Use these links to rapidly review the document
2U, Inc. FORM 10-K TABLE OF CONTENTS
2U, Inc. INDEX TO CONSOLIDATED FINANCIAL INFORMATION

Table of Contents

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, 2017

or

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

For the transition period from to

Commission File Number: 001-36376

2U, INC.
(Exact name of registrant as specified in its charter)

Delaware	**26-2335939**
(State or other jurisdiction of incorporation or organization)	(I.R.S. Employer Identification No.)
7900 Harkins Road, Lanham, MD	**20706**
(Address of principal executive offices)	(Zip Code)

(301) 892-4350
Registrant's telephone number, including area code:

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

Title of each class:	Name of exchange on which registered:
Common Stock, $0.001 par value per share	The Nasdaq Global Select Market

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

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

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

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

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted 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 and post such files). Yes ☒ No ☐

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K is not contained herein, and will not be contained, to the best of registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this form 10-K. ☐

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 ☐ (Do not check if a smaller reporting company)	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 is a shell company (as defined in Rule 12b-2 of the Exchange Act). Yes ☐ No ☒

The aggregate market value of the 47,301,042 shares held by non-affiliates as of June 30, 2017 (computed based on the closing price on such date as reported on The Nasdaq Global Select Market) was $2,219,364,891.

As of February 21, 2018, there were 52,715,791 shares of the registrant's common stock, par value $0.001 per share, outstanding.

DOCUMENTS INCORPORATED BY REFERENCE

Portions of the Company's definitive proxy statement, to be filed pursuant to Regulation 14A under the Securities Exchange Act of 1934, for its 2018 Annual Meeting of Stockholders are incorporated by reference in Part III of this Form 10-K.

2U, Inc.
FORM 10-K
TABLE OF CONTENTS

		PAGE
	PART I	
Item 1.	Business	3
Item 1A.	Risk Factors	15
Item 1B.	Unresolved Staff Comments	42
Item 2.	Properties	42
Item 3.	Legal Proceedings	42
Item 4.	Mine Safety Disclosures	42
	PART II	
Item 5.	Market for Registrant's Common Equity, Related Stockholder Matters and Issuer Purchases of Equity Securities	43
Item 6.	Selected Financial Data	44
Item 7.	Management's Discussion and Analysis of Financial Condition and Results of Operations	44
Item 7A.	Quantitative and Qualitative Disclosures About Market Risk	44
Item 8.	Financial Statements and Supplementary Data	46
Item 9.	Changes in and Disagreements with Accountants on Accounting and Financial Disclosure	46
Item 9A.	Controls and Procedures	46
Item 9B.	Other Information	46
	PART III	
Item 10.	Directors, Executive Officers and Corporate Governance	47
Item 11.	Executive Compensation	47
Item 12.	Security Ownership of Certain Beneficial Owners and Management and Related Stockholder Matters	47
Item 13.	Certain Relationships and Related Transactions, and Director Independence	47
Item 14.	Principal Accounting Fees and Services	47
	PART IV	
Item 15.	Exhibits, Financial Statement Schedules	47
Item 16.	Form 10-K Summary	47
SIGNATURES		53
INDEX TO CONSOLIDATED FINANCIAL INFORMATION		55
Management's Discussion and Analysis of Financial Condition and Results of Operations (Unaudited)		56
Consolidated Financial Statements:		
Reports of Independent Registered Public Accounting Firm		75
Consolidated Balance Sheets as of December 31, 2017 and 2016		78
Consolidated Statements of Operations and Comprehensive Loss for the years ended December 31, 2017, 2016 and 2015		79
Consolidated Statements of Changes in Stockholders' Equity for the years ended December 31, 2017, 2016 and 2015		80
Consolidated Statements of Cash Flows for the years ended December 31, 2017, 2016 and 2015		81
Notes to Consolidated Financial Statements		82
Selected Financial Data (Unaudited)		110

SPECIAL NOTE REGARDING FORWARD-LOOKING STATEMENTS

This Annual Report on Form 10-K contains forward-looking statements within the meaning of the Private Securities Litigation Reform Act of 1995 and which are subject to substantial risks and uncertainties. In some cases, you can identify forward-looking statements by the words "may," "might," "will," "could," "would," "should," "expect," "intend," "plan," "objective," "anticipate," "believe," "estimate," "predict," "project," "potential," "continue" and "ongoing," or the negative of these terms, or other comparable terminology intended to identify statements about the future. These statements involve known and unknown risks, uncertainties and other factors that may cause our actual results, levels of activity, performance or achievements to be materially different from the information expressed or implied by these forward-looking statements. Although we believe that we have a reasonable basis for each forward-looking statement contained in this Annual Report on Form 10-K, we caution you that these statements are based on a combination of facts and factors currently known by us and our expectations of the future, about which we cannot be certain. Factors which may cause actual results to differ materially from current expectations include, but are not limited to:

- trends in the higher education market and the market for online education, and expectations for growth in those markets;
- the acceptance, adoption and growth of online learning by colleges and universities, faculty, students, employers, accreditors and state and federal licensing bodies;
- our ability to comply with evolving regulations and legal obligations related to data privacy, data protection and information security;
- our expectations about the potential benefits of our cloud-based software-as-a-service, or SaaS, technology and technology-enabled services to university clients and students;
- our dependence on third parties to provide certain technological services or components used in our platform;
- our ability to meet the anticipated launch dates of our graduate programs and short courses;
- our expectations about the predictability, visibility and recurring nature of our business model;
- our ability to acquire new university clients and expand our graduate programs and short courses with existing university clients;
- our ability to successfully integrate the operations of Get Educated International Proprietary Limited, or GetSmarter, achieve the expected benefits of the acquisition and manage, expand and grow the combined company;
- our ability to execute our growth strategy in the international, undergraduate and non-degree alternative markets;
- our ability to continue to acquire prospective students for our graduate programs and short courses;
- our ability to affect or increase student retention in our graduate programs;
- our expectations regarding the scalability of our cloud-based platform;
- our expectations regarding future expenses in relation to future revenue;
- potential changes in regulations applicable to us or our university clients; and
- our expectations regarding the amount of time our cash balances and other available financial resources will be sufficient to fund our operations.

You should refer to the risks described in Part I, Item 1A. "Risk Factors" in this Annual Report on Form 10-K for a discussion of important factors that may cause our actual results to differ materially from those expressed or implied by our forward-looking statements. As a result of these factors, we cannot assure you that the forward-looking statements in this Annual Report on Form 10-K will prove to be accurate. Furthermore, if our forward-looking statements prove to be inaccurate, the inaccuracy may be material. In light of the significant uncertainties in these forward-looking statements, you should not regard these statements as a representation or warranty by us or any other person that we will achieve our objectives and plans in any specified timeframe, or at all. We undertake no obligation to publicly update any forward-looking statements, whether as a result of new information, future events or otherwise, except as required by law.

You should read this Annual Report on Form 10-K completely and with the understanding that our actual future results may be materially different from what we expect. We qualify all of our forward-looking statements by these cautionary statements.

SPECIAL NOTE REGARDING EXHIBITS

In reviewing the agreements included as exhibits to this Annual Report on Form 10-K, please remember they are included to provide you with information regarding their terms and are not intended to provide any other factual or disclosure information about the Company or the other parties to the agreements. The agreements contain representations and warranties by each of the parties to the applicable agreement. These representations and warranties have been made solely for the benefit of the other parties to the applicable agreement and:

- should not in all instances be treated as categorical statements of fact, but rather as a way of allocating the risk to one of the parties if those statements provide to be inaccurate;
- have been qualified by disclosures that were made to the other party in connection with the negotiation of the applicable agreement, which disclosures are not necessarily reflected in the agreement;
- may apply standards of materiality in a way that is different from what may be viewed as material to you or other investors; and
- were made only as of the date of the applicable agreement or such other date or dates as may be specified in the agreement and are subject to more recent developments.

Accordingly, these representations and warranties may not describe the actual state of affairs as of the date they were made of at any other time. Additional information about the Company may be found elsewhere in this Annual Report on Form 10-K and the Company's other public filings, which are available without charge through the SEC's website at http://www.sec.gov.

The Company acknowledges that, notwithstanding the inclusion of the foregoing cautionary statements, it is responsible for considering whether additional specific disclosures of material information regarding material contractual provisions are required to make the statements in this report not misleading.

PART I

Item 1. Business

Our Mission

Our mission is to improve lives by eliminating the back row in higher education.

Overview

We are a leading education technology company that well-recognized nonprofit colleges and universities trust to bring them into the digital age. Our comprehensive platform of tightly integrated technology and services provides the digital infrastructure universities need to attract, enroll, educate and support students at scale. With our platform, students can pursue their education anytime, anywhere, without quitting their jobs or moving; and university clients can improve educational outcomes, skills attainment and career prospects for a greater number of students.

Over the past decade, we have developed new and innovative tools within our platform to enhance the effectiveness of instructional methods and improve student outcomes and the student experience. During that time, we have also refined our program selection algorithm and improved our data-driven digital marketing capabilities across our ecosystem of offerings to generate increased student enrollments in a cost effective manner. As a result, demand for our comprehensive platform of integrated technology and services has increased significantly. Since 2008, we have expanded our university client base from one to 24 across our entire portfolio of offerings, increased the number of 2U-powered graduate programs from one to 37, and enrolled over 33,000 graduate students.

Our core strategy is to launch graduate programs and short courses with new and existing university clients and to increase student enrollments across our portfolio. We are also committed to continuously improving our platform to deliver high-quality university and student experiences and outcomes at scale.

Business Segments

Beginning in July 2017, with the closing of our acquisition of GetSmarter, we began offering premium online short courses to students not seeking a full graduate degree. As a result of the GetSmarter acquisition, we have two reportable segments: the Graduate Program Segment and the Short Course Segment.

In both our Graduate Program Segment and our Short Course Segment, we provide well-recognized nonprofit colleges and universities with the comprehensive infrastructure they need to attract, enroll, educate and support students in their 2U-enabled graduate program or short course. In our Graduate Program Segment, we target students seeking a full graduate degree of the same quality they would receive on-campus. In our Short Course Segment, we target working professionals seeking career advancement through skills attainment.

The reportable segments represent businesses for which separate financial information is utilized by the chief operating decision maker for the purpose of allocating resources and evaluating performance. Our Graduate Program Segment derives revenue primarily from a contractually specified percentage of the amounts our university clients receive from their students in the 2U-enabled graduate program for tuition and fees, less credit card fees and other specified charges we have agreed to exclude in certain of our university client contracts. The Short Course Segment derives revenue directly from students for the tuition and fees paid to enroll in and progress through our short courses. A contractually specified percentage of the tuition and fees received from students is shared with the university client. For additional information regarding our segments, see Note 13 Segment and Geographic Information in the accompanying notes to our consolidated financial statements included in Part II, Item 8, "Financial Statements and Supplementary Data" of this Annual Report on Form 10-K.

Our Platform

Our platform consists of front-end and back-end cloud-based SaaS technology and technology-enabled services. These two components are tightly integrated and each is optimized with data analysis and machine learning techniques.

Front-End Technology and Services

We provide the following front-end technology and services to students enrolled in our offerings and to faculty members and university administrators supporting our offerings:

- *Online Learning Platform.* Our online learning platform is a secure and accessible learning and teaching platform, where our university clients can reliably deliver their high-quality educational content to students in a live, intimate and engaging setting, all accessible through proprietary web and mobile applications. Our online learning platform allows our university clients to provide a personalized learning environment for faculty and students as well as a robust online educational community. Students can also download their asynchronous coursework for convenient offline consumption.

  On January 19, 2018, we entered into an agreement to purchase a perpetual source code license for the Learn.co platform from Flatiron School, Inc., a wholly owned subsidiary of WeWork Companies, Inc. Once integrated into our online learning platform, we expect that Learn.co will enhance the learning experience of students and instruction capabilities of faculty across our entire portfolio of offerings.

- *Student and Faculty Support.* We augment each student's academic experience by providing ongoing personalized non-academic support. We also provide a dedicated team to support and train university administration and faculty on how to use our platform to facilitate outstanding live instruction.

- *Accessibility.* For students with disabilities, we are able to facilitate accessibility across our platform. This includes providing screen-reading technology, captioning, subtitling and voice-over descriptions for asynchronous content, and sign language interpretation and real time captioning for live classes.

- *Admissions Application Advising.* Leveraging our customer relationship management deployments and other technology, our graduate program-dedicated teams work with prospective students as they consider and apply to a program. Once a student has submitted a completed admissions application package, it is routed to and reviewed by the university admissions office, which renders the final admission decision.

- *In-Program Student Field Placements.* Leveraging our nationwide network of clinics, hospitals, schools and other sites, our field placement team is dedicated to securing in-program field placement opportunities for students enrolled in our university clients' graduate programs that have a field placement component. Leveraging a geo-location database, we work closely with faculty to identify and approve sites that meet curriculum requirements.

- *Immersion Support.* Many of our university clients' graduate programs require students to attend immersions and intensive residencies where students travel to a university client's physical campus and other locations, where they can engage in collaborative learning experiences with their classmates and professors in person, and develop invaluable personal and professional relationships. We provide the resources and technology to support our university clients in facilitating these experiences.

- *Faculty Recruiting.* Using our platform, our university clients can identify and employ highly qualified teaching faculty without geographic constraint. We effectively act as a search firm by attracting, cultivating and vetting a pool of faculty candidates for our university clients.

Back-End Technology and Services

We provide the following back-end technology and services to launch and operate our offerings:

- *Graduate Program Launch and Operations Applications.* We use an application we call Central Park to unify our suite of applications and better automate the standup of technology infrastructure for new graduate programs. We also use an application we call Uber-Conf to translate graduate program-specific code into a common language to simplify program-specific complexity. These applications simplify the effort to launch new graduate programs and enable non-technology oriented employees to support the data analytics and operational needs across our business.

- *University Systems Integration Applications.* We use an application we call Port Authority to integrate our technology with our university clients' information technology systems. This application automates the student enrollment process, which allows us to more efficiently and quickly enroll students, thereby increasing our student-to-support staff ratios, while reducing the potential for human error.

- *Content Management System.* Our content management system enables us and our university clients to author, review and deploy the asynchronous content for our offerings. The content management system includes a set of project management and collaboration tools that allow our university clients' faculty to seamlessly integrate their work with that of our course production and content development staff.

- *Admissions Application Processing Portal.* Our proprietary admissions application system, known as the Online Application and Recommendation System, or OARS, automates the graduate program admissions application process. OARS is integrated with the primary marketing site for each graduate program and directly using data analysis and machine learning techniques, funnels prospective students into each university client's existing admissions application process and provides automated workflow for that process.

- *Customer Relationship Management.* We have developed customer relationship management deployments configured for each university client's specific graduate program. Each deployment serves as the data hub for scheduling, student acquisition, student application, faculty admissions review, enrollment and student support. Our university clients and our employees review, maintain and track this information to ensure proper coordination.

- *Content Development.* Leveraging our content management system, our content development staff works closely with our university clients' faculty in a collaborative process to produce high-quality, engaging online coursework and content.

- *Student Acquisition.* Leveraging data analytics and machine learning techniques, we develop targeted, offering-specific digital marketing campaigns that can reach and engage interested and qualified prospective students in a cost-effective manner. Our marketing teams also develop creative assets, such as websites related to the graduate program and short course fields of study, and execute search engine optimization and paid search campaigns aimed at acquiring students cost-effectively.

- *State Authorization Services.* Many of our offerings must comply with state authorization requirements in each state where students reside. We work with most of our university clients to identify and satisfy a complex array of state authorization requirements.

Our Approach

Our approach in providing our platform to our university clients is as follows:

- ***Tightly Integrated Technology and Services with a Focus on Quality.*** We believe that our platform offers extensive features, high configurability, an intuitive user interface and the ability to support synchronous and asynchronous learning at scale. Our front-end and back-end technology and services are tightly integrated, and together they provide a broad set of capabilities that would otherwise require universities to purchase multiple, disparate point solutions, and hire significant human resources and expertise.

- ***Data-Driven Methodology.***

  - *Proprietary Algorithm.* We have developed a proprietary program-selection algorithm to optimize our process for identifying new graduate programs that have a high likelihood of success. Following our acquisition of GetSmarter, we have deployed this algorithm to inform our short course selection process as well. Our algorithm draws on a wide variety of data, including the operating history of our existing offerings, and is based on key market variables, such as the existing market size of an offering, potential student demographics and university characteristics.

  - *Marketing.* We believe that our continuously expanding selection of educational offerings increases our marketing leverage, allowing us to acquire additional students for the same cost and increase enrollments across our entire portfolio of offerings. In addition, we use data analytics and machine learning techniques to focus our marketing efforts on finding prospective students for the right offerings at times when conversion is more likely.

- ***Alignment with University Clients.*** We serve as brand stewards for our university clients and our relationships are characterized by close, ongoing collaboration with faculty and administrators, as well as a deep integration between their academic missions and our platform. Our revenue-share model also aligns our interests with those of our university clients. This revenue model, combined with long contractual terms, enables us to make the investment in technology, integration, content production, marketing, student and faculty support and other services necessary to launch and scale successful offerings, without significant financial risk to our university clients.

- ***Driving High Quality Student Outcomes.*** We are committed to delivering the technology and services required to support each student throughout the life of each offering, thereby improving the likelihood of students' achieving their desired educational outcomes, skills attainment and career opportunities.

Our Growth Strategy

We intend to continue our industry leadership as a provider of a digital education platform that enables well-recognized nonprofit colleges and universities to deliver education online. Our approach to growth is disciplined and focused on long-term success. The principal elements of our strategy are to:

- ***Add Graduate Programs, Short Courses, University Clients and Students.*** We intend to add graduate programs and short courses with new and existing university clients, and increase student enrollments across our entire portfolio of offerings.

- ***Add New Categories of Offerings.*** We believe that there is significant international demand for our platform as colleges and universities worldwide seek to extend their brands by accessing the growing global market for higher education. We also believe that there may be significant opportunities in the future to offer high-quality digital education experiences to undergraduate students and expand our non-degree offerings. As we evaluate these growth strategies, we

periodically consider acquisitions or investment opportunities in complementary businesses, joint ventures, services and technologies and intellectual property rights in an effort to add product offerings, extend our technological leadership or expand the markets in which we operate. We expect to continue to evaluate, and may enter into, acquisitions and investments in the future as opportunities are presented.

Clients

Graduate Program Segment

In our Graduate Program Segment, we have grown our university client and program base significantly since our inception from one client with one program in one academic discipline in 2008 to 24 clients with 51 programs in 23 degree verticals today, 37 of which have launched and have students enrolled. A full listing of all 51 announced programs, including the programs we plan to launch in 2018, can be found at investor.2u.com.

Our long-term university client contracts, which typically have 10 to 15 year initial terms, do not include termination rights for convenience. Most contracts impose liquidated damages for a university client's non-renewal, unless the university client otherwise terminates due to our uncured breach.

Our contracts also set forth the parties' respective rights to offer competitive programs. For example, some contracts permit us to offer competitive programs with other schools whose potential students are not academically qualified or otherwise interested in the program we offer with our client. Other contracts prohibit us from offering competitive programs with a specific list of schools, whether a certain number as listed on U.S. News & World Report's "best" schools list or a specifically enumerated list of schools negotiated with our university client. In addition, any limitation on our ability to offer competitive programs becomes inapplicable if a university client either refuses to scale the program to accommodate all students qualifying for admission into the program, or raises the program admissions standards above those at the time of contract execution. In addition, our contracts generally prohibit our university clients from offering any online competitive program. Most of our more recent contracts either do not restrict our ability to offer competitive programs or provide for only limited restrictions.

For the years ended December 31, 2017 and 2016, 27% and 34%, respectively, of our consolidated revenue was derived from our programs with University of Southern California, or USC, including our two longest running programs, launched in 2009 and 2010. We expect that these programs will continue to account for a large portion of our revenue until our other university client graduate programs become more mature and achieve significantly higher enrollment levels.

Our programs with Simmons College accounted for 17% and 18% of our consolidated revenue for the years ended December 31, 2017 and 2016, respectively. Our programs with the University of North Carolina accounted for 10% and 11% of our revenue for the years ended December 31, 2017 and 2016, respectively.

Short Course Segment

In our Short Course Segment, we currently have ten university clients we are collaborating with to offer more than 80 courses. Our university client contracts in our Short Course Segment are typically shorter in length and less restrictive than our client contracts in our Graduate Program Segment.

In our Short Course Segment, revenue is derived from individual students, rather than directly from university clients. For the year ended December 31, 2017, revenue associated with our three largest university clients in this segment accounted for approximately 82% of the segment's revenue, which was less than 10% of our consolidated revenue on a combined basis. Of the 12 courses we have

launched in 2017, six are with these three university clients. We expect these university clients will continue to account for a large portion of our revenue in the Short Course Segment.

Competition

The overall market for technology solutions that enable higher education providers to deliver education online is highly fragmented, rapidly evolving and subject to changing technology, shifting needs of students and educators and frequent introductions of new delivery methods. Several competitors provide platforms that compete with some of the capabilities of our platform. Two such competitors, are Pearson Online Learning Services and Wiley Education Services, owned by Pearson and John Wiley & Sons, respectively, both of which are large education and publishing companies. In addition, traditional massive open online course providers have evolved from providing massive open online courses to providing short course certificates, nano degrees and similar non-degree alternatives. Many of these companies provide components of the technology and services we provide and these companies may choose to pursue some of the institutions we target. Moreover, nonprofit colleges and universities may elect to continue using or develop their own online learning solutions in-house.

We expect that the competitive landscape will expand as the market for online education offerings at nonprofit institutions matures. We believe the principal competitive factors in our market include the following:

- brand awareness and reputation;
- ability of online graduate programs and short courses to deliver desired student outcomes;
- robustness and evolution of technology solutions;
- breadth and depth of service offering;
- ability to make significant investments in launching and operating graduate programs;
- expertise in marketing, student acquisition and student retention;
- quality of student and faculty experience;
- ease of deployment and use of technology solutions;
- level of customization, configurability, integration, security, scalability and reliability of technology solutions; and
- quality of university client base and track record of performance.

We believe we compete favorably on the basis of these factors. Our ability to remain competitive will depend, to a great extent, upon our ability to consistently deliver our high-quality platform, meet university client needs for content development, acquire, support and retain students and deliver desired student, faculty and university outcomes.

Seasonality

We experience seasonality in our marketing and sales expenses in both our Graduate Program Segment and our Short Course Segment. We typically reduce our paid search and other marketing and sales efforts during late November and December because these efforts are less productive during the holiday season. We generally do not experience pronounced seasonality in our revenue, although revenue can fluctuate significantly from quarter to quarter due to variations driven by the academic schedules of our graduate programs and short courses.

Intellectual Property

We protect our intellectual property by relying on a combination of copyrights, trademarks, trade secrets and contractual agreements. For example, we rely on trademark protection in the United States and various foreign jurisdictions to protect our rights to various marks, including 2U, NO BACK ROW, GETSMARTER and other distinctive logos associated with our brand.

We ensure that we own intellectual property created for us by signing agreements with employees, independent contractors, consultants, companies, and any other third party that creates intellectual property for us that assign any intellectual property rights to us.

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

We also purchase or license technology that we incorporate into our technology or services. While it may be necessary in the future to seek or renew licenses relating to various aspects of our technology and services, we believe, based upon past experience and industry practice, such licenses generally could be obtained on commercially reasonable terms.

We continue to evaluate developing and expanding our intellectual property rights in patents, trademarks and copyrights, as available through registration in the United States and internationally.

For important additional information related to our intellectual property position, please review the information set forth in "Risk Factors—Risks Related to Intellectual Property."

Education Laws and Regulations

The higher education industry is heavily regulated. Institutions of higher education that award degrees and certificates to signify the successful completion of an academic program are subject to regulation from three primary entities: the U.S. Department of Education, or DOE, accrediting agencies and state licensing authorities. Each of these entities promulgates and enforces its own laws, regulations and standards, which we refer to collectively as education laws.

We contract with postsecondary institutions that are subject to education laws. In addition, we ourselves are required to comply with certain education laws as a result of our role as a service provider to institutions of higher education, either directly or indirectly through our contractual arrangements with university clients. Our failure, or that of our university clients, to comply with education laws could adversely impact our operations. As a result, we work closely with our university clients to maintain compliance with education laws.

Federal Laws and Regulations

Under the Higher Education Act of 1965, as amended, or the HEA, institutions offering postsecondary education must comply with certain laws and related regulations promulgated by the DOE in order to participate in the Title IV federal student financial assistance programs. Many of our university clients participate in the Title IV programs.

The HEA and the regulations promulgated thereunder are frequently revised, repealed or expanded. Congress historically has reauthorized and amended the HEA in regular intervals, approximately every five to seven years. The re-authorization process is currently under way.

The re-authorization of the HEA could alter the regulatory landscape of the higher education industry, and thereby impact the manner in which we conduct business and serve our university clients. In addition, the DOE is independently conducting an ongoing series of rulemakings intended to assure the integrity of the Title IV programs. The DOE also frequently issues formal and informal guidance

instructing institutions of higher education and other covered entities how to comply with various federal laws and regulations. DOE guidance is subject to frequent change and may impact our business model.

Although we are not considered an institution of higher education and we do not directly participate in Title IV programs, we are required to comply with certain regulations promulgated by the DOE as a result of our role as a service provider to institutions that do participate in Title IV programs. These include, for example, regulations governing student privacy under Family Educational Rights and Privacy Act, or FERPA. The most material obligations stem from new rules and revisions to existing regulations promulgated by the DOE in 2010 as part of the so-called "program integrity" rules.

While the program integrity rules were targeted at for-profit institutions of higher education, most apply equally to traditional colleges and universities such as our university clients, and they apply in particular to institutions contracting with outside vendors to provide services, particularly in connection with distance education. These rules include principally the incentive compensation rule, the misrepresentation rule, the written arrangements rules and state authorization requirements. The more significant program integrity rules applicable to us or our university clients are discussed in further detail below.

Incentive Compensation Rule

The HEA provides that any institution that participates in the Title IV federal student financial assistance programs must agree with the DOE that the institution will not provide any commission, bonus or other incentive payment to any person or entity engaged in any student recruiting or admission activities.

As part of the program integrity rules, the DOE issued revised regulations regarding incentive compensation effective July 1, 2011. Under the revised regulations, each higher education institution agrees that it will not "provide any commission, bonus, or other incentive payment based in any part, directly or indirectly, upon success in securing enrollments or the award of financial aid, to any person or entity who is engaged in any student recruitment or admission activity, or in making decisions regarding the award of title IV, HEA program funds." Pursuant to this rule, we are prohibited from offering our covered employees, which are those involved with or responsible for recruiting or admissions activities, any bonus or incentive-based compensation based on the successful recruitment, admission or enrollment of students into a postsecondary institution.

