

**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION**

Washington, D.C. 20549

**FORM 10-K**

Annual Report pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934

For the fiscal year ended December 31, 2021

OR

Transition Report pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934

**Securities Exchange Act of 1934**

**For the fiscal year ended December 31, 2021**

**Commission file number 000-21129**

**AWARE, INC.**

(Exact Name of Registrant as Specified in Its Charter)

**Massachusetts**  
(State or Other Jurisdiction of  
Incorporation or Organization)

**04-2911026**  
(I.R.S. Employer Identification No.)

**40 Middlesex Turnpike, Bedford, Massachusetts 01730**

(Address of Principal Executive Offices)  
(Zip Code)

**(781) 276-4000**

(Registrant's Telephone Number, Including Area Code)

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

Title of Each Class	Trading Symbol	Name of Each Exchange on Which Registered
Common Stock, \$0.01 par value per share	AWRE	The Nasdaq Global Market

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

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

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

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

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

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

Large Accelerated Filer  Accelerated Filer  Non-Accelerated Filer  Smaller Reporting Company  Emerging Growth Company

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

Indicate by check mark whether the registrant has filed a report on and attestation to its management's assessment of the effectiveness of its internal control over financial reporting under Section 404(b) of the Sarbanes-Oxley Act (15 U.S.C. 7262(b)) by the registered public accounting firm that prepared or issued its audit report.

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

As of June 30, 2021, the aggregate market value of the registrant's common stock held by non-affiliates of the registrant, based on the closing sale price as reported on the Nasdaq Global Market, was approximately \$50,128,551.

The number of shares outstanding of the registrant's common stock as of March 1, 2022 was 21,642,260.

**DOCUMENTS INCORPORATED BY REFERENCE**

Portions of the registrant's definitive Proxy Statement to be delivered to shareholders in connection with the registrant's Annual Meeting of Shareholders to be held on June 15, 2022 are incorporated by reference into Part III of this Annual Report on Form 10-K.

AWARE, INC.  
FORM 10-K  
FOR THE YEAR ENDED DECEMBER 31, 2021

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## ITEM 1. BUSINESS

### Company Overview

Aware, Inc. (“Aware”, “we”, “us”, “our”, or the “Company”) is a leading, global authentication company that validates and secures identities using proven and trusted adaptive biometrics. Aware’s software offerings address the growing challenges that government and commercial enterprises face in knowing, authenticating and securing individuals through frictionless and highly secure user experiences. Aware’s algorithms are based on the most diverse data sets in the world and can be tailored to the unique security and requirements of each customer. Our portfolio enables government agencies and commercial entities to enroll, identify, authenticate and enable using biometrics, which comprise physiological characteristics, such as fingerprints, faces, irises and voices.

- **Enroll:** Register biometric identities into an organization’s secure database
- **Identify:** Utilize an organization’s secure database to accurately identify individuals using biometric data
- **Authenticate:** Provide frictionless multi-factor, passwordless access to secured accounts and databases with biometric verification
- **Enable:** Manage the lifecycle of secure identities through optimized biometric interchanges

We have been engaged in this business since 1993. Our comprehensive portfolio of biometric solutions is based on innovative, robust products designed explicitly for ease of integration, including customer-managed and integration ready biometric frameworks, platforms, Software Development Kits (“SDKs”) and services. Principal government applications of biometrics systems include border control, visa applicant screening, law enforcement, national defense, intelligence, secure credentialing, access control, and background checks. Principal commercial applications include mobile enrollment, user authentication, identity proofing, and secure transaction enablement.

Our products span multiple biometric modalities, including fingerprint, face, iris and voice, and provide interoperable, standards-compliant, field-proven biometric functionality. Our products are used to capture, verify, format, compress and decompress biometric images as well as aggregate, analyze, process, match and transport those images and templates within biometric systems. For large deployments, we may provide project management and software engineering services. We sell our biometrics software products and services globally through a multifaceted distribution strategy using systems integrators, Original Equipment Manufacturers (“OEMs”), value added resellers (“VARs”), partners, and directly to end user customers.

Aware was incorporated in Massachusetts in 1986. We are headquartered at 40 Middlesex Turnpike in Bedford, Massachusetts, and our telephone number at this address is (781) 276-4000. Our website address is [www.aware.com](http://www.aware.com). The information on our website is not part of this Form 10-K, unless expressly noted. Our stock is traded on the Nasdaq Global Market under the symbol AWRE.

### Worldwide Coronavirus Pandemic (“COVID-19”)

On March 11, 2020, the World Health Organization declared the novel strain of coronavirus (“COVID-19”) a global pandemic and recommended containment and mitigation measures worldwide. Governor Charlie Baker of Massachusetts ordered all businesses and organizations that do not provide “COVID-19 Essential Services” to close their physical workplaces and facilities to workers, customers and the public as of noon on March 24, 2020. At that time, we took the necessary steps to enable an all-remote workforce. Many of our clients worldwide were similarly impacted. Over time, the restrictions in the state of Massachusetts were eased, or re-tightened, in line with the trends of the pandemic. As of December 31, 2021, we were in a hybrid model with some employees coming into the office and others continuing to work remotely.

The global outbreak of COVID-19 continues to evolve, and the extent to which COVID-19, particularly with regard the new variants that emerged in 2021 (“Delta” and “Omicron”) may have long-term impact on our business and the markets we serve, will depend on future developments—which are highly uncertain and cannot be predicted with confidence, such as the pace of ongoing vaccination efforts in the United States and the rest of the world, the duration of the outbreak, travel restrictions and social distancing measures in the United States and other countries, business closures or business disruptions, and the effectiveness of actions taken in the United States and other countries to contain and treat the disease.

We are continuing to monitor the situation with our primary focus on the health and safety of our employees and clients.

## Principal Products & Services

We sell a broad range of biometrics software products and solutions that perform functions to address our customers' desired use cases where they are addressing improved security, data protection compliance and improved ROI and efficiencies including:

1. Enrollment of their workforce for benefits and background checks
2. Enrollment of their customers for a better experience or improved customer service and security
3. Law enforcement processing and forensic analysis
4. Trusted remote enrollment where travel or direct contact is not viable
5. Trusted transactions and access control

Our biometrics software solutions are built upon robust componentized products that are customer configurable to give them control so they can uniquely address their specific customers' expectations. These solutions and services facilitate customers with an opportunity for a faster go-to-market process to help reduce their development times and exposure to software support and maintenance risks. Our solutions and services are described below.

### Integrated Framework and Platform Solutions and Services

#### Knomi® Mobile Framework

The Knomi mobile biometric authentication framework is built on our hardened biometric SDK components, which are optimized to operate on mobile devices, and a server that together enable strong, multi-factor, password-free authentication from a mobile device using biometrics. Knomi offers multiple biometric modality options, including facial recognition, and voice authentication as means to enroll, onboard or authenticate. Knomi software components can be used in different combinations and configurations to enable either a server-centric architecture, a web-based or a device-centric implementation. Knomi has primarily been sold as a perpetual license and is also available as a fixed term license that is priced on a subscription-based model.

#### AwareABIS™ Platform

AwareABIS is an Automated Biometric Identification System ("ABIS") used for large-scale biometric identification and deduplication using fingerprint, face, and iris recognition. Leveraging Aware's Astra™ and BioSP™ products, AwareABIS is a highly scalable platform that performs one-to-many search or one-to-one match against large stores of biometrics and other identity data. Utilizing highly distributed computing, AwareABIS also enables complex filtering, and linking operations critical to data preparation and quality assurance functions, such as identity resolution and data deduplication of massive biometric databases (tens of millions of records). The platform is built upon several mature, high-performance, field-proven applications and algorithms from Aware. AwareABIS has primarily been sold as perpetual license and is also available as a fixed term license that is priced on a subscription-based model or the size of the biometric system.

#### AFIX Suite of Products

Aware's AFIX suite of products is used for small-scale law enforcement focused biometric identification. AFIX Tracker™ supports fingerprint, palmprint and latent print identification, designed to serve between 15,000 and 2 million identities. AFIX Tracker is ideal for crime scene investigation applications in low to moderate sized community populations. The product provides minutiae-based search capability and can be configured as either a standalone system, or for use with centralized, server-based data stores. AFIX Tracker has primarily been sold as a perpetual license and is also available as a fixed term license that is priced on a subscription-based model or the size of the biometric system.

#### BioSP™ - Biometric Services Platform

BioSP is a service-oriented platform used to enable a biometric system with advanced biometric data processing and management functionality in a web services architecture. It provides workflow, data management and formatting, and other important utilities for large-scale fingerprint recognition, face recognition, and iris recognition systems. BioSP is well suited for applications that require the collection of biometrics throughout a distributed network, and

subsequent aggregation, analysis, processing, distribution, matching, and sharing of data with other system components. BioSP is modular, programmable, scalable, and secure, capable of managing all aspects of transaction workflow, including messaging, submissions, responses, and logging. BioSP has primarily been sold as a perpetual license and is also available as a fixed term license that is priced on users, transactions, or enterprise wide.

#### BioSP™ Biometric Services Platform - WebEnroll

WebEnroll is a browser-based biometric enrollment and data management solution available as an enhanced version of BioSP™ that utilizes BioComponents™ for capture of biographic data, fingerprints and facial images in a browser. Each BioComponent performs advanced biometric image autocapture as well as capture device hardware abstraction. Once images are captured, they are submitted to BioSP, where configurable workflows and modular software applications are used for processing, routing, and storage of each transaction. WebEnroll has primarily been sold as a perpetual license and is also available as a fixed term license that is priced on users, transactions, or enterprise wide.

#### AwareID™

AwareID™ is our new Software-as-a-Service (“SaaS”) offering that is used for Aware’s adaptive authentication platform of cloud-based biometric application programming interfaces (“APIs”) and turnkey services. AwareID provides biometric face and voice analysis for liveness-verification, and document validation. The platform uses proprietary Adaptive Authentication technology in cloud-based bundles to provide comprehensive authentication functionality with situational awareness for onboarding, access control/management, and authentication of transactions. These services can be used discretely to enhance investments already in place or combined to provide higher functionality. The AwareID platform is built on open architecture and interfaces to maximize interoperability and connection to other biometric and/or digital identity applications and platforms. AwareID is provided as a SaaS offering with usage-based pricing. This wider SaaS offering includes the solution formerly referred to as Indigo™.

#### FortressID™

Aware’s Fortress Identity cloud platform (“FortressID”), acquired in December 2021, is used for user authentication with compound biometrics. The Fortress Identity Biometric Authenticator™ and Onboarding Authentication Platform™ provide multi-factor authentication through passive and active biometrics for multiple modalities, including voice, fingerprint, face and behavior to enable online onboarding and identity proofing. FortressID also includes a mobile SDK for iOS and Android applications, a Citrix connector to enable full multi-modal, multi-factor biometric user authentication with Citrix, and an Active Directory connector to enable the addition of biometrics to strengthen or replace password access. FortressID is sold as a SaaS offering. Going forward, we plan to transition FortressID into the AwareID offering.

### **Software products**

We sell a broad range of software components, or “building blocks”, such as SDKs, APIs, and applications that customers use to streamline or develop their systems into more effective solutions. These building blocks enable important functions including:

1. Matching of biometric samples against biometric databases.
2. Enrollment, analysis, and processing of biometric images and identity data on workstations.
3. Image compression

BioComponents™ bundles our offerings as applications with a user interface. We also license our software unbundled as building blocks and have primarily sold these offerings as a perpetual license.

Historically, we sold our software products under perpetual or fixed-term licenses. With the introduction of AwareID and FortressID, we have incorporated SaaS offerings into our product line-up. While we did not recognize revenues from our SaaS offerings during 2021, we expect SaaS to become a significant product offering moving forward.

### ***Building Blocks: SDKs, APIs, Applications, and Subsystems***

#### ***Biometric Search & Matching SDKs***

Our SDKs consist of: i) multiple software libraries; ii) sample applications that show customers how to use the libraries; and iii) documentation. Customers use our SDKs to design and develop biometrics applications. Nexa™ is our line of biometric search and match SDKs, including Nexa|Fingerprint™, Nexa|Face™, Nexa|Iris™ and Nexa|Voice™. These products provide high-performance biometric algorithms for fingerprint, facial, iris and voice identification or authentication. The algorithms in these products convert images into biometric templates, which can then be compared to templates stored in databases to find matches.

In addition to the Nexa line, we also offer AwareXM™, an interoperable fingerprint matching SDK that provides MINEX-certified, INCITS 378-compliant fingerprint minutiae extraction, template generation, and fingerprint authentication.

#### ***Biometric Enrollment SDKs and APIs***

Our suite of enrollment SDKs and APIs performs functions that are critical to biometric enrollment, including (i) image capture and hardware abstraction, (ii) image quality assurance, (iii) image compression, (iv) mobile enrollment, matching and liveness verification, and (v) fingerprint card processing.

#### ***Imaging products***

In addition to our biometrics software products, we also sell products used in applications involving medical and advanced imaging. Our principal imaging product is Aware JPEG 2000, which is based on the JPEG2000 standard. The JPEG2000 standard is an image compression standard and coding system that was created by the Joint Photographic Experts Group committee in 2000. Our JPEG2000 product is used to compress, store, and display images. Those images are typically medical images.

#### ***Software maintenance***

We also provide and sell software maintenance to many of our customers who purchase our software products and solutions. Software maintenance has historically been made available by contracts that typically have a one-year term during which customers have the right to receive technical support and software updates for a fixed fee, if and when they become available. Software maintenance is also available as part of a subscription-based solution offering under which customers receive standard software maintenance plus access to upgrades and product enhancements.

#### ***Services***

We provide a variety of program management and software engineering services, including: i) project planning and management; ii) system and architecture design; iii) software design, development, customization, configuration, and testing; and iv) software integration and installation. Services are sold in conjunction with our products and solutions and are provided for a fixed fee.

Service engagement deliverables may include: i) complete customer software solutions; ii) one or more subsystems comprised of software products that are integrated within a larger system; iii) custom-configured versions of existing software products; or iv) custom-designed software products. In some cases, the software resulting from service engagements may form the basis for new or improved Aware software solutions and/or products.

Our customers for services include: i) government agencies; ii) large multinational systems integrators; iii) smaller systems integrators with a particular market, technology or geographic focus; and iv) commercial partners or providers of products, solutions, and services for themselves or to their end customers. We provide services directly to end-users or indirectly to end-users through systems integrators or commercial entities or partners. When we provide services to systems integrators, they are often engaged with the end-user as a prime contractor and are responsible for delivery of a complete solution, in which case we typically serve as a subcontractor assigned a subset of the total scope of work.

The scope of our services projects varies. A small project might involve configuration and testing of a single software product, taking a small team one month or less. A large project might involve delivery of a more complex solution comprised of multiple products and subsystems, requiring a larger team to conduct program and project management, system design, software customization and integration, and taking up to one year or more. Some projects are followed by subsequent follow-on projects that serve to change or extend the features and functionality of the initial system.

### **Distribution Methods**

We sell our products, solutions and services through three principal channels of distribution:

- i) Systems integrator channel – we sell to systems integrators that incorporate our software products and solutions into biometric systems that are delivered primarily to government end users.
- ii) Direct channel – we sell directly to government, as well as commercial customers.
- iii) OEM and VAR channel – we sell to hardware and software solution providers that incorporate our software products into their products for resale or use in their solution offerings or integrated software products.

### **Major Customers**

All of our revenue in 2021 and 2020 was derived from unaffiliated customers. No customer represented 10% or more of total revenue in either 2021 or 2020.

### **Competitive Business Conditions**

A significant number of established companies have developed or are developing and marketing software and hardware for biometrics products and applications that currently compete with or will compete directly with our offerings. We believe that additional competitors will enter the biometrics market and become significant long-term competitors, and that, as a result, competition will increase. Companies competing with us may introduce solutions that are competitively priced, have increased performance or functionality or incorporate technological advances we have not yet developed or implemented. Our current principal competitors include:

- Diversified technology providers that offer integrated biometrics solutions to governments, law enforcement agencies and other organizations. This group of competitors includes companies such as Idemia, Thales, and NEC.
- Component providers that offer biometrics software and hardware components for fingerprint, facial, iris and voice biometric identification. This group of competitors includes companies such as FaceTec, iProov, and Innovatics.

We expect competition to intensify in the near term in the biometrics market. Many current and potential competitors have substantially greater financial, marketing, and research resources than we have. Moreover, low-cost foreign competitors have demonstrated a willingness to sell their products at significantly reduced prices. To compete effectively in this environment, we must continually develop and market new and enhanced solutions and technologies at competitive prices and must have the resources available to invest in significant research and development activities. Our failure to compete successfully could cause our revenues and market share to decline.

### **Intellectual Property**

We rely on a combination of nondisclosure agreements and other contractual provisions, as well as patent, trademark, trade secret and copyright law to protect our proprietary rights. We have an active program to protect our proprietary technology through the filing of patents. As of December 31, 2021, we had approximately 84 U.S. and foreign patents and approximately 15 pending patent applications. Our patents and patent applications pertain primarily to biometrics and imaging compression.

Although we have patented certain aspects of our technology, we rely primarily on trade secrets to protect our intellectual property. We attempt to protect our trade secrets and other proprietary information through agreements with our customers, suppliers, employees and consultants, and through security measures. Each of our employees is required to sign a non-disclosure agreement. Although we intend to protect our rights vigorously, we cannot guarantee that these measures will be successful. In addition, effective intellectual property protection may be unavailable or limited in certain foreign countries.

Third parties may assert exclusive patent, copyright and other intellectual property rights to technologies that are important to us. We may receive claims from third parties suggesting that we may be obligated to license such intellectual property rights. If we were found to have infringed any third party's patents, we could be subject to substantial damages or an injunction preventing us from conducting our business.

## **Employees**

As of December 31, 2021, we employed 81 people, all based in the U.S, including 49 in engineering and research, 20 in sales and marketing, and 12 in finance and administration. Of these employees, 66 were based in Massachusetts and were based outside of Massachusetts. None of our employees are represented by a labor union. We consider our employee relations to be good.

We believe that our future success will depend in large part on the service of our technical, sales, marketing and senior management personnel and upon our ability to retain highly qualified technical, sales and marketing and managerial personnel. We cannot guarantee that we will be able to retain our key managers and employees or that we will be able to attract and retain additional highly qualified personnel in the future.

## **Available Information**

Our Annual Report on Form 10-K, Quarterly Reports on Form 10-Q, Current Reports on Form 8-K, proxy statements, and amendments to reports filed pursuant to Sections 13(a) and 15(d) of the Securities Exchange Act of 1934, as amended, are made available free of charge on or through our website at [www.aware.com](http://www.aware.com) as soon as reasonably practicable after such reports are filed with, or furnished to, the Securities and Exchange Commission ("the SEC"). The SEC also maintains a website, [www.sec.gov](http://www.sec.gov), that contains reports and other information regarding issuers that file electronically with the SEC.

Copies of our (i) Corporate Governance Principles, (ii) charters for the Audit Committee, Compensation Committee, and Nominating Committee, and (iii) Code of Ethics are available in the Investor Relations section of our website at [www.aware.com](http://www.aware.com).

## **ITEM 1A. RISK FACTORS**

***While we expect the impacts of COVID-19 to have an adverse effect on our business, financial condition and results of operations, we are unable to predict the extent or nature of these impacts at this time.***

Due to the COVID-19 pandemic we have been limited in our ability to: (i) conduct face-to-face meetings with customers and prospective customers, (ii) present in-person demonstrations of our software solutions, (iii) attend trade shows and conferences which typically generate future sales opportunities or (iv) meet with prospective strategic partners. These effects caused by the COVID-19 pandemic adversely impacted our operating and financial results in 2021 and 2020 and will likely have an adverse impact on our operating and financial results over at least the next several quarters.

The extent to which our operating and financial results will continue to be affected by the COVID-19 pandemic will depend on various factors and consequences beyond our control, such as the duration and scope of the pandemic; the impact of the emergence of new variants of the virus that causes COVID-19; additional actions by businesses and governments in response to the pandemic; and the speed and effectiveness of responses to combat the virus, including vaccine development and distribution. COVID-19, and the volatile regional and global economic conditions stemming from the pandemic, could also aggravate our other risk factors described in this Form 10-K.

***Our operating results may fluctuate significantly from period-to-period and are difficult to predict.***

Individual orders can represent a meaningful percentage of our revenues and operating results in any single quarter and the timing of the receipt of those orders is difficult to predict. The failure to close an order or the deferral or cancellation of an order can result in revenue and net income shortfalls for that quarter. We base our current and future expense levels on our internal operating plans and sales forecasts, and our operating costs are to a large extent fixed. As a result, we may not be able to sufficiently reduce our costs in any quarter to adequately compensate for an unexpected near-term shortfall in revenues, and even a small shortfall could disproportionately and adversely affect our financial results for that quarter.

Our financial results may be negatively affected by a number of factors, including the following:



- any lack or reduction of government funding and the political, budgetary and purchasing constraints of government customers who purchase products and services directly or indirectly from us;
- the terms of customer contracts that affect the timing of revenue recognition;
- the size and timing of our receipt of customer orders;
- significant fluctuations in demand for our products and services;
- any loss of a key customer or one of its key customers;
- new competitors entering our markets, or the introduction of enhanced solutions from new or existing competitors;
- competitive pressures on selling prices;
- any cancellations, or delays of orders or contract amendments by government customers;
- higher than expected costs, asset write-offs, and other one-time financial charges; and
- general economic trends and other factors, such as the COVID-19 pandemic.

As a result of these factors, we believe that period-to-period comparisons of our revenue levels and operating results are not necessarily meaningful. You should not rely on our quarterly revenue and operating results to predict our future performance.

***We derive a significant portion of our revenue directly or indirectly from government customers, and our business may be adversely affected by changes in the contracting or fiscal policies of those governmental entities.***

We derive a significant portion of our revenue directly or indirectly from federal, international, state and local governments. We believe that the success and growth of our business will continue to depend on government customers purchasing our products and services either directly from us or indirectly through our channel partners. Changes in government contracting policies or government budgetary constraints may adversely affect our financial performance. Among the factors that could adversely affect our business are:

- changes in fiscal policies or decreases in available government funding,
- changes in government funding priorities;
- changes in government programs or applicable requirements;
- the adoption of new laws or regulations or changes to existing laws or regulations relating to the provision of biometrics services or the use of biometric data;
- changes in political or social attitudes with respect to security and defense issues;
- changes in audit policies and procedures of government entities;
- potential delays or changes in the government appropriations process; and
- delays in the payment of our invoices by government payment offices.

These and other factors could cause government customers or our channel partners to reduce purchases of products and services from us which would have a material adverse effect on our business, financial condition and operating results.

***A significant commercial market for biometrics technology may not develop, and, even if it does, there can be no assurance our biometrics technology will be successful.***

A component of our strategy to grow our revenue includes expansion into commercial markets. To date, biometrics technology has received only limited acceptance and slow adoption in these markets. Although the recent appearance

of biometric readers on popular consumer products, such as smartphones, has increased interest in biometrics as a means of authenticating and/or identifying individuals, commercial markets for biometrics technology are still in the process of developing and evolving. Biometrics-based solutions compete with more traditional security methods including keys, cards, personal identification numbers, passwords and security personnel. Acceptance of biometrics as an alternative to such traditional methods depends upon a number of factors including: i) the performance and reliability of biometric solutions; ii) costs involved in adopting and integrating biometric solutions; iii) public concerns regarding privacy; and iv) potential privacy legislation.

For these reasons, we are uncertain whether there will be significant demand for biometrics technology from commercial markets. Moreover, even if there is significant demand, there can be no assurance that our biometrics products will achieve market acceptance.

***We derive a significant portion of our revenue from third party channel partners.***

Our future results depend upon the continued successful distribution of our products through a channel of systems integrators and OEM partners. Systems integrators, including VARs, use our software products as a component of the biometrics systems they deliver to their customers. OEMs embed our software products in their technology devices or software products. These channel partners typically sell their products and services to government customers.

Our failure to effectively manage our relationships with these third parties could impair the success of our sales, marketing and support activities. Moreover, the activities of these third parties are not within our direct control. The occurrence of any of the following events could have a material adverse effect on our business, financial condition and operating results:

- a reduction in sales efforts by our partners;
- the failure of our partners to win government awards in which our products are used;
- a reduction in technical capabilities or financial viability of our partners;
- a misalignment of interest between us and any of our partners;
- the termination of our relationship with a major systems integrator or OEM; or
- any adverse effect on a partner's business related to competition, pricing or other factors.

***If the biometrics market does not experience significant growth or if our products do not achieve broad acceptance both domestically and internationally, we may not be able to grow our business.***

Our revenues are derived primarily from sales of biometrics products and services. We cannot accurately predict the future growth rate or the size of the biometrics market. The expansion of the biometrics market and the market for our biometrics products and services depends on a number of factors, such as:

- the cost, performance and reliability of our products and services and the products and services offered by our competitors;
- the continued growth in demand for biometrics solutions within the government and law enforcement markets, as well as the development and growth of demand for biometric solutions in markets outside of government and law enforcement;
- customers' perceptions regarding the benefits of biometrics solutions;
- public perceptions regarding the intrusiveness of these solutions and the manner in which organizations use the biometric information collected;
- public perceptions regarding the confidentiality of private information;
- proposed or enacted legislation related to privacy of biometric information;
- customers' satisfaction with biometrics solutions; and
- marketing efforts and publicity regarding biometrics solutions.

Even if biometrics solutions gain wide market acceptance, our solutions may not adequately address market requirements and may not continue to gain market acceptance. If biometrics solutions generally or our solutions specifically do not gain wide market acceptance, we may not be able to achieve our anticipated level of growth and our revenues, and our results of operations would be adversely affected.

***We face intense competition from other biometrics solutions providers.***

A significant number of established companies have developed or are developing and marketing software and hardware for biometrics products and applications that currently compete with or will compete directly with our offerings. We believe that additional competitors will enter the biometrics market and become significant long-term competitors, and that, as a result, competition will increase. Companies competing with us may introduce solutions that are competitively priced, have increased performance or functionality or incorporate technological advances we have not yet developed or implemented. Our current principal competitors include:

- Diversified technology providers that offer integrated biometrics solutions to governments, law enforcement agencies and other organizations. This group of competitors includes companies such as Idemia, Thales, and NEC.
- Component providers that offer biometrics software and hardware components for fingerprint, facial, iris and voice biometric identification. This group of competitors includes companies such as FaceTec, iProov, and Innovatics.

We expect competition to intensify in the near term in the biometrics market. Many current and potential competitors have substantially greater financial, marketing, and research resources than we have. Moreover, low-cost foreign competitors from third world and other countries have demonstrated a willingness to sell their products at significantly reduced prices. To compete effectively in this environment, we must continually develop and market new and enhanced solutions and technologies at competitive prices and must have the resources available to invest in significant research and development activities. Our failure to compete successfully could cause our revenues and market share to decline.

***The biometrics industry is characterized by rapid technological change and evolving industry standards, which could render our existing products obsolete.***

Our future success will depend upon our ability to develop and introduce a variety of new capabilities and enhancements to our existing products in order to address the changing and sophisticated needs of the marketplace. Frequently, technical development programs in the biometrics industry require assessments to be made of the future direction of technology, which is inherently difficult to predict. Delays in introducing new products and enhancements, the failure to choose correctly among technical alternatives or the failure to offer innovative products or enhancements at competitive prices may cause customers to forego purchases of our products and purchase our competitors' products. We may not have adequate resources available to us or may not adequately keep pace with appropriate requirements in order to effectively compete in the marketplace.

***Our software products may have errors, defects or bugs, which could result in delayed or lost revenue, expensive correction, liability to our customers, and claims against us.***

Despite testing, complex software products such as ours may contain errors, defects, or bugs, which may only be discovered after they have been installed and used by our customers. Defects in the products that we develop and sell to our customers could require expensive corrections and result in delayed or lost revenue, adverse customer reaction and negative publicity about us or our products and services. Customers who are not satisfied with any of our products may also bring claims against us for damages, which, even if unsuccessful, would likely be time-consuming to defend, and could result in costly litigation and payment of damages. Such claims could harm our reputation, financial results and competitive position.

***Our business may be adversely affected by our use of open source software.***

The software industry is making increasing use of open source software in the development of products. We also license and integrate certain open source software components from third parties into our software. Open source software license agreements may require that the software code in these components or the software into which they are integrated be freely accessible under open source terms. Many features we may wish to add to our products in the future may be available as open source software and our development team may wish to make use of this software to reduce development costs and speed up the development process. While we carefully monitor the use of all open

source software and try to ensure that no open source software is used in such a way as to require us to disclose the source code to the related product, such use could inadvertently occur. If we were required to make our software freely available, our business could be seriously harmed.

***We rely on third-party software to develop and provide our solutions and significant defects in third-party software could harm our business.***

We rely on software licensed from third parties to develop and offer some of our solutions. In addition, we may need to obtain future licenses from third parties to use software or other intellectual property associated with our solutions. We cannot assure you that these licenses will be available to us on acceptable terms, without significant price increases or at all. Any loss of the right to use any such software or other intellectual property required for the development and maintenance of our solutions could result in delays in the provision of our solutions until equivalent technology is either developed by us or, if available from others, is identified, obtained, and integrated, which could harm our business. Any errors or defects in third-party software could result in errors or a failure of our solutions, which could harm our business.

***Part of our future business is dependent on market demand for, and acceptance of, the cloud-based model for the use of software.***

We expect to derive a growing percentage of our revenue from the sale of cloud-based services. As a result, widespread acceptance and use of the cloud-based business model is critical to our future growth and success. Under the perpetual or fixed term license model for software procurement, users of the software typically run applications on their hardware. Because companies are generally predisposed to maintaining control of their IT systems and infrastructure, there may be resistance to the concept of accessing the functionality that software provides as a service through a third party. If the market for cloud-based, software solutions ceases to grow or grows slower than we currently anticipate, demand for our services could be negatively affected.

***Our operational systems and networks and products may be subject to an increasing risk of continually evolving cybersecurity or other technological risks, which could result in the disclosure of company or customer confidential information, damage to Aware's reputation, additional costs to Aware, regulatory penalties and financial losses.***

Our products, services and systems may be used in critical company, customer or third-party operations, or involve the storage, processing and transmission of sensitive data, including valuable intellectual property, other proprietary or confidential data, regulated data, and personal information of employees, customers and others. Successful breaches, employee malfeasance, or human or technological error could result in, for example, unauthorized access to, disclosure, modification, misuse, loss, or destruction of company, customer, or other third party data or systems; theft of sensitive, regulated, or confidential data including personal information and intellectual property; the loss of access to critical data or systems through ransomware, destructive attacks or other means; and business delays, service or system disruptions or denials of service.

If we or third parties with which we do business were to fall victim to successful cyber-attacks or experience other cybersecurity incidents, including the loss of individually identifiable customer or other sensitive data, we may incur substantial costs and suffer other negative consequences, which may include remediation costs, such as liability for stolen assets or information, repairs of system damage, and incentives to customers or business partners in an effort to maintain relationships after an attack as well as litigation and legal risks, including regulatory actions by state and federal regulators.

***Our intellectual property is subject to limited protection.***

Because we are a technology provider, our ability to protect our intellectual property and to operate without infringing the intellectual property rights of others is critical to our success. We regard our technology as proprietary. We rely on a combination of U.S. and worldwide patent, trade secret, copyright, and trademark law as well as confidentiality agreements to protect our proprietary technology. We cannot assure you that we will be able to enforce the patents we own against third parties. Some foreign countries do not currently provide effective legal protection for intellectual property and our ability to prevent the unauthorized use of our products in those countries is therefore limited. Despite our efforts, these measures can only provide limited protection. Unauthorized third parties may try to copy or reverse engineer portions of our products or otherwise obtain and use our intellectual property. If we fail to protect our intellectual property rights adequately, our competitors may gain access to our technology, and our business would thus be harmed.

In the future, we may be involved in legal action to enforce our intellectual property rights relating to our patents, copyrights or trade secrets. Any such litigation could be costly and time-consuming for us, even if we were to prevail. Moreover, even if we are successful in protecting our proprietary information, our competitors may independently develop technologies substantially equivalent or superior to our technology. Accordingly, despite our efforts, we may be unable to prevent third parties from infringing upon or misappropriating our intellectual property or otherwise gaining access to our technology. The misappropriation of our technology or the development of competitive technology could seriously harm our business.

***We may be sued by third parties for alleged infringement of their proprietary rights.***

We may be subject to claims that our technology and products infringe the intellectual property rights of others. A large and increasing number of participants in the technology industry, including companies known as non-practicing entities, have applied for or obtained patents. Some of these patent holders have demonstrated a readiness to commence litigation based on allegations of patent infringement. Third parties have asserted against us in the past and may assert against us in the future patent, copyright and other intellectual property rights to technologies that are important to our business.

Intellectual property rights can be uncertain and involve complex legal and factual questions. Moreover, intellectual property claims, with or without merit, can be time-consuming and expensive to litigate or settle, and could divert management attention away from the execution of our business plan. If we were found to have infringed the proprietary rights of others, we could be subject to substantial damages or an injunction preventing us from conducting our business.

***If we are unable to attract and retain key personnel, our business could be harmed.***

If any of our key employees were to leave, we could face substantial difficulty in hiring qualified successors and could experience a loss in productivity while any successor obtains the necessary training and experience. Our employment relationships are at-will and we have had key employees leave in the past. We cannot assure you that one or more key employees will not leave in the future. We intend to continue to hire additional highly qualified personnel, including software engineers and sales personnel, but may not be able to attract, assimilate or retain qualified personnel in the future. Any failure to attract, integrate, motivate and retain these employees could harm our business.

***Our business may be affected by government laws and regulations.***

Extensive regulation under federal, state, and foreign law has adversely affected us and could further adversely affect us in ways that are difficult for us to predict. More specifically, we are subject to regulatory environment changes regarding privacy and data protection that could have a material impact on our results of operations. These regulatory changes may potentially involve new regulatory issues/requirements such as the EU General Data Protection Regulation (“GDPR”), the California Consumer Privacy Act (“CCPA”), the Illinois Biometric Privacy Act, Texas Statute on the Capture or Use of Biometric Identifier, State of Washington H.B. 1493, Brazil’s General Data Protection Law (“LGPD”) and any other state, federal or foreign regulations governing the collection, use and storage of biometric data. The potential costs of compliance with or imposed by new/existing regulations and policies that are applicable to us, or fines and penalties to which we may become subject if we fail to comply with those regulations and policies, may affect the use of our products and services and could have a material adverse impact on our results of operations.

In addition, our business may also be adversely affected by: i) the imposition of tariffs, duties and other import restrictions on goods and services we purchase from non-domestic suppliers; or ii) the imposition of economic sanctions on existing or potential customers or suppliers, or iii) by the imposition of export restrictions on products we sell internationally. Changes in current or future laws or regulations, in the United States or elsewhere, could seriously harm our business.

***Adverse economic conditions could harm our business.***

Unfavorable changes in economic conditions, including recessions, inflation, turmoil in financial markets, changes caused by global crisis such as the COVID-19 pandemic, the ongoing conflict between Russia and Ukraine and resulting economic sanctions, the Taliban’s takeover of Afghanistan, or other changes in economic conditions, could harm our business, results of operations, and financial conditions as a result of:

- reduced demand for our products;

- increased risk of order cancellations or delays;
- increased pressure on the prices for our products;
- greater difficulty in collecting accounts receivable; and
- risks to our liquidity, including the possibility that we might not have access to our cash when needed.

We are unable to predict whether or when any such adverse economic conditions could occur in the U.S. or other countries; and if they do occur, nor can we predict their timing, duration, or severity. The longer the duration, the greater the risks we face in operating our business.

***We may not realize the anticipated benefits of our acquisitions.***

We may make acquisitions of companies that offer complementary products, services, and technologies such as our acquisitions of FortressID in December of 2021 and AFIX in November of 2020. The ultimate success of our acquisitions depends, in part, on our ability to realize the anticipated synergies, cost savings and growth opportunities from integrating acquired businesses or assets into our existing businesses. However, the acquisition and successful integration of independent businesses or assets is a complex, costly and time-consuming process, and the benefits we realize may not exceed the costs of the acquisition. The risk and difficulties associated with acquiring and integrating companies and other assets include, among others, difficulties assimilating the operations and personnel of acquired companies, challenges in realizing the value of the acquired assets relative to the price paid, distraction of management from our ongoing businesses and potential product disruptions associated with the sale of the acquired company's products. These factors could have a material adverse effect on our business, financial condition, operating results and cash flows. Additionally, the consideration we pay for any future acquisitions could include shares of our stock, which could cause dilution to existing shareholders and to earnings per share.

***We may have additional tax liabilities.***

We are subject to income taxes in the United States. Significant judgments are required in determining our provisions for income taxes. In the course of preparing our tax provisions and returns, we must make calculations where the ultimate tax determination may be uncertain. Our tax returns are subject to examination by the Internal Revenue Service ("IRS") and state tax authorities. There can be no assurance as to the outcome of these examinations. If the ultimate determination of taxes owed is for an amount in excess of amounts previously accrued, our operating results, cash flows, and financial condition could be adversely affected.

***The market price of our common stock has been and may continue to be subject to wide fluctuations, and this may make it difficult for shareholders to resell the common stock when they want or at prices they find attractive.***

The market price of our common stock, like that of other technology companies, is volatile and is subject to wide fluctuations in response to a variety of factors, including:

- quarterly variations in operating results;
- announcements of technological innovations or new products by us or our competitors,
- changes in customer relationships, such as the loss of a key customer;
- recruitment or departure of key personnel;
- corporate actions we may initiate, such as acquisitions, stock sales or repurchases, dividend declarations, or corporate reorganizations; and
- other events or factors.

Our stock price may also be affected by broader market trends unrelated to our performance. As a result, purchasers of our common stock may be unable at any given time to sell their shares at or above the price they paid for them. Moreover, companies that have experienced volatility in the market price of their stock often are subject to securities class action litigation. If we were the subject of such litigation, it could result in substantial costs and divert management's attention and resources.

