intrinsic value of \$242.3 million. The total fair value of RSUs vested was approximately \$85.2 in 2019, \$65.0 million in 2018, and \$48.6 million in 2017.

The following table summarizes the activity related to RSUs for the year ended December 31, 2019:

	RSUs Outstanding	
	Shares (in thousands)	Weighted- Average Grant Date Fair Value Per Share
Unvested and outstanding at January 1, 2019	1,983	\$ 83.67
Granted	772	158.86
Vested	(1,011)	84.34
Canceled	(215)	95.64
Unvested and outstanding at December 31, 2019	<u>1,529</u>	\$ 119.46

Employee Stock Purchase Plan (“ESPP”)— The ESPP authorizes the issuance of up to a total of 1,785,021 shares of common stock to participating employees and allows eligible employees to purchase shares of common stock at a 15% discount from the fair market value of the stock as determined on specific dates at six-month intervals. The offering periods for the ESPP commence on June 1 and November 1 of each year.

The following table summarizes the activity related to ESPP:

	Shares Issued (in thousands)	Weighted- Average Purchase Price	Total Cash Proceeds (in thousands)
2019	116	\$ 123.69	\$ 14,383
2018	148	\$ 80.21	\$ 11,863
2017	94	\$ 38.83	\$ 3,635

12. Income Taxes

Loss before provision for income taxes was as follows:

	Year Ended December 31,		
	2019	2018	2017
	(in thousands)		
United States	\$ (63,200)	\$ (69,769)	\$ (54,894)
Foreign	12,427	7,809	4,855
Total	<u>\$ (50,773)</u>	<u>\$ (61,960)</u>	<u>\$ (50,039)</u>

The (provision) benefit for income taxes consists of the following:

	Year Ended December 31,		
	2019	2018	2017
	(in thousands)		
Current income tax provision			
Federal	\$ (238)	\$ (184)	\$ —
State	(241)	(140)	(144)
Foreign	(3,293)	(1,508)	(1,077)
Total current income tax provision	<u>(3,772)</u>	<u>(1,832)</u>	<u>(1,221)</u>
Deferred income tax benefit			
Federal	160	21	10,435
State	—	—	977
Foreign	639	(57)	134
Total deferred income tax benefit (expense)	<u>799</u>	<u>(36)</u>	<u>11,546</u>
Total income tax benefit (provision)	<u>\$ (2,973)</u>	<u>\$ (1,868)</u>	<u>\$ 10,325</u>

The following reconciles the differences between income taxes computed at the federal statutory rate of 21% for 2019 and 2018 and 35% for 2017 and the provision for income taxes:

	Year Ended December 31,		
	2019	2018	2017
	(in thousands)		
Expected income tax benefit at the federal statutory rate	\$ 10,665	\$ 12,955	\$ 17,166
State taxes net of federal benefit	3,700	5,155	5,150
Stock-based compensation	16,055	17,575	10,939
Executive compensation limitation	(7,244)	—	—
Difference in foreign tax rates	693	435	988
U.S. tax credits	24,170	1,763	1,717
Convertible debt and acquisition	—	—	11,573
Federal rate change	—	—	(49,123)
Transition tax	—	—	(1,063)
GILTI inclusion	(1,645)	(1,177)	—
Meals and entertainment	(1,208)	(1,411)	(745)
Change in valuation allowance	(47,523)	(37,059)	13,988
Other	(636)	(104)	(265)
Income tax benefit (provision)	<u>\$ (2,973)</u>	<u>\$ (1,868)</u>	<u>\$ 10,325</u>

On December 22, 2017, the United States of America signed tax legislation (the “2017 Act”) which enacted a wide range of changes to the U.S. corporate income tax system. The 2017 Act reduced the U.S. corporate tax rate from 35% to 21% effective January 1, 2018, broadened the tax base and changes rules for expensing and capitalizing business expenditures, established a territorial tax system for foreign earnings as well as a minimum tax on certain foreign earnings, provided for a one-time transition tax on previously undistributed foreign earnings, and introduced new rules for the treatment of certain export sales. The Company recorded provisional estimates for the impact of the 2017 Act during the period ended December 31, 2017 and completed the accounting in 2018 without any significant adjustments to the provisional estimates.

Deferred Tax Assets and Liabilities —Deferred income taxes reflect the net effects of temporary differences between the carrying amounts of assets and liabilities for financial reporting purposes and the amounts used for income tax purposes. Significant components of the Company’s deferred tax assets and liabilities were as follows:

	Year Ended December 31,	
	2019	2018
	(in thousands)	
Deferred tax assets:		
Net operating loss carryforwards	\$ 142,512	\$ 118,897
Research and investment credits	35,285	11,154
Accruals and reserves	9,239	7,734
Depreciation	1,756	1,119
Stock-based compensation	5,451	5,404
Interest expense	3,197	2,466
Total deferred tax assets	<u>197,440</u>	<u>146,774</u>
Deferred tax liabilities:		
Intangible assets	(2,678)	(1,002)
Convertible debt	(3,550)	(4,675)
Capitalized costs	(11,351)	(8,002)
Depreciation	(138)	—
Total deferred tax liabilities	<u>(17,717)</u>	<u>(13,679)</u>
Valuation allowance	(180,092)	(132,759)
Net deferred tax assets	<u>\$ (369)</u>	<u>\$ 336</u>

The Company reviews all available evidence to evaluate the realizability of its deferred tax assets, including its recent history of accumulated losses over the most recent three years as well as its ability to generate income in future periods. The Company has provided a valuation allowance against its U.S. net deferred tax assets as it is more likely than not that these assets will not be realized given the nature of the assets and the likelihood of future utilization.

The valuation allowance increased by \$47.3 million in 2019, \$36.1 million in 2018 and \$5.5 million in 2017, primarily due to the increase in the U.S. net operating loss deferred tax asset. The Company does not expect any significant changes in its valuation allowance positions within the next 12 months.

Prior to the 2017 Act, the Company had asserted that the earnings of its foreign subsidiaries were indefinitely reinvested in the operations of those subsidiaries. In 2018, the Company completed its accounting for the impact of the 2017 Act and determined that it would no longer assert indefinite reinvestment of its foreign earnings. Earnings through December 31, 2017 have been subject to U.S. federal income tax via the one-time transition tax on previously undistributed foreign earnings. The foreign earnings for the years ended December 31, 2019 and 2018 have been subject to U.S. federal income tax via the Global Intangible Low-Taxed Income (“GILTI”) provision. The Company has determined that any incremental tax incurred upon ultimate distribution of these earnings to the U.S. would not be material.

The Company had federal and state net operating loss carryforwards of \$947 million at December 31, 2019 and \$781 million at December 31, 2018. The Company also had international net operating loss carryforwards of \$6 million at December 31, 2019. As a result of the 2017 Act all federal net operating losses, created after January 1, 2018, have an indefinite carryforward period. All federal net operating losses, created before January 1, 2018, are subject to a 20 year carryforward period and will expire at various dates through 2037. State net operating losses will expire at various dates through 2039. The Company has a federal interest expense carryforward of \$13.0 million at December 31, 2019, and \$10.0 million at December 31, 2018, which have an indefinite carryforward period.

The Company had federal research and development credit carryforwards of \$23.0 million at December 31, 2019 that expire at various dates through 2039. The Company also has state research and investment tax credit carryforwards of \$12.2 million, that expire at various dates through 2034.

Under Section 382 of the Internal Revenue Code of 1986, as amended, substantial changes in the Company's ownership may limit the amount of net operating loss carryforwards that could be utilized annually in the future to offset taxable income. Specifically, this limitation may arise in the event of a cumulative change in ownership of the Company of more than 50% within a three-year period. Any such annual limitation may significantly reduce the utilization of net operating loss carryforwards before they expire. The Company performed an analysis through December 31, 2018 and determined any potential ownership change under Section 382 during the year would not have a material impact on the future utilization of US net operating losses and tax credits. There was no material change to this conclusion in 2019. However, future transactions in the Company's common stock could trigger an ownership change for purposes of Section 382, which could limit the amount of net operating loss carryforwards and other attributes that could be utilized annually in the future to offset taxable income, if any. Any such limitation, whether as the result of sales of common stock by our existing stockholders or sales of common stock by the Company, could have a material adverse effect on results of operations in future years.

Uncertain Tax Positions —The Company accounts for uncertainty in income taxes using a two-step process. The Company first determines whether it is more likely than not that a tax position will be sustained upon examination by a tax authority, including resolutions of any related appeals or litigation processes, based on technical merit. If a tax position meets the more-likely-than-not recognition threshold it is then measured to determine the amount of benefit to recognize in the financial statements. The tax position is measured as the largest amount of benefit that is greater than 50% likely of being realized upon ultimate settlement.

The following summarizes activity related to unrecognized tax benefits:

	Year Ended December 31,		
	2019	2018	2017
	(in thousands)		
Unrecognized benefit—beginning of the year	\$ 3,925	\$ 2,725	\$ 1,742
Gross increases—current period positions	2,387	1,200	983
Gross decrease—prior period positions	(867)	—	—
Unrecognized benefit—end of period	<u>\$ 5,445</u>	<u>\$ 3,925</u>	<u>\$ 2,725</u>

All of the gross unrecognized tax benefits represent a reduction to the research and development tax credit carryforward. The gross decrease to prior period positions is a result of the Company completing its documentation of credits generated between 2015 and 2018.

All of the unrecognized tax benefits decrease deferred tax assets with a corresponding decrease to the valuation allowance. None of the unrecognized tax benefits would affect the Company's effective tax rate if recognized in the future.

The Company has elected to recognize interest and penalties related to uncertain tax positions as a component of income tax expense. No interest or penalties have been recorded through December 31, 2019 because the Company has no tax due because of significant NOL carryforwards.

The Company does not expect any significant change in its unrecognized tax benefits within the next 12 months.

The Company files tax returns in the United States and various jurisdictions throughout the world where the Company has operations or established a taxable presence. All of the Company's tax years remain open to examination in the United States, as carryforward attributes generated in past years may still be adjusted upon examination by the Internal Revenue Service or state tax authorities if they have or will be used in future periods. The Company remains open to examination for varying periods in the other foreign jurisdictions and is routinely examined by various taxing authorities.

13. Employee Benefit Plan

The Company maintains a defined contribution savings plan under Section 401(k) of the Internal Revenue Code. This plan covers certain employees who meet minimum age and service requirements and allows participants to defer a portion of their annual compensation on a pretax basis, subject to legal limitations. Total employer contributions were \$4.8 million in 2019, \$4.0 million in 2018, and \$2.9 million in 2017.

14. Quarterly Financial Results (unaudited)

	Fourth Quarter	Third Quarter	Second Quarter	First Quarter
	(in thousands, except per share amounts)			
Year ended December 31, 2019				
Revenue	\$ 186,186	\$ 173,621	\$ 163,255	\$ 151,798
Cost of revenue	35,975	33,263	31,142	29,578
Gross profit	150,211	140,358	132,113	122,220
Net loss	(10,302)	(14,987)	(17,357)	(11,100)
Basic and diluted net loss per share	\$ (0.24)	\$ (0.35)	\$ (0.41)	\$ (0.27)
Year ended December 31, 2018				
Revenue	\$ 144,022	\$ 131,826	\$ 122,576	\$ 114,556
Cost of revenue	27,364	25,765	24,851	22,377
Gross profit	116,658	106,061	97,725	92,179
Net loss	(11,492)	(18,663)	(18,225)	(15,448)
Basic and diluted net loss per share	\$ (0.29)	\$ (0.48)	\$ (0.48)	\$ (0.41)

ITEM 9. Changes in and Disagreements with Accountants on Accounting and Financial Disclosure

None.

ITEM 9A. Controls and Procedures

(a) Evaluation of Disclosure Controls and Procedures

Our management, with the participation of our Chief Executive Officer and Chief Financial Officer, has evaluated the effectiveness of our disclosure controls and procedures (as defined in Rules 13a-15(e) and 15d-15(e) under the Securities Exchange Act of 1934, as amended (the Exchange Act)), as of the end of the period covered by this Annual Report on Form 10-K. Based on such evaluation, our Chief Executive Officer and Chief Financial Officer have concluded that as of December 31, 2019, our disclosure controls and procedures were effective at the reasonable assurance level.

(b) Management's Report on Internal Control Over Financial Reporting

Our management, with the participation of our Chief Executive Officer and Chief Financial Officer, is responsible for establishing and maintaining adequate internal control over financial reporting. Internal control over financial reporting is defined in Rules 13a-15(f) or 15d-15(f) promulgated under the Exchange Act as a process designed by, or under the supervision of, the company's principal executive and principal financial officers and effected by the company's board of directors, management and other personnel, 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 and includes those policies and procedures that:

- pertain to the maintenance of records that in reasonable detail accurately and fairly reflect the transactions and dispositions of the assets of the company;
- 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
- 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.

Our management assessed the effectiveness of the Company's internal control over financial reporting as of December 31, 2019. In making this assessment, our management used the criteria set forth by the Committee of Sponsoring Organizations of the Treadway Commission (COSO) in *Internal Control — Integrated Framework* (2013).

Based on our assessment, management, with the participation of our Chief Executive Officer and Chief Financial Officer, concluded that, as of December 31, 2019, our internal control over financial reporting was effective based on those criteria.

The effectiveness of the Company's internal control over financial reporting as of December 31, 2019 has been audited by PricewaterhouseCoopers LLP, an independent registered public accounting firm, as stated in its report, which is included under Item 8 of this annual report on Form 10-K

(c) Inherent Limitations of Internal Controls

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

(d) Changes in Internal Control over Financial Reporting

No change in our internal control over financial reporting occurred during the quarter ended December 31, 2019 that has materially affected, or is reasonably likely to materially affect, our internal control over financial reporting.

ITEM 9B. Other Information

None.

PART III

ITEM 10. Directors, Executive Officers and Corporate Governance

The complete response to this Item regarding the backgrounds of our executive officers and directors and other information required by Items 401, 405 and 407 of Regulation S-K will be contained in our definitive proxy statement for our 2020 Annual Meeting of Stockholders.

Code of Business Conduct and Ethics

We have adopted a code of business conduct and ethics that is applicable to all of our employees, officers and directors including our chief executive officer and senior financial officers, which is available on our website under “Investor Relations—Leadership & Governance.”

ITEM 11. Executive Compensation

The information required by this Item is incorporated by reference herein to our definitive proxy statement for our 2020 Annual Meeting of Stockholders.

ITEM 12. Security Ownership of Certain Beneficial Owners and Management and Related Stockholder Matters

The information required by this Item is incorporated by reference herein to our definitive proxy statement for our 2020 Annual Meeting of Stockholders.

ITEM 13. Certain Relationships and Related Transactions, and Director Independence

The information required by this Item is incorporated by reference herein to our definitive proxy statement for our 2020 Annual Meeting of Stockholders.

ITEM 14. Principal Accountant Fees and Services

The information required by this Item is incorporated by reference herein to our definitive proxy statement for our 2020 Annual Meeting of Stockholders.

PART IV

ITEM 15. Exhibits, Financial Statement Schedules

(a) Documents Filed as Part of this Annual Report on Form 10-K

1. Financial Statements (included in Item 8 of this Annual Report on Form 10-K):

- Report of Independent Registered Public Accounting Firm
- Consolidated Balance Sheets as of December 31, 2019 and 2018
- Consolidated Statements of Operations for the years ended December 31, 2019, 2018 and 2017
- Consolidated Statements of Comprehensive Loss for the years ended December 31, 2019, 2018 and 2017
- Consolidated Statements of Cash Flows for the years ended December 31, 2019, 2018 and 2017
- Consolidated Statements of Stockholders' Equity for the years ended December 31, 2019, 2018 and 2017
- Notes to Consolidated Financial Statements

2. Financial Statement Schedules

Financial statements schedules are omitted as they are either not required or the information is otherwise included in the consolidated financial statements.

3. The exhibits required by Item 601 of Regulation S-K are listed in the Exhibit List on the following page and are incorporated herein.

ITEM 16. 10-K Summary

Not applicable.

EXHIBIT LIST

Exhibit number	Description of exhibit
3.1(1)	Seventh Amended and Restated Certificate of Incorporation (as amended and currently in effect)
3.2(2)	Amended and Restated Bylaws (as currently in effect)
4.1(3)	Form of Common Stock Certificate
4.2(4)	Fourth Amended and Restated Investors' Rights Agreement between the Registrant and the investors named therein dated October 25, 2012
4.3(5)	Indenture, dated as of May 10, 2017, between HubSpot, Inc., and Wilmington Trust, National Association, as trustee
4.4(5)	Form of 0.25% Convertible Senior Notes due 2022 (included in Exhibit 4.3)
4.5**	Description of the Registrant's Securities Registered Pursuant to Section 12 of the Securities Exchange Act of 1934, as amended
10.1(6)	Amended and Restated Lease between Jamestown Premier Davenport, LLC and HubSpot, Inc., executed December 14, 2015 and effective as of November 1, 2015; First Amendment to Amended and Restated Lease between Davenport Owner (DE) LLC and HubSpot, Inc., effective as of March 23, 2017; Second Amendment to Amended and Restated Lease between Davenport Owner (DE) LLC and HubSpot, Inc., effective as of August 31, 2018
10.2(7)	Lease, dated February 22, 2016, among HubSpot Ireland Limited, HubSpot, Inc. and Hibernia REIT PLC and Agreement for Lease, dated November 6, 2015, among HubSpot Ireland Limited, HubSpot, Inc. and Hibernia REIT PLC
10.3**	Lease dated April 23, 2015 between Two Canal Park Massachusetts LLC (formerly BCSP Cambridge Two Property LLC) and HubSpot, Inc.; First Amendment to Lease dated August 10, 2016; Second Amendment to Lease dated March 12, 2018; Third Amendment to Lease dated December 2, 2019; Fourth Amendment to Lease dated January 6, 2020.
10.4**	Lease dated October 7, 2016 between One Canal Park Massachusetts LLC and HubSpot, Inc.; First Amendment to Lease dated February 14, 2017; Second Amendment to Lease dated March 12, 2018.; Third Amendment to Lease dated May 2, 2018; Fourth Amendment to Lease dated April 19, 2019.
10.5**	Lease of 1 – 6 Sir John Rogerson's Quay, Windmill Quarter, Dublin 2, dated August 1, 2019, between Hibernia REIT Public Limited Company, as Landlord, HubSpot Ireland Limited, as Tenant, SOBO Management Company Limited by Guarantee, as Management Company, and HubSpot, Inc., as Guarantor
10.6(8)#	Form of Indemnification Agreement between the Registrant and each of its Executive Officers and Directors
10.7(9)#	2007 Equity Incentive Plan and forms of restricted stock agreement and option agreements thereunder
10.8 (10)#	2014 Stock Option and Grant Plan and forms of restricted stock and option agreements thereunder
10.9(11)#	2014 Employee Stock Purchase Plan
10.10(12)#	Senior Executive Cash Incentive Bonus Plan
10.11(13)	Form of Call Option Transaction Confirmation
10.12(14)	Form of Warrant Confirmation
10.13**#	Non-Employee Director Compensation Policy (as amended and currently in effect)
21.1**	List of Subsidiaries
23.1**	Consent of PricewaterhouseCoopers LLP, Independent Registered Public Accounting Firm
24.1**	Power of Attorney (included on signature page)
31.1**	Certification of Chief Executive Officer Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002
31.2**	Certification of Chief Financial Officer Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002

32.1**ÿ	Certification of Chief Executive Officer and Chief Financial Officer Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002
101.INS**	Inline XBRL Instance Document – the instance document does not appear in the Interactive Data File because XBRL tags are embedded within the Inline XBRL 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)

Indicates a management contract or compensatory plan.

** Filed herewith.

ÿ The certifications furnished in Exhibit 32.1 hereto are deemed to accompany this Annual Report on Form 10-K and will not be deemed “filed” for purposes of Section 18 of the Securities Exchange Act of 1934, as amended. Such certifications will not be deemed to be incorporated by reference into any filings under the Securities Act of 1933, as amended, or the Securities Exchange Act of 1934, as amended, except to the extent that the Registrant specifically incorporates any of them by reference.

- (1) Incorporated by reference to Exhibit 3.1 to HubSpot, Inc.’s Annual Report on Form 10-K filed on February 24, 2016.
- (2) Incorporated by reference to Exhibit 3.1 to HubSpot, Inc.’s Current Report on Form 8-K filed on April 25, 2018.
- (3) Incorporated by reference to Exhibit 4.1 to HubSpot, Inc.’s Amendment No. 1 to Registration Statement on Form S-1 (SEC File No. 333-198333) filed on September 26, 2014.
- (4) Incorporated by reference to Exhibit 4.2 to HubSpot, Inc.’s Registration Statement on Form S-1 (SEC File No. 333-198333) filed on August 25, 2014.
- (5) Incorporated by reference to Exhibit 4.1 to HubSpot, Inc.’s Form 8-K filed on May 10, 2017.
- (6) Incorporated by reference to Exhibit 10.1 to HubSpot, Inc.’s Annual Report on Form 10-K filed on February 12, 2019.
- (7) Incorporated by reference to Exhibit 10.1 to HubSpot, Inc.’s Quarterly Report on Form 10-Q filed May 4, 2016.
- (8) Incorporated by reference to Exhibit 10.4 to HubSpot, Inc.’s Registration Statement on Form S-1 (SEC File No. 333-198333) filed on August 25, 2014.
- (9) Incorporated by reference to Exhibit 10.5 to HubSpot, Inc.’s Registration Statement on Form S-1 (SEC File No. 333-198333) filed on August 25, 2014.
- (10) Incorporated by reference to Exhibit 10.8 to HubSpot’s Annual Report on Form 10-K filed on February 12, 2019.
- (11) Incorporated by reference to Exhibit 10.8 to HubSpot, Inc.’s Amendment No. 2 to Registration Statement on Form S-1 (SEC File No. 333-198333) filed on October 6, 2014.
- (12) Incorporated by reference to Exhibit 10.10 to HubSpot, Inc.’s Amendment No. 1 to Registration Statement on Form S-1 (SEC File No. 333-198333) filed on September 26, 2014.
- (13) Incorporated by reference to Exhibit 10.1 to HubSpot, Inc.’s Form 8-K filed on May 10, 2017.
- (14) Incorporated by reference to Exhibit 10.2 to HubSpot, Inc.’s Form 8-K filed on May 10, 2017.

Signatures

Pursuant to the requirements of Section 13 or 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, in the city of Cambridge, Commonwealth of Massachusetts, on the 12th day of February 2020 .

HUBSPOT, INC.

By: /s/ Brian Halligan
Brian Halligan

Chief Executive Officer and Chairman

POWER OF ATTORNEY

We, the undersigned directors and officers of HubSpot, Inc. (the "Company"), hereby and severally constitute and appoint Brian Halligan, J.D. Sherman and Kate Bueker and each of them singly, our true and lawful attorneys, with full power to them, and each of them singly, to sign for us and in our names in the capacities indicated below, and to file 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 each of us might or could do in person and hereby ratifying and confirming all that said attorneys and each of them, or their substitutes, shall do or cause to be done by virtue of this Power of Attorney.

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 and on the dates indicated.

<u>Signature</u>	<u>Title</u>	<u>Date</u>
<u>/s/ Brian Halligan</u> Brian Halligan	Chief Executive Officer and Chairman <i>(Principal Executive Officer)</i>	February 12, 2020
<u>/s/ Kate Bueker</u> Kate Bueker	Chief Financial Officer <i>(Principal Financial and Accounting Officer)</i>	February 12, 2020
<u>/s/ Dharmesh Shah</u> Dharmesh Shah	Director and Chief Technology Officer	February 12, 2020
<u>/s/ Ron Gill</u> Ron Gill	Director	February 12, 2020
<u>/s/ Julie Herendeen</u> Julie Herendeen	Director	February 12, 2020
<u>/s/ Lorrie Norrington</u> Lorrie Norrington	Director	February 12, 2020
<u>/s/ Avanish Sahai</u> Avanish Sahai	Director	February 12, 2020
<u>/s/ Michael Simon</u> Michael Simon	Director	February 12, 2020
<u>/s/ Jay Simons</u> Jay Simons	Director	February 12, 2020
<u>/s/ Jill Ward</u> Jill Ward	Director	February 12, 2020

**Description of the Registrant's Securities Registered Pursuant to
Section 12 of the Securities Exchange Act of 1934, as amended**

The summary of the general terms and provisions of the registered securities of HubSpot, Inc. ("HubSpot," "we," or "our") set forth below does not purport to be complete and is subject to and qualified in its entirety by reference to our Seventh Amended and Restated Certificate of Incorporation (our "certificate of incorporation") and our Amended and Restated By-laws (our "by-laws" and, together with our certificate of incorporation, our "Charter Documents"), each of which is incorporated by reference as an exhibit to our most recent Annual Report on Form 10-K filed with the Securities and Exchange Commission. We encourage you to read our Charter Documents and the applicable provisions of the General Corporation Law of the State of Delaware (the "DGCL") for additional information.

General

Our authorized capital stock consists of 500,000,000 shares of common stock, \$0.001 par value per share, and 25,000,000 shares of preferred stock, \$0.001 par value per share.

Common Stock

Only our common stock is registered under Section 12 of the Securities Exchange Act of 1934, as amended.

Dividends

Subject to preferences that may be applicable to any outstanding shares of preferred stock, holders of common stock are entitled to receive ratably such dividends as may be declared by our board of directors out of funds legally available for that purpose.

Voting

Under the provisions of our certificate of incorporation, holders of our common stock are entitled to one vote for each share of common stock held by such holder on any matter submitted to a vote at a meeting of stockholders. Our certificate of incorporation does not provide cumulative voting rights to holders of our common stock.

Our by-laws provide that, except as required by law or our Charter Documents, all matters will be decided by the vote of the majority of the votes properly cast for such matter.

Other Rights

In the event of our liquidation, dissolution or winding up, the holders of common stock are entitled to share ratably in all assets remaining after the payment of liabilities, subject to the prior distribution rights of preferred stock then outstanding. Holders of common stock have no preemptive, conversion or subscription rights. There are no redemption or sinking fund provisions applicable to the common stock.

Preferred Stock

Our board of directors has the authority, without further action by our stockholders, to designate and issue up to 25,000,000 shares of preferred stock in one or more series. Our board of directors may also designate the rights, preferences and privileges of the holders of each such series of preferred stock, any or all of which may be greater than or senior to those granted to the holders of common stock. Though the actual effect of any such issuance on the rights of the holders of common stock will not be known until such time as our board of directors determines the specific rights of the holders of preferred stock, the potential effects of such an issuance include:

- diluting the voting power of the holders of common stock;
- reducing the likelihood that holders of common stock will receive dividend payments;

- reducing the likelihood that holders of common stock will receive payments in the event of our liquidation, dissolution, or winding up; and
- delaying, deterring or preventing a change in control or other corporate takeover.

No shares of preferred stock are outstanding as of the date of our Annual Report on Form 10-K with which this Exhibit 4.5 is filed as an exhibit.

Registration Rights

Certain holders of our common stock and warrants to purchase common stock are entitled to the following rights with respect to the registration of such shares for public resale under the Securities Act of 1933 (the “Securities Act”) pursuant to a registration rights agreement by and among us and certain of our stockholders. We refer to these shares collectively as “registrable securities.”

The registration of shares of common stock as a result of the following rights being exercised would enable the holders to trade these shares without restriction under the Securities Act when the applicable registration statement is declared effective. Ordinarily, we will be required to pay all expenses, other than underwriting discounts and commissions, related to any registration effected pursuant to the exercise of these registration rights.

Demand Registration Rights

If the holders of at least 25% of the registrable securities then outstanding request in writing that we effect a registration, we may be required to register the offer and sale of their shares anticipated to have an aggregate sale price, net of underwriting discounts and commissions, if any, of \$10 million. At most, we are obligated to effect two registrations for the holders of registrable securities in response to these demand registration rights. Depending on certain conditions, however, we may defer such registration for up to 90 days. If the holders requesting registration intend to distribute their shares by means of an underwriting, the managing underwriter of such offering will have the right to limit the number of shares to be underwritten for reasons related to the marketing of the shares.

Piggyback Registration Rights

If we propose to register the offer and sale of any shares of our securities under the Securities Act, the holders of registrable securities will be entitled to notice of the registration and to include their shares of registrable securities in the registration. These piggyback registration rights are subject to certain conditions and limitations, including the right of the underwriters to limit the number of shares included in any such registration under specific circumstances. We have the right to terminate or withdraw any registration initiated by us prior to the effectiveness of such registration whether or not the holders of registrable securities have elected to include their shares in the registration.

Form S-3 Registration Rights

If at any time we become entitled under the Securities Act to register our shares on Form S-3 and the holders of the registrable securities then outstanding request in writing that we register their shares for public resale on Form S-3 with an aggregate price to the public of the shares to be registered of at least \$2 million, we will be required to effect such registration; provided, however, that if our board of directors determines, in good faith, that such registration would be materially detrimental to us and our stockholders at such time, we may defer the registration for up to 90 days. We are only obligated to effect up to two registrations on Form S-3 within any twelve-month period.

Anti-Takeover Effects of Delaware Law and Provisions of our Charter Documents

Certain provisions of the DGCL and our Charter Documents contain provisions that could have the effect of delaying, deferring or discouraging another party from acquiring control of us. These provisions, which are summarized below, are expected to discourage certain types of coercive takeover practices and inadequate takeover bids. These provisions are also designed in part to encourage anyone seeking to acquire control of us to first negotiate with our board of directors. We believe that the advantages gained by protecting our ability to negotiate with any unsolicited and potentially unfriendly acquirer outweigh the disadvantages of discouraging such proposals, including those priced above the then-current market value of our common stock, because, among other reasons, the negotiation of such proposals could improve their terms.

Charter Document Provisions

Our Charter Documents include a number of provisions that could deter hostile takeovers or delay or prevent changes in control of our board of directors or management team, including the following:

- authorize our board of directors to issue, without further action by the stockholders, up to 25,000,000 shares of undesignated preferred stock;
- specify that special meetings of our stockholders can be called only by our board of directors, the chairman of our board of directors, the chief executive officer or the president;
- 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;
- provide that directors may be removed only for cause;
- 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;
- establish that our board of directors is divided into three classes—Class I, Class II and Class III—with each class serving staggered terms; and
- require a supermajority of votes to amend certain of the above-mentioned provisions.

Delaware Anti-Takeover Statute

We are subject to the provisions of Section 203 of the DGCL regulating corporate takeovers. In general, Section 203 prohibits a publicly held Delaware corporation from engaging, under certain circumstances, in a business combination with an interested stockholder for a period of three years following the date the person became an interested stockholder unless:

- prior to the date of the transaction, the board of directors of the corporation approved either the business combination or the transaction which resulted in the stockholder becoming an interested stockholder;
- upon completion of the transaction that resulted in the stockholder becoming an interested stockholder, the interested stockholder owned at least 85% of the voting stock of the corporation outstanding at the time the transaction commenced, excluding for purposes of determining the voting stock outstanding, but not for determining the outstanding voting stock owned by the interested stockholder, (1) shares owned by persons who are directors and also officers and (2) shares owned by employee stock plans in which employee participants do not have the right to determine confidentially whether shares held subject to the plan will be tendered in a tender or exchange offer; or
- at or subsequent to the date of the transaction, the business combination is approved by the board of directors of the corporation and authorized at an annual or special meeting of stockholders, and not by written consent, by the affirmative vote of at least 66 2/3% of the outstanding voting stock which is not owned by the interested stockholder.

Generally, a business combination includes a merger, asset or stock sale, or other transaction resulting in a financial benefit to the interested stockholder. An interested stockholder is a person who, together with affiliates and associates, owns or, within three years prior to the determination of interested stockholder status, did own 15% or more of a corporation's outstanding voting stock. We expect the existence of this provision to have an anti-takeover effect with respect to transactions our board of directors does not approve in advance. We also anticipate that Section 203 of the DGCL may discourage business combinations or other attempts that might result in a premium over the market price for the shares of common stock held by our stockholders.

The provisions of Delaware law and our Charter Documents could have the effect of discouraging others from attempting hostile takeovers and, as a consequence, may also inhibit temporary fluctuations in the market price of our common stock that often result from actual or rumored hostile takeover attempts. These provisions may also have the effect of preventing changes in our management. It is possible that these provisions could make it more difficult to accomplish transactions that stockholders may otherwise deem to be in their best interests.

Our certificate of incorporation requires, to the fullest extent permitted by law, that derivative actions brought in our name, actions against our directors, officers and employees for breach of fiduciary duty and other similar actions may be brought only in the Court of Chancery in the State of Delaware. Although we believe this provision benefits us by providing increased consistency in the application of Delaware law in the types of lawsuits to which it applies, the provision may have the effect of discouraging lawsuits against our directors and officers.

ACTIVE/102180812.3

EXHIBIT 1, LEASE DATA
 Two Canal Park
 Cambridge, Massachusetts 02141
 (the “ **Building** ”)

Execution Date: April 23, 2015

Tenant: HubSpot, Inc.,
 a Delaware corporation

Tenant’s Address: 25 First Street – 2 nd Floor
 Cambridge, Massachusetts 02141

Landlord: BCSP Cambridge Two Property LLC,
 a Delaware limited liability company

Landlord’s Address: c/o Beacon Capital Partners, LLC
 200 State Street, 5 th Floor
 Boston, Massachusetts 02109
 with a copy to:
 Goulston & Storrs PC
 400 Atlantic Avenue
 Boston, Massachusetts 02110
 Attn: Two Canal Park

Building: Two Canal Park
 Cambridge, Massachusetts 02141

Lot: The parcel(s) of land on which the Building is located and the other improvements thereon
 (including the Building, driveways and landscaping).

Common Areas: The common walkways and accessways located on the Lot, as the same may be changed, from time
 to time.

Article 2 Premises: A portion of the first (1 st) floor of the Building, containing approximately 9,170 rentable square
 feet, substantially as shown on the Lease Plan, attached hereto and incorporated herein as Exhibit 2,
 Sheet 1 (“ **First Floor Premises** ”); and
 The entirety of the second (2 nd) floor of the Building, containing approximately 50,602 rentable
 square feet, substantially as shown on the Lease Plan, attached hereto and incorporated herein as
 Exhibit 2, Sheet 1 (“ **Second Floor Premises** ”)
 Total Rentable Area of the Premises: 59,772 square feet
 Total Rentable Area of the Building: 206,567 square feet

Section 3.1 Commencement Date: The date that is the later of (i) the date that Landlord delivers possession of the Premises to Tenant in
 the Delivery Condition and with Landlord’s Work, as defined in Article 4 hereof, substantially
 completed, and (ii) December 1, 2015.

Estimated Commencement Date: December 1, 2015

Rent Commencement Date: The date one (1) month after the Commencement Date

Section 3.2 Expiration Date: The date one hundred twenty (120) months (plus the partial month, if any) after the Rent Commencement Date, unless earlier terminated, or extended per Section 29.16

Article 5 Permitted Use: General business offices and all legal uses customarily accessory thereto.

Article 6 Yearly Rent:

Lease Year	Yearly Rent	Monthly Payment	Per Rentable Square Foot
Lease Year 1	\$ 3,407,004.00	\$ 283,917.00	\$ 57.00
Lease Year 2	\$ 3,466,776.00	\$ 288,898.00	\$ 58.00
Lease Year 3	\$ 3,526,548.00	\$ 293,879.00	\$ 59.00
Lease Year 4	\$ 3,586,320.00	\$ 298,860.00	\$ 60.00
Lease Year 5	\$ 3,646,092.00	\$ 303,841.00	\$ 61.00
Lease Year 6	\$ 3,705,864.00	\$ 308,822.00	\$ 62.00
Lease Year 7	\$ 3,765,636.00	\$ 313,803.00	\$ 63.00
Lease Year 8	\$ 3,825,408.00	\$ 318,784.00	\$ 64.00
Lease Year 9	\$ 3,885,180.00	\$ 323,765.00	\$ 65.00
Lease Year 10	\$ 3,944,952.00	\$ 328,746.00	\$ 66.00

For purposes hereof, “ **Lease Year** ” shall mean a twelve-month period beginning on the Rent Commencement Date or any anniversary of the Rent Commencement Date, except that if the Rent Commencement Date does not fall on the first day of a calendar month, then the first Lease Year shall begin on the Rent Commencement Date and end on the last day of the month containing the first anniversary of the Rent Commencement Date, and each succeeding Lease Year shall begin on the day following the last day of the prior Lease Year.

Tenant shall have no obligation to pay Yearly Rent for the period commencing as of the Commencement Date, and expiring as of the day before the Rent Commencement Date (the “ **Rent Abatement Period** ”). During the Rent Abatement Period, only Yearly Rent shall be abated (“ **Abated Yearly Rent** ”), and all additional rent and other costs and charges specified in the Lease shall remain as due and payable pursuant to the provisions of the Lease.

Article 7	Security Deposit:	\$855,028.00, subject to reduction in accordance with Section 7.3
Article 8	Electricity:	Landlord shall provide utilities to Tenant as set forth in Article 8 hereof.
Article 9	Operating Costs in the Base Year:	The actual amount of Operating Costs for calendar year 2016
	Tax Base:	The actual amount of Taxes for fiscal year 2016 (i.e., July 1, 2015, through June 30, 2016)
	Tenant’s Proportionate Share:	28.94%
Section 29.3	Broker:	For Tenant: T3 Advisors, LLC For Landlord: CBRE/New England
Section 29.5	Enforcement of Arbitration:	Massachusetts; Superior Court
Section 29.12	Parking:	Number of Parking Passes: Thirty-Six (36), as more fully set forth in Section 29.12 hereof

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Exhibit 10—	Form of Non-Disturbance Agreement
Exhibit 11—	Form of Confidentiality Agreement

THIS DEED OF LEASE between Landlord and Tenant named in Exhibit 1 is entered into on the Execution Date as stated in Exhibit 1.

Landlord demises to Tenant, and Tenant takes from Landlord, the Premises upon and subject to the provisions of this Lease.

1. INCORPORATION OF EXHIBITS; REFERENCE DATA

The Exhibits attached to this Lease are made a part hereof. Any reference in this Lease to any of the terms defined in any such Exhibit shall have the meaning set forth in such Exhibit.

2. DESCRIPTION OF DEMISED PREMISES

2.1 Demised Premises. The Premises are that portion of the Building as described in Exhibit 1.

2.2 Appurtenant Rights. Tenant shall have, as appurtenant to the Premises, the non-exclusive right to use in common with others entitled thereto: (a) the common lobbies, hallways, stairways and elevators of the Building serving the Premises in common with others; (b) the Common Areas, as defined in Exhibit 1; (c) freight elevator serving the Building, (d) loading dock serving the Building, and (e) if the Premises include less than the entire rentable area of any floor, the common toilets and other common facilities of such floor; and no other appurtenant rights or easements. Tenant's use of such areas shall be subject to the terms hereof and to the Rules and Regulations as set forth in Exhibit 4 hereof. Tenant acknowledges that Landlord has no obligation to allow any particular telecommunication service provider to have access to the Building or to the Premises, and that if Landlord permits such access and the provider provides services to other tenants in the Building, Landlord may require the service provider to pay Landlord a reasonable fee therefor. As of the date of this Lease, Verizon and Comcast provide telecommunications service in the Building, provided, however, Landlord approves Tenant's use of Windstream or Lighttower as Tenant's telecommunications service provider for the Premises, and Landlord shall permit access to the Building and Premises by any such service provider, at no fee to Landlord. Landlord represents that, as of the date hereof, the roof and all the structural elements of the Building and all mechanical, electrical, fire/life safety and HVAC systems serving the Building and the Premises are in good operating condition and repair.

2.3 Exclusions and Reservations. The following are not part of the Premises: the exterior glass and curtainwall, all the perimeter walls of the Premises except the inner surfaces thereof, any balconies (except to the extent any balconies are shown as part of the Premises on Exhibit 2), terraces or roofs adjacent to the Premises, and any space in or adjacent to the Premises used for risers, shafts, stacks, pipes, conduits, wires and appurtenant fixtures, fan rooms, ducts, electric or other utilities, sinks or other Building facilities. Landlord reserves the right to access and use any of the foregoing, as well as the right to enter the Premises, subject to the provisions of this Lease, for the purposes of operation, maintenance, decoration and repair.

2.4 Rentable Area. Total Rentable Area of the Premises and the Building is agreed to be the amounts set forth in Exhibit 1.

3. TERM OF LEASE

3.1 Definitions. As used in this Lease the following terms have the following meanings:

- (a) "Commencement Date"—The date set forth in Exhibit 1.
- (b) "Rent Commencement Date"—The date set forth in Exhibit 1.

3.2 Term. The "**Term**" of this Lease shall commence on the Commencement Date and end on the Expiration Date as stated in Exhibit 1, unless extended or terminated pursuant to the terms hereof.

3.3 Declaration Fixing Commencement Date. Once the Commencement Date has been determined, Landlord and Tenant shall execute an agreement, in the form attached hereto as Exhibit 5, in which shall be stated the Commencement Date, the Rent Commencement Date and the Expiration Date.

4. READINESS FOR OCCUPANCY—ENTRY BY TENANT PRIOR TO COMMENCEMENT DATE; LANDLORD’S WORK; LANDLORD’S CONCOURSE WORK

4.1 Landlord’s Work.

(a) “**Landlord’s Work**” shall mean the work to be performed by Landlord to purchase, at its sole cost and expense, and install building standard window blinds in the Premises and in preparing the Premises for Tenant’s occupancy as shown on Tenant’s final approved TI Plans (as defined herein) and in the preparation of such plans, and the actual costs related thereto (but without mark-up by Landlord or any supervisory or construction management fee to Landlord except as expressly set forth in Section 4.2 below, and specifically excluding all consultant, architect and engineering fees incurred by Tenant, other than those incurred by Landlord on behalf of Tenant as provided below), as more particularly described and provided for in Section 4.2; provided that Landlord’s Work shall exclude work to be performed in connection with Tenant’s data and telephone cabling, computer systems, furniture and furniture systems, office equipment (e.g. copiers) and similar items (such excluded work collectively, “**Tenant Installations**”).

(b) “**Punch List Items**” shall mean any and all minor or insubstantial details of construction, decoration or mechanical adjustments that remain to be done in such space or any part thereof following Substantial Completion (as defined below) of such space, or portion thereof, which (taking into account both of the items to be completed and the work required to complete such items) will not materially interfere with Tenant’s Installations or Tenant’s conduct of business in such space and use thereof for the applicable Permitted Use.

(c) “**Substantially Completed**” (or “**Substantial Completion**”) shall mean that with respect to Landlord’s Work for the Premises, (i) Landlord’s Work, as shown on Tenant’s final approved TI Plans, has been completed in accordance with the provisions of this Lease (including, without limitation, that such work has been completed in a good and workmanlike manner, in compliance with all applicable laws, and substantially in accordance with the TI Plans), except only Punch List Items and such work that Tenant needs to perform in connection with Tenant Installations and (ii) all conditions to the issuance of a temporary or permanent certificate of occupancy for the Premises have been satisfied allowing for lawful occupancy of the Premises by Tenant, except only conditions related solely to the completion of Tenant’s Installations, and (iii) Landlord delivers to Tenant a written notice of substantial completion from Landlord’s architect, which notice of substantial completion shall be subject to confirmation by Tenant (which confirmation or objection, if Tenant does not agree that Substantial Completion of Landlord’s Work or any applicable portion thereof has occurred, shall be given (if at all) as promptly as possible and no more than five (5) business days after Tenant’s receipt of Landlord’s notification and provided Landlord has afforded Tenant access to the Premises as provided in Section 4.9, and which confirmation (if any) shall specify any good faith objections and/or Tenant’s determination that Substantial Completion of Landlord’s Work (or applicable portions thereof) has not occurred). The failure of Tenant to confirm Landlord’s notification of Substantial Completion of Landlord’s Work as set forth herein or to object in writing thereto within such five (5) business day period shall be deemed a confirmation of such notification. If Tenant objects to any matters set forth in Landlord’s notice of Substantial Completion of Landlord’s Work and notifies Landlord thereof within five (5) business days following receipt of the notice and the parties are unable to resolve the dispute within ten (10) days of Tenant’s notice of objection, either party may elect to refer the dispute to arbitration in accordance with the provisions of Section 29.5 below. Landlord shall, subject to obtaining Tenant’s necessary cooperation in connection therewith, including, without limitation, the completion of Tenant’s Installations, obtain a permanent certificate of occupancy for the Landlord’s Work from the City of Cambridge after the Substantial Completion of the Landlord Work.

(d) “**Tenant Delay**” shall mean any delay in Substantial Completion of Landlord’s Work to the extent actually resulting from any of the following: (i) changes, alterations or additions required or requested by Tenant in the layout or finish of such space or any part thereof made subsequent to the approval by Landlord of the TI Plans, (ii) any delay of Tenant in approving information, approving plans, specifications or estimates, giving authorizations or otherwise, in each case beyond the time frames expressly set forth in this Lease (or, in the absence of any time frame, beyond a reasonable time not to exceed seven (7) days for TI Plans and five (5) days for other approvals, (iii) caused by delay/or default on the part of Tenant or its consultants or vendors, or (iv) due to the failure of Tenant to submit the Program (defined below) on or before April 15, 2015, or a delay beyond the two (2) business day period set forth below in Tenant responding to any questions and/or information requests by Landlord or the Architect with respect to the Program, or (v) due to the inclusion of any “special work” or “long lead time” items (whether by reason of ordering time or complexity of construction) in the work contemplated by

the TI Plans and identified by Landlord in writing as such (which writing shall also contain Landlord's good faith estimate as to the length of the delay and proposed alternatives, if any, which will eliminate the Tenant Delay) as soon as is practical but not later than the issuance of the GMP (as hereinafter defined). Notwithstanding anything to the contrary contained herein, any delay by Tenant in submitting the Program, responding to information requests regarding the Program, or approving any portion of the TI Plans to Landlord by the date required for approval of such portion under this Lease shall automatically (and without any need for such delay to actually cause a delay in the availability of the Premises for occupancy) be deemed a Tenant Delay equal to the number of days Tenant delays in submitting the Program, responding to such questions or requests, or approving such portion of the TI Plans. Except with respect to any Tenant Delay referred to in the preceding sentence, Landlord shall give Tenant notice of any claim of Tenant Delay on or before the date five (5) business days following the date that Landlord obtains actual knowledge of the occurrence of the matters giving rise to a claim of Tenant Delay and, if Landlord fails so to give such timely notice, Landlord may not claim Tenant Delay with respect to any period of delay occurring prior to Landlord's delivery of the notice to Tenant with respect to such matters of which Landlord had actual knowledge. If Tenant disputes Landlord's determination as to whether a Tenant Delay has occurred or the length thereof, Tenant shall notify Landlord in writing "**Tenant Delay Dispute Notice**") within five (5) business days following receipt of Landlord's notice of Tenant Delay whereupon the dispute shall be resolved by arbitration in accordance with Section 29.5 of this Lease. If Tenant fails to give a timely Tenant Delay Dispute Notice, Tenant shall be deemed to have waived any right to contest the claim of Tenant Delay asserted by Landlord.

4.2 TI Plans.

Tenant shall be solely responsible for the timely preparation and submission to Landlord of the initial space programming requirements for the Premises in sufficient, commercially reasonable detail (exclusive of finishes) to allow the architect hired and mutually agreed upon by Landlord and Tenant (the "**Architect**") to prepare the Design Development Drawings for Landlord's Work, as that term is defined below (such requirements, the "**Program**"). The Program shall include the following items of work in Landlord's Work: (a) removal of the internal stairway between the second and third floors in each of the two (2) existing atriums in the Building (collectively, the "**Atrium**") and restoration of the affected areas of the Building; (b) the installation of shower facilities in the Premises; and/or (c) the installation of a private entry door to the Premises from the Patio (as that term is defined in Section 29.22 below). If Tenant elects to include any one or more of the foregoing items, Landlord agrees that Tenant shall have no obligation to remove, replace, or restore any such work at the end of the Term. Tenant shall respond in writing within three (3) business days to any information requests regarding the Program made by Landlord or the Architect. The Architect shall prepare and submit to Landlord and Tenant (i) the design development drawings "**Design Development Drawings for Landlord's Work**") and (ii) the final full sets of scaled and dimensioned construction documents, including architectural, electrical, mechanical, plumbing, sprinkler, life safety and other construction drawings, plans and specifications "**Construction Drawings for Landlord's Work**") (the final Construction Drawings for Landlord's Work as approved by Landlord and Tenant pursuant to this Section 4.2 are the "**TI Plans**" and the foregoing plans are sometimes hereinafter referred to, collectively, as the "**Construction Plans**") necessary to construct the tenant improvements in the Premises for Tenant's occupancy, as well as the ancillary equipment to be installed by Landlord as part of Landlord's Work to specifically serve the Premises. Landlord shall enter into a contract (the "**Design Contract**") with the Architect, which term may include agreements with engineers and other professionals and consultants as subconsultants to the Architect, for the preparation of the Construction Plans. The Design Contract shall provide that the Architect shall deliver to Tenant simultaneously with the delivery of same to Landlord copies of all notices and other communications given to Landlord pursuant to such contract, including, without limitation, any plans or other submissions that may require the approval of the "Owner" under any such Design Contract. Tenant acknowledges and agrees that (i) Landlord will enter into the Design Contract solely as an accommodation to Tenant, and as Tenant's agent, (ii) Tenant agrees to indemnify Landlord against any liability under the Design Contract that does not directly result from the negligence or willful misconduct of Landlord or its employees, (iii) Tenant shall be solely responsible for all decisions and action taken by Landlord as the "Owner" under any Design Contract except to the extent that Landlord takes any such decision or action without the written consent of Tenant thereto, (iv) Landlord shall in no event be responsible for any delay that would otherwise constitute a Tenant Delay (except to the extent the same directly results from the failure of Landlord to act timely), and any such delay shall constitute a Tenant Delay hereunder notwithstanding that Landlord is the party legally responsible for acting as the "Owner" under any such Design Contract, (v) no approval by Landlord under the Design Contract, of any plans, specifications, change orders, or other matter under the Design Contract shall constitute Landlord's approval thereof under this Lease, it being understood and agreed that Landlord's approval of all such matters hereunder shall be governed solely by the provisions of this Lease, without any regard for the fact that Landlord is a party to the Design Contract, (vi) the fact

that Landlord is a party to the Design Contract shall in no way relieve Tenant of any of its obligations under this Section 4.0, and (vii) Tenant shall, as additional rent, reimburse Landlord for all amounts payable to the Architect or any design professional under any Design Contract plus all reasonable, out of pocket costs and expenses incurred by Landlord in connection therewith, including, without limitation, all reasonable attorney's fees incurred, not to exceed Two Thousand Dollars (\$2,000) in negotiating, performing, and enforcing any Design Contract. Subject to the timely performance of Tenant's obligations hereunder, Landlord shall cause the Architect to submit Design Development Drawings for Landlord's Work to Landlord and Tenant on or before May 15, 2015, and to submit the Construction Drawings for Landlord's Work to Landlord and Tenant on or before June 19, 2015. All of such plans shall (i) be certified by an architect or engineer licensed in the Commonwealth of Massachusetts, (ii) comply with all applicable laws, (iii) be submitted to Landlord and Tenant no later than the dates set forth above with respect thereto and (iv) be subject to approval (in form and substance) or approved as noted by each of Landlord and Tenant (which approval shall not be unreasonably withheld, conditioned or delayed). Landlord's approval is solely given for the benefit of Landlord, and neither Tenant nor any third party shall have the right to rely upon Landlord's approval of the Design Development Drawings for Landlord's Work or the Construction Drawings for Landlord's Work for any purpose whatsoever. Each of Landlord and Tenant shall respond to any plan submission by Architect within seven (7) business days after (i) delivery of the original submission and (ii) in the case of the Construction Drawings for Landlord's Work, delivery of any resubmission. For the purposes of this Section 4 only, all responses required by either Landlord or Tenant may be given by email, with receipt of delivery requested to the following email addresses (or such other address(es) as the receiving party may from time to time designate by notice given pursuant to Section 27 below): if intended for Landlord: to _____ and to _____, and if intended for Tenant: _____ and _____. Any response by either of Landlord or Tenant shall be either an approval or an approval as noted. In the case of the Design Development Drawings for Landlord's Work, if either or both of Landlord and Tenant approve same as noted, the Architect shall not revise the Design Development Drawings for Landlord's Work to reflect the matters noted, but such matters shall be reflected in the Construction Drawings for Landlord's Work. If either of Landlord or Tenant approves as noted the Construction Drawings for Landlord's Work, Landlord shall cause the Architect to revise such drawings to reflect the matters noted; provided, however, that if Landlord disapproves the matters noted by Tenant, Landlord shall forthwith notify Tenant of such disapproval, and such disapproved noted matters shall not be included in the Construction Drawings for Landlord's Work. If Tenant disputes Landlord's disapproval of any such noted matters, Tenant may submit such dispute to arbitration pursuant to Section 29.5 below. Except to the extent that any noted items merely correct errors or missing items (i.e., items that were included in the Design Development Drawings for Landlord's Work (and not disapproved) but were omitted in error from the Construction Drawings for Landlord's Work) in the Construction Drawings, if Tenant approves as noted the Construction Drawings for Landlord's Work or any revision thereof, the time required to revise such drawings to reflect the matters noted by Tenant shall constitute Tenant Delay. If either of Landlord or Tenant fails to respond within such seven (7) business day period, the Design Development Drawings for Landlord's Work or Construction Drawings for Landlord's Work, as applicable, shall be deemed approved by such party. Landlord has selected and Tenant hereby approves MJA Construction as the construction manager ("**Construction Manager**") for the performance of Landlord's Work (including pre-construction services), pursuant to a separate construction management agreement between Landlord and the Construction Manager (the "**Construction Management Agreement**," which shall be a guaranteed maximum price contract) to be entered into by Landlord and Construction Manager. Upon issuance of the TI Plans, Construction Manager shall solicit on an open book basis competitive, fixed price bids for the performance of Landlord's Work for the Premises from at least three (3) subcontractors per trade (although certain long-term lead items may be bid prior to issuance of the TI Plans, as agreed upon by Landlord and Tenant). Landlord shall review the bids with Tenant and its representatives. During the twelve (12) business day period following opening of the bids, (1) Landlord shall level the bids, and provide Tenant the opportunity to review the leveled bids and (2) Tenant shall be entitled to make value engineering changes to the TI Plans, subject to Landlord's approval (which approval shall not be unreasonably withheld, delayed or conditioned), which value engineering changes shall be incorporated into the leveled bids. Except as otherwise expressly set forth in this Section 4.2, any time in making value engineering changes shall constitute Tenant Delay. After the completion of the leveling of the bids and the value engineering changes, Landlord and Construction Manager shall submit to Tenant the estimated cost of Landlord's Work for the Premises which shall consist of, but not be limited to, the following: (i) estimated permit, filing, expediting, architect's and engineering fees, (ii) reasonable legal fees (not to exceed \$2,000.00) incurred by Landlord related to negotiating the form of the Design Contract(s) and the form of Construction Management Agreement for Landlord's Work, (iii) a guaranteed maximum price for all work covered under the Construction Management Agreement and shown on TI Plans (the "**GMP**" which shall include all of the following costs: (a) the approved subcontractor bids, (b) Construction Manager insurance costs, (c) general conditions and general requirements, (d) a Construction Manager's fee of three

percent (3%) payable to the Construction Manager, and (e) a Construction Manager contingency (not to exceed five percent (5%)), (iv) Landlord Insurance Costs, (v) third party project management fees paid by Landlord not to exceed Forty-Eight Thousand Dollars (\$48,000), (vi) cost of controlled inspections, and (vii) such other out-of-pocket costs reasonably approved by Landlord and Tenant which are reasonably to be incurred by Landlord and are associated with and reasonably necessary for Landlord's Work for the Premises (including all consultant, architect and engineering fees incurred by Landlord) (collectively, the "**Final TI Cost**"). In no event shall Final TI Cost include any costs incurred to remove, remediate or encapsulate any Hazardous Materials (including asbestos and lead paint) discovered in the Premises during the performance of the Landlord's Work. Tenant shall approve or disapprove the Final TI Cost within five (5) business days from receipt thereof (which approval shall not be unreasonably withheld, conditioned or delayed and any delay by Tenant in the approval of the Final TI Cost beyond such five (5) business day period shall constitute Tenant Delay). If Tenant shall disapprove the Final TI Cost, Tenant shall have five (5) business days, before incurring Tenant Delay, to value engineer to reduce the Final TI Cost so that such amount is equal to or less than Landlord's Contribution. Upon Tenant's approval (or deemed approval) of the Final TI Cost (the "**Approved Budget**"), Landlord shall be authorized to proceed with the execution of Landlord's Work and award the bids. Tenant shall have the right to make changes ("**Changes**") from time to time in the TI Plans by approving revised plans, indicating the proposed Changes. Such Changes shall be subject to Landlord's approval (which shall not be unreasonably withheld, delayed or conditioned, except to the extent such Changes affect the Building's systems or the structural integrity of the Building, in which case approval shall be in Landlord's sole discretion). Landlord shall notify Tenant of its approval or disapproval of any such proposed Change within seven (7) days following receipt of such proposed Change (or such longer period as may be reasonably necessary for Landlord to price such Change). Within such seven (7) day period (or such longer period as may be reasonably necessary for Landlord to price the Change), if Landlord approves the proposed Change, Landlord shall notify Tenant of the total amount of any net increase or decrease in the cost of Landlord's Work, and any Tenant Delay in the completion of Landlord's Work, resulting therefrom by presenting Tenant with a change order containing such information (a "**Change Order**"). Landlord's failure to respond to such Change within the seven (7) day period (or such longer period as may be reasonably necessary for Landlord to price such Change) shall be deemed an approval of such Change, in which event, not later than three (3) business days after Tenant's subsequent written request therefor, Landlord shall give Tenant written notice (the "**Change Notice**") indicating any net increase or decrease in the cost of Landlord's Work and any Tenant Delay resulting from such Change Order. If Tenant does not accept the Change Order within three (3) business days of the giving of such notice (i.e., Landlord's notice of cost and time changes as aforesaid when Landlord timely responds or, where the Change Order is deemed approved as aforesaid, the Change Notice), Landlord shall not make the proposed Change. If Tenant accepts the Change Order (including the adjustment in the cost of Landlord's Work and the Tenant Delay in the completion of Landlord's Work resulting therefrom as set forth in the Change Order), the provisions of this Article 4 shall apply to Landlord's Work as adjusted by the approved Change Order and the Approved Budget and GMP shall be increased or decreased as a result of the Change Order (but maintaining the three percent (3%) Contingency for the GMP and Approved Budget as set forth above). Any time during which the performance of Landlord's Work must be postponed or delayed (in whole or in part) in order to review and approve any such Changes and determine the cost thereof as well as any additional time required to implement any such Changes shall all constitute Tenant Delay to the extent the same actually delays the prosecution of Landlord's Work.

4.3 Landlord's Work.

Upon finalizing the TI Plans and Tenant's approval of the TI Plans, Landlord shall construct, at Tenant's sole cost and expense (after deduction of Landlord's Contribution), Landlord's Work in substantial compliance with the TI Plans in a good and workmanlike manner. Subject to Force Majeure, Tenant Delay and Section 4.5, Landlord shall use diligent efforts to complete Landlord's Work on or before the Estimated Commencement Date. In addition to the foregoing, Landlord shall, at its sole expense and without deduction from Landlord's Contribution, not later than the Commencement Date install glass panels around the boundary of the Atrium on the third and fourth floors of the Building where such panels do not exist as of the Execution Date, which work on the fourth floor of the Building shall be subject to approval of the current tenant of such floor.

4.4 Governmental Permits, Certificates of Occupancy and Approvals.

All permits, temporary or permanent certificates of occupancy and other governmental approvals necessary for the performance of Landlord's Work and the use and occupancy of the Premises (or applicable portion thereof) by Tenant upon Substantial Completion shall be obtained by Landlord, provided that those permits, certificates and approvals applicable to Landlord's Work shall, except as otherwise specifically provided in this Lease, be obtained by Landlord at Tenant's sole cost and expense (subject to reimbursement from Landlord's Contribution). Landlord

shall file with the appropriate governmental authority any and all portions of the TI Plans required in order to obtain such permits, certificates and approvals, and diligently proceed to have the permits and temporary certificate of occupancy issued for the Premises. In connection with any temporary certificate of occupancy obtained by Landlord for Landlord's Work, Landlord shall keep and maintain such temporary certificate of occupancy in full force and effect.

4.5 Completion Date.

Subject to delay by Force Majeure and Tenant Delay, Landlord shall Substantially Complete Landlord's Work in substantial conformance with the TI Plans and have the Premises Substantially Complete and ready for Tenant's occupancy on the Estimated Commencement Date. The failure to have the Premises Substantially Complete (including Landlord's Work but, for the avoidance of doubt, excluding the Window Treatments) and ready for Tenant's occupancy on the Estimated Commencement Date shall not affect the validity of this Lease or the obligations of Tenant hereunder nor shall the same be construed in any way to extend the term of this Lease. If Substantial Completion of the Premises does not occur on or before July 1, 2016, as such date may be extended by any delays caused by (i) any Tenant Delay or (ii) Force Majeure, as defined below (provided that any delay for Force Majeure shall not exceed ninety (90) days in the aggregate) (the "**Outside Date**"), then (x) Tenant shall be entitled to a credit (to be applied following the Rent Commencement Date) in an amount equal to the product of: (i) \$9,370.18 multiplied by (ii) the number of days that elapse after the Outside Date until Substantial Completion of the Premises has occurred and (y) Tenant may elect to terminate this Lease by giving notice of such election to Landlord at any time after the Outside Date and before Substantial Completion of the Premises has occurred. If Tenant so elects, then this Lease shall terminate on the date that is thirty (30) days after delivery of Tenant's termination notice unless, on or before the expiration of such 30-day period, Substantial Completion of the Premises occurs, in which event Tenant's election to terminate shall automatically become void.

4.6 When Premises Deemed Ready.

The Premises shall be conclusively deemed ready for Tenant's occupancy as soon as Landlord's Work has been Substantially Completed, but in no event prior to January 1, 2016. Landlord shall notify Tenant of the anticipated date of Substantial Completion for the Premises at least ten (10) business days prior to the anticipated date of Substantial Completion. Landlord and Tenant shall thereupon set a mutually convenient time on or before such date for Tenant, the Architect, Landlord, and Landlord's contractor to inspect the Premises and Landlord's Work therein. With respect to Landlord's Work, not later than five (5) business days after such inspection, Landlord shall cause Landlord's Architect to prepare and submit to Landlord and Tenant a list of Punch List Items and other items to be completed with respect to such space. Subject to Tenant Delay and Force Majeure, Landlord shall use diligent efforts to complete such Punch List Items as promptly as possible and in any event (subject to extension for Force Majeure and Tenant Delay) within sixty (60) days following such inspection (unless particular Punch List Items cannot be completed within the sixty (60) day period, in which case such sixty (60) day period shall be extended for such time as may be reasonably necessary to enable Landlord to complete such Punch List Items). Notwithstanding any other provisions of this Article 4, if the delay in the Substantial Completion of the Premises is due to a Tenant Delay, then the Commencement Date shall be the date that the Premises would have been Substantially Completed but for any Tenant Delay, but in no event earlier than January 1, 2016. If, pursuant to the foregoing, the Commencement Date occurs before the Premises is in fact Substantially Completed, Tenant shall not (except with Landlord's consent) be entitled to take possession of such space until the Premises is in fact Substantially Completed. Any of Landlord's Work in the Premises not fully completed on the Commencement Date shall thereafter be so completed with reasonable diligence by Landlord. Any dispute as to whether any portion of the Premises is Substantially Complete shall be determined by arbitration in accordance with the provisions of Section 27.5 hereof, except that, with respect to disputes under this Section 4.6, such arbitration shall be conducted under the Fast Track Procedures provisions (currently, Rules F-1 through F-13) of the Arbitration Rules of the Construction Industry of the American Arbitration Association, with both parties agreeing to waive the \$75,000 qualification in such rules.

4.7 Landlord's Contribution.

Landlord shall, in the manner hereinafter set forth, contribute up to Four Million One Hundred Eighty-four Thousand Forty and 00/100 Dollars (\$4,184,040.00) (i.e., \$70.00 per rentable square foot of Premises) ("**Landlord's Contribution**") towards the cost of Landlord's Work to be performed in the Premises and as otherwise provided below in this Section 4.7. In the event that the aggregate hard and soft costs of Landlord's Work (the "Total Cost") exceeds Landlord's Contribution, Tenant shall pay to Landlord the amount of such excess pari passu with the application of the Landlord's Contribution, i.e., each month as Landlord applies Landlord's

Contribution to the Total Cost, Tenant shall contribute an amount equal to the product of (i) the total amount of the Total Cost multiplied by (ii) a fraction, the numerator of which is the amount by which the Total Cost exceeds Landlord's Contribution and the denominator of which is the Total Cost. Notwithstanding the foregoing, after the completion of Landlord's Work, provided Tenant has occupied the Premises for its business purposes, Tenant shall be entitled to apply any unused portion of Landlord's Contribution towards soft costs, including cabling, furniture and moving costs. Landlord has previously paid to Tenant or Tenant's architect a space planning allowance in the amount of \$6,000.20.

4.8 Tenant's Delay – Additional Costs.

If a Tenant Delay occurs or Tenant fails to comply with any terms or conditions contained in this Article 4, in each case beyond the time frames set forth in this Lease (or, in the absence of any time frame, beyond a reasonable time), and such Tenant Delay or failure is not due to any act or (where there is an obligation under this Lease to act) omission of Landlord, any additional actual cost to Landlord in connection with the completion of the Landlord's Work in accordance with the terms of this Lease shall be promptly paid by Tenant to Landlord to the extent that such additional actual cost is the result of such Tenant Delay or failure of Tenant, and Landlord's TI Costs exceed Landlord's Contribution. For the purposes of the immediately preceding sentence, the expression "additional actual cost to Landlord" shall mean the actual cost over and above such actual cost as would have been the aggregate actual cost to Landlord of completing Landlord's Work in accordance with the terms of this Lease had there been no such failure or Tenant Delay. Nothing contained in this Section 4.8 shall limit or qualify or prejudice any other covenants, agreements, terms, provisions and conditions contained in this Lease, including, but not limited to Section 4.2. Any dispute between Landlord and Tenant as to any amounts owing pursuant to this Section 4.8 may be referred by Landlord or Tenant for arbitration in accordance with Section 29.5 below.

4.9 Preparation of Premises—Outside Contractors.

Landlord shall provide Tenant with access to the Premises prior to the Term Commencement Date solely as follows:

(a) Tenant and its agents shall be given access to the Premises throughout the period that construction of Landlord's Work is ongoing, for purposes of inspecting such work;

(b) All such early access shall be coordinated with and by Landlord and the Construction Manager and their contractors and shall be performed by Tenant in a manner which does not unreasonably interfere with Landlord's completion of Landlord's Work. Any such interference shall constitute Tenant Delay (to the extent it actually delays Substantial Completion beyond the Estimated Commencement Date); and

(c) Tenant shall have access to the Premises during the thirty (30) day period immediately preceding the date of Substantial Completion of the Landlord's Work for the purpose of performing the Tenant Installations, provided that such work shall be performed at times and in a manner so as not to interfere with or delay the performance of Landlord's Work.

4.10 Conclusiveness of Landlord's Performance.

Except as set forth in the next sentence, Tenant shall be conclusively deemed to have agreed that Landlord has performed all of its obligations under this Article 4 with respect to the Premises unless not later than the end of the second calendar month next beginning after the Commencement Date, Tenant shall give Landlord written notice specifying the respects in which Landlord has not performed such obligation for the Premises. Landlord shall obtain customary warranties from the contractors performing Landlord's Work, which warranties shall be valid for a minimum period of one (1) year from their date of issue, and shall keep such warranties in full force and effect. All warranties related to Landlord's Work shall be assignable to Tenant, and at Tenant's request, Landlord shall assign, without recourse, any such warranties then in effect to Tenant unless Landlord is then enforcing any of such warranties (in which case Landlord shall assign such warranties to Tenant upon resolution of such enforcement).

4.11 Tenant Payments of Construction Cost.

Landlord shall have the same rights and remedies which Landlord has upon the nonpayment of Yearly Rent and other charges due under this Lease for nonpayment of any amounts which Tenant is required to pay to Landlord or Landlord's contractor in connection with the construction and initial preparation of the Premises (including, without limitation, any amounts which Tenant is required to pay in accordance with Section 4.7 hereof) or in connection with any construction in the Premises performed for Tenant by Landlord, Landlord's contractor or any other person, firm or entity after the Commencement Date. At the written request of Tenant, Landlord shall permit Tenant to examine Landlord's books and records with respect to the Final TI Cost, which shall include all submissions to Landlord by the Construction Manager with respect to Landlord's Work.

4.12 Base Building Systems; Delivery Condition.

On the Commencement Date, Landlord, at its sole cost and expense, shall deliver to Tenant the Premises vacant, broom clean, free of tenants, occupants, property and debris, in compliance with all applicable Laws and free of all Hazardous Materials that are required to be removed, remediated, or encapsulated pursuant to applicable Environmental Laws (defined below) and with the base building systems including, without limitation, HVAC, mechanical, plumbing, electrical, elevator services, roofing, fire safety access and emergency egress systems serving the Premises shall be in good working order on the Commencement Date.

4.13 Window Treatments.

On or before the Commencement Date, at its sole cost and expense, Landlord shall purchase and install building standard window treatments on all exterior windows in the Premises.

4.14 Disputes.

Any disputes under this Article 4 shall be submitted to arbitration in accordance with Section 29.5 below.

5. **USE OF PREMISES**

5.1 Permitted Use. Tenant shall occupy and use the Premises for the Permitted Use as stated in Exhibit 1 and for no other purposes. Without limiting the generality of the foregoing, Tenant agrees that it shall not use the Premises or any part thereof, or permit the Premises or any part thereof to be used for the preparation or dispensing of food, except that Tenant may, with Landlord's prior written consent (including approval of plans for any such equipment that has a water connection), which consent shall not be unreasonably withheld, install at its own cost and expense standard pantries and kitchenettes, including so-called hot-cold water fountains, coffee makers, microwave ovens and commonly used pantry equipment (excluding, however, stovetops, hot plates, ovens or toaster ovens; however, toaster ovens with an auto-shutoff feature shall be permitted) for the preparation of beverages and foods, provided that no cooking, frying, etc., are carried on in the Premises to such extent as requires special exhaust venting, other than the use of the duct referred to in the next following sentence. Tenant shall have the exclusive right to tap into the so-called "black iron" venting duct currently located in the South side of the Building in connection with Tenant's use of the kitchen or kitchen equipment in the Premises. So long as Tenant has exclusive use of such duct, Tenant shall, at Tenant's cost and expense, be responsible for all cleaning, maintenance, and repair costs in connection with the use of such duct and any associated equipment.

5.2 Prohibited Uses. Notwithstanding any other provision of this Lease, Tenant shall not use, or suffer or permit the use or occupancy of, or suffer or permit anything to be done in or anything to be brought into or kept in or about the Premises or the Building or any part thereof (including, without limitation, any materials, appliances or equipment used in the construction or other preparation of the Premises and furniture and carpeting): (i) which would violate any of the covenants, agreements, terms, provisions and conditions of this Lease or otherwise applicable to or binding upon the Premises; (ii) for any unlawful purposes or in any unlawful manner; (iii) which, in the reasonable judgment of Landlord shall in any way (a) impair the appearance or reputation of the Building; or (b) impair, interfere with or otherwise diminish the quality of any of the Building services or the proper and economic heating, cleaning, ventilating, air conditioning or other servicing of the Building or Premises; or with the use or occupancy of any of the other areas of the Building, or occasion discomfort, inconvenience or annoyance, or injury or damage to any occupants of the Premises or other tenants or occupants of the Building; or (iv) which is inconsistent with the maintenance of the Building as an office building of the first class in the quality of its maintenance, use, or occupancy. Tenant shall not install or use any electrical or other equipment of any kind which, in the reasonable judgment of Landlord, might cause any such impairment, interference, discomfort, inconvenience, annoyance or injury. In addition to the foregoing, Tenant shall not use the Premises or any portion thereof for the operation of a crossfit or fitness facility, other than a facility for the exclusive use of Tenant and its employees.

5.3 Licenses and Permits. Tenant shall be responsible for obtaining and maintaining any governmental license or permit required for the proper and lawful conduct of Tenant's business and shall at all times comply with the terms and conditions of each such license or permit. Tenant shall use the Premises in accordance with all applicable laws.

6. RENT

Commencing on the Rent Commencement Date and continuing throughout the Term, Tenant shall pay the Yearly Rent and other charges, at the rate for Yearly Rent stated in Exhibit 1, to Landlord monthly, in advance, without demand on the first day of each month. Rent shall be prorated for any partial calendar month during the Term. The rent shall be payable to Landlord or, if Landlord shall so direct in writing, to Landlord's agent or nominee, at the office of Landlord or such place as Landlord may designate in writing from time to time, without offset or deduction. Yearly Rent and any other sums due hereunder not paid on or before the date due shall bear interest for each month or fraction thereof from the due date until paid computed at the annual rate of five (5) percentage points over the so-called The Wall Street Journal prime rate or at any applicable lesser maximum legally permissible rate for debts of this nature, provided, however, that such interest shall not be charged to Tenant for any past due amounts for the first (1st) occasion, if any, in any twelve-(12)-month period, if such amounts are paid within five (5) days after notice that the same are delinquent. In addition, if Tenant fails to pay any installment of rent or any other sums due hereunder when due, Tenant shall pay Landlord an administration fee equal to five percent (5%) of the past due amount, provided, however, that such administrative fee shall not be charged to Tenant for any past due amounts for the first (1st) occasion, if any, in any twelve-(12)-month period, if such amounts are paid within five (5) days after notice that the same are delinquent.

7. SECURITY DEPOSIT

7.1 Cash Security Deposit. Tenant shall, at the time that Tenant executes and delivers this Lease to Landlord, pay to Landlord a security deposit (the "**Security Deposit**") in the amount set forth in Exhibit 1 securing Tenant's obligations under this Lease. In no event shall the Security Deposit be deemed to be a prepayment of rent or a measure of liquidated damages. Tenant agrees that no interest shall accrue on the Security Deposit and that Landlord shall have the right to commingle the Security Deposit with other funds of Landlord. In the event that Tenant shall default in any of its obligations under this Lease, Landlord shall have the right, without prior notice to Tenant, to apply the Security Deposit (or any portion thereof) towards the cure of any such default. Tenant shall promptly, upon notice from Landlord, pay to Landlord any amount so applied by Landlord in order to restore the full amount of the Security Deposit. In addition, in the event of a termination based upon the default of Tenant under this Lease, or a rejection of this Lease pursuant to the provisions of the Federal Bankruptcy Code, Landlord shall have the right to apply the Security Deposit (from time to time, if necessary) to cover the full amount of damages and other amounts due from Tenant to Landlord under this Lease. Any amounts so applied shall, at Landlord's election, be applied first to any unpaid rent and other charges which were due prior to the filing of the petition for protection under the Federal Bankruptcy Code. The application of all or any part of the Security Deposit to any obligation or default of Tenant under this Lease shall not deprive Landlord of any other rights or remedies Landlord may have or constitute a waiver by Landlord. Provided that Tenant is not in default beyond the expiration of any applicable any notice, grace or cure period of any of its obligations under this Lease at the expiration of the Term, Landlord shall refund to Tenant not later than thirty (30) days after the expiration of this Lease any portion of the Security Deposit which Landlord is then holding.

7.2 Letter of Credit.

(a) In lieu of a cash Security Deposit, Tenant may deliver to Landlord, on the date that Tenant executes and delivers this Lease to Landlord, an Irrevocable Standby Letter of Credit (the "**Letter of Credit**") which shall be (1) in the form attached hereto as Exhibit 6, (2) issued by a bank approved in writing by Landlord with an investment grade credit rating from Moody's (i.e., a rating of Baa3 or above), S&P (i.e., a rating of BBB- or above), or Fitch (i.e., a rating of BBB- or above) (an "Acceptable Bank"), (3) upon which presentment may be made in Boston, MA, Washington, DC, or elsewhere in the continental United States if presentation may be made by overnight courier (e.g., Federal Express), (4) in the amount set forth in Exhibit 1, and (5) for a term of at least one (1) year, subject to automatic extension in accordance with the terms of the Letter of Credit. If the issuer of the Letter of Credit ceases to qualify as an Acceptable Bank or becomes subject to insolvency or receivership proceedings of any sort, Tenant shall be required to deliver a substitute Letter of Credit satisfying the conditions hereof (the "**Substitute Letter of Credit**") within fifteen (15) business days after written notice thereof from Landlord. If the issuer of the Letter of Credit gives written notice of its election not to renew such Letter of Credit for any additional period, Tenant shall be required to deliver a Substitute Letter of Credit at least thirty (30) days prior to the expiration of the term of such Letter of Credit. If Tenant fails to furnish such renewal or replacement by the applicable deadline set forth above, Landlord may draw upon such Letter of Credit and hold the proceeds thereof (the "**Security Proceeds**") as a cash Security Deposit pursuant to the terms of Section 7.1. Tenant agrees that it shall

maintain the Letter of Credit, in the full amount required hereunder, in effect until a date which is at least sixty (60) days after the Expiration Date of this Lease. Tenant's failure to maintain or replace the Letter of Credit as required hereunder shall be treated as a failure to pay rent for purposes of Landlord's remedies.

(b) If Tenant is in default of its obligations under this Lease that continues beyond the expiration of any applicable notice grace or cure period, then Landlord shall have the right, at any time after such event, without giving any further notice to Tenant, to draw down from the Letter of Credit (or Substitute Letter of Credit or Additional Letter of Credit, as defined below, as the case may be) (i) the amount necessary to cure such default or (ii) if such default cannot reasonably be cured by the expenditure of money, the amount which, in Landlord's opinion, is necessary to satisfy Tenant's liability in account thereof. In the event of any such draw by Landlord, Tenant shall, within fifteen (15) business days of written demand therefor, deliver to Landlord an additional Letter of Credit satisfying the foregoing conditions (the "**Additional Letter of Credit**"), except that the amount of such Additional Letter of Credit shall be the amount of such draw. Tenant may, in lieu of providing an Additional Letter of Credit, deliver to Landlord an amendment to the existing Letter of Credit. In addition, in the event of a termination based upon the default of Tenant under this Lease, or a rejection of this Lease pursuant to the provisions of the Federal Bankruptcy Code, Landlord shall have the right to draw upon the Letter of Credit (from time to time, if necessary) to cover the full amount of damages and other amounts due from Tenant to Landlord under this Lease. Any amounts so drawn shall, at Landlord's election, be applied first to any unpaid rent and other charges which were due prior to the filing of the petition for protection under the Federal Bankruptcy Code. Tenant hereby covenants and agrees not to oppose, contest or otherwise interfere with any attempt by Landlord to draw down from said Letter of Credit including, without limitation, by commencing an action seeking to enjoin or restrain Landlord from drawing upon said Letter of Credit. Tenant also hereby expressly waives any right or claim it may have to seek such equitable relief. In addition to whatever other rights and remedies Landlord may have against Tenant if Tenant breaches its obligations under this paragraph, Tenant hereby acknowledges that it shall be liable for any and all damages which Landlord may suffer as a result of any such breach.

(c) Upon request of Landlord, Tenant shall, at its expense, cooperate with Landlord in obtaining an amendment to or replacement of any Letter of Credit which Landlord is then holding so that the amended or new Letter of Credit reflects the name of any new owner of the Building.

(d) To the extent that Landlord has not previously drawn upon any Letter of Credit, Substitute Letter of Credit, Additional Letter of Credit or Security Proceeds (collectively, the "**Collateral**") held by Landlord, Landlord shall return such Collateral to Tenant on the expiration of the Term, less any amounts due from Tenant hereunder.

(e) In no event shall the proceeds of any Letter of Credit be deemed to be a prepayment of rent or a measure of liquidated damages.

7.3 Reduction in Security Deposit.

Provided that Tenant has not been in default under this Lease beyond applicable notice and cure periods at any time in the twelve (12) months prior to the Reduction Date, as hereafter defined, ("**Reduction Condition**"), the Security Deposit shall be reduced as set forth below on the Reduction Date. Provided that the Reduction Condition is met on the Reduction Date, the Security Deposit shall be reduced to Two Hundred Eighty-Five Thousand Nine and 50/100 Dollars (\$285,009.50) on the third (3rd) anniversary of the Rent Commencement Date ("**Reduction Date**"). Tenant shall request such reduction in a written notice to Landlord at any time on or after the Reduction Date, and if the Reduction Condition has been met, Landlord shall so notify Tenant, whereupon Tenant shall provide Landlord with a Substitute Letter of Credit in the reduced amount (in which event Landlord shall forthwith return the previously held Letter of Credit), or an amendment to the Letter of Credit reducing it to the reduced amount. If the Reduction Condition is not met on the Reduction Date, Tenant shall have the right to reduce the amount of the Letter of Credit as aforesaid on the date after the Reduction Date when Tenant has not been in default under this Lease beyond applicable notice and cure periods for the immediately preceding twelve (12) month period.

8. **SERVICES FURNISHED BY LANDLORD**

8.1 Electric Current.

(a) Landlord shall provide electric current to Tenant in a reasonable quantity sufficient for Tenant's conduct of its business in the Premises for the Permitted Use but not less than six (6) watts per useable square feet of the Premises. The consumption of electricity in the Premises shall be measured by a separate submeter to be installed by Landlord in the Premises as of the Commencement Date. Tenant shall pay Landlord for Tenant's use of electric

current in the Premises as shown on such submeter from time to time within thirty (30) days after demand therefor. Tenant shall have the right to read such submeter from time to time. In addition, from time to time at the written request of Tenant, Landlord shall provide Tenant copies of the electric bills for the service covered by such submeter. If the Premises are not separately submetered as of the Commencement Date, Landlord shall, at its sole cost and expense, install a separate submeter to service the Premises.

(b) If Tenant shall require electric current for use in the Premises in excess of such reasonable quantity to be furnished for such use as hereinabove provided and if (i) in Landlord's reasonable judgment, Landlord's facilities are inadequate for such excess requirements or (ii) such excess use shall result in an additional burden on the Building air conditioning system and additional cost to Landlord on account thereof, then, as the case may be, (x) Landlord, upon written request and at the sole cost and expense of Tenant, will furnish and install such additional wire, conduits, feeders, switchboards and appurtenances as reasonably may be required to supply such additional requirements of Tenant if current therefor be available to Landlord, provided that the same shall be permitted by applicable laws and insurance regulations and shall not cause damage to the Building or the Premises or cause or create a dangerous or hazardous condition or entail excessive or unreasonable alterations or repairs or interfere with or disturb other tenants or occupants of the Building or (y) Tenant shall reimburse Landlord for such additional cost, as aforesaid. In the case of any additional electrical equipment being installed by or for Tenant, all the electricity serving such equipment shall be submetered, at Tenant's sole cost and expense, and Tenant shall reimburse Landlord for the cost of electricity consumed by such equipment as shown on such submeter.

(c) Except for Landlord's gross negligence or willful misconduct and except as set forth in Section 8.8 below, Landlord shall not in any way be liable or responsible to Tenant for any loss, damage or expense which Tenant may sustain or incur if the quantity, character, or supply of electrical energy is changed by the utility service provider such that it is no longer suitable for Tenant's requirements.

(d) Tenant agrees that it will not make any material alteration or material addition to the electrical equipment and/or appliances in the Premises without the prior written consent of Landlord in each instance first obtained, which consent will not be unreasonably withheld, conditioned, or delayed, and Tenant will promptly advise Landlord of any other alteration or addition to such electrical equipment and/or appliances.

8.2 Water.

(a) Landlord shall furnish cold water for ordinary premises and kitchenette, cleaning, toilet, lavatory and drinking purposes and hot water for the core restroom sinks. If Tenant requires, uses or consumes water for any purpose other than for the aforementioned purposes, Landlord may (i) assess a reasonable charge for the additional water so used or consumed by Tenant or (ii) install a water meter and thereby measure Tenant's water consumption for all purposes. In the latter event, Landlord shall pay the cost of the meter and the cost of installation thereof and shall keep said meter and installation equipment in good working order and repair. Tenant agrees to pay for the additional water consumed, as shown on said meter, together with the sewer charge based on said meter charges, as and when bills are rendered, and on default in making such payment, Landlord may pay such charges and collect the same from Tenant. All piping and other equipment and facilities for use of water outside the Building core, but that exclusively serve the Premises, will be installed and maintained by contractors approved by Landlord at Tenant's sole cost and expense.

(b) Landlord shall supply up to thirty (30) tons of condenser water for Tenant's supplemental HVAC equipment and Landlord will install, at Landlord's expense, a submeter to measure the condenser water for Tenant's operation of any supplemental HVAC equipment in the Premises. Tenant shall pay to Landlord, at the same time and in the same manner that Tenant pays Yearly Rent under the Lease, the charges for such condenser water based on the monthly reading of the submeter and the actual out of pocket cost to Landlord to provide such condenser water without mark-up or profit to Landlord.

8.3 Elevators, Heat, and Cleaning.

(a) "**Business Hours**" shall be defined as Mondays-Fridays (other than Building Holidays, as hereinafter defined) during the hours between 8:00 a.m. and 6:00 p.m. and on Saturdays (other than Building Holidays) during the hours between 8:00 a.m. and 1:00 p.m. "**Building Holidays**" shall include New Year's Day, Martin Luther King Day, Presidents' Day, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans' Day, Thanksgiving Day and Christmas Day (the "**Existing Holidays**"), and any other day declared a holiday by the federal government or the Commonwealth of Massachusetts; provided that during any such additional Building Holidays other than the Existing Holidays, Tenant shall not be obligated to reimburse Landlord for any HVAC service to the Premises requested by Tenant during times which would otherwise have been Business Hours if such day had not been designated as an additional Building Holiday.

(b) Landlord at its expense shall: (i) provide the existing elevator facilities during Business Hours and have at least one (1) elevator in operation available for Tenant's non-exclusive use at all other times; (ii) furnish heat to the Premises during Business Hours so as to maintain an ambient temperature between 68° and 72° during the heating season; and (iii) cause the Premises to be cleaned on Mondays-Fridays (except for Building Holidays) provided the same are kept in order by Tenant substantially in accordance with the cleaning standards attached hereto as Exhibit 8.

(c) With respect to furnishing heat on Saturdays, if Landlord determines that the majority of tenants in the Building are not utilizing their premises on Saturdays, then in order to conserve energy, Landlord reserves the right to provide such service only on request; service during the hours between 8:00 a.m. and 1:00 p.m. will be without charge to Tenant, but Tenant must request same by giving Landlord notice thereof not later than 12:00 Noon on the business day for which such service is required or 3:00 on the preceding business day for weekend or Building Holiday service.

8.4 Air Conditioning.

(a) Landlord shall furnish to and distribute in the Premises air conditioning during Business Hours so as to maintain an ambient temperature between 70° and 74° during the cooling season. Tenant agrees to close the blinds when necessary because of the sun's position, whenever the air conditioning system is in operation, and to abide by all the reasonable regulations and requirements which Landlord may prescribe for, the proper functioning and protection of the air conditioning system.

(b) With respect to furnishing air conditioning on Saturdays, if Landlord determines that the majority of tenants in the Building are not utilizing their premises on Saturdays, then in order to conserve energy, Landlord reserves the right to provide such service only on request; service during the hours between 8:00 a.m. and 1:00 p.m. will be without charge to Tenant, but Tenant must request same by giving Landlord notice thereof not later than 3:00 on the preceding Friday.

8.5 Additional Heat, Cleaning and Air Conditioning Services.

(a) Landlord will use reasonable efforts, upon notice as set forth above from Tenant of its requirements in that regard, to furnish additional heat, cleaning or air conditioning services to the Premises on days and at times other than as above provided.

(b) Tenant will pay to Landlord a reasonable charge (i) for any such additional heat or air conditioning service required by Tenant on an hourly basis at the prevailing hourly rate (based on Landlord's direct cost (including equipment depreciation), (ii) for any extra cleaning of the Premises required because of the carelessness or indifference of Tenant or because of the particular nature of Tenant's business (i.e., other than customary business office use), and (iii) for any cleaning done at the request of Tenant of any portions of the Premises which may be used for storage, a shipping room or other non-office purposes. If the cost to Landlord for cleaning the Premises shall be increased due to the installation in the Premises, at Tenant's request, of any materials or finish other than those which are building standard, Tenant shall pay to Landlord an amount equal to such increase in cost. Landlord hereby represents to Tenant that, as of the Execution Date of this Lease, the charge for overtime heating and cooling is \$50.00 per hour for the first (1st) floor and \$75.00 per hour for the second (2nd) floor (subject to Landlord's right, from time to time, to increase such charge to reflect actual increases in the cost of providing such services including equipment depreciation and Landlord's standard administrative fee; provided, however, that the hourly charge for the first (1st) floor shall always be 2/3rd of the hourly charge for the second (2nd) floor.

8.6 Additional Air Conditioning Equipment. In the event Tenant requires additional air conditioning for business machines, meeting rooms or other special purposes, or because of occupancy or excess electrical loads, any additional air conditioning units, chillers, condensers, compressors, ducts, piping and other equipment, such additional air conditioning equipment will be installed and maintained by contractors approved by Landlord, which approval shall not be unreasonably withheld, at Tenant's sole cost and expense, but only if, in Landlord's reasonable judgment, the same will not cause damage or injury to the Building or create a dangerous or hazardous condition or entail excessive or unreasonable alterations, repairs or expense (unless Tenant agrees to pay for same) or materially interfere with or disturb other tenants; and Tenant shall pay to Landlord based on the readings of the existing submeter, the electricity costs with respect to such additional air conditioning equipment. All such equipment shall be submetered as provided in Section 8.1 hereof.

8.7 Repairs. Except as otherwise provided in Articles 18 and 20, and subject to Tenant's obligations in Article 14, Landlord shall keep and maintain the roof (and all components of the roof), exterior walls, structural floor slabs, columns, elevators, public stairways and corridors, public lavatories, all base building systems and equipment (including, without limitation, sanitary, electrical, heating, air conditioning, fire/life safety, plumbing or other systems servicing the Premises) and other common facilities of both the Building and the Common Areas in good condition and repair consistent with comparable first-class office buildings in Cambridge, Massachusetts.

8.8 Interruption or Curtailment of Services.

(a) When necessary by reason of accident or emergency, or for repairs, alterations, replacements or improvements which in the reasonable judgment of Landlord are desirable or necessary to be made, or of difficulty or inability in securing supplies or labor, or of strikes, or of any other cause beyond the reasonable control of Landlord, whether such other cause be similar or dissimilar to those hereinabove specifically mentioned until said cause has been removed, Landlord reserves the right temporarily to interrupt, curtail, stop or suspend (i) the furnishing of heating, elevator, air conditioning, and cleaning services and (ii) the operation of the plumbing and electric systems, provided, however, Landlord shall use commercially reasonable efforts to minimize interference with Tenant's use and occupancy of the Premises. Landlord shall exercise reasonable diligence to eliminate the cause of any such interruption, curtailment, stoppage or suspension, but there shall be no diminution or abatement of rent or other compensation due from Landlord to Tenant hereunder, nor shall this Lease be affected or any of Tenant's obligations hereunder reduced, and Landlord shall have no responsibility or liability for any such interruption, curtailment, stoppage, or suspension of services or systems.

(b) Notwithstanding anything to the contrary in this Lease contained, if the Premises shall lack any service which Landlord is required to provide hereunder (thereby rendering the Premises or a portion thereof untenable) (a " **Service Interruption** ") so that, for the Landlord Service Interruption Cure Period, as hereinafter defined, the continued operation in the ordinary course of Tenant's business is materially adversely affected and if Tenant ceases to use the affected portion of the Premises during the period of untenability as the direct result of such lack of service, then, provided that Tenant ceases to use the affected portion of the Premises during the entirety of the Landlord Service Interruption Cure Period and that such untenability and Landlord's inability to cure such condition is not caused by the fault or neglect of Tenant or Tenant's agents, employees or contractors, Yearly Rent, Operating Expense Excess and Tax Excess shall thereafter be abated in proportion to such untenability until such condition is cured sufficiently to allow Tenant to occupy the affected portion of the Premises. For the purposes hereof, the " **Landlord Service Interruption Cure Period** " shall be defined as five (5) consecutive business days after Landlord's receipt of written notice from Tenant of the condition causing untenability in the Premises, provided however, that the Landlord Service Interruption Cure Period shall be ten (10) consecutive business days after Landlord's receipt of written notice from Tenant of such condition causing untenability in the Premises if either the condition was caused by causes beyond Landlord's control or Landlord is unable to cure such condition as the result of causes beyond Landlord's control.

(c) The provisions of paragraph (b) of this Section 8.8 shall not apply in the event of untenability caused by fire or other casualty, or taking (see Articles 18 and 20). The remedies set forth in this Section 8.8 shall be Tenant's sole remedies in the event of a Service Interruption.

(d) Notwithstanding anything to the contrary in this Lease contained, in the event that the Premises lack any service which Landlord is required to provide hereunder or electric current thereby rendering the Premises or any material portion thereof untenable, the untenability of which materially adversely affects the continued operation in the ordinary course of Tenant's business, and (i) if such untenability continues for ninety (90) consecutive days after Landlord's receipt of written notice of such condition from Tenant, and (ii) such untenability is not caused by the fault or neglect of Tenant, or Tenant's agents, employees, or contractors, then, provided that Tenant ceases to use the affected portion of the Premises during the entire period of such untenability, Tenant shall have the right to terminate this Lease exercisable by giving Landlord a written termination notice as follows. This Lease shall terminate as of the date ten (10) days after Landlord's receipt of Tenant's notice, unless Landlord shall have cured such condition on or before such tenth (10th) day.

8.9 Energy Conservation. Notwithstanding anything to the contrary in this Article 8 or in this Lease contained, Landlord may institute, and Tenant shall comply with, such written policies, programs and measures as may be reasonably necessary or required to comply with applicable codes, rules, regulations or standards.

8.10 Miscellaneous. All services provided by Landlord to Tenant are based upon an assumed maximum premises population of one person per one hundred fifty (150) square feet of Total Rentable Area of the Premises (one person per one hundred fifty (150) square feet of Total Rentable Area of the Premises for air conditioning).

8.11 Access. So long as Tenant shall comply with Landlord's reasonable security program for the Building, Tenant shall have access to the Premises and (for monthly pass holders) the Garage twenty-four (24) hours per day, three hundred sixty-five (365) days per year, during the Term of this Lease, except in an emergency. The Building is currently accessed by an electronic access system wherein tenants are permitted access to the Building by presenting electronic access cards at the electronic card readers. Landlord shall provide security in the Building in a manner consistent with other first-class office buildings in East Cambridge, Massachusetts.

9. OPERATING COSTS AND TAXES

9.1 Definitions. As used in this Article 9, the words and terms which follow mean and include the following:

(a) "**Operating Year**" shall mean a calendar year in which occurs any part of the Term of this Lease.

(b) "**Operating Costs in the Base Year**" shall be the amount as stated in Exhibit 1.

(c) "**Tenant's Proportionate Share**" shall be the percentage as stated in Exhibit 1.

(d) "**Taxes**" shall mean the real estate taxes and other taxes, levies and assessments imposed upon the Building and the land on which it stands and upon any personal property of Landlord used in the operation thereof, or Landlord's interest in the Building or such personal property; charges, fees and assessments for transit, housing, police, fire or other governmental services or purported benefits to the Building; service or user payments in lieu of taxes; any assessments in connection with any business improvement district in which the Building may be located or any similar program(s) in which the Building may participate; and any and all other taxes, levies, betterments, assessments and charges arising from the ownership, leasing, operating, use or occupancy of the Building or based upon rentals derived therefrom, which are or shall be imposed by National, State, Municipal or other authorities. As of the Execution Date, "Taxes" shall not include any franchise, rental, income or profit tax, capital levy or excise, provided, however, that any of the same and any other tax, excise, fee, levy, charge or assessment, however described, that may in the future be levied or assessed as a substitute for or an addition to, in whole or in part, any tax, levy or assessment which would otherwise constitute "Taxes," whether or not now customary or in the contemplation of the parties on the Execution Date of this Lease, shall constitute "Taxes," but only to the extent calculated as if the Building and the land upon which it stands is the only real estate owned by Landlord. "Taxes" shall also include expenses of tax abatement or other proceedings contesting assessments or levies. Wherever the term "Building" is used in determining

Taxes, it shall mean Taxes specific to the actual Building, or the equitably prorated and apportioned portion of those Taxes which apply to the Building together with other buildings or properties. Landlord represents and warrants that the Building is separately assessed for tax purposes from any other buildings or properties. Landlord represents that there is no tax reduction or tax exemption program in effect with respect to the Building that will expire during the Term.

(e) "**Tax Base**" shall be the amount stated in Exhibit 1 and shall apply to a Tax Period of twelve (12) months. Tax Base shall be reduced pro rata if and to the extent that the Tax Period contains fewer than twelve (12) months. Landlord represents and warrants that there are no payment-in-lieu-of-taxes or other tax reduction agreements in effect during the Tax Period of the Tax Base that will expire or phase out during the Term.

(f) "**Tax Period**" shall be any fiscal/tax period in respect of which Taxes are due and payable to the appropriate governmental taxing authority, any portion of which period occurs during the Term of this Lease, the first such Tax Period being the one in which the Rent Commencement Date occurs.

(g) "**Operating Costs**":

(1) Definition of Operating Costs. "**Operating Costs**" shall mean all costs incurred and expenditures of whatever nature made by Landlord in the operation and management, for repair and replacements, cleaning and maintenance of the Building including, without limitation, vehicular and pedestrian passageways related to the Building, related equipment, facilities and appurtenances, elevators, and cooling and heating equipment. In the event that Landlord or Landlord's managers or

agents perform services for the benefit of the Building off-site which would otherwise be performed on-site (e.g., accounting), the cost of such services shall be reasonably allocated among the properties benefiting from such service and shall be included in Operating Costs. Operating Costs shall include, without limitation, those categories of “Specifically Included Categories of Operating Costs”, as set forth below, but shall not include “Excluded Costs,” as hereinafter defined. If Landlord incurs Operating Costs for the Building together with one or more other buildings or properties, the shared costs and expenses shall be equitably prorated and apportioned between the Building and the other buildings or properties. Wherever the term “Building” is used in determining Operating Costs, it shall mean Operating Costs specific to the actual Building, or the equitably prorated and apportioned portion of those costs which apply to the Building together with other buildings or properties.

(2) Definition of Excluded Costs. “**Excluded Costs**” shall be defined as the following:

(i) Costs of renovating or otherwise improving, decorating, painting or redecorating space for tenants or other occupants of the Building.

(ii) Leasing fees or commissions, advertising and promotional expenses, legal fees, the cost of tenant improvements, build out allowances, moving expenses, assumption of rent under existing leases and other concessions incurred in connection with leasing space in the Building and costs incurred in connection with the selling or change of ownership of the Building, including brokerage commissions, consultants’, attorney’s and accountants’ fees, closing costs, title insurance premiums, transfer taxes and interest charges.

(iii) All depreciation and amortization, except as otherwise explicitly provided in this Article 9.

(iv) Any cost or expense to the extent that Landlord is reimbursed other than as a payment for Operating Costs, including, but not limited to, (a) work or services performed for any tenant (including Tenant) at such tenant’s cost, (b) the cost of any item for which Landlord is paid or reimbursed by warranties, service contracts, insurance proceeds or otherwise, (c) increased insurance premiums or taxes assessed specifically to any tenant of the Building, (d) charges (including applicable taxes) for electricity, water and other utilities for which Landlord is reimbursed by any tenant; and (e) costs for supplying extra services to tenants (i.e., overtime HVAC and extra cleaning); and (f) costs incurred in connection with the making of repairs which are the reimbursed by another tenant of the Building.

(v) Wages, salaries, or other compensation paid to any executive employees above the grade of general manager, except that if any such employee performs a service which would have been performed by an outside consultant, the compensation paid to such employee for performing such service shall be included in Operating Costs, to the extent only that the cost of such service does not exceed competitive cost of such service had such service been rendered by an outside consultant.

(vi) Interest on debt or amortization payments on any mortgage or mortgages (except to the extent that such interest is included together with the amortization of capital expenditures which are permitted to be passed through pursuant to the provisions of this Article 9).

(vii) Expenses incurred by Landlord for repairs or other work occasioned by fire, windstorm, or other insured casualty or condemnation (excluding commercially reasonable deductibles, which shall be included).

(viii) Expenses, including without limitation, legal fees and disbursements incurred by Landlord to resolve disputes, enforce or negotiate lease terms with prospective or existing tenants or in connection with any financing, sale or syndication of the Building.

(ix) Expenses for the replacement of any item covered under warranty to the extent of the amount covered less the reasonable, out-of-pocket costs of enforcement and excluding any enforcement costs of warranties obtained for Landlord’s Work.

(x) Costs to correct any penalty or fine incurred by Landlord due to Landlord’s violation of any federal, state, or local law or regulation.

(xi) Expenses for any item or service which Tenant pays directly to a third party or separately reimburses Landlord (i.e., other than as a reimbursement of Operating Costs) and expenses incurred by Landlord to the extent the same are reimbursable or reimbursed from any other tenants (i.e., other than as a reimbursement of Operating Costs), occupants of the property, or third parties.

(xii) Expenses in connection with services or other benefits of a type which are not provided Tenant but which are provided to another tenant or occupant.

(xiii) Wages, salaries, or other compensation paid to any executive employees above the grade of general manager, except that if any such employee performs a service which would have been performed by an outside consultant, the compensation paid to such employee for performing such service shall be included in Operating Costs, to the extent only that the cost of such service does not exceed competitive cost of such service had such service been rendered by an outside consultant.

(xiv) Overhead and profit increment paid to subsidiaries or affiliates of Landlord for services on or to the real property, to the extent only that the costs of such services exceed competitive costs of such services were they not so rendered by a subsidiary or affiliate (provided however, that this subparagraph (xvi) shall not apply to the management fee, which shall be governed by Section 9.1(4)(g).

(xv) Any expense for which Landlord is otherwise compensated or has the right to be compensated through the proceeds of insurance or for which the Landlord would have been compensated by insurance proceeds had it carried the coverage required in the Lease, and in all events other than the commercially reasonable deductibles.

(xvi) Expenses incurred by Landlord in order to correct any violation of applicable laws, but only to the extent any of the same are in effect and applicable to the Building as of the Commencement Date and subject to Section 9.1(g)(3) below, provided, however, that the provisions of this clause shall not preclude the inclusion of costs of compliance with applicable laws enacted prior to the date of this Lease to the extent such compliance is required for the first time by reason of any amendment, modification or reinterpretation (provided such reinterpretation is pursuant to a final judgment not subject to further appeal by a court of competent jurisdiction) of an applicable law which is imposed after the date of this Lease.

(xvii) Payments into reserves.

(xviii) All costs of purchasing (i.e., as opposed to maintenance of) major sculptures, paintings or other major works or objects of art (as opposed to decorations purchased or leased by Landlord for display in the common areas of the Building).

(xix) Any charge for Landlord's income tax, excess profit tax, franchise tax, or like tax on Landlord's business and tax penalties incurred as a result of Landlord's negligence, inability or unwillingness to make payments and/or to file any income tax or informational returns when due.

(xx) Costs of signs in or on the Building or complex identifying only the owner of the Building or other tenants signs.

(xxi) Landlord's charitable or political contributions.

(xxii) Costs incurred for capital improvements or any other capital expenditures as determined under generally accepted commercial office building accounting principles except for the annual charge-off of permitted Capital Expenditures explicitly provided in this Section 9.1(g)(3) below.

(xxiii) All costs incurred due to violation by Landlord or any tenant of the terms and conditions of any lease, except to the extent such cost would have been incurred absent a violation.

(xxiv) Travel and entertainment costs.

(xxv) Costs of gifts.

(xxvi) Any interest or penalties incurred as a result of Landlord's failure to timely make tax payments or to file any tax information or returns when due (including any additional interest or penalty resulting from the failure to pay taxes in time to receive the greatest discount for early payment).

(xxvii) Rentals for items (except when needed in connection with normal repairs and maintenance of permanent systems) which if purchased, rather than rented, would constitute a capital improvement to the extent that such payments exceed the amount which could have been included in Operating Expenses had Landlord purchased such equipment rather than leasing such equipment, except to the extent permitted under Section 9.1(g)(3).

(xxviii) Any costs to perform any substantial renovation to the Building, including without limitation, Landlord's proposed or currently planned renovations to the Building lobby, entrances and elevator cabs.

(xxix) Directly allocable expenses incurred for the repair, maintenance or operation of the Garage (i.e., exclusive of insurance and taxes, which shall be included in Operating Costs) and any pay-parking garage, including, but not limited to, salaries and benefits of any attendants (excluding elevators, escalators and areas providing direct access to the Garage from the Building).

(xxx) The operating expenses incurred by Landlord relative to retail stores and any specialty services in the Building, and the cost of installing, operating and maintaining any specialty service observatory, broadcasting facilities, luncheon club, museum, athletic or recreational club (except as set forth in clause (xxxi) below).

(xxxi) Cost of designing, renovating or otherwise constructing a fitness facility or other new amenity within the Building, but the cost of the repair, maintenance or use thereof shall be included in Operating Costs after deducting therefrom any revenue received by Landlord on any such facility or amenity; provided, however, that Tenant may elect, by giving notice of such election to Landlord not later than ninety (90) days after Landlord notifies Tenant of the establishment of any such new amenity, not to have the right to use such amenity, in which event no such costs shall be included in Operating Costs for purposes of this Lease.

(xxxii) Costs of replacement (as opposed to ordinary repair and maintenance) of the roof, foundation and exterior walls of the Premises (excluding replacement of damaged exterior glass).

(xxxiii) Costs of repairs necessitated by Landlord's negligence or willful misconduct.

(xxxiv) That portion of employees expenses for employees whose time is not spent directly and solely in the operation of the Premises; and any fee charged by Landlord for supervision of its own employees.

(xxxv) Landlord's general corporate overhead and administrative expenses.

(xxxvi) Rent and other costs incurred in connection with a management or leasing office to the extent the size or rental rate for such office space exceeds the size or fair market rental value of office space occupied by management personnel of comparable buildings (and Tenant agrees that the management and leasing office existing as of the Execution Date does not exceed such size).

(xxxvii) Taxes or any amounts or charges excluded from Taxes under this Lease.

(3) Capital Expenditures. Capital expenditures for replacements of existing capital items shall not be included in Operating Costs. Subject to subsection (i) below, if a new capital item is acquired which does not replace another capital item which was worn out, has become obsolete, etc., then there shall be included in Operating Costs for each Operating Year in which and after such capital expenditure is made the Annual Charge-Off of such capital expenditure.

(i) Limitation. Notwithstanding anything to the contrary herein contained, with respect to any capital expenditure, the Annual Charge-Off for such capital expenditure shall be included in Operating Costs only if:

- (x) the new capital item being acquired is required by law first enacted or adopted after the Execution Date of this Lease; or
- (y) The new capital item is reasonably projected to reduce Operating Costs by an amount reasonably proximate to the Annual Charge-Off (defined below) therefor, as reasonably determined by Landlord.

(ii) Annual Charge-Off. “**Annual Charge-Off**” shall be defined as the annual amount of principal and interest payments which would be required to repay a loan (“**Capital Loan**”) in equal monthly installments over the Useful Life, as hereinafter defined, of the capital item in question on a level payment direct reduction basis at an annual interest rate equal to the Capital Interest Rate, as hereinafter defined, where the initial principal balance is the cost of the capital item in question. However, if Landlord reasonably concludes on the basis of engineering estimates that a particular capital expenditure will effect savings in Building operating costs including, without limitation, energy-related costs, and that such projected savings will, on an annual basis (“**Projected Annual Savings**”), exceed the Annual Charge-Off of such capital expenditure computed as aforesaid, then and in such event, the Annual Charge-Off shall be increased to an amount equal to the Projected Annual Savings; and in such circumstances, the increased Annual Charge-Off (in the amount of the Projected Annual Savings) shall be made for such period of time as it would take to fully amortize the cost of the capital item in question, together with interest thereon at the Capital Interest Rate as aforesaid, in equal monthly payments, each in the amount of one-twelfth (1/12th) of the Projected Annual Savings, with such payments being applied first to interest and the balance to principal. In no event shall the Annual Charge-Off of any capital expenditure incurred before or during calendar year 2016 be included in Operating Expenses unless a full twelve (12) months of Annual Charge-Off thereof is included in Operating Costs in the Base Year.

(iii) Useful Life. “**Useful Life**” shall be reasonably determined by Landlord in accordance with generally accepted accounting principles and practices in effect at the time of acquisition of the capital item.

(iv) Capital Interest Rate. “**Capital Interest Rate**” shall be defined as an annual rate of either two percentage points over the so-called The Wall Street Journal prime rate at the time the capital expenditure is made or, if the capital item is acquired through third-party financing, then the actual (including fluctuating) rate paid by Landlord in financing the acquisition of such capital item.

(4) “**Specifically Included Categories of Operating Costs**.” Operating Costs shall include, but not be limited to, the following:

Taxes : Sales, Federal Social Security, Unemployment and Medicare Taxes and contributions and State Unemployment taxes and contributions accruing to and paid by Landlord on account of all employees of Landlord and/or Landlord’s managing agent, who are employed in, about or on account of the Building, except that taxes levied upon the net income of Landlord and taxes withheld from employees, and “Taxes” as defined in Section 9.1(d) shall not be included herein.

Water: All charges and rates connected with water supplied to the Building and related sewer use charges.

Heat and Air Conditioning: All charges connected with heat and air conditioning supplied to the Building.

Wages: Wages and the cost of all employee benefits of all employees of Landlord and/or Landlord’s managing agent who are employed in, about or on account of the Building.

Cleaning: The cost of labor and material for cleaning the Building, surrounding areaways and windows in the Building.

Elevator Maintenance: All expenses for or on account of the upkeep and maintenance of all elevators in the Building.

Management Fee: A management fee in an amount equal to three percent (3%) of the gross revenues of the Building, provided that a management fee of three percent (3%) of gross revenues (and grossed up as provided in this Lease) is included in Operating Costs in the Base Year.

Office Expenses: The cost of office expense, including, without limitation, rent, business supplies and equipment.

Electricity : The cost of all electric current for the operation of any machine, appliance or device used for the operation of the Premises and the Building, including the cost of electric current for the elevators, lights, air conditioning and heating, exclusive of tenant electricity supplied to leasable areas of the Building. If and so long as Tenant is billed directly by the electric utility for its own consumption as determined by its separate meter, or billed directly by Landlord as determined by a check meter, then Operating Costs shall include only Building and public area electric current consumption and not any leasable area electric current consumption (including electric current for HVAC air handling equipment in the Building). Wherever separate metering is unlawful, prohibited by utility company regulation or tariff or is otherwise impracticable, relevant consumption figures for the purposes of this Article 9 shall be determined by fair and reasonable allocations and engineering estimates made by Landlord.

Insurance, etc.: Fire, casualty, liability, rent loss and such other insurance as may from time to time be carried by Landlord, so long as typically carried by landlords of comparable buildings with respect to the Building, and the fees of Landlord's insurance consultants or brokers in connection therewith.

Other: Any common area or other charges which Landlord is required to pay with respect to Landlord's interest in the Building pursuant to any condominium, reciprocal easement or other similar documents applicable thereto and all other expenses customarily incurred in connection with the operation and maintenance of first-class office buildings in the City or Town wherein the Building is located including, without limitation, insurance deductible amounts.

(5) Gross-Up Provision. Notwithstanding the foregoing, in determining the amount of Operating Costs for any calendar year or portion thereof falling within the Term (including Operating Costs in the Base Year), if less than ninety-five percent (95%) of the Rentable Area of the Building shall have been occupied by tenants at any time during the period in question, then Operating Costs that vary based on occupancy for such period shall be adjusted to equal the amount such variable Operating Costs would have been for such period had occupancy been ninety-five percent (95%) throughout such period. The extrapolation of Operating Costs under this paragraph shall be performed by appropriately adjusting the cost of those components of Operating Costs that are impacted by changes in the occupancy of the Building.

9.2 Tax Excess. If in any Tax Period the Taxes exceed the Tax Base, Tenant shall pay to Landlord Tenant's Proportionate Share of such excess, such amount being hereinafter referred to as "**Tax Excess**". Tenant shall pay the Tax Excess as follows: commencing July 1, 2016, Tenant shall make monthly estimated payments on account of the projected Tax Excess, as reasonably estimated by Landlord on the basis of the most recent Tax data available. Such monthly estimated payments shall be made commencing on the aforesaid date and otherwise at the same time and in the same manner as Tenant's monthly payments of Yearly Rent. Landlord shall furnish to Tenant, after the end of each year, a statement setting forth in reasonable detail the basis for the computation of Tax Excess. If the total of Tenant's monthly estimated payments with respect to any Tax Period is greater than the actual Tax Excess for such Tax Period, Tenant may credit the difference against the next installment of rental or other charges due to Landlord hereunder. If the total of such payments is less than the actual Tax Excess for such Tax Period, Tenant shall pay the difference to Landlord within thirty (30) days after Landlord's bill therefor. Landlord shall, upon written request of Tenant, from time to time, provide Tenant with copies of real estate tax bills for any Tax Period with respect to which Tenant is required to pay Tax Excess.

Appropriate credit against Tax Excess shall be given for any refund obtained by reason of a reduction in any Taxes by the Assessors or the administrative, judicial or other governmental agency responsible therefor. The original computations, as well as reimbursement or payments of additional charges, if any, or allowances, if any, under the provisions of this Section 9.2 shall be based on the original assessed valuations with adjustments to be made at a later date when the tax refund, if any, shall be paid to Landlord by the taxing authorities. Expenditures for legal fees and for other similar or dissimilar expenses incurred in obtaining the tax refund may be charged against the tax refund before the adjustments are made for the Tax Period.

9.3 Operating Costs Excess. If the Operating Costs in any Operating Year exceed the Operating Costs in the Base Year, Tenant shall pay to Landlord Tenant's Proportionate Share of such excess, such amount being hereinafter referred to as "**Operating Costs Excess**." Tenant shall pay the Operating Costs Excess as follows: commencing January 1, 2017, Tenant shall make monthly estimated payments on account of the projected Operating Costs Excess, as reasonably estimated by Landlord on the basis of the most recent Operating Costs data or budget available. Such monthly estimated payments shall be made commencing on the aforesaid date and otherwise at the same time and in the same manner as Tenant's monthly payments of Yearly Rent. Landlord shall furnish to Tenant, within one hundred fifty (150) days after the end of each year, a statement setting forth in reasonable detail the basis for the computation of Operating Costs Excess for each year, and shall provide Tenant with reasonable supporting information upon written request therefor given sixty (60) days within two hundred seventy (270) days of Tenant's receipt of such statement. If the total of Tenant's monthly estimated payments with respect to any Operating Year is greater than the actual Operating Costs Excess for such Operating Year, Tenant may credit the difference against the next installment of rental or other charges due to Landlord hereunder. If the total of such payments is less than the actual Operating Costs Excess for such Operating Year, Tenant shall pay the difference to Landlord when billed therefor.

9.4 Part Years. If Tenant is obligated to pay Operating Costs Excess or Tax Excess for only a part of an Operating Year or a Tax Period, Tenant's Proportionate Share of the Operating Costs Excess or Tax Excess, as the case may be, in respect of such Operating Year or Tax Period shall be reduced to an amount determined by multiplying such Tenant's Proportionate Share by a fraction, the numerator of which is the number of days within such Operating Year or Tax Period for which Tenant has liability for the Operating Costs Excess or Tax Excess, as the case may be, and the denominator of which is three hundred sixty-five (365).

9.5 Effect of Taking. In the event of any taking of the Building or the land upon which it stands under circumstances whereby this Lease shall not terminate under the provisions of Article 20 then, for the purposes of determining Tax Excess there shall be substituted for the Tax Base originally provided for herein a fraction of such Tax Base, the numerator of which fraction shall be the Taxes for the first Tax Period subsequent to the condemnation or taking which takes into account such condemnation or taking, and the denominator of which shall be the Taxes for the last Tax Period prior to the condemnation or taking, which did not take into account such condemnation or taking. Tenant's Proportionate Share shall be adjusted appropriately to reflect the proportion of the Premises and/or the Building remaining after such taking.

9.6 Disputes, etc. Any disputes arising under this Article 9 may, at the election of either party, be submitted to arbitration as hereinafter provided. Any obligations under this Article 9 which shall not have been paid at the expiration or sooner termination of the Term of this Lease shall survive such expiration and shall be paid when and as the amount of same shall be determined to be due.

9.7 Tenant's Right to Examine Records.

Subject to the provisions of this Section 9.7, Tenant shall have the right, at Tenant's cost and expense, to examine all documentation and calculations prepared in determination of Operating Costs Excess. Tenant (a) Shall have the right to make such examination no more than once in respect of any period in which Landlord has given Tenant a statement of the actual amount of Operating Costs (the "**Operating Costs Statement**"). Tenant shall have no right to examine all documentation and calculations pursuant to this Section 9.7 unless Tenant has paid the amount shown on the Operating Costs Statement. Tenant shall exercise such right by giving Landlord written notice (the "**Documentation Request**") no more than one hundred eighty (180) days after Landlord gives Tenant an Operating Costs Statement in respect of such period (the "**Documentation Request Due Date**"). Notwithstanding anything to the contrary herein contained, Tenant shall only have the right to examine the documentation and calculations relative to Operating Costs in the Base Year for a period of one hundred eighty (180) days after Landlord gives Tenant the Operating Costs Statement with respect to the first or second Operating Year after the Base Year (but Tenant shall have the right to exercise Operating Costs in the Base Year only once).

(b) Such documentation and calculations shall be made available to Tenant at the offices where Landlord keeps such records in Massachusetts during normal Business Hours within a reasonable time after Landlord receives a Documentation Request. Landlord shall notify Tenant (the "**Documentation Availability Notice**") when such documents and calculations are available for examination.

(c) Such examination (the "**Examination**") may be made only by Tenant's employees, a nationally or regionally recognized independent certified public accounting firm (a "**Major CPA Firm**"), or by another certified public accounting firm reasonably approved by Landlord, in either case licensed to do business in the jurisdiction

where the Building is located or by Paul A. Stevens and Associates. Without limiting Landlord's approval rights, Landlord may withhold its approval of any examiner of Tenant who is representing, or in the case of an examiner other than a Major CPA Firm has within the last two (2) years prior to Tenant's request represented, any other tenant in the Building. In no event shall Tenant use any examiner who is being paid by Tenant on a contingent fee basis.

(d) As a condition to performing any such Examination, Tenant and its examiner(s) shall be required to execute and deliver to Landlord a confidentiality agreement, in substantially the form attached hereto as Exhibit 11. Without limiting the foregoing in the case of an examiner other than an Approved Reviewer or a Major CPA Firm, such examiner(s) shall be required to agree that it will not represent any other tenant in the Building within the two (2) years following the audit.

(e) The Examination shall be commenced within thirty (30) days after Landlord delivers the Documentation Availability Notice and, subject to Landlord's providing Tenant and its consultants with the necessary access to books and back-up documentation promptly after delivery of the Documentation Availability Notice, shall be concluded within sixty (60) days of its commencement. Tenant shall provide Landlord with a written report (the "**Report**") from its examiner summarizing the results of the Examination not later than the earlier to occur of (a) ten (10) days after Tenant's receipt of the Report and (b) ninety-five (95) days after Landlord delivers the Documentation Availability Notice (the earlier of such dates, the "**Report Due Date**").

(f) If Tenant delivers the Report to Landlord on or before the Report Due Date, and if Tenant disagrees with the Operating Costs Statement, Landlord and Tenant shall negotiate in good faith for thirty (30) days (the "**Operating Costs Negotiation Period**") to agree on a resolution.

(g) If Landlord and Tenant have not agreed on a resolution within the Operating Costs Negotiation Period, then Tenant may request that the matter be determined by arbitration by giving Landlord written notice (the "**Operating Costs Arbitration Request**") within thirty (30) days after the expiration of the Operating Costs Negotiation Period (the "**Arbitration Request Due Date**"), in which case the matter shall be submitted to arbitration in accordance with the provisions of Section 29.5 hereof.

(h) If, after the Examination with respect to any calendar year, it is finally determined that: (a) Tenant has made an overpayment on account of Operating Costs Excess, Landlord shall credit such overpayment against the next installment(s) of Yearly Rent thereafter payable by Tenant, except that if such overpayment is determined after the termination or expiration of the Term, Landlord shall promptly refund to Tenant the amount of such overpayment less any amounts then due from Tenant to Landlord; or (b) Tenant has made an underpayment on account of Operating Costs Excess, Tenant shall, within thirty (30) days of such determination, pay such underpayment to Landlord; and (c) if the amount of Operating Costs was overstated by more than five percent (5%), Landlord shall pay Tenant's reasonable out-of-pocket cost for such audit.

(i) Time is of the essence of the provisions of this Section 9.7. Should Tenant fail to give Landlord the Documentation Request by the Documentation Request Due Date, or the Report by the Report Due Date, or the Operating Costs Arbitration Request by the Arbitration Request Due Date, then in any such case Tenant shall have no further right to question said Operating Costs, and the amounts shown on Landlord's Operating Costs Statement shall be final as between the parties.

10. CHANGES OR ALTERATIONS BY LANDLORD

Landlord reserves the right, exercisable by itself or its nominee, at any time and from time to time without the same constituting an actual or constructive eviction and without incurring any liability to Tenant therefor or otherwise affecting Tenant's obligations under this Lease, to make such changes, alterations, additions, improvements, repairs or replacements in or to: (i) the Building (including the Premises) and the fixtures and equipment thereof, (ii) the street entrances, halls, passages, elevators, escalators, and stairways of the Building, and (iii) the Common Areas and facilities located therein, as Landlord may deem necessary or desirable, and to change the arrangement and/or location of entrances or passageways, doors and doorways, and corridors, elevators, stairs, toilets, or other public parts of the Building and/or the Common Areas, provided, however, that there be no unreasonable obstruction of the right of access to, or unreasonable interference with the use and enjoyment of, the Premises by Tenant. Nothing contained in this Article 10 shall be deemed to relieve Tenant of any duty, obligation or liability of Tenant with respect to making any repair, replacement or improvement or complying with any law, order or requirement of any governmental or other authority. Landlord reserves the right to adopt and at any time and from time to time to change the name or address of the Building. Neither this Lease nor any use by

Tenant shall give Tenant any right or easement for the use of any door, passage, concourse or walkway within the Building or in the Common Areas, and the use of such doors, passages, concourses or walkways may be regulated or discontinued at any time and from time to time by Landlord without notice to Tenant and without affecting the obligation of Tenant hereunder or incurring any liability to Tenant therefor, provided, however, that there be no unreasonable obstruction of the right of access to, or unreasonable interference with the use of the Premises by Tenant.

If at any time any windows of the Premises are temporarily closed or darkened for any reason whatsoever including but not limited except if due to Landlord's own acts, Landlord shall not be liable for any damage Tenant may sustain thereby, and Tenant shall not be entitled to any compensation therefor nor abatement of rent, nor shall the same release Tenant from its obligations hereunder or constitute an eviction. Nothing contained herein shall affect any of Tenant's rights or remedies under Section 8.8 above.

11. FIXTURES, EQUIPMENT AND IMPROVEMENTS—REMOVAL BY TENANT

All fixtures, equipment, improvements and appurtenances attached to or built into the Premises (excluding Tenant's furniture, fixtures, and equipment) prior to or during the Term, whether by Landlord at its expense or at the expense of Tenant (either or both) or by Tenant shall be and remain part of the Premises and shall not be removed by Tenant during or at the end of the Term unless Landlord otherwise elects to require Tenant to remove such fixtures, equipment, improvements and appurtenances, in accordance with and subject to Articles 12 and/or 22 of this Lease. Landlord agrees to notify Tenant in writing whether it will be required to remove any such fixtures, equipment, improvements and appurtenances at the end of the term at the time that Landlord approved Tenant's plans for same if Tenant requests in writing that Landlord make such election at the time that Tenant requests Landlord's approval thereof, provided that Tenant shall have no obligation to remove carpeting or leasehold improvements in the Premises that are customarily found in first-class business offices. All electric, plumbing, heating and sprinkling systems, fixtures and outlets, vaults, paneling, molding, shelving, radiator enclosures, cork, rubber, linoleum and composition floors, ventilating, silencing, air conditioning and cooling equipment, shall be deemed to be included in such fixtures, equipment, improvements and appurtenances, whether or not attached to or built into the Premises. Where not built into the Premises, all removable electric fixtures, furniture, or trade fixtures or business equipment or Tenant's inventory or stock in trade shall not be deemed to be included in such fixtures, equipment, improvements and appurtenances and may be, and upon the request of Landlord will be, removed by Tenant upon the condition that such removal shall not materially damage the Premises or the Building and that the cost of repairing any damage to the Premises or the Building arising from installation or such removal shall be paid by Tenant.