In addition, the revised rule initially raised a question as to whether our company itself, as an entity, is prohibited from entering into tuition revenue-sharing arrangements with university clients. On March 17, 2011, the DOE issued official agency guidance, known as a "Dear Colleague Letter," or the DCL, providing guidance on this point. The DCL states that "[t]he Department generally views payment based on the amount of tuition generated as an indirect payment of incentive compensation based on success in recruitment and therefore a prohibited basis upon which to measure the value of the services provided" and that "[t]his is true regardless of the manner in which the entity compensates its employees." But the DCL also provides an important exception to the ban on tuition revenue-sharing arrangements between institutions and third parties. According to the DCL, the DOE does not consider payment based on the amount of tuition generated by an institution to violate the incentive compensation ban if the payment compensates an "unaffiliated third party" that provides a set of "bundled services" that includes recruitment services, such as those we provide. Example 2-B in the DCL is described as a "possible business model" developed "with the statutory mandate in mind." Example 2-B describes the following as a possible business model:

> "A third party that is not affiliated with the institution it serves and is not affiliated with any other institution that provides educational services, provides bundled services to the institution including marketing, enrollment application assistance, recruitment services, course support for online

delivery of courses, the provision of technology, placement services for internships, and student career counseling. The institution may pay the entity an amount based on tuition generated for the institution by the entity's activities for all the bundled services that are offered and provided collectively, as long as the entity does not make prohibited compensation payments to its employees, and the institution does not pay the entity separately for student recruitment services provided by the entity."

The DCL guidance indicates that an arrangement that complies with Example 2-B will be deemed to be in compliance with the incentive compensation provisions of the HEA and the DOE's regulations. Our business model and contractual arrangements with our university clients closely follow Example 2-B in the DCL. In addition, we assure that none of our "covered employees" is paid any bonus or other incentive compensation in violation of the rule.

Because the bundled services rule was promulgated in the form of agency guidance issued by the DOE in the form of a DCL and is not codified by statute or regulation, the rule could be altered or removed without prior notice, public comment period or other administrative procedural requirements that accompany formal agency rulemaking. Similarly, a court could invalidate the rule in an action involving our company or our university clients, or in action that does not involve us at all. The revision, removal or invalidation of the bundled services rule by Congress, the DOE or a court could require us to change our business model.

Misrepresentation Rule

The HEA prohibits an institution that participates in the Title IV programs from engaging in any "substantial misrepresentation" regarding three broad subject areas: (1) the nature of the school's education programs, (2) the school's financial charges and (3) the employability of the school's graduates. In 2010, as part of the program integrity rules, the DOE revised its regulations in order to significantly expand the scope of the misrepresentation rule. Although some of the DOE's most expansive amendments to the misrepresentation rule were overturned by the courts in 2012, most of the 2010 amendments survived and remain in effect.

Under the new rule, "misrepresentation" is defined as any false, erroneous or misleading statement, written, visual or oral. This includes even statements that "have the likelihood or tendency to deceive." Therefore, a statement need not be intentionally deceitful to qualify as a misrepresentation. "Substantial misrepresentation" is defined loosely as a misrepresentation on which the person to whom it was made could reasonably be expected to rely, or has reasonably relied, to that person's detriment.

The new regulation also expands the scope of the rule to cover statements made by any representative of an institution, including agents, employees and subcontractors, and statements made directly or indirectly to any third party, including state agencies, government officials or the public, and not just to students or prospective students.

Violations of the misrepresentation rule are subject to various sanctions by the DOE and violations may be used as a basis for legal action by third parties. Similar rules apply under state laws or are incorporated in institutional accreditation standards and the Federal Trade Commission, or FTC, applies similar rules prohibiting any unfair or deceptive marketing practices to the education sector. As a result, we and our employees and subcontractors, as agents of our university clients, must use a high degree of care to comply with such rules and are prohibited by contract from making any false, erroneous or misleading statements about our university clients. To avoid an issue under the misrepresentation rule and similar rules, we assure that all marketing materials are approved in advance by our university clients before they are used by our employees and we carefully monitor our subcontractors.

Accreditation Rules and Standards

Accrediting agencies primarily examine the academic quality of the instructional programs of an educational institution, and a grant of accreditation is typically viewed as confirmation that an institution or an institution's programs meet generally accepted academic standards. Accrediting agencies also review the administrative and financial operations of the institutions they accredit to ensure that each institution has the resources to perform its educational mission. The DOE also relies on accrediting agencies to determine whether institutions' educational programs qualify the institutions to participate in Title IV programs.

In addition to institutional accreditation, colleges and universities may require specialized programmatic accreditation for particular educational programs. Many states and professional associations require professional programs to be accredited, and require individuals to have graduated from accredited programs in order to sit for professional license exams. Programmatic accreditation, while not a sufficient basis for institutional Title IV Program certification by the DOE, assists graduates to practice or otherwise secure appropriate employment in their chosen field. Common fields of study subject to programmatic accreditation include teaching and nursing.

Although we are not an accredited institution and are not required to maintain accreditation, accrediting agencies are responsible for reviewing an accredited institution's third-party contracts with service providers like us and may require an institution to obtain approval from or to notify the accreditor in connection with such arrangements. One purpose of the notification and approval requirements is to verify that the accredited institution remains responsible for providing academic instruction leading to a credential and provides oversight of other activities undertaken by third parties like us that are within the scope of its accreditation. We work closely with our university clients to assure that the standards of their respective accreditors are met and are not adversely impacted by us.

Accrediting agencies are also responsible for assuring that any "written arrangements" to outsource academic instruction meet accrediting standards and related regulations of the DOE. Our operations are generally not subject to such "written arrangements" rules because academic instruction is provided by our university client institutions and not by us.

State Laws and Regulations

Each state has at least one licensing agency responsible for the oversight of educational institutions operating within its jurisdiction. Continued approval by such agencies is necessary for an institution to operate and grant degrees, diplomas or certificates in those states. Moreover, under the HEA, approval by such agencies is necessary to maintain eligibility to participate in Title IV programs. State attorneys general are also active in enforcing education laws, and the level of regulatory oversight varies substantially from state to state.

We and our university clients may be subject to regulation in each state in which we or they own facilities, provide distance education or recruit students. State laws establish standards for, among other things, student instruction, qualifications of faculty, location and nature of facilities, recruiting practices and financial policies. The need to comply with applicable state laws and regulations may limit or delay our ability to market or expand our offerings. In addition, the interpretation of state authorization regulations is subject to substantial discretion by the state agency responsible for enforcing the regulations.

As part of the program integrity rules, the DOE required, among other things, that an institution offering distance learning or online programs secure the approval of those states which require such approval and provide evidence of such approval to the DOE upon request. This regulation dramatically increased the importance of state authorization because failure to obtain it could result in an obligation to return federal funds received by an institution. The U.S. Court of Appeals for the District of Columbia struck down the regulations requiring proof of state approval for online education programs in 2012 on procedural grounds; however, the DOE promulgated similar replacement regulations in December 2016, with an effective date of July 1, 2018. In addition, even if these rules do not go into effect, it is the policy of DOE to require proof of all necessary state approvals when an institution seeks to renew its authorization to participate in the Title IV programs.

Most states participate in the State Authorization Reciprocity Agreement, or SARA, governing the licensing of online offerings. All SARA-member institutions may provide online offerings in SARA states without obtaining separate state authorization (this includes externships, recruiting, local advertising, and faculty presence). SARA-member institutions must still obtain a separate authorization in order to open a physical location in another state and are also required to obtain any additional approvals that may be required for offerings leading to professional licensure in a state (e.g., nursing, teaching, or counseling). Most of our university clients are SARA members and the DOE has indicated it will accept participation in a reciprocity agreement as evidence of state approval.

We monitor state law developments closely and work closely with our university clients to assist them with obtaining any required approvals.

Other Laws

Our activities on behalf of institutions are also subject to other federal and state laws. These regulations include, but are not limited to, consumer marketing and unfair trade practices laws and regulations, including those promulgated and enforced by the FTC, as well as federal and state data protection and privacy requirements.

Employees

As of December 31, 2017, we had 1,808 full-time employees and 114 part-time employees. None of our employees are represented by a labor union or covered by a collective bargaining agreement. We consider our relations with our employees to be good.

Other Information

We were incorporated as a Delaware corporation in April 2008 and completed our initial public offering in April 2014. Our principal executive offices are located at 7900 Harkins Road, Lanham, MD 20706, and our telephone number is (301) 892-4350.

You can obtain copies of our Annual Report on Form 10-K, Quarterly Reports on Form 10-Q, Current Reports on Form 8-K, and other filings with the U.S. Securities and Exchange Commission, or the SEC, and all amendments to these filings, free of charge from our website at investor.2u.com as soon as reasonably practicable following our filing of any of these reports with the SEC. You can also obtain copies free of charge by contacting our Investor Relations department at our office address listed above. The public may read and copy any materials filed by us with the SEC at the SEC's Public Reference Room at 100 F Street, NE, Room 1580, Washington, DC 20549. The public may obtain information on the operation of the Public Reference Room by calling the SEC at 1-800-SEC-0330. The SEC maintains an Internet site that contains reports, proxy and information statements and other information regarding issuers that file electronically with the SEC at www.sec.gov. The contents of these websites are not incorporated into this filing. Further, our references to the URLs for these websites are intended to be inactive textual references only.

Item 1A. Risk Factors

In addition to the other information set forth in this Annual Report on Form 10-K, you should carefully consider the factors discussed in the "Special Note Regarding Forward-Looking Statements" in this Annual Report on Form 10-K.

Risks Related to Our Business Model, Our Operations and Our Growth Strategy

We have a limited operating history, which makes it difficult to predict our future financial and operating results, and we may not achieve our expected financial and operating results in the future.

We were incorporated in 2008 and launched our first graduate program in 2009. In July 2017, we acquired GetSmarter and extended our offerings to include premium online short courses offered in collaboration with universities. As a result of our limited operating history, our ability to forecast our future operating results, including revenue, cash flows and profitability, is limited and subject to a number of uncertainties. We have encountered and will encounter risks and uncertainties frequently experienced by growing companies in the technology industry. If our assumptions regarding these risks and uncertainties are incorrect or change due to factors impacting our targeted markets, or if we do not manage these risks successfully, our operating and financial results may differ materially from our expectations and our business may suffer.

We have incurred significant net losses since inception, and we expect our operating expenses to increase significantly in the foreseeable future, which may make it more difficult for us to achieve and maintain profitability.

We incurred net losses of $29.4 million, $20.7 million and $26.7 million during the years ended December 31, 2017, 2016 and 2015, respectively. We will need to generate and sustain increased revenue levels in future periods to become profitable, and, even if we do, we may not be able to maintain or increase our level of profitability. We anticipate that our operating expenses will increase substantially in the foreseeable future as we undertake increased technology and production efforts to support a growing number of graduate programs and increase our marketing and sales efforts to drive the acquisition of potential students. In addition, as a public company, we will continue to incur significant accounting, legal and other expenses that we did not incur as a private company. These expenditures will make it harder for us to achieve and maintain profitability. Our efforts to grow our business may be more costly than we expect, and we may not be able to increase our revenue enough to offset our higher operating expenses. If we are forced to reduce our expenses, our growth strategy could be compromised. We may incur significant losses in the future for a number of reasons, including unforeseen expenses, difficulties, complications, delays and other unknown events. As a result, we may be unable to achieve and maintain profitability, and the value of our company and our common stock could decline significantly.

Our business depends heavily on the adoption by colleges and universities of online delivery of their educational offerings. If we fail to attract new university clients, or if new leadership at existing university clients does not have an interest in continuing or expanding online delivery of their educational offerings, our revenue growth and profitability may suffer.

The success of our business depends in large part on our ability to enter into agreements with additional nonprofit colleges and universities to offer their graduate programs and courses online. In particular, to engage new university clients, we need to convince potential university clients, many of which have been educating students in generally the same types of on-campus programs for hundreds of years, to invest significant time and resources to adjust the manner in which they teach students. The delivery of online education at leading nonprofit colleges and universities is nascent, and many administrators and faculty members have expressed concern regarding the perceived loss of control

over the education process that might result from offering content online, as well as skepticism regarding the ability of colleges and universities to provide high-quality education online that maintains the standards they set for their on-campus programs. It may be difficult to overcome this resistance, and online programs of the kind we develop with our university clients may not achieve significant market acceptance. In addition, our university clients have regular turnover in their leadership positions, and there is no guarantee that any new leader will have an interest in continuing or expanding online delivery of the university's educational offerings. If new leaders at our university clients do not embrace online delivery of educational offerings, we may not be able add additional offerings with the university client and the university client may attempt to terminate or may not renew their relationship with us.

Our financial performance depends heavily on our ability to acquire qualified potential students for our offerings, and our ability to do so may be affected by circumstances beyond our control.

Building awareness of our offerings is critical to our ability to acquire prospective students for our university clients' programs and courses and generate revenue. A substantial portion of our expenses is attributable to marketing and sales efforts dedicated to attracting potential students to our offerings. Because we generate revenue based on a portion of the tuition and fees that students pay, it is critical to our success that we identify qualified prospective students for our offerings in a cost-effective manner, and that enrolled students remain active in our offerings until graduation or completion.

The following factors, many of which are largely outside of our control, may prevent us from successfully driving and maintaining student enrollment in our offerings in a cost-effective manner or at all:

- *Negative perceptions about online learning programs.* As a non-traditional form of education delivery, prospective students will subject our offerings to increased scrutiny. Online offerings that we or our competitors provide may not be successful or operate efficiently, and new entrants to the field of online learning also may not perform well. Such underperformance could create the perception that online offerings in general are not an effective way to educate students, whether or not our offerings achieve satisfactory performance, which could make it difficult for us to successfully attract prospective students. Students may be reluctant to enroll in online programs and courses for fear that the learning experience may be substandard, that employers may be averse to hiring students who received their education online, or that organizations granting professional licenses or certifications may be reluctant to grant them based on degrees earned through online education.

- *Ineffective marketing efforts.* We invest substantial resources in developing and implementing data-driven marketing strategies that focus on identifying the right potential student at the right time. These marketing efforts make substantial use of search engine optimization, paid search and custom website development and deployment and we rely on a small number of internet search engines and marketing partners. If our execution of this strategy proves to be inefficient or unsuccessful in generating a sufficient quantity of qualified prospective students, or if the costs associated with the execution of this strategy increase, our revenue could be adversely affected.

- *Damage to university client reputation.* Because we market a specific graduate program or course to potential students, the reputations of our university clients are critical to our ability to enroll students. Many factors affecting our university clients' reputations are beyond our control and can change over time, including their academic performance and ranking among nonprofit educational institutions.

- *Lack of interest in an offering.* We may encounter difficulties attracting qualified students for graduate programs or courses that are not highly desired or that are relatively new within their

fields. Macroeconomic conditions beyond our control may diminish interest in employment in a field, and that could contribute to lack of interest in offerings in the disciplines related to that field.

- *Our lack of control over admissions decisions for our university clients' graduate programs.* Even if we are able to identify prospective students for a graduate program, there is no guarantee that students will be admitted to that program. In the Graduate Program Segment, the university clients retain complete discretion over admissions decisions, and any changes to admissions standards, or inconsistent application of admissions standards, could affect student enrollment and our ability to generate revenue.

- *Inability of students to secure funding.* Like traditional college and university students, many of the students in our university clients' graduate programs rely heavily on the availability of third-party financing to pay for the costs of their educations, including tuition. This tuition assistance may include federal or private student loans, scholarships and grants, or benefits or reimbursement provided by the students' employers. Any developments that reduce the availability of financial aid for higher education generally, or for our university clients' graduate programs in particular, could impair students' abilities to meet their financial obligations, which in turn could result in reduced enrollment and harm our ability to generate revenue.

- *General economic conditions.* Student enrollment in our offerings may be affected by changes in global economic conditions. An improvement in economic conditions and, in particular, an improvement in the economic conditions in the U.S. and the U.S. unemployment rate, may reduce demand among potential students for educational services, as they may find adequate employment without additional education. Conversely, a worsening of economic and employment conditions may reduce the willingness of employers to sponsor educational opportunities for their employees or discourage existing or potential students from pursuing additional education due to a perception that there are insufficient job opportunities, increased economic uncertainty or other factors, any of which could adversely impact our ability to attract qualified students to our offerings. If one or more of these factors reduces student demand for our offerings, enrollment could be negatively affected, our costs associated with student acquisition and retention could increase, or both, any of which could materially compromise our ability to grow our revenue or achieve profitability. These developments could also harm our reputation and make it more difficult for us to engage new and existing university clients for new offerings, which would negatively impact our ability to expand our business.

Disruption to or failures of our platform could reduce university client and student satisfaction with our offerings and could harm our reputation.

The performance and reliability of our platform is critical to our operations, reputation and ability to attract new university clients, as well as our student acquisition and retention efforts. Our university clients rely on this technology to offer their programs and courses online, and students access this technology on a frequent basis as an important part of their educational experience. Because our platform is complex and incorporates a variety of hardware and proprietary and third party software, our platform may have errors or defects that could result in unanticipated downtime for our university clients and students. Web and mobile based applications frequently contain undetected errors when first introduced or when new versions or enhancements are released, and we have from time to time found errors and defects in our technology and new errors and defects may be detected in the future. In addition, we have experienced and may in the future experience temporary system interruptions to our platform for a variety of reasons including network failures, power failures, problems with third party firmware updates, as well as an overwhelming numbers of users trying to access our platform. Any errors, defects, disruptions or other performance problems with our platform could damage our or our university clients' reputations, decrease student satisfaction and retention and impact our ability to

attract new students and university clients. If any of these problems occur, our university clients could attempt to terminate their agreements with us, or make indemnification or other claims against us. In addition, sustained or recurring disruptions in our platform could adversely affect our and our university clients' compliance with applicable regulations and accrediting body standards.

We rely upon Amazon Web Services to host certain aspects of our platform and any disruption of or interference with our use of Amazon Web Services could impair our ability to deliver our platform to university clients and students, resulting in university client and student dissatisfaction, damage to our reputation, and harm to our business.

Amazon Web Services, or AWS, provides a distributed computing infrastructure platform for business operations, or what is commonly referred to as a cloud computing service. We have designed our technology and technology-enabled services to use data processing, storage capabilities and other services provided by AWS. Currently, our online learning platform and certain of our front-end and back-end technology and services are run on AWS. Given this, along with the fact that we cannot easily switch our AWS operations to another cloud provider, any disruption of, or interference with our use of, AWS would impact our operations and our business would be adversely impacted. AWS provides us with computing and storage capacity pursuant to an agreement that continues until terminated by either party. AWS may terminate the agreement without cause by providing 30 days' prior written notice, and may terminate the agreement for cause with 30 days' prior written notice, including any material default or breach of the agreement by us that we do not cure within the 30-day period. Additionally, AWS has the right to terminate the agreement immediately with notice to us in certain scenarios such as if AWS believes providing the services could create a substantial economic or technical burden or material security risk for AWS, or in order to comply with the law or requests of governmental entities. If any of our arrangements with AWS is terminated, we could experience interruptions in our software as well as delays and additional expenses in arranging new facilities and services.

We utilize third-party data center hosting facilities operated by AWS. Our operations depend, in part, on AWS's abilities to protect these facilities against damage or interruption from natural disasters, power or telecommunications failures, criminal acts and similar events. The occurrence of spikes in usage volume, a natural disaster, an act of terrorism, vandalism or sabotage, a decision to close a facility without adequate notice, or other unanticipated problems at a facility could result in lengthy interruptions in the availability of our platform, which would result in harm to our business. Also, in the event of damage or interruption, our insurance policies may not adequately compensate us for any losses that we may incur. These factors in turn could further reduce our revenue, subject us to liability or cause our university clients to fail to renew or terminate their contracts, any of which could harm our business.

Our student acquisition efforts depend in large part upon the availability of advertising space through a variety of media.

We depend upon the availability of advertising space through a variety of media, including third party applications on platforms such as Facebook and LinkedIn, to direct traffic to our offerings and acquire new students for our offerings. The availability of advertising space varies, and a shortage of advertising space in any particular media or on any particular platform, or the elimination of a particular medium on which we advertise, could limit our ability to direct traffic to our offerings and acquire new students on a cost-effective basis, any of which could have a material adverse effect on our business, results of operations and financial condition.

The market for our offerings may be limited based on the types of nonprofit colleges and universities we target.

Our target market of selective nonprofit colleges and universities is necessarily limited. Some of the contracts we enter into with our university clients contain limitations on our ability to contract with other institutions to provide the same offering. In addition, in order to maintain good relations with our university clients we may decide not to approach certain institutions that they regard as their direct competitors to offer similar programs or courses, even if we are allowed to do so under our contracts.

We have agreed to incur, and we may incur in the future, costs to terminate some or all of the exclusivity obligations in certain of our university client contracts.

Certain of our contracts with our university clients limit our ability to enable competitive offerings with other schools. In our Graduate Program Segment, we have determined that enabling some of these contractually prohibited competitive programs may be part of our business strategy. To eliminate some or all of the exclusivity obligations in certain university clients' contracts with us, we have agreed with certain university clients in our Graduate Program Segment to do some or all of the following: make fixed and contingent cash payments over time, reduce our revenue share over time, and/or make minimum investments in marketing under certain conditions.

We may determine in the future that enabling additional contractually prohibited competitive programs or courses is desirable, and we may therefore agree with additional university clients to incur costs similar to those above to reduce or eliminate the exclusivity obligations contained in their contracts with us.

If the competitive programs or courses we ultimately enable fail to reach scale or cannot be scaled at a reasonable cost, or if we need to incur contingent costs in connection with offering competitive programs or courses, our ability to grow our business and achieve profitability would be impaired.

Attracting new university clients for the launch of new offerings is complex and time-consuming. If we pursue unsuccessful opportunities, we may forego more profitable opportunities and our operating results and growth would be harmed.

The process of identifying new offerings at selective nonprofit colleges and universities, and then negotiating contracts with potential university clients, is complex and time-consuming. Because of the initial reluctance on the part of some nonprofit colleges and universities to embrace a new method of delivering their education services and the complicated approval process within universities, our sales process to attract and engage a new university client can be lengthy. Depending on the particular college or university and the particular offering, we may face resistance from university administrators or faculty members during the process.

The sales cycle for a new university client often spans one year or longer. In addition, our sales cycle can vary substantially because of a number of factors, including the university client's approval processes or disagreements over the terms of our offerings. We spend substantial time and management resources on these sales efforts without any assurance that our efforts will result in the launch of a new program or course. If we invest substantial resources pursuing unsuccessful opportunities, we may forego other more profitable university client relationships, which would harm our operating results and growth.

To launch a new graduate program, we must incur significant expense in technology and content development, as well as marketing and sales, to identify and attract prospective students, and it may be several years, if ever, before we generate revenue from a new program sufficient to recover our costs.

To launch a new graduate program, we must integrate components of our platform with the various student information and other operating systems our university clients use to manage functions within their institutions. In addition, our content development staff must work closely with that university client's faculty members to produce engaging online coursework and content, and we must commence student acquisition activities. This process of launching a new graduate program is time-consuming and costly and, under our agreements with our university clients, we are primarily responsible for the significant costs of this effort, even before we generate any revenue. Additionally, during the life of our university client agreements, we are responsible for the costs associated with continued marketing, maintaining our platform and providing non-academic and other support for students enrolled in the graduate program. We invest significant resources in these new graduate programs from the beginning of our relationship with a university client, and there is no guarantee that we will ever recoup these costs.

Because our university client agreements provide that we receive a fixed percentage of the tuition that the university clients receive from the students enrolled in their graduate programs, we only begin to recover these costs once students are enrolled and our university clients begin billing students for tuition and fees. The time that it takes for us to recover our investment in a new graduate program depends on a variety of factors, primarily the level of our student acquisition costs and the rate of growth in student enrollment in the program. We estimate that, on average, it takes approximately four to five years after engagement with a university client to fully recover our investment in that university client's new graduate program. Because of the lengthy period required to recoup our investment in a new graduate program, unexpected developments beyond our control could occur that result in the university client ceasing or significantly curtailing a graduate program before we are able to fully recoup our investment. As a result, we may ultimately be unable to recover the full investment that we make in a new graduate program or achieve our expected level of profitability for the graduate program.

If new offerings do not scale efficiently and in the time frames we expect, our reputation and our revenue will suffer.

Our continued growth and profitability depends on our and our university clients' ability to successfully scale newly launched offerings. As we continue aggressively growing our business, we plan to continue to hire new employees at a rapid pace, particularly in our marketing and sales team and our technology and content development teams. If we cannot adequately train these new employees, we may not be successful in acquiring potential students for our offerings, which would adversely impact our ability to generate revenue, and our university clients and the students in their programs and courses could lose confidence in the knowledge and capability of our employees. If we cannot quickly and efficiently scale our technology to handle growing student enrollment and new offerings, our university clients' and their students' experiences may suffer, which could damage our reputation among colleges and universities and their faculty and students.

In addition, in our Graduate Program Segment, if our university clients cannot quickly develop the infrastructure and hire sufficient faculty and administrators to handle growing student enrollments, our university clients' and their students' experiences with our platform may suffer, which could damage our reputation among colleges and universities and their faculty and students.

Our ability to effectively manage any significant growth of new offerings and increasing student enrollment will depend on a number of factors, including our ability to:

- satisfy existing students in, and attract and enroll new students for, our offerings;

- assist our university clients in recruiting qualified faculty to support their expanding enrollments;
- assist our university clients in developing and producing an increased volume of course content;
- successfully introduce new features and enhancements and maintain a high level of functionality in our platform; and
- deliver high-quality support to our university clients and their faculty and students.

Establishing new offerings or expanding existing offerings will require us to make investments in management and key staff, increase capital expenditures, incur additional marketing expenses and reallocate other resources. If student enrollment in our offerings does not increase, if we are unable to launch new offerings in a cost-effective manner or if we are otherwise unable to manage new offerings effectively, our ability to grow our business and achieve profitability would be impaired, and the quality of our platform and the satisfaction of our university clients and their students could suffer.

Our financial performance depends heavily on student retention within our offerings, and factors influencing student retention may be out of our control.

Once a student is enrolled in a program or course, we and our university client must retain the student over the life of the program or course to generate ongoing revenue. Our strategy involves offering high-quality support to students enrolled in these programs and courses to support their retention. If we do not help students quickly resolve any educational, technological or logistical issues they encounter, otherwise provide effective ongoing support to students or deliver the type of high-quality, engaging educational content that students expect, students may withdraw from the program or course, which would negatively impact our revenue.

In addition, student retention could be compromised by the following factors, many of which are largely outside of our control:

- *Reduced support from our university clients.* Because revenue from a particular offering is directly attributable to the level of student enrollment in the offering, our ability to grow our revenue from a university client relationship depends on the growth of enrollment in that program. Our university clients could limit enrollment in their offerings, cease providing the offerings altogether or significantly curtail or inhibit our ability to promote their offerings, any of which would negatively impact our revenue.
- *Lack of support from faculty members in our university clients' graduate programs.* It takes a significant time commitment and dedication from our university clients' faculty members to work with us to develop course content for their graduate programs and courses designed for an online learning environment. Our university clients' faculty may be unfamiliar with the development and production process, may not understand the time commitment involved to develop the course content, or may otherwise be resistant to changing the ways in which they present the same content in an on-campus class. Our ability to maintain high student retention will depend in part on our ability to convince our university clients' faculty of the value in the time and effort they will spend developing the course content. Lack of support from faculty could cause the quality of our graduate programs to decline, which could contribute to decreased student satisfaction and retention in our Graduate Program Segment.
- *Student dissatisfaction.* Enrolled students may drop out of our offerings based on their individual perceptions of the value they are getting from the offering. For example, we may face retention challenges as a result of students' dissatisfaction with the quality of course content and presentation, dissatisfaction with our university clients' faculty, changing views of the value of our offerings and perceptions of employment prospects following completion of the program or

course. Factors outside our control related to student satisfaction with, and overall perception of, a program or course may contribute to decreased student retention rates for that program.