***If we are unable to maintain effective internal controls over financial reporting, investors could lose confidence in the reliability of our financial statements, which could result in a decline in the price of our common stock.***

As a public company, we are required to enhance and test our financial, internal and management control systems to meet obligations imposed by the Sarbanes-Oxley Act of 2002. Consistent with the Sarbanes-Oxley Act and the rules and regulations of the SEC, management's assessment of our internal controls over financial reporting is required in connection with our filing of our Annual Report on Form 10-K. If we are unable to identify, implement and conclude that we have effective internal controls over financial reporting, investors could lose confidence in the reliability of our financial statements, which could result in a decrease in the value of our common stock. Our assessment of our internal controls over financial reporting may also uncover weaknesses or other issues with these controls that could also result in adverse investor reaction.

***We must make judgments in the process of preparing our financial statements.***

We prepare our financial statements in accordance with generally accepted accounting principles and certain critical accounting policies that are relevant to our business. The application of these principles and policies requires us to make significant judgments and estimates. The most significant estimates included in the financial statements pertain to revenue recognition, reserves for doubtful accounts, valuation of acquired assets and assumed liabilities in business combination and valuation allowance for deferred income tax assets. In the event that our judgments and estimates differ from actual results, we may have to change them, which could materially affect our financial position and results of operations.

Moreover, accounting standards have been subject to rapid change and evolving interpretations by accounting standards setting organizations over the past few years. The implementation of new accounting standards requires us to interpret and apply them appropriately. If our current interpretations or applications are later found to be incorrect, we may have to restate our financial statements and the price of our stock could decline.

#### **ITEM 1B. UNRESOLVED STAFF COMMENTS**

Not applicable.

#### **ITEM 2. PROPERTIES**

We currently occupy approximately 72,000 square feet of office space in Bedford, Massachusetts, which serves as our headquarters. This site is used for our research and development, sales and marketing, and administrative activities. While we currently own this facility, in April 2021 we entered into a Purchase and Sale Agreement with FDS Bedford, LLC, pursuant to which it may elect to purchase the property. See Note 10 to our audited financial statements included elsewhere in this Annual Report on Form 10-K for more information on this agreement.

In March 2022, we entered into a lease with respect to approximately 20,730 rentable square feet in Burlington, Massachusetts. We expect to take possession of this property in July 2022 and intend to use this property as our headquarters. We believe that this facility will be adequate for our current needs and that additional space sufficient to meet our needs for the foreseeable future will be available on reasonable terms. See Note 11 to our audited financial statements included elsewhere in this Annual Report on Form 10-K for more information on this agreement.

#### **ITEM 3. LEGAL PROCEEDINGS**

From time to time, we are involved in litigation incidental to the conduct of our business. We are not party to any lawsuit or proceeding that, in our opinion, is likely to materially impact us or our business.

#### **ITEM 4. MINE SAFETY DISCLOSURES**

Not applicable.

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

Our common stock is the only class of stock we have outstanding, and it trades on the Nasdaq Global Market under the symbol AWRE.

As of March 1, 2022, we had approximately 74 shareholders of record. This number does not include shareholders who hold our shares in a "nominee" or "street" name. We paid no dividends in 2021 or 2020. We anticipate that we will continue to reinvest any earnings to finance future operations although we may also pay special cash dividends if our board of directors deems it appropriate.

**Issuer Purchases of Equity Securities**

On May 4, 2020, the Company announced that the board of directors had approved the repurchase of up to \$10,000,000 of our common stock from time to time through December 31, 2021. We did not repurchase any shares under this plan in 2021.

**ITEM 6. [RESERVED]**



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

### RESULTS OF OPERATIONS

The following table sets forth, for the years indicated, certain line items from our consolidated statements of operations stated as a percentage of total revenue:

	Year ended	
	December 31,	
	2021	2020
<b>Revenue:</b>		
Software licenses	47%	45%
Software maintenance	40	48
Services and other	13	7
Total revenue	100	100
<b>Costs and expenses:</b>		
Cost of services and other	7	7
Research and development	55	80
Selling and marketing	38	48
General and administrative	37	48
Total costs and expenses	137	183
Operating loss	(37)	(83)
Interest income	-	2
Loss before benefit from income taxes	(37)	(81)
Benefit from income taxes	(2)	(14)
Net loss	(35%)	(67%)

### Summary of Operations

We are primarily engaged in the development and sale of biometrics products, solutions and services. Our software products are used in government and commercial systems and applications and fulfill a broad range of functions critical to secure biometric enrollment, authentication, identification and transactions. Principal government applications of biometrics systems include border control, visa applicant screening, law enforcement, national defense, intelligence, secure credentialing, access control, and background checks. Principal commercial applications include: i) user enrollment and authentication used for login to mobile devices, computers, networks, and software programs; ii) user authentication for financial transactions and purchases (online and in-person); iii) physical access control to buildings; and iv) identity proofing of prospective employees and customers. We sell our biometrics software products and services globally through a multifaceted distribution strategy using systems integrators, OEMs, VARs, partners, and directly to end user customers. We also derive a portion of our revenue from the sale of imaging software licenses to OEMs and systems integrators that incorporate our software into medical imaging products and medical systems.

In November 2020, we acquired certain assets and assumed certain liabilities of Radiant's AFIX product line for cash consideration of approximately \$2.4 million. The acquisition of AFIX provides turnkey face and fingerprint biometric and forensic analysis software for small and medium-sized law enforcement and government agencies and extends our ABIS product family.

In December 2021, we acquired 100% of the outstanding shares of FortressID in exchange for \$2.5 million in cash. Additionally, the purchase consideration includes a contingent consideration arrangement wherein the seller is entitled to cash payments of up to \$4.0M based on revenue targets in 2022 and 2023. The fair value of the contingent consideration was determined to be \$0.9M at December 31, 2021 and is included in the purchase price consideration. The acquisition of FortressID, expands the Company's offerings around identity proofing, enhancing its onboarding, verification and authentication offerings to directly address financial compliance requirements and enable organizations to mitigate risk and curtail increasing fraud.

### Summary of Financial Results

We used revenue and operating loss to summarize financial results over the past two years as we believe these measurements are the most meaningful way to understand our operating performance.

## **2021 compared to 2020**

Revenue and operating loss in 2021 were \$16.9 million and \$6.1 million, respectively, which compared to revenue and operating loss in 2020 of \$11.3 million and \$9.4 million, respectively.

Higher revenue in 2021 as compared to 2020 was primarily due to an increase in software license revenue from subscription-based contracts and fixed fee license contracts, as well as maintenance revenue related to our acquisition of AFIX in the fourth quarter of 2020 and services revenue related to additional service projects. Lower operating loss in 2021 as compared 2020 was primarily due to the increase in revenue, which was partially offset by increased operating expenses.

### ***Software License Revenue***

Software license revenue consists of revenue from the sale of biometrics and imaging software products. Sales of software products depend on our ability to win proposals to supply software for biometrics systems projects either directly to end user customers or indirectly through channel partners.

Software license revenue increased 58% from \$5.0 million in 2020 to \$8.0 million in 2021. As a percentage of total revenue, software license revenue increased from 45% in 2020 to 47% in 2021. The \$3.0 million increase in software license revenue was attributable to a \$1.6 million increase in subscription-based contracts and \$1.4 million increase in fixed fee license contracts.

### ***Software Maintenance Revenue***

Software maintenance revenue consists of revenue from the sale of software maintenance contracts. Software maintenance contracts entitle customers to receive software support and software updates, if and when they become available, during the term of the contract.

Software maintenance revenue increased 23% from \$5.4 million in 2020 to \$6.7 million in 2021. As a percentage of total revenue, software maintenance revenue decreased from 48% in 2020 to 40% in 2021. The dollar increase in software maintenance revenue was primarily due to software maintenance revenue related to our acquisition of AFIX in the fourth quarter of 2020.

A majority of our customers purchase software maintenance contracts when they initially purchase software licenses. Since our software is used in active biometrics systems, many of our customers continue to renew their maintenance contracts in subsequent years while systems remain operational.

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

Services revenue consists of fees we charge to perform software development, integration, installation, and customization services. Similar to software license revenue, services revenue depends on our ability to win biometrics systems projects either directly with end user customers or in conjunction with channel partners. Other revenue consists of hardware fees that are included with some of our software license. Services and other revenue fluctuate when we commence new projects and/or when we complete projects that were started in previous periods.

Services and other revenue increased 162% from \$0.8 million in 2020 to \$2.2 million in 2021. As a percentage of total revenue, services and other revenue increased from 7% in 2020 to 13% in 2021. The dollar increase in services and other revenue was primarily due to additional services performed by us with system integrators.

### ***Cost of Services and Other Revenue***

Cost of services and other revenue consists primarily of engineering costs to perform customer services projects. Such costs primarily include: i) engineering salaries, stock-based compensation, fringe benefits, and facilities; ii) engineering consultants and contractors; iii) software license fees; and iv) hardware costs.

Cost of services and other revenue increased 49% from \$0.8 million in 2020 to \$1.2 million in 2021. When compared to services and other revenue, cost of services and other revenue as a percentage decreased from 96% in 2020 to 55% in 2021, which resulted in gross margins increasing from 4% in 2020 to 45% in 2021. The dollar increase in cost of services and other revenue was primarily due to third-party software and hardware costs related to a project from our AFIX product line as well as higher allocation of engineering costs to service and other revenue resulting from higher active contracts with services.

Gross margins on services and other revenue are a function of: i) the nature of the projects; ii) the level of engineering difficulty and labor hours required to complete project tasks; and iii) how much we were able to charge. Gross margins in these years reflect the profitability mix of customer projects. We expect that gross margins on services and other revenue will continue to fluctuate in future periods based on the nature, complexity, and pricing of future projects.

### **Research and Development Expense**

Research and development expense consists of costs for: i) engineering personnel, including salaries, stock-based compensation, fringe benefits, and facilities; ii) engineering consultants and contractors, and iii) other engineering expenses such as supplies, equipment depreciation, dues and memberships and travel. Engineering costs incurred to develop our technology and products are classified as research and development expense. As described in the cost of services section, engineering costs incurred to provide engineering services for customer projects are classified as cost of services and are not included in research and development expense.

The classification of total engineering costs to research and development expense and cost of services was (in thousands):

	<b>Years ended December 31,</b>	
	<b>2021</b>	<b>2020</b>
Research and development expense	\$ 9,259	\$ 9,093
Cost of services and other	1,210	810
<b>Total engineering costs</b>	<b>\$ 10,469</b>	<b>\$ 9,903</b>

Total engineering costs increased 6% from 2020 to 2021. As a percentage of total revenue, total engineering costs decreased from 87% in 2020 to 62% in 2021.

Total engineering costs increased by \$0.6 million in 2021 as compared to 2020. The spending increase was primarily due to higher employee costs. Our engineering headcount of 49 in 2021 remained consistent compared to 2020. We believe our engineering organization was adequately staffed as of December 31, 2021.

As we described in the Part I—Business of this Form 10-K, we intend to introduce new products that will allow us to offer more complete biometrics solutions. We believe this strategy will allow us to sell more software into biometrics systems projects in order to grow our revenue. Our preference is to develop such products internally, however to the extent we are unable to do that, we may purchase or license technologies from third parties. We anticipate that we will continue to focus our future research and development activities on enhancing existing products and developing new products. We expect research and development expenses to increase in absolute dollars, but to decrease as a percentage of net revenues.

### **Selling and Marketing Expense**

Selling and marketing expense primarily consists of costs for: i) sales and marketing personnel, including salaries, sales commissions, stock-based compensation, fringe benefits, travel, and facilities; and ii) advertising and promotion expenses.

Sales and marketing expense increased by 18% from \$5.4 million in 2020 to \$6.3 million in 2021. As a percentage of total revenue, sales and marketing expense decreased from 48% in 2020 to 38% in 2021. The dollar increase in selling and marketing expense was primarily due to increased headcount and contracted sales agents. We expect to expand our sales and marketing force to address additional opportunities.

### **General and Administrative Expense**

General and administrative expense consists primarily of costs for: i) officers, directors and administrative personnel, including salaries, bonuses, director compensation, stock-based compensation, fringe benefits, and facilities; ii) professional fees, including legal and audit fees; iii) public company expenses; and iv) other administrative expenses, such as insurance costs and bad debt provisions.

General and administrative expense increased by 14% from \$5.4 million in 2020 to \$6.2 million in 2021. As a percentage of total revenue, general and administrative expense decreased from 48% in 2020 to 37% in 2021. The increase in general and administrative expense in 2021 was primarily due to higher employee related costs of our

administrative personnel and professional services in 2021. We expect general and administrative expenses to increase in absolute dollars, but to decrease as a percentage of net revenues and may fluctuate depending on specific activities in a period.

### **Interest Income**

Interest income decreased by 98% from \$0.2 million in 2020 to \$4,000 in 2021. The dollar decrease was primarily due to lower interest rates within our money market accounts.

### **Income Taxes**

We are subject to income taxes in the United States and we use estimates in determining our provisions for income taxes. We account for income taxes using the asset and liability method for accounting and reporting income taxes. Deferred tax assets and liabilities are recognized based on temporary differences between the financial reporting and income tax bases of assets and liabilities using statutory rates.

A discussion of income taxes for the years ended December 31, 2021, and 2020 follows:

*Year ended December 31, 2021.* Total income tax benefit for the year ended December 31, 2021 was \$0.3 million. The income tax benefit for 2021 relates to a release of our valuation allowance as a result of deferred taxes recorded as part of the FortressID acquisition.

*Year ended December 31, 2020.* Total income tax benefit for the year ended December 31, 2020 was \$1.6 million. The income tax benefit for 2020 was primarily due to the tax benefit of the current year tax loss which can be carried back due to changes made by the CARES Act.

## **LIQUIDITY AND CAPITAL RESOURCES**

In recent years, we have financed the company with our cash balances, cash generated from operations, and cash received from the sale of patent assets. Equity financing has not been a meaningful source of financing for us in recent years. Cash flows from operating, investing and financing activities are described below.

### Cash flows from operating activities

A discussion of cash flow from operating activities for each of the last two years is as follows:

*Year ended December 31, 2021.* Cash used in operating activities was \$6.2 million in 2021. Cash used by operations was primarily the result of \$5.8 million of net loss and \$2.3 million of changes in assets and liabilities, partially offset by the add back of \$1.9 million of non-cash items for depreciation, amortization and stock-based compensation.

*Year ended December 31, 2020.* Cash used in operating activities was \$5.3 million in 2020. Cash used by operations was primarily the result of \$7.6 million of net loss, partially offset by \$0.8 million of changes in assets and liabilities and by the add back of \$1.5 million of non-cash items for depreciation, amortization and stock-based compensation.

### Cash flows from investing activities

A discussion of cash flow from investing activities for each of the last two years is as follows:

*Year ended December 31, 2021.* Investing activity cash usage of \$2.5 million was primarily the result of \$2.5 million used in connection with our acquisition of FortressID.

*Year ended December 31, 2020.* Investing activity cash usage of \$2.9 million was primarily the result of \$2.4 million used in connection with our acquisition of the AFIX product suite and \$0.5 million of purchases of property and equipment.

### Cash flows from financing activities

A discussion of cash flow from financing activities for each of the last two years is as follows:

*Year ended December 31, 2021.* Financing activity cash provided of \$0.1 million was primarily the result of the issuance of common stock from stock grants which was partially offset by cash used to pay income taxes for employees who surrendered shares in connection with stock grants.

*Year ended December 31, 2020.* Financing activity cash usage of \$1.0 million was primarily the result of \$0.9 million used to buy back stock under our stock repurchase program and \$0.1 million used to pay income taxes for employees who surrendered shares in connection with stock grants.

At December 31, 2021, we had cash and cash equivalents of \$30.0 million. While we cannot assure you that we will not require additional financing, or that if needed such financing will be available to us, we believe that our cash and cash equivalents will be sufficient to fund our operations for at least the next twelve months from the filing date of this Annual Report on Form 10-K and to meet our known long-term cash requirements. Whether these resources are adequate to meet our liquidity needs beyond that period will depend on our future growth, operating results, and the investments needed to support our operations. If we required additional capital resources, we may utilize available funds or additional external financing.

To date, inflation has not had a material impact on our financial results. There can be no assurance, however, that inflation will not adversely affect our financial results in the future.

#### **OFF-BALANCE SHEET ARRANGEMENTS**

We do not currently have any arrangements with unconsolidated entities, such as entities often referred to as structured finance, special purpose entities, or variable interest entities which are often established for the purpose of facilitating off-balance sheet arrangements or other contractually narrow or limited purposes. Accordingly, we are not exposed to any financing, liquidity, market or credit risk if we had such relationships.

#### **CRITICAL ACCOUNTING POLICIES**

The Company's significant accounting policies are discussed in Note 2, Summary of Significant Accounting Policies, to our financial statements, included elsewhere in this Annual Report. *We have identified the following as our significant accounting policies and estimates, which are defined as those that are reflective of significant judgments and uncertainties, are the most pervasive and important to the presentation of our financial condition and results of operations and could potentially result in materially different results under different assumptions, judgments or conditions.*

**Revenue recognition.** In accordance with Accounting Standards Codification ("ASC"), Topic 606, Revenue from Contracts with Customers ("ASC 606"), revenue is recognized when a customer obtains control of promised goods and services. The amount of revenue recognized reflects the consideration to which we expect to be entitled to receive in exchange for these goods and services. In addition, ASC 606 requires disclosures of the nature, amount, timing, and uncertainty of revenue and cash flows arising from contracts with customers.

The core principle of the standard is that we should recognize revenue to depict the transfer of promised goods or services to customers in an amount that reflects the consideration to which we expect to be entitled in exchange for those goods or services. To achieve that core principle, we apply the following five step model:

1. Identify the contract with the customer;
2. Identify the performance obligations in the contract;
3. Determine the transaction price;
4. Allocate the transaction price to the performance obligations in the contract; and
5. Recognize revenue when (or as) each performance obligation is satisfied.

We categorize revenue as software licenses, software maintenance, or services and other revenue. Revenue from software licenses is recognized at a point in time upon delivery, provided all other revenue recognition criteria are met. We recognize software maintenance revenue over time on a straight-line basis over the contract period. Services revenue is recognized over time as the services are delivered using an input method (i.e., labor hours incurred as a percentage of total labor hours budgeted), provided all other revenue recognition criteria are met.

In addition to selling software licenses, software maintenance and software services on a standalone basis, a significant portion of our contracts include multiple performance obligations, which require an allocation of the transaction price to each distinct performance obligation based on a relative standalone selling price (“SSP”) basis. The SSP is the price at which we would sell a promised good or service separately to a customer. The best estimate of SSP is the observable price of a good or service when we sell that good or service separately. A contractually stated price or a list price for a good or service may be the SSP of that good or service. We use a range of amounts to estimate SSP when we sell each of the goods and services separately and need to determine whether there is a discount that needs to be allocated based on the relative SSP of the various goods and services. In instances where SSP is not directly observable, such as when we do not sell the product or service separately, we typically determine the SSP using an adjusted market assessment approach using information that may include market conditions and other observable inputs. We typically have more than one SSP for individual goods and services due to the stratification of those goods and services by customers and circumstances. In these instances, we may use information such as the nature of the customer and distribution channel in determining the SSP.

When software licenses and significant customization engineering services are sold together, they are accounted for as a combined performance obligation, as the software licenses are generally highly dependent on, and interrelated with, the associated customization services and therefore are not distinct performance obligations. Revenue for the combined performance obligation is recognized over time as the services are delivered using an input method (i.e., labor hours incurred as a percentage of total labor hours budgeted).

When subscription-based software is sold, the software license and software maintenance are generally considered distinct performance obligations. The transaction price is allocated to the software license and the software maintenance based on relative SSP. We sell our software subscription license for a fixed fee or a subscription-based royalty fee, sometimes subject to a minimum guarantee. When the amount is in the form of a fixed fee, including the guaranteed minimum usage-based royalty, revenue allocated to the software license is recognized at a point in time upon delivery, provided all other revenue recognition criteria are met. Any royalties not subject to the guaranteed minimum or earned in excess of the minimum amount are recognized as revenue when the subsequent usage occurs. Revenue allocated to the software maintenance is recognized over the contract term.

Our arrangements can include variable fees, such as the option to purchase additional usage of a previously delivered software license. The Company may also provide pricing concessions to clients, a business practice that also gives rise to variable fees in contracts. For variable fees arising from the client’s purchase of additional usage of a previously delivered software license, we apply the sales and usage-based royalties guidance related to a license of intellectual property and recognizes the revenue in the period the underlying sale or usage occurs. We include variable fees in the determination of total transaction price if it is not probable that a future significant reversal of revenue will occur. We use the expected value or most likely value amount, whichever is more appropriate for specific circumstances, to estimate variable consideration, and the estimates are based on the level of historical price concessions offered to clients.

The amount of consideration is not adjusted for a significant financing component if the time between payment and the transfer of the related good or service is expected to be one year or less under the practical expedient in ASC 606-10-32-18. Our revenue arrangements are typically accounted for under such expedient, as payment is typically due within 30 to 60 days. As of December 31, 2021 and 2020, none of our contracts contained a significant financing component.

**Goodwill and intangible assets impairment.** Our goodwill and intangible assets result from our previous business acquisitions. Goodwill and intangible assets with indefinite useful lives are not amortized but are tested for impairment at least annually or as circumstances indicate their value may no longer be recoverable. We do not carry any intangible assets with indefinite useful lives other than goodwill. We perform our annual goodwill impairment test in the fourth quarter. To assess if goodwill is impaired, we first review qualitative factors to determine whether further impairment testing is necessary. If based on the qualitative assessment, we consider it more-likely-than-not that our reporting unit’s fair value is less than its carrying amount, we perform a quantitative impairment test. An excess of carrying value over fair value would indicate that goodwill may be impaired.

We periodically reevaluate our business and have determined that we have one operating segment and one reporting unit. If our assumptions change in the future, we may be required to record impairment charges to reduce our goodwill’s carrying value.

If indicators of impairment are present, we compare the estimated undiscounted cash flows that the asset is expected to generate to the carrying value. The key assumptions of the cash flow model involve significant subjectivity. If

such assets are impaired, an impairment is measured by the amount by which the carrying amount of the asset exceeds its fair value.

As of December 31, 2021, we had \$3.1 million of goodwill and \$3.2 million of intangible assets. Impairment in the valuation of long-lived assets could materially impact our operating results and financial position. To date, there have been no impairments of goodwill or intangible assets.

**Stock-Based Compensation.** We grant stock and stock options to our employees and directors. We measure stock-based compensation cost at the grant date based on the fair value of the award and recognize it as expense over the applicable vesting period of the award on a straight-line basis.

For stock awards, we determine the fair value of the award by using the fair market value of our stock on the date of grant; provided the number of shares in the grant is fixed on the grant date.

For stock options, we use the Black-Scholes valuation model to estimate the fair value of the award. This valuation model takes into account the exercise price of the award, as well as a variety of significant assumptions. The assumptions used to estimate the fair value of stock options include the expected term, the expected volatility of our stock over the expected term, the risk-free interest rate over the expected term, and our expected annual dividend yield.

**Income taxes.** As part of the process of preparing our consolidated financial statements we are required to estimate our actual current tax expense. We must also estimate temporary and permanent differences that result from differing treatment of certain items for tax and accounting purposes. These differences result in deferred tax assets and liabilities, which are included in our consolidated balance sheet. We must then assess the likelihood that our deferred tax assets will be recovered from future taxable income and to the extent we believe recovery is not likely, we must establish a valuation allowance. To the extent we establish a valuation allowance or increase this allowance in a period for deferred tax assets, which have been recognized, we must include an expense with the tax provision in the statement of operations. Conversely, to the extent we decrease our valuation allowance in a period for deferred tax assets, which have been previously reserved, we must include a tax benefit with the tax provision in the statement of operations.

The Coronavirus Aid, Relief and Economic Security Act (“CARES Act”) was signed into law on March 27, 2020. The Act contained specific relief and stimulus measures including allowing net operating losses originating in 2018 through 2020 to be carried back five years to offset taxable income in the carryback period.

Significant management judgment is required in determining our provision for income taxes, our deferred tax assets, and any valuation allowance recorded against our net deferred tax assets. Our deferred tax assets primarily relate to: i) research and development tax credit carryforwards related to excess stock compensation benefits; ii) net operating loss carryforwards; and iii) temporary differences that result from differing treatment of certain items for tax and accounting purposes. As of December 31, 2021, we had a total of \$10.7 million of deferred tax assets for which we have recorded a \$10.7 million valuation allowance.

We will continue to assess the level of valuation allowance required in future periods. Should evidence regarding the realizability of tax assets change at a future point in time, the valuation allowance will be adjusted accordingly.

**Allowance for doubtful accounts.** We make judgments as to our ability to collect outstanding receivables and provide allowances for receivables when collection becomes doubtful. Provisions are made based upon a specific review of all significant outstanding invoices. If the judgments we make to determine the allowance for doubtful accounts do not reflect the future ability to collect outstanding receivables, additional provisions for doubtful accounts may be required.

## RECENT ACCOUNTING PRONOUNCEMENTS

**Recent Accounting Pronouncements.** In October 2021, the Financial Accounting Standards Board (“FASB”) issued Accounting Standard Update (“ASU”) No. 2021-08, *Business Combinations (Topic 805): Accounting for Contract Assets and Contract Liabilities from Contracts with Customers*. The ASU requires contract assets and contracts liabilities to be accounted for as if they (“the acquirer”) entered into the original contract at the same time and same date as the acquiree. The guidance is to be effective for reporting periods beginning after December 15, 2022, with early adoption permitted. We have elected not to early adopt and we are continuing to assess the impact of the standard on our consolidated financial statements.

In December 2019, FASB issued Accounting Standard Update (“ASU”) No. 2019-12, *Income Taxes (Topic 740): Simplifying the Accounting for Income Taxes*. The ASU was issued to reduce the complexity of the reporting information for financial statement users. We adopted the standard on January 1, 2020. The adoption of the standard did not result in any adjustment to our financial statements.

In June 2016, the FASB issued ASU 2016-13, *Financial Instruments – Credit Losses (Topic 326): Measurement of Credit Losses of Financial Instruments*, which changes the methodology for measuring credit losses on financial instruments and the timing of when such losses are recorded. This guidance was to be effective for reporting periods beginning after December 15, 2019, with early adoption permitted. In November 2019, the FASB issued ASU 2019-10, *Financial Instruments – Credit Losses (Topic 326), Derivatives and Hedging (Topic 815), and Leases (Topic 842) Effective Dates*, which deferred the effective dates for us, as a smaller reporting company, until fiscal year 2023. We are continuing to assess the impact of the standard on our consolidated financial statements.



## ITEM 8. FINANCIAL STATEMENTS AND SUPPLEMENTARY DATA

### Report of Independent Registered Public Accounting Firm

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

#### Opinion on the Financial Statements

We have audited the accompanying consolidated balance sheets of Aware, Inc. and its subsidiaries (the Company) as of December 31, 2021 and 2020, the related consolidated statements of operations, changes in stockholders' equity, and cash flows for each of the two years in the period ended December 31, 2021, and the related notes to the consolidated financial statements (collectively, the financial statements). In our opinion, the financial statements present fairly, in all material respects, the financial position of the Company as of December 31, 2021 and 2020, and the results of its operations and its cash flows for each of the two years in the period ended December 31, 2021, in conformity with accounting principles generally accepted in the United States of America.

#### Basis for Opinion

These financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on the Company's financial statements based on our audits. We are a public accounting firm registered with the Public Company Accounting Oversight Board (United States) (PCAOB) and are required to be independent with respect to the Company in accordance with 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 and in accordance with auditing standards generally accepted in the United States of America. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement, whether due to error or fraud. The Company is not required to have, nor were we engaged to perform, an audit of its internal control over financial reporting. As part of our audits, we are required to obtain an understanding of internal control over financial reporting but not for the purpose of expressing an opinion on the effectiveness of the Company's internal control over financial reporting. Accordingly, we express no such opinion.

Our audits included performing procedures to assess the risks of material misstatement of the financial statements, whether due to error or fraud, and performing procedures that respond to those risks. Such procedures included examining, on a test basis, evidence regarding the amounts and disclosures in the financial statements. Our audits also included evaluating the accounting principles used and significant estimates made by management, as well as evaluating the overall presentation of the financial statements. We believe that our audits provide a reasonable basis for our opinion.

#### Critical Audit Matters

The critical audit matters communicated below are matters arising from the current period audit of the financial statements that were communicated or required to be communicated to the audit committee and that: (1) relate to accounts or disclosures that are material to the financial statements and (2) involved our especially challenging, subjective, or complex judgments. The communication of critical audit matters does not alter in any way our opinion on the 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.

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#### Revenue Recognition

As described in Note 2 to the financial statements, the Company recognizes revenue when a customer obtains control of promised goods and services. The amount of revenue recognized reflects the consideration to which the Company expects to be entitled to receive in exchange for these goods and services. The Company offers customers the ability to purchase combinations of software licenses, software maintenance, and related professional services together in one arrangement. The Company must determine which promises are distinct performance obligations and allocate the revenue to the performance obligations that are considered distinct based upon their relative stand-alone selling price. Revenue allocated to software licenses is typically recognized at a point in time upon delivery and revenue allocated to the software maintenance and professional services is recognized over time, provided all other revenue recognition criteria are met. Significant judgment is exercised by the Company in determining revenue recognition for these customer agreements, and includes the following:

- Determination of whether products and services are considered distinct performance obligations that should be accounted for separately versus together, such as software maintenance or professional services that are sold with software licenses
- The pattern of delivery (i.e., timing of when revenue is recognized) for each distinct performance obligation
- Identification and treatment of contract terms that may impact the timing and amount of revenue recognized (e.g., variable consideration, optional purchases, and material rights)
- Determination of stand-alone selling prices for each distinct performance obligation

Given these factors, the related audit effort in evaluating management's judgments in determining revenue recognition for these customer agreements was extensive and required a high degree of auditor judgment.

Addressing the matter involved performing procedures and evaluating audit evidence in connection with forming our overall opinion on the financial statements. Our procedures related to the Company's revenue recognition for these customer agreements included, among others:

- We evaluated management's significant accounting policies related to these customer agreements for reasonableness.
- We selected a sample of customer agreements and performed the following procedures:
  - Obtained and read contract source documents for each selection, including master agreements, and certain other documents which were part of the agreement
  - Tested management's identification and treatment of contract terms
  - Tested management's underlying assumptions and conclusions regarding the standalone selling price for each distinct performance obligation
  - Assessed the terms in the customer agreement and evaluated the appropriateness of management's application of their accounting policies, along with their use of estimates, in the determination of revenue recognition conclusions
  - Tested the mathematical accuracy of management's calculations of revenue and the associated pattern of revenue recognized in the financial statements.

#### Contingent Acquisition Payment

As disclosed in Note 4 to the consolidated financial statements, during 2021, the Company completed the acquisition of FortressID for a total aggregate purchase price of \$3.4 million. The transaction was accounted for as a business combination. The total aggregate purchase price included \$2.5 million of cash consideration plus the fair value of the contingent consideration arrangement which was estimated to be \$0.9 million. The contingent consideration requires cash payments of up to \$2.0 million by achieving revenue targets during 2022 and up to another \$2.0 million for revenue targets reached during 2023. The Company determines the fair value of contingent consideration as part of the initial purchase price allocation and on an ongoing basis each reporting period until the contingent consideration period is settled. As of December 31, 2021, the liability recorded for future estimated contingent consideration was \$0.9 million, which represents a Level 3 estimate in the fair value hierarchy due to the significant unobservable inputs used in determining the fair value and the use of management judgment about the assumptions that market participants would use in pricing these liabilities.

Auditing the Company's accounting for its contingent acquisition payment was complex due to the significant estimation required by management to determine the fair value of the contingent consideration. The significance of the estimations used by management to determine the fair value of contingent consideration was primarily due to the

sensitivity of the fair value to the underlying assumptions. The significant assumptions include estimation of the probability and timing of payments, future sales forecasts, as well as the appropriate discount rate based on the estimated timing of payments. These significant assumptions are forward looking and could be affected by future economic and market conditions.

Given these factors, the related audit effort in evaluating management's judgments in determining the fair value of the contingent acquisition payment was extensive and required a high degree of auditor judgment.

Addressing the matter involved performing procedures and evaluating audit evidence in connection with forming our overall opinion on the financial statements. Our procedures related to the Company's contingent acquisition payment included, among others:

- We performed audit procedures that included, evaluating the Company's use of the multi-scenario model and testing the significant assumptions used in the model.
- We assessed the terms of the contingent acquisition payment and the conditions that must be met for the amounts to become payable.
- We evaluated the completeness and accuracy of the underlying data used in the analysis.
- We involved our valuation professionals to assist with our evaluation of the methodology used by the Company and significant assumptions included in the fair value estimate.

/s/ RSM US LLP

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

Boston, Massachusetts

March 15, 2022

**AWARE, INC.**  
**CONSOLIDATED BALANCE SHEETS**  
(in thousands, except share data)

	December 31,	
	2021	2020
<b>ASSETS</b>		
Current assets:		
Cash and cash equivalents	\$ 29,963	\$ 38,565
Accounts receivable (less allowance for doubtful accounts of \$74 at December 31, 2021 and \$138 at December 31, 2020)	3,763	2,285
Unbilled receivables	3,087	2,229
Tax receivable	1,411	—
Prepaid expenses and other current assets	591	582
Total current assets	38,815	43,661
Property and equipment, net	3,216	3,701
Intangible assets, net	3,222	1,217
Goodwill	3,120	1,651
Long term tax receivable	—	1,398
Total assets	\$ 48,373	\$ 51,628
<b>LIABILITIES AND STOCKHOLDERS' EQUITY</b>		
Current liabilities:		
Accounts payable	\$ 283	\$ 494
Accrued expenses	1,909	1,531
Deferred revenue	3,549	3,843
Total current liabilities	5,741	5,868
Long-term deferred revenue	191	90
Long-term contingent acquisition payment	919	-
Total long-term liabilities	1,110	90
Commitments and contingent liabilities (Note 7)		
Stockholders' equity:		
Preferred stock, \$1.00 par value; 1,000,000 shares authorized, none outstanding	-	-
Common stock, \$.01 par value; shares authorized, 70,000,000 in 2021 and 2020; issued and outstanding of 21,613,982 as of December 31, 2021 and 21,378,833 as of December 31, 2020	216	214
Additional paid-in capital	97,778	96,104
Accumulated deficit	(56,472)	(50,648)
Total stockholders' equity	41,522	45,670
Total liabilities and stockholders' equity	\$ 48,373	\$ 51,628

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

**AWARE, INC.**  
**CONSOLIDATED STATEMENTS OF OPERATIONS**  
(in thousands, except per share data)

	<b>Years ended December 31,</b>	
	<b>2021</b>	<b>2020</b>
<b>Revenue:</b>		
Software licenses	\$ 7,973	\$ 5,038
Software maintenance	6,679	5,429
Services and other	2,202	842
Total revenue	16,854	11,309
<b>Costs and expenses:</b>		
Cost of services and other	1,210	810
Research and development	9,259	9,093
Selling and marketing	6,324	5,411
General and administrative	6,158	5,419
Total costs and expenses	22,951	20,733
Operating loss	(6,097)	(9,424)
Interest and other income	4	176
Loss before benefit for income taxes	(6,093)	(9,248)
Benefit for income taxes	(269)	(1,634)
Net loss	\$ (5,824)	\$ (7,614)
Net loss per share – basic	\$ (0.27)	\$ (0.35)
Net loss per share – diluted	\$ (0.27)	\$ (0.35)
Weighted-average shares - basic	21,525	21,473
Weighted-average shares - diluted	21,525	21,473

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

**AWARE, INC.**  
**CONSOLIDATED STATEMENTS OF CASH FLOWS**  
(in thousands)

	<b>Years ended December 31,</b>	
	<b>2021</b>	<b>2020</b>
<b>Cash flows from operating activities:</b>		
Net loss	\$ (5,824)	\$ (7,614)
Adjustments to reconcile net loss to net cash used in operating activities:		
Depreciation and amortization	687	561
Stock-based compensation	1,567	838
Deferred taxes	(269)	-
Bad debt provision	(64)	118
Increase (decrease) from changes in assets and liabilities:		
Accounts receivable	(1,410)	84
Unbilled receivables	(837)	1,086
Prepaid expenses and other current assets	(9)	(171)
Tax receivable	(13)	(1,398)
Accounts payable	(249)	307
Accrued expenses	380	435
Deferred revenue	(193)	480
Net cash used in operating activities	<u>(6,234)</u>	<u>(5,274)</u>
<b>Cash flows from investing activities:</b>		
Purchases of property and equipment	(27)	(484)
Cash paid for acquisitions, net	(2,450)	(2,430)
Net cash used in investing activities	<u>(2,477)</u>	<u>(2,914)</u>
<b>Cash flows from financing activities:</b>		
Proceeds from issuance of common stock	163	50
Payments made for taxes of employees who surrendered shares related to unrestricted stock	(54)	(93)
Repurchase of common stock	—	(946)
Net cash provided by (used in) financing activities	<u>109</u>	<u>(989)</u>
Decrease in cash and cash equivalents	(8,602)	(9,177)
Cash and cash equivalents, beginning of year	38,565	47,742
Cash and cash equivalents, end of year	<u>\$ 29,963</u>	<u>\$ 38,565</u>
<b>Supplemental disclosure:</b>		
Cash paid for income taxes	<u>\$ -</u>	<u>\$ -</u>

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

**AWARE, INC.**  
**CONSOLIDATED STATEMENTS OF STOCKHOLDERS' EQUITY**  
(in thousands)

	Common Stock		Additional Paid-In Capital	Accumulated Deficit	Total Stockholders' Equity
	Shares	Amount			
Balance at December 31, 2019	21,443	\$ 214	\$ 96,255	\$ (43,034)	\$ 53,435
Issuance of unrestricted stock	246	2	(2)	—	-
Shares surrendered by employees to pay taxes related to unrestricted stock	(27)	-	(93)	—	(93)
Issuance of common stock under employee stock purchase plan	15	-	50	—	50
Stock-based compensation expense		—	838	—	838
Repurchase of common stock	(298)	(2)	(944)	—	(946)
Net loss				(7,614)	(7,614)
Balance at December 31, 2020	21,379	214	96,104	(50,648)	45,670
Issuance of unrestricted stock	189	2	(2)	—	-
Shares surrendered by employees to pay taxes related to unrestricted stock	(16)	-	(54)	—	(54)
Issuance of common stock under employee stock purchase plan	62	-	163	—	163
Stock-based compensation expense	—	—	1,567	—	1,567
Net loss				(5,824)	(5,824)
Balance at December 31, 2021	<u>21,614</u>	<u>\$ 216</u>	<u>\$ 97,778</u>	<u>\$ (56,472)</u>	<u>\$ 41,522</u>

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

## 1 NATURE OF BUSINESS

We are a global leader in biometrics software offerings and solutions. Our portfolio enables government agencies and commercial entities to enroll, identify authenticate and enable using biometrics, which comprise physiological characteristics, such as fingerprints, faces, irises and voices.