12. ALTERATIONS AND IMPROVEMENTS BY TENANT

Tenant shall make no alterations, decorations, installations, removals, additions or improvements in or to the Premises ("**Alterations**") without Landlord's prior written consent and then only those that are made by contractors or mechanics approved by Landlord. No installations or work shall be undertaken or begun by Tenant until: (i) Landlord has approved written plans and specifications and a time schedule for such work; (ii) Tenant has made provision for either written waivers of liens from all contractors, laborers and suppliers of materials for such installations or work, with respect to any Alterations with an aggregate cost in excess of \$200,000.00, the filing of lien bonds on behalf of such contractors, laborers and suppliers, or other appropriate protective measures approved by Landlord; and (iii) with respect to any Alterations with an aggregate cost in excess of \$200,000.00, Tenant has procured appropriate surety payment and performance bonds. No amendments or additions to such plans and specifications shall be made without the prior written consent of Landlord. Landlord's consent and approval required under this Article 12 shall not be unreasonably withheld. Landlord's approval is solely given for the benefit of Landlord, and neither Tenant nor any third party shall have the right to rely upon Landlord's approval of Tenant's plans for any purpose whatsoever. Without limiting the foregoing, Tenant shall be responsible for all elements of the design of Tenant's plans (including, without limitation, compliance with law, functionality of design, the structural integrity of the design, the configuration of the Premises and the placement of Tenant's furniture, appliances and equipment), and Landlord's approval of Tenant's plans shall in no event relieve Tenant of the responsibility for such design. Landlord shall have no liability or responsibility for any claim, injury or damage alleged to have been caused by the particular materials, whether building standard or non-building standard, appliances or equipment selected by Tenant in connection with any work performed by or on behalf of Tenant in the Premises including, without limitation, furniture, carpeting, copiers, laser printers, computers and refrigerators. Any such Alterations shall be

done at Tenant's sole expense and at such times and in such manner as Landlord may from time to time reasonably designate, pursuant to uniformly enforced, non-discriminatory construction rules and regulations in effect for the Building. Tenant shall reimburse Landlord, as Additional Rent, for any reasonable, out-of-pocket third-party costs (including engineers' and architects' fees and expenses but excluding in-house personnel of Landlord or its parent company) incurred by Landlord in connection with review and approval of the plans and specifications, and, with respect to Alterations that are structural or that materially affect the building systems, any inspections or other oversight by or on behalf of Landlord during the performance of such Alterations. Except for such out-of-pocket expenses, Landlord will not charge Tenant any construction management or supervisory fee in connection with Alterations, unless Landlord and Tenant otherwise agree that Landlord will manage the performance of such Alterations on Tenant's behalf. If Tenant shall make any Alterations, then Landlord may elect to require Tenant at the expiration or sooner termination of the Term of this Lease to restore the Premises to substantially the same condition as existed at the Commencement Date. Landlord agrees that Tenant will only be required to remove above-standard office improvements (including, without limitation, attached or built in fixtures, equipment and appurtenances) and, except as set forth below, will not have any obligation to remove any of Landlord's Work or the existing internal staircase(s) in the Premises. Notwithstanding the foregoing, Tenant shall at the election of Landlord remove any refrigerators and refrigeration equipment, including any associated taps, in the Premises, however affixed, and the so-called bleachers located in the first floor portion of the Premises. If Tenant so requests in writing at the time that Tenant requests Landlord's approval of such Alterations, Landlord agrees to make such election at the time that Landlord approves Tenant's plans for any such Alterations.

Notwithstanding anything to the contrary herein contained, Tenant shall have the right, without obtaining Landlord's consent, to make interior nonstructural Alterations costing not more than \$200,000.00, provided however that:

- (i) Tenant shall give prior written notice to Landlord of such Alterations;
- (ii) Tenant shall submit to Landlord plans for such Alterations if Tenant utilizes plans for such Alterations; and
- (iii) Such Alterations shall not materially affect any of the Building's systems, or the ceiling of the Premises.

13. TENANT'S CONTRACTORS—MECHANICS' AND OTHER LIENS—STANDARD OF TENANT'S PERFORMANCE—COMPLIANCE WITH LAWS

(a) Whenever Tenant shall make any Alterations in or to the Premises after the Commencement Date, Tenant will strictly observe the following covenants and agreements:

(b) Tenant agrees that it will not, either directly or indirectly, use any contractors and/or materials if, in the reasonable judgment of Landlord, their use may cause any harm to Landlord or create any difficulty, whether in the nature of a labor dispute or otherwise, in the construction, maintenance and/or operation of the Building or any part thereof.

(c) In no event shall any material or equipment be incorporated in or added to the Premises, so as to become a fixture or otherwise a part of the Building, in connection with any such Alteration which is subject to any lien, charge, mortgage or other encumbrance of any kind whatsoever or is subject to any security interest or any form of title retention agreement. No installations or work shall be undertaken or begun by Tenant until Tenant has complied with the requirements of Article 12 hereof. Any mechanic's lien filed against the Premises or the Building for work claimed to have been done for, or materials claimed to have been furnished to, Tenant shall be discharged by Tenant within ten (10) business days thereafter, at Tenant's expense by filing the bond required by law or otherwise. If Tenant fails so to discharge or bond any lien, Landlord may do so at Tenant's expense, and Tenant shall reimburse Landlord for any expense or cost incurred by Landlord in so doing within fifteen (15) days after rendition of a bill therefor.

(d) All installations or work done by Tenant shall be at its own expense and shall at all times comply with (i) laws, rules, orders and regulations of governmental authorities having jurisdiction thereof; (ii) orders, rules and regulations of any Board of Fire Underwriters, or any other body hereafter constituted exercising similar functions, and governing insurance rating bureaus; (iii) the Rules and Regulations of Landlord, initially set forth in Exhibit 4 hereof, as the same may be reasonably modified from time to time over the Term of this Lease by prior written notice to Tenant; and (iv) plans and specifications prepared by and at the expense of Tenant theretofore submitted to and approved by Landlord.

(e) Tenant shall procure all necessary permits before undertaking any work in the Premises; do all of such work in a good and workmanlike manner, employing materials of good quality and complying with all governmental requirements; and defend, save harmless, exonerate and indemnify Landlord and Landlord's managing agent from all injury, loss or damage to any person or property occasioned by or growing out of such work. Tenant shall cause contractors employed by Tenant (i) to carry the insurance required in Section II of Exhibit 3 and (ii) to submit certificates evidencing such coverage to Landlord prior to the commencement of such work.

14. REPAIRS BY TENANT—FLOOR LOAD

14.1 Repairs by Tenant. Tenant shall keep the interior, non-structural elements of the Premises neat and clean and in such repair, order and condition as the same are in on the Commencement Date or may be put in during the Term hereof, reasonable use and wearing thereof and damage by fire or by other casualty and repairs for which Landlord is responsible excepted. Tenant shall be solely responsible for the proper maintenance of all equipment and appliances operated by Tenant, including, without limitation, copiers, laser printers, computers and refrigerators. Tenant shall be responsible for janitorial services to be provided to any non-core lavatories currently existing within the Premises. Tenant shall make all repairs in and about the Premises necessary to preserve them in such repair, order and condition, which repairs shall be in quality and class equal to the original work. If Tenant shall fail to complete any required repair within thirty (30) days after Landlord's written notice thereof, Landlord may elect, at the expense of Tenant, to make any such repairs or to repair any damage or injury to the Building or the Premises caused by moving property of Tenant in or out of the Building, or by installation or removal of furniture or other property, or by misuse by, or neglect, or improper conduct of, Tenant or Tenant's servants, employees, agents, contractors, or licensees.

14.2 Floor Load—Heavy Machinery. Tenant shall not place a load upon any floor of the Premises exceeding the floor load per square foot of area which such floor was designed to carry and which is allowed by law (i.e., 1,000 pounds per square foot of floor area). Landlord reserves the right to prescribe the weight and position of all business machines and mechanical equipment, including safes, which shall be placed so as to distribute the weight. Business machines and mechanical equipment shall be placed and maintained by Tenant at Tenant's expense in settings sufficient in Landlord's reasonable judgment to absorb and prevent vibration, noise and annoyance. Tenant shall not move any safe, heavy machinery, heavy equipment, freight, bulky matter, or fixtures into or out of the Building without Landlord's prior written consent. If such safe, machinery, equipment, freight, bulky matter or fixtures require special handling, Tenant agrees to employ only persons holding a Master Rigger's License to do said work, and that all work in connection therewith shall comply with applicable laws and regulations. Any such moving shall be at the sole risk and hazard of Tenant, and subject to the waiver of subrogation, Tenant will defend, indemnify and save Landlord harmless against and from any liability, loss, injury, claim or suit resulting directly or indirectly from such moving. Proper placement of all such business machines, etc., in the Premises shall be Tenant's responsibility.

15. INSURANCE, INDEMNIFICATION, EXONERATION AND EXCULPATION

15.1 General Liability Insurance. Tenant shall procure, keep in force, maintain and pay for insurance throughout the Term in accordance with the terms and in the amounts set forth in Exhibit 3.

15.2 General. Subject to the waiver of subrogation set forth in Section 19 herein, Tenant will save Landlord, its agents and employees, harmless and will exonerate, defend and indemnify Landlord, its agents and employees, from and against any and all claims, liabilities or penalties asserted by or on behalf of any third party arising from Tenant's breach of this Lease or:

(a) On account of or based upon any injury to person, or loss of or damage to property, sustained or occurring on the Premises on account of or based upon the act, omission, fault, negligence or misconduct of any person whomsoever (except to the extent the same is caused by Landlord, its agents, contractors or employees);

(b) On account of or based upon any injury to person, or loss of or damage to property, sustained or occurring elsewhere (other than on the Premises) in or about the Building (and, in particular, without limiting the generality of the foregoing, on or about the elevators, stairways, public corridors, sidewalks, concourses, arcades, malls, galleries, vehicular tunnels, approaches, areaways, roof, or other appurtenances and facilities used in connection with the Building or Premises) arising out of the use or occupancy of the Building or Premises by Tenant, or by any person claiming by, through or under Tenant, or on account of or based upon the negligent acts or omissions or willful misconduct of Tenant, its agents, employees or contractors; and

(c) On account of or based upon (including monies due on account of) any work or thing whatsoever done (other than by Landlord or its contractors, or agents or employees of either) on the Premises during the Term of this Lease and during the period of time, if any, prior to the Commencement Date that Tenant may have been given access to the Premises.

15.3 Property of Tenant. In addition to and not in limitation of the foregoing, Tenant covenants and agrees that, to the maximum extent permitted by law, all merchandise, furniture, fixtures and property of every kind, nature and description related or arising out of Tenant's leasehold estate hereunder, which may be in or upon the Premises or Building, in the public corridors, or on the sidewalks, areaways and approaches adjacent thereto, shall be at the sole risk and hazard of Tenant, and that if the whole or any part thereof shall be damaged, destroyed, stolen or removed from any cause or reason whatsoever, no part of said damage or loss shall be charged to, or borne by, Landlord.

15.3 A Landlord's Indemnity of Tenant. Landlord, subject to the limitations on Landlord's liability contained elsewhere in this Lease, agrees to hold Tenant harmless and to defend, exonerate and indemnify Tenant from and against any and all claims, liabilities, or penalties asserted by or on behalf of any third party for damage to property or injuries to persons sustained or occurring in the Building to the extent arising from the negligence or willful misconduct of Landlord or Landlord's agents, employees or contractors.

15.4 Bursting of Pipes, etc. Landlord shall not be liable for any injury or damage to persons or property resulting from fire, explosion, falling plaster, steam, gas, air contaminants or emissions, electricity, electrical or electronic emanations or disturbance, water, rain or snow or leaks from any part of the Building or from the pipes, appliances, equipment or plumbing works or from the roof, street or sub-surface or from any other place or caused by dampness, vandalism, malicious mischief or by any other cause of whatever nature, unless (x) caused by or due to the negligence of Landlord, its agents, servants or employees, and (y) if Tenant knew of such condition sufficiently in advance of the occurrence of any such injury or damage as would have enabled Landlord to prevent such damage or loss had Tenant notified Landlord of such condition, only after (i) notice to Landlord of the condition and (ii) the expiration of a reasonable time (such reasonableness to take into account the potential seriousness of the condition and, in the event of imminent danger to persons or property, shall mean promptly upon receipt of such notice) after such notice has been received by Landlord without Landlord having taken all reasonable and practicable means to cure or correct such condition. In the case of (ii) above, pending such cure or correction by Landlord, Tenant shall take all reasonably prudent temporary measures and safeguards to prevent any injury, loss or damage to persons or property. Subject to the foregoing, in no event shall Landlord be liable for any loss, the risk of which is covered by Tenant's insurance or is required to be so covered by this Lease; nor shall Landlord or its agents be liable for any such damage caused by other tenants or persons in the Building or caused by operations in construction of any private, public, or quasi-public work; nor shall Landlord be liable for any latent defect in the Premises or in the Building.

15.5 Repairs and Alterations—No Diminution of Rental Value.

(a) Except as may be otherwise specifically provided in this Lease, there shall be no allowance to Tenant for diminution of rental value and no liability on the part of Landlord by reason of inconvenience, annoyance or injury to Tenant arising from any repairs, alterations, additions, replacements or improvements, or any related work made by Landlord, Tenant or others in or to any portion of the Building or Premises or any property adjoining the Building, or in or to fixtures, appurtenances, or equipment thereof, or for failure of Landlord or others to make any repairs, alterations, additions or improvements in or to any portion of the Building, or of the Premises, or in or to the fixtures, appurtenances or equipment thereof.

(b) Notwithstanding anything to the contrary in this Lease contained, if due to any such repairs, alterations, replacements, or improvements made by Landlord (a "**Repair Interruption**") or if due to Landlord's failure to make any repairs, alterations, or improvements required to be made by Landlord (a "**Failure to Repair**"), any portion of the Premises becomes untenantable or inaccessible so that for the Premises Untenantability Cure Period, as hereinafter defined, the continued operation in the ordinary course of Tenant's business is materially adversely affected, then, provided that Tenant ceases to use the affected portion of the Premises for the conduct of its business during the entirety of the Premises Untenantability Cure Period by reason of such untenantability or inaccessibility, and that such untenantability or inaccessibility and Landlord's inability to cure such condition is not caused by the fault or neglect of Tenant or Tenant's agents, employees or contractors, Yearly Rent, Tenant's Proportionate Share of Taxes and Tenant's Proportionate Share of Operating Costs shall thereafter be abated in proportion to such untenantability until the day such condition is completely corrected and Tenant can use and access the Premises or such portion thereof for the conduct of its business therein. For the purposes hereof, the "**Premises Untenantability**"

Cure Period” shall be defined as four (4) consecutive business days after Landlord’s receipt of written notice from Tenant of the condition causing untenability in the Premises, provided however, that the Premises Untenability Cure Period shall be ten (10) consecutive business days after Landlord’s receipt of written notice from Tenant of such condition causing untenability in the Premises if either the condition was caused by causes beyond Landlord’s control or Landlord is unable to cure such condition as the result of causes beyond Landlord’s control.

(c) The provisions of Section 15.5(b) shall not apply in the event of untenability caused by fire or other casualty, or taking (see Articles 18 and 20). Tenant’s sole remedy in the case of a Repair Interruption shall be as set forth in this Section 15.5.

16. ASSIGNMENT, MORTGAGING AND SUBLETTING

(a) Except as expressly provided in this Article 16, Tenant covenants and agrees that neither this Lease nor the Term and estate hereby granted, nor any interest herein or therein, will be assigned, mortgaged, pledged, hypothecated, encumbered or otherwise transferred, voluntarily, by operation of law or otherwise, and that neither the Premises, nor any part thereof will be encumbered in any manner by reason of any act or omission on the part of Tenant, or used or occupied, or permitted to be used or occupied, or utilized for desk space or for mailing privileges, by anyone other than Tenant, or for any use or purpose other than the Permitted Use, or be sublet, or offered or advertised for subletting without Landlord’s prior written consent and subject to Section (b)(3) below of this Section 16. Notwithstanding the foregoing, it is hereby expressly understood and agreed however, if Tenant is a business entity, that the assignment or transfer of this Lease, and the Term and estate hereby granted, to any business entity into which Tenant is merged (including any merger where Tenant is the surviving entity) or with which Tenant is consolidated, which business entity shall have a net worth, as determined in accordance with generally accepted accounting principles, of at least Two Hundred Fifty Million Dollars \$250,000,000.00 or which acquires all or substantially all of Tenant’s business (whether by stock purchase or otherwise) or assets, or through a reorganization of Tenant from one form of legal entity into another form of legal entity so long as the successor entity assumes by operation of law or otherwise the obligations of Tenant under this Lease, (such business entity being hereinafter called “**Permitted Assignee**”), shall not require Landlord’s consent or the giving of a Recapture Offer (defined below), but upon the express condition that Permitted Assignee and Tenant shall promptly execute, acknowledge and deliver to Landlord an agreement (“**Assumption Agreement**”) in form and substance reasonably satisfactory to Landlord whereby Permitted Assignee shall agree to be independently bound by and upon all the covenants, agreements, terms, provisions and conditions set forth in this Lease on the part of Tenant to be performed, and whereby Permitted Assignee shall expressly agree that the provisions of this Article 16 shall, notwithstanding such assignment or transfer, continue to be binding upon it with respect to all future assignments and transfers. In addition to the foregoing, the transaction by which the Tenant becomes, and the trading of the Tenant’s voting stock while the Tenant remains, a so-called reporting public corporation under the provisions of the Securities Exchange Act of 1934, as amended, the outstanding voting stock of which is registered in accordance with the provisions of the Securities Act of 1933, as amended, and actively traded on the New York Stock Exchange or another recognized, national securities exchange (and for the purposes hereof, the term “voting stock” shall refer to shares of stock regularly entitled to vote for the election of directors of the corporation) shall not require Landlord’s consent or the giving of the Recapture Offer.

(b) Except for an assignment or sublease to a Permitted Assignee or to an Affiliated Entity, as defined below, then, notwithstanding anything to the contrary in this Lease contained:

- (1) Tenant shall, prior to offering or advertising the Premises, or any portion thereof, for sublease give Landlord a Recapture Offer, as hereinafter defined.
- (2) For the purposes hereof, a “Recapture Offer” shall be defined as a notice in writing from Tenant to Landlord which:
 - (i) States that Tenant desires to sublet the Premises, or a portion thereof.
 - (ii) Identifies the affected portion of the Premises (“**Recapture Premises**”).
 - (iii) Identifies the period of time (“**Recapture Period**”) during which Tenant proposes to sublet the Recapture Premises or to assign its interest in this Lease.

(iv) Offers to Landlord to terminate this Lease in respect of the Recapture Premises (in the case of a subletting for the remainder of the Term of this Lease) or to suspend the Term of this Lease pro tanto in respect of the Recapture Period (i.e., the Term of this Lease in respect of the Recapture Premises shall be terminated during the Recapture Period and Tenant's rental obligations shall be reduced in proportion to the ratio of the Total Rentable Area of the Recapture Premises to the Total Rentable Area of the Premises then demised to Tenant).

(3) Landlord shall have thirty (30) days to accept a Recapture Offer. If Landlord does not timely give written notice to Tenant accepting a Recapture Offer, then Landlord shall not unreasonably withhold, condition, or delay its consent to a sublease of the Recapture Premises for the Recapture Period, or an assignment of Tenant's interest in this Lease, as the case may be, to a Qualified Transferee, as hereinafter defined. If Landlord recaptures a portion of the Premises with access to one or more of the internal staircases serving the Premises where Tenant remains in possession of one or more of the portions of the Premises with access to such staircase(s), then, in connection with such recapture, Landlord shall perform, at its expense, such work as shall be necessary to comply with applicable Laws and to prevent access to such staircase(s) from the recaptured portion of the Premises.

(4) For the purposes hereof, a "**Qualified Transferee**" shall be defined as a person, firm or corporation which, in Landlord's reasonable opinion:

- (i) is financially responsible and of good reputation;
- (ii) shall use the Premises for no other purpose than the Permitted Use; and
- (iii) is not a Restricted Occupant, as hereinafter defined.

(5) For the purposes hereof, a "**Restricted Occupant**" shall be defined as any tenant or subtenant of premises in the Building ("**Occupant**") unless such Occupant satisfies all three of the following criteria:

- (i) Such Occupant desires to occupy the Recapture Premises for expansion purposes only; and
- (ii) Such Occupant's occupancy of the Recapture Premises will not, either directly or indirectly, cause a vacancy in the premises which such Occupant then occupies in the Building; and
- (iii) Such Occupant's need, as to the size of premises and length of term, cannot then (i.e., at the time that Tenant requests Landlord's consent to such Occupant) be satisfied by Landlord.

(6) Notwithstanding anything to the contrary in this Article 16(b) contained:

- (i) If Tenant is in default of its obligations under this Lease continuing beyond the expiration of the applicable notice, grace or cure period at the time that it makes the aforesaid offer to Landlord, such default shall be deemed to be a "reasonable" reason for Landlord withholding its consent to any proposed subletting or assignment; and
- (ii) If Tenant does not enter into a sublease with a subtenant (or an assignment to an assignee, as the case may be) approved by Landlord, as aforesaid, on or before the date which is twelve (12) months after the earlier of: (x) the expiration of said thirty (30) day period, or (y) the date that Landlord notifies Tenant that Landlord will not accept Tenant's offer to terminate or suspend this Lease, then before entering into any assignment or sublease, Tenant shall again offer to Landlord, in accordance with this Article 16(b), either to terminate or to suspend this Lease in respect of the portion of the Premises proposed to be sublet (or in respect of the entirety of the Premises in the event of a proposed assignment, as the case may be). If Tenant shall make any subsequent offers to terminate or suspend this Lease pursuant to this Article 16(b), any such subsequent offers shall be treated in all respects as if it is Tenant's first offer to suspend or terminate this Lease pursuant to this Article 16(b), provided that the period of time Landlord shall have in which to accept or reject such subsequent offer shall be thirty (30) days.

(7) No subletting or assignment shall relieve Tenant of its primary obligation as party-Tenant hereunder, nor shall it reduce or increase Landlord's obligations under this Lease.

(c) Notwithstanding anything to the contrary herein contained, Tenant shall have the right, without obtaining Landlord's consent and without giving Landlord a Recapture Offer, to assign its interest in this Lease or to sublease the Premises, or any portion thereof, to an Affiliated Entity, as hereinafter defined, so long as such entity remains in such relationship to Tenant, and provided that prior to or simultaneously with such assignment, such Affiliated Entity executes and delivers to Landlord an Assumption Agreement, as hereinabove defined. For the purposes hereof, an "Affiliated Entity" shall be defined as any entity which is controlled by, is under common control with, or which controls Tenant. For the purposes hereof, control shall mean the direct or indirect ownership of more than fifty (50%) percent of the beneficial interest of the entity in question.

(b) If this Lease be assigned, or if the Premises or any part thereof be sublet or occupied by anybody other than Tenant, Landlord may, at any time following a default which is not cured within applicable notice and cure periods, and from time to time, collect rent and other charges from the assignee, subtenant or occupant, and apply the net amount collected to the rent and other charges herein reserved then due and thereafter becoming due, but no such assignment, subletting, occupancy or collection shall be deemed a waiver of this covenant, or the acceptance of the assignee, subtenant or occupant as a tenant, or a release of Tenant from the further performance by Tenant of covenants on the part of Tenant herein contained. Any consent by Landlord to a particular assignment or subletting shall not in any way diminish the prohibition stated in the first sentence of this Article 16 or the continuing liability of Tenant named on Exhibit 1 as the party Tenant under this Lease. No assignment or subletting shall affect the purpose for which the Premises may be used as stated in Exhibit 1.

(c) In the event of an assignment of this Lease or a sublease of the Premises or any portion thereof to anyone other than a Permitted Assignee or Affiliated Entity, Tenant shall pay to Landlord fifty percent (50%) of any Net Transfer Profit (as defined below), payable in accordance with the following. In the case of an assignment of this Lease, "Net Transfer Profit": (1) shall be defined as the amount (if any) by which any consideration paid by the assignee, if any, specifically for or as an inducement to Tenant to make said assignment exceeds the reasonable attorneys' fees, architectural and engineering fees, construction costs and brokerage fees and other inducements or concessions incurred by Tenant in order to effect such transfer (collectively, "Transfer Expenses"), and (2) shall be payable concurrently with the payment to be made by the assignee to Tenant. In the case of a sublease, "Net Transfer Profit": (3) shall be defined as a monthly amount equal to the amount by which the sublease rent actually received and other charges payable by the subtenant to Tenant under the sublease exceed the sum of the rent and other charges payable under this Lease for the Premises or allocable to the sublet portion thereof, plus the Transfer Expenses incurred with respect to such sublease, and (4) shall be payable on a monthly basis concurrently with the subtenant's payment of rent to Tenant under the sublease after Tenant recovers such Transfer Expenses. Net Transfer Profit shall not include any amounts paid to Tenant for purchase or rental of furniture, fixtures or improvements or for leasehold improvements; provided, however, that Tenant shall not include the cost of any such items in Transfer Expenses.

(d) The listing of any name other than that of Tenant, whether on the doors of the Premises or on the Building directory, or otherwise, shall not operate to vest in any such other person, firm or corporation any right or interest in this Lease or in the Premises or be deemed to effect or evidence any consent of Landlord, it being expressly understood that any such listing is a privilege extended by Landlord revocable at will by written notice to Tenant.

(e) Tenant shall pay Landlord a review fee in the amount of Landlord's reasonable, out of pocket costs for Landlord's review of any requests by Tenant to sublet the Premises or assign its interest in this Lease. Such fee or costs shall be deemed to be additional rent under this Lease.

(f) Notwithstanding anything to the contrary herein contained, Tenant shall have the right, upon prior notice to Landlord but without having to obtain Landlord's consent, to sublet up to ten percent (10%) of the floor area of the Premises for Internal Sublet Offices, as hereinafter defined, to Affiliated Entities and Tenant's clients, Tenant's customers and Tenant's business partners (collectively the "Permitted Users"). For purposes of this Paragraph, an "Internal Sublet Office" shall have access to the Common Areas of the Building only through Tenant's reception area and a secondary exit from Tenant's Premises. Tenant shall be responsible for the Permitted Users complying with the terms and conditions of this Lease, and any failure of the Permitted Users to comply with the terms and conditions of this Lease shall be deemed a failure by Tenant to comply. Tenant acknowledges and agrees that it shall be responsible for all acts, omissions and negligence of the Permitted Users.

17. MISCELLANEOUS COVENANTS

Tenant covenants and agrees as follows:

17.1 Rules and Regulations. Tenant will faithfully observe and comply with the Rules and Regulations annexed hereto as Exhibit 4 and such other and further reasonable Rules and Regulations as Landlord hereafter at any time or from time to time may make and may communicate in writing to Tenant, which in the reasonable judgment of Landlord shall be necessary for the reputation, safety, care or appearance of the Building, or the preservation of good order therein, or the operation or maintenance of the Building, or the equipment thereof, or the comfort of tenants or others in the Building, provided, however, that in the case of any conflict between the provisions of this Lease and any such regulations, the provisions of this Lease shall control, and provided further that nothing contained in this Lease shall be construed to impose upon Landlord any duty or obligation to enforce the Rules and Regulations or the terms, covenants or conditions in any other lease as against any other tenant and Landlord shall not be liable to Tenant for violation of the same by any other tenant, its servants, employees, agents, contractors, visitors, invitees or licensees. Notwithstanding anything to the contrary in this Lease contained, Landlord agrees that it will not enforce said Rules and Regulations against Tenant in a discriminatory or arbitrary manner.

17.2 Access to Premises. Tenant shall: (i) permit Landlord to erect, use and maintain pipes, ducts and conduits in and through the Premises, provided the same do not materially reduce the floor area or materially adversely affect the appearance thereof; (ii) upon prior oral/email notice (except that no notice shall be required in emergency situations), permit Landlord and any mortgagee of the Building or the Building and land or of the interest of Landlord therein, and any lessor under any underlying lease, and their representatives, to have reasonable access to and to enter upon the Premises at all reasonable hours for the purposes of inspection or of making repairs, replacements or improvements in or to the Premises or the Building or equipment (including, without limitation, sanitary, electrical, heating, air conditioning or other systems) or of complying with all laws, orders and requirements of governmental or other authority or of exercising any right reserved to Landlord by this Lease (including the right during the progress of any such repairs, replacements or improvements or while performing work and furnishing materials in connection with compliance with any such laws, orders or requirements to take upon or through, or to keep and store within, the Premises all necessary materials, tools and equipment, provided that such storage does not adversely affect Tenant's access to or the use and occupancy of the Premises); and (iii) permit Landlord, at reasonable times, to show the Premises during ordinary Business Hours to any existing or prospective mortgagee, purchaser, or assignee of any mortgage of the Building or of the Building and the land or of the interest of Landlord therein, and during the period of twelve (12) months next preceding the Expiration Date to any person contemplating the leasing of the Premises or any part thereof. If Tenant shall not be personally present to open and permit an entry into the Premises at any time when for any reason an entry therein shall be necessary or permissible, Landlord or Landlord's agents may enter the same by a master key, or, in the event of an emergency, may forcibly enter the same, without rendering Landlord or such agents liable therefor (if during such entry Landlord or Landlord's agents shall accord reasonable care to Tenant's property), and without in any manner affecting the obligations and covenants of this Lease; provided, however, except in an emergency, Landlord shall use reasonable efforts to schedule any access in advance with Tenant and at times when Tenant is reasonably able to have a representative present during such access. Landlord shall exercise its rights of access to the Premises permitted under any of the terms and provisions of this Lease in such manner as to minimize to the extent practicable interference with Tenant's use and occupation of the Premises.

17.3 Accidents to Sanitary and Other Systems. Tenant shall give to Landlord prompt notice of any fire or accident in the Premises or in the Building and of any damage to, or defective condition in, any part or appurtenance of the Building including, without limitation, sanitary, electrical, ventilation, heating and air conditioning or other systems located in, or passing through, the Premises. Except as otherwise provided in Articles 18 and 20, and subject to Tenant's obligations in Article 14, such damage or defective condition shall be remedied by Landlord with reasonable diligence, but if such damage or defective condition was caused by Tenant or by the employees, licensees, contractors or invitees of Tenant, the cost to remedy the same shall be paid by Tenant, subject to the waiver of subrogation in this Lease. In addition, all reasonable costs incurred by Landlord in connection with the investigation of any notice given by Tenant shall be paid by Tenant if the reported damage or defective condition was caused by Tenant or by the employees, licensees, contractors, or invitees of Tenant, subject to the waiver of subrogation in this Lease. Tenant shall not be entitled to claim any eviction from the Premises or any damages arising from any such damage or defect unless the same (i) shall have been occasioned by the negligence or willful misconduct of Landlord, its agents, servants or employees and (ii) shall not, after notice to Landlord of the condition, have been cured or corrected within thirty (30) days after such notice has been received by Landlord; and in case of a claim of eviction unless such damage or defective condition shall have rendered the Premises untenable and they shall not have been made tenable by Landlord within the aforesaid thirty (30) days.

17.4 Signs, Blinds and Drapes.

(a) Tenant shall put no signs in any part of the Building. Except for the building standard window blinds to be installed by Landlord, at Landlord's cost and expense, as part of Landlord's Work, no signs or blinds may be put on or in any window or elsewhere if visible from the exterior of the Building, nor may the building standard drapes or blinds be removed by Tenant. Notwithstanding the foregoing, Tenant shall have the right, during the Term of this Lease, to list Tenant's name on the Building directory. The initial listing of Tenant's name shall be at Landlord's cost and expense. Any changes, replacements or additions by Tenant to such directory shall be at Tenant's sole cost and expense. Tenant may hang its own drapes, provided that they shall not in any way interfere with the building standard drapery or blinds or be visible from the exterior of the Building and that such drapes are so hung and installed that when drawn, the building standard drapery or blinds are automatically also drawn. Any signs or lettering in the public corridors or on the doors shall conform to Landlord's building standard design. Neither Landlord's name, nor the name of the Building or the name of any other structure erected or used in conjunction therewith shall be used without Landlord's consent in any advertising material (except on business stationery or as an address in advertising matter), nor shall any such name, as aforesaid, be used in any undignified, confusing, detrimental or misleading manner. Subject to the provisions of Articles 12 and 13 above, Tenant may install a white screening graphic on portions of the exterior first floor windows (extending from approximately four feet (4') above grade level to approximately 6 feet (6') above grade level) of the Premises to obscure vision into the Premises from the adjoining pavement. Landlord shall have the right to approve the design and location of such screening.

(b) In addition, provided that Tenant is then leasing and occupying, in the aggregate, at least 60,000 rentable square feet in the Building, Tenant shall have the non-exclusive right, at its sole cost and expense, to install and maintain a tenant identification sign consisting of the name of Tenant on the exterior façade of the Building (the "**Exterior Signage**"), provided that (i) no monetary or material non-monetary default of Tenant, beyond applicable notice and cure period, has occurred hereunder and is continuing, (ii) Tenant installs such Exterior Signage within two (2) years after the time that Tenant first is in occupancy of 60,000 rentable square feet or more in the Building, (iii) Landlord approves in writing the location, size and appearance of such Exterior Signage requested by Tenant, and Landlord hereby approves the signage depicted on **Exhibit 7** hereto (it being understood and agreed that **Exhibit 7** depicts two (2) alternative signs and that Tenant may elect which one (1) of such alternative signs shall be installed), (iv) such Exterior Signage is in compliance with all applicable laws, codes and ordinances and Tenant has obtained all governmental permits and approvals required in connection therewith, and (v) the installation, maintenance and removal of such Exterior Signage (including, without limitation, the repair and cleaning of the Building façade upon removal of such Building Sign) is performed at Tenant's expense in accordance with the terms and conditions governing alterations pursuant to Articles 12 and 13 hereof and Landlord's reasonable regulations. Notwithstanding the foregoing provisions of this Section 17.4 to the contrary, (i) within thirty (30) days after written notice from Landlord requiring removal of the Exterior Signage (the "**Removal Notice**"), which Removal Notice may be given at any time when (x) the aggregate square footage of the Premises leased and occupied by Tenant or any Permitted Assignee or Affiliated Entity is less than 60,000 rentable square feet, or (y) there occurs, and remains uncured beyond applicable notice and cure period, a monetary or material non-monetary default of Tenant, or (ii) on or before the date on which the Term of the Lease expires or is terminated, Tenant shall, at Tenant's cost and expense, remove the Exterior Signage and restore all damage to the Building caused by the installation and/or removal of such Exterior Signage, which removal and restoration shall be performed in accordance with the terms and conditions governing alterations pursuant to Articles 12 and 13 hereof. If Tenant does not perform the maintenance, repair, replacement or removal work specified in this Section 17.4 within ten (10) business days after notice from Landlord, then Landlord may do so, at Tenant's cost, and Tenant shall reimburse Landlord, as additional rent, for the cost of such work within thirty (30) days after request therefor. The right to the Exterior Signage granted pursuant to this Section 17.4 is personal to Tenant and may not be exercised by any occupant, subtenant, or other assignee of Tenant. If Tenant fails to install Exterior Signage on or before the date two (2) years after the time that Tenant or any Permitted Assignee or Affiliated Entity first is in occupancy of 60,000 rentable square feet or more, then Tenant shall have no further right to install any Exterior Signage, time being of the essence.

(c) Tenant shall have the right to install an identification sign on the door from the Patio (defined below) to the Premises provided that (i) Landlord approves in writing the location, size and appearance of such sign, (ii) such sign is in compliance with all applicable laws, codes and ordinances and Tenant has obtained all governmental permits and approvals required in connection therewith, and (iii) the installation, maintenance and removal of such sign (including, without limitation, the repair and cleaning of the affected portion of the Building upon removal of such sign) is performed at Tenant's expense in accordance with the terms and conditions governing alterations pursuant to Articles 12 and 13 hereof and Landlord's reasonable regulations.

17.5 Estoppel Certificate. Either party shall at any time and from time to time upon not less than ten (10) business days' prior notice to the other party (the "**Requesting Party**"), execute, acknowledge and deliver to the Requesting Party a statement in writing certifying that this Lease is unmodified and in full force and effect (or if there have been modifications, that the same is in full force and effect as modified and stating the modifications), and the dates to which the Yearly Rent and other charges have been paid in advance, if any, stating whether or not such party is in default in performance of any covenant, agreement, term, provision or condition contained in this Lease and, if so, specifying each such default and such other facts as the Requesting Party may reasonably request and which are customarily included in estoppels certificates, it being intended that any such statement delivered pursuant hereto may be relied upon by any prospective purchaser of the Building or of the Building and the land or of any interest of Landlord therein, any mortgagee or prospective mortgagee thereof, any lessor or prospective lessor thereof, any lessee or prospective lessee thereof, or any prospective assignee of any mortgage thereof. Time is of the essence in respect of any such requested certificate, both parties hereby acknowledging the importance of such certificates in mortgage financing arrangements, prospective sale and the like. If Tenant fails to so execute and deliver such estoppel certificate within such ten (10) business day period, then Landlord shall be entitled to send Tenant a second notice requesting such execution and delivery of such estoppel certificate ("**Second Notice**"), and if Tenant fails to execute and deliver such estoppel certificate within three (3) days after the Second Notice, then Tenant shall pay to Landlord a fee in the amount of Five Hundred and 00/100 Dollars (\$500.00) per day for each day beyond the third (3rd) day after the Second Notice that Tenant fails to execute and deliver such estoppel certificate. Such fee shall be in addition to Landlord's other remedies hereunder.

17.6 Prohibited Materials and Property . Tenant shall not bring or permit to be brought or kept in or on the Premises or elsewhere in the Building (i) any inflammable, combustible or explosive fluid, material , chemical or substance including, without limitation, any hazardous substances (collectively, "**Hazardous Materials**") as defined under applicable state or local law, under the Federal Comprehensive Environmental Response Compensation and Liability Act (CERCLA), 42 USC §9601 et seq., as amended, under Section 3001 of the Federal Resource Conservation and Recovery Act of 1976, as amended, or under any regulation of any governmental authority regulating environmental or health matters (collectively, "**Environmental Laws**") (except for standard office supplies and cleaning supplies used, stored, and disposed of in accordance with applicable law) or (ii) any materials, appliances or equipment (including, without limitation, materials, appliances and equipment selected by Tenant for the construction or other preparation of the Premises and furniture and carpeting) which pose any danger to life, safety or health or may cause damage, injury or death. Tenant shall not cause or permit any potentially harmful air emissions, odors of cooking or other processes, or any unusual or other objectionable odors or emissions to emanate from or permeate the Premises. The occasional presence of normal food odors generated by catered events in the Atrium shall not be considered to violate the foregoing restriction. In the event that, during the performance of any Alterations by Tenant at the Premises or during the performance of Landlord's Work, the removal, encapsulation or other remediation of Hazardous Materials determined to be present in the Premises as of the Commencement Date shall be required pursuant to any Environmental Laws, such removal, encapsulation or other remediation shall be performed by Landlord, at Landlord's expense (and in no event shall any portion of Landlord's Contribution be applied toward such cost), to the extent required by such Environmental Laws.

17.7 Requirements of Law—Fines and Penalties. Tenant at its sole expense shall comply with all laws, rules, orders and regulations, including, without limitation, all energy-related requirements, of Federal, State, County and Municipal Authorities and with any direction of any public officer or officers, pursuant to law, which shall impose any duty upon Landlord or Tenant with respect to or arising out of Tenant's use or occupancy of the Premises. Tenant shall reimburse and compensate Landlord for all expenditures made by, or damages or fines sustained or incurred by, Landlord due to nonperformance or noncompliance with or breach or failure to observe any item, covenant, or condition of this Lease upon Tenant's part to be kept, observed, performed or complied with. If Tenant receives notice of any violation of law, ordinance, order or regulation applicable to the Premises, it shall give prompt notice thereof to Landlord. During the Term, Tenant shall not be responsible for the costs to make Common Areas of the Building or any entrance to the Premises comply with applicable law, including the Americans with Disabilities Act (42 U.S.C. § 12101 et. seq.) and the regulations and Accessibility Guidelines for Buildings and Facilities issued pursuant thereto, unless the requirement to comply was triggered by either (i) Tenant's particular use of the premises (versus general office or retail use) or (ii) any improvements to the premises made by or on behalf of Tenant. However, Tenant agrees that, within the Premises, it shall be responsible for compliance with the Americans with Disabilities Act (42 U.S.C. § 12101 et. seq.) and the regulations and Accessibility Guidelines for Buildings and Facilities issued pursuant thereto.

17.8 Tenant's Acts—Effect on Insurance. Tenant shall not do or permit to be done any act or thing upon the Premises or elsewhere in the Building which will invalidate or be in conflict with any insurance policies covering the Building and the fixtures and property therein; and shall not do, or permit to be done, any act or thing upon the Premises which shall subject Landlord to any liability or responsibility for injury to any person or persons or to property by reason of any business or operation being carried on upon said Premises or for any other reason. Tenant at its own expense shall comply with all rules, orders, regulations and requirements of the Board of Fire Underwriters, or any other similar body having jurisdiction, and shall not (i) do, or permit anything to be done, in or upon the Premises, or bring or keep anything therein, except as now or hereafter permitted by the Fire Department, Board of Underwriters, Fire Insurance Rating Organization, or other authority having jurisdiction, and then only in such quantity and manner of storage as will not increase the rate for any insurance applicable to the Building, or (ii) use the Premises in a manner which shall increase such insurance rates on the Building, or on property located therein, over that applicable when Tenant first took occupancy of the Premises hereunder. If by reason of the failure of Tenant to comply with the provisions hereof the insurance rate applicable to any policy of insurance shall at any time thereafter be higher than it otherwise would be, Tenant shall reimburse Landlord for that part of any insurance premiums thereafter paid by Landlord, which shall have been charged because of such failure by Tenant.

17.9 Miscellaneous. Tenant shall not suffer or permit the Premises or any fixtures, equipment or utilities therein or serving the same, to be overloaded, damaged or defaced, nor permit any hole to be drilled or made in any part thereof, except for the purpose of hanging lightweight artwork, whiteboards, tack boards, and similar wall hangings on the walls of the Premises. Tenant shall not suffer or permit any employee, contractor, business invitee or visitor to violate any covenant, agreement or obligations of Tenant under this Lease.

18. DAMAGE BY FIRE, ETC.

During the entire Term of this Lease, and adjusting insurance coverages to reflect current values from time to time:—(i) Landlord shall keep the Building (excluding Alterations installed in the Premises after the Commencement Date (“**Later Alterations**”) and any personal property or trade fixtures installed by or at the expense of Tenant) insured in accordance with Exhibit 3; and (ii) Tenant shall keep its personal property and trade fixtures in and about the Premises and the Later Alterations insured in accordance with Exhibit 3.

If any portion of the Premises required to be insured by Landlord under the preceding paragraph shall be damaged by fire or other insured casualty, or the use thereof or access thereto shall be legally prohibited (or prohibited by Landlord) due to fire or other insured casualty (regardless of whether or not such fire or other insured casualty actually damages the Premises), Landlord shall proceed with diligence, subject to the then applicable statutes, building codes, zoning ordinances, and regulations of any governmental authority, and at the expense of Landlord (but only to the extent of insurance proceeds made available to Landlord by any mortgagee of the real property of which the Premises are a part) to repair or cause to be repaired such damage, provided, however, in respect of any Later Alterations as shall have been damaged by such fire or other casualty and which (in the judgment of Landlord) can more effectively be repaired as an integral part of Landlord's repair work on the Premises, that such repairs to such Later Alterations shall be performed by Landlord but at Tenant's expense (which expense shall be limited to the proceeds of insurance maintained by Tenant or required to be maintained by Tenant hereunder, plus the deductible payable under the applicable policy); in all other respects, all repairs to and replacements of Tenant's property and Later Alterations shall be made by and at the expense of Tenant. If the Premises or any part thereof shall have been rendered unfit for use and occupation hereunder by reason of such damage, the Yearly Rent (together with Operating Costs Excess and Tax Excess) and electricity charges or a just and proportionate part thereof, according to the nature and extent to which the Premises shall have been so rendered unfit, shall be suspended or abated until the Premises (except as to the property which is to be repaired by or at the expense of Tenant), or legal access thereto or use thereof as aforesaid, shall have been restored as nearly as practicably may be to the condition in which they were immediately prior to such fire or other casualty, provided, however, that if Landlord or any mortgagee of the Building or of the Building and the land or Landlord's interest therein shall be unable to collect the insurance proceeds (including rent insurance proceeds) applicable to such damage or associated business interruption because of some action or inaction on the part of Tenant, or the employees, licensees or invitees of Tenant and such action or inaction is not cured within ten (10) days after receipt of written notice from Landlord, the cost of repairing such damage shall be paid by Tenant and there shall be no abatement of rent. Landlord shall not be liable for delays in the making of any such repairs which are due to government regulation, casualties and strikes, unavailability of labor and materials, and other causes beyond the reasonable control of Landlord, nor shall Landlord be liable for any inconvenience or annoyance to Tenant or injury

to the business of Tenant resulting from such delays in repairing such damage. If (i) the Premises (or legal access thereto or use thereof) are so damaged or prevented by fire or other casualty (whether or not insured) at any time during the last twenty-four (24) months of the Term hereof that the cost to repair such damage is reasonably estimated to exceed one third of the total Yearly Rent payable hereunder for the period from the estimated date of restoration until the Expiration Date, or (ii) the Building (whether or not including any portion of the Premises) is so damaged by fire or other casualty (whether or not insured) that substantial alteration or reconstruction or demolition of the Building shall in Landlord's judgment be required, then and in either of such events, this Lease and the Term hereof may be terminated at the election of Landlord or Tenant by a notice in writing of its election so to terminate which shall be given within sixty (60) days following such fire or other casualty, the effective termination date of which shall be not less than thirty (30) days after the day on which such termination notice is received by the other party; provided, however, with respect to any termination under clause (ii) where the Premises have not been damaged, Tenant may elect to extend the termination date to the date that is one hundred eighty (180) days after delivery of Landlord's termination notice. In the event of any termination, this Lease and the Term hereof shall expire as of such effective termination date as though that were the Expiration Date as stated in Exhibit 1 and the Yearly Rent shall be apportioned as of such date; and if the Premises or any part thereof shall have been rendered unfit for use and occupation by reason of such damage the Yearly Rent (together with Operating Costs Excess, Tax Excess, and Electricity Charge) for the period from the date of the fire or other casualty to the effective termination date, or a just and proportionate part thereof, according to the nature and extent to which the Premises shall have been so rendered unfit, shall be abated.

19. WAIVER OF SUBROGATION

In any case in which Tenant shall be obligated to pay to Landlord any loss, cost, damage, liability, or expense suffered or incurred by Landlord, Landlord shall allow to Tenant as an offset against the amount thereof (i) the net proceeds of any insurance collected by Landlord for or on account of such loss, cost, damage, liability or expense, and (ii) if such loss, cost, damage, liability or expense shall have been caused by a peril against which Landlord has agreed to procure insurance coverage under the terms of this Lease, the amount of such insurance coverage, whether or not actually procured by Landlord. Landlord agrees that the deductible under such policy shall be a commercially reasonable amount.

In any case in which Landlord or Landlord's managing agent shall be obligated to pay to Tenant any loss, cost, damage, liability or expense suffered or incurred by Tenant, Tenant shall allow to Landlord or Landlord's managing agent, as the case may be, as an offset against the amount thereof (i) the net proceeds of any insurance collected by Tenant for or on account of such loss, cost, damage, liability, or expense, and (ii) if such loss, cost, damage, liability or expense shall have been caused by a peril against which Tenant has agreed to procure insurance coverage under the terms of this Lease, the amount of such insurance coverage, whether or not actually procured by Tenant. Tenant agrees that the deductible under such policy shall be a commercially reasonable amount.

The parties hereto shall each procure an appropriate clause in, or endorsement on, any property insurance policy covering the Premises (including Later Alterations) and the Building and personal property, fixtures and equipment located thereon and therein, pursuant to which the insurance companies waive subrogation or consent to a waiver of right of recovery in favor of either party, its respective agents or employees. Each party hereby agrees that it will not make any claim against or seek to recover from the other or its agents or employees for any loss or damage to the Premises, the Building, or the claiming party's property or the property of others claiming under such claiming party resulting from perils required to be insured by such party's property insurance.

20. CONDEMNATION—EMINENT DOMAIN

In the event that the Premises or any part thereof, or the whole or any part of the Building, shall be taken or appropriated by eminent domain or shall be condemned for any public or quasi-public use, or (by virtue of any such taking, appropriation or condemnation) shall suffer any damage (direct, indirect or consequential) for which Landlord or Tenant shall be entitled to compensation, then (and in any such event) this Lease and the Term hereof may be terminated at the election of Landlord by a notice in writing of its election so to terminate which shall be given by Landlord to Tenant within sixty (60) days following the date on which Landlord shall have received notice of such taking, appropriation or condemnation. In the event that a material part of the Premises or the means of access thereto shall be so taken, appropriated or condemned, and in either case, the remainder of the Premises or the

mode of access thereto is, in Tenant's reasonable judgment, unsuitable for the operation of Tenant's business in the Premises, then (and in any such event) this Lease and the Term hereof may be terminated at the election of Tenant by a notice in writing of its election so to terminate which shall be given by Tenant to Landlord within sixty (60) days following the date on which Tenant shall have received notice of such taking, appropriation or condemnation.

Upon the giving of any such notice of termination (either by Landlord or Tenant) this Lease and the Term hereof shall terminate on or retroactively as of the date on which Tenant shall be required to vacate any part of the Premises or shall be deprived of a substantial part of the means of access thereto, provided, however, that Landlord may in Landlord's notice elect to terminate this Lease and the Term hereof retroactively as of the date on which such taking, appropriation or condemnation became legally effective. In the event of any such termination, this Lease and the Term hereof shall expire as of such effective termination date as though that were the Expiration Date as stated in Exhibit 1, and the Yearly Rent (together with Operating Costs Excess and Tax Excess) shall be apportioned as of such date. If neither party (having the right so to do) elects to terminate Landlord will, with reasonable diligence and at Landlord's expense, restore the remainder of the Premises, or the remainder of the means of access, as nearly as practicably may be to the same condition as obtained prior to such taking, appropriation or condemnation in which event (i) the Total Rentable Area shall be equitably adjusted, (ii) a just proportion of the Yearly Rent, according to the nature and extent of the taking, appropriation or condemnation and the resulting permanent injury to the Premises and the means of access thereto, shall be permanently abated, and (iii) a just proportion of the remainder of the Yearly Rent, according to the nature and extent of the taking, appropriation or condemnation and the resultant injury sustained by the Premises and the means of access thereto, shall be abated until what remains of the Premises and the means of access thereto shall have been restored as fully as may be for permanent use and occupation by Tenant hereunder. Except for any award specifically reimbursing Tenant for moving or relocation expenses or for Tenant's personal property, or for the unamortized value of any leasehold improvements paid for by Tenant (in excess of any Landlord contribution), there are expressly reserved to Landlord all rights to compensation and damages created, accrued or accruing by reason of any such taking, appropriation or condemnation, in implementation and in confirmation of which Tenant does hereby acknowledge that Landlord shall be entitled to receive all such compensation and damages, grant to Landlord all and whatever rights (if any) Tenant may have to such compensation and damages, and agree to execute and deliver all and whatever further instruments of assignment as Landlord may from time to time reasonably request. In the event of any taking of the Premises or any part thereof for temporary (i.e., not in excess of one (1) year) use, (i) this Lease shall be and remain unaffected thereby, and (ii) Tenant shall be entitled to receive for itself any award made to the extent allocable to the Premises in respect of such taking on account of such use, provided, that if any taking is for a period extending beyond the Term of this Lease, such award shall be apportioned between Landlord and Tenant as of the Expiration Date or earlier termination of this Lease.

21. DEFAULT

21.1 Conditions of Limitation—Re-entry—Termination. This Lease and the herein Term and estate are, upon the condition that if (a) subject to Section 21.2, Tenant shall neglect or fail to perform or observe any of Tenant's covenants or agreements herein, including (without limitation) the covenants or agreements with regard to the payment when due of rent, additional charges, reimbursement for increase in Landlord's costs, or any other charge payable by Tenant to Landlord (all of which shall be considered as part of Yearly Rent for the purposes of invoking Landlord's statutory or other rights and remedies in respect of payment defaults); or (b) Tenant shall be involved in financial difficulties as evidenced by an admission in writing by Tenant of Tenant's inability to pay its debts generally as they become due, or by the making or offering to make a composition of its debts with its creditors; or (c) Tenant shall make an assignment or trust mortgage, or other conveyance or transfer of like nature, of all or a substantial part of its property for the benefit of its creditors, or (d) an attachment or other legal process shall issue against Tenant or its property and a sale of any of its assets shall be held thereunder; or (e) any judgment, final beyond appeal or any lien, attachment or the like shall be entered, recorded or filed against Tenant in any court, registry, etc. and Tenant shall fail to pay such judgment within sixty (60) days after the judgment shall have become final beyond appeal or to discharge or secure by surety bond such lien, attachment, etc. within sixty (60) days of such entry, recording or filing, as the case may be; or (f) the leasehold hereby created shall be taken on execution or by other process of law and shall not be re-vested in Tenant within sixty (60) days thereafter; or (g) a receiver, sequesterer, trustee or similar officer shall be appointed by a court of competent jurisdiction to take charge of all or any part of Tenant's property and such appointment shall not be vacated within sixty (60) days; or (h) any proceeding shall be instituted by or against Tenant pursuant to any of the provisions of any Act of Congress or State

law relating to bankruptcy, reorganizations, arrangements, compositions or other relief from creditors, and, in the case of any proceeding instituted against it, if Tenant shall fail to have such proceedings dismissed within sixty (60) days or if Tenant is adjudged bankrupt or insolvent as a result of any such proceeding, or (i) any event shall occur or any contingency shall arise whereby this Lease, or the Term and estate thereby created, would (by operation of law or otherwise) devolve upon or pass to any person, firm or corporation other than Tenant, except as expressly permitted under Article 16 hereof—then, and in any such event (except as hereinafter in Section 21.2 otherwise provided) Landlord may, by written notice to Tenant, elect to terminate this Lease; and thereupon (and without prejudice to any remedies which might otherwise be available for arrears of rent or other charges due hereunder or preceding breach of covenant or agreement and without prejudice to Tenant’s liability for damages as hereinafter stated), upon the giving of such notice, this Lease shall terminate as of the date specified therein as though that were the Expiration Date as stated in Exhibit 1. Without being taken or deemed to be guilty of any manner of trespass or conversion, and without being liable to indictment, prosecution or damages therefor, Landlord may, by any lawful means, enter into and upon the Premises (or any part thereof in the name of the whole); repossess the same as of its former estate; and expel Tenant and those claiming under Tenant. The words “re-entry” and “re-enter” as used in this Lease are not restricted to their technical legal meanings.

21.2 Grace Period. Notwithstanding anything to the contrary in this Article contained, Landlord agrees not to take any action to terminate this Lease (a) for default by Tenant in the payment when due of any sum of money, if Tenant shall cure such default within five (5) business days after written notice thereof is given by Landlord to Tenant, provided, however, that no such notice need be given and no such default in the payment of money shall be curable if on two (2) prior occasions in any twelve (12) month period there had been a default in the payment of money which had been cured after notice thereof had been given by Landlord to Tenant as herein provided or (b) for default by Tenant in the performance of any covenant other than a covenant to pay a sum of money, if Tenant shall cure such default within a period of thirty (30) days after written notice thereof given by Landlord to Tenant (except where the emergency nature of the default threatens to cause bodily injury or damage to property and remedial action should appropriately take place sooner, as indicated in such written notice), or within such additional period as may reasonably be required to cure such default if the default is of such a nature that it cannot be cured within such thirty-(30)-day period, provided, however, (1) that there shall be no extension of time beyond such thirty-(30)-day period for the curing of any such default unless, not more than ten (10) days after the receipt of the notice of default, Tenant in writing (i) shall specify the cause on account of which the default cannot be cured during such period and shall advise Landlord of its intention duly to institute all steps necessary to cure the default and (ii) shall, as soon as reasonably practicable, duly institute and thereafter diligently prosecute to completion all steps necessary to cure such default and, (2) that no notice of the opportunity to cure a default need be given, and no grace period whatsoever shall be allowed to Tenant, if the default is incurable.

Notwithstanding anything to the contrary in this Section 21.2 contained, except to the extent prohibited by applicable law, any statutory notice and grace periods provided to Tenant by law are hereby expressly waived by Tenant.

21.3 Damages—Termination. Upon the termination of this Lease under the provisions of this Article 21, Tenant shall pay to Landlord the rent and other charges payable by Tenant to Landlord up to the time of such termination, shall continue to be liable for any preceding breach of covenant, and in addition, shall pay to Landlord as damages, at the election of Landlord

either:

(x) the amount (the “**Excess Amount**”) by which, at the time of the termination of this Lease (or at any time thereafter if Landlord shall have initially elected damages under subparagraph (y), below), (i) the aggregate of the rent and other charges projected over the period commencing with such termination and ending on the Expiration Date as stated in Exhibit 1 exceeds (ii) the aggregate projected rental value of the Premises for such period, as such Excess Amount is reduced to present value using a discount rate of the then-applicable federal discount rate;

or:

(y) amounts equal to the rent and other charges which would have been payable by Tenant had this Lease not been so terminated, payable upon the due dates therefor specified herein following such termination and until the Expiration Date as specified in Exhibit 1, provided, however, if Landlord shall re-let the Premises during such period, that Landlord shall credit Tenant with the net rents received by Landlord from such re-letting, such net rents to be determined by first deducting from the gross rents as and when received by Landlord from such re-letting the

expenses incurred or paid by Landlord in terminating this Lease, as well as the expenses of re-letting, including altering and preparing the Premises for new tenants, brokers' commissions, and all other similar and dissimilar expenses properly chargeable against the Premises and the rental therefrom, it being understood that any such re-letting may be for a period equal to or shorter or longer than the remaining Term of this Lease; and provided, further, that (i) in no event shall Tenant be entitled to receive any excess of such net rents over the sums payable by Tenant to Landlord hereunder and (ii) in no event shall Tenant be entitled in any suit for the collection of damages pursuant to this Subparagraph (y) to a credit in respect of any net rents from a re-letting except to the extent that such net rents are actually received by Landlord. If the Premises or any part thereof should be re-let in combination with other space, then proper apportionment on a square foot area basis shall be made of the rent received from such re-letting and of the expenses of re-letting.

In calculating the rent and other charges under Subparagraph (x), above, there shall be included, in addition to the Yearly Rent, Tax Excess and Operating Costs Excess, all other considerations agreed to be paid or performed by Tenant, on the assumption that all such amounts and considerations would have remained constant (except as herein otherwise provided) for the balance of the full Term hereby granted.

Suit or suits for the recovery of such damages, or any installments thereof, may be brought by Landlord from time to time at its election, and nothing contained herein shall be deemed to require Landlord to postpone suit until the date when the Term of this Lease would have expired if it had not been terminated hereunder.

Landlord agrees to use reasonable efforts to relet the Premises after Tenant vacates the Premises in the event that the Lease is terminated based upon a default by Tenant hereunder. Marketing of Tenant's Premises in a manner similar to the manner in which Landlord markets other premises within Landlord's control in the Building shall be deemed to have satisfied Landlord's obligation to use "reasonable efforts."

Nothing herein contained shall be construed as limiting or precluding the recovery by Landlord against Tenant of any sums or damages to which, in addition to the damages particularly provided above, Landlord may lawfully be entitled by reason of any default hereunder on the part of Tenant.

21.4 Fees and Expenses.

(a) If Tenant shall default in the performance of any covenant on Tenant's part to be performed as in this Lease contained that continues beyond the expiration of any applicable notice, grace or cure period, Landlord may immediately, or at any time thereafter, without additional notice, perform the same for the account of Tenant. If Landlord at any time is compelled to pay or elects to pay any sum of money, or do any act which will require the payment of any sum of money, by reason of the failure of Tenant to comply with any provision hereof, or if Landlord is compelled to or does incur any expense, including reasonable attorneys' fees, in instituting, prosecuting, and/or defending any action or proceeding instituted by reason of any default of Tenant hereunder, Tenant shall on demand pay to Landlord by way of reimbursement the sum or sums so paid by Landlord with all costs and actual damages, plus interest computed as provided in Article 6 hereof.

(b) Tenant shall pay Landlord's cost and expense, including reasonable attorneys' fees, incurred (i) in enforcing any obligation of the Tenant under this lease, but subject to the provisions of the following sentence or (ii) as a result of Landlord, without its fault, being made party to any litigation pending by or against Tenant or any persons claiming through or under Tenant. In the event of any litigation or other legal proceeding (e.g., arbitration) between Landlord and Tenant relating to the provisions of this Lease or Tenant's occupancy of the Premises, the losing party (i.e., based upon a judgment, final beyond appeal) shall, upon demand, reimburse the prevailing party for its reasonable costs of prosecuting and/or defending such proceeding (including, without limitation, reasonable attorneys' fees), provided however, that with respect to arbitration, the losing party shall only be obligated to reimburse the prevailing party for attorneys' fees if such fees are awarded by the arbitrator(s).

21.5 Waiver of Redemption. Tenant does hereby waive and surrender all rights and privileges which it might have under or by reason of any present or future law to redeem the Premises or to have a continuance of this Lease for the Term hereby demised after being dispossessed or ejected therefrom by process of law or under the terms of this Lease or after the termination of this Lease as herein provided. Tenant specifically waives receipt of a Notice to Quit.

21.6 Landlord's Remedies Not Exclusive. The specified remedies to which Landlord may resort hereunder are cumulative and are not intended to be exclusive of any remedies or means of redress to which Landlord may at any time be lawfully entitled, and Landlord may invoke any remedy (including the remedy of specific performance) allowed at law or in equity as if specific remedies were not herein provided for.

22. END OF TERM—ABANDONED PROPERTY

Upon the expiration or other termination of the Term of this Lease, Tenant shall peaceably quit and surrender to Landlord the Premises together with all alterations and additions made thereto, broom clean, in good order, repair and condition (except as provided herein and in Section 8.7 and Articles 18 and 20) excepting only ordinary wear and use, damage by fire or other casualty and damage or repairs for which, under other provisions of this Lease, Tenant has no responsibility of repair or restoration. Tenant shall remove all of its property, including, without limitation, all telecommunication, computer and other cabling installed by or for Tenant in the Premises or elsewhere in the Building, and, to the extent specified by Landlord in writing at the time Landlord approves such installation, all alterations and additions made by Tenant and all partitions wholly within the Premises, and shall repair any damages to the Premises or the Building caused by their installation or by such removal. Tenant's obligation to observe or perform this covenant shall survive the expiration or other termination of the Term of this Lease.

Tenant will remove any personal property from the Building and the Premises upon or prior to the expiration or termination of this Lease and any such property which shall remain in the Building or the Premises for more than ten (10) days thereafter shall be conclusively deemed to have been abandoned, and may either be retained by Landlord as its property or sold or otherwise disposed of in such manner as Landlord may see fit. If any part thereof shall be sold, then Landlord may receive and retain the proceeds of such sale and apply the same, at its option, against the expenses of the sale, the cost of moving and storage, any arrears of Yearly Rent, additional or other charges payable hereunder by Tenant to Landlord and any damages to which Landlord may be entitled under Article 21 hereof or pursuant to law.

Any holding over by Tenant or anyone claiming under Tenant after the expiration of the Term of this Lease shall be treated as a tenancy at sufferance and shall be on the terms and conditions as set forth in this Lease, as far as applicable except that Tenant shall pay as a use and occupancy charge an amount equal to the greater of (x) one hundred fifty percent (150%) of the Yearly Rent and Tax Excess and Operating Costs Excess calculated (on a daily basis) at the highest rate payable under the terms of this Lease, for the first sixty (60) days and two hundred percent (200%) of the same thereafter, or (y) one hundred twenty-five percent (125%) of the fair market rental value of the Premises, in each case for the period measured from the day on which Tenant's hold-over commences and terminating on the day on which Tenant vacates the Premises. In addition, Tenant shall save Landlord, its agents and employees, harmless and will exonerate, defend and indemnify Landlord, its agents and employees, from and against any and all damages which Landlord may suffer on account of Tenant's hold-over in the Premises after the expiration or prior termination of the Term of this Lease.

23. SUBORDINATION

(a) Subject to any mortgagee's or ground lessor's election, as hereinafter provided for, and subject to the requirements of this Section 23, this Lease is subject and subordinate in all respects to all matters of record (including, without limitation, deeds and land disposition agreements), ground leases and/or underlying leases, and to the lien of all mortgages, any of which may now or hereafter be placed on or affect such leases and/or the real property of which the Premises are a part, or any part of such real property, and/or Landlord's interest or estate therein, and to each advance made and/or hereafter to be made under any such mortgages, and to all renewals, modifications, consolidations, replacements and extensions thereof and all substitutions therefor. Landlord represents that to the actual knowledge of Landlord no matter if record prohibits or restricts Tenant's rights to install signage and to use the Patio as provided in this Lease, but this representation shall not apply to any law, regulation, or order of any governmental authority, whether or not same is a matter of record. This Article 23 shall be self-operative and no further instrument or subordination shall be required. In confirmation of such subordination, Tenant shall execute, acknowledge and deliver promptly any certificate or instrument that Landlord and/or any mortgagee and/or lessor under any ground or underlying lease and/or their respective successors in interest may request. Tenant acknowledges that, where any consent of Landlord is required under this Lease, any consent

or approval hereafter given by Landlord may be subject to the further consent or approval of such mortgagee, and the failure or refusal of such mortgagee to give such consent or approval shall, notwithstanding anything to the contrary in this Lease contained, constitute reasonable justification for Landlord's withholding its consent or approval. Notwithstanding anything to the contrary in this Article 23 contained, as to any future mortgages, ground leases, and/or underlying lease or deeds of trust, the herein provided subordination and attornment shall be effective only if the mortgagee, ground lessor or trustee therein, as the case may be, agrees, by a written instrument in recordable form and in the commercially reasonable, customary form of such mortgagee, ground lessor, or trustee ("**Nondisturbance Agreement**") that, as long as Tenant shall not be in terminable default of the obligations on its part to be kept and performed under the terms of this Lease, this Lease will not be affected and Tenant's possession hereunder will not be disturbed by any default in, termination, and/or foreclosure of, such mortgage, ground lease, and/or underlying lease or deed of trust, as the case may be. Tenant shall be responsible for paying any fees or expenses charged by such mortgagee, ground lessor or trustee in connection with such Nondisturbance Agreement. Notwithstanding the foregoing Landlord agrees to use reasonable efforts to obtain subordination, non-disturbance and attornment agreement for Tenant from its current mortgagee in the form attached hereto as **Exhibit 10**. Tenant agrees that Tenant shall pay any charges (including legal fees) required by any mortgagee as a condition to entering into any such agreement.

(b) Any such mortgagee or ground lessor may from time to time subordinate or revoke any such subordination of the mortgage or ground lease held by it to this Lease. Such subordination or revocation, as the case may be, shall be effected by written notice to Tenant and by recording an instrument of subordination or of such revocation, as the case may be, with the appropriate registry of deeds or land records and to be effective without any further act or deed on the part of Tenant. In confirmation of such subordination or of such revocation, as the case may be, Tenant shall execute, acknowledge and promptly deliver any certificate or instrument that Landlord, any mortgagee or ground lessor may request.

(c) [Intentionally Omitted]

(d) The term "**mortgage(s)**" as used in this Lease shall include any mortgage or deed of trust. The term "**mortgagee(s)**" as used in this Lease shall include any mortgagee or any trustee and beneficiary under a deed of trust or receiver appointed under a mortgage or deed of trust. The term "**mortgagor(s)**" as used in this Lease shall include any mortgagor or any grantor under a deed of trust.

(e) If Tenant fails to execute, acknowledge and deliver any such certificate or instrument within ten (10) days after Landlord or such mortgagee or such ground lessor has made written request therefor, then Landlord shall be entitled to send Tenant a second notice requesting such execution and delivery of such certificate or instrument ("**Second Notice**"), and if Tenant fails to execute and deliver such certificate or instrument within three (3) days after the Second Notice, then Tenant shall pay to Landlord a fee in the amount of Five Hundred and 00/100 Dollars (\$500.00) per day for each day beyond the third (3rd) day after the Second Notice that Tenant fails to execute and deliver such certificate or instrument. Such fee shall be in addition to Landlord's other remedies hereunder.

(f) Notwithstanding anything to the contrary contained in this Article 23, if all or part of Landlord's estate and interest in the real property of which the Premises are a part shall be a leasehold estate held under a ground lease, then: (i) the foregoing subordination provisions of this Article 23 shall not apply to any mortgages of the fee interest in said real property to which Landlord's leasehold estate is not otherwise subject and subordinate; and (ii) the provisions of this Article 23 shall in no way waive, abrogate or otherwise affect any agreement by any ground lessor (x) not to terminate this Lease incident to any termination of such ground lease prior to its Term expiring or (y) not to name or join Tenant in any action or proceeding by such ground lessor to recover possession of such real property or for any other relief.

(g) In the event of any failure by Landlord to perform, fulfill or observe any agreement by Landlord herein, in no event will Landlord be deemed to be in default under this Lease permitting Tenant to exercise any or all rights or remedies under this Lease until Tenant shall have given written notice of such failure to any mortgagee (ground lessor and/or trustee) of which Tenant shall have been advised and until a reasonable period of time (not to exceed ninety (90) days) shall have elapsed following the giving of such notice, during which such mortgagee (ground lessor and/or trustee) shall have the right, but shall not be obligated, to remedy such failure.

24. QUIET ENJOYMENT

Landlord covenants that so long as there is no default of Tenant in existence and continuing beyond the expiration of applicable notice and cure periods, Tenant shall quietly enjoy the Premises from and against the claims of all persons claiming by, through or under Landlord subject, nevertheless, to the covenants, agreements, terms, provisions and conditions of this Lease and, subject to the requirements of Section 23(a) above, the lien of the mortgages, ground leases and/or underlying leases to which this Lease is subject and subordinate, as hereinabove set forth.

Without incurring any liability to Tenant, Landlord may permit access to the Premises and open the same, whether or not Tenant shall be present, upon any demand of any receiver, trustee, assignee for the benefit of creditors, sheriff, marshal or court officer entitled to (but provided that such party shall present to Landlord the applicable order entered by a court of competent jurisdiction permitting such entry), such access for the purpose of taking possession of, or removing, Tenant's property or for any other lawful purpose (but this provision and any action by Landlord hereunder shall not be deemed a recognition by Landlord that the person or official making such demand has any right or interest in or to this Lease, or in or to the Premises), or upon demand of any representative of the fire, police, building, sanitation or other department of the city, state or federal governments.

25. ENTIRE AGREEMENT — WAIVER — SURRENDER

25.1 Entire Agreement. This Lease and the Exhibits made a part hereof contain the entire and only agreement between the parties and any and all statements and representations, written and oral, including previous correspondence and agreements between the parties hereto, are merged herein. Tenant acknowledges that all representations and statements upon which it relied in executing this Lease are contained herein and that Tenant in no way relied upon any other statements or representations, written or oral. Any executory agreement hereafter made shall be ineffective to change, modify, discharge or effect an abandonment of this Lease in whole or in part unless such executory agreement is in writing and signed by the party against whom enforcement of the change, modification, discharge or abandonment is sought.

25.2 Waiver by Landlord. The failure of Landlord to seek redress for violation, or to insist upon the strict performance, of any covenant or condition of this Lease, or any of the Rules and Regulations promulgated hereunder, shall not prevent a subsequent act, which would have originally constituted a violation, from having all the force and effect of an original violation. The receipt by Landlord of rent with knowledge of the breach of any covenant of this Lease shall not be deemed a waiver of such breach. The failure of Landlord to enforce any of such Rules and Regulations against Tenant and/or any other tenant in the Building shall not be deemed a waiver of any such Rules and Regulations. No provisions of this Lease shall be deemed to have been waived by Landlord unless such waiver is in writing signed by Landlord. No payment by Tenant or receipt by Landlord of a lesser amount than the monthly rent herein stipulated shall be deemed to be other than on account of the stipulated rent, nor shall any endorsement or statement on any check or any letter accompanying any check or payment as rent be deemed an accord and satisfaction, and Landlord may accept such check or payment without prejudice to Landlord's right to recover the balance of such rent or pursue any other remedy in this Lease provided.

25.3 Surrender. No act or thing done by Landlord during the Term hereby demised shall be deemed an acceptance of a surrender of the Premises, and no agreement to accept such surrender shall be valid, unless in writing signed by Landlord. No employee of Landlord or of Landlord's agents shall have any power to accept the keys of the Premises prior to the termination of this Lease. The delivery of keys to any employee of Landlord or of Landlord's agents shall not operate as a termination of this Lease or a surrender of the Premises except in connection with the natural expiration of the Term. In the event that Tenant at any time desires to have Landlord underlet the Premises for Tenant's account, Landlord or Landlord's agents are authorized to receive the keys for such purposes without releasing Tenant from any of the obligations under this Lease, and Tenant hereby relieves Landlord of any liability for loss of or damage to any of Tenant's effects in connection with such underletting.

26. INABILITY TO PERFORM—EXCULPATORY CLAUSE

(a) Except as may be otherwise specifically herein provided, this Lease and the obligations of Tenant to pay rent hereunder and perform all the other covenants, agreements, terms, provisions and conditions hereunder on the part of Tenant to be performed shall in no way be affected, impaired or excused because Landlord is unable to fulfill any of its obligations under this Lease or is unable to supply or is delayed in supplying any service expressly or

impliedly to be supplied or is unable to make or is delayed in making any repairs, replacements, additions, alterations, improvements or decorations or is unable to supply or is delayed in supplying any equipment or fixtures if Landlord is prevented or delayed from so doing by reason of Force Majeure, as hereinafter defined. In each such instance of inability of Landlord to perform, Landlord shall exercise reasonable diligence to eliminate the cause of such inability to perform. Similarly, except as otherwise specifically herein provided in this Lease, if Tenant is unable to perform any of its covenants or agreements under this Lease other than the payment of rent by reason of Force Majeure, Landlord shall not exercise any remedies in respect of a default arising from such inability until the applicable Force Majeure no longer exists and Tenant has had a reasonable opportunity to cure such default after the event of Force Majeure has ceased. For purposes of this Lease, "Force Majeure" shall mean any prevention, delay or stoppage due to governmental regulation, strikes, lockouts, acts of God, acts of war, terrorist acts, civil commotions, unusual scarcity of or inability to obtain labor or materials, labor difficulties, casualty or other causes reasonably beyond Landlord's control or attributable to Tenant's action or inaction.

(b) Tenant shall neither assert nor seek to enforce any claim against Landlord, or Landlord's agents or employees, or the assets of Landlord or of Landlord's agents or employees, for breach of this Lease or otherwise, other than against Landlord's interest in the Building of which the Premises are a part and in the undistributed rents, issues and profits thereof, and Tenant agrees to look solely to such interest for the satisfaction of any liability of Landlord under this Lease, it being specifically agreed that in no event shall Landlord or Landlord's agents or employees (or any of the officers, trustees, directors, partners, beneficiaries, joint venturers, members, stockholders or other principals or representatives, and the like, disclosed or undisclosed, thereof) ever be personally liable for any such liability. This paragraph shall not limit any right that Tenant might otherwise have to obtain injunctive relief against Landlord or to take any other action which shall not involve the personal liability of Landlord to respond in monetary damages from Landlord's assets other than Landlord's interest in said real estate, as aforesaid. In no event shall Landlord or Landlord's agents or employees (or any of the officers, trustees, directors, partners, beneficiaries, joint venturers, members, stockholders or other principals or representatives and the like, disclosed or undisclosed, thereof) ever be liable for consequential or incidental damages. Without limiting the foregoing, in no event shall Landlord or Landlord's agents or employees (or any of the officers, trustees, directors, partners, beneficiaries, joint venturers, members, stockholders or other principals or representatives and the like thereof), ever be liable for lost profits of Tenant. Except in the event of a breach by Tenant of its obligations under Article 22, in no event shall Tenant or Tenant's agents or employees (or any of the officers, trustees, directors, partners, beneficiaries, joint venturers, members, stockholders or other principals or representatives and the like, disclosed or undisclosed, thereof) ever be liable for consequential or incidental damages (including, without limitation, loss profits) of Landlord.

(c) Landlord shall not be deemed to be in default of its obligations under this Lease unless Tenant has given Landlord written notice of such default, and Landlord has failed to cure such default within thirty (30) days after Landlord receives such notice or such longer period of time as Landlord may reasonably require to cure such default provided that Landlord has promptly commenced to cure within such thirty (30) day period and thereafter diligently pursues the same. Except as otherwise expressly provided in this Lease, in no event shall Tenant have the right to terminate this Lease nor shall Tenant's obligation to pay Yearly Rent or other charges under this Lease abate based upon any default by Landlord of its obligations under this Lease.

27. BILLS AND NOTICES

Any notice, consent, request, bill, demand or statement hereunder by either party to the other party ("**Notice**") shall be in writing and shall be deemed to have been duly given when either delivered or served personally, or when delivery is first attempted or refused, provided that such Notice shall be addressed to Landlord at its address as stated in Exhibit 1 and to Tenant at the Premises (or at Tenant's address as stated in Exhibit 1, if delivered or mailed prior to Tenant's occupancy of the Premises), or if any address for notices shall have been duly changed as hereinafter provided, if addressed as aforesaid to the party at such changed address. Notices shall be delivered by hand, by United States mail (certified, return receipt requested, and prepaid), or by Federal Express or other recognized overnight delivery service which provides a receipt for, or other proof of, delivery (prepaid). Either party may at any time change the address or specify an additional address for such Notices by delivering or mailing, as aforesaid, to the other party a notice stating the change and setting forth the changed or additional address, provided such changed or additional address is a street address within the United States.

All bills and statements for reimbursement or other payments or charges due from Tenant to Landlord hereunder shall be due and payable in full thirty (30) days, unless herein otherwise provided, after submission thereof by Landlord to Tenant. Tenant's failure to make timely payment of any amounts indicated by such bills and statements, whether for work done by Landlord at Tenant's request, reimbursement provided for by this Lease or for any other sums properly owing by Tenant to Landlord, shall be treated as a default in the payment of rent, in which event Landlord shall have all rights and remedies provided in this Lease for the nonpayment of rent. Subject to Tenant's audit rights under Section 9.7 above, if Tenant has not objected to any statement of additional rent which is rendered by Landlord to Tenant within one hundred eighty (180) days after Landlord has rendered the same to Tenant, then the same shall be deemed to be a final account between Landlord and Tenant not subject to any further dispute.

28. PARTIES BOUND — TITLE

The covenants, agreements, terms, provisions and conditions of this Lease shall bind and benefit the successors and assigns of the parties hereto with the same effect as if mentioned in each instance where a party hereto is named or referred to, except that no violation of the provisions of Article 16 hereof shall operate to vest any rights in any successor or assignee of Tenant and that the provisions of this Article 28 shall not be construed as modifying the conditions of limitation contained in Article 21 hereof.

If, in connection with or as a consequence of the sale, transfer or other disposition of the real estate (land and/or Building, either or both, as the case may be) of which the Premises are a part, Landlord ceases to be the owner of the reversionary interest in the Premises, Landlord shall be entirely freed and relieved from the performance and observance thereafter of all covenants and obligations hereunder on the part of Landlord to be performed and observed, it being understood and agreed in such event (and it shall be deemed and construed as a covenant running with the land) that the person succeeding to Landlord's ownership of said reversionary interest shall thereupon and thereafter assume, and perform and observe, any and all of such covenants and obligations of Landlord.

29. MISCELLANEOUS

29.1 Separability. If any provision of this Lease or portion of such provision or the application thereof to any person or circumstance is for any reason held invalid or unenforceable, the remainder of this Lease (or the remainder of such provision) and the application thereof to other persons or circumstances shall not be affected thereby.

29.2 Captions, etc. The captions are inserted only as a matter of convenience and for reference, and in no way define, limit or describe the scope of this Lease or the intent of any provisions thereof. References to "State" shall mean, where appropriate, the Commonwealth of Massachusetts.

29.3 Broker. Tenant represents and warrants that it has not directly or indirectly dealt, with respect to the leasing of office space in the Building, with any broker or had its attention called to the Premises or other space to let in the Building, etc. by anyone other than the broker, person or firm, if any, designated in Exhibit 1. Tenant agrees to defend, exonerate and save harmless and indemnify Landlord and anyone claiming by, through or under Landlord against any claims for a commission arising out of the execution and delivery of this Lease or out of negotiations between Landlord and Tenant with respect to the leasing of other space in the Building, provided that Landlord shall be solely responsible for the payment of brokerage commissions to the broker, person or firm, if any, designated as Landlord's Broker in Exhibit 1. Landlord shall pay a brokerage commission to Tenant's Broker and Landlord's Broker, pursuant to separate agreements between Landlord and Landlord's Broker and Landlord and Tenant's Broker.

Landlord represents and warrants that, in connection with the execution and delivery of the Lease, it has not directly or indirectly dealt with any broker other than the brokers designated on Exhibit 1. Landlord agrees to defend, exonerate and save harmless Tenant and anyone claiming by, through, or under Tenant against any claims arising in breach of the representation and warranty set forth in the immediately preceding sentence.

29.4 Modifications. If in connection with obtaining financing for the Building or Landlord's interest therein, a bank, insurance company, pension trust or other institutional lender shall request reasonable modifications in this Lease as a condition to such financing, Tenant will not withhold, delay or condition its consent thereto, provided that such modifications do not increase the obligations of Tenant hereunder or materially adversely affect the leasehold interest hereby created.

29.5 Arbitration. Any disputes relating to provisions or obligations in this Lease as to which a specific provision or a reference to arbitration is made herein shall be submitted to arbitration in accordance with the provisions of applicable state law (as identified in Section 29.6), as from time to time amended. Arbitration proceedings, including the selection of an arbitrator, shall be conducted pursuant to the rules, regulations and procedures from time to time in effect as promulgated by the American Arbitration Association. Prior written notice of application by either party for arbitration shall be given to the other at least ten (10) days before submission of the application to the said Association's office in the City or County wherein the Building is situated (or the nearest other city or county having an Association office). The arbitrator shall hear the parties and their evidence. The decision of the arbitrator shall be binding and conclusive, and judgment upon the award or decision of the arbitrator may be entered in the appropriate court of law (as identified on Exhibit 1), and the parties consent to the jurisdiction of such court and further agree that any process or notice of motion or other application to the Court or a Judge thereof may be served outside the State or Commonwealth wherein the Building is situated by registered mail or by personal service, provided a reasonable time for appearance is allowed. The costs and expenses of each arbitration hereunder and their apportionment between the parties shall be determined by the arbitrator in his award or decision. No arbitrable dispute shall be deemed to have arisen under this Lease prior to (i) the expiration of the period of twenty (20) days after the date of the giving of written notice by the party asserting the existence of the dispute together with a description thereof sufficient for an understanding thereof; and (ii) where a Tenant payment (e.g., Tax Excess or Operating Costs Excess under Article 9 hereof) is in issue, the amount billed by Landlord having been paid by Tenant.

29.6 Governing Law. This Lease is made pursuant to, and shall be governed by, and construed in accordance with, the laws of the Commonwealth of Massachusetts and any applicable local municipal rules, regulations, by-laws, ordinances and the like.

29.7 Assignment of Rents. Subject to any contrary terms in any SNDA executed by Tenant and any mortgage holder or ground lessor pursuant to Section 23(a) above, with reference to any assignment by Landlord of its interest in this Lease, or the rents payable hereunder, conditional in nature or otherwise, which assignment is made to or held by a bank, trust company, insurance company or other institutional lender holding a mortgage or ground lease on the Building or Landlord's interest therein, Tenant agrees:

(a) that the execution thereof by Landlord and the acceptance thereof by such mortgagee and/or ground lessor shall never be deemed an assumption by such mortgagee and/or ground lessor of any of the obligations of Landlord thereunder, unless such mortgagee and/or ground lessor shall, by written notice sent to Tenant, specifically otherwise elect; and

(b) that, except as aforesaid, such mortgagee and/or ground lessor shall be treated as having assumed Landlord's obligations thereunder only upon foreclosure of such mortgagee's mortgage or deed of trust or termination of such ground lessor's ground lease and the taking of possession of the Premises after having given notice of its exercise of the option stated in Article 23 hereof to succeed to the interest of Landlord under this Lease.

29.8 Representation of Authority. By his execution hereof each of the signatories on behalf of the respective parties hereby warrants and represents to the other that he or she is duly authorized to execute this Lease on behalf of such party. If either Landlord or Tenant is a corporation, the applicable party hereby appoints the signatory whose name appears below on behalf of such party as its attorney-in-fact for the purpose of executing this Lease for and on behalf of such party.

29.9 Expenses Incurred by Landlord Upon Tenant Requests. Except in connection with requests by Tenant to sublet the Premises or assign its interest in this Lease, as to which the review fee set forth in Article 16 shall apply, Tenant shall, upon demand, reimburse Landlord for all reasonable expenses, including, without limitation, legal fees, incurred by Landlord in connection with all requests by Tenant for consents, approvals or execution of collateral documentation related to this Lease, including, without limitation, costs incurred by Landlord in the review and approval of Tenant's plans and specifications in connection with proposed alterations to be made by Tenant to the Premises and requests by Tenant for Landlord to execute waivers of Landlord's interest in Tenant's property in connection with third party financing by Tenant. Such costs shall be deemed to be additional rent under this Lease. The provisions of this Section 29.9 shall not apply to the Landlord's Work, which is governed by the provisions of Article 4 above.

29.10 Survival.

(a) Without limiting any other obligation of Tenant which may survive the expiration or prior termination of the Term of this Lease, all obligations on the part of Tenant to indemnify, defend, or hold Landlord harmless, as set forth in this Lease (including, without limitation, Tenant's obligations under Sections 13(d), 15.3, and 29.3) shall survive the expiration or prior termination of the Term of this Lease.

(b) Without limiting any other obligation of Landlord which may survive the expiration or prior termination of the Term of this Lease, all obligations on the part of Landlord to indemnify, defend, or hold Tenant harmless, as set forth in this Lease (including, without limitation, Landlord's obligations under Sections 2.2, 9.1(e) and 29.3 shall survive the expiration or prior termination of the Term of this Lease.

29.11 Financial Statements. Tenant, within fifteen (15) days after request, shall provide Landlord with a current financial statement and such other information as Landlord may reasonably request in order to create a "business profile" of Tenant and determine Tenant's ability to fulfill its obligations under this Lease. The foregoing obligation shall be waived during any period of time in which Tenant's stock is publicly traded on a nationally recognized exchange or such information is available on Tenant's website.

29.12 Parking.

(a) Number of Passes. During the Term of this Lease, Tenant shall have the right to use, and shall be obligated to pay for, the number of monthly parking passes specified in Exhibit 1 for use in the garage located beneath the Building ("**Building Garage**"). The Building Garage is sometimes hereinafter referred to as the "**Garage**." The passes in the Building Garage are referred to as the "**Parking Passes**." The Parking Passes shall be paid for by Tenant at the then current prevailing rate in the Garage, as such rate may vary from time to time. Landlord hereby represents to Tenant that, as of the Execution Date of this Lease, the charge for Parking Passes is \$250.00 per month, per pass, subject to increase from time to time.

(b) Garage Operator. Landlord hereby reserves the right to enter into a management agreement or lease with an entity for the Garage ("**Garage Operator**"). In such event, Tenant, upon request of Landlord, shall enter into a parking agreement with the Garage Operator and pay the Garage Operator the monthly charge established hereunder, and Landlord shall have no liability for claims arising through acts or omissions of the Garage Operator unless caused by the negligence or willful misconduct of Landlord. It is understood and agreed that the identity of the Garage Operator may change from time to time during the Term. In connection therewith, any parking lease or agreement entered into between Tenant and a Garage Operator shall be freely assignable by such Garage Operator or any successors thereto.

(c) No Liability – Garage. Neither Landlord nor any Garage Operator shall be responsible for money, jewelry, vehicles or other personal property lost in or stolen from the Garage regardless of whether such loss or theft occurs when the Garage or other areas therein are locked or otherwise secured. Except as caused by the negligence or willful misconduct of Landlord or any Garage Operator or their respective agents, contractors, or employees and without limiting the terms of the preceding sentence, neither Landlord nor any Garage Operator shall be liable for any loss, injury or damage to persons using the Garage or vehicles or other property therein, it being agreed that, to the fullest extent permitted by Law, the use of the Garage shall be at the sole risk of Tenant and its employees.

(d) General Provisions. Tenant shall have no right to sublet, assign, or otherwise transfer said Parking Passes, other than in connection with an assignment or sublease permitted or consented to pursuant to Article 16. No deductions or allowances shall be made for days when Tenant or any of its employees does not utilize the parking facilities or for Tenant utilizing less than all of the Parking Passes. Said Parking Passes will be on an unassigned, non-reserved basis, and shall be subject to the rules and regulations from time to time in force.

(e) Parking Rules and Regulations. Landlord or the Garage Operator shall have the right from time to time to promulgate reasonable rules and regulations regarding the Garage, the Parking Passes and the use thereof, including, but not limited to, rules and regulations controlling the flow of traffic to and from various parking areas, the angle and direction of parking and the like. Tenant shall comply with and cause its employees to comply with all such rules and regulations as well as all reasonable additions and amendments thereto.

(f) No Overnight Storage. Tenant shall not store or permit its employees to store any vehicles overnight in the Garage without the prior written consent of the Garage Operator. Except for emergency repairs, Tenant and its employees shall not perform any work on any vehicles while located in the Garage or on the Property. If it is necessary for Tenant or its employees to leave a vehicle in the Garage overnight, Tenant shall provide Landlord and the Garage Operator with prior notice thereof designating the license plate number and model of such vehicle.

(g) Temporary Closure. Landlord and the Garage Operator shall have the right to temporarily close the Garage or certain areas therein in order to perform necessary repairs, maintenance and improvements to the Garage; provided, however, if the Garage or any portion thereof such that Tenant is unable to use its Parking Passes is closed for more than one (1) day, Tenant shall receive an abatement of the monthly fee per parking space until the Garage (or portion thereof) is fully operational.

(h) Access Cards. The Garage Operator may elect to provide parking cards or keys to control access to the Garage. In such event, Landlord or the Garage Operator shall provide Tenant with one card or key for each Parking Pass that Tenant is entitled to hereunder, provided that Landlord or the Garage Operator shall have the right to require Tenant or its employees to place a reasonable deposit on such access cards or keys and to pay a fee for any lost or damaged cards or keys.

(i) Bicycles. Landlord agrees that it, or the Garage Operator, shall at all times during the Term provide bicycle storage racks in the Garage for the non-exclusive use of Tenant and its employees, subject to reasonable rules and regulations therefor provided to Tenant from time to time.

29.13 Anti-Terrorism Representations. Tenant represents and warrants to Landlord that:

(a) Tenant is not, and shall not during the Term of this Lease become, a person or entity with whom Landlord is restricted from doing business under the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, H.R. 3162, Public Law 107-56 (commonly known as the “**USA Patriot Act**”) and Executive Order Number 13224 on Terrorism Financing, effective September 24, 2001 and regulations promulgated pursuant thereto, including, without limitation, persons and entities named on the Office of Foreign Asset Control Specially Designated Nationals and Blocked Persons List (collectively, “**Prohibited Persons**”); and

(b) To the best of Tenant’s knowledge, Tenant is not currently conducting any business or engaged in any transactions or dealings, or otherwise associated with, any Prohibited Persons in connection with the use or occupancy of the Premises; and

(c) Tenant will not in the future during the Term of this Lease knowingly engage in any transactions or dealings, or be otherwise associated with, any Prohibited Persons in connection with the use or occupancy of the Premises.

Landlord represents and warrants to Tenant that:

(a) Landlord is not, and shall not during the Term of this Lease become, a person or entity with whom Tenant is restricted from doing business under the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, H.R. 3162, Public Law 107-56 (commonly known as the “**USA Patriot Act**”) and Executive Order Number 13224 on Terrorism Financing, effective September 24, 2001 and regulations promulgated pursuant thereto, including, without

limitation, persons and entities named on the Office of Foreign Asset Control Specially Designated Nationals and Blocked Persons List (collectively, “**Prohibited Persons**”); and

(d) To the best of Landlord’s knowledge Landlord is not currently conducting any business or engaged in any transactions or dealings, or otherwise associated with, any Prohibited Persons in connection with the use or occupancy of the Premises; and

(e) Landlord will not in the future during the Term of this Lease knowingly engage in any transactions or dealings, or be otherwise associated with, any Prohibited Persons in connection with the use or occupancy of the Premises.

29.14 Waiver of Trial by Jury. Landlord and Tenant hereby waives any right to trial by jury in any action, proceeding or brought by either Landlord or Tenant on any matters whatsoever arising out of or any way connected with this Lease, the relationship of Landlord and Tenant, Tenant’s use or occupancy of the Premises and/or any claim of injury or damage, including but not limited to, any summary process eviction action.

29.15 No Offset. Except as may be otherwise expressly provided in this Lease, in no event shall Tenant have the right to terminate or cancel this Lease or to withhold rent or to set-off any claim or damages against rent as a result of any default by Landlord or breach by Landlord of its covenants or warranties or promises under this Lease, except in the case of a wrongful eviction of Tenant from the Premises (constructive or actual) by Landlord

continuing after notice to Landlord thereof and a reasonable opportunity for Landlord to cure the same in the time periods set forth herein. Further, except as expressly provided in this Lease, Tenant shall not assert any right to deduct the cost of repairs or any monetary claim against Landlord from rent thereafter due and payable, but shall look solely to Landlord for satisfaction of such claim.

29.16 Tenant's Option to Extend the Term of the Lease.

(a) On the conditions, which conditions Landlord may waive, at its election, by written notice to Tenant at any time, that as of the time of option exercise and as of the commencement of the hereinafter described additional term, (i) Tenant is not in default of its covenants and obligations under the Lease, continuing beyond the expiration of any applicable notice, grace and cure period and (ii) Tenant has not assigned this Lease or sublet more than twenty-five percent (25%) of the Premises (except to a Permitted Assignee or Affiliated Entity), Tenant shall have the option ("**Extension Option**") to extend the Term of this Lease for one (1) additional period of five (5) years, such additional term commencing as of the expiration of the initial Term of the Lease ("**Extension Term**"). Tenant may exercise its Extension Option by giving Landlord written notice ("**Extension Notice**") not earlier than fifteen (15) months and not later than twelve (12) months prior to the Expiration Date of the initial Term of the Lease. Upon the timely giving of the Extension Notice, the Term of this Lease shall be deemed extended upon all of the terms and conditions of this Lease. If Tenant fails to timely give the Extension Notice, as aforesaid, Tenant shall have no further right to extend the Term of this Lease, time being of the essence of this Section 29.16.

(b) The Yearly Rent during the Extension Term shall be based upon the Fair Market Rental Value, as defined in and determined pursuant to Subparagraph (e) of this Section 29.16, as of the commencement of the Extension Term, of the Premises then demised to Tenant.

(c) Tenant shall have no further option to extend the Term of the Lease other than the Extension Term.

(d) Notwithstanding the fact that Tenant's exercise of the Extension Option shall be self-executing, as aforesaid, the parties shall promptly execute a lease amendment reflecting the Extension Term after Tenant exercises the Extension Option, except that, if has not yet been determined, the Yearly Rent payable in respect of the Extension Term may not be set forth in said amendment. In such event, after such Yearly Rent is determined, the parties shall execute a written agreement confirming the same. The execution of such lease amendment shall not be deemed to waive any of the conditions to Tenant's exercise of its rights under this Section 29.16, unless otherwise specifically provided in such lease amendment.

(e) (i) "**Fair Market Rental Value**" shall be computed as of the commencement of the Extension Term at the then current annual rental charge (i.e., the sum of Yearly Rent plus escalation and other charges), including provisions for subsequent increases and other adjustments for leases or agreements to lease (including letters of intent, if executed by both Landlord and Tenant) then currently being executed in comparable space located in the Building, or in comparable first-class office buildings located in East Cambridge, Massachusetts. In determining Fair Market Rental Value, all relevant factors shall be considered.

(ii) Dispute as to Fair Market Rental Value

Landlord shall initially designate Fair Market Rental Value by notice to Tenant thereof given at least eleven (11) months before the Expiration Date. If Tenant disagrees with Landlord's designation of a Fair Market Rental Value, the parties shall negotiate in good faith for thirty (30) days after Landlord's initial designation ("**Negotiation Period**") to reach agreement on the Fair Market Rental Value. If the parties have not reached agreement on the Fair Market Rental Value by the end of the Negotiation Period, then the Fair Market Rental Value shall be submitted to arbitration as follows: Fair Market Rental Value shall be submitted to arbitration as follows: Fair Market Rental Value shall be determined by impartial arbitrators, one to be chosen by the Landlord, one to be chosen by Tenant, and a third to be selected, if necessary, as below provided. The unanimous written decision of the two first chosen, without selection and participation of a third arbitrator, or otherwise, the written decision of a majority of three arbitrators chosen and selected as aforesaid, shall be conclusive and binding upon Landlord and Tenant. Landlord and Tenant shall each notify the other of its chosen arbitrator within ten (10) business days following the expiration of the Negotiation Period and, unless such two arbitrators shall have reached a unanimous decision within thirty (30) days after their designation, they shall so notify the Boston office of the American Arbitration Association (or such organization as may succeed to said American Arbitration Association) and request him/her to select an impartial third arbitrator, who shall be a real estate broker dealing with like types of properties, with a minimum of ten (10) years' experience in office leasing in Cambridge, Massachusetts, to determine Fair Market Rental Value as herein defined. Such third arbitrator and the first two chosen shall, subject to commercial arbitration rules of the

American Arbitration Association, hear the parties and their evidence and render their decision within thirty (30) days following the conclusion of such hearing and notify Landlord and Tenant thereof. If either party fails to designate its chosen broker within ten (10) business days following the expiration of the Negotiation Period, which failure continues for five (5) business days after written notice thereof, the other party's broker shall determine Fair Market Rental Value acting alone. Landlord and Tenant shall bear the expense of the third arbitrator (if any) equally. The decision of the arbitrator(s) shall be binding and conclusive, and judgment upon the award or decision of the arbitrator(s) may be entered in the appropriate court of law (as identified on **Exhibit 1**); and the parties consent to the jurisdiction of such court and further agree that any process or notice of motion or other application to the Court or a Judge thereof may be served outside the Commonwealth of Massachusetts by registered mail or by personal service, provided a reasonable time for appearance is allowed. If the dispute between the parties as to a Fair Market Rental Value has not been resolved before the commencement of Tenant's obligation to pay rent based upon such Fair Market Rental Value, then Tenant shall pay Yearly Rent and other charges under the Lease in respect of the Premises in question based upon the Fair Market Rental Value designated by Landlord until either the agreement of the parties as to the Fair Market Rental Value, or the decision of the arbitrators, as the case may be, at which time Tenant shall pay any underpayment of rent and other charges to Landlord, or Landlord shall refund any overpayment of rent and other charges to Tenant.

29.17 Tenant's Right of First Offer.

On the conditions, which conditions Landlord may waive, at its election, by written notice to Tenant at any time, that as of the time of option exercise and as of the commencement of the hereinafter described additional term, (i) Tenant is not in default under the Lease beyond any applicable notice, grace and cure periods, (ii) not more than twenty-five percent (25%) of the Premises is sublet, other than to a Permitted Assignee or an Affiliated Entity, (iii) the Lease has not been assigned other than to a Permitted Assignee or an Affiliated Entity and (iv) the RFO Premises, as hereinafter defined, is intended for the exclusive use of Tenant or any Permitted Assignee or an Affiliated Entity during the Term, Tenant shall have the following one time right ("**Right of First Offer**") to lease the RFO Premises, as hereinafter defined, when the RFO Premises become available for lease to Tenant, as hereinafter defined. Notwithstanding the foregoing, Tenant shall have no right to exercise its Right of First Offer if less than twenty-four (24) months remain in the Term of the Lease, unless (i) Tenant has not yet exercised the Extension Option, (ii) the Extension Option has not lapsed unexercised, and (iii) simultaneously with giving an RFO Exercise Notice (as hereinafter defined), Tenant timely and properly exercises the Extension Option as set forth in Section 29.16 above (and, in such event, the prohibition set forth in Section 29.16 above, on giving the Extension Notice more than fifteen (15) months before the Expiration Date of the initial Term shall be waived, if necessary). In any case where Tenant has no right to exercise its Right of First Offer (that is, during the last twenty-four (24) months of the Term of the Lease if Tenant does not have any remaining right to exercise the Extension Option, or if the aforesaid conditions are not met), Landlord shall not be obligated to deliver Landlord's RFO Notice (as hereinafter defined) to Tenant.

(a) Definition of RFO Premises

"**RFO Premises**" shall be defined as any area on the third (3rd) or fourth (4th) floor of the Building, when such area becomes available for lease to Tenant, as hereinafter defined, during the Term of this Lease. For the purposes of this Section 29.17, an RFO Premises shall be deemed to be "**available for lease to Tenant**" if, during the Term of this Lease, Landlord, in its reasonable judgment, determines that such area will become available for leasing to Tenant (i.e. when Landlord determines that the then occupant of the RFO Premises will vacate the RFO Premises and that the holder(s) of any superior rights to the RFO Premises will not exercise such rights, and when Landlord intends to offer such area for lease). Tenant acknowledges that the portion of the RFO Premises located on the third floor of the Building (the "**Third Floor RFO Premises**") are currently vacant. Notwithstanding anything to the contrary herein contained, Tenant's right of first offer shall not apply to the Third Floor RFO Premises until Landlord has leased all or a portion of the Third Floor RFO Premises to a third party and thereafter the Third Floor RFO Premises or such portion thereof that has been so leased once again become "available for lease"; provided, however, if any portion of the Third Floor RFO Premises is not subject to an executed lease by the first (1st) anniversary of the Rent Commencement Date, then the portion of the Third Floor RFO Premises not so leased shall thereafter be deemed "available for lease" if the other conditions thereto are met. In no event shall Landlord offer RFO Premises to Tenant more than two (2) years prior to the date such RFO Premises will be available for occupancy by Tenant.

(b) Exercise of Right to Lease RFO Premises

Landlord shall give Tenant written notice (“**Landlord’s RFO Notice**”) at the time that Landlord determines, as aforesaid, that an RFO Premises will become available for lease to Tenant. Landlord’s RFO Notice shall set forth the location and size of the RFO Premises, Landlord’s designation of the Fair Market Rental Value (as defined in Subparagraph (e) of Section 29.16 above, but ignoring all references to “renewal”) applicable to the RFO Premises and the RFO Premises Commencement Date. Tenant shall have the right, exercisable upon written notice given to Landlord within ten (10) business days after the receipt of Landlord’s RFO Notice, to either: (i) lease the RFO Premises at the Fair Market Rental Value set forth in Landlord’s RFO Notice (“**RFO Exercise Notice**”), or (ii) lease the RFO Premises but provide Landlord with a counteroffer of Landlord’s designation of Fair Market Rental Value (“**Tenant’s Objection Notice**”). If Tenant timely and properly provides an RFO Exercise Notice, Tenant shall lease the RFO Premises and the Fair Market Rental Value shall be as set forth in Landlord’s RFO Notice. If Tenant timely and properly provides Tenant’s Objection Notice, then Tenant shall lease the RFO Premises, and the Fair Market Rental Value shall be determined as follows: Fair Market Rental Value shall be determined by impartial arbitrators, one to be chosen by the Landlord, one to be chosen by Tenant, and a third to be selected, if necessary, as below provided. Each arbitrator shall be a broker affiliated with a major Boston commercial real estate brokerage firm and each arbitrator shall have at least ten (10) years’ experience dealing in properties of a nature and type generally similar to the Building located in East Cambridge, Massachusetts. The unanimous written decision of the two first chosen, without selection and participation of a third arbitrator, or otherwise, the written decision of a majority of three arbitrators chosen and selected as aforesaid, shall be conclusive and binding upon Landlord and Tenant. Landlord and Tenant shall each notify the other of its chosen arbitrator within ten (10) business days following the call for arbitration and, unless such two arbitrators shall have reached a unanimous decision within thirty (30) days after their designation, they shall so notify the President of the Boston office of the American Arbitration Association (or such organization as may succeed to said American Arbitration Association) and request him to select an impartial third arbitrator, having the qualifications set forth above, to determine Fair Market Rental Value as herein defined. Such third arbitrator and the first two chosen shall, subject to commercial arbitration rules of the American Arbitration Association, hear the parties and their evidence and render their decision within thirty (30) days following the conclusion of such hearing and notify Landlord and Tenant thereof. Landlord and Tenant shall bear the expense of the third arbitrator (if any) equally. The decision of the arbitrator shall be binding and conclusive, and judgment upon the award or decision of the arbitrator may be entered in the appropriate court of law (as identified on Exhibit 1); and the parties consent to the jurisdiction of such court and further agree that any process or notice of motion or other application to the Court or a Judge thereof may be served outside the Commonwealth of Massachusetts by registered mail or by personal service, provided a reasonable time for appearance is allowed. If the dispute between the parties as to a Fair Market Rental Value has not been resolved before the commencement of Tenant’s obligation to pay rent based upon such Fair Market Rental Value, then Tenant shall pay Yearly Rent and other charges under the Lease in respect of the Premises in question based upon the Fair Market Rental Value designated by Landlord until either the agreement of the parties as to the Fair Market Rental Value, or the decision of the arbitrators, as the case may be, at which time Tenant shall pay any underpayment of rent and other charges to Landlord, or Landlord shall refund any overpayment of rent and other charges to Tenant. If Tenant does not timely and properly provide either an RFO Exercise Notice or Tenant’s Objection Notice, time being of the essence, then Tenant shall have no further right to lease all or any portion of the RFO Premises that were the subject of Landlord’s RFO Notice, but shall continue to have rights other RFO Premises, if any, which have not yet been offered to Tenant pursuant to this Section 29.17. Notwithstanding the foregoing if the RFO Premises that were the subject of Landlord’s RFO Notice shall not be leased (which term shall include a letter of intent that results in a lease) by the date that is one (1) year after the deadline for Tenant to have given a RFO Exercise Notice or Tenant’s Objection Notice with respect to such Landlord’s RFO Notice, then Tenant’s Right of First Offer hereunder shall again apply to such RFO Premises.

(c) Lease Provisions Applying to RFO Premises

The leasing to Tenant of the RFO Premises shall be upon all of the same terms and conditions of the Lease, except as follows:

(1) RFO Premises Commencement Date

The RFO Premises Commencement Date shall be the later of: (x) the RFO Premises Commencement Date as set forth in Landlord’s RFO Notice, or (y) the date that Landlord delivers the RFO Premises to Tenant in the condition set forth in subparagraph (d) below.

(2) Expiration Date

The Expiration Date in respect of the RFO Premises shall be the Expiration Date of the Lease.

(3) Yearly Rent

The Yearly Rent rental rate in respect of the RFO Premises shall be based upon the Fair Market Rental Value determined as set forth above.

(d) Condition of RFO Premises

Tenant shall take the RFO Premises "as-is" in its then (i.e. as of the date of delivery) state of construction, finish, and decoration, without any obligation on the part of Landlord to construct or prepare the RFO Premises for Tenant's occupancy, unless otherwise set forth in Landlord's RFO Notice, but broom clean and free of Hazardous Materials (or with same encapsulated in accordance with applicable Environmental Laws) in any event. The foregoing shall not operate to exclude or waive any improvement allowances, rent abatement, free rent or other concessions determined to be part of the Fair Market Rental Value.

(e) Termination of Right of First Offer

The rights of Tenant hereunder with respect to an RFO Premises shall terminate on the earlier to occur of: (i) Tenant's failure to exercise its Right of First Offer within the ten (10) business day period provided in Section 29.17(b) above; and (iii) the date Landlord otherwise would have provided Landlord's RFO Notice to Tenant, if one or more of the requirements set forth in the first paragraph of this Section 29.17 is not met on the date Landlord otherwise would have provided Landlord's RFO Notice to Tenant.

(f) Subordination. Notwithstanding anything herein to the contrary, Tenant's Right of First Offer is subject and subordinate to any rights that Landlord may grant to the holder of the tenant's interest under the lease Landlord is currently negotiating with Symantec Corporation. During such period of time that Landlord or its affiliates shall own One Canal and/or Ten Canal, as the case may be, at Tenant's request, Landlord shall provide, to the best of its knowledge, information on any office space available at One Canal or Ten Canal (or whichever of such buildings shall be owned by Landlord or its affiliates at the time of the request), which information shall include the square footage of any such available space in either such building that Landlord is aware will be available during the twelve (12) month period after such notification.

(g) Execution of Lease Amendments

Notwithstanding the fact that Tenant's exercise of the above-described option to lease the RFO Premises shall be self-executing, as aforesaid, the parties hereby agree promptly to execute a lease amendment reflecting the addition of the RFO Premises. The execution of such lease amendment shall not be deemed to waive any of the conditions to Tenant's exercise of the herein option to lease the RFO Premises, unless otherwise specifically provided in such lease amendment.

29.18 Emergency Generator.

(a) Tenant, subject to Landlord's review and approval of Tenant's plans therefor, shall have the right to install a supplemental generator (the "Generator" which term shall include associated power and fuel lines), to provide emergency additional electrical capacity to the Premises during the Term, in an electrical capacity to be reasonably approved by Landlord. Tenant's plans for the Generator shall include a secondary containment system to protect against and contain any release of hazardous materials. The Generator shall be placed in an area (the "Generator Area") measuring approximately 20' x 20' to be designated by Landlord on the roof and, with respect to such associated power and fuel lines, in such conduits or other areas as Landlord shall designate. Notwithstanding the foregoing, Tenant's right to install the Generator shall be subject to Landlord's approval of the manner in which the Generator is installed, the manner in which any fuel pipe is installed, the manner in which any ventilation and exhaust systems are installed, the manner in which any cables are run to and from the Generator to the Premises and the measures that will be taken to eliminate any vibrations or sound disturbances from the operation of the Generator, including, without limitation, any necessary 2 hour rated enclosures or sound installation. Landlord shall have the right to require an acceptable enclosure to hide or disguise the existence of the Generator and to minimize any adverse effect that the installation of the Generator may have on the appearance of the Building and the Property. Tenant shall be solely responsible for obtaining all necessary governmental and regulatory approvals and

for the cost of installing, operating, maintaining and removing the Generator. Tenant shall not install or operate the Generator until Tenant has obtained and submitted to Landlord copies of all required governmental permits, licenses and authorizations necessary for the installation and operation of the Generator. In addition to, and without limiting Tenant's obligations under the Lease, Tenant shall comply with all applicable environmental and fire prevention Laws pertaining to Tenant's use of the Generator Area. Tenant shall also be responsible for the cost of all utilities consumed in the operation of the Generator.

(b) Tenant shall be responsible for assuring that the installation, maintenance, operation and removal of the Generator shall in no way damage any portion of the Building or the Generator Area. To the maximum extent permitted by law, the Generator and all appurtenances in the Generator Area shall be at the sole risk of Tenant, and, except in connection with Landlord's gross negligence or willful misconduct, Landlord shall have no liability to Tenant if the Generator or any appurtenances installations are damaged for any reason. Subject to the waiver of subrogation provision of this Lease, Tenant agrees to be responsible for any damage caused to the Building or Property in connection with the installation, maintenance, operation or removal of the Generator and, in accordance with the terms of Article 15 hereof, to indemnify, defend and hold Landlord harmless from all liabilities, obligations, damages, penalties, claims, costs, charges and expenses, including, without limitation, reasonable architects' and attorneys' fees (if and to the extent permitted by law), which may be imposed upon, incurred by, or asserted against Landlord in connection with the installation, maintenance, operation or removal of the Generator, including, without limitation, any environmental and hazardous materials claims. In addition to, and without limiting Tenant's obligations under the Lease, Tenant covenants and agrees that the installation and use of the Generator and appurtenances shall not adversely affect the insurance coverage for the Building. If for any reason, the installation or use of the Generator and/or the appurtenances shall result in an increase in the amount of the premiums for such coverage, then Tenant shall be liable for the full amount of any such increase.

(c) Tenant shall be responsible for the installation, operation, cleanliness, maintenance and removal of the Generator and the appurtenances, all of which shall remain the personal property of Tenant, and shall be removed by Tenant at its own expense at the expiration or earlier termination of the Lease. Tenant shall repair any damage caused by such removal, including the patching of any holes to match, as closely as possible, the color surrounding the area where the Generator and appurtenances were attached. Such maintenance and operation shall be performed in a manner to avoid any unreasonable interference with any other tenants or Landlord. Tenant shall take the Generator Area "as is" in the condition in which the Generator Area is in as of the date Tenant installs the Generator, without any obligation on the part of Landlord to prepare or construct the Generator Area for Tenant's use or occupancy. Without limiting the foregoing, Landlord makes no warranties or representations to Tenant as to the suitability of the Generator Area for the installation and operation of the Generator. Tenant shall have no right to make any changes, alterations, additions, decorations or other improvements to the Generator Area without Landlord's prior written consent in accordance with the standards for Alterations in this Lease. Tenant agrees to maintain the Generator, including without limitation, any enclosure installed around the Generator in good condition and repair. Tenant shall be responsible for performing any maintenance and improvements to any enclosure surrounding the Generator so as to keep such enclosure in good condition.

(d) Tenant, upon prior notice to Landlord and subject to the rules and regulations enacted by Landlord, shall have access to the Generator and its surrounding area for the purpose of installing, repairing, maintaining and removing said Generator.

(e) Tenant shall only test the Generator before or after Business Hours and at a time mutually agreed to in writing by Landlord and Tenant in advance. Tenant shall be permitted to use the Generator Area solely for the maintenance and operation of the Generator and the Generator and Generator Area are solely for the benefit of Tenant. All electricity generated by the Generator may only be consumed by Tenant in the Premises.

(f) Landlord shall have no obligation to provide any services, including, without limitation, electric current, to the Generator Area.

(g) Tenant shall have no right to sublet the Generator Area or to assign its interest in the Generator Area hereunder, unless such assignment or sublease is in connection with the assignment of Tenant's interest under the Lease or a sublease of the Premises.

29.19 Roof Area.

(a) Tenant shall have the right to use the Roof Area, as hereinafter defined, to install supplemental HVAC systems, cell tower boosters, high frequency wireless local area network equipment, local exhaust equipment, and/or a communication satellite dish or antenna ("**Equipment**") for a period commencing as of the date that Tenant

installs any of the Equipment in the Roof Area (“**Roof Area Commencement Date**”) and terminating as of the expiration or earlier termination of the Term of the Lease. The “**Roof Area**” shall be an area on the roof of the Building designated by Landlord. Tenant shall be permitted to use the Roof Area solely for installation of the Equipment. Such installation shall be designed in such manner as to be easily removable and so as not to damage the roof of the Building. The Equipment and any replacement shall be subject to Landlord’s approval, not to be unreasonably withheld, conditioned or delayed. Tenant’s use of the Roof Area shall be upon all of the conditions of the Lease, except as follows:

(b) Tenant shall have no obligation to pay Yearly Rent, Tax Excess or Operating Expense Excess in respect of the Roof Area.

(c) Landlord shall have no obligation to provide any services to the Roof Area.

(d) Tenant shall have no right to make any changes, alterations, signs, decoration, or other improvements to the Roof Area or to the Equipment without Landlord’s prior written consent, which consent Landlord shall not unreasonably withhold, condition or delay.

(e) Tenant shall have no right of access to the roof of the Building unless Tenant has given Landlord reasonable advance notice and unless Tenant’s representatives are accompanied by a representative of Landlord. Landlord shall provide Tenant with twenty-four (24) hour access to the Roof Area, subject to Landlord’s reasonable security procedures and restrictions based on emergency conditions and to other causes beyond Landlord’s reasonable control. Tenant shall give Landlord reasonable advance written notice of the need for access to the Roof Area (except that such notice may be oral in an emergency), and Landlord must be present during any entry by Tenant onto the Roof Area. Each notice for access shall be in the form of a work order referencing the lease and describing, as applicable, the date access is needed, the name of the contractor or other personnel requiring access, the name of the supervisor authorizing the access/work, the areas to which access is required, the Building common elements to be impacted (risers, electrical rooms, etc.) and the description of new equipment or other Equipment to be installed and evidence of Landlord’s approval thereof. In the event of an emergency, such notice shall follow within five (5) days after access to the Roof Area.

(f) At the expiration or prior termination of Tenant’s right to use the Roof Area, Tenant shall remove all Installations (including, without limitation, the Equipment) from the Roof Area and any associated cables, etc., elsewhere in the Building.

(g) Tenant shall be responsible for the cost of repairing any damage to the roof of the Building caused by the installation or removal of any Equipment.

(h) Tenant shall have no right to sublet the Roof Area.

(i) No other person, firm or entity (including, without limitation, other tenants, licensees or occupants of the Building) shall have the right to benefit from the services provided by the Equipment other than Tenant, Tenant’s Affiliates, assignees, subtenants and permitted occupants and their respective agents, employees and invitees.

(j) In the event that Landlord performs repairs to or replacement of the roof, Tenant shall, at Tenant’s cost, remove the Equipment until such time as Landlord has completed such repairs or replacements. Tenant recognizes that there may be an interference with Tenant’s use of the Equipment in connection with such work. Landlord shall use reasonable efforts to complete such work as promptly as possible and to perform such work in a manner which will minimize or, if reasonably possible, eliminate any interruption in Tenant’s use of the Equipment.

(k) Any services required by Tenant in connection with Tenant’s use of the Roof Area or the Equipment shall be installed by Tenant, at Tenant’s expense, subject to Landlord’s prior approval, not to be unreasonably withheld, conditioned or delayed.

(l) To the maximum extent permitted by law, all Equipment in the Roof Area shall be at the sole risk of Tenant, and Landlord shall have no liability to Tenant in the event that any Equipment is damaged for any reason.

(m) Tenant shall take the Roof Area “as-is” in the condition in which the Roof Area is in as of the Roof Area Commencement Date. Landlord makes no warranties or representations to Tenant as to the suitability of the Roof Area for the installation and operation of the Equipment. Tenant shall have no right to make any changes, alterations, additions, decorations or other improvements to the Roof Area without Landlord’s prior written consent, not to be unreasonably withheld.

(n) Tenant shall comply with all applicable laws, ordinances and regulations in Tenant's use of the Roof Area and the Equipment.

(o) Landlord shall have the right, upon sixty (60) days' notice to Tenant, to require Tenant to relocate the Roof Area to another area ("**Relocated Rooftop Area**") on the roof of the Building suitable for the use of the Equipment. In such event, Tenant shall on or before the sixtieth (60th) day after Landlord gives such notice, relocate all of its Equipment from the Roof Area to the Relocated Rooftop Area. Any relocations of the Roof Area shall be at Landlord's cost and expense.

(p) In addition to complying with the applicable construction provisions of the Lease, Tenant shall not install or operate Equipment in any portion of the Roof Area until (x) Tenant shall have obtained Landlord's prior written approval, which approval will not be unreasonably withheld, conditioned or delayed, of Tenant's plans and specifications for the placement and installation of the Equipment in the Roof Area, and (y) Tenant shall have obtained and delivered to Landlord copies of all required governmental and quasi-governmental permits, approvals, licenses and authorizations necessary for the lawful installation, operation and maintenance of the Equipment. The parties hereby acknowledge and agree, by way of illustration and not limitation, that Landlord shall have the right to withhold its approval of Tenant's plans and specifications hereunder, and shall not be deemed to be unreasonable in doing so, if Tenant's intended placement or method of installation or operation of the Equipment (i) may subject other licensees, tenants or occupants of the Building, or other surrounding or neighboring landowners or their occupants, to signal interference, Tenant hereby acknowledging that a shield may be required in order to prevent such interference, (ii) does not minimize to the fullest extent practicable the obstruction of the views from the windows of the Building that are adjacent to the Equipment, if any, or (iii) may constitute a violation of any consent, approval, permit or authorization necessary for the lawful installation of the Equipment.

(q) In addition to the indemnification provisions set forth in the Lease which shall be applicable to the Roof Area, Tenant shall, to the maximum extent permitted by law and subject to the provisions of Article 19 above, indemnify, defend, and hold Landlord, its agents, contractors and employees harmless from any and all claims, losses, demands, actions or causes of actions suffered by any person, firm, corporation, or other entity arising from the negligence or willful misconduct of Tenant, its agents, employees or contractors in connection with Tenant's use of the Roof Area.

(r) Landlord shall have the right to designate or identify the Equipment with or by a lease or license number (or other marking) and to place such number (or marking) on or near such Equipment.

29.20 Dog Friendly Premises.

Notwithstanding anything to the contrary contained elsewhere in the Lease, provided that Tenant itself and/or Permitted Transferees and Affiliated Entities are leasing the equivalent square footage of one full floor in the Building, Tenant shall be permitted to bring fully domesticated and trained dogs, kept by the Tenant's employees as pets into the Premises, on the following terms and conditions (the "**Dog Rules and Regulations**").

(a) Tenant must submit its application(s) for each dog via Landlord's designated tenant work order request system. Landlord requires property management's in person pre-screening of all dogs prior to application approval.

(b) Tenant's employee must submit to Landlord copies of the dog's current license and vaccinations upon application.

(c) Tenant (i) must maintain company liability insurance reasonably acceptable to Landlord against dog incidents and provide Landlord with evidence of such coverage, and (ii) takes full responsibility for the management of its permitted dogs and issues that arise within its premises and the Building related to the dogs it permits. Such incidents may include, but are not limited to co-employee issues, co-tenant complaints, and guest concerns, dog interactions with other dogs, additional maintenance, and dog behavior. Tenant agrees that Landlord shall have no responsibility or liability whatsoever for any loss, damage, or injury whatsoever caused by any such dogs, and Tenant shall indemnify, defend and hold Landlord harmless against and from all liabilities, obligations, damages, penalties, claims, actions, costs, charges and expenses, including, without limitation, reasonable attorneys' fees and other professional fees (if and to the extent permitted by Law), which may be imposed upon, incurred by or asserted against Landlord in connection with any such dogs.

(d) Any Tenant desiring to permit dogs will be responsible for all dog related housekeeping and maintenance expenses determined as necessary by Landlord and incurred by Landlord in the maintenance of Tenant's premises beyond building standard contract services.

(e) This right is limited to three (3) dogs on the First Floor Premises and up to five (5) dogs on the Second Floor Premises at any one time.

(f) Access to and egress from the Building and tenant premises shall be as follows:

- (i) Enter or exit the Building using only the service entrance next to the Building loading dock using an approved access device.
- (ii) Access or exit the elevator bank using only the service corridor utilizing an approved access device.
- (iii) Access and exit the Second Floor Premises only via the Service Elevator designated specifically for dog accessibility or via the internal staircase between the First Floor Premises and the Second Floor Premises.
- (iv) Access or depart Tenant's Premises without entering any other areas of the Building such as common area restrooms or stairwells, or other, except as set forth in clauses (i)-(iii) above.

(g) Dogs are not permitted on passenger elevators, in restrooms, fire stairwells (except in an emergency), bicycle room, the conference facility, the locker rooms, the main lobby, or in any Building public or common space existing currently or designated as such by Landlord in the future, except the areas designated in clauses (i)-(iii) above.

(h) Dogs are not permitted in the landscaped areas adjacent to the property and cannot be in the vicinity of either the Canal Street or First Street entrances to the building lobby.

(i) Landlord reserves the right, from time to time, to ban certain breeds of dogs, at its sole discretion, and to modify the Dog Rules & Regulations as it deems necessary.

(j) Any violation of these rules shall entitle Landlord to disallow any and all dogs in the Premises thereafter by notice to Tenant thereof. If Tenant continues to bring dogs into the Building after receiving such notice from Landlord, then such action shall constitute a default under the Lease.

(k) The rights of Tenant under this Section 29.20 are personal to HubSpot, Inc. and any Permitted Assignee, and may not be exercised by any other tenant, subtenant, licensee, or other occupant of the Premises or any portion thereof.

Additional restrictions:

- Dogs in excess of 40 pounds, taller than 24 inches (or otherwise, in the reasonable discretion of Landlord or its property manager), and not "house broken" are prohibited from the Building.
- Any observed aggressive behavior, such as growling, barking, chasing, nipping or biting will result in the dog being permanently removed from the Building.
- Any dog with excessive odors or perceived to be unhealthy, unclean, infested with fleas/ticks/other, or not adequately groomed, will not be permitted into the Building.
- All dogs must be attended at all times; must always be on a leash when outside the Premises as access and exit occurs and while on the exterior property of Landlord.
- Tenants are required to clean up after their dogs whether in any designated dog relief area, or on sidewalks and streets, pursuant to any applicable City of Cambridge ordinance.
- Any dog "accidents" or failure of Tenant to clean up after its permitted dogs will result in any offending dog being banned permanently from the Building. Additionally, "puppy pads" or similar indoor relief treatments and measures are strictly prohibited.
- Tenants shall be responsible for the cost of all cleaning, pest control (e.g. treatment for ticks and fleas), and all other items associated with their dogs, which costs shall be Additional Rent.

29.21 Soda Fountain.

Tenant shall have the right to install one (1) or more soda fountains in the Premises in accordance with the provisions of Article 12 above, and Tenant will not be required to remove such soda fountains at the end of the Term.

29.22 Exterior Patio Space.

Tenant shall have the exclusive right to use the so-called patio area located adjacent to the First Floor Premises shown on **Exhibit 8** attached hereto ("**Patio**"), subject to Landlord's reasonable rules and regulations with respect thereto in effect from time to time and to the terms and conditions set forth below. Use of the Patio in shall be without charge to Tenant, but Landlord may pass through to Tenant its actual costs incurred due to Tenant's exclusive use of the Patio (such as excess cleaning costs). Tenant shall have the right to section off the Patio, in a first-class manner and subject to Landlord's reasonable approval, from the rest of the Building and to prevent other tenants in the Building from using the Patio during the Term. Tenant shall have the right to install electrical outlets in the Patio subject to the provisions of Articles 12 and 13 above.

Tenant shall keep the Patio neat and free of trash, and Tenant shall be responsible for all non-structural maintenance and repairs to the Patio. Landlord shall have no obligation to provide any services to the Patio. To the extent applicable, all provisions of this Lease shall apply to Tenant's use of the Patio, provided that Tenant shall not be required to pay Base Rent or Additional Rent on account of Operating Expenses and Taxes with respect to the Patio, and Landlord shall not be required to provide any services to the Patio. In no event shall the square footage of the Patio be included in the Rentable Area of the Premises. Tenant's right granted herein to use the Patio is neither transferable nor assignable except in connection with a permitted assignment of the Lease or permitted sublet of the Premises. In no event shall any smoking be permitted on the Patio. Tenant may install heaters on the patio, provided, however, that such heaters must be removed by Tenant and stored by Tenant when such heaters are not in use.

Tenant's lease of the Patio shall be upon all of the terms and conditions set forth in the Lease applicable to the Premises, except to the extent inconsistent with the terms of this Section 29.22.

Tenant shall take the Patio "as-is," in the condition in which the Patio is in as of the date hereof, without any obligation on the part of Landlord to provide any leasehold improvements to the Patio and without any representation or warranty by Landlord to Tenant as to the condition of the Patio or the Building.

Tenant may, at its sole cost and expense, place furniture (the "Furniture") in the Patio, provided that (A) the Furniture is of a first-class standard of quality and appearance consistent with the design and construction of the Building; (B) the Furniture shall not be used or placed in the Patio until (1) its design, size, color and position are first approved by Landlord in writing, which approval shall not be unreasonably withheld, conditioned or delayed, and (2) its method of attachment or installation is first approved by Landlord in writing, which approval may be withheld in Landlord's reasonable discretion; (C) Tenant shall be solely responsible for stacking and securing the Furniture when not in use and for removing the Furniture from the Patio and storing same within the Premises during the offseason determined by Tenant and reasonably approved by Landlord; and (D) Tenant shall be solely responsible for any destruction, damage, theft or vandalism of, or to, the Furniture. Tenant hereby covenants and agrees that it shall not: (x) erect or place any canopy or other enclosure or covering on the Patio; or (y) permit any music or other similar sounds to be heard in the Patio without Landlord's prior written approval, which shall not be unreasonably withheld, conditioned or delayed. Tenant shall have the right to play music after business hours and during social events, provided that such music does not disturb or interfere with the rights of other tenants in the Building and provided that such music is not in violation of applicable City of Cambridge noise ordinance or materially interferes with other tenants' use, occupancy or quiet enjoyment of the Premises.