- *Personal factors.* Factors impacting a student's willingness and ability to stay enrolled in a program or course include personal factors, such as ability to continue to pay tuition, ability to meet the rigorous demands of the offering, and lack of time to continue classes, all of which are generally beyond our control.

Any of these factors could significantly reduce the revenue that we generate from our offerings, which would negatively impact our return on investment for the particular offering, and could compromise our ability to grow our business and achieve profitability.

Of the graduate programs we operate, only a small number contribute a significant portion of our revenue, and loss or material underperformance of any one of these programs could have a disproportionate effect on our business.

In our Graduate Program Segment, we currently have, and for the foreseeable future expect to continue to have, a small number of graduate programs that contribute a meaningful portion of our revenue and generate positive earnings and cash flow. Therefore, if any of these programs were to materially underperform for any reason or if the university client for these programs terminate or do not renew their relationship with us, it would hurt our future financial performance.

A significant portion of our revenue is currently attributable to graduate programs with the University of Southern California. The loss of, or a decline in enrollment in, these programs could significantly reduce our revenue.

We expect that our programs with USC will continue to account for a large portion of our revenue until our other university client programs become more mature and achieve significantly higher enrollment levels. Any decline in USC's reputation, any increase in USC's tuition, or any changes in USC's policies could adversely affect the number of students that enroll in these programs. Further, the faculty or administrators could become resistant to offering their online programs through our platform, making it more difficult for us to attract and retain students. USC is not required to expand student enrollment in these online programs and, upon the expiration of their contracts, they are not required to continue using us as the provider of these or other online programs. If certain of these programs were to materially underperform for any reason or to terminate or not renew their relationships with us, it would significantly reduce our revenue.

A significant portion of our revenue in the Short Course Segment is attributable to courses with three university clients. The loss of any of these clients, or a decline in enrollment in certain of these courses, could significantly reduce our revenue in this segment.

We expect that our courses with our three largest university clients in the Short Course Segment will continue to account for a large portion of our revenue in this segment. Any decline in these university clients' reputations, increase in fees adversely affecting the number of students that enroll in these courses, or these university clients becoming resistant to offering online courses through our platform, would make it more difficult for us to attract students. These university clients are not required to continue using us as their provider for online short courses. If any of these university clients elected to end certain courses or to terminate or not renew their relationships with us, it would significantly reduce our revenue in this segment.

The loss, or material underperformance, of any one of our graduate programs could harm our reputation, which could in turn affect our profitability.

We rely on our reputation for delivering high-quality online graduate programs and recommendations from existing university clients to attract potential new university clients. Therefore, the loss of any single graduate program, or the failure of any university client to renew its agreement with us upon expiration, could harm our reputation and impair our ability to pursue our growth strategy and ultimately to become profitable.

If our security measures or those of our third party service providers are breached or fail and result in unauthorized disclosure of data, we could lose university clients, fail to attract new university clients and be exposed to protracted and costly litigation.

Our platform and computer systems store and transmit proprietary and confidential university, student and company information, which may include personal information of students, prospective students, faculty and employees, that is subject to stringent legal and regulatory obligations. As a technology company, we face an increasing number of threats to our platform and computer systems including unauthorized activity and access, system viruses, worms, malicious code, denial of service attacks, and organized cyberattacks, any of which could breach our security and disrupt our platform and our university clients' programs. The techniques used by computer hackers and cyber criminals to obtain unauthorized access to data or to sabotage computer systems change frequently and generally are not detected until after an incident has occurred. Our efforts to maintain the security and integrity of our platform, and the cybersecurity measures taken by our third party service providers may be unable to anticipate, detect or prevent all attempts to compromise our systems. If our security measures are breached or fail as a result of third-party action, employee error, malfeasance or otherwise, we could be subject to liability or our business could be interrupted, potentially over an extended period of time. Any or all of these issues could harm our reputation, adversely affect our ability to attract new university clients and students, cause existing university clients to scale back their offerings or elect not to renew their agreements, cause prospective students not to enroll or students to not stay enrolled in our offerings, or subject us to third-party lawsuits, regulatory fines or other action or liability. Further, any reputational damage resulting from breach of our security measures could create distrust of our company by prospective university clients or students. In addition, our insurance coverage may not be adequate to cover losses associated with such events, and in any case, such insurance may not cover all of the types of costs, expenses and losses we could incur to respond to and remediate a security breach. As a result, we may be required to expend significant additional resources to protect against the threat of these disruptions and security breaches or to alleviate problems caused by such disruptions or breaches.

Many governments have enacted laws that require companies and institutions to notify individuals of data breach incidents, usually in writing. Under the terms of our contracts with our university clients, we would be responsible for the costs of investigating and disclosing data breaches to the university clients' students. In addition to costs associated with investigating and fully disclosing a data breach, we could be subject to substantial monetary fines or private claims by affected parties and our reputation would likely be harmed.

We have grown rapidly and expect to continue to invest in our growth for the foreseeable future. If we fail to manage this growth effectively, the success of our business model will be compromised.

We have experienced rapid growth in a relatively short period of time, which has placed, and will continue to place, a significant strain on our administrative and operational infrastructure, facilities and other resources. Our ability to manage our operations and growth will require us to continue to expand our marketing and sales personnel, technology team, finance and administration teams, as well as our facilities and infrastructure. We will also be required to refine our operational, financial and

management controls and reporting systems and procedures. If we fail to manage this expansion of our business efficiently, our costs and expenses may increase more than we plan and we may not successfully expand our university client base, enhance our platform, develop new offerings with new and existing university clients, attract a sufficient number of qualified students in a cost-effective manner, satisfy the requirements of our existing university clients, respond to competitive challenges or otherwise execute our business plan. Accordingly, our historical revenue growth rate may not continue in the future.

Our ability to manage any significant growth of our business effectively will depend on a number of factors, including our ability to:

- effectively recruit, integrate, train and motivate a large number of new employees, including our marketing and technology teams, while retaining existing employees;
- maintain the beneficial aspects of our corporate culture and effectively execute our business plan;
- continue to improve our operational, financial and management controls;
- protect and further develop our strategic assets, including our intellectual property rights; and
- make sound business decisions in light of the scrutiny associated with operating as a public company.

These activities will require significant capital expenditures and allocation of valuable management and employee resources, and our growth will continue to place significant demands on our management and our operational and financial infrastructure.

We may not be able to effectively manage any future growth in an efficient, cost-effective or timely manner, or at all. In particular, any failure to implement systems enhancements and improvements successfully will likely negatively impact our ability to manage our expected growth, ensure uninterrupted operation of key business systems and comply with the rules and regulations that are applicable to public reporting companies. Moreover, if we do not manage the growth of our business and operations effectively, the quality of our platform could suffer, which could negatively affect our reputation, results of operations and overall business.

We may expand by acquiring or investing in other companies or technologies, which may divert our management's attention, result in dilution to our shareholders and consume resources that are necessary to sustain our business.

We have in the past and may in the future acquire complementary products, services, technologies or businesses. Negotiating these transactions can be time-consuming, difficult and expensive, and our ability to complete these transactions may often be subject to conditions or approvals that are beyond our control. In addition, we have limited experience in acquiring other companies or technologies. We may not be able to identify desirable additional acquisition targets, may incorrectly estimate the value of an acquisition target or may not be successful in entering into an agreement with any particular target. Consequently, these transactions, even if undertaken and announced, may not close.

An acquisition, investment, or new business relationship may result in unforeseen operating difficulties and expenditures. It is also possible that the integration process could result in material challenges, including, without limitation:

- the diversion of management's attention from ongoing business concerns and performance as a result of the devotion of management's attention to acquisition or integration activities;
- managing a larger combined company;

- maintaining employee morale and retaining key management and other employees;
- the possibility of faulty assumptions underlying expectations regarding the integration process;
- retaining existing business and operational relationships and attracting new business and operational relationships;
- consolidating corporate and administrative infrastructures and eliminating duplicative operations and inconsistencies in standards, controls, procedures and policies;
- coordinating geographically separate organizations;
- unanticipated issues in integrating information technology, communications and other systems;
- undetected errors or unauthorized use of a third party's code in the products of the acquired companies or in technology acquired;
- entry into highly competitive markets in which we have no or limited direct prior experience and where competitors have stronger market positions; and
- exposure to unknown liabilities, including claims and disputes by third parties against the companies we acquire.

Many of these factors will be outside of the combined company's control and any one of them could result in delays, increased costs, decreased revenues and diversion of management's time and energy, which could materially affect our financial position, results of operations and cash flows.

If we experience difficulties with the integration process following an acquisition, the anticipated benefits of the acquisition may not be realized fully or at all, or may take longer to realize than expected. Moreover, the anticipated benefits of any acquisition, investment, or business relationship may not be realized.

In addition, in connection with an acquisition, investment or new business relationship we may:

- issue additional equity securities that would dilute current shareholders;
- use cash that we may need in the future to operate our business;
- incur debt on terms unfavorable to us or that we are unable to repay or that may place burdensome restrictions on our operations;
- incur large charges or substantial liabilities; or
- become subject to adverse tax consequences.

Any of these outcomes could harm our business and operating results.

We face competition from established and emerging companies, which could divert university clients or students to our competitors, result in pricing pressure and significantly reduce our revenue.

We expect existing competitors and new entrants to the online learning market to revise and improve their business models constantly in response to challenges from competing businesses, including ours. If these or other market participants introduce new or improved delivery of online education and technology-enabled services that we cannot match or exceed in a timely or cost-effective manner, our ability to grow our revenue and achieve profitability could be compromised.

Some of our competitors and potential competitors have significantly greater resources than we do. Increased competition may result in pricing pressure for us in terms of the percentage of tuition and fees we are able to negotiate to receive. The competitive landscape may also result in longer and more complex sales cycles with a prospective university client or a decrease in our market share among selective nonprofit colleges and universities seeking to offer online graduate programs or short courses, any of which could negatively affect our revenue and future operating results and our ability to grow our business.

A number of competitive factors could cause us to lose potential university client and student opportunities or force us to offer our platform on less favorable economic terms, including:

- competitors may develop service offerings that our potential university clients or students find to be more compelling than ours;

- competitors may adopt more aggressive pricing policies and offer more attractive sales terms, adapt more quickly to new technologies and changes in university client and student requirements, and devote greater resources to the acquisition of qualified students than we can;

- current and potential competitors may establish cooperative relationships among themselves or with third parties to enhance their products and expand their markets, and our industry is likely to see an increasing number of new entrants and increased consolidation. Accordingly, new competitors or alliances among competitors may emerge and rapidly acquire significant market share; and

- colleges and universities may choose to continue using or to develop their own online learning solutions in-house, rather than pay for our platform.

We may not be able to compete successfully against current and future competitors. In addition, competition may intensify as our competitors raise additional capital and as established companies in other market segments or geographic markets expand into our market segments or geographic markets. If we cannot compete successfully against our competitors, our ability to grow our business and achieve profitability could be impaired.

If for-profit postsecondary institutions, which offer online education alternatives different from ours, perform poorly, it could tarnish the reputation of online education as a whole, which could impair our ability to grow our business.

For-profit postsecondary institutions, many of which provide course offerings predominantly online, are under intense regulatory and other scrutiny, which has led to media attention that has sometimes portrayed that sector in an unflattering light. Some for-profit online school operators have been subject to governmental investigations alleging the misuse of public funds, financial irregularities, and failure to achieve positive outcomes for students, including the inability to obtain employment in their fields. These allegations have attracted significant adverse media coverage and have prompted legislative hearings and regulatory responses. These investigations have focused on specific companies and individuals, and even entire industries in the case of recruiting practices by for-profit higher education companies. Even though we do not market our platform to these institutions, this negative media attention may nevertheless add to skepticism about online higher education generally, including our platform.

The precise impact of these negative public perceptions on our current and future business is difficult to discern. If these few situations, or any additional misconduct, cause all online learning programs to be viewed by the public or policymakers unfavorably, we may find it difficult to enter into or renew contracts with selective colleges and universities or attract additional students for our offerings. In addition, this perception could serve as the impetus for more restrictive legislation, which could limit our future business opportunities. Moreover, allegations of abuse of federal financial aid

funds and other statutory violations against for-profit higher education companies could negatively impact our opportunity to succeed due to increased regulation and decreased demand. Any of these factors could negatively impact our ability to increase our university client base and grow our offerings, which would make it difficult to continue to grow our business.

If we are unable to successfully implement our new global enterprise resource planning system, it could disrupt our business or have a material adverse effect on our results of operations, cash flows and financial condition.

We are in the process of implementing of a new global enterprise resource planning, or ERP, system. The ERP system is designed to accurately maintain our books and records and provide information on our operations to management. Our ERP system implementation will continue to require significant investment of human and financial resources. There are inherent risks associated with upgrading or changing systems, including inaccurate data or reporting. The process of upgrading and standardizing our ERP system is complex, time-consuming and expensive. We may experience data loss, disruptions, delays or negative business impacts from the upgrades. Any operational disruptions during the course of this process and any delays or deficiencies in the design and implementation of the new ERP system or in the performance of our legacy systems could materially and adversely affect our ability to operate our businesses. Additionally, changes in scope, timeline or cost of implementing the ERP system could have a material adverse effect on our results of operations, cash flows and financial condition.

If we do not retain our senior management team and key employees, we may not be able to sustain our growth or achieve our business objectives.

Our future success is substantially dependent on the continued service of our senior management team. Because of our small number of university clients and the significant nature of each new university client relationship, our senior management team is heavily involved in the university client identification and sales process, and their expertise is critical in navigating the complex approval processes of large nonprofit colleges and universities. We do not maintain key-person insurance on any of our employees, including our senior management team. The loss of the services of any individual on our senior management team, or failure to find a suitable successor, could make it more difficult to successfully operate our business and achieve our business goals.

Our future success also depends heavily on the retention of our marketing and sales, technology and content development and support teams to continue to attract and retain qualified students in our university clients' programs and courses, thereby generating revenue for us. In particular, our highly-skilled technology and content development employees provide the technical expertise underlying our bundled technology-enabled services that support our university clients' programs and courses and the students enrolled in these offerings. Competition for these employees is intense. As a result, we may be unable to attract or retain these key personnel that are critical to our success, resulting in harm to our relationships with university clients, loss of expertise or know-how and unanticipated recruitment and training costs.

In addition, as a result of business acquisitions, including the GetSmarter acquisition, current and prospective employees of 2U and any acquired company may experience uncertainty about their future roles following the acquisition. If our employees or the employees of any acquired company depart because of issues relating to uncertainty or perceived difficulties of integration, our ability to realize the anticipated benefits of an acquisition could be adversely impacted.

Our international operations expose us to fluctuations in currency exchange rates that could negatively impact our financial results and cash flows.

After the GetSmarter acquisition, we conduct a more substantial portion of our business outside the U.S. and we accordingly make certain business and resource decisions considering assumptions about foreign currency. As a result, we face exposure to adverse movements in foreign currency exchange rates, in particular with respect to the volatility of the South African rand, or ZAR. While our reporting currency is in U.S. dollars, a portion of our consolidated revenues and expenses are denominated in ZAR, certain of our assets are denominated in ZAR and we have a significant employee base in South Africa. A decrease in the value of the U.S. dollar in relation to the ZAR could increase our cost of doing business in South Africa. Alternatively, if the ZAR depreciates against the U.S. dollar, the value of our ZAR revenues, earnings and assets as expressed in our U.S. dollar financial statements will decline. We have not entered into any hedging transactions in an effort to reduce our exposure to foreign exchange risk. Our exposure to adverse movements in foreign currency exchange rates, including the ZAR, could have a material adverse impact on our financial results and cash flows.

The fluctuations of currencies in which we conduct business can both increase and decrease our overall revenue and expenses for any given fiscal period. Such volatility, even when it increases our revenues or decreases our expenses, impacts our ability to accurately predict our future results and earnings.

We have incurred substantial transaction and integration expenses related to the acquisition of GetSmarter and expect to incur additional integration expenses that could negatively impact our financial results and cash flows.

We have incurred, and expect to continue to incur, a number of non-recurring costs associated with the GetSmarter acquisition and combining the operations of the two companies. For example, we expect to incur costs related to formulating and implementing integration plans, including facilities and systems consolidation costs and employment-related costs. We continue to assess the magnitude of these costs, and additional unanticipated costs may be incurred in the integration of the two companies' businesses. Any expected efficiencies to offset these costs may not be achieved in the near term, or at all.

We may need additional capital in the future to pursue our business objectives. Additional capital may not be available on favorable terms, or at all, which could compromise our ability to grow our business.

We may need to raise additional funds to respond to business challenges or opportunities, accelerate our growth, develop new offerings or enhance our platform. If we seek to raise additional capital, it may not be available on favorable terms or may not be available at all. In addition, if we have borrowings outstanding under our credit facility, we may be restricted from using the net proceeds of financing transactions for our operating objectives. Lack of sufficient capital resources could significantly limit our ability to manage our business and to take advantage of business and strategic opportunities. Any additional capital raised through the sale of equity or debt securities with an equity component would dilute our stock ownership. If adequate additional funds are not available if and when needed, we may be required to delay, reduce the scope of, or eliminate material parts of our business strategy.

We maintain offices outside of the United States, have international residents that apply to and enroll in our offerings and plan to expand our international business, which exposes us to risks inherent in international operations.

We have a branch office in Hong Kong for marketing and student support. In addition, we currently employ approximately 332 people in South Africa and 2 people in the United Kingdom as a result of the acquisition of GetSmarter, which significantly increased our international operations, including the number of international applicants and students in our offerings. One element of our growth strategy is to continue expanding our international operations and to establish a worldwide client base. Our current international operations and future initiatives will involve a variety of risks that could constrain our operations and compromise our growth prospects, including:

- the need to localize and adapt online offerings for specific countries, including translation into foreign languages and ensuring that these offerings enable our university clients to comply with local education laws and regulations;
- the burden of complying with a wide variety of laws, including those relating to labor and employment matters, data protection and privacy;
- difficulties in staffing and managing foreign operations, including different pricing environments, longer sales cycles, longer accounts receivable payment cycles and collections issues;
- lack of familiarity with and unexpected changes in foreign regulatory requirements;
- challenges inherent in efficiently managing an increased number of employees over large geographic distances, including the need to implement appropriate systems, policies, benefits and compliance programs;
- new and different sources of competition, and practices which may favor local competitors;
- weaker protection for intellectual property and other legal rights than in the United States and practical difficulties in enforcing intellectual property and other rights outside of the United States;
- compliance challenges related to the complexity of multiple, conflicting and changing governmental laws and regulations, including employment, tax, privacy and data protection, and anti-bribery laws and regulations such as the U.S. Foreign Corrupt Practices Act and the U.K. Bribery Act;
- increased financial accounting and reporting burdens and complexities;
- restrictions on the transfer of funds;
- adverse tax consequences, including the potential for required withholding taxes for our overseas employees;
- terrorist attacks, acts of violence or war and adverse environmental conditions;
- unstable regional and economic political conditions; and
- fluctuations in currency exchange rates or restrictions on foreign currency.

Our expansion efforts may not be successful. Our experience with attracting university clients and students in the U.S. may not be relevant to our ability to attract clients and students in other markets. If we invest substantial time and resources to expand our international operations and are unable to attract university clients and students successfully and in a timely manner, our business and operating results will be harmed.

Our operations in South Africa expose us to risks that could have an adverse effect on our business.

We expect to continue adding personnel in South Africa. We may incur costs complying with labor laws, rules and regulations in South Africa, including laws that regulate work time, provide for mandatory compensation in the event of termination of employment for operational reasons, and impose monetary penalties for non-compliance with administrative and reporting requirements in respect of affirmative action policies. Our reliance on a workforce in South Africa also exposes us to disruptions in the business, political, and economic environment in that region, as well as natural disasters and other environmental conditions. Maintenance of a stable political environment is important to our operations in South Africa, and terrorist attacks and acts of violence or war may directly affect our physical facilities and workforce or contribute to general instability. Our operations in South Africa require us to comply with complex local laws and regulatory requirements and expose us to foreign currency exchange rate risk. The economy of South Africa in the past has been, and in the future may continue to be, characterized by rates of inflation and interest rates that are substantially higher than those prevailing in the United States, which could increase our South-African based costs and decrease our operating margins. Our operations in South Africa may also subject us to trade restrictions, exchange control limitations, reduced or inadequate protection for intellectual property rights, security breaches, and other factors that may adversely affect our business. Negative developments in any of these areas could increase our costs of operations or otherwise harm our business.

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

As of December 31, 2017, we had federal net operating loss carryforwards due to prior period losses, which, if not utilized, will begin to expire in 2029. Our gross state net operating loss carryforwards are equal to or less than the federal net operating loss carryforwards and expire over various periods based on individual state tax laws. These net operating loss carryforwards could expire unused and be unavailable to offset future income tax liabilities, which could adversely affect our profitability. In addition, under Section 382 of the Internal Revenue Code of 1986, as amended, if a corporation undergoes an "ownership change," which is generally defined as a greater than 50% change, by value, in its equity ownership over a three-year period, the corporation's ability to use its pre-change net operating loss carryforwards and other pre-change tax attributes to offset its post-change income may be limited. Similar rules may apply under state tax laws. During the three-year period ended December 31, 2016, we determined that such an ownership change occurred. Absent a subsequent ownership change, however, all of our historical net operating losses should be available. Therefore, the occurrence of the ownership change during the three-year period ended December 31, 2016 is not expected to limit our ability to carry forward historical net operating losses before expiration. We may experience ownership changes in the future as a result of subsequent shifts in our stock ownership. If a future ownership change occurs and limits our ability to use our historical net operating loss carryforwards, it would harm our future financial statement results by increasing our future tax obligations. We also have net operating loss carryforwards in South Africa and the United Kingdom, and there is no guarantee that entities in these countries will generate enough taxable income to fully utilize them.

We engage some individuals classified as independent contractors, not employees, and if federal or state law mandates that they be classified as employees, our business would be adversely impacted.

We engage independent contractors and are subject to the Internal Revenue Service regulations and applicable state law guidelines regarding independent contractor classification. These regulations and guidelines are subject to judicial and agency interpretation, and it could be determined that the independent contractor classification is inapplicable. Further, if legal standards for classification of

independent contractors change, it may be necessary to modify our compensation structure for these personnel, including by paying additional compensation or reimbursing expenses. In addition, if our independent contractors are determined to have been misclassified as independent contractors, we would incur additional exposure under federal and state law, workers' compensation, unemployment benefits, labor, employment and tort laws, including for prior periods, as well as potential liability for employee benefits and tax withholdings. Any of these outcomes could result in substantial costs to us, could significantly impair our financial condition and our ability to conduct our business as we choose, and could damage our reputation and our ability to attract and retain other personnel.

We rely on third-party software to provide certain components of our platform, which may be difficult to obtain or which could cause errors or failures of our platform.

We rely on software licensed from third parties to offer certain components of our technology and services. In addition, we may need to obtain future licenses from third-parties to use intellectual property necessary for the continued use of our technology and services, which might not be available to us on acceptable terms, or at all. Any loss of the right to use a component of our technology or services could result in errors or failures of our platform until equivalent technology is either developed by us, or, if available, 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 platform, which could harm our business.

Risks Related to Regulation of Our Business and That of Our University Clients

Our business model relies on university client institutions complying with federal and state laws and regulations.

Higher education is heavily regulated. All of our university clients in the United States and certain university clients outside of the United States participate in Title IV federal student financial assistance programs under the HEA of 1965, as amended, or HEA, and are subject to extensive regulation by the DOE, as well as various state agencies, licensing boards and accrediting commissions. To participate in the Title IV programs, an institution must receive and maintain authorization by the appropriate state education agencies, be accredited by an accrediting commission recognized by the DOE, and be certified by the DOE as an eligible institution. If a university client participating in Title IV was found to be in non-compliance with any of these laws, regulations, standards or policies, the university client could lose some or all access to Title IV program funds, lose the ability to offer certain programs or lose their ability to operate in certain states, any of which could cause our revenue from that university client's program to decline.

The regulations, standards and policies applicable to our university clients change frequently and are often subject to interpretation. Changes in, or new interpretations of, applicable laws, regulations or standards could compromise our university clients' accreditation, authorization to operate in various states, permissible activities or use of federal funds under Title IV programs. We cannot predict with certainty how the requirements applied by our university clients' regulators will be interpreted, or whether our university clients will be able to comply with these requirements in the future.

Our activities are subject to federal and state laws and regulations and other requirements.

Although we are not an institution of higher education, we are required to comply with certain education laws and regulations as a result of our role as a service provider to higher education institutions, either directly or indirectly through our contractual arrangements with university clients. Failure to comply with these laws and regulations could result in breach of contract and indemnification claims and could cause damage to our reputation and impair our ability to grow our business and achieve profitability.

Activities of the U.S. Congress could result in adverse legislation or regulatory action.

The process of re-authorization of the HEA began in 2014 and is ongoing. Congressional hearings began in 2013 and will continue to be scheduled by the U.S. Senate Committee on Health, Education, Labor and Pensions, the U.S. House of Representatives Committee on Education and the Workforce and other Congressional committees regarding various aspects of the education industry, including accreditation matters, student debt, student recruiting, cost of tuition, distance learning, competency-based learning, student success and outcomes and other matters.

The increased scrutiny and results-based accountability initiatives in the education sector, as well as ongoing policy differences in Congress regarding spending levels, could lead to significant changes in connection with the reauthorization of the HEA or otherwise. These changes may place additional regulatory burdens on postsecondary schools generally, and specific initiatives may be targeted at or have an impact upon companies like us that serve higher education. The adoption of any laws or regulations that limit our ability to provide our bundled services to our university clients could compromise our ability to drive revenue through their programs or make our platform less attractive to them. Congress could also enact laws or regulations that require us to modify our practices in ways that could increase our costs.

In addition, regulatory activities and initiatives of the DOE may have similar consequences for our business even in the absence of Congressional action.

Our business model, which depends on our ability to receive a share of tuition revenue as payment from our university clients, has been validated by a DOE "dear colleague" letter, but such validation is not codified by statute or regulation and may be subject to change.

Each institution that participates in Title IV programs agrees it will not "provide any commission, bonus, or other incentive payment based in any part, directly or indirectly, upon success in securing enrollments or the award of financial aid, to any person or entity who is engaged in any student recruitment or admission activity, or in making decisions regarding the award of Title IV, HEA program funds." All of our university clients participate in Title IV Programs.