- **Enroll:** Register biometric identities into an organization’s secure database
- **Identify:** Utilize an organization’s secure database to accurately identify individuals using biometric data
- **Authenticate:** Provide frictionless multi-factor, passwordless access to secured accounts and databases with biometric verification
- **Enable:** Manage the lifecycle of secure identities through optimized biometric interchanges

We have been engaged in this business since 1993. Our comprehensive portfolio of biometric solutions is based on innovative, robust products designed explicitly for ease of integration, including customer-managed and integration ready biometric frameworks, platforms, software development kits (“SDKs”) and services. Principal government applications of biometrics systems include border control, visa applicant screening, law enforcement, national defense, intelligence, secure credentialing, access control, and background checks. Principal commercial applications include mobile enrollment, user authentication, identity proofing, and secure transaction enablement.

Our products span multiple biometric modalities including fingerprint, face, iris and voice, and provide interoperable, standards-compliant, field-proven biometric functionality. Our products are used to capture, verify, format, compress and decompress biometric images as well as aggregate, analyze, process, match and transport those images and templates within biometric systems. For large deployments, we may provide project management and software engineering services. We sell our biometrics software products and services globally through a multifaceted distribution strategy using systems integrators, original equipment manufacturers (“OEMs”), VARs, partners, and directly to end user customers.

Certain amounts in the consolidated financial statements and associated notes may not add due to rounding. All percentages have been calculated using unrounded amounts.

## 2 SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

**Basis of Presentation** - The consolidated financial statements include the accounts of Aware, Inc. and its subsidiaries (“the Company”). All significant intercompany transactions have been eliminated.

**Use of Estimates** – The preparation of our financial statements in conformity with accounting principles generally accepted in the United States of America requires us to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and the reported amount of revenues and expenses during the reporting period. The most significant estimates included in the financial statements pertain to revenue recognition, reserves for doubtful accounts, valuation of acquired assets and assumed liabilities in business combinations, earn-out liability, goodwill and long-lived asset impairment and valuation allowance for deferred income tax assets. Actual results could differ from those estimates.

**Fair Value Measurements** - The Financial Accounting Standards Board (“FASB”) Codification defines fair value and establishes a fair value hierarchy that prioritizes the inputs to valuation techniques used to measure fair value. The hierarchy gives the highest priority to the unadjusted quoted prices in active markets for identical assets or liabilities (level 1 measurements) and the lowest priority to unobservable inputs (level 3 measurements). The three levels of the fair value hierarchy under the FASB Codification are: i) Level 1 – valuations that are based on quoted prices (unadjusted) in active markets for identical assets or liabilities that the reporting entity has the ability to access at the measurement date; ii) Level 2 – valuations that are based on quoted prices in markets that are not active or for which all significant inputs are observable, either directly or indirectly; and iii) Level 3 – valuations that require inputs that are both significant to the fair value measurement and unobservable.



Cash and cash equivalents, which primarily include money market mutual funds, were \$30.0 million and \$38.6 million at December 31, 2021 and 2020, respectively. We classified our cash equivalents of \$29.0 million and \$37.9 million as of December 31, 2021 and 2020, respectively, within Level 1 of the fair value hierarchy because they are valued using quoted market prices. Our cash equivalents are measured at fair value on a recurring basis and their carrying values approximate their respective fair values.

As of December 31, 2021, our assets that are measured at fair value on a recurring basis and whose carrying values approximate their respective fair values include the following (in thousands):

	Fair Value Measurement at December 31, 2021 Using:		
	Quoted Prices in Active Markets for Identical Assets (Level 1)	Significant Other Observable Inputs (Level 2)	Significant Unobservable Inputs (Level 3)
Assets:			
Money market funds (included in cash and cash equivalents)	\$ 28,952	\$ -	\$ -
Total assets	\$ 28,952	\$ -	\$ -
Liabilities:			
Contingent acquisition payment	\$ -	\$ -	\$ 919
Total liabilities	\$ -	\$ -	\$ 919

The fair value of our contingent acquisition payment was determined using a Monte Carlo simulation and there was no change in fair value from the initial recording date (acquisition date) to December 31, 2021 due to the proximity of the acquisition to year-end.

As of December 31, 2020, our assets that are measured at fair value on a recurring basis and whose carrying values approximate their respective fair values include the following (in thousands):

	Fair Value Measurement at December 31, 2020 Using:		
	Quoted Prices in Active Markets for Identical Assets (Level 1)	Significant Other Observable Inputs (Level 2)	Significant Unobservable Inputs (Level 3)
Money market funds (included in cash and cash equivalents)	\$ 37,948	\$ -	\$ -
Total	\$ 37,948	\$ -	\$ -

**Cash and Cash Equivalents** – Cash and cash equivalents, which consist primarily of money market funds and demand deposits, are stated at fair value. All highly liquid investments purchased with an original maturity of three months or less are considered cash equivalents. Our cash balances exceed the Federal Deposit Insurance Corporation limits. The Company does not believe it is exposed to significant credit risk related to cash and cash equivalents.

**Allowance for Doubtful Accounts** – Accounts are charged to the allowance for doubtful accounts as they are deemed uncollectible based on a periodic review of the accounts.

For the years ended December 31, 2021 and 2020, changes to and ending balances of the allowance for doubtful accounts were as follows (in thousands):

	Years ended December 31,	
	2021	2020
Allowance for doubtful accounts balance - beginning of year	\$ 138	\$ 20
Additions to the allowance for doubtful accounts	-	118
Deductions against the allowance for doubtful accounts	(64)	-
Allowance for doubtful accounts balance - end of year	<u>\$ 74</u>	<u>\$ 138</u>

**Property and Equipment** – Property and equipment is stated at cost. Depreciation and amortization of property and equipment is provided using the straight-line method over the estimated useful lives of the assets. Upon retirement or sale, the costs of the assets disposed of and the related accumulated depreciation are removed from the accounts and any resulting gain or loss on disposal is included in the determination of income or loss. Expenditures for repairs and maintenance are charged to expense as incurred.

The estimated useful lives of assets are:

Building	30 years
Building improvements	5 to 20 years
Furniture and fixtures	5 years
Computer and office equipment	3 years
Purchased software	3 years

**Goodwill** – We record goodwill when consideration paid in a business acquisition exceeds the value of the net assets acquired. Our estimates of fair value are based upon assumptions believed to be reasonable at the time, but such estimates are inherently uncertain and unpredictable. Assumptions may be incomplete or inaccurate and unanticipated events or circumstances may occur, which may affect the accuracy of validity of such assumptions, estimates or actual results. Goodwill is not amortized but rather is tested for impairment annually in the fourth quarter or more frequently, if facts and circumstances warrant a review. Circumstances that could trigger an impairment test include, but are not limited to, a significant adverse change in the business climate or legal factors, an adverse action or assessment by a regulator, or unanticipated competition. We have determined that there is a single reporting unit for the purpose of conducting the goodwill impairment assessment. In accordance with ASC Topic 350, Intangibles—Goodwill and Other, we first assess qualitative factors to determine whether it is necessary to perform the quantitative goodwill impairment test. If after assessing the totality of events or circumstances, we determine that it is more likely than not (i.e., greater than 50% likelihood) that the fair value of the reporting unit is less than its carrying amount, then the quantitative test is required. The quantitative goodwill impairment test requires us to estimate and compare the fair value of the reporting unit, determined using an income approach and a market approach, with its carrying value. If the fair value of the reporting unit exceeds the carrying value of the net assets, goodwill is not impaired. If the fair value of the reporting unit is less than the carrying value, the difference is recorded as an impairment loss up to the amount of goodwill.

Application of the goodwill impairment test requires judgments, including identification of the reporting units, assigning goodwill to reporting units, a qualitative assessment to determine whether there are any impairment indicators, and determining the fair value of each reporting unit which often involves the use of significant estimates and assumptions, including assumptions with respect to future cash inflows and outflows, discount rates, asset lives and market multiples, among other items. There is no assurance that the actual future earnings or cash flows of the reporting unit will not decline significantly from the projections used in the impairment analysis. Goodwill impairment charges may be recognized in future periods to the extent changes in factors or circumstances occur, including deterioration in the macroeconomic environment and industry, deterioration in the Company's performance or its future projections, or changes in plans for its reporting unit.

The changes in goodwill for the years ended December 31, 2021 and 2020 were as follows (in thousands):

As of December 31, 2021 and 2020, we had \$3.1 and \$1.7 million of goodwill, respectively. Changes in the valuation of goodwill could materially impact our operating results and financial position. We performed a quantitative analysis during the year ended December 31, 2021 and determined there was no impairment loss and to date, there have been no impairments of goodwill.

	<b>Goodwill</b>
Balance as of December 31, 2019	\$ —
Goodwill arising from AFIX acquisition	1,651
Balance as of December 31, 2020	1,651
Goodwill arising from FortressID acquisition	1,469
Balance as of December 31, 2021	<u>\$ 3,120</u>

**Valuation of Long-Lived Assets** – We review long-lived assets for impairment whenever events or changes in business circumstances indicate that the carrying amount of the assets may not be fully recoverable or that the useful lives of these assets are no longer appropriate. Each impairment test is based on a comparison of the undiscounted cash flows estimated to be generated by those assets over their estimated economic life to the related carrying value of those assets to determine if the assets are impaired. If an impairment is indicated, the asset is written down to its estimated fair value. The cash flow estimates used to identify the potential impairment reflect our best estimates using appropriate assumptions and projections at that time. In evaluating potential impairment of these assets, we specifically consider whether any indicators of impairment are present, including, but not limited to:

- whether there has been a significant adverse change in the business climate that affects the value of an asset;
- whether there has been a significant change in the extent or way an asset is used; and
- whether there is an expectation that the asset will be sold or disposed of before the end of its originally estimated useful life.

We did not identify any events or changes in business circumstances that the carrying amount of the assets may not be fully recoverable or that the useful lives of these assets are no longer appropriate during the years ended December 31, 2021 and 2020.

**Revenue recognition.** The core principle of Accounting Standards Codification (“ASC”) Topic 606, Revenue from Contracts with Customers (“ASC 606”) is that we should recognize revenue to depict the transfer of promised goods or services to customers in an amount that reflects the consideration to which we expect to be entitled in exchange for those goods or services. To achieve that core principle, we apply the following five step model:

**1) Identify the contract with the customer**

A contract with a customer exists when (i) we enter into an enforceable contract with a customer that defines each party’s rights regarding the goods or services to be transferred and identifies the related payment terms, (ii) the contract has commercial substance, and (iii) we determine that collection of substantially all consideration for goods and services that are transferred is probable based on the customer’s intent and ability to pay the promised consideration. We apply judgment in determining the customer’s intent and ability to pay, which is based on a variety of factors including the customer’s historical payment experience, or in the case of a new customer, published credit and financial information pertaining to the customer.

We evaluate contract modifications for the impact on revenue recognition if they have been approved by both parties such that the enforceable rights and obligations under the contract have changed. Contract modifications are either accounted for using a cumulative effect adjustment or prospectively over the remaining term of the arrangement. The determination of which method is more appropriate depends on the nature of the modification, which we evaluate on a case-by-case basis.

We combine two or more contracts entered into at or near the same time with the same customer and account for them as a single contract if (i) the contracts are negotiated as a package with a common commercial objective, (ii) the amount of consideration to be paid in one contract depends on the price or performance of the other contract, or (iii) some or all of the goods or services in one contract would be combined with some or all of the goods and services in the other contract into a single performance obligation. If two or more contracts are combined, the consideration to be paid is aggregated and allocated to the individual performance obligations without regard to the consideration specified in the individual contracts.

## ***2) Identify the performance obligations in the contract***

Performance obligations promised in a contract are identified based on the goods and services that will be transferred to the customer that are both capable of being distinct, whereby the customer can benefit from the good or service either on its own or together with other available resources, and are distinct in the context of the contract, whereby the transfer of the good or service is separately identifiable from other promises in the contract. To the extent a contract includes multiple promised goods and services, we apply judgment to determine whether promised goods and services are capable of being distinct and distinct in the context of the contract. If these criteria are not met, the promised goods and services are accounted for as a combined performance obligation. To identify performance obligations, we consider all of the goods or services promised in a contract regardless of whether they are explicitly stated or are implied by customary business practices.

## ***3) Determine the transaction price***

The transaction price is determined based on the consideration we expect to be entitled in exchange for transferring promised goods and services to the customer. Determining the transaction price requires significant judgment. To the extent the transaction price includes variable consideration, we estimate the amount of variable consideration that should be included in the transaction price utilizing either the expected value method or the most likely amount method depending on the nature of the variable consideration. Variable consideration is included in the transaction price if, in our judgment, it is probable that a significant future reversal of cumulative revenue recognized under the contract will not occur. Any estimates, including the effect of the constraint on variable consideration, are evaluated at each reporting period. Some of our arrangements include usage-based royalties where a software license is the predominant item that the royalty relates to. In these arrangements, revenue from the usage-based royalty is recognized when the subsequent usage occurs.

The amount of consideration is not adjusted for a significant financing component if the time between payment and the transfer of the related good or service is expected to be one year or less under the practical expedient in ASC 606-10-32-18. Our revenue arrangements are typically accounted for under such expedient, as payment is typically due within 30 to 60 days. As of December 31, 2021 and 2020, none of our contracts contained a significant financing component.

Our arrangements can include variable fees, such as the option to purchase additional usage of a previously delivered software license. The Company may also provide pricing concessions to clients, a business practice that also gives rise to variable fees in contracts. The Company also reviews contractual termination provisions in determining contractual term and total transaction price. For variable fees arising from the client's purchase of additional usage of a previously delivered software license, we apply the sales and usage-based royalties guidance related to a license of intellectual property and recognizes the revenue in the period the underlying sale or usage occurs. We include variable fees in the determination of total transaction price if it is not probable that a future significant reversal of revenue will occur. We use the expected value or most likely value amount, whichever is more appropriate for specific circumstances, to estimate variable consideration, and the estimates are based on the level of historical price concessions offered to clients.

## ***4) Allocate the transaction price to performance obligations in the contract***

If the contract contains a single performance obligation, the entire transaction price is allocated to the single performance obligation. Contracts that contain multiple performance obligations require an allocation of the transaction price to each performance obligation based on a relative standalone selling price ("SSP") basis unless the transaction price is variable and meets the criteria to be allocated entirely to a performance obligation or to a distinct service that forms part of a single performance obligation. The consideration to be received is allocated among the separate performance obligations based on relative SSPs. The SSP is the price at which we would sell a promised good or service separately to a customer. The best estimate of SSP is the observable price of a

good or service when we sell that good or service separately. A contractually stated price or a list price for a good or service may be the SSP of that good or service. We use a range of amounts to estimate SSP when we sell each of the goods and services separately and need to determine whether there is a discount that needs to be allocated based on the relative SSP of the various goods and services. In instances where SSP is not directly observable, such as when we do not sell the product or service separately, we typically determine the SSP using an adjusted market assessment approach using information that may include market conditions and other observable inputs. We typically have more than one SSP for individual goods and services due to the stratification of those goods and services by customers and circumstances. In these instances, we may use information such as the nature of the customer and distribution channel in determining the SSP.

#### **5) Recognize revenue when or as we satisfy a performance obligation**

We satisfy performance obligations either over time or at a point in time. Revenue is recognized over time if 1) the customer simultaneously receives and consumes the benefits provided by our performance, 2) our performance creates or enhances an asset that the customer controls as the asset is created or enhanced, or 3) our performance does not create an asset with an alternative use to us and we have an enforceable right to payment for performance completed to date. If we do not satisfy a performance obligation over time, the related performance obligation is satisfied at a point in time by transferring the control of a promised good or service to a customer.

We categorize revenue as software licenses, software maintenance, or services and other. Specific revenue recognition policies apply to each category of revenue.

##### Software licenses

Software licenses consist of revenue from the sale of software licenses for biometrics and imaging applications. Our software licenses are functional intellectual property and typically provide customers with the right to use our software on a term or perpetual basis as it exists when made available to the customer. We recognize revenue from perpetual software licenses at a point in time upon delivery, provided all other revenue recognition criteria are met.

We also offer certain products pursuant to a subscription-based software model which includes a term software license to use the software for a fixed term. We recognize revenue for fixed fees associated with subscription-based software licenses at a point in time upon delivery, provided all other revenue recognition criteria are met. Fees subject to the usage-based royalty exception are recognized when the subsequent usage occurs.

Also, with our acquisition of FortressID and adaption of our current products to be delivered in a hosted environment with AwareID, we expect to recognize revenue from our SaaS offerings in future periods. SaaS offerings are recognized ratably over the subscription period. For the year ended December 31, 2021 we did not generate revenue from SaaS contracts.

##### Software maintenance

Software maintenance consists of revenue from the sale of software maintenance contracts for biometrics and imaging software. Software maintenance contracts entitle customers to receive software support and software updates, if and when they become available, during the term of the maintenance contract. Software support and software updates are considered distinct services. However, these distinct services are considered a single performance obligation consisting of a series of distinct services that are substantially the same and have the same pattern of transfer to the customer. We recognize software maintenance revenue over time on a straight-line basis over the contract period.

##### Services

Service revenue consists of fees from biometrics customers for software engineering services. We recognize services revenue over time as the services are delivered using an input method (i.e., labor hours incurred as a percentage of total labor hours budgeted), provided all other revenue recognition criteria are met. The use of the over-time revenue recognition method requires judgment in developing budgeted labor hours. Changes in budgeted hours may occur and the resulting impact on revenue recognition is accounted for in the period of the change in estimate.

### Arrangements with multiple performance obligations

In addition to selling software licenses, software maintenance and software services on a standalone basis, a significant portion of our contracts include multiple performance obligations. The various combinations of multiple performance obligations and our revenue recognition for each are described as follows:

- **Perpetual software licenses and software maintenance:** When software licenses and software maintenance contracts are sold together, the software licenses and software maintenance are generally considered distinct performance obligations. The transaction price is allocated to the software licenses and the software maintenance based on relative SSP. Revenue allocated to the software licenses is recognized at a point in time upon delivery, provided all other revenue recognition criteria are met. Revenue allocated to the software maintenance is recognized over time on a straight-line basis over the contract period.
- **Perpetual software licenses and services:** When software licenses and significant customization engineering services are sold together, they are accounted for as a combined performance obligation, as the software licenses are generally highly dependent on, and interrelated with, the associated services and therefore are not distinct performance obligations. Revenue for the combined performance obligation is recognized over time as the services are delivered using an input method (i.e., labor hours incurred as a percentage of total labor hours budgeted). When software licenses and standard implementation or consulting-type services are sold together, they are generally considered distinct performance obligations, as the software licenses are not dependent on or interrelated with the associated services. The transaction price in these arrangements is allocated to the software licenses and services based on relative SSP. Revenue allocated to the software licenses is recognized at a point in time upon delivery, provided all other revenue recognition criteria are met. Revenue allocated to the services is recognized over time using an input method. In arrangements with both software licenses and services, the software license portion of the arrangement is classified as software license revenue and the services portion is classified as services revenue in our consolidated statements of operations.
- **Perpetual software licenses, software maintenance and services:** When we sell software licenses, software maintenance and software services together, we account for the individual performance obligations separately if they are distinct. The transaction price is allocated to the separate performance obligations based on relative SSP. Revenue allocated to the software licenses is recognized at a point in time upon delivery. Revenue allocated to the services is recognized over time using an input method (i.e., labor hours incurred as a percentage of total labor hours budgeted). Revenue for the software maintenance is recognized over time on a straight-line basis over the contract period. However, if the software services are significant customization engineering services, they are accounted for with the software licenses as a combined performance obligation, as stated above. Revenue for the combined performance obligation is recognized over time using an input method.
- **Perpetual software licenses, hardware, software maintenance, and services:** When we sell software licenses, hardware, software maintenance and software services together, we account for the individual performance obligations separately if they are distinct. The transaction price is allocated to the separate performance obligations based on relative SSP. Revenue allocated to the software licenses is recognized at a point in time upon delivery. Revenue allocated to the services is recognized over time using an input method (i.e., labor hours incurred as a percentage of total labor hours budgeted). Revenue for the software maintenance is recognized over time on a straight-line basis over the contract period.
- **Subscription-based software consisting of a software license and software maintenance:** When subscription-based software is sold, the software license and software maintenance are generally considered distinct performance obligations. The transaction price is allocated to software license and the software maintenance based on relative SSP. We sell subscription-based software licenses for a fixed fee and/or a usage-based royalty fee, sometimes subject to a minimum guarantee. When the amount is in the form of a fixed fee, including the guaranteed minimum in usage-based royalty, revenue is allocated to the software license recognized at a point in time upon delivery, provided all other revenue recognition criteria are met. Any royalties not subject to the guaranteed minimum or earned in excess of the minimum amount are recognized as revenue when the subsequent usage occurs. Revenue allocated to the software maintenance is recognized on a straight-line basis over the contract period.

### Returns

We do not offer rights of return for our products and services in the normal course of business.

### Customer Acceptance

Our contracts with customers generally do not include customer acceptance clauses.

### Contract Balances

When the timing of our delivery of goods or services is different from the timing of payments made by customers, we recognize either a contract asset (performance precedes contractual due date) or a contract liability (customer payment precedes performance). Customers that prepay are represented by the deferred revenue until the performance obligation is satisfied. Our contract assets consist of unbilled receivables. Our contract liabilities consisted of deferred (unearned) revenue, which is generally related to software maintenance contracts. We classify deferred revenue as current or noncurrent based on the timing of when we expect to recognize revenue.

The following table presents changes in our contract assets and liabilities during the years ended December 31, 2021 and 2020 (in thousands):

	<b>Balance at Beginning of period</b>	<b>Revenue Recognized In Advance of Billings</b>	<b>Billings</b>	<b>Balance at End of Period</b>
<b>Year ended December 31, 2020</b>				
Contract Assets:				
Unbilled receivables	\$ 3,315	\$ 1,508	\$ (2,594)	\$ 2,229
<b>Year ended December 31, 2021</b>				
Contract Assets:				
Unbilled receivables	\$ 2,229	\$ 7,172	\$ (6,314)	\$ 3,087
	<b>Balance at Beginning of period</b>	<b>Billings</b>	<b>Revenue Recognized</b>	<b>Balance at End of Period</b>
<b>Year ended December 31, 2020</b>				
Contract Liabilities:				
Deferred revenue	\$ 2,837	\$ 6,619	\$ (5,523)	\$ 3,933
<b>Year ended December 31, 2021</b>				
Contract Liabilities:				
Deferred revenue	\$ 3,933	\$ 6,486	\$ (6,679)	\$ 3,740

### Remaining Performance Obligations

Remaining performance obligations represent the transaction price from contracts for which work has not been performed or goods and services have not been delivered. We expect to recognize revenue on approximately 67% of the remaining performance obligations over the next 12 months, with the remainder recognized thereafter. As of December 31, 2021, the aggregate amount of the transaction price allocated to remaining performance obligations with a duration greater than one year, comprised of software maintenance contracts, was \$2.6 million.

### Contract Costs

We recognize an other asset for the incremental costs of obtaining a contract with a customer if we expect the benefit of those costs to be longer than one year. We have determined that certain sales commissions meet the requirements to be capitalized, and we amortize these costs on a consistent basis with the pattern of transfer of the goods and services in the contract. Total capitalized costs to obtain a contract were immaterial during the periods presented and are included in other current and long-term assets on our consolidated balance sheets.

We apply a practical expedient to expense costs as incurred for costs to obtain a contract when the amortization period is one year or less. These costs include sales commissions on software maintenance contracts with a contract period of one year or less as sales commissions paid on contract renewals are commensurate with those paid on the initial contract.

**Income Taxes** – We compute deferred income taxes based on the differences between the financial statement and tax basis of assets and liabilities using enacted rates in effect in the years in which the differences are expected to reverse. We establish a valuation allowance to offset temporary deductible differences, net operating loss carryforwards and tax credits when it is more likely than not that the deferred tax assets will not be realized.

We recognize the tax benefit from an uncertain tax position only if it is more-likely-than-not that the tax position will be sustained upon examination by the taxing authorities, based on the technical merits of the tax position. The evaluation of an uncertain tax position is based on factors that include, but are not limited to, changes in the tax law, the measurement of tax positions taken or expected to be taken in tax returns, the effective settlement of matters subject to audit, and changes in facts or circumstances related to a tax position. Any changes to these estimates, based on the actual results obtained and/or a change in assumptions, could impact our tax provision in future periods. Interest and penalty charges, if any, related to unrecognized tax benefits would be classified as a provision for income tax in the consolidated statements of operations.

**Capitalization of Software Costs** – We capitalize certain costs to develop software products to be sold, leased, or marketed to external users, after technological feasibility of the product has been established. No software costs were capitalized during the years ended December 31, 2021 and 2020, because such costs incurred subsequent to the establishment of technological feasibility, but prior to commercial availability, were immaterial.

Software development costs also include costs to support our SaaS offerings. We capitalize development costs related to these software applications once the preliminary project stage is complete and it is probable that the projects will be completed. No software costs were capitalized during the years ended December 31, 2021 and 2020.

**Research and Development Costs** – Costs incurred in the research and development of our products are expensed as incurred.

**Concentration of Credit Risk** – At December 31, 2021 and 2020, we had cash and cash equivalents, in excess of federally insured deposit limits of approximately \$29.7 million and \$38.3 million, respectively.



Concentration of credit risk with respect to net accounts receivable and unbilled receivables consisted of amounts owed by the following customers that comprised more than 10% of net accounts receivable and unbilled receivables at December 31:

	<u>2021</u>	<u>2020</u>
Customer A	27%	39%
Customer B	-	13%

We had no customer in 2021 or 2020 that provided 10% or more of revenue.

**Stock-Based Compensation** – We grant stock and stock options to our employees and directors. We measure stock-based compensation cost at the grant date based on the fair value of the award and recognize stock-based compensation expense on a straight-line basis over the requisite service period of the award.

For stock awards, we determine the fair value of the award by using the fair market value of our stock on the date of grant; provided the number of shares in the grant is fixed on the grant date.

For stock options, we use the Black-Scholes option valuation model to estimate the fair value of the award. This valuation model takes into account the exercise price of the award, as well as a variety of significant assumptions. The assumptions used to estimate the fair value of stock options include the expected term, the expected volatility of our stock over the expected term, the risk-free interest rate over the expected term, and our expected annual dividend yield.

**Computation of Earnings per Share** – Basic earnings per share is computed by dividing income available to common shareholders by the weighted average number of common shares outstanding. Diluted earnings per share is computed by dividing income available to common shareholders by the weighted average number of common shares outstanding plus additional common shares that would have been outstanding if dilutive potential common shares had been issued. For the purposes of this calculation, stock options are considered common stock equivalents in periods in which they have a dilutive effect. Stock options that are antidilutive are excluded from the calculation.

**Fair Value of Financial Instruments** – The carrying amounts of cash and cash equivalents, accounts receivable, accounts payable and accrued expenses approximate fair value because of their short-term nature.

**Segments** – We organize ourselves into a single segment reporting to the chief operating decision maker, who we have designated as our Chief Executive Officer.

We conduct our operations in the United States and sell our products and services to domestic and international customers. Revenues were generated from the following geographic regions (in thousands):

	<b>Year ended December 31,</b>	
	<u>2021</u>	<u>2020</u>
United States	\$ 9,624	\$ 6,724
Brazil	1,938	975
United Kingdom	1,726	1,606
Rest of world	3,566	2,004
	<u>\$ 16,854</u>	<u>\$ 11,309</u>

Revenue by product group was (in thousands):

	<b>Year ended December 31,</b>	
	<b>2021</b>	<b>2020</b>
License and service contracts	\$ 14,164	\$ 10,514
Subscription-based contracts	2,690	795
	<u>\$ 16,854</u>	<u>\$ 11,309</u>

Revenue included by product group consists of all associated revenue within the contract, including license revenue, maintenance revenue, and services and other revenue. Revenue by product group may be recognized at a point in time or over-time. These revenues are attributable to both contracts with fixed fees or guaranteed minimums.

Revenue by timing of transfer of goods or services was (in thousands):

	<b>Year ended December 31,</b>	
	<b>2021</b>	<b>2020</b>
Goods or services transferred at a point in time	\$ 7,992	\$ 5,120
Goods or services transferred over time	8,862	6,189
	<u>\$ 16,854</u>	<u>\$ 11,309</u>

### 3 PROPERTY AND EQUIPMENT

Property and equipment consisted of the following at December 31 (in thousands):

	<b>2021</b>	<b>2020</b>
Land	\$ 1,056	\$ 1,056
Building and improvements	9,166	9,166
Computer and office equipment	1,310	1,283
Purchased software	155	154
Furniture and fixtures	778	778
Total	12,465	12,437
Less accumulated depreciation	(9,249)	(8,736)
Property and equipment, net	<u>\$ 3,216</u>	<u>\$ 3,701</u>

Depreciation expense was \$0.5 million for the years ended December 31, 2021 and 2020.

### 4. ACQUISITIONS

In December 2021, we acquired 100% of the outstanding shares and acquired all of assets and liabilities of FortressID for a purchase price of \$3.4 million, which consisted of \$2.5 million of cash consideration and an earnout with a fair value of \$0.9 million. The maximum earnout payment is \$4.0 million and requires cash payments of up to \$2.0 million for set revenue targets in 2022 and another \$2.0 million for set revenue targets in 2023. The acquisition of FortressID, expands our offerings around identity proofing-enhancing its onboarding, verification and authentication offerings to directly address financial compliance requirements and enable organizations to mitigate risk and curtail increasing fraud.

The acquisition was accounted for as a business combination, whereby all the assets acquired, and liabilities assumed were recognized at fair value on the acquisition date, with any excess of the consideration transferred over the fair value of the net assets acquired recognized as goodwill. Unaudited pro forma results of operations assuming the above acquisition had taken place at the beginning of each period are not provided because the historical operating results and pro forma results would not be materially different from reported results for the periods presented.

The fair values recorded were based on a valuation performed by a third-party valuation specialist and the estimates and assumptions used in such valuation are subject to change, within the measurement period (up to one year from the acquisition date). The following table summarizes the fair values of the assets acquired and liabilities assumed at the date of acquisition (in thousands):

Customer relationships	\$ 1,740
Developed technology	430
Trade name / trademarks	10
Goodwill	1,469
Gross assets acquired	<u>3,649</u>
Net working capital	(11)
Fair value of contingent consideration	<u>(919)</u>
Net assets acquired	<u>\$ 2,719</u>

After allocating the purchase price to the assets acquired and liabilities assumed based on their fair values at the date of acquisition, we recorded goodwill of approximately \$1.5 million, which included \$0.3 million related to the release of certain deferred tax assets. Goodwill largely consists of expected synergies to be realized from combining operations. The goodwill is deductible for income tax purposes.

The fair values of intangible assets were based on valuations using the income approach. The fair value of intangible assets and their estimated useful life as of December 31, 2021 are as follows (dollars in thousands):

	<u>Useful Life</u>	<u>Gross Amount</u>	<u>Accumulated Amortization</u>	<u>Net Book Value</u>
Customer relationships	10 years	\$ 1,740	\$ -	\$ 1,740
Developed technology	7 years	430	-	430
Trade name / trademarks	3 years	10	-	10
		<u>\$ 2,180</u>	<u>\$ -</u>	<u>\$ 2,180</u>

In November 2020, we entered into a Bill of Sale and Assignment Agreement (the “Agreement”) with Radiant Mission Solutions Inc. (“Radiant” as seller) and Maxar Technologies, Inc. (“as guarantor”) to acquire certain assets and assume certain liabilities of Radiant’s AFIX product line for cash consideration of approximately \$2.4 million. The acquisition of AFIX, provides turnkey face and fingerprint biometric and forensic analysis software for small and medium-sized law enforcement and government agencies, extends our ABIS product family.

The acquisition was accounted for as a business combination, whereby all the assets acquired, and liabilities assumed were recognized at fair value on the acquisition date, with any excess of the consideration transfer over the fair value of the net assets acquired recognized as goodwill. Unaudited pro forma results of operations assuming the above acquisition had taken place at the beginning of each period are not provided because the historical operating results and pro forma results would not be materially different from reported results for the periods presented. There were no measurement period adjustments recorded in the measurement period, which is now closed.

The fair values recorded were based on a valuation performed by a third-party valuation specialist. The following table summarizes the fair values of the assets acquired and liabilities assumed at the date of acquisition (in thousands):

Net working capital, excluding deferred revenue	\$ 155
Customer relationships	940
Developed technology	280
Trade name / trademarks	20
Goodwill	<u>1,651</u>
Gross assets acquired	3,046
Deferred revenue	<u>(616)</u>
Net assets acquired	<u><u>\$ 2,430</u></u>

After allocating the purchase price to the assets acquired and liabilities assumed based on their fair values at the date of acquisition, we recorded goodwill of approximately \$1.7 million. Goodwill largely consists of expected synergies to be realized from combining operations. The goodwill is deductible for income tax purposes.

The fair values of intangible assets were based on valuations using the income approach. The fair value of intangible assets and their estimated useful lives as of December 31, 2021 are as follows (dollars in thousands):

	<u>Useful Life</u>	<u>Gross Amount</u>	<u>Accumulated Amortization</u>	<u>Net Book Value</u>
Customer relationships	8 years	\$ 940	\$ 132	\$ 808
Developed technology	5 years	280	63	217
Tradenames	7 years	20	3	17
		<u>\$ 1,240</u>	<u>\$ 198</u>	<u>\$ 1,042</u>

During the years ended December 31, 2021 and 2020 we recorded \$176 thousand and \$26 thousand of amortization expense on intangible assets, respectively. The Company expects to record amortization for the years ended December 31 as follows (in thousands):

2022	\$	415
2023		415
2024		415
2025		412
2026		412
Thereafter		1,153
	\$	<u>3,222</u>

## 5. INCOME TAXES

We recorded a benefit for income taxes of \$0.3 million in the year ended December 31, 2021 related to a release of our valuation allowance as a result the deferred taxes recorded as part of the FortressID acquisition. We recorded a benefit for income taxes of \$1.6 million in the year ended December 31, 2020 that includes a \$1.4 million tax benefit of the current year tax loss which can be carried back due to changes made by the CARES Act which was signed into law on March 27, 2020. The CARES Act contained specific relief and stimulus measures including allowing net operating losses originating in 2018 through 2020 to be carried back five years to offset taxable income in the carryback period. The components of the benefit from income taxes are as follows (in thousands):

	Year ended December 31,	
	2021	2020
<b>Current:</b>		
Federal	\$ -	\$ (1,397)
State	—	(237)
	—	(1,634)
<b>Deferred:</b>		
Federal	(147)	—
State	(122)	—
	(269)	—
<b>Benefit from income taxes</b>	<u>\$ (269)</u>	<u>\$ (1,634)</u>

The 2021 difference between the effective tax rate and the U.S federal statutory rates was driven primarily due to the change in valuation allowance of our deferred tax assets. A reconciliation of the U.S. federal statutory rate to the effective tax rate is as follows:

	Year ended December 31,	
	2021	2020
Federal statutory rate	21%	21%
State rate, net of federal benefit	6	6
Tax credits	2	3
Permanent adjustments	—	—
Change in valuation allowance	(24)	(25)
Expiration of statutes on uncertain tax positions	—	2
Net operating loss carryback rate benefit under CARES Act	—	11
Other	(1)	—
<b>Effective tax rate</b>	<u>4%</u>	<u>18%</u>

The 2020 difference between the effective tax rate and the U.S. feral statutory rates was driven primarily due to the change in valuation allowance of our deferred tax assets. This was partially offset by an income tax rate benefit related to a carryback of the 2020 net operating losses under the CARES Act.

**Deferred income taxes** - We had deferred tax assets of \$10.7 million and \$8.7 million as of December 31, 2021 and 2020 respectively. **The principal components of deferred tax assets, net, were as follows at December 31 (in thousands):**

	2021	2020
Depreciation	\$ 367	\$ 307
Stock-based compensation	405	121
Research and development credits	6,904	6,686
Net operating loss	3,380	1,352
Other	254	208
Total deferred tax assts	<u>11,310</u>	<u>8,674</u>
Valuation allowance	(10,730)	(8,674)
Deferred tax liabilities		
Intangibles	(580)	—
Total deferred tax liabilities	<u>(580)</u>	<u>—</u>
Net deferred tax assets (liabilities)	<u>\$ -</u>	<u>\$ -</u>

As of December 31, 2021, \$6.9 million of our deferred tax assets relate to research credit carryforwards. We assessed the need for a valuation allowance on our deferred tax assets. We evaluated and considered all available evidence, both positive and negative, to determine whether, based on the weight of that evidence, a valuation allowance for deferred tax assets was needed. As part of this analysis, we gave more weight to recent, historical evidence than future projections as we consider the past more objective. As of December 31, 2021, we had a cumulative pretax loss over the most recent three-year period including a pretax loss of \$6.1 million in 2021. We considered the cumulative loss for the year ended December 31, 2021 to be significant negative evidence in the overall analysis.

Further, a significant portion of our deferred tax assets relates to federal and state research and development credits. These credits may only offset 75% of the tax liability after net operating loss carryforwards are utilized and thus, we have the risk that the credits could expire before utilization if sufficient taxable income in the carryforward periods doesn't exist.

As of December 31, 2021, we had a federal net operating loss carryforward of \$7.3 million, which may be available to offset future income tax liabilities and can be carried forward indefinitely. As of December 31, 2021, we had State NOL carryforwards of \$16.7 million, respectively, which expire at various dates through 2041.