The rights of Tenant under this Section 29.22 are personal to HubSpot, Inc. and any Permitted Assignee (and any affiliates or permitted occupants), and may not be exercised by any other tenant, subtenant, licensee, or other occupant of the Premises or any portion thereof

Prior to the expiration of the Term of the Lease or within two (2) business days after any earlier termination of this Lease, Tenant, at its sole cost and expense, shall remove the Furniture from the Patio and restore the Patio to its condition prior to Tenant's use thereof, ordinary wear and tear excepted. If Tenant fails to do so, then Landlord may remove the Furniture and restore the Patio, and Tenant shall reimburse Landlord for the cost of such removal and restoration immediately upon demand.

IN WITNESS WHEREOF the parties hereto have executed this Deed of Lease in multiple copies, each to be considered an original hereof, as a sealed instrument on the day and year noted in Exhibit 1 as the Execution Date.

LANDLORD:

BCSP CAMBRIDGE TWO PROPERTY LLC,
a Delaware limited liability company

By: /s/ Philip J. Brannigan, Jr.
Name: Philip J. Brannigan, Jr.
Title: Managing Director

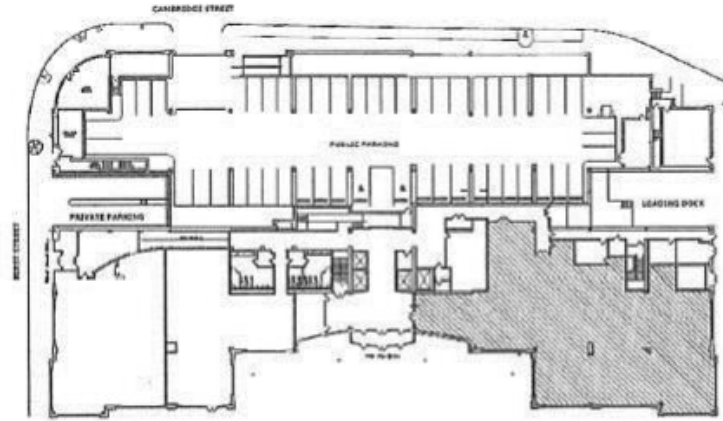
TENANT:

HUBSPOT, INC.,
a Delaware corporation

By: /s/ John P. Kelleher
Name: John P. Kelleher
Title: Secretary & General Counsel
Hereunto Duly Authorized

EXHIBIT 2, SHEET 1

LEASE PLAN, FIRST FLOOR PREMISES

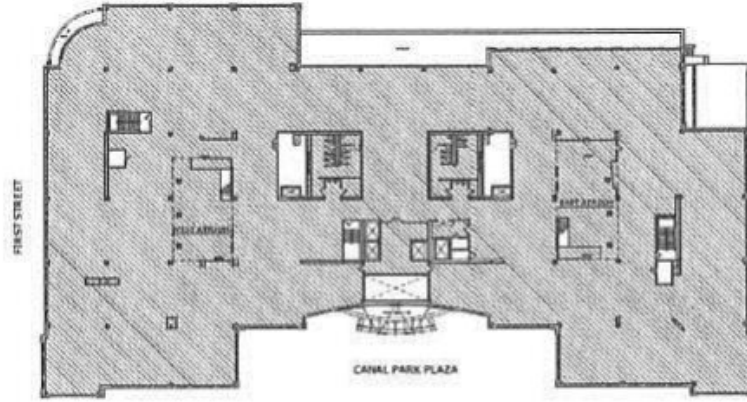


2 CANAL PARK FIRST FLOOR



EXHIBIT 2, SHEET 2

LEASE PLAN, SECOND FLOOR PREMISES



2 CANAL PARK SECOND FLOOR



NELSON

EXHIBIT 3

INSURANCE PROVISIONS

1. TENANT INSURANCE

- A. Tenant shall procure, maintain and pay for, from a company or companies lawfully authorized to do business in the jurisdiction in which the Building is located having a rating of A-VIII or better by AM Best and otherwise reasonably acceptable to Landlord, the following types of insurance as will protect the Tenant and Landlord against claims which may be claimed to have occurred from and after the time Tenant and/or its contractors first enter the Premises and continuing through the expiration of the Term of this Lease or, if later, the last day that Tenant or anyone claiming by, through or under Tenant is in occupancy of all or a portion of the Premises:
- (i) Commercial General Liability Insurance, as hereinafter defined, with the following minimum limits:
 - (a) \$1,000,000 Each Occurrence;
 - (b) \$2,000,000 General Aggregate
 - (c) \$1,000,000 Personal and Advertising Injury; and
 - (d) \$2,000,000 Products-Completed Operations Aggregate.
 - (ii) Umbrella/Excess Liability Insurance, as hereinafter defined, with a per occurrence and annual aggregate limit of \$4,000,000 per location (“Umbrella Limit”).
 - (iii) Property Insurance, as hereinafter defined, insuring Tenant’s personal property and trade fixtures in and about the Premises and the Later Alterations (as defined in Article 18) in an amount equal to one hundred percent (100%) replacement cost value.
 - (iv) Terrorism coverage, where commercially available, is recommended.
- B. In no event shall Landlord be responsible for Tenant’s business interruption exposure or loss which shall be the Tenant’s sole responsibility. The foregoing shall not, however, affect any provisions for rent abatement which are specifically set forth in the Lease.
- C. All insurance required of Tenant (and Tenant’s contractors) shall be primary and non-contributory and maintained under valid and enforceable policies, for the full limits and coverage terms required herein. To the extent such a provision is then available from Tenant’s insurer, such insurance shall provide that it shall not be canceled or the coverages be changed or reduced below the minimum amounts and coverages required under this Lease without at least thirty (30) days’ (10 days’ in the event of cancellation for nonpayment of premium) prior written notice to Landlord, and in any event, Tenant shall provide Landlord with at least thirty (30) days’ prior written notice of any such cancellation or reduction in the amounts or types of such insurance below the minimum amounts and coverages required under this Lease. On or before the time Tenant and/or its contractors enter the Premises in accordance with Articles 4 and 12 of this Lease and thereafter not less than ten (10) days prior to the expiration date of each expiring policy, certificates of insurance evidencing insurance coverage required herein together with evidence satisfactory to Landlord of the payment of all premiums for such policies, shall be delivered by Tenant to Landlord, and certificates as aforesaid of such policies shall, upon request of Landlord, be delivered by Tenant to the holder of any mortgage affecting the Premises.
- D. Landlord may require, from time to time additional insurance coverages and limits as may be reasonable and customary for similar first-class office buildings in the Cambridge, Massachusetts.
- E. In the event Tenant subleases all or any part of the Premises, Tenant shall require its subtenant(s) to also carry and maintain the same insurance coverage terms and limits as required herein of Tenant.

- F. Landlord makes no representation or warranty to Tenant that the amount of insurance required to be carried by Tenant under the terms of this Lease is adequate to fully protect Tenant's interests. Tenant is encouraged to evaluate its insurance needs and obtain whatever additional types or amounts of insurance that it may deem desirable or appropriate.

2. TENANT CONTRACTOR INSURANCE

- A. Tenant shall cause contractors employed by Tenant to carry:
- (i) Worker's Compensation Insurance in compliance with statutory requirements, and Employer's Liability Insurance, as hereinafter defined,
 - (ii) Automobile Liability Insurance, and
 - (iii) Commercial General Liability and Umbrella Liability Insurance covering such contractors on or about the Premises in the amount stated in Section 1.A. above or in such other reasonable amount as Landlord shall require.
- B. Tenant shall submit, or shall cause such contractors employed by Tenant to submit, certificates evidencing such coverage to Landlord prior to the commencement of any Alterations in or to the Premises and at least 15 days prior to any policy renewals.
- C. All insurance carried by Tenant's Contractors shall be primary and non-contributory and Tenant shall cause each of Tenant's contractors to require and maintain the foregoing insurance requirements of its subcontractors and sub-sub contractors at all tiers.

3. LANDLORD INSURANCE

During the entire Term of this Lease, and adjusting insurance coverages to reflect current values from time to time, Landlord shall keep the Building (excluding Later Alterations, as defined in Article 18, and any personal property or trade fixtures belonging to Tenant or those claiming by, through or under Tenant) insured against loss or damage caused by any peril covered under fire, extended coverage and all risk insurance in an amount equal to one hundred percent (100%) replacement cost value above foundation walls.

Landlord shall maintain Liability insurance with a limit of \$5,000,000 per occurrence and in the aggregate and such coverage may be achieved by a combination of CGL and Umbrella liability policies.

Landlord shall maintain or cause to be maintained Garage keepers Legal Liability coverage with limits that are reasonable and customary for similar properties and exposures in the same geographic region.

If and to the extent Landlord or Landlord's property manager has any employees, Landlord shall maintain or cause its property manager to maintain statutory workers' compensation insurance and employer's liability insurance in a commercially reasonable amount determined by Landlord.

4. DEFINITIONS

- A. Commercial General Liability Insurance: commercial general liability insurance including coverage for bodily injury (inclusive of but not limited to coverage for death, and mental anguish), property damage, premises operations, personal & advertising injury, independent contractors, products and completed operations, and contractual liability coverages. Such policy shall provide coverage on an occurrence form and be endorsed to have the General Aggregate set forth above apply on a per location basis, and the deductibles and/or self-insured retentions thereunder shall be commercially reasonable. The Contractual General Liability Insurance shall include coverage sufficient to meet Tenant's indemnity obligations in this Lease to the extent they are insurable. Landlord, Landlord's managing agent any other parties requested by Landlord from time to time in writing shall each be added as an additional insured (using form CG2010(11/85) or equivalent, or another form reasonably approved by Landlord in writing) on a primary non-contributory basis on the Commercial General Liability Insurance policy.

- B. Umbrella/Excess Liability Insurance: umbrella/excess liability insurance on a follow form basis with a per occurrence and annual aggregate limit of the Umbrella Limit set forth above per location. Coverage shall be excess of Commercial General Liability Insurance (including products and completed operations coverage), Automobile Liability Insurance (if applicable) and Employer's Liability Insurance (if applicable) with coverage being concurrent with and not more restrictive than the underlying insurance policies and shall include the same additional insured provisions as the Commercial General Liability Insurance, and the deductibles and/or self-insured retentions thereunder shall be commercially reasonable.
- C. Property Insurance: property insurance against loss or damage caused by any peril covered under an all risk insurance policy or its equivalent. The Property Insurance policy shall include coverage for business interruption including extra expense to insure Tenant's ongoing business operations at Premises should the Tenant be unable to continue operations due to an insurable event. Tenant is also responsible for any and all boiler & machinery/machinery and equipment insurance relating to its own equipment, and such Property Insurance shall include such coverage. The deductibles and/or self-insured retentions under such Property Insurance shall be commercially reasonable. The proceeds of such Property Insurance shall first be used for the replacement or restoration of such personal property or trade fixtures and the Later Alterations until such restoration or replacement is complete and then to mitigate business interruption loss and extra expense. Such insurance shall include waivers of subrogation (as included in Article 19).
- D. Employer's Liability Insurance: employer's liability insurance in the amount of \$500,000 each accident for bodily injury by accident, \$500,000 each employee for bodily injury by disease, and \$500,000 policy limit for bodily injury by disease, or such other amount as may be required by the Umbrella/Excess Liability Insurance to effect umbrella coverage.

EXHIBIT 4

RULES AND REGULATIONS

1. The sidewalks, entrances, passages, courts, elevators, vestibules, stairways, corridors or halls or other parts of the Building not occupied by any tenant shall not be obstructed or encumbered by any tenant or used for any purpose other than ingress and egress to and from the Premises, and if the Premises are situated on the ground floor of the Building, the tenant thereof shall, at said tenant's own expense, keep the sidewalks and curb directly in front of said Premises clean and free from ice and snow. Landlord shall have the right to control and operate the public portions of the Building, and the facilities furnished for the common use of the tenants, in such a manner as Landlord deems best for the benefit of the tenants generally. No tenant shall permit the visit to its premises of persons in such numbers or under such conditions as to interfere with the use and enjoyment by other tenants of the entrances, corridors, elevators and other public portions or facilities of the Building.

2. No awnings or other projections shall be attached to the outside walls of the Building without the prior written consent of Landlord. No drapes, blinds, shades, or screens shall be attached to or hung in, or used in connection with any window or door of the Premises, without the prior written consent of Landlord. Such awnings, projections, curtains, blinds, shades, screens or other fixtures must be of a quality, type, design and color, and attached in the manner approved by Landlord. Drapes installed by the tenant for their use must be cleaned by the tenant. Landlord shall have the right to require Tenant to remove, in Landlord's reasonable discretion, any items placed on the windowsills of the Premises that are visible from outside of the Building.

3. No sign, advertisement, notice or other lettering shall be exhibited, inscribed, painted or affixed by tenant on any part of the outside or inside of the Premises or Building without the prior written consent of Landlord. In the event of the violation of the foregoing by any tenant, Landlord may remove same without any liability, and may charge the expense incurred by such removal to the tenant or tenants violating this rule. Interior signs on doors and directory tablet shall be inscribed, painted or affixed for each tenant by Landlord at the expense of such tenant, and shall be of a size, color and style acceptable to Landlord.

4. No showcases or other articles shall be put in front of or affixed to any part of the exterior of the Building, nor placed in the halls, corridors or vestibules without the prior written consent of Landlord.

5. The water and wash closets and other plumbing fixtures shall not be used for any purposes other than those for which they were constructed, and no sweepings, rubbish, rags or other substances shall be thrown therein. All damages resulting from any misuse of the fixtures shall be borne by the tenant who, or whose servants, employees, agents, visitors or licensees, shall have caused the same.

6. There shall be no marking, painting, drilling into or in any way defacing any part of the Premises or the Building. No boring, cutting or stringing of wires shall be permitted. Tenant shall not construct, maintain, use or operate within the Premises or elsewhere within or on the outside of the Building, any electrical device, wiring or apparatus in connection with a loud speaker system or other sound system.

7. No bicycles, vehicles or animals, birds or pets of any kind (other than animals providing assistance to persons with disabilities) shall be brought into or kept in or about the Premises, and no cooking shall cause or permit any unusual or objectionable odors to be produced upon or emanate from the Premises.

8. The Premises shall not be used for manufacturing, for the storage of merchandise, or for the sale of merchandise, goods or property of any kind at auction.

9. No tenant shall make, or permit to be made, any unseemly or disturbing noises or disturb or interfere with occupants of this or neighboring buildings or premises of those having business with them whether by the use of any musical instrument, radio, talking machine, unmusical noise, whistling, singing, or in any other way. No tenant shall throw anything out of the doors or windows or down the corridors or stairs.

10. No inflammable, combustible or explosive fluid, chemical or substance shall be brought or kept upon the Premises.

11. No additional locks or bolts of any kind shall be placed upon any of the doors, or windows by any tenant, nor shall any changes be made in existing locks or the mechanism thereof. The doors leading to the corridors or main halls shall be kept closed during Business Hours except as they may be used for ingress or egress. Each tenant shall, upon the termination of its tenancy, restore to Landlord all keys to stores, offices, storage, and toilet rooms either furnished to or otherwise procured by such tenant, and in the event of the loss of any keys, so furnished, such tenant shall pay to Landlord the cost thereof.

12. All removals, or the carrying in or out of any safes, freight, furniture or bulky matter of any description must take place during the hours which Landlord or its Agent may determine from time to time. Landlord reserves the right to inspect all freight to be brought into the Building and to exclude from the Building all freight which violates any of these Rules and Regulations or this Lease of which these Rules and Regulations are a part.

13. Landlord shall have the right to prohibit any advertising by any tenant which, in Landlord's opinion, tends to impair the reputation of the Building or its desirability as a building for offices, and upon written notice from Landlord, tenant shall refrain from or discontinue such advertising.

14. Any person employed by any tenant to do janitorial work within the Premises must obtain Landlord's consent and such person shall, while in the Building and outside of said Premises, comply with all instructions issued by the Superintendent of the Building. No tenant shall engage or pay any employees on the Premises, except those actually working for such tenant on said Premises.

15. Landlord reserves the right to exclude from the Building at all times any person who is not known or does not properly identify himself to the building management or watchman on duty. Landlord may at his option require all persons without access cards who are admitted to or leaving the Building between the hours of 6:00 p.m. and 8:00 a.m., Monday through Saturday, Sundays and legal holidays to register. Each tenant shall be responsible for all persons for whom it authorizes entry into or exit out of the Building, and shall be liable to Landlord for all acts of such persons.

16. The Premises shall not be used for lodging or sleeping or for any immoral or illegal purpose.

17. Each tenant, before closing and leaving the premises at any time, shall see that all windows are closed and all lights turned off.

18. The requirements of tenant will be attended to only upon application at the office of the Building. Employees shall not perform any work or do anything outside of the regular duties, unless under special instruction from the management of the Building.

19. Canvassing, soliciting and peddling in the Building are prohibited, and each tenant shall cooperate to prevent the same.

20. Only hand trucks equipped with rubber tires and side guards may be used in the Building.

21. Access plates to underfloor conduits shall be left exposed. Where carpet is installed, carpet shall be cut around access plates. Where tenant elects not to provide removable plates in their carpet for access into the underfloor duct system, it shall be the tenant's responsibility to pay for the removal and replacement of the carpet for any access needed into the duct system at any time in the future.

22. Mats, trash or other objects shall not be placed in the public corridors.

23. Landlord does not maintain or clean suite finishes which are non-standard, such as kitchens, bathrooms, wallpaper, special lights, etc. However, should the need for repairs arise, Landlord will arrange for the work to be done at the tenant's expense.

24. Landlord will furnish and install light bulbs for the building standard fluorescent or incandescent fixtures only. For special fixtures, the tenant will stock his own bulbs, which will be installed by Landlord when so requested by the tenant.

25. Tenant shall comply with all workplace smoking Laws. There shall be no smoking in bathrooms, elevator lobbies, elevators, and other common areas, or anywhere in the Building or the Garage or within the no-smoking zones outside the Building as designated by Landlord, from time to time (Tenant acknowledging that the entire Building is smoke-free).

26. Each tenant shall handle its newspapers and "office paper" in the manner required by applicable law and shall conform with any recycling plan instituted by Landlord.

27. Prior to serving alcoholic beverages in the Premises, Tenant shall obtain from Landlord a copy of Landlord's then-current policies regarding alcoholic beverages, and shall comply therewith (including, without limitation, compliance with the insurance requirements set forth therein).

28. Violation of these rules and regulations, or any amendments thereto, shall be a default under this Lease, entitling Landlord to all remedies therefor.

29. Landlord may upon request by any tenant, waive the compliance by such tenant of any of the foregoing rules and regulations, provided that (i) no waiver shall be effective unless signed by Landlord or Landlord's authorized Agent, (ii) any such waiver shall not relieve such tenant from the obligation to comply with such rule or regulation in the future unless expressly consented to by Landlord, and (iii) no waiver granted to any tenant shall relieve any other tenant from the obligation of complying with the foregoing rules and regulations unless such other tenant has received a similar waiver in writing from Landlord.

30. In the event of any conflict between any provisions in this Lease and these rules and regulations, the provisions set forth in this Lease shall control.

EXHIBIT 5

FORM OF COMMENCEMENT DATE AGREEMENT

Reference is made to that certain Lease by and between **[[Landlord name]]**, a _____, Landlord, and _____, a _____, Tenant, and dated _____.

Landlord and Tenant hereby confirm and agree that:

1. The Commencement Date under this Lease is _____.
2. The Rent Commencement Date under this Lease is _____.
3. The Expiration Date under this Lease is _____.

4. With respect to the initial build-out of the Premises, Tenant shall be required to remove the following items at the expiration or earlier termination of the Lease: all telecommunication, computer, and other cabling installed by or for Tenant in the Premises or elsewhere in the Building, and _____. Tenant's obligations to remove any further Alterations to the Premises shall be governed by the provisions of the Lease, including, without limitation, Articles 12 and 22 thereof.

This Commencement Date Agreement is executed as of _____, 201_____.

LANDLORD:

,
a _____

By:

Name: _____
Title: _____

TENANT:

,
a _____

By:

Name: _____
Title: _____
Hereunto Duly Authorized _____

EXHIBIT 6

FORM OF LETTER OF CREDIT

BENEFICIARY:

ISSUANCE DATE:

_____, 201__

[[LANDLORD]]

IRREVOCABLE STANDBY

LETTER OF CREDIT NO.

ACCOUNTTEE/APPLICANT:

MAXIMUM/AGGREGATE

CREDIT AMOUNT:

\$ _____

USD: _____

LADIES AND GENTLEMEN:

We hereby establish our irrevocable letter of credit in your favor for account of the applicant up to an aggregate amount not to exceed \$ _____ US Dollars available by your draft(s) drawn on ourselves at sight accompanied by:

Your statement, signed by a purportedly authorized officer/official certifying that the Beneficiary is entitled to draw upon this Letter of Credit (in the amount of the draft submitted herewith) pursuant to this Lease (the "Lease") dated _____ by and between _____, as Landlord, and _____, as Tenant.

Draft(s) must indicate name and issuing bank and credit number and must be presented at this office.

You shall have the right to make partial draws against this Letter of Credit from time to time.

Funds will be made available to Beneficiary on the same day as a sight draft is presented by Beneficiary.

This Letter of Credit is transferable without charge to you at any time and from time to time and may be transferred in its entirety only. In the event of a transfer, we reserve the right to require reasonable evidence of such transfer as a condition to any draw hereunder. Any such transfer is to be effective at our counters and is contingent upon:

- A. The satisfactory completion of our transfer form attached hereto; and
- B. The return of the original of this Letter of Credit and all amendments thereto for endorsement thereon by us to the transferee.

This Letter of Credit shall expire at our office on _____, 201__ (the "Stated Expiration Date"). It is a condition of this Letter of Credit that the Stated Expiration Date shall be deemed automatically extended without amendment for successive one (1) year periods from such Stated Expiration Date, unless at least forty-five (45) days prior to such Stated Expiration Date (or any anniversary thereof) we shall notify you and the Accountee/Applicant in writing by certified mail (return receipt) that we elect not to consider this Letter of Credit extended for any such additional one (1) year period.

We expressly agree and acknowledge that we shall not refuse to pay on any draw permitted under this Letter of Credit in the event that the Accountee/Applicant opposes, contests or otherwise attempts to interfere with any attempt by Landlord to draw down from said Letter of Credit.

Except as otherwise expressly stated herein, this Letter of Credit is subject to the "Uniform Customs and Practice for Documentary Credits, International Chamber of Commerce, Publication No. 500 (1993 Revision)".

EXHIBIT 7

EXTERIOR SIGN LOCATION



2.5" deep fabricated horizontal grain brushed stainless steel lettering (non-illuminated); flush mount to building.
39.22 square feet (allowance per City of Cambridge zoning bylaws is 60 square feet in area, maximum, for wall signs).

A vertical sign specification form for Cadwell Sign. At the top is a logo for Cadwell Sign featuring a stylized 'C' and 'S' with a green arrow pointing right. Below the logo is the text "CADWELL SIGN" and "Serving Boston, MA". Further down is contact information for Cadwell Sign, Inc., including the address "200 South Street, Boston, MA 02111", phone number "617-452-1100", and website "www.cadwell-sign.com". The form includes a section for the sign name, which is "HubSpot". There are several empty fields for additional information, including a section for "Notes" and a QR code at the bottom.

Exhibit 7 - 1



2.5" deep fabricated horizontal grain brushed stainless steel lettering (non-illuminated). Sprocket shape is custom painted Pantone 151 C (satin finish), flush mount to building.
 38.22 square feet (allowance per City of Cambridge zoning bylaws is 60 square feet in area, maximum, for wall signs).

 CADWELL SIGN <small>Heavy Sign Experts</small>	
<small>Cadwell Signage Inc. 650 Route 1A Hudson, MA 01149 Tel: 413-533-1100 www.cadwellusa.com</small>	
HubSpot	
DATE:	01/12/2016
PROJECT:	HubSpot Cambridge
NO.:	1-11
REV.:	01/12/16
BY:	JL
DATE:	
<input type="checkbox"/> SIGNAGE <input type="checkbox"/> SIGNAGE/ILLUMINATION	
DESIGN APPROVAL:	
DATE:	
	

EXHIBIT 8

PATIO

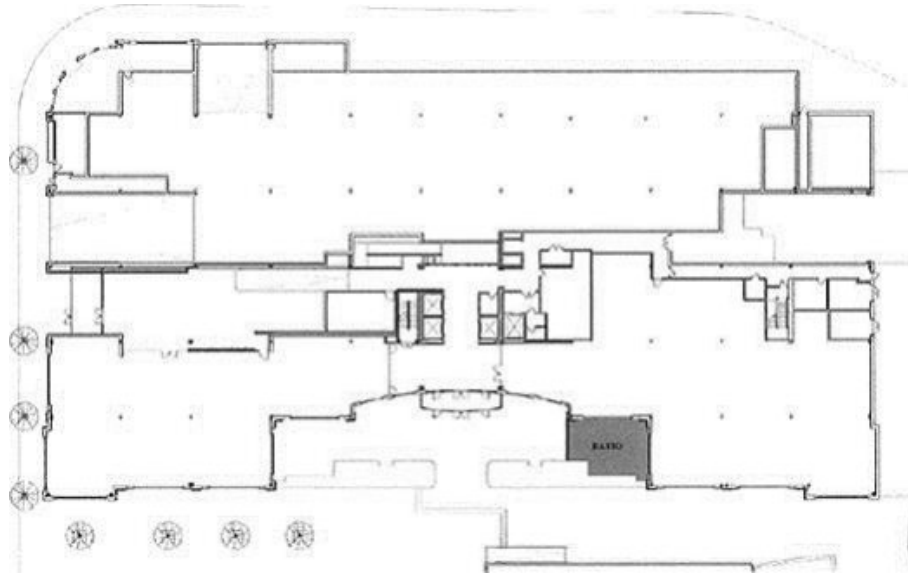


Exhibit 8 - 1

EXHIBIT 9

CLEANING SPECIFICATIONS

2 Canal Park

Overview

This Base Cleaning Specification has been designed to standardize the cleaning programs. Used in conjunction with the site-specific requirements section, it includes industry best practices as well as green cleaning processes to ensure a healthy and safe environment for the people who visit or work in our buildings.

It is based on a five-day-per-week service schedule and is formatted into three sections:

Section one includes the area types that can be found in both the common areas or the suite areas. The task and frequency sets associated with these area types remain constant regardless of “where” the areas are found.

Section two includes the area types that are found in the common areas only. These may, at times, require the cleaning tasks to be performed more frequently to recover from heavy use.

Section three includes the area types within the suites. Cleaning for these areas is focused on the needs commonly associated with tenant activities. In each case, the specifications are expressed in the industry-standard format utilizing annual frequencies (see Frequency Chart below).

Frequency Chart

<u>EXAMPLES OF FREQUENCY REQUIRED</u>	<u>ANNUAL FREQUENCY</u>
Five day service (daily)	260
Four times weekly	208
Twice weekly	104
Weekly service	52
Monthly service	12
Quarterly service	4
Yearly service	1

Specifications for Area Types Found in Common Areas and/or Suite Areas

Atriums, Entrances & Lobbies

<u>Task Description</u>	<u>Annual Frequency</u>
Clean door glass and other adjacent glass areas.	260
Dust furniture and spot clean all horizontal and vertical surfaces.	260
Empty general trash, replace liners when soiled or torn. Remove trash to designated area.	260
clean ash urns.	260
Spot clean carpet using approved carpet spotting equipment and supplies.	260
Dust mop floors with a water-based chemically treated dust mop.	260
Damp mop floors to remove dirt and spills.	260
Fully vacuum all walk-off mats	260
Vacuum entry door thresholds.	52
Dust areas above shoulder level and below knee level.	52
Spot clean telephones and sanitize receivers.	52
Burnish finished floor using electric burnisher.	48
Polish entry door thresholds.	12
Dust or vacuum air vents to remove loose dust, soil and cobwebs.	12
Dust window treatments including horizontal and vertical blinds.	4
Clean and polish wood furniture to restore finish. Exception: Citizens Bank Floors.	4
Vacuum fabric furniture.	4
Machine scrub hard surface floors.	4
Damp wipe light fixture exteriors to remove stains, dust and cobwebs.	1
Damp wipe trash containers to remove soil and stains.	1

Break Areas & Kitchenettes

<u>Task Description</u>	<u>Annual Frequency</u>
Empty break room trash, replace liners and tie-off at corners, clean obvious food and spills from exterior of trash container. Remove trash to designated area.	260
Dust and damp wipe horizontal and vertical break room surfaces including tops of microwave. Interior Microwave cleaning is an extra, please provide unit cost.	260
Dust mop floors with a water-based chemically treated dust mop.	260
Damp mop floors to remove dirt and spills.	260
Fully vacuum all carpeted areas from wall to wall.	260
Spot clean carpet using approved carpet spotting equipment and supplies.	260
Dust areas above shoulder level and below knee level.	52
Damp wipe trash containers to remove soil and stains.	12
Damp wipe air vents to remove dust, soil and cobwebs.	4
Dust window treatments including horizontal and vertical blinds.	4
Machine scrub and recoat floors using approved floor finish.	3
Hot-water extract carpeted areas using approved equipment and supplies.	2
Damp wipe light fixture exteriors to remove stains, dust and cobwebs.	1
Completely strip and refinish floors, apply three coats of approved floor finish and buff.	1

Copy / Mail / Fax Areas

<u>Task Description</u>	<u>Annual Frequency</u>
Empty general trash, replace liners when soiled or torn. Remove trash to designated area.	260
Spot clean carpet using approved carpet spotting equipment and supplies.	260
Using a backpack, spot vacuum carpets and hard surfaces to remove visible dirt, dust and debris.	208
Spot mop floors to remove visible dirt and spills.	208
Dust furniture and spot clean all horizontal and vertical surfaces.	52
Dust areas above shoulder level and below knee level.	52
Fully vacuum all carpeted areas from wall to wall.	52
Damp mop floors to remove dirt and spills.	52
Dust or vacuum air vents to remove loose dust, soil and cobwebs.	4
Dust window treatments including horizontal and vertical blinds.	4
Machine scrub and recoat floors using approved floor finish.	3
Dust light fixtures to remove exterior dust and cobwebs.	1
Damp wipe trash containers to remove soil and stains.	1

Conference Rooms

<u>Task Description</u>	<u>Annual Frequency</u>
Dust furniture and spot clean all horizontal and vertical surfaces.	260
Spot clean interior partition and door glass.	260
Empty general trash, replace liners when soiled or torn. Remove trash to designated area.	260
Spot clean carpet using approved carpet spotting equipment and supplies.	260
Vacuum carpeted traffic lanes and spot vacuum hard-to-reach areas.	208
Damp wipe dry erase boards and trays.	52
Dust areas above shoulder level and below knee level.	52
Spot clean telephones and sanitize receivers.	52
Fully vacuum all carpeted areas from wall to wall.	52
Dust or vacuum air vents to remove loose dust, soil and cobwebs.	4
Dust window treatments horizontal and vertical blinds coordinated with manager.	1
Dust light fixtures to remove exterior dust and cobwebs.	1
Damp wipe trash containers to remove soil and stains.	1

Elevators

<u>Task Description</u>	<u>Annual Frequency</u>
Clean elevator walls, doors, carpets, tile, hard surface floors, ceiling and stainless steel.	260
Vacuum elevator track.	104
Polish elevator tracks and all associated bright work including metal frames and other metallic surfaces.	52
Damp wipe light fixture exteriors to remove stains, dust and cobwebs.	1
	1

Janitor Closets

<u>Task Description</u>	<u>Annual Frequency</u>
Clean janitors' room sinks and floors, organize shelves and inspect equipment.	260
Dust or vacuum air vents to remove loose dust, soil and cobwebs.	4
Dust light fixtures to remove exterior dust and cobwebs.	1
Damp wipe trash containers to remove soil and stains.	1

Restrooms, Common

<u>Task Description</u>	<u>Annual Frequency</u>
Perform all daily restroom cleaning procedures; apply germicidal cleaner to all fixtures, refill dispensers, empty trash and replace liners, remove trash to designated area, spot clean mirrors and partitions, wipe fixtures & bright work clean, sweep and mop floors with germicidal cleaner.	260
With a germicidal cleaner, completely damp wipe restroom partitions including high/low areas.	52
Dust or vacuum air vents to remove loose dust, soil and cobwebs.	12
Wash restroom walls with germicidal cleaner.	12
Machine scrub restroom floors with germicidal cleaner.	12
Damp wipe light fixture exteriors to remove stains, dust and cobwebs.	12
Damp wipe trash containers and to remove soil and stains.	52

Stairwells, Common

<u>Task Description</u>	<u>Annual Frequency</u>
Spot clean carpeted stairs using approved carpet spotting equipment and supplies.	260
Spot mop hard surface or tile stairs.	208
Spot vacuum stairs using a backpack vacuum.	208
Damp mop stairs to remove dirt and spills.	208
Vacuum stairways, dust vertical and horizontal surfaces and spot clean.	52
Dust light fixtures to remove exterior dust and cobwebs.	1
Completely strip and refinish tiled landings, apply three coats of approved floor finish .	1

Trash Dumpster Enclosures

<u>Task Description</u>	<u>Annual Frequency</u>
Police exterior trash dumpster areas to remove litter.	52

Specifications for Area Types Found in Suites

Only Corridors, Suite

<u>Task Description</u>	<u>Annual Frequency</u>
Dust corridor furniture; spot clean all horizontal and vertical surfaces including interior and door glass.	260
Clean and polish drinking fountains.	260
Empty general trash, replace liners when soiled or torn. Remove trash to designated area.	260
Spot clean carpet using approved carpet spotting equipment and supplies.	260
Fully vacuum corridor carpets from wall to wall.	260
Dust mop hard surface floors with a water-based chemically treated dust mop.	260
Damp mop or auto scrub floors to remove dirt and spills.	260
Dust areas above shoulder level and below knee level.	52
Dust or vacuum air vents to remove loose dust, soil and cobwebs.	4
Dust window treatments including horizontal and vertical blinds.	4
Damp wipe light fixture exteriors to remove stains, dust and cobwebs.	1
Damp wipe trash containers to remove soil and stains.	1

Executive Offices, Suite

<u>Task Description</u>	<u>Annual Frequency</u>
Spot clean carpet using approved carpet spotting equipment and supplies.	260
Empty general trash, replace liners when soiled or torn. Remove trash to designated area.	260
Dust mop floors with a water-based chemically treated dust mop.	260
Damp mop floors to remove dirt and spills.	260
Fully vacuum carpets from wall to wall to remove dirt, dust and debris.	260
Dust furniture and spot clean all horizontal and vertical surfaces.	260
Dust areas above shoulder level and below knee level.	52
Dust or vacuum air vents to remove loose dust, soil and cobwebs.	4
Dust window treatments including horizontal and vertical blinds.	4
Dust light fixtures to remove exterior dust and cobwebs.	1
Damp wipe trash containers to remove soil and stains.	1

<u>Task Description</u>	<u>Annual Frequency</u>
Spot clean carpet using approved carpet spotting equipment and supplies.	260
Empty general trash, replace liners when soiled or torn. Remove trash to designated area.	260
Spot mop floors to remove visible dirt and spills.	260
Using a backpack, spot vacuum carpets to remove visible dirt, dust and debris.	260
Dust furniture and spot clean all horizontal and vertical surfaces.	52
Dust areas above shoulder level and below knee level.	52
Fully vacuum all carpeted areas from wall to wall.	52
Using a backpack, fully vacuum or dust mop hard surface floors to remove dirt, dust, etc.	52
Damp mop floors to remove dirt and spills.	52
Dust or vacuum air vents to remove loose dust, soil and cobwebs.	4
Dust window treatments including horizontal and vertical blinds.	4
Dust light fixtures to remove exterior dust and cobwebs.	1
Damp wipe trash containers to remove soil and stains.	1

EXHIBIT 10

FORM OF NONDISTURBANCE AGREEMENT

SUBORDINATION, NONDISTURBANCE, AND ATTORNMENT AGREEMENT

This SUBORDINATION, NONDISTURBANCE, AND ATTORNMENT AGREEMENT (this "Agreement") is entered into as of _____, 2015 (the "Effective Date"), between BANK OF AMERICA, N.A., a national banking association, as Administrative Agent on behalf of itself and other lenders who may become parties to the Loan Agreement (as defined below) from time to time, whose address is 225 Franklin Street, Boston, Massachusetts 02109, Attention: Commercial Real Estate Banking ("Mortgagee"), and _____, a _____, whose address is _____ ("Tenant"), with reference to the following facts:

A. BCSP CAMBRIDGE TWO PROPERTY LLC, a Delaware limited liability company, whose address is c/o Beacon Capital Partners, LLC, 200 State Street, 5th Floor, Boston, Massachusetts 02109 ("Landlord"), owns the real property located at Two Canal Park, Cambridge, MA (such real property, including all buildings, improvements, structures and fixtures located thereon, "Landlord's Premises"), as more particularly described in **Schedule A**.

B. Mortgagee and Lenders (as defined in the Loan Agreement) have made (or agreed to make) a loan to Landlord in the original principal amount of \$75,200,000.00 (the "Loan") pursuant to that certain Loan Agreement dated March 3, 2015 by and among Landlord, Lenders and Mortgagee (as amended or otherwise modified from time to time, the "Loan Agreement").

C. To secure the Loan, Landlord has encumbered (or will encumber) Landlord's Premises by entering into that certain Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing, each dated March 3, 2015, for the benefit of Mortgagee (as may be amended, increased, renewed, extended, spread, consolidated, severed, restated, or otherwise changed from time to time, the "Mortgage") recorded in the Middlesex (South) County Registry of Deeds (the "Land Records") on March 3, 2015 in Book 64997, Page 1.

D. Pursuant to a Lease, dated as of _____, [as amended on _____ and _____] ([as amended] the "Lease"), Landlord demised to Tenant a portion of Landlord's Premises as more particularly described in the Lease ("Tenant's Premises").

[E. A memorandum or short form of the Lease [is to be recorded in the Land Records prior to the recording of this Agreement.] [was recorded in the Land Records on _____, at Book _____, Page _____.]

F. Tenant and Mortgagee desire to agree upon the relative priorities of their interests in Landlord's Premises and their rights and obligations if certain events occur.

NOW, THEREFORE, for good and sufficient consideration and intending to be legally bound hereby, Tenant and Mortgagee agree:

1. Definitions. The following terms shall have the following meanings for purposes of this Agreement.

1.1 "Construction-Related Obligation(s)" means any obligation of Landlord under the Lease to make, pay for, or reimburse Tenant for any alterations, demolition, or other improvements or work at Landlord's Premises, including Tenant's Premises, if applicable. Construction-Related Obligations shall not include: (a) reconstruction or repair following fire, casualty or condemnation; or (b) day-to-day maintenance and repairs.

1.2 "Foreclosure Event" means: (a) foreclosure under the Mortgage; (b) any other exercise by Mortgagee of rights and remedies (whether under the Mortgage or under applicable law, including bankruptcy law) as holder of the Loan and/or the Mortgage, as a result of which Successor Landlord, as defined herein, becomes owner of Landlord's Premises; or (c) delivery by Landlord to Mortgagee (or its designee or nominee) of a deed or other conveyance of Landlord's interest in Landlord's Premises in lieu of any of the foregoing.

1.3 "Former Landlord" means Landlord and any other party that was landlord under the Lease at any time before the occurrence of any attornment under this Agreement.

1.4 "Offset Right" means any right or alleged right of Tenant to any offset, defense (other than one arising from actual payment and performance, which payment and performance would bind a Successor Landlord pursuant to this Agreement), claim, counterclaim, reduction, deduction, or abatement against Tenant's payment of Rent, as defined herein, or performance of Tenant's other obligations under the Lease, arising (whether under the Lease or under applicable law) from Landlord's breach or default under the Lease.

1.5 “Rent” means any fixed rent or base rent and additional rent under the Lease.

1.6 “Successor Landlord” means any party that becomes owner of Landlord’s Premises as the result of a Foreclosure Event.

1.7 “Termination Right” means any right of Tenant to cancel or terminate the Lease or to claim a partial or total eviction arising (whether under the Lease or under applicable law) from Landlord’s breach or default under the Lease.

2. Subordination. The Lease, including all rights of first refusal, purchase options and other rights of purchase, shall be, and shall at all times remain, subject and subordinate to the Mortgage, the lien and security interest imposed by the Mortgage and the right to enforce such lien or security interest, and all advances made under or secured by the Mortgage.

3. Nondisturbance; Recognition; and Attornment.

3.1 No Exercise of Mortgage Remedies Against Tenant. So long as the Lease has not been terminated on account of Tenant’s default that has continued beyond applicable notice and cure periods (an “Event of Default”), Mortgagee shall not name or join Tenant as a defendant in any exercise of Mortgagee’s rights and remedies arising upon a default under the Mortgage unless applicable law requires Tenant to be made a party thereto as a condition to proceeding against Landlord or prosecuting such rights and remedies. In the latter case, Mortgagee may join Tenant as a defendant in such action only for such purpose and not to terminate the Lease, disaffirm the Lease or otherwise adversely affect Tenant’s rights under the Lease or this Agreement in such action.

3.2 Nondisturbance and Attornment. If the Lease has not been terminated on account of an Event of Default by Tenant, then, if Successor Landlord takes title to Landlord’s Premises or succeeds to the interest of the Landlord under the Lease: (a) Successor Landlord shall not terminate or disturb Tenant’s possession of Tenant’s Premises under the Lease, except in accordance with the terms of the Lease and this Agreement; (b) Successor Landlord shall be bound to Tenant under all the terms and conditions of the Lease (except as provided in this Agreement); (c) Tenant shall recognize and attorn to Successor Landlord as Tenant’s direct landlord under the Lease as affected by this Agreement; provided, however, Tenant shall be under no obligation to pay to the Successor Landlord any rent or other sum payable pursuant to the Lease until Tenant receives a notice from Successor Landlord in accordance with Section 6 below that it has succeeded to the interest of Landlord under the Lease; and (d) the Lease shall continue in full force and effect as a direct lease, in accordance with its terms (except as provided in this Agreement), between Successor Landlord and Tenant.

3.3 Further Documentation. The provisions of this Article shall be effective and self-operative without any need for Successor Landlord or Tenant to execute any further documents. Tenant and Successor Landlord shall, however, confirm the provisions of this Article in writing upon request by either of them.

3.4 Default Under Mortgage. In the event that Mortgagee notifies Tenant of a default that has continued beyond applicable notice and cure periods under the Mortgage and demands that Tenant pay its rent and all other sums due under the Lease directly to Mortgagee, Tenant shall honor such demand and pay directly to Mortgagee the full amount of its rent and all other sums due under the Lease, without offset, or as otherwise required pursuant to such notice beginning with the payment next due after such notice of default, without inquiry as to whether a default actually exists under the Mortgage and notwithstanding any contrary instructions of or demands from Landlord.

4. Protection of Successor Landlord. Notwithstanding anything to the contrary in the Lease or the Mortgage, Successor Landlord shall not be liable for or bound by any of the following matters:

4.1 Claims Against Former Landlord. Any Offset Right that Tenant may have against any Former Landlord relating to any event or occurrence before the date of attornment, including any claim for damages of any kind whatsoever as the result of any breach by Former Landlord that occurred before the date of attornment. (The foregoing shall not limit (a) Tenant’s right to exercise against Successor Landlord any Offset Right otherwise available to Tenant because of events occurring or continuing after the date of attornment, or (b) Successor Landlord’s obligation to correct any conditions that existed as of the date of attornment and violate Successor Landlord’s obligations as landlord under the Lease.)

4.2 Acts or Omissions of Former Landlord. Any act, omission, default, misrepresentation, or breach of warranty, of any previous landlord (including Former Landlord) (other than to cure defaults of a continuing nature) or obligations accruing prior to Successor Landlord's actual ownership of the Property); provided, however, that any Successor Landlord shall be liable and responsible for the performance of all covenants and obligations of Landlord under the Lease accruing from and after the date that it takes title to the Property.

4.3 Prepayments. Any payment of Rent that Tenant may have made to Former Landlord more than thirty (30) days before the date such Rent was first due and payable under the Lease with respect to any period after the date of attornment other than, and only to the extent that, the Lease expressly required such a prepayment, and except to the extent said Rent was paid to or received by Mortgagee.

4.4 Payment; Security Deposit. Any obligation (a) to pay Tenant any sum(s) that any Former Landlord owed to Tenant, or (b) with respect to any security deposited with Former Landlord, unless such security was actually delivered to Mortgagee. This Section is not intended to apply to Landlord's obligation to make any payment that constitutes a Construction-Related Obligation.

4.5 Modification; Amendment. Any modification or amendment of the Lease made without Mortgagee's written consent, if such amendment or modification (a) causes an offset of rent and/or reduces rent, (b) affects the size or measurement of the Premises, (c) changes the Term of the Lease, or (d) increases the obligations of Landlord under the Lease, unless the same is made in order to comply with applicable law, and exclusive of any amendment to the Lease memorializing the exercise of any rights of Tenant expressly contained in the Lease, including, without limitation, any option to expand the Premises or extend the Term.

4.6 Surrender; Etc. Any consensual or negotiated surrender, cancellation, or termination of the Lease, in whole or in part, agreed upon between Landlord and Tenant, unless effected unilaterally by Tenant pursuant to the express terms of the Lease.

4.7 Construction-Related Obligations. Except as expressly provided below, any Construction-Related Obligation of Landlord under the Lease. Notwithstanding the foregoing, Successor Landlord shall be bound by the obligations of Landlord and the rights of Tenant under the last two sentences Section 4.5 of the Lease (i.e., Tenant's right to a rent credit and to terminate this Lease in the event of late delivery).

5. Exculpation of Successor Landlord. Notwithstanding anything to the contrary in this Agreement or the Lease, upon any attornment pursuant to this Agreement, the Lease shall be deemed to have been automatically amended to provide that Successor Landlord's obligations and liability under the Lease shall never extend beyond Successor Landlord's (or its successors' or assigns') interest, if any, in Landlord's Premises from time to time, including the rents and proceeds therefrom, including insurance and condemnation proceeds, Successor Landlord's interest in the Lease, and the proceeds from any sale or other disposition of Landlord's Premises by Successor Landlord (collectively, "Successor Landlord's Interest "). Tenant shall look exclusively to Successor Landlord's Interest (or that of its successors and assigns) including the rents and proceeds therefrom for payment or discharge of any obligations of Successor Landlord under the Lease as modified by this Agreement. If Tenant obtains any money judgment against Successor Landlord with respect to the Lease or the relationship between Successor Landlord and Tenant, then Tenant shall look solely to Successor Landlord's Interest (or that of its successors and assigns) to collect such judgment. Tenant shall not collect or attempt to collect any such judgment out of any other assets of Successor Landlord. In addition to any limitation of liability set forth in this Agreement, Mortgagee and/or its successors and assigns shall under no circumstances be liable for any incidental, consequential, punitive, or exemplary damages. Nothing contained herein shall affect the limitations on Tenant's liability set forth in Section 26(b) or elsewhere in the Lease.

6. Mortgagee's Right to Cure.

6.1 Notice to Mortgagee. Notwithstanding anything to the contrary in the Lease or this Agreement so long as the mortgage is outstanding, before exercising any Termination Right, Tenant shall provide Mortgagee with notice of the breach or default by Landlord giving rise to same (the "Default Notice ") and, thereafter, the opportunity to cure such breach or default as provided for below. All notices hereunder shall be given in the manner prescribed in Section 8.1 below.

6.2 Mortgagee's Cure Period. After Mortgagee receives a Default Notice, Mortgagee shall have a period of thirty (30) days beyond the time available to Landlord under the Lease in which to cure the breach or default by Landlord. Mortgagee shall have no obligation to cure (and shall have no liability or obligation for not curing) any breach or default by Landlord, except to the extent that Mortgagee agrees or undertakes otherwise in writing.

7. Confirmation of Facts. Tenant represents to Mortgagee and to any Successor Landlord, as of the Effective Date, that Tenant has full authority to enter into this Agreement, which has been duly authorized by all necessary actions.

8. Miscellaneous.

8.1 Notices. All notices or other communications required or permitted under this Agreement shall be in writing and given by certified mail (return receipt requested) or by nationally recognized overnight courier service that regularly maintains records of items delivered. Each party's address is as set forth in the opening paragraph of this Agreement, subject to change by notice under this Section. Notices shall be effective the next business day after being sent by overnight courier service, and five (5) business days after being sent by certified mail (return receipt requested).

8.2 Successors and Assigns. This Agreement shall bind and benefit the parties, their successors and assigns, any Successor Landlord, and its successors and assigns. If Mortgagee assigns the Mortgage, then upon delivery to Tenant of written notice thereof accompanied by the assignee's written assumption of all obligations under this Agreement, all liability of the assignor shall terminate.

8.3 Entire Agreement. This Agreement constitutes the entire agreement between Mortgagee and Tenant regarding the subordination of the Lease to the Mortgage and the rights and obligations of Tenant and Mortgagee as to the subject matter of this Agreement.

8.4 Interaction with Lease and with Mortgage. If this Agreement conflicts with the Lease, then this Agreement shall govern as between the parties hereto and any Successor Landlord, including upon any attornment pursuant to this Agreement. This Agreement supersedes, and constitutes full compliance with, any provisions in the Lease that provide for subordination of the Lease to, or for delivery of nondisturbance agreements by the holder of, the Mortgage. Mortgagee confirms that Mortgagee has consented to Landlord's entering into the Lease.

8.5 Mortgagee's Rights and Obligations. Except as expressly provided for in this Agreement, Mortgagee shall have no obligations to Tenant with respect to the Lease. If an attornment occurs pursuant to this Agreement, then all rights and obligations of Mortgagee under this Agreement shall terminate, without thereby affecting in any way the rights and obligations of Successor Landlord provided for in this Agreement.

8.6 Interpretation; Governing Law. The interpretation, validity and enforcement of this Agreement shall be governed by and construed under the internal laws of the Commonwealth of Massachusetts, excluding its principles of conflict of laws.

8.7 Amendments. This Agreement may be amended, discharged or terminated, or any of its provisions waived, only by a written instrument executed by the party to be charged.

8.8 Execution. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.

8.9 Mortgagee's Representation. Mortgagee represents that Mortgagee has full authority to enter into this Agreement, and Mortgagee's entry into this Agreement has been duly authorized by all necessary actions.

8.10 Captions. The captions and section numbers appearing in this Agreement are inserted only as a matter of convenience. They do not define, limit, construe or describe the scope or intent of the provisions of this Agreement.

8.11 Partial Invalidity. If any term or provision of this Agreement or the application thereof to any person, firm or corporation, or circumstance, shall be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons, firms or corporations, or circumstances, other than those as to which it is held invalid, shall both be unaffected thereby, and each term or provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

IN WITNESS WHEREOF, this Agreement has been duly executed and delivered under seal by Mortgagee and Tenant as of the Effective Date.

MORTGAGEE:

BANK OF AMERICA, N.A.,
a national banking association,
as Administrative Agent

By: _____ [SEAL]
Name: Emily B. Rush
Title: Senior Vice President

TENANT :

_____,
a _____,

By: _____ [SEAL]
Name: _____
Title: _____

COMMONWEALTH OF MASSACHUSETTS)
)
COUNTY OF SUFFOLK) ss.

On _____, 2015, before me, _____, personally appeared Emily B. Rush, the Senior Vice President of BANK OF AMERICA, N.A., on behalf of such national banking association, as Administrative Agent.

I certify under PENALTY OF PERJURY under the laws of the Commonwealth of Massachusetts that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ (Seal)

STATE OF _____)
) ss.
COUNTY OF _____)

On _____, 2015, before me, _____, personally appeared _____, the _____ of _____, on behalf of such _____.

I certify under PENALTY OF PERJURY under the laws of the State of _____ that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ (Seal)

LANDLORD'S CONSENT

Landlord acknowledges the foregoing Agreement. The foregoing Agreement shall not alter, waive or diminish any of Landlord's obligations under the Mortgage or, as between Landlord and Tenant, any of Landlord's or Tenant's obligations under the Lease. The above Agreement discharges any obligations of Mortgagee under the Mortgage and related loan documents to enter into a nondisturbance agreement with Tenant. Tenant is hereby authorized to pay its rent and all other sums due under the Lease directly to Mortgagee upon receipt of a notice as set forth in Section 3.4 of the foregoing Agreement from Mortgagee and Tenant is not obligated to inquire as to whether a default actually exists under the Mortgage. Landlord is not a party to the above Agreement.

LANDLORD :

BCSP CAMBRIDGE TWO PROPERTY LLC , a Delaware limited liability company

By: _____

Name: Nancy J. Broderick

Title: Managing Director

COMMONWEALTH OF MASSACHUSETTS)

)

COUNTY OF SUFFOLK) , ss.

On _____, 2015, before me, _____, personally appeared Nancy J. Broderick, the Managing Director of BCSP CAMBRIDGE TWO PROPERTY LLC, on behalf of such limited liability company.

I certify under PENALTY OF PERJURY under the laws of the Commonwealth of Massachusetts that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ (Seal)

SCHEDULE A

Description of Landlord's Premises

TRACT I - FEE SIMPLE

A certain parcel of land in the Commonwealth of Massachusetts, County of Middlesex, City of Cambridge at the southeasterly corner of First Street and Cambridge Street, shown as Parcel F on a plan by Cullinan Engineering Company, Inc. entitled "Plan of Property owned by City of Cambridge, First Street, Cambridge Street, Cambridge, Massachusetts" dated March 13, 1985 drawn by Cullinan Engineering Co., Inc., and recorded with the Middlesex South Registry of Deeds as Plan No. 291 of 1985 in Book 16059, Page 439 (hereinafter "Plan"), bounded and described as follows:

Beginning at the intersection of the relocated easterly sideline of First Street and the northerly sideline of Otis Way as shown on the Plan;

THENCE N 09 degrees 28' 49" E along the relocated easterly sideline of First Street, One Hundred Forty-Nine and 91/100 (149.91) feet;

THENCE northeasterly along a curve to the right having a radius of Thirty-Eight and 00/100 (38.00) feet at the intersection of the relocated easterly sideline of First Street and the relocated southerly sideline of Cambridge Street as shown on the Plan, a length of Sixty and 32/100 (60.32) feet;

THENCE S 79 degrees 34' 01" E along the relocated southerly sideline of Cambridge Street, Two Hundred Thirty and 59/100 (230.59);

THENCE southeasterly along a curve to the right having a radius of Seventy and 00/100 (70.00) feet on the relocated southerly sideline of Cambridge Street, a length of Twenty-Nine and 18/100 (29.18) feet;

THENCE S 55 degrees 40' 57" E along the relocated southerly sideline of Cambridge Street, Forty-Five and 91/100 (45.91) feet;

THENCE S 10 degrees 18' 55" W by land now or formerly of the City of Cambridge, One Hundred Fifty-Eight and 33/100 (158.33) feet;

THENCE N 80 degrees 31' 11" W by land and now or formerly of the City of Cambridge and along the northerly sideline of Otis Way, respectively, as shown on the Plan, Three Hundred Thirty-Six and 79/100 (336.79) feet to The Point of Beginning.

TRACT II-EASEMENT

Exclusive easements A (foundation and pile cap easement), and B (twenty-five-foot wide construction and maintenance easement), and non-exclusive easements C (4,564 square foot service, access and utility easement), D (below-ground parking easement) and E (pedestrian access easement over Otis Way and five-foot wide foundation and pile cap easement), all as set forth in deed recorded in Book 16059, Page 439 in accordance with the terms thereof as affected by Modification of Deed and Grant of Easement dated June 21, 1999 recorded in Book 30383, Page 405.

TRACT III-EASEMENT

Permanent rights and easement for below-ground tie-backs contained in Tieback and Indemnity Agreement dated November 15, 1989 recorded in Book 20427, Page 501.

TRACT IV-EASEMENT

Rights and easements contained in Easement Agreement dated July 28, 1998 between EOP-One Canal Park L.L.C., as grantor, and Two Canal Park Limited Partnership, as grantee, recorded in Book 29131, Page 340.

TRACT V-LICENSE

Terms and conditions of License No. 2491 dated November 13, 1990 recorded in Book 20912, Page 398; as affected by Partial Certificate of Compliance dated June 2, 1994 recorded in Book 24609, Page 45; as affected by Certificate of Compliance dated June 7, 1999 recorded in Book 30843, Page 421.

EXHIBIT 11

CONFIDENTIALITY AGREEMENT

This Confidentiality Agreement is entered into as of this _____ day of _____, 20____, by and between **BCSP CAMBRIDGE TWO PROPERTY LLC**, a Delaware limited liability company (“Landlord”), with an address c/o Beacon Capital Partners, 200 State Street, 5 th Floor, Boston, Massachusetts 02109, and **HUBSPOT, INC.**, a Delaware corporation (“Tenant”), with an address at Two Canal Park, Cambridge, Massachusetts 02141.

WHEREAS, Tenant entered into a certain lease (the “Lease”) dated April _____, 2015, with respect to certain premises in that certain building located at Two Canal Park, Cambridge, Massachusetts 02141 (the “Building”);

WHEREAS, Tenant has requested to conduct an examination of the records maintained by Landlord with respect to Operating Costs paid by Tenant under the Lease for Operating Year 20____ (the “Examination”), and has requested that _____ (“Consultant”) be permitted to conduct the Examination;

WHEREAS, the parties do wish to provide for the confidentiality of certain proprietary documents and other sensitive business information that Landlord has or may produce to Tenant and Consultant in connection with the Examination;

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

1. The parties acknowledge and agree that all documents produced by Landlord in the course of the Examination shall be treated as confidential and shall be used by Tenant solely for the purposes of conducting an examination of Operating Costs for Operating Year 20____ and for no other purpose or purposes.
2. Tenant shall not, except as specifically provided in Paragraph 4 below, disclose any such confidential documents or any summary of the contents thereof, to any persons not bound by this Confidentiality Agreement, it being understood and agreed upon that Tenant may show confidential documents to its employees, brokers, attorneys, or independent auditors who are shown this Confidentiality Agreement and agree to be bound hereby. In addition, Tenant may disclose such confidential documents as may be necessary in connection with any arbitration between Landlord and Tenant with respect to such Operating Costs.
3. All such confidential documents shall be maintained in safe and secure facilities at the offices of Tenant. Upon the termination of the Examination and final resolution of any arbitration between Landlord and Tenant with respect thereto, Tenant shall return all confidential documents and all summaries or excerpts thereof to Landlord.
4. Tenant may disclose confidential documents as required by an order of a court of competent jurisdiction, including a subpoena duces tecum, provided the Tenant shall (a) object to production on the grounds of this Confidentiality Agreement, and (b) promptly upon receipt of said order or subpoena, and in no event less than three (3) days after receipt of said order or subpoena or seventy-two (72) hours prior to the time a response is due, whichever is earlier due (unless a response is due in less than such time), notify Landlord in writing of the order or subpoena. In addition, Tenant may disclose confidential documents as may be agreed upon in writing by Landlord.
5. Each of Tenant and Consultant shall advise its employees and independent auditors of the terms of this Confidentiality Agreement and shall be responsible for any failure by any of their respective current or former employees and independent auditors to abide by the terms of this Confidentiality Agreement.
6. In recognition of the confidential nature of the documents and the other business information that Landlord will provide to Tenant under this Confidentiality Agreement and to ensure against any inadvertent disclosure of confidential information, Consultant and any of its employees and independent auditors who review any confidential documents shall not, for a period of two (2) years after the date hereof, consult with, represent or otherwise provide any services to any other current, former or prospective tenant at any building owned by Landlord relating to the examination of any operating expense documentation for any such building. The parties agree that this Paragraph 6 shall survive the breach or termination of this Confidentiality Agreement.

7. Tenant acknowledges and agrees that the extent and irreparable nature of the damages which may result from a breach of this Confidentiality Agreement may make the legal remedies available to Landlord for such a breach inadequate. Accordingly, in the event of a breach of this Confidentiality Agreement, Tenant acknowledges that Landlord will be entitled to immediate injunctive relief without proof of actual damages, in addition to and not in substitution for any other remedy Landlord may have at law or in equity.

8. This Confidentiality Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts.

9. This Confidentiality Agreement shall constitute the entire understanding between the parties concerning the subject matter of this Confidentiality Agreement and supersedes and replaces all prior negotiations, proposed amendments and agreements, written and oral, concerning the subject matter of this Confidentiality Agreement.

10. The undersigned do hereby represent and warrant that they have authority to enter into this Confidentiality Agreement on behalf of themselves and their respective affiliates, subsidiaries or related entities.

11. This Confidentiality Agreement shall be binding upon and inure to the benefit of the successors, successors-in-title, assigns, heirs and personal representatives of the parties.

12. Capitalized terms used but not defined herein shall have the meanings given to them in the Lease.

13. EACH PARTY HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ALL RIGHTS TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM (WHETHER IN CONTRACT, STATUTE, TORT (SUCH AS NEGLIGENCE) OR OTHERWISE) RELATING TO THIS CONFIDENTIALITY AGREEMENT.

14. Tenant hereby represents and warrants that the Consultant is not being paid on a contingent fee basis in connection with the Examination.

[Signature Page Follows]

Exhibit 11 - 2

WITNESS, the execution hereof by facsimile or otherwise, in any number of counterpart copies, each of which shall be deemed an original for all purposes, as of the date and year first above written.

LANDLORD:

BCSP CAMBRIDGE TWO PROPERTY LLC,
a Delaware limited liability company

By: _____
Name: _____
Title: _____

TENANT:

HUBSPOT, INC.,
a Delaware corporation

By: _____
Name: _____
Title: _____
Hereunto Duly Authorized

EXHIBIT 1

JOINDER OF INDEPENDENT CONSULTANT

The undersigned, (“Consultant”), a _____, with an address at _____, has been retained by Tenant to conduct the Examination. Consultant hereby joins in the foregoing Confidentiality Agreement dated as of _____, 20____ by and between BCSP CAMBRIDGE TWO PROPERTY LLC AND HUBSPOT, INC., and agrees to be bound by all of the terms thereof. The execution of this Joinder by Consultant and the delivery of an executed original hereof to Landlord is an express pre-condition to Consultant and Tenant commencing the Examination. Consultant hereby represents and warrants that it is not being paid on a contingent fee basis in connection with the Examination.

CONSULTANT:

By: _____

Name: _____

Title: _____

Hereunto Duly Authorized

Date Signed: _____

FIRST AMENDMENT TO LEASE

This **FIRST AMENDMENT TO LEASE** (the “**Amendment**”) dated this 10th day of August, 2016 (the “**Effective Date**”) is made by and between **TWO CANAL PARK MASSACHUSETTS, LLC**, a Delaware limited liability company, as successor-in-interest to **BCSP CAMBRIDGE TWO PROPERTY, LLC** (the “**Landlord**”), and **HUBSPOT, INC.**, a Delaware corporation (the “**Tenant**”).

RECITALS:

- A. WHEREAS, Landlord and Tenant entered into that certain Lease dated April 23, 2015 (the “**Lease**”) whereby Tenant leases from Landlord certain premises consisting of approximately: (i) 9,170 rentable square feet on the first (1st) floor and (ii) approximately 50,602 rentable square feet on the second (2nd) floor for a total of 59,772 rentable square feet (the “**Existing Premises**”) in the building located at Two Canal Park, Cambridge, Massachusetts; and
- B. WHEREAS, the Expiration Date with respect to the Term of the Lease is scheduled to expire on January 31, 2026 (the “**Expiration Date**”); and
- C. WHEREAS, Landlord and Tenant have agreed to lease additional space in the Building to Tenant on the first (1st) floor of the Building consisting of approximately 8,188 rentable square feet substantially shown on the floor plan attached hereto as **Exhibit A** (the “**Expansion Premises**”) on the terms and conditions set forth herein.

AGREEMENT:

NOW THEREFORE, in consideration of the promises contained herein and other good and valuable consideration, the receipt of which is hereby acknowledged, the parties agree as follows:

1. Recitals. The recitals set forth above are incorporated herein and made a part of this Amendment as if set forth herein in full.
2. Capitalized Terms. All capitalized terms used in this Amendment that are not defined in this Amendment shall have the meanings ascribed to such terms in the Lease. In the event of any conflict between the terms of the Lease and the terms of this Amendment, the definitions set forth in this Amendment shall control.
3. Term for Expansion Premises. Subject to the terms and conditions set forth herein, the Term of the Lease with respect to the Expansion Premises shall commence on the date Landlord delivers possession of the Expansion Premises to Tenant vacant, broom clean, free of tenants, occupants, property and debris, in compliance with all applicable Laws and free of all Hazardous Materials that are required to be removed, remediated, or encapsulated pursuant to applicable Environmental Laws (defined below) and with the base building systems including, without limitation, HVAC, mechanical, plumbing, electrical, elevator services, roofing, fire safety access and emergency egress systems serving the Premises in good working order (the “**Expansion Premises Commencement Date**”) and expire on the Expiration Date under the Lease. Except as otherwise expressly provided herein, Tenant’s lease of the Expansion Premises shall be on all of the terms and conditions of the Lease, including, without limitation, Tenant’s extension rights, dog rights and rights to install a soda fountain, and the Term of the Lease with respect to the Expansion Premises shall be coterminous with the Term of the Lease for the Existing Premises, as the same may be earlier terminated or extended as provided in the Lease.

Accordingly, as of the Expansion Premises Commencement Date, the Premises as set forth on Exhibit I-1 the Lease shall be deleted in its entirety and replaced with the following:

- Premises:** A portion of the first (1st) floor of the Building, containing approximately 9,170 rentable square feet, substantially as shown on the Lease Plan, attached hereto and incorporated herein as Exhibit 2, Sheet 1 (“**First Floor Premises**”)
- The entirety of the second (2nd) floor of the Building, containing approximately 50,602 rentable square feet, substantially shown on the Lease Plan, attached hereto and incorporated herein as Exhibit 2, Sheet 1 (“**Second Floor Premises**”)

A portion of the first (1st) floor of the Building containing approximately 8,188 rentable square feet substantially shown on the floor plan attached as **Exhibit A** to the First Amendment to Lease and incorporated herein (the “**Expansion Premises**”).

Total Area of the Premises: 67,960 square feet

Total Area of the Building: 206,567 square feet

4. **Yearly Rent for Expansion Premises.** Effective as of the Expansion Premises Rent Commencement Date (as hereinafter defined), Tenant shall pay Yearly Rent with respect to the Expansion Premises in accordance with the following schedule and in accordance with all other terms and conditions applicable to the payment of Base Rent under the Lease:

Term for Expansion Premises	Yearly Rent	Monthly Payment	Per Rentable Square Foot of Expansion Premises
First Rent Year	\$524,032.00	\$43,669.33	\$ 64.00
Second Rent Year	\$532,220.00	\$44,351.67	\$ 65.00
Third Rent Year	\$540,408.00	\$45,034.00	\$ 66.00
Fourth Rent Year	\$548,596.00	\$45,716.33	\$ 67.00
Fifth Rent Year	\$556,784.00	\$46,398.67	\$ 68.00
Sixth Rent Year	\$564,972.00	\$47,081.00	\$ 69.00
Seventh Rent Year	\$573,160.00	\$47,763.33	\$ 70.00
Eighth Rent Year	\$581,348.00	\$48,445.67	\$ 71.00
From the day immediately following the expiration of the Eight Rent Year through the Expiration Date	\$589,536.00	\$49,128.00	\$ 72.00

The “**Expansion Premises Rent Commencement Date**” shall be the date that is six (6) months following the Expansion Premises Commencement Date. Tenant shall have no obligation to pay Yearly Rent with respect to the Expansion Premises for the period commencing on the Expansion Premises Commencement Date and expiring as of the day before the Expansion Premises Rent Commencement Date.

For purposes hereof, a “**Rent Year**” shall mean, with respect to the Expansion Premises, any twelve (12) month period during the Term of the Lease commencing as of the Expansion Premises Rent Commencement Date, or as of any anniversary of the Expansion Premises Rent Commencement Date, except that if the Expansion Premises Rent Commencement Date does not occur on the first day of a calendar month, then (i) the first Rent Year shall further include the partial calendar month in which the first anniversary of the Expansion Premises Commencement Date occurs, and (ii) the remaining Rent Years shall be the successive twelve-(12)-month periods following the end of such first Rent Year.

After the Expansion Premises Commencement Date, Landlord and Tenant shall confirm the Expansion Premises Commencement Date, the Expansion Premises Rent Commencement Date and the Yearly Rent with respect to the Expansion Premises in the form attached hereto as **Exhibit C** (the “**Expansion Premises Commencement Date Letter**”).

5. **Tax Excess for Expansion Premises.** The Tax Base with respect to the Expansion Premises shall be the actual amount of Taxes for the fiscal year 2017 (i.e., July 1, 2016, through June 30, 2017). Tenant shall pay to Landlord Tenant’s Expansion Premises Proportionate Share (as hereinafter defined) of the amount by which Taxes with respect to the Expansion Premises exceed Taxes with respect to the Tax Base with respect to the Expansion Premises in accordance with the terms and conditions of the Lease. “**Tenant’s Expansion Premises Proportionate Share**” shall be 3.96%.

6. Operating Excess for Expansion Premises. The Operating Costs in the Base Year with respect to the Expansion Premises shall be the actual amount of Operating Costs for the calendar year 2017. Tenant shall pay to Landlord Tenant's Expansion Premises Proportionate Share of the amount by which Operating Costs with respect to the Expansion Premises exceed Operating Costs with respect to the Base Year for the Expansion Premises in accordance with the terms and conditions of the Lease.

7. Amendment to Parking. In connection with this Amendment, and effective as of the Expansion Premises Commencement Date, Tenant shall have the right to use five (5) additional Parking Passes.

Accordingly, Section 29.12 Parking set forth on Exhibit I-3 shall be deleted in its entirety and replaced with the following:

Section 29.12 Parking: Number of Parking Passes: Forty-One (41), as more fully set forth in Section 29.12 hereof.

8. Security Deposit. As of the Effective Date, Landlord is currently holding the Security Deposit in the amount of \$855,028.00 which shall continue to be held by Landlord in connection with the terms and conditions of the Lease.

9. Condition of Expansion Premises. Except for the Improvement Allowance as more particularly described on **Exhibit B** attached hereto and except as set forth in Section 3 of this Amendment, Landlord shall not be obligated to make any improvements or contribute any allowances and Tenant shall take occupancy of the Expansion Premises in its "as-is" condition. The foregoing shall not limit or relieve Landlord of any of Landlord's express obligations under the Lease.

10. Exterior Patio Space. In consideration of Tenant's agreement to not pursue legal action resulting from the material disturbances to Tenant's quiet enjoyment of the Existing Premises set forth in Section 14 below, Landlord agrees to provide Tenant with the exclusive use of the ground floor patio space adjacent to the Expansion Premises at no additional rental or other charge on the same terms and conditions as are applicable to the Patio under Section 29.22 of the Lease.

11. Exterior Signage. In addition to Tenant's Exterior Signage rights under Section 17.4 of the Lease, Tenant shall have the right to install one (1) additional exterior sign on the façade of the Expansion Premises containing the name and logo of Tenant.

12. Dog Friendly Premises. Landlord agrees to reasonably cooperate with Tenant to agree upon a reasonable expansion of Tenant's rights under Section 29.20 of the Lease.

13. Brokers. Tenant represents to Landlord that Tenant has not dealt with any broker in connection with this Amendment other than CBRE/New England representing Landlord exclusively ("**Landlord's Broker**"), and T3 Advisors, LLC, representing Tenant exclusively ("**Tenant's Broker**"), and warrants that no other broker is or may be entitled to any commission in connection therewith. Tenant agrees to indemnify, defend and hold harmless Landlord and Landlord's agents from all damages, liability and expense (including reasonable attorneys' fees) arising from any claims or demands of any other brokers or finders for any commission alleged to be due such brokers or finders in connection with their participation in the negotiation with Tenant of this

Amendment. Landlord represents and warrants that, in connection with the execution and delivery of the Lease, it has not directly or indirectly dealt with any broker other than the Landlord's Broker and the Tenant's Broker. Landlord agrees to defend, exonerate and save harmless Tenant and anyone claiming by, through, or under Tenant against any claims arising in breach of the representation and warranty set forth in the immediately preceding sentence. Landlord shall pay any commissions due to Landlord's Broker and Tenant's Broker pursuant to a separate agreement between Landlord and Landlord's Broker.

14. Release by Tenant; Amendment Contingency. Reference is hereby made to those letters received by Landlord and dated May 31, 2016 and July 1, 2016, sent to Landlord on behalf of Tenant (the "**Letters**"). Provided Landlord causes the Expansion Premises Commencement Date to occur by not later than October 15, 2016, Tenant agrees to waive and release any and all claims against Landlord in connection with the Letters. This Amendment is contingent upon Landlord entering into that certain Termination Agreement with respect to the current occupant of the Expansion Premises. In the event this contingency is not satisfied by August 31, 2016, Tenant or Landlord may elect to terminate this Amendment by delivery of written notice to the other party and in such event this Amendment shall terminate in its entirety, including, without limitation, the waiver and release set forth in this Section 14 of Tenant's claims against Landlord with respect to the matters addressed in the Letters.

15. Counterparts. This Amendment may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

16. Confirmation of Lease. Except as amended by this Amendment, all terms and provisions of the Lease shall remain in full force and effect.

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, Landlord and Tenant have caused this Amendment to be executed as of the Effective Date.

LANDLORD:

TWO CANAL PARK MASSACHUSETTS, LLC

a Delaware limited liability company

By: **BAY STATE REIT, LLC**
a Delaware limited liability company, its Manager

By: **U.S. REAL ESTATE INVESTMENT FUND REIT, INC.**
a Delaware corporation, its Manager

By: /s/ Peter Palandjian
Name: Peter Palandjian
Title: President and Treasurer

TENANT:

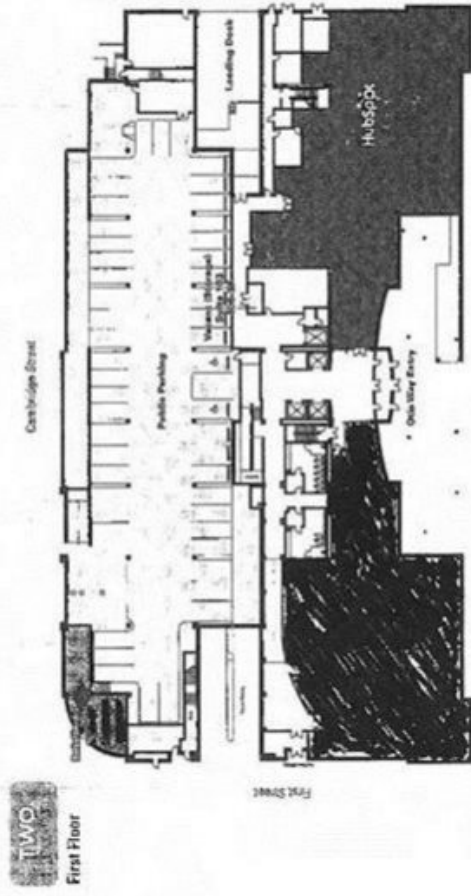
HUBSPOT, INC.

a Delaware corporation

By: /s/ John P. Kelleher
Name: John P. Kelleher
Title: Secretary and General Counsel

EXHIBIT "A"
EXPANSION PREMISES
ATTACHED HERETO

PROPERTY OVERVIEW



LEASE EXPIRATION
 Street: 01/01/2021 - 01/01/2022 - 01/01/2023 - 01/01/2024 - 01/01/2025 - 01/01/2026 - 01/01/2027 - 01/01/2028 - 01/01/2029 - 01/01/2030 - 01/01/2031 - 01/01/2032 - 01/01/2033 - 01/01/2034 - 01/01/2035 - 01/01/2036 - 01/01/2037 - 01/01/2038 - 01/01/2039 - 01/01/2040 - 01/01/2041 - 01/01/2042 - 01/01/2043 - 01/01/2044 - 01/01/2045 - 01/01/2046 - 01/01/2047 - 01/01/2048 - 01/01/2049 - 01/01/2050

EXHIBIT "B"

IMPROVEMENT ALLOWANCE

1. Landlord shall provide to Tenant a tenant improvement allowance of up to \$70.00 per rentable square foot of the Expansion Premises (the "**Improvement Allowance**") provided, however, the Improvement Allowance shall be prorated and reduced to reflect the number of months remaining in the Term as of the Expansion Premises Commencement Date compared to the number of months in the original Term of the Lease, to be used by Tenant to pay for the cost to construct certain improvements with respect to the Expansion Premises ("**Tenant's Improvements**"). In addition, Landlord shall provide Tenant with an additional allowance of up to \$2.00 per rentable square foot of the Expansion Premises (\$16,376.00) (the "**Demolition Allowance**") to be used by Tenant toward the cost of demolition of the existing demising wall in the Expansion Premises.
2. Landlord agrees that Tenant may apply the Improvement Allowance towards hard construction costs, soft costs (such as permitting, architectural and engineering fees), voice and data wiring and cabling costs, and furniture, fixtures and equipment expenses.
3. Tenant acknowledges that all costs for the Tenant Improvements in excess of the Improvement Allowance shall be at the sole cost and expense of the Tenant and shall payable within thirty (30) days of receipt of invoice from Landlord.
4. All Tenant Improvements shall: (a) be subject to all terms and conditions of the Lease, including but not limited to Section 12; (b) based on plans and specifications previously approved by Landlord, which approval shall not be unreasonably withheld, conditioned or delayed; (b) performed in a good and workmanlike manner by contractors previously approved by Landlord, which approval shall not be unreasonably withheld, conditioned or delayed; and (c) be in compliance with all applicable laws and regulations.
5. Landlord shall disburse the Improvement Allowance and Demolition Allowance to Tenant on a periodic basis (but no more than once per month) upon receipt from Tenant of: (i) reasonable documentation of payment by Tenant for materials and labor, as the case may be; and (ii) partial lien waivers or final lien waivers, if applicable, from any contractors or laborers hired by Tenant to perform any improvements to the Premises. Tenant must utilize the Improvement Allowance on or before eighteen (18) months following the Expansion Premises Commencement Date, the failing of which shall cause Tenant to forfeit the Improvement Allowance or any remainder thereof. Tenant shall not be permitted to apply any unused Improvement Allowance toward Rent.
6. Landlord shall pay for the cost of Tenant's space planning allowance with respect to the Expansion Premises in an amount not to exceed (\$.10) per rentable square foot of the Expansion Premises (\$818.80). Tenant's architect shall invoice Landlord directly.

EXHIBIT "C"

EXPANSION PREMISES COMMENCEMENT DATE CERTIFICATE

DATE: _____, 2016

RE: First Amendment to Lease dated _____, 2016 (the "Amendment") by and between Two Canal Park Massachusetts, LLC ("Landlord"), and Hubspot, Inc. ("Tenant") with respect to premises located at Two Canal Park, Cambridge, Massachusetts

Dear Tenant:

This certificate shall constitute the Expansion Premises Commencement Date Certificate referenced in Section 4 of the Amendment. All capitalized terms not defined herein shall have the same meaning ascribed to them in the Amendment.

1. The Expansion Premises Commencement Date shall be _____.

2. The Expansion Premises Rent Commencement Date shall be _____.

3. Yearly Rent shall be paid in accordance with the following schedule:

[NOTE: INSERT EXACT DATES FOR TERM ONCE DETERMINED]

Term for Expansion Premises	Yearly Rent	Monthly Payment	Per Rentable Square Foot of Expansion Premises
First Rent Year	\$524,032.00	\$43,669.33	\$ 64.00
Second Rent Year	\$532,220.00	\$44,351.67	\$ 65.00
Third Rent Year	\$540,408.00	\$45,034.00	\$ 66.00
Fourth Rent Year	\$548,596.00	\$45,716.33	\$ 67.00
Fifth Rent Year	\$556,784.00	\$46,398.67	\$ 68.00
Sixth Rent Year	\$564,972.00	\$47,081.00	\$ 69.00
Seventh Rent Year	\$573,160.00	\$47,763.33	\$ 70.00
Eighth Rent Year	\$581,348.00	\$48,445.67	\$ 71.00
From the day immediately following the expiration of the Eight Rent Year through the Expiration Date	\$589,536.00	\$49,128.00	\$ 72.00

IN WITNESS WHEREOF, Landlord and Tenant have caused this Expansion Premises Commencement Date Certificate to be executed as of the date set forth above.

LANDLORD:

TWO CANAL PARK MASSACHUSETTS, LLC
a Delaware limited liability company

By: **BAY STATE REIT, LLC**
a Delaware limited liability company, its Manager

By: **U.S. REAL ESTATE INVESTMENT FUND REIT, INC.**
a Delaware corporation, its Manager

By: _____
Name: Peter Palandjian
Title: President and Treasurer

TENANT:

HUBSPOT, INC.
a Delaware corporation

By: _____
Name: _____
Title: _____

SECOND AMENDMENT TO LEASE

This **SECOND AMENDMENT TO LEASE** (the “**Second Amendment**”) dated this 12th day of March, 2018 (the “**Effective Date**”) is made by and between **TWO CANAL PARK MASSACHUSETTS, LLC**, a Delaware limited liability company (the “**Landlord**”), and **HUBSPOT, INC.**, a Delaware corporation (the “**Tenant**”).

RECITALS:

A. WHEREAS, Landlord and Tenant entered into that certain Lease dated April 23, 2015 (the “**Original Lease**”), as amended by that certain First Amendment to Lease dated August 10, 2016 (the “**First Amendment**”) (collectively, the “**Lease**”) whereby Tenant leases from Landlord certain premises consisting of approximately 67,960 rentable square feet, comprised of: (i) 17,358 rentable square feet on the first (1st) floor; and (ii) approximately 50,602 rentable square feet on the second (2nd) floor (the “**Premises**”) in the building located at Two Canal Park, Cambridge, Massachusetts (the “**Building**”); and

B. WHEREAS, Landlord and Tenant have agree to amend the Lease on the terms and conditions set forth herein.

AGREEMENT:

NOW THEREFORE, in consideration of the promises contained herein and other good and valuable consideration, the receipt of which is hereby acknowledged, the parties agree as follows:

1. Recitals. The recitals set forth above are incorporated herein and made a part of this Second Amendment as if set forth herein in full.
2. Capitalized Terms. All capitalized terms used in this Second Amendment that are not defined in this Second Amendment shall have the meanings ascribed to such terms in the Lease. In the event of any conflict between the terms of the Lease and the terms of this Second Amendment, the definitions set forth in this Second Amendment shall control.
3. Amendment to Definition of RFO Premises.
 - (a) Landlord hereby represents that there are no superior rights to any of the RFO Premises (as such term is hereinafter amended) as of the date of this Second Amendment.
 - (b) The RFO Premises, as defined in the first sentence of Section 29.17(a) of the Original Lease, shall be deleted in its entirety and restated as follows:

“RFO Premises” shall be defined as any area on the third (3rd), fourth (4th), and fifth (5th) floor of the Building, when such area becomes available for lease to Tenant, as hereinafter defined, during the Term of the Lease.

4. Exterior Signage. In addition to Tenant's Exterior Signage rights pursuant to: (i) Section 11 of the First Amendment; and (ii) Section 17.4 of the Original Lease, Tenant, at its sole cost and expense, shall have the right to install one (1) additional exterior sign on the façade of the Building subject to all terms and conditions of Section 17.4 of the Original Lease. For purposes of confirmation herein, Tenant shall have the right to install a total of three (3) exterior signs on the façade of the Building subject to all terms and conditions of Section 17.4 of the Original Lease.
5. Security Deposit. As of the Effective Date, Landlord is currently holding the Security Deposit in the amount of \$855,028.00 which shall continue to be held by Landlord in connection with the terms and conditions of the Lease.
6. Brokers. Tenant represents to Landlord that Tenant has not dealt with any broker in connection with this Second Amendment other than CBRE/New England representing Landlord exclusively ("**Landlord's Broker**"), and T3 Advisors, LLC, representing Tenant exclusively ("**Tenant's Broker**"), and warrants that no other broker is or may be entitled to any commission in connection therewith. Tenant agrees to indemnify, defend and hold harmless Landlord and Landlord's agents from all damages, liability and expense (including reasonable attorneys' fees) arising from any claims or demands of any other brokers or finders for any commission alleged to be due such brokers or finders in connection with their participation in the negotiation with Tenant of this Second Amendment. Landlord represents and warrants that, in connection with the execution and delivery of the Lease, it has not directly or indirectly dealt with any broker other than Landlord's Broker and Tenant's Broker. Landlord agrees to defend, exonerate and save harmless Tenant and anyone claiming by, through, or under Tenant against any claims arising in breach of the representation and warranty set forth in the immediately preceding sentence. Landlord shall pay any commissions due to Landlord's Broker and Tenant's Broker pursuant to a separate agreement between Landlord and Landlord's Broker.
7. Counterparts and Authority. This Second Amendment may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument. Landlord and Tenant each warrant to the other that the person or persons executing this Second Amendment on its behalf has or have authority to do so and that such execution has fully obligated and bound such party to all terms and provisions of this Second Amendment.
8. Confirmation of Lease. Except as amended by this Second Amendment, all terms and provisions of the Lease shall remain in full force and effect, and as further modified by this Second Amendment, is expressly ratified and confirmed by the parties hereto. This Second Amendment shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns, subject to the provisions of the Lease regarding assignment and subletting.
9. Governing Law; Interpretation and Partial Invalidity. This Second Amendment shall be governed and construed in accordance with the laws of the Commonwealth of Massachusetts. If any term of this Second Amendment, or the application thereof to any person or circumstances, shall to any extent be invalid or unenforceable, the remainder of this Second Amendment, or the application of such term to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each term of this Second Amendment shall be valid and enforceable to the fullest extent permitted by law. The titles for the paragraphs are for convenience only and are not to be considered in construing this Second Amendment. This Second Amendment contains all of the agreements of the parties with respect to the subject matter hereof, and supersedes all prior dealings between them with respect to such subject matter.
10. Binding Agreement. This document shall become effective and binding only upon the execution and delivery of this Second Amendment by both Landlord and Tenant.

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, Landlord and Tenant have caused this Second Amendment to be executed as of the Effective Date.

LANDLORD:

TWO CANAL PARK MASSACHUSETTS, LLC

a Delaware limited liability company

By: **BAY STATE REIT, LLC**
a Delaware limited liability company, its Manager

By: **U.S. REAL ESTATE INVESTMENT FUND REIT, INC.**
a Delaware corporation, its Manager

By: /s/ Thomas Taranto
Name: Thomas Taranto
Title: Vice President

TENANT:

HUBSPOT, INC.

a Delaware corporation

By: /s/ John P. Kelleher
Name: John P. Kelleher
Title: General Counsel

THIRD AMENDMENT TO LEASE

This **THIRD AMENDMENT TO LEASE** (this “**Third Amendment**”) dated this 2nd day of December, 2019 (the “**Effective Date**”) is made by and between **TWO CANAL PARK MASSACHUSETTS, LLC**, a Delaware limited liability company (the “**Landlord**”), and **HUBSPOT, INC.**, a Delaware corporation (the “**Tenant**”).

RECITALS:

- A. WHEREAS, Landlord and Tenant entered into that certain Lease dated April 23, 2015 (the “**Original Lease**”), as amended by First Amendment to Lease dated August 10, 2016 (the “**First Amendment**”), as amended by Second Amendment to Lease dated March 12, 2018 (the “**Second Amendment**”) (collectively, the “**Lease**”) whereby Tenant leases from Landlord certain premises consisting of approximately: (i) 17,358 rentable square feet on the first (1st) floor and (ii) approximately 50,602 rentable square feet on the second (2nd) floor for a total of approximately 67,960 rentable square feet (the “**Existing Premises**”) in the building located at Two Canal Park, Cambridge, Massachusetts (the “**Building**”);
- B. WHEREAS, the Expiration Date with respect to the Term of the Lease is scheduled to expire on January 31, 2026 (the “**Expiration Date**”); and
- C. WHEREAS, Landlord and Tenant have agreed to lease additional space in the Building to Tenant consisting of the entire third (3rd) floor of the Building containing approximately 48,047 rentable square feet substantially shown on the floor plan attached hereto as **Exhibit A** (the “**Third Floor Expansion Premises**”) on the terms and conditions set forth herein.

AGREEMENT:

NOW THEREFORE, in consideration of the promises contained herein and other good and valuable consideration, the receipt of which is hereby acknowledged, the parties agree as follows:

1. **Recitals.** The recitals set forth above are incorporated herein and made a part of this Third Amendment as if set forth herein in full.
2. **Capitalized Terms.** All capitalized terms used in this Third Amendment that are not defined in this Third Amendment shall have the meanings ascribed to such terms in the Lease. In the event of any conflict between the terms of the Lease and the terms of this Third Amendment, the definitions set forth in this Third Amendment shall control.
3. **Term for Third Floor Expansion Premises.** Subject to the terms and conditions set forth herein, the Term of the Lease with respect to the Third Floor Expansion Premises shall commence on the date Landlord delivers possession of the Third Floor Expansion Premises to Tenant vacant, broom clean, free of tenants, occupants, property and debris, in compliance with all applicable Laws and free of all Hazardous Materials that are required to be removed, remediated, or encapsulated pursuant to applicable Environmental Laws and with the base building systems including, without limitation, HVAC, mechanical, plumbing, electrical, elevator services, roofing, fire safety access and emergency egress systems serving the Third Floor Expansion Premises in good working order (the “**Third Floor Expansion Premises Commencement Date**”) and shall expire on the Expiration Date under the Lease. Except as otherwise expressly provided herein, Tenant’s lease of the Third Floor Expansion Premises shall be on all of the terms and conditions of the Lease, including, without limitation, Tenant’s extension rights, and the Term of the Lease with respect to the Third Floor Expansion Premises shall be coterminous with the Term of the Lease for the Existing Premises, as the same may be earlier terminated or extended as provided in the Lease. Landlord will exercise commercially reasonable efforts to cause the Third Floor Expansion Premises Commencement Date to occur by April 1, 2020 and shall provide Tenant with not less than forty-five (45) days prior written notice of the Third Floor Expansion Premises Commencement Date.

Accordingly, as of the Third Floor Expansion Premises Commencement Date, the Premises as set forth on Exhibit I-1 to the Lease shall be deleted in its entirety and replaced with the following:

Premises: A portion of the first (1st) floor of the Building, containing approximately 9,170 rentable square feet, substantially as shown on the Lease Plan, attached hereto and incorporated herein as Exhibit 2, Sheet 1 (“**First Floor Premises**”).

A portion of the first (1st) floor of the Building containing approximately 8,188 rentable square feet substantially shown on the floor plan attached as **Exhibit A** to the First Amendment to Lease and incorporated herein (the “**Expansion Premises**”).

The entirety of the second (2nd) floor of the Building, containing approximately 50,602 rentable square feet, substantially shown on the Lease Plan, attached hereto and incorporated herein as Exhibit 2, Sheet 1 (“**Second Floor Premises**”)

A portion of the third (3rd) floor of the Building, containing approximately 48,047 rentable square feet, substantially as shown on the Lease Plan, attached hereto and incorporated herein as Exhibit 2, Sheet 1 (“**Third Floor Expansion Premises**”)

Total Area of the Premises: 116,007 square feet
 Total Area of the Building: 206,567 square feet

4. Yearly Rent for Third Floor Expansion Premises. Effective as of the Third Floor Expansion Premises Rent Commencement Date (as hereinafter defined), Tenant shall pay Yearly Rent with respect to the Third Floor Expansion Premises in accordance with the following schedule and in accordance with all other terms and conditions applicable to the payment of Base Rent under the Lease:

Term for Third Floor Expansion Premises	Yearly Rent	Monthly Payment	Per Rentable Square Foot of Third Floor Expansion Premises
First 3 rd Amendment Rent Year	\$4,324,230.00	\$360,352.50	\$90.00
Second 3 rd Amendment Rent Year	\$4,432,335.75	\$369,361.31	\$92.25
Third 3 rd Amendment Rent Year	\$4,543,144.14	\$378,595.35	\$94.56
Fourth 3 rd Amendment Rent Year	\$4,656,722.75	\$388,060.23	\$96.92
Fifth 3 rd Amendment Rent Year	\$4,773,140.82	\$397,761.73	\$99.34
From the day immediately following expiration of the Fifth 3 rd Amendment Rent Year through January 31, 2026	N/A	\$407,678.80	\$101.82

The “**Third Floor Expansion Premises Rent Commencement Date**” shall be the date that is three (3) months following the Third Floor Expansion Premises Commencement Date. Tenant shall have no obligation to pay Yearly Rent with respect to the Third Floor Expansion Premises for the period commencing on the Third Floor Expansion Premises Commencement Date and expiring as of the day before the Third Floor Expansion Premises Rent Commencement Date.

For purposes hereof, a “**3rd Amendment Rent Year**” shall mean, with respect to the Third Floor Expansion Premises, any twelve (12) month period during the Term of the Lease commencing as of the Third Floor Expansion Premises Rent Commencement Date, or as of any anniversary of the Third Floor Expansion Premises Rent Commencement Date, except that if the Third Floor Expansion Premises Rent Commencement Date does not occur on the first day of a calendar month, then (i) the first Rent Year shall further include the partial calendar month in which the first anniversary of the Third Floor Expansion Premises Rent Commencement Date occurs, and (ii) the remaining Rent Years shall be the successive twelve-(12)-month periods following the end of such first Rent Year.

After the Third Floor Expansion Premises Commencement Date, Landlord and Tenant shall confirm the Third Floor Expansion Premises Commencement Date, the Third Floor Expansion Premises Rent Commencement Date and the Yearly Rent with respect to the Third Floor Expansion Premises in the form attached hereto as **Exhibit C** (the “**Third Floor Expansion Premises Commencement Date Letter**”).

5. Tax Excess for Third Floor Expansion Premises. The Tax Base with respect to the Third Floor Expansion Premises shall be the actual amount of Taxes for the fiscal year 2021 (i.e., July 1, 2020, through June 30, 2021). From and after the Third Floor Premises Rent Commencement Date, Tenant shall pay to Landlord, Tenant’s Third Floor Expansion Premises Proportionate Share (as hereinafter defined) of the amount by which Taxes with respect to the Third Floor Expansion Premises exceed Taxes with respect to the Tax Base with respect to the Third Floor Expansion Premises in accordance with the terms and conditions of the Lease. “**Tenant’s Third Floor Expansion Premises Proportionate Share**” shall be 23.26%.

6. Operating Excess for Third Floor Expansion Premises. The Operating Costs in the Base Year with respect to the Third Floor Expansion Premises shall be the actual amount of Operating Costs for the calendar year 2020. From and after the Third Floor Premises Rent Commencement Date, Tenant shall pay to Landlord, Tenant’s Third Floor Expansion Premises Proportionate Share of the amount by which Operating Costs with respect to the Third Floor Expansion Premises exceed Operating Costs with respect to the Base Year for the Third Floor Expansion Premises in accordance with the terms and conditions of the Lease.

7. Amendment to Parking. In connection with this Third Amendment, and effective as of the Third Floor Expansion Premises Commencement Date, Tenant shall have the right to use twenty-nine (29) additional Parking Passes. Accordingly, Section 29.12 Parking set forth on Exhibit I-3 of the Original Lease shall be deleted in its entirety and replaced with the following:

Section 29.12 Parking: Number of Parking Passes: Seventy (70), as more fully set forth in Section 29.12 hereof.

8. Letter of Credit. As of the Effective Date, Landlord is currently holding a Letter of Credit in the amount of \$285,009.50. Effective upon the Third Floor Expansion Premises Commencement Date, the Letter of Credit shall be increased to \$855,028.00 and notwithstanding any terms and conditions of the Lease to the contrary, this amount shall continue to be held by Landlord in accordance with the terms and conditions of the Lease through the Expiration Date. Section 7.3 Reduction in Security Deposit in the Original Lease is hereby deleted in its entirety and of no further force and effect.

9. Condition of Third Floor Expansion Premises. Except for: (a) the Third Floor Improvement Allowance as more particularly described on **Exhibit B** attached hereto; and (b) except for Landlord’s obligation to deliver the Third Floor Expansion Premises to Tenant as set forth in Section 3 of this Third Amendment, Landlord shall not be obligated to make any improvements or contribute any allowances and Tenant shall take occupancy of the Third Floor Expansion Premises in its “as-is” condition. The foregoing shall not limit or relieve Landlord of any of Landlord’s express obligations under the Lease.

10. Landlord’s Recapture Right. Notwithstanding anything in the Lease to the contrary, Landlord’s rights under Section 16(b) shall not apply to and Landlord will not have any right to receive a Recapture Offer with respect to any partial sublease of the Premises (as expanded by this Third Amendment) entered into by Tenant within eighteen (18) months following the Third Floor Expansion Premises Commencement Date for sublease terms that are for thirty-six (36) months or less from the delivery date of the proposed sublease space.

11. Dog Friendly Premises. Paragraph (e) of Section 29.20 of the Original Lease shall be deleted in its entirety and replaced with the following:

(e) This right is limited to three (3) dogs on the First Floor Premises, five (5) dogs on the Second Floor Premises, and five (5) dogs on the Third Floor Expansion Premises.

12. Signage.

12.1 Tenant currently has the right to install three (3) exterior signs on the façade of the Building subject to the terms and conditions of Section 17.4 of the Original Lease, as amended by Section 11 of the First Amendment, and further amended by Section 4 of the Second Amendment. Notwithstanding any terms and conditions of the Lease to the contrary, at least one (1) of the exterior signs can be located on the top floor of the Building.

12.2 (A) Clause (ii) of Section 17.4(b) of the Original Lease; and (B) the last sentence of Section 17.4(b) of the Original Lease shall be deleted in their entirety and of no further force and effect.

13. Brokers. Tenant represents to Landlord that Tenant has not dealt with any broker in connection with this Third Amendment other than CBRE/New England representing Landlord exclusively ("**Landlord's Broker**"), and T3 Advisors, LLC, representing Tenant exclusively ("**Tenant's Broker**"), and warrants that no other broker is or may be entitled to any commission in connection therewith. Tenant agrees to indemnify, defend and hold harmless Landlord and Landlord's agents from all damages, liability and expense (including reasonable attorneys' fees) arising from any claims or demands of any other brokers or finders for any commission alleged to be due such brokers or finders in connection with their participation in the negotiation with Tenant of this Third Amendment. Landlord represents and warrants that, in connection with the execution and delivery of the Lease, it has not directly or indirectly dealt with any broker other than the Landlord's Broker and the Tenant's Broker. Landlord agrees to defend, exonerate and save harmless Tenant and anyone claiming by, through, or under Tenant against any claims arising in breach of the representation and warranty set forth in the immediately preceding sentence. Landlord shall pay any commissions due to Landlord's Broker and Tenant's Broker pursuant to a separate agreement between Landlord and Landlord's Broker.

14. Counterparts. This Third Amendment may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

15. Confirmation of Lease. Except as amended by this Third Amendment, all terms and provisions of the Lease shall remain in full force and effect.

IN WITNESS WHEREOF, Landlord and Tenant have caused this Third Amendment to be executed as of the Effective Date.

LANDLORD:

TWO CANAL PARK MASSACHUSETTS, LLC

a Delaware limited liability company

By: **BAY STATE REIT, LLC**
a Delaware limited liability company, its Manager

By: **U.S. REAL ESTATE INVESTMENT FUND REIT, INC.**
a Delaware corporation, its Manager

By: /s/ Thomas Taranto
Name: Thomas Taranto
Title: Vice President

TENANT:

HUBSPOT, INC.

a Delaware corporation

By: /s/ John Kelleher
Name: John Kelleher
Title: General Counsel

EXHIBIT "A"

THIRD FLOOR EXPANSION PREMISES

ATTACHED HERETO

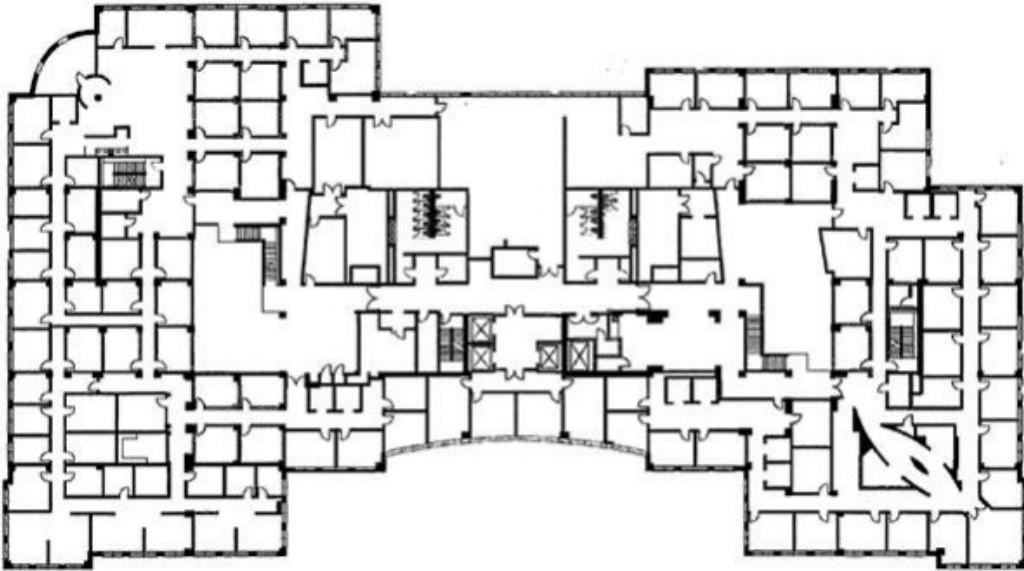


EXHIBIT "B"

IMPROVEMENT ALLOWANCE

1. Landlord shall provide to Tenant a tenant improvement allowance of up to \$50.00 per rentable square foot of the Third Floor Expansion Premises (which is \$2,402,350.00 based on 48,047 rentable square feet in the Third Floor Expansion Premises) (the "**Third Floor Improvement Allowance**"), to be used by Tenant to pay for the cost to construct certain improvements with respect to the Third Floor Expansion Premises ("**Tenant's 3rd Floor Improvements**").
2. Landlord agrees that Tenant may apply the Third Floor Improvement Allowance towards hard construction costs, soft costs (such as permitting, architectural and engineering fees), voice and data wiring and cabling costs, and furniture, fixtures and equipment expenses.
3. Tenant acknowledges that all costs for the Tenant's 3rd Floor Improvements in excess of the Third Floor Improvement Allowance shall be at the sole cost and expense of the Tenant and shall payable within thirty (30) days of receipt of invoice from Landlord.
4. All Tenant's 3rd Floor Improvements shall: (a) be subject to all terms and conditions of the Lease, including but not limited to Section 12 of the Original Lease; (b) based on plans and specifications previously approved by Landlord, which approval shall not be unreasonably withheld, conditioned or delayed; (c) performed in a good and workmanlike manner by contractors previously approved by Landlord, which approval shall not be unreasonably withheld, conditioned or delayed; and (d) be in compliance with all applicable laws and regulations.
5. Landlord shall disburse the Third Floor Improvement Allowance to Tenant on a periodic basis (but no more than once per month) upon receipt from Tenant of: (a) reasonable documentation of payment by Tenant for materials and labor, as the case may be; and (b) partial lien waivers or final lien waivers, if applicable, from any contractors or laborers hired by Tenant to perform any improvements to the Third Floor Expansion Premises. Tenant must utilize the Third Floor Improvement Allowance on or before eighteen (18) months following the Third Floor Expansion Premises Commencement Date, the failing of which shall cause Tenant to forfeit the Third Floor Improvement Allowance or any remainder thereof. Tenant shall not be permitted to apply any unused Third Floor Improvement Allowance toward Rent.

EXHIBIT "C"

**THIRD FLOOR EXPANSION PREMISES
COMMENCEMENT DATE CERTIFICATE**

DATE: _____, 2016

RE: Third Amendment to Lease dated _____, 2019 (the "**Amendment**") by and between Two Canal Park Massachusetts, LLC ("**Landlord**"), and Hubspot, Inc. ("**Tenant**") with respect to premises located at Two Canal Park, Cambridge, Massachusetts

Dear Tenant:

This certificate shall constitute the Third Floor Expansion Premises Commencement Date Certificate referenced in Section 4 of the Amendment. All capitalized terms not defined herein shall have the same meaning ascribed to them in the Amendment.

1. The Third Floor Expansion Premises Commencement Date shall be _____.
2. The Third Floor Expansion Premises Rent Commencement Date shall be _____.
3. Yearly Rent shall be paid in accordance with the following schedule:

Term for Third Floor Expansion Premises	Yearly Rent	Monthly Payment	Per Rentable Square Foot of Third Floor Expansion Premises
First Rent Year	\$4,324,230.00	\$360,352.50	\$90.00
Second Rent Year	\$4,432,335.75	\$369,361.31	\$92.25
Third Rent Year	\$4,543,144.14	\$378,595.35	\$94.56
Fourth Rent Year	\$4,656,722.75	\$388,060.23	\$96.92
Fifth Rent Year	\$4,773,140.82	\$397,761.73	\$99.34
From the day immediately following expiration of the Fifth Rent Year through January 31, 2026	N/A	\$407,678.80	\$101.82

IN WITNESS WHEREOF, Landlord and Tenant have caused this Third Floor Expansion Premises Commencement Date Certificate to be executed as of the date set forth above.

LANDLORD:

TWO CANAL PARK MASSACHUSETTS, LLC
a Delaware limited liability company

By: **BAY STATE REIT, LLC**
a Delaware limited liability company, its Manager

By: **U.S. REAL ESTATE INVESTMENT FUND REIT, INC.**
a Delaware corporation, its Manager

By: _____
Name: Peter Palandjian
Title: President and Treasurer

TENANT:

HUBSPOT, INC.
a Delaware corporation

By: _____
Name: _____
Title: _____

FOURTH AMENDMENT TO LEASE

This **FOURTH AMENDMENT TO LEASE** (this “**Fourth Amendment**”) dated this 6th day of January, 2020 (the “**Effective Date**”) is made by and between **TWO CANAL PARK MASSACHUSETTS, LLC**, a Delaware limited liability company (the “**Landlord**”), and **HUBSPOT, INC.**, a Delaware corporation (the “**Tenant**”).

RECITALS:

A. WHEREAS, Landlord and Tenant entered into that certain Lease dated April 23, 2015 (the “**Original Lease**”), as amended by First Amendment to Lease dated August 10, 2016, as amended by Second Amendment to Lease dated March 12, 2018 as amended by Third Amendment to Lease dated December 2, 2019 (collectively, the “**Lease**”) whereby Tenant leases from Landlord certain premises consisting of approximately: (i) 17,358 rentable square feet on the first (1st) floor; (ii) approximately 50,602 rentable square feet on the second (2nd) floor; and (iii) approximately 48,047 rentable square feet on the third (3rd) floor for a total of approximately 116,007 rentable square feet (the “**Premises**”) in the building located at Two Canal Park, Cambridge, Massachusetts; and

B. WHEREAS, Landlord and Tenant wish to amend the Lease on the terms and conditions set forth herein.

AGREEMENT:

NOW THEREFORE, in consideration of the promises contained herein and other good and valuable consideration, the receipt of which is hereby acknowledged, the parties agree as follows:

1. Recitals. The recitals set forth above are incorporated herein and made a part of this Fourth Amendment as if set forth herein in full.
2. Capitalized Terms. All capitalized terms used in this Fourth Amendment that are not defined in this Fourth Amendment shall have the meanings ascribed to such terms in the Lease. In the event of any conflict between the terms of the Lease and the terms of this Fourth Amendment, the definitions set forth in this Fourth Amendment shall control.
3. Amendment to ROFO Expiration Date.
 - 3.1 Notwithstanding any terms and conditions to the contrary set forth in the Lease, Section 29.17(c)(2) of the Original Lease shall be deleted in its entirety and replaced with the following:
 - (2) Expiration Date
4. Counterparts. This Fourth Amendment may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.
5. Confirmation of Lease. Except as amended by this Fourth Amendment, all terms and provisions of the Lease shall remain in full force and effect.

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[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, Landlord and Tenant have caused this Fourth Amendment to be executed as of the Effective Date.

LANDLORD:

TWO CANAL PARK MASSACHUSETTS, LLC

a Delaware limited liability company

By: **BAY STATE REIT, LLC**
a Delaware limited liability company, its Manager

By: **U.S. REAL ESTATE INVESTMENT FUND REIT, INC.**
a Delaware corporation, its Manager

By: /s/ Thomas Taranto
Name: Thomas Taranto
Title: Vice President

TENANT:

HUBSPOT, INC.

a Delaware corporation

By: /s/ John Kelleher
Name: John Kelleher
Title: General Counsel

EXHIBIT 1, LEASE DATA
One Canal Park
Cambridge, Massachusetts 02141
(the “**Building**”)

Execution Date: October 7, 2016

Tenant: HubSpot, Inc.,
a Delaware corporation

Tenant’s Address: 25 First Street – 2nd Floor
Cambridge, Massachusetts 02141
Attn: General Counsel

Landlord: One Canal Park Massachusetts LLC,
a Delaware limited liability company

Landlord’s Address: c/o Intercontinental Real Estate Corporation
1270 Soldiers Field Road
Boston, Massachusetts 02135
Attention: Scott Kelly, Regional Director – Asset Management

with a copy to:

Bradley & Associates, P.C.
1270 Soldiers Field Road
Boston, Massachusetts 02135
Attn: Christian Poyant, Esq.

Building: One Canal Park
Cambridge, Massachusetts 02141

Lot: The parcel(s) of land on which the Building is located and the other improvements thereon
(including the Building, driveways and landscaping).

Common Areas: The common walkways and accessways located on the Lot, as the same may be changed,
from time to time.

Article 2 Premises: A portion of the second (2nd) floor of the Building, containing approximately 16,750
rentable square feet, substantially as shown on the Lease Plan, attached hereto and
incorporated herein as Exhibit 2, Sheet 1 (“**Premises A**”); and

A portion of the second (2nd) floor of the Building, containing approximately 8,562
rentable square feet, substantially as shown on the Lease Plan, attached hereto and
incorporated herein as Exhibit 2, Sheet 2 (“**Premises B**”)

Total Rentable Area of the Premises: 25,312 square feet

Total Rentable Area of the Building: 101,457 square feet

Commencement Date:

Premises A: The later date to occur of (i) the date Landlord delivers possession of Premises A to Tenant vacant, broom clean, free of tenants, occupants, property and debris, in compliance with all applicable Laws and free of all Hazardous Materials that are required to be removed, remediated, or encapsulated pursuant to applicable Environmental Laws (defined below) and with the roof, structural elements and base building systems including, without limitation, HVAC, mechanical, plumbing, electrical, elevator services, roofing, fire safety access and emergency egress systems serving the Premises in good working order, and (ii) March 1, 2017. Notwithstanding the foregoing, Tenant may, by notice to Landlord delivered not later than February 1, 2017, elect to defer the Commencement Date of Premises A to a later date selected by Tenant but in no event later than October 1, 2017. The deferment of the Commencement Date for Premises A will not defer the Rent Commencement Date for Premises A beyond October 1, 2017 so long as Landlord delivers possession of Premises A to Tenant in the condition required under this Lease on the date selected by Tenant as the deferred Premises A Commencement Date.

Premises B: The later date to occur of (i) the date Landlord delivers possession of Premises B to Tenant vacant, broom clean, free of tenants, occupants, property and debris, in compliance with all applicable Laws and free of all Hazardous Materials that are required to be removed, remediated, or encapsulated pursuant to applicable Environmental Laws (defined below) and with the roof, structural elements and base building systems including, without limitation, HVAC, mechanical, plumbing, electrical, elevator services, roofing, fire safety access and emergency egress systems serving the Premises in good working order, and (ii) June 1, 2019.

Estimated Commencement Date:

Premises A: March 1, 2017

Premises B: June 1, 2019

Rent Commencement Date:

Premises A: The later date to occur of (i) seven (7) months following the Commencement Date for Premises A and (ii) October 1, 2017, provided, however, if Tenant elects to defer the Commencement Date for Premises A, the seven (7) month period will commence to run on March 1, 2017 but will be tolled if and during any period that Landlord does not deliver possession of Premises A to Tenant in the condition required under this Lease on the date selected by Tenant as the deferred Premises A Commencement Date. By way of example of the foregoing, if Tenant elects to defer the Commencement Date of Premises A to July 1, 2017, then the Rent Commencement Date for Premises A would be October 1, 2017, except that if Landlord did not deliver possession of Premises A to Tenant until August 1, 2017, then the Rent Commencement Date for Premises A would be November 1, 2017.

Premises B: The later date to occur of (i) three (3) months following the Commencement Date for Premises B and (ii) September 1, 2019.

Section 3.2 Expiration Date: January 31, 2026

Article 5 Permitted Use: General business offices and all legal uses customarily accessory thereto.

Article 6 Yearly Rent:

For Premises A:

<u>Lease Year</u>	<u>Yearly Rent</u>	<u>Monthly Payment</u>	<u>Per Rentable Square Foot</u>
First Lease Year	\$1,139,000.00	\$94,916.57	\$68.00
Second Lease Year	\$1,155,750.00	\$96,312.50	\$69.00
Third Lease Year	\$1,172,500.00	\$97,708.33	\$70.00
Fourth Lease Year	\$1,189,250.00	\$99,104.17	\$71.00
Fifth Lease Year	\$1,206,000.00	\$100,500.00	\$72.00
Sixth Lease Year	\$1,222,750.00	\$101,895.83	\$73.00
Seventh Lease Year	\$1,239,500.00	\$103,291.67	\$74.00
Eighth Lease Year	\$1,256,250.00	\$104,687.50	\$75.00
From the commencement of the Ninth Lease Year through the Expiration Date	N/A	\$106,083.33	\$76.00

For Premises B:

<u>Lease Year</u>	<u>Yearly Rent</u>	<u>Monthly Payment</u>	<u>Per Rentable Square Foot</u>
If applicable, from the Rent Commencement Date for Premises A through the expiration of the Second Lease Year	N/A	\$49,231.50	\$69.00
Third Lease Year	\$599,340.00	\$49,945.00	\$70.00
Fourth Lease Year	\$607,902.00	\$50,658.50	\$71.00
Fifth Lease Year	\$616,464.00	\$51,372.00	\$72.00
Sixth Lease Year	\$625,026.00	\$52,085.50	\$73.00
Seventh Lease Year	\$633,588.00	\$52,799.00	\$74.00
Eighth Lease Year	642,150.00	\$53,512.50	\$75.00
From the commencement of the Ninth Lease Year through the Expiration Date	N/A	\$54,226.00	\$76.00

For purposes hereof, "**Lease Year**" shall mean a twelve-month period beginning on the Rent Commencement Date for Premises A or any anniversary of the Rent Commencement Date for Premises A, except that if the Rent Commencement Date for Premises A does not fall on the first day of a calendar month, then the first Lease Year shall begin on the Rent Commencement Date for Premises A and end on the last day of the month containing the first anniversary of the Rent Commencement Date for Premises A, and each succeeding Lease Year shall begin on the day following the last day of the prior Lease Year.

Tenant shall have no obligation to pay Yearly Rent for the period commencing as of the Commencement Date for the applicable Portion of the Premises (as hereinafter defined), and expiring as of the day before the Rent Commencement Date for the applicable Portion of the Premises (the "**Applicable Rent Abatement Period**"). During the Applicable Rent Abatement Period, only Yearly Rent for the applicable Portion of the Premises shall be abated ("**Abated Yearly Rent**"), and all additional rent and other costs and charges specified in the Lease shall remain as due and payable pursuant to the provisions of the Lease.

Article 8	Letter of Credit:	\$434,585.00
		Notwithstanding the foregoing, a Letter of Credit in the amount of \$286,826.10 with respect to Premises A shall be delivered on or before the Commencement Date with respect to Premises A. The Letter of Credit shall be increased by \$147,758.90 on or before the Commencement Date with respect to Premises B.
Article 9	Electricity:	Landlord shall provide utilities to Tenant as set forth in Article 9 hereof.
Article 10	Operating Costs in the Base Year:	For Premises A: The actual amount of Operating Costs for calendar year 2018
		For Premises B: The actual amount of Operating Costs for calendar year 2019
		For Premises A: The actual amount of Taxes for fiscal year 2018 (i.e., July 1, 2017, through June 30, 2018)
	Tax Base:	For Premises B: The actual amount of Taxes for fiscal year 2019 (i.e., July 1, 2018, through June 30, 2019)
	Tenant's Premises A Proportionate Share:	16.56%
	Tenant's Premises B Proportionate Share:	8.42%
Section 30.3	Broker:	For Tenant: T3 Advisors, LLC For Landlord: CBRE/New England
Section 30.5	Enforcement of Arbitration:	Massachusetts; Superior Court

Section 30.12

Parking:

Number of Parking Passes:

For Premises A:

Sixteen (16), as more fully set forth in Section 30.12 hereof

For Premises B:

Seven (7), as more fully set forth in Section 30.12 hereof

Exhibit 1 - 5

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THIS DEED OF LEASE between Landlord and Tenant named in Exhibit 1 is entered into on the Execution Date as stated in Exhibit 1.

Landlord demises to Tenant, and Tenant takes from Landlord, the Premises upon and subject to the provisions of this Lease.

1. INCORPORATION OF EXHIBITS; REFERENCE DATA

The Exhibits attached to this Lease are made a part hereof. Any reference in this Lease to any of the terms defined in any such Exhibit shall have the meaning set forth in such Exhibit.

2. DESCRIPTION OF DEMISED PREMISES

2.1 Demised Premises. The Premises are that portion of the Building as described in Exhibit 1.

2.2 Appurtenant Rights. Tenant shall have, as appurtenant to the Premises, the non-exclusive right to use in common with others entitled thereto: (a) the common lobbies, hallways, stairways and elevators of the Building serving the Premises in common with others; (b) the Common Areas, as defined in Exhibit 1; (c) freight elevator serving the Building, (d) loading dock serving the Building, and (e) if the Premises include less than the entire rentable area of any floor, the common toilets and other common facilities of such floor; and no other appurtenant rights or easements. Tenant's use of such areas shall be subject to the terms hereof and to the Rules and Regulations as set forth in Exhibit 4 hereof. Tenant acknowledges that Landlord has no obligation to allow any particular telecommunication service provider to have access to the Building or to the Premises, and that if Landlord permits such access and the provider provides services to other tenants in the Building, Landlord may require the service provider to pay Landlord a reasonable fee therefor. As of the date of this Lease, Verizon and Comcast provide telecommunications service in the Building, provided, however, Landlord approves Tenant's use of Windstream or Lightower as Tenant's telecommunications service provider for the Premises, and Landlord shall permit access to the Building and Premises by any such service provider, at no fee to Landlord. Landlord represents that, as of the date hereof, the roof and all the structural elements of the Building and all mechanical, electrical, fire/life safety and HVAC systems serving the Building and the Premises are in good operating condition and repair.

2.3 Exclusions and Reservations. The following are not part of the Premises: the exterior glass and curtainwall, all the perimeter walls of the Premises except the inner surfaces thereof, any balconies (except to the extent any balconies are shown as part of the Premises on Exhibit 2), terraces or roofs adjacent to the Premises, and any space in or adjacent to the Premises used for risers, shafts, stacks, pipes, conduits, wires and appurtenant fixtures, fan rooms, ducts, electric or other utilities, sinks or other Building facilities. Landlord reserves the right to access and use any of the foregoing, as well as the right to enter the Premises, subject to the provisions of this Lease, for the purposes of operation, maintenance, decoration and repair.

2.4 Rentable Area. Total Rentable Area of the Premises and the Building is agreed to be the amounts set forth in Exhibit 1.

3. TERM OF LEASE

3.1 Definitions. As used in this Lease the following terms have the following meanings:

(a) "Commencement Date" - The date set forth in Exhibit 1. Each portion of the Premises (i.e. Premises A or Premises B, as the case may be) are sometimes referred to herein as a "**Portion of the Premises**."

(b) "Rent Commencement Date" - The date set forth in Exhibit 1.

(c) If Landlord does not deliver possession of any Portion of the Premises to Tenant in the condition required under this Lease within thirty (30) days following the Estimated Commencement Date for such Portion of the Premises (the "First Outside Date"), subject to a day for day postponement of such First Outside Date on account of any delays resulting from Force Majeure, then Tenant shall be entitled to a credit equal to one day of Yearly Rent for each day following the First Outside Date until the earlier of the date the Commencement Date for such Portion of the Premises occurs or the Second Outside Date (as hereinafter defined). If Landlord does not deliver possession of any Portion of the Premises to Tenant in the condition required under this Lease within ninety (90) days following the Estimated Commencement Date for such Portion of the Premises (the "Second Outside Date"), subject to a day for day postponement of such Second Outside Date on account of any delays resulting from Force Majeure, then Tenant shall be entitled to a credit equal to two days of Yearly Rent for each day following the Second Outside Date until the date the Commencement Date for such Portion of the Premises occurs.

(d) Notwithstanding anything in this Lease to the contrary, in the event that Tenant is denied a building permit or a certificate of occupancy for any Portion of the Premises or is required to cease or postpone performance of its tenant improvements to any Portion of the Premises due to (i) any portion of the Building not being in compliance with applicable Laws, or (ii) the discovery of Hazardous Materials in the Premises requiring removal or remediation under applicable Laws, Landlord shall be responsible, at Landlord's sole cost and not as part of Operating Expenses, to correct the noncompliance with Laws or remove or remediate the Hazardous Materials, as applicable, and the Rent Commencement Date for the affected Portion of the Premises shall be postponed one (1) day for each day following Tenant's notice to Landlord that the tenant improvement work is delayed.

3.2 Term. The "**Term**" of this Lease shall commence on the Commencement Date for the applicable Portion of the Premises and end on the Expiration Date as stated in Exhibit 1, unless extended or terminated pursuant to the terms hereof.

3.3 Declaration Fixing Commencement Date. Once the Commencement Date for each Portion of the Premises has been determined, Landlord and Tenant shall execute an agreement, in the form attached hereto as Exhibit 5, in which shall be stated the Commencement Date and the Rent Commencement Date for such Portion of the Premises.

4. READINESS FOR OCCUPANCY - ENTRY BY TENANT PRIOR TO COMMENCEMENT DATE; LANDLORD'S WORK; LANDLORD'S CONCOURSE WORK

4.1 Base Building Systems; Delivery Condition.

On the Commencement Date for each Portion of the Premises, Landlord, at its sole cost and expense, shall deliver to Tenant the applicable Portion of the Premises vacant, broom clean, free of tenants, occupants, property and debris, in compliance with all applicable Laws and free of all Hazardous Materials that are required to be removed, remediated, or encapsulated pursuant to applicable Environmental Laws (defined below) and with the roof, structural elements and all base building systems including, without limitation, HVAC, mechanical, plumbing, electrical, elevator services, roofing, fire safety access and emergency egress systems serving the Premises in good working order.

4.2 Window Treatments.

Landlord, at its sole cost and expense, shall purchase and install new building standard window treatments on all exterior windows in the Premises by a date reasonably coordinated with Tenant and in connection with the timing of Tenant's Work, but in no event later than thirty (30) days following the date Tenant commences occupancy of any portion of the Premises for the conduct of business.

4.3 Disputes.

Any disputes under this Article 4 shall be submitted to arbitration in accordance with Section 30.5 below.

5. **CONDITION OF PREMISES**

5.1 Condition of Premises

Notwithstanding anything to the contrary herein contained and except as otherwise set forth in this Lease, including, without limitation, Section 4.1, Tenant shall take each Portion of the Premises "as-is", in the condition in which the Premises are in as of the Applicable Commencement Date, without any obligation on the part of Landlord to prepare or construct the Premises for Tenant's occupancy, and without any representation or warranty by Landlord to Tenant as to the condition of the Premises or the Building.

5.2 Landlord's Contribution.

(a) Landlord shall, in the manner hereinafter set forth, contribute up to \$7.00 per rentable square foot of the Premises per annum, which amount shall be prorated to reflect the number of months remaining in the Term following the applicable Rent Commencement Date for each Portion of the Premises ("**Landlord's Contribution**") towards the cost of the initial leasehold improvements to be installed by Tenant in the Premises ("**Tenant's Work**"). If the Rent Commencement Date for Premises A occurs on October 1, 2017, then the Landlord's Contribution for Premises A will be \$977,077.75, and if the Rent Commencement Date for Premises B occurs on September 1, 2019, then the Landlord's Contribution for Premises B will be \$369,792.78. In addition, Landlord shall contribute up to One Hundred Twenty-Six Thousand Five Hundred Sixty and 00/100 Dollars (\$126,560.00) (i.e. \$5.00 per rentable square foot of the Premises) ("**Landlord's Demolition Contribution**") toward Tenant's demolitions costs associated with Premises A and Premises B. Landlord shall pay for the cost of Tenant's space planning costs in an amount not to exceed Two Thousand Five Hundred Thirty-One and 20/100 Dollars (\$2,531.20) ("**Space Planning Allowance**"). Tenant's Work shall be performed in accordance with Articles 12 and 13 hereof. In the event that Landlord's Contribution shall not be sufficient to complete Tenant's Work, Tenant shall pay the excess costs.

(b) Provided that Tenant is not in default of its obligations under this Lease beyond applicable notice and cure periods at the time that Tenant submits any Requisition (as hereinafter defined) on account of Landlord's Contribution and/or Landlord's Demolition Contribution, Landlord shall pay the cost of the work shown on each Requisition submitted by Tenant to Landlord within thirty (30) days of Landlord's receipt thereof. If Tenant is prevented from receiving payment of a Requisition based upon Tenant's default, Tenant shall have the right, so long as the Lease is in full force and effect, and Tenant is in full compliance with its obligations under the Lease, to resubmit such Requisition after Tenant cures such default. For the purposes hereof, a "**Requisition**" shall mean written documentation showing in reasonable detail the costs of the improvements then installed by Tenant in the Premises. Following the first Requisition, each subsequent Requisition shall be accompanied by evidence reasonably satisfactory to Landlord that all work covered by previous Requisitions has been fully paid by Tenant. Landlord shall have the right, upon reasonable advance notice to Tenant, to inspect Tenant's books and records relating to each Requisition in order to verify the amount thereof. Tenant shall submit Requisition(s) no more often than monthly.