Although this rule, referred to as the incentive compensation rule, generally prohibits entities or individuals from receiving incentive-based compensation payments for the successful recruitment, admission or enrollment of students, the DOE provided guidance in 2011 permitting tuition revenue-sharing arrangements known as the "bundled services rule." Our current business model relies heavily on the bundled services rule to enter into tuition revenue-sharing agreements with our university clients.

Because the bundled services rule was promulgated in the form of agency guidance issued by the DOE in the form of a "dear colleague" letter, or DCL, and is not codified by statute or regulation, there is risk that the rule could be altered or removed without prior notice, public comment period or other administrative procedural requirements that accompany formal agency rulemaking. Although the DCL represents the current policy of the DOE, the bundled services rule could be reviewed, altered or vacated in the future. In addition, the legal weight the DCL would carry in litigation over the propriety of any specific compensation arrangements under the HEA or the incentive compensation rule is uncertain. We can offer no assurances as to how the DCL would be interpreted by a court. The revision, removal or invalidation of the bundled services rule by Congress, the DOE or a court, whether in an action involving our company or our university clients, or in action that does not involve us, could require us to change our business model and renegotiate the terms of our university client contracts and could compromise our ability to generate revenue.

If we or our subcontractors or agents violate the incentive compensation rule, we could be liable to our university clients for substantial fines, sanctions or other liabilities.

Even though the DCL clarifies that tuition revenue-sharing arrangements with our university clients are permissible, we are still subject to other provisions of the incentive compensation rule that prohibit us from offering to our employees who are involved with or responsible for recruiting or admissions activities any bonus or incentive-based compensation based on the successful identification, admission or enrollment of students into any institution. If we or our subcontractors or agents violate the incentive compensation rule, we could be liable to our university clients for substantial fines, sanctions or other liabilities, including liabilities related to "whistleblower" claims under the federal False Claims Act. Any such claims, even if without merit, could require us to incur significant costs to defend the claim, distract management's attention and damage our reputation.

If we or our subcontractors or agents violate the misrepresentation rule, or similar federal and state regulatory requirements, we could face fines, sanctions and other liabilities.

We are required to comply with other regulations promulgated by the DOE that affect our student acquisition activities, including the misrepresentation rule. The misrepresentation rule is broad in scope and applies to statements our employees, subcontractors or agents may make about the nature of a university client's program, a university client's financial charges or the employability of a university client's program graduates. A violation of this rule, FTC rules or other federal or state regulations applicable to our marketing activities by an employee, subcontractor or agent performing services for university clients could hurt our reputation, result in the termination of university client contracts, require us to pay fines or other monetary penalties or require us to pay the costs associated with indemnifying a university client from private claims or government investigations.

If our university clients participating in Title IV programs fail to maintain their state authorizations, or we or our university clients participating in Title IV programs violate other state laws and regulations, students in their offerings could be adversely affected and we could lose our ability to operate in that state and provide services to these university clients.

Our university clients participating in Title IV programs must be authorized in certain states to offer online educational offerings, engage in recruiting and operate externships, internships, clinical training or other forms of field experience, depending on state law. The loss of or failure to obtain state authorization would, among other things, limit the ability of a university client participating in Title IV programs to enroll students in that state, render the university client and its students ineligible to participate in Title IV programs in that state, diminish the attractiveness of the university client's offering and ultimately compromise our ability to generate revenue and become profitable.

In addition, if we or any of our university clients participating in Title IV programs fail to comply with any state agency's rules, regulations or standards beyond authorizations, the state agency or state attorney general could limit the ability of the university client to offer educational offerings in that state or limit our ability to perform our contractual obligations to our university client in that state.

If our U.S.-based university clients fail to maintain institutional or programmatic accreditation for their offerings, our revenue could be materially affected.

The loss or suspension of a U.S.-based university client's accreditation or other adverse action by the university client's institutional or programmatic accreditor would render the institution or its offerings ineligible to participate in Title IV programs, could prevent the university client from offering certain educational offerings and, for degree-granting programs, could make it impossible for the graduates of the university client's program to practice the profession for which they trained. If any of these results occurs, it could hurt our ability to generate revenue from that offering.

Our future growth could be impaired if our university clients fail to obtain timely approval from applicable regulatory agencies to offer new programs, make substantive changes to existing programs or expand their programs into or within certain states.

Our U.S.-based university clients are required to obtain the appropriate approvals from the DOE and applicable state and accrediting regulatory agencies for new programs or locations, which may be conditioned, delayed or denied in a manner that could impair our strategic plans and future growth. Education regulatory agencies are generally experiencing significant increases in the volume of requests for approvals as a result of new distance learning programs and adjustments to the significant volume of new regulations over the last several years. Regulatory capacity constraints have resulted in delays to various approvals our U.S.-based university clients are requesting, and such delays could in turn delay the timing of our ability to generate revenue from our university clients' programs.

If more state agencies require specialized approval of our university clients' offerings, our operating costs could rise significantly, approval times could lag or we could be prohibited from operating in certain states.

In addition to state licensing agencies, our U.S.-based university clients may be required to obtain approval from professional licensing boards in certain states to offer specialized programs in specific fields of study. Currently, relatively few states require institutions to obtain professional board approval for their online educational offerings. However, more states could pass laws requiring our U.S.-based university clients' offerings, such as graduate programs in teaching or nursing, to obtain approval from state professional boards. If a significant number of states pass additional laws requiring schools to obtain professional board approval, the cost of obtaining all necessary state approvals could dramatically increase, which could make our platform less attractive to U.S.-based university clients, and these university clients could be barred from operating in some states entirely.

Evolving regulations and legal obligations related to data privacy, data protection and information security and our actual or perceived failure to comply with such obligations, could have an adverse effect on our business.

The legislative and regulatory framework for privacy and security issues worldwide is rapidly evolving and is likely to remain uncertain for the foreseeable future. In providing our platform to university clients and in operating our business, we collect and process regulated personal information from students, faculty, prospective students and employees, such as names, identification numbers and birth dates. Our handling of this personal information is subject to a variety of laws and regulations, which have been adopted by federal, state and foreign governments to regulate the collection, distribution, use and storage of personal information of individuals. Any failure or perceived failure by us to comply with these privacy laws and regulations or any security incident that results in the unauthorized release or transfer of this personal information in our possession, could result in government enforcement actions, litigation, fines and penalties or adverse publicity, all of which could have an adverse effect on our reputation and business.

Various federal, state and foreign legislative, regulatory or other governmental bodies may enact new or additional laws or regulations, or issue rulings that invalidate prior laws or regulations concerning privacy, data storage and data protection that could materially adversely impact our business. For example, in April 2016, the European Parliament and the Council of the European Union formally adopted a comprehensive general data protection regulation (GDPR), which will take effect in May 2018. The GDPR introduces new data protection requirements in the EU and substantial fines for breaches. We are also subject to evolving EU laws on data transfer, as we may transfer personal data from the European Economic Area to other jurisdictions. There is currently litigation challenging various EU mechanisms for adequate data transfers and it is uncertain whether various mechanisms, such as the "Privacy Shield" or "model contractual clauses" will be invalidated by the European courts. Complying with these and other changing requirements could cause us to incur substantial costs, or

require us to change our business practices, any of which could materially adversely affect our business and operating results.

We are required to comply with The Family Educational Rights and Privacy Act, or FERPA, and failure to do so could harm our reputation and negatively affect our business.

FERPA generally prohibits an institution of higher education participating in Title IV programs from disclosing personally identifiable information from a student's education records without the student's consent. Our university clients and their students disclose to us certain information that originates from or comprises a student education record under FERPA. As an entity that provides services to institutions participating in Title IV programs, we are indirectly subject to FERPA, and we may not transfer or otherwise disclose any personally identifiable information from a student record to another party other than in a manner permitted under the statute. If we violate FERPA, it could result in a material breach of contract with one or more of our university clients and could harm our reputation. Further, in the event that we disclose student information in violation of FERPA, the DOE could require a university client to suspend our access to their student information for at least five years.

In our Short Course Segment, we are subject to risks and compliance rules and regulations related to the third party credit card payment processing platform integrated within our websites or otherwise used by our business.

Students typically use a credit or debit card to pay application and enrollment fees and to make tuition payments for our short courses. We are subject to payment card association operating rules, certification requirements and rules governing electronic funds transfers, which could change or be reinterpreted to make it difficult or impossible for us to comply. We believe that we and the payment processing service providers we use are compliant in all material respects with the Payment Card Industry Data Security Standard. However, there is no guarantee that such compliance will be maintained or that compliance will prevent illegal or improper use of our systems that are integrated with our payment processing providers. If we or any of the third party payment processors we use fails to be in compliance with applicable credit card rules and regulations, we may be required to migrate to an alternate payment processor which could result in transaction downtime during the migration and/or a loss of students and have a material adverse effect on our business, financial condition and results of operations.

Risks Related to Intellectual Property

We operate in an industry with extensive intellectual property litigation. Claims of infringement against us may hurt our business.

Our success depends, in part, upon our ability to avoid infringing intellectual property rights owned by others and being able to resolve claims of intellectual property infringement without major financial expenditures or adverse consequences. The technology and software fields generally are characterized by extensive intellectual property litigation and many companies that own, or claim to own, intellectual property have aggressively asserted their rights. From time to time, we may be subject to legal proceedings and claims relating to the intellectual property rights of others, and we expect that third parties will assert intellectual property claims against us, particularly as we expand the complexity and scope of our business. In addition, our university client agreements require us to indemnify our university clients against claims that our platform infringe the intellectual property rights of third parties.

Future litigation may be necessary to defend ourselves or our university clients from intellectual property infringement claims or to establish our proprietary rights. Some of our competitors have

substantially greater resources than we do and would be able to sustain the costs of complex intellectual property litigation to a greater degree and for longer periods of time than we could. In addition, patent holding companies that focus solely on extracting royalties and settlements by enforcing patent rights may target us. Regardless of whether claims that we are infringing patents or other intellectual property rights have any merit, these claims are time-consuming and costly to evaluate and defend and could:

- hurt our reputation;
- adversely affect our relationships with our current or future university clients;
- cause delays or stoppages in providing our platform;
- divert management's attention and resources;
- require technology changes to our software that could cause us to incur substantial cost;
- subject us to significant liabilities; and
- require us to cease some or all of our activities.

In addition to liability for monetary damages against us, which may include attorneys' fees, treble damages in the event of a finding of willful infringement, or, in some circumstances, damages against our university clients, we may be prohibited from developing, commercializing or continuing to provide some or all of our bundled technology-enabled platform unless we obtain licenses from, and pay royalties to, the holders of the patents or other intellectual property rights, which may not be available on commercially favorable terms, or at all.

We may incur liability, or our reputation may be harmed, as a result of the activities of our university clients and students or the content in our online learning environments.

We may be subject to potential liability for the activities of our university clients or students in connection with the data they post or store in our online learning platform. For example, university personnel or students, or our employees or independent contractors, may post to our online learning platform various articles or other third-party content for use in class discussions or within asynchronous lessons.

Various U.S. federal statutes may apply to us with respect to these activities. The Copyright Act of 1976 provides recourse to copyright owners who believe that their rights under U.S. copyright law have been infringed on the internet. Those rights can be limited by operation of the Digital Millennium Copyright Act of 1998, or DMCA, such that we may not be liable for infringing content posted by university clients or students, provided that we follow the procedures for handling copyright infringement claims set forth in the DMCA.

Although statutes and case law in the U.S. have generally shielded us from liability for these activities to date, court rulings in pending or future litigation may narrow the scope of protection afforded us under these laws. In addition, laws governing these activities are unsettled in many international jurisdictions. As a result, we could incur liability to third parties for the unauthorized duplication, distribution or other use of third party content. Any such claims could subject us to costly litigation and impose a significant strain on our financial resources and management personnel regardless of whether the claims have merit. Our various liability insurance coverages may not cover potential claims of this type adequately or at all, and we may be required to alter or cease our uses of such material, which may include changing or removing content from courses or altering the functionality of our online learning platform, or to pay monetary damages.

Additionally, university personnel or students, or our employees or independent contractors could use our online learning platform to store or process regulated personal information without our knowledge. In the event that our systems experience a data security incident, or an individual or entity accesses information without, or in excess of, proper authorization, we could be subject to data security incident notification laws, as described elsewhere, which may require prompt remediation and notification to individuals. If we are unaware of the data and information stored on our systems, we may be unable to appropriately comply with all legal obligations, and we may be exposed to governmental enforcement or prosecution actions, private litigation, fines and penalties or adverse publicity and these incidents could harm our reputation and business.

Our failure to protect our intellectual property rights could diminish the value of our platform, weaken our competitive position and reduce our revenue.

We regard the protection of our intellectual property, which includes trade secrets, copyrights, trademarks and domain names, as critical to our success. We protect our proprietary information from unauthorized use and disclosure by entering into confidentiality agreements with any party who may come in contact with such information. We also seek to ensure that we own intellectual property created for us by signing agreements with employees, independent contractors, consultants, companies and any other third party who may create intellectual property for us that assign their copyright and patent rights to us. However, these arrangements and the other steps we have taken to protect our intellectual property may not prevent the misappropriation of our proprietary information or deter independent development of similar technologies by others.

We pursue the registration of our domain names, trademarks and service marks in the United States and in jurisdictions outside the United States. However, third parties may knowingly or unknowingly infringe on our trademark or service mark rights, third parties may challenge our trademark or service mark rights, and pending or future trademark or service mark applications may not be approved. In addition, effective trademark protection may not be available in every country in which we operate or intend to operate. In any or all cases, we may be required to expend significant time and expense to prevent infringement or enforce our rights.

Monitoring unauthorized use of our intellectual property is difficult and costly. Our efforts to protect our proprietary rights may not be adequate to prevent misappropriation of our intellectual property. Further, we may not be able to detect unauthorized use of, or take appropriate steps to enforce, our intellectual property rights. Our competitors may also independently develop similar technology. In addition, the laws of many countries may not protect our proprietary rights to as great an extent as do the laws of the United States. Further, the laws in the United States and elsewhere change rapidly, and any future changes could adversely affect us and our intellectual property rights. Our failure to meaningfully protect our intellectual property could result in competitors offering services that incorporate our most technologically advanced features, which could seriously reduce demand for our platform. In addition, we may in the future need to initiate litigation such as infringement or administrative proceedings, to protect our intellectual property rights. Litigation, whether we are a plaintiff or a defendant, can be expensive, time-consuming and may divert the efforts of our technical staff and managerial personnel, whether or not such litigation results in a determination that is unfavorable to us. In addition, litigation is inherently uncertain, and thus we may not be able to stop our competitors from infringing upon our intellectual property rights.

The use of "open source" software in our platform could negatively affect our ability to offer our platform and subject us to possible litigation.

A substantial portion of our platform incorporates so-called "open source" software, and we may incorporate additional open source software in the future. Open source software is generally freely accessible, usable and modifiable. Certain open source licenses may, in certain circumstances, require

us to offer our platform that incorporate the open source software for no cost, that we make available source code for modifications or derivative works we create based upon, incorporating or using the open source software and that we license such modifications or derivative works under the terms of the particular open source license. Our efforts to monitor the use of open source software in our platform to ensure that no open source software is used in such a way as to require us to disclose our source code when we do not wish to do so, may be unable to prevent such use from occurring. In addition, if a third party software provider has incorporated certain types of open source software into software we license from such third party without our knowledge, we could, under certain circumstances, be required to comply with the foregoing conditions. If an author or other third party that distributes open source software we use were to allege that we had not complied with the conditions of one or more of these licenses, we could be required to incur significant legal expenses defending against such allegations and could be subject to significant damages, including being enjoined from offering the component of our platform that contained the open source software and being required to comply with the foregoing conditions, which could disrupt our ability to offer certain components of our platform.

We could also be subject to suits by parties claiming ownership of what we believe to be open source software. The terms of many open source licenses to which we are subject have not been interpreted by U.S. or foreign courts. Accordingly, there is a risk that those licenses could be construed in a manner that imposes unanticipated conditions or restrictions on our ability offer our platform. Litigation could be costly for us to defend, have a negative effect on our operating results and financial condition and require us to devote additional research and development resources to change our products.

If internet search engines' methodologies are modified, our search engine optimization capability in connection with our student recruiting efforts could be harmed.

Our search engine optimization capability in connection with our student acquisition efforts substantially depends on various internet search engines, such as Google, to direct a significant amount of traffic to websites related to our offerings. Our ability to influence the number of visitors directed to these websites through search engines is not entirely within our control. For example, search engines frequently revise their algorithms in an attempt to optimize their search result listings. In 2011, Google announced an algorithm change that affected nearly 12% of their U.S. query results. Future changes that may be made by Google or any other search engines could impact our ability to effectively utilize search engine optimization as part of our student acquisition strategies in the long-term. Changes in the methodologies used by search engines to display results could cause the websites related to our offerings to receive less favorable placements, which could reduce the number of prospective students who click to visit these websites from search engines. Any reduction in the number of prospective students directed to our websites could negatively affect our ability to generate prospective students, and ultimately revenue, through our student acquisition activities.

Individuals that appear in content hosted on our online learning platform may claim violation of their rights.

Faculty and students that appear in video segments hosted on our online learning platform may claim that proper assignments, licenses, consents and releases were not obtained for use of their likenesses, images or other contributed content. Our contracts typically require that our university clients ensure that proper assignments, licenses, consents and releases are obtained for their course material, but we cannot know with certainty that they have obtained all necessary rights. Moreover, the laws governing rights of publicity and privacy, and the laws governing faculty ownership of course content, are imprecise and adjudicated on a case-by-case basis, such that the enforcement of agreements to transfer the necessary rights is unclear. As a result, we could incur liability to third parties for the unauthorized duplication, display, distribution or other use of this material. Any such claims could subject us to costly litigation and impose a significant strain on our financial resources and

management personnel regardless of whether the claims have merit. Our various liability insurance coverages may not cover potential claims of this type adequately or at all, and we may be required to alter or cease our use of such material, which may include changing or removing content from courses, or to pay monetary damages. Moreover, claims by faculty and students could damage our reputation, regardless of whether such claims have merit.

Risks Related to Ownership of Our Common Stock and Our Status as a Public Company

Our quarterly operating results have fluctuated in the past and may do so in the future, which could cause our stock price to decline.

Our quarterly operating results have historically fluctuated due to seasonality and changes in our business, and our future operating results may vary significantly from quarter to quarter due to a variety of factors, many of which are beyond our control. You should not rely on period-to-period comparisons of our operating results as an indication of our future performance. Factors that may cause fluctuations in our quarterly operating results include, but are not limited to, the following:

- the timing of our costs incurred in connection with the launch of new graduate programs and the delay in receiving revenue from these new programs, which delay may last for several years;
- seasonal variation driven by the semester schedules for our university clients' graduate programs, which may vary from year to year;
- changes in the student enrollment and retention levels in our university clients' offerings;
- changes in our key metrics or the methods used to calculate our key metrics;
- changes in tuition rates;
- the timing and amount of our marketing and sales expenses;
- costs necessary to improve and maintain our platform;
- fluctuations in foreign currency exchange rates;
- costs related to any acquisition and integration of business and technology;
- our ability to effectively integrate businesses and technologies that we acquire;
- changes in the prospects of the economy generally, which could alter current or prospective university clients' or students' spending priorities, or could increase the time it takes us to launch new offerings.

Our operating results may fall below the expectations of market analysts and investors in some future periods, which could cause the market price of our common stock to decline substantially.

The trading price of the shares of our common stock may be volatile, and purchasers of our common stock could incur substantial losses.

Our stock price may be volatile. The stock market in general and the market for technology companies in particular have experienced extreme volatility that has often been unrelated to the operating performance of particular companies. As a result of this volatility, investors may not be able to sell their common stock at or above the price paid for the shares. The market price for our common stock may be influenced by many factors, including:

- actual or anticipated variations in our operating results;
- changes in financial estimates by us or by any securities analysts who might cover our stock;
- conditions or trends in our industry, the stock market or the economy;

- stock market price and volume fluctuations of comparable companies and, in particular, those that operate in the software and information technology industries;
- announcements by us or our competitors of new product or service offerings, significant acquisitions, strategic partnerships or divestitures;
- announcements of investigations or regulatory scrutiny of our operations or lawsuits filed against us;
- capital commitments;
- investors' general perception of our company and our business;
- recruitment or departure of key personnel; and
- sales of our common stock, including sales by our directors and officers or specific stockholders.

In addition, in the past, stockholders have initiated class action lawsuits against technology companies following periods of volatility in the market prices of these companies' stock. Such litigation, if instituted against us, could cause us to incur substantial costs and divert management's attention and resources from our business.

If equity research analysts do not continue to publish research or reports, or publish unfavorable research or reports, about us, our business or our market, our stock price and trading volume could decline.

The trading market for our common stock will be influenced by the research and reports that equity research analysts publish about us and our business. Equity research analysts may elect not to initiate or to continue to provide research coverage of our common stock, and such lack of research coverage may adversely affect the market price of our common stock. Even if we do have equity research analyst coverage, we will not have any control over the analysts or the content and opinions included in their reports. The price of our stock could decline if one or more equity research analysts downgrade our stock or issue other unfavorable commentary or research. If one or more equity research analysts ceases coverage of our company or fails to publish reports on us regularly, demand for our stock could decrease, which in turn could cause our stock price or trading volume to decline.

Provisions in our corporate charter documents and under Delaware law may prevent or frustrate attempts by our stockholders to change our management and hinder efforts to acquire a controlling interest in us, and the market price of our common stock may be lower as a result.

Provisions in our amended and restated certificate of incorporation and amended and restated bylaws may make it difficult for a third party to acquire, or attempt to acquire, control of our company, even if a change in control is considered favorable by you and other stockholders. For example, our board of directors has the authority to issue up to 5,000,000 shares of preferred stock. The board of directors can fix the price, rights, preferences, privileges, and restrictions of the preferred stock without any further vote or action by our stockholders. An issuance of shares of preferred stock may result in the loss of voting control to other stockholders, which could delay or prevent a change in control transaction. As a result, the market price of our common stock and the voting and other rights of our stockholders may be adversely affected.

Our charter documents also contain other provisions that could have an anti-takeover effect, including:

- only one of our three classes of directors will be elected each year;
- stockholders are not entitled to remove directors other than by a $66\,^{2}/_{3}$% vote and only for cause;
- stockholders are not permitted to take actions by written consent;

- stockholders are not permitted to call a special meeting of stockholders; and
- stockholders are required to give us advance notice of their intention to nominate directors or submit proposals for consideration at stockholder meetings.

In addition, we are subject to the anti-takeover provisions of Section 203 of the Delaware General Corporation Law, which regulates corporate acquisitions by prohibiting Delaware corporations from engaging in specified business combinations with particular stockholders of those companies. These provisions could discourage potential acquisition proposals and could delay or prevent a change in control transaction. They could also have the effect of discouraging others from making tender offers for our common stock, including transactions that may be in your best interests. These provisions may also prevent changes in our management or limit the price that investors are willing to pay for our stock.

Concentration of ownership of our common stock among our existing executive officers, directors and large stockholders may prevent smaller stockholders from influencing significant corporate decisions.

Our executive officers, directors and current beneficial owners of 5% or more of our common stock and their respective affiliates, in the aggregate, beneficially own a substantial percentage of our outstanding common stock. These persons, acting together, are able to significantly influence all matters requiring stockholder approval, including the election and removal of directors, any merger, consolidation, sale of all or substantially all of our assets, or other significant corporate transactions. The interests of this group of stockholders may not coincide with our interests or the interests of other stockholders.

If we fail to maintain proper and effective internal controls, our ability to produce accurate financial statements on a timely basis could be impaired.

We are subject to the reporting requirements of the Securities Exchange Act of 1934, the Sarbanes-Oxley Act and the rules and regulations of The Nasdaq Global Select Market. The Sarbanes-Oxley Act requires, among other things, that we maintain effective disclosure controls and procedures and internal control over financial reporting. We are required to perform system and process evaluation and testing of our internal control over financial reporting to allow management to report on the effectiveness of our internal control over financial reporting in our Form 10-K filing for that year, as required by Section 404 of the Sarbanes-Oxley Act. This may require us to incur substantial additional professional fees and internal costs to further expand our accounting and finance functions and expend significant management efforts.

We may in the future discover material weaknesses in our system of internal financial and accounting controls and procedures that could result in a material misstatement of our financial statements. In addition, our internal control over financial reporting will not prevent or detect all errors and all fraud. A control system, no matter how well designed and operated, can provide only reasonable, not absolute, assurance that the control system's objectives will be met. Because of the inherent limitations in all control systems, no evaluation of controls can provide absolute assurance that misstatements due to errors or fraud will not occur or that all control issues and instances of fraud will be detected.

If we are not able to comply with the requirements of Section 404 of the Sarbanes-Oxley Act in a timely manner, or if we are unable to maintain proper and effective internal controls, we may not be able to produce timely and accurate financial statements. If that were to happen, the market price of our stock could decline and we could be subject to sanctions or investigations by the stock exchange on which our common stock is listed, the Securities and Exchange Commission, or SEC, or other regulatory authorities.

Because we do not anticipate paying any cash dividends on our common stock in the foreseeable future, capital appreciation, if any, will be your sole source of gains and you may never receive a return on your investment.

You should not rely on an investment in our common stock to provide dividend income. We have not declared or paid cash dividends on our common stock to date. We currently intend to retain our future earnings, if any, to fund the development and growth of our business. In addition, the terms of our existing credit facility preclude, and the terms of any future debt agreements is likely to similarly preclude, us from paying dividends. As a result, capital appreciation, if any, of our common stock will be your sole source of gain for the foreseeable future. Investors seeking cash dividends should not purchase our common stock.

Item 1B. Unresolved Staff Comments

None.

Item 2. Properties

Our headquarters are located in Lanham, Maryland, where we occupy approximately 200,000 square feet under a lease that expires in 2028.

In February 2017, we signed a lease for new office space in Brooklyn, New York, which we began to occupy in December 2017. The lease covers three floors totaling approximately 80,000 square feet and will expire approximately 12 years after the lease commencement date.

In May 2016, we signed a lease for new office space in Denver, Colorado, which we began to occupy in October 2016. The lease covers two floors totaling approximately 50,000 square feet and will expire approximately eight years after the lease commencement date.

Including our headquarters and the Brooklyn and Denver leases, we lease an aggregate of approximately 436,000 square feet of space, primarily for our Graduate Program Segment, in Maryland, New York, California, Colorado, North Carolina, Virginia and Hong Kong.

We lease an aggregate of approximately 42,000 square feet of space, primarily for our Short Course Segment, in South Africa and the United Kingdom.

We believe that our current facilities are suitable and adequate to meet our ongoing needs and that, if we require additional space, we will be able to obtain additional facilities on commercially reasonable terms.

Item 3. Legal Proceedings

We are not presently involved in any legal proceeding or other contingency that, if determined adversely to it, would individually or in the aggregate have a material adverse effect on its business, operating results, financial condition or cash flows. Accordingly, we do not believe that there is a reasonable possibility that a material loss exceeding amounts already recognized may have been incurred as of the date of the balance sheets presented herein.

Item 4. Mine Safety Disclosures

None.