We evaluated the positive and negative evidence bearing upon the realizability of our deferred tax assets, which are composed principally of net operating loss carryforwards and research and development credits. Under the applicable accounting standards, we considered our history of losses and concluded that it is more likely that we will not recognize the benefits of federal and state deferred tax assets. Therefore, we have recorded a full valuation allowance of \$10.7 million and \$8.7 million at December 31, 2021 and 2020, respectively. During the year ended December 31, 2021, we increased the valuation allowance by \$2.0 million from the prior year end. We will continue to monitor the evidence and the realizability of our deferred tax assets in future periods. Should evidence regarding the realizability of our deferred tax assets change at a future point in time, we will adjust the valuation allowance as required.

Under Internal Revenue Code Section 382, if a corporation undergoes an "ownership change," the corporation's ability to use its pre-change NOL carryforwards and other pre-change tax attributes to offset its post-change income may be limited. In connection with our acquisition of FortressID during 2021, the historical NOL carryforwards of \$3.5 million from FortressID are likely limited under Section 382 due to a change in ownership triggered by the acquisition, however, we do not expect the limitation to result in any of the NOL carryforwards to expire unused. We have not completed a study at the Aware, Inc. level to assess whether an "ownership change" has occurred or whether there have been multiple ownership changes since we became a "loss

corporation” as defined in Section 382. Future changes in our stock ownership, which may be outside of our control, may trigger an “ownership change.” In addition, future equity offerings or acquisitions that have equity as a component of the purchase price could result in an “ownership change.” If an “ownership change” has occurred or does occur in the future, utilization of the NOL carryforwards or other tax attributes may be limited, which could potentially result in increased future tax liability to us.

**Uncertain tax benefits** - A roll forward of the uncertain tax position that was primarily related to our research and development tax credits is as follows (in thousands):

Uncertain tax positions at December 31, 2019	\$ 1,008
Increase due to positions taken in prior periods	(206)
Uncertain tax positions at December 31, 2020	802
Decrease due to positions taken in prior periods	—
Uncertain tax positions at December 31, 2021	<u>\$ 802</u>

Uncertain tax positions of \$0.8 million will impact our tax rate if realized.

**Tax examinations** – We file tax returns as prescribed by the tax laws of the jurisdictions in which we operate. In the normal course of business, we are subject to examination by federal and state jurisdictions, where applicable. The earliest tax years that remain subject to examination by jurisdiction is 2018 for both federal and Massachusetts. However, to the extent the Company utilizes net operating losses or credits from years prior to 2018, the statute remains open to the extent of the net operating losses or other credits are utilized.

## 6. EQUITY AND STOCK COMPENSATION PLANS

**Stock Option Plan** – We have one active fixed stock option plan which is our 2001 Nonqualified Stock Plan (“2001 Plan”). We are authorized to grant nonqualified stock options, stock appreciation rights and stock awards to our employees and directors for up to 8,000,000 shares of common stock under this plan. As of December 31, 2021, there were 889,262 shares available for grant under the 2001 Plan.

Options are granted at exercise prices as determined by the Board of Directors and have a term of up to a maximum ten years. Options generally vest over three to five years.

The following table presents stock-based compensation expenses included in our consolidated statements of operations (in thousands):

	<b>Years ended December 31,</b>	
	<b>2021</b>	<b>2020</b>
Cost of services	\$ 23	\$ 17
Research and development	261	188
Selling and marketing	250	168
General and administrative	1,033	465
Stock-based compensation expense	<u>\$ 1,567</u>	<u>\$ 838</u>

Stock-based compensation expense in the preceding table includes expenses associated with grants of: i) stock options, ii) unrestricted shares of our common stock; and iii) performance share awards. The methods used to determine stock-based compensation expense for each type of equity grant are described in the following paragraphs.

**Stock Option Grants.** For the years ended December 31, 2021 and 2020, we granted stock options for 2,875,000 and 50,000 shares of our common stock, respectively. We estimate the fair value of those stock options using the Black-Scholes valuation model.

The Black-Scholes valuation model takes into account the exercise price of the award, as well as a variety of significant assumptions. The assumptions used to estimate the fair value of stock options include the expected term, the expected volatility of our stock over the expected term, the risk-free interest rate over the expected term, and our expected annual dividend yield. We do not estimate our forfeiture rates as the actual forfeiture rate is known at the end of each reporting period due to the timing of our stock option vesting. We believe that

the valuation technique and the approach utilized to develop the underlying assumptions are appropriate in calculating the fair values of stock options granted in the years ended December 31, 2021 and 2020. Estimates of fair value are not intended to predict actual future events or the value ultimately realized by persons who receive equity awards.

Specific assumptions used to determine the fair value of options granted during the years ended December 31, 2021 and 2020, using the Black-Scholes valuation model were as follows:

	Years ended December 31,	
	2021	2020
Expected term (1)	6.26 years	6.14 years
Expected volatility factor (2)	39%	37%
Risk-free interest rate (3)	0.6%	0.6%
Expected annual dividend yield	n/a	n/a

- (1) The expected term for each grant was determined based on the simplified method.
- (2) The expected volatility for each grant is estimated based on an average of historical volatility over the expected term of the stock options.
- (3) The risk-free interest rate for each grant is based on the U.S. Treasury yield curve in effect at the time of grant for a period equal to the expected term of the stock option.

*Unrestricted Stock Grants.* Our 2001 Plan permits us to grant shares of unrestricted stock to our directors, officers, and employees. Stock-based compensation expense for stock grants is determined based on the fair market value of our stock on the date of grant; provided the number of shares in the grant is fixed on the grant date. We granted 56,553, and 256,250 shares of unrestricted stock during the years ended December 31, 2021, and 2020, respectively.

In 2021, we granted 56,553 shares of unrestricted stock to directors. The shares were issued in two equal installments shortly after June 30, 2021 and December 31, 2021.

We expensed \$0.3 million of stock-based compensation expense related to these grants in the year ended December 31, 2021. There was no unamortized stock-based compensation charge associated with these stock grants as of December 31, 2021.

In 2020, we granted 256,250 shares of unrestricted stock to directors, officers, and employees. In March and May 2020, we granted 243,000 shares of unrestricted stock to directors, officers, and employees. The shares were issued in two equal installments shortly after June 30, 2020 and December 31, 2020. In October and November, we granted 13,250 shares of unrestricted stock to employees. The shares were issued shortly after December 31, 2020.

We expensed \$0.7 million of stock-based compensation expense related to these grants in the year ended December 31, 2020. There was no unamortized stock-based compensation charge associated with these stock grants as of December 31, 2020.

We also, granted 120,000 shares in September and October 2019 to be issued in four equal installments shortly after the anniversaries of their grant dates in September and October of 2020, 2021, 2022, and 2023, provided the grantee is serving as a director, officer, or employee on those dates. The total stock-based compensation expense related to the 120,000 shares granted in 2019 was \$0.4 million, of which \$23,000 was charged to expense in 2019, and \$84,000 was charged to expense in the each 2020 and 2021. We anticipate the remaining \$145,000 will be charged to expense ratably through 2023.



	2021		2020	
	Shares	Weighted Average Exercise Price	Shares	Weighted Average Exercise Price
Outstanding at beginning of year	425,000	\$ 6.00	435,000	\$ 6.00
Granted	2,875,000	\$ 4.73	50,000	\$ 6.00
Exercised	—	—	—	—
Forfeited or cancelled	60,000	\$ 4.73	60,000	\$ 6.00
Outstanding at end of year	3,240,000	\$ 4.97	425,000	\$ 6.00
Exercisable at year end	218,748	\$ 6.00	112,496	\$ 6.00

Total options outstanding at December 31, 2021 were 3,240,000. 218,748 of those options were vested and had a weighted average exercise price of \$6.00.

Options to purchase up to 2,875,000 and 50,000 shares of our common stock were granted in the years ended December 31, 2021 and 2020 respectively.

At December 31, 2021, the weighted average remaining contractual term for total options outstanding and total options exercisable was approximately 9.00 and 7.92 years, respectively.

At December 31, 2021, the aggregate intrinsic value of options outstanding and options exercisable was zero. The intrinsic value of a stock option is the amount by which the market value of the underlying stock exceeds the exercise price of the option.

The following table summarizes the stock options outstanding at December 31, 2021:

Exercise Price Range	Options Outstanding			Options Exercisable	
	Number	Weighted Average Exercise Price	Weighted Average Remaining Contractual Term (in years)	Number	Weighted Average Exercise Price
\$4 to \$5	2,921,250	\$ 4.72	9.11	54,687	\$ 4.50
\$5 to \$6	106,250	\$ 5.50	7.83	54,687	\$ 5.50
\$6 to \$7	106,250	\$ 6.50	7.83	54,687	\$ 6.50
\$7 to \$8	106,250	\$ 7.50	7.83	54,687	\$ 7.50
	3,240,000	\$ 4.97	9.00	218,748	\$ 6.00

At December 31, 2021, unrecognized compensation expense related to non-vested stock options was approximately \$4.2 million, which is expected to be recognized over a weighted average period of 3.0 years.

We issue common stock from previously authorized but unissued shares to satisfy option exercises and purchases under our Employee Stock Purchase Plan.

**Employee Stock Purchase Plan** – In May 2021, we adopted the 2021 Employee Stock Purchase Plan (“2021 ESPP Plan”) under which eligible employees could purchase common stock at a price equal to 85% of the lower of the fair market value of the common stock at the beginning or end of each six-month offering period. The 2021 ESPP Plan replaced our previous Employee Stock Purchase Plan (the “1996 ESPP Plan”). Stock-based compensation expense related to our 2021 ESPP Plan for the year ended December 31, 2021 was \$0.1 million. Participation in the 2021 ESPP Plan is limited to \$25,000 worth of stock for each calendar year and may be terminated at any time by the employee and automatically ends on termination of employment. A total of 1,000,000 shares of common stock have been reserved for issuance. As of December 31, 2021, there were 945,501 shares available for future issuance under the 2021 ESPP Plan. We issued 54,499 and 6,972 under the 2021 ESPP Plan and 1996 ESPP Plan, respectively, during the year ended December 31, 2021. We issued 15,388 common shares under the 1996 ESPP Plan during the year ended December 31, 2020.

**Share Purchases** - On April 30, 2020, our Board of Directors approved a program authorizing to purchase up to \$10 million of our common stock, of which \$1.0 million had been utilized as of December 31, 2021. We did not purchase any shares in the year ended December 31, 2021. During the year ended December 31, 2020, we repurchased 298,214 shares of our common stock. The shares were purchased from time to time in the open market at management’s discretion, depending upon market conditions and other factors. The authorization to repurchase Company stock expired on December 31, 2021. Repurchases were made under the program using our own cash resources and will be in accordance with Rule 10b-18 under the Securities Exchange Act of 1934 and other applicable laws, rules and regulations. The program did not obligate us to acquire any particular amount of common stock and the program may be modified or suspended at any time at our Board of Directors discretion.

**Dividends** – We did not pay dividends in the years ended December 31, 2021 and 2020.

## 7. COMMITMENTS AND CONTINGENT LIABILITIES

**Lease Commitments** – We own our principal office and research facility in Bedford, Massachusetts, which we have occupied since November 1997. We have no real estate lease commitments and no equipment lease commitments.

**Litigation** - There are no material pending legal proceedings to which we are a party or to which any of our properties are subject which, either individually or in the aggregate, are expected to have a material adverse effect on our business, financial position or results of operations.

**Guarantees and Indemnification Obligations** – We enter into agreements in the ordinary course of business that require us: i) to perform under the terms of the contracts, ii) to protect the confidentiality of our customers’ intellectual property, and iii) to indemnify customers, including indemnification against third party claims alleging infringement of intellectual property rights. We also have agreements with each of our directors and executive officers to indemnify such directors or executive officers, to the extent legally permissible, against all liabilities reasonably incurred in connection with any action in which such individual may be involved by reason of such individual being or having been a director or officer of the Company.

Given the nature of the above obligations and agreements, we are unable to make a reasonable estimate of the maximum potential amount that we could be required to pay. Historically, we have not made any significant payments on the above guarantees and indemnifications and no amount has been accrued in the accompanying consolidated financial statements with respect to these guarantees and indemnifications.

**8. EMPLOYEE BENEFIT PLAN**

In 1994, we established a qualified 401(k) Retirement Plan (the “Plan”) under which employees are allowed to contribute certain percentages of their pay, up to the maximum allowed under Section 401(k) of the Internal Revenue Code. Our contributions to the Plan are at the discretion of the Board of Directors. Our contributions were approximately \$0.4 and \$0.3 million in 2021 and 2020, respectively.

**9. NET LOSS PER SHARE**

The number of common shares used in the computation of diluted net loss per share for the periods presented does not include the effect of the following potentially outstanding common shares because the effect would have been anti-dilutive (in thousands):

	<b>Year ended</b>	
	<b>December 31,</b>	
	<b>2021</b>	<b>2020</b>
Stock options	2,823	433

Net loss per share is calculated as follows (in thousands, except per share data):

	<b>Year ended</b>	
	<b>December 31,</b>	
	<b>2021</b>	<b>2020</b>
Net loss	(5,824)	(7,614)
<u>Shares outstanding:</u>		
Weighted-average common shares outstanding	21,525	21,473
Additional dilutive common stock equivalents	—	—
Diluted shares outstanding	<u>21,525</u>	<u>21,473</u>
Net loss per share – basic	\$ (0.27)	\$ (0.35)
Net loss per share - diluted	\$ (0.27)	\$ (0.35)

**10. POTENTIAL SALE OF BUILDING**

On April 26, 2021 (the “Contract Date”), we entered into an Agreement of Purchase and Sale (the “Purchase and Sale Agreement”) with FDS Bedford, LLC or its designee (the “Purchaser”). The Purchase and Sale Agreement provided that we are obligated to sell the property at 40 Middlesex Turnpike, Bedford, Massachusetts (the “Property”) to the Purchaser for \$8,875,000 (the “Transaction”), subject to the satisfaction or waiver on or before the closing of the conditions set forth in the Purchase and Sale Agreement.

The Purchaser is under no obligation to complete the Transaction. The Purchaser deposited \$125,000 with a title company following the Contract Date which is non-refundable. The deposit will be credited against the \$8,875,000 purchase price at the closing. We anticipate the sale of the building, if it occurs, to be in the second or third quarter of 2022.

We currently occupy the Property. We are entitled to continue to occupy the Property for a period of approximately six months following the Closing at no cost to us. We are obligated to maintain the Property we occupy in first class condition and repair during this period.

## 11. SUBSEQUENT EVENTS

**Lease agreement** - On March 1, 2022, we entered into a lease agreement with 76/80 Burlington Group LLC (the "Lease"). Pursuant to the Lease, we leased approximately 20,730 rentable square feet at 76 Blanchard Road in Burlington, Massachusetts (the "Premise") for a term of ten years and six months, which includes a one-time termination right after seven years and six months. We intend to use as our principal executive offices. The term of the Lease commences on the date that the landlord notifies us that the planned construction on the Premise is substantially complete. The Lease provides for an aggregate of \$8.2 million of rent due over the Lease term and also provides a renewal option for up to two additional terms of five years each.

**Subscription agreement** - On March 11, 2022, concurrent with our entry into a mutual reseller arrangement with MIRACL Technologies Limited ("MIRACL"), we entered into a subscription agreement with Omlis Limited, a limited company incorporated and registered in England and Wales and the parent of MIRACL ("Omlis"). We purchased \$2.5 million of Omlis' Convertible Note ("Note") that accrues at 5% annually with a maturity date of March 11, 2026.

Prior to maturity, we have the right to convert into a future financing at a 20% discount from the price per share paid by the investors. If the Note remains outstanding on the maturity date, the Note shall, at the option of the holders of a majority of the outstanding Note, (i) be converted into the most senior shares in Omlis, (ii) be redeemed by payment in cash of the Note and all accrued but unpaid interest or (iii) remain outstanding.

In connection with the sale of the Note, Omlis granted us a right of first refusal for 18 months with respect to any proposed sale by Omlis of equity securities constituting 20% or more of the outstanding voting power of Omlis or all or substantially all of the assets of Omlis or any of its material subsidiaries. Also, in connection with the sale of the Note, Omlis issued us a warrant that expires on September 11, 2023 which allows us to purchase up to 8% of the total equity shares in Omlis at a price per share of \$33.91.

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

None.

### **ITEM 9A. CONTROLS AND PROCEDURES**

#### **Conclusion Regarding the Effectiveness of Disclosure Controls and Procedures**

Under the supervision and with the participation of our management, including our chief executive officer and chief financial officer, we conducted an evaluation of our disclosure controls and procedures, as such term is defined under Rule 13a-15(e) promulgated under the Securities Exchange Act of 1934, as amended (the “Exchange Act”). Based on this evaluation, our chief executive officer and chief financial officer concluded that our disclosure controls and procedures were effective as of the end of the period covered by this annual report.

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

Under the supervision and with the participation of our management, including our chief executive officer and chief financial officer, we concluded that there were no changes in our internal control over financial reporting that occurred during the year ended December 31, 2021 that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

#### **Management’s Report on Internal Control Over Financial Reporting**

Our management is responsible for establishing and maintaining adequate internal control over financial reporting as defined in Rules 13(a)-15(f) under the Exchange Act. Under the supervision and with the participation of our management, including our principal executive officer and principal financial officer, we conducted an evaluation of the effectiveness of our internal control over financial reporting based on the framework in *Internal Control - Integrated Framework* issued by the Committee of Sponsoring Organizations of the Treadway Commission in 2013. Based on our evaluation under the framework in *Internal Control — Integrated Framework*, our management concluded that our internal control over financial reporting was effective as of December 31, 2021.

### **ITEM 9B. OTHER INFORMATION**

None.

### **ITEM 9C. DISCLOSURE REGARDING FOREIGN JURISDICTIONS THAT PREVENT INSPECTIONS**

Not applicable.

## PART III

### ITEM 10. DIRECTORS, EXECUTIVE OFFICERS AND CORPORATE GOVERNANCE

The information required by Item 10 of Form 10-K is incorporated by reference from the information contained in the sections captioned “*Directors and Executive Officers*”, “*Corporate Governance*” and “*Section 16(a) Beneficial Ownership Reporting Compliance*” in the Proxy Statement that will be delivered to our shareholders in connection with our June 15, 2022 Annual Meeting of Shareholders.

### ITEM 11. EXECUTIVE COMPENSATION

The information required by Item 11 of Form 10-K is incorporated by reference from the information contained in the section captioned “*Executive Compensation*” in the Proxy Statement that will be delivered to our shareholders in connection with our June 15, 2022 Annual Meeting of Shareholders.

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

The information required by Item 12 of Form 10-K is incorporated by reference from the information contained in the section captioned “*Security Ownership of Certain Beneficial Owners and Management and Related Stockholder Matters*” in the Proxy Statement that will be delivered to our shareholders in connection with our June 15, 2022 Annual Meeting of Shareholders.

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

The information, if any, required by Item 13 of Form 10-K is incorporated by reference from the information contained in the sections captioned “*Corporate Governance*” and “*Certain Relationships and Related Transactions*” in the Proxy Statement that will be delivered to our shareholders in connection with our June 15, 2022 Annual Meeting of Shareholders.

### ITEM 14. PRINCIPAL ACCOUNTANT FEES AND SERVICES

The information required by Item 14 of Form 10-K is incorporated by reference from the information contained in the section captioned “*Independent Accountants*” in the Proxy Statement that will be delivered to our shareholders in connection with our June 15, 2022 Annual Meeting of Shareholders.

PART IV

ITEM 15. EXHIBITS AND FINANCIAL STATEMENT SCHEDULE

The following documents are filed as part of this report:

(a) Financial Statements and Exhibits:

	<u>Page</u>
<a href="#">(1) Report of Independent Registered Public Accounting Firm</a> (PCAOB ID No. 49)	25
<a href="#">Consolidated Balance Sheets as of December 31, 2021 and 2020</a>	28
<a href="#">Consolidated Statements of Operations for each of the two years in the period ended December 31, 2021</a>	29
<a href="#">Consolidated Statements of Cash Flows for each of the two years in the period ended December 31, 2021</a>	30
<a href="#">Consolidated Statements of Stockholders' Equity for each of the two years in the period ended December 31, 2021</a>	31
<a href="#">Notes to Consolidated Financial Statements</a>	32

(2) Exhibits:

The exhibits listed below are filed with or incorporated by reference in this report.

<b>Exhibit No.</b>	<b>Description of Exhibit</b>
3.1	<a href="#">Amended and Restated Articles of Organization, as amended (filed as Exhibit 3.1 to the Company's Form 10-K for the year ended December 31, 2008 and incorporated herein by reference).</a>
3.2	<a href="#">Amended and Restated By-Laws (filed as Exhibit 3.1 to the Company's Form 8-K filed with the Securities and Exchange Commission on December 10, 2007 and incorporated herein by reference).</a>
4.1†	<a href="#">Description of the Registrant's Securities Registered Pursuant to Section 12 of the Securities Exchange Act of 1934, as amended (filed as Exhibit 4.1 to the Company's Form 10-K for the year ended December 31, 2019 and incorporated herein by reference).</a>
10.1*	<a href="#">2021 Employee Stock Purchase Plan, (filed as Annex A to the Company's Proxy Statement on Schedule 14A filed with the Securities and Exchange Commission on April 9, 2021 and incorporated herein by reference).</a>
10.2*	<a href="#">Form of Indemnification Agreement for Directors and Officers of Aware, Inc. (filed as Exhibit 10.1 to the Company's Form 8-K filed with the Securities and Exchange Commission on February 22, 2011 and incorporated herein by reference).</a>
10.3*	<a href="#">2001 Nonqualified Stock Plan (filed as Exhibit 99(d)(4) to the Company's Schedule TO filed with the Securities and Exchange Commission on March 3, 2003 and incorporated herein by reference).</a>
10.4*	<a href="#">Form of Nonqualified Stock Option Agreement under the 2001 Nonqualified Stock Plan for options granted to executive officers and directors prior to May 21, 2008 (filed as Exhibit 10.6 to Company's Form 10-K for the year ended December 31, 2006 and incorporated herein by reference).</a>
10.5*	<a href="#">Form of Nonqualified Stock Option Agreement under the 2001 Nonqualified Stock Plan for options granted to executive officers and directors from and after May 21, 2008 (filed as Exhibit 10.8 to Company's Form 8-K on May 22, 2008 and incorporated herein by reference).</a>
10.6*	<a href="#">Form of Unrestricted Stock Award for outside directors of Aware under the 2001 Nonqualified Stock Plan (filed as Exhibit 10.1 to Company's Form 8-K filed with the Securities and Exchange Commission on July 28, 2010 and incorporated herein by reference).</a>
10.7*	<a href="#">Form of Unrestricted Stock Award for officers of Aware under the 2001 Nonqualified Stock Plan (filed as Exhibit 10.2 to Company's Form 8-K filed with the Securities and Exchange Commission on July 28, 2010 and incorporated herein by reference).</a>
10.8*	<a href="#">Form of Unrestricted Stock Award for executive officers and directors of Aware, Inc. under the 2001 Nonqualified Plan (filed as Exhibit 10.1 to the Company's Form 8-K filed with the Securities and Exchange Commission on April 4, 2013 and incorporated herein by reference).</a>

- 10.9\* [Form of Change in Control Retention Agreement between Aware, Inc. and Kevin T. Russell \(filed as Exhibit 10.1 to the Company's Form 8-K filed with the Securities and Exchange Commission on March 30, 2015 and incorporated herein by reference\).](#)
- 10.10\* [Form of Change in Control Retention Agreement between Aware, Inc. and David J. Martin \(filed as Exhibit 10.1 to the Company's Form 8-K filed with the Securities and Exchange Commission on March 1, 2017 and incorporated herein by reference\).](#)
- 10.11\* [Employment Agreement between Aware, Inc. and Robert A. Eckel \(filed as Exhibit 10.1 to the Company's Form 8-K filed with the Securities and Exchange Commission on September 19, 2019 and incorporated herein by reference\).](#)
- 10.12\* [Performance Share Award Agreement between Aware, Inc. and Robert A. Eckel \(filed as Exhibit 10.2 to the Company's Form 8-K filed with the Securities and Exchange Commission on September 19, 2019 and incorporated herein by reference\).](#)
- 10.13\* [Employment Agreement between Aware, Inc. and Kevin T. Russell \(filed as Exhibit 10.3 to the Company's Form 8-K filed with the Securities and Exchange Commission on September 19, 2019 and incorporated herein by reference\).](#)
- 10.14\* [Employment Agreement between Aware, Inc. and Robert M. Mungovan \(filed as Exhibit 10.1 to the Company's Form 8-K filed with the Securities and Exchange Commission on October 1, 2019 and incorporated herein by reference\).](#)
- 10.15\* [Employment Agreement between Aware, Inc. and Mohamed Lazzouni \(filed as Exhibit 10.1 to the Company's Form 8-K filed with the Securities and Exchange Commission on November 19, 2019 and incorporated herein by reference\).](#)
- 10.16\* [Employment Agreement between Aware, Inc. and David B. Barcelo dated May 4, 2020 \(filed as Exhibit 10.1 to Aware, Inc. Current Report on Form 8-K filed with the Securities and Exchange Commission on May 4, 2020 and incorporated herein by reference\).](#)
- 10.17\* [Aware, Inc. 2020 Executive Bonus Plan \(filed as Exhibit 10.2 to Aware, Inc. Current Report on Form 8-K filed with the Securities and Exchange Commission on May 4, 2020 and incorporated herein by reference\).](#)
- 10.18\* [Amendment to Employment Agreement between Aware, Inc. and Robert Eckel dated March 27, 2020 \(filed as Exhibit 10.2 to Aware Inc. Current Report on Form 8-K filed with the Securities and Exchange Commission on March 30, 2020 and incorporate herein by reference\).](#)
- 10.19 [Agreement of Purchase and Sale dated as of April 26, 2021 by and between Aware, Inc. and FDS Bedford, LLC \(filed as Exhibit 10.1 to Aware Inc. Current Report on Form 8-1 filed with the Securities and Exchange Commission on April 27, 2021 and incorporated herein by reference. between Aware, Inc. and David B. Barcelo dated May 4, 2020 \(filed as Exhibit 10.1 to Aware, Inc. Current Report on Form 8-K filed with the Securities and Exchange Commission on May 4, 2020 and incorporated herein by reference\).](#)
- 10.20 [Lease dated as of March 1, 2021 by and between 76/80 Burlington Group, LLC and Aware, Inc.](#)
- 21.1 [Subsidiaries of Registrant.](#)
- 23.1 [Consent of Independent Registered Public Accounting Firm.](#)
- 31.2 [Certification of Chief Financial Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.](#)
- 32.1 [Certification of Chief Executive Officer and Chief Financial Officer pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.](#)
- 101 The following financial statements from Aware, Inc.'s Annual Report on Form 10-K for the year ended December 31, 2021, formatted in inline XBRL (eXtensible Business Reporting Language), as follows: (i) Consolidated Balance Sheets as of December 31, 2021 and December 31, 2020; (ii) Consolidated Statements of Operations for the Years Ended December 31, 2021 and December 31, 2020; (iii) Consolidated Statements of Cash Flows for the Years Ended December 31, 2021 and December 31, 2020; (iv) Consolidated Statements of Stockholders' Equity for the Years Ended December 31, 2021 and December 31, 2020; and (v) Notes to Consolidated Financial Statements.



\*Management contract or compensatory plan.

## 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.

### **AWARE, INC.**

By: /s/ Robert A. Eckel  
Robert A. Eckel  
Chief Executive Officer & President

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

Date: March 15, 2022

Pursuant to the requirements of the Securities Exchange Act of 1934, this report has been signed below by the following persons on behalf of the registrant and in the capacities indicated on the 15th day of March 2022.

### Signature

### Title

/s/ Robert A. Eckel  
Robert A. Eckel

Chief Executive Officer, President & Director  
(Principal Executive Officer)

/s/ David Barcelo  
David Barcelo

Chief Financial Officer  
(Principal Financial and Accounting Officer)

/s/ Brent P. Johnstone  
Brent P. Johnstone

Chairman of the Board & Director

/s/ John S. Stafford, III  
John S. Stafford, III

Director

/s/ Brian D. Connolly  
Brian D. Connolly

Director

/s/ Gary Eeve  
Gary Eeve

Director

/s/ Peter Faubert  
Peter Faubert

Director

**LEASE****BLANCHARD WOODS**  
**76 Blanchard Road, Burlington, Massachusetts**

Premises: Approximately 20,730 rentable square feet of space on the second (2<sup>nd</sup>) floor of the Building  
 Tenant: AWARE, Inc.

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**LEASE**  
**BLANCHARD WOODS**

This Lease, by and between Landlord and the Tenant (as defined below), relates to the space in the building (the "Building") known as 76 Blanchard Road of Blanchard Woods (the "Office Park"), in Burlington, Middlesex County, Massachusetts, with an address at 76 Blanchard Road Burlington, Massachusetts. The term "Lot" shall mean the parcel of land on which the Building is located; and the term "Property" shall mean the Lot and all improvements thereon from time to time, including the Building.

The parties to this Lease hereby agree with each other as follows:

**1. BASIC LEASE PROVISIONS**

**1.1 INTRODUCTION.**

As further supplemented in the balance of this instrument and its Exhibits, the following sets forth the basic terms of this Lease and, where appropriate, constitutes definitions of certain terms used in this Lease.

**1.2 BASIC DATA AND DEFINITIONS.**

Lease Date: \_\_\_\_\_, 2022.

Landlord: 76/80 BURLINGTON GROUP LLC

Present Mailing Address of Landlord: c/o Duffy Properties LLC  
465 Waverley Oaks Road, Suite 500  
Waltham, MA 02452

Tenant: AWARE, Inc.,  
a Massachusetts corporation.

Present Mailing Address of Tenant: 40 Middlesex Turnpike  
Bedford, MA 01730

Term or original Term: Ten (10) years, six (6) months (plus the partial month, if any, immediately following the Commencement Date).

Scheduled Commencement Date: July 1, 2022. (Actual Commencement Date as provided in Section 2.3.2).

Fixed Rent:	Lease Year	PSF	Annual Fixed Rent	Monthly Installment	
	1		\$31.00	\$642,630.00	\$53,552.50
	2		\$31.93	\$661,908.90	\$55,159.08
	3		\$32.89	\$681,809.70	\$56,817.48
	4		\$33.88	\$702,332.40	\$58,527.70
	5		\$34.90	\$723,477.00	\$60,289.75
	6		\$35.95	\$745,243.50	\$62,103.63
	7		\$37.03	\$767,631.90	\$63,969.33
	8		\$38.14	\$790,642.20	\$65,886.85
	9		\$39.28	\$814,274.40	\$67,856.20
	10		\$40.46	\$838,735.80	\$69,894.65
	11		\$41.67	\$863,819.10	\$71,984.93

\* **Free Rent:** Notwithstanding the Fixed Rent set forth above, so long as Tenant is not in default (beyond any applicable notice or cure period) under any of the terms and conditions of this Lease, Tenant shall be entitled to an abatement of the monthly installments of Fixed Rent, or so-called "free rent" period, for the first six (6) months of the Term (the "Free Rent Period"). Tenant shall be responsible for the payment of Operating Expenses and Taxes as and to the extent provided in this Lease

Option Periods: Two extension periods of five (5) years.

Premises: The portion of the Building (as defined above) located on the second (2<sup>nd</sup>) floor, and shown as outlined on Exhibit A attached hereto.

Rentable Floor Area of the Premises: Approximately 20,730 rentable square feet.

Rentable Floor Area of the Building: Approximately 38,637 rentable square feet

Permitted Use:	First-class office space, and no other use
Security Deposit Amount:	\$122,410.65.
Additional Escrow:	\$150,000.00, as defined in Section 2.3.4.
Brokers:	Colliers International and Hunneman.
Tax Base:	The Taxes for Tax Year 2022 (the fiscal year ending June 30, 2022), as provided in Section 8.1.
Base Operating Expenses:	The Operating Expenses for Operating Year 2022 (currently the calendar year ending December 31, 2022), as provided in Section 8.2.

## **2. DEMISING OF PREMISES, TERM, OPTIONS**

### **2.1 DEMISE OF PREMISES.**

2.1.1 Landlord hereby demises and leases to Tenant, and Tenant hereby accepts from Landlord, the Premises, subject to the terms and conditions of this Lease.

2.1.2 For the purposes of this Lease, it is agreed that the Rentable Floor Area of the Premises shall be as stated in Section 1.2 above, and the Rentable Floor Area of the Building shall be as stated in Section 1.2 above.

### **2.2 APPURTENANT RIGHTS AND RESERVATIONS.**

2.2.1 Tenant shall have, as appurtenant to the Premises, the nonexclusive right to use and to permit its invitees to use in common with others, public or common lobbies, hallways, stairways, passenger elevators and sanitary facilities in the Building necessary for Tenant's use and occupancy of the Premises, and (as provided in the next subsection) the parking facilities serving the Building. Such rights shall always be subject to reasonable rules and regulations from time to time established by Landlord by suitable notice,

and shall be subject to the right of Landlord to designate and change from time to time areas and facilities to be so used.

2.2.2 Tenant shall also have, as appurtenant to the Premises, the nonexclusive right to use, and permit its employees and invitees to use, in common with others, on a first come, first serve basis, the open parking facilities serving the Building (excepting those spaces now or hereafter designated by Landlord as being for the exclusive use of others). Such parking rights shall be subject to the right of Landlord to limit the number of parking spaces available to Tenant, its employees and invitees, where the use of the same exceeds, in Landlord's judgment, the ratio of approximately 3.0 spaces per 1,000 square feet of the Rentable Floor Area of the Premises.

2.2.3 Excepted and excluded from the Premises are the roof and all perimeter walls of the Premises, except the inner surfaces thereof, but the entry doors to the Premises are not excluded from the Premises and are a part thereof for all purposes; and Tenant agrees that Landlord shall have the right to place in the Premises (but in such manner as to reduce to a minimum interference with Tenant's use of the Premises) utility lines, pipes and the like to serve premises other than the Premises, and to replace and maintain and repair such utility lines, pipes and the like in, over and upon the Premises.

2.2.4 During the hours of 8:00 A.M. to 6:00 P.M., Monday through Friday, legal holidays (both federal and state) in all cases excepted ("Normal Building Operating Hours"), the Building shall be open and access to the Premises shall be freely available, subject to interruption due to causes beyond Landlord's reasonable control. During periods other than Normal Building Operating Hours, Landlord shall endeavor to provide means of access to the Premises, subject to security restrictions on such access, such as card access systems. Access to the Premises during Normal Building Operating Hours and at other times shall always be subject to reasonable rules and regulations therefor from time to time established by Landlord by suitable notice. Tenant acknowledges that, in all events, Tenant is responsible for providing security to the Premises and its own personnel, and Tenant shall indemnify, defend with counsel of Landlord's selection, and save Landlord harmless from any claim for injury to person or damage to property asserted by any personnel, employee, guest, invitee or agent of Tenant which is suffered or occurs in or about the Premises or in or about the Building by reason of the act of any intruder or any other person in or about the Premises or the Building.

## 2.3 TERM.

2.3.1 Subject to the conditions herein stated, Tenant shall hold the Premises for the Term (as defined in Section 1.2) commencing on the Commencement Date (as defined below) and expiring at midnight of the last day of the Term, unless sooner terminated as provided herein.

2.3.2 The term "Commencement Date" shall mean the day following the Substantial Completion Date (as defined in Section 6.2). If the "Commencement Date" is a date certain agreed upon by the parties at the time of the execution of this Lease, such date shall be as set forth in Section 1.2; otherwise, the "Commencement Date" is the date on which the Premises are ready for Tenant's occupancy (as defined in Article 6).

2.3.3 Landlord and Tenant agree to execute a supplemental agreement confirming the actual Commencement Date and expiration date of the Term, once same are determined.

2.3.4 In addition to Tenant's Option in Section 2.6, Tenant shall have the right to terminate the Lease upon written notice received by the Landlord on or before March 31, 2022. In the event the Tenant terminates under this clause, Landlord shall retain the Additional Escrow (see Section 1.2) paid at Lease signing as its sole and exclusive remedy against Tenant. If Tenant does not terminate the Lease on or before



March 31, 2022, then Tenant's right under this Section 2.3.4 shall lapse and the Additional Escrow shall be held by the Landlord and applied to Tenant's obligations under the Lease.

2.3.5 Between the date of the signing of this Lease and March 31, 2022, Landlord shall retain the right to show the premises to prospective tenants, however Landlord shall not enter into a letter of intent, lease or other agreement with a prospective tenant until Aware has elected to terminate pursuant to Section 2.3.4 or April 1, 2022, whichever is sooner.

#### 2.4 OPTION TO EXTEND THE TERM.

Tenant shall have the option to extend the Term of this Lease for additional periods equal to the Option Periods (each an "Extension Term"), provided that: (a) Tenant is not in default beyond any applicable grace period under any of the terms and conditions of this Lease at the time it elects to extend the Term or at the commencement of the Extension Term; (b) Tenant has not assigned this Lease or sublet any portion of the Premises; and (c) Tenant has given Landlord written notice of its election to extend the Term no later than 12 months prior to the expiration date of the original Term of this Lease. In the event that Tenant shall extend the Term as aforesaid, such extension shall be upon the same terms and conditions as set forth herein except that: no further right to extend shall be deemed to be included; no rent abatement or Free Rent period will be included; no tenant improvements or allowances will be included; and the annual Fixed Rent payable hereunder shall be adjusted in accordance with the provisions of Section 3. Should Tenant so extend the Term of this Lease, the term "Term" as used herein shall mean the original Term together with the Extension Term. If Tenant fails to timely exercise its rights hereunder as aforesaid, Tenant shall be deemed to have conclusively waived its right to do so and the applicable Extension Term (s) set forth herein shall be void and of no further force or effect and Tenant, following such failure (or waiver) and within seven (7) days of Landlord's request therefor, shall execute and deliver to Landlord a certification, in recordable form, confirming the Tenant's failure to exercise (or waiver of) such right, and Tenant's failure to so execute and deliver such certification shall (without limiting Landlord's remedies on account thereof) entitle Landlord to execute and deliver to any third party, and record, an affidavit confirming the waiver, which affidavit shall be binding on Tenant and may be conclusively relied on by third parties.