(c) Notwithstanding anything to the contrary herein contained:

(1) Landlord shall have no obligation to advance funds on account of Landlord's Contribution or Landlord's Demolition Contribution unless and until Landlord has received the Requisition in question, together with certifications from Tenant's architect, certifying that the work shown on the Requisition has been performed in accordance with applicable law and in accordance with Tenant's approved plans, and written lien waivers from Tenant's contractor for work performed to date, which waivers may be conditioned upon payment of the amount stated in the Requisition.

(2) Landlord shall pay Landlord's Contribution and Landlord's Demolition Contribution to Tenant if and to the extent the same is due and payable in accordance with the provisions hereof.

(3) Landlord shall have no obligation to pay Landlord's Contribution or Landlord's Demolition Contribution in respect of any Requisition submitted after May 31, 2021.

(4) If the total hard costs of the Tenant's Work are less than the Landlord's Contribution, Tenant may requisition any unused portion for Tenant's soft costs, including cabling, furniture and moving costs, provided, however, that not more than ten percent (10%) of the unused Landlord's Contribution shall be applied to soft costs.

(5) In the event Landlord fails to timely pay any Requisition of the Landlord's Contribution, the Landlord's Demolition Contribution or Space Planning Allowance subject to the terms and conditions set forth herein, Tenant, upon written notice to Landlord, shall be permitted to offset such unpaid amount on a dollar for dollar basis against the Yearly Rent due hereunder until such time as the Landlord's Contribution, the Landlord's Demolition Contribution and Space Planning Allowance, as applicable, have been fully paid or credited to Tenant.

(d) Except for Landlord's Contribution, Landlord's Demolition Contribution and the Space Planning Allowance, Tenant shall bear all other costs of Tenant's Work. Landlord shall have no liability or responsibility for any claim, injury or damage alleged to have been caused by the particular materials, whether building standard or non-building standard, selected by Tenant in connection with Tenant's Work.

5.3 Plans and Specifications. Tenant shall be solely responsible for the preparation of the final architectural, electrical and mechanical construction drawings, plans and specifications (called "**plans**") necessary to construct the Premises for Tenant's occupancy, which plans shall be subject to Landlord's approval, which will not be unreasonably withheld, and shall comply with their requirements to avoid aesthetic or other conflicts with the design and function of the balance of the Building. Landlord's approval is solely given for the benefit of Landlord, and neither Tenant nor any third party shall have the right to rely upon Landlord's approval of Tenant's plans for any purpose whatsoever. Landlord's architects and engineers shall respond to any plan submission by Tenant within ten (10) business days after Landlord's receipt thereof. If Landlord fails to respond to Tenant's plan submission within such ten (10) business day period, Tenant's plans shall be deemed approved. In the event Landlord's architect's or engineers' approval of Tenant's plans is withheld or conditioned, Landlord shall send written notification thereof to Tenant and include a reasonably detailed statement identifying the reasons for such refusal or condition, and Tenant shall promptly have the plans revised by its architect to incorporate all reasonable objections and conditions presented by Landlord and shall resubmit such plans to Landlord and Landlord shall respond to Tenant's resubmission within five (5) business days. Such process shall be followed until the plans shall have been approved by Landlord's architect and engineers without unreasonable objection or condition. Without limiting the foregoing, Tenant shall be responsible for all elements of the design of Tenant's plans (including, without limitation, compliance with law, functionality of design, the structural integrity of the design, the configuration of the Premises and the placement of Tenant's furniture, appliances and equipment), and Landlord's approval of Tenant's plans shall in no event relieve Tenant of the responsibility for such design. If requested by Tenant, Landlord's architect will prepare the plans necessary for such construction at Tenant's cost. Whether or not the layout and plans are prepared with the help (in whole or in part) of Landlord's architect, Tenant agrees to remain solely responsible for the timely preparation and submission of all such plans and for all elements of the design of such plans and for all costs related thereto. (The word "**architect**" as used in this Article 4 shall include an interior designer or space planner.)

5.4 Preparation of Premises. Notwithstanding the provisions of Article 12 with respect to Tenant's Work, if Landlord reasonably determines that Tenant's plans adversely affect any building systems or affect the structural elements, Tenant shall reimburse Landlord for any third-party out-of-pocket costs incurred by Landlord to review Tenant's plans.

5.5 Contractors and Subcontractors. In connection with Tenant's Work or any Alterations, Tenant shall select a general contractor and subcontractors subject to Landlord's approval, which approval shall not be unreasonably withheld, conditioned or delayed, provided such contractor is a reputable company, is a union member and will not cause any labor disharmony in the Building. Tenant may have limited portions of Tenant's Work and Alterations which do not constitute any of the major trades (defined as the electrical, mechanical, carpentry and plumbing trades) performed by non-union labor where union labor is not generally available or customarily required in the City of Cambridge, Massachusetts and Tenant will not be required to use union contractors, subcontractors or vendors for installation of data/cablings and furniture and for moving services. Furthermore but subject to the foregoing, Tenant shall not take any action at the Building which would cause a work stoppage, picketing, labor disruption or dispute (the "**Labor Disruption**") and Tenant acknowledges that it shall take any and all actions reasonably necessary to resolve any Labor Disruption that may arise.

5.6 Tenant Payments of Construction Cost. Landlord shall have the same rights and remedies which Landlord has upon the nonpayment of Yearly Rent and other charges due under this Lease for nonpayment of any amounts which Tenant is required to pay to Landlord or Landlord's contractor in connection with any construction in the Premises performed for Tenant by Landlord, Landlord's contractor or any other person, firm or entity after the Commencement Date.

5.7 Disputes. Any disputes under this Article 4 shall be submitted to arbitration in accordance with the provisions of Section 29.5 hereof.

6. USE OF PREMISES

6.1 Permitted Use. Tenant shall occupy and use the Premises for the Permitted Use as stated in Exhibit 1 and for no other purposes. Without limiting the generality of the foregoing, Tenant agrees that it shall not use the Premises or any part thereof, or permit the Premises or any part thereof to be used for the preparation or dispensing of food, except that Tenant may, with Landlord's prior written consent (including approval of plans for any such equipment that has a water connection), which consent shall not be unreasonably withheld, install at its own cost and expense standard pantries and kitchenettes, including so-called hot-cold water fountains, coffee makers, microwave ovens and commonly used pantry equipment (excluding, however, stovetops, hot plates, ovens or toaster ovens; however, toaster ovens with an auto-shutoff feature shall be permitted) for the preparation of beverages and foods, provided that no cooking, frying, etc., are carried on in the Premises to such extent as requires special exhaust venting.

6.2 Prohibited Uses. Notwithstanding any other provision of this Lease, Tenant shall not use, or suffer or permit the use or occupancy of, or suffer or permit anything to be done in or anything to be brought into or kept in or about the Premises or the Building or any part thereof (including, without limitation, any materials, appliances or equipment used in the construction or other preparation of the Premises and furniture and carpeting): (i) which would violate any of the covenants, agreements, terms, provisions and conditions of this Lease or otherwise applicable to or binding upon the Premises; (ii) for any unlawful purposes or in any unlawful manner; (iii) which, in the reasonable judgment of Landlord shall in any way (a) impair the appearance or reputation of the Building; or (b) impair, interfere with or otherwise diminish the quality of any of the Building services or the proper and economic heating, cleaning, ventilating, air conditioning or other servicing of the Building or Premises; or with the use or occupancy of any of the other areas of the Building, or occasion discomfort, inconvenience or annoyance, or injury or damage to any occupants of the Premises or other tenants or occupants of the Building; or (iv) which is inconsistent with the maintenance of the Building as an office building of the first class in the quality of its maintenance, use, or occupancy. Tenant shall not install or use any electrical or other equipment of any kind which, in the reasonable judgment of Landlord, might cause any such impairment, interference, discomfort, inconvenience, annoyance or injury.

6.3 Licenses and Permits. Tenant shall be responsible for obtaining and maintaining any governmental license or permit required for the proper and lawful conduct of Tenant's business and in connection with its Alterations as may be necessary and shall at all times comply with the terms and conditions of each such license or permit. Tenant shall use the Premises in accordance with all applicable laws.

6.4 Use Restriction on Landlord. Landlord shall not lease, license or permit occupancy of any portion of the Building for the operation of a “Cross-Fit”. Notwithstanding the foregoing, Landlord shall not be restricted from leasing space on the ground floor or below in the Building to other fitness uses, provided that prior to executing any lease, license or occupancy with any retail tenant at the Building that may cause unreasonable noise, vibrations or other disruptions to emanate outside of its leased premises, Landlord shall first notify Tenant and reasonably confer with Tenant on such tenancy and its impact on Tenant’s use and enjoyment of the Premises, including discussion of the mitigation measures that will be employed by Landlord (if Landlord, in its reasonable but sole discretion deems such mitigation measures to be necessary).

7. RENT

Commencing on the Rent Commencement Date and continuing throughout the Term, Tenant shall pay the Yearly Rent and other charges, at the rate for Yearly Rent stated in Exhibit 1, to Landlord monthly, in advance, without demand on the first day of each month. Rent shall be prorated for any partial calendar month during the Term. The rent shall be payable to Landlord or, if Landlord shall so direct in writing, to Landlord’s agent or nominee, at the office of Landlord or such place as Landlord may designate in writing from time to time, without offset or deduction. Yearly Rent and any other sums due hereunder not paid on or before the date due shall bear interest for each month or fraction thereof from the due date until paid computed at the annual rate of five (5) percentage points over the so-called The Wall Street Journal prime rate or at any applicable lesser maximum legally permissible rate for debts of this nature, provided, however, that such interest shall not be charged to Tenant for any past due amounts for the first (1st) occasion, if any, in any twelve-(12)-month period, if such amounts are paid within five (5) days after notice that the same are delinquent. In addition, if Tenant fails to pay any installment of rent or any other sums due hereunder when due, Tenant shall pay Landlord an administration fee equal to five percent (5%) of the past due amount, provided, however, that such administrative fee shall not be charged to Tenant for any past due amounts for the first (1st) occasion, if any, in any twelve-(12)-month period, if such amounts are paid within five (5) days after notice that the same are delinquent.

8. SECURITY DEPOSIT

8.1 Cash Security Deposit. Tenant shall, at the time that Tenant executes and delivers this Lease to Landlord, pay to Landlord a security deposit (the “**Security Deposit**”) in the amount set forth in Exhibit 1 securing Tenant’s obligations under this Lease. In no event shall the Security Deposit be deemed to be a prepayment of rent or a measure of liquidated damages. Tenant agrees that no interest shall accrue on the Security Deposit and that Landlord shall have the right to commingle the Security Deposit with other funds of Landlord. In the event that Tenant shall default in any of its obligations under this Lease, Landlord shall have the right, without prior notice to Tenant, to apply the Security Deposit (or any portion thereof) towards the cure of any such default. Tenant shall promptly, upon notice from Landlord, pay to Landlord any amount so applied by Landlord in order to restore the full amount of the Security Deposit. In addition, in the event of a termination based upon the default of Tenant under this Lease, or a rejection of this Lease pursuant to the provisions of the Federal Bankruptcy Code, Landlord shall have the right to apply the Security Deposit (from time to time, if necessary) to cover the full amount of damages and other amounts due from Tenant to Landlord under this Lease. Any amounts so applied shall, at Landlord’s election, be applied first to any unpaid rent and other charges which were due prior to the filing of the petition for protection under the Federal Bankruptcy Code. The application of all or any part of the Security Deposit to any obligation or default of Tenant under this Lease shall not deprive Landlord of any other rights or remedies Landlord may have or constitute a waiver by Landlord. Provided that Tenant is not in default beyond the expiration of any applicable any notice, grace or cure period of any of its obligations under this Lease at the expiration of the Term, Landlord shall refund to Tenant not later than thirty (30) days after the expiration of this Lease any portion of the Security Deposit which Landlord is then holding.

8.2 Letter of Credit.

(a) In lieu of a cash Security Deposit, Tenant may deliver to Landlord, on the date that Tenant executes and delivers this Lease to Landlord, an Irrevocable Standby Letter of Credit (the "**Letter of Credit**") which shall be (1) in the form attached hereto as Exhibit 6, (2) issued by a bank approved in writing by Landlord with an investment grade credit rating from Moody's (i.e., a rating of Baa3 or above), S&P (i.e., a rating of BBB- or above), or Fitch (i.e., a rating of BBB- or above) (an "Acceptable Bank"), (3) upon which presentment may be made in Boston, MA, Washington, DC, or elsewhere in the continental United States if presentation may be made by overnight courier (e.g., Federal Express), (4) in the amount set forth in Exhibit 1, and (5) for a term of at least one (1) year, subject to automatic extension in accordance with the terms of the Letter of Credit. If the issuer of the Letter of Credit ceases to qualify as an Acceptable Bank or becomes subject to insolvency or receivership proceedings of any sort, Tenant shall be required to deliver a substitute Letter of Credit satisfying the conditions hereof (the "**Substitute Letter of Credit**") within fifteen (15) business days after written notice thereof from Landlord. If the issuer of the Letter of Credit gives written notice of its election not to renew such Letter of Credit for any additional period, Tenant shall be required to deliver a Substitute Letter of Credit at least thirty (30) days prior to the expiration of the term of such Letter of Credit. If Tenant fails to furnish such renewal or replacement by the applicable deadline set forth above, Landlord may draw upon such Letter of Credit and hold the proceeds thereof (the "**Security Proceeds**") as a cash Security Deposit pursuant to the terms of Section 7.1. Tenant agrees that it shall maintain the Letter of Credit, in the full amount required hereunder, in effect until a date which is at least sixty (60) days after the Expiration Date of this Lease. Tenant's failure to maintain or replace the Letter of Credit as required hereunder shall be treated as a failure to pay rent for purposes of Landlord's remedies.

(b) If Tenant is in default of its obligations under this Lease that continues beyond the expiration of any applicable notice grace or cure period, then Landlord shall have the right, at any time after such event, without giving any further notice to Tenant, to draw down from the Letter of Credit (or Substitute Letter of Credit or Additional Letter of Credit, as defined below, as the case may be) (i) the amount necessary to cure such default or (ii) if such default cannot reasonably be cured by the expenditure of money, the amount which, in Landlord's opinion, is necessary to satisfy Tenant's liability in account thereof. In the event of any such draw by Landlord, Tenant shall, within fifteen (15) business days of written demand therefor, deliver to Landlord an additional Letter of Credit satisfying the foregoing conditions (the "**Additional Letter of Credit**"), except that the amount of such Additional Letter of Credit shall be the amount of such draw. Tenant may, in lieu of providing an Additional Letter of Credit, deliver to Landlord an amendment to the existing Letter of Credit. In addition, in the event of a termination based upon the default of Tenant under this Lease, or a rejection of this Lease pursuant to the provisions of the Federal Bankruptcy Code, Landlord shall have the right to draw upon the Letter of Credit (from time to time, if necessary) to cover the full amount of damages and other amounts due from Tenant to Landlord under this Lease. Any amounts so drawn shall, at Landlord's election, be applied first to any unpaid rent and other charges which were due prior to the filing of the petition for protection under the Federal Bankruptcy Code. Tenant hereby covenants and agrees not to oppose, contest or otherwise interfere with any attempt by Landlord to draw down from said Letter of Credit including, without limitation, by commencing an action seeking to enjoin or restrain Landlord from drawing upon said Letter of Credit. Tenant also hereby expressly waives any right or claim it may have to seek such equitable relief. In addition to whatever other rights and remedies Landlord may have against Tenant if Tenant breaches its obligations under this paragraph, Tenant hereby acknowledges that it shall be liable for any and all damages which Landlord may suffer as a result of any such breach.

(c) Upon request of Landlord, Tenant shall, at its expense, cooperate with Landlord in obtaining an amendment to or replacement of any Letter of Credit which Landlord is then holding so that the amended or new Letter of Credit reflects the name of any new owner of the Building.

(d) To the extent that Landlord has not previously drawn upon any Letter of Credit, Substitute Letter of Credit, Additional Letter of Credit or Security Proceeds (collectively, the "**Collateral**") held by Landlord, Landlord shall return such Collateral to Tenant on the expiration of the Term, less any amounts due from Tenant hereunder.

(e) In no event shall the proceeds of any Letter of Credit be deemed to be a prepayment of rent or a measure of liquidated damages.

9. SERVICES FURNISHED BY LANDLORD

9.1 Electric Current.

(a) Landlord shall provide electric current to Tenant in a reasonable quantity sufficient for Tenant's conduct of its business in the Premises for the Permitted Use but not less than six (6) watts per useable square feet of the Premises. The consumption of electricity in the Premises shall be measured by a separate submeter to be installed by Landlord in the Premises as of the Commencement Date. Tenant shall pay Landlord for Tenant's use of electric current in the Premises as shown on such submeter from time to time within thirty (30) days after demand therefor. Tenant shall have the right to read such submeter from time to time. In addition, from time to time at the written request of Tenant, Landlord shall provide Tenant copies of the electric bills for the service covered by such submeter. If the Premises are not separately submetered as of the Commencement Date, Landlord shall, at its sole cost and expense, install a separate submeter to service the Premises.

(b) If Tenant shall require electric current for use in the Premises in excess of such reasonable quantity to be furnished for such use as hereinabove provided and if (i) in Landlord's reasonable judgment, Landlord's facilities are inadequate for such excess requirements or (ii) such excess use shall result in an additional burden on the Building air conditioning system and additional cost to Landlord on account thereof, then, as the case may be, (x) Landlord, upon written request and at the sole cost and expense of Tenant, will furnish and install such additional wire, conduits, feeders, switchboards and appurtenances as reasonably may be required to supply such additional requirements of Tenant if current therefor be available to Landlord, provided that the same shall be permitted by applicable laws and insurance regulations and shall not cause damage to the Building or the Premises or cause or create a dangerous or hazardous condition or entail excessive or unreasonable alterations or repairs or interfere with or disturb other tenants or occupants of the Building or (y) Tenant shall reimburse Landlord for such additional cost, as aforesaid. In the case of any additional electrical equipment being installed by or for Tenant, all the electricity serving such equipment shall be submetered, at Tenant's sole cost and expense, and Tenant shall reimburse Landlord for the cost of electricity consumed by such equipment as shown on such submeter.

(c) Except for Landlord's gross negligence or willful misconduct and except as set forth in Section 8.8 below, Landlord shall not in any way be liable or responsible to Tenant for any loss, damage or expense which Tenant may sustain or incur if the quantity, character, or supply of electrical energy is changed by the utility service provider such that it is no longer suitable for Tenant's requirements.

(d) Tenant agrees that it will not make any material alteration or material addition to the electrical equipment and/or appliances in the Premises without the prior written consent of Landlord in each instance first obtained, which consent will not be unreasonably withheld, conditioned, or delayed, and Tenant will promptly advise Landlord of any other alteration or addition to such electrical equipment and/or appliances.

9.2 Water.

(a) Landlord shall furnish cold water for ordinary premises and kitchenette, cleaning, toilet, lavatory and drinking purposes and hot water for the core restroom sinks. If Tenant requires, uses or consumes water for any purpose other than for the aforementioned purposes, Landlord may (i) assess a reasonable charge for the additional water so used or consumed by Tenant or (ii) install a water meter and thereby measure Tenant's water consumption for all purposes. In the latter event, Landlord shall pay the cost of the meter and the cost of installation thereof and shall keep said meter and installation equipment in good working order and repair. Tenant agrees to pay for the additional water consumed, as shown on said meter, together with the sewer charge based on said meter charges, as and when bills are rendered, and on default in making such payment, Landlord may pay such charges and collect the same from Tenant. All piping and other equipment and facilities for use of water outside the Building core, but that exclusively serve the Premises, will be installed and maintained by contractors approved by Landlord at Tenant's sole cost and expense.

9.3 Elevators, Heat, and Cleaning.

(a) “**Business Hours**” shall be defined as Mondays-Fridays (other than Building Holidays, as hereinafter defined) during the hours between 8:00 a.m. and 6:00 p.m. and on Saturdays (other than Building Holidays) during the hours between 8:00 a.m. and 1:00 p.m. “**Building Holidays**” shall include New Year’s Day, Martin Luther King Day, Presidents’ Day, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans’ Day, Thanksgiving Day and Christmas Day (the “**Existing Holidays**”), and any other day declared a holiday by the federal government or the Commonwealth of Massachusetts; provided that during any such additional Building Holidays other than the Existing Holidays, Tenant shall not be obligated to reimburse Landlord for any HVAC service to the Premises requested by Tenant during times which would otherwise have been Business Hours if such day had not been designated as an additional Building Holiday.

(b) Landlord at its expense shall: (i) provide the existing elevator facilities during Business Hours and have at least one (1) elevator in operation available for Tenant’s non-exclusive use at all other times; (ii) furnish heat to the Premises during Business Hours so as to maintain an ambient temperature between 68° and 72° during the heating season; and (iii) cause the Premises to be cleaned on Mondays-Fridays (except for Building Holidays) provided the same are kept in order by Tenant substantially in accordance with the cleaning standards attached hereto as Exhibit 8.

(c) With respect to furnishing heat on Saturdays, if Landlord determines that the majority of tenants in the Building are not utilizing their premises on Saturdays, then in order to conserve energy, Landlord reserves the right to provide such service only on request; service during the hours between 8:00 a.m. and 1:00 p.m. will be without charge to Tenant, but Tenant must request same by giving Landlord notice thereof not later than 12:00 Noon on the business day for which such service is required or 3:00 on the preceding business day for weekend or Building Holiday service.

9.4 Air Conditioning.

(a) Landlord shall furnish to and distribute in the Premises air conditioning during Business Hours so as to maintain an ambient temperature between 70° and 74° during the cooling season. Tenant agrees to close the blinds when necessary because of the sun’s position, whenever the air conditioning system is in operation, and to abide by all the reasonable regulations and requirements which Landlord may prescribe for, the proper functioning and protection of the air conditioning system.

(b) With respect to furnishing air conditioning on Saturdays, if Landlord determines that the majority of tenants in the Building are not utilizing their premises on Saturdays, then in order to conserve energy, Landlord reserves the right to provide such service only on request; service during the hours between 8:00 a.m. and 1:00 p.m. will be without charge to Tenant, but Tenant must request same by giving Landlord notice thereof not later than 3:00 on the preceding Friday.

9.5 Additional Heat, Cleaning and Air Conditioning Services.

(a) Landlord will use reasonable efforts, upon notice as set forth above from Tenant of its requirements in that regard, to furnish additional heat, cleaning or air conditioning services to the Premises on days and at times other than as above provided.

(b) Tenant will pay to Landlord a reasonable charge (i) for any such additional heat or air conditioning service required by Tenant on an hourly basis at the prevailing hourly rate (based on Landlord’s direct cost (including equipment depreciation) and without mark-up by Landlord or profit to Landlord), (ii) for any extra cleaning of the Premises required because of the carelessness or indifference of Tenant or because of the particular nature of Tenant’s business (i.e., other than customary business office use), and (iii) for any cleaning done at the request of Tenant of any portions of the Premises which may be used for storage, a shipping room or other non-office purposes. If the cost to Landlord for cleaning the Premises shall be increased due to the installation in the Premises, at Tenant’s request, of any materials or finish other than those which are building standard, Tenant shall pay to Landlord an amount equal to such increase in cost. Landlord hereby represents to Tenant that, as of the Execution Date of this Lease, the charge for overtime heating and cooling is \$75.00 per floor per hour (subject to Landlord’s right, from time to time, to increase such charge to reflect actual increases in the cost of providing such services including equipment depreciation and Landlord's standard administrative fee.

9.6 Additional Air Conditioning Equipment. In the event Tenant requires additional air conditioning for business machines, meeting rooms or other special purposes, or because of occupancy or excess electrical loads, any additional air conditioning units, chillers, condensers, compressors, ducts, piping and other equipment, such additional air conditioning equipment will be installed and maintained by contractors approved by Landlord, which approval shall not be unreasonably withheld, at Tenant's sole cost and expense, but only if, in Landlord's reasonable judgment, the same will not cause damage or injury to the Building or create a dangerous or hazardous condition or entail excessive or unreasonable alterations, repairs or expense (unless Tenant agrees to pay for same) or materially interfere with or disturb other tenants; and Tenant shall pay to Landlord based on the readings of the existing submeter, the electricity costs with respect to such additional air conditioning equipment. All such equipment shall be submetered as provided in Section 9.1 hereof.

9.7 Repairs. Except as otherwise provided in Articles 19 and 21, and subject to Tenant's obligations in Article 15, Landlord shall keep and maintain the roof (and all components of the roof), exterior walls, structural floor slabs, columns, elevators, public stairways and corridors, public lavatories, all base building systems and equipment (including, without limitation, sanitary, electrical, heating, air conditioning, fire/life safety, plumbing or other systems servicing the Premises) and other common facilities of both the Building and the Common Areas in good condition and repair consistent with comparable first-class office buildings in Cambridge, Massachusetts.

9.8 Interruption or Curtailment of Services.

(a) When necessary by reason of accident or emergency, or for repairs, alterations, replacements or improvements which in the reasonable judgment of Landlord are desirable or necessary to be made, or of difficulty or inability in securing supplies or labor, or of strikes, or of any other cause beyond the reasonable control of Landlord, whether such other cause be similar or dissimilar to those hereinabove specifically mentioned until said cause has been removed, Landlord reserves the right temporarily to interrupt, curtail, stop or suspend (i) the furnishing of heating, elevator, air conditioning, and cleaning services and (ii) the operation of the plumbing and electric systems, provided, however, Landlord shall use commercially reasonable efforts to minimize interference with Tenant's use and occupancy of the Premises. Landlord shall exercise reasonable diligence to eliminate the cause of any such interruption, curtailment, stoppage or suspension, but there shall be no diminution or abatement of rent or other compensation due from Landlord to Tenant hereunder, nor shall this Lease be affected or any of Tenant's obligations hereunder reduced, and Landlord shall have no responsibility or liability for any such interruption, curtailment, stoppage, or suspension of services or systems.

(b) Notwithstanding anything to the contrary in this Lease contained, if the Premises shall lack any service which Landlord is required to provide hereunder (thereby rendering the Premises or a portion thereof untenable) (a "**Service Interruption**") so that, for the Landlord Service Interruption Cure Period, as hereinafter defined, the continued operation in the ordinary course of Tenant's business is materially adversely affected and if Tenant ceases to use the affected portion of the Premises during the period of untenability as the direct result of such lack of service, then, provided that Tenant ceases to use the affected portion of the Premises during the entirety of the Landlord Service Interruption Cure Period and that such untenability and Landlord's inability to cure such condition is not caused by the fault or neglect of Tenant or Tenant's agents, employees or contractors, Yearly Rent, Operating Expense Excess and Tax Excess shall thereafter be abated in proportion to such untenability until such condition is cured sufficiently to allow Tenant to occupy the affected portion of the Premises. For the purposes hereof, the "**Landlord Service Interruption Cure Period**" shall be defined as five (5) consecutive business days after Landlord's receipt of written notice from Tenant of the condition causing untenability in the Premises, provided however, that the Landlord Service Interruption Cure Period shall be ten (10) consecutive business days after Landlord's receipt of written notice from Tenant of such condition causing untenability in the Premises if either the condition was caused by causes beyond Landlord's control or Landlord is unable to cure such condition as the result of causes beyond Landlord's control.

(c) The provisions of paragraph (b) of this Section 8.8 shall not apply in the event of untenability caused by fire or other casualty, or taking (see Articles 19 and 21). The remedies set forth in this Section 9.8 shall be Tenant's sole remedies in the event of a Service Interruption.

(d) Notwithstanding anything to the contrary in this Lease contained, in the event that the Premises lack any service which Landlord is required to provide hereunder or electric current thereby rendering the Premises or any material portion thereof untenantable, the untenantability of which materially adversely affects the continued operation in the ordinary course of Tenant's business, and (i) if such untenantability continues for ninety (90) consecutive days after Landlord's receipt of written notice of such condition from Tenant, and (ii) such untenantability is not caused by the fault or neglect of Tenant, or Tenant's agents, employees, or contractors, then, provided that Tenant ceases to use the affected portion of the Premises during the entire period of such untenantability, Tenant shall have the right to terminate this Lease exercisable by giving Landlord a written termination notice as follows. This Lease shall terminate as of the date ten (10) days after Landlord's receipt of Tenant's notice, unless Landlord shall have cured such condition on or before such tenth (10th) day.

9.9 Energy Conservation. Notwithstanding anything to the contrary in this Article 8 or in this Lease contained, Landlord may institute, and Tenant shall comply with, such written policies, programs and measures as may be reasonably necessary or required to comply with applicable codes, rules, regulations or standards.

9.10 Miscellaneous. All services provided by Landlord to Tenant are based upon an assumed maximum premises population of one person per one hundred fifty (150) square feet of Total Rentable Area of the Premises (one person per one hundred fifty (150) square feet of Total Rentable Area of the Premises for air conditioning).

9.11 Access. So long as Tenant shall comply with Landlord's reasonable security program for the Building, Tenant shall have access to the Premises and (for monthly pass holders) the Garage twenty-four (24) hours per day, three hundred sixty-five (365) days per year, during the Term of this Lease, except in an emergency. The Building is currently accessed by an electronic access system wherein tenants are permitted access to the Building by presenting electronic access cards at the electronic card readers. Landlord shall provide security in the Building in a manner consistent with other first-class office buildings in East Cambridge, Massachusetts.

10. OPERATING COSTS AND TAXES

10.1 Definitions. As used in this Article 9, the words and terms which follow mean and include the following:

- (a) "**Operating Year**" shall mean a calendar year in which occurs any part of the Term of this Lease.
- (b) "**Operating Costs in the Base Year**" shall be the amount as stated in Exhibit 1 for the applicable portion of the Premises.
- (c) "**Tenant's Premises A Proportionate Share**" shall be the percentage as stated in Exhibit 1.
- (d) "**Tenant's Premises B Proportionate Share**" shall be the percentage as stated in Exhibit 1.

(e) "**Taxes**" shall mean the real estate taxes and other taxes, levies and assessments imposed upon the Building and the land on which it stands and upon any personal property of Landlord used in the operation thereof, or Landlord's interest in the Building or such personal property; charges, fees and assessments for transit, housing, police, fire or other governmental services or purported benefits to the Building; service or user payments in lieu of taxes; any assessments in connection with any business improvement district in which the Building may be located or any similar program(s) in which the Building may participate; and any and all other taxes, levies, betterments, assessments and charges arising from the ownership, leasing, operating, use or occupancy of the Building or based upon rentals derived therefrom, which are or shall be imposed by National, State, Municipal or other authorities. As of the Execution Date, "Taxes" shall not include any franchise, rental, income or profit tax, capital levy or excise, provided, however, that any of the same and any other tax, excise, fee, levy, charge or assessment, however described, that may in the future be levied or assessed as a substitute for or an addition to, in whole or in part, any tax, levy or assessment which would otherwise constitute "Taxes," whether or not now customary or in the contemplation of the parties on the Execution Date of this Lease, shall constitute "Taxes," but only to the extent calculated as if the Building and the land upon which it stands is the only real estate owned by Landlord. "Taxes" shall also include expenses of tax abatement or other proceedings contesting assessments or levies. Wherever the term "Building" is used in determining Taxes, it shall mean Taxes specific to the actual Building, or the equitably prorated and apportioned portion of those Taxes which apply to the Building together with other buildings or properties. Landlord represents and warrants that the Building is separately assessed for tax purposes from any other buildings or properties. Landlord represents that there is no tax reduction or tax exemption program in effect with respect to the Building that will expire during the Term.

(f) “**Tax Base**” shall be the amount stated in Exhibit 1 for the applicable Portion of the Premises and shall apply to a Tax Period of twelve (12) months. Tax Base shall be reduced pro rata if and to the extent that the Tax Period contains fewer than twelve (12) months. Landlord represents and warrants that there are no payment-in-lieu-of-taxes or other tax reduction agreements in effect during the Tax Period of the Tax Base that will expire or phase out during the Term.

(g) “**Tax Period**” shall be any fiscal/tax period in respect of which Taxes are due and payable to the appropriate governmental taxing authority, any portion of which period occurs during the Term of this Lease, the first such Tax Period being the one in which the Rent Commencement Date occurs.

(h) “**Operating Costs**”:

(1) Definition of Operating Costs. “**Operating Costs**” shall mean all costs incurred and expenditures of whatever nature made by Landlord in the operation and management, for repair and replacements, cleaning and maintenance of the Building including, without limitation, vehicular and pedestrian passageways related to the Building, related equipment, facilities and appurtenances, elevators, and cooling and heating equipment. In the event that Landlord or Landlord’s managers or agents perform services for the benefit of the Building off-site which would otherwise be performed on-site (e.g., accounting), the cost of such services shall be reasonably allocated among the properties benefiting from such service and shall be included in Operating Costs. Operating Costs shall include, without limitation, those categories of “Specifically Included Categories of Operating Costs”, as set forth below, but shall not include “Excluded Costs,” as hereinafter defined. If Landlord incurs Operating Costs for the Building together with one or more other buildings or properties, the shared costs and expenses shall be equitably prorated and apportioned between the Building and the other buildings or properties. Wherever the term “Building” is used in determining Operating Costs, it shall mean Operating Costs specific to the actual Building, or the equitably prorated and apportioned portion of those costs which apply to the Building together with other buildings or properties.

(2) Definition of Excluded Costs. “**Excluded Costs**” shall be defined as the following:

(i) Costs of renovating or otherwise improving, decorating, painting or redecorating space for tenants or other occupants of the Building.

(ii) Leasing fees or commissions, advertising and promotional expenses, legal fees, the cost of tenant improvements, build out allowances, moving expenses, assumption of rent under existing leases and other concessions incurred in connection with leasing space in the Building and costs incurred in connection with the selling or change of ownership of the Building, including brokerage commissions, consultants’, attorney’s and accountants’ fees, closing costs, title insurance premiums, transfer taxes and interest charges.

(iii) All depreciation and amortization, except as otherwise explicitly provided in this Article 9.

(iv) Any cost or expense to the extent that Landlord is reimbursed other than as a payment for Operating Costs, including, but not limited to, (a) work or services performed for any tenant (including Tenant) at such tenant’s cost, (b) the cost of any item for which Landlord is paid or reimbursed by warranties, service contracts, insurance proceeds or otherwise, (c) increased insurance premiums or taxes assessed specifically to any tenant of the Building, (d) charges (including applicable taxes) for electricity, water and other utilities for which Landlord is reimbursed by any tenant; and (e) costs for supplying extra services to tenants (i.e., overtime HVAC and extra cleaning); and (f) costs incurred in connection with the making of repairs which are the reimbursed by another tenant of the Building.

(v) Wages, salaries, benefits or other compensation paid to any executive employees (and employment or payroll taxes associated with such employees) above the grade of general manager, except that if any such employee performs a service which would have been performed by an outside consultant, the compensation paid to such employee for performing such service shall be included in Operating Costs, to the extent only that the cost of such service does not exceed competitive cost of such service had such service been rendered by an outside consultant.

(vi) Interest on debt or amortization payments on any mortgage or mortgages (except to the extent that such interest is included together with the amortization of capital expenditures which are permitted to be passed through pursuant to the provisions of this Article 9).

(vii) Expenses incurred by Landlord for repairs or other work occasioned by fire, windstorm, or other insured casualty or condemnation (excluding commercially reasonable deductibles, which shall be included).

(viii) Expenses, including without limitation, legal fees and disbursements incurred by Landlord to resolve disputes, enforce or negotiate lease terms with prospective or existing tenants or in connection with any financing, sale or syndication of the Building.

(ix) Expenses for the replacement of any item covered under warranty to the extent of the amount covered less the reasonable, out-of-pocket costs of enforcement and excluding any enforcement costs of warranties obtained for Landlord's Work.

(x) Costs to correct any penalty or fine incurred by Landlord due to Landlord's violation of any federal, state, or local law or regulation.

(xi) Expenses for any item or service which Tenant pays directly to a third party or separately reimburses Landlord (i.e., other than as a reimbursement of Operating Costs) and expenses incurred by Landlord to the extent the same are reimbursable or reimbursed from any other tenants (i.e., other than as a reimbursement of Operating Costs), occupants of the property, or third parties.

(xii) Expenses in connection with services or other benefits of a type which are not provided Tenant but which are provided to another tenant or occupant.

(xiii) Overhead and profit increment paid to subsidiaries or affiliates of Landlord for services on or to the real property, to the extent only that the costs of such services exceed competitive costs of such services were they not so rendered by a subsidiary or affiliate (provided however, that this subparagraph (xvi) shall not apply to the management fee, which shall be governed by Section 9.1(4)(g).

(xiv) Any expense for which Landlord is otherwise compensated or has the right to be compensated through the proceeds of insurance or for which the Landlord would have been compensated by insurance proceeds had it carried the coverage required in the Lease, and in all events other than the commercially reasonable deductibles.

(xv) Expenses incurred by Landlord in order to correct any violation of applicable laws, but only to the extent any of the same are in effect and applicable to the Building as of the Commencement Date and subject to Section 9.1(g)(3) below, provided, however, that the provisions of this clause shall not preclude the inclusion of costs of compliance with applicable laws enacted prior to the date of this Lease to the extent such compliance is required for the first time by reason of any amendment, modification or reinterpretation (provided such reinterpretation is pursuant to a final judgment not subject to further appeal by a court of competent jurisdiction) of an applicable law which is imposed after the date of this Lease.

(xvi) Payments into reserves.

(xvii) All costs of purchasing (i.e., as opposed to maintenance of) major sculptures, paintings or other major works or objects of art (as opposed to decorations purchased or leased by Landlord for display in the common areas of the Building).

(xviii) Any charge for Landlord's income tax, excess profit tax, franchise tax, or like tax on Landlord's business and tax penalties incurred as a result of Landlord's negligence, inability or unwillingness to make payments and/or to file any income tax or informational returns when due.

(xix) Costs of signs in or on the Building or complex identifying only the owner of the Building or other tenants signs.

(xx) Landlord's charitable or political contributions.

(xxi) Costs incurred for capital improvements or any other capital expenditures as determined under generally accepted commercial office building accounting principles except for the annual charge-off of Permitted Capital Expenditures explicitly provided in this Section 9.1(g)(3) below.

(xxii) All costs incurred due to violation by Landlord or any tenant of the terms and conditions of any lease, except to the extent such cost would have been incurred absent a violation.

(xxiii) Travel and entertainment costs.

(xxiv) Costs of gifts.

(xxv) Any interest or penalties incurred as a result of Landlord's failure to timely make tax payments or to file any tax information or returns when due (including any additional interest or penalty resulting from the failure to pay taxes in time to receive the greatest discount for early payment).

(xxvi) Rentals for items (except when needed in connection with normal repairs and maintenance of permanent systems) which if purchased, rather than rented, would constitute a capital improvement to the extent that such payments exceed the amount which could have been included in Operating Expenses had Landlord purchased such equipment rather than leasing such equipment, except to the extent permitted under Section 10.1(g)(3).

(xxvii) Any costs to perform any substantial renovation to the Building, including without limitation, Landlord's proposed or currently planned renovations to the Building lobby, entrances and elevator cabs.

(xxviii) Any costs or expenses incurred for the repair, maintenance or operation of any parking structure or parking area where Tenant is granted parking rights under this Lease, including, but not limited to, salaries and benefits of any attendants.

(xxix) The operating expenses incurred by Landlord relative to retail stores and any specialty services in the Building, and the cost of installing, operating and maintaining any specialty service observatory, broadcasting facilities, luncheon club, museum, athletic or recreational club (except as set forth in clause (xxxi) below).

(xxx) Cost of designing, renovating or otherwise constructing a fitness facility or other new amenity within the Building, but the cost of the repair, maintenance or use thereof shall be included in Operating Costs after deducting therefrom any revenue received by Landlord on any such facility or amenity; provided, however, that Tenant may elect, by giving notice of such election to Landlord not later than ninety (90) days after Landlord notifies Tenant of the establishment of any such new amenity, not to have the right to use such amenity, in which event no such costs shall be included in Operating Costs for purposes of this Lease.

(xxxi) Costs of replacement (as opposed to ordinary repair and maintenance) of the roof, foundation, exterior walls or other structural elements of the Premises (excluding replacement of damaged exterior glass).

(xxxii) Costs of repairs necessitated by Landlord's negligence or willful misconduct.

(xxxiii) That portion of employees expenses for employees whose time is not spent directly and solely in the operation of the Premises; and any fee charged by Landlord for supervision of its own employees.

(xxxiv) Landlord's general corporate overhead.

(xxxv) Rent and other costs incurred in connection with a management or leasing office to the extent the size or rental rate for such office space exceeds the size or fair market rental value of office space occupied by management personnel of comparable buildings (and Tenant agrees that the management and leasing office existing as of the Execution Date does not exceed such size).

(xxxvi) Taxes or any amounts or charges excluded from Taxes under this Lease.

(xxxvii) Any costs to relocate tenants or buy out any tenant's lease in the Building or otherwise terminate any tenant's lease.

(3) Capital Expenditures. Capital expenditures for replacements of existing capital items shall not be included in Operating Costs. If a new capital item is acquired which does not replace another capital item which was worn out, has become obsolete, etc., then there shall be included in Operating Costs for each Operating Year in which and after such capital expenditure is made the Annual Charge-Off of such capital expenditure, provided and only if:

- (x) the new capital item being acquired is required by law first enacted or adopted after the Execution Date of this Lease; or
- (y) The new capital item is reasonably projected to reduce Operating Costs by an amount reasonably proximate to the Annual Charge-Off (defined below) therefor, as reasonably determined by Landlord.

The “**Annual Charge-Off**” shall be defined as the annual amount of principal and interest payments which would be required to repay a loan (“**Capital Loan**”) in equal monthly installments over the Useful Life, as hereinafter defined, of the capital item in question on a level payment direct reduction basis at an annual interest rate equal to the Capital Interest Rate, as hereinafter defined, where the initial principal balance is the cost of the capital item in question. In no event shall the Annual Charge-Off of any capital expenditure incurred before or during calendar year 2018 or 2019 be included in Operating Expenses unless a full twelve (12) months of Annual Charge-Off thereof is included in Operating Costs in the applicable Base Year. The “**Useful Life**” shall be reasonably determined by Landlord in accordance with generally accepted accounting principles and practices in effect at the time of acquisition of the capital item. The “**Capital Interest Rate**” shall be defined as an annual rate of either two percentage points over the so-called The Wall Street Journal prime rate at the time the capital expenditure is made or, if the capital item is acquired through third-party financing, then the actual (including fluctuating) rate paid by Landlord in financing the acquisition of such capital item.

(4) “**Specifically Included Categories of Operating Costs.**” Subject to the Excluded Costs, Operating Costs shall include, but not be limited to, the following:

Taxes: Subject to exclusion (g)(2)(v) above, sales, Federal Social Security, Unemployment and Medicare Taxes and contributions and State Unemployment taxes and contributions accruing to and paid by Landlord on account of all employees of Landlord and/or Landlord’s managing agent, who are employed in, about or on account of the Building, except that taxes levied upon the net income of Landlord and taxes withheld from employees, and “Taxes” as defined in Section 9.1(d) shall not be included herein.

Water: All charges and rates connected with water supplied to the Building and related sewer use charges.

Heat and Air Conditioning: All charges connected with heat and air conditioning supplied to the Building exclusive of charges for after-hours HVAC supplied to any tenants in the Building (including Tenant).

Wages: Wages and the cost of all employee benefits of all employees of Landlord and/or Landlord’s managing agent who are employed in, about or on account of the Building.

Cleaning: The cost of labor and material for cleaning the Building, surrounding areaways and windows in the Building.

Elevator Maintenance: All expenses for or on account of the upkeep and maintenance of all elevators in the Building.

Management Fee: A management fee in an amount equal to three percent (3%) of the gross revenues of the Building, provided that a management fee of three percent (3%) of gross revenues (and grossed up as provided in this Lease) is included in Operating Costs in the Base Year.

Office Expenses: The cost of office expense, including, without limitation, rent, business supplies and equipment.

Electricity: The cost of all electric current for the operation of any machine, appliance or device used for the operation of the Premises and the Building, including the cost of electric current for the elevators, lights, air conditioning and heating, exclusive of tenant electricity supplied to leasable areas of the Building. If and so long as Tenant is billed directly by the electric utility for its own consumption as determined by its separate meter, or billed separately by Landlord as determined by a submeter or check meter, then Operating Costs shall include only Building and public area electric current consumption and not any leasable area electric current consumption (including electric current for HVAC air handling equipment in the Building). Wherever separate metering is unlawful, prohibited by utility company regulation or tariff or is otherwise impracticable, relevant consumption figures for the purposes of this Article 9 shall be determined by fair and reasonable allocations and engineering estimates made by Landlord.

Insurance, etc.: Fire, casualty, liability, rent loss and such other insurance as may from time to time be carried by Landlord, so long as typically carried by landlords of comparable buildings with respect to the Building, and the fees of Landlord's insurance consultants or brokers in connection therewith.

Other: Any common area or other charges which Landlord is required to pay with respect to Landlord's interest in the Building pursuant to any condominium, reciprocal easement or other similar documents applicable thereto but only if such documents is in existence as of the Premises A Commencement Date and all other expenses customarily incurred in connection with the operation and maintenance of first-class office buildings in the City or Town wherein the Building is located including, without limitation, commercially reasonable insurance deductible amounts.

(5) Gross-Up Provision. Notwithstanding the foregoing, in determining the amount of Operating Costs for any calendar year or portion thereof falling within the Term (including Operating Costs in the applicable Base Year), if less than ninety-five percent (95%) of the Rentable Area of the Building shall have been occupied by tenants at any time during the period in question, then Operating Costs that vary based on occupancy for such period shall be adjusted to equal the amount such variable Operating Costs would have been for such period had occupancy been ninety-five percent (95%) throughout such period. The extrapolation of Operating Costs under this paragraph shall be performed by appropriately adjusting the cost of those components of Operating Costs that are impacted by changes in the occupancy of the Building.

10.2 Tax Excess. If in any Tax Period the Taxes exceed the applicable Tax Base for the applicable Portion of the Premises, Tenant shall pay to Landlord the applicable Tenant's Proportionate Share for the applicable portion of the Premises (i.e. the Tenant's Premises A Proportionate Share or the Tenant's Premises B Proportionate Share, as the case may be) of such excess, such amount being hereinafter referred to as "**Tax Excess**". Tenant shall pay the Tax Excess as follows: (a) with respect to Premises A, commencing July 1, 2018, and (b) with respect to Premises B, commencing on September 1, 2019, Tenant shall make monthly estimated payments on account of the projected Tax Excess, as reasonably estimated by Landlord on the basis of the most recent Tax data available. Such monthly estimated payments shall be made commencing on the aforesaid date and otherwise at the same time and in the same manner as Tenant's monthly payments of Yearly Rent. Landlord shall furnish to Tenant, after the end of each year, a statement setting forth in reasonable detail the basis for the computation of Tax Excess. If the total of Tenant's monthly estimated payments with respect to any Tax Period is greater than the actual Tax Excess for such Tax Period, Tenant may credit the difference against the next installment of rental or other charges due to Landlord hereunder. If the total of such payments is less than the actual Tax Excess for such Tax Period, Tenant shall pay the difference to Landlord within thirty (30) days after Landlord's bill therefor. Landlord shall, upon written request of Tenant, from time to time, provide Tenant with copies of real estate tax bills for any Tax Period with respect to which Tenant is required to pay Tax Excess.

Appropriate credit against Tax Excess shall be given for any refund obtained by reason of a reduction in any Taxes by the Assessors or the administrative, judicial or other governmental agency responsible therefor. The original computations, as well as reimbursement or payments of additional charges, if any, or allowances, if any, under the provisions of this Section 9.2 shall be based on the original assessed valuations with adjustments to be made at a later date when the tax refund, if any, shall be paid to Landlord by the taxing authorities. Expenditures for legal fees and for other similar or dissimilar expenses incurred in obtaining the tax refund may be charged against the tax refund before the adjustments are made for the Tax Period.

10.3 Operating Costs Excess. If the Operating Costs in any Operating Year exceed the Operating Costs in the applicable Base Year for the applicable Portion of the Premises, Tenant shall pay to Landlord the applicable Tenant's Proportionate Share for the applicable portion of the Premises (i.e. the Tenant's Premises A Proportionate Share or the Tenant's Premises B Proportionate Share, as the case may be) of such excess, such amount being hereinafter referred to as "**Operating Costs Excess.**" Tenant shall pay the Operating Costs Excess as follows: (a) with respect to Premises A, commencing January 1, 2019, and (b) with respect to Premises B, commencing January 1, 2020, Tenant shall make monthly estimated payments on account of the projected Operating Costs Excess, as reasonably estimated by Landlord on the basis of the most recent Operating Costs data or budget available. Such monthly estimated payments shall be made commencing on the aforesaid date and otherwise at the same time and in the same manner as Tenant's monthly payments of Yearly Rent. Landlord shall furnish to Tenant, within one hundred fifty (150) days after the end of each year, a statement setting forth in reasonable detail the basis for the computation of Operating Costs Excess for each year, and shall provide Tenant with reasonable supporting information upon written request therefor given sixty (60) days within two hundred seventy (270) days of Tenant's receipt of such statement. If the total of Tenant's monthly estimated payments with respect to any Operating Year is greater than the actual Operating Costs Excess for such Operating Year, Tenant may credit the difference against the next installment of rental or other charges due to Landlord hereunder. If the total of such payments is less than the actual Operating Costs Excess for such Operating Year, Tenant shall pay the difference to Landlord when billed therefor.

10.4 Part Years. If Tenant is obligated to pay Operating Costs Excess or Tax Excess for only a part of an Operating Year or a Tax Period, the applicable Tenant's Proportionate Share of the Operating Costs Excess or Tax Excess, as the case may be, in respect of such Operating Year or Tax Period shall be reduced to an amount determined by multiplying such applicable Tenant's Proportionate Share by a fraction, the numerator of which is the number of days within such Operating Year or Tax Period for which Tenant has liability for the Operating Costs Excess or Tax Excess, as the case may be, and the denominator of which is three hundred sixty-five (365).

10.5 Effect of Taking. In the event of any taking of the Building or the land upon which it stands under circumstances whereby this Lease shall not terminate under the provisions of Article 20 then, for the purposes of determining Tax Excess there shall be substituted for the Tax Base originally provided for herein a fraction of such Tax Base, the numerator of which fraction shall be the Taxes for the first Tax Period subsequent to the condemnation or taking which takes into account such condemnation or taking, and the denominator of which shall be the Taxes for the last Tax Period prior to the condemnation or taking, which did not take into account such condemnation or taking. Tenant's Proportionate Share shall be adjusted appropriately to reflect the proportion of the Premises and/or the Building remaining after such taking.

10.6 Disputes, etc. Any disputes arising under this Article 9 may, at the election of either party, be submitted to arbitration as hereinafter provided. Any obligations under this Article 9 which shall not have been paid at the expiration or sooner termination of the Term of this Lease shall survive such expiration and shall be paid when and as the amount of same shall be determined to be due.

10.7 Tenant's Right to Examine Records.

Subject to the provisions of this Section 10.7, Tenant shall have the right, at Tenant's cost and expense, to examine all documentation and calculations prepared in determination of Operating Costs Excess. Tenant

(a) Shall have the right to make such examination no more than once in respect of any period in which Landlord has given Tenant a statement of the actual amount of Operating Costs (the "**Operating Costs Statement**"). Tenant shall have no right to examine all documentation and calculations pursuant to this Section 10.7 unless Tenant has paid the amount shown on the Operating Costs Statement. Tenant shall exercise such right by giving Landlord written notice (the "**Documentation Request**") no more than one hundred eighty (180) days after Landlord gives Tenant an Operating Costs Statement in respect of such period (the "**Documentation Request Due Date**"). Notwithstanding anything to the contrary herein contained, Tenant shall only have the right to examine the documentation and calculations relative to Operating Costs in the Base Year for the applicable Portion of the Premises for a period of one hundred eighty (180) days after Landlord gives Tenant the Operating Costs Statement with respect to the first or second Operating Year after the Base Year for the applicable Portion of the Premises (but Tenant shall have the right to exercise Operating Costs in the Base Year only once).

(b) Such documentation and calculations shall be made available to Tenant at the offices where Landlord keeps such records in Massachusetts during normal Business Hours within a reasonable time after Landlord receives a Documentation Request. Landlord shall notify Tenant (the "**Documentation Availability Notice**") when such documents and calculations are available for examination.

(c) Such examination (the "**Examination**") may be made only by Tenant's employees, a nationally or regionally recognized independent certified public accounting firm (a "**Major CPA Firm**"), or by another certified public accounting firm reasonably approved by Landlord, in either case licensed to do business in the jurisdiction where the Building is located or by Paul A. Stevens and Associates (an "**Approved Reviewer**"). Without limiting Landlord's approval rights, Landlord may withhold its approval of any examiner of Tenant other than Paul A. Stevens and Associates who is representing, or in the case of an examiner other than a Major CPA Firm has within the last two (2) years prior to Tenant's request represented, any other tenant in the Building. In no event shall Tenant use any examiner who is being paid by Tenant on a contingent fee basis.

(d) As a condition to performing any such Examination, Tenant and its examiner(s) shall be required to execute and deliver to Landlord a confidentiality agreement, in substantially the form attached hereto as Exhibit 9. Without limiting the foregoing in the case of an examiner other than an Approved Reviewer or a Major CPA Firm, such examiner(s) shall be required to agree that it will not represent any other tenant in the Building within the two (2) years following the audit.

(e) The Examination shall be commenced within thirty (30) days after Landlord delivers the Documentation Availability Notice and, subject to Landlord's providing Tenant and its consultants with the necessary access to books and back-up documentation promptly after delivery of the Documentation Availability Notice, shall be concluded within sixty (60) days of its commencement unless Tenant sends written notice of any necessary documentation not delivered by Landlord. Tenant shall provide Landlord with a written report (the "**Report**") from its examiner summarizing the results of the Examination not later than the earlier to occur of (a) ten (10) days after Tenant's receipt of the Report and (b) ninety-five (95) days after Landlord delivers the Documentation Availability Notice (the earlier of such dates, the "**Report Due Date**").

(f) If Tenant delivers the Report to Landlord on or before the Report Due Date, and if Tenant disagrees with the Operating Costs Statement, Landlord and Tenant shall negotiate in good faith for thirty (30) days (the "**Operating Costs Negotiation Period**") to agree on a resolution.

(g) If Landlord and Tenant have not agreed on a resolution within the Operating Costs Negotiation Period, then Tenant may request that the matter be determined by arbitration by giving Landlord written notice (the "**Operating Costs Arbitration Request**") within thirty (30) days after the expiration of the Operating Costs Negotiation Period (the "**Arbitration Request Due Date**"), in which case the matter shall be submitted to arbitration in accordance with the provisions of Section 29.5 hereof.

(h) If, after the Examination with respect to any calendar year, it is determined by agreement or arbitration that: (a) Tenant has made an overpayment on account of Operating Costs Excess, Landlord shall credit such overpayment against the next installment(s) of Yearly Rent thereafter payable by Tenant, except that if such overpayment is determined after the termination or expiration of the Term, Landlord shall promptly refund to Tenant the amount of such overpayment less any amounts then due from Tenant to Landlord; or (b) Tenant has made an underpayment on account of Operating Costs Excess, Tenant shall, within thirty (30) days of such determination, pay such underpayment to Landlord; and (c) if the amount of Operating Costs was overstated by more than five percent (5%), Landlord shall pay Tenant's reasonable out-of-pocket cost for such audit.

(i) Time is of the essence of the provisions of this Section 10.7. Should Tenant fail to give Landlord the Documentation Request by the Documentation Request Due Date, or the Report by the Report Due Date, or the Operating Costs Arbitration Request by the Arbitration Request Due Date, then in any such case Tenant shall have no further right to question said Operating Costs, and the amounts shown on Landlord's Operating Costs Statement shall be final as between the parties.

11. CHANGES OR ALTERATIONS BY LANDLORD

Landlord reserves the right, exercisable by itself or its nominee and subject to Tenant's rights under Section 9.8(h), at any time and from time to time without the same constituting an actual or constructive eviction and without incurring any liability to Tenant therefor or otherwise affecting Tenant's obligations under this Lease, to make such changes, alterations, additions, improvements, repairs or replacements in or to: (i) the Building (including the Premises) and the fixtures and equipment thereof, (ii) the street entrances, halls, passages, elevators, escalators, and stairways of the Building, and (iii) the Common Areas and facilities located therein, as Landlord may deem necessary or desirable, and to change the arrangement and/or location of entrances or passageways, doors and doorways, and corridors, elevators, stairs, toilets, or other public parts of the Building and/or the Common Areas, provided, however, that there be no unreasonable obstruction of the right of access to, or unreasonable interference with the use and enjoyment of, the Premises by Tenant. Nothing contained in this Article 11 shall be deemed to relieve Tenant of any duty, obligation or liability of Tenant with respect to making any repair, replacement or improvement or complying with any law, order or requirement of any governmental or other authority. Landlord reserves the right to adopt and at any time and from time to time to change the name or address of the Building. Neither this Lease nor any use by Tenant shall give Tenant any right or easement for the use of any door, passage, concourse or walkway within the Building or in the Common Areas, and the use of such doors, passages, concourses or walkways may be regulated or discontinued at any time and from time to time by Landlord without notice to Tenant and without affecting the obligation of Tenant hereunder or incurring any liability to Tenant therefor, provided, however, that there be no unreasonable obstruction of the right of access to, or unreasonable interference with the use of the Premises by Tenant.

If at any time any windows of the Premises are temporarily closed or darkened for any reason whatsoever except if due to Landlord's own acts, Landlord shall not be liable for any damage Tenant may sustain thereby, and Tenant shall not be entitled to any compensation therefor nor abatement of rent, nor shall the same release Tenant from its obligations hereunder or constitute an eviction. Nothing contained herein shall affect any of Tenant's rights or remedies under Section 9.8 above.

12. FIXTURES, EQUIPMENT AND IMPROVEMENTS--REMOVAL BY TENANT

All fixtures, equipment, improvements and appurtenances attached to or built into the Premises (excluding Tenant's furniture, fixtures, and equipment) prior to or during the Term, whether by Landlord at its expense or at the expense of Tenant (either or both) or by Tenant shall be and remain part of the Premises and shall not be removed by Tenant during or at the end of the Term unless Landlord otherwise elects to require Tenant to remove such fixtures, equipment, improvements and appurtenances, in accordance with and subject to Articles 13 and/or 23 of this Lease. Landlord agrees to notify Tenant in writing whether it will be required to remove any such fixtures, equipment, improvements and appurtenances at the end of the term at the time that Landlord approved Tenant's plans for same if Tenant requests in writing that Landlord make such election at the time that Tenant requests Landlord's approval thereof, provided that Tenant shall have no obligation to remove carpeting or leasehold improvements in the Premises that are customarily found in first-class business offices. All electric, plumbing, heating and sprinkling systems, fixtures and outlets, vaults, paneling, molding, shelving, radiator enclosures, cork,

rubber, linoleum and composition floors, ventilating, silencing, air conditioning and cooling equipment, shall be deemed to be included in such fixtures, equipment, improvements and appurtenances, whether or not attached to or built into the Premises. Where not built into the Premises, all removable electric fixtures, furniture, or trade fixtures or business equipment or Tenant's inventory or stock in trade shall not be deemed to be included in such fixtures, equipment, improvements and appurtenances and may be, and upon the request of Landlord will be, removed by Tenant upon the condition that such removal shall not materially damage the Premises or the Building and that the cost of repairing any damage to the Premises or the Building arising from installation or such removal shall be paid by Tenant.

13. ALTERATIONS AND IMPROVEMENTS BY TENANT

Tenant shall make no alterations, decorations, installations, removals, additions or improvements in or to the Premises ("**Alterations**") without Landlord's prior written consent and then only those that are made by contractors or mechanics approved by Landlord. No installations or work shall be undertaken or begun by Tenant until: (i) Landlord has approved written plans and specifications and a time schedule for such work; (ii) Tenant has made provision for either written waivers of liens from all contractors, laborers and suppliers of materials for such installations or work, with respect to any Alterations with an aggregate cost in excess of \$200,000.00, the filing of lien bonds on behalf of such contractors, laborers and suppliers, or other appropriate protective measures approved by Landlord; and (iii) with respect to any Alterations with an aggregate cost in excess of \$200,000.00, Tenant has procured appropriate surety payment and performance bonds. No amendments or additions to such plans and specifications shall be made without the prior written consent of Landlord. Landlord's consent and approval required under this Article 13 shall not be unreasonably withheld. Landlord's approval is solely given for the benefit of Landlord, and neither Tenant nor any third party shall have the right to rely upon Landlord's approval of Tenant's plans for any purpose whatsoever. Without limiting the foregoing, Tenant shall be responsible for all elements of the design of Tenant's plans (including, without limitation, compliance with law, functionality of design, the structural integrity of the design, the configuration of the Premises and the placement of Tenant's furniture, appliances and equipment), and Landlord's approval of Tenant's plans shall in no event relieve Tenant of the responsibility for such design. Landlord shall have no liability or responsibility for any claim, injury or damage alleged to have been caused by the particular materials, whether building standard or non-building standard, appliances or equipment selected by Tenant in connection with any work performed by or on behalf of Tenant in the Premises including, without limitation, furniture, carpeting, copiers, laser printers, computers and refrigerators. Any such Alterations shall be done at Tenant's sole expense and at such times and in such manner as Landlord may from time to time reasonably designate, pursuant to uniformly enforced, non-discriminatory construction rules and regulations in effect for the Building. Tenant shall reimburse Landlord, as Additional Rent, for any reasonable, out-of-pocket third-party costs (including engineers' and architects' fees and expenses but excluding in-house personnel of Landlord or its parent company) incurred by Landlord in connection with review and approval of the plans and specifications, and, with respect to Alterations that are structural or that materially affect the building systems, any inspections or other oversight by or on behalf of Landlord during the performance of such Alterations. Except for such out-of-pocket expenses, Landlord will not charge Tenant any construction management or supervisory fee in connection with Alterations including the Tenant Work, unless Landlord and Tenant otherwise agree that Landlord will manage the performance of such Alterations on Tenant's behalf. If Tenant shall make any Alterations, then Landlord may elect to require Tenant at the expiration or sooner termination of the Term of this Lease to restore the Premises to substantially the same condition as existed at the Commencement Date. Landlord agrees that Tenant will only be required to remove above-standard office improvements (including, without limitation, attached or built in fixtures, equipment and appurtenances) and, except as set forth below, will not have any obligation to remove any of Landlord's Work or the existing internal staircase(s) in the Premises. Notwithstanding the foregoing, Tenant shall at the election of Landlord remove any refrigerators and refrigeration equipment, including any associated taps, in the Premises, however affixed. If Tenant so requests in writing at the time that Tenant requests Landlord's approval of such Alterations, Landlord agrees to make such election at the time that Landlord approves Tenant's plans for any such Alterations.

Notwithstanding anything to the contrary herein contained, Tenant shall have the right, without obtaining Landlord's consent, to make interior nonstructural Alterations costing not more than \$150,000.00, provided however that:

- (i) Tenant shall give prior written notice to Landlord of such Alterations;
- (ii) Tenant shall submit to Landlord plans for such Alterations if Tenant utilizes plans for such Alterations; and
- (iii) Such Alterations shall not materially affect any of the Building's systems, or the ceiling of the Premises.

14. TENANT'S CONTRACTORS—MECHANICS' AND OTHER LIENS--STANDARD OF TENANT'S PERFORMANCE--COMPLIANCE WITH LAWS

(a) Whenever Tenant shall make any Alterations in or to the Premises after the Commencement Date, Tenant will strictly observe the following covenants and agreements:

(b) Tenant agrees that it will not, either directly or indirectly, use any contractors and/or materials if, in the reasonable judgment of Landlord, their use may cause any harm to Landlord or create any difficulty, whether in the nature of a labor dispute or otherwise, in the construction, maintenance and/or operation of the Building or any part thereof.

(c) In no event shall any material or equipment be incorporated in or added to the Premises, so as to become a fixture or otherwise a part of the Building, in connection with any such Alteration which is subject to any lien, charge, mortgage or other encumbrance of any kind whatsoever or is subject to any security interest or any form of title retention agreement. No installations or work shall be undertaken or begun by Tenant until Tenant has complied with the requirements of Article 13 hereof. Any mechanic's lien filed against the Premises or the Building for work claimed to have been done for, or materials claimed to have been furnished to, Tenant shall be discharged by Tenant within ten (10) business days thereafter, at Tenant's expense by filing the bond required by law or otherwise. If Tenant fails so to discharge or bond any lien, Landlord may do so at Tenant's expense, and Tenant shall reimburse Landlord for any expense or cost incurred by Landlord in so doing within fifteen (15) days after rendition of a bill therefor.

(d) All installations or work done by Tenant shall be at its own expense and shall at all times comply with (i) laws, rules, orders and regulations of governmental authorities having jurisdiction thereof; (ii) orders, rules and regulations of any Board of Fire Underwriters, or any other body hereafter constituted exercising similar functions, and governing insurance rating bureaus; (iii) the Rules and Regulations of Landlord, initially set forth in Exhibit 4 hereof, as the same may be reasonably modified from time to time over the Term of this Lease by prior written notice to Tenant; and (iv) plans and specifications prepared by and at the expense of Tenant theretofore submitted to and approved by Landlord.

(e) Tenant shall procure all necessary permits before undertaking any work in the Premises; do all of such work in a good and workmanlike manner, employing materials of good quality and complying with all governmental requirements; and defend, save harmless, exonerate and indemnify Landlord and Landlord's managing agent from all injury, loss or damage to any person or property occasioned by or growing out of such work. Tenant shall cause contractors employed by Tenant (i) to carry the insurance required in Section II of Exhibit 3 and (ii) to submit certificates evidencing such coverage to Landlord prior to the commencement of such work.

15. REPAIRS BY TENANT--FLOOR LOAD

15.1 Repairs by Tenant. Tenant shall keep the interior, non-structural elements of the Premises neat and clean and in such repair, order and condition as the same are in on the Commencement Date or may be put in during the Term hereof, reasonable use and wearing thereof and damage by fire or by other casualty and repairs for which Landlord is responsible excepted. Tenant shall be solely responsible for the proper maintenance of all equipment and appliances operated by Tenant, including, without limitation, copiers, laser printers, computers and refrigerators. Tenant shall be responsible for janitorial services to be provided to any non-core lavatories currently existing within the Premises. Tenant shall make all repairs in and about the Premises necessary to preserve them in such repair, order and condition, which repairs shall be in quality and class equal to the original work. If Tenant shall fail to complete any required repair within thirty (30) days after Landlord's written notice thereof, Landlord may elect, at the expense of Tenant, to make any such repairs or to repair any damage or injury to the Building or the Premises caused by moving property of Tenant in or out of the Building, or by installation or removal of furniture or other property, or by misuse by, or neglect, or improper conduct of, Tenant or Tenant's servants, employees, agents, contractors, or licensees.

15.2 Floor Load--Heavy Machinery. Tenant shall not place a load upon any floor of the Premises exceeding the floor load per square foot of area which such floor was designed to carry and which is allowed by law (i.e., 1,000 pounds per square foot of floor area). Landlord reserves the right to prescribe the weight and position of all business machines and mechanical equipment, including safes, which shall be placed so as to distribute the weight. Business machines and mechanical equipment shall be placed and maintained by Tenant at Tenant's expense in settings sufficient in Landlord's reasonable judgment to absorb and prevent vibration, noise and annoyance. Tenant shall not move any safe, heavy machinery, heavy equipment, freight, bulky matter, or fixtures into or out of the Building without Landlord's prior written consent. If such safe, machinery, equipment, freight, bulky matter or fixtures require special handling, Tenant agrees to employ only persons holding a Master Rigger's License to do said work, and that all work in connection therewith shall comply with applicable laws and regulations. Any such moving shall be at the sole risk and hazard of Tenant, and subject to the waiver of subrogation, Tenant will defend, indemnify and save Landlord harmless against and from any liability, loss, injury, claim or suit resulting directly or indirectly from such moving. Proper placement of all such business machines, etc., in the Premises shall be Tenant's responsibility.

16. INSURANCE, INDEMNIFICATION, EXONERATION AND EXCULPATION

16.1 General Liability Insurance. Tenant shall procure, keep in force, maintain and pay for insurance throughout the Term in accordance with the terms and in the amounts set forth in Exhibit 3.

16.2 General. Subject to the waiver of subrogation set forth in Section 20 herein, Tenant will save Landlord, its agents and employees, harmless and will exonerate, defend and indemnify Landlord, its agents and employees, from and against any and all claims, liabilities or penalties asserted by or on behalf of any third party arising from Tenant's breach of this Lease or:

(a) On account of or based upon any injury to person, or loss of or damage to property, sustained or occurring on the Premises on account of or based upon the act, omission, fault, negligence or misconduct of any person whomsoever (except to the extent the same is caused by Landlord, its agents, contractors or employees);

(b) On account of or based upon any injury to person, or loss of or damage to property, sustained or occurring elsewhere (other than on the Premises) in or about the Building (and, in particular, without limiting the generality of the foregoing, on or about the elevators, stairways, public corridors, sidewalks, concourses, arcades, malls, galleries, vehicular tunnels, approaches, areaways, roof, or other appurtenances and facilities used in connection with the Building or Premises) arising out of the use or occupancy of the Building or Premises by Tenant, or by any person claiming by, through or under Tenant, or on account of or based upon the negligent acts or omissions or willful misconduct of Tenant, its agents, employees or contractors; and

(c) On account of or based upon (including monies due on account of) any work or thing whatsoever done (other than by Landlord or its contractors, or agents or employees of either) on the Premises during the Term of this Lease and during the period of time, if any, prior to the Commencement Date that Tenant may have been given access to the Premises.

The foregoing indemnity shall not apply to any claims, liabilities or penalties arising from the negligence or willful misconduct of Landlord or any of Landlord's agents, employees or contractors or due to any breach of this Lease by Landlord.

16.3 Property of Tenant. In addition to and not in limitation of the foregoing, Tenant covenants and agrees that, to the maximum extent permitted by law, all merchandise, furniture, fixtures and property of every kind, nature and description related or arising out of Tenant's leasehold estate hereunder, which may be in or upon the Premises or Building, in the public corridors, or on the sidewalks, areaways and approaches adjacent thereto, shall be at the sole risk and hazard of Tenant, and that if the whole or any part thereof shall be damaged, destroyed, stolen or removed from any cause or reason whatsoever, no part of said damage or loss shall be charged to, or borne by, Landlord.

16.3A Landlord's Indemnity of Tenant. Landlord, subject to the limitations on Landlord's liability contained elsewhere in this Lease, agrees to hold Tenant harmless and to defend, exonerate and indemnify Tenant from and against any and all claims, liabilities, or penalties asserted by or on behalf of any third party for damage to property or injuries to persons sustained or occurring in the Building to the extent arising from the negligence or willful misconduct of Landlord or Landlord's agents, employees or contractors.

16.4 Bursting of Pipes, etc. Landlord shall not be liable for any injury or damage to persons or property resulting from fire, explosion, falling plaster, steam, gas, air contaminants or emissions, electricity, electrical or electronic emanations or disturbance, water, rain or snow or leaks from any part of the Building or from the pipes, appliances, equipment or plumbing works or from the roof, street or sub-surface or from any other place or caused by dampness, vandalism, malicious mischief or by any other cause of whatever nature, unless (x) caused by or due to the negligence of Landlord, its agents, servants or employees, and (y) if Tenant knew of such condition sufficiently in advance of the occurrence of any such injury or damage as would have enabled Landlord to prevent such damage or loss had Tenant notified Landlord of such condition, only after (i) notice to Landlord of the condition and (ii) the expiration of a reasonable time (such reasonableness to take into account the potential seriousness of the condition and, in the event of imminent danger to persons or property, shall mean promptly upon receipt of such notice) after such notice has been received by Landlord without Landlord having taken all reasonable and practicable means to cure or correct such condition. In the case of (ii) above, pending such cure or correction by Landlord, Tenant shall take all reasonably prudent temporary measures and safeguards to prevent any injury, loss or damage to persons or property. Subject to the foregoing, in no event shall Landlord be liable for any property loss, the risk of which is covered by Tenant's insurance or is required to be so covered by this Lease; nor shall Landlord or its agents be liable for any such damage caused by other tenants or persons in the Building or caused by operations in construction of any private, public, or quasi-public work; nor shall Landlord be liable for any latent defect in the Premises or in the Building.

16.5 Repairs and Alterations--No Diminution of Rental Value.

(a) Except as may be otherwise specifically provided in this Lease, there shall be no allowance to Tenant for diminution of rental value and no liability on the part of Landlord by reason of inconvenience, annoyance or injury to Tenant arising from any repairs, alterations, additions, replacements or improvements, or any related work made by Landlord, Tenant or others in or to any portion of the Building or Premises or any property adjoining the Building, or in or to fixtures, appurtenances, or equipment thereof, or for failure of Landlord or others to make any repairs, alterations, additions or improvements in or to any portion of the Building, or of the Premises, or in or to the fixtures, appurtenances or equipment thereof.

(b) Notwithstanding anything to the contrary in this Lease contained, if due to any such repairs, alterations, replacements, or improvements made by Landlord (a “**Repair Interruption**”) or if due to Landlord’s failure to make any repairs, alterations, or improvements required to be made by Landlord (a “**Failure to Repair**”), any portion of the Premises becomes untenantable or inaccessible so that for the Premises Untenantability Cure Period, as hereinafter defined, the continued operation in the ordinary course of Tenant’s business is materially adversely affected, then, provided that Tenant ceases to use the affected portion of the Premises for the conduct of its business during the entirety of the Premises Untenantability Cure Period by reason of such untenantability or inaccessibility, and that such untenantability or inaccessibility and Landlord’s inability to cure such condition is not caused by the fault or neglect of Tenant or Tenant’s agents, employees or contractors, Yearly Rent, Tenant’s Proportionate Share of Taxes and Tenant’s Proportionate Share of Operating Costs shall thereafter be abated in proportion to such untenantability until the day such condition is completely corrected and Tenant can use and access the Premises or such portion thereof for the conduct of its business therein. For the purposes hereof, the “**Premises Untenantability Cure Period**” shall be defined as four (4) consecutive business days after Landlord’s receipt of written notice from Tenant of the condition causing untenantability in the Premises, provided however, that the Premises Untenantability Cure Period shall be ten (10) consecutive business days after Landlord’s receipt of written notice from Tenant of such condition causing untenantability in the Premises if either the condition was caused by causes beyond Landlord’s control or Landlord is unable to cure such condition as the result of causes beyond Landlord’s control.

(c) The provisions of Section 16.5(b) shall not apply in the event of untenantability caused by fire or other casualty, or taking (see Articles 19 and 21). Tenant’s sole remedy in the case of a Repair Interruption shall be as set forth in this Section 15.5.

17. ASSIGNMENT, MORTGAGING AND SUBLETTING

(a) Except as expressly provided in this Article 16, Tenant covenants and agrees that neither this Lease nor the Term and estate hereby granted, nor any interest herein or therein, will be assigned, mortgaged, pledged, hypothecated, encumbered or otherwise transferred, voluntarily, by operation of law or otherwise, and that neither the Premises, nor any part thereof will be encumbered in any manner by reason of any act or omission on the part of Tenant, or used or occupied, or permitted to be used or occupied, or utilized for desk space or for mailing privileges, by anyone other than Tenant, or for any use or purpose other than the Permitted Use, or be sublet, or offered or advertised for subletting without Landlord’s prior written consent and subject to Section (b)(3) below of this Section 16. Notwithstanding the foregoing, it is hereby expressly understood and agreed however, if Tenant is a business entity, that the assignment or transfer of this Lease, and the Term and estate hereby granted, to any business entity into which Tenant is merged (including any merger where Tenant is the surviving entity) or with which Tenant is consolidated, which business entity shall have a net worth, as determined in accordance with generally accepted accounting principles, of at least Two Hundred Fifty Million Dollars \$250,000,000.00 or which acquires all or substantially all of Tenant’s business (whether by stock purchase or otherwise) or assets, or through a reorganization of Tenant from one form of legal entity into another form of legal entity so long as the successor entity assumes by operation of law or otherwise the obligations of Tenant under this Lease, (such business entity being hereinafter called “**Permitted Assignee**”), shall not require Landlord’s consent or the giving of a Recapture Offer (defined below), but upon the express condition that Permitted Assignee and Tenant shall promptly execute, acknowledge and deliver to Landlord an agreement (“**Assumption Agreement**”) in form and substance reasonably satisfactory to Landlord whereby Permitted Assignee shall agree to be independently bound by and upon all the covenants, agreements, terms, provisions and conditions set forth in this Lease on the part of Tenant to be performed, and whereby Permitted Assignee shall expressly agree that the provisions of this Article 16 shall, notwithstanding such assignment or transfer, continue to be binding upon it with respect to all future assignments and transfers. In addition to the foregoing, the transaction by which the Tenant becomes, and the trading of the Tenant’s voting stock while the Tenant remains, a so-called reporting public corporation under the provisions of the Securities Exchange Act of 1934, as amended, the outstanding voting stock of which is registered in accordance with the provisions of the Securities Act of 1933, as amended, and actively traded on the New York Stock Exchange or another recognized, national securities exchange (and for the purposes hereof, the term “voting stock” shall refer to shares of stock regularly entitled to vote for the election of directors of the corporation) shall not require Landlord’s consent or the giving of the Recapture Offer.

(b) Except for an assignment or sublease to a Permitted Assignee or to an Affiliated Entity, as defined below, then, notwithstanding anything to the contrary in this Lease contained:

(1) Tenant shall, prior to offering or advertising the Premises, or any portion thereof, for sublease give Landlord a Recapture Offer, as hereinafter defined.

(2) For the purposes hereof, a “**Recapture Offer**” shall be defined as a notice in writing from Tenant to Landlord which:

(i) States that Tenant desires to sublet the Premises, or a portion thereof.

(ii) Identifies the affected portion of the Premises (“**Recapture Premises**”).

(iii) Identifies the period of time (“**Recapture Period**”) during which Tenant proposes to sublet the Recapture Premises or to assign its interest in this Lease.

(iv) Offers to Landlord to terminate this Lease in respect of the Recapture Premises (in the case of a subletting for the remainder of the Term of this Lease) or to suspend the Term of this Lease pro tanto in respect of the Recapture Period (i.e., the Term of this Lease in respect of the Recapture Premises shall be terminated during the Recapture Period and Tenant's rental obligations shall be reduced in proportion to the ratio of the Total Rentable Area of the Recapture Premises to the Total Rentable Area of the Premises then demised to Tenant), except that, if the Recapture Period is not for the remainder of the Term, then Landlord or its assignee or subtenant will, unless Tenant agrees otherwise, restore the Recapture Premises to the condition on which it was delivered to Landlord and repair any and all damage to the Recapture Premises that may have occurred following such delivery by Tenant.

(3) Landlord shall have thirty (30) days to accept a Recapture Offer. If Landlord does not timely give written notice to Tenant accepting a Recapture Offer, then within the same thirty (30) day period Landlord shall not unreasonably withhold, condition, or delay its consent to a sublease of the Recapture Premises for the Recapture Period, or an assignment of Tenant's interest in this Lease, as the case may be, to a Qualified Transferee, as hereinafter defined. If Landlord recaptures a portion of the Premises, Landlord shall perform, at its expense, such work as shall be necessary to comply with applicable Laws and lawfully demise the recaptured portion of the Premises.

(4) For the purposes hereof, a “**Qualified Transferee**” shall be defined as a person, firm or corporation which, in Landlord's reasonable opinion:

(i) is financially responsible and of good reputation;

(ii) shall use the Premises for no other purpose than the Permitted Use; and

(iii) is not a Restricted Occupant, as hereinafter defined.

(5) For the purposes hereof, a “**Restricted Occupant**” shall be defined as any existing tenant or subtenant of premises in the Building (“**Occupant**”) unless such Occupant satisfies all three of the following criteria:

(i) Such Occupant desires to occupy the applicable portion of the Premises for expansion purposes only; and

(ii) Such Occupant's occupancy of the applicable portion of the Premises will not, either directly or indirectly, cause a vacancy in the premises which such Occupant then occupies in the Building; and

(iii) Such Occupant's need, as to the size of premises and length of term, cannot then (i.e., at the time that Tenant requests Landlord's consent to such Occupant) be satisfied by Landlord in the Building.

(6) Notwithstanding anything to the contrary in this Article 16(b) contained:

(i) If Tenant is in default of its obligations under this Lease continuing beyond the expiration of the applicable notice, grace or cure period at the time that it makes the aforesaid offer to Landlord, such default shall be deemed to be a "reasonable" reason for Landlord withholding its consent to any proposed subletting or assignment; and

(ii) If Tenant does not enter into a sublease with a subtenant (or an assignment to an assignee, as the case may be) approved by Landlord, as aforesaid, on or before the date which is twelve (12) months after the earlier of: (x) the expiration of said thirty (30) day period, or (y) the date that Landlord notifies Tenant that Landlord will not accept Tenant's offer to terminate or suspend this Lease, then before entering into any assignment or sublease, Tenant shall again offer to Landlord, in accordance with this Article 16(b), either to terminate or to suspend this Lease in respect of the portion of the Premises proposed to be sublet (or in respect of the entirety of the Premises in the event of a proposed assignment, as the case may be). If Tenant shall make any subsequent offers to terminate or suspend this Lease pursuant to this Article 16(b), any such subsequent offers shall be treated in all respects as if it is Tenant's first offer to suspend or terminate this Lease pursuant to this Article 16(b), provided that the period of time Landlord shall have in which to accept or reject such subsequent offer shall be ten (10) business days.

(7) No subletting or assignment shall relieve Tenant of its primary obligation as party-Tenant hereunder, nor shall it reduce or increase Landlord's obligations under this Lease.

(c) Notwithstanding anything to the contrary herein contained, Tenant shall have the right, without obtaining Landlord's consent and without giving Landlord a Recapture Offer, to assign its interest in this Lease or to sublease the Premises, or any portion thereof, to an Affiliated Entity, as hereinafter defined, so long as such entity remains in such relationship to Tenant, and provided that prior to or simultaneously with such assignment, such Affiliated Entity executes and delivers to Landlord an Assumption Agreement, as hereinabove defined. For the purposes hereof, an "**Affiliated Entity**" shall be defined as any entity which is controlled by, is under common control with, or which controls Tenant. For the purposes hereof, control shall mean the direct or indirect ownership of more than fifty (50%) percent of the beneficial interest of the entity in question.

(d) If this Lease be assigned, or if the Premises or any part thereof be sublet or occupied by anybody other than Tenant, Landlord may, at any time following a default which is not cured within applicable notice and cure periods, and from time to time, collect rent and other charges from the assignee, subtenant or occupant, and apply the net amount collected to the rent and other charges herein reserved then due and thereafter becoming due, but no such assignment, subletting, occupancy or collection shall be deemed a waiver of this covenant, or the acceptance of the assignee, subtenant or occupant as a tenant, or a release of Tenant from the further performance by Tenant of covenants on the part of Tenant herein contained. Any consent by Landlord to a particular assignment or subletting shall not in any way diminish the prohibition stated in the first sentence of this Article 16 or the continuing liability of Tenant named on Exhibit 1 as the party Tenant under this Lease. No assignment or subletting shall affect the purpose for which the Premises may be used as stated in Exhibit 1.

(e) In the event of an assignment of this Lease or a sublease of the Premises or any portion thereof to anyone other than a Permitted Assignee or Affiliated Entity, Tenant shall pay to Landlord fifty percent (50%) of any Net Transfer Profit (as defined below), payable in accordance with the following. In the case of an assignment of this Lease, “**Net Transfer Profit**”: (1) shall be defined as the amount (if any) by which any consideration paid by the assignee, if any, specifically for or as an inducement to Tenant to make said assignment exceeds the reasonable attorneys' fees, architectural and engineering fees, construction costs and brokerage fees and other inducements or concessions incurred by Tenant in order to effect such transfer (collectively, “**Transfer Expenses**”), and (2) shall be payable within five (5) business days following receipt of the payment to be made by the assignee to Tenant. In the case of a sublease, “**Net Transfer Profit**”: (3) shall be defined as a monthly amount equal to the amount by which the sublease rent actually received and other charges payable by the subtenant to Tenant under the sublease exceed the sum of the rent and other charges payable under this Lease for the Premises or allocable to the sublet portion thereof, plus the Transfer Expenses incurred with respect to such sublease, and (4) shall be payable on a monthly basis within five (5) business days following receipt of the subtenant’s payment of rent to Tenant under the sublease and after Tenant recovers such Transfer Expenses. Net Transfer Profit shall not include any amounts paid to Tenant for purchase or rental of furniture, fixtures or improvements or for leasehold improvements; provided, however, that Tenant shall not include the cost of any such items in Transfer Expenses.

(f) The listing of any name other than that of Tenant, whether on the doors of the Premises or on the Building directory, or otherwise, shall not operate to vest in any such other person, firm or corporation any right or interest in this Lease or in the Premises or be deemed to effect or evidence any consent of Landlord, it being expressly understood that any such listing is a privilege extended by Landlord revocable at will by written notice to Tenant.

(g) Tenant shall pay Landlord a review fee in the amount of Landlord’s reasonable, out of pocket costs for Landlord’s review of any requests by Tenant to sublet the Premises or assign its interest in this Lease. Such fee or costs shall be deemed to be additional rent under this Lease.

(h) Notwithstanding anything to the contrary herein contained, Tenant shall have the right, upon prior notice to Landlord but without having to obtain Landlord’s consent, to sublet up to ten percent (10%) of the floor area of the Premises for Internal Sublet Offices, as hereinafter defined, to Affiliated Entities and Tenant’s clients, Tenant’s customers and Tenant’s business partners (collectively the “**Permitted Users**”). For purposes of this Paragraph, an “**Internal Sublet Office**” shall have access to the Common Areas of the Building only through Tenant’s reception area and a secondary exit from Tenant’s Premises. Tenant shall be responsible for the Permitted Users complying with the terms and conditions of this Lease, and any failure of the Permitted Users to comply with the terms and conditions of this Lease shall be deemed a failure by Tenant to comply. Tenant acknowledges and agrees that it shall be responsible for all acts, omissions and negligence of the Permitted Users

18. MISCELLANEOUS COVENANTS

Tenant covenants and agrees as follows:

18.1 Rules and Regulations. Tenant will faithfully observe and comply with the Rules and Regulations annexed hereto as Exhibit 4 and such other and further reasonable Rules and Regulations as Landlord hereafter at any time or from time to time may make and may communicate in writing to Tenant, which in the reasonable judgment of Landlord shall be necessary for the reputation, safety, care or appearance of the Building, or the preservation of good order therein, or the operation or maintenance of the Building, or the equipment thereof, or the comfort of tenants or others in the Building, provided, however, that in the case of any conflict between the provisions of this Lease and any such regulations, the provisions of this Lease shall control, and provided further that nothing contained in this Lease shall be construed to impose upon Landlord any duty or obligation to enforce the Rules and Regulations or the terms, covenants or conditions in any other lease as against any other tenant and Landlord shall not be liable to Tenant for violation of the same by any other tenant, its servants, employees, agents, contractors, visitors, invitees or licensees. Notwithstanding anything to the contrary in this Lease contained, Landlord agrees that it will not enforce said Rules and Regulations against Tenant in a discriminatory or arbitrary manner.

18.2 Access to Premises. Tenant shall: (i) permit Landlord to erect, use and maintain pipes, ducts and conduits in and through the Premises, provided the same do not materially reduce the floor area or materially adversely affect the appearance thereof; (ii) upon prior oral/email notice (except that no notice shall be required in emergency situations), permit Landlord and any mortgagee of the Building or the Building and land or of the interest of Landlord therein, and any lessor under any underlying lease, and their representatives, to have reasonable access to and to enter upon the Premises at all reasonable hours for the purposes of inspection or of making repairs, replacements or improvements in or to the Premises or the Building or equipment (including, without limitation, sanitary, electrical, heating, air conditioning or other systems) or of complying with all laws, orders and requirements of governmental or other authority or of exercising any right reserved to Landlord by this Lease (including the right during the progress of any such repairs, replacements or improvements or while performing work and furnishing materials in connection with compliance with any such laws, orders or requirements to take upon or through, or to keep and store within, the Premises all necessary materials, tools and equipment, provided that such storage does not adversely affect Tenant's access to or the use and occupancy of the Premises); and (iii) permit Landlord, at reasonable times, to show the Premises during ordinary Business Hours to any existing or prospective mortgagee, purchaser, or assignee of any mortgage of the Building or of the Building and the land or of the interest of Landlord therein, and during the period of twelve (12) months next preceding the Expiration Date to any person contemplating the leasing of the Premises or any part thereof. If Tenant shall not be personally present to open and permit an entry into the Premises at any time when for any reason an entry therein shall be necessary or permissible, Landlord or Landlord's agents may enter the same by a master key, or, in the event of an emergency, may forcibly enter the same, without rendering Landlord or such agents liable therefor (if during such entry Landlord or Landlord's agents shall accord reasonable care to Tenant's property), and without in any manner affecting the obligations and covenants of this Lease; provided, however, except in an emergency, Landlord shall use reasonable efforts to schedule any access in advance with Tenant and at times when Tenant is reasonably able to have a representative present during such access. Landlord shall exercise its rights of access to the Premises permitted under any of the terms and provisions of this Lease in such manner as to minimize to the extent practicable interference with Tenant's use and occupation of the Premises.

18.3 Accidents to Sanitary and Other Systems. Tenant shall give to Landlord prompt notice of any fire or accident in the Premises or in the Building and of any damage to, or defective condition in, any part or appurtenance of the Building including, without limitation, sanitary, electrical, ventilation, heating and air conditioning or other systems located in, or passing through, the Premises. Except as otherwise provided in Articles 19 and 21, and subject to Tenant's obligations in Article 15, such damage or defective condition shall be remedied by Landlord with reasonable diligence, but if such damage or defective condition was caused by Tenant or by the employees, licensees, contractors or invitees of Tenant, the cost to remedy the same shall be paid by Tenant, subject to the waiver of subrogation in this Lease. In addition, all reasonable costs incurred by Landlord in connection with the investigation of any notice given by Tenant shall be paid by Tenant if the reported damage or defective condition was caused by Tenant or by the employees, licensees, contractors, or invitees of Tenant, subject to the waiver of subrogation in this Lease. Tenant shall not be entitled to claim any eviction from the Premises or any damages arising from any such damage or defect unless the same (i) shall have been occasioned by the negligence or willful misconduct of Landlord, its agents, servants or employees and (ii) shall not, after notice to Landlord of the condition, have been cured or corrected within thirty (30) days after such notice has been received by Landlord; and in case of a claim of eviction unless such damage or defective condition shall have rendered the Premises untenable and they shall not have been made tenable by Landlord within the aforesaid thirty (30) days.

18.4 Signs, Blinds and Drapes. Tenant shall put no signs in any part of the Building. Except for the building standard window blinds to be installed by Landlord, at Landlord's cost and expense in accordance with Section 4.2, no signs or blinds may be put on or in any window or elsewhere if visible from the exterior of the Building, nor may the building standard drapes or blinds be removed by Tenant. Notwithstanding the foregoing, Landlord shall, at Landlord's cost, during the Term of this Lease, list Tenant's name on all Building directories, including in the main Building lobby and the second floor elevator lobby. The initial listing of Tenant's name shall be at Landlord's cost and expense. Any changes, replacements or additions by Tenant to such directory shall be at Tenant's sole cost and expense. Tenant may hang its own drapes, provided that they shall not in any way interfere with the building standard drapery or blinds or be visible from the exterior of the Building and that such drapes are so hung and installed that when drawn, the building standard drapery or blinds are automatically also drawn. Any signs or lettering in the public corridors or on the doors shall conform to Landlord's building standard design. Neither Landlord's name, nor the name of the Building or the name of any other structure erected or used in conjunction therewith shall be used without Landlord's consent in any advertising material (except on business stationery or as an address in advertising matter), nor shall any such name, as aforesaid, be used in any undignified, confusing, detrimental or misleading manner.

18.5 Estoppel Certificate. Either party shall at any time and from time to time upon not less than ten (10) business days' prior notice to the other party (the "Requesting Party"), execute, acknowledge and deliver to the Requesting Party a statement in writing certifying that this Lease is unmodified and in full force and effect (or if there have been modifications, that the same is in full force and effect as modified and stating the modifications), and the dates to which the Yearly Rent and other charges have been paid in advance, if any, stating whether or not such party is in default in performance of any covenant, agreement, term, provision or condition contained in this Lease and, if so, specifying each such default and such other facts as the Requesting Party may reasonably request and which are customarily included in estoppels certificates, it being intended that any such statement delivered pursuant hereto may be relied upon by any prospective purchaser of the Building or of the Building and the land or of any interest of Landlord therein, any mortgagee or prospective mortgagee thereof, any lessor or prospective lessor thereof, any lessee or prospective lessee thereof, or any prospective assignee of any mortgage thereof. Time is of the essence in respect of any such requested certificate, both parties hereby acknowledging the importance of such certificates in mortgage financing arrangements, prospective sale and the like. If Tenant fails to so execute and deliver such estoppel certificate within such ten (10) business day period, then Landlord shall be entitled to send Tenant a second notice requesting such execution and delivery of such estoppel certificate ("Second Notice"), and if Tenant fails to execute and deliver such estoppel certificate within three (3) days after the Second Notice, then Tenant shall pay to Landlord a fee in the amount of Five Hundred and 00/100 Dollars (\$500.00) per day for each day beyond the third (3rd) day after the Second Notice that Tenant fails to execute and deliver such estoppel certificate. Such fee shall be in addition to Landlord's other remedies hereunder.

18.6 Prohibited Materials and Property. Tenant shall not bring or permit to be brought or kept in or on the Premises or elsewhere in the Building (i) any inflammable, combustible or explosive fluid, material, chemical or substance including, without limitation, any hazardous substances (collectively, "Hazardous Materials") as defined under applicable state or local law, under the Federal Comprehensive Environmental Response Compensation and Liability Act (CERCLA), 42 USC §9601 et seq., as amended, under Section 3001 of the Federal Resource Conservation and Recovery Act of 1976, as amended, or under any regulation of any governmental authority regulating environmental or health matters (collectively, "Environmental Laws") (except for standard office supplies and cleaning supplies used, stored, and disposed of in accordance with applicable law) or (ii) any materials, appliances or equipment (including, without limitation, materials, appliances and equipment selected by Tenant for the construction or other preparation of the Premises and furniture and carpeting) which pose any danger to life, safety or health or may cause damage, injury or death. Tenant shall not cause or permit any potentially harmful air emissions, odors of cooking or other processes, or any unusual or other objectionable odors or emissions to emanate from or permeate the Premises. The occasional presence of normal food odors generated by catered events in the Atrium shall not be considered to violate the foregoing restriction. In the event that, during the performance of any Alterations by Tenant at the Premises, including during the performance of the Tenant Work, the removal, encapsulation or other remediation of Hazardous Materials determined to be present in the Premises as of the Commencement Date shall be required pursuant to any Environmental Laws, such removal, encapsulation or other remediation shall be performed by Landlord, at Landlord's expense, to the extent required by such Environmental Laws and if any portion of the Premises is rendered unusable or inaccessible as a result of the presence or remediation of such Hazardous Materials, then the Yearly Rent, Operating Expense Excess and Tax Excess shall be abated in proportion to such untenability until such time as the affected portion of the Premises is usable and accessible.

18.7 Requirements of Law--Fines and Penalties. Tenant at its sole expense shall comply with all laws, rules, orders and regulations, including, without limitation, all energy-related requirements, of Federal, State, County and Municipal Authorities and with any direction of any public officer or officers, pursuant to law, which shall impose any duty upon Landlord or Tenant with respect to or arising out of Tenant's use or occupancy of the Premises. Tenant shall reimburse and compensate Landlord for all expenditures made by, or damages or fines sustained or incurred by, Landlord due to nonperformance or noncompliance with or breach or failure to observe any item, covenant, or condition of this Lease upon Tenant's part to be kept, observed, performed or complied with. If Tenant receives notice of any violation of law, ordinance, order or regulation applicable to the Premises, it shall give prompt notice thereof to Landlord. During the Term, Tenant shall not be responsible for the costs to make Common Areas of the Building or any entrance to the Premises comply with applicable law, including the Americans with Disabilities Act (42 U.S.C. § 12101 et. seq.) and the regulations and Accessibility Guidelines for Buildings and Facilities issued pursuant thereto, unless the requirement to comply was triggered by either (i) Tenant's particular use of the premises (versus general office or retail use) or (ii) any improvements to the premises made by or on behalf of Tenant. However, Tenant agrees that, within the Premises, it shall be responsible for compliance with the Americans with Disabilities Act (42 U.S.C. § 12101 et. seq.) and the regulations and Accessibility Guidelines for Buildings and Facilities issued pursuant thereto.

18.8 Tenant's Acts--Effect on Insurance. Tenant shall not do or permit to be done any act or thing upon the Premises or elsewhere in the Building which will invalidate or be in conflict with any insurance policies covering the Building and the fixtures and property therein; and shall not do, or permit to be done, any act or thing upon the Premises which shall subject Landlord to any liability or responsibility for injury to any person or persons or to property by reason of any business or operation being carried on upon said Premises or for any other reason. Tenant at its own expense shall comply with all rules, orders, regulations and requirements of the Board of Fire Underwriters, or any other similar body having jurisdiction, and shall not (i) do, or permit anything to be done, in or upon the Premises, or bring or keep anything therein, except as now or hereafter permitted by the Fire Department, Board of Underwriters, Fire Insurance Rating Organization, or other authority having jurisdiction, and then only in such quantity and manner of storage as will not increase the rate for any insurance applicable to the Building, or (ii) use the Premises in a manner which shall increase such insurance rates on the Building, or on property located therein, over that applicable when Tenant first took occupancy of the Premises hereunder. If by reason of the failure of Tenant to comply with the provisions hereof the insurance rate applicable to any policy of insurance shall at any time thereafter be higher than it otherwise would be, Tenant shall reimburse Landlord for that part of any insurance premiums thereafter paid by Landlord, which shall have been charged because of such failure by Tenant.

18.9 Miscellaneous. Tenant shall not suffer or permit the Premises or any fixtures, equipment or utilities therein or serving the same, to be overloaded, damaged or defaced, nor permit any hole to be drilled or made in any part thereof, except for the purpose of hanging lightweight artwork, whiteboards, tack boards, and similar wall hangings on the walls of the Premises. Tenant shall not suffer or permit any employee, contractor, business invitee or visitor to violate any covenant, agreement or obligations of Tenant under this Lease.

19. **DAMAGE BY FIRE, ETC.**

During the entire Term of this Lease, and adjusting insurance coverages to reflect current values from time to time:--(i) Landlord shall keep the Building (excluding the Tenant Work Alterations installed in the Premises after the Commencement Date ("**Later Alterations**") and any personal property or trade fixtures installed by or at the expense of Tenant) insured in accordance with Exhibit 3; and (ii) Tenant shall keep its personal property and trade fixtures in and about the Premises and the Later Alterations insured in accordance with Exhibit 3.

If any portion of the Premises required to be insured by Landlord under the preceding paragraph shall be damaged by fire or other insured casualty, or the use thereof or access thereto shall be legally prohibited (or prohibited by Landlord) due to fire or other insured casualty (regardless of whether or not such fire or other insured casualty actually damages the Premises), Landlord shall proceed with diligence, subject to the then applicable statutes, building codes, zoning ordinances, and regulations of any governmental authority, and at the expense of Landlord (but only to the extent of insurance proceeds made available to Landlord by any mortgagee of the real property of which the Premises are a part) to repair or cause to be repaired such damage, provided, however, in respect of any Later Alterations as shall have been damaged by such fire or other casualty and which (in the judgment of Landlord) can more effectively be repaired as an integral part of Landlord's repair work on the Premises, that such repairs to such Later Alterations shall be performed by Landlord but at Tenant's expense (which expense shall be limited to the proceeds of insurance maintained by Tenant or required to be maintained by Tenant hereunder, plus the deductible payable under the applicable policy); in all other respects, all repairs to and replacements of Tenant's property and Later Alterations shall be made by and at the expense of Tenant. If the Premises or any part thereof shall have been rendered unfit for use and occupation hereunder by reason of such damage, the Yearly Rent (together with Operating Costs Excess and Tax Excess) and electricity charges or a just and proportionate part thereof, according to the nature and extent to which the Premises shall have been so rendered unfit, shall be suspended or abated until the Premises (except as to the property which is to be repaired by or at the expense of Tenant), or legal access thereto or use thereof as aforesaid, shall have been restored as nearly as practicably may be to the condition in which they were immediately prior to such fire or other casualty, provided, however, that if Landlord or any mortgagee of the Building or of the Building and the land or Landlord's interest therein shall be unable to collect the insurance proceeds (including rent insurance proceeds) applicable to such damage or associated business interruption because of some action or inaction on the part of Tenant, or the employees, licensees or invitees of Tenant and such action or inaction is not cured within ten (10) days after receipt of written notice from Landlord, the cost of repairing such damage shall be paid by Tenant and there shall be no abatement of rent. Notwithstanding the foregoing, the abatement of Rent shall continue for one hundred fifty (150) days following Landlord's restoration to permit Tenant to restore the later Alterations. Landlord shall not be liable

for delays in the making of any such repairs which are due to government regulation, casualties and strikes, unavailability of labor and materials, and other causes beyond the reasonable control of Landlord, nor shall Landlord be liable for any inconvenience or annoyance to Tenant or injury to the business of Tenant resulting from such delays in repairing such damage. If (i) the Premises (or legal access thereto or use thereof) are so damaged or prevented by fire or other casualty (whether or not insured) at any time during the last twenty-four (24) months of the Term hereof that the cost to repair such damage is reasonably estimated to exceed one third of the total Yearly Rent payable hereunder for the period from the estimated date of restoration until the Expiration Date, or (ii) the Building (whether or not including any portion of the Premises) is so damaged by fire or other casualty (whether or not insured) that substantial alteration or reconstruction or demolition of the Building shall in Landlord's judgment be required, then and in either of such events, this Lease and the Term hereof may be terminated at the election of Landlord or Tenant by a notice in writing of its election so to terminate which shall be given within sixty (60) days following such fire or other casualty, the effective termination date of which shall be not less than thirty (30) days after the day on which such termination notice is received by the other party; provided, however, with respect to any termination under clause (ii) where the Premises have not been damaged, Tenant may elect to extend the termination date to the date that is one hundred eighty (180) days after delivery of Landlord's termination notice. In the event of any termination, this Lease and the Term hereof shall expire as of such effective termination date as though that were the Expiration Date as stated in Exhibit 1 and the Yearly Rent shall be apportioned as of such date; and if the Premises or any part thereof shall have been rendered unfit for use and occupation by reason of such damage the Yearly Rent (together with Operating Costs Excess, Tax Excess, and Electricity Charge) for the period from the date of the fire or other casualty to the effective termination date, or a just and proportionate part thereof, according to the nature and extent to which the Premises shall have been so rendered unfit, shall be abated.

20. WAIVER OF SUBROGATION

In any case in which Tenant shall be obligated to pay to Landlord any loss, cost, damage, liability, or expense suffered or incurred by Landlord, Landlord shall allow to Tenant as an offset against the amount thereof (i) the net proceeds of any insurance collected by Landlord for or on account of such loss, cost, damage, liability or expense, and (ii) if such loss, cost, damage, liability or expense shall have been caused by a peril against which Landlord has agreed to procure insurance coverage under the terms of this Lease, the amount of such insurance coverage, whether or not actually procured by Landlord. Landlord agrees that the deductible under such policy shall be a commercially reasonable amount.

In any case in which Landlord or Landlord's managing agent shall be obligated to pay to Tenant any loss, cost, damage, liability or expense suffered or incurred by Tenant, Tenant shall allow to Landlord or Landlord's managing agent, as the case may be, as an offset against the amount thereof (i) the net proceeds of any insurance collected by Tenant for or on account of such loss, cost, damage, liability, or expense, and (ii) if such loss, cost, damage, liability or expense shall have been caused by a peril against which Tenant has agreed to procure insurance coverage under the terms of this Lease, the amount of such insurance coverage, whether or not actually procured by Tenant. Tenant agrees that the deductible under such policy shall be a commercially reasonable amount.

The parties hereto shall each procure an appropriate clause in, or endorsement on, any property insurance policy covering the Premises (including Later Alterations) and the Building and personal property, fixtures and equipment located thereon and therein, pursuant to which the insurance companies waive subrogation or consent to a waiver of right of recovery in favor of either party, its respective agents or employees. Each party hereby agrees that it will not make any claim against or seek to recover from the other or its agents or employees for any loss or damage to the Premises, the Building, or the claiming party's property or the property of others claiming under such claiming party resulting from perils required to be insured by such party's property insurance.

21. CONDEMNATION - EMINENT DOMAIN

In the event that the Premises or any part thereof, or the whole or any part of the Building, shall be taken or appropriated by eminent domain or shall be condemned for any public or quasi-public use, or (by virtue of any such taking, appropriation or condemnation) shall suffer any damage (direct, indirect or consequential) for which Landlord or Tenant shall be entitled to compensation, then (and in any such event) this Lease and the Term hereof may be terminated at the election of Landlord by a notice in writing of its election so to terminate which shall be given by Landlord to Tenant within sixty (60) days following the date on which Landlord shall have received notice of such taking, appropriation or condemnation. In the event that a material part of the Premises or the means of access thereto shall be so taken, appropriated or condemned, and in either case, the remainder of the Premises or the mode of access thereto is, in Tenant's reasonable judgment, unsuitable for the operation of Tenant's business in the Premises, then (and in any such event) this Lease and the Term hereof may be terminated at the election of Tenant by a notice in writing of its election so to terminate which shall be given by Tenant to Landlord within sixty (60) days following the date on which Tenant shall have received notice of such taking, appropriation or condemnation.

Upon the giving of any such notice of termination (either by Landlord or Tenant) this Lease and the Term hereof shall terminate on or retroactively as of the date on which Tenant shall be required to vacate any part of the Premises or shall be deprived of a substantial part of the means of access thereto, provided, however, that Landlord may in Landlord's notice elect to terminate this Lease and the Term hereof retroactively as of the date on which such taking, appropriation or condemnation became legally effective. In the event of any such termination, this Lease and the Term hereof shall expire as of such effective termination date as though that were the Expiration Date as stated in Exhibit 1, and the Yearly Rent (together with Operating Costs Excess and Tax Excess) shall be apportioned as of such date. If neither party (having the right so to do) elects to terminate Landlord will, with reasonable diligence and at Landlord's expense, restore the remainder of the Premises, or the remainder of the means of access, as nearly as practicably may be to the same condition as obtained prior to such taking, appropriation or condemnation in which event (i) the Total Rentable Area shall be equitably adjusted, (ii) a just proportion of the Yearly Rent, according to the nature and extent of the taking, appropriation or condemnation and the resulting permanent injury to the Premises and the means of access thereto, shall be permanently abated, and (iii) a just proportion of the remainder of the Yearly Rent, according to the nature and extent of the taking, appropriation or condemnation and the resultant injury sustained by the Premises and the means of access thereto, shall be abated until what remains of the Premises and the means of access thereto shall have been restored as fully as may be for permanent use and occupation by Tenant hereunder. Except for any award specifically reimbursing Tenant for moving or relocation expenses or for Tenant's personal property, or for the unamortized value of any leasehold improvements paid for by Tenant (in excess of any Landlord contribution), there are expressly reserved to Landlord all rights to compensation and damages created, accrued or accruing by reason of any such taking, appropriation or condemnation, in implementation and in confirmation of which Tenant does hereby acknowledge that Landlord shall be entitled to receive all such compensation and damages, grant to Landlord all and whatever rights (if any) Tenant may have to such compensation and damages, and agree to execute and deliver all and whatever further instruments of assignment as Landlord may from time to time reasonably request. In the event of any taking of the Premises or any part thereof for temporary (i.e., not in excess of one (1) year) use, (i) this Lease shall be and remain unaffected thereby, and (ii) Tenant shall be entitled to receive for itself any award made to the extent allocable to the Premises in respect of such taking on account of such use, provided, that if any taking is for a period extending beyond the Term of this Lease, such award shall be apportioned between Landlord and Tenant as of the Expiration Date or earlier termination of this Lease.

22. DEFAULT

22.1 Conditions of Limitation - Re-entry - Termination. This Lease and the herein Term and estate are, upon the condition that if (a) subject to Section 21.2, Tenant shall neglect or fail to perform or observe any of Tenant's covenants or agreements herein, including (without limitation) the covenants or agreements with regard to the payment when due of rent, additional charges, reimbursement for increase in Landlord's costs, or any other charge payable by Tenant to Landlord (all of which shall be considered as part of Yearly Rent for the purposes of invoking Landlord's statutory or other rights and remedies in respect of payment defaults); or (b) Tenant shall be involved in financial difficulties as evidenced by an admission in writing by Tenant of Tenant's inability to pay its debts generally as they become due, or by the making or offering to make a composition of its debts with its creditors; or (c) Tenant shall make an assignment or trust mortgage, or other conveyance or transfer of like nature, of

all or a substantial part of its property for the benefit of its creditors, or (d) an attachment or other legal process shall issue against Tenant or its property and a sale of any of its assets shall be held thereunder; or (e) any judgment, final beyond appeal or any lien, attachment or the like shall be entered, recorded or filed against Tenant in any court, registry, etc. and Tenant shall fail to pay such judgment within sixty (60) days after the judgment shall have become final beyond appeal or to discharge or secure by surety bond such lien, attachment, etc. within sixty (60) days of such entry, recording or filing, as the case may be; or (f) the leasehold hereby created shall be taken on execution or by other process of law and shall not be re-vested in Tenant within sixty (60) days thereafter; or (g) a receiver, sequesterer, trustee or similar officer shall be appointed by a court of competent jurisdiction to take charge of all or any part of Tenant's property and such appointment shall not be vacated within sixty (60) days; or (h) any proceeding shall be instituted by or against Tenant pursuant to any of the provisions of any Act of Congress or State law relating to bankruptcy, reorganizations, arrangements, compositions or other relief from creditors, and, in the case of any proceeding instituted against it, if Tenant shall fail to have such proceedings dismissed within sixty (60) days or if Tenant is adjudged bankrupt or insolvent as a result of any such proceeding, or (i) any event shall occur or any contingency shall arise whereby this Lease, or the Term and estate thereby created, would (by operation of law or otherwise) devolve upon or pass to any person, firm or corporation other than Tenant, except as expressly permitted under Article 17 hereof - then, and in any such event (except as hereinafter in Section 22.2 otherwise provided) Landlord may, by written notice to Tenant, elect to terminate this Lease; and thereupon (and without prejudice to any remedies which might otherwise be available for arrears of rent or other charges due hereunder or preceding breach of covenant or agreement and without prejudice to Tenant's liability for damages as hereinafter stated), upon the giving of such notice, this Lease shall terminate as of the date specified therein as though that were the Expiration Date as stated in Exhibit 1. Without being taken or deemed to be guilty of any manner of trespass or conversion, and without being liable to indictment, prosecution or damages therefor, Landlord may, by any lawful means, enter into and upon the Premises (or any part thereof in the name of the whole); repossess the same as of its former estate; and expel Tenant and those claiming under Tenant. The words "re-entry" and "re-enter" as used in this Lease are not restricted to their technical legal meanings.

22.2 Grace Period. Notwithstanding anything to the contrary in this Article contained, Landlord agrees not to take any action to terminate this Lease (a) for default by Tenant in the payment when due of any sum of money, if Tenant shall cure such default within five (5) business days after written notice thereof is given by Landlord to Tenant, provided, however, that no such notice need be given and no such default in the payment of money shall be curable if on two (2) prior occasions in any twelve (12) month period there had been a default in the payment of money which had been cured after notice thereof had been given by Landlord to Tenant as herein provided or (b) for default by Tenant in the performance of any covenant other than a covenant to pay a sum of money, if Tenant shall cure such default within a period of thirty (30) days after written notice thereof given by Landlord to Tenant (except where the emergency nature of the default threatens to cause bodily injury or damage to property and remedial action should appropriately take place sooner, as indicated in such written notice), or within such additional period as may reasonably be required to cure such default if the default is of such a nature that it cannot be cured within such thirty-(30)-day period, provided, however, (1) that there shall be no extension of time beyond such thirty-(30)-day period for the curing of any such default unless, not more than ten (10) days after the receipt of the notice of default, Tenant in writing (i) shall specify the cause on account of which the default cannot be cured during such period and shall advise Landlord of its intention duly to institute all steps necessary to cure the default and (ii) shall, as soon as reasonably practicable, duly institute and thereafter diligently prosecute to completion all steps necessary to cure such default and, (2) that no notice of the opportunity to cure a default need be given, and no grace period whatsoever shall be allowed to Tenant, if the default is incurable.

Notwithstanding anything to the contrary in this Section 22.2 contained, except to the extent prohibited by applicable law, any statutory notice and grace periods provided to Tenant by law are hereby expressly waived by Tenant.

22.3 Damages - Termination. Upon the termination of this Lease under the provisions of this Article 22, Tenant shall pay to Landlord the rent and other charges payable by Tenant to Landlord up to the time of such termination, shall continue to be liable for any preceding breach of covenant, and in addition, shall pay to Landlord as damages, at the election of Landlord

either:

(x) the amount (the “**Excess Amount**”) by which, at the time of the termination of this Lease (or at any time thereafter if Landlord shall have initially elected damages under subparagraph (y), below), (i) the aggregate of the rent and other charges projected over the period commencing with such termination and ending on the Expiration Date as stated in Exhibit 1 exceeds (ii) the aggregate projected rental value of the Premises for such period, as such Excess Amount is reduced to present value using a discount rate of the then-applicable federal discount rate;

or:

(y) amounts equal to the rent and other charges which would have been payable by Tenant had this Lease not been so terminated, payable upon the due dates therefor specified herein following such termination and until the Expiration Date as specified in Exhibit 1, provided, however, if Landlord shall re-let the Premises during such period, that Landlord shall credit Tenant with the net rents received by Landlord from such re-letting, such net rents to be determined by first deducting from the gross rents as and when received by Landlord from such re-letting the expenses incurred or paid by Landlord in terminating this Lease, as well as the expenses of re-letting, including altering and preparing the Premises for new tenants, brokers’ commissions, and all other similar and dissimilar expenses properly chargeable against the Premises and the rental therefrom, it being understood that any such re-letting may be for a period equal to or shorter or longer than the remaining Term of this Lease; and provided, further, that (i) in no event shall Tenant be entitled to receive any excess of such net rents over the sums payable by Tenant to Landlord hereunder and (ii) in no event shall Tenant be entitled in any suit for the collection of damages pursuant to this Subparagraph (y) to a credit in respect of any net rents from a re-letting except to the extent that such net rents are actually received by Landlord. If the Premises or any part thereof should be re-let in combination with other space, then proper apportionment on a square foot area basis shall be made of the rent received from such re-letting and of the expenses of re-letting.

In calculating the rent and other charges under Subparagraph (x), above, there shall be included, in addition to the Yearly Rent, Tax Excess and Operating Costs Excess, all other considerations agreed to be paid or performed by Tenant, on the assumption that all such amounts and considerations would have remained constant (except as herein otherwise provided) for the balance of the full Term hereby granted.

Suit or suits for the recovery of such damages, or any installments thereof, may be brought by Landlord from time to time at its election, and nothing contained herein shall be deemed to require Landlord to postpone suit until the date when the Term of this Lease would have expired if it had not been terminated hereunder.

Landlord agrees to use reasonable efforts to relet the Premises after Tenant vacates the Premises in the event that the Lease is terminated based upon a default by Tenant hereunder. Marketing of Tenant's Premises in a manner similar to the manner in which Landlord markets other premises within Landlord's control in the Building shall be deemed to have satisfied Landlord's obligation to use "reasonable efforts."

Nothing herein contained shall be construed as limiting or precluding the recovery by Landlord against Tenant of any sums or damages to which, in addition to the damages particularly provided above, Landlord may lawfully be entitled by reason of any default hereunder on the part of Tenant.

22.4 Fees and Expenses.

(a) If Tenant shall default in the performance of any covenant on Tenant’s part to be performed as in this Lease contained that continues beyond the expiration of any applicable notice, grace or cure period, Landlord may immediately, or at any time thereafter, without additional notice, perform the same for the account of Tenant. If Landlord at any time is compelled to pay or elects to pay any sum of money, or do any act which will require the payment of any sum of money, by reason of the failure of Tenant to comply with any provision hereof, or if Landlord is compelled to or does incur any expense, including reasonable attorneys’ fees, in instituting, prosecuting, and/or defending any action or proceeding instituted by reason of any default of Tenant hereunder, Tenant shall on demand pay to Landlord by way of reimbursement the sum or sums so paid by Landlord with all costs and actual damages, plus interest computed as provided in Article 6 hereof.

(b) Tenant shall pay Landlord's cost and expense, including reasonable attorneys' fees, incurred (i) in enforcing any obligation of the Tenant under this lease, but subject to the provisions of the following sentence or (ii) as a result of Landlord, without its fault, being made party to any litigation pending by or against Tenant or any persons claiming through or under Tenant. In the event of any litigation or other legal proceeding (e.g., arbitration) between Landlord and Tenant relating to the provisions of this Lease or Tenant's occupancy of the Premises, the losing party (i.e., based upon a judgment, final beyond appeal) shall, upon demand, reimburse the prevailing party for its reasonable costs of prosecuting and/or defending such proceeding (including, without limitation, reasonable attorneys' fees), provided however, that with respect to arbitration, the losing party shall only be obligated to reimburse the prevailing party for attorneys' fees if such fees are awarded by the arbitrator(s).

22.5 Waiver of Redemption. Tenant does hereby waive and surrender all rights and privileges which it might have under or by reason of any present or future law to redeem the Premises or to have a continuance of this Lease for the Term hereby demised after being dispossessed or ejected therefrom by process of law or under the terms of this Lease or after the termination of this Lease as herein provided. Tenant specifically waives receipt of a Notice to Quit.

22.6 Landlord's Remedies Not Exclusive. The specified remedies to which Landlord may resort hereunder are cumulative and are not intended to be exclusive of any remedies or means of redress to which Landlord may at any time be lawfully entitled, and Landlord may invoke any remedy (including the remedy of specific performance) allowed at law or in equity as if specific remedies were not herein provided for.

23. END OF TERM - ABANDONED PROPERTY

Upon the expiration or other termination of the Term of this Lease, Tenant shall peaceably quit and surrender to Landlord the Premises together with all alterations and additions made thereto, broom clean, in good order, repair and condition (except as provided herein and in Section 9.7 and Articles 19 and 21) excepting only ordinary wear and use, damage by fire or other casualty and damage or repairs for which, under other provisions of this Lease, Tenant has no responsibility of repair or restoration. Tenant shall remove all of its property, including, without limitation, all telecommunication, computer and other cabling installed by or for Tenant in the Premises or elsewhere in the Building, and, to the extent specified by Landlord in writing at the time Landlord approves such installation, all alterations and additions made by Tenant and all partitions wholly within the Premises, and shall repair any damages to the Premises or the Building caused by their installation or by such removal. Tenant's obligation to observe or perform this covenant shall survive the expiration or other termination of the Term of this Lease.

Tenant will remove any personal property from the Building and the Premises upon or prior to the expiration or termination of this Lease and any such property which shall remain in the Building or the Premises for more than ten (10) days thereafter shall be conclusively deemed to have been abandoned, and may either be retained by Landlord as its property or sold or otherwise disposed of in such manner as Landlord may see fit. If any part thereof shall be sold, then Landlord may receive and retain the proceeds of such sale and apply the same, at its option, against the expenses of the sale, the cost of moving and storage, any arrears of Yearly Rent, additional or other charges payable hereunder by Tenant to Landlord and any damages to which Landlord may be entitled under Article 22 hereof or pursuant to law.

Any holding over by Tenant or anyone claiming under Tenant after the expiration of the Term of this Lease shall be treated as a tenancy at sufferance and shall be on the terms and conditions as set forth in this Lease, as far as applicable except that Tenant shall pay as a use and occupancy charge an amount equal to the greater of (x) one hundred fifty percent (150%) of the Yearly Rent and Tax Excess and Operating Costs Excess calculated (on a daily basis) at the highest rate payable under the terms of this Lease, for the first sixty (60) days and two hundred percent (200%) of the same thereafter, or (y) one hundred twenty-five percent (125%) of the fair market rental value of the Premises, in each case for the period measured from the day on which Tenant's hold-over commences and terminating on the day on which Tenant vacates the Premises. In addition, if such holdover exceeds thirty (30) days, Tenant shall save Landlord, its agents and employees, harmless and will exonerate, defend and indemnify Landlord, its agents and employees, from and against any and all damages which Landlord may suffer on account of Tenant's hold-over in the Premises after the expiration or prior termination of the Term of this Lease.

24. SUBORDINATION

(a) Subject to any mortgagee's or ground lessor's election, as hereinafter provided for, and subject to the requirements of this Section 24, this Lease is subject and subordinate in all respects to ground leases and/or underlying leases, and to the lien of all mortgages, any of which may now or hereafter be placed on or affect such leases and/or the real property of which the Premises are a part, or any part of such real property, and/or Landlord's interest or estate therein, and to each advance made and/or hereafter to be made under any such mortgages, and to all renewals, modifications, consolidations, replacements and extensions thereof and all substitutions therefor. Landlord represents that to the actual knowledge of Landlord no matter of record prohibits or restricts Tenant's rights to install signage, but this representation shall not apply to any law, regulation, or order of any governmental authority, whether or not same is a matter of record. This Article 24 shall be self-operative and no further instrument or subordination shall be required. In confirmation of such subordination, Tenant shall execute, acknowledge and deliver promptly any certificate or instrument that Landlord and/or any mortgagee and/or lessor under any ground or underlying lease and/or their respective successors in interest may request. Tenant acknowledges that, where any consent of Landlord is required under this Lease, any consent or approval hereafter given by Landlord may be subject to the further consent or approval of such mortgagee, and the failure or refusal of such mortgagee to give such consent or approval shall, notwithstanding anything to the contrary in this Lease contained, constitute reasonable justification for Landlord's withholding its consent or approval. Notwithstanding anything to the contrary in this Article 24 contained, as to any future mortgages, ground leases, and/or underlying lease or deeds of trust, the herein provided subordination of this Lease and attornment shall be effective only if the mortgagee, ground lessor or trustee therein, as the case may be, agrees, by a written instrument in recordable form and in the commercially reasonable, customary form of such mortgagee, ground lessor, or trustee ("**Nondisturbance Agreement**") that, as long as Tenant shall not be in terminable default of the obligations on its part to be kept and performed under the terms of this Lease, this Lease will not be affected and Tenant's possession hereunder will not be disturbed by any default in, termination, and/or foreclosure of, such mortgage, ground lease, and/or underlying lease or deed of trust, as the case may be. Tenant shall be responsible for paying any fees or expenses charged by such mortgagee, ground lessor or trustee in connection with any future Nondisturbance Agreement. Notwithstanding the foregoing Landlord agrees to obtain a subordination, non-disturbance and attornment agreement for Tenant from its current mortgagee in the form attached hereto as **Exhibit 8**.

(b) Any such mortgagee or ground lessor may from time to time subordinate or revoke any such subordination of the mortgage or ground lease held by it to this Lease. Such subordination or revocation, as the case may be, shall be effected by written notice to Tenant and by recording an instrument of subordination or of such revocation, as the case may be, with the appropriate registry of deeds or land records and to be effective without any further act or deed on the part of Tenant. In confirmation of such subordination or of such revocation, as the case may be, Tenant shall execute, acknowledge and promptly deliver any certificate or instrument that Landlord, any mortgagee or ground lessor may request.

(c) [Intentionally Omitted]

(d) The term "**mortgage(s)**" as used in this Lease shall include any mortgage or deed of trust. The term "**mortgagee(s)**" as used in this Lease shall include any mortgagee or any trustee and beneficiary under a deed of trust or receiver appointed under a mortgage or deed of trust. The term "**mortgagor(s)**" as used in this Lease shall include any mortgagor or any grantor under a deed of trust.

(e) If Tenant fails to execute, acknowledge and deliver any such Nondisturbance Agreement within ten (10) days after Landlord or such mortgagee or such ground lessor has made written request therefor, then Landlord shall be entitled to send Tenant a second notice requesting such execution and delivery of such certificate or instrument ("**Second Notice**"), and if Tenant fails to execute and deliver such certificate or instrument within three (3) days after the Second Notice, then Tenant shall pay to Landlord a fee in the amount of Five Hundred and 00/100 Dollars (\$500.00) per day for each day beyond the third (3rd) day after the Second Notice that Tenant fails to execute and deliver such certificate or instrument. Such fee shall be in addition to Landlord's other remedies hereunder.

(f) Notwithstanding anything to the contrary contained in this Article 24, if all or part of Landlord's estate and interest in the real property of which the Premises are a part shall be a leasehold estate held under a ground lease, then: (i) the foregoing subordination provisions of this Article 24 shall not apply to any mortgages of the fee interest in said real property if Landlord's leasehold estate is not subject and subordinate to such fee mortgage; and (ii) the provisions of this Article 23 shall in no way waive, abrogate or otherwise affect any agreement by any ground lessor (x) not to terminate this Lease incident to any termination of such ground lease prior to its Term expiring or (y) not to name or join Tenant in any action or proceeding by such ground lessor to recover possession of such real property or for any other relief.

(g) In the event of any failure by Landlord to perform, fulfill or observe any agreement by Landlord herein, in no event will Landlord be deemed to be in default under this Lease permitting Tenant to exercise any or all rights or remedies under this Lease until Tenant shall have given written notice of such failure to any mortgagee (ground lessor and/or trustee) of which Tenant shall have been advised and until a reasonable period of time (not to exceed ninety (90) days) shall have elapsed following the giving of such notice, during which such mortgagee (ground lessor and/or trustee) shall have the right, but shall not be obligated, to remedy such failure.

25. QUIET ENJOYMENT

Landlord covenants that so long as there is no default of Tenant in existence and continuing beyond the expiration of applicable notice and cure periods, Tenant shall quietly enjoy the Premises from and against the claims of all persons claiming by, through or under Landlord subject, nevertheless, to the covenants, agreements, terms, provisions and conditions of this Lease and, subject to the requirements of Section 23(a) above, the lien of the mortgages, ground leases and/or underlying leases to which this Lease is subject and subordinate, as hereinabove set forth.