PART II

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

Our common stock has been listed on The Nasdaq Global Select Market since March 28, 2014, under the symbol "TWOU." Prior to our initial public offering, there was no public market for our common stock.

The following table set forth for the indicated periods the high and low sales prices of our common stock as reported on The Nasdaq Global Select Market.

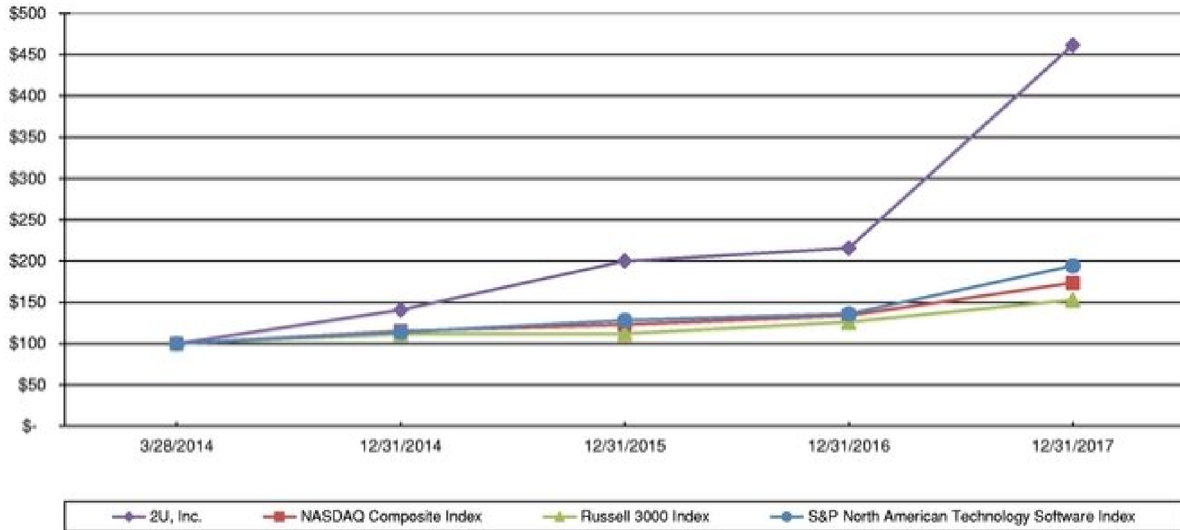
	2017		2016	
	High	Low	High	Low
First Quarter	$ 40.38	$ 29.23	$ 27.50	$ 14.94
Second Quarter	48.40	39.38	29.87	21.76
Third Quarter	56.12	44.69	38.91	28.78
Fourth Quarter	69.27	55.23	38.49	29.34

As of February 21, 2018, there were 36 registered stockholders of record for our common stock. The actual number of stockholders is greater than this number of record holders and includes stockholders who are beneficial owners but whose shares are held in street name by brokers and other nominees. This number of holders of record also does not include stockholders whose shares may be held in trust by other entities.

Stock Performance Graph

The graph set forth below compares the cumulative total stockholder return on an initial investment of $100 in our common stock between March 28, 2014 (the date of our initial public offering) and December 31, 2017, with the comparative cumulative total return of such amount over the same period on (i) The Nasdaq Composite Index, (ii) the S&P North American Technology Software Index and (iii) the Russell 3000 Index. We have not paid any cash dividends and, therefore, the cumulative total return calculation for us is based solely upon our stock price appreciation or depreciation and does not include any reinvestment of cash dividends. The graph assumes our closing sales price on March 28, 2014 of $13.98 per share as the initial value of our common stock. The comparisons shown in the graph below are based upon historical data, and are not necessarily indicative of, nor intended to forecast, the potential future stock performance of our common stock.

Comparison of Cumulative Total Return
Through December 31, 2017
Assumes Initial Investment of $100



The information presented above in the stock performance graph shall not be deemed to be "soliciting material" or to be "filed" with the SEC or subject to Regulation 14A or 14C, except to the extent that we subsequently specifically request that such information be treated as soliciting material or specifically incorporate it by reference into a filing under the Securities Act of 1933, as amended, or a filing under the Securities Exchange Act of 1934, as amended.

Dividend Policy

We have never declared or paid any dividends on our common stock. We anticipate that we will retain all of our future earnings, if any, for use in the operation and expansion of our business and do not anticipate paying cash dividends in the foreseeable future. Additionally, our ability to pay dividends on our common stock is limited by restrictions under the terms of the agreements governing our credit facility, and the terms of any future loan agreement into which we may enter or any additional debt securities we may issue are likely to contain similar restrictions on the payment of dividends.

Item 6. Selected Financial Data

See the information for the years 2013 through 2017 contained in the table titled "Selected Financial Data," which is included in this Annual Report on Form 10-K and listed in the Index to Consolidated Financial Information on page 55 hereof (with only the information for such years to be deemed filed as part of this Annual Report on Form 10-K).

Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operations

See the information contained under the heading "Management's Discussion and Analysis of Results of Operations and Financial Condition," which is included in this Annual Report on Form 10-K and listed in the Index to Consolidated Financial Information on page 55 hereof.

Item 7A. Quantitative and Qualitative Disclosures About Market Risk

Market risk is the risk of loss to future earnings, values or future cash flows that may result from changes in the price of a financial instrument. The value of a financial instrument may change as a

result of changes in interest rates, exchange rates, commodity prices, equity prices and other market changes. Our exposure to market risk related to changes in foreign currency exchange rates is deemed moderate as further described below. In addition, we do not use derivative financial instruments for speculative, hedging or trading purposes, although in the future we may enter into exchange rate hedging arrangements to manage the risks described in the succeeding paragraphs.

Interest Rate Risk

We are subject to interest rate risk in connection with potential borrowings available under our bank line of credit which was procured in December 2013 and amended in January 2017. Borrowings under the revolving line of credit bear interest at variable rates. Increases in LIBOR or our lender's prime rate would increase the amount of interest payable on any borrowings outstanding under this line of credit. On January 21, 2014, we borrowed $5.0 million under this line of credit and repaid this borrowing in full on February 18, 2014. There have been no subsequent borrowings under this line of credit, and therefore, no amounts were outstanding as of December 31, 2017.

Foreign Currency Exchange Risk

Prior to July 1, 2017, we did not have significant foreign currency exchange risk. Beginning in the third quarter of 2017, with the acquisition of GetSmarter, we now transact business in foreign currencies and are exposed to risks resulting from fluctuations in foreign currency exchange rates. Our primary exposures are related to non-U.S. dollar denominated revenue and operating expenses in South Africa and the United Kingdom. Accounts relating to foreign operations are translated into U.S. dollars using prevailing exchange rates at the relevant period end. As a result, we would experience increased revenue and operating expenses in our non-U.S. operations if there were a decline in the value of the U.S. dollar relative to these foreign currencies. Conversely, we would experience decreased revenue and operating expenses in our non-U.S. operations if there were an increase in the value of the U.S. dollar relative to these foreign currencies. Translation adjustments are included as a separate component of stockholders' equity.

For the years ended December 31, 2017 and 2016, our foreign currency translation adjustment was a gain of $5.3 million and zero, respectively. For the years ended December 31, 2017 and 2016, we recognized a foreign currency exchange loss of $0.9 million and zero, respectively, included in our consolidated statements of operations and comprehensive loss. Foreign exchange volatility from the date of acquisition of GetSmarter to December 31, 2017 was 10% and 5% for the South African rand and UK pound, respectively. A 10% fluctuation of foreign currency exchange rates would have had an immaterial effect on our results of operations and cash flows for all periods presented.

The fluctuations of currencies in which we conduct business can both increase and decrease our overall revenue and expenses for any given fiscal period. Such volatility, even when it increases our revenues or decreases our expenses, impacts our ability to accurately predict our future results and earnings.

Inflation

We do not believe that inflation currently has had a material effect on our business, financial condition or results of operations, though we continue to monitor costs we incur in higher inflationary economies. Additionally, we continue to monitor all inflation-driven costs, regardless of where they are incurred. If our costs were to become subject to significant inflationary pressures, the price increases implemented by our university clients and our own pricing strategies might not fully offset the higher costs, which could harm our business, financial condition and results of operations.

Item 8. Financial Statements and Supplementary Data

See our consolidated financial statements at December 31, 2017, and for the periods then ended, together with the report of KPMG LLP thereon and the information contained in Note 16 in said consolidated financial statements titled "Quarterly Financial Information (Unaudited)," which are included in this Annual Report on Form 10-K and listed in the Index to Consolidated Financial Information on page 55 hereof.

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

None.

Item 9A. Controls and Procedures

Disclosure Controls and Procedures

Under the supervision and with the participation of our management, including our Chief Executive Officer and Chief Financial Officer, we have evaluated the effectiveness of our disclosure controls and procedures pursuant to Exchange Act Rule 13a-15(b) as of the end of the period covered by this report. Based on that evaluation, our Chief Executive Officer and Chief Financial Officer have concluded that these disclosure controls and procedures are effective.

Management's Annual Report On Internal Control Over Financial Reporting

Management is responsible for establishing and maintaining adequate internal control over financial reporting for the Company. With the participation of our Chief Executive Officer and Chief Financial Officer, management conducted an evaluation of the effectiveness of our internal control over financial reporting as of December 31, 2017 based on the Internal Control—Integrated Framework (2013) issued by the Committee of Sponsoring Organizations of the Treadway Commission. Based on this evaluation, management concluded that our internal control over financial reporting was effective as of December 31, 2017.

We acquired Get Educated International Proprietary Limited ("GetSmarter") on July 1, 2017, which represented 1.3% of our total assets and 5.7% of our total revenue as of December 31, 2017. As the GetSmarter acquisition was completed during the second quarter of 2017, the scope of our evaluation of the effectiveness of our internal control over financial reporting does not include GetSmarter.

Our independent registered public accounting firm, KPMG LLP, has issued an audit report on the effectiveness of our internal control over financial reporting, which appears in Item 8 of this report.

Changes in Internal Control Over Financial Reporting

There were no changes in our internal control over financial reporting during the quarter ended December 31, 2017 that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

Item 9B. Other Information

Not applicable.

PART III

We will file a definitive Proxy Statement for our 2018 Annual Meeting of Stockholders or our 2018 Proxy Statement with the SEC, pursuant to Regulation 14A, not later than 120 days after the end of our fiscal year. Accordingly, certain information required by Part III has been omitted under General Instruction G(3) to Form 10-K. Only those sections of the 2018 Proxy Statement that specifically address the items set forth herein are incorporated by reference.

Item 10. Directors, Executive Officers and Corporate Governance

The information required by Item 10 is hereby incorporated by reference to the sections of our 2018 Proxy Statement under the captions "Board of Directors and Committees," "Election of Directors," "Management," "Section 16(a) Beneficial Ownership Reporting Compliance" and "Code of Business Conduct and Ethics for Employees, Executive Officers and Directors."

Item 11. Executive Compensation

The information required by Item 11 is hereby incorporated by reference to the sections of our 2018 Proxy Statement under the captions "Executive Compensation," "Director Compensation" and "Compensation Committee Interlocks and Insider Participation."

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

The information required by Item 12 is hereby incorporated by reference to the sections of our 2018 Proxy Statement under the captions "Security Ownership of Certain Beneficial Owners and Management" and "Securities Authorized for Issuance under Equity Compensation Plans."

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

The information required by Item 13 is hereby incorporated by reference to the sections of our 2018 Proxy Statement under the captions "Transactions with Related Parties" and "Director Independence."

Item 14. Principal Accounting Fees and Services

The information required by Item 14 is hereby incorporated by reference to the section of our 2018 Proxy Statement under the caption "Independent Registered Public Accounting Firm Fees."

PART IV

Item 15. Exhibits, Financial Statement Schedules

(a) Exhibits

See the Exhibit Index immediately following the Part IV of this Annual Report on Form 10-K.

(b) Financial Statements

See the Index to Consolidated Financial Information on page 55 hereof.

Item 16. Form 10-K Summary

None.

Exhibit Index

Exhibit Number	Description	Form	File No.	Exhibit Number	Filing Date	Filed Herewith
2.1	Share Sale Agreement, by and among a wholly owned subsidiary of the Registrant, K2017143886 South Africa Proprietary Limited, Get Educated International Proprietary Limited ("Get Educated"), the shareholders of Get Educated, and Samuel Edward Paddock, as the Seller's Representative.	10-Q	001-36376	2.1	May 4, 2017	
2.2	Addendum to the Share Sale Agreement, by and among a wholly owned subsidiary of the Registrant, K2017143886 South Africa Proprietary Limited, Get Educated International Proprietary Limited ("Get Educated"), the shareholders of Get Educated, and Samuel Edward Paddock, as the Seller's Representative.	8-K	001-36376	2.2	July 3, 2017	
3.1	Amended and Restated Certificate of Incorporation of the Registrant.	8-K	001-36376	3.1	April 4, 2014	
3.2	Amended and Restated Bylaws of the Registrant.	8-K	001-36376	3.2	April 4, 2014	
4.1	Specimen stock certificate evidencing shares of Common Stock.	S-1/A	333-194079	4.2	March 17, 2014	
10.1*	Services Agreement, by and between the Registrant and University of Southern California, on behalf of the USC Rossier School of Education, dated as of October 29, 2008, as amended to date.	S-1	333-194079	10.1	February 21, 2014	

Exhibit Number	Description	Form	File No.	Exhibit Number	Filing Date	Filed Herewith
10.2*	Master Services Agreement, by and between the Registrant and University of Southern California, on behalf of School of Social Work, dated as of April 12, 2010, as amended.	S-1	333-194079	10.2	February 21, 2014	
10.2.1*	Second Addendum to the Master Services Agreement, by and between the Registrant and University of Southern California, on behalf of the School of Social Work, dated as of March 14, 2014.	S-1/A	333-194079	10.2.1	March 17, 2014	
10.2.2*	Amendment to Master Services Agreement, by and between the Registrant and University of Southern California, on behalf of School of Social Work, dated as of November 5, 2015.	10-K	001-36376	10.2.2	March 10, 2016	
10.3	Amended and Restated Investor Rights Agreement, dated as of March 27, 2012, by and among the Registrant and certain of its stockholders.	S-1	333-194079	10.6	February 21, 2014	
10.4†	Fourth Amended and Restated 2008 Stock Incentive Plan, as amended to date.	S-1	333-194079	10.7	February 21, 2014	
10.5†	Form of Incentive Stock Option Agreement under 2008 Stock Incentive Plan.	S-1	333-194079	10.8	February 21, 2014	
10.6†	Form of Non-Qualified Stock Option Agreement under 2008 Stock Incentive Plan.	S-1	333-194079	10.9	February 21, 2014	
10.7†	2014 Equity Incentive Plan.	S-1	333-194079	10.11	February 21, 2014	
10.8†	Form of Stock Option Agreement under 2014 Equity Incentive Plan.	S-1	333-194079	10.12	February 21, 2014	
10.9†	Form of Restricted Stock Unit Award Agreement under 2014 Equity Incentive Plan.	S-1	333-194079	10.13	February 21, 2014	

Exhibit Number	Description	Form	File No.	Exhibit Number	Filing Date	Filed Herewith
10.10†	Summary of Non-Employee Director Compensation.	10-Q	001-36376	10.1	May 12, 2014	
10.11†	Confidential Information, Invention Assignment, Work for Hire, Noncompete and No Solicit/No Hire Agreement, dated as of February 28, 2009, by and between the Registrant and Christopher J. Paucek.	S-1/A	333-194079	10.14	March 17, 2014	
10.12†	Form of Indemnification Agreement with directors and executive officers.	S-1	333-194079	10.15	February 21, 2014	
10.14*	Amended and Restated Revolving Credit Agreement, by and among the Registrant, Comerica Bank as Administrative Agent and as a Lender, Issuing Lender and Swing Line Lender and Square 1 Bank as a Lender, dated as of December 31, 2013.	S-1	333-194079	10.4	February 21, 2014	
10.16	Office Lease, by and between Lanham Office 2015 LLC and 2U Harkins Road LLC, dated as of December 23, 2015.	10-K	001-36376	10.16	February 24, 2017	
10.17	Agreement of Lease, by and between 55 Prospect Owner LLC and 2U NYC, LLC, dated as of February 13, 2017.	10-K	001-36376	10.17	February 24, 2017	
10.18	Office Lease, by and between SRI Ten DCC LCC and 2U, Inc., dated May 11, 2016.					X
21.1	Subsidiaries of the Registrant.					X
23.1	Consent of KPMG LLP, independent registered public accounting firm.					X

Exhibit Number	Description	Form	File No.	Exhibit Number	Filing Date	Filed Herewith
31.1	Certification of Chief Executive Officer of 2U, Inc. pursuant to Exchange Act Rule 13a-14(a)/15d-14(a), as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.					X
31.2	Certification of Chief Financial Officer of 2U, Inc. pursuant to Exchange Act Rule 13a-14(a)/15d-14 (a), as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.					X
32.1	Certification of Chief Executive Officer of 2U, Inc. in accordance with 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.					X
32.2	Certification of Chief Financial Officer of 2U, Inc. in accordance with 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.					X
101.INS	XBRL Instance Document.					X
101.SCH	XBRL Taxonomy Extension Schema Document.					X
101.CAL	XBRL Taxonomy Extension Calculation Linkbase Document.					X
101.DEF	XBRL Taxonomy Extension Definition Linkbase Document.					X
101.LAB	XBRL Taxonomy Extension Label Linkbase Document.					X

Exhibit Number	Description	Form	File No.	Exhibit Number	Filing Date	Filed Herewith
101.PRE	XBRL Taxonomy Extension Presentation Linkbase Document.					X

* Portions of this exhibit, indicated by asterisks, have been omitted pursuant to a request for confidential treatment and have been separately filed with the Securities and Exchange Commission.

† Indicates 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:

2U, Inc.
February 27, 2018

By: /s/ CHRISTOPHER J. PAUCEK

Name: Christopher J. Paucek
Title: *Chief Executive Officer and Director*

POWER OF ATTORNEY

KNOW ALL PERSONS BY THESE PRESENTS , that each person whose signature appears below constitutes and appoints Christopher J. Paucek, Catherine A. Graham and Matthew J. Norden, or each of them, as his true and lawful attorneys-in-fact and agents, each with the full power of substitution, for him and in his name, place or stead, in any and all capacities, to sign any amendments to this report and to file the same, with exhibits thereto, and other documents in connection therewith, with the Securities and Exchange Commission, hereby ratifying and confirming all that either of said attorneys-in-fact, or substitute or substitutes, may do or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities Act of 1934, this Annual Report on Form 10-K has been signed by the following persons on behalf of the registrant and in the capacities and on the dates indicated.

Signature	Title	Date
/s/ CHRISTOPHER J. PAUCEK Christopher J. Paucek	Chief Executive Officer and Director (Principal Executive Officer)	February 27, 2018
/s/ CATHERINE A. GRAHAM Catherine A. Graham	Chief Financial Officer (Principal Financial Officer)	February 27, 2018
/s/ ANDREA PAPACONSTANTOPOULOS Andrea Papaconstantopoulos	Chief Accounting Officer (Principal Accounting Officer)	February 27, 2018
/s/ PAUL A. MAEDER Paul A. Maeder	Director and Chairman of the Board	February 27, 2018
/s/ MARK J. CHERNIS Mark J. Chernis	Director	February 27, 2018

Signature	Title	Date
/s/ TIMOTHY M. HALEY Timothy M. Haley	Director	February 27, 2018
/s/ JOHN M. LARSON John M. Larson	Director	February 27, 2018
/s/ CORETHA M. RUSHING Coretha M. Rushing	Director	February 27, 2018
/s/ ROBERT M. STAVIS Robert M. Stavis	Director	February 27, 2018
/s/ SALLIE L. KRAWCHECK Sallie L. Krawcheck	Director	February 27, 2018
/s/ EARL LEWIS Earl Lewis	Director	February 27, 2018
/s/ EDWARD S. MACIAS Edward S. Macias	Director	February 27, 2018
/s/ VALERIE J. JARRETT Valerie J. Jarrett	Director	February 27, 2018

2U, Inc.
INDEX TO CONSOLIDATED FINANCIAL INFORMATION

	PAGE
Management's Discussion and Analysis of Financial Condition and Results of Operations (Unaudited)	56
Consolidated Financial Statements:	
Reports of Independent Registered Public Accounting Firm	75
Consolidated Balance Sheets as of December 31, 2017 and 2016	78
Consolidated Statements of Operations and Comprehensive Loss for the years ended December 31, 2017, 2016 and 2015	79
Consolidated Statements of Changes in Stockholders' Equity for the years ended December 31, 2017, 2016 and 2015	80
Consolidated Statements of Cash Flows for the years ended December 31, 2017, 2016 and 2015	81
Notes to Consolidated Financial Statements	82
Selected Financial Data (Unaudited)	110

Management's Discussion and Analysis of Financial Condition and Results of Operations

You should read the following discussion and analysis of our financial condition and results of operations in conjunction with our consolidated financial statements and the related notes and other financial information included elsewhere in this Annual Report on Form 10-K. Some of the information contained in this discussion and analysis or set forth elsewhere in this report, including information with respect to our plans and strategy for our business, includes forward-looking statements that involve risks and uncertainties. You should review Item 1A. "Risk Factors" and "Special Note Regarding Forward-Looking Statements" in this report for a discussion of important factors that could cause actual results to differ materially from the results described in or implied by the forward-looking statements contained in the following discussion and analysis.

Overview

We are a leading education technology company that well-recognized nonprofit colleges and universities trust to bring them into the digital age. Our comprehensive platform of tightly integrated technology and services provides the digital infrastructure universities need to attract, enroll, educate and support students at scale. With our platform, students can pursue their education anytime, anywhere, without quitting their jobs or moving; and university clients can improve educational outcomes, skills attainment and career prospects for a greater number of students.

As a result of our July 2017 acquisition of GetSmarter we have two reportable segments: the Graduate Program Segment and the Short Course Segment.

- Our Graduate Program Segment provides services to well-recognized nonprofit colleges and universities primarily in the United States to enable the online delivery of graduate programs. We target students seeking a full graduate degree of the same quality they would receive on-campus.
- Our Short Course Segment provides premium online short courses to working professionals in more than 150 countries. We target working professionals seeking career advancement through skills attainment.

Our core strategy is to launch graduate programs and short courses with new and existing university clients and to increase student enrollments across our portfolio of offerings. We are also committed to continuously improving our platform to deliver high-quality university and student experiences and outcomes at scale.

Our Business Model and Components of Operating Results

The key elements of our business model and components of our operating results are described below.

Revenue

Graduate Program Segment

Our Graduate Program Segment derives revenue primarily from a contractually specified percentage of the amounts our university clients receive from their students in the 2U-enabled graduate program for tuition and fees, less credit card fees and other specified charges we have agreed to exclude in certain of our university client contracts. Most of our contracts with university clients within this segment have 10 to 15 year initial terms.

Short Course Segment

Our Short Course Segment derives revenue directly from students for the tuition and fees paid to enroll in and progress through our short courses. A contractually specified percentage of the gross proceeds from students is shared with the university clients, in the form of a royalty recognized within our consolidated statements of operations and comprehensive loss as curriculum and teaching costs. Our university client contracts within this segment are typically shorter and less restrictive than our contracts within our Graduate Program Segment.

The primary driver of our revenue growth across our segments is the increase in the number of student enrollments in our graduate programs and short courses. This in turn is influenced primarily by three factors:

- our ability to increase the number of graduate programs and short courses offered, either by adding new university clients or by adding graduate programs and short courses with current university clients;
- our ability to acquire prospective students for graduate programs and short courses; and
- our ability to retain the students who enroll in graduate programs and short courses.

In the near term, we expect the significant drivers of our consolidated financial results to continue to be our university client relationships with the University of Southern California, Simmons College and the University of North Carolina, within our Graduate Program Segment. For the years ended December 31, 2017, 2016 and 2015, 27%, 34% and 43%, respectively, of our consolidated revenue was derived from our graduate programs with USC, including our two longest running programs, which were launched in 2009 and 2010. Our programs with Simmons College accounted for 17%, 18% and 16% of our consolidated revenue for the years ended December 31, 2017, 2016 and 2015, respectively. Our programs with the University of North Carolina accounted for 10%, 11% and 12% of our consolidated revenue for the years ended December 31, 2017, 2016 and 2015, respectively.

For the year ended December 31, 2017, revenue associated with our three largest university clients in our Short Course Segment accounted for approximately 82% of the segment's revenue, which was less than 10% of our consolidated revenue on a combined basis.

Marketing and Sales Costs

Our most significant cost in each fiscal period relates primarily to student acquisition activities across each of our segments. This includes the cost of online advertising and student generation, as well as cash and non-cash compensation and benefit costs (including stock-based compensation) for our graduate program and short course marketing, search engine optimization, marketing analytics and admissions application counseling personnel.

We have primary responsibility for identifying qualified students for our graduate programs and short courses, generating potential student interest and driving applications to the educational offerings. The number of students who enroll in our graduate programs and short courses in any given period is significantly dependent on the amount we have spent on these student acquisition activities in prior periods.

Graduate Program Segment

We typically identify prospective students for our graduate programs between three months and two or more years before they ultimately enroll. For the students currently enrolled in our graduate programs and those who have graduated, the average time from our initial contact with that student to enrollment was approximately seven months. For the students who have graduated from these graduate programs, the average time from initial enrollment to graduation was 26 months. Based on the student

retention rates and patterns we have observed in our graduate programs, we estimate that, for our current graduate programs, the average time from a graduate program student's initial enrollment to graduation will be approximately two years.

Although most of our university clients' graduate programs span multiple academic terms and, therefore, generate continued revenue beyond the term in which initial enrollments occur, we expect that we will need to continue to incur significant marketing and sales expense for existing graduate programs going forward to generate a continuous pipeline of new enrollments. For new graduate programs, we begin incurring marketing and sales costs as early as nine months prior to the classes beginning.

Accordingly, our marketing and sales expense in any period is an investment we make to generate revenue in future periods. Likewise, revenue generated in any period is largely attributable to the investment made in student acquisition activities in earlier periods. Because marketing and sales expense in any period is almost entirely unrelated to revenue generated in that period, we do not believe it is meaningful to directly compare the two. We believe that the total revenue we will receive over time related to students who enroll in our graduate programs as a result of current period marketing and sales expense, will be significantly greater as a multiple of that current period expense than is implied by the multiple of current period revenue to current period marketing and sales expense as expressed in our financial statements. Further, we believe that our marketing and sales expense in future periods will generally decline as a percentage of the revenue reported in those same periods as our revenue base from returning students in existing programs increases.

We continually manage our marketing and sales expense to ensure that across our portfolio of offerings, our cost to acquire students for these offerings is appropriate for our business model. We use a ratio of attrition adjusted lifetime revenue of a student, or LTR, to the total cost to acquire that student, or TCA, as the measure of our marketing efficiency and to determine how much we are willing to spend to acquire an additional student for any offering. The calculations included in this ratio include certain assumptions. For any period, we know what we spent on program sales and marketing and therefore, can accurately calculate the ratio's denominator. However, given the time lag between when we incur our marketing and sales expense and when we receive revenue related to students enrolled based on that expense, we have to incorporate forecasts of student enrollments and retention into our calculation of the ratio's numerator, which is our estimate of future revenue related to that period's expense. We use the significant amount of data we have on the effectiveness of various marketing channels, student attrition and other factors to inform our forecasts and are continually testing the assumptions underlying these forecasts against actual results to give us confidence that our forecasts are reasonable. The LTR to TCA ratio may vary across offerings depending on the nature of the offering, where that offering is in its lifecycle and whether we enable the same or similar offerings at other universities.