#### 2.5 RIGHT OF FIRST OFFER ON CERTAIN ADDITIONAL SPACE.

2.5.1 Provided (a) Tenant is not in default beyond any applicable grace period under any of the terms and conditions of this Lease at the time it elects to exercise its rights hereunder or, at Landlord's option, at the time of the delivery of the applicable Available Space (as defined below); and (b) the Tenant originally named herein (except in connection with a transfer pursuant to Section 5.3.3 below) continues to occupy and operate all or substantially all of the Premises, Tenant shall have the right of first offer to lease, in its entirety, any space on the first (1<sup>st</sup>) floor of the Building that becomes available for occupancy (the "Available Space") from and after the initial occupancy thereof, subject to and in accordance with the terms and conditions set forth in this Section 2.5. At any time during the Term of this Lease, so long as at least twenty-four (24) months of the Lease Term remain (which may include an executed Option Period), Tenant may give written notice to Landlord of its interest in leasing Available Space that becomes available for occupancy subject to the terms hereof. Within fourteen (14) days after Tenant's notice, Landlord shall respond to Tenant in writing ("Landlord's Available Space Notice") with a statement as to what, if any, Available Space that is anticipated to become available for occupancy, the anticipated date upon which such Available Space shall be available for occupancy by Tenant, along with a floor plan showing the approximate rentable square footage thereof and Landlord's designation of the Fixed Rent and additional rent thereof and any other relevant economic terms and the method by which Tenant's share of Operating Expenses and Taxes are to be calculated. As used herein, space shall be deemed "available for occupancy" when any lease or occupancy agreement (including extension periods) of the Available Space has expired or is due to expire within approximately six (6) months, and/or Landlord has elected not to renew the lease

of the present tenant, and/or any prior options, rights or rights to lease with respect to such Available Space have expired or been waived and Landlord is free, and has elected, to lease such space to third parties without restriction. Tenant understands that all of the Available Space is currently vacant and being marketed by Landlord to potential tenants and will be leased prior to Tenant having any rights under this Section 2.5 thereunder as Tenant has elected not to lease the Available Space at this time.

2.5.2 Tenant shall have the right to exercise its rights hereunder to lease the entire Available Space subject to Landlord's Available Space Notice, if any, only by giving written notice to Landlord (the "Acceptance Notice") within fourteen (14) days following Tenant's receipt of Landlord's Available Space Notice indicating Tenant's unambiguous intent to accept such Available Space pursuant to the terms and conditions contained therein. If Tenant so elects to lease the applicable Available Space as provided herein, such Available Space shall be leased upon the same terms and conditions contained in, and be co-terminus with, this Lease, except the Fixed Rent shall be the amount stated in Landlord's Available Space Notice, and such Available Space shall be and become part of the Premises hereunder upon the delivery of such Available Space to Tenant. It is understood and agreed that such Available Space shall be leased by Tenant in its then "as is", "where-is" condition, without warranty or representation by Landlord and Landlord shall have no obligation to complete any work to prepare the applicable Available Space for Tenant's use and occupancy. The Available Space shall be delivered free of any occupants and any personal property of any prior occupants and shall be broom clean. Following such election by Tenant, and effective as of the delivery of the applicable Available Space in accordance with this Section 2.5 and for the balance of the Term and any extension thereof: (x) the "Premises", as used in this Lease, shall include the applicable Available Space; (y) the "Rentable Floor Area of the Premises" shall be increased to include the rentable square footage of the applicable Available Space; and (z) the annual Fixed Rent shall equal the sum of the Fixed Rent provided for in this Lease plus the Fixed Rent for the applicable Available Space as set forth in Landlord's Available Space Notice. To confirm the inclusion of the subject Available Space as set forth above, Landlord shall prepare, and Tenant and Landlord shall promptly execute and deliver, an amendment to this Lease reflecting the foregoing terms and incorporation of any Available Space.

2.5.3 If Tenant fails to deliver the Acceptance Notice within such fourteen (14) day period, or if Tenant notifies Landlord that it declines to exercise Tenant's right to the applicable Available Space, Landlord may market and lease the applicable Available Space (or any portion thereof) to any party and upon any terms free of any rights of Tenant. If Tenant fails to deliver the Acceptance Notice within such fourteen (14) day period, or if Tenant notifies Landlord that it declines to exercise Tenant's right to the applicable Available Space, and if Landlord is not subsequently obligated under this Section 2.5 to provide Tenant with a revised Landlord's Available Space Notice, Tenant's right and option to the Available Space subject to Landlord's Available Space Notice shall be deemed waived and be of no further force or effect. If Tenant's rights are deemed to be waived in accordance with this Section 2.5, following such waiver (including compliance with Section 2.5.4, if applicable) and within seven (7) days of Landlord's request therefor, Tenant shall execute and deliver to Landlord a certification, in recordable form, confirming the waiver of such right, subject to Tenant's rights if the space becomes available for occupancy again during the Term of this Lease. Tenant's failure to so execute and deliver such certification shall (without limiting Landlord's remedies on account thereof) entitle Landlord to execute and deliver to any third party, and record, an affidavit confirming the waiver, which affidavit shall be binding on Tenant and may be conclusively relied on by third parties.

2.5.4 Tenant understands that its rights under this Section are and shall be subject and subordinate to any options to lease or any rights of first negotiation, first offer or first refusal to lease granted to other tenants of the Building prior to the date of execution and delivery of this Lease. Landlord shall provide written notice to Tenant if such prior rights exist.

## 2.6 TERMINATION OPTION.

2.6.1 Provided no event of Tenant default has occurred, the Premises has not been sublet, or the Lease assigned, Tenant shall have a right to terminate this lease after the ninetieth (90<sup>th</sup>) full month of the Term; upon full compliance of all of the following terms and conditions:

- (a) Tenant shall provide nine (9) months prior written notice (“Written Notice”) to Landlord of Tenant’s intention to exercise this option to terminate; and
- (b) Tenant’s Written Notice shall be accompanied by the payment in good and sufficient funds of one (1) month of the then current Fixed Rent and one (1) month of the then current total Tenant’s Tax and Operating Expense obligations; and
- (c) Tenant shall pay within thirty (30) days’ of receipt of billing from Landlord all of unamortized transaction costs including but not limited to Brokers Fees and Tenant Improvements (“TI”), amortized transactions costs, and all other unamortized transaction costs; and
- (d) Said payments listed above of base rent and additional rent shall constitute consideration for the early termination of this Lease and shall not be credited or applied to any outstanding rental payment of use and occupancy charges; and
- (e) Upon satisfactions of the requirements listed above, this Lease shall terminate on the Termination Date as if that date was the natural expiration of this Lease.

## 3. RENT

### 3.1 FIXED RENT.

3.1.1 Tenant agrees to pay to Landlord, without offset or deduction and without previous demand therefor, annual Fixed Rent during each Lease Year (as defined below) of the Term. The annual Fixed Rent during the original Term shall be as provided in Section 1.2 above.

3.1.2 All such annual Fixed Rent shall be payable in equal monthly installments, in advance, on the first day of each and every calendar month during the Term, commencing on the Commencement Date, to Landlord, or as directed by Landlord, at the Present Mailing Address of Landlord (as set forth in Section 1.2) or at the address from time to time designated by Landlord. Notwithstanding the foregoing, Tenant shall pay the first monthly installment of Fixed Rent on the date that Tenant executes and delivers this Lease, such first monthly installment to be applied to the first month the Fixed Rent is due in accordance with this Lease.

3.1.3 Fixed Rent for any partial month shall be paid by Tenant on a pro rata basis, and if the Commencement Date occurs on a day other than the first day of a calendar month, the first payment which Tenant shall make shall be a payment equal to a proportionate part of such monthly Fixed Rent for the partial month from such date to the first day of the succeeding calendar month, and the monthly Fixed Rent for such succeeding calendar month.

3.1.4 For the purposes of this Lease, “Lease Year” shall mean each successive 12-month period included in whole or in part in the Term of this Lease; the first Lease Year beginning on the Commencement Date and ending at midnight on the day before the first anniversary of the Commencement Date (provided that if the Commencement Date is not the first day of a calendar month, the first Lease Year shall end at midnight on the last day of the calendar month which includes the first anniversary of the Commencement

Date). If the first Lease Year of the Term shall be greater than one full calendar year, the annual Fixed Rent for such Lease Year shall be increased proportionately to the greater length of such Lease Year.

3.1.5 Notwithstanding the fact that the amounts of Fixed Rent set forth in this Lease were or may have been determined with reference to the floor area of the Premises, said amounts as set forth above are stipulated to be the amounts of Fixed Rent due hereunder.

### 3.2 FIXED RENT DURING EXTENSION TERM.

3.2.1 During the Extension Term of this Lease (if Tenant exercises its option to extend the Term hereof in accordance with Section 2.4), the annual Fixed Rent to be paid by Tenant during each Lease Year of the Extension Term shall be determined as of the first day of the Extension Term and shall equal the Fair Market Rental Value.

3.2.2 The “Fair Market Rental Value” shall mean the market rate for the rental of the Premises for the Extension Term, but not less than the Fixed Rent payable during the last Lease Year of the original Term. The Fair Market Rental Value shall be determined as follows:

- (a) After the exercise by Tenant of its option to extend the Term, Landlord shall advise Tenant in writing of Landlord’s determination of the Fair Market Rental Value prior to the expiration of the original Term. Tenant shall be deemed to have accepted the rental amount contained in Landlord’s said notice, and such rental rate shall be conclusively deemed to be the Fair Market Rental Value, unless Tenant notifies Landlord in writing, within fifteen (15) days after Landlord’s notice, that Tenant disputes the aforementioned determination by Landlord.
- (b) In the event that Tenant so disputes the determination of the Fair Market Rental Value by Landlord, and the Landlord and Tenant are unable to agree on the Fair Market Rental Value within thirty (30) days, the same shall be determined as follows: Landlord and Tenant each shall, within thirty (30) days thereafter, appoint an independent appraiser who shall be instructed to determine independently the Fair Market Rental Value. If the difference between the amounts so determined by such appraisers does not exceed ten percent (10%) of the lesser of such amounts, then the Fair Market Rental Value shall be an amount equal to fifty percent (50%) of the total of the amounts so determined. If the difference between the amounts so determined shall exceed ten percent (10%) of the lesser of such amounts, then such two (2) appraisers shall have ten (10) days thereafter to appoint a third appraiser, but if such appraisers fail to do so within such ten (10) day period, then either Landlord or Tenant may request the Greater Boston Real Estate Board or any successor organization thereto to appoint an appraiser within ten (10) days of such request, and both Landlord and Tenant shall be bound by any appointment so made within such ten (10) day period. If no such appraiser shall have been appointed within such ten (10) days either Landlord or Tenant may apply to any court having jurisdiction to have such appointment made by such court. Any appraiser appointed by the original appraisers, by the Greater Boston Real Estate Board or by such court shall be instructed to determine the Fair Market Rental Value in accordance with the definition of such term contained herein and within twenty (20) days after its appointment. If the third appraisal shall exceed the higher of the first two appraisals, the Fair Market Rental Value shall be the higher of the first two appraisals; if the third appraisal is less than the lower of the first two appraisals, the Fair Market Rental Value shall be the lower of the first two appraisals. In all other cases, the Fair Market Rental Value shall be equal to the third appraisal. Notwithstanding the foregoing, if either party shall fail to appoint its appraiser within the thirty (30) day period specified above (such

party being referred to herein as the “failing party”), the other party may serve notice on the failing party requiring the failing party to appoint its appraiser within ten (10) days of the giving of such notice. If the failing party shall not respond by appointment of its appraiser within said ten day period, then the appraiser appointed by the other party shall be the sole appraiser whose determination of the Fair Market Rental Value shall be binding and conclusive upon Tenant and Landlord. Each party shall pay for the fees and expenses of the appraiser appointed by it, but the fees and expenses of the third appraiser shall be shared equally by the parties. All appraisers appointed hereunder shall be MAI appraisers, so-called, knowledgeable in the field of commercial real estate and experienced in the Boston Metro-West market. The foregoing determination shall be conclusive, final and binding on the parties and enforceable in any court having jurisdiction over the parties.

- (c) If the parties are unable to agree on the Fair Market Rental Value (or the arbitration procedure set forth above has not concluded) prior to the first day of the Extension Term, Tenant shall make monthly payments on account of Fixed Rent (in addition to all additional rent and other payments hereunder) in the amount of Landlord’s initial designation of the Fair Market Rental Value, until the Fair Market Rental Value has been finally established as herein provided, at which time an appropriate retroactive Fixed Rent adjustment payment or refund shall be made, if necessary.

3.2.3 During the Extension Term, Tenant shall continue to pay all additional rent and other payments as provided in this Lease.

### 3.3 LATE PAYMENT.

If any Fixed Rent, additional rent or any other payments due hereunder from Tenant are not paid within ten (10) days of the due date thereof, Tenant shall be charged a late fee of \$250.00 for each late payment for each month or portion thereof that said payment remains outstanding. Said late fee shall be payable in addition to and not in exclusion of any other remedies of Landlord on account of such late payments, including without limitation the obligation to pay interest on late payments, as provided in Section 12.3.

## 4. USE OF PREMISES; ALTERATIONS

### 4.1 PERMITTED USE.

4.1.1 Tenant agrees that the Premises shall be used and occupied by Tenant only for the Permitted Use, as provided in Section 1.2 of this Lease, and for no other purpose or purposes.

4.1.2 Tenant further covenants and agrees to conform to the following provisions during the entire Lease Term:

- (a) Tenant shall cause all freight (including furniture, fixtures and equipment used by Tenant in the occupancy of the Premises) to be delivered to or removed from the Building and the Premises in accordance with reasonable rules and regulations established by Landlord therefor and Landlord may require that such deliveries or removals be undertaken during periods other than Normal Building Operating Hours.
- (b) Tenant shall not place on the exterior of exterior walls (including both interior and exterior surfaces of windows and doors) or on any part of the Building outside the Premises, any sign, symbol, free-standing sign or advertisement or the like visible to public view outside of the Premises except as provided in the next paragraph.

Notwithstanding the foregoing, Tenant may, at Tenant's sole expense, locate and affix a sign at the entrance door to the Premises of the type commonly and customarily found in first-class office buildings (but not a free-standing sign) for the purpose of identifying and locating the Premises, which sign and location shall be subject to the prior approval of Landlord. Where Landlord establishes reasonable standards for such signs, Tenant agrees to conform to the same and to submit for Landlord's prior approval, such approval not unreasonably to be withheld, a plan or sketch of the sign to be placed on or about such entry door and location thereof. Without limitation, lettering on windows and window displays are expressly prohibited. Landlord shall also provide Tenant with a listing on the Building's main tenant directory.

- (c) Tenant shall not perform any act or any practice which may injure the Premises, or any other part of the Building or the Property, or cause any offensive odors or loud noise, or constitute a nuisance or a menace to any other tenant or tenants or other persons in the Building, or be detrimental to the reputation or appearance of the Building, and Tenant shall permit no waste with respect to the Premises or the Property.
- (d) Tenant shall conduct Tenant's business in the Premises in such a manner that Tenant's invitees shall not collect, line up or linger in the lobby or corridors of the Building, but shall be entirely accommodated within the Premises.
- (e) Tenant shall comply and shall cause all employees to comply with all rules and regulations from time to time established by Landlord by suitable notice, including without limitation the current rules and regulations, a copy of which are attached hereto as Exhibit B. Landlord shall not, however, be responsible for the noncompliance of any such rules and regulations by any other tenant or occupant.
- (f) Tenant shall, at Tenant's sole expense, promptly comply with all applicable laws, ordinances, rules, regulations, orders, certificates of occupancy, conditional use or other permits, variances, covenants and restrictions of record, the reasonable recommendations of Landlord's engineers or other consultants, and requirements of any fire insurance underwriters, rating bureaus or government agencies, now in effect or which may hereafter come into effect during the Lease Term relating in any manner to the Premises or the occupation and use by Tenant of the Premises ("Laws and Restrictions").

#### 4.2 ALTERATIONS.

Tenant shall not make any alterations, improvements, additions, utility installations or repairs (collectively referred to as "Alterations" or singly as an "Alteration") to the Premises, except in accordance with this Section 4.2 and with the prior written consent of Landlord, which Landlord agrees not unreasonably to withhold as to nonstructural Alterations (nonstructural Alterations being those that do not affect the Building's structure, roof, exterior or mechanical, electrical, plumbing, life safety or other Building systems or architectural design, character or use of the Building or Premises). Without limiting any of the terms hereof, Landlord will not approve any Alterations requiring unusual expense to readapt the Premises to normal office use on lease termination or increasing the cost of construction, insurance or taxes on the Building or of Landlord's services to the Premises, unless Tenant first gives assurances or security acceptable to Landlord that such re-adaptation will be made prior to such termination without expense to Landlord and makes provisions acceptable to Landlord for payment of such increased cost. All Alterations made by Tenant shall be made in accordance with plans and specifications which have been approved in writing by the Landlord, pursuant to a duly issued permit, and in accordance with all Laws and Restrictions, the provisions of this Lease and in a good and first-class workmanlike manner using new materials of same or better quality as base building

standard materials, finishes and colors, free of all liens and encumbrances. All Alterations shall be performed by a contractor or contractors selected by Tenant and approved in writing by Landlord. Tenant shall pay to Landlord a fee equal to five percent (5%) of the cost of any such Alterations to compensate Landlord for the overhead and other costs it incurs in reviewing the plans therefor and in monitoring the construction of the Alterations. If, as a result of any Alterations made by Tenant, Landlord is obligated to comply with the Americans With Disabilities Act or any other Laws and Restrictions and such compliance requires Landlord to make any improvement or Alteration to any portion of the Building, as a condition to Landlord's consent, Landlord shall have the right to require Tenant to pay to Landlord prior to the construction of any Alteration by Tenant, the entire cost of any improvement or alteration Landlord is obligated to complete by such law or regulation. Tenant agrees to obtain or cause its contractor(s) to obtain, prior to the commencement of any work or Alterations, "builder's all risk" insurance in an amount and with such coverages approved by Landlord and worker's compensation insurance in the statutorily required amount(s) and evidence of all such insurance shall be furnished to Landlord prior to the performance by such contractor(s) or person(s) of any work in respect of the Premises. Landlord shall have the right to stop any work not being performed in conformance with this Lease, and, at its option, may repair or remove non-conforming work at the expense of Tenant. Tenant hereby indemnifies and holds Landlord harmless from and against any liens, encumbrances and violations of Laws and Restrictions. The filing of any lien or encumbrance, or the violation of Laws and Restrictions, shall constitute a default hereunder. The repair and indemnity obligations of Tenant hereunder, including Tenant's obligations to repay Landlord the cost of repairing or removing Alterations, shall survive the termination of this Lease. All Alterations performed by Tenant in the Premises shall remain therein (unless Landlord directs Tenant to remove the same on termination or expiration of this Lease) and, at termination or expiration, shall be surrendered as a part thereof, except for Tenant's usual trade furniture and equipment, if movable, installed prior to or during the Lease term at Tenant's cost, which trade furniture and equipment Tenant shall remove in their entirety prior to the termination or expiration of this Lease, provided that if Tenant is then in default hereunder, Landlord may direct that no such trade fixtures, furniture and equipment be removed. Tenant agrees to repair any and all damage to the Premises resulting from such removal (including removal of Tenant's Alterations directed by Landlord) or, if Landlord so elects, to pay Landlord for the cost of any such repairs forthwith after billing therefor.

## **5. ASSIGNMENT AND SUBLETTING**

### **5.1 GENERALLY.**

5.1.1 Notwithstanding any other provisions of this Lease, Tenant covenants and agrees that it will not assign this Lease or sublet (which term, without limitation, shall include the granting of any concessions, licenses, occupancy rights, management arrangements and the like) the whole or any part of the Premises without, in each instance, having first received the express, written consent of Landlord, which consent shall not be unreasonably withheld or delayed. A change in Tenant's name shall not constitute an assignment or sublease hereunder, provided Tenant notifies Landlord in writing of such name change prior to making such change. Tenant shall not collaterally assign this Lease (or any portion thereof) or permit any assignment of this Lease by mortgage, other encumbrance or operation of law.

5.1.2 Without limitation, it shall not be unreasonable for Landlord to withhold such approval from any assignment or subletting where, in Landlord's reasonable opinion: (a) the proposed assignee or sublessee does not have a financial standing and credit rating reasonably acceptable to Landlord; (b) the proposed assignee or sublessee has a negative reputation in the community; (c) the business in which the proposed assignee or sublessee is engaged could detract from the Building, its value or the costs of ownership thereof; (d) the rent to be paid by any proposed sublessee is less than the then current fair market rent; (e) the proposed sublessee or assignee is a current tenant or a prospective tenant (meaning such tenant has been presented with or has made an offer to lease space) of the Building or of the Office Park; (f) the

use of the Premises by any sublessee or assignee (even though a Permitted Use) violates any use restriction granted by Landlord in any other lease or would otherwise cause Landlord to be in violation of its obligations under another lease or agreement to which Landlord is a party; (g) if such assignment or subleasing is not approved of by the holder of any mortgage on the Property (if such approval is required); (h) a proposed assignee's or subtenant's business will impose a burden on the Property's parking facilities, elevators, common areas, facilities, or utilities that is greater than the burden imposed by Tenant, in Landlord's reasonable judgment; (i) any guarantor of this Lease refuses to consent to the proposed transfer or to execute a written agreement reaffirming the guaranty; (j) Tenant is in default of any of its obligations under the Lease at the time of the request or at the time of the proposed assignment or sublease; (k) if requested by Landlord, the assignee or subtenant refuses to sign a non-disturbance and attornment agreement in favor of Landlord's lender; (l) Landlord has sued or been sued by the proposed assignee or subtenant or has otherwise been involved in a legal dispute with the proposed assignee or subtenant; (m) the assignee or subtenant is involved in a business which is not in keeping with the then current standards of the Property; (n) the assignment or sublease will result in there being more than one subtenant of the Premises (e.g., the assignee or subtenant intends to use the Premises as an executive suite); or (o) the assignee or subtenant is a governmental or quasi-governmental entity or an agency, department or instrumentality of a governmental or quasi-governmental agency. Landlord may condition its consent upon such assignee or sublessee depositing with Landlord such additional security as Landlord may reasonably require to assure the performance and observance of the obligations of such party to Landlord. In no event, however, shall Tenant assign this Lease or sublet the whole or any part of the Premises to a proposed assignee or sublessee which has been judicially declared bankrupt or insolvent according to law, or with respect to which an assignment has been made of property for the benefit of creditors, or with respect to which a receiver, guardian, conservator, trustee in involuntary bankruptcy or similar officer has been appointed to take charge of all or any substantial part of the proposed assignee's or sublessee's property by a court of competent jurisdiction, or with respect to which a petition has been filed for reorganization under any provisions of the Bankruptcy Code now or hereafter enacted, or if a proposed assignee or sublessee has filed a petition for such reorganization, or for arrangements under any provisions of the Bankruptcy Code now or hereafter enacted and providing a plan for a debtor to settle, satisfy or extend the time for the payment of debts.

5.1.3 Any request by Tenant for such consent shall set forth or be accompanied by, in detail reasonably satisfactory to Landlord, the identification of the proposed assignee or sublessee, its financial condition and the terms on which the proposed assignment or subletting is to be made, including, without limitation, a signed copy of all assignment and sublease documents, and clearly stating the rent or any other consideration to be paid in respect thereto; and such request shall be treated as Tenant's warranty in respect of the information submitted therewith. Tenant's request shall not be deemed complete or submitted until all of the foregoing information has been received by Landlord. Landlord shall respond to such request for consent within forty five (45) days following Landlord's receipt of all information, documentation and security required by Landlord with respect to such proposed sublease or assignment.

5.1.4 The foregoing restrictions shall be binding on any assignee or sublessee to which Landlord has consented, provided, notwithstanding anything else contained in this Lease, Landlord's consent to any further assignment, subleasing or any sub-subleasing by any approved assignee or sublessee may be withheld by Landlord at Landlord's sole and absolute discretion.

5.1.5 Consent by Landlord to any assignment or subleasing shall not include consent to the assignment or transferring of any lease renewal, extension or other option, first offer, first refusal or other rights granted hereunder, or any special privileges or extra services granted to tenant by separate agreement (written or oral), or by addendum or amendment of the Lease, unless specifically agreed to in writing by the Landlord.



5.1.6 In the case of any assignment of this Lease or subletting of the Premises, the Tenant named herein shall be and remain fully and primarily liable for the obligations of Tenant hereunder, notwithstanding such assignment or subletting, including, without limitation, the obligation to pay the Fixed Rent and other amounts provided under this Lease, and the Tenant shall be deemed to have waived all suretyship defenses.

5.1.7 In addition to the foregoing, it shall be a condition of the validity of any such assignment or subletting that the assignee or sublessee agrees directly with Landlord, in form satisfactory to Landlord, to be bound by all the obligations of Tenant hereunder, including, without limitation, the obligation to pay Fixed Rent and other amounts provided for under this Lease, the covenant regarding use and the covenant against further assignment and subletting.

## 5.2 REIMBURSEMENT, RECAPTURE AND EXCESS RENT.

5.2.1 Tenant shall, upon thirty (30) days' notice, reimburse Landlord for the reasonable fees and expenses (including legal and administrative fees and costs) incurred by Landlord in processing any request to assign this Lease or to sublet all or any portion of the Premises, whether or not Landlord agrees thereto, and if Tenant shall fail promptly so to reimburse Landlord, the same shall be a default in Tenant's monetary obligations under this Lease subject to the applicable grace and cure period set forth in Section 12.1(b).

5.2.2 If Tenant requests Landlord's consent to assign this Lease or sublet (or otherwise grant occupancy rights in and to) all or a portion of the Premises, Landlord shall have the option, exercisable by written notice to Tenant given within thirty (30) days after Landlord's receipt of Tenant's completed request, to terminate this Lease as of the date specified in such notice, which shall not be less than thirty (30) nor more than one hundred twenty (120) days after the date of such notice, as to the entire Premises in the case of a proposed assignment or subletting of the whole Premises, and as to the portion of the Premises to be sublet in the case of a subletting of a portion. In the event of termination in respect of a portion of the Premises, the portion so eliminated shall be delivered to Landlord on the date specified in good order and condition in the manner provided in Section 4.2 at the end of the Term and thereafter, to the extent necessary in Landlord's judgment, Landlord, at its own cost and expense, may have access to and may make modification to the Premises (or portion thereof) so as to make such portion a self-contained rental unit with access to common areas, elevators and the like. Fixed Rent and the Rentable Floor Area of the Premises shall be adjusted according to the extent of the Premises for which the Lease is terminated.

5.2.3 Without limitation of the rights of Landlord hereunder in respect thereto, if there is any assignment of this Lease by Tenant for consideration or a subletting of the whole of the Premises by Tenant at a rent which exceeds the rent payable hereunder by Tenant, or if there is a subletting of a portion of the Premises by Tenant at a rent in excess of the subleased portion's pro rata share of the rent payable hereunder by Tenant, then Tenant shall pay to Landlord, as additional rent, forthwith upon Tenant's receipt of, in the case of an assignment, all of the consideration (or the cash equivalent thereof) therefor and in the case of a subletting, all of any such excess rent. For the purposes of this subsection, the term "rent" shall mean all Fixed Rent, additional rent or other payments and/or consideration payable by one party to another for the use and occupancy of all or a portion of the Premises including, without limitation, key money, or bonus money paid by the assignee or subtenant to Tenant in connection with such transaction and any payment in excess of fair market value for services rendered by Tenant to the assignee or subtenant or for assets, fixtures, inventory, equipment or furniture transferred by Tenant to the assignee or subtenant in connection with any such transaction, but shall exclude any separate payments by Tenant for reasonable attorney's fees and broker's commissions in connection with such assignment or subletting.

5.2.4 If the Premises or any part thereof are sublet by Tenant, following the occurrence of a default which has continued beyond the applicable cure period, Landlord, in addition to any other remedies

provided hereunder or at law, may at its option collect directly from such sublessee(s) all rents becoming due to the Tenant under such sublease(s) and apply such rent against any amounts due Landlord by Tenant under this Lease, and Tenant hereby irrevocably authorizes and directs such sublessee(s) to so make all such rent payments, if so directed by Landlord; and it is understood that no such election or collection or payment shall be construed to constitute a novation of this Lease or a release of Tenant hereunder, or to create any lease or occupancy agreement between the Landlord and such subtenant or impose any obligations on Landlord, or otherwise constitute the recognition of such sublease by Landlord for any purpose whatsoever.

5.2.5 The following terms and conditions shall apply to any subletting by Tenant of all or any part of the Premises and shall be deemed included in all subleases under this Lease whether or not expressly incorporated therein:

Tenant hereby absolutely and unconditionally assigns and transfers to Landlord all of Tenant's interest in all rentals and income arising from any sublease entered into by Tenant, and Landlord may collect such rent and income and apply same toward Tenant's obligations under this Lease; provided, however, that until a default occurs in the performance of Tenant's obligations under this Lease, Tenant may receive, collect and enjoy the rents accruing under such sublease. Landlord shall not, by reason of this or any other assignment of such rents to Landlord nor by reason of the collection of the rents from a subtenant, be deemed to have assumed or recognized any sublease or to be liable to the subtenant for any failure of Tenant to perform and comply with any of Tenant's obligations to such subtenant under such sublease, including, but not limited to, Tenant's obligation to return any security deposit. Tenant hereby irrevocably authorizes and directs any such subtenant, upon receipt of a written notice from Landlord stating that a default exists in the performance of Tenant's obligations under this Lease, to pay to Landlord the rents due as they become due under the sublease. Tenant agrees that such subtenant shall have the right to rely upon any such statement and request from Landlord, and that such subtenant shall pay such rents to Landlord without any obligation or right to inquire as to whether such default exists and notwithstanding any notice from or claim from Tenant to the contrary. In the event Tenant shall default in the performance of its obligations under this Lease or Landlord terminates this Lease by reason of a default of Tenant, Landlord at its option and without any obligation to do so, may require any subtenant to attorn to Landlord, in which event Landlord shall undertake the obligations of Tenant under such sublease from the time of the exercise of said option to the termination of such sublease; provided, however, Landlord shall not be liable for any prepaid rents or security deposit paid by such subtenant to Tenant or for any other prior defaults of Tenant under such sublease.

### 5.3 CERTAIN TRANSFERS.

5.3.1 If at any time Tenant's interest in this Lease is held by a corporation, trust, partnership, limited liability company or other entity, the transfer of more than 25% of the voting stock, beneficial interests, partnership interests, membership interests or other ownership interests therein (whether at one time or in the aggregate) shall be deemed an assignment of this Lease, and shall require Landlord's prior written consent. The foregoing provisions shall not be applicable so long as the Tenant is a corporation, the outstanding voting stock of which is listed on a recognized security exchange, or if at least 80% of its voting stock is owned by another corporation, the voting stock of which is so listed.

5.3.2 To enable Landlord to determine the ownership of Tenant, Tenant agrees to furnish to Landlord, from time to time promptly after Landlord's request therefor, (a) if the last sentence of subsection 5.3.1 is applicable, proof of listing on a recognized security exchange, or (b) if the last sentence of subsection 5.3.1 is not applicable, an accurate and complete listing of the holders of its stock, beneficial interests, partnership interests, membership interests or other ownership interests therein as of such request and as of the date of this Lease. Landlord shall use reasonable efforts to keep confidential any information

received by Landlord pursuant to this Section 5.3, provided, however, that Landlord shall have the right to disclose any such information to existing or prospective mortgagees, or prospective purchasers of the Building, where required.

## **6. CONDITION OF PREMISES AND RESPONSIBILITY FOR REPAIRS**

### **6.1 CONDITION OF PREMISES.**

6.1.1 Tenant accepts the Premises and the Building in their present “as is” condition, without representation or warranty, express or implied, in fact or in law, by Landlord and without recourse to Landlord as to the nature, condition or usability thereof; and Tenant agrees that, except for the Tenant’s Improvements (as hereinafter defined), Landlord has no work to perform in or on the Premises to prepare the Premises for Tenant’s use and occupancy, and that any and all work to be done in or on the Premises will be performed by Tenant at Tenant’s sole cost and expense in accordance with the terms of this Lease.

6.1.2 Landlord and Tenant acknowledge and agree that certain furniture was abandoned by a prior tenant and is currently in the Premises. Landlord and Tenant further acknowledge and agree that Tenant shall have the right to use all such furniture at no additional cost to Tenant and such furniture shall be considered Tenant’s furniture as of the Effective Date.

### **6.2 TENANT’S IMPROVEMENTS.**

6.2.1 Tenant has provided Landlord with all necessary information regarding Tenant’s space planning needs in connection with its use of the Premises. Based upon such information supplied by Tenant, Landlord has prepared a space plan and outline specifications (the “Space Plans”) for the layout of Tenant’s leasehold improvements to the Premises (“Tenant’s Improvements”). Tenant’s Improvements shall not include Tenant’s furniture, trade fixtures, equipment and personal property and are limited to normal office fit-up construction, as generally laid out and specified on the Space Plans. Tenant acknowledges that Tenant’s Improvements have been designed to the general quality of the design of the Building and in accordance with Landlord’s building standards for office build-out for the Building. Landlord has submitted the proposed and preliminary Space Plans to Tenant and Tenant has approved the proposed and preliminary Space Plans. The Landlord and the Tenant agree and understand that as the construction work begins, some changes may be necessary to the Space Plans and the parties agree to work together in good faith to coordinate any alterations to the Space Plans. The Space Plans are attached hereto as Exhibit C.

6.2.2 Based upon the approved final Space Plans (see below), the Landlord shall cause final plans and specifications, sufficient to permit the construction of Tenant’s Improvements, to be prepared (the “Plans”), which Plans shall be submitted to Tenant for approval, which approval shall not be unreasonably withheld or delayed and shall be deemed given if not disapproved of in writing (with a detailed list of the deficiencies in the Plans) within 7 days of submittal. Tenant’s approval of the Plans shall be substantially consistent with previous approvals, choices and directions given. Tenant understands and agrees that changes to the Space Plans that may be needed or desired by Tenant, and or the specification by Tenant of any components or finishes that are not building-standard or as depicted on the Space Plans, will be incorporated into the Plans if (a) such changes do not materially modify the scope or character of the Tenant’s Improvements or any material component thereof, and (b) such changes will not, individually or in the aggregate, in Landlord’s reasonable opinion, result in a likelihood of a material delay in the substantial completion of Tenant’s Improvements, or (c) such changes are agreed to in writing by the Landlord and the Tenant. Tenant agrees that any additional cost resulting from such changes, after final approval of the Space Plans, as well as from any changes to the Tenant’s Improvements after the final approval of the Plans (including design and construction costs, including materials, labor and general conditions costs) shall be the responsibility of Tenant and shall be paid in full by Tenant to Landlord within

15 days of billing therefor by Landlord; and Tenant agrees that if such changes do result in a material delay in substantial completion, same shall be deemed a Tenant Delay (as defined below). Tenant shall provide written confirmation that it is prepared to move forward with final approval of the Space Plans on or before March 31, 2022. Once confirmed, and provided Tenant's right to terminate in Section 2.3.4 has either expired or been waived, Landlord shall submit the approved Space Plans to the architect/space planner for preparation of the Plans. Landlord shall provide final Space Plans, pursuant to this Section 6.2.2, within fourteen (14) days following (i) the earlier of March 31, 2022, or Tenant's waiver of its Section 2.3.4 right to terminate, and (ii) written confirmation from the Tenant that Tenant is prepared to move forward with final Space Plans approval.

6.2.3 Following the completion and approval of the Plans, Landlord shall proceed, using reasonable efforts, to obtain all necessary permits and approvals for the construction of Tenant's Improvements, to engage a contractor or construction manager to perform or supervise the construction and to proceed to construct Tenant's Improvements in substantial conformance with the Plans. Landlord reserves the right to make changes and substitutions to the Plans in connection with the construction of Tenant's Improvements, provided same do not materially adversely modify the Plans approved by Tenant, and Tenant agrees to not unreasonably withhold or delay its consent to any changes that do materially adversely modify the Plans, in accordance with subsection 6.2.2. The Landlord shall provide a minimum of seven (7) days' notice before undertaking any changes to the Plans approved by Tenant.

6.2.4 Landlord agrees to use reasonable efforts to substantially complete Tenant's Improvements by the Scheduled Commencement Date, subject to delays caused by factors beyond the reasonable control of Landlord but in no event shall Landlord be liable to Tenant for any failure to deliver the Premises on any specified date, nor shall such failure give rise to any default or other remedies under this Lease or at law or equity.

6.2.5 Tenant's Improvements shall be deemed substantially complete on the date (the "Substantial Completion Date") the Landlord notifies Tenant that, with the exception of Punchlist (defined below) items, the Landlord has completed the Tenant Improvements. Notwithstanding the foregoing, if any delay in the substantial completion of the Tenant's Improvements by Landlord is due to Tenant Delays or arises from the Optional Work and the Landlord has provided Tenant with written notice identifying the Tenant Delay or Optional Work delay, then the Substantial Completion Date shall be deemed to be the date Tenant's Improvements would have been substantially completed, if not for same, as reasonably determined by Landlord. "Tenant Delays" shall mean delays caused by: (a) requirements of the Plans requested by Tenant that do not conform to Landlord's building standards for office build-out, or which contain long lead-time or non-standard items requested by Tenant; (b) any change in the Plans requested by Tenant following the approval of the Plans; (c) failure to approve the Plans (or changes thereto or modifications thereof) within the time limits provided herein; (d) any request by Tenant for a delay in the commencement or completion of Tenant's Improvements for any reason; or (e) any other act or omission of Tenant or its employees, agents or contractors.