Without incurring any liability to Tenant, Landlord may permit access to the Premises and open the same, whether or not Tenant shall be present, upon any demand of any receiver, trustee, assignee for the benefit of creditors, sheriff, marshal or court officer entitled to (but provided that such party shall present to Landlord the applicable order entered by a court of competent jurisdiction permitting such entry), such access for the purpose of taking possession of, or removing, Tenant's property or for any other lawful purpose (but this provision and any action by Landlord hereunder shall not be deemed a recognition by Landlord that the person or official making such demand has any right or interest in or to this Lease, or in or to the Premises), or upon demand of any representative of the fire, police, building, sanitation or other department of the city, state or federal governments.

26. ENTIRE AGREEMENT -- WAIVER -- SURRENDER

26.1 Entire Agreement. This Lease and the Exhibits made a part hereof contain the entire and only agreement between the parties and any and all statements and representations, written and oral, including previous correspondence and agreements between the parties hereto, are merged herein. Tenant acknowledges that all representations and statements upon which it relied in executing this Lease are contained herein and that Tenant in no way relied upon any other statements or representations, written or oral. Any executory agreement hereafter made shall be ineffective to change, modify, discharge or effect an abandonment of this Lease in whole or in part unless such executory agreement is in writing and signed by the party against whom enforcement of the change, modification, discharge or abandonment is sought.

26.2 Waiver by Landlord. The failure of Landlord to seek redress for violation, or to insist upon the strict performance, of any covenant or condition of this Lease, or any of the Rules and Regulations promulgated hereunder, shall not prevent a subsequent act, which would have originally constituted a violation, from having all the force and effect of an original violation. The receipt by Landlord of rent with knowledge of the breach of any covenant of this Lease shall not be deemed a waiver of such breach. The failure of Landlord to enforce any of such Rules and Regulations against Tenant and/or any other tenant in the Building shall not be deemed a waiver of any such Rules and Regulations. No provisions of this Lease shall be deemed to have been waived by Landlord unless such waiver is in writing signed by Landlord. No payment by Tenant or receipt by Landlord of a lesser amount than the monthly rent herein stipulated shall be deemed to be other than on account of the stipulated rent, nor shall any endorsement or statement on any check or any letter accompanying any check or payment as rent be deemed an accord and satisfaction, and Landlord may accept such check or payment without prejudice to Landlord's right to recover the balance of such rent or pursue any other remedy in this Lease provided.

26.3 Surrender. No act or thing done by Landlord during the Term hereby demised shall be deemed an acceptance of a surrender of the Premises, and no agreement to accept such surrender shall be valid, unless in writing signed by Landlord. No employee of Landlord or of Landlord's agents shall have any power to accept the keys of the Premises prior to the termination of this Lease. The delivery of keys to any employee of Landlord or of Landlord's agents shall not operate as a termination of this Lease or a surrender of the Premises except in connection with the natural expiration of the Term. In the event that Tenant at any time desires to have Landlord underlet the Premises for Tenant's account, Landlord or Landlord's agents are authorized to receive the keys for such purposes without releasing Tenant from any of the obligations under this Lease, and Tenant hereby relieves Landlord of any liability for loss of or damage to any of Tenant's effects in connection with such underletting.

27. INABILITY TO PERFORM - EXCULPATORY CLAUSE

(a) Except as may be otherwise specifically herein provided, this Lease and the obligations of Tenant to pay rent hereunder and perform all the other covenants, agreements, terms, provisions and conditions hereunder on the part of Tenant to be performed shall in no way be affected, impaired or excused because Landlord is unable to fulfill any of its obligations under this Lease or is unable to supply or is delayed in supplying any service expressly or impliedly to be supplied or is unable to make or is delayed in making any repairs, replacements, additions, alterations, improvements or decorations or is unable to supply or is delayed in supplying any equipment or fixtures if Landlord is prevented or delayed from so doing by reason of Force Majeure, as hereinafter defined. In each such instance of inability of Landlord to perform, Landlord shall exercise reasonable diligence to eliminate the cause of such inability to perform. Similarly, except as otherwise specifically herein provided in this Lease, if Tenant is unable to perform any of its covenants or agreements under this Lease other than the payment of rent by reason of Force Majeure, Landlord shall not exercise any remedies in respect of a default arising from such inability until the applicable Force Majeure no longer exists and Tenant has had a reasonable opportunity to cure such default after the event of Force Majeure has ceased. For purposes of this Lease, "**Force Majeure**" shall mean any prevention, delay or stoppage due to governmental regulation, strikes, lockouts, acts of God, acts of war, terrorist acts, civil commotions, unusual scarcity of or inability to obtain labor or materials, labor difficulties, casualty or other causes reasonably beyond Landlord's control or attributable to Tenant's action or inaction.

(b) Tenant shall neither assert nor seek to enforce any claim against Landlord, or Landlord's agents or employees, or the assets of Landlord or of Landlord's agents or employees, for breach of this Lease or otherwise, other than against Landlord's interest in the Building of which the Premises are a part and in the undistributed rents, issues and profits thereof, and Tenant agrees to look solely to such interest for the satisfaction of any liability of Landlord under this Lease, it being specifically agreed that in no event shall Landlord or Landlord's agents or employees (or any of the officers, trustees, directors, partners, beneficiaries, joint venturers, members, stockholders or other principals or representatives, and the like, disclosed or undisclosed, thereof) ever be personally liable for any such liability. This paragraph shall not limit any right that Tenant might otherwise have to obtain injunctive relief against Landlord or to take any other action which shall not involve the personal liability of Landlord to respond in monetary damages from Landlord's assets other than Landlord's interest in said real estate, as aforesaid. In no event shall Landlord or Landlord's agents or employees (or any of the officers, trustees, directors, partners, beneficiaries, joint venturers, members, stockholders or other principals or representatives and the like, disclosed or undisclosed, thereof) ever be liable for consequential or incidental damages. Without limiting the foregoing, in no event shall Landlord or Landlord's agents or employees (or any of the officers, trustees, directors, partners, beneficiaries, joint venturers, members, stockholders or other principals or representatives and the like thereof), ever be liable for lost profits of Tenant. Except in the event of a breach by Tenant of its obligations under Article 23, in no event shall Tenant or Tenant's agents or employees (or any of the officers, trustees, directors, partners, beneficiaries, joint venturers, members, stockholders or other principals or representatives and the like, disclosed or undisclosed, thereof) ever be liable for consequential or incidental damages (including, without limitation, loss profits) of Landlord.

(c) Landlord shall not be deemed to be in default of its obligations under this Lease unless Tenant has given Landlord written notice of such default, and Landlord has failed to cure such default within thirty (30) days after Landlord receives such notice or such longer period of time as Landlord may reasonably require to cure such default provided that Landlord has promptly commenced to cure within such thirty (30) day period and thereafter diligently pursues the same. Except as otherwise expressly provided in this Lease, in no event shall Tenant have the right to terminate this Lease nor shall Tenant's obligation to pay Yearly Rent or other charges under this Lease abate based upon any default by Landlord of its obligations under this Lease.

28. BILLS AND NOTICES

Any notice, consent, request, bill, demand or statement hereunder by either party to the other party (“**Notice**”) shall be in writing and shall be deemed to have been duly given when either delivered or served personally, or when delivery is first attempted or refused, provided that such Notice shall be addressed to Landlord at its address as stated in Exhibit 1 and to Tenant at the Premises (or at Tenant's address as stated in Exhibit 1, if delivered or mailed prior to Tenant’s occupancy of the Premises), or if any address for notices shall have been duly changed as hereinafter provided, if addressed as aforesaid to the party at such changed address. Notices shall be delivered by hand, by United States mail (certified, return receipt requested, and prepaid), or by Federal Express or other recognized overnight delivery service which provides a receipt for, or other proof of, delivery (prepaid). Either party may at any time change the address or specify an additional address for such Notices by delivering or mailing, as aforesaid, to the other party a notice stating the change and setting forth the changed or additional address, provided such changed or additional address is a street address within the United States.

All bills and statements for reimbursement or other payments or charges due from Tenant to Landlord hereunder shall be due and payable in full thirty (30) days, unless herein otherwise provided, after submission thereof by Landlord to Tenant. Tenant's failure to make timely payment of any amounts indicated by such bills and statements, whether for work done by Landlord at Tenant’s request, reimbursement provided for by this Lease or for any other sums properly owing by Tenant to Landlord, shall be treated as a default in the payment of rent, in which event Landlord shall have all rights and remedies provided in this Lease for the nonpayment of rent. Subject to Tenant’s audit rights under Section 9.7 above, if Tenant has not objected to any statement of additional rent which is rendered by Landlord to Tenant within one hundred eighty (180) days after Landlord has rendered the same to Tenant, then the same shall be deemed to be a final account between Landlord and Tenant not subject to any further dispute.

29. PARTIES BOUND -- TITLE

The covenants, agreements, terms, provisions and conditions of this Lease shall bind and benefit the successors and assigns of the parties hereto with the same effect as if mentioned in each instance where a party hereto is named or referred to, except that no violation of the provisions of Article 16 hereof shall operate to vest any rights in any successor or assignee of Tenant and that the provisions of this Article 28 shall not be construed as modifying the conditions of limitation contained in Article 21 hereof.

If, in connection with or as a consequence of the sale, transfer or other disposition of the real estate (land and/or Building, either or both, as the case may be) of which the Premises are a part, Landlord ceases to be the owner of the reversionary interest in the Premises, Landlord shall be entirely freed and relieved from the performance and observance thereafter of all covenants and obligations hereunder on the part of Landlord to be performed and observed, it being understood and agreed in such event (and it shall be deemed and construed as a covenant running with the land) that the person succeeding to Landlord’s ownership of said reversionary interest shall thereupon and thereafter assume, and perform and observe, any and all of such covenants and obligations of Landlord.

30. MISCELLANEOUS

30.1 Separability. If any provision of this Lease or portion of such provision or the application thereof to any person or circumstance is for any reason held invalid or unenforceable, the remainder of this Lease (or the remainder of such provision) and the application thereof to other persons or circumstances shall not be affected thereby.

30.2 Captions, etc. The captions are inserted only as a matter of convenience and for reference, and in no way define, limit or describe the scope of this Lease or the intent of any provisions thereof. References to “**State**” shall mean, where appropriate, the Commonwealth of Massachusetts.

30.3 Broker. Tenant represents and warrants that it has not directly or indirectly dealt, with respect to the leasing of office space in the Building, with any broker or had its attention called to the Premises or other space to let in the Building, etc. by anyone other than the broker, person or firm, if any, designated in Exhibit 1. Tenant agrees to defend, exonerate and save harmless and indemnify Landlord and anyone claiming by, through or under Landlord against any claims for a commission arising out of the execution and delivery of this Lease or out of negotiations between Landlord and Tenant with respect to the leasing of other space in the Building, provided that Landlord shall be solely responsible for the payment of brokerage commissions to the broker, person or firm, if any, designated as Landlord's Broker in Exhibit 1. Landlord shall pay a brokerage commission to Tenant's Broker and Landlord's Broker, pursuant to separate agreements between Landlord and Landlord's Broker and Landlord and Tenant's Broker.

Landlord represents and warrants that, in connection with the execution and delivery of the Lease, it has not directly or indirectly dealt with any broker other than the brokers designated on Exhibit 1. Landlord agrees to defend, exonerate and save harmless Tenant and anyone claiming by, through, or under Tenant against any claims arising in breach of the representation and warranty set forth in the immediately preceding sentence.

30.4 Modifications. If in connection with obtaining financing for the Building or Landlord's interest therein, a bank, insurance company, pension trust or other institutional lender shall request reasonable modifications in this Lease as a condition to such financing, Tenant will not withhold, delay or condition its consent thereto, provided that such modifications do not increase the obligations of Tenant hereunder or materially adversely affect the leasehold interest hereby created.

30.5 Arbitration. Any disputes relating to provisions or obligations in this Lease as to which a specific provision or a reference to arbitration is made herein shall be submitted to arbitration in accordance with the provisions of applicable state law (as identified in Section 30.6), as from time to time amended. Arbitration proceedings, including the selection of an arbitrator, shall be conducted pursuant to the rules, regulations and procedures from time to time in effect as promulgated by the American Arbitration Association. Prior written notice of application by either party for arbitration shall be given to the other at least ten (10) days before submission of the application to the said Association's office in the City or County wherein the Building is situated (or the nearest other city or county having an Association office). The arbitrator shall hear the parties and their evidence. The decision of the arbitrator shall be binding and conclusive, and judgment upon the award or decision of the arbitrator may be entered in the appropriate court of law (as identified on Exhibit 1), and the parties consent to the jurisdiction of such court and further agree that any process or notice of motion or other application to the Court or a Judge thereof may be served outside the State or Commonwealth wherein the Building is situated by registered mail or by personal service, provided a reasonable time for appearance is allowed. The costs and expenses of each arbitration hereunder and their apportionment between the parties shall be determined by the arbitrator in his award or decision. No arbitrable dispute shall be deemed to have arisen under this Lease prior to (i) the expiration of the period of twenty (20) days after the date of the giving of written notice by the party asserting the existence of the dispute together with a description thereof sufficient for an understanding thereof; and (ii) where a Tenant payment (e.g., Tax Excess or Operating Costs Excess under Article 9 hereof) is in issue, the amount billed by Landlord having been paid by Tenant.

30.6 Governing Law. This Lease is made pursuant to, and shall be governed by, and construed in accordance with, the laws of the Commonwealth of Massachusetts and any applicable local municipal rules, regulations, by-laws, ordinances and the like.

30.7 Assignment of Rents. Subject to any contrary terms in any SNDA executed by Tenant and any mortgage holder or ground lessor pursuant to Section 24(a) above, with reference to any assignment by Landlord of its interest in this Lease, or the rents payable hereunder, conditional in nature or otherwise, which assignment is made to or held by a bank, trust company, insurance company or other institutional lender holding a mortgage or ground lease on the Building or Landlord's interest therein, Tenant agrees:

(a) that the execution thereof by Landlord and the acceptance thereof by such mortgagee and/or ground lessor shall never be deemed an assumption by such mortgagee and/or ground lessor of any of the obligations of Landlord thereunder, unless such mortgagee and/or ground lessor shall, by written notice sent to Tenant, specifically otherwise elect; and

(b) that, except as aforesaid, such mortgagee and/or ground lessor shall be treated as having assumed Landlord's obligations thereunder only upon foreclosure of such mortgagee's mortgage or deed of trust or termination of such ground lessor's ground lease and the taking of possession of the Premises after having given notice of its exercise of the option stated in Article 23 hereof to succeed to the interest of Landlord under this Lease.

30.8 Representation of Authority. By his execution hereof each of the signatories on behalf of the respective parties hereby warrants and represents to the other that he or she is duly authorized to execute this Lease on behalf of such party. If either Landlord or Tenant is a corporation, the applicable party hereby appoints the signatory whose name appears below on behalf of such party as its attorney-in-fact for the purpose of executing this Lease for and on behalf of such party.

30.9 Expenses Incurred by Landlord Upon Tenant Requests. Except in connection with requests by Tenant to sublet the Premises or assign its interest in this Lease, as to which the review fee set forth in Article 17 shall apply, Tenant shall, upon demand, reimburse Landlord for all reasonable expenses, including, without limitation, reasonable legal fees, incurred by Landlord in connection with all requests by Tenant for consents, approvals or execution of collateral documentation related to this Lease, including, without limitation, costs incurred by Landlord in the review and approval of Tenant's plans and specifications in connection with proposed alterations to be made by Tenant to the Premises and requests by Tenant for Landlord to execute waivers of Landlord's interest in Tenant's property in connection with third party financing by Tenant. Such costs shall be deemed to be additional rent under this Lease.

30.10 Survival.

(a) Without limiting any other obligation of Tenant which may survive the expiration or prior termination of the Term of this Lease, all obligations on the part of Tenant to indemnify, defend, or hold Landlord harmless, as set forth in this Lease (including, without limitation, Tenant's obligations under Sections 13(4), 16.3, and 30.3) shall survive the expiration or prior termination of the Term of this Lease.

(b) Without limiting any other obligation of Landlord which may survive the expiration or prior termination of the Term of this Lease, all obligations on the part of Landlord to indemnify, defend, or hold Tenant harmless, as set forth in this Lease (including, without limitation, Landlord's obligations under Sections 2.2, and 30.3 shall survive the expiration or prior termination of the Term of this Lease.

30.11 Financial Statements. Tenant, within fifteen (15) days after request, shall provide Landlord with a current financial statement and such other information as Landlord may reasonably request in order to create a "business profile" of Tenant and determine Tenant's ability to fulfill its obligations under this Lease. The foregoing obligation shall be waived during any period of time in which Tenant's stock is publicly traded on a nationally recognized exchange or such information is available on Tenant's website.

30.12 Parking.

(a) Number of Passes. During the Term of this Lease, Tenant shall use and shall be obligated to pay for the number of monthly parking passes specified in Exhibit 1 for use in City of Cambridge Municipal Parking Garage located on First Street ("**Building Garage**"). The Building Garage is sometimes hereinafter referred to as the "**Garage**." The passes in the Building Garage are referred to as the "**Parking Passes**." The number of Parking Passes shall be paid for by Tenant at the then current prevailing rate in the Garage, as such rate may vary from time to time. Landlord hereby represents to Tenant that, as of the Execution Date of this Lease, Landlord has the contractual right to satisfy Tenant's parking rights under this Lease in the Building Garage pursuant to a separate lease with the City of Cambridge ("**Parking Lease**") and the charge for Parking Passes is \$250.00 per month, per pass, subject to increase from time to time. Landlord shall not terminate the Parking Lease, provided, however, in the event the Parking Lease is terminated by the City of Cambridge, Landlord shall, not later than ten (10) days following the termination of the Parking Lease, provide alternative parking at the current prevailing market rate in a parking garage nearest to the Building and in no event more than 1/2 mile walk from the Building, including but not limited to, by way of example, in parking garage of Cambridgeside Galleria if such parking is currently available. If Landlord fails to provide such alternative parking, Tenant shall have the right to equitably abate the Rent payable under this Lease until such alternative parking is provided.

(b) General Provisions. Tenant shall have no right to sublet, assign, or otherwise transfer said Parking Passes, other than in connection with an assignment or sublease permitted or consented to pursuant to Article 16. No deductions or allowances shall be made for days when Tenant or any of its employees does not utilize the parking facilities or for Tenant utilizing less than all of the Parking Passes. Said Parking Passes will be on an unassigned, non-reserved basis, and shall be subject to the rules and regulations from time to time in force.

(c) Parking Rules and Regulations. Landlord or the Garage Operator shall have the right from time to time to promulgate reasonable rules and regulations regarding the Garage, the Parking Passes and the use thereof, including, but not limited to, rules and regulations controlling the flow of traffic to and from various parking areas, the angle and direction of parking and the like. Tenant shall comply with and cause its employees to comply with all such rules and regulations as well as all reasonable additions and amendments thereto.

(d) No Overnight Storage. Tenant shall not store or permit its employees to store any vehicles overnight in the Garage without the prior written consent of the Garage Operator. Except for emergency repairs, Tenant and its employees shall not perform any work on any vehicles while located in the Garage or on the Property. If it is necessary for Tenant or its employees to leave a vehicle in the Garage overnight, Tenant shall provide Landlord and the Garage Operator with prior notice thereof designating the license plate number and model of such vehicle.

(e) Temporary Closure. Landlord and the Garage Operator shall have the right to temporarily close the Garage or certain areas therein in order to perform necessary repairs, maintenance and improvements to the Garage; provided, however, if the Garage or any portion thereof such that Tenant is unable to use its Parking Passes is closed for more than one (1) day, Tenant shall receive an abatement of the monthly fee per parking space until the Garage (or portion thereof) is fully operational.

(f) Access Cards. The Garage Operator may elect to provide parking cards or keys to control access to the Garage. In such event, Landlord or the Garage Operator shall provide Tenant with one card or key for each Parking Pass that Tenant is entitled to hereunder, provided that Landlord or the Garage Operator shall have the right to require Tenant or its employees to place a reasonable deposit on such access cards or keys and to pay a fee for any lost or damaged cards or keys.

(g) Bicycles. Landlord agrees that it, or the Garage Operator, shall at all times during the Term provide bicycle storage racks in the Garage for the non-exclusive use of Tenant and its employees, subject to reasonable rules and regulations therefor provided to Tenant from time to time.

30.13 Anti-Terrorism Representations. Tenant represents and warrants to Landlord that:

(a) Tenant is not, and shall not during the Term of this Lease become, a person or entity with whom Landlord is restricted from doing business under the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, H.R. 3162, Public Law 107-56 (commonly known as the “**USA Patriot Act**”) and Executive Order Number 13224 on Terrorism Financing, effective September 24, 2001 and regulations promulgated pursuant thereto, including, without limitation, persons and entities named on the Office of Foreign Asset Control Specially Designated Nationals and Blocked Persons List (collectively, “**Prohibited Persons**”); and

(b) To the best of Tenant’s knowledge, Tenant is not currently conducting any business or engaged in any transactions or dealings, or otherwise associated with, any Prohibited Persons in connection with the use or occupancy of the Premises; and

(c) Tenant will not in the future during the Term of this Lease knowingly engage in any transactions or dealings, or be otherwise associated with, any Prohibited Persons in connection with the use or occupancy of the Premises.

Landlord represents and warrants to Tenant that:

(a) Landlord is not, and shall not during the Term of this Lease become, a person or entity with whom Tenant is restricted from doing business under the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, H.R. 3162, Public Law 107-56 (commonly known as the “**USA Patriot Act**”) and Executive Order Number 13224 on Terrorism Financing, effective September 24, 2001 and regulations promulgated pursuant thereto, including, without limitation, persons and entities named on the Office of Foreign Asset Control Specially Designated Nationals and Blocked Persons List (collectively, “**Prohibited Persons**”); and

(d) To the best of Landlord’s knowledge Landlord is not currently conducting any business or engaged in any transactions or dealings, or otherwise associated with, any Prohibited Persons in connection with the use or occupancy of the Premises; and

(e) Landlord will not in the future during the Term of this Lease knowingly engage in any transactions or dealings, or be otherwise associated with, any Prohibited Persons in connection with the use or occupancy of the Premises.

30.14 Waiver of Trial by Jury. Landlord and Tenant hereby waives any right to trial by jury in any action, proceeding or brought by either Landlord or Tenant on any matters whatsoever arising out of or any way connected with this Lease, the relationship of Landlord and Tenant, Tenant’s use or occupancy of the Premises and/or any claim of injury or damage, including but not limited to, any summary process eviction action.

30.15 No Offset. Except as may be otherwise expressly provided in this Lease, in no event shall Tenant have the right to terminate or cancel this Lease or to withhold rent or to set-off any claim or damages against rent as a result of any default by Landlord or breach by Landlord of its covenants or warranties or promises under this Lease, except in the case of a wrongful eviction of Tenant from the Premises (constructive or actual) by Landlord continuing after notice to Landlord thereof and a reasonable opportunity for Landlord to cure the same in the time periods set forth herein. Further, except as expressly provided in this Lease, Tenant shall not assert any right to deduct the cost of repairs or any monetary claim against Landlord from rent thereafter due and payable, but shall look solely to Landlord for satisfaction of such claim.

30.16 Tenant’s Option to Extend the Term of the Lease.

(a) On the conditions, which conditions Landlord may waive, at its election, by written notice to Tenant at any time, that as of the time of option exercise and as of the commencement of the hereinafter described additional term, (i) Tenant is not in default of its covenants and obligations under the Lease, continuing beyond the expiration of any applicable notice, grace and cure period and (ii) Tenant has not assigned this Lease or sublet more than twenty-five percent (25%) of the Premises (except to a Permitted Assignee or Affiliated Entity), Tenant shall have the option (“**Extension Option**”) to extend the Term of this Lease for one (1) additional period of five (5) years, such additional term commencing as of the expiration of the initial Term of the Lease (“**Extension Term**”). Tenant may exercise its Extension Option by giving Landlord written notice (“**Extension Notice**”) not earlier than fifteen (15) months and not later than twelve (12) months prior to the Expiration Date of the initial Term of the Lease. Upon the timely giving of the Extension Notice, the Term of this Lease shall be deemed extended upon all of the terms and conditions of this Lease. If Tenant fails to timely give the Extension Notice, as aforesaid, Tenant shall have no further right to extend the Term of this Lease, time being of the essence of this Section 30.16.

(b) The Yearly Rent during the Extension Term shall be based upon the Fair Market Rental Value, as defined in and determined pursuant to Subparagraph (e) of this Section 30.16, as of the commencement of the Extension Term, of the Premises then demised to Tenant.

(c) Tenant shall have no further option to extend the Term of the Lease other than the Extension Term.

(d) Notwithstanding the fact that Tenant's exercise of the Extension Option shall be self-executing, as aforesaid, the parties shall promptly execute a lease amendment reflecting the Extension Term after Tenant exercises the Extension Option, except that, if has not yet been determined, the Yearly Rent payable in respect of the Extension Term may not be set forth in said amendment. In such event, after such Yearly Rent is determined, the parties shall execute a written agreement confirming the same. The execution of such lease amendment shall not be deemed to waive any of the conditions to Tenant's exercise of its rights under this Section 29.16, unless otherwise specifically provided in such lease amendment.

(e) (i) "**Fair Market Rental Value**" shall be computed as of the commencement of the Extension Term or, with respect to RFO Premises or the Term of this Lease with respect to such RFO Premises, at the then current annual rental charge (i.e., the sum of Yearly Rent plus escalation and other charges), including provisions for subsequent increases and other adjustments for leases or agreements to lease (including executed letters of intent) then currently being executed in comparable space located in the Building, and in comparable first-class office buildings located in East Cambridge, Massachusetts. In determining Fair Market Rental Value, all relevant factors shall be considered.

(ii) Dispute as to Fair Market Rental Value

Landlord shall initially designate Fair Market Rental Value by notice to Tenant thereof given at least eleven (11) months before the Expiration Date. If Tenant disagrees with Landlord's designation of a Fair Market Rental Value, the parties shall negotiate in good faith for thirty (30) days after Landlord's initial designation ("**Negotiation Period**") to reach agreement on the Fair Market Rental Value. If the parties have not reached agreement on the Fair Market Rental Value by the end of the Negotiation Period, then the Fair Market Rental Value shall be submitted to arbitration as follows: Fair Market Rental Value shall be submitted to arbitration as follows: Fair Market Rental Value shall be determined by impartial arbitrators, one to be chosen by the Landlord, one to be chosen by Tenant, and a third to be selected, if necessary, as below provided. The unanimous written decision of the two first chosen, without selection and participation of a third arbitrator, or otherwise, the written decision of a majority of three arbitrators chosen and selected as aforesaid, shall be conclusive and binding upon Landlord and Tenant. Landlord and Tenant shall each notify the other of its chosen arbitrator within ten (10) business days following the expiration of the Negotiation Period and, unless such two arbitrators shall have reached a unanimous decision within thirty (30) days after their designation, they shall so notify the Boston office of the American Arbitration Association (or such organization as may succeed to said American Arbitration Association) and request him/her to select an impartial third arbitrator, who shall be a real estate broker dealing with like types of properties, with a minimum of ten (10) years' experience in office leasing in Cambridge, Massachusetts, to determine Fair Market Rental Value as herein defined. Such third arbitrator and the first two chosen shall, subject to commercial arbitration rules of the American Arbitration Association, hear the parties and their evidence and render their decision within thirty (30) days following the conclusion of such hearing and notify Landlord and Tenant thereof. If either party fails to designate its chosen broker within ten (10) business days following the expiration of the Negotiation Period, which failure continues for five (5) business days after written notice thereof, the other party's broker shall determine Fair Market Rental Value acting alone. Landlord and Tenant shall bear the expense of the third arbitrator (if any) equally. The decision of the arbitrator(s) shall be binding and conclusive, and judgment upon the award or decision of the arbitrator(s) may be entered in the appropriate court of law (as identified on **Exhibit 1**); and the parties consent to the jurisdiction of such court and further agree that any process or notice of motion or other application to the Court or a Judge thereof may be served outside the Commonwealth of Massachusetts by registered mail or by personal service, provided a reasonable time for appearance is allowed. If the dispute between the parties as to a Fair Market Rental Value has not been resolved before the commencement of Tenant's obligation to pay rent based upon such Fair Market Rental Value, then Tenant shall pay Yearly Rent and other charges under the Lease in respect of the Premises in question based upon the Fair Market Rental Value designated by Landlord until either the agreement of the parties as to the Fair Market Rental Value, or the decision of the arbitrators, as the case may be, at which time Tenant shall pay any underpayment of rent and other charges to Landlord, or Landlord shall refund any overpayment of rent and other charges to Tenant.

30.17 Tenant's Right of First Offer.

On the conditions, which conditions Landlord may waive, at its election, by written notice to Tenant at any time, that as of the time of option exercise and as of the commencement of the hereinafter described additional term, (i) Tenant is not in default under the Lease beyond any applicable notice, grace and cure periods, (ii) not more than twenty-five percent (25%) of the Premises is sublet, other than to a Permitted Assignee or an Affiliated Entity, (iii) the Lease has not been assigned other than to a Permitted Assignee or an Affiliated Entity and (iv) the RFO Premises, as hereinafter defined, is intended for the exclusive use of Tenant or any Permitted Assignee or an Affiliated Entity during the Term, Tenant shall have the following one time right ("**Right of First Offer**") to lease the RFO Premises, as hereinafter defined, when the RFO Premises become available for lease to Tenant, as hereinafter defined. Notwithstanding the foregoing, Tenant shall have no right to exercise its Right of First Offer if less than twenty-four (24) months remain in the Term of the Lease, unless (i) Tenant has not yet exercised the Extension Option, (ii) the Extension Option has not lapsed unexercised, and (iii) simultaneously with giving an RFO Exercise Notice (as hereinafter defined), Tenant timely and properly exercises the Extension Option as set forth in Section 29.16 above (and, in such event, the prohibition set forth in Section 29.16 above, on giving the Extension Notice more than fifteen (15) months before the Expiration Date of the initial Term shall be waived, if necessary). In any case where Tenant has no right to exercise its Right of First Offer (that is, during the last twenty-four (24) months of the Term of the Lease if Tenant does not have any remaining right to exercise the Extension Option, or if the aforesaid conditions are not met), Landlord shall not be obligated to deliver Landlord's RFO Notice (as hereinafter defined) to Tenant.

(a) Definition of RFO Premises

"**RFO Premises**" shall be defined as any area in the Building, when such area becomes available for lease to Tenant, as hereinafter defined, during the Term of this Lease. For the purposes of this Section 29.17, an RFO Premises shall be deemed to be "**available for lease to Tenant**" if, during the Term of this Lease, Landlord, in its reasonable judgment, determines that such area will become available for leasing to Tenant (i.e. when Landlord determines that the then occupant of the RFO Premises will vacate the RFO Premises and that the holder(s) of any superior rights to the RFO Premises will not exercise such rights, and when Landlord intends to offer such area for lease).

(b) Exercise of Right to Lease RFO Premises

Landlord shall give Tenant written notice ("**Landlord's RFO Notice**") at the time that Landlord determines, as aforesaid, that an RFO Premises will become available for lease to Tenant. Landlord's RFO Notice shall set forth the location and size of the RFO Premises, Landlord's designation of the Fair Market Rental Value (as defined in Subparagraph (e) of Section 30.16 above, but ignoring all references to "renewal" applicable to the RFO Premises and the RFO Premises Commencement Date. Tenant shall have the right, exercisable upon written notice given to Landlord within ten (10) business days after the receipt of Landlord's RFO Notice, to either: (i) lease the RFO Premises at the Fair Market Rental Value set forth in Landlord's RFO Notice ("**RFO Exercise Notice**"), or (ii) lease the RFO Premises but provide Landlord with a counteroffer of Landlord's designation of Fair Market Rental Value ("**Tenant's Objection Notice**"). If Tenant timely and properly provides an RFO Exercise Notice, Tenant shall lease the RFO Premises and the Fair Market Rental Value shall be as set forth in Landlord's RFO Notice. If Tenant timely and properly provides Tenant's Objection Notice, then Tenant shall lease the RFO Premises, and the Fair Market Rental Value shall be determined as follows: Fair Market Rental Value shall be determined by impartial arbitrators, one to be chosen by the Landlord, one to be chosen by Tenant, and a third to be selected, if necessary, as below provided. Each arbitrator shall be a broker affiliated with a major Boston commercial real estate brokerage firm and each arbitrator shall have at least ten (10) years' experience dealing in properties of a nature and type generally similar to the Building located in East Cambridge, Massachusetts. The unanimous written decision of the two first chosen, without selection and participation of a third arbitrator, or otherwise, the written decision of a majority of three arbitrators chosen and selected as aforesaid, shall be conclusive and binding upon Landlord and Tenant. Landlord and Tenant shall each notify the other of its chosen arbitrator within ten (10) business days following the call for arbitration and, unless such two arbitrators shall have reached a unanimous decision within thirty (30) days after their designation, they shall so notify the President of the Boston office of the American Arbitration Association (or such organization as may succeed to said American Arbitration Association) and request him to select an impartial third arbitrator, having the qualifications set forth above, to determine Fair

Market Rental Value as herein defined. Such third arbitrator and the first two chosen shall, subject to commercial arbitration rules of the American Arbitration Association, hear the parties and their evidence and render their decision within thirty (30) days following the conclusion of such hearing and notify Landlord and Tenant thereof. Landlord and Tenant shall bear the expense of the third arbitrator (if any) equally. The decision of the third arbitrator shall be binding and conclusive, and judgment upon the award or decision of the arbitrator may be entered in the appropriate court of law (as identified on Exhibit 1); and the parties consent to the jurisdiction of such court and further agree that any process or notice of motion or other application to the Court or a Judge thereof may be served outside the Commonwealth of Massachusetts by registered mail or by personal service, provided a reasonable time for appearance is allowed. If the dispute between the parties as to a Fair Market Rental Value has not been resolved before the commencement of Tenant's obligation to pay rent based upon such Fair Market Rental Value, then Tenant shall pay Yearly Rent and other charges under the Lease in respect of the Premises in question based upon the Fair Market Rental Value designated by Landlord until either the agreement of the parties as to the Fair Market Rental Value, or the decision of the arbitrators, as the case may be, at which time Tenant shall pay any underpayment of rent and other charges to Landlord, or Landlord shall refund any overpayment of rent and other charges to Tenant. If Tenant does not timely and properly provide either an RFO Exercise Notice or Tenant's Objection Notice, time being of the essence, then Tenant shall have no further right to lease all or any portion of the RFO Premises that were the subject of Landlord's RFO Notice, but shall continue to have rights to all other RFO Premises, if any, which have not yet been offered to Tenant pursuant to this Section 30.17. Notwithstanding the foregoing if the RFO Premises that were the subject of Landlord's RFO Notice shall not be leased (which term shall include a letter of intent that results in a lease) by the date that is one (1) year after the deadline for Tenant to have given a RFO Exercise Notice or Tenant's Objection Notice with respect to such Landlord's RFO Notice, then Tenant's Right of First Offer hereunder shall again apply to such RFO Premises.

(c) Lease Provisions Applying to RFO Premises

The leasing to Tenant of the RFO Premises shall be upon all of the same terms and conditions of the Lease, except as follows:

(1) RFO Premises Commencement Date

The RFO Premises Commencement Date shall be the later of: (x) the RFO Premises Commencement Date as set forth in Landlord's RFO Notice, or (y) the date that Landlord delivers the RFO Premises to Tenant in the condition set forth in subparagraph (d) below.

(2) Expiration Date

The Expiration Date in respect of the RFO Premises shall be the Expiration Date of the Lease.

(3) Yearly Rent; Base Years

The Yearly Rent rental rate in respect of the RFO Premises shall be based upon the Fair Market Rental Value determined as set forth above and the Base Year for Operating Expenses shall be the calendar year in which the RFO Premises Commencement Date falls, and the Base Year for Taxes shall be the fiscal year in which the RFO Premises Commencement Date falls.

(d) Condition of RFO Premises

Tenant shall take the RFO Premises "as-is" in its then (i.e. as of the date of delivery) state of construction, finish, and decoration, without any obligation on the part of Landlord to construct or prepare the RFO Premises for Tenant's occupancy, unless otherwise set forth in Landlord's RFO Notice, but broom clean and free of Hazardous Materials (or with same encapsulated in accordance with applicable Environmental Laws) in any event. The foregoing shall not operate to exclude or waive any improvement allowances, rent abatement, free rent or other concessions determined to be part of the Fair Market Rental Value.

(e) Termination of Right of First Offer

The rights of Tenant hereunder with respect to an RFO Premises shall terminate on the earlier to occur of: (i) Tenant's failure to exercise its Right of First Offer within the ten (10) business day period provided in Section 30.17(b) above; and (iii) the date Landlord otherwise would have provided Landlord's RFO Notice to Tenant, if one or more of the requirements set forth in the first paragraph of this Section 30.17 is not met on the date Landlord otherwise would have provided Landlord's RFO Notice to Tenant.

(f) Subordination. During such period of time that Landlord or its affiliates shall own Two Canal and/or Ten Canal, as the case may be, at Tenant's request, Landlord shall provide, to the best of its knowledge, information on any office space available at Two Canal or Ten Canal (or whichever of such buildings shall be owned by Landlord or its affiliates at the time of the request), which information shall include the square footage of any such available space in either such building that Landlord is aware will be available during the twelve (12) month period after such notification.

(g) Execution of Lease Amendments

Notwithstanding the fact that Tenant's exercise of the above-described option to lease the RFO Premises shall be self-executing, as aforesaid, the parties hereby agree promptly to execute a lease amendment reflecting the addition of the RFO Premises. The execution of such lease amendment shall not be deemed to waive any of the conditions to Tenant's exercise of the herein option to lease the RFO Premises, unless otherwise specifically provided in such lease amendment.

30.18 Roof Area.

(a) Tenant shall have the right to use the Roof Area, as hereinafter defined, to install supplemental HVAC systems, cell tower boosters, high frequency wireless local area network equipment, local exhaust equipment, and/or a communication satellite dish or antenna ("**Equipment**") for a period commencing as of the date that Tenant installs any of the Equipment in the Roof Area ("**Roof Area Commencement Date**") and terminating as of the expiration or earlier termination of the Term of the Lease. The "**Roof Area**" shall be an area on the roof of the Building designated by Landlord. Tenant shall be permitted to use the Roof Area solely for installation of the Equipment. Such installation shall be designed in such manner as to be easily removable and so as not to damage the roof of the Building. The Equipment and any replacement shall be subject to Landlord's approval, not to be unreasonably withheld, conditioned or delayed. Tenant's use of the Roof Area shall be upon all of the conditions of the Lease, except as follows:

(b) Tenant shall have no obligation to pay Yearly Rent, Tax Excess or Operating Expense Excess in respect of the Roof Area.

(c) Landlord shall have no obligation to provide any services to the Roof Area.

(d) Tenant shall have no right to make any changes, alterations, signs, decoration, or other improvements to the Roof Area or to the Equipment without Landlord's prior written consent, which consent Landlord shall not unreasonably withhold, condition or delay.

(e) Tenant shall have no right of access to the roof of the Building unless Tenant has given Landlord reasonable advance notice and unless Tenant's representatives are accompanied by a representative of Landlord. Landlord shall provide Tenant with twenty-four (24) hour access to the Roof Area, subject to Landlord's reasonable security procedures and restrictions based on emergency conditions and to other causes beyond Landlord's reasonable control. Tenant shall give Landlord reasonable advance written notice of the need for access to the Roof Area (except that such notice may be oral in an emergency), and Landlord must be present during any entry by Tenant onto the Roof Area. Each notice for access shall be in the form of a work order referencing the lease and describing, as applicable, the date access is needed, the name of the contractor or other personnel requiring access, the name of the supervisor authorizing the access/work, the areas to which access is required, the Building common elements to be impacted (risers, electrical rooms, etc.) and the description of new equipment or other Equipment to be installed and evidence of Landlord's approval thereof. In the event of an emergency, such notice shall follow within five (5) days after access to the Roof Area.

(f) At the expiration or prior termination of Tenant's right to use the Roof Area, Tenant shall remove all Installations (including, without limitation, the Equipment) from the Roof Area and any associated cables, etc., elsewhere in the Building.

(g) Tenant shall be responsible for the cost of repairing any damage to the roof of the Building caused by the installation or removal of any Equipment.

(h) Tenant shall have no right to sublet the Roof Area.

(i) No other person, firm or entity (including, without limitation, other tenants, licensees or occupants of the Building) shall have the right to benefit from the services provided by the Equipment other than Tenant, Tenant's Affiliates, assignees, subtenants and permitted occupants and their respective agents, employees and invitees.

(j) In the event that Landlord performs repairs to or replacement of the roof, Tenant shall, at Tenant's cost, remove the Equipment until such time as Landlord has completed such repairs or replacements. Tenant recognizes that there may be an interference with Tenant's use of the Equipment in connection with such work. Landlord shall use reasonable efforts to complete such work as promptly as possible and to perform such work in a manner which will minimize or, if reasonably possible, eliminate any interruption in Tenant's use of the Equipment.

(k) Any services required by Tenant in connection with Tenant's use of the Roof Area or the Equipment shall be installed by Tenant, at Tenant's expense, subject to Landlord's prior approval, not to be unreasonably withheld, conditioned or delayed.

(l) To the maximum extent permitted by law, all Equipment in the Roof Area shall be at the sole risk of Tenant, and Landlord shall have no liability to Tenant in the event that any Equipment is damaged for any reason.

(m) Tenant shall take the Roof Area "as-is" in the condition in which the Roof Area is in as of the Roof Area Commencement Date. Landlord makes no warranties or representations to Tenant as to the suitability of the Roof Area for the installation and operation of the Equipment. Tenant shall have no right to make any changes, alterations, additions, decorations or other improvements to the Roof Area without Landlord's prior written consent, not to be unreasonably withheld.

(n) Tenant shall comply with all applicable laws, ordinances and regulations in Tenant's use of the Roof Area and the Equipment.

(o) Landlord shall have the right, upon sixty (60) days' notice to Tenant, to require Tenant to relocate the Roof Area to another area ("**Relocated Rooftop Area**") on the roof of the Building suitable for the use of the Equipment. In such event, Tenant shall on or before the sixtieth (60th) day after Landlord gives such notice, relocate all of its Equipment from the Roof Area to the Relocated Rooftop Area. Any relocations of the Roof Area shall be at Landlord's cost and expense.

(p) In addition to complying with the applicable construction provisions of the Lease, Tenant shall not install or operate Equipment in any portion of the Roof Area until (x) Tenant shall have obtained Landlord's prior written approval, which approval will not be unreasonably withheld, conditioned or delayed, of Tenant's plans and specifications for the placement and installation of the Equipment in the Roof Area, and (y) Tenant shall have obtained and delivered to Landlord copies of all required governmental and quasi-governmental permits, approvals, licenses and authorizations necessary for the lawful installation, operation and maintenance of the Equipment. The parties hereby acknowledge and agree, by way of illustration and not limitation, that Landlord shall have the right to withhold its approval of Tenant's plans and specifications hereunder, and shall not be deemed to be unreasonable in doing so, if Tenant's intended placement or method of installation or operation of the Equipment (i) may subject other licensees, tenants or occupants of the Building, or other surrounding or neighboring landowners or their occupants, to signal interference, Tenant hereby acknowledging that a shield may be required in order to prevent such interference, (ii) does not minimize to the fullest extent practicable the obstruction of the views from the windows of the Building that are adjacent to the Equipment, if any, or (iii) may constitute a violation of any consent, approval, permit or authorization necessary for the lawful installation of the Equipment.

(q) In addition to the indemnification provisions set forth in the Lease which shall be applicable to the Roof Area, Tenant shall, to the maximum extent permitted by law and subject to the provisions of Article 19 above, indemnify, defend, and hold Landlord, its agents, contractors and employees harmless from any and all claims, losses, demands, actions or causes of actions suffered by any person, firm, corporation, or other entity arising from the negligence or willful misconduct of Tenant, its agents, employees or contractors in connection with Tenant's use of the Roof Area.

(r) Landlord shall have the right to designate or identify the Equipment with or by a lease or license number (or other marking) and to place such number (or marking) on or near such Equipment.

30.19 Dog Friendly Premises

Notwithstanding anything to the contrary contained elsewhere in the Lease, provided that Tenant itself and/or Permitted Transferees and Affiliated Entities are leasing 25,000 rentable square feet in the Building, Tenant shall be permitted to bring fully domesticated and trained dogs, kept by the Tenant's employees as pets into the Premises, on the following terms and conditions (the "**Dog Rules and Regulations**").

(a) Tenant must submit its application(s) for each dog via Landlord's designated tenant work order request system. Landlord requires property management's in person pre-screening of all dogs prior to application approval.

(b) Tenant's employee must submit to Landlord copies of the dog's current license and vaccinations upon application.

(c) Tenant (i) must maintain company liability insurance reasonably acceptable to Landlord against dog incidents and provide Landlord with evidence of such coverage, and (ii) takes full responsibility for the management of its permitted dogs and issues that arise within its premises and the Building related to the dogs it permits. Such incidents may include, but are not limited to co-employee issues, co-tenant complaints, and guest concerns, dog interactions with other dogs, additional maintenance, and dog behavior. Tenant agrees that Landlord shall have no responsibility or liability whatsoever for any loss, damage, or injury whatsoever caused by any such dogs, and Tenant shall indemnify, defend and hold Landlord harmless against and from all liabilities, obligations, damages, penalties, claims, actions, costs, charges and expenses, including, without limitation, reasonable attorneys' fees and other professional fees (if and to the extent permitted by Law), which may be imposed upon, incurred by or asserted against Landlord in connection with any such dogs.

(d) Any Tenant desiring to permit dogs will be responsible for all dog related housekeeping and maintenance expenses determined as necessary by Landlord and incurred by Landlord in the maintenance of Tenant's premises beyond building standard contract services.

(e) This right is limited to up to three (3) dogs on the Premises at any one time.

(f) Access to and egress from the Building and tenant premises shall be as follows:

(i) Enter or exit the Building using only the two (2) service entrances on either side of the Building loading dock using an approved access device. In the event Landlord installs card access on the exterior stairwell entrance doors, Landlord reserves the right to designate those doors for primary access.

(ii) Access and exit the Second Floor Premises only via the Service Elevator designated specifically for dog accessibility or via the internal staircase between the First Floor Premises and the Second Floor Premises.

(iii) Access or depart Tenant's Premises without entering any other areas of the Building such as common area restrooms or stairwells, or other, except as set forth in clauses (i)-(iii) above.

(g) Dogs are not permitted in restrooms, fire stairwells (except in an emergency), bicycle room, the conference facility, the locker rooms, the main lobby, or in any Building public or common space existing currently or designated as such by Landlord in the future, except the areas designated in clauses (i)-(iii) above.

(h) Dogs are not permitted in the landscaped areas adjacent to the property.

(i) Landlord reserves the right, from time to time, to ban certain breeds of dogs, at its sole discretion, and to modify the Dog Rules & Regulations as it deems necessary.

(j) Any violation of these rules shall entitle Landlord to disallow any and all dogs in the Premises thereafter by notice to Tenant thereof. If Tenant continues to bring dogs into the Building after receiving such notice from Landlord, then such action shall constitute a default under the Lease.

(k) The rights of Tenant under this Section 30.19 are personal to HubSpot, Inc. and any Permitted Assignee, and may not be exercised by any other tenant, subtenant, licensee, or other occupant of the Premises or any portion thereof.

Additional restrictions:

- Dogs in excess of 40 pounds, taller than 24 inches (or otherwise, in the reasonable discretion of Landlord or its property manager), and not “house broken” are prohibited from the Building.
- Any observed aggressive behavior, such as growling, barking, chasing, nipping or biting will result in the dog being permanently removed from the Building.
- Any dog with excessive odors or perceived to be unhealthy, unclean, infested with fleas/ticks/other, or not adequately groomed, will not be permitted into the Building.
- All dogs must be attended at all times; must always be on a leash when outside the Premises as access and exit occurs and while on the exterior property of Landlord.
- Tenants are required to clean up after their dogs whether in any designated dog relief area, or on sidewalks and streets, pursuant to any applicable City of Cambridge ordinance.
- Any dog “accidents” or failure of Tenant to clean up after its permitted dogs will result in any offending dog being banned permanently from the Building. Additionally, “puppy pads” or similar indoor relief treatments and measures are strictly prohibited.
- Tenants shall be responsible for the cost of all cleaning, pest control (e.g. treatment for ticks and fleas), and all other items associated with their dogs, which costs shall be Additional Rent.

30.20 Soda Fountain.

Tenant shall have the right to install one (1) or more soda fountains in the Premises in accordance with the provisions of Article 12 above, and Tenant will not be required to remove such soda fountains at the end of the Term.

IN WITNESS WHEREOF the parties hereto have executed this Deed of Lease in multiple copies, each to be considered an original hereof, as a sealed instrument on the day and year noted in Exhibit 1 as the Execution Date.

LANDLORD:

ONE CANAL PARK MASSACHUSETTS LLC,
a Delaware limited liability company

By: BAY STATE REIT, LLC, a Delaware limited
Liability company, its Manager

By: U.S. REAL ESTATE INVESTMENT
FUND REIT, INC., a Delaware corporation

By: /s/ Peter Palandjian
Name: Peter Palandjian
Title: President & Treasurer

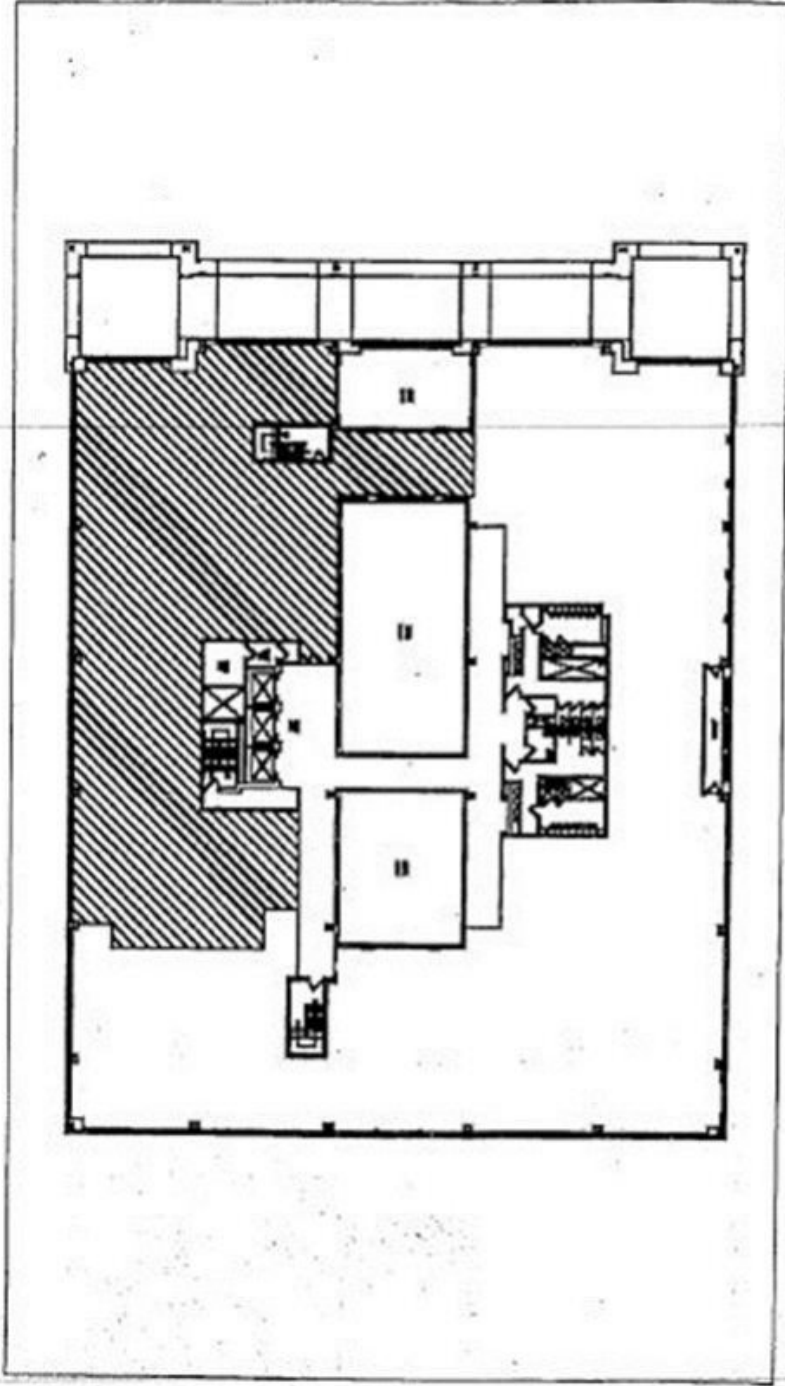
TENANT:

HUBSPOT, INC.,
a Delaware corporation

By: /s/ John P. Kelleher
Name: John P. Kelleher
Title: General Counsel
Hereunto Duly Authorized

EXHIBIT 2, SHEET 1
LEASE PLAN, PREMISES
ATTACHED HERETO

Exhibit 2, Sheet 1



One Canal Park
2nd Floor
Cambridge, Massachusetts

EXHIBIT 3

INSURANCE PROVISIONS

1. TENANT INSURANCE

- A. Tenant shall procure, maintain and pay for, from a company or companies lawfully authorized to do business in the jurisdiction in which the Building is located having a rating of A-VIII or better by AM Best and otherwise reasonably acceptable to Landlord, the following types of insurance as will protect the Tenant and Landlord against claims which may be claimed to have occurred from and after the time Tenant and/or its contractors first enter the Premises and continuing through the expiration of the Term of this Lease or, if later, the last day that Tenant or anyone claiming by, through or under Tenant is in occupancy of all or a portion of the Premises:
- (i) Commercial General Liability Insurance, as hereinafter defined, with the following minimum limits:
 - (a) \$1,000,000 Each Occurrence;
 - (b) \$2,000,000 General Aggregate
 - (c) \$1,000,000 Personal and Advertising Injury; and
 - (d) \$2,000,000 Products-Completed Operations Aggregate.
 - (ii) Umbrella/Excess Liability Insurance, as hereinafter defined, with a per occurrence and annual aggregate limit of \$4,000,000 per location ("Umbrella Limit").
 - (iii) Property Insurance, as hereinafter defined, insuring Tenant's personal property and trade fixtures in and about the Premises and the Later Alterations (as defined in Article 18) in an amount equal to one hundred percent (100%) replacement cost value.
 - (iv) Terrorism coverage, where commercially available, is recommended.
- B. In no event shall Landlord be responsible for Tenant's business interruption exposure or loss which shall be the Tenant's sole responsibility. The foregoing shall not, however, affect any provisions for rent abatement which are specifically set forth in the Lease.
- C. All insurance required of Tenant (and Tenant's contractors) shall be primary and non-contributory and maintained under valid and enforceable policies, for the full limits and coverage terms required herein. To the extent such a provision is then available from Tenant's insurer, such insurance shall provide that it shall not be canceled or the coverages be changed or reduced below the minimum amounts and coverages required under this Lease without at least thirty (30) days' (10 days' in the event of cancellation for nonpayment of premium) prior written notice to Landlord, and in any event, Tenant shall provide Landlord with at least thirty (30) days' prior written notice of any such cancellation or reduction in the amounts or types of such insurance below the minimum amounts and coverages required under this Lease. On or before the time Tenant and/or its contractors enter the Premises in accordance with Articles 4 and 12 of this Lease and thereafter not less than ten (10) days prior to the expiration date of each expiring policy, certificates of insurance evidencing insurance coverage required herein together with evidence satisfactory to Landlord of the payment of all premiums for such policies, shall be delivered by Tenant to Landlord, and certificates as aforesaid of such policies shall, upon request of Landlord, be delivered by Tenant to the holder of any mortgage affecting the Premises.

- D. Landlord may require, from time to time additional insurance coverages and limits as may be reasonable and customary for similar first-class office buildings in the Cambridge, Massachusetts.
- E. In the event Tenant subleases all or any part of the Premises, Tenant shall require its subtenant(s) to also carry and maintain the same insurance coverage terms and limits as required herein of Tenant.
- F. Landlord makes no representation or warranty to Tenant that the amount of insurance required to be carried by Tenant under the terms of this Lease is adequate to fully protect Tenant's interests. Tenant is encouraged to evaluate its insurance needs and obtain whatever additional types or amounts of insurance that it may deem desirable or appropriate.

2. TENANT CONTRACTOR INSURANCE

- A. Tenant shall cause contractors employed by Tenant to carry:
 - (i) Worker's Compensation Insurance in compliance with statutory requirements, and Employer's Liability Insurance, as hereinafter defined,
 - (ii) Automobile Liability Insurance, and
 - (iii) Commercial General Liability and Umbrella Liability Insurance covering such contractors on or about the Premises in the amount stated in Section 1.A. above or in such other reasonable amount as Landlord shall require.
- B. Tenant shall submit, or shall cause such contractors employed by Tenant to submit, certificates evidencing such coverage to Landlord prior to the commencement of any Alterations in or to the Premises and at least 15 days prior to any policy renewals.
- C. All insurance carried by Tenant's Contractors shall be primary and non-contributory and Tenant shall cause each of Tenant's contractors to require and maintain the foregoing insurance requirements of its subcontractors and sub-sub contractors at all tiers.

3. LANDLORD INSURANCE

During the entire Term of this Lease, and adjusting insurance coverages to reflect current values from time to time, Landlord shall keep the Building (excluding Later Alterations, as defined in Article 18, and any personal property or trade fixtures belonging to Tenant or those claiming by, through or under Tenant) insured against loss or damage caused by any peril covered under fire, extended coverage and all risk insurance in an amount equal to one hundred percent (100%) replacement cost value above foundation walls.

Landlord shall maintain Liability insurance with a limit of \$5,000,000 per occurrence and in the aggregate and such coverage may be achieved by a combination of CGL and Umbrella liability policies.

Landlord shall maintain or cause to be maintained Garage keepers Legal Liability coverage with limits that are reasonable and customary for similar properties and exposures in the same geographic region.

If and to the extent Landlord or Landlord's property manager has any employees, Landlord shall maintain or cause its property manager to maintain statutory workers' compensation insurance and employer's liability insurance in a commercially reasonable amount determined by Landlord.

4. **DEFINITIONS**

- A. Commercial General Liability Insurance: commercial general liability insurance including coverage for bodily injury (inclusive of but not limited to coverage for death, and mental anguish), property damage, premises operations, personal & advertising injury, independent contractors, products and completed operations, and contractual liability coverages. Such policy shall provide coverage on an occurrence form and be endorsed to have the General Aggregate set forth above apply on a per location basis, and the deductibles and/or self-insured retentions thereunder shall be commercially reasonable. The Contractual General Liability Insurance shall include coverage sufficient to meet Tenant's indemnity obligations in this Lease to the extent they are insurable. Landlord, Landlord's managing agent any other parties requested by Landlord from time to time in writing shall each be added as an additional insured (using form CG2010(11/85) or equivalent, or another form reasonably approved by Landlord in writing) on a primary non-contributory basis on the Commercial General Liability Insurance policy.
- B. Umbrella/Excess Liability Insurance: umbrella/excess liability insurance on a follow form basis with a per occurrence and annual aggregate limit of the Umbrella Limit set forth above per location. Coverage shall be excess of Commercial General Liability Insurance (including products and completed operations coverage), Automobile Liability Insurance (if applicable) and Employer's Liability Insurance (if applicable) with coverage being concurrent with and not more restrictive than the underlying insurance policies and shall include the same additional insured provisions as the Commercial General Liability Insurance, and the deductibles and/or self-insured retentions thereunder shall be commercially reasonable.
- C. Property Insurance: property insurance against loss or damage caused by any peril covered under an all risk insurance policy or its equivalent. The Property Insurance policy shall include coverage for business interruption including extra expense to insure Tenant's ongoing business operations at Premises should the Tenant be unable to continue operations due to an insurable event. Tenant is also responsible for any and all boiler & machinery/machinery and equipment insurance relating to its own equipment, and such Property Insurance shall include such coverage. The deductibles and/or self-insured retentions under such Property Insurance shall be commercially reasonable. The proceeds of such Property Insurance shall first be used for the replacement or restoration of such personal property or trade fixtures and the Later Alterations until such restoration or replacement is complete and then to mitigate business interruption loss and extra expense. Such insurance shall include waivers of subrogation (as included in Article 19).
- D. Employer's Liability Insurance: employer's liability insurance in the amount of \$500,000 each accident for bodily injury by accident, \$500,000 each employee for bodily injury by disease, and \$500,000 policy limit for bodily injury by disease, or such other amount as may be required by the Umbrella/Excess Liability Insurance to effect umbrella coverage.

EXHIBIT 4

RULES AND REGULATIONS

1. The sidewalks, entrances, passages, courts, elevators, vestibules, stairways, corridors or halls or other parts of the Building not occupied by any tenant shall not be obstructed or encumbered by any tenant or used for any purpose other than ingress and egress to and from the Premises, and if the Premises are situated on the ground floor of the Building, the tenant thereof shall, at said tenant's own expense, keep the sidewalks and curb directly in front of said Premises clean and free from ice and snow. Landlord shall have the right to control and operate the public portions of the Building, and the facilities furnished for the common use of the tenants, in such a manner as Landlord deems best for the benefit of the tenants generally. No tenant shall permit the visit to its premises of persons in such numbers or under such conditions as to interfere with the use and enjoyment by other tenants of the entrances, corridors, elevators and other public portions or facilities of the Building.

2. No awnings or other projections shall be attached to the outside walls of the Building without the prior written consent of Landlord. No drapes, blinds, shades, or screens shall be attached to or hung in, or used in connection with any window or door of the Premises, without the prior written consent of Landlord. Such awnings, projections, curtains, blinds, shades, screens or other fixtures must be of a quality, type, design and color, and attached in the manner approved by Landlord. Drapes installed by the tenant for their use must be cleaned by the tenant. Landlord shall have the right to require Tenant to remove, in Landlord's reasonable discretion, any items placed on the windowsills of the Premises that are visible from outside of the Building.

3. Except as permitted in the Lease, no sign, advertisement, notice or other lettering shall be exhibited, inscribed, painted or affixed by tenant on any part of the outside or inside of the Premises or Building without the prior written consent of Landlord. In the event of the violation of the foregoing by any tenant, Landlord may remove same without any liability, and may charge the expense incurred by such removal to the tenant or tenants violating this rule. Interior signs on doors and directory tablet shall be inscribed, painted or affixed for each tenant by Landlord at the expense of such tenant, and shall be of a size, color and style acceptable to Landlord.

4. No showcases or other articles shall be put in front of or affixed to any part of the exterior of the Building, nor placed in the halls, corridors or vestibules without the prior written consent of Landlord.

5. The water and wash closets and other plumbing fixtures shall not be used for any purposes other than those for which they were constructed, and no sweepings, rubbish, rags or other substances shall be thrown therein. All damages resulting from any misuse of the fixtures shall be borne by the tenant who, or whose servants, employees, agents, visitors or licensees, shall have caused the same.

6. There shall be no marking, painting, drilling into or in any way defacing any part of the Premises or the Building. No boring, cutting or stringing of wires shall be permitted. Tenant shall not construct, maintain, use or operate within the Premises or elsewhere within or on the outside of the Building, any electrical device, wiring or apparatus in connection with a loud speaker system or other sound system.

7. Except as permitted in the Lease, no bicycles, vehicles or animals, birds or pets of any kind (other than animals providing assistance to persons with disabilities) shall be brought into or kept in or about the Premises, and no cooking shall cause or permit any unusual or objectionable odors to be produced upon or emanate from the Premises.

8. The Premises shall not be used for manufacturing, for the storage of merchandise, or for the sale of merchandise, goods or property of any kind at auction.

9. No tenant shall make, or permit to be made, any unseemly or disturbing noises or disturb or interfere with occupants of this or neighboring buildings or premises of those having business with them whether by the use of any musical instrument, radio, talking machine, unmusical noise, whistling, singing, or in any other way. No tenant shall throw anything out of the doors or windows or down the corridors or stairs.

10. No inflammable, combustible or explosive fluid, chemical or substance shall be brought or kept upon the Premises.

11. No additional locks or bolts of any kind shall be placed upon any of the doors, or windows by any tenant, nor shall any changes be made in existing locks or the mechanism thereof. The doors leading to the corridors or main halls shall be kept closed during Business Hours except as they may be used for ingress or egress. Each tenant shall, upon the termination of its tenancy, restore to Landlord all keys to stores, offices, storage, and toilet rooms either furnished to or otherwise procured by such tenant, and in the event of the loss of any keys, so furnished, such tenant shall pay to Landlord the cost thereof.

12. All removals, or the carrying in or out of any safes, freight, furniture or bulky matter of any description must take place during the hours which Landlord or its Agent may determine from time to time. Landlord reserves the right to inspect all freight to be brought into the Building and to exclude from the Building all freight which violates any of these Rules and Regulations or this Lease of which these Rules and Regulations are a part.

13. Landlord shall have the right to prohibit any advertising by any tenant which, in Landlord's opinion, tends to impair the reputation of the Building or its desirability as a building for offices, and upon written notice from Landlord, tenant shall refrain from or discontinue such advertising.

14. Any person employed by any tenant to do janitorial work within the Premises must obtain Landlord's consent and such person shall, while in the Building and outside of said Premises, comply with all instructions issued by the Superintendent of the Building. No tenant shall engage or pay any employees on the Premises, except those actually working for such tenant on said Premises.

15. Landlord reserves the right to exclude from the Building at all times any person who is not known or does not properly identify himself to the building management or watchman on duty. Landlord may at his option require all persons without access cards who are admitted to or leaving the Building between the hours of 6:00 p.m. and 8:00 a.m., Monday through Saturday, Sundays and legal holidays to register. Each tenant shall be responsible for all persons for whom it authorizes entry into or exit out of the Building, and shall be liable to Landlord for all acts of such persons.

16. The Premises shall not be used for lodging or sleeping or for any immoral or illegal purpose.

17. Each tenant, before closing and leaving the premises at any time, shall see that all windows are closed and all lights turned off.

18. The requirements of tenant will be attended to only upon application at the office of the Building. Employees shall not perform any work or do anything outside of the regular duties, unless under special instruction from the management of the Building.

19. Canvassing, soliciting and peddling in the Building are prohibited, and each tenant shall cooperate to prevent the same.

20. Only hand trucks equipped with rubber tires and side guards may be used in the Building.

21. Access plates to underfloor conduits shall be left exposed. Where carpet is installed, carpet shall be cut around access plates. Where tenant elects not to provide removable plates in their carpet for access into the underfloor duct system, it shall be the tenant's responsibility to pay for the removal and replacement of the carpet for any access needed into the duct system at any time in the future.

22. Mats, trash or other objects shall not be placed in the public corridors.

23. Landlord does not maintain or clean suite finishes which are non-standard, such as kitchens, bathrooms, wallpaper, special lights, etc. However, should the need for repairs arise, Landlord will arrange for the work to be done at the tenant's expense.

24. Landlord will furnish and install light bulbs for the building standard fluorescent or incandescent fixtures only. For special fixtures, the tenant will stock his own bulbs, which will be installed by Landlord when so requested by the tenant.

25. Tenant shall comply with all workplace smoking Laws. There shall be no smoking in bathrooms, elevator lobbies, elevators, and other common areas, or anywhere in the Building or the Garage or within the no-smoking zones outside the Building as designated by Landlord, from time to time (Tenant acknowledging that the entire Building is smoke-free).

26. Each tenant shall handle its newspapers and "office paper" in the manner required by applicable law and shall conform with any recycling plan instituted by Landlord.

27. Prior to serving alcoholic beverages in the Premises, Tenant shall obtain from Landlord a copy of Landlord's then-current policies regarding alcoholic beverages, and shall comply therewith (including, without limitation, compliance with the insurance requirements set forth therein).

28. Violation of these rules and regulations, or any amendments thereto, shall be a default under this Lease, entitling Landlord to all remedies therefor.

29. Landlord may upon request by any tenant, waive the compliance by such tenant of any of the foregoing rules and regulations, provided that (i) no waiver shall be effective unless signed by Landlord or Landlord's authorized Agent, (ii) any such waiver shall not relieve such tenant from the obligation to comply with such rule or regulation in the future unless expressly consented to by Landlord, and (iii) no waiver granted to any tenant shall relieve any other tenant from the obligation of complying with the foregoing rules and regulations unless such other tenant has received a similar waiver in writing from Landlord.

30. In the event of any conflict between any provisions in this Lease and these rules and regulations, the provisions set forth in this Lease shall control.

EXHIBIT 5

FORM OF COMMENCEMENT DATE AGREEMENT

Reference is made to that certain Lease by and between **[[Landlord name]]**, a _____, Landlord, and _____, a _____, Tenant, and dated _____.

Landlord and Tenant hereby confirm and agree that:

31. The Commencement Date under this Lease is _____.

32. The Rent Commencement Date under this Lease is _____.

33. The Expiration Date under this Lease is _____.

34. With respect to the initial build-out of the Premises, Tenant shall be required to remove the following items at the expiration or earlier termination of the Lease: all telecommunication, computer, and other cabling installed by or for Tenant in the Premises or elsewhere in the Building, and _____. Tenant's obligations to remove any further Alterations to the Premises shall be governed by the provisions of the Lease, including, without limitation, Articles 12 and 22 thereof.

This Commencement Date Agreement is executed as of _____, 201__.

LANDLORD:

_____,
a _____

By: _____
Name: _____
Title: _____

TENANT:

_____,
a _____

By: _____
Name: _____
Title: _____

Hereunto Duly Authorized

EXHIBIT 6

FORM OF LETTER OF CREDIT

BENEFICIARY:

ISSUANCE DATE:
_____, 201_

[[LANDLORD]]

IRREVOCABLE STANDBY
LETTER OF CREDIT NO.

ACCOMTEE/APPLICANT:

MAXIMUM/AGGREGATE
CREDIT AMOUNT:
\$ _____
USD: _____

LADIES AND GENTLEMEN:

We hereby establish our irrevocable letter of credit in your favor for account of the applicant up to an aggregate amount not to exceed \$ _____ US Dollars available by your draft(s) drawn on ourselves at sight accompanied by:

Your statement, signed by a purportedly authorized officer/official certifying that the Beneficiary is entitled to draw upon this Letter of Credit (in the amount of the draft submitted herewith) pursuant to this Lease (the "**Lease**") dated _____ by and between _____, as Landlord, and _____, as Tenant.

Draft(s) must indicate name and issuing bank and credit number and must be presented at this office.

You shall have the right to make partial draws against this Letter of Credit from time to time.

Funds will be made available to Beneficiary on the same day as a sight draft is presented by Beneficiary.

This Letter of Credit is transferable without charge to you at any time and from time to time and may be transferred in its entirety only. In the event of a transfer, we reserve the right to require reasonable evidence of such transfer as a condition to any draw hereunder. Any such transfer is to be effective at our counters and is contingent upon:

- A. The satisfactory completion of our transfer form attached hereto; and
- B. The return of the original of this Letter of Credit and all amendments thereto for endorsement thereon by us to the transferee.

This Letter of Credit shall expire at our office on _____, 201_ (the "**Stated Expiration Date**"). It is a condition of this Letter of Credit that the Stated Expiration Date shall be deemed automatically extended without amendment for successive one (1) year periods from such Stated Expiration Date, unless at least forty-five (45) days prior to such Stated Expiration Date (or any anniversary thereof) we shall notify you and the Accomtee/Applicant in writing by certified mail (return receipt) that we elect not to consider this Letter of Credit extended for any such additional one (1) year period.

We expressly agree and acknowledge that we shall not refuse to pay on any draw permitted under this Letter of Credit in the event that the Accomtee/Applicant opposes, contests or otherwise attempts to interfere with any attempt by Landlord to draw down from said Letter of Credit.

Except as otherwise expressly stated herein, this Letter of Credit is subject to the "Uniform Customs and Practice for Documentary Credits, International Chamber of Commerce, Publication No. 500 (1993 Revision)".

EXHIBIT 7

CLEANING SPECIFICATIONS

1 Canal Park

Overview

This Base Cleaning Specification has been designed to standardize the cleaning programs. Used in conjunction with the site-specific requirements section, it includes industry best practices as well as green cleaning processes to ensure a healthy and safe environment for the people who visit or work in our buildings.

It is based on a five-day-per-week service schedule and is formatted into three sections:

Section one includes the area types that can be found in both the common areas or the suite areas. The task and frequency sets associated with these area types remain constant regardless of “where” the areas are found.

Section two includes the area types that are found in the common areas only. These may, at times, require the cleaning tasks to be performed more frequently to recover from heavy use.

Section three includes the area types within the suites. Cleaning for these areas is focused on the needs commonly associated with tenant activities. In each case, the specifications are expressed in the industry-standard format utilizing annual frequencies (see Frequency Chart below).

Frequency Chart

<u>EXAMPLES OF FREQUENCY REQUIRED</u>	<u>ANNUAL FREQUENCY</u>
Five day service (daily)	260
Four times weekly	208
Twice weekly	104
Weekly service	52
Monthly service	12
Quarterly service	4
Yearly service	1

Specifications for Area Types Found in Common Areas and/or Suite Areas
Atriums, Entrances & Lobbies

Task Description	Annual Frequency
Clean door glass and other adjacent glass areas.	260
Dust furniture and spot clean all horizontal and vertical surfaces.	260
Empty general trash, replace liners when soiled or torn. Remove trash to designated area.	260
clean ash urns.	260
Spot clean carpet using approved carpet spotting equipment and supplies.	260
Dust mop floors with a water-based chemically treated dust mop.	260
Damp mop floors to remove dirt and spills.	260
Fully vacuum all walk-off mats	260
Vacuum entry door thresholds.	52
Dust areas above shoulder level and below knee level.	52
Spot clean telephones and sanitize receivers.	52
Burnish finished floor using electric burnisher.	48
Polish entry door thresholds.	12
Dust or vacuum air vents to remove loose dust, soil and cobwebs.	12
Dust window treatments including horizontal and vertical blinds.	4
Clean and polish wood furniture to restore finish. Exception: Citizens Bank Floors.	4
Vacuum fabric furniture.	4
Machine scrub hard surface floors.	4
Damp wipe light fixture exteriors to remove stains, dust and cobwebs.	1
Damp wipe trash containers to remove soil and stains.	1

Break Areas & Kitchenettes

Task Description	Annual Frequency
Empty break room trash, replace liners and tie-off at corners, clean obvious food and spills from exterior of trash container. Remove trash to designated area.	260
Dust and damp wipe horizontal and vertical break room surfaces including tops of microwave. Interior Microwave cleaning is an extra, please provide unit cost.	260
Dust mop floors with a water-based chemically treated dust mop.	260
Damp mop floors to remove dirt and spills.	260
Fully vacuum all carpeted areas from wall to wall.	260
Spot clean carpet using approved carpet spotting equipment and supplies.	260
Dust areas above shoulder level and below knee level.	52
Damp wipe trash containers to remove soil and stains.	12
Damp wipe air vents to remove dust, soil and cobwebs.	4
Dust window treatments including horizontal and vertical blinds.	4
Machine scrub and recoat floors using approved floor finish.	3
Hot-water extract carpeted areas using approved equipment and supplies.	2
Damp wipe light fixture exteriors to remove stains, dust and cobwebs.	1
Completely strip and refinish floors, apply three coats of approved floor finish and buff.	1

Copy / Mail / Fax Areas

<u>Task Description</u>	<u>Annual Frequency</u>
Empty general trash, replace liners when soiled or torn. Remove trash to designated area.	260
Spot clean carpet using approved carpet spotting equipment and supplies.	260
Using a backpack, spot vacuum carpets and hard surfaces to remove visible dirt, dust and debris.	208
Spot mop floors to remove visible dirt and spills.	208
Dust furniture and spot clean all horizontal and vertical surfaces.	52
Dust areas above shoulder level and below knee level.	52
Fully vacuum all carpeted areas from wall to wall.	52
Damp mop floors to remove dirt and spills.	52
Dust or vacuum air vents to remove loose dust, soil and cobwebs.	4
Dust window treatments including horizontal and vertical blinds.	4
Machine scrub and recoat floors using approved floor finish.	3
Dust light fixtures to remove exterior dust and cobwebs.	1
Damp wipe trash containers to remove soil and stains.	1

Conference Rooms

<u>Task Description</u>	<u>Annual Frequency</u>
Dust furniture and spot clean all horizontal and vertical surfaces.	260
Spot clean interior partition and door glass.	260
Empty general trash, replace liners when soiled or torn. Remove trash to designated area.	260
Spot clean carpet using approved carpet spotting equipment and supplies.	260
Vacuum carpeted traffic lanes and spot vacuum hard-to-reach areas.	208
Damp wipe dry erase boards and trays.	52
Dust areas above shoulder level and below knee level.	52
Spot clean telephones and sanitize receivers.	52
Fully vacuum all carpeted areas from wall to wall.	52
Dust or vacuum air vents to remove loose dust, soil and cobwebs.	4
Dust window treatments horizontal and vertical blinds coordinated with manager.	1
Dust light fixtures to remove exterior dust and cobwebs.	1
Damp wipe trash containers to remove soil and stains.	1

Elevators

<u>Task Description</u>	<u>Annual Frequency</u>
Clean elevator walls, doors, carpets, tile, hard surface floors, ceiling and stainless steel.	260
Vacuum elevator track.	104
Polish elevator tracks and all associated bright work including metal frames and other metallic surfaces.	52
Damp wipe light fixture exteriors to remove stains, dust and cobwebs.	1
	1

Janitor Closets

<u>Task Description</u>	<u>Annual Frequency</u>
Clean janitors' room sinks and floors, organize shelves and inspect equipment.	260
Dust or vacuum air vents to remove loose dust, soil and cobwebs.	4
Dust light fixtures to remove exterior dust and cobwebs.	1
Damp wipe trash containers to remove soil and stains.	1

Restrooms, Common

<u>Task Description</u>	<u>Annual Frequency</u>
Perform all daily restroom cleaning procedures; apply germicidal cleaner to all fixtures, refill dispensers, empty trash and replace liners, remove trash to designated area, spot clean mirrors and partitions, wipe fixtures & bright work clean, sweep and mop floors with germicidal cleaner.	260
With a germicidal cleaner, completely damp wipe restroom partitions including high/low areas.	52
Dust or vacuum air vents to remove loose dust, soil and cobwebs.	12
Wash restroom walls with germicidal cleaner.	12
Machine scrub restroom floors with germicidal cleaner.	12
Damp wipe light fixture exteriors to remove stains, dust and cobwebs.	12
Damp wipe trash containers and to remove soil and stains.	52

Stairwells, Common

<u>Task Description</u>	<u>Annual Frequency</u>
Spot clean carpeted stairs using approved carpet spotting equipment and supplies.	260
Spot mop hard surface or tile stairs.	208
Spot vacuum stairs using a backpack vacuum.	208
Damp mop stairs to remove dirt and spills.	208
Vacuum stairways, dust vertical and horizontal surfaces and spot clean.	52
Dust light fixtures to remove exterior dust and cobwebs.	1
Completely strip and refinish tiled landings, apply three coats of approved floor finish.	1

Trash Dumpster Enclosures

<u>Task Description</u>	<u>Annual Frequency</u>
Police exterior trash dumpster areas to remove litter.	52
Specifications for Area Types Found in Suites	

Only Corridors, Suite

<u>Task Description</u>	<u>Annual Frequency</u>
Dust corridor furniture; spot clean all horizontal and vertical surfaces including interior and door glass.	260
Clean and polish drinking fountains.	260
Empty general trash, replace liners when soiled or torn. Remove trash to designated area.	260
Spot clean carpet using approved carpet spotting equipment and supplies.	260
Fully vacuum corridor carpets from wall to wall.	260
Dust mop hard surface floors with a water-based chemically treated dust mop.	260
Damp mop or auto scrub floors to remove dirt and spills.	260
Dust areas above shoulder level and below knee level.	52
Dust or vacuum air vents to remove loose dust, soil and cobwebs.	4
Dust window treatments including horizontal and vertical blinds.	4
Damp wipe light fixture exteriors to remove stains, dust and cobwebs.	1
Damp wipe trash containers to remove soil and stains.	1

Executive Offices, Suite

<u>Task Description</u>	<u>Annual Frequency</u>
Spot clean carpet using approved carpet spotting equipment and supplies.	260
Empty general trash, replace liners when soiled or torn. Remove trash to designated area.	260
Dust mop floors with a water-based chemically treated dust mop.	260
Damp mop floors to remove dirt and spills.	260
Fully vacuum carpets from wall to wall to remove dirt, dust and debris.	260
Dust furniture and spot clean all horizontal and vertical surfaces.	260
Dust areas above shoulder level and below knee level.	52
Dust or vacuum air vents to remove loose dust, soil and cobwebs.	4
Dust window treatments including horizontal and vertical blinds.	4
Dust light fixtures to remove exterior dust and cobwebs.	1
Damp wipe trash containers to remove soil and stains.	1

General Offices, Suite

<u>Task Description</u>	<u>Annual Frequency</u>
Spot clean carpet using approved carpet spotting equipment and supplies.	260
Empty general trash, replace liners when soiled or torn. Remove trash to designated area.	260
Spot mop floors to remove visible dirt and spills.	260
Using a backpack, spot vacuum carpets to remove visible dirt, dust and debris.	260
Dust furniture and spot clean all horizontal and vertical surfaces.	52
Dust areas above shoulder level and below knee level.	52
Fully vacuum all carpeted areas from wall to wall.	52
Using a backpack, fully vacuum or dust mop hard surface floors to remove dirt, dust, etc.	52
Damp mop floors to remove dirt and spills.	52
Dust or vacuum air vents to remove loose dust, soil and cobwebs.	4
Dust window treatments including horizontal and vertical blinds.	4
Dust light fixtures to remove exterior dust and cobwebs.	1
Damp wipe trash containers to remove soil and stains.	1

EXHIBIT 8

FORM OF NONDISTURBANCE AGREEMENT

ATTACHED HERETO

JPMORGAN CHASE BANK, N.A.
(Mortgagee)

- and -

HUBSPOT, INC.
(Tenant)

- and -

ONE CANAL PARK MASSACHUSETTS, LLC
(Landlord)

**SUBORDINATION, NON-DISTURBANCE
AND ATTORNMENT AGREEMENT**

Dated: as of _____, 2016

Location: One Canal Park, Cambridge, Middlesex County, Massachusetts

PREPARED BY AND UPON
RECORDATION RETURN TO:

Riemer & Braunstein LLP
Three Center Plaza
Boston, Massachusetts 02108
Attention: Steven J. Weinstein, Esq.

SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT

THIS SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT (this "Agreement") is made and entered into as of the ___ day of _____, 2016, by and among JPMORGAN CHASE BANK, N.A., a national banking association, as Administrative Agent for itself and various other lending institutions (defined below)("Mortgagee"), HUBSPOT, INC., a Delaware corporation ("Tenant"), and ONE CANAL PARK MASSACHUSETTS, LLC and its successors and assigns ("Landlord").

RECITALS:

A. Landlord owns the land ("Land") described in Exhibit A attached hereto and the building and related improvements located thereon (the "Building"; the Land and Building are collectively referred to as the "Property").

B. Under the terms of a certain lease (as the same has been, and may be further, amended, assigned, supplemented or otherwise modified, the "Lease") dated _____, 2016 between Tenant and Landlord, or Landlord's predecessor in title, Tenant has leased a portion of the Building, as more particularly described in the Lease (the "Demised Premises").

C. Landlord and certain affiliates of Landlord (Landlord and such affiliates are hereinafter, collectively, referred to as the "Borrower"), have executed a mortgage in favor of Mortgagee (the "Mortgage") pursuant to which Landlord has encumbered or will encumber Landlord's interest in the Land, Building and Lease to secure, among other things, the payment of certain indebtedness owing by Borrower to one or more lenders (the "Lenders") as described therein and in all other documents executed by Borrower or any guarantor evidencing, securing or guaranteeing such indebtedness (collectively, the "Loan Documents").

D. The parties hereto desire to have the Lease be subordinate to the lien of the Mortgage, to establish certain rights of non-disturbance for the benefit of Tenant under the Lease, and further to define the terms, covenants and conditions precedent for such rights.

AGREEMENT:

NOW, THEREFORE, for good and valuable consideration, the parties hereto mutually agree as follows:

1. Subordination. The Lease and all of the terms, covenants and provisions thereof and all rights, remedies and options of Tenant thereunder are and shall at all times continue to be subject and subordinate in all respects to the lien of the Mortgage, including without limitation, all renewals, increases, modifications, consolidations, extensions and amendments thereof with the same force and effect as if the Mortgage and the other Loan Documents had been executed, delivered and (in the case of the Mortgage) recorded prior to the execution and delivery of the Lease.

2. Non-Disturbance. In the event of foreclosure of the Mortgage or conveyance in lieu of foreclosure, which foreclosure or conveyance occurs prior to the expiration of the term of the Lease, including any extensions and renewals of such term, and so long as Tenant is not in default under any of the terms, covenants and conditions of the Lease beyond any applicable notice and cure periods, Mortgagee agrees on behalf of itself, its successors and assigns, including any purchaser at such foreclosure (each being referred to herein as an "Acquiring Party"), that Tenant shall not be named as a party therein unless such joinder shall be required by law, provided, however, such joinder shall not result in the termination of the Lease or disturb the Tenant's possession, quiet enjoyment or use of the Demised Premises or Tenant's rights under the Lease, and the sale of the Property in any such action or proceeding and the exercise by Mortgagee of any of its other rights under the Mortgage shall be made subject to all rights of Tenant under the Lease (subject to the terms of this Agreement); provided, further, however, that Mortgagee and Tenant agree that the following provisions of the Lease (if any) shall not be binding on Mortgagee or Acquiring Party: any option to purchase or any right of first refusal to purchase with respect to the Property, and any provision regarding the use of insurance proceeds or condemnation proceeds with respect to the Property which is inconsistent with the terms of the Mortgage; provided, however, if the Premises and Building are not restored following such casualty, Acquiring Party will be bound by Tenant's termination rights set forth in the Lease.

3. Attornment. In the event of foreclosure of the Mortgage or conveyance in lieu of foreclosure, which foreclosure or conveyance occurs prior to the expiration date of the term of the Lease, including any extensions and renewals of such term now provided thereunder, Tenant shall, at the election of the Acquiring Party, either: (i) attorn to and recognize the Acquiring Party as the new landlord under the Lease, which Lease shall thereupon become a direct lease between Tenant and the Acquiring Party for the remainder of the term of the Lease (including all extension periods which have been or are hereafter exercised) upon the same terms and conditions as are set forth in the Lease (subject to the terms of this Agreement); or (ii) if any Landlord default under the Lease is not susceptible to cure and results in the termination of the Lease, or the Lease is terminated as a result of rejection in a bankruptcy or similar proceeding, then upon receiving the written request of the Acquiring Party, Tenant shall enter into a new lease of the Demised Premises with the Acquiring Party (a "New Lease"), which New Lease shall be upon the same terms, covenants and conditions as are set forth in the Lease (subject to the terms of this Agreement) for the remainder of the term of the Lease (including all extension periods which have been or are hereafter exercised). In either such event described in the preceding clauses (i) or (ii) of this Section 3, Tenant hereby agrees to pay and perform all of the obligations of Tenant pursuant to the Lease (or the New Lease, as applicable) for the benefit of the Acquiring Party. For all purposes of this Agreement, the word "Lease" shall be deemed to mean the Lease or any such New Lease, as applicable.

4. Limitation of Liability. Notwithstanding anything to the contrary contained herein or in the Lease, in the event of foreclosure of the Mortgage or conveyance in lieu of foreclosure, which foreclosure or conveyance occurs prior to the expiration date of the term of the Lease, including any extensions and renewals of such term now provided thereunder, the liability of Mortgagee, its successors and assigns, or Acquiring Party, as the case may be, shall be limited to its interest in the Property and all rents and proceeds therefrom; provided, however, that Mortgagee or Acquiring Party, as the case may be, and their respective successors and assigns, shall in no event and to no extent:

(a) be liable to Tenant for any past act, omission or default on the part of any prior landlord (including Landlord); provided that the foregoing shall not limit Mortgagee's or any Acquiring Party's obligations to correct any conditions that existed as of the date of attornment and violate Mortgagee's or any Acquiring Party's obligations as landlord under the Lease;

(b) be liable for or subject to any offsets or defenses which Tenant might have against any prior landlord (including Landlord), except to the extent that Tenant has an express right to any such offset or defense under the terms of the Lease and the basis of such offset(s) or defense(s) is a default under the Lease which is continuing after Mortgagee or any Acquiring Party acquires title to the Property, and Mortgagee had notice thereof and an opportunity to cure such default in accordance with Section 8;

(c) be liable for any payment of rent or additional rent which Tenant might have paid for more than one month in advance of the due date thereof or any deposit, rental security or any other sums deposited with any prior landlord (including Landlord), except to the extent such monies are actually received by Mortgagee or Acquiring Party, as applicable;

(d) be bound by any amendment, modification or termination of the Lease or by any waiver or forbearance on the part of any prior landlord (including Landlord), in either case to the extent the same is made or given without the prior written consent of Mortgagee if required under the Loan Documents, provided, however, that Mortgagee's consent shall not be required for amendments, modifications or terminations that are made, consistent with the terms of the Lease applicable thereto, in connection with rights expressly granted to Tenant under the Lease (i.e. rights of extension or expansion or rights to terminate in connection with a casualty or condemnation);

(e) be bound by any warranty, representation or indemnity of any nature whatsoever made by any prior landlord (including Landlord) under the Lease including any warranties, representations or indemnities regarding any work required to be performed under the Lease, use, compliance with zoning, hazardous wastes or environmental laws, habitability, fitness for purpose, title or possession;

(f) Except for day-to-day repair, maintenance and replacement obligations under the Lease and Landlord's obligations under the Lease to restore the Demised Premises following casualty or condemnation, be liable to Tenant for construction or restoration, or delays in construction or restoration, of the Building or the Demised Premises, or for the obligations of any prior landlord (including Landlord) to reimburse Tenant for or indemnify Tenant against any costs, expenses or damages arising from such construction or any delay in Tenant's occupancy of the Demised Premises; or

(g) be liable to Tenant for any contribution toward construction or installation of any improvements upon the Demised Premises, or any expansion or rehabilitation of existing improvements thereon; provided, however, if Mortgagee or any Acquiring Party does not make payments to Tenant of the Landlord's Contribution or the Landlord's Demolition Contribution in accordance with the terms and conditions of the Lease, and Tenant has given such Mortgagee or Acquiring Party notice and the opportunity to cure Landlord's failure to pay the Landlord's Contribution and/or the Landlord's Demolition Contribution in accordance with Section 8 below, and provided no default is then continuing under the Lease, then Tenant shall have the right to offset the unpaid Landlord's Contribution or the Landlord's Demolition Contribution against the monthly payments of Yearly Rent due under the Lease.

5. Rent. Tenant hereby agrees to and with Mortgagee that, upon receipt from Mortgagee of a notice of any default by Landlord under the Mortgage, Tenant will pay to Mortgagee directly all rents, additional rents and other sums then or thereafter due under the Lease. In the event of the foregoing, Landlord hereby authorizes Tenant to pay to Mortgagee directly all rents, additional rents and other sums then or thereafter due under the Lease. In addition, Landlord hereby indemnifies and holds Tenant harmless from and against any and all claims, causes of actions, demands, liabilities and losses of any kind or nature, including but not limited, to attorney's fees and expenses, sustained by Tenant as a result of any and all claims by third parties claiming through Landlord all or any portion of the rent, additional rents, and other sums due under the Lease which are paid by Tenant directly to Mortgagee in accordance with the terms and conditions hereof.

6. Intentionally Omitted.

7. Further Documents. The foregoing provisions shall be self-operative and effective without the execution of any further instruments on the part of any party hereto. Tenant agrees, however, to execute and deliver to Mortgagee or Acquiring Party, as the case may be, or such other person to whom Tenant herein agrees to attorn such other instruments as such party shall reasonably request in order to effectuate said provisions.

8. Notice and Cure. Tenant agrees that if there occurs a default by Landlord under the Lease:

(a) A copy of each notice of default given to Landlord pursuant to the Lease shall also be given simultaneously to Mortgagee, and no such notice shall be effective for any purpose under the Lease unless so given to Mortgagee; and

(b) If Landlord shall fail to cure any default within the time prescribed by the Lease, Tenant shall give further notice of such fact to Mortgagee. Mortgagee shall have the right (but not the obligation) to remedy any Landlord default under the Lease, or to cause any default of Landlord under the Lease to be remedied and shall be allowed such additional time as may be reasonably necessary to cure such default (not to exceed an additional ninety (90) days).

9. Notices. All notices, demands, approvals and requests given or required to be given hereunder shall be in writing and shall be deemed to have been properly given upon receipt when personally served or sent by overnight delivery service or upon the third (3rd) business day after mailing if sent by U. S. registered or certified mail, postage prepaid, addressed as follows:

Mortgagee:

JPMorgan Chase Bank, N.A., as Administrative Agent
245 Park Avenue, 45th Floor
New York, New York 10017
Attention: Joan Matera

with a copy to:

Riemer & Braunstein LLP
Three Center Plaza
Boston, Massachusetts 02108
Attention: Steven J. Weinstein, Esq.

Landlord:

One Canal Park Massachusetts, LLC
1270 Soldiers Field Road
Boston, Massachusetts 02135
Attention: Scott Kelly

Tenant:

HubSpot, Inc.
25 First Street, 2nd Floor
Cambridge, MA 02141
Attention: President

with a copy to:

Goodwin Procter LLP
100 Northern Avenue
Boston, MA 02210
Attention: Katherine L. Murphy, Esq.

or to such other address in the United States as such party may from time to time designate by written notice to the other parties.

10. Binding Effect. The terms, covenants and conditions hereof shall be binding upon and inure to the benefit of Mortgagee (for the benefit of the Lenders), Landlord and Tenant and their respective heirs, executors, administrators, successors and assigns.

11. No Oral Modifications. This Agreement may not be modified in any manner or terminated except by an instrument in writing executed by all the parties hereto or their respective successors in interest.

12. Governing Law. This Agreement shall be governed, construed, applied and enforced in accordance with the laws of the State where the Property is located.

13. Counterparts. This Agreement may be signed in counterparts, each of which shall be deemed an original and all of which together shall constitute one document.

14. Inapplicable Provisions. If any term, covenant or condition of this Agreement is held to be invalid, illegal or unenforceable in any respect by a court of competent jurisdiction, such provision shall be deemed modified to the extent necessary to be enforceable, or if such modification is not practicable, such provision shall be deemed deleted from this Agreement, and the other provisions of this Agreement shall remain in full force and effect.

15. Authority. Each of the undersigned parties further represents and warrants to the other parties hereto that the person executing this Agreement on behalf of each such party hereto has been duly authorized to so execute this Agreement and to cause this Agreement to be binding upon such party and its successors and assigns.

16. Tenant's Personal Property. It is expressly agreed to among Mortgagee, Landlord and Tenant that in no event shall the Mortgage cover or encumber (and shall not be construed as subjecting in any manner to the lien thereof) any of Tenant's moveable trade fixtures, business equipment, furniture, signs or other personal property at any time placed in, on or about the Property.

17. Subsequent Transfer. If any Acquiring Party, by succeeding to the interest of Landlord under the Lease, should become obligated to perform the covenants of Landlord thereunder, then, upon any transfer of Landlord's interest by such Acquiring Party, all obligations shall terminate as to such Acquiring Party.

18. Waiver of Jury Trial. LANDLORD, TENANT AND MORTGAGEE HEREBY IRREVOCABLY WAIVE ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR RELATED TO THIS AGREEMENT.

19. Number and Gender. Whenever the context may require, any pronouns used herein shall include the corresponding masculine, feminine or neuter forms, and the singular form of nouns and pronouns shall include the plural and vice versa.

[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK]

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as an instrument under seal as of the date first above written.

MORTGAGEE:

JPMORGAN CHASE BANK, N.A.

By: _____
Name: _____
Title: _____

[Signature Page to Subordination, Non-Disturbance and Attornment Agreement]

TENANT:

HUBSPOT, INC., a Delaware corporation

By: _____
Name: _____
Title: _____

[Signature Page to Subordination, Non-Disturbance and Attornment Agreement]

LANDLORD:

ONE CANAL PARK MASSACHUSETTS, LLC, a
Delaware limited liability company

By: Bay State REIT, LLC, a Delaware limited liability
company, its Manager

By: U.S. Real Estate Investment Fund REIT, Inc., a
Delaware corporation, its Manager

By: _____
Name: Peter Palandjian
Title: President and Treasurer

[Signature Page to Subordination, Non-Disturbance and Attornment Agreement]

ACKNOWLEDGMENTS

STATE OF _____)

COUNTY OF _____) ss.

On the ____ day of _____, 2016, before me, the undersigned, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he/she signed it voluntarily for its stated purpose as _____ for JPMorgan Chase Bank, N.A.

WITNESS my hand and official seal

Notary Public
My Commission Expires: _____

COMMONWEALTH OF MASSACHUSETTS)

COUNTY OF SUFFOLK ss.

On the ____ day of _____, 2016, before me, the undersigned, personally appeared Peter Palandjian personally known to me or proved to me on the basis of satisfactory evidence to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he/she signed it voluntarily for its stated purpose as President and Treasurer of U.S. Real Estate Investment Fund REIT, Inc., the Manager of Bay State REIT, LLC, the Manager of One Canal Park Massachusetts, LLC.

WITNESS my hand and official seal

Notary Public
My Commission Expires:_____

STATE OF _____)

COUNTY OF _____) ss.

On the ____ day of _____, 2016, before me, the undersigned, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he/she signed it voluntarily for its stated purpose as _____ for Hubspot, Inc.

WITNESS my hand and official seal

Notary Public

My Commission Expires: _____

EXHIBIT A

LEGAL DESCRIPTION

PARCEL ONE:

Parcel 1:

The land in the Commonwealth of Massachusetts, County of Middlesex, City of Cambridge, on the easterly side of First Street, shown as "Parcel 'C'" on a plan prepared by Cullinan Engineering Co., Inc., entitled, "Plan of Property Owned by City of Cambridge, First Street, Cambridge, Massachusetts," dated December 6, 1984 (hereinafter the "Plan"), which Plan is recorded with the Middlesex South District County Registry of Deeds as Plan No. 290 of 1985 in Plan Book 16059, Page 434 described as follows:

Beginning at a point on the relocated easterly line of First Street, said point being S 09° 28' 49° W and 199.91 feet from the point of curvature of the relocated corner rounding at Cambridge Street;

Thence, through land now or formerly of the City of Cambridge on the following five courses:

S 80° 31' 11" E, a distance of 153.67 feet, to a point;

S 09° 28' 49° W, a distance of 29.00 feet, to a point;

N 80° 31' 11" W, a distance of 1.67 feet, to a point;

S 09° 28' 49' W, a distance of 171.00 feet, to a point.

And N 80° 31' 11" W, a distance of 152.00 feet, to a point on the aforesaid relocated easterly line of First Street;

Thence N 09° 28' 49" E, along said relocated easterly line of First Street, a distance of 200.00 feet, to the Point of Beginning.

Parcel 2:

There is appurtenant to the above-described parcel the following easements:

a. Service Access and Utility Easement fifty (50') feet wide, as created, set forth in the Quitclaim Deed from the City of Cambridge to Canal Park Associates, dated March 15, 1985, recorded with the Middlesex South District County Registry of Deeds in Book 16059, Page 434;

b. Foundation and Pile Cap Easement five (5') feet wide along the easterly and southerly boundaries and two (2') feet wide in part along the westerly boundary extending into and under First Street, as created and set forth in the Quitclaim Deed from the City of Cambridge to Canal Park Associates, dated March 15, 1985, recorded with the Middlesex South District County Registry of Deeds in Book 16059, Page 434.

c. Vertical limit for foundation and pile cap easements to the top of pile cap, at least one (1') foot below finished grade, as set forth in the Quitclaim Deed from the City of Cambridge to Canal Park Associates, dated March 15, 1985, recorded with the Middlesex South District County Registry of Deeds in Book 16059, Page 434;

d. Construction easement and permanent non-exclusive maintenance easement twenty-five (25') feet from the existing property lines around the project area, as set forth in the Quitclaim Deed from the City of Cambridge to Canal Park Associates, dated March 15, 1985, recorded with the Middlesex South District County Registry of Deeds in Book 16059, Page 434;

e. Encroachment Easement Agreement by and between the City of Cambridge and Canal Park Associates, dated May 23, 1988, recorded with the Middlesex South District County Registry of Deeds in Book 19200, Page 472 and shown on the plan recorded with said Deeds as Plan No. 957 of 1988;

f. Encroachment Easement Agreement by and between the City of Cambridge and Canal Park Associates, dated September 26, 1989, recorded with the Middlesex South District County Registry of Deeds in Book 20380, Page 203 and shown on the plan recorded with said Deeds as Plan No. 131 of 1990;

g. Easements set forth in Tieback and Indemnity Agreement by and between the City of Cambridge and Canal Park Associates, dated November 15, 1989, recorded with the Middlesex South District County Registry of Deeds in Book 20427, Page 501.

PARCEL TWO (Otis Way):

Another parcel of land in the Commonwealth of Massachusetts, County of Middlesex, City of Cambridge, on the easterly side of First Street, being shown as Otis Way on the plan prepared by Cullinan Engineering Co., Inc., entitled, "Plan of Property Owned by City of Cambridge, First Street, Cambridge, Massachusetts," dated December 6, 1984 (hereinafter the "Plan"), which Plan is recorded with the Middlesex South District County Registry of Deeds as Plan No. 290 of 1985 in Plan Book 16059, Page 434.

Beginning at a point on the relocated easterly line of First Street, said point being S 09° 28' 49" W and 149.91 feet from the point of curvature of the relocated corner rounding to Cambridge Street; Thence, through land now or formerly of the City of Cambridge on the following four courses:
S 80° 31' 11" E, a distance of 152.00 feet, to a point;
S 09° 28' 49" W, a distance of 50.00 feet, to a point;
N 80° 31' 11" W, a distance of 152.00 feet, to a point on the aforesaid relocated easterly line of First Street; thence N 09° 28' 49" E, along said relocated easterly line of First Street, a distance of 50.00 feet to the Point of Beginning.

PARCEL THREE (Leasehold Parking Spaces):

Together with the leasehold interest in 100 parking spaces within the East Cambridge Parking Facility located at the corner of First Street and Thorndike Street, East Cambridge, Middlesex County, Massachusetts, set forth in the Lease Agreement by and between the City of Cambridge, as Lessor, and Canal Park Associates, as Lessee, dated March 15, 1985, a Notice of which is recorded with the Middlesex South District County Registry of Deeds in Book 16059, Page 505; as assigned in the Quitclaim Deed by The Travelers Insurance Company to Beacon Properties, L.P., dated June 9, 1994, recorded with said Deeds in Book 24609, Page 49 and the Assignment of Leases and Security Deposits from The Travelers Insurance Company to Beacon Properties, L.P., dated June 9, 1994, recorded with said Deeds in Book 24609, Page 58; as assigned by the Assignment and Assumption of Lease by Beacon Properties, L.P. to BP-One Canal, LLC, dated December 18, 1997, recorded with said Deeds in Book 27998, Page 229; as assigned by the Assignment and Assumption of Lease Agreement for Parking Spaces by MA-One Canal Park, LLC (formerly known as EOP-One Canal Park, LLC, formerly known as BP-One Canal Park, LLC) to BCSP Cambridge One Property LLC, dated March 21, 2014, recorded with said Deeds in Book 63406, Page 336; as affected by a Corrective Assignment and Assumption of Lease Agreement for Parking Spaces by MA-One Canal Park, LLC (formerly known as EOP-One Canal Park, LLC, formerly known as BP-One Canal Park, LLC) to BCSP Cambridge One Property LLC, dated March 21, 2014, recorded with said Deeds in Book 63931, Page 175, and as further assigned to [TBD] by Assignment and Assumption for Parking Lease dated _____, 2016 and recorded in Book _____, Page ____.

PARCEL FOUR (License):

Rights in the nature of an interest in real property as set forth in License No. 2491 dated November 13, 1990 recorded in Book 20912, Page 398; as affected by Partial Certificate of Compliance dated June 2, 1994 recorded in Book 24609, Page 45; as affected by Certificate of Compliance dated June 7, 1999 recorded in Book 30843, Page 421.
2034820.4

EXHIBIT 9

CONFIDENTIALITY AGREEMENT

This Confidentiality Agreement is entered into as of this ____ day of _____, 20__, by and between **ONE CANAL PARK MASSACHUSETTS, LLC**, a Delaware limited liability company ("Landlord"), with an address c/o Intercontinental Real Estate Corporation, 1270 Soldiers Field Road, Boston, MA 02135, and **HUBSPOT, INC.**, a Delaware corporation ("Tenant"), with an address at Two Canal Park, Cambridge, Massachusetts 02141.

WHEREAS, Tenant entered into a certain lease (the "Lease") dated _____, 2016, with respect to certain premises in that certain building located at Two Canal Park, Cambridge, Massachusetts 02141 (the "Building");

WHEREAS, Tenant has requested to conduct an examination of the records maintained by Landlord with respect to Operating Costs paid by Tenant under the Lease for Operating Year 20__ (the "Examination"), and has requested that _____ ("Consultant") be permitted to conduct the Examination;

WHEREAS, the parties do wish to provide for the confidentiality of certain proprietary documents and other sensitive business information that Landlord has or may produce to Tenant and Consultant in connection with the Examination;

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

1. The parties acknowledge and agree that all documents produced by Landlord in the course of the Examination shall be treated as confidential and shall be used by Tenant solely for the purposes of conducting an examination of Operating Costs for Operating Year 20__ and for no other purpose or purposes.

2. Tenant shall not, except as specifically provided in Paragraph 4 below, disclose any such confidential documents or any summary of the contents thereof, to any persons not bound by this Confidentiality Agreement, it being understood and agreed upon that Tenant may show confidential documents to its employees, brokers, attorneys, or independent auditors who are shown this Confidentiality Agreement and agree to be bound hereby. In addition, Tenant may disclose such confidential documents as may be necessary in connection with any arbitration between Landlord and Tenant with respect to such Operating Costs.

3. All such confidential documents shall be maintained in safe and secure facilities at the offices of Tenant. Upon the termination of the Examination and final resolution of any arbitration between Landlord and Tenant with respect thereto, Tenant shall return all confidential documents and all summaries or excerpts thereof to Landlord.

4. Tenant may disclose confidential documents as required by an order of a court of competent jurisdiction, including a subpoena duces tecum, provided the Tenant shall (a) object to production on the grounds of this Confidentiality Agreement, and (b) promptly upon receipt of said order or subpoena, and in no event less than three (3) days after receipt of said order or subpoena or seventy-two (72) hours prior to the time a response is due, whichever is earlier due (unless a response is due in less than such time), notify Landlord in writing of the order or subpoena. In addition, Tenant may disclose confidential documents as may be agreed upon in writing by Landlord.

5. Each of Tenant and Consultant shall advise its employees and independent auditors of the terms of this Confidentiality Agreement and shall be responsible for any failure by any of their respective current or former employees and independent auditors to abide by the terms of this Confidentiality Agreement.

6. In recognition of the confidential nature of the documents and the other business information that Landlord will provide to Tenant under this Confidentiality Agreement and to ensure against any inadvertent disclosure of confidential information, Consultant and any of its employees and independent auditors who review any confidential documents shall not, for a period of two (2) years after the date hereof, consult with, represent or otherwise provide any services to any other current, former or prospective tenant at any building owned by Landlord relating to the examination of any operating expense documentation for any such building. The parties agree that this Paragraph 6 shall survive the breach or termination of this Confidentiality Agreement.

7. Tenant acknowledges and agrees that the extent and irreparable nature of the damages which may result from a breach of this Confidentiality Agreement may make the legal remedies available to Landlord for such a breach inadequate. Accordingly, in the event of a breach of this Confidentiality Agreement, Tenant acknowledges that Landlord will be entitled to immediate injunctive relief without proof of actual damages, in addition to and not in substitution for any other remedy Landlord may have at law or in equity.

8. This Confidentiality Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts.

9. This Confidentiality Agreement shall constitute the entire understanding between the parties concerning the subject matter of this Confidentiality Agreement and supersedes and replaces all prior negotiations, proposed amendments and agreements, written and oral, concerning the subject matter of this Confidentiality Agreement.

10. The undersigned do hereby represent and warrant that they have authority to enter into this Confidentiality Agreement on behalf of themselves and their respective affiliates, subsidiaries or related entities.

11. This Confidentiality Agreement shall be binding upon and inure to the benefit of the successors, successors-in-title, assigns, heirs and personal representatives of the parties.

12. Capitalized terms used but not defined herein shall have the meanings given to them in the Lease.

13. EACH PARTY HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ALL RIGHTS TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM (WHETHER IN CONTRACT, STATUTE, TORT (SUCH AS NEGLIGENCE) OR OTHERWISE) RELATING TO THIS CONFIDENTIALITY AGREEMENT.

14. Tenant hereby represents and warrants that the Consultant is not being paid on a contingent fee basis in connection with the Examination.

[Signature Page Follows]

WITNESS, the execution hereof by facsimile or otherwise, in any number of counterpart copies, each of which shall be deemed an original for all purposes, as of the date and year first above written.

LANDLORD:

ONE CANAL PARK MASSACHUSETTS LLC,
a Delaware limited liability company

By: BAY STATE REIT, LLC, a Delaware limited
liability company, its Manager

By: U.S. REAL ESTATE INVESTMENT
FUND REIT, INC., a Delaware corporation, its Manager

By: _____
Name: _____
Title: _____

TENANT:

HUBSPOT, INC.,
a Delaware corporation

By: _____
Name: _____
Title: _____

Hereunto Duly Authorized

EXHIBIT 1
JOINDER OF INDEPENDENT CONSULTANT

The undersigned, _____ (“Consultant”), a _____, with an address at _____, has been retained by Tenant to conduct the Examination. Consultant hereby joins in the foregoing Confidentiality Agreement dated as of _____, 20__ by and between _____ AND HUBSPOT, INC., and agrees to be bound by all of the terms thereof. The execution of this Joinder by Consultant and the delivery of an executed original hereof to Landlord is an express pre-condition to Consultant and Tenant commencing the Examination. Consultant hereby represents and warrants that it is not being paid on a contingent fee basis in connection with the Examination.

CONSULTANT:

By: _____
Name: _____
Title: _____
Hereunto Duly Authorized

Date Signed: _____

FIRST AMENDMENT TO LEASE

This **FIRST AMENDMENT TO LEASE** (the “**Amendment**”) dated this 14th day of February, 2017 (the “**Effective Date**”) is made by and between **ONE CANAL PARK MASSACHUSETTS, LLC**, a Delaware limited liability company (the “**Landlord**”), and **HUBSPOT, INC.**, a Delaware corporation (the “**Tenant**”).

RECITALS:

- A. WHEREAS, Landlord and Tenant entered into that certain Lease dated October 7, 2016 (the “**Lease**”) whereby Tenant leases from Landlord certain premises consisting of approximately: (i) 16,750 rentable square feet on the second (2nd) floor (“**Premises A**”); and (ii) approximately 8,562 rentable square feet on the second (2nd) floor (“**Premises B**”) (collectively, Premises A and Premises B shall be known as the “**Premises**”) in the building located at One Canal Park, Cambridge, Massachusetts (the “**Building**”);
- B. WHEREAS, the Expiration Date with respect to the Term of the Lease is scheduled to expire on January 31, 2026 (the “**Expiration Date**”); and
- C. WHEREAS, Landlord has agreed to lease additional space to Tenant pursuant to Tenant’s exercise of its right of first offer under Section 30.17 of the Lease and consisting of: (i) approximately 9,022 rentable square feet on fourth (4th) floor of the Building (“**Premises C**”); and (ii) approximately 21,052 rentable square feet on the fourth (4th) floor of the Building (“**Premises D**”) substantially shown on the floor plan attached hereto as **EXHIBIT “A”** (the on the terms and conditions set forth herein.

AGREEMENT:

NOW THEREFORE, in consideration of the promises contained herein and other good and valuable consideration, the receipt of which is hereby acknowledged, the parties agree as follows:

1. Recitals. The recitals set forth above are incorporated herein and made a part of this Amendment as if set forth herein in full.
2. Capitalized Terms. All capitalized terms used in this Amendment that are not defined in this Amendment shall have the meanings ascribed to such terms in the Lease. In the event of any conflict between the terms of the Lease and the terms of this Amendment, the definitions set forth in this Amendment shall control.
3. Term for Premises C. Landlord demises to Tenant, and Tenant takes from Landlord, the Premises C upon and subject to the provisions of the Lease, as amended by this Amendment. Subject to the terms and conditions set forth herein, the Term of the Lease with respect to Premises C shall commence on the later date to occur of (the "**Premises C Commencement Date**"): (i) March 1, 2017, and (ii) date Landlord delivers possession of Premises C to Tenant vacant, broom clean, free of tenants, occupants, property and debris, in compliance with all applicable Laws and free of all Hazardous Materials that are required to be removed, remediated, or encapsulated pursuant to applicable Environmental Laws and shall expire on the Expiration Date under the Lease. Except as otherwise expressly provided herein, Tenant's lease of the Premises C shall be on all of the terms and conditions of the Lease, and the Term of the Lease with respect to the Premises C shall be coterminous with the Term of the Lease for the Premises, as the same may be earlier terminated or extended as provided in the Lease. For purposes of this Amendment, the "Estimated Commencement Date" for Premises C is March 1, 2017 and Premises C shall be deemed a "Portion of the Premises" under the Lease. Once the Premises C Commencement Date has occurred, Landlord and Tenant shall execute an agreement, in a form similar to that which is attached as Exhibit 5 to the Lease in order to confirm the Premises C Commencement Date and the schedule with respect to Yearly Rent for Premises C.
4. Term for Premises D. Landlord demises to Tenant, and Tenant takes from Landlord, the Premises D upon and subject to the provisions of the Lease, as amended by this Amendment. Subject to the terms and conditions set forth herein, the Term of the Lease with respect to the Premises D shall commence on the later date to occur of (the "**Premises D Commencement Date**"): (i) August 1, 2020, and (ii) date Landlord delivers possession of Premises D to Tenant vacant, broom clean, free of tenants, occupants, property and debris, in compliance with all applicable Laws and free of all Hazardous Materials that are required to be removed, remediated, or encapsulated pursuant to applicable Environmental Laws and shall expire on the Expiration Date under the Lease. Except as otherwise expressly provided herein, Tenant's lease of the Premises D shall be on all of the terms and conditions of the Lease, and the Term of the Lease with respect to the Premises D shall be coterminous with the Term of the Lease for the Premises, as the same may be earlier terminated or extended as provided in the Lease. For purposes of this Amendment, the "Estimated Commencement Date" for Premises D is August 1, 2020 and Premises D shall be deemed a "Portion of the Premises" under the Lease. Once the Premises D Commencement Date has occurred, Landlord and Tenant shall execute an agreement, in a form similar to that which is attached as Exhibit 5 to the Lease in order to confirm the Premises D Commencement Date and the schedule with respect to Yearly Rent for Premises D.

5. Yearly Rent for Premises C. Effective as of the Premises C Rent Commencement Date (as hereinafter defined), Tenant shall pay Yearly Rent with respect to the Premises C in accordance with the following schedule and in accordance with all other terms and conditions applicable to the payment of Yearly Rent under the Lease:

Term for Premises C	Yearly Rent	Monthly Payment	Per Rentable Square Foot of Premises D
From the Premises C Commencement Date through the day immediately preceding the Premises C Rent Commencement Date	\$0	\$0	\$0
From the Premises C Rent Commencement Date through the expiration of the First Expansion Premises Rent Year	\$640,562.00	\$53,380.17	\$71.00
Second Expansion Premises Rent Year	\$649,584.00	\$54,132.00	\$72.00
Third Expansion Premises Rent Year	\$658,606.00	\$54,883.83	\$73.00
Fourth Expansion Premises Rent Year	\$667,628.00	\$55,635.67	\$74.00
Fifth Expansion Premises Rent Year	\$676,650.00	\$56,387.50	\$75.00
Sixth Expansion Premises Rent Year	\$685,672.00	\$57,139.33	\$76.00
Seventh Expansion Premises Rent Year	\$694,694.00	\$57,891.17	\$77.00
Eighth Expansion Premises Rent Year	\$703,716.00	\$58,643.00	\$78.00
From the commencement of the Ninth Expansion Premises Rent Year through January 31, 2026	\$712,738.00	\$59,394.83	\$79.00

Tenant shall have no obligation to pay Yearly Rent for Premises C for the period commencing as of the Premises C Commencement Date and expiring on the date that is one (1) month following the Premises C Commencement Date (the “**Premises C Rent Abatement Period**”). The “**Premises C Rent Commencement Date**” shall be the day immediately following the expiration of the Premises C Rent Abatement Period.

For purposes of the Lease, the term “**Expansion Premises Rent Year**” shall mean a twelve-month period beginning on the Premises C Commencement Date or any anniversary of the Premises C Commencement Date, except that if the Premises C Commencement Date does not fall on the first day of a calendar month, then the first Expansion Premises Rent Year shall begin on the Premises C Commencement Date and end on the last day of the month containing the first anniversary of the Premises C Commencement Date, and each succeeding Expansion Premises Rent Year shall begin on the day following the last day of the prior Expansion Premises Rent Year.

6. Yearly Rent for Premises D. Effective as of the Premises D Rent Commencement Date (as hereinafter defined), Tenant shall pay Yearly Rent with respect to the Premises D in accordance with the following schedule and in accordance with all other terms and conditions applicable to the payment of Yearly Rent under the Lease:

Term for Premises D	Yearly Rent	Monthly Payment	Per Rentable Square Foot of Premises D
From the Premises D Commencement Date through the day immediately preceding the Premises D Rent Commencement Date	\$0	\$0	\$0
From the Premises D Rent Commencement Date through the expiration of the Fourth Expansion Premises Rent Year	\$1,557,848.00	\$129,820.667	\$74.00
Fifth Expansion Premises Rent Year	\$1,578,900.00	\$131,575.00	\$75.00
Sixth Expansion Premises Rent Year	\$1,599,952.00	\$133,329.33	\$76.00
Seventh Expansion Premises Rent Year	\$1,621,004.00	\$135,083.67	\$77.00
Eighth Expansion Premises Rent Year	\$1,642,056.00	\$136,838.00	\$78.00
From the commencement of the Ninth Expansion Premises Rent Year through January 31, 2026	\$1,663,108.00	\$138,592.33	\$79.00

Tenant shall have no obligation to pay Yearly Rent for Premises D for the period commencing as of the Premises D Commencement Date and expiring on the date that is three (3) months following the Premises D Commencement Date (the “**Premises D Rent Abatement Period**”). The “**Premises D Rent Commencement Date**” shall be the day immediately following the expiration of the Premises D Rent Abatement Period.

7. Tax Excess for Premises C. The Tax Base with respect Premises C shall be the actual amount of Taxes for the fiscal year 2018 (i.e., July 1, 2017, through June 30, 2018). From and after July 1, 2018, Tenant shall pay to Landlord Tenant’s Premises C Proportionate Share (as hereinafter defined) of the amount by which Taxes in any Tax Period exceed the Tax Base with respect to the Premises C, with such excess payable in accordance with the terms and conditions of the Lease. “**Tenant’s Premises C Proportionate Share**” shall be 8.89%.

8. Operating Excess for Premises C. The Operating Costs in the Base Year with respect to Premises C shall be the actual amount of Operating Costs for the calendar year 2017. From and after January 1, 2018, Tenant shall pay to Landlord Tenant’s Premises C Proportionate Share of the amount by which Operating Costs in any Operating Year exceed the Operating Costs in the Base Year with respect to Premises C, with such excess payable in accordance with the terms and conditions of the Lease.

9. Tax Excess for Premises D. The Tax Base with respect to the Premises D shall be the actual amount of Taxes for the fiscal year 2020 (i.e., July 1, 2019, through June 30, 2020). From and after July 1, 2020, Tenant shall pay to Landlord Tenant’s Premises D Proportionate Share (as hereinafter defined) of the amount by which Taxes in any Tax Period exceed the Tax Base with respect to the Premises D, with such excess payable in accordance with the terms and conditions of the Lease. “**Tenant’s Premises D Proportionate Share**” shall be 20.75%.

10. Operating Excess for Premises D. The Operating Costs in the Base Year with respect to Premises D shall be the actual amount of Operating Costs for the calendar year 2020. Tenant shall pay to Landlord Tenant's Premises D Proportionate Share of the amount by which Operating Costs in any Operating Year exceed Operating Costs in the Base Year with respect to Premises D, with such excess payable in accordance with the terms and conditions of the Lease.

11. Amendment to Parking. Effective as of the Premises C Commencement Date, Tenant shall have the right to five (5) additional Parking Passes, and effective as of the Premises D Commencement Date, Tenant shall have the right to ten (10) additional Parking Passes under the Lease. The additional Parking Passes shall be subject to all of the terms and conditions of Section 30.12 of the Lease. Landlord's representation set forth in Section 30.12 of the Lease shall be deemed restated by Landlord as of each of the Premises C Commencement Date and the Premises D Commencement Date.

12. Condition of Premises C and Premises D. Except for the Landlord's obligation to: (a) deliver Premises C to Tenant lawfully demised and with egress that is compliant with applicable law; (b) Landlord's obligation to deliver Premises C and Premises D in accordance with Sections 4.1 and 4.2 of the Lease; and (c) provide the Improvement Allowance as more particularly described on **EXHIBIT B**, Landlord shall not be obligated to make any improvements or contribute any allowances and Tenant shall take occupancy of the Premises C and Premises D in their "as-is" condition as of the date of this Amendment. Notwithstanding the foregoing, (i) Landlord's representation set forth in Section 2.2 of the Lease shall apply with respect to Premises C as of the Premises C Commencement Date and with respect to Premises D as of the Premises D Commencement Date, (ii) Section 3.1(c) of the Lease shall apply to Premises C and Premises D, and (iii) Section 3.1(d) shall apply to Premises C and Premises D. In addition, Landlord shall deliver Premises D to Tenant in the same condition as Premises D is in as of the date of this Amendment, normal wear and tear (exclusive of physical damage) only excepted and in no event shall there be any alterations or changes performed to Premises D after the date of this Amendment without Tenant's prior written consent, in Tenant's sole discretion.

13. Tenant's Extension Option and Right of First Offer. For purposes of confirmation herein, Tenant's Extension Option under Section 30.16 (Tenant's Option to Extend the Term of the Lease) shall be applicable to Premises C and Premises D. Reference is hereby made to Tenant's Extension Option in Section 30.16 and Tenant's Right of First Offer in Section 30.17 (Tenant's Right of First Offer) and Landlord and Tenant agree that, notwithstanding the terms and conditions of the Extension Option or the Right of First Offer, Tenant shall be permitted to sublease all or any portion of Premises without being subject to the 25% cap on subletting in Section 30.16 and Section 30.17 and without forfeiting its rights under the Extension Option or the Right of First Offer so long as such subleases are entered into prior to December 31, 2020 and the terms of the subleases do not extend beyond January 31, 2023 (the foregoing, an "**Exempt Sublease**"). In addition, clause (iv) set forth in the first paragraph of Section 17 (e.g. RFO Premises must be for the exclusive use of Tenant) shall not apply prior to December 31, 2020.

The "**RFO Premises**" as defined in Section 30.17(a) of the Lease is hereby amended to exclude any rentable space on the first (1st) floor of the Building but only if Landlord is offering such first (1st) floor space to lease for retail purposes only and not for office purposes. For purposes of the Lease, the only superior rights to which Tenant's Right of First Offer will be subject pursuant to Section 30.17(a) are the prior rights expressly existing as of the Execution Date and identified on **Exhibit C** attached hereto.

14. Landlord's Recapture Rights. Notwithstanding the terms and conditions to the contrary set forth in Section 17 of the Lease, Tenant shall not be required to give Landlord a "Recapture Offer" when offering or advertising a sublease under the Lease for an Exempt Sublease and Landlord's recapture right under Section 17 shall also not apply to any sublease (and Tenant shall not be required to give Landlord a "Recapture Offer" with respect to any sublease) with a term that expires prior to January 31, 2023. In addition, for purposes of Section 17 of the Lease, Simon Kucher, an existing tenant in the Building, shall not be deemed to be a Restricted Occupant with respect to any Exempt Sublease.

15. Letter of Credit. Exhibit 1, Lease Data is hereby amended to delete Article 8 therefrom and insert the following in place thereof:

“\$984,187.50

Notwithstanding the foregoing, a Letter of Credit in the amount of \$284,749.71 with respect to Premises A shall be delivered on or before the Commencement Date with respect to Premises A. The Letter of Credit shall be amended or replaced so as to increase the amount to \$444,890.2 on or before the Premises C Commencement Date. The Letter of Credit shall be amended or replaced so as to increase the amount to \$594,725.50 on or before the Commencement Date with respect to Premises B. The Letter of Credit shall be amended or replaced so as to increase the amount to \$984,187.50 on or before the Premises D Commencement Date.”

16. Miscellaneous. Exhibit 1, Lease Data, Article 6 (Yearly Rent) contains a rent chart for the Yearly Rent for Premises B and is hereby amended to correct an error in the first column of the first row following the column headings row to read as follows: “If applicable, from the Rent Commencement Date for Premises B through the expiration of the Second Lease Year.”

17. Brokers. Tenant represents to Landlord that Tenant has not dealt with any broker in connection with this Amendment other than CBRE/New England representing Landlord exclusively (“**Landlord’s Broker**”), and T3 Advisors, LLC, representing Tenant exclusively (“**Tenant’s Broker**”), and warrants that no other broker is or may be entitled to any commission in connection therewith. Tenant agrees to indemnify, defend and hold harmless Landlord and Landlord’s agents from all damages, liability and expense (including reasonable attorneys’ fees) arising from any claims or demands of any other brokers or finders for any commission alleged to be due such brokers or finders in connection with their participation in the negotiation with Tenant of this Amendment other than Landlord’s Broker and Tenant’s Broker. Landlord represents and warrants that, in connection with the execution and delivery of the Lease, it has not directly or indirectly dealt with any broker other than the Landlord’s Broker and the Tenant’s Broker. Landlord agrees to defend, exonerate and save harmless Tenant and anyone claiming by, through, or under Tenant against any claims arising in breach of the representation and warranty set forth in the immediately preceding sentence. Landlord shall pay any commissions due to Landlord’s Broker and Tenant’s Broker pursuant to a separate agreement between Landlord, Landlord’s Broker.

18. Counterparts. This Amendment may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

19. Confirmation of Lease. Except as amended by this Amendment, all terms and provisions of the Lease shall remain in full force and effect.