Short Course Segment

We typically begin incurring marketing and sales costs approximately three months prior to each short course presentation, and our short courses run between six and 16 weeks. As our short courses often have a course length that straddles two fiscal quarters based on the timing of the course start, the marketing and sales expense in any period is a combination of investments we make to generate revenue in the current and subsequent periods. Likewise, revenue generated in any period is attributable to investments made in student acquisition activities in the prior and current periods.

As the majority of our short course student enrollments are attributable to discrete marketing efforts for each short course presentation, we expect that we will need to continue to incur significant marketing and sales expense for each new and recurring short course presentation going forward to generate a continuous pipeline of new enrollments.

Other Operating Costs

Our other operating costs consist of the following:

Curriculum and teaching. Curriculum and teaching costs are associated with our Short Course Segment and primarily relate to royalties due to our university clients based on the revenue associated with short course offerings. It also includes costs to compensate short course tutors.

Servicing and support. Servicing and support costs consist primarily of cash and non-cash compensation and benefit costs (including stock-based compensation). It also includes software licensing, telecommunications, technical support and other costs related to providing access to and support for our platform for our university clients and students. In addition, servicing and support includes costs to facilitate in-program field placements, student immersions and other student enrichment experiences, as well as costs to assist our university clients with their state compliance requirements.

Technology and content development. Technology and content development costs consist primarily of cash and non-cash compensation and benefit costs (including stock-based compensation) and outsourced services costs related to the ongoing improvement and maintenance of our platform, and the developed content for our graduate programs and short courses. It also includes the associated amortization expense related to capitalized technology and content development, as well as hosting and other costs associated with maintaining our platform in a cloud environment. Additionally, it includes the costs to support our internal infrastructure, including our cloud-based server usage.

General and administrative. General and administrative costs consist primarily of cash and non-cash compensation and benefit costs (including stock-based compensation) for employees in our executive, administrative, finance and accounting, legal, communications and human resources functions. It also includes external legal, accounting and other professional fees, telecommunications charges and other corporate costs such as insurance and travel that are not related to another function.

Non-cash stock-based compensation expense is a component of compensation cost within each of the five cost categories described above. Under our current framework for granting equity awards under our 2014 Equity Incentive Plan, the majority of our equity awards are made on or around April 1 of each year and typically have four-year vesting periods.

To support our anticipated growth, we expect to continue to hire new employees (which will increase both our cash and non-cash compensation and benefit costs, including stock-based compensation), increase our promotion and student acquisition efforts, expand our technology infrastructure and increase our other support capabilities. As a result, we expect our costs to increase in absolute dollars, but to decrease as a percentage of revenue over time as we achieve economies of scale through the expansion of our business.

Period-to-Period Fluctuations

Our revenue, cash position, accounts receivable, deferred revenue, and sales and marketing expense can fluctuate significantly from quarter to quarter due to variations driven by the academic schedules of our graduate programs and short courses.

Our graduate programs generally start classes for new and returning students an average of four times per year and our short courses have multiple course starts per year. Graduate program courses and short course presentations are not necessarily evenly spaced throughout the year, do not necessarily correspond to the traditional academic calendar and may vary from year to year. As a result, the number of courses our graduate programs and short courses have in session, and therefore the number of students enrolled, will vary from quarter to quarter, leading to variability in our revenue.

Our graduate programs and short courses often have academic terms that straddle two fiscal quarters. Our graduate program university clients generally pay us when they have billed tuition and specified fees to their students, which is typically early in the academic term, and once the drop/add period has passed. We recognize the related revenue ratably over the course of the academic term, beginning on the first day of classes through the last. Our short course students typically pay either in full upon registration of the short course or in full before the end of the short course based on a payment plan. Because we generally receive payments from our graduate program university clients and short course students prior to our ability to recognize the majority of those amounts as revenue, we record deferred revenue at each balance sheet date equal to the excess of the amounts we have billed or received from our graduate program university clients and short course students over the amounts we have recognized as revenue as of that date. For these reasons, our cash flows typically vary considerably from quarter to quarter and our cash position, accounts receivable and deferred revenue typically fluctuate between quarterly balance sheet dates.

Our expense levels across both segments also fluctuate from quarter to quarter, driven primarily by our marketing and sales activity. We typically reduce our paid search and other marketing and sales efforts during late November and December because these efforts are less productive during the holiday season. This generally results in lower total marketing and sales expense during the fourth quarter. In addition, because we begin spending on marketing and sales, and, to a lesser extent, services and support as much as nine months prior to the start of classes for a new graduate program and as much as three months prior to the start of a new short course, these costs as a percentage of revenue fluctuate, sometimes significantly, depending on the timing of new graduate programs and short courses launches.

Results of Operations

Full-Year 2017 Highlights

- Revenue was $286.8 million, an increase of 39.3% from $205.9 million for the year ended December 31, 2016.
- Net loss was $(29.4) million, or $(0.60) per share, compared to $(20.7) million, or $(0.44) per share for the year ended December 31, 2016.
- Adjusted EBITDA was $11.4 million, compared to $4.5 million for the year ended December 31, 2016.
- Our Graduate Program Segment launched ten new graduate programs.
- We acquired GetSmarter in July 2017 for a net cash purchase price of $98.7 million and an earn-out payment of up to $20.0 million in cash, subject to the achievement of certain financial milestones.
- We completed a public offering of common stock in September 2017 in which we sold 4,047,500 shares and received net proceeds of $189.5 million.

Revenue

Revenue for the year ended December 31, 2017 was $286.8 million, an increase of 39.3%, from $205.9 million for the same period of 2016. Graduate Program Segment revenue was $270.5 million for the year ended December 31, 2017, an increase of 31.4%, from $205.9 million for the same period of 2016, primarily due to a 27.9% increase in full course equivalent enrollments. We also reported incremental revenue of $16.3 million for the year ended December 31, 2017 related to our Short Course Segment, which was created as a result of our acquisition of GetSmarter in July of 2017.

Revenue for the year ended December 31, 2016 was $205.9 million, an increase of 37.1%, from $150.2 million for the same period of 2015, primarily due to a 35.6% increase in full course equivalent enrollments.

Costs

Curriculum and Teaching

Curriculum and teaching costs for the year ended December 31, 2017 were $6.6 million, and we did not incur any such costs in 2016 or 2015.

Servicing and Support

Servicing and support costs for the year ended December 31, 2017 were $50.8 million, an increase of 23.9%, from $41.0 million for the same period of 2016. This was primarily due to a 18.4% increase in cash and non-cash compensation and benefit costs within our Graduate Program Segment, as we increased our headcount by 21% in this area to serve a growing number of students and faculty in new and existing graduate programs. Additionally, 3.4% of the increase related to rent, other facilities costs and travel costs within our Graduate Program Segment. The increase also included 1.8% of additional servicing and support costs associated with our Short Course Segment. The remainder of the increase related to other net costs to service and support our Graduate Program Segment.

Servicing and support costs for the year ended December 31, 2016 were $41.0 million, an increase of 27.9%, from $32.0 million for the same period of 2015. This was primarily due to a 19.9% increase in cash and non-cash compensation and benefit costs within our Graduate Program Segment, as we increased our headcount by 26% in this area to serve a growing number of students and faculty in new and existing graduate programs. Additionally, 3.4% of the increase related to rent, other facilities costs and travel costs within our Graduate Program Segment. The remainder of the increase related to other net costs to service and support our Graduate Program Segment.

Technology and Content Development

Technology and content development costs for the year ended December 31, 2017 were $45.9 million, an increase of 38.0%, from $33.3 million for the same period of 2016. This was due in part to a 12.4% increase in cash and non-cash compensation and benefit costs (net of amounts capitalized for technology and content development) within our Graduate Program Segment, as we increased our headcount by 30% in this area to support the scaling of existing and launch of new graduate programs. Additionally, 15.4% of the increase related to higher amortization expense associated with capitalized technology and content development, as well as higher hosting and licensing costs, within our Graduate Program Segment due to the larger number of courses that have been developed and the continued maintenance of our platform in a cloud environment. The increase also included 8.3% of additional technology and content development costs associated with our Short Course Segment. The remainder of the increase related to other net costs to support and maintain our internal software applications in our Graduate Program Segment.

Technology and content development costs for the year ended December 31, 2016 were $33.3 million, an increase of 22.3%, from $27.2 million for the same period of 2015. This was due in part to a 5.8% increase in cash and non-cash compensation and benefit costs (net of amounts capitalized for technology and content development) within our Graduate Program Segment, as we increased our headcount by 31% in this area to support the scaling of existing programs and launch of new graduate programs. Additionally, 13.9% of the increase related to higher amortization expense associated with capitalized technology and content development, as well as higher hosting and licensing costs within our Graduate Program Segment due to the larger number of courses that have been

developed for our university client programs and the continued maintenance of our platform in a cloud environment.

Marketing and Sales

Marketing and sales costs for the year ended December 31, 2017 were $150.9 million, an increase of 41.6%, from $106.6 million for the same period of 2016. This was primarily due to an 18.4% increase in direct internet marketing costs to acquire students for our Graduate Program Segment. Additionally, 9.5% of the increase related to cash and non-cash compensation and benefit costs, as we increased our headcount by 26% in this area within our Graduate Program Segment to acquire students for, and drive revenue growth in, existing and new graduate programs. The increase also included 8.4% of additional marketing and sales costs associated with our Short Course Segment. The remainder of the increase related to other net costs to support growth within our Graduate Program Segment.

Marketing and sales costs for the year ended December 31, 2016 were $106.6 million, an increase of 28.6%, from $82.9 million for the same period of 2015. This was primarily due to a 15.7% increase in direct internet marketing costs to acquire students for our Graduate Program Segment. Additionally, 10.0% of the increase related to cash and non-cash compensation and benefit costs, as we increased our headcount by 21% within our Graduate Program Segment to acquire students for, and drive revenue growth in, existing and new graduate programs. The remainder of the increase related to other net costs to support growth within our Graduate Program Segment.

General and Administrative

General and administrative costs for the year ended December 31, 2017 were $62.7 million, an increase of 36.2%, from $46.0 million for the same period of 2016. This was primarily due to a 16.3% increase in cash and non-cash compensation and benefit costs within our Graduate Program Segment, as we increased our headcount by 18% in this area to support our growing business. Additionally, a 4.4% increase related to higher consulting and other professional services within our Graduate Program Segment primarily driven by additional recurring and nonrecurring costs associated with the acquisition of GetSmarter and partially offset by reductions in year-over-year costs after the integration of our enterprise resource planning system which was completed in the second quarter of 2017, and a 2.6% increase related to rent, other facilities costs and travel costs within our Graduate Program Segment. The increase also included 7.1% of additional general and administrative costs associated with our Short Course Segment. The remainder of the increase related to other net costs to support growth within our Graduate Program Segment.

General and administrative costs for the year ended December 31, 2016 were $46.0 million, an increase of 34.9%, from $34.1 million for the same period of 2015. This was primarily due to a 23.0% increase in cash and non-cash compensation and benefit costs within our Graduate Program Segment, as we increased our headcount by 35% in this area to support our growing business. Additionally, 11.2% of the increase related to higher consulting and other professional services, primarily related to non-recurring costs associated with the integration of our enterprise resource planning system. The remainder of the increase related to other net cost increases to support growth within our Graduate Program Segment.

Net Interest Income (Expense)

Interest income is derived from interest received on our cash and cash equivalents. Interest expense consists primarily of the amortization of deferred financing costs associated with our line of credit. Net interest income (expense) reflects the aggregation of interest income and interest expense. For the year ended December 31, 2017, we earned net interest income of $284,000, a decrease of

18.4%, from $348,000 for the same period of 2016. Our net interest income for the year ended December 31, 2016 represented an increase of 190.3%, from net interest expense of $385,000 for the same period of 2015.

Other Non-Operating Income (Expense), Net

Other non-operating income (expense), net primarily consists of foreign currency gains and losses. For the year ended December 31, 2017, we incurred other non-operating expense, net, of $866,000 primarily due to foreign currency rate fluctuations associated with the acquisition and operations of our Short Course Segment, compared to no activity in the same period of 2016. Our other non-operating expense, net for the year ended December 31, 2015 included a $250,000 write-down on an investment that did not recur in 2016.

Income Tax Benefit

Income tax benefit consists of U.S. federal, state and foreign income taxes. To date, we have not been required to pay U.S. federal income taxes because of our current and accumulated net operating losses. For the year ended December 31, 2017, we recognized a tax benefit of $1.3 million. The tax benefit primarily relates to the GetSmarter acquisition and losses generated from the acquired operations. We expect to continue to recognize a tax benefit in the future for the Short Course Segment to the extent that the segment continues to generate taxable losses and deferred tax liabilities that are in excess of deferred tax assets. We incurred immaterial state and foreign income tax liabilities for the years ended December 31, 2016 and 2015.

On December 22, 2017, the Tax Act and Jobs Act of 2017 (the "Tax Act") was enacted into law and the new legislation contains certain key tax provisions that affected us. The Tax Act affects us by (i) reducing the U.S. tax rate to 21% effective January 1, 2018, (ii) impacting the values of our deferred assets and liabilities, (iii) changing our ability to utilize future net operating losses and (iv) requiring a one-time tax on any of our unrepatriated foreign earnings and profits ("E&P") in 2017.

Pursuant to U.S. GAAP, changes in tax rates and tax laws are accounted for in the period of enactment, and the resulting effects are included as components of the income tax provision related to continuing operations within the same period. Therefore, the following changes in the tax laws have been accounted for in 2017. Our deferred tax assets and liabilities and offsetting valuation allowance have been remeasured at the new enacted tax rate as of December 31, 2017. The amount of U.S. net operating losses that we have available and our ability to utilize them to reduce future taxable income is not impacted by the Tax Act. However, the Tax Act may impact the amount and ability to utilize net operating losses generated by us in the future. Additionally, we believe that any undistributed amounts of foreign earnings and profits potentially included in taxable income would be offset by net operating losses; therefore, no transition tax is due from us in 2017.

Consolidated Statements of Operations as a Percentage of Revenue

The following table sets forth selected consolidated statements of operations data as a percentage of revenue for each of the periods indicated.

	Year Ended December 31,		
	2017	2016	2015
Revenue	100.0%	100.0%	100.0%
Costs and expenses			
Curriculum and teaching	2.3	—	—
Servicing and support	17.7	19.9	21.4
Technology and content development	16.0	16.2	18.1
Marketing and sales	52.6	51.8	55.2
General and administrative	21.9	22.4	22.7
Total costs and expenses	110.5	110.3	117.4
Loss from operations	(10.5)	(10.3)	(17.4)
Other income (expense):			
Interest income	0.1	0.2	0.1
Interest expense	0.0	0.0	(0.4)
Other income (expense), net	(0.3)	0.0	(0.1)
Total other income (expense)	(0.2)	0.2	(0.4)
Loss before income taxes	(10.7)	(10.1)	(17.8)
Income tax benefit	0.4	—	—
Net loss	(10.3)%	(10.1)%	(17.8)%

Key Business and Financial Performance Metrics

We use a number of key metrics to evaluate our business, measure our performance, identify trends affecting our business, formulate financial projections and make strategic decisions. In addition to adjusted EBITDA, which we discuss below and revenue and the components of loss from operations in the section above entitled "—Our Business Model and Components of Operating Results", we utilize full course equivalent enrollments as a key metric to evaluate the success of our growth strategy.

Full Course Equivalent Enrollments in Our University Clients' Offerings

We measure full course equivalent enrollments for each of the courses offered during a particular period by taking the number of students enrolled in that course and multiplying it by the percentage of the course completed during that period. We use this metric to account for the fact that many courses we enable straddle two or more fiscal quarters. For example, if a course had 25 enrolled students and 40% of the course was completed during a particular period, we would count the course as having 10 full course equivalent enrollments for that period. Any individual student may be enrolled in more than one course during a period.

Average revenue per full course equivalent enrollment represents our weighted-average revenue per course across the mix of courses being offered during a period within each of our operating segments. This number is derived by dividing the total revenue for a period for each of our operating segments by the number of full course equivalent enrollments within the applicable segment during that same period. This amount may vary from period to period depending on the academic calendars of our university clients, the relative growth rates of graduate programs and short courses, as applicable, with varying tuition levels, the launch of new graduate programs or short courses with higher or lower than average net tuition costs and annual tuition increases instituted by our university clients.

The following table sets forth the full course equivalent enrollments and average revenue per full course equivalent enrollment in our Graduate Program Segment for the periods presented.

	Year Ended December 31,		
	2017	2016	2015
Graduate program full course equivalent enrollments	98,904	77,344	57,019
Graduate program average revenue per full course equivalent enrollment	$ 2,734	$ 2,662	$ 2,634

Of the increase in full course equivalent enrollments for the years ended December 31, 2017 and 2016, 959 or 4.4% and 476 or 2.3%, respectively, were attributable to graduate programs launched during the preceding 12 months.

The following table sets forth the full course equivalent enrollments and average revenue per full course equivalent enrollment in our Short Course Segment for the periods presented.

	Year Ended December 31,		
	2017*	2016	2015
Short courses full course equivalent enrollments	10,830	—	—
Short courses average revenue per full course equivalent enrollment**	$ 1,507	$ —	$ —

* We acquired GetSmarter on July 1, 2017 and their results of operations are included in our financial results from the date of acquisition. As such, the full course equivalent enrollment measures of our short courses are measured only for the six months ended December 31, 2017.

** The calculation of short course average revenue per full course equivalent enrollment includes $0.7 million of revenue that was excluded from the results of operations in the third quarter of 2017, due to an adjustment recorded as part of the valuation of GetSmarter.

Adjusted EBITDA

Adjusted EBITDA represents our earnings before net interest income (expense), taxes, depreciation and amortization, foreign currency gains or losses, acquisition-related gains or losses and stock-based compensation expense. Adjusted EBITDA is a key measure used by our management and board of directors to understand and evaluate our core operating performance and trends, to prepare and approve our annual budget and to develop short- and long-term operational plans. In particular, the exclusion of certain expenses in calculating adjusted EBITDA can provide a useful measure for period-to-period comparisons of our core business. Accordingly, we believe that adjusted EBITDA provides useful information to investors and others in understanding and evaluating our operating results in the same manner as our management and board of directors.

Adjusted EBITDA is not a measure calculated in accordance with U.S. GAAP, and should not be considered as an alternative to any measure of financial performance calculated and presented in accordance with U.S. GAAP. In addition, adjusted EBITDA may not be comparable to similarly titled measures of other companies because other companies may not calculate adjusted EBITDA in the same manner as we do. We prepare adjusted EBITDA to eliminate the impact of stock-based compensation expense, which we do not consider indicative of our core operating performance.

Our use of adjusted EBITDA has limitations as an analytical tool, and you should not consider it in isolation or as a substitute for analysis of our financial results as reported under U.S. GAAP. Some of these limitations are:

- although depreciation and amortization are non-cash charges, the assets being depreciated and amortized may have to be replaced in the future, and adjusted EBITDA does not reflect cash capital expenditure requirements for such replacements or for new capital expenditure requirements;
- adjusted EBITDA does not reflect changes in, or cash requirements for, our working capital needs;
- adjusted EBITDA does not reflect acquisition related gains or losses such as, but not limited to, post-acquisition changes in the value of contingent consideration reflected in operations;
- adjusted EBITDA does not reflect the potentially dilutive impact of equity-based compensation;
- adjusted EBITDA does not reflect interest or tax payments that may represent a reduction in cash available to us; and
- other companies, including companies in our industry, may calculate adjusted EBITDA differently, which reduces its usefulness as a comparative measure.

Because of these and other limitations, you should consider adjusted EBITDA alongside other U.S. GAAP-based financial performance measures, including various cash flow metrics, net income (loss) and our other U.S. GAAP results. The following table presents a reconciliation of net loss to adjusted EBITDA for each of the periods indicated:

	Year Ended December 31,		
	2017	2016	2015
		(in thousands)	
Net loss	$ (29,423)	$ (20,684)	$ (26,733)
Adjustments:			
Interest income	(371)	(383)	(167)
Interest expense	87	35	552
Foreign currency loss	866	—	—
Depreciation and amortization expense	19,624	9,750	7,220
Income tax benefit	(1,297)	—	—
Stock-based compensation expense	21,930	15,823	12,499
Total adjustments	40,839	25,225	20,104
Adjusted EBITDA (loss)	$ 11,416	$ 4,541	$ (6,629)

Financial Condition: Capital Resources and Liquidity

Acquisitions

During 2017, we acquired all of the outstanding equity interest in GetSmarter for a net purchase price of $98.7 million in cash and an earn-out payment of up to $20.0 million in cash, subject to the achievement of certain financial milestones. The acquired assets and liabilities of GetSmarter have been recorded at their estimated fair values at the date of acquisition.

Capital Expenditures

During the year ended December 31, 2017, we had capital asset additions of $62.3 million, which were comprised of $29.6 million of leasehold improvements, $23.9 million in capitalized technology and

content development and $8.9 million of other property and equipment. The $62.3 million increase consisted of $51.1 million in cash capital expenditures and $11.2 million of non-cash capital expenditures, primarily related to landlord funded leasehold improvements. In 2018, we expect new capital asset additions of approximately $55 to $59 million, of which approximately $2 to $3 million will be funded by landlord leasehold improvement allowances.

Sources of Liquidity

Public Offerings of Common Stock

On September 11, 2017, we sold 4,047,500 shares of our common stock to the public, including 547,500 shares sold pursuant to the underwriters' over-allotment option, resulting in net proceeds of $189.5 million, which we intend to use for general corporate purposes, including expenditures for graduate program and short course marketing, technology and content development, in connection with new graduate program and short course launches and growing existing graduate programs and short courses.

On September 30, 2015, we sold 3,625,000 shares of our common stock to the public, including 525,000 shares sold pursuant to the underwriters' over-allotment option, resulting in net proceeds of $117.1 million, which was used for general corporate purposes, including expenditures for marketing, sales, technology and content development in connection with new program launches and growing existing programs.

Lines of Credit

We currently have a $25.0 million revolving line of credit with Comerica Bank, or Comerica, which had no amounts outstanding as of December 31, 2017 and 2016. During 2017, we amended our line of credit agreement multiple times to extend the maturity date as well as to receive Comerica's consent to our acquisition of GetSmarter and our formation of certain subsidiaries in connection therewith. The most recent amendment was completed in the first quarter of 2018, to extend the maturity date of the credit agreement through March 31, 2018.

Under this revolving line of credit, we have the option of borrowing funds subject to (i) a base rate, which is equal to 1.5% plus the greater of Comerica's prime rate, the federal funds rate plus 1% or the 30-day LIBOR plus 1%, or (ii) LIBOR plus 2.5%. For amounts borrowed under the base rate, we may make interest-only payments quarterly, and may prepay such amounts with no penalty. For amounts borrowed under LIBOR, we may make interest-only payments in periods of one, two and three months and will be subject to a prepayment penalty if we repay such borrowed amounts before the end of the interest period.

Borrowings under the line of credit are collateralized by substantially all of our assets. The availability of borrowings under this credit line is subject to our compliance with reporting and financial covenants, including, among other things, that we achieve specified minimum three-month trailing revenue levels during the term of the agreement and specified minimum six-month trailing profitability levels for some of our graduate programs, measured quarterly. In addition, we are required to maintain a minimum adjusted quick ratio, which measures our short-term liquidity, of at least 1.10 to 1.00. As of December 31, 2017 and 2016, our adjusted quick ratios were 5.44 and 5.43, respectively.

The covenants under the line of credit also place limitations on our ability to incur additional indebtedness or to prepay permitted indebtedness, grant liens on or security interests in our assets, carry out mergers and acquisitions, dispose of assets, declare, make or pay dividends, make capital expenditures in excess of specified amounts, make investments, loans or advances, enter into transactions with our affiliates, amend or modify the terms of our material contracts, or change our fiscal year. If we are not in compliance with the covenants under the line of credit, after any

opportunity to cure such non-compliance, or we otherwise experience an event of default under the line of credit. We are currently in compliance with all such covenants.

Certain of our operating lease agreements entered into require security deposits in the form of cash or an unconditional, irrevocable letter of credit. As of December 31, 2017, we have entered into standby letters of credit totaling $11.5 million, as security deposits for the applicable leased facilities. Additionally, in June 2017, we entered into standby letters of credit totaling $3.5 million in connection with two government grants. These letters of credit reduced the aggregate amount we may borrow under our revolving line of credit to $10.0 million.

Our Short Course Segment had $1.9 million of revolving debt facilities that matured on December 31, 2017. These facilities were subsequently extended with a borrowing base of $1.3 million and will mature on March 31, 2018. As of December 31, 2017, no amounts were outstanding under these facilities and the interest rate was 10.25%.

Government Grants

In June 2017, we entered into two conditional loan agreements with Prince George's County, Maryland and the State of Maryland, respectively, for an aggregate amount of $3.5 million, each bearing an interest rate of 3% per annum. These agreements are conditional loan obligations that may be forgiven provided that we attain certain conditions related to employment levels at our Lanham, Maryland headquarters.

Working Capital

Our cash at December 31, 2017 was held for working capital purposes. Our working capital as of December 31, 2017 and 2016 was $190.1 million and $143.6 million, respectively. We do not enter into investments for trading or speculative purposes. We invest any cash in excess of our immediate requirements in investments designed to preserve the principal balance and provide liquidity. Accordingly, our cash is invested primarily in demand deposit accounts that are currently providing only a minimal return.

Cash Flows

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

	Year Ended December 31,		
	2017	2016	2015
		(in thousands)	
Cash provided by (used in):			
Operating activities	$ 8,106	$ 5,210	$ (9,267)
Investing activities	(149,374)	(24,518)	(15,945)
Financing activities	196,752	4,309	122,012
Effects of exchange rate changes on cash	(844)	—	—
Net changes in cash and cash equivalents	$ 54,640	$ (14,999)	$ 96,800

Operating Activities

Cash provided by operating activities for the year ended December 31, 2017 was $8.1 million, an increase of 55.6% from net cash provided by operating activities of $5.2 million for the same period of 2016. This was primarily due to increases of $3.2 million and $15.5 million in net loss and up-front and marketing rights payments to universities, respectively, which were partially offset by decreases of $11.6 million and $8.3 million in non-cash expenses and changes in working capital, respectively. In addition, there was an increase of $1.7 million in operating activities associated with the GetSmarter acquisition.

Cash provided by operating activities for the year ended December 31, 2016 was $5.2 million, an increase of 156.2% from net cash used in operating activities of $9.3 million for the same period of 2015. This was primarily related to increases of $5.9 million and $5.3 million in up-front and marketing rights payments to universities and changes in working capital and non-cash expenses, respectively, which were partially offset by a decrease of $6.0 million in net loss.