6.2.6 Within seven (7) days after the Commencement Date, Landlord and Tenant shall confer and create a specific list of any defects or incomplete remaining items of work with respect to Tenant's Improvements (a "Punchlist"). Except with respect to the items contained in the Punchlist or unresolved items specifically conveyed in writing to Landlord within 7 days after the Commencement Date, Tenant shall be deemed satisfied with Tenant's Improvements, Landlord shall be deemed to have completed all of its obligations under this Section 6.2 and Tenant shall have no claim that Landlord has failed to perform in full its obligations hereunder.

6.2.7 This Lease is subject to the Landlord obtaining all permits, licenses and approvals necessary to allow Landlord to construct Tenant's Improvements and obtain a certificate of occupancy with

respect thereto; and if Landlord shall be unable to obtain same, and is therefore unable to commence or complete Tenant's Improvements, then this lease may be terminated by Landlord by written notice to Tenant. If the Lease is terminated pursuant to this section through no fault of the Tenant, then Landlord shall return to the Tenant all sums paid to the Landlord pursuant to this Agreement.

6.2.8 All components of the Tenant's Improvements shall be part of the Building, except only for such items as Landlord and Tenant agree in writing shall be removed by Tenant on the termination of this Lease.

6.2.9 If Tenant occupies the Premises prior to the Commencement Date, such occupancy shall be subject to all provisions of this Lease, such occupancy shall not change the termination date, and Tenant shall pay Fixed Rent and all other charges provided for in this Lease during the period of such occupancy. Tenant shall be liable for any damages or delays caused by Tenant's activities at the Premises. Prior to entering the Premises, Tenant shall obtain all insurance it is required to obtain by the Lease and shall provide certificates of said insurance to Landlord. Tenant shall coordinate such entry with Landlord's building manager, and such entry shall be made in compliance with all terms and conditions of this Lease and the rules and regulations in effect from time to time.

### 6.3 REPAIRS TO BE MADE BY LANDLORD.

6.3.1 Except as otherwise provided in this Lease, Landlord agrees to keep in good order, condition and repair, the roof, exterior walls, structural components and common building systems of the Building insofar as they affect or serve the Premises and the appurtenant common areas of the Building, and to maintain and repair the HVAC system and equipment serving the Premises, unless installed by or for Tenant. Without limitation, Landlord shall in no event be responsible to Tenant for the condition of glass in and about the Premises or for the doors leading to the Premises, or for any improvements, additions or alterations (including the Tenant's Improvements) installed by or for the Tenant, or for any condition in the Premises or the Building caused by any act or neglect of Tenant or any contractor, agent, employee or invitee of Tenant, or anyone claiming by, through or under Tenant. Landlord also agrees to maintain the parking areas, roadways and landscaping on the property surrounding the Building in good order and repair. Landlord shall not be responsible to make any improvements or repairs to the Building or the Premises other than as expressed in this Section unless expressly otherwise provided in this Lease. All costs incurred by Landlord in connection with the foregoing obligations shall be included as part of Operating Expenses.

6.3.2 Landlord shall never be liable for any failure to make repairs which, under the provisions of this Section or elsewhere in this Lease, Landlord has undertaken to make unless: (a) Tenant has given notice to Landlord of the need to make such repairs as a result of a condition in the Building or in the Premises requiring any repair for which Landlord is responsible; and (b) Landlord has failed to commence to make such repairs within thirty (30) days' after receipt of such notice if any repairs are, in fact, necessary.

### 6.4 MAINTENANCE AND REPAIRS TO BE MADE BY TENANT.

6.4.1 Tenant covenants and agrees that Tenant will keep neat and clean and maintain in good order, condition and repair, the Premises and every part thereof (and any signs permitted hereunder) throughout the Lease Term, excepting only those repairs for which Landlord is responsible under the terms of this Lease, damage by fire or other casualty or as a consequence of the exercise of the power of eminent domain and reasonable wear and tear and Tenant shall surrender the Premises at the end of the Term in such condition. Without limitation, Tenant shall maintain and use the Premises in accordance with all Laws and Restrictions and shall, at Tenant's own expense obtain and maintain in effect all permits, licenses and the like required by applicable law. Tenant shall not permit or commit any waste, and Tenant shall be responsible for the cost of repairs which may be made necessary by reason of damage to any areas in the

Building or Office Park, including the Premises, by Tenant, Tenant's contractors or Tenant's agents, employees, invitees, or anyone claiming by, through or under Tenant. Landlord may replace as needed any bulbs and ballasts in the Premises during the Lease Term at Tenant's cost and expense, or Landlord may require Tenant to replace the same, at Tenant's cost and expense.

6.4.2 If repairs are required to be made by Tenant pursuant to the terms hereof, Landlord may demand that Tenant make the same forthwith, and if Tenant fails, refuses or neglects to commence such repairs and complete the same with reasonable dispatch after such demand, Landlord may (but shall not be obligated to) make or cause such repairs to be made and shall not be responsible to Tenant for any loss or damage that may accrue to Tenant's stock or business by reason thereof. If Landlord makes or causes such repairs to be made, Tenant agrees that Tenant will forthwith, within thirty (30) days' receipt, pay to Landlord the cost thereof, and if Tenant shall fail to so reimburse Landlord upon demand, Landlord shall have the remedies provided for the nonpayment of rent or other charges payable hereunder.

## 6.5 FLOOR LOAD - HEAVY MACHINERY; OCCUPANT DENSITY.

6.5.1 Tenant shall not place a load upon any floor in the Premises exceeding the floor load per square foot of area which such floor was designed to carry and which is allowed by law. 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 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 consent.

6.5.2 If such safe, machinery, equipment, freight, bulky matter or fixtures requires 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 Laws and Restrictions. Any such moving shall be at the sole risk and hazard of Tenant and Tenant will exonerate, indemnify and save Landlord harmless against and from any liability, loss, injury, claim or suit resulting directly or indirectly from such moving. Tenant shall schedule such moving at such times as Landlord shall require for the convenience of the normal operations of the Building.

6.5.3 Tenant shall maintain a ratio of not more than one Occupant (as defined below) per square foot of rentable area in the Premises as required by applicable federal, state and local building codes and requirements, and in conformance with number of allotted non-exclusive parking spaces. Landlord shall have the right to periodically visit the Premises without advance notice to Tenant in order to track the number of Occupants arriving at the Premises. For purposes of this section, "Occupants" shall not include people not employed by Tenant that deliver or pick up mail or other packages at the Premises, employees of Landlord or employees of Landlord's agents or contractors. Tenant acknowledges that increased numbers of Occupants causes additional wear and tear on the Premises and the Common Areas, additional use of electricity, water and other utilities, and additional demand for other Building services.

## 7. SERVICES; UTILITY CHARGES

### 7.1 LANDLORD'S SERVICES.

#### 7.1.1 Landlord covenants during the Term:

- (a) To furnish, through Landlord's employees or independent contractors, electricity (for lights, convenience receptacles, and normal office machines and equipment in the Premises, subject to Section 7.2 below, and for the common areas and facilities), heat, air

conditioning and ventilation and general cleaning services to a level customarily provided by operators of buildings such as the Building; it is understood, however, that heat, air conditioning and ventilation and certain other services shall only be furnished during Normal Building Operating Hours; and

- (b) To furnish, through Landlord's employees or independent contractors, additional Building operation services upon reasonable advance request of Tenant at rates from time to time established by Landlord to be paid by Tenant provided the same may be reasonably and conveniently provided by Landlord. Tenant hereby agrees to pay to Landlord the cost of such additional services as additional rent upon demand by Landlord. The current charge for afterhours HVAC service is \$75.00 per hour for such use, subject to change from time to time reasonably reflect changes in the cost factors relating thereto.

7.1.2 Landlord shall provide for the operation of a cafeteria food service facility (the "Cafeteria") in the Building and/or the Office Park. The Cafeteria will be available for use by Tenant and its employees, together with others, during its hours of operation and in accordance with any rules and regulations that may be established concerning such use. Charges for food and other services provided at the Cafeteria shall be as determined by Landlord (or the operator of the Cafeteria) from time to time in its sole discretion. It is understood and agreed that all use of the Cafeteria and its facilities shall be at the sole risk of Tenant and the employees using same, and, to the maximum extent this agreement may be made effective according to law (including the limitations set forth in M.G.L. c. 186, §15), but subject to Tenant's insurance requirements hereunder and Section 13.22, Tenant hereby releases Landlord, and the owner or operator of the Cafeteria, from any liability in connection with such use and indemnifies and holds the Landlord, and the owner or operator of the Cafeteria, harmless from and against any loss, cost, liability, damage or expense occasioned by or in any way related to or arising from the use of the Cafeteria by Tenant or Tenant's employees or by any other party allowed to use same by Tenant or any of its employees. Landlord reserves the right at any time or from time to time, in its sole discretion, to discontinue the Cafeteria, or alter its size, type, location or serving capacity, or its meals or hours of operation or any other aspect thereof. To the extent the Cafeteria is open and available to the Tenant as provided herein, Tenant shall pay to Landlord, as additional rent and on a so-called net basis, Tenant's share (as computed in Section 8.1.2) of any losses, costs or subsidies incurred or paid by Landlord in operating the Cafeteria within thirty (30) days of invoice therefor; provided Landlord may elect to collect same in monthly estimated payments (as reasonably estimated by Landlord from time to time), due on the same date as monthly Fixed Rent installment payments are due hereunder, with a periodic (not more often than annual) reconciliation.

7.1.3 Landlord shall open, operate, and make available to Tenant, from time to time, a fitness center facility (the "Fitness Center") in the Building and/or Office Park. If provided, the Fitness Center may be available for use by Tenant and its employees, together with others, during its hours of operation and in accordance with any rules and regulations that may be established concerning such use. Charges for use of and services provided at the Fitness Center shall be as determined by Landlord (or the operator of the Fitness Center, as the case may be) from time to time in its sole discretion. It is understood and agreed that all use of the Fitness Center and its facilities shall be at the sole risk of Tenant and the employees using same, and, to the maximum extent this agreement may be made effective according to law (including the limitations set forth in M.G.L. c. 186, §15), but subject to Tenant's insurance requirements hereunder and Section 13.22, Tenant hereby releases Landlord, and the owner or operator of the Fitness Center, from any liability in connection with such use and indemnifies and holds the Landlord, and the owner or operator of the Fitness Center, harmless from and against any loss, cost, liability, damage or expense occasioned by or in any way related to or arising from the use of the in connection with such use. Landlord reserves the right at any time or from time to time, in its sole discretion, to discontinue the Fitness Center, limit the access to or use thereof, or alter its size, type, location or serving capacity, or hours of operation or any other aspect thereof. To the extent the Fitness Center is open and available to the Tenant as provided herein, Tenant

shall pay to Landlord, as additional rent and on a so-called net basis, Tenant's share (as computed in Section 8.1.2) of any losses, costs or subsidies incurred or paid by Landlord in operating the Fitness Center within thirty (30) days of invoice therefor; provided Landlord may elect to collect same in monthly estimated payments (as reasonably estimated by Landlord from time to time), due on the same date as monthly Fixed Rent installment payments are due hereunder, with a periodic (not more often than annual) reconciliation.

## 7.2 UTILITY SERVICES AND CHARGES.

7.2.1 The Tenant shall obtain directly from the supplier or utility company any services (such as telephone service, or should it be separately metered and provided as provided in Section 7.3 below, electrical service) not provided to the Premises by Landlord, and Tenant shall pay all charges therefor when due. If requested by Landlord, Tenant shall promptly provide Landlord with evidence of such payment. If such utility company shall have a lien on the Premises for nonpayment of such charges and Tenant shall fail at any time to make payment of same, without limitation of Landlord's rights on account of such failure, Tenant shall thereafter, if requested by Landlord, pay to Landlord, when monthly Fixed Rent is next due and thereafter on Landlord's demand, an amount reasonably estimated by Landlord to be sufficient to discharge any such lien in the event of a further failure of Tenant to pay any such charges when due. Landlord shall hold the amounts from time to time deposited under this Section 7.2 as security for payment of such charges and may, without limitation of remedies on account of Tenant's failure to make any subsequent payment of such charges, use such amounts for such payments. Such amount or such portion thereof as shall be unexpended at the expiration of this Lease shall, upon full performance of all Tenant's obligations hereunder, be repaid to Tenant without interest.

7.2.2 Tenant shall not introduce to the Premises personnel, fixtures or equipment which (individually or in the aggregate) exceed those used by the average office tenant or overload the capacity of the electrical, heating, ventilating and air conditioning, mechanical, plumbing or other utility systems serving the Premises; such capacities shall be deemed overloaded if such use by Tenant exceeds, on a square foot basis, the capacity of such systems. If Tenant uses the Premises or installs fixtures or equipment in such a manner as would so overload said systems, as reasonably determined by Landlord, Tenant shall pay, as additional rent, within ten (10) days of billing therefor, the cost of providing and installing any additional equipment, facilities or services that may be required as a result thereof, and for any repairs or damage resulting therefrom.

7.2.3 All costs incurred by Landlord in connection with utility services provided to the Premises shall be included as part of the Operating Expenses.

7.2.4 Landlord shall not be responsible for any interruption of electricity, oil, water, sewer, telephone, data or other utility or Building services supplied to the Premises unless caused by Landlord's negligence. Furthermore, Landlord shall not be liable for loss of property or for injury to, or interference with, Tenant's business, including, without limitation, loss of profits, however occurring, through or in connection with or incidental to an interruption of any such services or utilities. Landlord may comply with voluntary controls or guidelines promulgated by any governmental entity relating to the use or conservation of energy, water, gas, light or electricity or the reduction of automobile or other emissions without creating any liability of Landlord to Tenant under this Lease.

## 7.3 ELECTRICAL SERVICE AND ELECTRICAL CHARGE.

7.3.1 It is understood that the electrical service for the Premises (for lights and convenience outlets) is currently separately metered from service provided to other rentable spaces and common areas of the Building, and Tenant shall make arrangements for such electrical service directly with the utility supplier.



**8. ADDITIONAL RENT FOR TAXES AND OPERATING EXPENSES****8.1 TENANT'S PAYMENT OF ITS SHARE OF REAL ESTATE TAXES.**

8.1.1 For the purposes of this Section, the following terms shall have the following meaning:

“Tax Year” shall mean the twelve-month period in use in the Town of Burlington for the purpose of imposing ad valorem taxes upon real property. In the event that such Town changes the period of its tax year, “Tax Year” shall mean a twelve-month period commencing on the first day of such new tax year, and each twelve-month period commencing on the anniversary of such date during the Term of this Lease.

“Taxes” shall mean all taxes and assessments of every kind and nature imposed, assessed or levied by a governmental authority on the Property, including without limitation all real estate taxes, betterments, assessments (ordinary and extraordinary), water rents, sewer, and other charges. If taxes upon rentals or otherwise pertaining to the Property (including without limitation any tax on rentals or income or any value added tax, so called) shall be substituted, in whole or in part, for the present ad valorem real estate taxes, or shall be assessed in addition thereto, then the term “Taxes” shall include such substituted taxes, to the extent to which the same shall be a substitute for present ad valorem real estate taxes, together with any such additional taxes. The term “Taxes” shall not include any inheritance or estate taxes, or any taxes on income to the extent applicable to Landlord's net income.

8.1.2 In the event that the Taxes imposed with respect to the Property shall be greater during any Tax Year (and in the event the Town shall first send estimated tax bills, until a final bill is sent [at which time Tenant's share of real estate taxes shall be recomputed], real estate taxes shall be such taxes as shown on the estimated tax bill) than the Tax Base (as defined in Section 1.2), Tenant shall pay to Landlord, as additional rent, the amount obtained by multiplying the amount by which the Taxes exceed the Tax Base by a fraction, the numerator of which is the Rentable Floor Area of the Premises and the denominator of which is the Rentable Floor Area of the Building.

8.1.3 Landlord shall submit to Tenant a statement setting forth the amount of such additional rent, and within thirty (30) days after the delivery of such statement (whether or not such statement shall be timely), Tenant shall pay to Landlord the payment under subparagraph 8.1.2 above. So long as the Taxes, or any portion thereof, shall be payable in installments, Landlord may submit such statements to Tenant in similar installments. The failure by Landlord to send any statement required by this subparagraph shall not be deemed to be a waiver of Landlord's right to receive such additional rent.

8.1.4 If the first day of the Tax Year in such Town of Burlington should be changed after the Commencement Date so as to change the twelve-month period comprising the Tax Year, or if the Tax Year shall be a period of time other than twelve months, in determining the additional rent to be paid by Tenant under this Section with respect to the Taxes payable by Tenant for any such Tax Year, including a partial Tax Year, the Tax Amount shall be pro-rated on a per day basis.

8.1.5 Any betterment assessment, so-called “rent tax” or any other tax levied or imposed by any governmental authority in addition to, in lieu of or as a substitute for real estate taxes, shall nevertheless be deemed to be real estate taxes for the purpose of this Section.

8.1.6 Tenant's obligations to pay additional rent under this Section on account of Taxes shall commence on the Commencement Date.

8.1.7 If Tenant is obligated to pay any additional rent as aforesaid with respect to any Tax Year or fraction thereof during the Term, then Tenant shall pay, as additional rent, on the first day of each month of the next ensuing Tax Year, estimated monthly tax escalation payments equal to 1/12 of the annualized amount of additional rent payable hereunder for said previous Tax Year (or as otherwise reasonably estimated by Landlord). Estimated monthly tax escalation payments for each ensuing Tax Year shall be made retroactively to the first day of the Tax Year in question.

8.1.8 In the event that Landlord obtains an abatement, reduction or refund of any Taxes for a Tax Year which Tenant was obligated to pay a share of the increase in Taxes, then Tenant shall receive as a credit against its payment obligations under this Section, its proportionate share of the net proceeds of such abatement, reduction or refund (after deduction of all reasonable costs, including legal and appraisal fees, incurred by Landlord in obtaining the same) but only to the extent and not in excess of any payments made by Tenant for such increase as required under this Section. Landlord shall be under no obligation to seek such an abatement, reduction or refund. To the extent same are not credited as aforesaid, any of Landlord's reasonable costs (including legal and appraisal fees) incurred in attempting to obtain an abatement, reduction or refund shall be deemed Operating Expenses hereunder. Tenant shall not contest by any proceedings the assessed valuation of Landlord's Property or any part thereof for purposes of obtaining a reduction of its assessment or of any taxes.

8.1.9 Tenant shall pay prior to delinquency all taxes assessed against and levied upon trade fixtures, furnishings, equipment and all other personal property of Tenant contained in the Premises or related to Tenant's use of the Premises. If any of Tenant's personal property shall be assessed with Landlord's real or personal property, Tenant shall pay to Landlord the taxes attributable to Tenant within thirty (30) days after receipt of a written statement from Landlord setting forth the taxes applicable to Tenant's property.

## 8.2 TENANT'S PAYMENT OF ITS SHARE OF OPERATING EXPENSES.

8.2.1 For the purposes of this Section, the following terms shall have the following meanings:

“Operating Year” shall mean the calendar year, or such other twelve-month period as Landlord may designate from time to time.

“Operating Expenses” shall mean all expenses incurred by or attributable to Landlord in operating and maintaining the Building and Lot and their appurtenances, including but without limitation: premiums for fire, casualty, liability, rental interruption and such other insurance as Landlord may from time to time maintain with respect to the Lot and Building; security expenses; compensation and all fringe benefits, worker's compensation insurance premiums and payroll taxes paid by Landlord to, for or with respect to all persons engaged in operating, maintaining, or cleaning of the Building, the common areas of the Lot on which the Building is located and the other common areas of the Office Park; steam, water, sewer, electric, gas, telephone and other utility charges not billed directly to tenants by Landlord or the utility; costs of building and cleaning supplies and equipment (including rental); cost of maintenance, cleaning and repairs; cost of snow plowing or removal, or both and care of landscaping and irrigation systems; the cost of operating, replacing, modifying and/or adding improvements or equipment mandated by any law, statute, regulation or directive of any governmental agency and any repairs or removals necessitated thereby; the cost of installing intrabuilding network cabling (“INC”) and maintaining, repairing, securing and replacing existing INC; payments to independent contractors under service contracts for cleaning, operating, managing, maintaining and repairing the Building and said common areas (which payments may be to affiliates of Landlord); all other expenses paid in connection with the operation, cleaning, maintenance and repair of the Building and said common areas; either reasonable reserves for the replacement of equipment contained in and/or used in connection with the operation of the Building and

the Office Park or the amortized portion, properly attributable to the Operating Year in question, of the cost, with interest thereon at a rate reasonably determined by Landlord, of any capital repairs, improvements or replacements made to the Building or the Property, by Landlord; and a management fee based on a percentage of the gross rentals of the Building. Landlord may equitably adjust Tenant's share of Operating Expenses for all or part of any item of expense or cost reimbursable by Tenant that relates to a repair, replacement, or service that benefits only the Premises or only a portion of the Building or that varies with the occupancy of the Building. Landlord shall have the right but not the obligation, from time to time, to equitably allocate some or all of the Operating Expenses among different tenants of the Building or Office Park ("Cost Pools"). Such Cost Pools may include, but shall not be limited to, tenants that share particular systems or equipment or tenants that are similar users of particular systems or equipment such as by way of example but not limitation the office space tenants of the Building or properties, the general office tenants of the Building or properties and the retail space tenants of the Building or properties. The Operating Expenses shall also include the Building's share (as reasonably determined and allocated by Landlord) of: (a) the costs incurred by Landlord in operating, maintaining, repairing, insuring and paying real estate and other taxes upon any common facilities of the Office Park (including, without limitation, the common facilities from time to time serving the Lot or Building in common with other buildings or parcels of land), such as any so-called "loop" access roads, retention ponds, sewer and other utility lines, amenities and the like; (b) shuttle bus service (if and so long as Landlord shall provide the same); (c) the actual or imputed cost of the space occupied by on-the-grounds building attendant(s) and related personnel and the cost of administrative and or service personnel whose duties are not limited solely to the Building and/or the Lot, as allocated to the Building and/or Property by Landlord; and (d) payments made by Landlord under any easement, license, operating agreement, declaration, restrictive covenant, or instrument pertaining to the payment or sharing of costs among Office Park property owners.

8.2.2 If, during any Operating Year (including the Operating Year used for determining the Base Operating Expenses), less than 95% of the rentable area of the Building is occupied, the components of Operating Expenses that vary by occupancy level shall be equitably adjusted by Landlord, on an item by item basis, as appropriate, to reflect Operating Expenses based on 95% occupancy. The Base Operating Expenses shall be calculated by taking the actual Operating Expenses incurred during the Year 2022 from the Commencement Date through December 31, 2022, and then extrapolated over a full year (2022). This amount plus a separate snow calculation (discussed below) shall be considered the Base Operating Expenses. The component of Operating Expenses relating to snow removal (plowing, shoveling, etc.) shall be calculated by using the actual snow costs incurred for operating expenses at 80 Blanchard Road, Burlington (a sister building), such amounts shall be equitably adjusted and extrapolated over a full year (2022) and included in the Base Operating Expenses for the Premises.

8.2.3 In determining the Base Operating Expenses, there shall be excluded from the Operating Expenses for said Operating Year any non-recurring costs and expenses and/or capital expenditures.

8.2.4 After the expiration of each Operating Year, Landlord shall furnish Tenant with a statement setting forth the Operating Expenses for such Operating Year. Such statement shall be accompanied by a computation of the amount, if any, of the additional rent payable to Landlord pursuant to this subsection. The failure by Landlord to send any statement required by this subparagraph shall not be deemed to be a waiver of Landlord's right to receive such additional rent. For the avoidance of doubt, Tenant shall only be responsible for the amount, if any, over the calculated Base Operating Expenses (as defined in Section 1.2 and 8.2.2).

8.2.5 In the event the Operating Expenses during any Operating Year shall be greater than the Base Operating Expenses (as defined in Section 1.2), Tenant shall pay to Landlord, as additional rent, the amount obtained by multiplying the amount by which the Operating Expenses exceed the Base Operating

Expenses by a fraction, the numerator of which is the Rentable Floor Area of the Premises and the denominator of which is the Rentable Floor Area of the Building.

8.2.6 Said additional rent shall, with respect to the Operating Years in which the Commencement Date and end of the Term of this Lease fall, be pro-rated on a per day basis. If Landlord shall change its Operating Year, appropriate adjustment shall be made for any Operating Year less than or greater than twelve-months which may result.

8.2.7 Any additional rent payable by Tenant under this Section shall be paid within thirty (30) days after Landlord has furnished Tenant with the statement described above.

8.2.8 Tenant's obligations to pay additional rent under this Section on account of Operating Expenses shall commence on the Commencement Date.

8.2.9 If with respect to any Operating Year or fraction thereof during the Term, Tenant is obligated to pay any additional rent as aforesaid, then Tenant shall pay, as additional rent, on the first day of each month of the next ensuing Operating Year, estimated monthly operating escalation payments equal to 1/12th of the amount of additional rent payable hereunder for said previous Operating Year (or as otherwise reasonably estimated by Landlord). Estimated monthly operating escalation payments for each ensuing Operating Year shall be made retroactively to the first day of the Operating Year in question.

8.2.10 Landlord shall permit Tenant, at Tenant's expense and during normal business hours, but only one time with respect to any Operating Year, to review Landlord's invoices and statements relating to the Operating Expenses for the applicable Operating Year for the purpose of verifying the Operating Expenses and Tenant's share thereof; provided that notice of Tenant's desire to so review is given to Landlord not later than thirty (30) days after Tenant receives an annual statement from Landlord, and provided that such review is thereafter commenced and prosecuted by Tenant with due diligence. Any Operating Expenses statement or accounting by Landlord shall be binding and conclusive upon Tenant unless (a) Tenant duly requests such review within such 30-day period, and (b) within 3 months after such review request, Tenant shall notify Landlord in writing that Tenant disputes the correctness of such statement, specifying the particular respects in which the statement is claimed to be incorrect. Tenant shall have no right to conduct a review or to give Landlord notice that it desires to conduct a review at any time Tenant is in default under the Lease. The accountant conducting the review shall be compensated on an hourly basis and shall not be compensated based upon a percentage of overcharges it discovers. No subtenant shall have any right to conduct a review, and no assignee shall conduct a review for any period during which such assignee was not in possession of the Premises. Tenant agrees that the results of any Operating Expense review shall be kept strictly confidential by Tenant and shall not be disclosed to any other person or entity.

## **9. INDEMNITY AND INSURANCE**

### **9.1 INDEMNITY.**

9.1.1 To the maximum extent this agreement may be made effective according to law, Tenant shall indemnify and save harmless Landlord (together with its officers, directors, stockholders, partners, beneficial owners, trustees, managers, members, employees, agents, contractors, attorneys, and mortgagees) from and against all claims of whatever nature arising from: (a) any act, omission or negligence of Tenant, or Tenant's contractors, licensees, invitees, agents, servants or employees ("Tenant's Agents"), or any default or failure to perform an obligation by Tenant hereunder; or (b) any accident, injury, damage or loss whatsoever caused to any person or property during the Term, and thereafter, so long as Tenant is in occupancy of any part of the Premises, and occurring in the Premises, or arising out of the use

and occupancy of the Premises by Tenant and Tenant's Agents; or (c) any accident, injury, damage or loss occurring outside of the Premises, where such accident, injury, damage or loss results or is claimed to have resulted from the act, omission or negligence of Tenant or Tenant's Agents. Tenant's obligations hereunder shall include any other matters for which Tenant has agreed to indemnify Landlord pursuant to any other provision of this Lease.

9.1.2 This indemnity and hold harmless agreement shall include indemnity against all costs, expenses and liabilities incurred in or in connection with any such claim or proceeding brought thereon and providing a defense, with counsel reasonably satisfactory to Landlord, at Tenant's sole expense, within ten (10) days after written demand from Landlord, of any claims, action or proceeding arising out of or relating hereto whether or not litigated or reduced to judgment and whether or not well founded.

## 9.2 INSURANCE.

9.2.1 Tenant shall obtain and keep in force and effect during the Term, at its own cost and expense, commercial general liability, on an occurrence basis, in an amount of not less than One Million Dollars (\$1,000,000), and a general aggregate limit of not less than Two Million Dollars (\$2,000,000), for injury, death, property damage or other loss arising out of any one occurrence or in the aggregate, protecting Tenant as insured, and naming Landlord, Landlord's Affiliates, Landlord's mortgagees, property managers and managing agents as additional insureds ("Additional Insureds"), on a primary and non-contributory basis, against any and all claims for bodily injury, personal injury, death, property damage or other loss occurring in, upon, adjacent to or connected with the Premises or any part thereof. The policy shall not contain any intra-insured exclusions as between insured persons or organizations, but shall include coverage for liability assumed under this Lease as an "insured contract" for the performance of Tenant's indemnity obligations under this Lease. The policy shall cover host liquor liability exposure, and should contemplate coverage for pollution liability claims arising out Bodily Injury or Property Damage arising out of heat, smoke or fumes caused by a hostile fire. A Waiver of Subrogation shall be provided in favor of Landlord, Landlord's Affiliates and each Additional Insured. Landlord may from time to time during the Term increase the coverages required of Tenant hereunder to that customarily carried in the area in which the Premises is located on property similar to the Premises.

9.2.2 Tenant further agrees to maintain: (a) workers' compensation insurance with a limit of liability as required by law to be maintained, including a Waiver of Subrogation in favor of Landlord, Landlord's Affiliates and each Additional Insured; (b) employer's liability insurance with a minimum limit of coverage of Two Million Dollars (\$2,000,000), including a Waiver of Subrogation in favor of Landlord, Landlord's Affiliates and each Additional Insured which limit can be achieved in combination with an Umbrella policy; (c) so called "Special Form" insurance coverage for all of its contents, furniture, furnishings, equipment, improvements, fixtures and personal property located at the Premises providing protection in an amount equal to one hundred percent (100%) of the replacement cost basis of said items (subject to reasonable deductible amounts) without deduction for depreciation of the covered items and in amounts that meet any co-insurance clauses of the policies of insurance; (d) business interruption and extra expense insurance coverage(s) satisfactory to Landlord; (e) automobile liability insurance covering all owned, hired, and non-owned vehicles with a combined single limit of not less than One Million Dollars (\$1,000,000); and (f) a minimum umbrella liability limit of Three Million Dollars (\$3,000,000) covering any general commercial liability, employer's liability, and auto liability policies, with the Additional Insureds and Waiver of Subrogation provisions mirroring the underlying policies. With respect to automobile liability insurance, Landlord, Landlord's mortgagees, property managers and managing agents shall be afforded additional insured status on a primary and non-contributory basis, and Waiver of Subrogation shall be provided in favor of Landlord and Landlord's Affiliates. If this Lease is terminated as the result of a casualty in accordance with Section 11, the proceeds of said insurance attributable to the replacement of all tenant improvements installed at the Premises by Landlord or at Landlord's cost shall be paid to Landlord.

9.2.3 The insurance required hereunder shall be written in form and substance satisfactory to Landlord by a good and solvent insurance company of recognized standing, admitted to do business in Massachusetts, with a general policyholder's rating of not less than A- and financial rating of not less than Class VIII (as rated in the most current Best's Insurance Reports), which company shall be reasonably satisfactory to Landlord. Tenant shall procure, maintain and place such insurance and pay all premiums and charges therefor, and upon failure to pay all premiums and charges (and without limiting any other remedies on account thereof), Landlord may, but shall not be obligated to, procure, maintain and place such insurance or make such payments, and in such event, Tenant agrees to pay the amount thereof to Landlord on demand, as additional rent hereunder.

9.2.4 Tenant shall provide thirty (30) days written notice to Landlord prior to cancellation of noted policies. Prior to the Commencement Date, appropriate certificates of insurance shall be deposited with the Landlord. Any renewals, shall be so deposited at least thirty (30) days prior to the expiration of the prior policy.

### 9.3 TENANT'S RISK.

To the maximum extent this Agreement may be made effective according to law, Tenant agrees its use and occupancy of the Premises shall be at Tenant's sole risk; and Landlord shall have no responsibility or liability for any loss of or damage to furniture, fixtures, equipment or other personal property of Tenant for any reason whatsoever; and Landlord shall not be responsible or liable for any loss or damage resulting to Tenant's personal property or those claiming by, through or under Tenant, or its or their personal property, from the breaking, bursting, stopping or leaking of electric cables and wires, water, gas, sewer or steam pipes, sprinklers, and from roof leaks and the like. The provisions of this Section shall be applicable from and after the execution of this Lease, and until the end of the Lease Term, and during such further period as Tenant may use or be in occupancy of any part of the Premises or of the Building.

### 9.4 INJURY CAUSED BY THIRD PARTIES.

To the maximum extent this agreement may be made effective according to law, Tenant agrees that Landlord shall not be responsible or liable to Tenant, or to those claiming by, through or under Tenant, for any loss or damage that may be occasioned by or through the acts or omissions of any third parties, including without limitation persons occupying adjoining premises or any part of the premises adjacent to or connecting with the Premises or any part of the Building, or otherwise, except for third parties specifically working on behalf of the Landlord.

## 10. LANDLORD'S ACCESS TO PREMISES

### 10.1 LANDLORD'S RIGHT OF ACCESS.

Landlord shall have the right to enter the Premises at all reasonable business hours and after normal business hours for the purpose of inspecting or making repairs to the same (or to the Building), and Landlord shall also have the right to make access available at all reasonable hours to prospective or existing mortgagees or purchasers of any part of the Building. In all cases other than emergency, the Landlord shall provide forty eight (48) hours' notice to Tenant of the intention to access the Premises.

### 10.2 EXHIBITION OF SPACE TO PROSPECTIVE TENANTS.

For a period of twelve (12) months prior to the expiration of the Lease Term, and during any period in which Landlord is considering exercising its recapture rights (as provided in Section 5.2), or after Landlord has exercised same, Landlord may have reasonable access to the Premises at all reasonable hours for the purpose of exhibiting the same to prospective tenants, and may post suitable notice on the Premises

advertising the same for rent. In all cases other than emergency, the Landlord shall provide forty eight (48) hours' notice to Tenant of the intention to access the Premises.

### 10.3 KEYS.

Landlord shall have the right to retain keys and electric codes or card keys to the locks and card key access systems and other security systems on the entry doors to the Premises and all interior doors at the Premises.

## 11. EARLY ACCESS

### 11.1 TENANT'S EARLY ACCESS.

Provided no event of Tenant default has occurred and the Tenant does not interfere with the rights of other tenants or the Tenant Improvements, Tenant will be allowed, upon reasonable notice and approval of Landlord, reasonable access to the Premises up to thirty (30) days prior to the Commencement Date to permit Tenant to install fixtures, furniture, and equipment to allow for a transition into the Premises. During such access, Tenant shall be bound by all of the obligations of Tenant under the Lease, including any and all insurance requirements, but, provided that said access is solely for the purpose of installing fixtures, furniture, and equipment to allow for a transition into the Premises and not for the operation of Tenant's business, excluding the payment of Fixed Rent and Tenant's proportionate share of Taxes and Operating Expenses during the above-mentioned early access period.

## 12. FIRE, EMINENT DOMAIN, ETC.

### 12.1 FIRE OR OTHER CASUALTY.

12.1.1 If the Premises or the Building are damaged in whole or in part by any fire or other casualty (a "casualty"), the Tenant shall immediately give notice thereof to the Landlord. Unless this Lease is terminated as provided herein, the Landlord, at its own expense (except for any insurance deductibles, which shall be deemed Operating Expenses), and proceeding with due diligence and all reasonable dispatch, but subject to delays beyond the reasonable control of Landlord, shall repair and reconstruct the same so as to restore the Premises (but not any trade fixtures, equipment or personal property of Tenant) to substantially the same condition they were in prior to the casualty, subject to zoning and building laws then in effect. Notwithstanding the foregoing, in no event shall Landlord be obligated either to repair or rebuild if the damage or destruction results from an uninsured casualty or if the costs of such repairing or rebuilding exceeds the amount of the insurance proceeds (net of all costs and expenses incurred in obtaining same) received by Landlord on account thereof. Landlord shall not be liable for any inconvenience or annoyance to Tenant or injury to the business of Tenant resulting from delays in repairing such damage. If such damage or destruction occurs as a result of the negligence or the intentional acts of Tenant or Tenant's employees, agents, contractors or invitees, and the proceeds of insurance which are actually received by Landlord are not sufficient to pay for the repair of all of the damage, Tenant shall pay, at Tenant's sole cost and expense, to Landlord upon demand, the difference between the cost of repairing the damage and the insurance proceeds received by Landlord, subject to the Tenant's insurance as required by this Lease.

12.1.2 The Landlord shall, within 45 days after the occurrence of a casualty, provide Tenant with a good faith estimate of the time required to repair the damage to the Premises or the Building, as provided herein; if such estimate is for a period of more than two hundred seventy (270) days from the occurrence of the casualty (or during the last 18 months of the Term, for a period of more than ninety (90) days), the Premises shall be deemed "substantially damaged". If the Premises or the Building are substantially damaged, Landlord may elect to terminate this Lease by giving Tenant written notice of such termination within sixty (60) days of the date of such casualty; and if the Premises or the Building are substantially

damaged, and if as a result the Premises are rendered untenable for the Permitted Use, then Tenant may terminate this Lease by giving Landlord written notice of such termination within sixty (60) days of the date of such casualty.

12.1.3 For so long as such damage results in material interference with the operation of Tenant's use of the Premises which material interference causes Tenant to be unable to use the Premises, the Fixed Rent and additional rent payable by Tenant shall abate or be reduced proportionately for the period, commencing on the day following such material interference and continuing until the Premises has been substantially restored. Notwithstanding the foregoing, if such casualty was due to the fault or neglect of Tenant or Tenant's employees, contractors or agents, such abatement or reduction shall be made only if and to the extent of any proceeds of rental interruption insurance actually received by Landlord and allocated to the Premises.

12.1.4 If the Premises are damaged by a casualty, and the Lease is not terminated as provided herein, the Tenant, at its own expense, and proceeding with all reasonable dispatch, shall repair and reconstruct all of the improvements, alterations and additions made to the Premises by or for Tenant, including the Tenant's Improvements, and any trade fixtures, equipment or personal property of Tenant which shall have been damaged or destroyed.

## 12.2 EMINENT DOMAIN.

12.2.1 In the event of any condemnation or taking in any manner for public or quasi-public use, which shall be deemed to include a voluntary conveyance in lieu of a taking (a "taking") of the whole of the Property, this Lease shall forthwith terminate as of the date when Tenant is required to vacate the Premises.