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, Landlord and Tenant have caused this Amendment to be executed as of the Effective Date.

LANDLORD:

ONE CANAL PARK MASSACHUSETTS, LLC

a Delaware limited liability company

By: **BAY STATE REIT, LLC**
a Delaware limited liability company, its Manager

By: **U.S. REAL ESTATE INVESTMENT FUND REIT, INC.**
a Delaware corporation, its Manager

By: /s/ Thomas Taranto
Name: Thomas Taranto
Title: Vice President

TENANT:

HUBSPOT, INC.

a Delaware corporation

By: /s/ John Kelleher
Name: John Kelleher
Title: General Counsel

EXHIBIT "A"

PREMISES C
AND
PREMISES D

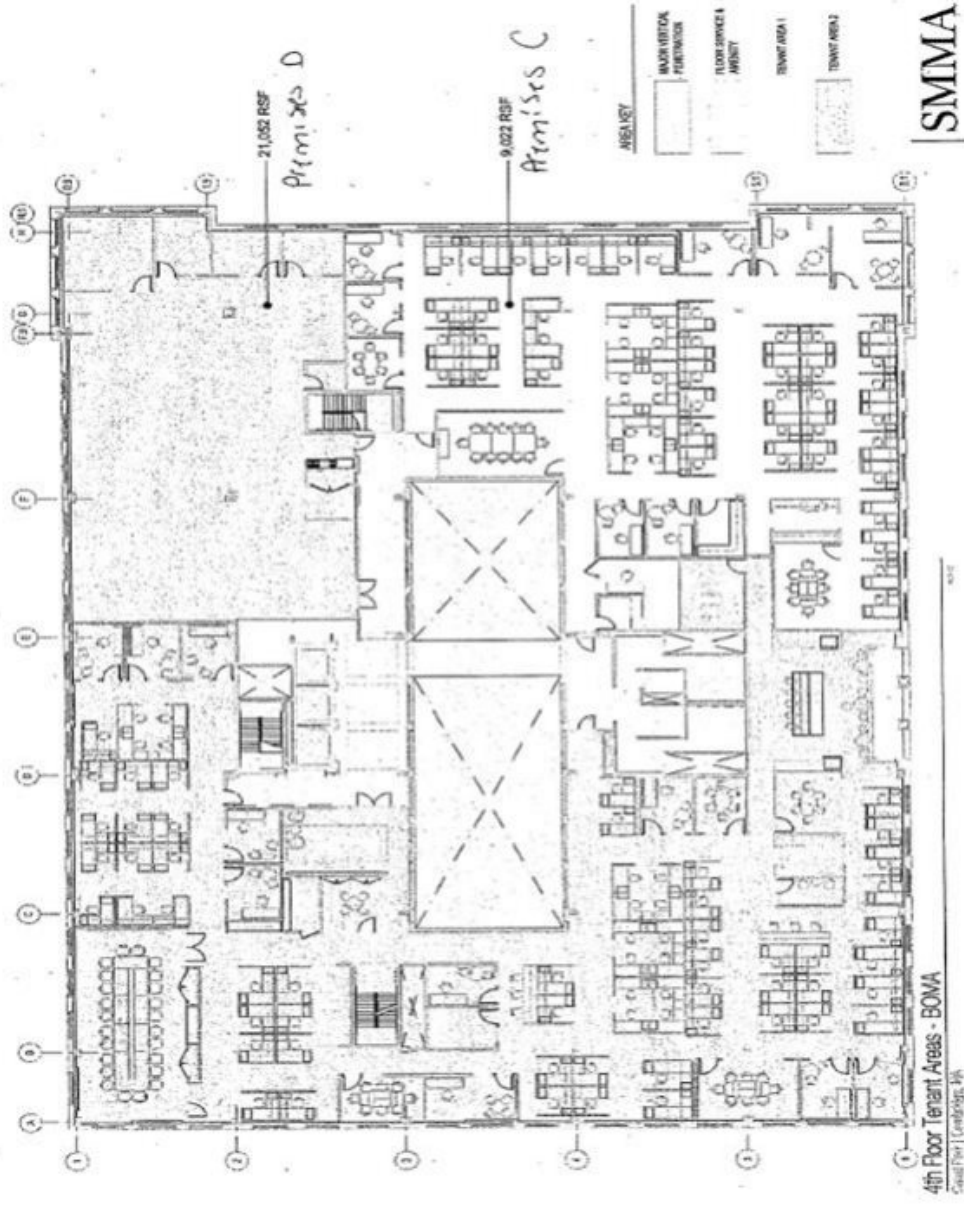


EXHIBIT "B"

IMPROVEMENT ALLOWANCE

1. Landlord shall, in the manner set forth in Section 5.2(b) of the Lease, provide to Tenant a tenant improvement allowance of up to \$5.00 per rentable square foot of the Premises C and Premises D per annum (the "**Improvement Allowance**") provided, however, the Improvement Allowance with respect to Premises D shall be prorated and reduced to reflect the number of months remaining in the Term for Premises D following the Premises D Rent Commencement Date. The Improvement Allowance shall be used by Tenant to pay for the hard and soft costs to construct certain improvements with respect to the Premises C and Premises D ("**Tenant's Improvements**"). By way of example, if the Premises C Rent Commencement Date occurs on April 1, 2017, the Improvement Allowance with respect to Premises C would be \$398,471.70 and, if the Premises D Rent Commencement Date occurs on November 1, 2020, the Improvement Allowance with respect to Premises D would be \$552,615.00.
2. Landlord agrees that Tenant may apply the Improvement Allowance towards hard construction costs, soft costs (such as permitting, architectural and engineering fees), voice and data wiring and cabling costs, and furniture, fixtures and equipment expenses subject to and in accordance with the same terms and conditions set forth in Sections 5.2(b) and 5.2(c) of the Lease.
3. Tenant acknowledges that all costs for Tenant's Improvements in excess of the Improvement Allowance shall be at the sole cost and expense of the Tenant.
4. All Tenant Improvements shall: (a) be subject to the same terms and conditions set forth in Section 5 of the Lease applicable to the Tenant's Work, provided, however, in no event shall Tenant be required to post any lien bonds or surety payment and performance bonds with respect to the Tenant Improvements; (b) based on plans and specifications previously approved by Landlord, which approval shall not be unreasonably withheld, conditioned or delayed; (c) performed in a good and workmanlike manner by contractors previously approved by Landlord, which approval shall not be unreasonably withheld, conditioned or delayed; and (d) be in compliance with all applicable laws and regulations.
5. Landlord shall disburse the Improvement Allowance to Tenant on a periodic basis (but no more than once per month) in accordance with the terms and conditions of Section 5.2 of the Lease applicable to the Landlord's Contribution.
6. Tenant must request disbursement of the Improvement Allowance on or before January 31, 2022, the failing of which shall cause Tenant to forfeit any portion of the Improvement Allowance not requisitioned by Tenant as of such date. Tenant shall not be permitted to apply any unused Improvement Allowance toward Rent or other amounts due under the Lease.
7. If Landlord fails timely to pay any portion of Landlord's Contribution or the Improvement Allowance when properly due and as to which Tenant has satisfied the requisition conditions, and such failure shall continue for thirty (30) days after written notice from Tenant to Landlord, then Tenant, provided no monetary or material non-monetary Event of Default of Tenant has occurred and is continuing, may deliver a second notice to Landlord, which notice shall specify the Requisition that has not been timely paid, the date upon which it was sent to Landlord, and if Landlord fails to disburse the amount expressly referenced in such notice within five (5) business days, then Tenant shall have the right to have such unpaid amount credited against the next installment(s) of Yearly Rent thereafter due under this Lease, until such sums due Tenant have been fully paid by Landlord or fully credited and accounted for.

SECOND AMENDMENT TO LEASE

This **SECOND AMENDMENT TO LEASE** (the “**Second Amendment**”) dated this 12th day of March, 2018 (the “**Effective Date**”) is made by and between **ONE CANAL PARK MASSACHUSETTS, LLC**, a Delaware limited liability company (“**Landlord**”), and **HUBSPOT, INC.**, a Delaware corporation (“**Tenant**”).

RECITALS:

- A. WHEREAS, Landlord and Tenant entered into that certain Lease dated October 7, 2016, as amended by that certain First Amendment to Lease dated February 14, 2017 (collectively, the “**Lease**”) whereby Tenant leases from Landlord certain premises consisting of approximately 55,386 rentable square feet, comprised of: (i) 16,750 rentable square feet on the second (2nd) floor (“**Premises A**”); (ii) approximately 8,562 rentable square feet on the second (2nd) floor (“**Premises B**”); (iii) approximately 9,022 rentable square feet on fourth (4th) floor of the Building (“**Premises C**”); and (iv) approximately 21,052 rentable square feet on the fourth (4th) floor of the Building (“**Premises D**”) (collectively, Premises A, Premises B, Premises C and Premises D shall be known as the “**Existing Premises**”) in the building located at One Canal Park, Cambridge, Massachusetts (the “**Building**”);
- B. WHEREAS, the Expiration Date with respect to the Existing Premises is scheduled to expire on January 31, 2026 (the “**Expiration Date**”);
- C. WHEREAS, Landlord has agreed and Tenant desires to lease additional space consisting of approximately 10,109 rentable square feet on the first (1st) floor of the Building (“**Premises E**”) as substantially shown on the floor plan attached hereto as **EXHIBIT “A”** subject to the terms and conditions set forth herein; and
- D. WHEREAS, The parties desire to extend the Term of the Lease with respect to the Existing Premises to be coterminous with the Term of the Lease with respect to Premises E.

AGREEMENT:

NOW THEREFORE, in consideration of the promises contained herein and other good and valuable consideration, the receipt of which is hereby acknowledged, the parties agree as follows:

- 1. Recitals. The recitals set forth above are incorporated herein and made a part of this Second Amendment as if set forth herein in full.
- 2. Capitalized Terms. All capitalized terms used in this Second Amendment that are not defined in this Second Amendment shall have the meanings ascribed to such terms in the Lease. In the event of any conflict between the terms of the Lease and the terms of this Second Amendment, the definitions set forth in this Second Amendment shall control.
- 3. Term for Premises E.
 - 3.1 Landlord demises to Tenant, and Tenant takes from Landlord, Premises E upon and subject to the provisions of the Lease, as amended by this Second Amendment. Subject to the terms and conditions set forth herein, the Term of the Lease with respect to Premises E (the “**Premises E Term**”) shall commence on the later date to occur of (the “**Premises E Commencement Date**”): (i) January 1, 2019, or (ii) date Landlord delivers possession of Premises E to Tenant vacant, broom clean, free of tenants, occupants, property and debris, in compliance with all applicable Laws and free of all Hazardous Materials that are required to be removed, remediated, or encapsulated pursuant to applicable Environmental Laws and shall expire on the last day of the full one hundred twentieth (120) month following the Premises E Rent Commencement Date, as defined herein (the “**Premises E Expiration Date**”). In no event shall Landlord deliver Premises E to Tenant prior to January 1, 2019.

3.2 For purposes of this Second Amendment, the “**Estimated Premises E Commencement Date**” is January 1, 2019. From and after the Premises E Commencement Date, Premises E shall be deemed a “**Portion of the Premises**” under the Lease. Once the Premises E Commencement Date has occurred, Landlord and Tenant shall execute a commencement date agreement, in a form similar to that which is attached as Exhibit 5 to the Lease in order to confirm the Premises E Commencement Date, the Premises E Expiration Date and the schedule with respect to Yearly Rent for Premises E.

4. Premises E Rent Commencement Date. The “**Premises E Rent Commencement Date**” shall commence on the date which is four (4) months following the Premises E Commencement Date.

5. Yearly Rent for Premises E. Effective as of the Premises E Rent Commencement Date, Tenant shall pay Yearly Rent with respect to Premises E in accordance with the following schedule and in accordance with all other terms and conditions applicable to the payment of Yearly Rent under the Lease:

Term for Premises E	Yearly Rent	Monthly Payment	Per Rentable Square Foot of Premises D
From the Premises E Commencement Date through the day immediately preceding the Premises E Rent Commencement Date	\$0	\$0	\$0
From the Premises E Rent Commencement Date through the expiration of the First Premises E Rent Year	\$727,848.00	\$60,654.00	\$72.00
Second Premises E Rent Year	\$737,957.00	\$61,496.42	\$73.00
Third Premises E Rent Year	\$748,066.00	\$62,338.83	\$74.00
Fourth Premises E Rent Year	\$758,175.00	\$63,181.25	\$75.00
Fifth Premises E Rent Year	\$768,284.00	\$64,023.67	\$76.00
Sixth Premises E Rent Year	\$778,393.00	\$64,866.08	\$77.00
Seventh Premises E Rent Year	\$788,502.00	\$65,708.50	\$78.00
Eighth Premises E Rent Year	\$798,611.00	\$66,550.92	\$79.00
Ninth Premises E Rent Year	\$808,720.00	\$67,393.33	\$80.00
Tenth Premises E Rent Year	\$818,829.00	\$68,235.75	\$81.00

For purposes of the Lease, the term “**Premises E Rent Year**” shall mean a twelve-month period beginning on the Premises E Rent Commencement Date or any anniversary of the Premises E Rent Commencement Date, except that if the Premises E Rent Commencement Date does not fall on the first day of a calendar month, then the first Premises E Rent Year shall begin on the Premises E Rent Commencement Date and end on the last day of the month containing the first anniversary of the Premises E Rent Commencement Date, and each succeeding Premises E Rent Year shall begin on the day following the last day of the prior Premises E Rent Year.

6. Tax Excess for Premises E. The Tax Base with respect Premises E shall be the actual amount of Taxes for the fiscal year 2020 (i.e., July 1, 2019, through June 30, 2020). From and after July 1, 2020, Tenant shall pay to Landlord Tenant’s Premises E Proportionate Share (as hereinafter defined) of the amount by which Taxes in any Tax Period exceed the Tax Base with respect to Premises E, with such excess payable in accordance with the terms and conditions of the Lease. “**Tenant’s Premises E Proportionate Share**” shall be 9.96%.

7. Operating Excess for Premises E. The Operating Costs in the Base Year with respect to Premises E shall be the actual amount of Operating Costs for the calendar year 2019. From and after January 1, 2020, Tenant shall pay to Landlord Tenant’s Premises E Proportionate Share of the amount by which Operating Costs in any Operating Year exceed the Operating Costs in the Base Year with respect to Premises E, with such excess payable in accordance with the terms and conditions of the Lease.

8. Extension of Term with Respect to the Existing Premises. Effective upon the Premises E Commencement Date: (a) the Term of the Lease with respect to the Existing Premises, shall be automatically extended for an additional period (the “**Stub Term**”) running coterminous with the Term of the Lease with respect to Premises E, expiring on the Premises E Expiration Date; (b) Yearly Rent with respect to the Existing Premises shall be paid during the Stub Term as more particularly set forth in the schedule below; and (c) all other terms and conditions of the Lease shall remain in full force and effect during the Stub Term.

Term for the Exiting Premises	Yearly Rent	Monthly Payment	Per Rentable Square Foot of the Existing Premises
From February 1, 2026 through the expiration of the Seventh Premises E Rent Year	\$4,375,494.00	\$364,624.50	\$79.00
Eighth Premises E Rent Year	\$4,430,880.00	\$369,240.00	\$80.00
Ninth Premises E Rent Year	\$4,486,266.00	\$373,855.50	\$81.00
Tenth Premises E Rent Year	\$4,541,652.00	\$378,471.00	\$82.00

9. Amendment to Parking. Effective as of the Premises E Commencement Date, Tenant shall have the right to ten (10) additional Parking Passes under the Lease. The additional Parking Passes shall be subject to all of the terms and conditions of Section 30.12 of the Lease. Landlord’s representation set forth in Section 30.12 of the Lease shall be deemed restated by Landlord as of the Premises E Commencement Date.

10. Condition of Premises E. Except for Landlord's obligation to: (a) deliver Premises E to Tenant lawfully demised and with egress that is compliant with applicable law; (b) Landlord's obligation to deliver Premises E in accordance with Section 3.1 of this Second Amendment; and (c) provide the Additional Improvement Allowance as more particularly described on **EXHIBIT "B"** attached hereto, Landlord shall not be obligated to make any improvements or contribute any allowances and Tenant shall take occupancy of the Premises E in its "as-is" condition as of the date of this Second Amendment. Notwithstanding the foregoing, (i) Landlord's representation set forth in Section 2.2 of the Lease shall apply with respect to Premises E as of the Premises E Commencement Date, (ii) Section 3.1(c) of the Lease shall apply to Premises E, and (iii) Section 3.1(d) shall apply to Premises E.

11. Tenant's Extension Option. For purposes of confirmation herein, Tenant's Extension Option under Section 30.16 (Tenant's Option to Extend the Term of the Lease) shall be applicable to Premises E.

12. Frosted Signage for Privacy and Branding. Notwithstanding the terms and conditions of Section 18.4 of the Lease, and subject to: (i) all applicable laws; and (ii) Landlord's prior written approval, which approval shall not be unreasonably withheld, conditioned or delayed, Tenant, at its sole cost and expense shall have the right to install professionally frosted vinyl graphics with Tenant's branding for privacy and branding purposes on the windows of Premises E, which Tenant shall remove upon expiration or earlier termination of the Lease leaving the same in good, clean condition and repair.

13. Building Signage. Notwithstanding the terms and conditions of Section 18.4 of the Lease, and subject to: (i) all applicable laws; and (ii) Landlord's prior written approval, which approval shall not be unreasonably withheld, conditioned or delayed, Tenant, at its sole cost and expense, shall have the right to install signage on the exterior of the Building ("**Exterior Building Signage**"), which Tenant shall remove upon expiration or earlier termination of the Lease, leaving the same in good, clean condition and repair. The size and location of the Exterior Building signage shall be mutually agreed upon by the parties, subject to the approval of the City of Cambridge.

14. Exterior Patio Space.

14.1 Tenant shall have the exclusive right to use the patio area in the location as shown on **EXHIBIT "C"** attached hereto (the "**Patio**"), subject to: (A) Landlord's reasonable rules and regulations with respect thereto in effect from time to time and to the terms and conditions set forth below; and (B) any applicable laws. Use of the Patio shall be without additional charge to Tenant, but Landlord may pass through to Tenant its actual costs incurred solely due to Tenant's exclusive use of the Patio (such as excess cleaning costs, if applicable). Tenant shall have the right to section off the Patio, in a first-class manner and subject to Landlord's reasonable approval, from the rest of the Building and to prevent other tenants in the Building from using the Patio during the Term. Tenant shall have the right to install electrical outlets in and run electrical service to the Patio subject to the provisions of Articles 12 and 13 of the Lease. Tenant will not be required to remove such electrical outlets at the end of the Term.

14.2 Tenant shall keep the Patio neat and free of trash, and Tenant shall be responsible for all non-structural maintenance and repairs to the Patio, except to the extent caused by or due to the negligence or willful misconduct of Landlord, its agents, servants or employees. Landlord shall have no obligation to provide any services to the Patio. To the extent applicable, all provisions of the Lease shall apply to Tenant's use of the Patio, provided that Tenant shall not be required to pay Yearly Rent or additional rent on account of Operating Costs and Taxes with respect to the Patio and Landlord shall not be required to provide any services to the Patio. Tenant's right granted herein to use the Patio is neither transferrable nor assignable except in connection with a permitted assignment of the Lease or permitted sublet of the Premises. In no event shall smoking be permitted on the Patio. In no event shall the square footage of the Patio be included in the Total Rentable Area of the Premises. Tenant may install heaters on the patio, provided, however, that such heaters must be removed by Tenant and stored by Tenant when such heaters are not in use.

14.3 Tenant's use of the Patio shall be upon all of the terms and conditions set forth in the Lease applicable to the Premises, except to the extent inconsistent with the terms of this Section 14 and except that the indemnity of Tenant under the Lease will not apply to the extent arising from the negligence or willful misconduct of Landlord or from Landlord's failure to maintain the Patio in good condition and repair.

14.4 Tenant shall take the Patio “as-is”, in the condition in which the Patio is in as of the date hereof, without any obligation on the part of Landlord to provide any leasehold improvements to the Patio and without any representation or warranty by Landlord to Tenant as to the condition of the Patio but subject to Landlord’s ongoing repair and maintenance obligations for the Patio under the Lease.

14.5 Tenant may, at its sole cost and expense, place furniture (the “**Furniture**”), in the Patio, provided that (A) the Furniture is of a first-class standard of quality and appearance consistent with the design and construction of the Building; (B) the Furniture shall not be used or placed in the Patio until (1) its design, size, color and position are first approved by Landlord; (2) its method of attachment or installation is first approved by Landlord in writing, which approval may be withheld in Landlord’s reasonable discretion; (C) Tenant shall be solely responsible for stacking and securing the Furniture when not in use and for removing the Furniture from the Patio and storing the same within the Premises during the offseason, as determined by Tenant and reasonably approved by Landlord; and (D) Tenant shall be solely responsible for any destruction, damage, theft or vandalism of, or to, the Furniture. Tenant hereby covenants and agrees that Tenant shall not: (x) erect or place any canopy or other enclosure or covering on the Patio; or (y) permit any music or other similar sounds to be heard in the Patio without Landlord’s prior written approval, which shall not be unreasonably withheld, conditioned, or delayed. Tenant shall have the right to play music after business hours and during social events, provided that such music does not disturb or interfere with the rights of other tenants in the Building and provided that such music is not in violation of applicable City of Cambridge noise ordinance or materially interferes with other tenants’ use, occupancy or quiet enjoyment of the Premises.

14.6 Prior to the expiration of the Term of the Lease or within two (2) business days after earlier termination of the Lease, Tenant, at its sole cost and expense, shall remove the Furniture from the Patio and restore the Patio to its condition prior to Tenant’s use thereof, ordinary wear and tear and damage or loss by casualty or condemnation excepted. If Tenant fails to do so, then Landlord may remove the Furniture and restore the Patio, and Tenant shall reimburse Landlord for the cost of such removal and restoration within ten (10) business days of written demand therefor.

14.7 Notwithstanding any terms and conditions to the contrary, the rights of Tenant under this Section 14 are personal to Hubspot, Inc. and any Permitted Assignee (and any affiliates or permitted occupants), and may not be exercised by any other tenant, subtenant, licensee, or other occupant of the Premises or any portion thereof.

15. Emergency Generator.

15.1 Tenant, subject to Landlord’s review and approval of Tenant’s plans therefor, shall have the right to install a supplemental generator (the “**Generator**” which term shall include associated power and fuel lines), to provide emergency additional electrical capacity to the Premises during the Term, in an electrical capacity to be reasonably approved by Landlord. Tenant’s plans for the Generator shall include a secondary containment system to protect against and contain any release of hazardous materials. The Generator shall be placed in an area (the “Generator Area”) measuring approximately 20’ x 20’ to be designated by Landlord on the roof and, with respect to such associated power and fuel lines, in such conduits or other areas as Landlord shall reasonably designate. Notwithstanding the foregoing, Tenant’s right to install the Generator shall be subject to Landlord’s approval of the manner in which the Generator is installed, the manner in which any fuel pipe is installed, the manner in which any ventilation and exhaust systems are installed, the manner in which any cables are run to and from the Generator to the Premises and the measures that will be taken to eliminate any vibrations or sound disturbances from the operation of the Generator, including, without limitation, any necessary 2 hour rated enclosures or sound installation. Landlord shall have the right to require an acceptable enclosure to hide or disguise the existence of the Generator and to minimize any adverse effect that the installation of the Generator may have on the appearance of the Building and the Property. Tenant shall be solely responsible for obtaining all necessary governmental and regulatory approvals and for the cost of installing, operating, maintaining and removing the Generator. Tenant shall not install or operate the Generator until Tenant has obtained and submitted to Landlord copies of all required governmental permits, licenses and authorizations necessary for the installation and operation of the Generator. In addition to, and without limiting Tenant’s obligations under the Lease, Tenant shall comply with all applicable environmental and fire prevention Laws pertaining to Tenant’s use of the Generator Area. Tenant shall also be responsible for the cost of all utilities consumed in the operation of the Generator.

15.2 Tenant shall be responsible for assuring that the installation, maintenance, operation and removal of the Generator shall in no way damage any portion of the Building or the Generator Area. To the maximum extent permitted by law, the Generator and all appurtenances in the Generator Area shall be at the sole risk of Tenant, and, except in connection with Landlord's gross negligence or willful misconduct, Landlord shall have no liability to Tenant if the Generator or any appurtenances installations are damaged for any reason. Subject to the waiver of subrogation provision of this Lease, Tenant agrees to be responsible for any damage caused to the Building or Property in connection with the installation, maintenance, operation or removal of the Generator and to indemnify, defend and hold Landlord harmless from all liabilities, obligations, damages, penalties, claims, costs, charges and expenses, including, without limitation, reasonable architects' and attorneys' fees (if and to the extent permitted by law), which may be imposed upon, incurred by, or asserted against Landlord in connection with the installation, maintenance, operation or removal of the Generator, including, without limitation, any environmental and hazardous materials claims. In addition to, and without limiting Tenant's obligations under the Lease, Tenant covenants and agrees that the installation and use of the Generator and appurtenances shall not adversely affect the insurance coverage for the Building. If for any reason, the installation or use of the Generator and/or the appurtenances shall result in an increase in the amount of the premiums for such coverage, then Tenant shall be liable for the full amount of any such increase.

15.3 Tenant shall be responsible for the installation, operation, cleanliness, maintenance and removal of the Generator and the appurtenances, all of which shall remain the personal property of Tenant, and shall be removed by Tenant at its own expense at the expiration or earlier termination of the Lease. Tenant shall repair any damage caused by such removal, including the patching of any holes to match, as closely as possible, the color surrounding the area where the Generator and appurtenances were attached. Such maintenance and operation shall be performed in a manner to avoid any unreasonable interference with any other tenants or Landlord. Tenant shall take the Generator Area "as is" in the condition in which the Generator Area is in as of the date Tenant installs the Generator, without any obligation on the part of Landlord to prepare or construct the Generator Area for Tenant's use or occupancy. Without limiting the foregoing, Landlord makes no warranties or representations to Tenant as to the suitability of the Generator Area for the installation and operation of the Generator. Tenant shall have no right to make any changes, alterations, additions, decorations or other improvements to the Generator Area without Landlord's prior written consent in accordance with the standards for Alterations in this Lease. Tenant agrees to maintain the Generator, including without limitation, any enclosure installed around the Generator in good condition and repair. Tenant shall be responsible for performing any maintenance and improvements to any enclosure surrounding the Generator so as to keep such enclosure in good condition.

15.4 Tenant, upon prior notice to Landlord and subject to the rules and regulations enacted by Landlord, shall have access to the Generator and its surrounding area for the purpose of installing, repairing, maintaining and removing said Generator.

15.5 Tenant shall only test the Generator before or after Business Hours and at a time mutually agreed to in writing by Landlord and Tenant in advance. Tenant shall be permitted to use the Generator Area solely for the maintenance and operation of the Generator and the Generator and Generator Area are solely for the benefit of Tenant. All electricity generated by the Generator may only be consumed by Tenant in the Premises.

15.6 Landlord shall have no obligation to provide any services, including, without limitation, electric current, to the Generator Area.

15.7 Tenant shall have no right to sublet the Generator Area or to assign its interest in the Generator Area hereunder, unless such assignment or sublease is in connection with the assignment of Tenant's interest under the Lease or a sublease of the Premises.

16. Brokers. Tenant represents to Landlord that Tenant has not dealt with any broker in connection with this Second Amendment other than CBRE/New England representing Landlord exclusively (“**Landlord’s Broker**”), and T3 Advisors, LLC, representing Tenant exclusively (“**Tenant’s Broker**”), and warrants that no other broker is or may be entitled to any commission in connection therewith. Tenant agrees to indemnify, defend and hold harmless Landlord and Landlord’s agents from all damages, liability and expense (including reasonable attorneys’ fees) arising from any claims or demands of any other brokers or finders for any commission alleged to be due such brokers or finders in connection with their participation in the negotiation with Tenant of this Second Amendment other than Landlord’s Broker and Tenant’s Broker. Landlord represents and warrants that, in connection with the execution and delivery of the Lease, it has not directly or indirectly dealt with any broker other than Landlord’s Broker and Tenant’s Broker. Landlord agrees to defend, exonerate and save harmless Tenant and anyone claiming by, through, or under Tenant against any claims arising in breach of the representation and warranty set forth in the immediately preceding sentence. Landlord shall pay any commissions due to Landlord’s Broker and Tenant’s Broker pursuant to a separate agreement between Landlord and Landlord’s Broker.

17. Counterparts and Authority. This Second Amendment may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument. Landlord and Tenant each warrant to the other that the person or persons executing this Second Amendment on its behalf has or have authority to do so and that such execution has fully obligated and bound such party to all terms and provisions of this Second Amendment.

18. Confirmation of Lease. Except as amended by this Second Amendment, all terms and provisions of the Lease shall remain in full force and effect, and as further modified by this Second Amendment, is expressly ratified and confirmed by the parties hereto. This Second Amendment shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns, subject to the provisions of the Lease regarding assignment and subletting.

19. Governing Law; Interpretation and Partial Invalidity. This Second Amendment shall be governed and construed in accordance with the laws of the Commonwealth of Massachusetts. If any term of this Second Amendment, or the application thereof to any person or circumstances, shall to any extent be invalid or unenforceable, the remainder of this Second Amendment, or the application of such term to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each term of this Second Amendment shall be valid and enforceable to the fullest extent permitted by law. The titles for the paragraphs are for convenience only and are not to be considered in construing this Second Amendment. This Second Amendment contains all of the agreements of the parties with respect to the subject matter hereof, and supersedes all prior dealings between them with respect to such subject matter.

20. Binding Agreement. This document shall become effective and binding only upon the execution and delivery of this Second Amendment by both Landlord and Tenant.

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, Landlord and Tenant have caused this Second Amendment to be executed as of the Effective Date.

LANDLORD:

ONE CANAL PARK MASSACHUSETTS, LLC

a Delaware limited liability company

By: **BAY STATE REIT, LLC**
a Delaware limited liability company, its Manager

By: **U.S. REAL ESTATE INVESTMENT FUND REIT, INC.**
a Delaware corporation, its Manager

By: /s/ Thomas Taranto
Name: Thomas Taranto
Title: Vice President

TENANT:

HUBSPOT, INC.

a Delaware corporation

By: /s/ John P. Kelleher
Name: John P. Kelleher
Title: General Counsel

EXHIBIT "A"
PREMISES E
ATTACHED HERETO

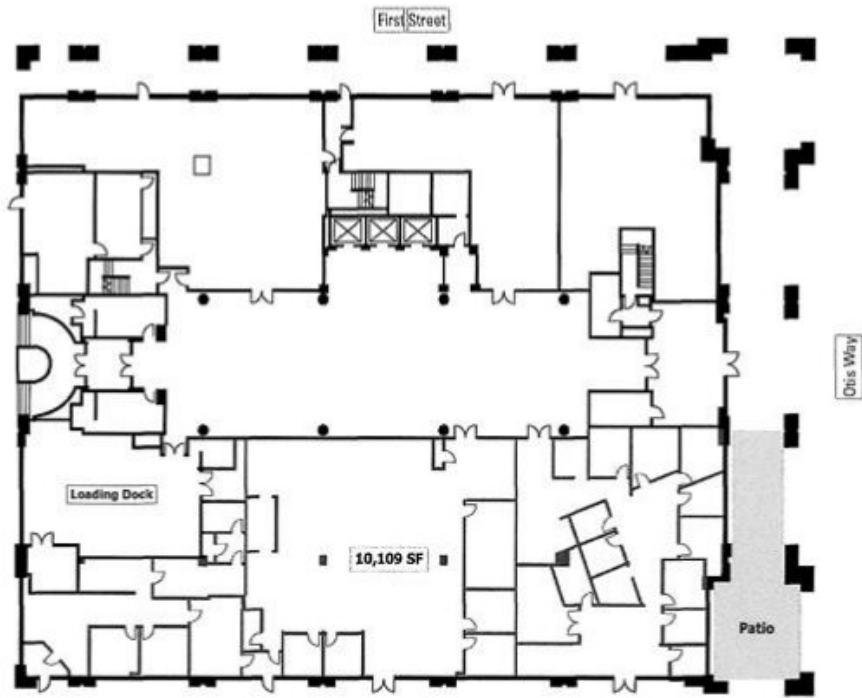
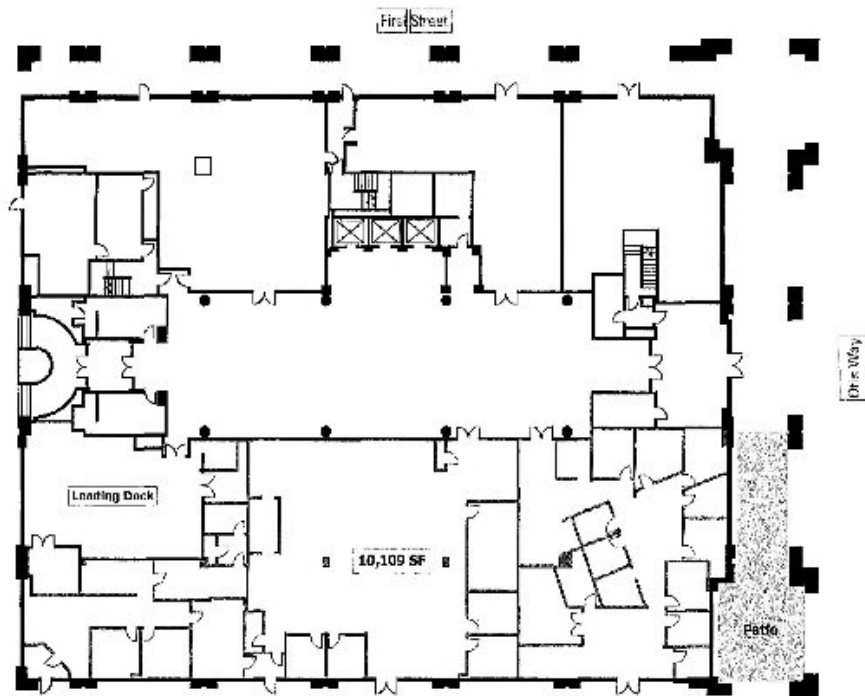


EXHIBIT "B"

IMPROVEMENT ALLOWANCE

1. Landlord shall, in the manner set forth in Section 5.2(b) of the Lease, provide to Tenant the following tenant improvement allowances: (a) up to \$70.00 per rentable square foot of Premises E (which equals up to \$707,630.00 in total) (the "**Premises E Improvement Allowance**"); and (b) up to \$3.50 per rentable square foot of the Existing Premises per annum for each year from February 1, 2026 to the Premises E Expiration Date (the "**Existing Premises Refurbishment Allowance**"). If the Premises E Expiration Date occurs on April 30, 2029, then the Existing Premises Refurbishment Allowance will be \$630,015.75. The Premises E Improvement Allowance shall be used by Tenant to pay for the hard and soft costs to construct certain improvements with respect to the Premises E (the "**Premises E Tenant Improvements**"). The Existing Premises Refurbishment Allowance shall be used by Tenant to pay for the hard and soft costs to construct certain improvements with respect to the Existing Premises (the "**Existing Premises Tenant Improvements**"). The Premises E Improvement Allowance and the Existing Premises Refurbishment Allowance shall be collectively referred to as the "**Additional Improvement Allowance**", and the Premises E Tenant Improvements and the Existing Premises Tenant Improvements shall be collectively referred to as the "**Additional Tenant Improvements**".
2. Landlord agrees that Tenant may apply the Additional Improvement Allowance towards hard construction costs, soft costs (such as permitting, architectural and engineering fees), voice and data wiring and cabling costs, and furniture, fixtures and equipment expenses subject to and in accordance with the same terms and conditions set forth in Sections 5.2(b) and 5.2(c) of the Lease.
3. Tenant acknowledges that all costs for the Additional Tenant Improvements in excess of the Additional Improvement Allowance shall be at the sole cost and expense of Tenant.
4. The Additional Tenant Improvements shall: (a) be subject to the same terms and conditions set forth in Section 5 of the Lease applicable to the Tenant's Work, provided, however, in no event shall Tenant be required to post any lien bonds or surety payment and performance bonds with respect to the Tenant Improvements; (b) based on plans and specifications previously approved by Landlord, which approval shall not be unreasonably withheld, conditioned or delayed; (c) performed in a good and workmanlike manner by contractors previously approved by Landlord, which approval shall not be unreasonably withheld, conditioned or delayed; and (d) be in compliance with all applicable laws and regulations.
5. Landlord shall disburse the Additional Improvement Allowance to Tenant on a periodic basis (but no more than once per month) in accordance with the terms and conditions of Section 5.2 of the Lease applicable to the Landlord's Contribution.
6. Tenant must request disbursement of: (i) the Premises E Improvement Allowance on or before the date which is eighteen (18) months following the Premises E Commencement Date, and (ii) the Existing Premises Refurbishment Allowance on or before January 31, 2025, the failing of which shall cause Tenant to forfeit any portion of the applicable Additional Improvement Allowance not requisitioned by Tenant as of such applicable date. Tenant shall not be permitted to apply any unused Additional Improvement Allowance toward Rent or other amounts due under the Lease.
7. If Landlord fails timely to pay any portion of the Landlord's Contribution, the Improvement Allowance, or the Additional Improvement Allowance when properly due and as to which Tenant has satisfied the requisition conditions, and such failure shall continue for thirty (30) days after written notice from Tenant to Landlord, then Tenant, provided no monetary or material non-monetary Event of Default of Tenant has occurred and is continuing, may deliver a second notice to Landlord, which notice shall specify the Requisition that has not been timely paid, the date upon which it was sent to Landlord, and if Landlord fails to disburse the amount expressly referenced in such notice within five (5) business days, then Tenant shall have the right to have such unpaid amount credited against the next installment(s) of Yearly Rent thereafter due under the Lease, until such sums due Tenant have been fully paid by Landlord or fully credited and accounted for

EXHIBIT "C"
PATIO
ATTACHED HERETO



THIRD AMENDMENT TO LEASE

This **THIRD AMENDMENT TO LEASE** (the “**Third Amendment**”) dated this 2nd day of May, 2018 (the “**Effective Date**”) is made by and between **ONE CANAL PARK MASSACHUSETTS, LLC**, a Delaware limited liability company (“**Landlord**”), and **HUBSPOT, INC.**, a Delaware corporation (“**Tenant**”).

RECITALS:

- A. WHEREAS, Landlord and Tenant entered into that certain Lease dated October 7, 2016, as amended by that certain First Amendment to Lease dated February 14, 2017, as amended by Second Amendment to Lease (the “**Second Amendment**”) dated March 12, 2018 (collectively, the “**Lease**”) whereby Tenant leases from Landlord certain premises consisting of approximately 55,386 rentable square feet, comprised of: (i) 16,750 rentable square feet on the second (2nd) floor (“**Premises A**”); (ii) approximately 8,562 rentable square feet on the second (2nd) floor (“**Premises B**”); (iii) approximately 9,022 rentable square feet on fourth (4th) floor of the Building (“**Premises C**”); (iv) approximately 21,052 rentable square feet on the fourth (4th) floor of the Building (“**Premises D**”); and (v) approximately 10,109 rentable square feet on the first (1st) floor of the Building (collectively, Premises A, Premises B, Premises C and Premises D shall be known as the “**Existing Premises**”) in the building located at One Canal Park, Cambridge, Massachusetts (the “**Building**”); and
- B. WHEREAS, the Term of the Lease was originally scheduled to expire on January 31, 2026 (the “**Original Term**”) and was extended pursuant to the Second Amendment for the “**Stub Term**” commencing on February 1, 2026 and expiring on April 30, 2029 (the “**Stub Term**” and together with the Original Term, the “**Term**”).
- C. WHEREAS, Landlord and Tenant desire to provide for a potentially earlier Commencement Date with respect to Premises B.

AGREEMENT:

NOW THEREFORE, in consideration of the promises contained herein and other good and valuable consideration, the receipt of which is hereby acknowledged, the parties agree as follows:

1. Recitals. The recitals set forth above are incorporated herein and made a part of this Third Amendment as if set forth herein in full.
2. Capitalized Terms. All capitalized terms used in this Third Amendment that are not defined in this Third Amendment shall have the meanings ascribed to such terms in the Lease. In the event of any conflict between the terms of the Lease and the terms of this Third Amendment, the definitions set forth in this Third Amendment shall control.
3. Commencement Date for Premises B. The Commencement Date with respect to Premises B shall be amended to be the later date to occur of (i) the date Landlord delivers possession of Premises B to Tenant vacant, broom clean, free of tenants, occupants, property and debris, in compliance with all applicable Laws and free of all Hazardous Materials that are required to be removed, remediated, or encapsulated pursuant to applicable Environmental Laws and with the roof, structural elements and base building systems including, without limitation, HVAC, mechanical, plumbing, electrical, elevator services, roofing, fire safety access and emergency egress systems serving the Premises in good working order, and (ii) January 1, 2019. In no event shall Landlord deliver Premises B to Tenant prior to January 1, 2019.
4. Rent Commencement Date for Premises B. The Rent Commencement Date with respect to Premises B shall be amended to be the later date to occur of (i) three (3) months following the Commencement Date for Premises B, and (ii) April 1, 2019.

5. Yearly Rent for Premises B.

- (a) Effective as of the Rent Commencement Date for Premises B, Tenant shall pay Yearly Rent with respect to Premises B for the remainder of the Original Term in accordance with the following schedule and in accordance with all other terms and conditions applicable to the payment of Yearly Rent under the Lease:

<u>Lease Year</u>	<u>Yearly Rent</u>	<u>Monthly Payment</u>	<u>Per Rentable Square Foot</u>
January 1, 2019 – March 30, 2019	\$0.00	\$0.00	\$0.00
April 1, 2019 – September 30, 2019	N/A	\$49,231.50	\$69.00
October 1, 2019 – September 30, 2020	\$599,340.00	\$49,945.00	\$70.00
October 1, 2020 September 30, 2021	\$607,902.00	\$50,658.50	\$71.00
October 1, 2021 – September 30, 2022	\$616,464.00	\$51,372.00	\$72.00
October 1, 2022 – September 30, 2023	\$625,026.00	\$52,085.50	\$73.00
October 1, 2023 – September 30, 2024	\$633,588.00	\$52,799.00	\$74.00
October, 1, 2024 – September 30, 2025	642,150.00	\$53,512.50	\$75.00
October 1, 2025 – January 31, 2026	N/A	\$54,226.00	\$76.00

- (b) During the Stub Term, the Yearly Rent payable with respect to Premises B is included in the Yearly Rent payable pursuant to Section 5 of the Second Amendment.

6. Counterparts and Authority. This Third Amendment may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument. Landlord and Tenant each warrant to the other that the person or persons executing this Third Amendment on its behalf has or have authority to do so and that such execution has fully obligated and bound such party to all terms and provisions of this Second Amendment.

7. Confirmation of Lease. Except as amended by this Third Amendment, all terms and provisions of the Lease shall remain in full force and effect, and as further modified by this Third Amendment, is expressly ratified and confirmed by the parties hereto. This Third Amendment shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns, subject to the provisions of the Lease regarding assignment and subletting.

8. Governing Law; Interpretation and Partial Invalidity. This Third Amendment shall be governed and construed in accordance with the laws of the Commonwealth of Massachusetts. If any term of this Third Amendment, or the application thereof to any person or circumstances, shall to any extent be invalid or unenforceable, the remainder of this Second Amendment, or the application of such term to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each term of this Third Amendment shall be valid and enforceable to the fullest extent permitted by law. The titles for the paragraphs are for convenience only and are not to be considered in construing this Third Amendment. This Third Amendment contains all of the agreements of the parties with respect to the subject matter hereof, and supersedes all prior dealings between them with respect to such subject matter.

9. Binding Agreement. This document shall become effective and binding only upon the execution and delivery of this Third Amendment by both Landlord and Tenant.

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, Landlord and Tenant have caused this Third Amendment to be executed as of the Effective Date.

LANDLORD:

ONE CANAL PARK MASSACHUSETTS, LLC

a Delaware limited liability company

By: **BAY STATE REIT, LLC**
a Delaware limited liability company, its Manager

By: **U.S. REAL ESTATE INVESTMENT FUND REIT, INC.**
a Delaware corporation, its Manager

By: /s/ Thomas Taranto
Name: Thomas Taranto
Title: Vice President

TENANT:

HUBSPOT, INC.

a Delaware corporation

By: /s/ John Kelleher
Name: John Kelleher
Title: General Counsel

FOURTH AMENDMENT TO LEASE

This **FOURTH AMENDMENT TO LEASE** (the "**Fourth Amendment**") dated this 19th day of April, 2019 (the "**Effective Date**") is made by and between **ONE CANAL PARK MASSACHUSETTS, LLC**, a Delaware limited liability company ("**Landlord**"), and **HUBSPOT, INC.**, a Delaware corporation ("**Tenant**").

RECITALS:

A. WHEREAS, Landlord and Tenant entered into that certain Lease dated October 7, 2016, as amended by that certain First Amendment to Lease dated February 14, 2017 (the "**First Amendment**"), as amended by Second Amendment to Lease dated March 12, 2018 (the "**Second Amendment**"), and further amended by Third Amendment to Lease dated May 2, 2018 (collectively, the "**Lease**") whereby Tenant leases from Landlord certain premises consisting of a total of approximately 65,496 rentable square feet, comprised of: (i) 16,750 rentable square feet on the second (2nd) floor ("**Premises A**"); (ii) approximately 8,562 rentable square feet on the second (2nd) floor ("**Premises B**"); (iii) approximately 9,022 rentable square feet on fourth (4th) floor of the Building ("**Premises C**"); (iv) approximately 21,052 rentable square feet on the fourth (4th) floor of the Building ("**Premises D**"); and approximately 10,109 rentable square feet on the first (1st) floor of the Building ("**Premises E**") (collectively, Premises A, Premises B, Premises C, Premises D and Premises E shall be known as the "**Existing Premises**") in the building located at One Canal Park, Cambridge, Massachusetts (the "**Building**");

B. WHEREAS, the Expiration Date with respect to the Existing Premises is scheduled to expire on April 30, 2029 (the "**Expiration Date**"); and

C. WHEREAS, Landlord has agreed and Tenant desires to lease additional space consisting of approximately 30,074 rentable square feet on the third (3rd) floor of the Building ("**Premises F**") as substantially shown on the floor plan attached hereto as **EXHIBIT "A"** subject to the terms and conditions set forth herein.

AGREEMENT:

NOW THEREFORE, in consideration of the promises contained herein and other good and valuable consideration, the receipt of which is hereby acknowledged, the parties agree as follows:

1. Recitals. The recitals set forth above are incorporated herein and made a part of this Fourth Amendment as if set forth herein in full.
2. Capitalized Terms. All capitalized terms used in this Fourth Amendment that are not defined in this Fourth Amendment shall have the meanings ascribed to such terms in the Lease. In the event of any conflict between the terms of the Lease and the terms of this Fourth Amendment, the definitions set forth in this Fourth Amendment shall control.
3. Term for Premises F.
 - 3.1 Landlord demises to Tenant, and Tenant takes from Landlord, Premises F upon and subject to the provisions of the Lease, as amended by this Fourth Amendment. Subject to the terms and conditions set forth herein, the Term of the Lease with respect to Premises F (the "**Premises F Term**") shall commence on the later date to occur of (the "**Premises F Commencement Date**"): (i) October 1, 2019, or (ii) date Landlord delivers possession of Premises F to Tenant vacant, broom free, free of tenants, occupants, property and debris, in compliance with all applicable Laws and free of Hazardous Materials that are required to be removed, remediated, or encapsulated pursuant to applicable Environmental Laws and shall expire on April 30, 2029 (the "**Premises F Expiration Date**"). In no event shall Landlord deliver Premises F to Tenant prior to October 1, 2019.
 - 3.2 For purposes of this Fourth Amendment, the "**Estimated Premises F Commencement Date**" is October 1, 2019. From and after the Premises F Commencement Date, Premises F shall be deemed a "**Portion of the Premises**" under the Lease. Once the Premises F Commencement Date has occurred, Landlord and Tenant shall execute a commencement date agreement, in a form similar to that which is attached as Exhibit 5 to the Lease in order to confirm the Premises F Commencement Date, the Premises F Expiration Date and the schedule with respect to Yearly Rent for Premises F.
4. Premises F Rent Commencement Date. The "**Premises F Rent Commencement Date**" shall commence on the Premises F Commencement Date.
5. Yearly Rent for Premises F. Effective as of the Premises F Rent Commencement Date, Tenant shall pay Yearly Rent with respect to Premises F in accordance with the following schedule and in accordance with all other terms and conditions applicable to the payment of Yearly Rent under the Lease:

Term for Premises F	Yearly Rent	Monthly Payment	Per Rentable Square Foot of Premises F
From the Premises F Rent Commencement Date through the expiration of the First Premises F Rent Year	\$2,405,920.00	\$200,493.33	\$80.00
Second Premises F Rent Year	\$2,435,994.00	\$202,999.50	\$81.00
Third Premises F Rent Year	\$2,466,068.00	\$205,505.67	\$82.00
Fourth Premises F Rent Year	\$2,496,142.00	\$208,011.83	\$83.00
Fifth Premises F Rent Year	\$2,526,216.00	\$210,518.00	\$84.00
Sixth Premises F Rent Year	\$2,556,290.00	\$213,024.17	\$85.00
Seventh Premises F Rent Year	\$2,586,364.00	\$215,530.33	\$86.00
Eighth Premises F Rent Year	\$2,616,438.00	\$218,036.50	\$87.00
Ninth Premises F Rent Year	\$2,646,512.00	\$220,542.67	\$88.00
From the commencement of the Tenth Premises F Rent Year through April 30, 2029	\$2,676,586.00	\$223,048.83	\$89.00

For purposes of the Lease, the term “**Premises F Rent Year**” shall mean a twelve-month period beginning on the Premises F Rent Commencement Date or any anniversary of the Premises F Rent Commencement Date, except that if the Premises F Rent Commencement Date does not fall on the first day of a calendar month, then the first Premises F Rent Year shall begin on the Premises F Rent Commencement Date and end on the last day of the month containing the first anniversary of the Premises F Rent Commencement Date, and each succeeding Premises F Rent Year shall begin on the day following the last day of the prior Premises F Rent Year.

6. Tax Excess for Premises F. The Tax Base with respect Premises F shall be the actual amount of Taxes for the fiscal year 2021 (i.e., July 1, 2020, through June 30, 2021). From and after July 1, 2021, Tenant shall pay to Landlord Tenant’s Premises F Proportionate Share (as hereinafter defined) of the amount by which Taxes in any Tax Period exceed the Tax Base with respect to Premises F, with such excess payable in accordance with the terms and conditions of the Lease. “**Tenant’s Premises F Proportionate Share**” shall be 29.64%.

7. Operating Excess for Premises F. The Operating Costs in the Base Year with respect to Premises F shall be the actual amount of Operating Costs for the calendar year 2020. From and after January 1, 2021, Tenant shall pay to Landlord Tenant’s Premises F Proportionate Share of the amount by which Operating Costs in any Operating Year exceed the Operating Costs in the Base Year with respect to Premises F, with such excess payable in accordance with the terms and conditions of the Lease.

8. Amendment to Parking. For purposes of clarification herein, Tenant currently has the right to thirty eight (38) Parking Passes under the Lease. Effective as of the Premises F Commencement Date, Tenant shall have the right to thirty (30) additional Parking Passes under the Lease. Effective as of the Premises D Commencement Date, Tenant shall have the right to ten (10) additional Parking Passes under the Lease. The Parking Passes shall be subject to all of the terms and conditions of Section 30.12 of the Lease.

9. Condition of Premises F. Except for Landlord's obligation to: (a) deliver Premises F in accordance with Section 3.1 of this Fourth Amendment; (b) demolish the existing improvements in Premises F at its sole cost and expense in accordance with a demolition plan mutually agreed to by Landlord and Tenant; (c) and to provide the Premises F Improvement Allowance as more particularly described on **EXHIBIT "B"** attached hereto, Landlord shall not be obligated to make any improvements or contribute any allowances and Tenant shall take occupancy of the Premises F in its "as-is" condition as of the date of this Fourth Amendment. Notwithstanding the foregoing, (i) Landlord's representation set forth in Section 2.2 of the Lease shall apply with respect to Premises F as of the Premises F Commencement Date, (ii) Section 3.1(c) of the Lease shall apply to Premises F, and (iii) Section 3.1(d) shall apply to Premises F.
10. Tenant's Extension Option. For purposes of confirmation herein, Tenant's Extension Option under Section 30.16 (Tenant's Option to Extend the Term of the Lease) shall be applicable to Premises F.
11. Deletion of Tenant's Right of First Offer. Section 30.17. Tenant's Right of First Offer. shall be deleted and of no further force and effect.
12. Exterior Building Signage. Section 13. Building Signage. of the Second Amendment shall be deleted in its entirety and replaced with the following:
- Notwithstanding the terms and conditions of Section 18.4 of the Lease, and subject to: (i) all applicable laws; and (ii) Landlord's prior written approval, which approval shall not be unreasonably withheld, conditioned or delayed, Tenant, at its sole cost and expense, shall have the right to install exclusive signage on any area above the first (1st) floor of the exterior office portion of the Building (the "**Exterior Building Signage**") which shall exclude any signage below the first (1st) floor for the ground floor retail tenants of the Building. The size and location of the Exterior Building signage shall be mutually agreed upon by Landlord and Tenant and shall be subject to the approval of the City of Cambridge. Upon expiration or earlier termination of the Lease, Tenant shall remove the Exterior Building Signage at its sole cost and expense and leave the Building façade in good, clean condition and repair.
13. Lobby and Common Area Improvements. Subject to Landlord's prior written approval, which approval shall not be unreasonably withheld, conditioned or delayed, Tenant, at its sole cost and expense shall have the right to: (a) make modifications and improvements to the lobby and all common areas of the Building for the purpose of creating more usable soft seating and communal space; and (b) to install interior signage and branding within the lobby and all common areas. Except as set forth herein, the provisions of this paragraph shall be considered Alterations and subject to all terms and conditions of the Lease that govern the same.
14. Letter of Credit. Landlord is currently holding a Letter of Credit in the amount of \$444,890.20. Notwithstanding any terms and conditions of this Lease to the contrary, as of the date of Tenant's signature to this Fourth Amendment, and as a condition to the effectiveness of this Fourth Amendment, the Letter of Credit shall be amended or replaced so as to increase the amount to \$594,725.50. The Letter of Credit shall be amended or replaced so as to increase the amount to \$1,151,206 on or before the Premises F Commencement Date. The Letter of Credit shall be amended or replaced so as to increase the amount to \$1,540,668.00 on or before the Premises D Commencement Date. All other terms and condition set forth in Article 8.2 of the Lease with respect to the Letter of Credit shall remain in full force and effect.
15. Dog Friendly Premises. Paragraphs (f) and (g) of Section 30.19 of the Lease shall be deleted in its entirety and replaced with the following:
- (f) Access to and egress from the Building and tenant premises shall be as follows:
- (i) Enter or exit from the Building using only the Otis Way entrance and the stairwell off the vestibule. Dogs shall be permitted in the main lobby of the Building to access the first (1st) floor suite. Dogs in the first (1st) floor premises may use any of the Canal facing doors that serve their space.

(g) Dogs are not permitted in the restrooms, elevators, bicycle room, or in any Building public or common space existing currently or designated by Landlord in the future except in the areas designated in clause (i) above.

16. Bicycle Room. Tenant shall have access to the bicycle room on the first (1st) floor of the Building for the purpose of storing bicycles and subject to such reasonable rules and regulations as may be required by Landlord.

17. Brokers. Tenant represents to Landlord that Tenant has not dealt with any broker in connection with this Fourth Amendment other than CBRE/New England representing Landlord exclusively (“**Landlord’s Broker**”), and T3 Advisors, LLC, representing Tenant exclusively (“**Tenant’s Broker**”), and warrants that no other broker is or may be entitled to any commission in connection therewith. Tenant agrees to indemnify, defend and hold harmless Landlord and Landlord’s agents from all damages, liability and expense (including reasonable attorneys’ fees) arising from any claims or demands of any other brokers or finders for any commission alleged to be due such brokers or finders in connection with their participation in the negotiation with Tenant of this Fourth Amendment other than Landlord’s Broker and Tenant’s Broker. Landlord represents and warrants that, in connection with the execution and delivery of the Lease, it has not directly or indirectly dealt with any broker other than Landlord’s Broker and Tenant’s Broker. Landlord agrees to defend, exonerate and save harmless Tenant and anyone claiming by, through, or under Tenant against any claims arising in breach of the representation and warranty set forth in the immediately preceding sentence. Landlord shall pay any commissions due to Landlord’s Broker and Tenant’s Broker pursuant to a separate agreement between Landlord and Landlord’s Broker.

18. Counterparts and Authority. This Fourth Amendment may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument. Landlord and Tenant each warrant to the other that the person or persons executing this Fourth Amendment on its behalf has or have authority to do so and that such execution has fully obligated and bound such party to all terms and provisions of this Fourth Amendment.

19. Confirmation of Lease. Except as amended by this Fourth Amendment, all terms and provisions of the Lease shall remain in full force and effect, and as further modified by this Fourth Amendment, is expressly ratified and confirmed by the parties hereto. This Fourth Amendment shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns, subject to the provisions of the Lease regarding assignment and subletting.

20. Governing Law; Interpretation and Partial Invalidity. This Fourth Amendment shall be governed and construed in accordance with the laws of the Commonwealth of Massachusetts. If any term of this Fourth Amendment, or the application thereof to any person or circumstances, shall to any extent be invalid or unenforceable, the remainder of this Fourth Amendment, or the application of such term to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each term of this Fourth Amendment shall be valid and enforceable to the fullest extent permitted by law. The titles for the paragraphs are for convenience only and are not to be considered in construing this Fourth Amendment. This Fourth Amendment contains all of the agreements of the parties with respect to the subject matter hereof, and supersedes all prior dealings between them with respect to such subject matter.

21. Binding Agreement. This document shall become effective and binding only upon the execution and delivery of this Fourth Amendment by both Landlord and Tenant.

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, Landlord and Tenant have caused this Fourth Amendment to be executed as of the Effective Date.

LANDLORD:

ONE CANAL PARK MASSACHUSETTS, LLC

a Delaware limited liability company

By: **BAY STATE REIT, LLC**
a Delaware limited liability company, its Manager

By: **U.S. REAL ESTATE INVESTMENT FUND REIT, INC.**
a Delaware corporation, its Manager

By: /s/ Thomas Taranto
Name: Thomas Taranto
Title: Vice President

TENANT:

HUBSPOT, INC.

a Delaware corporation

By: /s/ John Kelleher
Name: John Kelleher
Title: General Counsel

EXHIBIT "A"
PREMISES F
ATTACHED HERETO

Exhibit 1 - 23

EXHIBIT "B"

PREMISES F IMPROVEMENT ALLOWANCE

1. Landlord shall, in the manner set forth in Section 5.2(b) of the Lease, provide to Tenant an allowance of up to \$58.00 per rentable square foot of Premises F (which equals up to \$1,744,292.00 in total) (the "**Premises F Improvement Allowance**"). The Premises F Improvement Allowance shall be used by Tenant to pay for the construct certain improvements with respect to the Premises F (the "**Premises F Tenant Improvements**").
2. Landlord agrees that Tenant may apply the Premises F Improvement Allowance towards hard construction costs, soft costs (such as permitting, architectural and engineering fees), voice and data wiring and cabling costs, and furniture, fixtures and equipment expenses subject to and in accordance with the same terms and conditions set forth in Sections 5.2(b) and 5.2(c) of the Lease.
3. Tenant acknowledges that all costs for the Premises F Tenant Improvements in excess of the Premises F Improvement Allowance shall be at the sole cost and expense of Tenant.
4. The Premises F Tenant Improvements shall: (a) be subject to the same terms and conditions set forth in Section 5 of the Lease applicable to the Tenant's Work, provided, however, in no event shall Tenant be required to post any lien bonds or surety payment and performance bonds with respect to the Premises F Tenant Improvements; (b) based on plans and specifications previously approved by Landlord, which approval shall not be unreasonably withheld, conditioned or delayed; (c) performed in a good and workmanlike manner by contractors previously approved by Landlord, which approval shall not be unreasonably withheld, conditioned or delayed; and (d) be in compliance with all applicable laws and regulations.
5. Landlord shall disburse the Premises F Improvement Allowance to Tenant on a periodic basis (but no more than once per month) in accordance with the terms and conditions of Section 5.2 of the Lease applicable to the Landlord's Contribution.
6. Tenant must request disbursement of the Premises F Improvement Allowance on or before the date which is eighteen (18) months following the Premises F Commencement Date, the failing of which shall cause Tenant to forfeit any portion of the Premises F Improvement Allowance not requisitioned by Tenant as of such applicable date. Tenant shall not be permitted to apply any unused portion of the Premises F Improvement Allowance toward Rent or other amounts due under the Lease.
7. If Landlord fails timely to pay any portion of the Premises F Improvement Allowance when properly due and as to which Tenant has satisfied the requisition conditions, and such failure shall continue for thirty (30) days after written notice from Tenant to Landlord, then Tenant, provided no monetary or material non-monetary Event of Default of Tenant has occurred and is continuing, may deliver a second notice to Landlord, which notice shall specify the Requisition that has not been timely paid, the date upon which it was sent to Landlord, and if Landlord fails to disburse the amount expressly referenced in such notice within five (5) business days, then Tenant shall have the right to have such unpaid amount credited against the next installment(s) of Yearly Rent thereafter due under the Lease, until such sums due Tenant have been fully paid by Landlord or fully credited and accounted for.

Dated the 1st day August, 2019

(1) Landlord: HIBERNIA REIT PUBLIC LIMITED COMPANY
(2) Tenant: HUBSPOT IRELAND LIMITED
(3) Management Company: SOBO MANAGEMENT COMPANY LIMITED BY GUARANTEE
(4) Guarantor: HUBSPOT, INC.

LEASE
of
1 – 6 Sir John Rogerson's Quay, Windmill Quarter, Dublin 2

Term Commences:
Length of Term: 20 years
Rent Reviews: Every Five Years

Initial Rent: €6,749,551.50 (Ex VAT)

Arthur Cox
Earlsfort Centre
Earlsfort Terrace
Dublin 2

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THIS LEASE is made the day of 2019

BETWEEN:

- (1) **LANDLORD: HIBERNIA REIT PUBLIC LIMITED COMPANY** (Company No 531267) having its registered office at South Dock House, Hanover Quay, Dublin D02 XW94 (hereinafter called the “**Landlord**” which expression shall where the context so admits or requires include its successors and assigns);
- (2) **TENANT: HUBSPOT IRELAND LIMITED** (Company No. 515723) having its registered office at One Dockland Central, Guild Street, Dublin 1 (hereinafter called the “**Tenant**” which expression shall where the context so admits or requires include its permitted successors and permitted assigns);
- (3) **MANAGEMENT COMPANY: SOBO MANAGEMENT COMPANY LIMITED BY GUARANTEE** having its registered office at South Dock House, Hanover Quay, D02 XW94 (hereinafter called the “**Management Company**” which expression shall where the context so admits or requires include its successors and assigns); and
- (4) **GUARANTOR: HUBSPOT, INC.** a Delaware corporation, having its principal office at 25 First Street, 2nd Floor, Cambridge, MA 02141 (hereinafter called the “**Guarantor**”) which expression shall where the context so admits or requires include its permitted successors and permitted assigns).

WITNESSETH as follows:-

1. **DEFINITIONS**

In this Lease, unless the context otherwise requires the following expressions shall have the following meanings:-

- 1.1 “**Accountant**” means a person being a chartered or certified accountant or a firm thereof appointed by the Landlord (excluding an employee of the Landlord) to perform the functions of the Accountant under this Lease;
- 1.2 “**Act of the Oireachtas**” any act of Parliament or act of the Oireachtas or law of the European Union now in force in the State and any such act or law which may hereinafter be passed which has force in the State including (without prejudice to the generality of the foregoing) any instrument, directive, regulation or bye-law made thereunder;
- 1.3 “**Adjoining Property**” means any land and/or buildings within the Estate adjoining, neighbouring or in the vicinity of the Demised Premises or the Building (including any part of the Building);
- 1.4 “**Agreement for Lease**” means the Agreement for Lease dated November 2018 between (1) the Landlord, (2) the Tenant and (3) the Guarantor;
- 1.5 “**Balconies**” means the parts of the Demised Premises as are shown for the purposes of identification only coloured green on Plan No. 17, 18 and 19 attached hereto;

- 1.6 “**Base Rate**” means annual rate of interest for the time being which equals EURIBOR at the relevant date;
- 1.7 “**Basement**” means that portion of the Estate situate at basement level and shown shaded green on Plan No. 3 attached hereto comprising a car park and all appurtenances thereto and all additions, alterations and improvements thereto and in the event the Estate is extended all similar parts of any such extension (including that part of the Basement situate beneath the Building) and for the avoidance of doubt the Basement may from time to time include areas which are not immediately contiguous in location to one another, and excluding those parts of the basement level which form part of a Block (if any);
- 1.8 “**Basement Common Parts**” means that part of the Basement not for the time being either sold, demised to or in the exclusive occupation of any purchaser, tenant or licensee of the Landlord or the Management Company nor for the time being intended or (as the case may be) designed or capable of being sold or let as such the use and/or benefit of which is common to the Block Owner and/or the Management Company and/or the occupiers of any other part or parts of the Estate and others authorised by the Management Company including, for the avoidance of doubt, the Car Park Ramp, machinery and fire alarm system used in connection with the operation of the Basement;
- 1.9 “**Basement Services**” means the services and other matters specified in Part I of Schedule 7 hereto or any of them as they may from time to time be amended or varied by the Landlord and / or the Management Company;
- 1.10 “**Basement Service Charge**” means the aggregate costs, expenses and outgoings, paid, payable, incurred or borne from time to time by the Management Company in order to provide the Basement Services;
- 1.11 “**Basement Service Charge Period**” means each 12 month period commencing on 1 January in each year during the Term;
- 1.12 “**Basement Storage Area**” means that part of the Demised Premises located in the basement of the Building and allocated for use by the Tenant as a storage and facilities administration area shown for purposes of identification only coloured blue on Plan No. 4 attached hereto;
- 1.13 “**Bicycle Area**” means that part of the Demised Premises within the Basement shown coloured green on the Plan No. 5 attached hereto which the Tenant shall use for bicycle parking and for no other purpose;
- 1.14 “**BIM**” means building information modelling (in accordance with the Construction Industry Council Building Information Model Protocol (first edition 2013));
- 1.15 “**Block**” means any building or part thereof within the Estate let or capable of being let for business, and/or residential use, and the expression “Blocks” shall be construed accordingly. For the purposes of this definition “business” includes any trade, profession, or business whether or not it is carried on for gain or reward, any activity for providing cultural, charitable, educational, scientific, artistic, social, or sporting services either for the benefit of the owners and/or occupiers of the Estate and/or the public generally or otherwise and also public local authority or health authority services, and the expression “Block” shall include (i) those parts of a Block at basement level which do not comprise part of the Basement and (ii) the Building;

- 1.16 “**Brise Soleil**” means the brise soleil affixed to the external parts of the Building shown coloured orange on Plans No. 20, 21, 22, 23 and 24;
- 1.17 “**Building**” means the building located at 1 – 6 Sir John Rogerson’s Quay, Windmill Quarter, Dublin 2 and more particularly outlined in blue on Plan No. 2 attached hereto including part of the areas at basement level shown coloured green on Plan No. 3 attached hereto and shall be deemed to include any extensions or alterations to or any reductions or variations of it now or in the future respectively made within the Term;
- 1.18 “**Building Common Areas**” means the pedestrian ways, forecourts, entrance halls, corridors, loading bays, servicing area, lobbies, landings, lift shafts, walks, passages, stairs, staircases, basement areas and any other areas or amenities in the Building or within the curtilage thereof which are or may from time to time during the Term be provided by the Landlord and designated for the common use and enjoyment of the tenants and occupiers of the Building or any of them excluding the Demised Premises and any other Lettable Area PROVIDED ALWAYS that if the Landlord shall cause or permit any alterations in the Building which shall in any way alter the area or location of the Building Common Areas or any part thereof then the definition of Building Common Areas shall as and where necessary be modified accordingly;
- 1.19 “**Building Services**” means the services and other matters specified in Part I of Schedule 6 hereto or any of them as they may from time to time be amended or varied by the Landlord and / or the Management Company;
- 1.20 “**Building Service Charge**” means the aggregate of the costs, expenses, overheads, payments, charges and outgoings paid, payable, incurred or to be incurred or borne by the Landlord in providing the Building Services, calculated and payable in the manner set out in Part III of Schedule 6 of this Lease;
- 1.21 “**Building Service Charge Period**” means each 12 month period commencing on 1 January in each year during the Term;
- 1.22 “**Business Hours**” means 8a.m. to 6p.m., Monday to Friday excluding public and bank holidays;
- 1.23 “**Car Park Ramp**” means the car park ramp situate at the entrance to the Basement shown coloured blue on Plan no. 14 attached hereto;
- 1.24 “**Car Spaces**” means the total car parking spaces in the Estate;
- 1.25 “**Conduits**” means wires, cables, pipes, sewers, drains, gutters, ducts, flues, conduits, meters, traps, valves, air conditioning plant and equipment, and other media, plant, equipment or apparatus for the conducting, controlling or measuring of electricity, gas, power, water, foul drainage, surface water, drainage, telephone and other electrical impulses, air, smoke, fumes and other matter or things or forms of energy and other things of a like nature (if provided);

- 1.26 “**Demised Premises**” means the premises demised by this Lease and more particularly described in the Schedule 1 **PROVIDED ALWAYS** that for the purposes of Clause 6 herein, reference to the Demised Premises shall exclude (unless otherwise agreed in writing by the Landlord and the Tenant) all additions, alterations and improvements made to the Demised Premises by the Tenant;
- 1.27 “**Entrance Courtyard**” means that part of the Demised Premises as is shown coloured blue on Plan No. 6 attached to the Lease;
- 1.28 “**Estate**” means the Windmill Quarter, Dublin 2, as shown for identification purposes only coloured blue on Plan No. 1 attached hereto and the extent of which Estate may be expanded or retracted from time to time by the Landlord and / or the Management Company, and for the avoidance of doubt the Estate may from time to time include areas which are not immediately contiguous in location to one another;
- 1.29 “**Estate Common Areas**” means those parts of the Estate which may from time to time be designated by the Landlord and/ or the Management Company as being common areas including open spaces, water features, ponds, roads, footpaths, grass margins, security huts or compounds, external podium, concourses, landscaped areas, kerbs, verges, street lighting, bridges, pedestrian ways, watercourses, lakes, reservoirs, fountains, landscaped areas and other common areas and their finishes and those parts of the ground floor structural slabs of any Blocks in the Estate which do not exclusively serve any one Block any structural parts below ground floor slabs which do not exclusively serve any Block and any plant and equipment and machinery used in connection with the operation of the Estate and intended to be used in common by the owners and occupiers of the Estate and not exclusively serving any Block and any other area or any other structure used or intended to be used in common by the owners and occupiers of the Estate but does not include the Building, the Blocks, the Lettable Areas, the Basement Common Parts or any parts of the Estate which have been or are intended to be or are capable of being assured (whether by way of conveyance, assignment or by long lease) to any person other than any Management Company (other than any parts used by the Management Company for the purposes of managing the Estate and for the purpose of providing the Basement Services and the Estate Services);
- 1.30 “**Estate Service Charge**” means the aggregate of the costs, expenses, overheads, payments, charges and outgoings paid, payable, incurred or borne by the Management Company in maintaining, repairing, renewing and providing services, amenities and facilities to the Estate Common Areas, including the Estate Services whether or not the Management Company is obliged by this Lease to incur the same, calculated and payable in the manner set out in Part II of Schedule 5 of this Lease;
- 1.31 “**Estate Services**” means the services and other matters specified in Schedule 5 of this Lease or any of them as they may from time to time be amended or varied by the Landlord and / or the Management Company;

- 1.32 “**Estate Service Charge Period**” means each 12 month period commencing on 1 January in each year during the Term;
- 1.33 “**Exclusive Basement Services Areas**” means those parts of the Demised Premises within the Basement shown coloured green on the Plan No. 4 attached to the Lease which exclusively service the Office Premises;
- 1.34 “**Floor Area**” means at the election of the Landlord, the floor area of the premises being measured expressed in square feet and measured in accordance with the International Property Measurement Standards 3: Office Buildings (current at the date when they are to be applied) published by the International Property Measurement Standards Coalition or such code or standards as may be reasonably determined by the Landlord;
- 1.35 “**Gross Internal Area**” means the total floor area expressed in square feet measured in accordance with the Measuring Practice Guidance Notes (current at the date when they are to be applied) published on behalf of The Society of Chartered Surveyors Ireland (or if there are no such practice guidance notes, such code as may be reasonably determined by the Landlord) and, for the purposes of this Lease reference to this expression means the Gross Internal Area as determined by the Landlord’s surveyor, whose decision shall be final and binding;
- 1.36 “**Group Company**” means any undertaking which for the time being is a subsidiary of the Tenant, a holding company of which the Tenant is a subsidiary, or a subsidiary of such holding company (the terms “subsidiary” and “holding company” having the meaning given to them in sections 7 and 8 of the Companies Act 2014, respectively)
- 1.37 “**Guarantor**” means the party (if any) named as Guarantor and in the case of an individual includes the personal representatives of such Guarantor;
- 1.38 “**Independent Surveyor**” means an independent chartered surveyor with a current membership of the Society of Chartered Surveyors Ireland as may be appointed by agreement between the parties or, in default of agreement, within five (5) business days of first request by either Landlord or Tenant on nomination of the President (or if he / she is not available, the next most senior officer) of the Society of Chartered Surveyors Ireland;
- 1.39 “**Index**” shall mean the Consumer Price Index as published by the Central Statistics Office of the Republic of Ireland or any successor Office or Department or, if that Index shall cease to be published, then such other Index as may be substituted therefor or, if there is no direct substitution, then the nearest equivalent means of measuring increase in the cost of living;
- 1.40 “**Initial Rent**” means €6,749,551.50 exclusive of VAT comprising €6,633,301.50 (six million, six hundred and thirty three thousand, three hundred and one euro and fifty cent) in respect of the Demised Premises and €116,250 (one hundred and sixteen thousand, two hundred and fifty euro) in respect of the Tenant’s Car Park Spaces per annum and subject to review at the Rent Review Dates in accordance with the terms set out in Schedule 4;

- 1.41 **“Inspector”** means any person appointed by the Landlord (including an employee of the Landlord and the person appointed by the Landlord to collect the rents and manage the Building) to perform the function of an inspector for any purpose of this Lease;
- 1.42 **“Instalment Days”** each of the first day of January, the first day of April, the first day of July and the first day of October;
- 1.43 **“Insured Risks”** mean, subject always to such exclusions, excesses and limitations as are normally available and as may be imposed by the Landlord’s insurers for the time being in respect of any or all of the following risks:-
fire, storm, tempest, flood, earthquake, subsidence, lightning, explosion, impact, aircraft and other aerial devices and articles dropped therefrom, riot, civil commotion and malicious damage, bursting or overflowing of water tanks, apparatus or pipes, impact by road vehicles and other perils, expenses, or losses as the party effecting the relevant insurance may deem reasonable and prudent to insure against from time to time;
- 1.44 **“Internal Decoration Years”** means every fifth year of the Term;
- 1.45 **“Landlord”** means the party or parties named as “Landlord” at the commencement of this Lease, and includes the person for the time being entitled to the reversion immediately expectant on the determination of the Term;
- 1.46 **“Landlord’s Architect”** means any suitably qualified professional or firm appointed by the Landlord to perform the function of an architect for any purpose under this Lease;
- 1.47 **“Landlord’s Option to Tax”** means the Landlord’s option to tax the rents payable under this Lease pursuant to section 97(1) of the VAT Act;
- 1.48 **“Landlord’s Specification”** means the agreed form plans and specifications identified in Schedule 9 hereto;
- 1.49 **“Lettable Areas”** means those parts of the Building (or where appropriate other Blocks) (including the Demised Premises) leased or licensed or intended to be leased or licensed to occupational tenants or licensees, the construction of which have reached practical completion, including retail and office tenants;
- 1.50 **“Lease”** means this Lease and any document which is made supplemental hereto, or which is entered into pursuant to or in accordance with the terms hereof;
- 1.51 **“Management Company’s Financial Year”** means each period of twelve months ending on the last day of each December or such other month as the Management Company may from time to time determine;

- 1.52 “**Main Structure**” means the following: all those parts of the Building (including those within or surrounding the Demised Premises) which are designated by the Landlord in its absolute discretion as being part of the structure thereof and including, without prejudice to the generality of the foregoing, the foundations, all structural beams and joists, main structural walls, external walls, structural slabs, floor slabs, structural columns and pillars, any structural stairs the roofs and roof structures and all other load-bearing parts of the fabric or structure of the Building essential to the stability and strength thereof but excluding the Lettable Areas;
- 1.53 “**Observatory**” means the building known as the Observatory located at [No 7-9] Sir John Rogerson’s Quay which forms part of the Estate and is more particularly outlined in blue on Plan No. 15 attached hereto including the areas at basement level;
- 1.54 “**Office Area**” mean that part of the Building comprising the offices located on the ground floor, first floor, second floor, third floor, fourth floor and fifth floor, mezzanine floor and such other parts of the Building that may be designated from time to time by the Landlord or the Management Company as the “Offices Area” which for the avoidance of doubt excludes, the Basement, the Retail Units and the Main Structure;
- 1.55 “**Permitted User**” means office and ancillary uses including the provision of food and beverages and associated amenities;
- 1.56 “**Plan**” means the plan(s) annexed to this Lease;
- 1.57 “**Planning Acts**” mean the Local Government (Planning and Development) Acts 1963 to 1999 and the Planning and Development Acts 2000 to 2017, the Building Control Acts 1990 to 2014 and the Building Regulations 1991 to 2014, the Safety Health and Welfare and Work Acts 2005 to 2014 and the Fire Services Acts 1981 and 2003, and technical guidance documents, regulations, directions or orders made under the foregoing legislation or under any legislation repealed thereby and any statutory modification or re-enactment thereof for the time being in force;
- 1.58 “**Prescribed Rate**” means EURIBOR plus 4%;
- 1.59 “**Quarterly Gale Days**” mean 1st day of January, 1st day of April, 1st day of July and 1st day of October in every year of the Term;
- 1.60 “**Rent Commencement Date**” means 4, June 2019;
- 1.61 “**Rent Review Dates**” means the first day of the sixth year of the Term being 4, June 2024, the first day of the eleventh year of the Term, being 4, June 2029 and the first day of the sixteenth year of the Term, being 4, June 2034;
- 1.62 “**Residential Area**” means those parts of the Estate comprising the Residential Units and Residential Common Area and which are designated from time to time by Landlord and / or the Management Company as the Residential Area;

- 1.63 “**Residential Common Area**” means those parts of the Residential Area which do not form part of the Main Structure or the Lettable Areas and which may from time to time be designated by the Landlord or the Management Company as being common areas of the Residential Area including but not limited to all entrance halls, corridors, passages, landings, lobbies, staircases and lifts exclusively serving the Residential Units;
- 1.64 “**Residential Unit**” means any residential unit located within the Estate.
- 1.65 “**Retail Units**” means that part of the Building comprising retail units and such other parts of the Building that may be designated from time to time by the Landlord or the Management Company as a “Retail Unit”;
- 1.66 “**Retained Areas**” shall mean such parts of the Building as the Landlord or the Management Company may from time to time designate as such and unless designated to the contrary shall include the following:
- (a) the Building Common Areas;
 - (b) office or other accommodation which may from time to time be reserved in the Building for staff of the Landlord who are involved in the management or security of the Building;
 - (c) any parts of the Building reserved by the Landlord for the housing of plant, machinery and equipment or otherwise in connection with or required for the provision of the Building Services;
 - (d) all Conduits in, upon, over, under or within and exclusively serving the Building except any that form part of the Lettable Areas;
 - (e) the Main Structure; and
 - (f) all external plate glass in the windows, all cladding and all curtain walling in the Building and all external elements of the external envelope of the Building that contribute to water-tightness, weather tightness and air-tightness.
- 1.67 “**Safety Health and Welfare at Work Act**” means the Safety Health and Welfare at Work Act 2005 - 2014;
- 1.68 “**Services**” means the Building Services and/or the Estate Services and/or the Basement Services as appropriate;
- 1.69 “**Service Charge**” means the Building Service Charge and/or the Estate Service Charge and/ or the Basement Service Charge as appropriate;
- 1.70 “**Security Systems**” means such form of close circuit television system or other security systems (if any) which the Landlord or the Management Company may from time to time at their reasonable discretion provide;
- 1.71 “**Tenant**” means the party or parties named as “Tenant” at the commencement of this Lease and includes the successors in title of the Tenant and permitted assigns of the Tenant and, in the case of an individual or individuals his/their personal representatives;

- 1.72 “**Tenant’s Architect**” means any suitably qualified professional or firm appointed by the Landlord to perform the function of an architect for any purpose under this Lease;
- 1.73 “**Tenant Car Park Spaces**” means the 31 (thirty one) Car Spaces allocated for use by the Tenant as are shown for the purposes of identification only coloured yellow on Plan No. 13 attached hereto;
- 1.74 “**Tenant’s Proportion of the Building Service Charge**” means that proportion of the Building Service Charge (after same has been apportioned between the Office Area and the Retail Units on a Gross Internal Area basis and as certified by the Management Company) attributable to the Demised Premises on the basis of the percentage which the Floor Area of the Demised Premises bears to the total Floor Area of the Office Area as certified by the Management Company, save where such a comparison is inappropriate having regard to the nature of any expenditure, or item of expenditure, incurred or the premises in the Office Area which benefit from it or otherwise, in which case the Landlord may in its discretion acting in the interests of good estate management adopt such other method of calculation of the proportion of the expenditure to be attributed to the Demised Premises as is fair and reasonable in the circumstances;
- 1.75 “**Tenant’s Proportion of the Basement Service Charge**” means the proportion of the Basement Service Charge (after same has been apportioned between the Building and the Observatory on a Gross Internal Area basis as certified by the Management Company and which proportion is further apportioned between the Office Area and the Retail Units on a Gross Internal Area basis as certified by the Management Company) for each Service Charge Period, save where such a comparison is inappropriate having regard to the nature of any expenditure, or item of expenditure, incurred or the premises in the Building which benefit from it or otherwise, in which case the Landlord (or Management Company) may in its discretion acting in the interests of good estate management adopt such other method of calculation of the proportion of the expenditure to be attributed to the Demised Premises as is fair and reasonable in the circumstances;
- 1.76 “**Tenant’s Proportion of the Estate Service Charge**” means the proportion of the Estate Service Charge after same has been apportioned between the Blocks on a Gross Internal Area basis and as certified by the Management Company and further apportioned between the Residential Area, the Office Area and the Retail Units on a Gross Internal Area basis and as certified by the Management Company attributable to the Demised Premises on the basis of the percentage which the Floor Area of the Demised Premises bears to the total Floor Area of the Office Area as certified by the Management Company for each Service Charge Period, save where such a comparison is inappropriate having regard to the nature of any expenditure; or item of expenditure, incurred or the premises in the Estate which benefit from it or otherwise, in which case the Management Company may in its discretion acting in the interest of good estate management adopt such other method of calculation of the proportion of the expenditure to be attributed to the Demised Premises as is fair and reasonable in the circumstances;

- 1.77 “**Tenant’s Service Charge**” means the Tenant’s Proportion of the Building Service Charge, the Tenant’s Proportion of the Estate Service Charge and the Tenant’s Proportion of the Basement Service Charge;
- 1.78 “**Term**” means 20 (twenty) years commencing on the Term Commencement Date and expiring on 3, June 2039;
- 1.79 “**Term Commencement Date**” means 4, June 2019;
- 1.80 “**Uninsured Risks**” means any risks against which insurance cover is not generally available or is refused or is available on terms or subject to conditions making it commercially unreasonable to effect insurance against that risk or is subject to some special limitation such that the full cost of reinstatement (save for any normal insurance excess) is not recovered by the Landlord, so that any such risk is not an Insured Risk;
- 1.81 “**Utilities**” mean the following of whatsoever nature:-
water, soil, steam, air, gas, electricity, radio, television, telegraphic, telephonic and other communications, and other services and information (including any plant, machinery, apparatus, duct, tanks, systems, wireless, television, firefighting and fire prevention systems and equipment, burglar alarm systems, fibre optic cable and equipment to operate the same or required to be provided in or for the Estate or the Building) as may from time to time and in the opinion of the Management Company or the Landlord be desirable or necessary;
- 1.82 “**VAT**” means Value Added Tax as applied under the VAT Act or any similar or other such tax eligible;
- 1.83 “**VAT Act**” means the Value Added Tax Consolidation Act 2010 as amended and any related VAT regulations and any enactment extending, amending, repealing, replacing or continuing the same;
- 1.84 “**Working Day**” means any day other than a Saturday, Sunday or a public holiday in Ireland;
- 1.85 “**Yield Up Specification**” means the specification for the yield up of the Demised Premises in accordance with clause 4.8 hereof and attached at Schedule 11; and
- 1.86 “**the 1860 Act**” and “**the 1881 Act**” shall mean respectively the Landlord and Tenant Law Amendment Act, Ireland, 1860 and the Conveyancing Act 1881.

2. INTERPRETATION

UNLESS there is something in the subject or context inconsistent therewith:

- 2.1 where two or more persons are included in the expression “the Landlord” and/or “the Tenant” and/or “the Guarantor” the covenants which are expressed to be made by the Landlord and/or the Tenant and/or the Guarantor shall be deemed to be made by such persons jointly and severally;

- 2.2 words importing persons shall include firms, companies and corporations and vice versa;
- 2.3 any covenant by any party not to do any act or thing shall include an obligation not to permit or suffer such act or thing to be done;
- 2.4 references to any right of the Landlord to have access to or entry upon the Demised Premises shall be construed as extending to all persons authorised by the Landlord, to include the Management Company, any superior landlord and their and each of their agents and professional advisers together with the prospective purchasers of any interest of the Landlord or any superior landlord in the Demised Premises or in the Adjoining Property, contractors, workmen and others;
- 2.5 any reference to a statute or statutes (whether specifically named or not) or to any sections or sub-sections therein shall include any amendments or re-enactments thereof for the time being in force and all Statutory Instruments, orders, notices, regulations, directions, byelaws, permissions and plans for the time being made, issued or given thereunder or deriving validity therefrom;
- 2.6 the titles or headings appearing in this Lease are for reference only and shall not affect its construction or interpretation;
- 2.7 any reference to a clause or schedule shall mean a clause or schedule of this Lease;
- 2.8 any reference to the masculine gender shall include reference to the feminine gender and any reference to the neuter gender shall include the masculine and feminine genders and reference to the singular shall include reference to the plural;
- 2.9 if any term or provision in this Lease shall be held to be illegal or unenforceable in whole or in part, such term shall be deemed not to form part of this Lease but the enforceability of the remainder of this Lease shall not be affected;
- 2.10 The Management Company and the Landlord will be entitled, in their absolute discretion, to maintain the Estate, Basement, Building and Office Area up to a platinum standard LEED rated office accommodation in the Dublin marketplace and will be entitled to consider this standard when deciding on matters relating to the provision, operation, maintenance, repair, replacement, renewal, cleansing, decoration and amendment of any matters falling within the scope of Estate and / or Basement maintenance / services and / or the Building maintenance / services as outlined in the 5th 6th and 7th Schedules of this Lease respectively Tenant is aware of its covenant to meet the Tenant LEED requirements set out in Schedule 10 of this Lease.

3. **DEMISE AND RENTS**

THE Landlord in consideration of the rents herein reserved (including the adjustments thereof following any Rent Review as hereinafter provided) and the covenants on the part of the Tenant and the Guarantor and the conditions hereinafter contained **HEREBY DEMISES** unto the Tenant the Demised Premises **TOGETHER WITH** the rights, easements and privileges specified in Schedule 2 **EXCEPTING AND RESERVING** the rights and easements specified in Schedule 3 **TO HOLD** the Demised Premises unto the Tenant from and including the Term Commencement Date for the Term **YIELDING AND PAYING** unto the Landlord or the Management Company (or any nominee of either in the case of any contribution to a sinking or reserve fund) as appropriate during the Term:-

- 3.1 yearly and proportionately for any fraction of a year, the Initial Rent and from and including each Rent Review Date, such yearly rent as shall become payable under and in accordance with the provisions of Schedule 4 and in each case to be paid by electronic funds transfer (or some other form of payment if requested by the Landlord, acting reasonably, during the Term and agreed with the Tenant) by equal quarterly payments in advance on the Quarterly Gale Days without any deduction, set-off or counterclaim whatsoever;
- 3.2 The Tenant's due proportion of the sums (including the cost of periodic valuations for insurance purposes, provided that such valuations do not occur more than once in any twelve (12) month period) which the Landlord shall from time to time be required to pay for insuring the Building against the Insured Risks pursuant to Clause 6.1 all such sums to be paid within 30 (thirty) days of written demand the first payment to be made on the execution hereof and to be such amount as has been advised to the Tenant prior to the delivery of this Lease (the Tenant's due proportion to be calculated on the basis of the proportion which the Floor Area of the Demised Premises bears to the total Floor Area of the Building); and
- 3.3 the Tenant's Service Charge to be paid in accordance with the provisions hereof.

4. **TENANT'S COVENANTS**

The Tenant to the intent that the obligations shall continue throughout the Term **HEREBY COVENANTS** with the Landlord as follows:

4.1 **Rents**

To pay the rents or adjusted rents reserved by this Lease and referred to at paragraphs 3.1 to 3.3 inclusive and any additional sums payable herein at the times and in the manner herein prescribed for the payment of same without any deduction, set-off counter claim whatsoever, together with VAT, where applicable, following the receipt of a valid VAT invoice.

4.2 **Service Charges**

To pay the Tenant's Service Charges in the manner prescribed for the payment of same in accordance with schedules 5 to 7 hereto.

4.3 **Interest on arrears**

Without prejudice to any other right, remedy or power herein contained or otherwise available to the Landlord, if any of the rents reserved by this Lease (in the case of Initial Rent whether formally demanded or not and in the case of all other payments the same having been formally demanded) or if any other sum of money payable to the Landlord (or the Management Company as the case maybe) by the Tenant under this Lease shall remain unpaid for fourteen (14) days after the date when payment was due to pay interest thereon at the Prescribed Rate from and including the date on which payment was due to the date of payment to the Landlord (or the Management Company as the case maybe) (both before and after any judgment). Save where otherwise provided in this Lease all payments due by the Landlord to the Tenant shall be paid within fourteen (14) days of delivery of a valid invoice and otherwise such payment shall attract interest at the Prescribed Rate as aforesaid.

4.4 **Outgoings**

- (a) To pay and indemnify the Landlord against all existing and future rates, taxes, duties, charges, assessments, impositions and outgoings whatsoever (whether parliamentary, parochial, local or of any other description and whether or not of a capital or non-recurring nature) which now are or may at any time during the Term be charged, levied, assessed or imposed upon or payable in respect of the Demised Premises or upon the owner or occupier of them (excluding any tax payable by the Landlord upon any of the rents herein received or occasioned by any disposition of or dealing with the reversion of this Lease);
- (b) To pay all charges for electricity, gas (if any), water and other services and utilities consumed in the Demised Premises, including any connection and hiring charges and meter rents and to perform and observe all present and future regulations and requirements of the electricity, gas and water supply authorities or boards in respect of the supply and consumption of electricity, gas and water on the Demised Premises and to keep the Landlord indemnified against any breach thereof.

PROVIDED THAT for the avoidance of doubt the Tenant shall not be responsible for any arrears of outgoings, including electricity, gas (if any), water and other utilities, refuse charges, Local Authority charges, commercial rates and water rates arising on the Demised Premises in respect of any period prior to the Term Commencement Date.

4.5 **Repairs**

- (a) From time to time and at all times during the Term:
 - (i) to keep clean and tidy and to maintain, repair, replace and reinstate and to keep in good order repair and condition the Demised Premises and every part of it and any additions, alterations and extensions to it; and

- (ii) to keep clean and tidy and to maintain, repair and keep in good working order and condition and (where necessary) renew and replace with articles of a similar kind and quality all plant and machinery in or forming part of the Demised Premises and which exclusively serve the Demised Premises, including the Conduits and Utilities and the central heating and air conditioning plant (if any), the sprinkler system and all boilers and electrical and mechanical plant, machinery, equipment and apparatus;
- (iii) Without prejudice to Clause 4.5(a)(ii), the Tenant shall contribute on an annual basis to a reserve fund to be established by the Landlord (the “**Reserve Fund**”) which shall be put in place by the Landlord in respect of the capital costs associated with the upkeep, maintenance and replacement of the mechanical and electrical plant and equipment exclusively serving the Demised Premises including but not limited to the plant and equipment described at Schedule 12 (the “**M & E Plant Schedule**”) and any amendments thereto as may be agreed between the Landlord and Tenant from time to time during the Term. The Tenant shall either: (i) pay into the Reserve Fund annual contributions calculated in accordance with the M & E Plant Schedule up to the Option Date (as defined at Clause 4.35); or discharge the sum equivalent to 12 times the total annual contributions set out in the M & E Plant Schedule on or prior to the Option Date. By way of an illustrative example, if an asset is stated in the M & E Plant Schedule to have a lifespan of twenty (20) years the Tenant shall pay on or before the Option Date the total amount equivalent to 12/20 of the full replacement cost of the item(s) calculated in accordance with the M & E Plant Schedule. For the avoidance of doubt, the Tenant shall not be liable for any further contributions in respect of the M & E Plant Schedule after the Option Date. Following the Option Date and for the duration of the Term, the Reserve Fund shall continue to be held by the Landlord and the Tenant shall be entitled to continue to make deductions from it in accordance with the provisions of this clause;
- (iv) Subject to the Tenant: (i) having discharged all relevant contributions on an annual basis pursuant to Clause 4(a)(iii) up to the relevant Drawdown Date (as hereinafter defined); and (ii) having provided to the Landlord invoices vouching the properly and reasonably incurred costs of the Tenant, the Tenant shall be entitled to draw upon the Reserve Fund on any occasion (or on multiple occasions) during the Term (each such date referred to as a “**Drawdown Date**”) to the value of such vouched costs where the Tenant has been required to repair, replace or renew any of the assets detailed in the M & E Plant Schedule and the Landlord shall discharge the relevant sum to the Tenant without undue delay (and in any event within 10 Working Days from receipt of such invoices) PROVIDED ALWAYS that if the

Tenant has not contributed to the Reserve Fund on an annual basis and elects to discharge the sums due under Clause 4(a)(iii) by way of a lump sum payment into the Reserve Fund on or prior to the Option Date, the Tenant shall be entitled to, subject to providing to the Landlord invoices vouching the properly and reasonably incurred costs, deduct such vouched costs as have been incurred by the Tenant during the Term in repairing, replacing or renewing any of the assets detailed in the M & E Plant Schedule;

- (v) The Tenant shall establish as soon as possible after the Term Commencement Date, a comprehensive maintenance and service programme to the satisfaction of the Landlord (acting reasonably) in respect of the plant and equipment described in the M & E Plant Schedule and to provide maintenance reports to the Landlord periodically in the form and manner determined by the Landlord (acting reasonably) and notified to the Tenant;
- (vi) For the avoidance of doubt,
 - (A) The projected lifecycles set out in the M & E Plant Schedule assumes that the Tenant is maintaining the assets listed therein in good working order and condition pursuant to Clause 4.5(a)(ii);
 - (B) all funds paid or contributed to or towards the Reserve Fund shall be kept entirely separate from the Landlord's own funds but no prepaid amounts shall be refundable to the Tenant should the Tenant exercise its option at Clause 4.35;
 - (C) the Landlord shall open a separate deposit account with one of the Associated Banks in the Republic of Ireland and all payments or contributions paid to it for the purpose of the Reserve Fund shall be lodged to the credit of such deposit account and such deposit account shall be designated or entitled "1-6 SJRQ OFFICE BUILDING M & E RESERVE FUND A/C" or the like;
 - (D) all net interest accruing on the balance for the time being standing to the credit of such deposit account shall be added to and form part of the Reserve Fund and the said account shall not be drawn upon by the Landlord save for the express purposes for which the sinking or reserve fund has been established;
 - (E) the Landlord shall confirm the balance of the funds in the said account upon request by the Tenant but not more than once in any 12 month period during the Term;

- (F) In the event of the transfer by the Landlord of its interest in the Building the Landlord shall ensure that the balance (inclusive of net interest) standing to the credit of the account is transferred to or otherwise taken over by the transferee on the same terms and conditions as herein contained.
- (b) It is hereby acknowledged and agreed that the Tenant's repair obligations set out in Clause 4.5(a) above shall exclude the following:
 - (i) damage by any of the Insured Risks excepted if and so long only as the policy or policies of insurance shall not have been vitiated or payment of the policy monies withheld or refused in whole or in part by reason of any act, neglect, default or omission of the Tenant or the under-lessees, servants, agents, licensees or invitees of the Tenant or any person under its or their control; and
 - (ii) damage by the Uninsured Risks.

4.6 **Internal Decorations**

In every Internal Decoration Year and also in the last six (6) months of the Term (whether determined by effluxion of time or otherwise) (but never more than twice in any three (3) year period) in a good and workmanlike manner to prepare and decorate (with two coats at least of good quality paint) or otherwise treat, as appropriate, all internal parts of the Demised Premises required to be so treated and, as often as may be reasonably necessary, to wash down all tiles, glazed bricks and similar washable surfaces; such decorations and treatment in the last year of the Term to be executed in such colours and materials as the Landlord may reasonably notify to the Tenant from time to time.

4.7 **Cleaning**

To keep the Demised Premises in a clean and tidy condition and free from deposits of refuse or rubbish **AND** as often as reasonably necessary to clean properly all windows and window frames (internally) and all other glass in the Demised Premises PROVIDED ALWAYS that the Tenant shall not be obliged to clean the Brise Soleil and external glass in the Demised Premises as it is acknowledged that that the cleaning (only) of the Brise Soleil and external glass of the Building are included in the Building Services.

Yield Up

- (a) At the expiration or sooner determination of the Term quietly to yield up the Demised Premises in such good and substantial repair and condition as shall be in accordance with the Yield Up Specification at Schedule 11, the covenants on the part of the Tenant herein contained and in any licence or consent granted by the Landlord pursuant to the provisions of this Lease and:
- (i) in case any of the Landlord's fixtures and fittings which form part of the Demised Premises shall be missing, broken damaged or destroyed to forthwith replace them with others of a similar kind and of equal value;
 - (ii) to remove from the Demised Premises any moulding, sign, writing or painting of the name or business of the Tenant or occupiers;
 - (iii) to remove and make good to the Landlord's Specification all alterations or additions made to the Demised Premises by the Tenant (unless otherwise stipulated in writing by the Landlord at least four (4) months prior to the expiration or sooner determination of the Term, in which case the Landlord's election for retention of alterations or additions shall be made on a floor by floor basis only, as opposed to any piecemeal election for some but not all elements of alteration or addition on a single floor to be retained); and
 - (iv) to make good any damage caused to the Demised Premises by the removal of the Tenant's fixtures, fittings, furniture and effects without limitation.
- (b) If the Tenant should fail to have completed the works required to comply with this Clause 4.8 (the "**Reinstatement Works**") on or prior to the expiry of the Term (whether terminated by effluxion of time or otherwise) (the "**End Date**"), then the Tenant will pay to the Landlord within fourteen (14) days of demand:
- (i) The cost of completing the Reinstatement Works as estimated by the Landlord (acting reasonably), which for the avoidance of doubt shall include the quantum of any irrecoverable VAT incurred thereon (but shall exclude any resulting deductibility adjustment suffered by the Landlord pursuant to section 64 of the VAT Act or any VAT which is irrecoverable as a result of the Landlord not exercising the Landlord's Option to Tax to any subsequent relevant letting); and
 - (ii) An amount equal to all rent, outgoings, service charge and insurance payable under this Lease for the Works Period.

- (iii) **“Works Period”** means the period of time which it would reasonably be expected to take to complete the Reinstatement Works expeditiously (to include a reasonable period of time to (i) determine the condition of the Demised Premises, (ii) appoint a design team, (iii) price the Reinstatement Works (i.e. tendering etc.) and (iv) appoint/mobilise a contractor, as well as the time to undertake the Reinstatement Works.

PROVIDED THAT any dispute in relation to Clause 4.8 shall be referred by either the Landlord or the Tenant to an independent architect for determination.

- (c) For the purposes of this yield up clause the Demised Premises shall be deemed to have been provided to the Tenant on the Term Commencement Date in accordance with the Landlord Specification at Schedule 9.

4.9 **Rights of entry by Landlord**

Subject to compliance by the Landlord with the provisions of Clause 8.3, to permit the Landlord with all necessary materials and appliances at all reasonable times upon reasonable prior notice of at least 48 hours (except in cases of emergency) to enter and remain upon the Demised Premises for any of the following purposes:-

- (a) to view and examine the state and condition of the Demised Premises and to take schedules or inventories of the Landlord’s fixtures;
- (b) to exercise any of the rights excepted and reserved by this Lease; and
- (c) for any other purpose connected with the interest of the Landlord in the Demised Premises or the Building, including but not limited to, valuing or disposing of any interest of the Landlord.

4.10 **To Comply with Notices**

Whenever the Landlord shall give written notice to the Tenant of any defects, wants of repair or breaches of covenant, the Tenant shall within thirty (30) days of such notice, or sooner if requisite, make good and remedy the breach of covenant to the reasonable satisfaction of the Landlord and if the Tenant shall fail within forty (40) days of such notice, or as soon as reasonably possible in the case of emergency, to commence and then diligently and expeditiously to continue to comply with such notice, the Landlord may enter the Demised Premises and carry out or cause to be carried out all or any of the works referred to in such notice and all costs and expenses thereby incurred shall be paid by the Tenant to the Landlord on demand, and in default of payment shall be recoverable as rent in arrears including VAT invoices where applicable.

The Landlord may serve interim dilapidations schedules on the Tenant from time to time during the Term and the Tenant shall be obliged to reimburse the Landlord within fourteen (14) days of written demand for the reasonable vouched costs of the Landlord in preparing such schedules, and the Tenant must remedy within forty (40) days of such notice, all such dilapidations.

4.11 To Comply with Regulations

To comply and be bound by (and to procure compliance by any under tenant, licensee or their respective servants, agents, and all persons using the Demised Premises) of such reasonable written rules and regulations regarding the Building and the Estate, and the provision of Building Services, Basement Services and Estate Services (but excluding the Office Areas which are wholly operated and controlled by the Tenant) as may be made from time to time by the Landlord and / or the Management Company or their respective agents in the interest of good estate management and communicated to the Tenant with reasonable prior notice provided that in the event of any conflict between the terms of this Lease and such regulations, the terms of this Lease shall prevail.

4.12 Dangerous materials and use of machinery

- (a) Not to keep in or on the Demised Premises any article or thing which is or might become dangerous, offensive, unduly combustible or inflammable, radio-active or explosive or which might unduly increase the risk of fire or explosion;
- (b) Not to keep or operate in the Demised Premises any machinery which shall be unduly noisy or cause vibration or which is likely to annoy or disturb the tenants and occupiers of the Adjoining Property.

4.13 Overloading floors and services

- (a) Not to overload the floors of the Demised Premises or suspend any excessive weight from the roofs, ceilings, walls, stanchions or structure of the Demised Premises and not to overload the Utilities and Conduits in or serving the Demised Premises;
- (b) Not to do anything which may subject the Demised Premises or any parts thereof to any strain beyond that which they are designed to bear with due margin for safety;
- (c) to observe the weight limits and capacity prescribed for all lifts in the Demised Premises,

in each case, taking into account the Demised Premises loading, weight and capacity limits as advised by the Landlord to the Tenant in writing.

4.14 Conduits

Not to discharge into any Conduits any oil or grease or any noxious or deleterious effluent or substance whatsoever which may cause an obstruction or might be or become a source of danger, or which might injure the Conduits or the Adjoining Property.

4.15 **Prohibited users**

- (a) Not to use the Demised Premises or any part thereof for any public or political meeting, public exhibition or public entertainment show or spectacle of any kind, nor for any dangerous, noisy, noxious or offensive trade, business or occupation whatsoever, nor for any illegal or immoral purpose, nor for residential or sleeping purposes;
- (b) Not to use the Demised Premises or any part thereof for gambling, betting, gaming or wagering, or as a betting office, or as a club, or for the sale of beer, wines and spirits, or as a public office and not to play or use any musical instrument, record player, loud speaker or similar apparatus in such a manner as to be audible outside the Demised Premises, and not to hold any auction on the Demised Premises;
- (c) Not to place outside the Demised Premises any articles, goods or things of any kind.

4.16 **User**

- (a) Not without the prior written consent of the Landlord (which consent shall not be unreasonably withheld, delayed or conditioned) to use the Demised Premises or any part thereof except for the Permitted User;
- (b) Not to leave the Demised Premises continuously unoccupied (other than for normal holiday periods) without notifying the Landlord and providing such caretaking or security arrangements as the Landlord shall reasonably require in order to protect the Demised Premises from vandalism, theft or unlawful occupation (for the avoidance of doubt the Tenant shall discharge to the Landlord within thirty (30) days of written demand any increased insurance premium or, any other additional costs arising as a consequence of such vacancy);
- (c) At all times to comply with all requirements of the relevant Local Authority in connection with the user of the Demised Premises for the purpose of the Tenant's business;
- (d) To provide the Landlord with the name and contact details of at least two authorised key holders for the time being of the Demised Premises and to notify the Landlord of any changes in the person(s) so authorised as keyholders of the Demised Premises.

4.17 **Nuisance**

Not to do anything in or about the Demised Premises which could reasonably be expected to become a nuisance, or which is likely to cause damage or disturbance to the Landlord or the owners, tenants or occupiers of the Adjoining Property, or which is likely to be injurious to the value, tone, amenity or character of the Demised Premises.

Alterations

- (a) Not to make any structural alterations to the Demised Premises or the Building.
- (b) Not to make any alterations or additions to the Landlord's fixtures or to any of the Conduits without obtaining the prior written consent of the Landlord (such consent not to be unreasonably withheld or delayed) PROVIDED THAT any proposed alterations to the plans and specifications submitted to the Landlord for approval (and, for the avoidance of doubt, the plans and specifications detailing the final package of works) must be provided to the Landlord in a format that can be incorporated into the Landlord's that can be incorporated into the Landlord's existing 3D BIM model of the Building in IFC and/or other native proprietary format provided always that the Landlord grants a licence to the Tenant for the Tenant to use such BIM model of the Building .
- (c) Not to make any alterations or additions or to carry out any works which would reduce the LEED rating for the Building and the Demised Premises without the prior written consent of the Landlord (not to be unreasonably withheld or delayed) and, notwithstanding anything herein contained, the Landlord shall be entitled to (and the Tenant acknowledges that it is entirely reasonable for the Landlord to) require that in the event of any alterations or additions or the carrying out of any works which reduce the LEED rating for the Demised Premises or the Building that prior to the expiration or determination of the Lease, the Tenant shall carry out reinstatement works as are necessary to achieve the LEED rating. For the avoidance of doubt, the Tenant acknowledges that it shall be reasonable for the Landlord to refuse its consent to works that would reduce the LEED rating for the Building and the Demised Premises.
- (d) Not to make any alterations or do or permit to be done to anything that would cause the Landlord's insurance policy in respect of and covering the Building to become void or voidable wholly or in part or do anything which would invalidate or prejudice in any way the rights of the insured under the said policy to claim fully under the said policy. In carrying out any works or making alterations or doing anything in the Demised Premises or the Building to comply with and observe and perform all of the requirements of the Landlord's insurance policy and to comply with any reasonable requirements of the Landlord and any requirements of the insurers relating to the said policy of insurance (including providing plans and specifications, co-operating with any inspections, appointing any professionals, providing any certifications or permitting any opening of work or any inspections) to ensure that the insurance cover for the Building is not in any way prejudiced.
- (e) The Landlord may, as a condition of giving any such consent, require the Tenant to enter into such covenants as the Landlord shall require (acting reasonably) regarding the execution of any such works and the reinstatement of the Demised Premises at the expiry or sooner determination of the Term;

- (f) Not to make any alterations and additions of a non-structural nature to the Demised Premises without obtaining the prior written consent of the Landlord which consent shall not be unreasonably withheld or delayed but which consent shall be subject to the Tenant discharging the reasonable vouched costs of the Landlord properly incurred in connection with the furnishing of their consent **PROVIDED THAT** the Tenant may, without the need for Landlord's prior written consent, install or procure internal non-structural partitions not requiring planning permission or a new or revised fire safety or disability access certificate including the installation of, rearranging of or the removal of internal demountable partitions and related works **PROVIDED FURTHER THAT** all such work shall not involve connections being made to any plant or equipment in the Building or any material alterations to any plant or equipment in the Building and such works do not breach the provisions of Clauses 4.18(b), 4.18(c), 4.18(d) and provided that the Tenant provides details thereof to the Landlord prior to carrying out same and removes same upon the expiration or determination of the Term (unless notified in writing by the Landlord or agreed otherwise with the Landlord) **AND PROVIDED FURTHER THAT** such works shall not require any statutory consents (and in this regard the Tenant shall furnish a certificate of exemption if so requested by the Landlord). Where Landlord's consent is required in relation to any alterations or additions, the Tenant shall be required to submit with its documents for approval, updated digital information regarding such alterations or additions compatible with the Landlord's existing BIM model and in accordance with the Landlord's Employers Information Requirements attached as Schedule 13 ("**EIR**"). The EIR are in compliance with the standards set out in BS1192 parts 1-4 and require information to be delivered to BIM Level 2 (as defined in PAS1192-2).

4.19 **Signs and advertisements**

Not to erect or display on the exterior of the Demised Premises or in the windows thereof so as to be visible from the exterior, any pole, flag, aerial, advertisement poster, notice or other sign or thing whatsoever without the Landlord's prior written consent (not to be unreasonably withheld or delayed provided that it shall not be unreasonable for the Landlord to withhold its consent for any signage application if the proposed signage is offensive or is substantially incompatible with the character of the Building) or which does not comply with the Tenant's obligations under Clause 4.24 or any relevant planning permission.

Alienation

Not to assign, transfer, underlet, or part with the possession or occupation of the Demised Premises or any part thereof or suffer any person to occupy the Demised Premises or any part thereof as a licensee **BUT SO THAT NOTWITHSTANDING** the foregoing the Landlord shall not unreasonably withhold or delay its consent to an assignment of the entire of the Demised Premises or an underletting of the entire or part of the Demised Premises to an assignee/underlessee that constitutes an institutionally acceptable covenant and that is of good and sufficient financial standing (and in the case of an assignment, is otherwise to the reasonable satisfaction of the Landlord) sufficient to meet its obligations as aforesaid subject always to the following provisions or such of them as may be appropriate, that is to say:

- (a) The Tenant shall prior to any such alienation as aforesaid apply to the Landlord and give all reasonable information concerning the proposed transaction and concerning the proposed assignee, under-lessee, licensee or disponee as the Landlord may reasonably require;
- (b) The Landlord's consent (if given) to any such alienation shall be in writing and shall be given in such manner as the Landlord shall decide acting reasonably and the Tenant shall pay the reasonable vouched costs of the Landlord properly incurred in connection with the furnishing of such decision;
- (c) In the case of an assignment to a limited liability company which is not an institutionally acceptable covenant and of good and sufficient financial standing to meet its obligations as aforesaid, it shall be deemed reasonable for the Landlord to require that a guarantor or guarantors of financial standing satisfactory to the Landlord (acting reasonably) shall join in such consent as aforesaid as surety or sureties for such Company in order jointly and severally to covenant with the Landlord in the manner described in the guarantee contained in the Schedule 8 (mutatis mutandis);
- (d) In the case of an underlease, the Tenant agrees to use reasonable endeavours to ensure that the terms and conditions of any underlease remain confidential as between the Landlord and the Tenant and shall not be disclosed by the Tenant to any third party without the Landlord's prior written approval, except as required by Law;
- (e) In the case of an underlease, the same shall be of either the entire of the Demised Premises or part of the Demised Premises **PROVIDED THAT**
 - (A) The Tenant may sub-let on a floor-by-floor basis subject to a maximum of four (4) sub-lettings at any one time;

- (B) The Tenant may sub-let part only of a floor subject to a cap of two sub-tenants per floor and at a minimum of 50% of the floor area of a particular floor the Landlord acknowledging that the remaining un-let space may be less than 50% of a particular floor and subject further to the maximum of four (4) sub-lettings of the Demised Premises referenced in clause 4.20.1(f)(A) above and **PROVIDED THAT** the Tenant has obtained the necessary Fire Safety Certificate and Disability Access Certificate and any other consents or approvals for the sub-division of any floor; and
- (C) The Tenant shall be entitled to sub-let the entire of the part of the Demised Premises comprising Nos. 4, 5 & 6 Sir John Rogerson's Quay which sub-letting shall not be considered a sub-letting for the purposes of the restrictions set out in clauses 4.20.1(f)(A) and 4.20.1(f)(B) above.

and **PROVIDED FURTHER** that the Tenant has obtained the necessary Fire Safety Certificate and Disability Access Certificate and any other consents or approvals for the sub-division of any floor.

In the case of such underlease the same shall be made without taking a fine or premium at the then full current open market rent and the under-lessee shall, if required by the Landlord, enter into a direct covenant with the Landlord to perform and observe all the covenants (other than that for payment of the rents hereby reserved) and conditions herein contained and every such under-lease shall also be subject to the following conditions, that is to say that it shall contain:-

- (i) provisions for the review of the rent thereby reserved (which the Tenant hereby covenants to operate and enforce) corresponding except as to terms and dates but in all other respects (mutatis mutandis) with the rent review provisions contained in this Lease;
- (ii) a covenant by the undertenant (which the Tenant hereby covenants to use reasonable endeavours to enforce) prohibiting the undertenant from doing or suffering any act or thing upon or in relation to the Demised Premises in breach of, the provisions of this Lease;
- (iii) Any such sublease shall absolutely cease and determine if for whatever reason (including forfeiture) this Lease is terminated or expires (but the Landlord acknowledges that this shall be subject to any sub-tenant statutory rights which any sub-tenant may have entitling the sub-tenant to remain in occupation) (without prejudice to any claims the Landlord may have against the Tenant if such rights arise due to any breach of the Tenant's covenants in this Lease) and the Tenant shall procure that the sub-lessee vacates the premises underlet to it at the expiration or sooner determination of the Term;

- (iv) a condition for re-entry on breach of any covenant by the undertenant;
 - (v) the same restrictions as to alienation, assignment, underletting, parting with or sharing the possession or occupation of the premises underlet; and
 - (vi) a confirmation of renunciation of statutory renewal rights;
- (f) To enforce at the Tenant's own expense the performance and observance by every such undertenant of the covenants, provisions and conditions of the under-lease and not, at any time, either expressly or by implication, to waive any breach of the same;
- (g) Not to agree any reviewed rent with the undertenant or any rent payable on any renewal thereof without the prior written consent of the Landlord such consent not to be unreasonably withheld or delayed but provided always that nothing herein shall prevent the Tenant from complying with any independent determination process provided for in the rent review clauses of the sub-lease;
- (h) Not to produce evidence of, refer to or seek to rely upon during any rent review pursuant to Schedule 4 the terms, conditions and/or existence of any under-letting(s) of part or all of the Demised Premises created by the Tenant including but not limited to the rent payable under any such under-letting(s);
- (i) Not to vary the terms of any permitted under-lease without the prior written consent of the Landlord not to be unreasonably withheld or delayed.
- (j) For the avoidance of doubt, in the case of an assignment, underletting, parting with possession or occupation of the Demised Premises or any part thereof or sufferance of any person to occupy the Demised Premises or any part thereof as a licensee or concessionaire (an "Alienation"), it shall be reasonable for the Landlord to withhold consent to any such Alienation of the Demised Premises or part thereof where the Alienation would, in the reasonable opinion of the Landlord, have the effect or give rise to a termination of the Landlord's Option to Tax. PROVIDED ALWAYS THAT it shall not be reasonable for the Landlord to withhold such consent in circumstances where prior to any such proposed Alienation the Tenant pays or procures the payment to the Landlord of:
- (i) an amount equal to the amount of any VAT clawback or VAT payment obligations suffered by the Landlord as a result of such Alienation (hereinafter referred to in this Lease as a VAT Adjustment); and

- (ii) because the VAT Adjustment payable under sub-clause (i) above is or may be subject to tax in the hands of the Landlord, such further sum (the “Additional Payment”) as will leave the Landlord in at least the same position as if the VAT Adjustment had not been subject to tax and for the purpose of calculating the Additional Payment it shall be assumed, if not otherwise the case, that the VAT Adjustment and the Additional Payment constitute the sole income of the Landlord and that the Landlord has no deductible expenses, losses or allowances for tax purposes for offset or reduction against such income or receipt and the Tenant shall keep the Landlord indemnified in respect of any such VAT Adjustment and Additional Payment.

In respect of the above, the Landlord agrees to furnish to the Tenant a calculation of any sums due (the “Statement”) signed by the Landlord’s auditors or tax advisors and such Statement shall (save in the case of manifest error) be final and binding on the parties. All amounts shall be paid in advance to the Landlord prior to issuing consent to any proposed alienation.

4.20.2 In the event that the Tenant wishes to assign this Lease during the Term then the following provisions shall apply:

- (a) in such circumstances the Tenant shall prior to placing its interest in this Lease on the market, first serve a written notice on the Landlord to this effect (the “**Sale Notice**”) containing in full the terms on which the Tenant wishes to assign this Lease and offering to assign this Lease to the Landlord on the same terms;
- (b) if the Landlord wishes to accept the offer made in the Sale Notice, it will do so by serving on the Tenant a written notice (the “**Acceptance Notice**”) within twenty (20) calendar days of the date of service of the Sale Notice (the “**Acceptance Notice Period**”). On the date of service of the Acceptance Notice there will be constituted a binding contract between the Tenant and the Landlord for the assignment by the Tenant of this Lease to the Landlord on the terms contained in the Sale Notice such assignment to be completed within twenty (20) Working Days of service of the Acceptance Notice;
- (c) if the Landlord does not serve the Acceptance Notice during the Acceptance Notice Period (or if the assignment is not completed within the prescribed period specified at (b) above), then the Tenant may at any time during the period of eight (8) months from the expiration of the Acceptance Notice Period (the “**Transfer Period**”) market this Lease with a view to securing an offer from an arms-length third party;
- (d) if the Tenant secures an offer from an arms-length third party during the Transfer Period then the Tenant may assign this Lease to such third party at any time thereafter; and
- (e) the procedure set out in this clause 4.20.2 will be repeated whenever the Tenant wishes to assign its interest in this Lease during the Term (other than to a Group Company).

- 4.20.3 The Tenant may, subject to notifying the Landlord in advance but without the obligation to obtain the prior written consent of the Landlord share occupation of the Demised Premises with a Group Company or Group Companies provided that the Tenant shall:
- (a) provide prior written notification of the proposed occupation and thereafter once executed to provide to the Landlord a copy of the deed of renunciation which shall be executed by the proposed Group Company in conjunction with the sharing of possession;
 - (b) not permit such Group Company to acquire statutory renewal rights;
 - (c) ensure that any occupancy ceases prior to the termination of the Lease (and, in the case of any arrangement with a Group Company, upon it ceasing to be a Group Company, if earlier);
 - (d) ensure that the user under any such arrangement is in compliance with the Permitted User;
 - (e) upon request by the Landlord (acting reasonably), promptly furnish the Landlord with details of any Group Company in occupation of any part of the Demised Premises; and
 - (f) upon request, provide appropriate details of the Group Company and the relationship with the Tenant;

AND notwithstanding any such sharing of possession, the Tenant shall be and remains liable to the Landlord for any breach by either the Tenant or such Group Company of any of the covenants on the part of the Tenant contained in the Lease.

4.21 **Registration of dispositions**

Within fourteen (14) days of every alienation, assignment, transfer, assent, under-lease, assignment of under-lease or any other disposition, whether mediate or immediate, of or relating to the Demised Premises or any part thereof, to produce to and leave with the Landlord or its solicitors a certified copy of the deed, instrument or other document evidencing or effecting such disposition and to pay to the Landlord's solicitors their reasonable vouched legal costs and other expenses incurred in connection with such alienation.

4.22 **Disclosure of information**

Upon making any application or request in connection with the Demised Premises or this Lease, to disclose to the Landlord such information as the Landlord may reasonably require and, whenever the Landlord shall reasonably request, to supply full particulars;

- (a) of all persons other than the names of employees of companies or organisations in actual occupation or possession of the Demised Premises and of the right in which they are in such occupation or possession, and
- (b) of all persons other than the names of employees of companies or organisations having an interest in the Demised Premises (other than in the reversion to the Term).

4.23 **Landlord's costs**

To pay and indemnify the Landlord against all reasonable vouched costs, fees, charges, disbursements and expenses properly incurred by the Landlord, including, but not limited to, those payable to solicitors, counsel, architects, surveyors and sheriffs

- (a) in relation to the preparation and service of a notice under Section 14 of the 1881 Act and of any proceedings under the 1881 Act and/or the 1860 Act (whether or not any right of re-entry or forfeiture has been waived by the Landlord or a notice served under Section 14 of the 1881 Act has been complied with by the Tenant and notwithstanding that forfeiture has been avoided otherwise than by relief granted by the Court);
- (b) in relation to the preparation and service of all notices and schedules relating to wants of repair, whether served during or after the expiration of the Term (but relating in all cases only to such wants of repair that accrued not later than the expiration or sooner determination of the Term);
- (c) in connection with the recovery or attempted recovery of arrears of rent or other sums due from the Tenant, or in procuring the remedying of the breach of any covenant by the Tenant;
- (d) in relation to any application for the Landlord's or any superior landlord's consent required or made necessary by this Lease whether or not the same is granted (except in cases where the Landlord is obliged not to unreasonably withhold its consent and the withholding of its consent is held to be unreasonable), or whether or not the application has been withdrawn;
- (e) In relation to any application made by the Landlord at the request of the Tenant and whether or not such application is accepted, refused or withdrawn.

4.24 **Statutory requirements**

- (a) At the Tenant's own expense, to comply in all respects with the provisions of all Acts, Statutory Instruments, Bye Laws and other regulations now in force or which may hereafter be in force and any other obligations imposed by law relating to the Demised Premises or the Tenant's user thereof;
- (b) To execute all works and provide and maintain all arrangements upon or in respect of the Demised Premises or the user thereof, which are directed or required (whether by the Landlord, Tenant or occupier) by any statute now in force or which may hereafter be in force or by any government department, local or other competent authority or duly authorised officer or court of competent jurisdiction acting under or in pursuance of any statute and to indemnify and keep the Landlord indemnified against all costs, charges, fees and expenses of or incidental to the execution of any works or the provision or maintenance of any arrangements so directed or required;

- (c) Not to do in or near the Demised Premises, any act or thing by reason of which the Landlord may, under any statute, incur or have imposed upon it or become liable to pay any penalty, damages, compensation, costs, charges or expenses.

PROVIDED ALWAYS for the avoidance of doubt the Tenant shall not be responsible for any breaches of any Acts, Statutory Instruments, Bye Laws and other regulations now in force arising prior to the Term Commencement Date.

4.25 **Planning Acts**

- (a) Not to do anything on or in connection with the Demised Premises the doing or omission of which shall be a contravention of the Planning Acts or of any regulations, notices, orders, licences, consents, permissions and conditions (if any) served, made, granted or imposed thereunder and to indemnify (as well after the expiration of the Term by effluxion of time or otherwise as during its continuance) and keep indemnified the Landlord against all actions, proceedings, damages, penalties, costs, charges, claims and demands in respect of such acts and omissions or any of them and against the costs of any application for planning permission, commencement notices, fire safety certificates and the works and things done in pursuance thereof to rectify any such acts or omissions;
- (b) In the event of the Landlord giving written consent to any of the matters in respect of which the Landlord's consent shall be required under the provisions of this Lease or otherwise and in the event of permission or approval from any local authority under the Planning Acts being necessary for any addition, alteration or change in or to the Demised Premises or for the change of user thereof, to apply, at the cost of the Tenant, to the relevant local authority for all approvals, certificates, consents and permissions which may be required in connection therewith and to give notice to the Landlord of the granting or refusal (as the case may be) together with copies of all such approvals, certificates, consents and permissions forthwith on the receipt thereof and to comply with all conditions, regulations, bye laws and other matters prescribed by any competent authority either generally or specifically in respect thereof and (if commenced) to carry out such works at the Tenant's own expense in a good and workmanlike manner to the satisfaction of the Landlord;
- (c) To give notice forthwith to the Landlord of any notice, order or proposal for a notice or order served on the Tenant under the Planning Acts and if so required by the Landlord to produce the same and at the request of the Landlord at the joint cost of the Tenant and the Landlord, to make or join in making such objections or representations in respect of any proposal as the Landlord may require;
- (d) To comply at its own cost with any notice or order served on the Tenant under the provisions of the Planning Acts;

- (e) Not to implement any planning permission before it and any necessary fire safety certificates have been produced to and approved in writing by the Landlord (such approval not to be unreasonably withheld or delayed) **PROVIDED THAT** the Landlord may refuse to approve such planning permission or fire safety certificate on the grounds that any condition contained in it or anything omitted from it or the period referred to in it would, in the opinion of the Landlord (acting reasonably), be or be likely to be, prejudicial to the Landlord's interest in the Demised Premises or the Estate. In the event that the Tenant disputes that any condition contained in or anything omitted from or the period referred to in any such planning permission or fire safety certificate would be or be likely to be prejudicial to the Landlord's interest in the Demised Premises then it may refer the matter to the Independent Surveyor who shall determine the matter within twenty (20) Working Days of the date of his appointment, whose appointment shall be valid and binding on the parties and whose costs shall be borne as he directs or by the party against whom he finds in the event of no such direction. In the event that the Independent Surveyor finds in favour of the Tenant the Landlord shall not be entitled to refuse approval of such planning permission or fire safety certificate on the grounds that they are prejudicial to the Landlord's interest in the Demised Premises or the Estate.
- (f) To produce to the Landlord on demand (but never more than once in a twelve (12) month period) all plans, documents and other evidence as the Landlord may reasonably require in order to satisfy itself that all of the provisions in this covenant have been complied with.