Investing Activities

Cash used in investing activities for the year ended December 31, 2017 was $149.4 million, an increase of $124.9 million from $24.5 million for the same period of 2016. This was primarily due to $97.1 million in net cash paid to acquire GetSmarter, a $19.7 million increase due to purchases of property and equipment for our new office locations and a $7.1 million increase in additions to amortizable intangible assets to support a greater number of launched graduate programs and short courses.

Cash used in investing activities for the year ended December 31, 2016 was $24.5 million, an increase of 53.8% from $15.9 million for the same period of 2015. This was primarily due to a $6.4 million increase due to purchases of property and equipment related to leasehold improvement expenditures for our new office operating leases and a $4.4 million increase in costs related to internal-use software and content developed to support a greater number of launched graduate programs.

Financing Activities

Cash provided by financing activities for the year ended December 31, 2017 was $196.8 million, an increase of $192.4 million from $4.3 million for the same period of 2016. This was primarily due to $189.5 million in proceeds received from our public offering of common stock and $2.0 million in net proceeds from borrowings.

Cash provided by financing activities for the year ended December 31, 2016 was $4.3 million, a decrease of $117.7 million from $122.0 million for the same period of 2015. This was primarily due to $117.1 million in net proceeds from our public offering of common stock in 2015.

Contractual Obligations and Commitments

The following table summarizes our obligations under deferred government grant obligations, non-cancelable operating leases, commitments to certain of our university clients in exchange for contract extensions and various marketing and other rights and purchase obligations at December 31, 2017. Future events could cause actual payments to differ from these amounts.

	Payment due by period				
Contractual Obligations	**Less than 1 year**	**1 - 3 years**	**3 - 5 years**	**More than 5 years**	**Total**
			(in thousands)		
Deferred government grant obligations	$ —	$ —	$ —	$ 3,500	$ 3,500
Operating lease obligations	9,308	23,411	27,404	82,187	142,310
Future minimum payments to university clients	5,975	1,500	1,250	4,400	13,125
Purchase obligations	5,137	10,114	376	—	15,627
Total	$ 20,420	$ 35,025	$ 29,030	$ 90,087	$ 174,562

Other purchase orders made in the ordinary course of business are excluded from the table above. Any amounts for which we are liable under purchase orders are reflected in our consolidated balance sheets as accounts payable and accrued liabilities.

We have entered into a specific program agreement under which we would be obligated to make future minimum program payments to a university client in the event that certain program metrics, partially associated with a program not yet launched, are not achieved. Due to the dependency of this calculation on a future program launch, the amount of any associated contingent payments cannot be reasonably estimated at this time. As we cannot reasonably estimate the amount of the contingent payments, we have excluded such payments from the table above.

See Note 6 in the "Notes to Consolidated Financial Statements" included in Part II, Item 8 and "Legal Proceedings" contained in Part I, Item 3 of this Annual Report on Form 10-K for additional information regarding contingencies.

Other

We do not have any off-balance sheet arrangements, as defined in Item 303(a)(4)(ii) of Regulation S-K, such as the use of unconsolidated subsidiaries, structured finance, special purpose entities or variable interest entities.

Critical Accounting Policies and Significant Judgments and Estimates

This management's discussion and analysis of financial condition and results of operations is based on our consolidated financial statements, which have been prepared in accordance with U.S. GAAP. The preparation of these consolidated financial statements requires us to make estimates and assumptions that affect the reported amounts of assets and liabilities, disclosure of contingent assets and liabilities at the date of the consolidated financial statements, and the reported amounts of revenue and expenses during the reported period. In accordance with U.S. GAAP, we base our estimates on historical experience and on various other assumptions we believe to be reasonable under the circumstances. Actual results may differ from these estimates if conditions differ from our assumptions.

While our significant accounting policies are more fully described in Note 2 in the "Notes to Consolidated Financial Statements" included in Part II, Item 8 of this Annual Report on Form 10-K, we believe the following accounting policies are critical to the process of making significant judgments and estimates in preparation of our consolidated financial statements.

Revenue Recognition, Accounts Receivable and Allowance for Doubtful Accounts

We recognize revenue when all of the following conditions are met: (i) persuasive evidence of an arrangement exists, (ii) rendering of services is complete, (iii) fees are fixed or determinable and (iv) collection of fees is reasonably assured. Revenue for both of our segments is recognized ratably over the service period, which we define as the first through the last day of the graduate program course or short course. We establish a refund allowance, if necessary, for our share of tuition and fees ultimately uncollected either by our university clients within the Graduate Program Segment or by us within the Short Course Segment. Payments to university clients that are not for distinct goods or services are recognized as a reduction of revenue over the contractual term or the period to which they relate.

The Graduate Program Segment derives revenue primarily from a contractually specified percentage of the amounts our university clients receive from their students in the 2U-enabled graduate program for tuition and fees, less credit card fees and other specified charges we have agreed to exclude in certain of our university client contracts. Most of our contracts with university clients within this segment have 10 to 15 year initial terms.

The Short Course Segment derives revenue directly from students for the tuition and fees paid to enroll in and progress through our short courses. A contractually specified percentage of the gross proceeds from students is shared with the university clients, in the form of a royalty recognized within

our consolidated statements of operations and comprehensive loss as curriculum and teaching costs, for providing the content and certifying the course. Our university client contracts within this segment are typically shorter and less restrictive than our contracts within our Graduate Program Segment.

We generally receive payments for revenue from our graduate program university clients early in each academic term and from our short course students, either in full upon registration of the course or in full before the end of the course based on a payment plan, prior to completion of the service period. We record these payments as deferred revenue until the services are delivered or until our obligations are otherwise met, at which time we recognize the revenue. Deferred revenue as of a particular balance sheet date represents the excess of amounts billed or received as compared to amounts recognized in revenue in the consolidated statements of operations and comprehensive loss as of the end of the reporting period, and such amounts are reflected as a current liability on our consolidated balance sheets.

We generate substantially all of our revenue from multiple-deliverable contractual arrangements, and provide a combination of access to our platform that supports the complete lifecycle of a graduate program or short course, including attracting students, advising prospective students through the admissions application process, providing technical, success coaching and other support, facilitating accessibility to individuals with disabilities and facilitating in-program field placements, when required. We have determined that no individual deliverable has standalone value upon delivery and, therefore, the multiple deliverables within our arrangements do not qualify for treatment as separate units of accounting. Accordingly, we consider all deliverables to be a single unit of accounting and we recognize revenue from the entire arrangement over the term of the service period.

Our accounts receivable are stated at net realizable value. We utilize the allowance method to provide for doubtful accounts based on management's evaluation of the collectability of the amounts due. Our estimates are based on historical collection experience and a review of the current status of accounts receivable. We review and revise our estimates periodically and, historically, actual write-offs for uncollectible accounts have not significantly differed from our estimates.

Goodwill

Goodwill is the excess of purchase price over the fair value of identified net assets of the business acquired. Our goodwill balance was established in connection with our acquisition of GetSmarter in 2017. We will review goodwill at least annually, as of October 1, for possible impairment, beginning in 2018. Between annual tests, goodwill is reviewed for possible impairment if an event occurs or circumstances change that would more likely than not reduce the fair value of the reporting unit below its carrying value. We will test our goodwill at the reporting unit level, which is an operating segment or one level below an operating segment. We initially will assess qualitative factors to determine if it is necessary to perform the two-step goodwill impairment review. We will review our goodwill for impairment using the two-step process if we decide to bypass the qualitative assessment or determine that it is more likely than not that the fair value of a reporting unit is less than its carrying value based on our qualitative assessment. Upon the completion of the two-step process, we may be required to recognize an impairment based on the difference between the carrying value and the fair value of the goodwill recorded.

Internally-Developed Intangible Assets

Capitalized Technology

We capitalize certain costs related to internal-use software, primarily consisting of direct labor associated with creating the software. Software development projects generally include three stages: the preliminary project stage (all costs are expensed as incurred), the application development stage (certain costs are capitalized and certain costs are expensed as incurred) and the post-implementation/

operation stage (all costs are expensed as incurred). Costs capitalized in the application development stage include costs of designing the application, coding, integrating our and the university's networks and systems, and the testing of the software. Capitalization of costs requires judgment in determining when a project has reached the application development stage and the period over which we expect to benefit from the use of that software. Once the software is placed in service, these costs are amortized on the straight-line method over the estimated useful life of the software, which is generally three years.

Capitalized Content Development

We develop content on a course-by-course basis in conjunction with the faculty for each university client program. The university clients and their faculty generally provide course outlines in the form of the curriculum, any required textbooks, case studies and other reading materials, as well as presentations that are typically used in the on-campus setting. We are then responsible for, and incur all of the expenses related to, the conversion of the materials provided by each university client into a format suitable for delivery through our online learning platform.

The content development costs that qualify for capitalization are third-party direct costs, such as videography, editing and other services associated with creating digital content. Additionally, we capitalize internal payroll and payroll-related costs incurred to create and produce videos and other digital content utilized in the university clients' programs for delivery via our online learning platform. Capitalization ends when content has been fully developed by both us and the university client, at which time amortization of the capitalized content development costs begin. The capitalized costs are recorded on a course-by-course basis and included in capitalized content costs on the consolidated balance sheets. These costs are amortized using the straight-line method over the estimated useful life of the respective capitalized content program, which is generally five years. The estimated useful life corresponds with the planned curriculum refresh rate. This refresh rate is consistent with expected curriculum refresh rates as cited by program faculty members for similar on-campus programs. It is reasonably possible that developed content could be refreshed before the estimated useful lives are complete or be expensed immediately in the event that the development of a course is discontinued prior to launch.

Evaluation of Long-Lived Assets

We review long-lived assets, which consist of property and equipment, capitalized technology costs, capitalized content development costs and acquired finite-lived intangible assets, for impairment whenever events or changes in circumstances indicate the carrying value of an asset may not be recoverable. Recoverability of a long-lived asset is measured by a comparison of the carrying value of an asset or asset group to the future undiscounted net cash flows expected to be generated by that asset or asset group. If such assets are not recoverable, the impairment to be recognized is measured by the amount by which the carrying value of an asset exceeds the estimated fair value (discounted cash flow) of the asset or asset group. In order to assess the recoverability of the capitalized technology and content development costs, the costs are grouped by degree vertical, which is the lowest level of independent cash flows. Our impairment analysis is based upon cumulative results and forecasted performance. The actual results could vary from our forecasts, especially in relation to recently launched programs.

Stock-Based Compensation

We have issued three types of stock-based awards under our stock plans: stock options, restricted stock units and stock awards. Stock option awards granted to employees, directors and independent contractors are measured at fair value at each grant date. We rely on the Black-Scholes option pricing model for estimating the fair value of stock options granted, and expected volatility is based on the

historical volatilities of our common stock. For awards subject to service-based vesting conditions, we recognize compensation expense on a straight-line basis over the requisite service period of the award. Prior to January 1, 2017, we adjusted stock-based compensation expense for estimated forfeitures. Beginning on January 1, 2017, we account for forfeitures (and the impact on stock-based compensation expense) as they occur, as described in the "Recent Accounting Pronouncements" section in Note 2 in the "Notes to Consolidated Financial Statements" included in Part II, Item 8 of this Annual Report on Form 10-K. Stock options subject to service-based vesting generally vest at various times from the date of the grant, with most stock options vesting in tranches, generally over a period of four years. Restricted stock units subject to service-based vesting generally vest 25% on each anniversary of the grant date over four years.

For the years ended December 31, 2017, 2016 and 2015, we recorded stock-based compensation expense of $21.9 million, $15.8 million and $12.5 million, respectively. Information about the assumptions used in the calculation of stock-based compensation expense is set forth in Note 11 in the "Notes to Consolidated Financial Statements" included in Part II, Item 8 of this Annual Report on Form 10-K.

As of December 31, 2017, unrecognized stock-based compensation expense related to unvested options totaled $15.6 million and will be recognized over a weighted-average period of approximately 2.4 years.

As of December 31, 2017, unrecognized stock-based compensation expense related to unvested restricted stock units was $31.5 million and will be recognized over a weighted-average period of approximately 2.1 years.

Income Tax (Expense) Benefit

Income taxes are accounted for under the asset and liability method, which requires the recognition of deferred tax assets and liabilities for the expected future tax consequences of events that are included in the financial statements. Under this method, the deferred tax assets and liabilities are determined based on the differences between the financial statement and tax bases of the assets and liabilities using enacted tax rates in effect for the year in which the differences are expected to reverse. The effect of a change in tax rates on the deferred tax assets and liabilities is recognized in earnings in the period when the new rate is enacted. Deferred tax assets are subject to periodic recoverability assessments. Valuation allowances are established, when necessary, to reduce deferred tax assets to the amount that more likely than not will be realized. We consider all positive and negative evidence relating to the realization of the deferred tax assets in assessing the need for a valuation allowance. We currently maintain a full valuation allowance against our deferred tax assets in the U.S and certain entities in the foreign jurisdictions.

We record a liability for unrecognized tax benefits resulting from uncertain tax positions taken or expected to be taken in a tax return. We account for uncertainty in income taxes using a two-step approach for evaluating tax positions. Step one, recognition, occurs when we conclude that a tax position, based solely on its technical merits, is more likely than not to be sustained upon examination. Step two, measurement, determines the amount of benefit that is more likely than not to be realized upon ultimate settlement with a taxing authority that has full knowledge of all relevant information. De-recognition of a tax position that was previously recognized would occur if we subsequently determine that a tax position no longer meets the more likely than not threshold of being sustained. We recognize interest and penalties, if any, related to unrecognized tax benefits as income tax expense in our consolidated statements of operations.

On December 22, 2017, the Tax Act was enacted into law and the new legislation contains certain key tax provisions that affected us. The Tax Act affects us by (i) reducing the U.S. tax rate to 21% effective January 1, 2018, (ii) impacting the values of our deferred assets and liabilities, (iii) changing

our ability to utilize future net operating losses and (iv) requiring a one-time tax on any of our unrepatriated foreign earnings and profits ("E&P") in 2017.

Pursuant to U.S. GAAP, changes in tax rates and tax laws are accounted for in the period of enactment, and the resulting effects are included as components of the income tax provision related to continuing operations within the same period. Therefore, the following changes in the tax laws have been accounted for in 2017. Our deferred tax assets and liabilities and offsetting valuation allowance have been remeasured at the new enacted tax rate as of December 31, 2017. The amount of U.S. net operating losses that we have available and our ability to utilize them to reduce future taxable income is not impacted by the Tax Act. However, the Tax Act may impact the amount and ability to utilize net operating losses generated by us in the future. Additionally, we believe that any undistributed amounts of foreign earnings and profits potentially included in taxable income would be offset by net operating losses; therefore, no transition tax is due from us in 2017.

We are required to recognize the effect of the tax law changes in the period of enactment, such as re-measuring our U.S. deferred tax assets and liabilities as well as reassessing the net realizability of deferred tax assets and liabilities. In December 2017, the SEC issued Staff Accounting Bulletin No. 118, *Income Tax Accounting Implications of the Tax Cuts and Jobs Act* ("SAB 118"), which allows entities to record provisional amounts during a measurement period not to extend beyond one year of the enactment date. We consider the E&P and other items to be provisional and expect to complete our analysis within the measurement period in accordance with SAB 118, although we do not expect there to be any adjustment to the income tax benefit (expense) on our consolidated statements of operations and comprehensive loss during the re-measurement period.

Recent Accounting Pronouncements

Refer to Note 2 in the "Notes to Consolidated Financial Statements" included in Part II, Item 8 of this Annual Report on Form 10-K for a discussion of FASB's recent accounting pronouncements and their effect on us.

Report of Independent Registered Public Accounting Firm

To the Stockholders and Board of Directors
2U, Inc.:

Opinion on the Consolidated Financial Statements

We have audited the accompanying consolidated balance sheets of 2U, Inc. and subsidiaries (the Company) as of December 31, 2017 and 2016, the related consolidated statements of operations and comprehensive loss, changes in stockholders' equity, and cash flows for each of the years in the three-year period ended December 31, 2017, and the related notes (collectively, the consolidated financial statements). In our opinion, the consolidated financial statements present fairly, in all material respects, the financial position of the Company as of December 31, 2017 and 2016, and the results of its operations and its cash flows for each of the years in the three-year period ended December 31, 2017, in conformity with U.S. generally accepted accounting principles.

We also have audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States) (PCAOB), the Company's internal control over financial reporting as of December 31, 2017, based on criteria established in *Internal Control—Integrated Framework (2013)* issued by the Committee of Sponsoring Organizations of the Treadway Commission, and our report dated February 27, 2018 expressed an unqualified opinion on the effectiveness of the Company's internal control over financial reporting.

Basis for Opinion

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

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

/s/ KPMG LLP

We have served as the Company's auditor since 2013.

McLean, Virginia
February 27, 2018

Report of Independent Registered Public Accounting Firm

To the Stockholders and Board of Directors
2U, Inc.:

Opinion on Internal Control Over Financial Reporting

We have audited 2U, Inc. and subsidiaries' (the Company) internal control over financial reporting as of December 31, 2017, based on criteria established in *Internal Control—Integrated Framework (2013)* issued by the Committee of Sponsoring Organizations of the Treadway Commission. In our opinion, the Company maintained, in all material respects, effective internal control over financial reporting as of December 31, 2017, based on criteria established in *Internal Control—Integrated Framework (2013)* issued by the Committee of Sponsoring Organizations of the Treadway Commission.

We also have audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States) (PCAOB), the consolidated balance sheets of the Company as of December 31, 2017 and 2016, and the related consolidated statements of operations and comprehensive loss, changes in stockholders' equity, and cash flows for each of the years in the three-year period ended December 31, 2017, and related notes (collectively, the consolidated financial statements), and our report dated February 27, 2018 expressed an unqualified opinion on those consolidated financial statements.

The Company acquired Get Educated International Proprietary Limited (GetSmarter) during 2017, and management excluded from its assessment of the effectiveness of the Company's internal control over financial reporting as of December 31, 2017, GetSmarter's internal control over financial reporting associated with 1.3% of total assets and 5.7% of total revenues included in the consolidated financial statements of the Company as of and for the year ended December 31, 2017. Our audit of internal control over financial reporting of the Company also excluded an evaluation of the internal control over financial reporting of GetSmarter.

Basis for Opinion

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

We conducted our audit in accordance with the standards of the PCAOB. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether effective internal control over financial reporting was maintained in all material respects. Our audit of internal control over financial reporting included obtaining an understanding of internal control over financial reporting, assessing the risk that a material weakness exists, and testing and evaluating the design and operating effectiveness of internal control based on the assessed risk. Our audit also included performing such other procedures as we considered necessary in the circumstances. We believe that our audit provides a reasonable basis for our opinion.

Definition and Limitations of Internal Control Over Financial Reporting

A company's internal control over financial reporting is a process designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for

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

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

/s/ KPMG LLP

McLean, Virginia
February 27, 2018

2U, Inc.

Consolidated Balance Sheets

(in thousands, except share and per share amounts)

	December 31, 2017	December 31, 2016
Assets		
Current assets		
Cash and cash equivalents	$ 223,370	$ 168,730
Accounts receivable, net	14,174	7,860
Prepaid expenses and other assets	10,509	8,108
Total current assets	248,053	184,698
Property and equipment, net	49,055	15,596
Goodwill	71,988	—
Amortizable intangible assets, net	90,761	34,131
Prepaid expenses and other assets, non-current	22,205	9,895
Total assets	$ 482,062	$ 244,320
Liabilities and stockholders' equity		
Current liabilities		
Accounts payable and accrued expenses	$ 22,629	$ 14,724
Accrued compensation and related benefits	19,017	16,491
Deferred revenue	7,024	3,137
Other current liabilities	9,330	6,717
Total current liabilities	58,000	41,069
Non-current lease-related liabilities	22,573	7,620
Deferred government grant obligations	3,500	—
Deferred tax liabilities, net	10,087	—
Other non-current liabilities	70	394
Total liabilities	94,230	49,083
Commitments and contingencies (Note 6)		
Stockholders' equity		
Preferred stock, $0.001 par value, 5,000,000 shares authorized, none issued	—	—
Common stock, $0.001 par value, 200,000,000 shares authorized, 52,505,856 shares issued and outstanding as of December 31, 2017; 47,151,635 shares issued and outstanding as of December 31, 2016	53	47
Additional paid-in capital	588,289	371,455
Accumulated deficit	(205,836)	(176,265)
Accumulated other comprehensive income	5,326	—
Total stockholders' equity	387,832	195,237
Total liabilities and stockholders' equity	$ 482,062	$ 244,320

See accompanying notes to consolidated financial statements.

2U, Inc.

Consolidated Statements of Operations and Comprehensive Loss

(in thousands, except share and per share amounts)

	Year Ended December 31,		
	2017	2016	2015
Revenue	$ 286,752	$ 205,864	$ 150,194
Costs and expenses			
Curriculum and teaching	6,609	—	—
Servicing and support	50,767	40,982	32,047
Technology and content development	45,926	33,283	27,211
Marketing and sales	150,923	106,610	82,911
General and administrative	62,665	46,021	34,123
Total costs and expenses	316,890	226,896	176,292
Loss from operations	(30,138)	(21,032)	(26,098)
Interest income	371	383	167
Interest expense	(87)	(35)	(552)
Other income (expense), net	(866)	—	(250)
Loss before income taxes	(30,720)	(20,684)	(26,733)
Income tax benefit	1,297	—	—
Net loss	$ (29,423)	$ (20,684)	$ (26,733)
Net loss per share, basic and diluted	$ (0.60)	$ (0.44)	$ (0.63)
Weighted-average shares of common stock outstanding, basic and diluted	49,062,611	46,609,751	42,420,356
Other comprehensive loss			
Foreign currency translation adjustments, net of tax of $0 for all periods presented	5,326	—	—
Comprehensive loss	$ (24,097)	$ (20,684)	$ (26,733)

See accompanying notes to consolidated financial statements.

2U, Inc.

Consolidated Statements of Changes in Stockholders' Equity

(in thousands, except share amounts)

	Common Stock		Additional Paid-In Capital	Accumulated Deficit	Accumulated Other Comprehensive Loss	Total Stockholders' Equity
	Shares	Amount				
Balance, December 31, 2014	40,735,069	$ 41	$ 216,818	$ (128,848)	$ —	$ 88,011
Exercise of stock options	1,141,731	1	5,335	—	—	5,336
Issuance of common stock in connection with settlement of restricted stock units, net of withholdings	248,088	—	(436)	—	—	(436)
Issuance of common stock, net of issuance costs	3,625,000	4	117,108	—	—	117,112
Issuance of common stock award	26,567	—	750	—	—	750
Stock-based compensation expense	—	—	11,749	—	—	11,749
Net loss	—	—	—	(26,733)	—	(26,733)
Balance, December 31, 2015	45,776,455	46	351,324	(155,581)	—	195,789
Exercise of stock options	1,011,153	1	4,858	—	—	4,859
Issuance of common stock in connection with settlement of restricted stock units, net of withholdings	351,319	—	(382)	—	—	(382)
Issuance of common stock award	12,708	—	(168)	—	—	(168)
Stock-based compensation expense	—	—	15,823	—	—	15,823
Net loss	—	—	—	(20,684)	—	(20,684)
Balance, December 31, 2016	47,151,635	47	371,455	(176,265)	—	195,237
Cumulative-effect of accounting change (Note 2)	—	—	148	(148)	—	—
Balance, December 31, 2016, adjusted	47,151,635	47	371,603	(176,413)	—	195,237
Exercise of stock options	846,821	1	6,614	—	—	6,615
Issuance of common stock in connection with settlement of restricted stock units, net of withholdings	459,900	1	(1,310)	—	—	(1,309)
Issuance of common stock, net of issuance costs	4,047,500	4	189,452	—	—	189,456
Stock-based compensation expense	—	—	21,930	—	—	21,930
Net loss	—	—	—	(29,423)	—	(29,423)
Foreign currency translation adjustment	—	—	—	—	5,326	5,326
Balance, December 31, 2017	52,505,856	$ 53	$ 588,289	$ (205,836)	$ 5,326	$ 387,832

See accompanying notes to consolidated financial statements.

2U, Inc.

Consolidated Statements of Cash Flows

(in thousands)

	Year Ended December 31,		
	2017	2016	2015
Cash flows from operating activities			
Net loss	$ (29,423)	$ (20,684)	$ (26,733)
Adjustments to reconcile net loss to net cash provided by (used in) operating activities:			
Depreciation and amortization	19,624	9,750	7,220
Stock-based compensation expense	21,930	15,823	12,499
Charge related to execution of new lease agreement	—	—	884
Changes in operating assets and liabilities:			
Increase in accounts receivable, net	(5,634)	(6,885)	(625)
Decrease (increase) in prepaid expenses and other assets	1,549	(1,090)	(4,876)
Increase (decrease) in accounts payable and accrued expenses	3,504	(2,459)	2,366
Increase in accrued compensation and related benefits	2,504	3,086	4,317
Increase in deferred revenue	1,661	528	703
(Increase) decrease in payments to university clients	(13,239)	2,234	(3,664)
Increase (decrease) in other liabilities, net	4,763	4,907	(1,608)
Other	867	—	250
Net cash provided by (used in) operating activities	8,106	5,210	(9,267)
Cash flows from investing activities			
Purchase of a business, net of cash acquired	(97,102)	—	—
Purchases of property and equipment	(27,316)	(7,648)	(1,256)
Additions of amortizable intangible assets	(23,823)	(16,728)	(12,358)
Advances made to university clients	(1,950)	—	—
Advances repaid by university clients	817	—	—
Other	—	(142)	(2,331)
Net cash used in investing activities	(149,374)	(24,518)	(15,945)
Cash flows from financing activities			
Proceeds from issuance of common stock, net of offering costs	189,463	—	117,112
Proceeds from exercise of stock options	6,615	4,859	5,336
Proceeds from debt	3,500	—	—
Payments on debt	(1,517)	—	—
Tax withholding payments associated with settlement of restricted stock units	(1,309)	(378)	(436)
Other	—	(172)	—
Net cash provided by financing activities	196,752	4,309	122,012
Effect of exchange rate changes on cash	(844)	—	—
Net increase (decrease) in cash and cash equivalents	54,640	(14,999)	96,800
Cash and cash equivalents, beginning of period	168,730	183,729	86,929
Cash and cash equivalents, end of period	$ 223,370	$ 168,730	$ 183,729

See accompanying notes to consolidated financial statements.

2U, Inc.

Notes to Consolidated Financial Statements

1. Organization

2U, Inc. (the "Company") is a leading education technology company that well-recognized nonprofit colleges and universities trust to bring them into the digital age. The Company's comprehensive platform provides the digital infrastructure universities need to attract, enroll, educate and support students at scale, while delivering high-quality outcomes. With the Company's platform, students can pursue their education anytime, anywhere, without quitting their jobs or moving; and university clients can improve educational outcomes, skills attainment and career prospects for a greater number of students.