12.2.2 Unless this Lease is terminated as provided herein, the Landlord, at its own expense, and proceeding with due diligence and all reasonable dispatch, but subject to delays beyond the reasonable control of Landlord, shall restore the remaining portion of the Premises (but not any alterations or improvements made by or for Tenant, including the Tenant's Improvements, or any trade fixtures, equipment or personal property of Tenant) and the necessary portions of the Property as nearly as practicable to the same condition as it was prior to such taking, subject to zoning and building laws then in effect. Notwithstanding the foregoing, Landlord's obligation to restore the remaining portion of the Premises shall be limited to the extent of the condemnation proceeds (net of all costs and expenses incurred in connection with same) received by Landlord on account thereof. Landlord shall not be liable for any inconvenience or annoyance to Tenant or injury to the business of Tenant resulting from delays in restoring the Premises.

12.2.3 In the event that only a part of the Premises or the Property shall be taken, then, if such taking is a substantial taking (as hereinafter defined), either Landlord or Tenant may by delivery of notice in writing to the other within sixty (60) days following the date on which Landlord's title has been divested by such authority, terminate this Lease, effective as of the date when Tenant is required to vacate any portion of the Premises or appurtenant rights. A "substantial taking" shall mean a taking which: requires restoration and repair of the remaining portion of the Property that cannot in the ordinary course be reasonably expected to be repaired within 180 days; results in the loss of reasonable access to the Premises; results in the loss of more than 25% of the rentable floor area of the Premises; or results in loss of parking or of facilities in the Building and Landlord reasonably determines it is not practical to relocate such parking or relocate and reconnect such facilities within the remaining Building or Property.

12.2.4 If this Lease is not terminated as aforesaid, then this Lease shall continue in full force and effect, provided if as a result of which there is material interference with the operation of Tenant's use of



the Premises, then the Fixed Rent and additional rent payable by Tenant shall be justly and equitably abated and reduced according to the nature and extent of the loss of use thereof suffered by Tenant.

12.2.5 Landlord shall have and hereby reserves and excepts, and Tenant hereby grants and assigns to Landlord, all rights to recover for damages to the Building, the Lot, and the leasehold interest hereby created (including any award made for the value of the estate vested by this Lease in Tenant), and to compensation accrued or hereafter to accrue by reason of such taking, and by way of confirming the foregoing, Tenant hereby grants and assigns, and covenants with Landlord to grant and assign, to Landlord all rights to such damages of compensation. Nothing contained herein shall be construed to prevent Tenant from prosecuting in any condemnation proceedings a separate claim for the value of any of Tenant's personal property and for relocation expenses and business losses, provided that such action shall not affect the amount of compensation otherwise recoverable by Landlord from the taking authority.

### 13. **DEFAULT**

#### 13.1 TENANT'S DEFAULT.

The following shall be deemed to be defaults hereunder:

- (a) Tenant's failure to pay Fixed Rent or monthly installments of additional rent of Real Estate Taxes and Operating Expenses on or before the first (1st) day of each month which failure is not cured within five (5) days after notice from Landlord thereof, provided that if Landlord has already given one (1) such notice of any failure under this Section 13.1(a) during the twelve (12) months prior, then Tenant shall be in default if any such failure to pay Fixed Rent or monthly installments of additional rent of Real Estate Taxes and Operating Expenses is not cured within five (5) days after the date due, which is on or before the first (1st) day of the month; or
- (b) Tenant's failure to pay additional rent (except monthly installments of Real Estate Taxes and Operating Expenses) or any other charges for which provision is made herein within thirty (30) days (unless some other time for payment is specifically stated herein, then such period shall be as stated in this Lease) following the date on which the same become due and payable; or
- (c) Tenant's failure to perform or observe any other covenants, terms or conditions contained in this Lease, which failure is not cured within thirty (30) days after notice from Landlord thereof; or
- (d) If the estate hereby created shall be taken on execution or by other process of law, or if Tenant shall be judicially declared bankrupt or insolvent according to law, or if any assignment shall be made of the property of Tenant for the benefit of creditors, or if a receiver, guardian, conservator, trustee in involuntary bankruptcy or other-similar officer shall be appointed to take charge of all or any substantial part of Tenant's property by a court of competent jurisdiction, or if a petition shall be filed for the reorganization of Tenant under any provisions of the Bankruptcy Code now or hereafter enacted or if Tenant shall file a petition for such reorganization or for arrangements under any provision of the Bankruptcy Code now or hereafter enacted and providing a plan for a debtor to settle, satisfy or extend the time for payment of debts (references herein to Tenant shall include any guarantor of Tenant's obligations hereunder); or
- (e) The discovery by Landlord that any financial statement, representation or warranty given to Landlord by Tenant, or by any guarantor of Tenant's obligations hereunder, was

materially false at the time given. Tenant acknowledges that Landlord has entered into this Lease in material reliance on such information; or

- (f) If Tenant is a corporation or a partnership, the dissolution or liquidation of Tenant; or
- (g) If Tenant's obligations under this Lease are guaranteed: (i) the death of a guarantor, (ii) the termination of a guarantor's liability with respect to this Lease other than in accordance with the terms of such guaranty, (iii) a guarantor's becoming insolvent or the subject of a bankruptcy filing, (iv) a guarantor's refusal to honor the guaranty, or (v) a guarantor's breach of its guaranty obligation on an anticipatory breach basis.

## 13.2 REMEDIES.

13.2.1 In the event any default shall occur (notwithstanding any license of a former breach of covenant or waiver of the benefit hereof or consent in a former instance), Landlord lawfully may, immediately or at any time thereafter, and without demand or notice: enter into and upon the Premises or any part thereof in the name of the whole and repossess the same as of Landlord's former estate, and expel Tenant and those claiming through or under Tenant and remove its or their effects (forcibly, if necessary) without being guilty of any manner of trespass, and without prejudice to any remedies which might otherwise be used for arrears of rent or preceding breach of covenant; and, with or without making such entry as aforesaid, Landlord shall have the right, by suitable notice to Tenant, forthwith to terminate this Lease.

13.2.2 Tenant covenants and agrees, notwithstanding any entry or re-entry by Landlord, whether by summary proceedings or otherwise, and notwithstanding any such termination, to pay and be liable for, on the days originally fixed herein for the payment thereof, amounts equal to the several installments of rent and other charges reserved as they would, under the terms of this Lease, become due if this Lease had not been terminated or if Landlord had not entered or re-entered, as aforesaid, and whether the Premises be relet or remain vacant, in whole or in part, or for a period less than the remainder of the term, and for the whole thereof. Tenant shall also be liable for the unamortized cost of any Tenant's Improvements and brokerage commissions. The Landlord shall make commercially reasonable efforts to relet the Premises, however, nothing herein shall require the Landlord to prioritize or otherwise lease the Premises ahead of other space. In the event the Premises be relet by Landlord, Tenant shall be entitled to a credit in the net amount of rent and other charges received by Landlord in reletting, after deduction of all expenses incurred in reletting the premises (including, without limitation, remodeling and repair costs, brokerage fees, advertising costs, inspection fees, and rental concessions, tenant allowances, and attorneys' fees and costs, and the like), and in collecting the rent in connection therewith, in the following manner:

Amounts received by Landlord after reletting shall first be applied against such Landlord's expenses, until the same are recovered, and until such recovery, Tenant shall pay, as of each day when a payment would fall due under this Lease, the amount which Tenant is obligated to pay under the terms of this Lease (Tenant's liability prior to any such reletting and such recovery not in any way to be diminished as a result of the fact that such reletting might be for a rent higher than the rent provided for in this Lease); when and if such expenses have been completely recovered, the amounts received from reletting by Landlord as have not previously been applied shall be credited against Tenant's obligations as of each day when a payment would fall due under this Lease, and only the net amount thereof shall be payable by Tenant. Further, amounts received by Landlord from such reletting for any period shall be credited only against obligations of Tenant allocable to such period, and shall not be credited against obligations of Tenant hereunder accruing subsequent or prior to such period, nor shall any credit of any kind be due for any period after the date when the term of this Lease is scheduled to expire according to its terms.

As an alternative, at the election of Landlord, Tenant will upon such termination, pay to Landlord, as damages, such a sum as at the time of such termination represents the amount of the excess, if any, of the then value of the total rent and other benefits which would have accrued to Landlord under this Lease for the remainder of the Lease Term if the Lease terms had been fully complied with by Tenant over and above the then cash rental value (in advance) of the Premises for the balance of the term. For the purposes of this Section, if Landlord elects to require Tenant to pay damages in accordance with this subsection, the total rent shall be computed by assuming that Tenant's share of additional rent would be, for the balance of the unexpired term, the amount thereof (if any) for the immediately preceding annual period payable by Tenant to Landlord.

13.2.3 In lieu of any other damages or indemnity and in lieu of full recovery by Landlord of all sums payable under all the foregoing provisions of this Section, Landlord may, by written notice to Tenant, at any time after termination of this Lease or repossession of the Premises, elect to recover, and Tenant shall thereupon pay, Liquidated Damages. "Liquidated Damages" shall be equal to (a) the aggregate of the Fixed Rent and additional rent (for the purposes of this Section, if Landlord elects to require Tenant to pay damages in accordance with this subsection, the total rent shall be computed by assuming that Tenant's share of additional rent would be, for the 24 month period after termination or repossession, equal to the amount of additional rent which accrued during the full monthly rental period immediately prior to the termination or repossession and multiplied by 24) in the twenty-four (24) months after such termination or repossession (but not more than the Fixed Rent and additional rent due for the then remainder of the Term); plus (b) the amount of rent of any kind and the remaining unamortized cost of any Tenant's Improvements and brokerage commissions accrued and unpaid at the time of termination or repossession accrued and unpaid at the time of termination or repossession. Nothing contained in this Lease shall, however, limit or prejudice the right of Landlord to prove for and obtain in proceedings for bankruptcy or insolvency by reason of the termination of this Lease, an amount equal to the maximum allowed by any statute or rule of law in effect at the time when, and governing the proceedings in which, the damages are to be proved, whether or not the amount be greater, equal to, or less than the amount of the loss or damages referred to above.

13.2.4 Without limiting any of Landlord's rights and remedies hereunder, and in addition to all other amounts Tenant is otherwise obligated to pay, it is expressly agreed that Landlord shall be entitled to recover from Tenant all costs and expenses, including reasonable attorney's fees incurred by Landlord in enforcing this Lease from and after Tenant's default.

### 13.3 INTEREST ON LATE PAYMENTS.

If any payment of Fixed Rent, additional rent or any other payment payable hereunder by Tenant to Landlord shall not be paid within thirty (30) days of the due date, the same shall bear interest from the date when the same was payable until the date paid at the lesser of (a) 12% per annum, compounded monthly, or (b) the highest lawful rate of interest which Landlord may charge to Tenant without violating any applicable law. Such interest shall constitute additional rent payable hereunder and be payable upon demand therefor by Landlord.

### 13.4 LANDLORD'S DEFAULT.

Landlord shall in no event be in default in the performance of any of Landlord's obligations hereunder unless and until Landlord shall have failed to perform such obligations within thirty (30) days, or such additional time as is reasonably required to correct any such default, after written notice by Tenant to Landlord properly specifying wherein Landlord has failed to perform any such obligation. It is the express understanding and agreement of the parties and a condition of Landlord's agreement to execute this Lease

that in no event shall Tenant have the right to terminate this Lease or seek an abatement to or offset from Fixed Rent or Additional Rent as a result of Landlord's default, but Tenant shall be entitled to seek all other remedies, at law or equity, as a result of such default. Tenant hereby waives its right to recover punitive, special or consequential damages arising out any act, omission or default by Landlord (or any party for whom Landlord is responsible). This Lease and the obligations of Tenant hereunder shall not be affected or impaired because Landlord is unable to fulfill any of its obligations hereunder or is delayed in doing so, if such inability or delay is caused by reason of a Force Majeure Event (as defined below), and the time for Landlord's performance shall be extended for the period of any such delay. Any claim, demand, right or defense by Tenant that arises out of this Lease or the negotiations which preceded this Lease shall be barred unless Tenant commences an action thereon, or interposes a defense by reason thereof, within twelve (12) months after the date of the inaction, omission, event or action that gave rise to such claim, demand, right or defense. Tenant shall look solely to the equity of Landlord in the Building for the satisfaction of Tenant's remedies. As used herein, a "Force Majeure Event" shall be any delay caused by or resulting from acts of God, war, civil commotion, fire, flood or other casualty, labor difficulties, shortages of or inability to obtain labor, materials or equipment, government regulations, unusually severe weather, or other causes beyond such party's reasonable control.

### 13.5 COSTS OF ENFORCEMENT.

Landlord and Tenant shall each pay all reasonable costs and expenses (including without limitation reasonable attorney's fees) incurred by the other party in enforcing the other party's obligations or its rights under this Lease, provided such other party prevails in enforcing such obligations or rights, such costs not to accrue for the purposes hereof until the expiration of any notice and cure period with respect to such default.

### 13.6 BANKRUPTCY AND INSOLVENCY.

If the estate created hereby shall be taken in execution, or by other process of law, or if Tenant shall be declared bankrupt or insolvent, according to law, or if any receiver be appointed for the business and property of Tenant, or if any assignment shall be made of Tenant's property for the benefit of creditors (and as to such matters involuntarily taken against Tenant, Tenant has not within sixty (60) days thereof obtained a release or discharge therefrom), then this Lease may be canceled at the option of Landlord. If, as a matter of law, Landlord has no right upon the bankruptcy of Tenant to terminate this Lease then, the rights of Tenant, as debtor, or its trustee, shall be deemed abandoned or rejected unless Tenant, as debtor, or its trustee, (a) within sixty (60) days after the date of the order for relief under Chapter 7 of the Bankruptcy Code or sixty (60) days after the date the petition is filed under Chapter 11 of the Bankruptcy Code assumes in writing the obligations under this Lease, (b) cures or adequately assures the cure of all defaults existing under this Lease on Tenant's part within such sixty (60) days, and (c) furnishes adequate assurance of future performance of the obligations of Tenant under this Lease. Adequate assurance of curing defaults means the posting with Landlord of a sum in cash sufficient to defray the costs of such cure. Adequate assurance of future performance of the Tenant's obligations under this Lease means increasing the security deposit amount by an amount equal to six (6) Monthly Installments of Fixed Rent.

Tenant shall not be permitted to assume and assign this Lease in connection with any bankruptcy or insolvency proceedings without full and complete compliance with the following provisions: (a) Landlord is provided with the following information regarding the party desiring to assume the Lease ("Assumptor") which Landlord in its sole and absolute discretion deems sufficient (1) organizational information regarding the Assumptor (2) audited financial statements for the three (3) most recent fiscal years, and (3) such other information as Landlord deems appropriate, (b) Landlord determines that the use of the Demised Premises by the intended Assignee is compatible with the character of the Building, (c) all existing defaults under this Lease are cured at least ten (10) days prior to any hearings in connection with Tenant's request to

assume and assign the Lease, (d) the Assumptor at any such hearing provides adequate assurance of its future performance of the Lease as determined by Landlord in its sole and absolute discretion, which adequately assurance shall include at least the following: (1) posting of security deposit equal to six (6) Monthly Installments of Fixed Rent, if such was not already posted by Tenant, (2) paying in advance to Landlord the next six (6) Monthly Installments of Fixed Rent, or posting an irrevocable letter of credit for such amount, (3) establishing with Landlord an escrow in advance for the full cost of all real estate taxes, and insurance, as required under the Lease for the next twelve (12) months of the Lease and thereafter on an annual basis in advance, (4) providing Landlord with an unconditional continuing guarantee of the Lease executed by the owners or officers of the Assumptor as determined by Landlord in its sole and absolute discretion, and (5) the Assumptor executes a written agreement assuming the Lease and such Lease amendments as are necessary, which agreements and amendments are satisfactory to Landlord in its sole and absolute discretion.

#### **14. MISCELLANEOUS PROVISIONS**

##### **14.1 EXTRA HAZARDOUS USE.**

Tenant covenants and agrees that Tenant will not do or permit anything to be done in or upon the Premises or the Property, or bring in anything or keep anything therein which shall increase the rate of insurance on the Premises or on the Property above the standard rate applicable to premises being occupied for the use to which Tenant has agreed to devote the Premises; and Tenant further agrees that in the event that Tenant shall do any of the foregoing, Tenant will promptly pay to Landlord, on demand, any such increase resulting therefrom which shall be due and payable as additional rent hereunder.

##### **14.2 CONTROLLED SUBSTANCES.**

14.2.1 Except for Permitted Activities (Drug-Related Activities in accordance with all laws, both terms defined below), Tenant shall not engage in any Drug-Related Activities and shall prohibit any use or occupancy of the Premises for Drug-Related Activities. Without limiting the generality of the foregoing, Tenant shall (i) not enter into an assignment or sublease, consent or permit any assignment or sublease which allows Drug-Related Activities to occur in the Premises, other than the Permitted Activities for the Permitted Uses, and (ii) expressly prohibit in any assignment or sublease any Controlled Substances Uses (defined below) and Drug-Related Activities on any portion of the Premises other than Permitted Activities for the Permitted Uses. Tenant shall not knowingly make any payments to the Landlord derived from Drug-Related Activities, other than Permitted Activities for the Permitted Uses. The provisions of this Section 13.2 are intended and shall apply notwithstanding any state or local law permitting the Controlled Substances Uses or Drug-Related Activities.

##### **14.2.2 Definitions:**

- (a) Controlled Substance means any drug or chemical whose manufacture, possession, or use is regulated by any Governmental Authority, such as illicitly used drugs or prescription medications that are designated a controlled substance by the US Drug Enforcement Agency.
- (b) Controlled Substances Uses means any cultivation, growth, creation, production, manufacture, sale, distribution, storage, handling, possession or other use of a Controlled Substance.

- (c) Controlled Substances Laws means The Federal Controlled Substances Act (21 U.S.C. § 801 et seq.) or any other similar or related federal, state or local law, ordinance, code, rule, regulation or order.
- (d) Drug-Related Activities means any Controlled Substances Uses, any violation of any Controlled Substances Law or any business, communications, financial transactions or other activities related to Controlled Substances or Controlled Substances Uses.
- (e) Permitted Activities means the Tenant or an occupant of the Building shall not be precluded from engaging in the sale, creation, production, manufacture, storage, distribution, possession or handling of any Controlled Substances in accordance with all applicable federal laws and state laws for the Permitted Uses.

#### 14.3 WAIVER.

14.3.1 Failure on the part of Landlord to complain of any action or nonaction on the part of Tenant, no matter how long the same may continue, shall never be a waiver by Landlord of any of Landlord's rights hereunder. Further, no waiver at any time of any of the provisions hereof by Landlord shall be construed as a waiver of any of the other provisions hereof, and, a waiver at any time of any of the provisions hereof shall not be construed as a waiver at any subsequent time of the same provisions. The consent or approval of Landlord to or of any action by Tenant requiring such consent or approval shall not be construed to waive or render unnecessary Landlord's consent or approval to or of any subsequent similar act by Tenant.

14.3.2 No payment by Tenant or acceptance by Landlord of a lesser amount than shall be due from Tenant to Landlord shall be treated otherwise than as a payment on account. The acceptance by Landlord of a check for a lesser amount with an endorsement or statement thereon, or upon any letter accompanying such check that such lesser amount is payment in full, shall be given no effect, and Landlord may accept such check without prejudice to any other rights or remedies which Landlord may have against Tenant. In no event shall Tenant ever be entitled to receive interest upon, or any payments on account of earnings or profits derived from any payments hereunder by Tenant to Landlord.

#### 14.4 COVENANT OF QUIET ENJOYMENT.

Tenant, upon payment of the rent and the observing, keeping and performing all of the covenants, terms and provisions of this Lease on Tenant's part to be observed, kept and performed, shall lawfully, peaceably and quietly have, hold, occupy and enjoy the Premises during the term hereof, without hindrance or ejection by any persons lawfully claiming under Landlord to have title to the Premises superior to that of Tenant, subject, however, to the rights of the holders of mortgages on the Property, and subject to the terms and conditions of this Lease. The foregoing covenant of quiet enjoyment is in lieu of any other covenant, expressed or implied.

#### 14.5 LANDLORD'S LIABILITY.

14.5.1 It is understood and agreed that the obligations, covenants or liabilities of Landlord contained in this Lease shall be binding upon Landlord and Landlord's successors only with respect to breaches occurring during Landlord's and Landlord's successors' respective ownership of Landlord's interest hereunder. Further, Tenant specifically agrees to look solely to Landlord's then equity interest in the Building at the time owned, or in which Landlord holds an interest as ground lessee, for recovery of any judgment from Landlord; it being specifically agreed that Landlord (original or successor and their respective officers, directors, stockholders, partners, managers, members, beneficial owners, trustees, employees, agents, contractors, attorneys, and mortgagees), shall never be personally liable for any such judgment, or for the payment of any monetary obligation to Tenant. The provision contained in the

foregoing sentence is not intended to, and shall not limit, any right that Tenant might otherwise have to obtain injunctive relief against Landlord or Landlord's successors in interest, or any action not involving the personal liability of Landlord (original or successor) or not involving any claim in monetary damages from Landlord's assets other than a claim limited to Landlord's equity interest aforesaid in the Building. Notwithstanding any other provision of this Lease to the contrary, in no event shall Landlord ever be liable for any indirect, special or consequential damages suffered by Tenant or Tenant's Agents from any cause whatsoever.

14.5.2 With respect to any services, including, without limitation, electric current or water to be furnished by Landlord to Tenant, or obligations to be performed by Landlord hereunder, Landlord shall in no event be liable for failure to furnish or perform the same when (and the date for performance of the same shall be postponed so long as Landlord is) prevented from doing so by strike, lockout, breakdown, accident, order or regulation of or by any governmental authority, or failure of supply, or inability by the exercise of reasonable diligence to obtain supplies, parts or employees necessary to furnish such services, or perform such obligations or because of war or other emergency, or for any cause beyond Landlord's reasonable control, or for any cause due to any act or neglect of Tenant or Tenant's Agents.

#### 14.6 NOTICE TO MORTGAGEE AND GROUND LESSOR.

After receiving notice from any person, firm or other entity that it holds a mortgage which includes the Premises as part of the mortgaged premises, or that it is the ground lessor under a lease with Landlord, as ground lessee, which includes the Premises as part of the demised premises, no notice from Tenant to Landlord shall be effective unless and until a copy of the same is given to such holder or ground lessor, and the curing of any of Landlord's defaults by such holder or ground lessor shall be treated as performance by Landlord. For the purposes of this Lease, the term "mortgage" includes a mortgage on a leasehold interest of the Landlord (but not one on Tenant's leasehold interest).

Tenant acknowledges that, as of the date of this Lease, the mortgage holder is Nationwide Life Insurance Company, One Nationwide Plaza, Columbus, Ohio 43215, Attention: Real Estate Investments 1-05-701.

#### 14.7 ASSIGNMENT OF RENTS.

With reference to any assignment by Landlord of Landlord's interest in this Lease, or the rents payable hereunder, conditional in nature or otherwise, which assignment is made to the holder of a mortgage or ground lease on property which includes the Premises, Tenant agrees:

- (a) that the execution thereof by Landlord, and the acceptance thereof by the holder of such mortgage, or the ground lessor, shall never be treated as an assumption by such holder or ground lessor of any of the obligations of Landlord hereunder, unless such holder or ground lessor shall, by notice sent to Tenant, specifically otherwise elect; and
- (b) that, except as aforesaid, such holder or ground lessor shall be treated as having assumed Landlord's obligations hereunder only upon foreclosure of such holder's mortgage and the taking of possession of the Premises, or in the case of a ground lessor, the assumption of Landlord's position hereunder by such ground lessor. In no event shall the acquisition of title to the Building and the land on which the same is located by a purchaser which, simultaneously therewith, leases the entire Building or such land back to the seller thereof, be treated as an assumption by operation of law or otherwise of Landlord's obligations hereunder, but Tenant shall look solely to such seller-lessee, and its successors from time to time in title, for performance of Landlord's obligations hereunder. In any such event, this Lease shall be subject and subordinate to the lease to such seller. For all purposes such

seller-lessee, and its successors in title, shall be the landlord hereunder unless and until Landlord's position shall have been assumed by such purchaser-lessor.

#### 14.8 MECHANIC'S LIENS.

Tenant agrees immediately to discharge (either by payment or by the filing of the necessary bond, or otherwise) any mechanics', materialmen's or other lien or encumbrance against the Premises and/or Landlord's interest therein, which liens may arise out of any payment due for, or purported to be due for, any labor, services, materials, supplies or equipment alleged to have been furnished to or for Tenant in, upon or about the Premises. If Tenant shall fail to so discharge such lien or encumbrance then, in addition to any other right or remedy of Landlord, Landlord may, but shall not be obligated to, discharge same (either by payment or by filing of the necessary bond or otherwise) and any amount paid by Landlord for any of the aforesaid purposes, and all actual and legal and other expenses of Landlord, including actual counsel fees, in or about procuring the discharge of such lien, together with all necessary disbursements in connection therewith, and together with interest thereon at the rate set forth in Section 12.3 from the date of payment, shall be repaid by Tenant to Landlord on demand, and if unpaid may be treated as additional rent.

#### 14.9 NO BROKERAGE.

Tenant warrants and represents that Tenant has not dealt with any broker other than the Brokers, named in Section 1.2 hereof, in connection with the consummation of this Lease, and in the event any claim is made against the Landlord relative to dealings with brokers other than the Brokers, Tenant shall defend the claim against Landlord with counsel of Landlord's selection and save harmless and indemnify Landlord on account of loss, cost or damage which may arise by reason of any such claim.

#### 14.10 INVALIDITY OF PARTICULAR PROVISIONS.

If any term or provision of this Lease or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Lease, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Lease shall be valid and enforceable to the fullest extent permitted by law.

#### 14.11 PROVISIONS BINDING, ETC.

Except as herein otherwise provided, the terms hereof shall be binding upon and shall inure to the benefit of the successors and assigns, respectively, of Landlord and Tenant and, if Tenant shall be an individual, upon and to his heirs, executors, administrators, successors and assigns. If two or more persons or entities are named as Tenant herein, each of such person or entity shall be jointly and severally liable for the obligations of the Tenant hereunder, and Landlord may proceed against any one without first having commenced proceedings against any other of them. The reference contained to successors and assigns of Tenant is not intended to constitute a consent to assignment by Tenant, but has reference only to those instances in which Landlord may later give consent to a particular assignment as required by those provisions of Section 5 hereof.

#### 14.12 RECORDING.

Tenant agrees not to record the within Lease, but, if required by applicable law in order to protect Tenant's interest in the Premises, each party hereto agrees, on the request of the other, to execute a so-called memorandum of lease or short form lease in recordable form and complying with applicable law and reasonably satisfactory to Landlord's attorneys. In no event shall such document set forth the rent or other



charges payable by Tenant under this Lease; and any such document shall expressly state that it is executed pursuant to the provisions contained in this Lease and is not intended to vary the terms and conditions of this Lease.

#### 14.13 NOTICES.

Whenever, by the terms of this Lease, notice shall or may be given either to Landlord or to Tenant, such notice shall be in writing and shall be deemed duly given if sent either (i) by registered or certified mail, postage prepaid, return receipt requested, or (ii) by overnight mail service as provided by the U.S. mail or by a nationally recognized private common carrier with provisions for receipt of delivery, or (iii) by hand, and addressed as follows:

- (a) If intended for Landlord, addressed to Landlord at the Present Mailing Address of Landlord (as set forth in Section 1.2 of this Lease) (or to such other address or addresses as may from time to time hereafter be designated by Landlord by like notice).
- (b) If intended for Tenant: if given prior to the Commencement Date, addressed to Tenant at the Present Mailing Address of Tenant (as set forth in Section 1.2 of this Lease); and if given after the Commencement Date, addressed to Tenant at the Premises (or to such other address or addresses as may from time to time hereafter be designated by Tenant by like notice).

All such notices shall be effective when delivered in hand, or when deposited in the United States mail within the continental United States or when sent by overnight mail.

#### 14.14 WHEN LEASE BECOMES BINDING.

Employees or agents of Landlord have no authority to make or agree to make a lease or any other agreement or undertaking in connection herewith. The submission of this document for examination and negotiation does not constitute an offer to lease, or a reservation of, or option for, the Premises, and this document shall become effective and binding only upon the execution and delivery hereof by both Landlord and Tenant. All negotiations, considerations, representations and understandings between Landlord and Tenant are incorporated herein and may be modified or altered only by written agreement between Landlord and Tenant, and no act or omission of any employee or agent of Landlord shall alter, change or modify any of the provisions hereof.

#### 14.15 PARAGRAPH HEADINGS.

The section and paragraph headings throughout this instrument are for convenience and reference only, and the words contained therein shall in no way be held to explain, modify, amplify or aid in the interpretation, construction or meaning of the provisions of this Lease. This Lease shall be interpreted as if it was prepared by both parties and ambiguities shall not be resolved in favor of Tenant because all or a portion of this Lease was prepared by Landlord. As used in this Lease the words tenant and landlord include the plural as well as the singular. Words used in the neuter gender include the masculine and feminine gender.

#### 14.16 RIGHTS OF MORTGAGEE.

This Lease shall be subordinate to any existing mortgage currently encumbering the Premises and to any and all advances made or to be made thereunder and any extensions, renewals or modifications thereof, unless the holder of such mortgage elects to cause the Lease to be superior to such mortgage. This Lease shall be automatically subordinate to any future mortgages or ground leases from time to time encumbering the Premises, executed or delivered subsequent to the date of this Lease and to any and all advances made

or to be made thereunder and any extensions, renewals or modifications thereof (unless the holder or ground lessor elects to cause the Lease to be superior to such mortgage or ground lease), provided such mortgagee or ground lessor enters into an agreement (upon such terms as are customarily required by institutional lenders) recognizing Tenant under this Lease and providing that in the event of a foreclosure Tenant shall remain undisturbed under this Lease if Tenant is not in default (after applicable notice and grace periods) under any of the terms and conditions of this Lease (a “nondisturbance agreement”). Tenant agrees to execute such instruments of subordination in confirmation of the foregoing agreement as such holder may request and similar to the attached Exhibit E. Tenant hereby appoints such holder as Tenant’s attorney-in-fact to execute such subordination agreement upon default of Tenant in complying with such holder’s request. Landlord agrees, upon written request from Tenant, to use reasonable efforts to obtain a nondisturbance agreement from the holder of the existing mortgage on the Premises.

#### 14.17 STATUS REPORT.

Recognizing that Landlord may find it necessary to establish to third parties, such as accountants, banks, mortgagees, purchasers or the like, the then current status of performance hereunder, Tenant, on the request of Landlord made from time to time, will within 10 days of such request furnish to Landlord, or the holder of any mortgage encumbering the Premises, or such other party, as the case may be, a statement in form provided by Landlord, of the status of any matter pertaining to this Lease, including, without limitation:

- (a) That the Lease is unmodified and in full force and effect or, if there has been any modification, that the same is in full force and effect, as modified and stating any such modification;
- (b) Whether or not there are any existing setoffs or defenses against the enforcement of any of the terms, agreements, covenants and conditions of this Lease and any modifications thereof on the part of Tenant to be performed or complied with, and if so, specifying the same;
- (c) The date to which Fixed Rent and all additional rent and other charges have been paid; and
- (d) Any other matters reasonably requested by the Landlord or such other party.

Any statement furnished pursuant to this Section may be relied upon by Landlord, any mortgagee or ground lessee, any purchaser, or by any other third party interested in the status of this Lease or the Premises. Tenant hereby irrevocably appoints Landlord as attorney in fact for the Tenant with full power and authority to execute and deliver in the name of Tenant such status report if Tenant fails to deliver the same within such period and such certificate as signed by Landlord shall be fully binding on Tenant, if Tenant fails to deliver a contrary certificate within five (5) days after receipt by Tenant of a copy of the certificate executed by Landlord on behalf of Tenant. At Landlord's option, the failure of Tenant to deliver such statement within such time shall constitute a material default of Tenant hereunder, or it shall be conclusive upon Tenant that (a) this Lease is in full force and effect, without modification except as may be represented by Landlord, (b) there are no uncured defaults in Landlord's performance, (c) not more than one (1) month's Fixed Rent has been paid in advance, (d) all tenant improvements to be constructed by Landlord, if any, have been completed in accordance with Landlord's obligations and (e) Tenant has taken possession of the Premises.

#### 14.18 TENANT’S FINANCIAL CONDITION.

Tenant warrants and represents that all information furnished to Landlord or Landlord’s representatives in connection with this Lease are true and correct and in respect of the financial condition of Tenant, properly reflect the same without material adverse change, as of the date hereof. Upon Landlord’s request, which

may be made no more often than semi-annually, Tenant shall furnish to Landlord, at Tenant's sole cost and expense, then current financial statements of Tenant, audited (if audited statements have been recently prepared on behalf of Tenant, or otherwise certified as being true and correct by the chief financial officer of Tenant).

#### 14.19 ADDITIONAL REMEDIES OF LANDLORD; SURVIVAL.

14.19.1 Landlord shall have the right, but shall not be required to do so, to pay such sums or do any act which requires the expenditure of monies which may be necessary or appropriate by reason of the failure or neglect of Tenant to perform any of the provisions of this Lease, and in the event of the exercise of such right by Landlord, Tenant agrees to pay to Landlord forthwith upon demand all such sums; and if Tenant shall default in such payment, Landlord shall have the same rights and remedies as Landlord has hereunder for the failure of Tenant to pay the Fixed Rent.

14.19.2 Except as otherwise set forth herein, any obligations of Tenant as set forth herein (including, without limitation, rental and other monetary obligations, repair obligations and obligations to indemnify Landlord), shall survive the expiration or earlier termination of this Lease, and Tenant shall immediately reimburse Landlord for any expense incurred by Landlord in curing Tenant's failure to satisfy any such obligation (notwithstanding the fact that such cure might be effected by Landlord following the expiration or earlier termination of this Lease).

#### 14.20 WAIVER OF COUNTERCLAIMS.

If Landlord commences any summary proceeding for possession of the Premises based on an event of default by Tenant hereunder, Tenant hereby waives the right to interpose any non-compulsory counterclaim of whatever nature or description in any such proceeding; provided, however, that Tenant shall have the right to bring a separate action against Landlord to the extent otherwise allowed under this Lease.

#### 14.21 CONSENTS.

Except as otherwise specifically provided in this Lease, any consent or approval to be given by Landlord under this Lease may be withheld or denied at Landlord's sole and absolute discretion.

#### 14.22 HOLDING OVER.

If for any reason Tenant holds over or occupies the Premises (or any portion thereof, including as a result of Tenant's failure to surrender all or any portion thereof as required hereunder) beyond the Term, Tenant shall have no more rights than a tenant by sufferance (or, at Landlord's sole option, such holding over shall constitute a tenancy from month to month, terminable by either party upon thirty (30) days prior written notice to the other); and, in any case, Tenant shall be liable for the full payment of the monthly installment of rent during such period in an amount equal to two times the rent (including Fixed Rent and all additional rent) payable hereunder during the final year of the Term prior to such holding over, for any month or portion thereof (without reduction for a partial month), that Tenant so holds over or occupies the Premises, with such tenancy otherwise on the same terms and conditions as set forth in the Lease, as far as applicable. In addition, if Tenant holds over beyond any such thirty (30) day written notice, 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 such hold over. Nothing in this Section shall be construed to permit such holding over, or to limit Landlord's other rights and remedies on account thereof.

## 14.23 NON-SUBROGATION.

Landlord and Tenant mutually agree that, with respect to any hazard which is covered by property insurance then being carried by them, respectively, the one carrying such insurance and suffering such loss releases the other of and from any and all claims with respect to such loss, to the extent of such coverage; and they further mutually agree that their respective insurance companies shall have no right of subrogation against the other on account thereof. Such waiver shall be included in the policy, or such other party shall be named as an additional insured in such policy, and the other party shall reimburse the party paying such premium the amount of such extra premium. Each such policy which shall so name a party hereto as an additional insured shall contain the agreement of the insurer that the policy will not be canceled without at least thirty (30) days notice to both insureds and that the act or omission of on insured shall not invalidate the policy as to the other insured.

## 14.24 ENVIRONMENTAL HAZARDS.

14.24.1 Tenant and Tenant's Agents shall not use, maintain, generate, allow or bring on the Premises or the Property or transport or dispose of, on or from the Premises or the Property (whether into the ground, into any sewer or septic system, into the air, by removal off-site or otherwise) any Hazardous Matter (as hereinafter defined).

14.24.2 Tenant shall promptly deliver to Landlord copies of any notices, orders or other communications received from any governmental agency or official affecting the Premises and concerning alleged violations of the Environmental Requirements (hereinafter defined).

14.24.3 Tenant shall save Landlord (together with its officers, directors, stockholders, partners, beneficial owners, trustees, managers, members, employees, agents, contractors, attorneys, and mortgagees) harmless and indemnified from and against any and all Environmental Damages (hereinafter defined) which may be asserted by Tenant, any other person or entity, or government agency or which the indemnified parties may sustain or be put to on account of: (a) the presence or release of any Hazardous Matter upon, in or from the Premises during the Term and during any period when the Tenant, or Tenant's Agents are occupying the Premises or any part thereof, unless proven to have been caused by Landlord or Landlord's employees, agents or contractors; (b) the presence or release of any Hazardous Matter upon, in or from the Property caused by the act, omission or default of Tenant or Tenant's Agents; (c) the activities or other action or inaction of Tenant or Tenant's Agents in violation of Environmental Requirements; and (d) the breach of any of Tenant's obligations under this Section 13.23.

14.24.4 The provisions of this Section shall be in addition to any other obligations and liabilities Tenant may have to Landlord under this Lease or otherwise at law or in equity, and in the case of conflict between this Section 13.23 and any other provision of this Lease, the provision imposing the most stringent requirement on Tenant shall control. The obligations of Tenant under this Section 13.23 shall survive the expiration or termination of this Lease and the transfer of title to the Premises.