4.26 **Statutory notices**

Within seven (7) days of receipt of same (or sooner if requisite having regard to the requirements of the notice or order in question or the time limits stated therein) to produce to the Landlord a true copy and any further particulars required by the Landlord of any notice or order or proposal for the same given to the Tenant and relevant to the Demised Premises or the occupier thereof by any government department or local or public or statutory authority, and, without undue delay, to take all necessary steps to comply with the notice or order in so far as the same is the responsibility of the Tenant, and, at the request of the Landlord and (if the relevant notice solely impacts upon Demised Premises) at the joint cost of the Tenant and the Landlord, to make or join with the Landlord in making such objection or representation against or in respect of any such notice, order or proposal as the Landlord shall deem expedient.

4.27 **Fire and safety precautions and equipment**

- (a) To comply with the written requirements (whether notified or directed to the Landlord and then to the Tenant or directly to the Tenant) of the appropriate local authority and the insurers of the Demised Premises and reasonable requirements of the Landlord in relation to fire safety precautions affecting the Demised Premises;

- (b) Not to obstruct the access to or means of working of any firefighting, extinguishing and other safety appliances for the time being installed in the Demised Premises or the means of escape from the Demised Premises in case of fire or other emergency; and
- (c) To comply at all times with the provisions of the Safety Health and Welfare at Work Act and (where applicable) to furnish the Landlord with a copy of the Safety File and the Safety Statement prepared pursuant thereto.

4.28 **Safety File**

- (a) To maintain and keep and to hand over to the Landlord all relevant information for updating the safety file of the Landlord (the “Landlord’s Safety File”) in respect of any construction work as defined in the Safety Health & Welfare at Work Act 2005 - 2014 including fit-out works carried out by the Tenant (or its under-tenant(s) where appropriate) to the Demised Premises and to ensure that all such information can be incorporated into the Landlord’s 3D Building Information Asset Model (i.e. in a Revit/3D format).
- (b) In respect of any construction work carried out or to be carried out by the Tenant (or its under-tenant(s) where appropriate) to the Demised Premises which obliges the Tenant or such other party to keep a safety file (the “**Tenant’s Safety File**”) the Tenant shall retain or procure that there is retained therein all relevant information in relation to such construction work and on completion of such construction work shall expeditiously hand a duplicate copy of the Tenant’s Safety File to the Landlord or his authorised agent or nominee and the Tenant will ensure that all such information can be incorporated into the Landlord’s 3D Building Information Asset Model (i.e. in a Revit/3D format).
- (c) To maintain, keep and update as and when required the Tenant’s Safety File and when requested to do so to make same available for inspection by the Landlord or its authorised agent or nominee.
- (d) To supply the Landlord or his authorised agent or nominee with all necessary information and updates relating to the Tenant’s Safety File to enable the Landlord to update any copy thereof maintained by the Landlord and to ensure that all such information is provided in a format that is compatible with BIM.
- (e) On the assignment of this Lease to hand over the Tenant’s Safety File to the assignee and on or prior to the Termination Date to hand over the original Tenant’s Safety File to the Landlord or his authorised agent or nominee.
- (f) In the event, that the Landlord makes available the Landlord’s Safety File to the Tenant, to hold the Landlord’s Safety File in trust and to the order of the Landlord and to return it as soon as possible and in any event at the request of the Landlord or his authorised agent or nominee.

- (g) To comply with the requirements of the Safety Health & Welfare at Work Act 2005 and any regulations made thereunder and/or under any legislation repealed by it including provisions for appointment of a project supervisor for the design stage and the construction stage of any works carried out by or on behalf of the Tenant or any other occupier of the Demised Premises and to indemnify and keep indemnified the Landlord against any loss incurred by the Landlord as a result of the breach by the Tenant of its obligations under this Clause 4.28.

4.29 **Encroachments and easements**

Not to stop up, darken or obstruct any of the windows or lights belonging to the Demised Premises and not to permit any new window, light, opening, doorway, passage, Conduits or other encroachment or easement to be made or acquired by any third party into, upon or over the Demised Premises or any part thereof, and in case any person shall attempt to make or acquire any encroachment or easement whatsoever, to give written notice thereof to the Landlord immediately the same shall come to the notice of the Tenant, and, at the request of the Landlord but at the cost of the Tenant, to adopt such means as may be reasonably required by the Landlord for preventing any such encroachment or the acquisition of any such easement.

4.30 **Re-Letting**

- (a) To permit the Landlord at all reasonable times during the last twelve (12) months of the Term to enter upon the Demised Premises and affix and retain, without interference from or by the Tenant, upon any suitable parts of the exterior of the Building (but not so as to materially affect the access of light and air to the Demised Premises) notices for re-letting the same and not to remove or obscure the said notices.
- (b) During the last twelve (12) months of the Term to permit all persons with the authority of (and being accompanied by) the Landlord or the Landlord's agent to view the Demised Premises during Business Hours on no less than 48 hours prior written notice and by appointment with the Tenant (such appointment to be agreed as soon as practicable between the parties for the earliest possible time following the expiry of the 48 hours' notice).

4.31 **Indemnity**

- (a) To keep the Landlord and Management Company fully indemnified from and against all actions, proceedings, claims, demands, losses, costs, expenses, damages and liability arising in respect of any injury to or death of any person or damage to any property moveable or immovable or the infringement, disturbance or destruction of any right, easement or privilege arising out of any act, omission or negligence of the Tenant or any persons in on or about the Demised Premises expressly or impliedly with the Tenant's authority or the user of the Demised Premises or any breach of the Tenant's covenants or the conditions or other provisions contained in this Lease;

- (b) To effect and keep in force during the Term such public liability (with a limit of indemnity of not less than €6.5m (six million five hundred thousand euro), employer's liability (with a limit of indemnity of not less than €13m (thirteen million euro) and other policies of insurance as may be necessary to cover the Tenant against any claim arising under this covenant and to note the interests of the Landlord and the Management Company on such policies so that the Landlord and the Management Company are indemnified by the insurers in the same manner as the Tenant and whenever required to do so by the Landlord, to produce to the Landlord satisfactory evidence that the said policy or policies is/are valid and subsisting and that all premium due thereon have been paid. Limits required above may be maintained with a combination of primary and excess policies.
- (c) To indemnify the Landlord in respect of any excess applicable in relation to the policies of insurance in place pursuant to Clause 4.31(b).
- (d) To insure and keep insured the Tenant signage and plant and fit-out (if any which the Tenant shall have been permitted to install or to erect), furniture and equipment in the Demised Premises against all risks usually covered on a comprehensive policy in the full reinstatement or replacement cost thereof with an insurer of repute approved by the Landlord and in the event of destruction of or damage to all or any of the said fit-out, furniture and equipment by reason of one or more of the insured risks arising, to ensure that all monies payable under such policy of insurance are used in repairing, replacing, refurbishing or otherwise reinstating the fit-out, furniture and equipment.
- (e) To give notice to the Landlord as soon as possible upon becoming aware of any event which might affect any insurance policy maintained by the Landlord relating to the Building provided that the Tenant has been informed of the relevant terms of any such insurance policy.
- (f) If at any time the Tenant is entitled to the benefits of any insurance on the Demised Premises (which is not affected or maintained in pursuance of any obligation under this Lease) to apply all monies received by virtue of such insurance in making good the loss or damage in respect of which the same shall have been received.
- (g) To notify the Landlord in writing as soon as possible of any damage, howsoever occasioned, to the Demised Premises or to the personal property of the Landlord on the Demised Premises immediately on becoming aware of same.
- (h) To pay to the Landlord on demand the amount of any insurance monies in respect of the damage to the Demised Premises, the Building and / or the personal property of the Landlord which cannot be recovered by reason of any act, default, omission or negligence of the Tenant its servants, agents, licensees or invitees.

4.32 **Fire and Security Systems**

- (a) To comply with the written requirements (whether notified or directed to the Landlord and then to the Tenant or directly to the Tenant) of the appropriate statutory authorities, the insurers of the Building and the Landlord in relation to fire and safety precautions affecting the Building, the Estate and the Basement.
- (b) To keep the Demised Premises supplied and equipped with such fire-fighting and extinguishing appliances as shall be required by Law, any appropriate statutory authority or the Landlord's insurers or as shall be reasonably required by the Landlord and to maintain same to the satisfaction of the relevant party in efficient working order and at least once in every six months to cause any sprinkler system or other fire-fighting equipment in the Demised Premises to be inspected by a competent person.
- (c) Not to obstruct the access to or means of working any fire-fighting, extinguishing and other safety appliances for the time being installed in the Demised Premises or the means of escape from the Demised Premises or any adjoining or neighbouring property in case of fire or other emergency or to lock any fire door while the Demised Premises is occupied.
- (d) To be responsible for the security control in the Demised Premises and to comply with all reasonable written instructions and requirements of the Landlord, in relation to the security controls in the Building.
- (e) To ensure that, if any part of the Building and / or the Basement in which the Tenant's staff, servants and agents work or use needs to be evacuated, its staff servants and agents are trained in the procedure for and shall assist such evacuations.

4.33 **Stamp Duty and Value Added Tax**

- (a) To pay to the Landlord the stamp duty payable on this Lease and the counterpart thereof and the Landlord undertakes to pay the stamp duty or cause the stamp duty to be paid to the Revenue Commissioners within 30 days of receipt from the Tenant, and to forward to the Tenant or cause to be forwarded to the Tenant an original stamp duty certificate following such payment.
- (b) The Landlord hereby notifies and confirms to the Tenant that it is exercising the Landlord's Option to Tax.
- (c) For the avoidance of doubt, the Tenant shall in addition to any other amounts payable under the Lease pay to the Landlord, within thirty days of the receipt of a valid VAT invoice, the amount of VAT arising in relation to any rent or other payments due under or in connection with this Lease and the Tenant shall keep the Landlord fully indemnified against such VAT.

- (d) In the event that the Tenant is liable to pay any costs incurred or borne by the Landlord in connection with this Lease, the Tenant shall also pay to the Landlord the amount of any VAT incurred or borne by the Landlord on such costs to the extent the VAT is not deductible by the Landlord.
- (e) At any time during the Term the Landlord may terminate the Landlord's Option to Tax in respect of the Lease by giving written notice in this effect to the Tenant. Any termination of the Landlord's Option to Tax pursuant to this clause shall be at the sole discretion of the Landlord.
- (f) Where at any time during the Term the Landlord has terminated the Landlord's Option to Tax, the Landlord may thereafter from time to time during the Term exercise a Landlord's Option to Tax the rents and other sums payable under the Lease by giving notice to the Tenant pursuant to Section 97(1) of the VAT Act and where such notice is given the Tenant shall in addition to any amounts payable under this Lease pay to the Landlord the amount of VAT arising in relation to such amounts on the receipt of a valid VAT invoice and the Tenant shall keep the Landlord indemnified against such VAT, in accordance with Clause 4.33(c).
- (g) Where during the Term the Landlord's Option to Tax is at any time terminated pursuant to Section 97(1) (d)(iii), (iv) or (v) or Section 97(2) of the VAT Act as a result of a breach by the Tenant of clause 4.15 (Prohibited User) or clause 4.20 (Alienation) the Tenant hereby covenants to reimburse the Landlord on demand on a net of tax basis for the Landlord;
 - (i) the amount of any VAT clawback or VAT payment obligations suffered by the Landlord plus interest and penalties applicable thereon arising for the Landlord as a result of such termination (hereinafter referred to in this Lease as a VAT Adjustment), and,
 - (ii) because the VAT Adjustment payable under sub-clause (i) above is or may be subject to tax in the hands of the Landlord, such further sum (the "Additional Payment") as will leave the Landlord in at least the same position as if the VAT Adjustment had not been subject to tax and for the purpose of calculating the Additional Payment it shall be assumed, if not otherwise the case, that the VAT Adjustment and the Additional Payment constitute the sole income of the Landlord and that the Landlord has no deductible expenses, losses or allowances for tax purposes for offset or reduction against such income or receipt and the Tenant shall keep the Landlord indemnified in respect of any such VAT Adjustment and Additional Payment.
 - (iii) In respect of the above, the Landlord agrees to furnish to the Tenant, a calculation of any VAT Adjustment payable (the "Statement") signed by the Landlord's auditors or tax advisors and such Statement shall (save in the case of manifest error) be final and binding on the parties.

- (h) If there is any surrender forfeiture break or termination of this Lease for any reason (including any surrender within the meaning of Section 2(1) of the VAT Act) then the Landlord agrees to enter into non-binding negotiations with the Tenant to consider becoming responsible from the date of surrender of this Lease, for any capital good(s) created by the Tenant in accordance with section 64(7) of the VAT Act.
- (i) The Tenant shall fully and properly maintain all documents and records necessary for the Landlord to determine the VAT history of the Demised Premises in accordance with the VAT Act and shall make available to the Landlord or any person authorised by the Landlord all such documents and records upon reasonable request made during or within a reasonable period after Termination of the Term. Such records must include a copy of any capital goods records which the Tenant is required to keep in relation to the Demised Premises (or any development or refurbishment thereto) under Section 64(12) of the VAT Act.
- (j) The Tenant shall warrant to the Landlord the accuracy of any document issued to the Landlord as required in relation to the Premises or in the development or refurbishment of the Premises under chapter 2 of part 8 of the VAT Act.

4.34 **Bicycles**

Not to park or permit to be parked bicycles in any part of the Demised Premises or the Building other than in the designated bicycle racks provided in the Basement.

4.35 **Termination by Tenant**

- (a) The Tenant may terminate this Lease on the last day of twelfth year of the Term being 3, June 2031 (the "**Option Date**") subject strictly to:
 - (i) the Tenant serving on the Landlord a notice in writing exercising the said right (the "**Notice**") at least twelve months prior to the Option Date (and in this regard time shall be of the essence).
 - (ii) payment by the Tenant of all Rents in accordance with clauses 3.1 – 3.3, all outgoing and any other sums payable by the Tenant hereunder in respect of the Demised Premises payable up to and including the Option Date **PROVIDED THAT** the Tenant may, at any time up until six (6) weeks prior to the Option Date request in writing from the Landlord, a statement of any Rents, outgoings and any other sums payable by the Tenant hereunder, which statement the Landlord shall furnish within fifteen (15) Working Days following such request;
 - (iii) compliance by the Tenant in full with its yielding up obligations as set out at Clause 4.8 of this Lease;
 - (iv) the Tenant procuring that any sub-tenants or occupiers have vacated the Demised Premises on or before the Option Date.

- (b) Strictly without prejudice to the validity of the Tenant's exercise of its right to terminate pursuant to Clause 4.35 (a) the Tenant shall deliver to the Landlord on the Option Date the original of this Lease together with all related title documentation (including a release or discharge of all mortgages, charges or other encumbrances whether registered or not) and shall as beneficial owner deliver duly executed and stamped a surrender or assignment of this Lease.
- (c) Any such termination shall be without prejudice to any antecedent breach by either the Landlord or the Tenant of any of their respective covenants herein contained.

5. **LANDLORD'S COVENANTS**

The Landlord **HEREBY COVENANTS** with the Tenant as follows:-

5.1 **Quiet Enjoyment**

That the Tenant paying the rents reserved by this Lease and performing and observing the covenants on the part of the Tenant herein contained, shall and may peaceably hold and enjoy the Demised Premises during the Term without any interruption by the Landlord or any person lawfully claiming through, under, or in trust for it.

5.2 **Provision of Estate Services**

Subject to payment of the Tenant's Proportion of the Estate Service Charge, to provide or cause to be provided the maintenance and services more particularly set forth in Schedule 5 in accordance with the principles of good estate management.

5.3 **Provision of Building Services**

Subject to payment of the Tenant's Proportion of the Building Service Charge, to provide or cause to be provided the maintenance and services more particularly set forth in Schedule 6 in a good and workmanlike manner to Grade A Office Standards in accordance with the principles of good estate management.

5.4 **Provision of Basement Services**

Subject to payment of the Tenant's Proportion of the Basement Service Charge, to provide or cause to be provided the maintenance and services more particularly set forth in Schedule 7 in accordance with the principles of good estate management.

5.5 **Management Company**

To procure that the Management Company complies with its obligations pursuant to this Lease.

6. INSURANCE

6.1 Landlord to insure

Subject to the Landlord being able to effect insurance against any one or more of the items referred to in this sub-clause being available in the market on market standard commercial terms and subject to reimbursement by the Tenant of the sums referred to at Clause 3.2 hereof, the Landlord covenants with the Tenant to insure the following in the name of the Landlord:-

- (a) the Building (including the Demised Premises and, for the avoidance of doubt, the value of the fit out elements set out in Schedule 9) against loss or damage by the Insured Risks in the full reinstatement cost thereof (to be determined from time to time by the Landlord or his Inspector or Professional Adviser (each acting reasonably)) including:
 - (i) architects, surveyors, consultants and other professional fees (including Value Added Tax thereon) to the extent it is irrecoverable;
 - (ii) the costs of shoring up, demolishing, site clearing and similar expenses;
 - (iii) all stamp duty and other taxes or duties eligible on any building or like contract as may be entered into and all other incidental expenses relative to the reconstruction, reinstatement or repair of the Demised Premises;
 - (iv) such provision for inflation as the Landlord in its discretion, but acting in accordance with the principles of good estate management, shall deem appropriate;

provided that the Landlord shall, at the request of the Tenant, procure that the Landlord's insurance for the Building shall provide a waiver of all rights of subrogation against the Tenant, its' contractor and the Tenant's contractor's sub-contractors ("**Clause 26 Cover**") for any period during which the Tenant may undertake alterations in accordance with this Lease, subject only to (i) such cover being available in the Irish insurance market at reasonable rates; and (ii) the payment of any increase in the premium associated with the Clause 26 Cover and compliance by the Tenant with any requirements of the Landlord's insurer associated therewith.

- (b) the loss of rent and the service charge sums referred to in Clause 3 hereof, from time to time payable, or reasonably estimated to be payable under this Lease (taking account of any review of the rent which may become due under this Lease) following loss or damage to the Demised Premises by the Insured Risks, three (3) years or such longer period (but not exceeding four (4) years) (the "**Loss of Rent Period**") as the Landlord may, from time to time, reasonably deem to be necessary, having regard to the likely period required for obtaining planning permission and fire safety certificates (if applicable) and any other consents and approvals for reinstating the Demised Premises and having notified the Tenant of any proposed extension to such period;

- (c) property owners, public, employer's and other liability of the Landlord arising out of or in relation to the Demised Premises; and
- (d) such other insurances as the Landlord may, in its reasonable discretion from time to time, deem necessary to effect.

6.2 **Landlord to produce evidence of insurance**

- (a) At the request of the Tenant, the Landlord shall and hereby covenants with the Tenant to produce to the Tenant a copy or extract duly certified by the Landlord of the policy/policies of such insurance and a copy of the receipt(s) for the last premium or (at the Landlord's option) reasonable evidence from the insurers of the terms of the insurance policy/policies and the fact that the policy/policies is subsisting and in effect.
- (b) The Landlord shall procure for so long as the same is generally available in the Irish insurance market that the relevant policy of insurance will contain: (i) a waiver of subrogation rights in favour of the Tenant and (ii) a non-invalidation clause.

6.3 **Destruction of the Demised Premises**

If the Building or any part thereof or the means of access thereto is destroyed or damaged by any of the Insured Risks so as to render the Demised Premises unfit for use and occupation or without suitable means of access then:-

- (a) unless payment of the insurance moneys shall be refused in whole or in part by reason of any act neglect or default of the Tenant or the servants agents licensees or invitees of the Tenant or any under tenant or any person under its or their control; and
- (b) subject to the Landlord being able to obtain any necessary planning permission and fire safety certificates and all other necessary licences, approvals and consents (in respect of which the Landlord shall use its reasonable endeavours to obtain as soon as practicable); and
- (c) subject to the necessary labour and materials being and remaining available (in respect of which the Landlord shall use its reasonable endeavours to obtain as soon as practicable);

the Landlord shall lay out the proceeds of such insurance, (other than any in respect of the loss of rent and service charge sums referred to in Clause 3 hereof), in the rebuilding and reinstating of the Demised Premises or the part or parts thereof or the means of access thereto so destroyed or damaged, substantially as the same were prior to any such destruction or damage (but not so as to provide accommodation identical in layout and manner or method of construction if it would not be reasonably practical to do so). For the avoidance of any doubt, the Tenant shall not be liable for any shortfall in insurance proceeds associated with rebuilding and reinstating the Demised Premises unless the shortfall in whole or in part has arisen by reason of any act neglect or default of the Tenant or the servants agents licensees or invitees of the Tenant or any under tenant or any person under its or their control.

6.4 **Where reinstatement is prevented**

If the Landlord is prevented (for whatever reason) from rebuilding or reinstating the Building (including the Demised Premises) the Landlord shall be relieved from such obligation and shall be solely entitled to all the insurance moneys and if such rebuilding and reinstating shall continue to be so prevented for the Loss of Rent Period after the date of the destruction or damage so that after the said Loss of Rent Period the rebuilding/reinstatement is not substantially complete (which shall include but is not limited to the Demised Premises being fit for normal business use and occupation and accessible but excluding any Tenant fit-out elements) and this Lease has not been terminated by frustration, the Landlord or the Tenant may at any time after the expiry of such Loss of Rent Period by written notice given to the other determine this Lease but without prejudice to any claim by either party against the other in respect of any antecedent breach of covenant.

6.5 **Destruction by Uninsured Risks**

In the event that the Building is destroyed or damaged by an Uninsured Risk which has not been caused by any act, neglect, default or omission of the Tenant or any under-tenant or its or their servants, agents, licensees or invitees so as to render the Demised Premises unfit for occupation and use by the Tenant or without suitable access then the Rent and service charges payable hereunder or a fair proportion thereof according to the nature and extent of the damage will be suspended until the Demised Premises has been rebuilt or reinstated so as to render the Building fit for occupation and use and with suitable access or for the Loss of Rent Period whichever is the shorter period and any dispute about the extent, proportion or period of such suspension is to be referred to a single arbitrator to be appointed, in default of agreement, upon the application of either party, by or on behalf of the President (or other officer endowed with the functions of such President) for the time being of the Society of Chartered Surveyors in accordance with the provisions of the Arbitration Act 2010. If following on the destruction or damage from the Uninsured Risk as aforesaid, the Landlord has not served a notice on the Tenant of its intention to reinstate and repair the Building within a period of eighteen (18) months from the date of such destruction or damage (or if the Building has not been reinstated within the Loss of Rent Period from the date the service by the Landlord of a notice of its intention to rebuild or reinstate the Building) then the Tenant or the Landlord may terminate this lease at any time thereafter by at least two (2) months' written notice served on the other and such termination shall be effective as of the date of the destruction or damage but without prejudice to any claim by either party against the other in respect of any antecedent breach of covenant PROVIDED ALWAYS THAT if the Landlord decides not to rebuild or reinstate the Building then it will immediately notify the Tenant in writing and on receipt by the Tenant of such notice either party can terminate this Lease by written notice to the other at any time but without prejudice to any claim by either party against the other in respect of any antecedent breach of covenant. For the avoidance of any doubt, in the event that the Landlord elects to rebuild or reinstate the Building following damage or destruction by Uninsured Risks, the Tenant shall not be liable for any costs associated therewith.

6.6 **Cesser of Rent and Service Charge**

In case the Building (including any access / egress to it) or any part or parts thereof shall be destroyed or damaged by any of the Insured Risks or Uninsured Risks (only for the purposes of the rent first reserved by this Lease) so as to render the Demised Premises unfit for use and occupation or without suitable access and the insurance shall not have been vitiated or payment of the policy moneys refused in whole or in part as a result of some act or default of the Tenant or any under-tenant or any person under its or their control, then the rent first reserved by this Lease and the service charges referred to in Clause 3.3 or a fair proportion thereof, according to the nature and extent of the damage sustained, shall be suspended until the Building or the part destroyed or damaged shall be again rendered fit for use and occupation and accessible and any dispute regarding the cesser of rent or service charges shall be referred to a single arbitrator to be appointed, in default of agreement, upon the application of either party, by or on behalf of the President (or other officer endowed with the functions of such President) for the time being of the Society of Chartered Surveyors in accordance with the provisions of the Arbitration Act 2010.

6.7 **Insurance becoming void**

The Tenant shall not do or omit to do anything that could cause any policy of insurance in respect of or covering the Demised Premises or such of any Adjoining Property as may be owned by the Landlord to become void or voidable wholly or in part nor do anything whereby any abnormal or loaded premium may become payable and the Tenant shall, on demand, pay to the Landlord all proper and reasonable expenses incurred by the Landlord in renewing any such policy.

6.8 **Notice by Tenant**

The Tenant shall give notice to the Landlord forthwith upon the Tenant becoming aware of the happening of any event or thing which might affect any insurance policy relating to the Demised Premises.

The Landlord shall notify the Tenant as soon as reasonably practicable if it cannot insure against any Insured Risks or on the cancellation termination or lapse of any insurance cover which the Landlord is obliged to effect and maintain.

6.9 **Safety File**

The Landlord shall maintain the Safety File for the Building in accordance with its obligations under the Safety Health and Welfare at Work (Construction) Regulations 2013 and the Landlord acknowledges the right of the Tenant to production of the said Safety File and a copy of the application for any Fire Safety Certificate for the Building or the Building Common Areas and to delivery of copies thereof (at the Tenant's cost) and hereby undertakes with the Tenant for safe custody of same.

6.10 **LEED REQUIREMENTS**

The Tenant shall comply at all times with the LEED requirements set out in Schedule 10 of this Lease.

7. **MANAGEMENT COMPANY COVENANTS**

The Management Company **HEREBY COVENANTS** with the Landlord and Tenant as follows:-

7.1 **Estate Services and Basement Services**

Subject to the payment of the Tenant's Proportion of the Estate Service Charge and the Tenant's Proportion of the Basement Service Charge, to provide or cause to be provided such of the maintenance and services more particularly set forth in Schedule 5 and Schedule 7.

8. **PROVISOS**

PROVIDED ALWAYS AND IT IS HEREBY AGREED AND DECLARED as follows:-

8.1 **Forfeiture**

Without prejudice to any other right, remedy or power herein contained or otherwise available to the Landlord:-

- (a) if the rents or other monies reserved by this Lease or any part or parts thereof shall be unpaid for twenty-one (21) days after becoming payable (in the case of Initial Rent whether having been formally demanded or not); or
- (b) if any of the covenants by the Tenant contained in this Lease shall not be performed or observed in any material respect, the Tenant having been notified of such a breach and having failed within the period of fourteen (14) days following the date of receipt of such notice (or such longer period as may be agreed between the parties acting reasonably having regard to the nature of the breach); or
- (c) if the Tenant (being a body corporate) has a winding-up petition presented against it or passes a winding-up resolution (other than in connection with a members voluntary winding up for the purposes of an amalgamation or reconstruction which has the prior written approval of the Landlord or resolves to present its own winding-up petition or is wound-up (whether in Ireland or elsewhere) or a Receiver and Manager or Examiner is appointed in respect of the Demised Premises or any part thereof or of the Tenant; or
- (d) if the Tenant (being an individual, or if more than one individual, then any one of them) has a bankruptcy petition presented against him or is adjudged bankrupt (whether in Ireland or elsewhere) or suffers any distress or execution to be levied on the Demised Premises or enters into composition with his creditors or shall have a receiving order made against him

THEN, and in any such case, the Landlord may at any time thereafter re-enter the Demised Premises or any part thereof in the name of the whole and thereupon the Term shall absolutely cease and determine but without prejudice to any rights or remedies which may then have accrued to either party against the other in respect of any antecedent breach of any of the covenants or conditions contained in this Lease.

8.2 **Close Common Areas**

That, where it is otherwise unavoidable, it shall be lawful for the Management Company and /or Landlord at any time or times during the Term to temporarily or permanently close any part of the Estate Common Areas, Building Common Areas and / or the Basement or to erect obstructions or boundary marks or take such steps as the Landlord and / or the Management Company shall think necessary or as may be required or recommended by any local authority **PROVIDED ALWAYS** that the Landlord and the Management Company shall use their reasonable endeavours to procure (insofar as it is within the control of the Landlord and/or the Management Company to do so), (i) that reasonable and adequate means of access to and egress from the Demised Premises are continuously available for the Tenant, (ii) that the use and enjoyment of the Demised Premises by the Tenant is not materially affected, and (iii) that all such parts as aforesaid are reopened as soon as circumstances may reasonably permit to re-open all such parts as aforesaid as soon as circumstances may reasonably permit.

8.3 **Exercise of Rights of Entry**

In exercising any right or entitlement for the Landlord or the Management Company to enter or re-enter the Demised Premises for any purpose permitted by this Lease, the party exercising such rights (and the term “party” for the purposes of this clause shall mean the Landlord, the Management Company, any superior landlord or any others so permitted as the case may be) shall (save in cases of emergency, when such party shall nevertheless use its reasonable endeavours to comply with the following sub-paragraphs (a) to (f)):

- (a) give the Tenant not less than 48 hours prior notice (save in the case of emergency when no notice shall be required but provided that in such cases of emergency the Landlord or the Management Company shall, as soon as possible following such entry, notify the Tenant of the fact of the entry and the circumstances of the emergency);
- (b) comply (and use reasonable endeavours to ensure that their respective employees, agents, licensees and representatives shall comply) with the Tenant’s reasonable security policy in respect of the Demised Premises;
- (c) use reasonable endeavours to minimise any disruption to the Tenant; and
- (d) where the purposes of such entry is to install (to the extent permitted by this Lease) Conduits, Utilities, cabling or other services, accept that such rights shall be exercised in a manner which the Landlord will use reasonable endeavours not to materially interfere with the Tenant or its business carried on in the Demised Premises or to reduce the areas of the Demised Premises.

- (e) take all reasonable steps to ensure that as little damage or disturbance is done to the Demised Premises or any fixtures or fittings therein or any goods or merchandise thereat as is reasonably practicable and as little inconvenience is caused to the occupier or the trade or business carried on therein as is reasonably practicable; and
- (f) make good without undue delay any damage to the Demised Premises or any fixtures or fittings therein or any goods or merchandise thereat that may be caused by such exercise but without compensation for any temporary inconvenience or disturbance caused to the Tenant or the occupier of the Demised Premises.

8.4 **Rules and Regulations**

- (a) That it shall be lawful for the Management Company from time to time acting reasonably and in accordance with and having regard to the principles of good estate management and for the benefit of the tenants in the Estate to make such reasonable written regulations as the Management Company shall think fit for the management and conduct of the Estate and / or the Basement (but for the avoidance of doubt, excluding the Demised Premises), including those matters set out in paragraph 15 of the Third Schedule to this Lease, and to vary any such regulations provided such regulations shall not materially interfere with the occupation, amenity, use or enjoyment of the Demised Premises by the Tenant PROVIDED ALWAYS that if there is a conflict between any such regulations and the terms of this Lease, the terms of this Lease shall prevail.
- (b) That it shall be lawful for the Landlord from time to time acting reasonably and in accordance with having regard to the principles of good estate management and for the benefit of the tenants in the Building to make such reasonable regulations as the Landlord shall think fit for the management and conduct of the Building (but excluding matters relating exclusively to the operation and management of the Demised Premises) and to vary any such regulations provided such regulations shall not materially interfere with the occupation, amenity, use or enjoyment of the Demised Premises by the Tenant PROVIDED ALWAYS that if there is a conflict between any such regulations and the terms of this Lease, the terms of this Lease shall prevail.

8.5 **Agents**

In performing any obligations under this Lease, the Landlord and /or the Management Company (as appropriate) shall be entitled at its sole discretion to employ such reputable agents, contractors or other persons as the Landlord and/or Management Company may from time to time think fit;

8.6 **Removal of Property after Determination of the Term**

- (a) If after the expiry or sooner determination of the Lease any property of the Tenant shall remain in or on the Demised Premises then the Landlord may, as the agent of the Tenant, sell such property and shall pay or account to the Tenant on demand for the proceeds of sale (but not any interest thereon) after deducting the costs and expenses of removal storage and sale reasonably and properly incurred by it and any losses or damages suffered by it as a result of the Tenant's failure to remove same prior to the determination of the Term PROVIDED THAT if any monies payable by the Tenant to the Landlord under this Lease shall be unpaid then the Landlord may apply such balance of the sale proceeds after making the foregoing deductions towards the discharge or partial discharge (as the case may be) of such monies.
- (b) The Tenant shall and hereby does indemnify the Landlord against any liability incurred by it to any third party whose property shall have been sold by the Landlord in a bona fide mistaken belief (which shall be presumed unless the contrary be proved) that such property belonged to the Tenant and was liable to be dealt with as such pursuant to this Clause.

8.7 **Stoppage of Services**

Neither the Management Company nor the Landlord shall be responsible for any unavoidable delay or stoppage in connection with the provision of the said maintenance and services including the Estate Services, Basement Services and Building Services or for any loss, injury or damage sustained by the Tenant as a result of the temporary failure of the Landlord and/or the Management Company or their agents to provide the same or for any temporary omission to perform the same if such temporary failure, delay, stoppage or omission shall be due to any shortage of labour or materials inclement weather or other cause not within the control of the Landlord and/or the Management Company PROVIDED THAT the Landlord and/or the Management Company have taken reasonable steps to remedy or make good any such failure, delay, stoppage or omission as aforesaid as soon as may be practicable and within shorter time periods in case of emergency.

8.8 **Failure of Services**

If the Management Company and or the Landlord shall fail to provide the maintenance and services as herein provided the Tenant's sole remedy shall be an action to compel the Landlord and/or the Management Company to do so and the Landlord and/or the Management Company shall not be liable to the Tenant in respect of any loss, injury or damage which the Tenant shall sustain as a result of the failure of the Landlord and/or the Management Company to provide such maintenance or services or the failure of any member of the Landlord and/or the Management Company's staff properly to carry out his duties unless the Tenant shall notify the Landlord and/or the Management Company in writing specifying the failure for which the Tenant complains and the Landlord and/or the Management Company shall after the expiration of 10 Working Days from the receipt of the said notice continue to neglect to provide said maintenance or services in respect of which notice has been given by the Tenant.

8.9 **Cesser of Services**

The Landlord and/or the Management Company shall be entitled not to or to cease to provide any maintenance and services set forth in Schedule 5 and/or Schedule 6 if any maintenance and services shall in the opinion of the Landlord and/or the Management Company having regard to the principles of good estate management cease to be for the benefit of the Building and / or the Estate and / or Basement or shall have become due to technological change or otherwise obsolete or redundant **PROVIDED THAT** before taking any such action the Landlord and / or Management Company shall have due regard to any reasonable representations made by the Tenant.

8.10 **No Implied easements**

Nothing herein contained shall impliedly confer upon or grant to the Tenant any easement, right or privilege other than those expressly granted by this Lease.

8.11 **Airspace/ Subsoil**

That the Demised Premises shall not include, by implication or otherwise, any part of the Building Common Areas, or the Estate Common Areas or any airspace thereover or thereunder or the subsoil ground thereunder.

8.12 **Exclusion of warranty as to user**

Nothing contained in this Lease or in any consent granted by the Landlord under this Lease shall imply or warrant that the Demised Premises may be used under the Planning Acts or the Building Control Act and the Public Health Acts for the purpose herein authorised or any purpose subsequently authorised and the Tenant hereby acknowledges and admits that the Landlord has not given or made at any time any representation or warranty that any such use is or will be or will remain a permitted use under the Planning Acts.

8.13 **Representations**

The Tenant acknowledges that this Lease has not been entered into in reliance wholly or partly on any statement or representation made by or on behalf of the Landlord, except any such statement or representation that is expressly set out in this Lease.

8.14 **Covenants relating to Adjoining Property**

Nothing contained in or implied by this Lease shall give to the Tenant the benefit of or the right to enforce or to prevent the release or modification of any covenant, agreement or condition entered into by any tenant of the Landlord in respect of the Adjoining Property.

8.15 **Effect of waiver**

Each of the Tenant's covenants shall remain in full force both at law and in equity notwithstanding that the Landlord shall have waived or released temporarily any such covenant, or waived or released temporarily or permanently, revocable or irrevocably a similar covenant or similar covenants affecting other property belonging to the Landlord.

8.16 **Applicable Law**

- (a) This Lease shall in all respect be governed by and interpreted in accordance with the laws of Ireland;
- (b) For the benefit of the Landlord, the Tenant hereby irrevocably agrees that the Courts of Ireland are to have jurisdiction to settle any disputes which may arise out of or in connection with this Lease and that accordingly any suit, action, or proceedings (together in this Clause referred to as “proceedings”) arising out of or in connection with this Lease may be brought in such Courts;
- (c) The Tenant hereby irrevocably waives any objection which it may have now or hereafter to the taking of any proceedings in any such Court as is referred to in this Clause and any claim that any such proceedings have been brought in an inconvenient forum and further irrevocably agree that any judgment in any proceedings brought in the Courts of Ireland shall be conclusive and binding upon them and may be enforced in the courts of any other jurisdiction;
- (d) Nothing contained in this clause shall limit the right of the Landlord to take proceedings against the Tenant in any other Court of competent jurisdiction nor shall the taking of proceedings in one or more jurisdictions preclude the taking of proceedings in any other jurisdiction whether concurrently or not;
- (e) The Tenant hereby agrees that the proceedings may be served upon the Tenant by delivery to the registered office of the Tenant or at such other address in Ireland as the Tenant may from time to time notify to the Landlord in writing for this purpose.

8.17 **Notices**

- (a) Any demand or notice required to be made, given to, or served on the Tenant under this Lease shall be duly and validly made, given or served if addressed to the Tenant (and, if there shall be more than one of them, then to any one of them) and delivered personally or sent by pre-paid registered or recorded delivery mail (in the case of a company) to its registered office, (or in the case of an individual) to his last known address or to the Demised Premises. For so long as the Tenant is Hubspot Ireland Limited any notice served on the Tenant under clause 6.4.1 shall also be copied by email to the following email address(es) (but any failure or omission to do so shall not prejudice or invalidate the notice served on the Tenant).
 - (i) jkelleher@hubspot.com
 - (ii) kpapa@hubspot.com

- (b) Any demand or notice required to be made, given to, or served on the Guarantor under this Lease shall be duly and validly made, given or served if addressed to the Guarantor (and, if there shall be more than one of them, then to any one of them) and delivered personally, or sent by pre-paid registered or recorded delivery mail (in the case of a company) to its registered office, (or in the case of an individual) to his last known address or to the Demised Premises. For so long as the Guarantor is HubSpot Inc. any notice served on the Guarantor or the Tenant under clause 6.4.4 shall also be copied by email to the following email address(es) (but any failure or omission to do so shall not prejudice or invalidate the notice served on the Guarantor or the Tenant).
- (i) jkelleher@hubspot.com
- (ii) kpapa@hubspot.com
- (c) Any notice required to be given to or served on the Landlord shall be duly and validly given or served if delivered personally and receipted by an employee of the Landlord or sent by pre-paid registered or recorded delivery mail, addressed to the Landlord at its registered office.
- (d) If the receiving party consists of more than one person, than a notice to one of them is a notice to all.

8.18 Use of the Demised Premises

For the avoidance of doubt, the Tenant shall be entitled to use the Demised Premises for the Permitted User twenty-four (24) hours per day and three hundred and sixty-five (365) days per year for the duration of the Term and the Tenant shall be permitted access to the Building including the Basement during all such hours.

9. GUARANTOR COVENANTS

In consideration of this Lease having been entered into at its request, the Guarantor covenants and agrees with the Landlord, as a primary obligation, in the terms set out in Schedule 5.

10. SECTION 238 COMPANIES ACT, 2014

IT IS HEREBY CERTIFIED for the purposes of Section 238 of the Companies Act 2014 that the Landlord and the Tenant are not bodies corporate connected with one another in a manner which would require this transaction to be ratified by resolution of either.

IN WITNESS whereof the parties hereto have executed this Lease in the manner following and on the day and year first herein **WRITTEN**.

SCHEDULE 1

Demised Premises

ALL THAT the internal and non-structural parts of the Basement, ground, first, mezzanine, second, third, fourth and fifth floors of the Building and which said premises are for the purposes of identification only shown delineated on Plan No. 4, 6, 7, 8, 9, 10, 11 and 12 annexed hereto and thereon in lined red, together with any Landlord's fixtures and fittings in or about the same and all other additions, alterations and improvements thereto which may be carried out during the Term and shall include without limitation the following:-

- (a) the floor finishes thereof and the cavity between same and the upper surface of the floor slab of the Building;
- (b) the ceiling finishes thereof (including the suspended ceilings (if any)) and the cavity between the ceiling finishes and the under-surface of the floor above or the roof of the Building as the case may be (but excluding, for the avoidance of doubt, the roof of the Building);
- (c) all Conduits provided by the Landlord within the Demised Premises which exclusively service the Demised Premises;
- (d) the internal plaster surfaces and finishes of all structural and load bearing walls and columns therein or which enclose same but not any other part of such walls or columns;
- (e) the entirety of all non-structural or non-load bearing walls and columns therein;
- (f) the inner half severed medially of the internal non-load bearing walls (if any) that divide same from other parts of the Building;
- (g) all services (including mechanical and electrical services plant and equipment) within and exclusively serving the Demised Premises (including the washrooms and toilets included in the Demised Premises);
- (h) all Balconies; and
- (i) all glazing and Brise Soleil affixed to the external parts of the Demised Premises.

BUT EXCLUDING any structural parts of the Building that are not comprised or included within the items (a) to (h) above.

AND FURTHER EXCLUDING any part of the Retained Areas.

SCHEDULE 2

Rights And Easements Granted

1. The full and free right of support protection and shelter for such parts of the Demised Premises as require the same from any other part of the Building or the Estate or any extension thereof capable of providing such support and protection.
2. The right subject to the provisions of this Lease to the free and uninterrupted passage of the Utilities (in common with the Landlord and lessees of other parts of the Building or the Estate and all other persons entitled thereto) through and from the Conduits laid or to be laid on or over, under or through any other parts of the Building or the Estate or any extension thereof or other contiguous or adjacent lands and premises of the Landlord.
3. The right (in common with the Landlord and tenants of other parts of the Building or the Estate and all other persons similarly entitled or authorised) to enter on such parts of the Building or the Estate (upon giving due notice to any parties affected) for the purpose of repairing or cleansing the Demised Premises or any Conduits or Utilities used in connection with the Demised Premises. The right exercisable pursuant to this clause 3 shall be subject to prior notice being served on the Landlord in writing and to a written method statement being agreed by the Landlord and the Tenant in advance.
4. The right at all times to go pass and repass with or without vehicles over the roads and on foot only over the pedestrian ways within the Estate Common Areas as designated from time to time by the Landlord (or the Management Company) for the Tenant's access to and egress from the Demised Premises to and from the public highway.
5. The right at all times to use the Building Common Areas for all purposes in connection with the Tenant's access to and egress from the Demised Premises and for all proper purposes in connection with the use and enjoyment of the Demised Premises including for clarity over the Car Park Ramp and relevant portion of the Basement.
6. The right at all times to go pass and repass over the Estate Common Areas and the Building Common Areas as designated by the Landlord (or the Management Company) from time to time for the purpose of enjoying the amenities therein provided for the benefit of occupiers generally in the Office Area, the Building or the Estate.
7. The exclusive right for the Tenant (including, for the avoidance of any doubt, its permitted successors, licensees, employees, agents and other authorised persons) to use the Tenant Car Park Spaces for parking cars, vans, bikes and similar vehicles for no other purpose (subject to any existing or future regulations made by the Landlord), together with all necessary rights of access thereto and egress therefrom including over the Car Park Ramp over such route within the Basement as the Landlord may, from time to time, determine.
8. The right to use or pass along the fire escape passages or routes or stairs in any part of the Building, the Estate and / or Basement in case of emergency.
9. The right for the Tenant (including, for the avoidance of any doubt, its permitted successors, licensees, employees, agents and other authorised persons) to access the roof of the Building for the purposes of maintaining, replacing, relocating or removing any satellite dishes, mobile telecommunications antenna, supplemental heating, ventilation and air-conditioning plant and equipment and any other plant and equipment located on the roof and permitted by the Landlord from time to time. For the avoidance of doubt, the Tenant shall not be permitted to install such equipment on the roof of the Building without the prior written consent of the Landlord (not to be unreasonably withheld or delayed).

SCHEDULE 3

Exceptions and Reservations

The following rights and easements are excepted and reserved out of the Demised Premises to the Landlord, the Management Company and the other tenants and occupiers of the Building and or the Adjoining Property and all other persons authorised by the Landlord or having the like rights and easements:-

1. The free and uninterrupted passage and running of the Utilities through the Conduits which are now, or may at any time during the Term be in, on, under, or passing through or over the Demised Premises;
2. Subject to the compliance with the provisions of Clause 8.3 of this Lease, the right, at all reasonable times upon reasonable prior notice of at least 48 hours, except in cases of emergency, to enter the Demised Premises in order to:-
 - (a) inspect, cleanse, maintain, repair, connect, remove, lay, renew, relay, replace with others, alter or execute any works whatever to or in connection with the Conduits and any other services;
 - (b) execute repairs, decorations, alterations and any other works and to make installations to the Adjoining Property or to do anything whatsoever which the Landlord may or must do under this Lease;
 - (c) see that no unauthorised erections additions or alterations have been made and that authorised erections additions and alterations are being carried out in accordance with any consent given herein and any permission or approval granted by the relevant local authority

PROVIDED THAT the Landlord or the person exercising the foregoing rights shall cause as little inconvenience as practicable to the Demised Premises and shall make good, without unreasonable delay, any damage thereby caused to the Demised Premises;

3. The right to erect scaffolding for the purpose of repairing, refurbishing or cleaning the Building or any building now or hereafter erected on the Adjoining Property or in connection with the exercise of any of the rights mentioned in this Schedule **PROVIDED THAT** such scaffolding does not materially interfere with the proper access to or the enjoyment and use of the Demised Premises;
4. The right to erect and maintain signs on the Demised Premises and any premises abutting the same advertising the Building or the sale or letting of any premises or for the purpose of a planning or other statutory application in respect of the Demised Premises.
5. The rights of light, air, support, protection and shelter and all other easements and rights now or hereafter belonging to or enjoyed by the Adjoining Property;

6. Full right and liberty at any time hereafter to raise the height of, or make any alterations or additions or execute any other works to any buildings on the Adjoining Property or to the Building or to the Basement (other than the Demised Premises), or to erect any new buildings of any height on the Adjoining Property and/or to extend the Basement to incorporate the basement level of any part of the Estate and/or to extend the Building in such a manner as the Landlord or the person exercising the right shall think fit PROVIDED THAT the same does not materially obstruct, affect or interfere with the amenity of or access to the Demised Premises or the passage of light and air to the Demised Premises or the enjoyment and use of the Demised Premises and **PROVIDED ALWAYS** that the Landlord expressly covenants that, notwithstanding any provisions contained in this Lease, the Landlord shall not, without the prior agreement of the Tenant, raise the height of the Building or by any other means add any floors above the fifth floor of the Building.
7. The right to build on or into any boundary or party wall of the Building and, after giving not less than seven (7) days prior written notice, to enter the Building to place and lay in, under or upon the same such footings for any intended party wall or party structure with the foundations therefor as the Landlord shall reasonably think necessary and for such purpose to excavate the Building along the line of the junction between the Building and the Adjoining Property and also to keep and maintain the said footings and foundations **AND** on completion of the said works the Landlord or the person exercising this right shall make good, without delay, any damage thereby caused to the Building or the Demised Premises **PROVIDED ALWAYS** that the Landlord expressly covenants that it shall not, without the prior agreement of the Tenant, raise the height of the Building or by any means add any floors above the fifth floor of the Building;
8. All mines and minerals in or under the Building and the airspace above the Building.
9. The right of support and protection by the Demised Premises for such other parts of the Building or any extensions or alterations thereof or any adjoining premises as require such support and protection.
10. The right from time to time (acting reasonably and in accordance with the principles of good estate management) to make written rules and regulations and to make written additions amendments or revisions thereof for the orderly convenient and proper operation management and maintenance of the Office Area, the Building and or the Estate or any part thereof and in particular the Office Common Areas, the Building Common Areas and the Estate Common Areas (but excluding matters relating exclusively to the operation and management of the Demised Premises) including rules and regulations to be observed and performed in relation to standards, including standards of design and technical specification, relating to maintenance alterations additions and improvements all of which rules and regulations shall be deemed to be and shall form part of this Lease PROVIDED ALWAYS that if there is a conflict between any such rules and regulations and the terms of this Lease the terms of this Lease shall prevail.
11. The right on reasonable prior notice to the Tenant (save in case of emergency where no such notice shall be required) to designate vary, alter, change the use of, close or control access to the whole or any part of the Building Common Areas, the Basement and the Estate Common Areas provided that the Landlord and/or the Management Company shall where appropriate provide reasonable alternative access and egress to the Demised Premises and PROVIDED THAT the Tenant's use and enjoyment of the Demised Premises is not materially affected.

12. The right on reasonable prior notice to the Tenant (save in case of emergency where no such notice shall be required) to close temporarily at any time any part or parts of the Building Common Areas, the Basement and/or the Estate Common Areas for the purpose of repairing renewing renovating replacing cleaning and maintaining the same PROVIDED THAT the Tenant's proper access and egress and use and enjoyment of the Demised Premises is not materially affected.
13. The right on reasonable prior notice to the Tenant and under supervision of the Tenant's personnel who will make themselves readily available (save in case of emergency where no such notice shall be required) to gain access to the risers in the Building passing through the Demised Premises.
14. The right for the Management Company, from time to time (acting reasonably and in accordance with the principles of good estate management) to make reasonable and proper rules and regulations notified in writing to the Tenant where matters relate to use and enjoyment of the Building (but excluding matters relating exclusively to the operation and management of the Demised Premises) PROVIDED ALWAYS that if there is a conflict between any such rules and regulations and the terms of this Lease the terms of this Lease shall prevail:
 - (a) For the control regulation and limitation of traffic vehicular and otherwise into from and within the Estate and in particular regulations for the delivery and storage of stocks and goods and the control and use of any common store or stores.
 - (b) For the storage and removal of disposal or waste.
 - (c) In relation to the erecting and maintaining of signs notices and regulations as may be appropriate in any part or parts of the Estate.
 - (d) As to the means of bringing the Utilities into or through the Demised Premises.
 - (e) For the security of the Estate as a whole or in respect of any part or parts.
 - (f) For emergency action and procedure.
 - (g) For fire precautions.
 - (h) The Airspace over the Building.
15. The right for the Landlord and / or the Management Company to vary, abandon, or alter the plan and the scheme of development for the Estate (excluding the Demises Premises) and to deal with the Estate or any part thereof without regard to such plan or scheme of development provided that any such variation will not materially affect the Tenant's use of and access to the Demised Premises.

SCHEDULE 4

Rent Reviews

1. Definitions

In this Schedule, the following expressions shall have the following meanings:-

- (a) “**Review Date**” means the Rent Review Dates specified in the Definitions and “**Relevant Review Date**” shall be construed accordingly;
- (b) “**Open Market Rent**” means the full open market rent without any deductions whatsoever at which the Demised Premises might reasonably be expected to be let in the open market with vacant possession at the Relevant Review Date by a willing landlord to a willing tenant and without fine or premium or any other consideration for the grant thereof for a term equal the residue then unexpired of the Term granted by the within Lease and on the same terms and conditions and subject to the same covenants and provisions contained in this Lease (other than the amount of the rent payable hereunder but including these provisions for the review of rent) and having regard to other open market rental values current at the Review Date in so far as the Surveyor (as defined in Clause (e) of this Schedule) may deem same to be pertinent to the matters under consideration by him and making the Assumptions but disregarding the Disregarded Matters;
- (c) “**Assumptions**” mean the following assumptions (if not facts) at the Relevant Review Date:-
 - (i) that the Demised Premises are ready and available for immediate occupation, use and fit out by the Tenant for the Permitted User and may be lawfully used by any person for any of the purposes permitted by this Lease;
 - (ii) that no work has been carried out to the Demised Premises by the Tenant, any under tenant or their respective predecessors in title during the Term, which has diminished the rental value of the Demised Premises;
 - (iii) that if the Demised Premises or any part or parts thereof have been destroyed or damaged, they have been fully rebuilt and reinstated;
 - (iv) that the Demised Premises are in a good state of repair and decorative condition;
 - (v) that the Demised Premises have been delivered to the Tenant to the specification set out in Schedule 11 of this Lease, and is comprised within a Building which is to the specification set out in Schedule 11 of this Lease;
 - (vi) that all the covenants on the part of the Tenant contained in this Lease have been fully performed and observed;

- (vii) that the Tenant has enjoyed the benefit of any market-standard rent free period or rent concession at the commencement of this Lease;
 - (viii) that the Floor Area of the Demised Premises is square feet comprising square feet of office space and comprising square feet in respect of the Basement Storage Area; and
 - (ix) that the Demised Premises includes the use of thirty one (31) car parking spaces and includes the benefit of the Balconies, the Entrance Courtyard, the Exclusive Basement Service Areas, the Bicycle Spaces and the Shower Facilities.
- (d) **“Disregarded Matters”** mean:
- (i) any effect on rent of the fact that the Tenant, any permitted under tenant or their respective predecessors in title have been in occupation of the Demised Premises or any part thereof;
 - (ii) any rent free period or rent concession received by the Tenant at the commencement of the Lease or that may be received by a tenant in the market.
 - (iii) any goodwill attaching to the Demised Premises by reason of the business then carried on at the Demised Premises by the Tenant or any permitted under tenant;
 - (iv) any increase in rental value of the Demised Premises attributable to the existence at the Review Date, of any works (otherwise than in pursuance of an obligation under this Lease or any agreement therefor) executed by and at the expense of the Tenant (or any party lawfully occupying the Demised Premises under the Tenant) with the consent of the Landlord (where required under this Lease) in on or to the Demised Premises or any part thereof however, for the sake of clarity such Disregarded Matters shall not affect the specification for the Demised Premises and the Building as at the commencement of the Term of this Lease, as set out in Schedule 10; and
- (e) **“Surveyor”** means an independent chartered surveyor with at least 10 years post-qualification experience in the valuation and leasing of property similar to the Demised Premises and is acquainted with the market in the area in which the Demised Premises are located, appointed from time to time to determine the Open Market Rent pursuant to the provisions of this Schedule;
- (f) **“President”** means the President for the time being of the Society of Chartered Surveyors Ireland and includes the Vice-President or any person authorised by the President to make appointments on his behalf;
- (g) **“Rent Restrictions”** means the restrictions imposed by any statute for the control of rent in force on a Review Date or on the date on which any increased rent is ascertained in accordance with this Schedule and which operate to impose any limitation, whether in time or amount, on the collection of an increase in the rent first reserved by this Lease or any part thereof.

2. **Rent Review**

The rent first reserved by this Lease shall be reviewed at each Review Date in accordance with the provisions of this Schedule and, from and including each Review Date, the rent shall be the Open Market Rent on the Relevant Review Date, as agreed or determined pursuant to the provisions of this Schedule.

3. **Agreement or determination of the reviewed rent**

The Open Market Rent at any Review Date may be agreed in writing at any time between the Landlord and the Tenant but if, for any reason, they have not so agreed, either party may (not earlier than six months prior to and at any time after the Relevant Review Date) by notice in writing to the other require the Open Market Rent to be determined by the Surveyor.

4. **Appointment of Surveyor**

In default of agreement between the Landlord and the Tenant on the appointment of the Surveyor, the Surveyor shall be appointed by the President on the written application of either party such appointment to be made by the President within 14 days of receipt of such notification.

5. **Functions of the Surveyor**

The Surveyor shall:-

- (a) act as an arbitrator in accordance with the Arbitration Act 2010;
- (b) within sixty (60) days of his appointment, or within such extended period as the Landlord and the Tenant shall jointly agree in writing, give to each of them written notice of the amount of the Open Market Rent as determined by him.

6. **Fees of Surveyor**

The fees and expenses of the Surveyor including the costs of his nomination, shall be in the award of the Surveyor (but this shall not preclude the Surveyor from notifying both parties of his total fees and expenses notwithstanding the non-publication at that time of his award) and, failing such award, the same shall be payable by the Landlord and the Tenant in equal shares who shall each bear their own costs, fees and expenses. Without prejudice to the foregoing, both the Landlord and the Tenant shall each be entitled to pay the entire fees and expenses, due to the Surveyor and thereafter recover as a simple contract debt the amount (if any) due from the party who failed or refused to pay same.

7. **Appointment of new Surveyor**

If the Surveyor fails to give notice of his determination within the time aforesaid, or if he dies, or is unwilling to act, or becomes incapable of acting, or if, for any other reason, he is unable to act, either party may request the President to discharge the Surveyor and appoint another surveyor in his place to act in the same capacity, which procedure may be repeated as many times as necessary.

8. **Interim payments pending determination**

In the event that by the Relevant Review Date the amount of the reviewed rent has not been agreed or determined as aforesaid (the date of agreement or determination being herein called "the Determination Date") then, in respect of the period (herein called "the Interim Period") beginning with the Relevant Review Date and ending on the day before the Quarterly Gale Day following the Determination Date, the Tenant shall pay to the Landlord rent at the yearly rate payable immediately before the Relevant Review Date, and on the Determination Date, the Tenant shall pay to the Landlord, on demand as arrears of rent, the amount (if any) by which the reviewed rent exceeds the rent actually paid during the Interim Period (apportioned on a daily basis) together with interest thereon at the Base Rate from the Relevant Review Date to the date of actual payment. In the case of a rent reduction the Tenant shall be afforded a credit for any rent over paid (together with interest thereon at the Base Rate from the date of receipt of any such overpayment of rent to the Quarterly Gale Day following the Determination Date) against future rent payable under the Lease.

9. **Rent Restrictions**

On each and every occasion during the Term that Rent Restrictions shall be in force, then and in each and every case:

- (i) the operation of the provisions herein for review of the rent shall be postponed to take effect on the first date or dates thereafter upon which such operation may occur, and
- (ii) the collection of any increase or increases in the rent shall be postponed to take effect on the first date or dates thereafter that such increase or increases may be collected and/or retained in whole or in part and on as many occasions as shall be required to ensure the collection of the whole increase

AND until the Rent Restrictions shall be relaxed either partially or wholly the rent reserved by this Lease (which if previously reviewed shall be the rent payable under this Lease immediately prior to the imposition of the Rent Restrictions) shall (subject always to any provision to the contrary appearing in the Rent Restrictions) be the maximum Rent from time to time payable hereunder.

10. **Memoranda of reviewed rent**

As soon as the amount of any reviewed rent has been agreed or determined, memoranda thereof shall be prepared by the Landlord or its solicitors and thereupon shall be signed by or on behalf of the Tenant and the Landlord, and the Tenant shall be responsible for and shall pay to the Landlord the stamp duty (if any) payable on such memoranda and any counterparts thereof but the parties shall each bear their own costs in respect thereof.

11. **Time not of the essence**

For the purpose of this Schedule, time shall not be of the essence.

SCHEDULE 5

Part I -Maintenance and Estate Services to be provided by the Management Company

Subject to the provisions of Part II of this Schedule 5, the services to be provided by the Management Company are:

1. As often as may be reasonably required in accordance with the principles of good estate management the Management Company may cleanse, repair, renew, maintain and decorate, and redecorate, resurface, and where applicable modernise and replace, the whole of the Estate Common Areas and all structures thereon, the Conduits and Utilities therein and the accommodation necessary to house equipment and personnel used for the maintenance, operation and functioning of the Estate and the Management Company may have regard to improvements that will improve and modernise the Estate for the benefit of the occupants thereof, and may carry out such works even though items are not strictly beyond economic repair; excluding plant, machinery, apparatus, equipment, Conduits and Utilities exclusively serving the Building or any other Block in the Estate.
2. As often as shall be reasonably necessary the Management Company shall maintain, cleanse, repair and renew all electrical, mechanical and other plant, equipment, chattels, hard and soft landscaping features and fittings of ornament and shrubs and cultivations of every nature and all Utilities in use for the common benefit of the occupiers of the Estate within or serving the Estate and any fencing, gates, barriers or boundary walls in or surrounding the Estate Common Areas and the Estate (save for those which are the direct responsibility of the tenants or licensees of the Landlord under the terms of their lease or licence agreements). Without prejudice to the generality of the foregoing the Management Company shall provide for the costs of maintaining, repairing, amending and where necessary renewing and providing water from any source for any irrigation system to any landscaped parts within the Estate and the cost of maintaining, repairing, operating, inspecting, servicing and overhauling any temporary foul sewer station located within the Estate or the Adjoining Property (save for those which are the direct responsibility of the tenants or licensees of the Landlord under the terms of their lease or licence agreements).
3. The Management Company may acting reasonably but at its sole option from time to time provide such agent or agents or management personnel for the management of the Estate as it deems necessary in accordance with the principles of good estate management and in such event shall pay such agents' reasonable and market standard fees and value added tax thereon.
4. The Management Company may provide for the control of pedestrian, vehicular and any other traffic on, and the policing of the Estate Common Areas, if deemed necessary by the Management Company and may provide directional and other signs in the Estate.
5. The Management Company shall provide for the cost of rates (if any), service charges or such like charged on the Estate Common Areas and any special costs which may be charged by the local authority or district authority or any such body on the Estate as a whole, together with water rates insofar as the same shall not be separately assessed by the local authority.

6. The Management Company may provide for the provision and maintenance of floral displays and seasonal decorations to some / all of the Estate Common Areas and the cost of events that may be held from time to time on the Estate to promote, animate and improve the general environment of the Estate for the benefit of all occupants and users of the Estate.
7. The Management Company may provide the maintenance, repairing, cleansing, amending and where necessary renewing and repairing or increasing lighting or other systems for open spaces within the Estate including those for roads, footpaths and landscaped parts.
8. The Management Company may provide for the reasonable and proper costs of maintaining, repairing and paying all outgoings (including rent) for renewing, operating and equipping any estate management office, control room or security hut or such other storage and other parts and buildings used exclusively for the management or required for the general benefit of the Estate including the provision and replacement of all materials, equipment (including telephones and internet), tools, plant and machinery as the Management Company may consider appropriate.
9. The Management Company shall, from time to time provide and discharge the reasonable and proper costs of wages, and other reasonable costs for such other staff engaged by the Management Company for purposes connected with the Estate including persons engaged in the provision of the Services pursuant to the provisions of this Schedule.
10. The Management Company may provide for the cost of insurance of all plant, buildings, structures and equipment in the Estate Common Areas and including general service and inspection contract policies in respect thereof and also the insurance of the Estate Common Areas in respect of public liability/third party liability and Management Company's liability and any other risks (including employers liability and all risks insurance) which the Management Company deems prudent to insure against and the cost of insuring the Estate Common Areas against the Insured Risks in the full reinstatement cost thereof (to be determined from time to time by the Management Company (acting reasonably)) including:
 - (a) architects, surveyors, consultants and other professional fees (including Value Added Tax thereon) to the extent it is irrecoverable;
 - (b) the costs of shoring up, demolishing, site clearing and similar expenses;
 - (c) all stamp duty and other taxes or duties eligible on any building or like contract as may be entered into and all other incidental expenses relative to the reconstruction, reinstatement or repair of the Estate;
 - (d) such provision for inflation as the Management Company in its discretion, but acting in accordance with the principles of good estate management, shall deem appropriate;

- (e) the loss of service charge sums referred to in paragraph 3.3 of the reddendum, from time to time payable, following loss or damage to the Estate by the Insured Risks, for three (3) years or such longer period as the Management Company may, from time to time, reasonably deem to be necessary, having regard to the likely period required for obtaining planning permission and fire safety certificates (if applicable) and any other consents and approvals for reinstating the Estate and having notified the Tenant of any proposed extension to such period;
- (f) property owners, public, employer's and other liability of the Management Company arising out of or in relation to the Estate; and
- (g) such other insurances as the Management Company may, in its reasonable discretion from time to time, deem necessary to effect.

11. The Management Company may provide for the maintenance of all equipment required to service the Estate Common Areas.
12. The Management Company may provide any other services which are required by any public or local authority having power to require same.
13. The Management Company may provide for the cost of taking all steps deemed necessary or expedient by the Management Company in accordance with the principles of good estate management for complying with any legislation or order or statutory requirements thereunder concerning town planning, public health, highways, streets, drainage or other matters relating or alleged to relate to the Estate Common Areas for which the Tenant, and any other occupational tenant or Block Owner or any other owner or occupier of a Block or Residential Unit is not directly liable and any other steps reasonably necessary to safeguard health and safety of any persons using the Estate Common Areas including but not limited to the control of pests and vermin and consultancy fees and other costs associated with the provision and review of health and safety management systems.
14. The Management Company shall from time to time provide for all reasonable and proper professional fees for the management of the Estate including but not limited to accountants, surveyors and consultants fees and value added tax payable thereon.
15. The Management Company may from time to time provide for payment of costs, expenses and fees involved or resulting from the obtaining of professional advice whether from lawyers, barristers, surveyors or other experts in respect of making representations and taking legal action to enforce the rules and regulations and covenants in relation to the Estate, taking necessary legal action or in respect of planning applications, notices or other orders that might be received affecting the Estate or in respect of attempts to deny or obstruct any rights, easements, quasi easements or other privileges enjoyed or claimed to be enjoyed in respect of the Estate provided always that the proceeds of any proceedings shall be credited as against the Estate Service Charge.

16. The Management Company may provide for the reasonable and proper cost of purchasing, operating, repairing, maintaining and renewing and hiring the machinery and all electrical, mechanical and other plant, machinery, apparatus and equipment, chattels, features and fittings of ornament or Utility in use for the common benefit of the Estate and any reasonable or specialist service which in it deems necessary in accordance with the principles of good estate management and for the benefit of the occupiers of the Estate and including the cost of provision for renewal and replacement whenever necessary.
17. The Management Company may provide for the reasonable and proper cost of a periodic refuse collection, removal and disposal undertaken in relation to the Estate Common Areas and the reasonable cost of any plant or equipment for the treatment or packaging of same. In addition, the Management Company shall provide for the reasonable cost of keeping all roads within the Estate clear of parked vehicles and where necessary towing away such vehicles to such place as it may consider appropriate.
18. The Management Company may provide for the cost of periodic valuations and surveys of the Estate Common Areas for insurance purposes not more than once in every calendar year.
19. Any amount which may be deducted or disallowed by the Management Company's insurers pursuant to any excess provisions (which the Management Company shall ensure are competitive) in the insurance policies upon settlement of any claim by the Management Company.
20. The Management Company may provide for the reasonable and proper cost for the general security (including the maintenance, repair and renewal of any security system) of the Estate Common Areas.
21. Without prejudice to the generality of the foregoing, the Management Company may provide manned or unmanned 24 hour security of the Estate Common Areas and may also provide fire prevention and detection systems, burglar alarms, security systems and any other monitoring systems or any part thereof to such parts of the Estate Common Areas as the Management Company considers appropriate in the interest of maintaining security on the Estate.
22. The Management Company may at its sole option provide for a continuing sinking fund to be applied in and towards matters of a capital nature (subject to the provisions of Part II of this Schedule).
23. The Management Company shall from time to time provide and maintain such reasonable flood defences and take such reasonable flood protection measures in respect of the Estate Common Areas that the Management Company consider necessary in accordance with the principles of good estate management.
24. Operating, maintaining, testing, repairing, renewing and replacing the boilers, plant, machinery, generators and other equipment that are part of the common system or apparatus of the Estate together with all the cabling, pipe work, duct work and other installations appertaining thereto (not exclusively serving any Block or the Basement).

25. The Management Company may provide for the reasonable and proper cost of providing such further services and in carrying out such other works as are in the reasonable opinion of the Management Company acting in the interests of good estate management necessary for the comfort and convenience of the Tenant or any Block Owner.
26. Strictly provided that the Estate Service Charge shall not include:
- (a) Any capital costs relating to the construction or the initial equipping and fitting or the infrastructure serving the Estate and/or the Basement or any part or parts thereof or any extension thereof and any capital cost relating to the construction and provision of any office used for the management of the Estate;
 - (b) Any cost relating to the collection and/or review of rents and letting of any other parts of the Estate and any costs or expenses relating to the enforcement of covenants against other owners of Blocks, Residential Units or tenants of the Estate or sums properly owing by such parties;
 - (c) Any costs arising out of the wilful default, wilful misconduct or wilful omission of the Management Company its servants or agents;
 - (d) Any costs relating to the major refurbishment of Blocks and/or Residential Units in the Estate or any part thereof;
 - (e) Any costs relating to the initial landscaping of any part of the Estate;
 - (f) Any costs and expenses relating to the making good of any damage covered by any of the Insured Risks (save for any excess under the relevant insurance policy) to the extent of monies actually received on foot of the relevant policy excluding any excess;
 - (g) The costs of valuation for insurance purposes of any part of the Estate more often than once in every year;
 - (h) Any costs relating to items of plant, machinery and equipment (which for the avoidance of doubt includes lifts and air conditioning systems) which are not for the general benefit of the owners and occupiers of Blocks, Residential Units and/or Retail Units within the Estate and are for the exclusive use of certain tenants and/or owners of Blocks, Residential Units and/or Retail Units within the Estate; and
 - (i) Any costs or expenses incurred or relating to periods prior to the Term Commencement Date.
 - (j) In no event shall the Estate Service Charge payable by the Tenant be increased or altered by reason that at any relevant time any part of the Estate may be vacant or be occupied by the Landlord in its capacity as Landlord or that any tenant or other occupier of another part of the Estate may default in payment of its due proportion of the Estate Service Charge.

Part II

Tenant's Liability to Contribute to the Estate Service Charge

1. Contribution to the Estate Service Charge from other users

The Management Company shall prepare the Estate Service Charge budget on an annual basis and the Management Company may from time to time at its discretion but acting reasonably and in the interests of good estate management, alter the percentages or fractions attributable to different parts of the Estate, where it deems this to be appropriate.

2. Payment Dates

The Tenant's Proportion of the Estate Service Charge for each Service Charge Period shall be discharged by means of equal quarterly payments in advance to be made on each of the Instalment Days in each year or on such date on which a demand therefor is made (whichever shall be the later date) and by such additional payments as may be required under Clauses 3 and 7 of this Part II of Schedule 5.

3. Service Charge Period

For the purposes of this Part II of Schedule 5, "Service Charge Period" means the period of twelve months from 1st January to 31st December in each year (or such other period not exceeding 12 months as the Management Company may from time to time determine).

4. Advance Payments

Subject as hereinafter set out, the amount of each advance payment of the Estate Service Charge shall be one quarter of the Tenant's Proportion of such amount as the Management Company may reasonably estimate to be the Estate Service Charge for the relevant Service Charge Period and which is notified to the Tenant at least thirty (30) days or before the time when the demand for an advance payment is made.

5. Daily Rate of Calculation

The Estate Service Charge shall be deemed to accrue on a day-to-day basis in order to ascertain yearly rates and for the purposes of apportionment in relation to periods other than a Service Charge Period. In the event that this Deed shall commence on a day which is not one of the Instalment Days, then the Estate Service Charge shall be the apportioned amount of the Tenant's Proportion of the Estate Service Charge due up to the next Instalment Day and thereafter the provisions of Clause 4 of this Part II of Schedule 5 shall apply.

6. **Financial Statement**

The Management Company as soon as practicable (but in any event within six (6) months) after the end of each Service Charge Period shall submit to the Tenant the Management Company's financial statements relevant to the Estate Service Charge duly audited and certified by the Accountant. Such financial statements shall be prepared on an accruals basis and shall *inter alia* disclose:-

- 6.1 the total expenditure for the Service Charge Period ended itemised under the various headings of expense;
- 6.2 the Tenant's Proportion of the Estate Service Charge and details of the calculation thereof; and
- 6.3 details of the balancing payment or credit as the case may be.

7. **Balancing Adjustment**

If the Tenant's Proportion (expressed as a cash amount) of the Estate Service Charge as certified by the Accountant (the "Certificate") shall be more or less than the total of the advance payments referred to in Clause 4 of this Part II of the Schedule 5 above then any sum due to or allowable by the Management Company in respect of the Tenant's Proportion of the Estate Service Charge for the relevant Service Charge Period shall forthwith be paid (within thirty (30) days of written demand) or allowed as the case may be. The Certificate (or a copy thereof duly certified by the person by whom same is given) shall be conclusive evidence for the purposes hereof of the matters which it purports to certify and shall be final and binding on the parties hereto insofar as same relates to matters of fact save in the case of manifest error.

8. **Inspection by the Tenant**

If so requested by the Tenant by not less than fourteen (14) days prior written notice, the Management Company shall make available for inspection by the Tenant or its duly authorised agent at a reasonably accessible location for a period of one (1) month following the delivery to the Tenant of the Certificate the books and other documents or records which are in the reasonable opinion of the Management Company relevant for the purpose of ascertaining or verifying the level of the Estate Service Charge and the Tenant or its duly authorised agent shall be entitled to take copies (at the expense of the Tenant) of the relevant documents.

9. **Exceptional Costs**

In the event that the Management Company at any time during any Service Charge Period incur heavy exceptional expenditure (providing same is vouched) which forms part of the Estate Service Charge the Management Company shall be entitled to recover from the Tenant the Tenant's proportion of such costs from the Estate Sinking Fund in accordance with the provisions of Clause 12 of this Part II of Schedule 5 of this Lease.

10. **Claims by Third Parties in Respect of Loss or Damage in or about the Estate Common Areas**

- 10.1 The Management Company shall be entitled to include in the Estate Service Charge any reasonable payments properly made to third parties on sound legal advice in settlement of any claims by such third parties in respect of any loss or damage sustained by the same in or about the Estate Common Areas (other than where caused by the negligence of the Management Company or its agents) to the extent that such claims are not recovered under any policy of insurance effected by the Management Company solely on either of the following grounds:
- (a) by reason of the fact that the amount claimed by any third party falls within the excess amount stipulated on the relevant insurance policy; or
 - (b) by reason of the fact that the cost in terms of any consequential increase for the future in the premium payable on foot of the relevant policy that will cover any such payments from the relevant policy would in the sole opinion (acting reasonably and upon professional advice) of the Management Company exceed the amount necessary to settle such claims.
- 10.2 Notwithstanding any provision to the contrary contained in this Deed, the Estate Service Charge shall include the cost of Estate Services in respect of any matter which is either wholly or partly covered by insurance effected by the Management Company in respect of the Estate **PROVIDED ALWAYS** that if and when the proceeds of any such insurance are received by the Management Company as the case may be the relevant proportion thereof shall be deducted from the Tenant's Proportion of the Estate Service Charge payable by the Tenant on the Instalment Day next following.

11. **Restrictions on Objections to Estate Service Charge**

The Tenant shall not be entitled to object to the Estate Service Charge or otherwise on any of the following grounds:-

- 11.1 the inclusion in subsequent Service Charge Periods of any item of expenditure or liability omitted from the Estate Service Charge in any preceding Service Charge Period though the item itself may be disputed;
- 11.2 any item of the Estate Service Charge included at a proper cost having regard to the then market costs which might have been provided or performed at a lower cost;
- 11.3 disagreement with an estimate of future expenditure for which the Management Company may require to make provision so long as the Management Company has acted reasonably and in good faith and in accordance with the principles of good estate management and there being no manifest error;
- 11.4 the manner in which the Management Company exercises its discretion in providing the Estate Services so long as they are provided in good faith, acting reasonably and in accordance with the principles of good estate management; or
- 11.5 the employment of managing agents at reasonable market rates to carry out and provide on the Management Company's behalf the Estate Services.

12. **Sinking Fund and Reserve**

In the event that a sinking fund is established pursuant to Clause 22 of Part I of this Schedule 5 the Management Company shall be entitled to include in the Estate Service Charge for any Service Charge Period an amount which the Management Company determines is appropriate in accordance with the principles of good estate management to build up and maintain such sinking fund for the upkeep and maintenance costs and all other potential capital outlay associated with the Estate Common Areas **PROVIDED THAT** should such sinking fund be provided or established by the Management Company then -

- (a) all funds paid or contributed to or towards such fund shall be kept entirely separate from the Management Company's own funds;
- (b) the Management Company shall open a separate deposit account with one of the Associated Banks in the Republic of Ireland and all payments or contributions paid to it for the purpose of such fund shall be lodged to the credit of such deposit account;
- (c) such deposit account shall be designated or entitled " 1-6 SJRQ ESTATE TRUST A/C" or the like;
- (d) all net interest accruing on the balance for the time being standing to the credit of such deposit account shall be added to and form part of the sinking or reserve fund;
- (e) the said account shall not be drawn upon by the Management Company save for the express purposes for which the sinking or reserve fund has been established;
- (f) as part of each annual service charge budget the Management Company shall where available provide full details of any planned sinking fund expenditure anticipated for the following year;
- (g) the Management Company shall confirm the balance of the funds in the said account upon request by the Tenant but not more than once in any 12 month period during the Term;
- (h) In the event of the transfer by the Management Company of its interest in the Estate the Management Company shall ensure that the balance (inclusive of net interest) standing to the credit of the account is transferred to or otherwise taken over by the transferee on the same terms and conditions as herein contained.

13. **In providing the Estate Services the Management Company:**

- 13.1 shall be entitled in accordance with the principles of good estate management to employ, at competitive market rates, agents, professionals managers and contractors (including independent contractors) or such other persons as the Management Company may from time to time think fit or at competitive market rates buy, hire, rent or acquire on hire purchase or by way of lease any equipment or machinery required in connection therewith;

- 13.2 shall not be liable for any loss or damage, inconvenience or injury to any person or property arising from any failure or delay in carrying out or providing any of the Estate Services whether express or implied where such failure or delay would not have occurred but for the Insured Risks, the occurrence of war, civil commotion, strike, lockout, labour dispute, shortage of labour and materials, inclement weather, mechanical breakdown, failure, malfunction, repair or replacement of plant, machinery and equipment or any other cause beyond the control of the Management Company **PROVIDED THAT** the Management Company has used all reasonable endeavours to cause the Estate Service in question to be reinstated with the minimum of delay following written notification to the Management Company of failure of a service.
- 13.3 shall be entitled to provide any new or additional services if any such services shall in the reasonable opinion of the Management Company be for the benefit of the Estate and its users from time to time any such additional services shall be deemed to be included in the list of the Estate Services set out in this Schedule 5 as soon as the same are first provided.
- 13.4 if the payments in advance, as received pursuant to clause 4 of this Part II of Schedule 5 prove insufficient to meet an immediate liability, the Management Company shall be entitled to borrow monies for the purpose at commercially competitive rates of interest, and the interest payable on the borrowing shall be recoverable as an item of the Estate Service Charge.
- 13.5 for the purpose of giving effect to the provisions of this Schedule 5 the Management Company shall have the right from time to time to make written rules and regulations and to make additions and amendments to them or revisions of them on prior consultation and agreement with the Tenant (insofar as they relate to the Building) for the orderly convenient and proper operation, management and maintenance of the Estate or any part of the Estate, all of which rules and regulations shall be binding on Tenant **PROVIDED HOWEVER** that where there is a conflict between any such rules and regulations and the provisions of this Lease, the provisions of this Lease shall prevail.
- 13.6 shall use its reasonable endeavours to ensure that the fees from time to time of any managing agent or other professionals engaged by the Management Company shall be reasonable and competitive.
- 13.7 shall ensure that the Estate Service Charge payable by the Tenant is not increased or altered by reason that at any relevant time any Lettable Areas may be vacant or be occupied by the Landlord or the Management Company or that any tenant or other occupier of another part of the Estate defaults in payment of its due proportion of the Estate Service Charge.

PROVIDED ALWAYS THAT in providing the Estate Services listed in this Schedule, the Management Company shall act reasonably, in good faith, in accordance with the principles of good estate management and in a financially prudent manner **AND** where appropriate, the Management Company shall have due regard to the reasonable representations of the Tenant in the operation of the Estate Services.

PROVIDED FURTHER THAT notwithstanding anything contained in this Schedule, the Tenant hereby acknowledges that the Management Company shall be entitled to cease or not to provide any of the services itemised in this Schedule if any maintenance and services shall in the opinion of the Management Company (acting reasonably) not be for the benefit or cease to be for the benefit of the tenants and occupiers of the Estate or if any of the said services have become or shall have become obsolete or redundant due to technological change or otherwise.

SCHEDULE 6

Part I

Building Services

Subject to the provisions of Part II of this Schedule 6, the maintenance and services to be provided by the Landlord are:

1. Maintaining, repairing, rebuilding, replacing, renewing, renovating, refurbishing, decorating, cleaning and keeping in good and substantial repair and condition (including, as necessary, the periodic inspecting, examining, burning off, preparing, redecorating, resurfacing, painting, washing down, decorating, burnishing, unblocking or other treating including replacement and modernisation of items where to do so is of beneficial impact on the design and functionality of the Main Structure.
2. Maintaining, repairing, rebuilding, replacing, renewing, renovating, refurbishing, cleansing, inspecting, testing and keeping in good and substantial repair and condition the Conduits and Utilities in the Building (save for those which are the direct responsibility of the tenants or licensees of the Landlord under the terms of their lease or licence agreements).
3. Quarterly cleaning of all windows and Brise Soleil in the Building (including the outside of the windows and the Brise Soleil of the Demised Premises) save for those which are the direct responsibility of the tenants or licensees of the Landlord under the terms of their lease or licence agreements.
4. Collecting, storing and disposing of refuse including providing, hiring, maintaining, repairing and replacing refuse compactors, waste processors or similar machinery, equipment or containers for the collection, storage and disposal of refuse in the Building (save for refuse collection that is the direct responsibility of the tenants or licensees of the Landlord under the terms of their lease or licence agreements).
5. Operating, maintaining, repairing and replacing any signs, loudspeakers, public address or music broadcast systems or closed circuit television or the like on the Main Structure.
6. Operating, maintaining, testing, repairing, renewing and replacing the boilers, plant, machinery, generators and other equipment that are part of the common system or apparatus of the Building together with all the cabling, pipe work, duct work and other installations appertaining thereto.
7. Operating, maintaining, repairing and replacing any fire alarms, dry rises and other firefighting equipment serving the Building.
8. Operating, maintaining, repairing and replacing all decorative and floor lighting and emergency lighting located on the Main Structure.
9. Operating, maintaining, repairing and replacing such security and emergency systems and employing such security or policing personnel as the Landlord may consider necessary in respect of the Building including, but not limited to, alarm systems and television systems, generators, emergency lighting, fire detection and prevention systems, any fire escapes for the Building and all fire-fighting and fire prevention equipment and appliances (other than those for which the Tenant or other lessee is responsible).

10. (i) Effecting or arranging:
 - (a) periodic valuations of the Building for insurance purposes (but not more than once in any calendar year);
 - (b) works reasonably required to the Building in order to satisfy the requirements and/or reasonable recommendations of the insurers of the Building;
 - (c) property owner's liability, third part liability and employer's liability in respect of the Retained Areas and such other insurances as the Landlord may, in its absolute discretion from time to time, determine;
 - (ii) The cost of any amount which may be deducted or disallowed by the insurers pursuant to any excess provision in any insurance policy upon settlement of any claim by the Landlord; and
 - (iii) any other costs properly incurred by the Landlord in arranging and maintaining any insurances under this Schedule.
11. Taking such steps as may be necessary for the control of pests and vermin and any other steps reasonably necessary to safeguard the health and safety of the Landlord, its staff (if any) and any persons using the Building including but not limited to reasonable and competitive consultancy fees and other costs associated with the provision and review of health and safety management systems.
 12. The payment of all charges, impositions and other outgoings whether or not of an entirely novel character (other than rent) including rates and water rates and other charges which may be levied by a competent authority and which may be payable by the Landlord in respect of the Main Structure and whether or not of a capital or non-recurring nature (but excluding any taxes or other charges imposed on the Landlord by virtue of the receipt of rents and/or in connection with any dealing with its interest in the Building).
 13. Complying with the provisions of all laws which impose obligations on the Landlord in relation to the provision of the Building Services including, but without limiting the generality of the foregoing, compliance with the provisions of the Planning Acts, Public Health Acts, the Building Control Act, Building Regulations, the Health Safety & Welfare at Work Act 1989 and any other Laws already or hereafter to be passed affecting the Building and the proper costs of opposing, making representations in respect of and/or complying with the provisions or requirements of any notice, order, regulation, instrument or bye law made under any Law.
 14. Payment of costs, expenses and fees involved or resulting from the obtaining of professional advice whether from lawyers, barristers, surveyors or other experts in respect of making representations and taking legal action to enforce the rules and regulations in relation to the Building, recovery of service charges and enforcement of covenants, taking necessary legal action or in respect of planning applications, notices or other orders that might be received affecting the Building or in respect of attempts to deny or obstruct any rights, easements, quasi easements or other privileges enjoyed or claimed to be enjoyed in respect of the Building.

15. Making such contribution as the Landlord may properly be required to pay towards the expense of repairing, maintaining, and renewing, replacing and cleansing any roads, ways, paths, passages, bridges, perimeter walls, pavements, Conduits and Utilities, walls, fences or other conveniences, structures or easements which may belong to or be used from the Building or any part of it exclusively or in common with other neighbouring properties or the Adjoining Property.
16. The provision and payment of such staff at reasonable and competitive rates as the Landlord shall deem necessary in accordance with the principles of good estate management (including such direct or indirect labour as the Landlord deems appropriate) for the day-to-day running of any installations, plant and machinery in the Building and the provision of the other Building Services to the Building and for the general management, operation and security of the Building and all other incidental expenditure, including, but not limited to:
 - (a) insurance, health, pension, welfare, severance and other payments, contributions and premiums (but only where such payments or contributions are required by law);
 - (b) the provision of uniforms, working clothes, tools, appliances, materials and equipment (including telephones) for the proper performance of the duties of any such staff;
 - (c) providing, maintaining, repairing, decorating, lighting and equipping with materials and utilities any accommodation and facilities in the Building for staff employed in the Building including any site management office, security hut or control room situate in the Building and all rates, gas, electricity charges and other outgoings in respect thereof.
17. The payment of all reasonable and proper professional fees for the performance of the Building Services, the management and performance of any other duties in and about the Building or any part of it by whomsoever carried out including but not limited to all reasonable and proper accountants, surveyors and consultants fees and value added tax payable thereon to the extent it is irrecoverable.
18. The making and publishing of any rules and regulations for or in connection with the proper use of the Building and the enforcement of such rules and regulations.
19. The payment of any VAT chargeable on any item of expenditure referred to in this Schedule 6, to the extent it is irrecoverable.
20. The payment of all bank charges, overdraft fees, interest charges on loans relating to the management of the Building and the provision of the Building Services.
21. The costs of enforcing the observance by any superior landlord of its covenants in any superior lease.
22. The cost of providing and maintaining floral displays and seasonal decorations for the Building Common Areas.
23. Such annual provision as the Landlord or Management Company may, acting reasonably, deem proper for the establishment and maintenance of a reserve or sinking funds for the repair, replacement or renewal of the Landlord's plant, machinery, equipment, apparatus, fixtures and fittings and things forming part of the Retained Areas or used in the operation and maintenance of the Retained Areas PROVIDED THAT should such sinking fund be provided or established by the Landlord then

- 23.1 in assessing the proportion of the Tenant's sinking fund contribution the Landlord shall have regard to the life cycle costings of the relevant assets as against the length of the Term; and
 - 23.2 all funds paid or contributed to or towards such fund shall be kept entirely separate from the Landlord's own funds but no prepaid amounts shall be refundable to the Tenant should the Tenant exercise its option at Clause 4.35;
 - 23.3 the Landlord shall open a separate deposit account with one of the Associated Banks in the Republic of Ireland and all payments or contributions paid to it for the purpose of such fund shall be lodged to the credit of such deposit account;
 - 23.4 such deposit account shall be designated or entitled "1-6 SJRQ BUILDING TRUST A/C" or the like;
 - 23.5 all net interest accruing on the balance for the time being standing to the credit of such deposit account shall be added to and form part of the sinking or reserve fund;
 - 23.6 the said account shall not be drawn upon by the Landlord save for the express purposes for which the sinking or reserve fund has been established;
 - 23.7 as part of each annual service charge budget the Landlord shall where available provide full details of any planned sinking fund expenditure anticipated for the following year;
 - 23.8 the Landlord shall confirm the balance of the funds in the said account upon request by the Tenant but not more than once in any 12 month period during the Term;
 - 23.9 In the event of the transfer by the Landlord of its interest in the Building the Landlord shall ensure that the balance (inclusive of net interest) standing to the credit of the account is transferred to or otherwise taken over by the transferee on the same terms and conditions as herein contained.
24. The provision and maintenance of such reasonable flood defences and taking of reasonable flood protection measures in respect of the Building that the Management Company considers necessary in accordance with the principles of good estate management.
 25. The payment of any reasonable vouched costs and expenses (not referred to above but which the Tenant has agreed to in writing) which the Landlord may incur in discharging its obligations in this Schedule 6.
 26. The cost of the provision of such other services and amenities as the Landlord (acting in accordance with the principles of good estate management) reasonably considers necessary in accordance with the principles of good estate management for the benefit or comfort and convenience of the Retained Areas or any part or parts thereof or its users including the enforcement of rights against third parties.

Part II

Provisos in respect of the Building Services

PROVIDED ALWAYS that the provision of the Building Services by the Landlord shall be subject to the following stipulations and conditions:

1. In performing its obligations hereunder the Landlord shall be entitled acting in accordance with the principles of good estate management to employ agents, professionals managers and contractors (including independent contractors) or such other persons as the Landlord may from time to time think fit at reasonable rates or to buy, hire, rent or acquire on hire purchase or by way of lease any equipment or machinery required in connection therewith at reasonable rates.
2. The Landlord shall not be liable for any loss or damage, inconvenience or injury to any person or property arising from any failure or delay in carrying out or providing any of the Building Services whether express or implied where such failure or delay would not have occurred but for the Insured Risks, the occurrence of war, civil commotion, strike, lockout, labour dispute, shortage of labour and materials, inclement weather, mechanical breakdown, failure, malfunction, repair or replacement of plant, machinery and equipment or any other cause beyond the control of the Landlord provided that the Landlord has used reasonable endeavours to cause the Building Service in question to be reinstated with the minimum of delay following written notification to the Landlord of failure of a service.
3. By prior written agreement with the Tenant, the Landlord shall be entitled to provide new or additional services if any such services shall in the reasonable opinion of the Landlord be for the benefit of the Building and its users from time to time any such additional services shall be deemed to be included in the list of the Building Services set out in this Schedule 6.
4. If the Advance Payments (as defined in Part III of this Schedule 6) of Service Charge prove insufficient to meet an immediate liability, the Landlord shall be entitled to borrow monies for the purpose at commercially competitive rates of interest, and the interest payable on the borrowing shall be recoverable as an item of the Service Charge.
5. In accordance with the principles of good estate management, the Landlord shall have the right from time to time to make written rules and regulations and to make written additions and amendments to them or revisions of them (subject to prior agreement with the Tenant in so far as they relate to the Building) for the orderly convenient and proper operation, management and maintenance of the Building and the Retained Areas or any part of them all of which rules and regulations shall be binding on Tenant PROVIDED HOWEVER that where there is a conflict between any such rules and regulations and the provisions of this Lease, the provisions of this Lease shall prevail.
6. The Landlord shall use its reasonable endeavours to ensure that the fees from time to time of any managing agent or other professionals engaged by the Landlord (if any) shall be reasonable and competitive.

7. The Landlord shall ensure that the Building Service Charge payable by the Tenant is not increased or altered by reason that at any relevant time any Lettable Areas may be vacant or be occupied by the Landlord or the Management Company or that any tenant or other occupier of another part of the Building defaults in payment of its due proportion of the Building Service Charge.

PROVIDED ALWAYS THAT in providing the Building Services listed in this Schedule, the Landlord shall act reasonably, in good faith, in accordance with the principles of good estate management and in a financially prudent manner AND where appropriate, the Landlord shall have due regard to the reasonable representations of the Tenant in the operation of the Building Services.

PROVIDED FURTHER THAT notwithstanding anything contained in this Schedule, the Tenant hereby acknowledges that the Landlord shall be entitled to cease or not to provide any of the services itemised in this Schedule if any maintenance and services shall in the opinion of the Landlord (acting reasonably and in accordance with the principles of good estate management) not be for the benefit or cease to be for the benefit of the tenants and occupiers of the Building or if any of the said services have become or shall have become obsolete or redundant due to technological change or otherwise.

Part III

Calculation and payment of Building Service Charge

1. The Tenant's Proportion of the Building Service Charge shall be discharged by means of equal quarterly payments in advance (the "**Advance Payments**") to be made on each of the Quarterly Gale Days and by such additional payments as may be required under paragraph 5 of Part III of this Schedule 6.
2. The amount of each Advance Payment shall be one quarter of such amount as the Landlord may reasonably determine to be equal to the amount of the Tenant's Proportion of the Building Service Charge for the relevant Building Service Charge Period and which is notified by the Landlord or its agents to the Tenant at least thirty (30) days before the time when the demand for an Advance Payment is made. If the relevant figure is not determined then the Advance Payment shall equate to that applicable for the previous Advance Payment and an appropriate adjustment shall be made to the Advanced Payment falling after determination of the relevant figure. Appropriate adjustments shall be made to the amount of each Advance Payment having regard to where the Term Commencement Date is in relation to the Building Service Charge Period.
3. The Building Service Charge is to be treated as accruing on a day-to-day basis in order to ascertain yearly rates and for the purposes of apportionment in relation to periods other than of one year.
4. The Landlord will as soon as may be practicable after the end of each Building Service Charge Period (but in any event within six (6) months) submit to the Tenant a statement duly certified by the Accountant giving a proper summary of the Building Service Charge for the Building Service Charge Period just ended. The statement shall state the total amount of the Building Service Charge for the Building Service Charge Period to which it relates and the proportion of the Tenant's liability hereunder and shall disclose the total expenditure in the Building Service Charge Period itemised under the various headings of expenses together with all income to be credited thereto. The statement shall also itemise all amounts contributed to, held in and expended from any sinking or reserve fund established by the Landlord.
5. If the Tenant's Proportion of the Building Service Charge as certified is more or less than the total of the Advance Payments (or the grossed-up equivalent of such payments if made for any period of less than the Building Service Charge Period), then any sum due to or payable by the Landlord by way of adjustment in respect of the Tenant's Proportion of the Building Service Charge is forthwith to be paid within thirty (30) days of written demand or allowed as the case may be. The provisions of this paragraph are to continue to apply notwithstanding the determination or earlier termination of this Lease in respect of any Building Service Charge Period then current save that where there is any allowance due to the Tenant following the determination of the Lease, this shall be paid to the Tenant promptly and in any event within thirty (30) days.

6. If so requested by the Tenant by not less than fourteen (14) days prior written notice, the Management Company shall make available for inspection by the Tenant or its duly authorised agent at a reasonably accessible location for a period of one (1) month following the delivery to the Tenant of the Certificate the books and other documents or records which are in the reasonable opinion of the Management Company relevant for the purpose of ascertaining or verifying the level of the Building Service Charge and the Tenant or its duly authorised agent shall be entitled to take copies (at the expense of the Tenant) of the relevant documents.
7. If the Landlord is required during any Building Service Charge Period to incur heavy or exceptional expenditure which forms part of the Building Service Charge, the Landlord is to be entitled to recover from the Tenant the Tenant's Proportion of the Building Service Charge representing the whole of that expenditure on the Quarterly Gale Day next following (provided thirty (30) days' prior notice is given to the Tenant).
8. The Tenant is not entitled to object to the Building Service Charge (or any item comprised in it) or otherwise on any of the following grounds:
 - (a) the inclusion in a subsequent Building Service Charge Period of any item of expenditure or liability omitted from the Building Service Charge for any preceding Building Service Charge Period, save for any periods prior to the Term Commencement Date;
 - (b) an item of Building Service Charge included at a proper cost which might have been provided or performed at a lower cost;
 - (c) disagreement with any estimate of future expenditure for which the Landlord requires to make provision so long as the Landlord has acted in good faith and in the absence of manifest error;
 - (d) the manner in which the Landlord exercises its discretion in providing the Building Services so long as the Landlord acts in good faith and in accordance with the principles of good estate management;
 - (e) the employment at reasonable and competitive market rates of managing agents or other suitably qualified persons to carry out and provide on the Landlord's behalf any of the Landlord's obligations under this Schedule 6; and
 - (f) the benefit of a service or works provided by the Landlord will be enjoyed wholly or substantially at a time after the expiry of this Lease if the service or works are provided by the Landlord in good faith, and are or will be generally of benefit to the users of the Building as a class from time to time.

9. There is to be excluded from the items comprised in the Building Service Charge:

- (a) any liability or expense for which the Tenant or other tenants, licensees or occupiers of the Building may individually be responsible under the terms of their tenancy, licence or other arrangement by which they use or occupy the Building;
- (b) Damage by any risk for which the Landlord is insured or has covenanted to insure under the terms of this Lease and has recovered the cost of making good any such damage under the relevant policy;
- (c) Any costs incurred by the Landlord in connection with unlet and/or unoccupied parts of the Building which are not Building Common Areas;
- (d) Any costs arising out of the negligence, wilful default, wilful misconduct or wilful omission of the Landlord its servants or agents;
- (e) All costs (including professional fees) of whatever description incurred by or on behalf of the Landlord in connection with the original acquisition, construction, equipping or fitting out of the Building or any part or parts thereof;
- (f) All costs (including without limitation solicitors', surveyors' and agents' fees) incurred by or on behalf of the Landlord in the collection of rents and/or in any proceedings against any other occupier of the Building in the collection of rents (or service charges) other than the Tenant or any permitted under-lessee of the Tenant;
- (g) The cost of adding to, altering, improving, rebuilding or reconstructing the Building to the extent any such works do not constitute Building Services;
- (h) Any fees or expenses attributable to the letting of vacant parts or any dispositions or dealing with the Landlord's reversionary interest in the office Block or any part thereof.
- (i) Any costs or expenses incurred or relating to periods prior to the Term Commencement Date.

10. On a permitted assignment of this Lease the Landlord:

- (a) shall not be required to make any apportionment of the Building Service Charge relative to such an assignment; and
- (b) shall be entitled to deal exclusively with the tenant in whom this Lease is for the time being vested (and, for this purpose, in disregard of a permitted assignment of this Lease which has not been delivered to the Landlord).

PROVIDED ALWAYS that notwithstanding anything contained in this Schedule, the Tenant hereby acknowledges that the Landlord shall be entitled to cease or not to provide any of the services itemised in this Schedule if any maintenance and services shall in the opinion of the Landlord (acting reasonably and in accordance with the principles of good estate management) not be for the benefit or cease to be for the benefit of the tenants and occupiers of the Building or if any of the said services have become or shall have become obsolete or redundant due to technological change or otherwise.

SCHEDULE 7

Part One – Basement Services

Subject to the provisions of Part Two of this Schedule 7, the services to be provided by the Management Company are:

1. **Repairs**

Cleansing, repairing, renewing, maintaining, overhauling, operating, painting and decorating and redecorating, resurfacing, and modernising and replacing the whole of the Basement Common Parts where necessary or to modernise and improve the Basement Common Parts for the benefit of the users thereof, including without prejudice to the generality of the foregoing the roof, foundations, structures, pillars, columns, walls, fascias, piers, windows and where necessary re-building and replacing the Basement Common Parts.

So far as may be necessary for the reasonable use and enjoyment by the Tenant of the Demised Premises to keep the Basement Common Parts in good repair and condition and to keep all the apparatus, equipment, plant and other items therein properly maintained, repaired and where necessary renewed and replaced.

Provided that the Management Company shall not be liable under this clause for any repairs which are the liability of an occupational tenant of a Block or part of a Block pursuant to any letting or results from failure by the occupational tenant of the Premises to comply with its obligations under any occupational lease.

2. **Keep Basement Common Parts Clean and Lit**

Cleaning and maintaining in a proper manner, the Basement Common Parts and to keep the same adequately lighted including the maintenance and provision of the emergency lighting where appropriate, at such times as the Management Company shall reasonably determine.

3. **Staff**

Employing (either directly or by contract) such staff as the Management Company or its nominee may (acting reasonably) deem necessary to enable it to provide all or any of the Basement Services in the Basement Common Parts and for the general management, maintenance and cleaning and security of the Basement Common Parts, on such terms and conditions as the Management Company considers are appropriate.

The Management Company may from time to time provide such agent or agents and/or management personnel for the management of the Estate as it considers necessary on reasonable terms.

4. **Plant and Machinery**

Maintaining and repairing operating, inspecting, servicing, overhauling, cleaning, lighting, (as and when necessary) and renewing and replacing the machinery, within the Basement Common Parts from time to time, including but not limited to, boilers and items relating to the ventilation, heating, air conditioning and hot and cold water systems, travelators and escalators, the lift and lift shafts and lift motor rooms, building management systems, compactors, building management systems, compactors, floor flow machines, music systems, automatic doors and all fuels and electricity and any necessary maintenance contract and insurance in respect thereof.

5. **Security and Emergency Systems**

Maintaining, repairing, operating and inspecting, servicing and overhauling, cleaning and (as and when necessary) repairing, renewing, modifying or replacing any security and emergency systems for the Basement Common Parts including, but not limited to, alarm systems, internal and Estate telephone and close circuit television systems, generators, emergency lighting, fire detection and prevention systems, any fire escapes for the Basement Common Parts and all firefighting and fire prevention equipment and appliances (other than those for which a tenant is responsible) and any traffic barriers and traffic control and security systems.

6. **Signs**

Maintaining, updating and renewing name boards and signs in the Basement Common Parts and all directional signs and fire regulation notices and any flags, flag poles and television and radio aerials and any advertising boards or screens electronic or otherwise.

7. **Miscellaneous Items**

- (a) Leasing or hiring any of the items referred to in this Schedule or the cost of leasing and financing any item required for the purpose of providing any of the Basement Services.
- (b) Complying in respect of the Basement Common Parts with any notice, regulation or order of any competent authority and any requirement or order of any present or future Act of the Oireachtas, order, byelaw or regulation except where the same is the responsibility of any owner of a Block or any occupational tenant of any part of the Estate.
- (c) The making and publishing of any regulations for or in connection with the proper use of the Basement Common Parts and the enforcement thereof.

8. **Outgoings**

Paying all existing and future rates, taxes, duties, charges, assessments, impositions and outgoings whatsoever (whether parliamentary, parochial, local or of any other description and whether or not of a capital or non-recurring nature or of a wholly novel character) payable by the Management Company in respect of the Basement Common Parts or any part thereof including but not limited to any security hut or site management office or other structure used exclusively for the management or required for the general benefit of the Basement Common Parts so far as same are not separately assessed by any competent statutory authority and all water rates attributable to the Basement Common Parts insofar as same shall not be separately assessed by any competent statutory authority.

9. **Representations**

Taking any steps deemed desirable or expedient by the Management Company acting reasonably for complying with, any statute concerning any matters relating or alleged to relate to the Basement Common Parts or any part of it for which any owner of a Block or any occupational tenant is not directly responsible.

10. **Management**

- (a) The proper and reasonable fees, costs, charges, expenses and disbursements (including any value added tax payable thereon to the extent it is irrecoverable) of the Management Company, the Management Company's surveyor or the accountant and any other person employed or retained by the Management Company for or in connection with surveying and accounting functions, the performance of the Basement Services and any other duties in and about the Basement Common Parts or any part thereof relating to the general management, administration, security, maintenance, protection and cleanliness of the Basement Common Parts and all costs, expenses and fees involved or resulting from the obtaining of professional advice whether from lawyers, barristers, surveyors, architects, accountants, consultants or other experts in respect of the running of the Basement Common Parts.
- (b) The proper and reasonable fees and expenses (including any value added tax payable thereon to the extent it is irrecoverable) of the Management Company or its nominee in connection with the management of the Basement Common Parts and any of the functions and duties referred to in paragraph (a) that may be undertaken by or on behalf of the Management Company, such fees and expenses to include overheads commensurate with current market practice of property companies providing management services including the cost of managing and arranging all of the Services.
- (c) The Management Company may from time to time provide for payment of costs, expenses and fees involved or resulting from the obtaining of professional advice whether from lawyers, barristers, surveyors or other experts in respect of making representations and taking legal action to enforce the rules and regulations and covenants in relation to the Basement, taking necessary legal action or in respect of planning applications, notices or other orders that might be received affecting the Basement or in respect of attempts to deny or obstruct any rights, easements, quasi easements or other privileges enjoyed or claimed to be enjoyed in respect of the Basement.
- (d) The Management Company may provide for the reasonable and proper costs of maintaining, repairing and paying all outgoings for operating and equipping any site management office, control room or security hut or such other storage and other parts and buildings used exclusively for the management or required for the general benefit of the Basement including the provision and replacement of all materials, equipment (including telephones and internet), tools, plant and machinery as the Management Company may consider appropriate.

11. **Reserve Fund**

The Landlord or Management Company may at its sole option provide for a continuing sinking fund to be applied in and towards matters of a capital nature (subject to the provisions of Part II of this Schedule).

12. **Value Added Tax**

Value Added Tax at the rate for the time being in force chargeable in respect of any items of expenditure referred to in this part of this Schedule to the extent not otherwise recoverable by the Management Company or its nominee.

13. **Valuations**

The cost of periodic valuations and surveys of the Basement Common Parts for insurance purposes not more than once in every calendar year.

14. **Insurance**

Save and in respect of matters covered by the insurance policies maintained by the owner(s) for the Blocks, the cost of insurance for and against public, employers and other liability of the Management Company arising out of or in relation to the Basement Common Parts and the cost of insuring the Basement Common Parts against the Insured Risks and such other insurances as the Management Company acting reasonably, from time to time, deem necessary to effect including but without prejudice to the generality of the foregoing engineering insurances in respect of break-down and/or replacement of plant and the cost of insurance of building structures and equipment in the Basement Common Parts and insurance of any other risks which the Management Company deems prudent to insure against.

15. **Insurance Excess**

Any amount which may be deducted or disallowed by the Management Company's insurers pursuant to any excess provisions in the insurance policies upon settlement of any claim by the Management Company.

16. **Health and Safety**

Taking such steps as may be necessary for the control of pests and vermin and any other steps reasonably necessary to safeguard the health and safety of any persons using the Basement including but not limited to consultancy fees and other costs associated with the provision and review of health and safety management systems.

17. **Refuse**

Collecting, storing and disposing of refuse including providing, hiring, maintaining, repairing and replacing refuse compactors, waste processors or similar machinery, equipment or containers for the collection, storage and disposal of refuse in the Basement.

18. **Flood Protection Measures**

The Management Company shall from time to time provide and maintain such reasonable flood defences and take such reasonable flood protection measures in respect of the Building and the Basement that the Management Company considers desirable, appropriate and/or necessary.

19. **Excluded Costs**

Strictly provided that the Basement Service Charge shall not include any of the following:

- (a) Any capital costs relating to the construction or the initial equipping and fitting or the infrastructure serving the Estate and/or the Basement or any part or parts thereof or any extension thereof and any capital cost relating to the construction and provision of any office used for the management of the Estate;
- (b) Any cost relating to the collection and/or review of rents and letting of any other parts of the Estate and any costs or expenses relating to the enforcement of covenants against other owners of Blocks, Residential Units or Retail Units tenants of the Estate;
- (c) Any costs arising out of the wilful default, wilful misconduct or wilful omission of the Management Company its servants or agents;
- (d) Any costs relating to the major refurbishment of Blocks and/or Residential Units in the Estate or any part thereof;
- (e) Any costs relating to the initial landscaping of any part of the Estate;
- (f) Any costs and expenses relating to the making good of any damage covered by any of the Insured Risks (save for any excess under the relevant insurance policy) to the extent of monies actually received on foot of the relevant policy excluding any excess;
- (g) The costs of valuation for insurance purposes of any part of the Estate more often than once in every year; or
- (h) Any costs incurred in connection with the areas within the Estate designated and built for letting but for the time being vacant;
- (i) Any costs relating to items of plant, machinery and equipment (which for the avoidance of doubt includes lifts and air conditioning systems) which are not for the general benefit of the owners and occupiers of Blocks, Residential Units within the Estate and are for the exclusive use of certain tenants and/or owners of Blocks, Residential Units or Retail Units within the Estate;
- (j) Any costs and expenses relating to the making good of any damage covered by any of the Insured Risks (save or any excess under the relevant insurance policy) to the extent of monies actually received on foot of the policy excluding any excess.

Part Two – The Tenant’s Liability to Contribute to the Basement Service Charge

1. Payment Dates

The Tenant’s Proportion of the Basement Service Charge for each Service Charge Period shall be discharged by means of equal quarterly payments in advance to be made on each of the Instalment Days in each year or on such date on which a demand therefor is made (whichever shall be the later date) and by such additional payments as may be required under Clauses 3 and 7 of this Part Two of the Sixth Schedule.

2. Service Charge Period

For the purposes of this Part Two of the Sixth Schedule, “Service Charge Period” means the period of twelve months from 1 January to 31 December in each year (or such other period as the Management Company may from time to time determine).

3. Advance Payments

Subject to Clause 4 below and subject also as hereinafter set out, the amount of each advance payment of the Basement Service Charge shall be one quarter of the Tenant’s Proportion of the Basement Service Charge of such amount as the Management Company may reasonably estimate to be the Basement Service Charge for the relevant Service Charge Period and which is notified to the Block Owner at least thirty (30) days before the time when the demand for an advance payment is made.

4. Daily Rate of Calculation

The Basement Service Charge shall be deemed to accrue on a day-to-day basis in order to ascertain yearly rates and for the purposes of apportionment in relation to periods other than a Service Charge Period. In the event that this Deed shall commence on a day which is not one of the Instalment Days then the Basement Service Charge shall be the apportioned amount of the Tenant’s Proportion of the Basement Service Charge due up to the next Instalment Day and thereafter the provisions of Clause 4 above shall apply.

5. Financial Statement

The Management Company as soon as practicable (but in any event within six (6) months) after the end of each Service Charge Period shall submit to the Tenant the Management Company’s financial statements relevant to the Basement Service Charge duly audited and certified by the Accountant. Such financial statements shall be prepared on an accruals basis and shall inter alia disclose:-

- 5.1 The total expenditure for the Service Charge Period ended itemised under the various headings of expense;
- 5.2 The Tenant’s Proportion of the Basement Service Charge due from the Tenant and details of the calculation thereof; and
- 5.3 Details of the balancing payment or credit as the case may be.

6. Balancing Adjustment

If the Tenant's Proportion (expressed as a cash amount) of the Basement Service Charge as certified by the Accountant (the "Certificate") shall be more or less than the total of the advance payments referred to in Clause 3 above then any sum due to or allowable by the Management Company in respect of the Tenant's Proportion of the Basement Service Charge for the relevant Service Charge Period shall forthwith (within fourteen (14) days of written demand) be paid or allowed as the case may be. The Certificate (or a copy thereof duly certified by the person by whom same is given) shall be conclusive evidence for the purposes hereof of the matters which it purports to certify and shall be final and binding on the parties hereto insofar as same relates to matters of fact save in the case of manifest error.

7. Inspection by the Tenant

If so requested by the Tenant by not less than fourteen (14) days prior written notice, the Management Company shall make available for inspection by the Tenant or its duly authorised agent at a reasonably accessible location for a period of one (1) month following the delivery to the Tenant of the Certificate the books and other documents or records which are in the reasonable opinion of the Management Company relevant for the purpose of ascertaining or verifying the level of the Basement Service Charge and the Tenant or its duly authorised agent shall be entitled to take copies (at the expense of the Tenant) of the relevant documents.

8. Exceptional Costs

In the event that the Management Company shall at any time during any Service Charge Period incur heavy exceptional expenditure which forms part of the Basement Service Charge the Management Company shall be entitled to recover from the Tenant the Tenant's Proportion of the Basement Service Charge representing the whole of that expenditure on the Instalment Day next following (provided that at least thirty (30) days' notice is provided to the Tenant).

9. Claims by Third Parties in Respect of Loss or Damage in or about the Basement

The Management Company shall be entitled to include in the Basement Service Charge any payments properly made to third parties in settlement of any claims by such third parties in respect of any loss or damage sustained by the same in or about the Basement other than where caused by the negligence of the Management Company or its agents, to the extent that such claims are not recovered under any policy of insurance effected by the Management Company on either of the following grounds:-

- 9.1 by reason of the fact that the amount claimed by any third party falls within the excess amount stipulated on the relevant insurance policy; or
- 9.2 by reason of the fact that the cost in terms of any consequential increase for the future in the premium payable on foot of the relevant policy would in the sole opinion of the Management Company exceed the amount necessary to settle such claims.

10. **Restrictions on Objections to Basement Service Charge**

The Tenant shall not be entitled to object to the Basement Service Charge or otherwise on any of the following grounds:-

- 10.1 the inclusion in subsequent Service Charge Periods of any item of expenditure or liability omitted from the Basement Service Charge in any preceding Service Charge Period;
- 10.2 any item of the Basement Service Charge included at a proper cost which might have been provided or performed at a lower cost;
- 10.3 disagreement with an estimate of future expenditure for which the Management Company may require to make provision so long as the Management Company has acted reasonably and in good faith and there being no manifest error;
- 10.4 the manner in which the Management Company exercises its discretion in providing the Basement Services so long as they are provided in good faith and in accordance with the principles of good estate management; or
- 10.5 the employment of managing agents to carry out and provide on the Management Company's behalf the Basement Services.

11. **Sinking Fund And Reserve**

In the event that a sinking fund is established pursuant to Clause 12 of Part One of Schedule 7 the Management Company (or Landlord) shall be entitled to make annual provision in the Basement Service Charge for any Service Charge Period for an amount which the Management Company or Landlord reasonably determine for the repair, replacement or renewal of the Landlord's plant, machinery, equipment, apparatus, fixtures and fittings and things forming part of the Basement or used in the operation and maintenance of the Basement (and not otherwise discharged through any other sinking fund contribution) PROVIDED THAT should such sinking fund be provided or established then

- 11.1 in assessing the proportion of the Tenant's sinking fund contribution hereunder the Landlord shall have regard to the life cycle costings of the relevant assets as against the length of the Term; and
- 11.2 all funds paid or contributed to or towards such fund shall be kept entirely separate from the Landlord's own funds but no prepaid amounts shall be refundable to the Tenant should the Tenant exercise its option at Clause 4.35;
- 11.3 the Management Company shall open a separate deposit account with one of the Associated Banks in the Republic of Ireland and all payments or contributions paid to it for the purpose of such fund shall be lodged to the credit of such deposit account;
- 11.4 such deposit account shall be designated or entitled "1-6 SJRQ BASEMENT TRUST A/C" or the like;

- 11.5 all net interest accruing on the balance for the time being standing to the credit of such deposit account shall be added to and form part of the sinking or reserve fund;
- 11.6 the said account shall not be drawn upon by the Management Company save for the express purposes for which the sinking or reserve fund has been established;
- 11.7 as part of each annual service charge budget the Management Company shall where available provide full details of any planned sinking fund expenditure anticipated for the following year;
- 11.8 the Management Company shall confirm the balance of the funds in the said account upon request by the Tenant but not more than once in any 12 month period during the Term;

In the event of the transfer by the Management Company of its interest in the Basement the Management Company shall ensure that the balance (inclusive of net interest) standing to the credit of the account is transferred to or otherwise taken over by the transferee on the same terms and conditions as herein contained.

12. **Service Charge Contribution**

The Basement Service Charge shall include a reasonable and appropriate contribution towards the costs of maintaining and repairing any structural parts (including structural columns and the foundations of such columns) which support the podium of the Estate (the roof of the Basement) and are not otherwise demised as part of any Block, Residential Unit or Retail Units as are located in the Basement.

13. **In providing the Basement Services the Management Company:**

- 13.1 shall be entitled in its absolute discretion to employ agents, professionals managers and contractors (including independent contractors) or such other persons as the Management Company may from time to time think fit or to buy, hire, rent or acquire on hire purchase or by way of lease any equipment or machinery required in connection therewith;
- 13.2 shall not be liable for any loss or damage, inconvenience or injury to any person or property arising from any failure or delay in carrying out or providing any of the Basement Services whether express or implied where such failure or delay would not have occurred but for the Insured Risks, the occurrence of war, civil commotion, strike, lockout, labour dispute, shortage of labour and materials, inclement weather, mechanical breakdown, failure, malfunction, repair or replacement of plant, machinery and equipment or any other cause beyond the control of the Management Company provided that the Management Company has used all reasonable endeavours to cause the Basement Service in question to be reinstated with the minimum of delay following written notification to the Management Company of failure of a service.
- 13.3 shall be entitled to provide any new or additional services if any such services shall in the reasonable opinion of the Management Company be for the benefit of the Estate and its users from time to time any such additional services shall be deemed to be included in the list of the Basement Services set out in this Schedule 7 as soon as the same are first provided.

- 13.4 if the payments in advance, as received pursuant to clause 4 of this Part II of Schedule 7 prove insufficient to meet an immediate liability, the Management Company shall be entitled to borrow monies for the purpose at commercially competitive rates of interest, and the interest payable on the borrowing shall be recoverable as an item of the Basement Service Charge.
- 13.5 for the purpose of giving effect to the provisions of this Schedule 7 the Management Company shall have the right from time to time to make rules and regulations and to make additions and amendments to them or revisions of them for the orderly convenient and proper operation, management and maintenance of the Basement or any part of the Basement, all of which rules and regulations shall be binding on Tenant PROVIDED HOWEVER that where there is a conflict between any such rules and regulations and the provisions of this Lease, the provisions of this Lease shall prevail.
- 13.6 shall use its reasonable endeavours to ensure that the fees from time to time of any managing agent or other professionals engaged by the Management Company shall be reasonable and competitive.
- 13.7 shall ensure that the Basement Service Charge payable by the Tenant is not increased or altered by reason that at any relevant time any Lettable Areas may be vacant or be occupied by the Landlord or the Management Company or that any tenant or other occupier of another part of the Estate defaults in payment of its due proportion of the Basement Service Charge.

PROVIDED ALWAYS THAT in providing the Basement Services listed in this Schedule, the Management Company shall act reasonably, in good faith, in accordance with the principles of good estate management and in a financially prudent manner AND where appropriate, the Management Company shall have due regard to the reasonable representations of the Tenant in the operation of the Basement Services.

PROVIDED ALWAYS THAT notwithstanding anything contained in this Schedule, the Tenant hereby acknowledges that the Management Company shall be entitled to cease or not to provide any of the services itemised in this Schedule if any maintenance and services shall in the opinion of the Management Company (acting reasonably) not be for the benefit or cease to be for the benefit of the tenants and occupiers or of the Basement or if any of the said services have become or shall have become obsolete or redundant due to technological change or otherwise.

SCHEDULE 8

Guarantor covenants

The Guarantor hereby covenants with the Landlord, as a primary obligation, as follows:

1. **Covenant and indemnity**

That the Tenant or the Guarantor shall at all times during the Term (including any continuation or renewal of this Lease and whether before or after the expiration or termination of the Term) duly perform and observe all the covenants on the part of the Tenant contained in this Lease, including for the avoidance of doubt the payment of the rents and all other sums payable under this Lease (or any continuation or renewal of it) in the manner and at the times herein specified and all sums which may be due to the Landlord for mesne rates or as payment for the use and occupation of the Demised Premises, and the Guarantor hereby indemnifies the Landlord against all claims, demands, losses, damages, liability, costs, fees and expenses whatsoever sustained by the Landlord by reason of or arising out of any default by the Tenant in the performance and observance of any of its obligations or the payment of any rent and other sums arising before or after the expiration or termination of this Lease or any continuation or renewal of it.

2. **Joint and several liability**

That the Guarantor is jointly and severally liable with the Tenant (whether before or after any disclaimer by a liquidator, official assignee, trustee in bankruptcy or other persons administering the assets of the Tenant or whether before or after any repudiation by an examiner or other persons administering the assets of the Tenant) for the fulfilment of all the obligations of the Tenant under this Lease and agrees that the Landlord, in the enforcement of its rights hereunder, may proceed against the Guarantor as if the Guarantor was named as the Tenant in this Lease.

3. **Waiver**

That the Guarantor hereby waives any right to require the Landlord to proceed against the Tenant or to pursue any other remedy whatsoever which may be available to the Landlord before proceeding against the Guarantor and the Guarantor further acknowledges that these provisions are in addition to and not in substitution for any other rights which the Landlord may have and which may be enforced against the Guarantor whether or not recourse has been had to any such rights and whether or not any steps or proceedings have been taken against the Tenants.

4. **Postponement of claims**

That the Guarantor will not claim in any liquidation, examinership, bankruptcy, composition or arrangement of the Tenant in competition with the Landlord and will remit to the Landlord so much of the proceeds of any judgments and any distributions it may receive from any liquidator, examiner, official assignee, trustee in bankruptcy or other persons administering the assets of the Tenant as is due and owing to the Landlord and will hold for the benefit of the Landlord all security and rights the Guarantor may have over assets of the Tenant whilst any liabilities of the Tenant or the Guarantor to the Landlord remain outstanding.

5. **Postponement of participation**

That the Guarantor shall not be entitled to participate in any security held by the Landlord in respect of the Tenant's obligations to the Landlord under this Lease or to stand in the place of the Landlord in respect of any such security until all the obligations of the Tenant or the Guarantor to the Landlord under this Lease have been performed or discharged.

6. **Release**

That none of the following, or any combination thereof, releases, determines, discharges or in any way lessens or affects the liability of the Guarantor as principal debtor under this Lease or otherwise prejudices or affects the right of the Landlord to recover from the Guarantor to the full extent of this guarantee:

- (a) any neglect, delay or forbearance of the Landlord in endeavouring to obtain payment of any part of the rents or the other amounts required to be paid by the Tenant or in enforcing the performance or observance of any of the obligations of the Tenant under this Lease;
- (b) any refusal by the Landlord to accept any money tendered as rent by or on behalf of the Tenant at a time when the Landlord was entitled (or would after the service of a notice under Section 14 of the 1881 Act have been entitled) to re-enter the Demised Premises;
- (c) any extension of time given by the Landlord to the Tenant;
- (d) any licence, consent or approval granted by the Landlord;
- (e) any variation of the terms of this Lease (including any reviews of the rent payable under this Lease) or the transfer of the Landlord's reversion or, save as set out in clause 11 of this Schedule, the assignment of this Lease;
- (f) any change in the constitution, structure or powers of either the Tenant, the Guarantor or the Landlord or the liquidation, administration or bankruptcy (as the case may be) of either the Tenant or the Guarantor;
- (g) any legal limitation, or any immunity, disability or incapacity of the Tenant (whether or not known to the Landlord) or the fact that any dealings with the Landlord by the Tenant may be outside or in excess of the powers of the Tenant; or
- (h) any other act, omission, matter or thing whatsoever whereby, but for this provision, the Guarantor would be exonerated either wholly or in part (other than a release under seal given by the Landlord or the termination of this Guarantee pursuant to clause 11 of this Schedule 8).

7. **Disclaimer or forfeiture**

- (a) Without prejudice to the other provisions of this Schedule, if:
- (i) a liquidator, official assignee or trustee in bankruptcy or other person administering the assets of the Tenant shall disclaim or surrender this Lease; or
 - (ii) an examiner repudiates this Lease; or
 - (iii) this Lease shall be forfeited; or
 - (iv) the Tenant shall cease to exist

THEN the Guarantor shall, if the Landlord by notice in writing given to the Guarantor within twelve months after such disclaimer or other event so requires, accept from and execute and deliver to the Landlord a new lease of the Demised Premises subject to and with the benefit of this Lease (if the same shall still be deemed to be extant at such time) for a term commencing on the date of the disclaimer or other event and continuing for the residue then remaining unexpired of the Term, such new lease to be at the cost of the Guarantor (which, for the avoidance of doubt, shall include the Landlord's costs properly incurred in granting such new lease) and to be at the same rents and other sums payable in this Lease and subject to the same covenants, conditions and provisions as are contained in this Lease in so far as they are still applicable at the time and subject to the rights of any third party existing at the date of the grant;

or if the Landlord does not require the Guarantor to take a new lease, the Guarantor shall nevertheless upon demand pay to the Landlord the costs properly incurred by the Landlord in granting a lease of the Demised Premises or any part of it to a third party (or any attempted granting of such a lease which may for whatsoever reason prove unsuccessful) and a sum equal to the rents and other sums that would have been payable under this Lease (or any continuation or renewal of it) but for the disclaimer, repudiation, forfeiture or other event, such sums to be paid on the same dates and in the same manner as they would have been payable by the Tenant in respect of the period from and including the date of such disclaimer, repudiation, forfeiture or other event until the expiration of 6 months therefrom or until the Landlord has granted a lease of the Demised Premises to a third party (whichever shall first occur).

8. **Benefit of guarantee**

That this guarantee shall ensure for the benefit of the successors and assigns of the Landlord under the Lease without the necessity for any assignment thereof.

9. **Jurisdiction**

That the Guarantor will submit to the jurisdiction of the Irish courts in relation to any proceedings taken against the Guarantor or in relation to any new lease granted as aforesaid.

10. **Registration of company**

Where the Guarantor or the Tenant are bodies corporate that the Guarantor will comply with all statutory requirements necessary to ensure that the Tenant and/or the Guarantor remains on the register of companies.

11. **Replacement of Guarantor**

In the event that the Guarantor as named in this Lease enters into liquidation, whether compulsory or voluntary, or passes a resolution for winding-up while solvent, except where the liquidation or winding-up resolution is for the purposes of reconstruction or amalgamation while the Tenant or the Guarantor (as the case may be) remains solvent, the Tenant will ensure that the Guarantor as named in this Lease is replaced with another entity acceptable to the Landlord (acting reasonably).

12. **Termination of Guarantee**

This Guarantee shall automatically cease and determine and be of no further force or effect upon the assignment of this Lease by the Tenant to a third party with the Landlord's written consent, or on assignment following determination by a court of appropriate jurisdiction that the Landlord has unreasonably withheld consent.

SCHEDULE 9

Landlord's Specification for delivery of Demised Premises

INTRODUCTION

1-6 SJRQ is a new office building over 6 stories with a single level basement. The office reception is positioned at the main building entrance facing Sir John Rogerson's Quay within a full height glazed atrium. The reception is designed to service a single occupant or multiple tenants and provides direct access to the vertical circulation in the central core. A second entry point is provided through No. 6 Sir John Rogerson's Quay and a service set-down point and entry point from Creighton Street.

The typical office floors are arranged around a central core for vertical circulation and ancillary services. Structural columns are arranged at the perimeter of the floor plates to maximize open space and to provide flexible and substantially column free floor plates.

The refurbishment of the existing protected structures at number 4 and 5 Sir John Rogerson's Quay connect with the new building at all levels to also provide office accommodation.