14.24.5 The following terms as used herein shall have the meanings set forth below:

"Hazardous Matter" shall mean any substance: (a) which is or becomes defined as Hazardous Substance, Hazardous Waste, Hazardous Material or Oil under The Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Section 9601 et seq., M.G.L. Chapter 21C, M.G.L. Chapter 21D or M.G.L. Chapter 21E, and the regulations promulgated thereunder, as same may be amended from time to time; or (b) which is toxic, explosive, corrosive, flammable, infectious, radioactive, carcinogenic, mutagenic or otherwise hazardous to health or the environment and which is or

becomes regulated and the presence of which requires investigation or remediation pursuant to any applicable law.

“Environmental Requirements” shall mean all applicable law, the provisions of any and all approvals, and the terms and conditions of this Lease insofar as same relate to the release, maintenance, use, keeping in place, transportation, disposal or generation of Hazardous Matter, including without limitation those pertaining to reporting, licensing, permitting, health and safety of persons, investigation, containment, remediation, and disposal.

“Environmental Damages” shall mean all liabilities, injuries, losses, claims, damages (whether special, consequential or otherwise), settlements, attorneys’ and consultants’ fees, fines and penalties, interest and expenses, and costs of environmental site investigations, reports and cleanup, including without limitation costs incurred in connection with: any investigation or assessment of site conditions or of health of persons using the Building or the Lot; risk assessment and monitoring; any cleanup, remedial, removal or restoration work required by any governmental agency or recommended by Landlord’s environmental consultant; any decrease in value of Landlord’s Property; any damage caused by loss or restriction of rentable or usable space in Landlord’s Property; or any damage caused by adverse impact on marketing or financing of Landlord’s Property.

#### 14.25 SECURITY DEPOSIT.

Simultaneously with the execution and delivery of this Lease, Tenant shall deliver to Landlord a security deposit (the “Security Deposit”), which Security Deposit shall be in the Security Deposit Amount (as defined in Section 1.2) and shall consist either of cash or of a clean, irrevocable letter of credit satisfactory in form and content to Landlord and issued by an FDIC insured bank located in Boston reasonably satisfactory to Landlord in favor of the Landlord. During the Term hereof, and any extensions thereof, and for ninety (90) days after the expiration of the Term, or for so long thereafter as Tenant is in possession of the Premises or has unsatisfied obligations hereunder to Landlord, the Security Deposit shall be security for the full and timely performance of Tenant’s obligations under this Lease; which cash may be used or letter of credit drawn upon by Landlord and applied from time to time against outstanding obligations of Tenant hereunder without notice or demand. Tenant shall have no right to require Landlord to so apply the Security Deposit, nor shall Tenant be entitled to credit the same against rents or other sums payable hereunder; no interest shall accrue thereon. If the Security Deposit is in the form of a letter of credit, during the entire Term hereof, including any extension thereof, Tenant shall cause said letter of credit to be renewed, in identical form to that delivered herewith, no later than thirty (30) days prior to the date of expiration of same. Without limiting any other remedies of Landlord, in the event that Tenant fails to renew any letter of credit given hereunder at least thirty (30) days prior to the date of expiration thereof, then Landlord shall have the right to draw down the entire amount of said letter of credit and hold such sums as a cash deposit. If and to the extent that Landlord makes such use of the Security Deposit, or any part thereof, the sum so applied by Landlord (from cash or from a drawing on the letter of credit) shall be restored to the Security Deposit, in cash, by Tenant upon notice from Landlord, and failure to pay Landlord the amount to be so restored (within the grace period applicable to Fixed Rent hereunder) shall be a default hereunder giving rise to all of Landlord’s rights and remedies applicable to a default in the payment of rent. In the event of a change of circumstance relating to the bank issuing the letter of credit, or Landlord otherwise reasonably believes the financial conditions of the issuing bank has been degraded, Landlord reserves the right to require Tenant to replace the letter of credit from time to time with a substitute similar letter of credit issued by another bank satisfactory to Landlord. No trust relationship is created herein between Landlord and Tenant with respect to said Security Deposit. Tenant acknowledges that the Security Deposit is not an advance payment of any kind or a measure of Landlord’s damages in the event of Tenant’s default; Landlord shall not be obliged to keep the Security Deposit as a separate fund or pay interest thereon but may commingle the Security Deposit with its own funds provided that Landlord shall be able to separately

account for the Security Deposit. Tenant hereby waives the provisions of any law which is inconsistent with this Section 13.25.

#### 14.26 GOVERNING LAW.

The Lease shall be governed exclusively by the provisions hereof and by the laws of The Commonwealth of Massachusetts as the same may from time to time exist.

#### 14.27 SUBSTITUTION OF OTHER PREMISES.

Landlord shall have the option at any time to relocate Tenant to any other leasable space in the Office Park provided that said space shall be approximately the same size as the Premises and that Landlord shall pay the cost of moving Tenant's furniture and equipment to the new space with prior written notice to the Tenant. The new space shall include tenant improvements that are substantially equivalent to the tenant improvements contained in the Premises, and the cost of any required tenant improvements shall be paid by Landlord. Landlord shall deliver substitute space to Tenant not more than one hundred eighty (180) days after Tenant approves plans for the construction of required tenant improvements at the new space, if any. Tenant shall not unreasonably withhold or delay its approval of any plans for the construction of tenant improvements. Landlord shall give Tenant not less than thirty (30) days advance notice of the estimated move in date. Prior to the date that Tenant is moved to the new space, Tenant shall remain in the Premises and shall continue to perform all of its obligations under this Lease. After Tenant moves into the new space, this Lease shall remain in full force and effect and be deemed applicable to such new space, except as to Fixed Rent, Tenant's share of Operating Expenses, all of which shall be adjusted based on the relationship between the number of rentable square feet in the original Premises and the number of rentable square feet in the new space. Upon Tenant's election to be relocated, Landlord and Tenant shall amend this Lease to provide for the relocation of the Premises.

If the proposed substitute space will not meet the needs of Tenant, at Tenant's reasonable discretion, the Tenant shall have the option of rejecting the relocation. In the event the Tenant rejects the relocation proposal, Landlord may elect to allow Tenant to remain in the Premises pursuant to the then-current lease term or terminate the lease without penalty to either party.

#### 14.28 SECURITY MEASURES.

Tenant acknowledges that Landlord shall have no obligation to provide guard service or other security measures for the benefit of the Premises or the Property, and Landlord shall have no liability to Tenant due to its failure to provide such services. Tenant assumes all responsibility for the protection of Tenant, its agents, employees, contractors and invitees and the property of Tenant and of Tenant's agents, employees, contractors and invitees from acts of third parties. Nothing herein contained shall prevent Landlord, at Landlord's sole option, from implementing security measures for the Building or any part thereof, in which event Tenant shall participate in such security measures and the cost thereof shall be included within the definition of Operating Expenses, and to the maximum extent permissible by law, Landlord shall have no liability to Tenant and its agents, employees, contractors and invitees arising out of Landlord's negligent provision of security measures. Landlord shall have the right, but not the obligation, to require all persons entering or leaving the Building to identify themselves to a security guard and to reasonably establish that such person should be permitted access to the Building.

#### 14.29 EASEMENTS.

Landlord reserves to itself the right, from time to time, to grant such easements, rights and dedications that Landlord deems necessary or desirable, and to cause the recordation of parcel maps and restrictions, so long as such easements, rights, dedications, maps and restrictions do not unreasonably interfere with the use of

the Premises by Tenant. Tenant shall sign any of the aforementioned documents within thirty (30) days after Landlord's request and Tenant's failure to do so shall constitute a material default by Tenant. The obstruction of Tenant's view, air, or light by any structure erected in the vicinity of the Property, whether by Landlord or third parties, shall in no way affect this Lease or impose any liability upon Landlord.

#### 14.30 CHANGES TO PROPERTY.

Landlord shall have the right, from time to time, to make changes to the size, shape, location, number and extent of the improvements comprising the Property and to consent to changes in the Office Park (hereinafter referred to collectively as "Changes") including, but not limited to, the Building interior and exterior, the common areas and elements thereof, elevators, escalators, restrooms, HVAC, electrical systems, communication systems, fire protection and detection systems, plumbing systems, security systems, parking control systems, driveways, entrances, parking spaces, parking areas and landscaped areas. In connection with the Changes, Landlord may, among other things, erect scaffolding or other necessary structures at the Property, limit or eliminate access to portions of the Property, including portions of the common areas, or perform work in the Building, which work may create noise, dust or leave debris in the Building. Tenant hereby agrees that such Changes and Landlord's actions in connection with such Changes shall in no way constitute a constructive eviction of Tenant or entitle Tenant to any abatement of rent. Although Landlord shall use commercially reasonable efforts to minimize any material interference of Tenant's use or occupancy of or access to the Premises, Landlord shall have no responsibility or for any reason be liable to Tenant for any direct or indirect injury to or interference with Tenant's business arising from the Changes, nor shall Tenant be entitled to any compensation or damages from Landlord for any inconvenience or annoyance occasioned by such Changes or Landlord's actions in connection with such Changes.

#### 14.31 INCORPORATION OF PRIOR AGREEMENTS.

This Lease and the Exhibits hereto contain all agreements of the parties with respect to the Lease of the Premises and any other matter mentioned herein. No prior or contemporaneous agreement or understanding pertaining to any such matter shall be effective. Except as otherwise stated in this Lease, Tenant hereby acknowledges that no real estate broker nor Landlord or any employee or agents of any of said persons has made any oral or written warranties or representations to Tenant concerning the condition or use by Tenant of the Premises or the Property or concerning any other matter addressed by this Lease.

#### 14.32 AMENDMENTS.

This Lease may be modified in writing only, signed by the parties in interest at the time of the modification.

#### 14.33 COVENANTS.

This Lease shall be construed as though Landlord's covenants contained herein are independent and not dependent and Tenant hereby waives the benefit of any law to the contrary. All provisions of this Lease to be observed or performed by Tenant are both covenants and conditions.

#### 14.34 AUCTIONS.

Tenant shall not conduct, nor permit to be conducted, either voluntarily or involuntarily, any auction upon the Premises or the Property. The holding of any auction on the Premises or Common Areas in violation of this Section 13.33 shall constitute a default hereunder.

## 14.35 MERGER.

The voluntary or other surrender of this Lease by Tenant, or a mutual cancellation thereof, or a termination by Landlord, shall not result in the merger of Landlord's and Tenant's estates, and shall, at the option of Landlord, terminate all or any existing subtenancies or may, at the option of Landlord, operate as an assignment to Landlord of any or all of such subtenancies.

## 14.36 AUTHORITY.

If Tenant is a corporation, limited liability corporation, trust, or general or limited partnership, Tenant, and each individual executing this Lease on behalf of such entity, represents and warrants that such individual is duly authorized to execute and deliver this Lease on behalf of said entity, that said entity is duly authorized to enter into this Lease, and that this Lease is enforceable against said entity in accordance with its terms. If Tenant is a corporation, trust or partnership, Tenant shall deliver to Landlord upon request evidence of such authority satisfactory to Landlord.

## 14.37 RELATIONSHIP OF PARTIES.

Nothing contained in this Lease shall be deemed or construed by the parties hereto or by any third party to create the relationship of principal and agent, partnership, joint venturer or any association between Landlord and Tenant.

## 14.38 RIGHT TO LEASE.

Landlord reserves the absolute right to effect such other tenancies in the Property as Landlord in its sole discretion shall determine, and Tenant is not relying on any representation that any specific tenant or number of tenants will occupy the Property.

## 14.39 CONFIDENTIALITY.

Tenant acknowledges and agrees that the terms of this Lease are confidential. Disclosure of the terms hereof could adversely affect the ability of Landlord to negotiate other leases with respect to the Building and may impair Landlord's relationship with other tenants of the Building. Tenant agrees that it and its partners, officers, directors, employees, brokers, and attorneys, if any, shall not disclose the terms and conditions of this Lease to any other person or entity without the prior written consent of Landlord which may be given or withheld by Landlord, in Landlord's sole discretion, except as required for financial disclosures or securities filings. It is understood and agreed that damages alone would be an inadequate remedy for the breach of this provision by Tenant, and Landlord shall also have the right to seek specific performance of this provision and to seek injunctive relief to prevent its breach or continued breach.

## 14.40 OFAC CERTIFICATION AND INDEMNITY.

Executive Order No. 13224 on Terrorist Financing, effective September 24, 2001 (the "Executive Order"), and the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (Public Law 10756, the "Patriot Act") prohibit certain property transfers. Tenant hereby represents and warrants to Landlord (which representations and warranties shall be deemed to be continuing and re-made at all times during the Term) that neither Tenant nor any stockholder, manager, beneficiary, partner, or principal of Tenant is subject to the Executive Order, that none of them is listed on the United States Department of the Treasury Office of Foreign Assets Control ("OFAC") list of "Specially Designated Nationals and Blocked Persons" as modified from time to time, and that none of them is otherwise subject to the provisions of the Executive Order or the Patriot Act. The most current list of "Specially Designated Nationals and Blocked Persons" can be found at



http://www.treas.gov/offices/eotffc/ofac/sdn/index.html. Tenant shall from time to time, within ten days after request by Landlord, deliver to Landlord any certification or other evidence requested from time to time by Landlord in its reasonable discretion, confirming Tenant’s compliance with these provisions. No assignment or subletting shall be effective unless and until the assignee or subtenant thereunder delivers to Landlord written confirmation of such party’s compliance with the provisions of this subsection, in form and content satisfactory to Landlord. If for any reason the representations and warranties set forth in this subsection, or any certificate or other evidence of compliance delivered to Landlord hereunder, is untrue in any respect when made or delivered, or thereafter becomes untrue in any respect, then an event of default hereunder shall be deemed to occur immediately, and there shall be no opportunity to cure. Tenant shall indemnify, defend with counsel reasonably acceptable to Landlord, and hold Landlord harmless from and against, any and all liabilities, losses, claims, damages, penalties, fines, and costs (including attorneys’ fees and costs) arising from or related to the breach of any of the foregoing representations, warranties, and duties of Tenant. The provisions of this subsection shall survive the expiration or earlier termination of this Lease for the longest period permitted by law.

14.41 WAIVER OF JURY TRIAL.

LANDLORD AND TENANT HEREBY WAIVE THEIR RESPECTIVE RIGHT TO TRIAL BY JURY OF ANY CAUSE OF ACTION, CLAIM, COUNTERCLAIM OR CROSS-COMPLAINT IN ANY ACTION, PROCEEDING AND/OR HEARING BROUGHT BY EITHER LANDLORD AGAINST TENANT OR TENANT AGAINST LANDLORD ON ANY MATTER WHATSOEVER ARISING OUT OF, OR IN ANY WAY CONNECTED WITH, THIS LEASE, THE RELATIONSHIP OF LANDLORD AND TENANT, TENANT’S USE OR OCCUPANCY OF THE PREMISES, OR ANY CLAIM OF INJURY OR DAMAGE, OR THE ENFORCEMENT OF ANY REMEDY UNDER ANY LAW, STATUTE, OR REGULATION, EMERGENCY OR OTHERWISE, NOW OR HEREAFTER IN EFFECT.

Witness the execution hereof, under seal, in any number of counterparts, each of which counterparts shall be deemed an original for all purposes, as of the day and year first above written.

TENANT:  
AWARE, Inc.

By: /s/ David Barcelo  
Name: David Barcelo  
Title: CFO  
Hereunto duly authorized

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Hereunto duly authorized

LANDLORD:  
76/80 BURLINGTON GROUP LLC

By: /s/ Robert L. Duffy, Jr.

Name: Robert L. Duffy, Jr.  
Title: Member

**EXHIBIT A**  
**THE PREMISES**



Ex. A – 1

**EXHIBIT A-1****THE TENANT IMPROVEMENTS**

Landlord shall conduct the following Tenant Improvements, at Landlord's cost and expense (but subject to Section 6.2) using available building standard quantities and materials:

- Build out per plan attached as Exhibit C
- Exhibit C is a reasonable draft of the parties' expectations and may be amended or altered, in which case the Landlord and the Tenant will work together in good faith to agree upon any such alterations.

Not included in the Tenant Improvements are any and all costs or work associated with:

- (i) telephone/data/voice/network throughout the Premises; and
- (ii) cubicles and/or open areas, including but not limited to costs or work associated with their purchase, installation or setup, and any telephone/data/voice/network and/or A/C power wiring, coring, through floor access modules, or other wiring therefore; and
- (iii) Interior blinds; the installation of any interior blinds and/or window treatments which may be visible from the common area or outside the Premises is subject to the Landlord's written consent; and
- (iv) Coring the conference room floor(s) and/or the server room(s), if any; and
- (v) Furniture and appliances.

Landlord shall conduct the following Optional Work, which is not part of the Tenant Improvements, at Tenant's sole cost and expense, and Landlord is not responsible for any delays to the Substantial Completion Date arising from the Optional Work:

- Server Room, (a) Landlord has a one (1) ton unit available for use by Tenant as Supplemental HVAC for the Server room. This unit can be delivered in good working order as of the Commencement Date. However, Tenant shall be responsible for all costs and expenses associated with the unit operation and upkeep after the Commencement Date; (b) Tenant may purchase a six (6) ton HVAC unit for use by Tenant as Supplemental HVAC for the Server room. This unit will be separately metered from the "house" HVAC serving the Premises and the Tenant will pay for all utilities therefore directly to the provider. Notwithstanding the above, Tenant shall be solely responsible for all costs and expenses associated with any Supplemental HVAC, including all costs and expenses associated with the purchase (not applicable to the one (1) ton unit), installation, maintenance, relocation, repair, replacement and removal (if applicable). Landlord consents to the condenser for the six (6)-ton HVAC unit to be located on the roof, location to be determined by the Landlord, with the air handler for said unit to be located within the Server Room.
- Rooftop Generator, Tenant shall be permitted to install a natural gas rooftop generator of up to 65KW contingent upon Tenant satisfying any Landlord concerns, including but not limited to questions regarding placement, weight, installation, vibration, roof penetrations, etc. Furthermore, Tenant agrees to cooperate with Landlord in the event the Landlord needs to access Tenant space to perform structural or other work associated with placing another generator or other equipment on the roof.

Except for the items noted above, the Premises shall be delivered in "AS IS" condition and Tenant acknowledges that by taking possession of the Premises, the Premises "AS IS" are suitable for its intended use. Tenant shall be responsible for any delays, costs and expenses caused by Tenant's failure to make decisions affecting the Tenant Improvements or Optional Work in a timely manner. Tenant shall be solely responsible for all costs, expenses and delays resulting from requests by Tenant for work, quantities or materials in excess of the Tenant Improvements noted above.

**EXHIBIT B****CURRENT RULES AND REGULATIONS**

1. Tenant will review the non-binding tenant manual provided prior to move-in at Building and will provide referenced forms including emergency contacts, designated tenant representative, and card access requests and will notify Landlord when changes in information occur.
2. The entrances, vestibules, passages, corridors, halls, elevators and stairways shall not be encumbered nor obstructed by Tenant, Tenant's agents, servants, employees, licensees or visitors, or be used by them for any purpose other than ingress or egress to and from the Premises. Landlord reserves the right to reasonably restrict and regulate the use of aforementioned public areas of the Building by Tenant, Tenant's agents, employees, servants, licensees and visitors and by persons making deliveries to Tenant.
3. Movement in or out of the Building of furniture or office equipment which requires the use of elevators or stairways or the movement through the main Building entrance shall be restricted to the after business hours designated by Landlord. All such movement shall be under the supervision of Landlord and performed in the manner agreed upon between Tenant and Landlord by pre-arrangement before performance. Such pre-arrangement initiated by Tenant will include the determination by Landlord and subject to Landlord's reasonable discretion, relating to the time, method, and routing of the items' movement, as well as reasonable limitations imposed by safety, appearance or other reasonable concerns which may include the prohibition of equipment or any other item from being brought into the Building, as well as the method of the items' movement through the Building. Tenant shall assume with its contractors, all risk as to damage caused by any such movement or property being moved or injury to persons or public engaged or not engaged in such movement, including equipment, property, and personnel of Landlord if damaged or injured as a result of Tenant or its contractor's negligent or willful acts in connection with such Tenant arranged moving from the time of entering the property to the completion of work. Landlord shall not be liable for the acts of any person engaged in, or any damage or loss to any of said property or persons resulting from any act in connection with such moving performed by Tenant arrangement, except relating to Landlord's or its agent's or contractor's negligence or misconduct.
4. All deliveries, inclusive of packages, office supplies, etc., must be made via the freight elevator during Normal Building Operating Hours. Landlord's written approval must be obtained for any delivery made after business hours and Tenant will be responsible for the expense of the security attendant who monitors access to the Building during the period of such delivery.
5. Tenant shall not permit the parking or standing of delivery vehicles to interfere with the use of any driveway, walk, parking area or other common areas.
6. No hand trucks or delivery dollies, except those equipped with rubber tires and padded side guards, shall be used in any space, or in public halls of the building, either by Tenant or by jobbers or others in the delivery or receipt of merchandise.
7. All deliveries to the Tenant must be accepted by Tenant. The Landlord and its agents or employees will not accept, sign for, or hold Tenant mail, packages, or deliveries.
8. Tenant shall not make, or permit to be made, any unseemly or disturbing noises, odors, or vibrations to emanate from premises or otherwise unreasonably disturb or interfere with the occupancy of the

Building whether by the use of any equipment, musical instrument, radio, television, talking machine, unmusical noise, whistling, singing, or in any other way.

9. No additional locks, or security devices will be installed without prior notification and approval by Landlord. New locks or rekeying must be coordinated with Landlord and keyed on building master system. Additional keys may be requested in advance and at an additional charge to Tenant. Upon termination of Lease, Tenant will return 2 keys to each lock, and further will disclose any previously approved and installed security devices including combination locks, punch codes to doors and vaults.
10. After the initial move-in, for which the distribution of access cards will be provided at no cost to Tenant, Tenant agrees to pay an amount fixed by Landlord from time to time, for each additional access card issued by Landlord to Tenant. Such expense is presently \$20.00 per card.
11. Landlord specifically reserves the right to exclude from the Building during non-business hours, such as before 8:00 a.m. and after 6:00 p.m. on weekdays, on Saturdays and Sundays, and Building recognized Holidays, all persons not permitted entry by utilizing card access, telephone access system, or previous arrangement with the management office.
12. Tenant shall be responsible for persons it authorizes to have access to the Building during non-business hours and shall be liable for and shall coordinate which persons should have access cards issued. Tenant shall keep access card records current and properly identified by employee name.
13. Landlord is under no obligation to permit entrance to Tenant's premises or offices by use of pass keys controlled by Landlord to any person at any time except Landlord's employees, contractors, or service personnel directly supervised by Landlord. It is recommended that Tenant inform Tenant employees of these lockout procedures.
14. All service requests of Tenant required of Landlord shall be administered through Building management office. Tenants will not contract independently with employees and agents of Landlord without the coordination of the management office, nor shall Tenant request employees or agents of Landlord to receive or carry messages for or to any Tenant or other person.
15. None of the entries, passages, doors, elevators, elevator doors, hallways, or stairways shall be blocked or obstructed, nor shall any rubbish, litter, trash, or material of any nature be placed, emptied, or thrown into these areas, nor shall such areas be used at any time except for ingress and egress by Tenant, Tenant's agents, employees, or invitees.
16. No boxes, crates, pallets, or other such materials shall be stored in building hallways or other common areas. When Tenant must dispose of crates, boxes, etc., it will be the responsibility of Tenant to dispose of same prior to, or Normal Building Operating Hours, so as to avoid having such debris visible or being moved in the Common Areas during normal business hours. If such items are desired to be removed as part of evening janitorial service, the expense of such will be borne by Tenant.
17. Each Tenant shall cooperate with Landlord's employees in keeping leased premises neat and clean.
18. 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 or placed therein. Damages or maintenance expense resulting from any misuse of fixtures or disposal of the above by Tenant, its servants, employees, agents, visitors, or licensees, shall be borne by Tenant.

19. Unless otherwise provided for in this Lease, Tenant shall not mark, paint, drill into, or in any way deface any part of the Premises or the Building, except for Tenant's interior design components and furnishings in the Premises or the approved signage. Other than for initial move-in, no boring, cutting, or stringing for wires shall be permitted without the prior written consent of Landlord and as Landlord may direct.
20. Unless otherwise provided in this Lease, neither Tenant, nor its servants, employees, agents, visitors, or licensees, shall at any time bring or keep upon the Premises any flammable, combustible, or explosive fluid, chemical or substance (including Christmas trees and ornaments) except such items as may be incidentally used, provided Tenant notifies Landlord of the location thereof and makes adequate provision for safe storage. No space heaters or fans shall be operated or located in the Premises, other than UL approved or Landlord installed appliances.
21. No bicycles, vehicles, or animals, except for the disabled, shall be brought into or kept in or about the Premises or Building.
22. Tenant will not locate furnishings or cabinets adjacent to mechanical or electrical panels, HVAC equipment or other mechanical equipment so as to prevent personnel from servicing such units or equipment as routine or emergency access may require. Cost of moving such furnishings for Landlord's access will be borne by Tenant.
23. No space in the Premises or Building shall be used for manufacturing, for lodging, sleeping, storage of money in excess of \$300, storage of drugs or medicine not typically found of quality or quantity in First Aid supply kits or for legal purposes.
24. Tenant shall not place, install or operate on the demised premises or in any part of Building, any engine, stove, or machinery, or conduct mechanical operations or cook thereon or therein except Tenants microwave, refrigerator, office and communication equipment.
25. Tenant must obtain prior written approval, which shall be at Landlord's sole discretion, for installation of window shades, blinds, drapes, or any other window treatment of any kind whatsoever which would be visible from exterior of building other than Landlord supplied. Landlord will approve all internal lighting that may be visible from the exterior of the Building and shall have the right to change any unapproved lighting, without notice to Tenant, at Tenant's expense.
26. Tenant will coordinate with Landlord all Tenant arranged contractors, and installation technicians, rendering any construction or installation service to Tenant before performance of any such service. This provision shall apply to all work performed in the Building by Tenant arranged contractors including the installation of telephones, telegraph equipment, electrical devices and attachments, and the installation of any nature affecting the floors, walls, woodwork, trim, windows, ceiling, equipment (other than Tenant's office equipment), or any other physical portion of the Building.
27. Tenant shall, at its expense, provide artificial light for the employees of Landlord while making repairs or providing services in said Premises regardless of whether occurring during business or non-business hours after lease commencement date.
28. Smoking is prohibited in common entrances, vestibules, passages, corridors, halls, elevators, stairways, and toilet rooms of the Building. Tenant is responsible for informing all of its vendors, service providers, agents, employees, licensees, and visitors of this policy. Landlord reserves the right to request that any person(s) engaged in the act of smoking (in the common areas recited

above), at his or her choice, either cease smoking or leave the common areas of the Building immediately.

29. Canvassing, soliciting, and peddling in the Building and Parking Lot is prohibited. Landlord and Tenant shall cooperate to prevent same.
30. Tenant shall restrict parking by Tenant, its employees, service providers, agents, and visitors to parking areas designated by Landlord and shall comply with reasonable parking rules and regulations as may be modified, posted, and distributed by Landlord from time to time. The parking spaces shall not be used for overnight parking or dead storage of vehicles or other merchandise or material. All vehicles parked or traveling through the Office Park shall maintain a current registration and be properly insured. All parking shall be within the striped spaces in the parking lot. Landlord reserves the right to promulgate a system of parking stickers or passes as necessary to control parking by tenants and their visitors, and tenants shall reasonably cooperate in the implementation of such system.
31. Tenant will evacuate the Premises and Building in the event of emergency or catastrophe notification; whether practice drill, false alarm, or actual occurrence.
32. Tenant will notify Landlord of any incidents, accidents, injuries, or hazards which Tenant is aware of, which occur, or are present in Premises or Building.
33. Tenant will be requested to participate in recycling and other expense reduction programs offered by Building.
34. In the event the Premises is separately metered for any utility, Tenant shall provide the applicable utility provider with all information necessary for the Tenant to assume control of the appropriate account or meter on or before the earlier of the following, regardless of whether or not any base rent is due: (i) the Lease Commencement Date; (ii) the date of any early access to the Premises, regardless of whether said access is for Tenant to (a) conduct its business, (b) conduct or participate in any improvements to the Leased Premises, (c) install or store any fixtures, furniture, or equipment, or (d) prepare the Premises for the Tenant's occupancy or move-in. Tenant shall maintain electrical service to the Premises throughout the Term of the Lease, regardless of whether Tenant is actually occupying the space or not.
35. Landlord reserves the right to rescind any of these rules and make such other and further reasonable rules and regulations as in Landlord's judgment shall from time to time be needed for the safety, protection, care and cleanliness of the Building, the operation thereof, the preservation of good order therein, and the protection and comfort of its Tenants, their agents, employees, and invitees, which rules when made and notice thereof given to a Tenant shall be binding upon Tenant in the manner as if originally prescribed.

Landlord desires to maintain high standards of environmental comfort and convenience for the Tenants of Building. It will be appreciated if any undesirable conditions, lack of courtesy or attention are reported directly to the management.



**EXHIBIT C**  
**APPROVED SPACE PLANS**



Ex. C – 1

**EXHIBIT D**

**INTENTIONALLY OMITTED**

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## EXHIBIT E

**SAMPLE SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT**

THIS SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT (this "Agreement"), is made this \_\_\_\_ day of \_\_\_\_ 20\_\_ between \_\_\_\_\_, a \_\_\_\_\_ corporation or limited liability corporation ("Tenant"), and NATIONWIDE LIFE INSURANCE COMPANY, an Ohio corporation, its successors and assigns ("Lender") and 76/80 Burlington Group LLC or Blanchard Group LLC, a Massachusetts limited liability company ("Landlord"), whose address is One Nationwide Plaza, 1-05-701, Columbus, Ohio, 43215, Attention: Real Estate Investments (Loan Servicing).

## BACKGROUND

A. Lender is the owner and holder of: (i) that certain deed of trust, or mortgage or other similar security instrument (the "Mortgage") dated August 1, 2018, in the original amount of \$30,000,000, on the real estate more particularly described in the Mortgage (the "Property"); and (ii) an assignment of leases and rents (the "Assignment"). The Mortgage, the Assignment and any other instruments evidencing the loan to Landlord are collectively referred to as the "Security Documents".

B. Tenant is negotiating or has executed a lease (the "Lease") with Landlord to lease 76, 78, or 80 Blanchard Road (the "Premises"), located in Burlington, Massachusetts, and constituting a portion of the Property.

C. Tenant, Landlord and Lender desire to confirm their understanding with respect to the Security Documents and the Lease.

NOW THEREFORE, in consideration of the mutual promises of this Agreement, and intending to be legally bound hereby, the parties hereto agree and covenant as follows:

1. Subordination. The Lease and all rights, options, liens and charges of Tenant thereunder are hereby subordinated and made subject to the Security Documents, and any modification, renewal, substitution, extension or replacement thereof and each advance made thereunder as though the Security Documents, and each such modification, renewal, substitution, extension or replacement were executed and recorded, and the advance made, prior to the execution of the Lease; provided, however, in the event Lender at any time elects to have this Lease constitute a prior and superior lien to its Mortgage, then, and in such event, upon Lender or Landlord notifying Tenant to that effect in writing, the Lease will be deemed prior and superior in lien to the Mortgage, whether the Lease is dated prior to or subsequent to the date of the Mortgage.

2. Non-Disturbance. Lender hereby acknowledges and agrees that no foreclosure (whether judicial or non-judicial), deed in lieu of foreclosure, or other sale of the Property in connection with the enforcement of the Security Documents or otherwise in satisfaction of the underlying loan shall terminate the Lease or Tenant's rights thereunder to possess and use the Premises, subject to the following: (i) Tenant is in possession of the Premises, and (ii) Tenant is not in default in the payment of rent or in the performance of any of the terms, covenants or conditions of the Lease beyond any applicable notice and cure periods.

3. Attornment. If Lender succeeds to the interest of Landlord, as landlord under the Lease, or if the Property or the Premises are sold pursuant to Lender's rights under the Security Documents to a purchaser ("Purchaser"), Tenant shall attorn to Lender or to Purchaser and shall recognize Lender, or such Purchaser, thereafter as landlord under the Lease and agrees to be bound under all the terms, covenants and conditions of the Lease. Such attornment shall be effective and self-operative without the execution of any further instruments.
4. Lender's Rights and Obligations. If Lender exercises any of its rights under the Security Documents, or if Lender shall succeed to the interest of Landlord under the Lease, or if any Purchaser acquires the Security Documents, the Property, or the Premises, then Lender or Purchaser shall have the same remedies by entry, action or otherwise in the event of any default by Tenant (beyond any applicable notice and cure period) in the payment of rent or in the performance or observance of any of the terms, covenants and conditions of the Lease on Tenant's part to be paid, performed or observed that Landlord had or would have had if Lender or Purchaser had not succeeded to the interest of the present Landlord. Lender or Purchaser shall be bound to Tenant under all terms, covenants and conditions under the Lease and for any landlord defaults which arise after Lender or Purchaser succeeds to Landlord's interest under the Lease. Tenant acknowledges the Assignment and after written notice (the "Rent Notice") is given to Tenant by Lender, Tenant shall thereafter pay to Lender all rent and other amounts due or to become due (the "Rent") to Landlord under the Lease and Tenant shall not be liable to Lender for Rent paid to Landlord prior to receipt of the Rent Notice provided no Rent has been paid more than thirty (30) days in advance. Landlord hereby expressly authorizes Tenant to make such payments to Lender upon reliance on the Rent Notice, without any inquiry into the factual basis or any prior notice to or consent from Landlord and hereby releases Tenant from all liability, excepting Tenant fraud, to Landlord in connection with Tenant's compliance with the Rent Notice.
5. Notice and Right to Cure. Tenant agrees, until the Mortgage is released by Lender, to provide Lender (at the address noted above) with a copy of each notice of default given to Landlord under the Lease at the same time such notice of default is given to Landlord. In the event of any default by Landlord under the Lease, Tenant shall not seek to terminate the Lease or to exercise any rights to setoff or abate Rent or any other remedies, until Lender has received such notice and has been given the opportunity, but without undertaking Landlord's other obligations under the Lease, to cure the default within sixty (60) days from receipt of notice. In the event Lender, has begun action to cure the default, but not completed the same during the sixty (60) day period, Tenant agrees that Lender shall have a reasonable period of time thereafter to do so. If the default is such that it cannot practically be cured by Lender without taking possession of the Premises, Tenant agrees that any right it may have to terminate the Lease or to setoff or abate any Rent, shall be suspended for a reasonable period of time so long as Lender is diligently proceeding to acquire possession of the Premises, by foreclosure or is otherwise undertaking to cure the default of Landlord. Notwithstanding the foregoing, Lender shall have no obligation to cure any default under the Lease.
6. Parties Bound. The provisions of this Agreement shall be binding upon and inure to the benefit of Tenant, Lender and Landlord and their respective successors and/or assigns. Any party may record this Agreement at any time.
7. Captions. Captions and headings of sections are not parts of this Agreement and shall not be deemed to affect the meaning or construction of any of the provisions of this Agreement.
8. Counterparts. This Agreement may be executed in several counterparts each of which when executed and delivered is an original, but all of which together shall constitute one instrument.

9. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the state where the Property is located.

**[LENDER AND LANDLORD'S SIGNATURE PAGES FOLLOW]**

Ex. E – 3

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## SUBSIDIARIES OF REGISTRANT

**Name of Organization**

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Aware Security Corporation  
Fortr3ss, Inc.            Delaware

**Jurisdiction**

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Massachusetts

**CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM**

We consent to the incorporation by reference in the Registration Statements on Form S-8 (333-45026, 333-62020, 333-106569, and 333-106570) of Aware, Inc. of our report dated March 15, 2022, relating to the consolidated financial statements of Aware, Inc. and its subsidiary, appearing in this Annual Report on Form 10-K of Aware, Inc. for the year ending December 31, 2021.

/s/ RSM US LLP  
Boston, Massachusetts  
March 15, 2022

**CERTIFICATION OF CHIEF EXECUTIVE OFFICER**

I, Robert A. Eckel, Chief Executive Officer of Aware, Inc., certify that:

1. I have reviewed this annual report on Form 10-K of Aware, Inc.;
2. Based on my knowledge, this annual 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 annual report;
3. Based on my knowledge, the financial statements, and other financial information included in this annual 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 annual report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and we 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 annual 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 annual report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this annual report based on such evaluation; and
  - d) disclosed in this annual report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of registrant's board of directors (or persons performing the equivalent function):
  - a) all significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - b) any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: March 15, 2022

/s/ Robert A. Eckel

Robert A. Eckel

Chief Executive Officer & President

**CERTIFICATION OF CHIEF FINANCIAL OFFICER**

I, David Barcelo, Chief Financial Officer of Aware, Inc., certify that:

1. I have reviewed this annual report on Form 10-K of Aware, Inc.;
2. Based on my knowledge, this annual 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 annual report;
3. Based on my knowledge, the financial statements, and other financial information included in this annual 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 annual report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and we 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 annual 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 annual report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this annual report based on such evaluation; and
  - d) disclosed in this annual report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of registrant's board of directors (or persons performing the equivalent function):
  - a) all significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - b) any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: March 15, 2022

/s/ David Barcelo  
David Barcelo  
Chief Financial Officer

**CERTIFICATION PURSUANT TO SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**  
**(18 U.S.C. SECTION 1350)**

In connection with the Annual Report on Form 10-K of Aware, Inc. (the "Company") for the year ended December 31, 2021, as filed with the Securities and Exchange Commission on the date hereof (the "Report"), each of the undersigned Chief Executive Officer and Chief Financial Officer of the Company, certifies, to the best knowledge and belief of the signatory, pursuant to 18 U.S.C. §1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that:

- (1) The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
- (2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

/s/ Robert A. Eckel  
Robert A. Eckel  
Chief Executive Officer & President

/s/ David Barcelo  
David Barcelo  
Chief Financial Officer

Date: March 15, 2022

Date: March 15, 2022

The certification set forth above is being furnished as an exhibit solely pursuant to Section 906 of the Sarbanes-Oxley Act of 2002 and is not being filed as part of the Form 10-K or as a separate disclosure document of the Company or the certifying officers.