The new building consists of:

Ground Floor:

- Office reception, office accommodation and associated toilet facilities, electrical substation

Basement:

- Office car parking: 31 spaces including 2 disabled (accessed from the ramp through the adjacent Observatory Building)
- Bicycle parking: 300 spaces (accessed from the ramp through the adjacent Observatory Building)
- Bicycle repair area
- Shower & Changing facilities: 20 showers + 200 lockers
- Drying room
- Refuse store
- Plant rooms
- Tenant store

Roof Level:

- Plant Enclosure for landlord and tenant plant

1st-5th Floors:

- Office accommodation and associated toilet facilities

Building Dimensions:

Structural grid:	Generally 7.5x12m or 7.5m x 15m.
Planning grid:	The building is designed to accommodate a 1.5metre – 3m planning grid, following through from window location to ceiling and lighting layouts.
Floor to Floor:	4.0m for Office Floors. Retail Units at Ground Floor vary between 6.0m and 6.35m. At Basement level this varies between the car park at 3.7m to the ancillary accommodation, bike store, showers and changing areas at c. 3.3m and the Tenant Amenity Space at 5.150m
Structural System:	A structural steel frame and 150mm composite floor slabs designed and constructed to carry a floor loading of 5kn/sq. metre (4 +1). Perimeter columns are generally on a 7.5m, 12m or 15m module. The office floor plates are clear spanning from the core to the façade.
Floor Zone:	150mm (including raised access floor tiles).
Ceiling Zone:	900mm in depth (including cellular beam and ceiling finishes).
Clear floor to Ceiling Height:	Office floors, the floor to ceiling height will be 2800mm. Ground Floor office area on WML, the floor to ceiling height will be 5100mm. Ground floor Own Door Office, the floor to ceiling height will be 4250mm. Ground floor reception, the floor to soffit of the reception atrium will be 20.0m
Floor Loadings:	Office Floors 4kn/sq. metre per person plus 1 kn/sqm partitions (4 +1).

Design Standards/References:

The building is required to comply inter-alia with the following Acts and Regulations.

- BCO Guide – Best Practice in Specification for offices.
- LEED Assessment Criteria.
- The Planning and Development Act 2000 (as amended) and the Regulations made thereunder.
- The Building Control Acts 1990, the Regulations made there under and the building control amendment regulations 2013.
- The Health Safety and Welfare at Work Act 2005 and the Regulations made thereunder.
- The Office Premises Act.

Design Criteria:

The building is designed to the following criteria:

Occupancy rate for Sanitary Provision: WC design density - 1 Person / 8m², 60:60 Male:Female (based on total building provision). Disabled WC provision in accordance with TGD M2010.

Car Parking Provision: 31no. spaces including 2no. spaces for disabled drivers.

Sub-Division:

The building and the arrangement of services is designed for a single tenant occupancy or a multi-tenancy arrangement. From 1st to Fifth Floor the floor plates can be sub-divided into two self-contained tenancies.

**LANDLORD SPECIFICATION
RECEPTION AND LIFT LOBBIES**
Reception/ Atrium:

Floors: Large format natural stone floor with a honed finish
 Atrium Walls/Ceilings: Plasterboard ceiling system with a polished finish with illuminated recess detailing
 Reception desk: A bespoke unit of high-quality to the main reception.

Lift Lobbies:

Walls: Large format natural stone wall cladding; vertical wall panels
 Floors: Large format natural stone floor and skirting.
 Ceiling: Plasterboard ceiling with illuminated recess detail.
 Doors: Frameless glass sliding doors to the office accommodation.

Passenger Lifts:

Size: 4 No. 15 person
 Waiting time: Passenger lift peak average interval is less than 25 seconds
 Two separate lifts performs as fire fighting lifts
 A separate goods lift of 1250kg capacity is located in the core.

Toilets:

Walls: Large formal natural stone wall cladding; Moisture resistant plasterboard lining with eggshell paint finish.
 Floors: Large format natural stone floor and skirting.
 Ceilings: Dry lining with emulsion paint with ceiling mounted light fittings.
 Doors: Solid core hardwood flush doors; veneered finish and integrated vertical wall panel system finish
 WC cubicles: Flush full height solid toilet cubicles with glazed door and rear panel finish.

Vanity units: Corian formed wash hand basin and vanity unit incorporating soap dispenser and motion-controlled mixer-tap. Bespoke mirror over, incorporating under mirror illumination and concealed paper towel dispenser beneath.

Sanitary ware: Wall hung WC pans and urinals with concealed cisterns.

LANDLORD SPECIFICATION OFFICE AREAS

Walls: Dry-lining with emulsion paint finish.
Floors: 600mm x 600mm access flooring medium duty
Columns: Paint Finish
Ceiling: Metal suspended ceiling system to suit 1.5m square planning module. Perforated 600mm x 600mm ceiling tiles with linear plasterboard margins. System to incorporate light fittings, diffusers, smoke detectors, illuminated signage.

STAIRS

Main Stairs

Walls: Dry-lining with emulsion paint finish.
Floors: Natural stone floor finish from lower ground to first floor level with high quality carpet above
Ceiling: Painted plasterboard system to incorporate light fittings illuminated signage.
Handrails: Stainless steel balustrade with glass guarding and stainless steel handrail

Secondary Stairs

Walls: Emulsion-painted dry lining.
Floors: High quality carpet
Ceiling: Painted plasterboard system to incorporate light fittings illuminated signage.
Handrails: Stainless steel balustrade with glass guarding and stainless steel handrail

Showers, Changing & Locker Rooms

Space is provided at basement level for shower and changing facilities, lockers and a tenant amenity space.

Walls: Large format natural stone wall cladding; Moisture resistant plasterboard lining with eggshell paint finish/ porcelain Wall Tiles.
Floors: Large format porcelain tiled floor and skirting.
Ceilings: Painted plasterboard
Doors: Solid core hardwood flush doors; Timber veneered finish

WC cubicles:	Flush full height solid toilet cubicles with glazed door and rear panel finish.
Vanity units:	Corian formed wash hand basin and vanity unit incorporating soap dispenser and motion-controlled mixer-tap. Bespoke mirror over, incorporating under mirror.
Sanitary ware:	Wall hung WC pans and urinals with concealed cisterns.

Car Park Area

Walls:	Concrete block and insitu concrete internal walls; plasterboard lining with emulsion paint finish.
Floors:	Insitu concrete floor with Paint Finish. Including line marking for Parking Bays and Floor Signage.
Columns:	Paint Finish
Ceilings:	Soffit insulation to car park soffit and steelwork.
Doors:	Flush paint finish fire rated doors with stainless steel ironmongery.

Outline Electrical Specification

- Main building distribution boards.
- Sub distribution boards on floor plates.
- Energy-saving LED lighting in reception core and circulation areas.
- Emergency lighting installation in accordance with IS 3217:2013 in the core areas
- Proximity card access control system to building entrances.
- Intruder alarm system monitors the building perimeter.
- CCTV cameras monitor reception entrances, external access routes and access-controlled doors on building perimeter.
- Fully addressable fire alarm system in accordance with IS 3218:2013 in the core areas.

Outline Mechanical Specification

- Central HWS storage and boosted hot water services generated by high-efficiency low NOx gas-fired boiler LPHW heating system.
- Mains water and cold-water storage and distribution.
- High-efficiency water-cooled chillers with dry air coolers at roof level.
- LPHW & CHW pipework risers with heat meters at each floor.
- Air-handling plant at roof level with high-efficiency thermal wheel heat recovery for office zones and toilet core.
- Main fresh air ductwork terminating on each floor.
- Rainwater harvesting system.
- Building Energy Management System (BEMS) with front end PC to monitor and control main HVAC equipment.

OUTLINE SPECIFICATION OF EXTERNAL ENVELOPE

A bespoke glazed façade system to the North and West Façade on Sir John Rogerson's Quay and Creighton Street: Glazing spanning full height (4.0m) and shuffle-glazed into proprietary thermally broken framing at floor and ceiling level with the glazing flush internally. The vertical façade glass to be double glazed with laminate safety glass to both internal and external leafs and incorporates a solar neutral coating.

Fire stopping is incorporated within ceiling header adjacent to glass with intumescent seal to back of glass face. Blind box provision integrated within the perimeter bulkhead detail. Laminated vertical glass fins, are positioned externally spanning full height and are restrained at top and bottom with bespoke anchors disappearing into a slender aluminium toe detail located horizontally at each office floor level. The top and bottom anchors allow a visible gap between it and the façade glass. Lighting is incorporated into the facade system to illuminate the glass fins.

The South West façade to Creighton Street and Windmill Lane at the typical office floor level is a unitised curtain walling system with aluminium framing, anodised finish, nominally 1.5/3.0m wide x 4m high.

The system is thermally broken, pressure equalized, ventilated, self-draining, flush-glazed with externally mounted horizontal glass brise soleil system. The horizontal glass brise soleil with incorporated frit pattern providing solar shading spanning 1.5/3.0m and restrained via bespoke stainless steel cantilever arms which are affixed to the main unitised framing.

The vertical façade glass is double glazed with laminate safety glass to both internal and external leaves. Fire stopping is incorporated within ceiling header adjacent to glass with intumescent seal to back of glass face. Blind box provision integrated within the perimeter bulkhead detail.

The South West and South Façade to Creighton Street and Windmill Lane at the upper office floor levels is a unitised curtain walling system with aluminium framing, anodised finish, nominally 1.5/3.0m (w) x 4.0m (h) units. Vertical anodised aluminium fins span 4.0m and are restrained via bespoke stainless steel fixings which attach to the main horizontal unitised framing.

The anodised aluminium fins are of varying profile/angle (on plan) to create a varied effect. Fire stopping to be incorporated within ceiling header adjacent to glass with intumescent seal to back of glass face. Blind box provision integrated within the perimeter bulkhead detail.

Courtyard Facades facing The Observatory Building:

The glazed system is a factory fabricated unitised aluminium curtain walling system – nominally 1.5m (w) x 4.0m (h) units with anodised aluminium framing – thermally broken, pressure equalized, ventilated, self-draining, flush-glazed SG bonded.

The vertical façade glass to be double glazed with laminate safety glass to both internal and external leaves and to incorporate solar neutral coating to face 4. Fire stopping to be incorporated within ceiling header adjacent to glass with intumescent seal to back of glass face. Blind box provision integrated within the perimeter bulkhead detail.

Ground Floor Retail Facades facing Creighton Street and Windmill Lane:

The retail units are to be a fully glazed glass fin curtain walling system. High performance double glazing is mounted via a pressure equalized toggle fixed proprietary modified SG curtain walling system solution. The glazing is performance coated, clear double-glazed units and laminated Class A safety glass to both internal and external leaf's.

Thermally broken, pressure equalized, discretely self-draining, silicone jointed, stick system polyester powder-coated, structurally bonded to a vertical spanning laminated glass fin. Curtain walling mullion to be either proprietary glass-fin add-on solution or modified slim-line mullion, machined to fit glass fin thickness. Glass fins to be clear reduced iron laminated with fully polished edges.

North, West and South Facades:

Vertical and horizontal stone fins and projecting stone to north, west and south elevations. Stone cladding panels to the East façade stair. Stone cladding panels to the ground floor columns, ESB substation and plinth. Stone cladding panels fixes to steel cladding rail system.

All the curtain wall systems will comply as a minimum, with the relevant and current forms of all local national codes and standards and Building Regulations, British Standards, Euronorms (including harmonised Euronorms), DIN Standards, ASTM Standards, CWCT Guidelines and Technical Notes.

The glass replacement strategy includes for external replacement with a local internal access requirement to facilitate the safe removal and replacement.

EXTERNAL LANDSCAPING

Ground Floor Courtyard: Large external courtyard at ground floor level with extensive high quality planting and natural stone finishes.

4th and 5th Floor Terraces: Generous stone paved roof terraces at 4th and 5th floor levels.

SCHEDULE 10

LEED requirements

Energy & Atmosphere

EAp2/EAc1: Energy Performance

Tenant Fit-out Requirements

Lighting:

Office

Lighting fit-out installation not to exceed lighting power density:

7.5 W/m²

The following lighting controls are also included:

Daylight dimming

Occupancy sensors

HVAC System:

Office

The office build out fan coil average specific fan power (SFP) efficiency to be no more than **0.132 w/l/s**.

All other applicable items to be fit out by developer.

Indoor Environmental Quality

IEQp2/c2: Environmental Tobacco Smoke Control

Tenant Fit-out Requirements

1SJRQ NO SMOKING POLICY

1SJRQ is a smoke free environment, indoors and outdoors.

1. REGULATIONS OF SMOKING INDOORS:

Smoking is prohibited in all enclosed areas of 1SJRQ. This includes, but is not limited to the Block and Buildings, the Building Common Areas i.e. for clarity all commercial areas (retail, offices), all shared areas, all individual apartments, hallways, stairs, elevators, restrooms and all other enclosed areas.

2. REGULATION OF SMOKING OUTDOORS

Notwithstanding the above prohibitions on smoking in enclosed areas, smoking within 8m of 1SJRQ entries, outdoor air intakes, and operable windows is prohibited. There are no designated smoking areas within 1SJRQ

SCHEDULE 11

Yield Up Specification (including the enclosed USB detailing the Tenant Information Booklet)

1-3 and 6 SJRQ

The CAT A fit out for the main floor plates includes the following: -

Raised Access Floors – Supplied and fitted by the Landlord.

Credit in lieu of: -

- Floor Finishes
 - Type FLS-151 Carpet Tiling; 250mm x 1000mm, Tufted loop pile carpet tiles.
- Suspended Ceilings
 - CLG-301 Metal Ceiling System; SAS; Tiles, 330 grid ceiling system; hinge-down and slideable; bevelled edges.
- Mechanical
 - Fresh air ductwork on the floorplate
 - Fan Coil units
 - Secondary ductwork from FCU's
 - LPHW/CHW pipework on the floorplate
 - Insulation of above
 - Air Diffusers
- Electrical
 - Power Containment on the floorplate
 - Underfloor Power busbar
 - Lighting containment and general light fittings on the floorplate
 - Emergency lighting on the floorplate
 - Lighting control on the floorplate
 - Fire alarm on the floorplate

The 4 and 5 SJRQ CAT A Works for which the €27,000 credit allows for: -

- Carpet Type FLS-151 Carpet Tiling; 250mm x 1000mm, Tufted loop pile carpet tiles;.
- Painted ceilings; and
- Wall painting.

4 and 5 SJRQ will be left in the manner detailed in the Lease, to include generally: -

- Wall mounted radiators will be provided;
- The Western wall of SJRQ will be boarded and plastered on all floors, and will contain power sockets and data sockets;
- The North, South and East walls will generally be left as exposed brickwork;
- The Western wall of the stair core in 5 SJRQ will have a power and data socket on each level;
- Ceiling will have light fittings and separate emergency light fittings and smoke heads;
- The 5th floor of both 4 and 5 SJRQ will have hardwood flooring fitted; and
- A duct will supply fresh air in both 4 and 5 SJRQ.

See Tenant Information Booklet furnished for further detail.

General

Ground Floor:

- Office reception, office accommodation and associated toilet facilities, electrical substation

Basement:

- Office car parking: 31 spaces including 2 disabled (accessed from the ramp through the adjacent Observatory Building)
- Bicycle parking: 300 spaces (accessed from the ramp through the adjacent Observatory Building)
- Bicycle repair area
- Shower & Changing facilities: 20 showers + 200 lockers
- Drying room
- Refuse store
- Plant rooms
- Tenant store

Roof Level:

- Plant Enclosure for landlord and tenant plant

1st-5th Floors:

- Office accommodation and associated toilet facilities

Building Dimensions:

Structural grid:	Generally 7.5x12m or 7.5m x 15m.
Planning grid:	The building is designed to accommodate a 1.5metre – 3m planning grid, following through from window location to ceiling and lighting layouts.
Floor to Floor:	4.0m for Office Floors. Retail Units at Ground Floor vary between 6.0m and 6.35m. At Basement level this varies between the car park at 3.7m to the ancillary accommodation, bike store, showers and changing areas at c. 3.3m and the Tenant Amenity Space at 5.150m
Structural System:	A structural steel frame and 150mm composite floor slabs designed and constructed to carry a floor loading of 5kn/sq. metre (4 +1). Perimeter columns are generally on a 7.5m, 12m or 15m module. The office floor plates are clear spanning from the core to the façade.
Floor Zone:	150mm (including raised access floor tiles).
Ceiling Zone:	900mm in depth (including cellular beam and ceiling finishes).
Clear floor to Ceiling Height:	Office floors, the floor to ceiling height will be 2800mm. Ground Floor office area on WML, the floor to ceiling height will be 5100mm. Ground floor Own Door Office, the floor to ceiling height will be 4250mm. Ground floor reception, the floor to soffit of the reception atrium will be 20.0m
Floor Loadings:	Office Floors 4kn/sq. metre per person plus 1 kn/sqm partitions (4 +1).

Design Standards/References:

The building is required to comply inter-alia with the following Acts and Regulations.

- BCO Guide – Best Practice in Specification for offices.
- LEED Assessment Criteria.
- The Planning and Development Act 2000 (as amended) and the Regulations made thereunder.
- The Building Control Acts 1990, the Regulations made there under and the building control amendment regulations 2013.
- The Health Safety and Welfare at Work Act 2005 and the Regulations made thereunder.
- The Office Premises Act.

Design Criteria:

The building is designed to the following criteria:

Occupancy rate for Sanitary Provision: WC design density - 1 Person / 8m², 60:60 Male:Female (based on total building provision).
Disabled WC provision in accordance with TGD M2010.

Car Parking Provision: 31no. spaces including 2no. spaces for disabled drivers.

Sub-Division:

The building and the arrangement of services is designed for a single tenant occupancy or a multi-tenancy arrangement. From 1st to Fifth Floor the floor plates can be sub-divided into two self-contained tenancies.

**LANDLORD SPECIFICATION
RECEPTION AND LIFT LOBBIES****Reception/ Atrium:**

Floors:	Large format natural stone floor with a honed finish
Atrium Walls/Ceilings:	Plasterboard ceiling system with a polished finish with illuminated recess detailing
Reception desk:	A bespoke unit of high-quality to the main reception.

Lift Lobbies:

Walls:	Large format natural stone wall cladding; vertical wall panels
Floors:	Large format natural stone floor and skirting.
Ceiling:	Plasterboard ceiling with illuminated recess detail.
Doors:	Frameless glass sliding doors to the office accommodation.

Passenger Lifts:

Size:	4 No. 15 person
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Waiting time: Passenger lift peak average interval is less than 25 seconds
Two separate lifts performs as fire fighting lifts
A separate goods lift of 1250kg capacity is located in the core.

Toilets:

Walls: Large format natural stone wall cladding; Moisture resistant plasterboard lining with eggshell paint finish.
Floors: Large format natural stone floor and skirting.
Ceilings: Dry lining with emulsion paint with ceiling mounted light fittings.
Doors: Solid core hardwood flush doors; veneered finish and integrated vertical wall panel system finish
WC cubicles: Flush full height solid toilet cubicles with glazed door and rear panel finish.
Vanity units: Corian formed wash hand basin and vanity unit incorporating soap dispenser and motion-controlled mixer-tap. Bespoke mirror over, incorporating under mirror illumination and concealed paper towel dispenser beneath.
Sanitary ware: Wall hung WC pans and urinals with concealed cisterns.

**LANDLORD SPECIFICATION
OFFICE AREAS**

Walls: Dry-lining with emulsion paint finish.
Floors: 600mm x 600mm access flooring medium duty
Columns: Paint Finish
Ceiling: Metal suspended ceiling system to suit 1.5m square planning module. Perforated 600mm x 600mm ceiling tiles with linear plasterboard margins. System to incorporate light fittings, diffusers, smoke detectors, illuminated signage.

STAIRS

Main Stairs
Walls: Dry-lining with emulsion paint finish.
Floors: Natural stone floor finish from lower ground to first floor level with high quality carpet above
Ceiling: Painted plasterboard system to incorporate light fittings illuminated signage.
Handrails: Stainless steel balustrade with glass guarding and stainless steel handrail

Secondary Stairs

Walls: Emulsion-painted dry lining.
Floors: High quality carpet
Ceiling: Painted plasterboard system to incorporate light fittings illuminated signage.
Handrails: Stainless steel balustrade with glass guarding and stainless steel handrail

Showers, Changing & Locker Rooms

Space is provided at basement level for shower and changing facilities, lockers and a tenant amenity space.

Walls:	Large format natural stone wall cladding; Moisture resistant plasterboard lining with eggshell paint finish/ porcelain Wall Tiles.
Floors:	Large format porcelain tiled floor and skirting.
Ceilings:	Painted plasterboard
Doors:	Solid core hardwood flush doors; Timber veneered finish
WC cubicles:	Flush full height solid toilet cubicles with glazed door and rear panel finish.
Vanity units:	Corian formed wash hand basin and vanity unit incorporating soap dispenser and motion-controlled mixer-tap. Bespoke mirror over, incorporating under mirror.
Sanitary ware:	Wall hung WC pans and urinals with concealed cisterns.

Car Park Area

Walls:	Concrete block and insitu concrete internal walls; plasterboard lining with emulsion paint finish.
Floors:	Insitu concrete floor with Paint Finish. Including line marking for Parking Bays and Floor Signage.
Columns:	Paint Finish
Ceilings:	Soffit insulation to car park soffit and steelwork.
Doors:	Flush paint finish fire rated doors with stainless steel ironmongery.

Outline Electrical Specification

- Main building distribution boards.
- Sub distribution boards on floor plates.
- Energy-saving LED lighting in reception core and circulation areas.
- Emergency lighting installation in accordance with IS 3217:2013 in the core areas
- Proximity card access control system to building entrances.
- Intruder alarm system monitors the building perimeter.
- CCTV cameras monitor reception entrances, external access routes and access-controlled doors on building perimeter.
- Fully addressable fire alarm system in accordance with IS 3218:2013 in the core areas.

Outline Mechanical Specification

- Central HWS storage and boosted hot water services generated by high-efficiency low NOx gas-fired boiler LPHW heating system.
- Mains water and cold-water storage and distribution.
- High-efficiency water-cooled chillers with dry air coolers at roof level.
- LPHW & CHW pipework risers with heat meters at each floor.

- Air-handling plant at roof level with high-efficiency thermal wheel heat recovery for office zones and toilet core.
- Main fresh air ductwork terminating on each floor.
- Rainwater harvesting system.
- Building Energy Management System (BEMS) with front end PC to monitor and control main HVAC equipment.

OUTLINE SPECIFICATION OF EXTERNAL ENVELOPE

A bespoke glazed façade system to the North and West Façade on Sir John Rogerson's Quay and Creighton Street: Glazing spanning full height (4.0m) and shuffle-glazed into proprietary thermally broken framing at floor and ceiling level with the glazing flush internally. The vertical façade glass to be double glazed with laminate safety glass to both internal and external leafs and incorporates a solar neutral coating.

Fire stopping is incorporated within ceiling header adjacent to glass with in tumescent seal to back of glass face. Blind box provision integrated within the perimeter bulkhead detail. Laminated vertical glass fins, are positioned externally spanning full height and are restrained at top and bottom with bespoke anchors disappearing into to a slender aluminium toe detail located horizontally at each office floor level. The top and bottom anchors allow a visible gap between it and the façade glass. Lighting is incorporated into the facade system to illuminate the glass fins.

The South West façade to Creighton Street and Windmill Lane at the typical office floor level is a unitised curtain walling system with aluminium framing, anodised finish, nominally 1.5/3.0m wide x 4m high.

The system is thermally broken, pressure equalized, ventilated, self-draining, flush-glazed with externally mounted horizontal glass brise soleil system. The horizontal glass brise soleil with incorporated frit pattern providing solar shading spanning 1.5/3.0mm and restrained via bespoke stainless steel cantilever arms which are affixed to the main unitised framing.

The vertical façade glass is double glazed with laminate safety glass to both internal and external leafs. Fire stopping is incorporated within ceiling header adjacent to glass with in tumescent seal to back of glass face. Blind box provision integrated within the perimeter bulkhead detail.

The South West and South Façade to Creighton Street and Windmill Lane at the upper office floor levels is a unitized curtain walling system with aluminum framing, anodized finish, nominally 1.5/3.0m (w) x 4.0m (h) units. Vertical anodised aluminium fins span 4.0mm and are restrained via bespoke stainless steel fixings which attach to the main horizontal unitised framing.

The anodised aluminium fins are of varying profile/angle (on plan) to create a variated effect. Fire stopping to be incorporated within ceiling header adjacent to glass with in tumescent seal to back of glass face. Blind box provision integrated within the perimeter bulkhead detail.

Courtyard Facades facing The Observatory Building:

The glazed system is a factory fabricated unitised aluminium curtain walling system – nominally 1.5m (w) x 4.0m (h) units with anodised aluminium framing– thermally broken, pressure equalized, ventilated, self-draining, flush-glazed SG bonded.

The vertical façade glass to be double glazed with laminate safety glass to both internal and external leafs and to incorporate solar neutral coating to face 4. Fire stopping to be incorporated within ceiling header adjacent to glass with intumescent seal to back of glass face. Blind box provision integrated within the perimeter bulkhead detail.

Ground Floor Retail Facades facing Creighton Street and Windmill Lane;

The retail units are to be a fully glazed glass fin curtain walling system. High performance double glazing is mounted via a pressure equalized toggle fixed proprietary modified SG curtain walling system solution. The glazing is performance coated, clear double-glazed units and laminated Class A safety glass to both internal and external leaf’s.

Thermally broken, pressure equalized, discretely self-draining, silicone jointed, stick system polyester powder-coated, structurally bonded to a vertical spanning laminated glass fin. Curtain walling mullion to be either proprietary glass-fin add-on solution or modified slim-line mullion, machined to fit glass fin thickness. Glass fins to be clear reduced iron laminated with fully polished edges.

North, West and South Facades;

Vertical and horizontal stone fins and projecting stone to north, west and south elevations. Stone cladding panels to the East façade stair. Stone cladding panels to the ground floor columns, ESB substation and plinth. Stone cladding panels fixes to steel cladding rail system.

All the curtain wall systems will comply as a minimum, with the relevant and current forms of all local national codes and standards and Building Regulations, British Standards, Euronorms (including harmonised Euronorms), DIN Standards, ASTM Standards, CWCT Guidelines and Technical Notes.

The glass replacement strategy includes for external replacement with a local internal access requirement to facilitate the safe removal and replacement.

EXTERNAL LANDSCAPING

Ground Floor Courtyard: Large external courtyard at ground floor level with extensive high quality planting and natural stone finishes.

4th and 5th Floor Terraces: Generous stone paved roof terraces at 4th and 5th floor levels

SCHEDULE 12

M & E Plant Schedule

SCHEDULE 13

Employers Information Requirements

GIVEN under the Common Seal of
HIBERNIA REIT PUBLIC
LIMITED COMPANY
and **DELIVERED** as a **DEED**:

/s/ Ken Nowle
Director

/s/ Thomas Edward Moss
Director/Secretary

GIVEN UNDER the Common Seal of
SOBO MANAGEMENT COMPANY LIMITED BY GUARANTEE
AND delivered as a **DEED**

s/ Ken Nowle
Director

/s/ Sean O'Dryer
Secretary

GIVEN UNDER the Common Seal of
HUBSPOT IRELAND LIMITED
AND delivered as a DEED:

/s/ Kate Bueker
Director

/s/ John Kelleher
Director/Secretary

HUBSPOT, Inc.

/s/ John Kelleher
Name

General Counsel
Title

Dated the day of 2019

- (1) **Landlord:** **HIBERNIA REIT PUBLIC LIMITED
COMPANY**
- (2) **Tenant:** **HUBSPOT IRELAND LIMITED**
- (3) **Management
Company:** **SOBO MANAGEMENT COMPANY
LIMITED BY GUARANTEE**
- (4) **Guarantor:** **HUBSPOT, INC.**

LEASE

of

1SJRQ, WINDMILL QUARTER, DUBLIN 2

**Arthur Cox
Ten Earlsfort Terrace
Dublin 2**

**BUILDING INFORMATION MODELLING (BIM)
EMPLOYERS INFORMATION REQUIREMENTS (EIR)**

1-6 SIR JOHN ROGERSON QUAY, DUBLIN 2

on behalf of

WK Nowlan & HIBERNIA REIT

JOB REF: 15-117

DATE ISSUED: MAY 2015

REVISION: A

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DOCUMENT CONTROL SHEET

Rev.	Status	Page Nos.	Amendment	Date	By
A	SO	Document	First Draft	29/05/2015	Living BIM

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0.0 Introduction

0.1. Purpose of Document

This project will be carried out BIM (Building Information Modelling) to Level 2 BIM Maturity, using PAS1192-2:2013 “Specification for information management for the capital/delivery phase of construction projects using building information modelling (BIM)”.

This document provides a clear definition of the employer’s information requirements at key decision points, as well as standards and processes to be adopted by the supply chain, and forms part of the contract through the adoption of the CIC BIM Protocol.

The EIR will require the submission of a pre-contract BIM Execution Plan (BEP) from each supplier, to demonstrate their proposed approach, capability and capacity to deliver the required information, with their supply chain, prior to contract award. The EIR requires the appointed team to contribute to the production of an overall post-contract BIM Execution Plan (BEP) to be managed by the Project Information Manager for both Design & Construction Stage.

0.2. Scope

The Construction Industry Council (CIC) BIM Protocol is included as part of the agreement or contract between the Employer and the project team members. The BIM Protocol includes a Model Production and Delivery Table (MPDT) identifying model uses, Levels of Model Definition (LoMD) and responsibility for modelling for each Project Stage/Information Exchange This represents the outline Digital Plan of Work for the production, management and exchange of information on this project.

This EIR document is divided into 4 sections:

1. Project Information
2. Information Management (*Required by PAS1192-2 Clause 5.3 a*)
3. Commercial Management (*Required by PAS1192-2 Clause 5.3 b*)
4. Competence Assessment (*Required by PAS1192-2 Clause 5.3 c*)

The clauses in each section follow the order as set out in PAS1192-2:2013 and it is vital that all project participants refer to the PAS1192-2:2013 standard, a copy of which is included in the tender documents. Each clause includes a reference to the relevant clause in PAS1192-2:2013, for the purpose for including, a description of the content to be included or expectations for the information to be provided, in response to the EIR by the bidder.

In addition, each organisation using BIM collaboratively should be familiar with guidance contained in the ‘BIM Protocol’; the ‘Outline Scope of Services for the Role of Information Management’; and ‘Best Practice Guide for Professional Indemnity Insurance when using BIM’ published by the Construction Industry Council (CIC UK). Each Party should seek independent advice from their legal team and insurance providers, with regards to the professional risks of adherence to these guidelines,

It is not the intention of this document to state how each organisation will implement BIM with their respective organisations, but to help ensure that their individual efforts contribute to the broader objectives of the employer. Organisations are encouraged to ensure that their internal procedures support this document and standards for Level 2 BIM in the interest of project quality control and improving collaborative processes

0.3. Building Information Modelling Goals

The employer is promoting the use of Building Information Modelling, with the overall aim to improve collaboration and communication, to reduce construction waste and costs, alleviate the risk of project delays and increase project participants understanding of the details of a project. BIM goals for this project include:

- To carry out conceptual design studies and analysis
- To improve communication and presentation
- To produce a clash free BIM model with the appropriate level of detail
- To improve and validate constructability
- To coordinate designers and contractors information
- To reduce overall project time frame (4D)
- To reduce the overall project cost and improve predictability (5D)
- To test design iterations and optimize design for performance and lifecycle costing (6D)
- To reduce the number of RFI's and change orders
- To deliver a better building earlier
- To minimise construction waste
- To create an as-built Asset Information Model for better Facilities Management (7D)
- To promote better safety - PSDP/PSCS
- To Improve Statutory Compliance Record Information

For the avoidance of doubt and misunderstanding, bidders must refer to Appendix A, outlining the Building Information Modelling Use & Purpose, where the employer clearly defines their understanding and meaning of the relevant terms and expectation in relation to information management. The supply chain must review this list, and immediately seek clarification on any misunderstandings as to what they are required to provide.

0.4. The BIM Team

It is expected that the following organisations and individuals will interact with the BIM models with their own unique requirements (outside of this EIR). These may need to be considered by the delivery team, and discussed as part of the development of the BIM Execution Plan.

Team Member	Brief description of interaction with BIM
Owner	High level summary information about their facilities
Development Manager	Existing information about physical site(s) and corporate program needs
Real Estate Agent	Information about a site or facility to support purchase or sale.
Valuer	Information about the facility to support valuation.
Financing Agency	Information about demographics, corporations, and viability
Lead Architect	Planning and site information.
Civil/Structural/Services Engineer	Electronic model from which to import into design and analysis software.
PQS/Estimator	Electronic model to obtain accurate quantities.
Specifier	Intelligent objects from which to specify and link to later phases.
Legal	More accurate legal descriptions to defend or on which to base litigation.
Main Contractor	Intelligent objects for bidding and ordering and a place to store gained information.
Sub-Contractor	Clearer communication and same support for contractors.
Fabricator	Can use intelligent model for numerical controls fabrication.
Assigned Certifier	Compliance checking software can process model faster and more accurately.
Facility Managers	Provides product, warranty, and maintenance information.
Maintenance Engineer	Easily identify products for repair parts or replacement.
Retrofit	Minimizes unforeseen conditions and the resulting cost.

Disposal and Recycling	Better knowledge of what is recyclable.
Scoping, Testing, and Simulation	Electronically build facility and eliminate conflicts.
H&S Officer	Knowledge of what materials are in use and MSDS.
Environmental Control	Improved information for environmental impact analysis.
Plant Operations	3D visualization of processes.
Energy Consultant	Optimized energy analysis more easily accomplished allows for more review of alternatives, such as impact of building rotation or relocation on site.
Security Consultant	Intelligent objects in 3D provide better understanding of vulnerabilities
Network Manager	3D physical network plan is invaluable for troubleshooting.
Risk Manager	Better understanding of potential risks and how to avoid or minimize.
Occupants	Visualization of facility for way finding (building users often cannot read floor plans).
Emergency Services	Minimize loss of life and property with timely and accurate information

0.5. Copyright

This format of this document is based on requirements of PAS1192-2:2013 and 'Employer's Information Requirements, Guidance notes version 07: 28.02.13 provided by the BIM Task Group, and Guidance provided by the RIAI BIM Committee Template.

0.6. Credits

We wish to acknowledge and thank the members of the BIM Task Group www.bimtaskgroup.org and the RIAI BIM Committee, from which guidance this document was derived.

1.0 Section 1 - Project Information

1.1. Project Details

1.1.1. Employer

HIBERNIA REIT PLC

1.1.2. Client

HIBERNIA REIT PLC

1.1.3. Project Name

1-6 SIR JOHN ROGERSON QUAY SITE, DUBLIN 2

1.1.4. Project Location

AS ABOVE

1.2. Project Scope

1.2.1. Contract / Delivery Type

TBC

1.2.2. Project Stages

RIAI/RIBA/CIC - TBC

1.2.3. Project Phasing

ONE PHASE

1.2.4. Approximate Site Area

(WKN to provide Description).

1.2.5. Approximate Gross Internal Area

(WKN to provide Description).

1.3. Project Description

(WKN to provide Description)

2.0 Section 2 - Information Management

2.1 Level of Detail

Required by PAS1192-2 Clause 5.3 a) 1).

The following Project Stages and Level of Detail will be incorporated into the BIM Protocol:

Project Stages / Data Drops				
RIAI Stage	PAS1192 Stage	Stage Description	Data Drop/	Purpose
Stage 1	1	Inception		
Stage 2	2	Outline Proposals	1	P01 Approved Outline Business Case
Stage 3	3	Scheme Design	2	P02 Statutory approvals
Stage 4		Detail Design		
Stage 5	4	Production Information		
Stage 6		Tender Action	3	P03 Tender Documents
Stage 7		Project Planning		
Stage 8	5	Operations on Site	4	P04 Construction Documents (PIM)
	6	At Handover	5	P05 Handover, Operations and Maintenance (AIM)
		Final Cert	6	P06 Regulations and Compliance Documents

In accordance with Clause 9.8 of PAS1192-2:2013, the minimum level of detail needed by the employer for each model's purpose is defined as follows (refer to PAS 1192-2:2013 for definitions):

Levels of Model definition	
LOD	LOD
LOD1	Brief
LOD2	Concept
LOD3	Developed Design
LOD4	Production
LOD5	Installation
LOD6	As Constructed
LOD7	In Use

No response is required in the Pre-contract BIM Execution Plan. The Project Stages and Level of Detail should be included in Appendix 1 of the BIM Protocol and used to populate the Model Production and Delivery Table (MPDT).

2.2. Training Requirements

Required by PAS1192-2 Clause 5.3 a) 2)

For clarity the costs of all training required in support of the Tenderers scope is to be met by the Tenderer and clearly visible in their return.

The Project Information Manager (for both Design & Construction Stage) should highlight any specific training requirements that arise in assessing BIM Capability Assessments and preparing the post-contract BIM Execution Plan and inform the Employer ASAP following the BIM Kick-off meeting. Any training time spent is at the Tenderers costs and should be included in proposals..

Where applicable, the Tenderer shall provide details of training and costs he may/shall supply for the Common Data Environment (CDE).

All costs associated with developing the BIM capabilities to deliver on the Employer's Information Requirements should be included in the contract and supply chains tender.

2.2.1. Workshops

The Client has arranged for the provision of the following 1/2 day workshops to assist the project team understand and address the project BIM requirements:

1. A design stage BIM Facilitation Workshop to be held with the design team at the beginning of the BIM/design process
2. A construction stage BIM Facilitation Workshop to be held with the appointed contractor/subcontractors at the beginning construction phase of the BIM process.

2.3. Planning of Work and Data Segregation

Required by PAS1192-2 Clause 5.3 a) 3).

The Project Information Manager (Design and Construction stage) will federate these single discipline models together, for coordination and review in Navisworks.

Information should be managed in accordance with the processes described in PAS1192- 2:2013 and BS1192:2007.

File naming for models and extracts for models should be in accordance with BS1192:2007. The bidder should include an example of a single project file naming strategy which is in compliance with BS1192:2007.

The bidder should provide a methodology for how models will be managed. The expectation is that this will be coordinated by the Project Information Manager for both Design & Construction Stage.

The bidder shall provide a methodology for dividing the building into manageable volumes and how these volumes shall be defined and managed for all model authors.

The Pre-contract BIM Execution Plan should confirm that the project will be managed in accordance with the prescribed standards and where applicable provide proposals for how specific requirements for work management will be undertaken. Detailed proposals will be included in the Post-contract BIM Execution Plan by agreement with the appointed suppliers and the Project Information Manager (for both design & construction stage).

2.4. Co-ordination and Clash Detection

Required by PAS1192-2 Clause 5.3 a) 4).

The employer requires a fully coordinated and resolved design, to the appropriate level of detail for each project stage, before tendering and before executing the works on site.

The bidder should provide details for the following project management processes:

Details of the clash avoidance strategy and clash detection process including:

- Software
- Process overview
- Responsibilities
- Outputs
- Technical query workflow
- Tolerance strategy
- Clash resolution process

The Pre-contract BIM Execution Plan should respond to the request for details above. Agreed processes will be defined in the completed Post-contract BIM Execution Plan.

2.5. Collaboration Process

Required in response to the EIR by PAS1192-2 Clause 5.3 a) 5).

The Collaboration Process shall be carried out in accordance with BS1192:2007.

Project information will be shared via a Common Data Environment (CDE) which should allow information to be exchanged in accordance with BS1192:2007. The Information Manager will be responsible for managing the CDE. The costs for providing the CDE will be borne by the successful bidder at both design and construction stage. The CDE system/tool should be named in the pre-contract BEP.

The CDE must provide the following functionality:

- Include licenses to access the CDE for all individuals sharing information.
- Provide a secure login system.
- Comply with security requirements in section 2.7 of the EIR.
- Provide a means of recording metadata for files. At a minimum, the CDE should record who made the information contribution, the revision and suitability code for each file exchanged.
- Allow current and previous revisions to be viewed and downloaded.

- The CDE should include a viewer for the federated model which can be accessed by registered and authorised users who may not have design authoring tools or capability.
- Provide an audit trail for files sufficient to determine:
 - individual and organisation who shared the file
 - date and time when the file was shared
 - list of recipients who viewed/accessed the file

The bidder should provide a schedule identifying the frequency of collaboration and information exchanges.

The bidder should provide a schedule of meetings/workshops for project collaboration identifying the frequency for each type of meeting. A BIM Kick-off meeting is mandatory to agree roles, responsibilities and authorities.

The Pre-contract BIM Execution Plan should respond to the request for details above. Agreed processes will be defined in the completed Post Contract BIM Execution Plan.

2.6. Health and Safety

Required by PAS1192-2 Clause 5.3 a) 6).

The supplier pre-contract BIM Execution Plan should include details describing:

- Integration of person(s) undertaking role of Health and Safety Coordination (PSDP/PSCS) into the BIM Collaboration process.
- Identify key meetings where Health and Safety is reviewed in BIM as part of the collaboration process.
- Process for recording and incorporating decisions from Health and Safety matters arising from meetings above.

The Pre-contract BIM Execution Plan should respond to the request for details above. Agreed processes will be defined in the completed Post Contract BIM Execution Plan.

2.7. Security Requirements

Required by PAS1192-2 Clause 5.3 a) 7).

Any file when uploaded to the collaboration site or other electronic document management system, is to be secure to the standard required by the employer. The CDE should conform to:

- ISO 27001 Compliance
- Tier 4 Disaster Recovery
- EU - US Safe Harbour Compliance (Data Protection Act)

The employer shall provide a confidentiality agreement will be included in agreements/contracts with successful bidders.

The Pre-contract BIM Execution Plan should demonstrate the supplier's compliance with mandated security systems.

2.8. Information to be included or excluded from information models

Required by PAS1192-2 Clause 5.3 a) 8).

- The asset information generated across the design and build phases of the project should be captured and delivered in the COBie format to BS1192-4:2014 standard, using Uniclass Classification, delivered as part of the Digital Data Drops identified in the Model production Delivery Table. Assets identified in the Employers Asset Information Model should be populated with data appropriate to the level of Model Definition for each Data Drop.
- A mandatory field is required which provides a link from the assets identified in the Asset Information Model to the relevant documents of the Operations and Maintenance manual. In addition, a field is also required which includes a Unique Asset Identifier which will be provided by the Employers Facility Management Systems provider (once selected).
- The contractor should be aware, and make all their subcontractors and suppliers aware, that this project will be carried out using a BIM (building information modelling) process, prior to submitting their tender, so there is no doubt that all participants will have to produce and submit their information in accordance with this requirement.
- The contractor will need to make allowance in their programme of sub-contractor appointments, for time for development of the model of the sub-contract element of work, for coordination and approval before works commence on site.
- All members of the supply chain and all the contractor will be required to input the asset information (as required by the EIR) into the model during the construction stage and update the model should any changes occurred during construction and installation to reflect these changes so that at building handover the model and the digital data contained therein is accurate as built information.
- The end deliverable will be a federated object-based construction BIM and AIM (Asset Information Model), in the formats specified in the EIR, with associated digital asset information in COBie format, using Uniclass classification, with construction, fabrication and installation drawings derived as far as practically possible from the models. Testing commissioning certificates and product information sheets and other relevant documents, should be cross-referenced to the objects in the model through a unique identifying code (element ID) in the project database.

The Pre-contract BIM Execution Plan should demonstrate the supplier's compliance with mandated inclusions and exclusions.

2.9. Systems Performance

Required by PAS1192-2 Clause 5.3 a) 9)

To ensure all information is accessible to all parties across the project the following guide lines must be met, unless agreed with the project information manager.

1. 200mb limit - Individual discipline models should not exceed 200mb in size.
2. 500mb limit - Federated models do not exceed 500mb in size
3. Model Deliverables - In order of preference a version of all models should exist in a
 - (a) Revit 2015 RVT format (or other authoring tool formats during the detail design in the construction stage of the project, to be agreed with the information manager)
 - (b) Navisworks NWD format
 - (c) IFC (Industry Foundation Classes) 2x3 format
 - (d) DWG / DGN format (should be avoided due to loss of information)
4. Document Deliverables - All outputted deliverables should be submitted in one of following formats in order of preference.
 - (a) Revit 2015 RVT
 - (b) Design Review DWF/DWFX
 - (c) Navisworks NWD
 - (d) PDF
 - (e) COBie

The CDE should include a viewer for the federated model which can be accessed by registered and authorised users, that don't necessarily have design authoring software.

The Pre-contract BIM Execution Plan provided as part of the bid submission should confirm the requirements and constraints, indicating where any specific detail where required.

2.10. Compliance Plan

Required by PAS1192-2 Clause 5.3 a) 10).

The Project Information Model (PIM) and Asset Information Model (AIM) should be developed in compliance with the standards identified in Section 3.5 Standards and Guidance Documents.

The following Quality Assurance/ Control procedures in Fig. 3 shall be used:

QA Assurance / Control procedure		Role Responsible	Associated Software	Level of Assurance / Frequency
Checks	Definition			
Visual	Ensure there are no unintended model components in the model and that the model conveys design intent.	Task Team Manager, Lead Designer	BIM Authoring Software Revit	Every Issue
Clash Detection/Data Coherence	Detect issues in the model where two components are clashing including hard and soft clashes.	Task Interface Manager, Lead Designer	Clash Detection software Navisworks	Coordination Reviews
File Integrity	Check file naming and metadata are completed correctly.	Task Information Manager	Common Data Environment, Splash Sheet with each model.	Every Issue
Model Integrity	Check that model is fit for coordination across the project team.	Task Information Manager	BIM Authoring Software	Every Issue
Model Validation	Validate models issued as Shared and Published are complete and correct.	Task Information Managers Project Information Manager	BIM Authoring Software	Data Drops

QA Assurance / Control procedure		Role Responsible	Associated Software	Level of Assurance / Frequency
Checks	Definition			
Level of Model Definition	Validate model with the Project Information Model with the Production Delivery Table (MDPT).	Task Information Managers Project Information Manager	BIM Authoring Software	Every Issue. Full audit prior to Data Drop.
Project Programme	Review the Project Information Model progression against the Master Information Delivery Plan (MIDP)	Project Delivery Manager	Excel / Asta / Primavera / Microsoft Project or other agreed software for project programming.	Every Issue
Data Continuity	Automated comparison between information drops	Task Information Managers Project Information Manager	COBie Data Checker Model Review Solibri Model Checker	Data Drops
Data Compliance	Automated checks of information drops against agreed schema	Task Information Managers Project Information Manager	COBie Data Checker Model Review Solibri Model Checker	Data Drops
Data Completeness	Compliance with Level of Model Definition, Level of graphical detail, and level of attribute information, as set out in Digital Plan of Work	Task Information Managers Project Information Manager		Data Drops
Data Veracity	Inspection of accuracy and correctness of as-built information	Task Information Managers Project Information Manager		Prior to Handover
Data Consistency	Inspection of consistency expected between information and other documents	Task Information Managers Project Information Manager		Prior to Handover

The above figure represents the minimum requirements for a compliance plan. The Tenderer's Pre-Contract BIM Execution Plan as part of a bid submission should include these requirements, and set out Quality Assurance and Quality Control procedures.

2.11. Coordinates

Required by PAS1192-2 Clause 5.3 a) 11)

Each Project Information Model shall adopt the common Project Shared Coordinate System which is based on survey information using Irish Transverse Mercator (ITM) coordinates. The minimum requirement is spatial coordination stated as follows:

- The Architect should as early as possible share a model containing of Grids and Levels. This model should be used to acquire project co-ordinates.
- All task teams will adopt the established Project Shared Coordinate system across all Project Information Models to allow them to be referenced without modification.
- The model will use real world co-ordinates systems and be produced to a true height above datum based on Irish Transverse Mercator (ITM) co-ordinate system. Coordinates should be based on an accurate survey and not Ordnance Survey maps.
- Building Levels should relate to the Irish Transverse Mercator (ITM) co-ordinate system.
- The models should be oriented correctly to the true north.
- Units to nearest mm. Coordinates should be based on RICS 1:100 Survey accuracy.
- As far as practicably possible the model should be used for the setting out of works, to facilitate delivery of an as-built model. As tolerance strategy should be agreed and incorporated into the post-contract BIM Execution Plan (BEP). Any major deviations from the design or construction model should be captured in the as-built model, which may require verification of the location of installations through laser surveys, or other means, which should be undertaken by the main contractor before installations are closed up. A strategy for delivering a verified as-built model should be addressed in the pre-contract BIM execution plan, and implemented in the post-contract BEP.

The standards and methodology should be included in the pre-contract BIM Execution Plan. Specific detailed information e.g. coordinates should be included in the post contract BIM Execution Plan.

2.12. Software Formats

Refer to PAS1192-2 Clause 5.3 b) 3).

The Employer is utilising Autodesk Revit 2015 and Navisworks to operate and maintain its current and future building assets. All Task team members will be required to deliver the graphical & data elements of the Project Information Models (PIM) and Asset Information Models (AIM) using Revit, unless there is a compelling reason not to do so, in which case this needs to be agreed as part of the post-contract BIM execution plan (BEP)

Main design authoring tools are listed below the version of the application will be agreed and defined in the project BEP. The ability of the project team members to work with these platforms should be made clear in the BEP.

2.12.1. Model authoring

Revit Architecture 2015
Revit Structure 2015
Revit MEP 2015
AutoCAD Civil 3D 2015

2.12.2. Model co-ordination, clash review, review and comment:

Autodesk Navisworks 2015
Autodesk Design Review 2013

2.12.3. Facilities management

To be confirmed. Refer to the separate Outline Specification for PDMS and Digital Safety File.

2.12.4. Other

Other systems may be considered for some specific elements but the use of any other software must be agreed with the other project team members and approved by the Client and Project Information Manager. Proposals to use other software must include a strategy to return verified information to Revit format on handover, as well as a demonstration that this is achievable.

3.0 Section 3 - Commercial Management

3.1. Exchange of Information

Required by PAS1192-2 Clause 5.3 b) 1).

Project Stages and Data Drops are defined in Section 2.1 Level of Model Definition and the Model Production and Delivery Table appended to the BIM Protocol

The Tenderer is required to populate the data drops at each stage in accordance with the Model Production and Delivery Table for the BIM Protocol . Each Task Information Manager will be required to provide the Project Information Manager, with information for the model production responsibility matrix, confirming the model components they will deliver, and the level of model definition, for each stage. The Project Information manager will maintain the overall responsibility matrix.

- For each of the data drops, information will be required in the following formats from each individual Discipline/Suppliers (Task Team Member):
 - Native Revit BIM files (RVT) - 3D model files product specific for all design and analysis models in accordance with section 3.3
 - COBie - Excel format in accordance with BS1192-4:2014
 - Navisworks NWD files with Clash Tests, Timeliner (4D), Cost Workbook (5D), Drawings (extent and frequency to be agreed with each task team member)
 - Design Review DWFx 3D Model
 - Design Review DWFx drawing Sheets
 - PDF drawings (vector, not raster) no older than version 7.0
 - AutoCAD DWG drawings (layer translation table to be agreed)
 - Microsoft Excel XLSx schedules
 - IFC (industry foundation classes 2x3 format)
 - PDF Specifications (specification codes referenced to model keynotes)
 - PDF Reports
 - PDF Product Information Brochures/Cut-sheets
 - PDF Test Certificates
 - Structural Analysis Model (format to be agreed)
 - Energy Analysis Model (format to be agreed)

- For each of the data drops, information will be required in the following formats from the Project Information Manager (design stage/construction stage):
 - Federated XLS COBie
 - Federated IFC
 - Federated DWFx
 - Federated NWD with Clash Tests, Timeline Cost Workbook, Drawings (extent to be agreed)
 - An Online Collaboration Tool (Autodesk 360/Glue/Field or Other) may be provided

3.2. Client's Strategic Purpose

Required by PAS1192-2 Clause 5.3 b) 2).

It is expected that the primary use of the data will be for the following purposes:

- P01 - Approved Outline Business Case
- P02 - Tender Package
- P03 - Appoint Contractor
- P04 - Approved for Construction
- P05 - Practical Completion
- P06 - Operations and Maintenance
- P07 - Regulation and Compliance

3.3 Software Formats

Required by PAS1192-2 Clause 5.3 b) 3).

For Software formats for deliverables refer to section 2.12. Suppliers should provide as part of the pre-contract BEP a table as below indicating which software will be used by Task Team Members for the primary production management and exchange of information during design and construction

Task Team	Primary BIM Software and version	Coordination / Clash Detection Software and version	Specialist Software and version

3.4. Responsibility Matrix

Required by PAS1192-2 Clause 5.3 b) 4).

Refer to EIR Clause 3.6 for roles and responsibilities and the model delivery and production table in the BIM Protocol. The bidder should provide a methodology for preparing and maintaining a Model Delivery & production responsibility matrix as part of the post-contract BEP. An example or template responsibility matrix should be provided as part of the precontract BEP.

3.5. Standards and Guidance Documents

Required by PAS1192-2 Clause 5.3 b) 5).

The following core documents and standards are to be implemented on the project:

- BS 1192:2007
- PAS1192-2:2013
- PAS1192-3:2014BS1192-4:2014 – Collaborative Production of Architectural, Engineering and Construction Information Part 4- Employer information requirements (COBie).
- BS1192-5:2015 (currently out for consultation)
- BS 8541-2:2011 – Library objects for architecture, engineering and construction Part 1: Identification and classification – Code of practice
- BS 8541-2:2011 – Library objects for architecture, engineering and construction -Part 2:Recommended 2D symbols of building elements for use in building information modelling
- BS 8541-3:2012 - Library objects for architecture, engineering and construction -Part 3:Shape and measurement - Code of practice
- BS 8541-4:2012 – Collaborative Production of Architectural, Engineering and Construction Information Part 4 – Employer information requirements (COBie).ISO 16739:2005 & 2013 (Industry Foundation Classes)
- Building Information Model (BIM) Protocol (2013) – Construction Industry Council
- Outline Scope of Services for the Role of Information Management - Construction Industry Council (CIC)
- Best Practice Guide for Professional Indemnity Insurance when using BIM - Construction Industry Council (CIC)

3.6. Roles, Responsibilities and Authorities

Required by PAS1192-2 Clause 5.3 b) 6).

The following Roles, Responsibilities and Authorities are defined in Section 7.5 of PAS1192- 2:2013. The Tenderer's are asked to identify these roles and individuals below in Fig. 4 in their pre-contract BEP

Role	Responsibility	Authority
Information Management (Design Lead for design stages and Contractor Lead for construction stages)	<p>Enable reliable information exchange through a common data environment.</p> <p>Maintain and receive information into the Information Model.</p> <p>Enable integration and coordination of information within Information Model.</p> <p>Configure information for Project Outputs.</p> <p>Populate the information exchange format for the Information Model.</p>	<p>Enforce the Project BIM Execution Plan and ensure delivery of the Information requirement in the EIR.</p> <p>Accept /reject information exchanges within the common data environment.</p> <p>No design responsibility or right to issue instructions.</p>
Project Delivery Management -	<p>Assure delivery of information exchanges.</p> <p>Confirm suppliers ability to deliver information requirements.</p>	<p>Accept /reject information exchanges within the common data environment.</p>

Role	Responsibility	Authority
Lead Designer	<p>Manage information development and information approvals.</p> <p>Confirm design deliverables.</p> <p>Overall lead for configuration management.</p> <p>If a clash is detected which cannot be resolved by the Task Team Interface Manager then the lead designer shall be involved in the discussion to reach agreement and make the necessary changes to the models.</p>	<p>Approve design changes proposed to resolve clashes.</p> <p>Confirm status and approve information for issue within the common data environment.</p>
Task Team Manager	<p>Production of design outputs related to a task team specific, package based or time-based task.</p>	<p>Change the status of their team's signed-off information, update the revision and issue the information and model(s) to the PUBLISHED part of the CDE.</p>
Task Information Manager (Information Management)	<p>Direct the production of task information in compliance with standards and methods.</p> <p>Direct the production of task information using agreed systems.</p>	<p>Confirm that information is suitable for issue within a common data environment.</p>
Task Interface Manager (Spatial Coordination and Clash Detection)	<p>Manage spatial co-ordination on behalf of a task team.</p> <p>Propose resolutions to coordination clashes.</p>	<p>Propose resolutions to clashes.</p>
Information Originator (Geometry and information)	<p>Develop constituent parts of the information model in connection with specific tasks.</p> <p>Production of project outputs.</p>	<p>Ownership of model information.</p>

All the roles defined and their respective responsibilities and authorities, are stated only in connection with information management. Other arrangements may be put in place for other aspects of the overall project.

The organisation identified as ‘design lead’ or ‘contractor lead’ depending on the project stage shall undertake the role of Project Information Management.

The Pre-contract BIM Execution Plan should respond to the request for details above. The above table is a statement of the roles, responsibilities and authorities for the project which is based on PAS1192–2:2013. The Tenderer’s documentation should identify person(s) for each of the roles above. CVs for the persons identified should be included as part of the bid submission. In smaller businesses many of these roles may be executed by the same individual.

The individual(s) responsible for the role of Project Information Management will be identified in the BIM Protocol. The Employer should be notified of any change of personnel for the roles at contract signing. Agreed changes should be incorporated into the Post Contract BIM Execution Plan.

4.0 Section 4 - Competence Assessment

4.1. Competence Assessment

Required by PAS1192-2 Clause 5.3 c) 1).

A supplier BIM assessment form should be completed by all appropriate organizations within the supply chain, and submitted as part of their pre-contract BEP, so as to demonstrate their competence in and understanding of BIM and provide a comparable document by which to assess their capability.

The BIM assessment form should include the following (a template BIM assessment form is included in the tender documents):

Item	Description	Response
BIM Capability and Experience	Responses will describe how mature an organization is, and what capabilities are held.	Bidders should include the following detail: BIM experience - organizational and personnel BIM capabilities Out-sourced roles Guidance: The information requested in this section is detailed further in the Project Implementation Plan described in PAS 1192-2
Evidence of BIM Execution Planning	Responses will include examples of BIM execution planning	Bidders should include the following detail: BIM Execution Plans Lessons learnt Guidance: The content of the BIM Execution Plan at tender and start on site stages are described in PAS 1192-2
Confirmation of BIM Toolset	Responses will describe the processes and procedures that make up the bidder's BIM and information management toolkit	Bidders should include the detail on procedures aligned with core project stages as follows: BS1192 (2007) PAS1192-2 (2013) COBie BS1192-4:2014 Other bespoke processes
Details of BIM Workload and Resourcing	Responses will describe the resources (and what levels) that are available to the project	Bidders should include the following detail: Resource matrix with level, number, utilisation Outsourcing details or services etc. Guidance: The content of the assessment is described as the supplier BIM assessment form described in PAS 1192-2
Principal Supply Chain	Responses will describe the supply chain's ability to link into the process and how will this be assessed	Bidders should include the following detail: Key supply chain partners Expected outputs Assessment process

4.2. Changes to Associated Tender Documentation

Required by PAS1192-2 Clause 5.3 c) 2).

The following changes, text, insertions, documents are to be included in the tender documentation, by the project team, as special provisions to be allowed for, to support the utilising BIM on the project:

- A detailed Employer's Information Requirements (EIR) document is included in the tender documentation.
- Bidders are required to submit a pre-contract BIM execution plan, in the format of the template provided, to demonstrate how they intend to deliver on the Employers Information Requirements (EIR).
- The bidder and their supply chain will be required to provide a Pre-contract BIM execution Plan (BEP) which shall be in accordance with Section 6.2 of PAS1192-2:2013.
- In accordance with sections 6.3, 6.4, 6.5, 6.6 and 6.7 of PAS1192-2:2013, the bidder and their supply chain will be required to complete a Project Implementation Plan (PIP) or BIM Capability Assessment, in the format of the template provided, to indicate that they have the personnel, IT resources and BIM expertise to deliver the on the BIM execution plan. Where the bidder or members of the supply chain do not currently have BIM capabilities they should include a statement of how they intend to develop these capabilities, or meet these requirements, as part of delivering on the BIM execution plan. All costs associated with developing the BIM capabilities to deliver on the employer's information requirements should be included in the contract and supply chains tender.
- A Pre-qualification Questionnaire (PQQ) seeking details of BIM capabilities, is included as part of the tender documentation (see Table 8 in PAS91:2013as example).
- A read-only DWF/NWD version of the federated building information model is being made available as part of the tender stage, along with a COBie output in Excel format. Free viewing software is available to download. Bidders are not expected to purchase any software in order to tender works.
- The client can confirm that a fully editable Revit 2015 version of the architectural, structural and MEP services design intent models, will be made available to the successful contractor. The Models for the project has been develop to tender stage, approximating LoMD 4 'Production' (as defined by PAS 1192-2:2013; Figure 20 - Levels of model definition for building and infrastructure projects). The Models cannot be relied upon beyond these levels of definition, even if they do contain additional information. The contractor may use these models to develop further into a construction coordination model if they so choose, however the contractor is responsible for developing their own construction/fabrication BIM, in conjunction with their subcontractors, and in taking on the design intent models, they take full responsibility for checking these before incorporating information into construction, fabrication and installation models. The contractor and subcontractors are expected to add site setup, plant, equipment, crange, temporary works, scaffolding health and safety equipment etc. into the model and edit the model as required to show sequencing of works in conjunction with the construction programme. Cost estimates may be linked to the model so that value earned demonstrations can be provided at any stage.

- It is the contractor’s responsibility to develop and maintain the construction model during the construction phase of the project and ensure that other members of the supply chain develop their portions of the work in a model formats that can be federated into the overall construction model. Models should be produced before fabrication/installation, and should form part of the standard submittals/approvals process of fabrication or “shop drawings”. As far as practically possible, all fabrication and shop drawings should be derived from the construction models.
- The contractor will be required to take on the role of Project Information Manager during construction stage or appoint someone to take on the role on their behalf (Scope of service of Information manager included in tender documents). The information manager construction stage will be required to execute and manage the post-contract BIM Execution Plan (BEP) and operate and maintain the Common Data Environment (CDE) established at design stage.
- The contractor and their supply chain should confirm with their tender submissions that, they have reviewed the models provided, for constructability, logistics and health & safety issues, and ideally those should be linked to the construction programme and estimates as part of their tender submission, to demonstrate their understanding of the project and BIM.
- If any alternative proposals are being suggested as part of the tender, the contractor and subcontractors should ideally develop those aspects of the model from tender issue to tender return, incorporating any proposed construction alternatives, to demonstrate implications of alternative proposals, or additional information added to existing model elements if applicable. A developed COBie output will also be required as part of the tender to highlight any implications of alternative proposals.
- The contractor will be required to provide meeting facilities with IT and projection facilities to allow access to the construction model, and wireless internet connection on site to allow controlled mobile device accessibility to BIM information to all areas of the work. Laser Scanning & setting out equipment (robotic total station) may be required. As well as online collaboration tools (like Autodesk Glue/Field). Contractors should consider IT requirements as part of their proposals. This should be included in the preliminaries.

4.3. BIM Tender Assessment Details

Required by PAS1192-2 Clause 5.3 c) 3).

The Employer understands that the use of BIM is relatively new to the construction industry in Ireland, and won’t be applying a direct scoring and weighting system when assessing submissions in relation to BIM, however suppliers will be required to comply with these requirements, and where suppliers have little or no previous experience of delivering projects in BIM, they should include as part of their submission, and pre-contract BEP, details of how they intend to acquire the capability or resources to deliver BIM, should they be successful in their tender.

5.0 Appendix A - BIM Use & Purpose

5.1. Definition of Building Information Modelling Use & Purpose

For the avoidance of doubt and misunderstanding, the table below clearly defines the Employer's meaning and understanding of the following terms when describing BIM uses and objectives for the project. The supply chain must review this list, and immediately seek clarification on any misunderstandings as to what they are required to provide.

BIM Use Purpose		BIM Use Objectives	Synonyms	Description
1	Gather	to collect or organise Building information	administer, collect, manage, acquire	This primary objective is to use the BIM to gather information about the building and all building elements in order to properly manage the built asset, and the use of BIM can greatly assist in this effort. In this primary BIM use the information will be collected, gathered and organised.
1.1	Capture	to represent or preserve the current status of the Building and Building elements	Collect	The BIM process will be used to capture geometric and attribute data as a record of the Building elements that exists. Existing geometry can be captured using laser scanner or traditional survey methods. All building data captured is to be classified using Uniclass 2 and in COBie-UK-2012 format.
1.2	Quantify (5D)	to express or measure the amount of a Building element	Quantity Takeoff	BIM may be used for counting or collecting the amount of specific Building elements as part of the estimating and cost forecasting process. During the design phase of a Building, quantities maybe defined broadly, represented by a range and subject to change. In the construction phase, quantities are to be more certain and in the operations phase, quantities of elements are to be easily and more readily calculated.

BIM Use Purpose		BIM Use Objectives	Synonyms	Description
1.3	Monitor (6D/7D)	to collect information regarding the performance of Building elements and systems	Observe, Measure	BIM may be used to monitor real-time performance data of Building elements and Building activities. Building Automation System data should be integrated with the BIM data. The BIM should be used to where possible to assist the team to understand the performance of particular Building elements or processes. The contractor should be required to use the BIM process to monitor the productivity of construction processes
1.4	Qualify (4D/7D)	to characterize or identify Building elements' status	Follow, track, identify	This objective is to use the BIM to track the status of the building elements over time, through the design, construct and operation stages. (This should include information for example, in design, what is the element's level of development? In construction, has the element been fabricated? Is it installed? Is it damaged? During operations warranty information on the element and whether or not the element is reaching the end of its useful life)
2	Generate	to create or author information about the Building	create, author, model	It is expected that every discipline that interacts with the Building will generate information about the Building. This includes prescribing, arranging, and sizing Building elements to various levels of development. Within the design phase, the design team will be the primary generators of information, while in the construction phase; the subcontractors will generate most of the information. Additionally, in the operations phase, that information could be generated by those maintaining the Building when they update or change that Building. Anytime new information is authored, modelled, or created, it is generated.

BIM Use Purpose		BIM Use Objectives	Synonyms	Description
2.1	Prescribe	to determine the need for and select specific Building elements	program, specify	The BIM needs of specific Building element are to be agreed and described in the BIM Execution Plans and Model development Matrix. The model element requirements are to consider factors such as phase, discipline, and level of development.
2.2	Arrange	to determine location and placement of Building elements	configure, lay out, locate, place	This is to include during the planning phase the arrangement or adjacency of specific spaces, during the design phase the general location of elements, in the construction phase more detailed placement and installations and during the operations phase to determine the placement, relationship and arrangement of elements
2.3	Size	to determine the magnitude and scale of Building elements	scale, engineer	During design elements can could include the general dimensions of spaces, shape, size etc. and during construction elements must be accurate in terms of size, shape and location and contain all required data. During operations the building manager will record the size of replacement parts or modifications to the Building in the BIM
3	Analyse	to examine elements of the Building to gain a better understanding of it	examine, evaluate	The BIM will allow elements of the Building to be analysed for coordinating, forecasting, and validating for decision making.
3.1	Coordinate	to ensure the efficiency and harmony of the relationship of Building elements	detect, avoid	This objective of BIM use is to ensure that the Building will fit together as it is planned and that all the various systems have been considered through the use of clash detection, collision avoidance, design coordination, and interference management tools and collaboration

BIM Use Purpose		BIM Use Objectives	Synonyms	Description
3.2	Forecast	to predict the future performance of the Building and Building elements	simulate, predict	Detail analysis of the BIM is to be is conducted to predict future performance of the Building and Building elements. Factors to be considered include financial, energy, flow, scenario, and temporal. Financial forecasting includes cost estimation as well as the life cycle cost of a Building. This objective is to examine multiple Building variables to predicts building performance
3.3	Validate	to check or prove accuracy of Building information and that is logical and reasonable	check, confirm	This includes checking building information for accuracy to ensure that it is logical and reasonable. The validation is to include three primary areas: prescription, functionality, and compliance validation.
4	Communicate	to present information about a Building in a method in which it can be shared or exchanged	exchange	Communication is a key primary uses of BIM on this project. The purpose is to present information about the Building in a method which can be shared or exchanged. It promotes and enhances communication and often reduces the time it takes to communicate.
4.1	Visualise	to form a realistic representation of a Building or Building elements	review	The purpose is to form a virtual representation of the Building or Building elements using BIM to better visualise the building. This is especially important for those who have not been trained within the design and construction industry but are critical stakeholders and decision makers. This use is intended to support decision making about the Building's design or construction as well as support marketing efforts. This is to include walkthroughs and renderings

BIM Use Purpose		BIM Use Objectives	Synonyms	Description
4.2	Transform	to modify information and translate it to be received by another process	translate	For exchange of data and information in neutral formats model files are to be exchanged in IFC (industry foundation class) and model data is to be developed in such a way as to allow the data to be exported to COBie-UK-2012 format
4.3	Draw	to make a symbolic representation of the Building and Building elements	draft, annotate, detail	BIM will be used to improve the quality of all drawings including detailing and annotation. All drawing outputs are to be developed in parametric method rather static methods i.e., when the BIM model is updated, the corresponding drawings and sheets are also updated. All drawings outputs for all designers and subcontractors are to be derived in this way from the BIM.
4.4	Document	to create a record of Building information including the information necessary to precisely specify Building elements	Specify, submit, schedule, report.	BIM will be used to improve the quality of all schedules and access to building data. All schedule and data outputs are to be developed in parametric method rather static methods i.e., when the BIM model is updated, the corresponding schedule and data outputs are also updated. All schedules should be capable of being exported to excel and all data inputs capable of being exported to COBie as defined by BS1192-4:2014
5	Realise	to make or control a physical element using Building information	implement, perform, execute,	This BIM Use purpose gives the industry the ability to fabricate, assemble, control, and regulate elements of the Building. Designers and subcontractors will explore how the BIM could lead to the improved productivity of both construction and operations of facilities.

BIM Use Purpose		BIM Use Objectives	Synonyms	Description
5.1	Fabricate	to use Building information to manufacture the elements of a Building	manufacture	<p>Where practical all subcontractors are to maximise the use of BIM to manufacture elements of the Building. For example, Building information can be used to directly fabricate structural steel shapes from a CNC Machine or directly fabricate ductwork or cut piping. Within the design phase, BIM can be used to quickly generate prototypes of future Building elements, while in operations it could be used to quickly fabricate replacement parts.</p> <p>Subcontractors pre-contract BEP to include an explanation of their current shop- drawings and fabrication process, and describe how BIM could help improve the production and flow of information, and accuracy to current processes, and set out the feasibility/cost of implementing these changes and the expected ROI</p>
5.2	Assemble	to use Building information to bring together the separate elements of a Building	prefabricate	<p>The project team will explore how the building information is made available to bring together the separate elements of a Building with the potential ability to fit together systems that were traditionally very separate. Some common examples include curtain wall systems, energy/MEP risers, and toilet cores.</p>

BIM Use Purpose		BIM Use Objectives	Synonyms	Description
5.3	Control	to use Building information to physically manipulate the operation of executing equipment	manipulate	The project team will explore how the BIM can add the ability to use Building information to control equipment operations. EG - Building BMS
5.4	Regulate	to use Building information to inform the operation of a Building element	direct	The project team are to maximise the use of BIM to regulate Building elements potentially allows Building operators to optimise their operations. A common example of this is when information gathered from a temperature monitor (or thermostat) is used to alter the output of the HVAC system. The objective is to see how data can be tied to intelligent monitoring systems and the building information model. This allows the systems to make informed decisions based on the entire system.

6.0 Appendix B (informative)

6.1 Terms, definitions and abbreviations for BIM documentation

The following terms, definitions and abbreviations have been selected from PAS1192-2:2013 as being relevant to an Employers Information Requirements document and should be read in conjunction with PAS1192-2:2013 Annex A. The PAS1192-2:2013 annex numbering has been included for ease of cross referencing. Additional notes have been included which cross reference with BS1192:2007 and the CIC BIM Protocol.

In the interest of achieving a common language in the industry, the following terms should be used in the EIR:

6.1.1. 2D drawing

A 2D drawing contains a view of a model that is referenced into a “drawing sheet template” (blank drawing and title block). Such drawings must always be considered to be static documents, as they are drawing renditions or snapshots of the design’s model files. Such renditions are generated each time the drawing is prepared for “sharing” at regular milestones.

6.1.2. 2D model (M2)

A model with entities having two-dimensional properties. Such models are always to be considered to be dynamic, as they will be made up of “model files” that are “x-ref” or “reference” files.

6.1.3. 3D model (M3)

A model with objects having three-dimensional properties. Such models are always to be considered to be dynamic, as they will be made up of “model files” that are “x-ref” or “reference” files.

NOTE 3D Models with data can be considered Level 2 BIM models whereas 3D Models without data are Level 1 BIM. Refer to Figure 1 in PAS1192-2:2013.

6.1.4. 3D Visualization (VS)

3D images from the 3D CAD model, or a virtual representation of the building or facility to be constructed; used for visualizing the project. Refer to Clause 9.2 of BS1192:2007 where 2D Drawings are represented by the VS Type.

6.1.5. Archive

Component of the common data environment (CDE).

NOTE The archive section of the CDE is for inactive or superseded information. Such information will provide a history of the project information transfers, sharing, change orders and knowledge retention, and can be used for other contractual purposes or “discovery”.

6.1.6. As-built or as-constructed

A model consisting of documentation, non- graphical information and graphical information defining the delivered project.

“As-built” is defined as the record drawings and documentation defining deviation to the designed information occurring during construction at the end of the project.

“As-constructed” defines the defect and deviation to the designed model occurring during construction. The “as-constructed” model and its appended documentation are continually

updated through re-measurement as construction progresses. This allows for deviation to be reviewed with respect to the following packages and making knowledgeable assessment of impact and resolution.

6.1.7. AIM/Asset Information Model

Maintained information model used to manage, maintain and operate the asset.

6.1.8. BEP/BIM Execution Plan

Plan prepared by the suppliers to explain how the information modelling aspects of a project will be carried out.

6.1.9. BIM

Building information modelling.

6.1.10. Clash Rendition (CR)

Rendition of the native format model file to be used specifically for spatial coordination processes. To achieve clash avoidance or to be used for clash detection.

6.1.11. Client

Individual or organization commissioning a built asset.

NOTE The client may be different from the employer.

6.1.12. Common data environment (CDE)

Single source of information for any given project, used to collect, manage and disseminate all relevant approved project documents for multi-disciplinary teams in a managed process.

NOTE 1 A CDE may use a project server, an extranet, a file-based retrieval system or other suitable toolset.

NOTE 2 Note CDE as defined in the BS 1192:2007.

NOTE 3 The fundamental requirement for producing information through a collaborative activity is to share information early, and to trust the information that is being shared as well as the originator of that information. What is needed is a disciplined auditable process that is transparent and controllable. The method for managing a project through a common data environment (CDE) is applicable to all sizes of practice, and in particular it prepares that office to be able to work collaboratively. As a standard that is adopted by all, it will help to remove the problem of having to constantly retrain on each and every project when client standards are to be applied. If the clients accept the procedures and make them contractual, then these problems disappear. The CDE is a means of allowing information to be shared efficiently and accurately between all members of the project team - whether that information is in 2D or 3D, or indeed textual or numeric. The CDE enables multi-disciplinary design teams to collaborate in a managed environment, where the build-up and development of information follows the design, manufacturing and construction sequence. See BS 1192:2007 or Building Information Modelling - A Standard Framework and Guide to BS 1192, Richards, 2010. The CDE process also ensures that information is only generated once and is then reused as necessary by all members of the supply chain. It also ensures that the information is constantly updated and enriched for final delivery as part of the Facilities Management (FM) document.

6.1.13. COBie-UK-2012 (BS1192-4:2014)

Structured facility information for the commissioning, operation and maintenance of a project often in a neutral spreadsheet format that will be used to supply data to the employer or operator to populate decision making tools, FM and asset management systems.

NOTE Templates for the preparation of COBie information exchange files can be downloaded from the BIM Task Group website: <http://www.bimtaskgroup.org>.

6.1.14. Document

Information for use in the briefing, design, construction, operation, maintenance or decommissioning of a construction project, including but not limited to correspondence, drawings, schedules, specifications, calculations, spreadsheets.

NOTE Documents must either be immutable or incorporate a means of controlling changes.

6.1.15. Drawing (DR)

Static, printed, graphical representation of part or all of a project or asset. Refer to Clause 9.2 of BS1192:2007 where 2D Drawings are represented by the DR Type.

6.1.16. Employer

Individual or organization for whom the contract is executed and delivered.

6.1.17. Employer's Information Requirements (EIR)

Document setting out the information to be delivered by the supplier as part of the project delivery process to the employer.

6.1.18. Gate/Stage

Division of a standardized process map for the acquisition of a facility, at some of which the requirements can be delivered.

NOTE The stages at which information exchanges are required should be specified in the EIR by reference to the agreed stage and gate names. See the CIC Scope of Services

6.1.19. Information exchange

Structured collection of information at one of a number of pre-defined stages of a project with defined format and fidelity.

6.1.20. Information Management

Tasks and procedures applied to inputting, processing and generation activities to ensure accuracy and integrity of information.

The Role of Information Management is defined in PAS1192-2:2013 clause 7.5. Refer also to Outline Scope of Services for the Role of Information Management - Construction Industry Council (CIC) and Best Practice Guide for Professional Indemnity Insurance when using BIM - Construction Industry Council (CIC)

6.1.21. Information Model

The information model comprises three constituent parts: documentation, non-graphical information and graphical information.

NOTE The model is conveyed using PDF, COBie and native model files.

6.1.22. Levels of model detail (LOD)

Description of graphical content of models at each of the stages defined for example in the CIC Scope of Services.

6.1.23. Levels of model information (LOI)

Description of non-graphical content of models at each of the stages defined for example in the CIC Scope of Services.

6.1.24. Master information document index (MIDI)

Index specifying a detailed list of the deliverables for a project; for model, sub models, documents and data also allocating responsibility to deliver and the programme for delivery of a project supply chain.

6.1.25. Manageable Assets

Those aspects of the facility that may be managed during the facility life-cycle include both physical and spatial objects, and their functional groupings.

NOTE 1 An asset is a uniquely identifiable element which has a financial value and against which maintenance actions are recorded.

NOTE 2 Some aspects, such as the structural frame, or individual pipe and duct segments, fixings and secondary elements may be excluded from scope by the employer.

6.1.26. Origin

As the setting out point for a project or programme using co-ordinate geometry or related to the OS or geospatial reference.

6.1.27. Originator

Author of models, drawings and documents.

6.1.28. Project delivery team

Group of organizations or individuals contracted either directly or indirectly to deliver services or products to the project.

6.1.29. Project information model (PIM)

Information model developed during the design and production and construction phase of a project, consisting of documentation, non- graphical information and graphical information defining the delivered project.

NOTE The PIM is developed firstly as a design intent model, showing the architectural and engineering intentions of the design suppliers. Then the PIM is developed into a virtual construction model containing all the objects to be manufactured, installed or constructed. It becomes the basis of the Asset Information Model once handed over.

6.1.30. Project implementation plan (PIP)

Statement relating to the suppliers' IT and human resources capability to deliver the EIR.

NOTE Also contains standard method and procedure.

6.1.31. Published/documentation

Component of the CDE for drawing renditions that have been approved as suitable for a specific purpose – for example, suitable for construction.

NOTE The published documentation section of the CDE contains drawings – and, if agreed by the project teams, the native model files and renditions – which are snapshots of the shared information taken at a specific time. They are compiled by referencing the relevant approved model files into a coordinated model file and cutting the views and sections from the models.

6.1.32. Purpose of issue

States the purpose for issuing the document.

6.1.33. Purposes

Those aspects of the Facility that are intended to be managed by the facility owner.

NOTE Some purposes, such as supporting the business case, may be common with the briefing and design processes.

6.1.34. Rendition

Documentation in a form enabling the information to be viewed, printed and marked up. For example, PDF, DWF and NWD files are documentation consisting of snapshots of a model.

6.1.35. Requirements

Requirements are the documented expectations of facility owners/commissioners for sharable structured information. These are also referred to as the Employers Information Requirements (EIR) (alternatively, the Clients Information Requirements).

NOTE: Detailed requirements are included in this document.

6.1.36. Revision

Used to identify revisions of documents, drawing and model files.

6.1.37. Shared

Component of the CDE. The shared section of the CDE is where information can be made available to others in a “safe” environment. The early release of information assists in the rapid development of the design solution. To allow this to be achieved, the concept of information “status/suitability” has been adopted.

6.1.38. SMP

Standard Method and Procedure. Set of standard methods and procedures covering the way information is named, expressed and referenced.

6.1.39. Status

Defines the “suitability” of information in a model, drawing or document. Not to be confused with the status in architectural documentation as “new build”, “retain” or “demolish”.

6.1.40. Supplier

Provider of services or goods either directly to the employer or to another supplier in a supply chain.

6.1.41. Supplier information modelling assessment form

The form conveying the capability and experience of a supplier to carry out information modelling in a collaborative environment.

6.1.42. Supplier information technology assessment form

The form conveying the capability and IT resources of a supplier for exchanging information in a collaborative environment.

6.1.43. Supply chain capability assessment form

Form summarizing the human resource and IT capability of each organization in a supply chain.

6.1.44. Third party capability assessment form

Form conveying the information management and IT capabilities of non-design, non-construction organizations in a supply chain.

6.1.45. User

Individual occupying or using a built asset for its designed purpose.

6.1.46. Volume

Manageable spatial subdivision of a project, defined by the “project team” as a subdivision of the overall project that allows more than one person to work on the project models simultaneously and consistent with the analysis and design process.

NOTE 1 Analogous to the volume strategy defined by the lead designer to allocate volumes within the project to different disciplines into which they carry out their system models (walls structure, pipework, ductwork, electrical, etc.). Also achieves spatial co-ordination prior to detail design. Each volume or subdivision is a reference file. When one or more referenced files is viewed, the full or partial project may be represented. This subdivision also becomes important when using extranets, as it allows the files to be kept to a manageable file size.

NOTE 2: This term is defined as “zone” in BS 1192:2007.

6.1.47. Version

Sub-indexing to revision as used in the common data environment to show the development of information and information models, e.g. if a version is named P1.1, P1 is the revision number and .1 is the version to that revision.

6.1.48. Work in progress (WIP)

Component of the CDE.

7.0 Appendix C - Additional Guidance Notes

The following is additional guidance notes related to the relevant sections of the EIR, that have been extracted from the original BIM Task Group & RIAI EIR Templates, and kept here for ease of reference and for information only, but this **does not form part of the Employers Information Requirements for this project.**

Section 0.0 - Introduction

Section 0.1. - Purpose of Document

PAS1192-2:2013 requires the provision of a clear definition of the employer's information requirements (EIR) and key decision points (to form part of the contract possibly through adoption of the CIC BIM Protocol). The EIR should evaluate the proposed approach, capability and capacity of each supplier, and their supply chain, to deliver the required information, prior to contract award.

EIRs are produced as part of a wider set of documentation for use during project procurement and shall typically be issued as part of the employer's requirements or tender documentation. The development of the EIR shall start either with the assessment of an existing asset, leading to the development of the employer's need, or directly with the employer's need if no existing asset or asset information model is to be considered.

The EIR shall be incorporated into the tender documentation, to enable suppliers to produce their initial BIM execution plan (BEP) upon which their proposed approach, capability and capacity can be evaluated. The EIR is a key document with regards to communicating information requirements as well as establishing information management requirements. The EIR will act as a good basis from which to review the contents of the bidder's BIM Execution Planning, confirming its completeness.

The contents of the EIRs should be aligned to employer decision points which in turn will coincide with project stages. The EIR should be consistent with other appointment and contract documents in use on the project, which in turn should be aligned with industry standards such as the RIAI or PWC project stages. Information requirements should be specific, measurable, achievable, realistic and time-bound against, for defined project stages and information exchanges.

The employer, or the employer's representative, shall be responsible for ensuring that information requirements are included in project contracts in such a way as to avoid duplication of responsibilities.

Section 0.2. - Scope

The Employers Information Requirements guidance document is intended to support Employers undertaking BIM Level 2. It is recommended that Employers become familiar with a BIM Protocol such as the Construction Industry Council (CIC) BIM Protocol which should be included as part of the agreement or contract between the Employer and the project team members. The BIM Protocol should include a Model Production and Delivery Table identifying model uses, Levels of Model Definition (LoMD) and responsibility for modelling for each Project Stage /Information Exchange. The Project BIM Protocol should also identify the Project Information Manager.

PAS1192-2:2013 Clause 5.3 defines the minimum contents of the Employers Information Requirements

Employers should seek independent advice from their insurance provider and where necessary legal advice on the professional risks associated with working in BIM using the CIC BIM Protocol, a bespoke BIM Protocol or not using a BIM Protocol. Each organisation using BIM collaboratively should be familiar with guidance contained in the 'Outline Scope of Services for the Role of Information Management' and 'Best Practice Guide for Professional Indemnity Insurance when using BIM' published by the Construction Industry Council.

This document is generic in nature and is intended as guidance for an Employers Information Requirements document. Prior to its use, the document should be reviewed thoroughly to ensure that it is fit for purpose on the intended project. It is not the intention of this document to state how each organisation will implement BIM with their respective organisations but organisations are encouraged to ensure that their internal procedures support this document and standards for Level 2 BIM in the interest of project quality control and improving collaborative processes.

Section 0.3. - Building Information Modelling Goals

Section 0.4. - Building Information Modelling Use Purpose

Section 0.5. - The BIM Team

Section 0.6. - Copyright

Section 0.7. - Credits

Section 1.0 - Section 1 - Project Information

Section 1.1. - Project Details

The following project information should either be included in the EIR or referenced in other tender documentation where it is included. Project Information should be completed by the Employer.

Section 1.2. - Project Scope

Section 1.3. - Project Description

Section 2.0 - Section 2 - Information Management

Section 2.1. - Level of Detail

The purpose of this section is to define requirements for information submissions/data drops at project stages. This information is used to populate the Model Production and Delivery Table (MPDT) included in the BIM Protocol.

The responsibility for the maintenance of the Model Production Delivery Table (MPDT) sits with the Employer. The table can be managed by a party appointed by the employer. For example, post-contract the MPDT could be managed by the Project Delivery Manager or Project Information Manager.

Accurate recording of the Level of Detail is important. Model Originators will typically be required to complete models strictly to the level of detail required at a particular stage. Similarly information users will typically be required to only rely on information completed to the contractually defined level of detail.

The MPDT defines the scope of the models for the purposes of the contract. It is important that the MPDT is comprehensive and is regularly updated. The MPDT also defines for the purposes of the contract the levels of detail used for the various phases of the project.

Example:

Section 2.2. - Training Requirements

The purpose of this section is to provide bidders with details of training that will be provided in connection with project systems, or training requirements which the bidder will be required to deliver as part of their appointment/contract.

Any specific Client requirements should be communicated through the EIR and through the Pre Contract BIM Execution Plan for the bidder.

Section 2.3. - Planning of Work and Data Segregation

The purpose of this section is to set out requirements for the bidder's proposals for the management of the modelling process.

A statement that information should be managed in accordance with the processes described in PAS1192-2:2013 and BS1192:2007.

Where the employer has specific requirements for work management, the requirement and request for proposals should be identified.

Example

Section 2.4. - Co - ordination and Clash Detection

The purpose of this section is to define the required co-ordination process, together with requirements for quality control.

This EIR should include requests for details of the following project management processes:

Details of the clash detection process including:

Software

Process overview

Responsibilities

Outputs

Technical query workflow

Tolerance strategy

Clash resolution process

Example:

Section 2.5. - Collaboration Process

The purpose of this section is to define how, where and when project information will be shared.

Section 2.6. - Health and Safety

The purpose of this section is to enable the employer to define how BIM-based working will support Health and Safety monitoring aligned with the work stages. Data and records capture processes also need to be documented.

Section 2.7. - Security Requirements

The purpose of this section is to communicate client specific security measures required in order to secure the data.

Section 2.8. - Information to be either excluded or included from information models

The purpose of this section is to communicate a schedule of client specific assets that should be included or excluded from the Project Information Model (PIM) and the Asset Information Model (AIM). This section also enables the employer to obtain proposals with regards to asset information delivery into the employer’s FM environment.

Section 2.9. - Systems Performance

The purpose of this section is to communicate to bidders any constraints in the employer’s systems or specific IT requirements which may need additional resources or non-standard solutions.

Section 2.10. - Compliance Plan

The purpose of this section is to enable the supplier to communicate how the integrity of the model and other data sources will be maintained.

Section 2.11. - Coordinates

The purpose of this section is to encourage the adoption a common coordinate system for all BIM data with consistent adoption for all models. Defines requirements for the common coordinate system for all BIM data. Details modifications to imported DWG/DGN co-ordinates.

The following co-ordinate origin/system (3 dimensions) is to be used to place graphical models, for Ordnance Survey locators, geospatial and location with respect to an agreed origin.

Point	Location Description	Easting (mm)	Northing (mm)	Elevation or site datum

Section 2.12. - Software Formats

Section 3.0 - Section 3 - Commercial Management

Section 3.1. - Exchange of Information

The purpose of this section is to communicate the content of data drops and how data drops are aligned to work stages.

The following data is required to populate the data drops at each stage in accordance with the 'Plain Language Questions' that need to be supported by the data drops:

Data Drop 1 (Stage 2 Outline Proposals)											
Heading	Description	BIM Models (M3)	2D Drawing (DR)	COBie (IE)	Specification (SP)	Schedules (SC)	Programme (PR)	Visualisations (VS)	Reports (RP)	Responsibility	Notes
Space Planning	Room layouts and areas in accordance with Accommodation Schedule. Include required adjacencies and circulation.	x	x	x		x				ARCH	
Massing	Approximate scale of spaces sufficient to describe proposal for outline planning purposes.	x	x					x	x	ARCH	
Existing Services	Identification of existing underground services.	x							x	CIVL	
Existing Conditions	Topographic I and Point Cloud Survey	x	x						x	ARCH	
Design Programme	Design Programme up to appointment of main Contractor						x			PMAN	
Data Drop 2a (Stage 5 Production Information)											
Room Data Sheets	Equipment included for each room type	x	x		x	x		x		ARCH	Visualisations of selected room types only to convey quality of design.

No response is required in the Pre-contract BIM Execution Plan. Exchange of Information should be reviewed at each project stage. Any updates should be agreed with the supplier at each project stage.

Section 3.2. - Client's Strategic Purpose

The purpose of this section is to describe the expected purposes of the information provided using the COBie data exchange format.

Section 1.1.2 CIC BIM Protocol defines Permitted Purpose as: “a purpose related to the Project (or the construction, operation and maintenance of the Project) which is consistent with the applicable Level of Detail of the relevant Model (including a Model forming part of a Federated Model) and the purpose for which the relevant Model was prepared”.

Clause 3.3 CIC BIM Protocol identifies "A key area of concern for many information providers is that the wider use of data-rich BIM will make it harder to protect IPR. The CIC BIM Protocol uses a general concept of 'Permitted Purpose' to define the licensed uses of Models, rather than stating the specific uses of each model"

The CIC BIM Protocol does not specifically state the purposes for which models will be used. Setting out proposed purposes in the EIRs informs the scope of the licences defined in the Protocol.

Example:

The purposes included in the EIR can define the use to which the models are licensed as part of the BIM Protocol. Employers should consider including the purposes in Appendix 1 of the BIM Protocol which should be correlated with the Level of Detail, Project Stage and Data Drops.

Section 3.3. - Software Formats

Section 3.4. - Responsibility Matrix

The purpose of the Responsibility Matrix is to set out the relationship between disciplines and production of information or models in line with the defined project stages.

Preparation of a design responsibility matrix should begin early in the development of the project. It may start with a simple, strategic overview of design responsibility for the main design elements. As the project progresses however, it should increase in detail to allocate responsibility for specific elements, systems and products, setting out the level of detail and format of design information to be produced and any requirement for collateral warranties.

The bidder should provide a methodology for preparing and maintaining the responsibility matrix.

Example:

A Responsibility Matrix should be prepared by the supplier in conjunction with the Post- contract Execution Plan.

Section 3.5. - Standards and Guidance Documents

The purpose of this section is to define the BIM Standards that are incorporated into the Information Requirements, Appendix 2 of the CIC BIM Protocol.

Example:

The standards should be incorporated into the BIM Protocol - Appendix 2.

Section 3.6. - Roles, Responsibilities and Authorities

The purpose of this section is to bring to the attention of the project team the allocation of roles associated with the management of the model and project information.

The roles should be reaffirmed in the EIR either explicitly by including the table below or referencing section 7.5 of PAS1192-2:2013. Any changes to the roles, responsibilities and authorities should be documented in the EIR.

Clarity of roles, responsibility and authority are an essential aspect of effective information management. Roles should be embedded into contracts, either through a specific schedule of services or more general obligations. Information management roles are likely to be embedded into more extensive project roles - design team leader, principal contractor, etc.

PAS 1192-2:2013 identifies the types of roles that should be considered and likely responsibilities. It should be remembered that PAS1192-2:2013 should be read in conjunction with other contract documentation such as the Plans of Work and Schedule of Services. The roles indicated in PAS1192-2:2013 are for guidance only and will differ from project to project depending upon market sector, project size and the supply chain tier you are positioned in. Key to the allocation of roles, responsibility and authority is the appropriateness and ability of the organization to be able to deliver. In smaller businesses many of these roles may be executed by the same individual.

The Pre-contract BIM Execution Plan should confirm the roles, responsibilities and authorities as defined in PAS1192-2:2013 incorporating any changes defined in the EIR. The Pre-contract BIM Execution Plan should identify person(s) for each role. CVs for the persons identified should be included as part of the bid submission.

The Information Manager will be identified in the BIM Protocol. The Employer should be notified of any change of personnel for the roles at contract signing. Agreed changes should be incorporated into the Post Contract BIM Execution Plan.

On projects led with the CIC BIM Protocol (2013), a key role is the Information Manager. The Information Manager has a role in facilitating the management of the federated model and the production of project outputs. The information manager is also responsible for managing the operation, standards and culture of the Common Data Environment (CDE). The Information Manager is not a standalone role and is expected to shift from design team to contractor prior to start on site. Under the BIM Protocol, a client is obliged to appoint an Information Manager

Section 4.0 - Section 4 - Competence Assessment

The purpose of this section is to assess details of the collaboration process from the bidder sufficient to demonstrate BIM competence and capability at tender.

Section 4.1. - Competence Assessment

Templates of the documents listed in this section are included in the Construction Project Information Exchange (CPIx) Protocol, available via the CPI website <http://www.cpic.org.uk>. Use of the supply chain capability summary form means that a potential supplier does not need to submit assessment forms from each supply chain organization.

Section 4.2. - Changes to associated tender documentation

The purpose of this section is to identify insertions related to BIM Level 2 into the tender documents.

Examples (omit or change relevant examples):

A PQQ may be used for an initial expression of interest. PAS91:2013 may be used. A Project Implementation Plan (PIP) in accordance with section 6.3 of PAS1192-2:2013 should be included with the tender. All bidders should include a Pre-contract BIM Execution Plan in response to an EIR. The EIR may be prescriptive on the format of the Pre-contract BEP template used e.g. template provided or Pre-Contract Building Information Modelling (BIM) Execution Plan (BEP) version 2.0 April 2013.

Section 4.3. - BIM tender assessment details

The purpose of this section is provide bidders with information on scoring and weighting of information provided in relation to BIM as part of the tender.

8.0 Bibliography

8.1.1. Standards publications

- PAS1192-2:2013
- PAS1192-3:2014
- BS 1192:2007
- BS 1192-4:2014
- BS1192-5:2015 (currently out for consultation)
- BS 8541-2:2011 - Library objects for architecture, engineering and construction Part V. Identification and classification - Code of practice
- BS 8541-2:2011 - Library objects for architecture, engineering and construction-Part 2:
- Recommended 2D symbols of building elements for use in building information modelling

- BS 8541-3:2012 - Library objects for architecture, engineering and construction-Part 3:
- Shape and measurement - Code of practice
- BS 8541-4:2012 - Collaborative Production of Architectural, Engineering and Construction Information Part 4 - Employer information requirements (COBie).
- BS1192-4:2014 - Collaborative Production of Architectural, Engineering and Construction Information Part 4 - Employer information requirements (COBie).

8.1.2. Other publications

- RIAI Post Contract BIM Execution Plan template (revision P1.4)
- CPIx Post Contract-Award Building Information Modelling (BIM) Execution Plan (BEP) Revision R1 March 2013
- Building Information Model (BIM) Protocol (2013) - Construction Industry Council
- Outline Scope of Services for the Role of Information Management - Construction Industry Council (CIC)
- Best Practice Guide for Professional Indemnity Insurance when using BIM - Construction Industry Council (CIC)

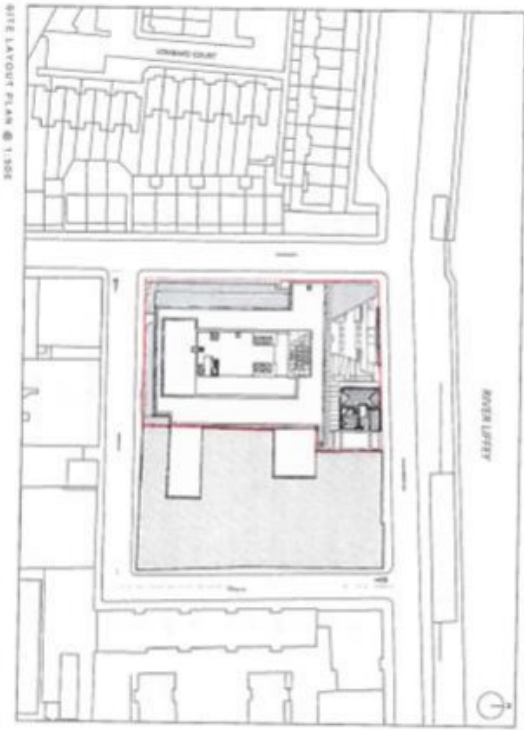
8.1.3. Websites

- Building Information Modelling (BIM) Task Group - <http://www.bimtaskgroup.org>
- COBie-UK-2012, Reference documentation - <http://www.bimtaskgroup.org/COBie-UK-2012>
- Construction Industry Council (CIC) - <http://www.cic.org.uk>
- Construction Project Information Committee (CPIC) - <http://www.cpic.org.uk>

8.1.4. Further Reading

- BS 8534:2011, Construction procurement policies, strategies and procedures - Code of practice
- BS EN ISO 9001:2008, Quality management systems - Requirements
- BS ISO 10007:2003, Quality management systems - Guidelines for configuration management
- BS ISO/IEC 27001:2005, Information technology - Security techniques – Information

Plan 2



SITE LAYOUT PLAN @ 1:500

NOT TO SCALE
FOR INFORMATION ONLY
DO NOT USE FOR CONSTRUCTION

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FOR INFORMATION ONLY
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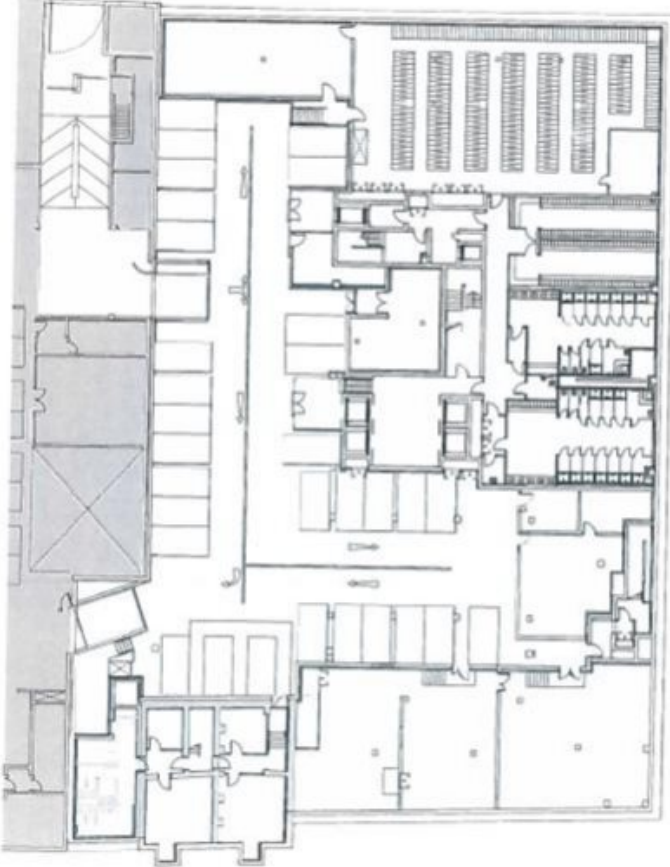
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Plan 3



Plan 4

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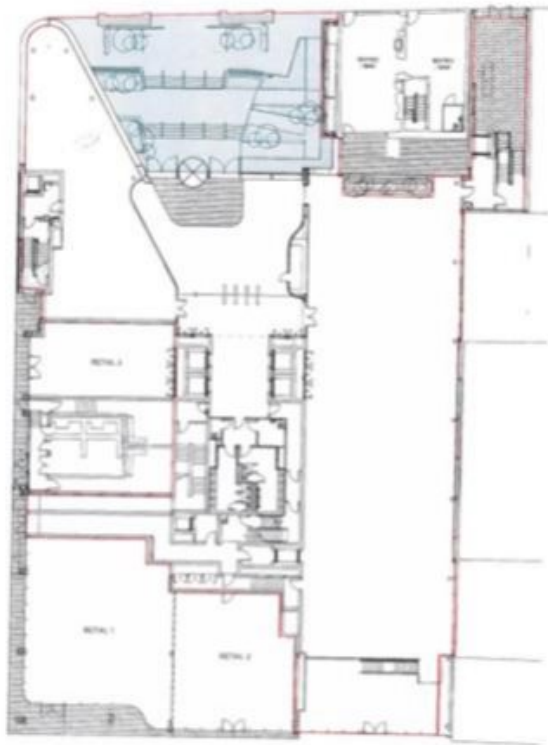
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Plan 6

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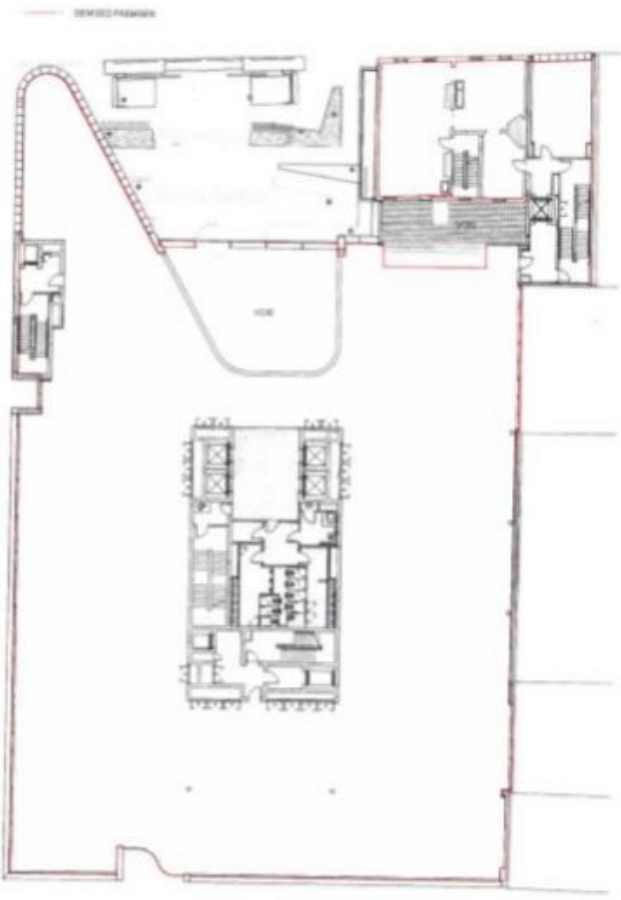


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Plan 8



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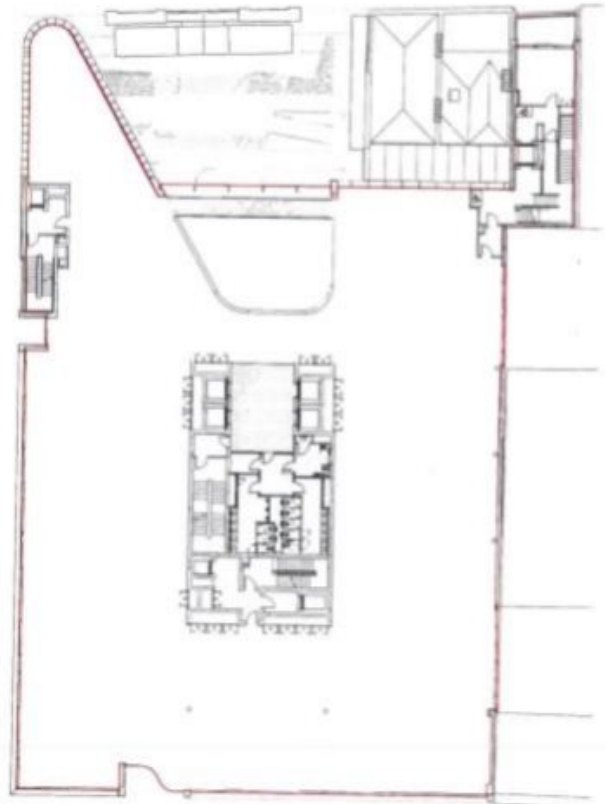
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Plan 10

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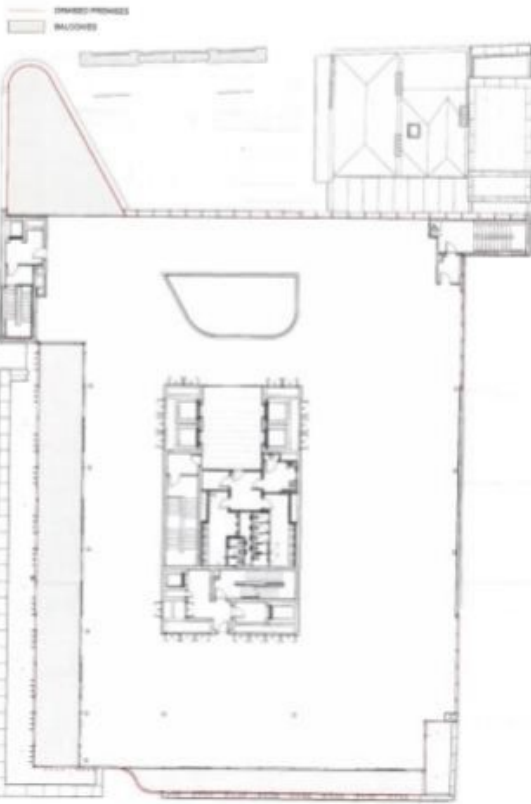
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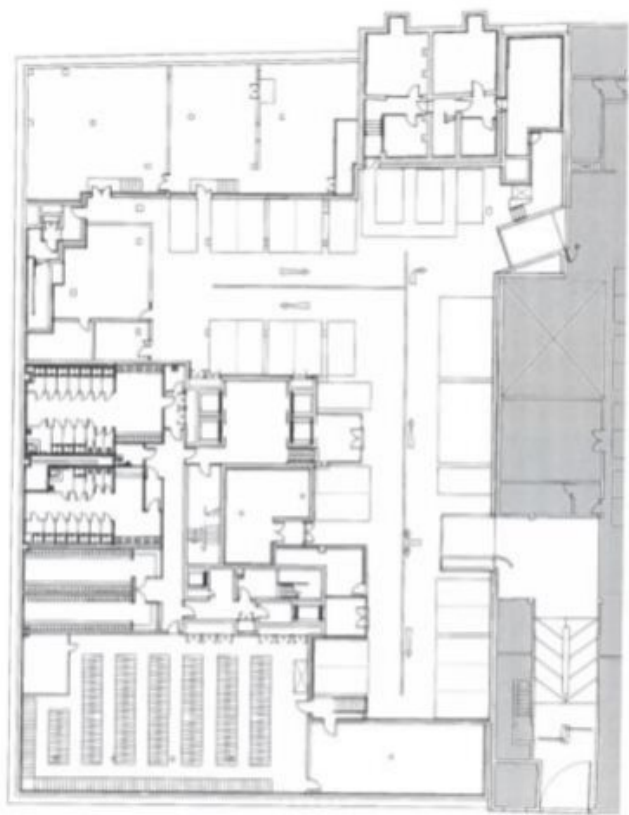
Plan 12



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KEYPLAN
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Plan 13



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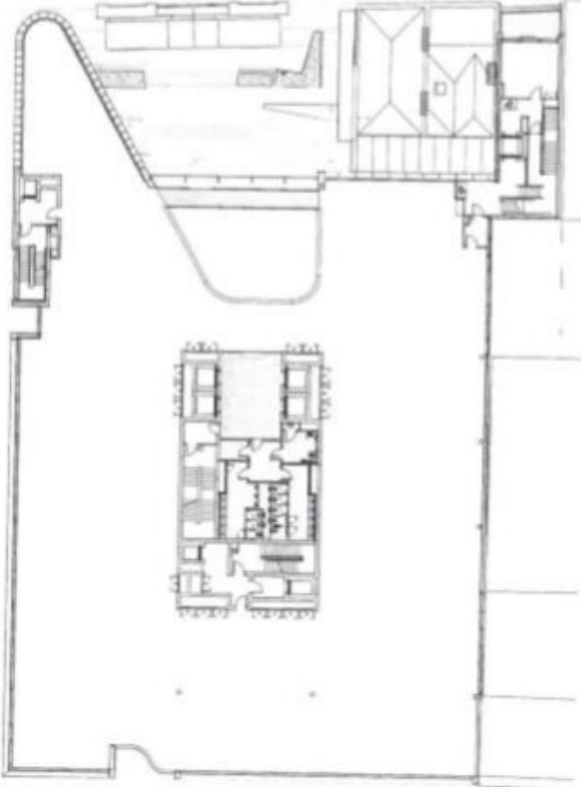
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PLAN 16
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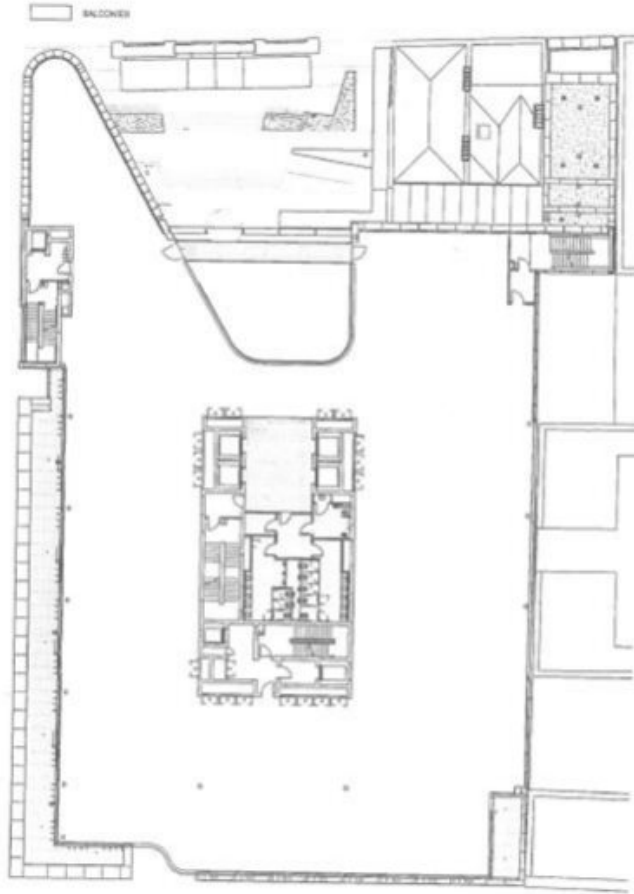
Plan 17

ENCLOSURE



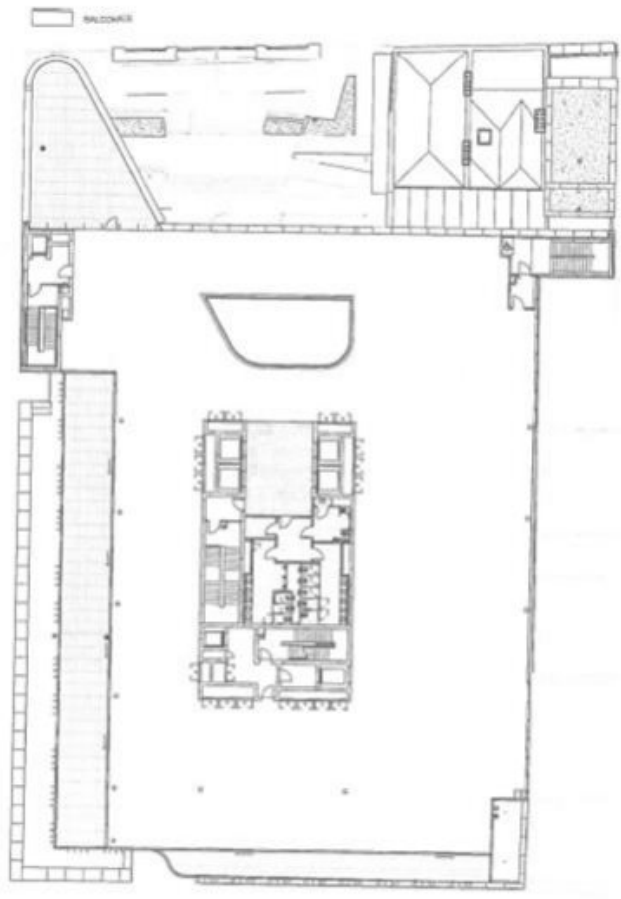
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Plan 18



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PROJECT FLOOR PLAN
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Plan 19



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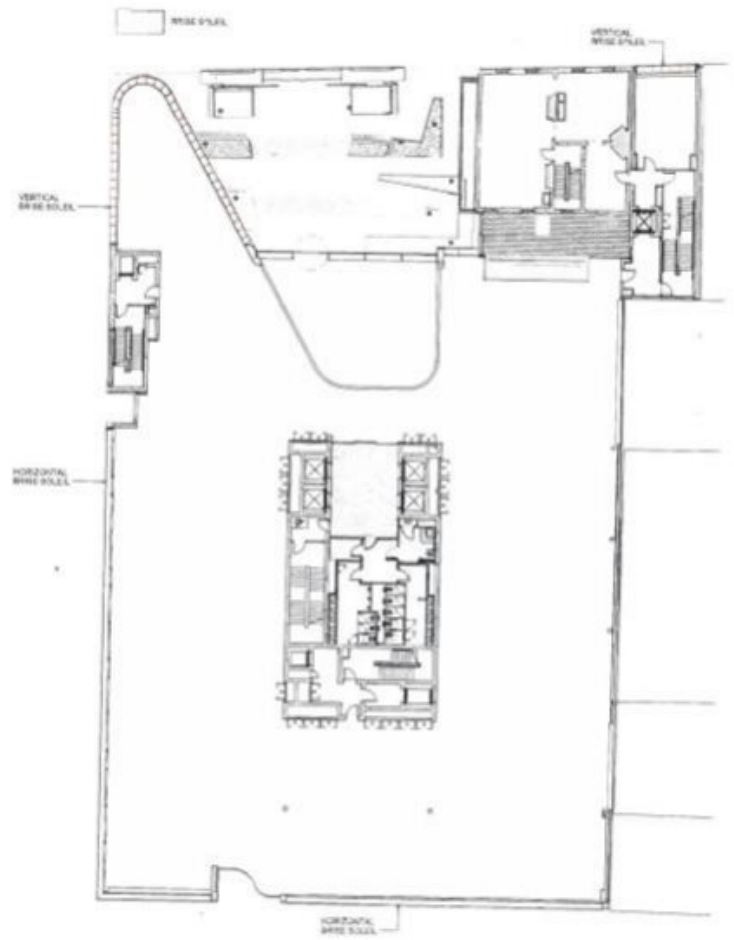
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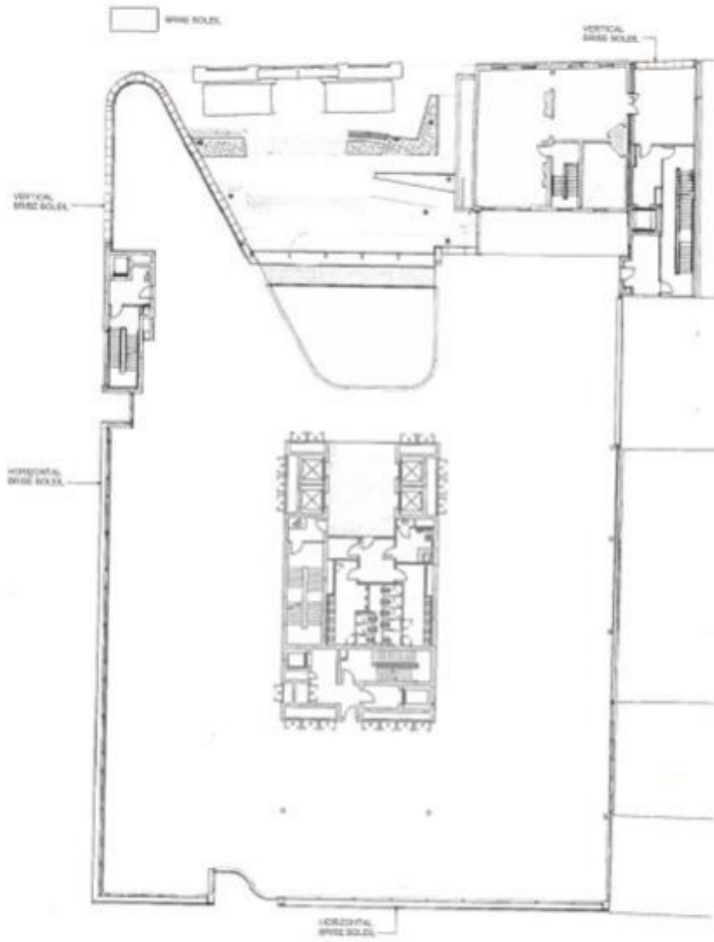
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Plan 20



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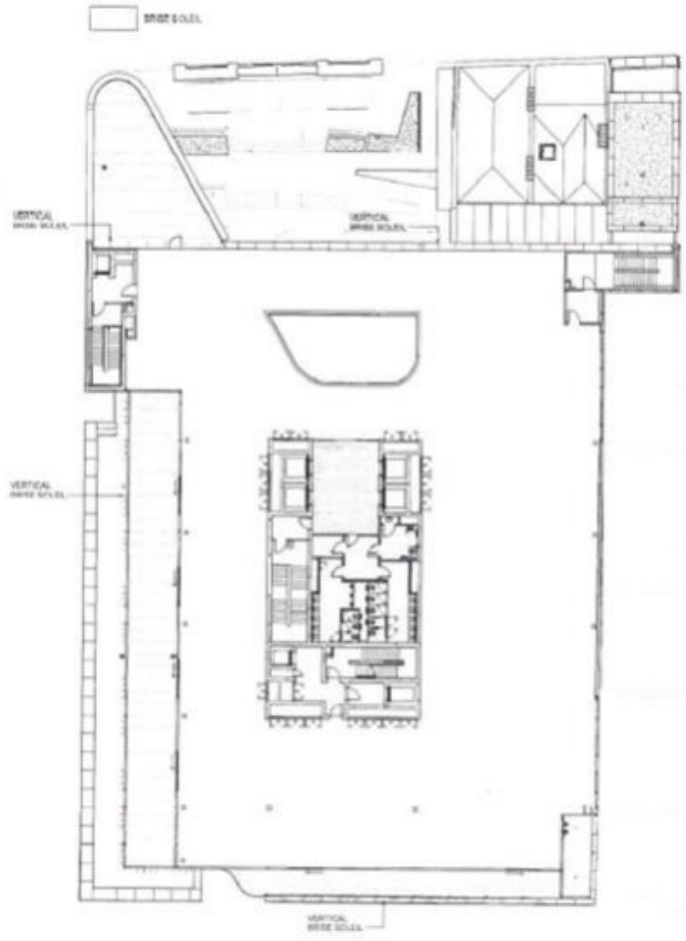
Plan 21



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HEAVY CONCRETE WALLS
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GLASS
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Plan 24



LEASE
HENRY JONES ARCHITECTS
L1015_LBS

HUBSPOT, INC.

NON-EMPLOYEE DIRECTOR COMPENSATION POLICY

The purpose of this Director Compensation Policy of HubSpot, Inc. (the “**Company**”), is to provide a total compensation package that enables the Company to attract and retain, on a long-term basis, high-caliber directors who are not employees or officers of the Company or its subsidiaries. In furtherance of the purpose stated above, all non-employee directors shall be paid compensation for services provided to the Company as set forth below:

Cash Retainers

Annual Retainer for Board Membership: \$35,000 for general availability and participation in meetings and conference calls of the Board of Directors, to be paid quarterly in advance.

Annual Retainer for Lead Independent Director: \$20,000 to be paid quarterly, in advance.

Additional Retainers for Committee Membership to be paid quarterly, in advance:

Audit Committee Chairperson:	\$	20,000
Audit Committee member:	\$	10,000
Compensation Committee Chairperson:	\$	15,000
Compensation Committee member:	\$	7,500
Nominating and Corporate Governance Committee Chairperson:	\$	8,500
Nominating and Corporate Governance Committee member:	\$	4,000

Note: Chairperson retainers are in addition to member retainers. No equity retainers shall be paid as compensation for committee membership.

Directors shall be entitled to retain any retainer fees paid in advance with respect to the quarter in which he or she ceases to be a director or ceases to serve on a committee, as committee chair or as Lead Independent Director.

Equity Retainers

Annual equity grants: Each non-employee member of the Board will receive an annual equity grant (the “**Annual Grant**”) following the annual meeting of stockholders of \$200,000 of equity awards in the form of stock options and/or restricted stock units, as determined by the Compensation Committee of the Board, that vest upon the first anniversary of such grant date (or, if earlier, immediately prior to the annual meeting of stockholders that is closest to the one year anniversary), provided, however, that all vesting ceases if the director resigns from the Board of Directors or otherwise ceases to serve as a director, unless the Board of Directors determines that the circumstances warrant continuation of vesting. The number of shares issued in connection with the Annual Grant shall be based on the 30 trading day trailing average NYSE stock price as of market close on the date of grant and in the case of options, shall be based on the 30 trading day trailing average fair value (Black-Scholes value) as of the date of grant. Newly elected non-employee directors will receive a pro-rated equity grant in connection with their appointment or election to the Board.

Acceleration of Equity Awards: All unvested equity awards held by non-employee directors will accelerate and immediately vest if the non-employee director’s service relationship ends within three months prior to or twelve months following a Sale Event (as defined in the Company’s 2014 Stock Option and Incentive Plan).

Directors Affiliated with Company Investors: Directors affiliated with an investor in the Company (“Investor Directors”) that holds one percent or more of our capital stock are not eligible to receive cash retainer fees or equity compensation under this policy. Directors affiliated with an investor who falls below the 1% threshold will become eligible to receive cash retainer fees beginning in the calendar quarter following the date in which the Company is notified that such investors’ holdings have fallen below 1% and will become eligible to receive an annual equity grant at the next annual meeting following such date.

Expenses

The Company will reimburse all reasonable out-of-pocket expenses incurred by non-employee directors in attending meetings of the Board or any Committee.

Effective Date: January 1, 2020

ADOPTED: January 29, 2020

Subsidiaries of HubSpot, Inc.

<u>Name of Subsidiary</u>	<u>Jurisdiction of Incorporation or Organization</u>
HubSpot Asia Pte. Ltd.	Singapore
HubSpot Australia Pty Ltd	Australia
HubSpot Canada Inc.	Canada
HubSpot France S.A.S.	France
HubSpot Germany GmbH	Germany
HubSpot Ireland Limited	Ireland
HubSpot Japan K.K.	Japan
HubSpot Latin America S.A.S.	Colombia
HubSpot Sweden, a filial of HubSpot Ireland Limited	Sweden
HubSpot UK Holdings Limited	United Kingdom
PieSync NV	Belgium

CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

We hereby consent to the incorporation by reference in the Registration Statements on Form S-3 (No. 333-229641) and Form S-8 (Nos. 333-229622, 333-223018, 333-216104, 333-209689, 333-202532, and 333-199225) of HubSpot, Inc. of our report dated February 12, 2020 relating to the financial statements and the effectiveness of internal control over financial reporting, which appears in this Form 10-K.

/s/ PricewaterhouseCoopers LLP

Boston, Massachusetts
February 12, 2020

**Certification of Chief Executive Officer
Pursuant to
Exchange Act Rules 13a-14(a) and 15d-14(a),
As Adopted Pursuant to
Section 302 of the Sarbanes-Oxley Act of 2002**

I, Brian Halligan, certify that:

1. I have reviewed this annual report on Form 10-K of HubSpot, 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: February 12, 2020

/s/ Brian Halligan

Brian Halligan

Chief Executive Officer

(Principal Executive Officer)

**Certification of Chief Financial Officer
Pursuant to
Exchange Act Rules 13a-14(a) and 15d-14(a),
As Adopted Pursuant to
Section 302 of the Sarbanes-Oxley Act of 2002**

I, Kate Bueker, certify that:

1. I have reviewed this annual report on Form 10-K of HubSpot, 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: February 12, 2020

/s/ Kate Bueker

Kate Bueker

Chief Financial Officer

(Principal Financial Officer)

Certifications of Chief Executive Officer and Chief Financial Officer
Pursuant to 18 U.S.C. Section 1350
As Adopted Pursuant to
Section 906 of the Sarbanes-Oxley Act of 2002

I, Brian Halligan, certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that, to my knowledge, the Annual Report on Form 10-K of HubSpot, Inc. for the period ended December 31, 2019 fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934 and that information contained in such Annual Report on Form 10-K fairly presents, in all material respects, the financial condition and results of operations of HubSpot, Inc.

/s/ Brian Halligan
Brian Halligan
Chief Executive Officer
(Principal Executive Officer)
February 12, 2020

I, Kate Bueker, certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that, to my knowledge, the Annual Report on Form 10-K of HubSpot, Inc. for the period ended December 31, 2019 fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934 and that information contained in such Annual Report on Form 10-K fairly presents, in all material respects, the financial condition and results of operations of HubSpot, Inc.

/s/ Kate Bueker
Kate Bueker
Chief Financial Officer
(Principal Financial Officer)
February 12, 2020

The foregoing certifications are not deemed filed with the Securities and Exchange Commission for purposes of Section 18 of the Securities Exchange Act of 1934, as amended (Exchange Act), and are not to be incorporated by reference into any filing of HubSpot, Inc. under the Securities Act of 1933, as amended, or the Exchange Act, whether made before or after the date hereof, regardless of any general incorporation language in such filing.