On July 1, 2017, the Company completed its acquisition of all of the outstanding equity interests of Get Educated International Proprietary Limited ("GetSmarter"), a leader in collaborating with universities to offer premium online short courses to working professionals. The acquisition will enable the Company to expand its total addressable market by offering short course certificates to students not seeking a full graduate degree and to provide a better product-market fit for international audiences. As a result of the acquisition of GetSmarter, the Company now manages its operations in two operating segments: the Graduate Program Segment and the Short Course Segment. See Note 3 for further information on the GetSmarter acquisition and Note 13 for further information on the Company's segments.

2. Significant Accounting Policies

Basis of Presentation and Principles of Consolidation

The accompanying consolidated financial statements include the accounts of the Company and its wholly-owned subsidiaries and have been prepared in accordance with United States generally accepted accounting principles ("U.S. GAAP") and include the assets, liabilities, results of operations and cash flows of the Company. All significant intercompany accounts and transactions have been eliminated in consolidation.

Reclassifications

The Company has reclassified capitalized technology and content development, as well as other amortizable intangible assets, into amortizable intangible assets, net on the consolidated balance sheets and consolidated statements of cash flows. In addition, certain other prior period amounts in the consolidated balance sheets and consolidated statements of cash flows have been reclassified to conform to the current period's presentation. These reclassifications had no impact on total assets, total liabilities, cash flows from operating activities or cash flows from investing activities previously reported for any periods presented.

Use of Estimates

The preparation of consolidated financial statements in accordance with U.S. GAAP requires management to make certain estimates and assumptions that affect the amounts reported herein. The Company bases its estimates and assumptions on historical experience and on various other factors that it believes to be reasonable under the circumstances. Due to the inherent uncertainty involved in making estimates, actual results reported in future periods may be affected by changes in those estimates. The Company evaluates its estimates and assumptions on an ongoing basis.

2U, Inc.

Notes to Consolidated Financial Statements (Continued)

2. Significant Accounting Policies (Continued)

Business Combinations

The purchase price of an acquisition is allocated to the assets acquired, including intangible assets, and liabilities assumed, based on their respective fair values at the acquisition date. Acquisition-related costs are expensed as incurred. The excess of the cost of an acquired entity of the net of the amounts assigned to the assets acquired and liabilities assumed is recognized as goodwill. The net assets and results of operations of an acquired entity are included in the Company's consolidated financial statements from the acquisition date.

Concentration of Credit Risk

Financial instruments that subject the Company to significant concentrations of credit risk consist primarily of cash and cash equivalents and accounts receivable. All of the Company's cash is held at financial institutions that management believes to be of high credit quality. The Company's bank accounts exceed federally insured limits at times. The Company has not experienced any losses on cash to date. To manage accounts receivable risk, the Company maintains an allowance for doubtful accounts, if needed.

Cash and Cash Equivalents

Cash and cash equivalents consist of bank checking accounts, money market accounts, investments in certificates of deposit that mature in less than three months and highly liquid marketable securities with maturities at the time of purchase of three months or less.

Fair Value Measurements

The carrying amounts of certain assets and liabilities, including cash and cash equivalents, accounts receivable, accounts payable and accrued expenses and other current liabilities, approximate their respective fair values due to their short-term nature.

Fair value is defined as the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date, based on the Company's principal or, in the absence of a principal, most advantageous, market for the specific asset or liability.

U.S. GAAP provides for a three-tier fair value hierarchy to classify and disclose all assets and liabilities measured at fair value on a recurring basis, as well as assets and liabilities measured at fair value on a non-recurring basis, in periods subsequent to their initial measurement. The fair value hierarchy requires the Company to use observable inputs when available, and to minimize the use of unobservable inputs when determining fair value. The three tiers are defined as follows:

- *Level 1* —Observable inputs that reflect quoted market prices (unadjusted) for identical assets or liabilities in active markets;
- *Level 2* —Observable inputs, other than quoted prices in active markets, that are observable either directly or indirectly in the marketplace for identical or similar assets and liabilities; and
- *Level 3* —Unobservable inputs that are supported by little or no market data, which require the Company to develop its own assumptions about the assumptions market participants would use in pricing the asset or liability based on the best information available in the circumstances.

2U, Inc.

Notes to Consolidated Financial Statements (Continued)

2. Significant Accounting Policies (Continued)

Advances to University Clients

The Company is contractually obligated to pay advances to certain of its university clients in order to fund start-up expenses of the program on behalf of the university client. Advances to university clients are stated at realizable value. Advances are repaid to the Company on terms as required in the respective agreements. The Company recognizes imputed interest income on these advance payments when there is a significant amount of imputed interest.

Long-Lived Assets

Property and Equipment

Property and equipment is stated at cost less accumulated depreciation and amortization. Expenditures for major additions, construction and improvements are capitalized. Depreciation and amortization is expensed using the straight-line method over the estimated useful lives of the related assets, which range from three to five years for computer hardware and five to seven years for furniture and office equipment. Leasehold improvements are depreciated on a straight-line basis over the lesser of the remaining term of the leased facility or the estimated useful life of the improvement, which generally ranges from four to approximately 11 years. Useful lives of significant assets are periodically reviewed and adjusted prospectively to reflect the Company's current estimates of the respective assets' expected utility. Repair and maintenance costs are expensed as incurred.

Amortizable Intangible Assets

Acquired Intangible Assets. The Company capitalizes purchased intangible assets such as software, websites and domains and amortizes them on a straight-line basis over their estimated useful life. Historically, the Company has assessed the useful lives of these acquired intangible assets to be between three and ten years.

Capitalized Technology. The Company capitalizes certain costs related to internal-use software, primarily consisting of direct labor associated with creating the software. Software development projects generally include three stages: the preliminary project stage (all costs are expensed as incurred), the application development stage (certain costs are capitalized and certain costs are expensed as incurred) and the post-implementation/operation stage (all costs are expensed as incurred). Costs capitalized in the application development stage include costs of designing the application, coding, integrating the Company's and the university's networks and systems, and the testing of the software. Capitalization of costs requires judgment in determining when a project has reached the application development stage and the period over which the Company expects to benefit from the use of that software. Once the software is placed in service, these costs are amortized on the straight-line method over the estimated useful life of the software, which is generally three years.

Capitalized Content Development. The Company develops content on a course-by-course basis in conjunction with the faculty for each university client program. The university clients and their faculty generally provide course outlines in the form of the curriculum, required textbooks, case studies and other reading materials, as well as presentations that are typically used in the on-campus setting. The Company is then responsible for, and incurs all of the expenses related to, the conversion of the materials provided by each university client into a format suitable for delivery through our online learning platform.

2U, Inc.

Notes to Consolidated Financial Statements (Continued)

2. Significant Accounting Policies (Continued)

The content development costs that qualify for capitalization are third-party direct costs, such as videography, editing and other services associated with creating digital content. Additionally, the Company capitalizes internal payroll and payroll-related costs incurred to create and produce videos and other digital content utilized in the university clients' programs for delivery via Online Campus. Capitalization ends when content has been fully developed by both the Company and the university client, at which time amortization of the capitalized content development costs begin. The capitalized costs are recorded on a course-by-course basis and included in capitalized content costs on the consolidated balance sheets. These costs are amortized using the straight-line method over the estimated useful life of the respective capitalized content program, which is generally five years. The estimated useful life corresponds with the planned curriculum refresh rate. This refresh rate is consistent with expected curriculum refresh rates as cited by program faculty members for similar on-campus programs. It is reasonably possible that developed content could be refreshed before the estimated useful lives are complete or be expensed immediately in the event that the development of a course is discontinued prior to launch.

Evaluation of Long-Lived Assets

The Company reviews long-lived assets, which consist of property and equipment, capitalized technology costs, capitalized content development costs and acquired finite-lived intangible assets, for impairment whenever events or changes in circumstances indicate the carrying value of an asset may not be recoverable. Recoverability of a long-lived asset is measured by a comparison of the carrying value of an asset or asset group to the future undiscounted net cash flows expected to be generated by that asset or asset group. If such assets are not recoverable, the impairment to be recognized is measured by the amount by which the carrying value of an asset exceeds the estimated fair value (discounted cash flow) of the asset or asset group. In order to assess the recoverability of the capitalized technology and content development costs, the costs are grouped by degree vertical, which is the lowest level of independent cash flows. The Company's impairment analysis is based upon cumulative results and forecasted performance. The actual results could vary from the Company's forecasts, especially in relation to recently launched programs.

Non-Cash Long-Lived Asset Additions

During the year ended December 31, 2017, the Company had capital asset additions of $62.3 million in property and equipment and capitalized technology and content development, of which $11.2 million consisted of non-cash capital expenditures, primarily related to landlord funded leasehold improvements.

During the year ended December 31, 2016, the Company had capital asset additions of $30.8 million in property and equipment and capitalized technology and content development, of which $6.4 million consisted of non-cash capital expenditures, primarily related to landlord funded leasehold improvements.

Goodwill

Goodwill is the excess of purchase price over the fair value of identified net assets of the business acquired. The Company's goodwill balance was established in connection with the acquisition of GetSmarter in 2017. The Company will review goodwill at least annually, as of October 1, for possible

2. Significant Accounting Policies (Continued)

impairment, beginning in 2018. Between annual tests, goodwill is reviewed for possible impairment if an event occurs or circumstances change that would more likely than not reduce the fair value of the reporting unit below its carrying value. The Company will test goodwill at the reporting unit level, which is an operating segment or one level below an operating segment. The Company initially will assess qualitative factors to determine if it is necessary to perform the two-step goodwill impairment review. The Company will review goodwill for impairment using the two-step process if it decides to bypass the qualitative assessment or determines that it is more likely than not that the fair value of a reporting unit is less than its carrying value based on a qualitative assessment. Upon the completion of the two-step process, the Company may be required to recognize an impairment based on the difference between the carrying value and the fair value of the goodwill recorded.

Government Grants

Government grants awarded to the Company in the form of forgivable loans are recorded as deferred government grant obligations within long-term liabilities on the consolidated balance sheets until all contingencies are resolved and the grant is determined to be realized.

Income Taxes

Income taxes are accounted for under the asset and liability method, which requires the recognition of deferred tax assets and liabilities for the expected future tax consequences of events that are included in the financial statements. Under this method, the deferred tax assets and liabilities are determined based on the differences between the financial statement and tax bases of the assets and liabilities using enacted tax rates in effect for the year in which the differences are expected to reverse. The effect of a change in tax rates on the deferred tax assets and liabilities is recognized in earnings in the period when the new rate is enacted. Deferred tax assets are subject to periodic recoverability assessments. Valuation allowances are established, when necessary, to reduce deferred tax assets to the amount that more likely than not will be realized. The Company considers all positive and negative evidence relating to the realization of the deferred tax assets in assessing the need for a valuation allowance. The Company currently maintains a full valuation allowance against deferred tax assets in the U.S and certain entities in the foreign jurisdictions.

The Company records a liability for unrecognized tax benefits resulting from uncertain tax positions taken or expected to be taken in a tax return. The Company accounts for uncertainty in income taxes using a two-step approach for evaluating tax positions. Step one, recognition, occurs when the Company concludes that a tax position, based solely on its technical merits, is more likely than not to be sustained upon examination. Step two, measurement, determines the amount of benefit that is more likely than not to be realized upon ultimate settlement with a taxing authority that has full knowledge of all relevant information. De-recognition of a tax position that was previously recognized would occur if the Company subsequently determines that a tax position no longer meets the more likely than not threshold of being sustained. The Company recognizes interest and penalties, if any, related to unrecognized tax benefits as income tax expense in the consolidated statements of operations and comprehensive loss.

2U, Inc.

Notes to Consolidated Financial Statements (Continued)

2. Significant Accounting Policies (Continued)

Revenue Recognition, Accounts Receivable and Allowance for Doubtful Accounts

The Company recognizes revenue when all of the following conditions are met: (i) persuasive evidence of an arrangement exists, (ii) rendering of services is complete, (iii) fees are fixed or determinable and (iv) collection of fees is reasonably assured. Revenue for both of our segments is recognized ratably over the service period, which the Company defines as the first through the last day of the graduate program class or short course. The Company establishes a refund allowance, if necessary, for its share of tuition and fees ultimately uncollected either by its university clients within the Graduate Program Segment or by the Company within the Short Course Segment. Payments to university clients that are not for distinct goods or services are recognized as a reduction of revenue over the contractual term or the period to which they relate.

The Graduate Program Segment derives revenue primarily from a contractually specified percentage of the amounts the Company's university clients receive from their students in the 2U-enabled graduate program for tuition and fees, less credit card fees and other specified charges that the Company has agreed to exclude in certain of our university client contracts. Most of our contracts with university clients within this segment have 10 to 15 year initial terms.

The Short Course Segment derives revenue directly from students for the tuition and fees paid to enroll in and progress through our short courses. A contractually specified percentage of the gross proceeds from students is shared with the university clients, in the form of a royalty recognized within the Company's consolidated statements of operations and comprehensive loss as curriculum and teaching costs, for providing the content and certifying the course. Our university client contracts within this segment are typically shorter and less restrictive than our contracts within our Graduate Program Segment.

The Company generally receives payments for revenue from graduate program university clients early in each academic term and from short course students, either in full upon registration of the course or in full before the end of the course based on a payment plan, prior to completion of the service period. The Company records these payments as deferred revenue until the services are delivered or until the obligations are otherwise met, at which time revenue is recognized. Deferred revenue as of a particular balance sheet date represents the excess of amounts billed or received as compared to amounts recognized in revenue in the consolidated statements of operations and comprehensive loss as of the end of the reporting period, and such amounts are reflected as a current liability on the Company's consolidated balance sheets.

The Company generates substantially all of its revenue from multiple-deliverable contractual arrangements, and provide a combination of access to the platform of technology and technology-enabled services that support the complete lifecycle of a graduate program or short course, including attracting students, advising prospective students through the admissions application process, providing technical, success coaching and other support, facilitating accessibility to individuals with disabilities and in some cases, facilitating in-program field placements. The Company has determined that no individual deliverable has standalone value upon delivery and, therefore, the multiple deliverables within its arrangements do not qualify for treatment as separate units of accounting. Accordingly, the Company considers all deliverables to be a single unit of accounting and recognizes revenue from the entire arrangement over the term of the service period.

2U, Inc.

Notes to Consolidated Financial Statements (Continued)

2. Significant Accounting Policies (Continued)

The Company's accounts receivable are stated at net realizable value. The Company utilizes the allowance method to provide for doubtful accounts based on management's evaluation of the collectability of the amounts due. The estimate is based on historical collection experience and a review of the current status of accounts receivable. Historically, actual write-offs for uncollectible accounts have not significantly differed from estimates. As of December 31, 2017 and 2016, the allowance for doubtful accounts was $0.3 million and zero, respectively, and relates to amounts from the Short Course Segment.

Marketing and Sales Costs

The majority of the marketing and sales costs incurred by the Company are directly related to acquiring students for its university clients' programs, with lesser amounts related to the Company's own marketing and advertising efforts. For the years ended December 31, 2017, 2016 and 2015, costs related to the Company's own marketing and advertising efforts were not material. All such costs are expensed as incurred and reported in marketing and sales expense in the Company's consolidated statements of operations and comprehensive loss.

As of December 31, 2017 and 2016, the Company had $11.7 million and $5.6 million, respectively, of accrued marketing costs included in accounts payable and accrued expenses on the consolidated balance sheets.

Leases

The Company leases all of its office facilities and enters into various other lease agreements in conducting its business. At the inception of each lease, the Company evaluates the lease agreement to determine whether the lease is an operating or capital lease. Additionally, many of the Company's lease agreements contain renewal options, tenant improvement allowances, rent holiday and/or rent escalation clauses. The Company defers tenant improvement allowances and amortizes such balances as a reduction of rent expense over the term of the lease. When rent holidays or rent escalations are included in a lease agreement, the Company records a deferred rent asset or liability in the consolidated financial statements, and records these items in rent expense evenly over the term of the lease.

The Company is also required to make additional payments under operating lease terms for taxes, insurance and other operating expenses incurred during the operating lease period; such items are expensed as incurred. Rental deposits are included as other assets in the consolidated financial statements for lease agreements the require payments in advance or deposits held for security that are refundable, less any damages, at the end of the respective lease.

Stock-Based Compensation

The Company accounts for stock-based compensation awards based on the fair value of the award as of the grant date. For awards subject to service-based vesting conditions, the Company recognizes stock-based compensation expense on a straight-line basis over the awards' requisite service period. Effective April 1, 2017, expected volatility is based on the historical volatilities of the Company's common stock. Prior to January 1, 2017, the Company adjusted stock-based compensation expense for estimated forfeitures of stock-based awards. As described in the "Recent Accounting Pronouncements" section of this Note, beginning on January 1, 2017, the Company accounts for forfeitures (and the

2. Significant Accounting Policies (Continued)

impact on stock-based compensation expense) as they occur. For awards subject to both performance and service-based vesting conditions, the Company recognizes stock-based compensation expense using an accelerated recognition method when it is probable that the performance condition will be achieved.

Foreign Currency Translation

For the portion of the Company's non-U.S. business where the local currency is the functional currency, operating results are translated into U.S. dollars using the average rate of exchange for the period, and assets and liabilities are converted at the closing rates on the period end date. Gains and losses on translation of these accounts are accumulated and reported as a separate component of stockholder's equity and comprehensive loss.

For any transaction that is in a currency different from the entity's functional currency, the Company records a gain or loss based on the difference between the exchange rate at the transaction date and the exchange rate at the transaction settlement date (or rate at period end, if unsettled) as other income (expense), net in the consolidated statements of operations and comprehensive loss.

Recent Accounting Pronouncements

In January 2017, the Financial Accounting Standards Board ("FASB") issued Accounting Standards Update ("ASU") No. 2017-04, *Intangibles—Goodwill and Other (Topic 350): Simplifying the Test for Goodwill Impairment* , which eliminates step two from the goodwill impairment test and requires an entity to recognize an impairment charge for the amount by which the carrying amount of a reporting unit exceeds its fair value, up to the amount of goodwill allocated to that reporting unit. The amendments in this ASU are effective for fiscal years beginning after December 15, 2019, with early adoption permitted. The Company is evaluating the impact that this standard will have on its consolidated financial position or related disclosures.

In January 2017, the FASB issued ASU No. 2017-01, *Business Combinations (Topic 805): Clarifying the Definition of a Business* , which revises the definition of a business and provides new guidance in evaluating when a set of transferred assets and activities is a business. The amendments in this ASU are effective for fiscal years beginning after December 15, 2017, with early adoption permitted. The Company early adopted this ASU in the third quarter of 2017, in connection with the acquisition of GetSmarter.

In November 2016, the FASB issued ASU No. 2016-18, *Statement of Cash Flows (Topic 230): Restricted Cash* , a consensus of the FASB Emerging Issues Task Force. The ASU requires companies to explain the changes in the combined total of restricted and unrestricted cash balances in the statement of cash flows. The amendments in this ASU are effective for fiscal years beginning after December 15, 2017, with early adoption permitted. Adoption of the ASU is retrospective to each prior period presented. The Company early adopted this ASU in the second quarter of 2017. Adoption of this standard did not have a material impact on the presentation of prior periods.

In August 2016, the FASB issued ASU No. 2016-15, *Statement of Cash Flows (Topic 230): Classification of Certain Cash Receipts and Cash Payments* . The ASU addresses eight specific cash flow issues with the objective of reducing the existing diversity in practice surrounding how certain transactions are classified in the statement of cash flows. The amendments in this ASU are effective for annual reporting periods beginning after December 15, 2017. The Company is currently evaluating the effect that this standard will have on its consolidated statements of cash flows and related disclosures.

2U, Inc.

Notes to Consolidated Financial Statements (Continued)

2. Significant Accounting Policies (Continued)

In March 2016, the FASB issued ASU No. 2016-09, *Compensation—Stock Compensation (Topic 718): Improvements to Employee Share-Based Payment Accounting* . The ASU simplifies various aspects related to the accounting and presentation of share-based payments. The guidance also allows employers to withhold shares to satisfy minimum statutory withholding requirements up to the employees' maximum individual tax rate without causing the award to be classified as a liability. Additionally, the guidance stipulates that cash paid by an employer to a taxing authority when directly withholding shares for tax withholding purposes should be classified as a financing activity on the statement of cash flows, and allows companies to elect an accounting policy to either estimate the share-based award forfeitures (and expense) or account for forfeitures (and expense) as they occur. The amendments in this ASU are effective for fiscal years beginning after December 15, 2016. The Company adopted this ASU on January 1, 2017. In connection with the adoption of this standard, the Company elected to no longer apply an estimated forfeiture rate and will instead account for forfeitures as they occur. Accordingly, the Company applied the modified retrospective adoption approach, which resulted in a $0.1 million cumulative-effect reduction to retained earnings with an offset to additional paid-in-capital.

In February 2016, the FASB issued ASU No. 2016-02, *Leases (Topic 842)* . The ASU introduces a model for lessees requiring most leases to be reported on the balance sheet. Lessor accounting remains substantially similar to current U.S. GAAP. The amendments in this ASU are effective for fiscal years beginning after December 15, 2018. The Company is currently evaluating the effect that this ASU will have on its consolidated financial position and related disclosures, and believes that this standard may materially increase its other non-current assets and non-current liabilities on the consolidated balance sheets in order to record right-of-use assets and related liabilities for its existing operating leases.

In August 2014, the FASB issued ASU No. 2014-15, Presentation of Financial Statements— *Going Concern (Subtopic 205-40): Disclosure of Uncertainties about an Entity's Ability to Continue as a Going Concern* . The ASU requires that an entity's management evaluate whether there are conditions or events that raise substantial doubt about the entity's ability to continue as a going concern within one year after the date that the financial statements are issued. The amendments in this ASU are effective for annual reporting periods ending after December 15, 2016. The Company adopted this ASU on January 1, 2017. Adoption of this standard did not have a material impact on the Company's financial reporting process.

In May 2014, the FASB issued ASU No. 2014-09, *Revenue from Contracts with Customers (Topic 606)* , which requires an entity to recognize the amount of revenue to which it expects to be entitled for the transfer of promised goods or services to customers. The ASU will replace most existing revenue recognition guidance in U.S. GAAP when it becomes effective. In July 2015, the FASB deferred the mandatory effective date of this ASU by one year from January 1, 2017 to January 1, 2018. Early application is permitted, but not prior to the original effective date of January 1, 2017. Subsequently, the FASB has issued the following standards related to ASU No. 2014-09: ASU No. 2016-08, *Revenue from Contracts with Customers (Topic 606): Principal versus Agent Considerations* ; ASU No. 2016-10, *Revenue from Contracts with Customers (Topic 606): Identifying Performance Obligations and Licensing* ; ASU No. 2016-12, *Revenue from Contracts with Customers (Topic 606): Narrow-Scope Improvements and Practical Expedients* ; and ASU No. 2016-20, *Technical Corrections and Improvements to Topic 606, Revenue from Contracts with Customers* . The Company must adopt ASU No. 2016-08, ASU No. 2016-10, ASU No. 2016-12 and ASU No. 2016-20 with ASU No. 2014-09 (collectively, the "new revenue standard"). The new revenue standard may be applied

2. Significant Accounting Policies (Continued)

retrospectively to each prior period presented or retrospectively with the cumulative effect recognized as of the date of adoption. The Company has finalized its assessment of the new standard, and will adopt the new revenue standard effective January 1, 2018 using the modified retrospective method. As part of its assessment, the Company completed reviews of its contracts and evaluated its costs, particularly costs of obtaining contracts with its university clients and costs associated with content development. Certain of these contract and content costs will be capitalized under the new standard. However, the Company has concluded that, upon adoption, the new revenue standard will not have a material impact on the amount and timing of either its revenue or costs.

3. Business Combination

On July 1, 2017, the Company, through a wholly owned subsidiary ("2U South Africa"), completed its acquisition of all of the outstanding equity interests of GetSmarter pursuant to a Share Sale Agreement, dated as of May 1, 2017 (the "Share Sale Agreement"), as amended by an addendum, dated as of June 29, 2017, for a net purchase price of $98.7 million in cash. In addition, 2U South Africa agreed to pay a potential earn-out payment of up to $20.0 million, subject to the achievement of certain financial milestones in calendar years 2017 and 2018. Under the terms of the Share Sale Agreement, the Company has issued restricted stock units for shares of its common stock, par value $0.001 per share, to certain employees and officers of GetSmarter. These awards are subject to the 2014 2U, Inc. Equity Incentive Plan and will vest over either a two- or four-year period. As a result of the transaction, GetSmarter became an indirect wholly owned subsidiary of the Company. The net assets and results of operations of GetSmarter are included in the Company's consolidated financial statements and in the newly established Short Course Segment as of July 1, 2017.

The Company has completed its valuation of the assets acquired and liabilities assumed of GetSmarter. The following table summarizes the estimated fair values of the assets acquired and liabilities assumed as of the date of the acquisition:

	Estimated Average Useful Life (in years)	Purchase Price Allocation (in thousands)
Cash and cash equivalents		$ 1,584
Current assets		3,676
Property and equipment, net		479
Amortizable intangible assets:		
Capitalized technology	3	2,800
Capitalized content development	4	5,000
University client relationships	9	28,000
Trade names and domain names	10	8,900
Goodwill		68,172
Current liabilities		(9,031)
Non-current liabilities		(10,894)
		$ 98,686

As of December 31, 2017, the completion of the purchase price allocation resulted primarily in a decrease of approximately $2 million in goodwill and an offsetting decrease in other current liabilities

2U, Inc.

Notes to Consolidated Financial Statements (Continued)

3. Business Combination (Continued)

related to contingent consideration. While the overall value of acquired intangible assets did not materially change, their individual values were reallocated between the asset categories.

The goodwill balance is primarily attributed to the assembled workforce, expanded market opportunities and cost and other operating synergies anticipated upon the integration of the operations of 2U and GetSmarter. The goodwill resulting from the acquisition is not expected to be tax deductible.

The unaudited pro forma combined financial information below is presented for illustrative purposes and does not purport to represent what the results of operations would actually have been if the business combination occurred as of the dates indicated or what the results would be for any future periods. The following table presents the Company's unaudited pro forma combined revenue and pro forma combined net loss, for the years ended December 31, 2017 and 2016 as if the acquisition of GetSmarter had occurred on January 1, 2016:

	Year Ended December 31,	
	2017	2016
	(in thousands)	
Pro forma revenue	$ 294,446	$ 223,532
Pro forma net loss	(37,267)	(27,959)
Pro forma net loss per share, basic and diluted	$ (0.76)	$ (0.60)

4. Property and Equipment, Net

Property and equipment, net consisted of the following as of:

	December 31, 2017	December 31, 2016
	(in thousands)	
Computer hardware	$ 8,519	$ 3,935
Furniture and office equipment	5,354	2,204
Leasehold improvements	42,086	6,689
Leasehold improvements in process	194	6,864
Total	56,153	19,692
Accumulated depreciation and amortization	(7,098)	(4,096)
Property and equipment, net	$ 49,055	$ 15,596

Depreciation expense of property and equipment was $5.5 million, $1.7 million and $1.1 million for the years ended December 31, 2017, 2016 and 2015, respectively.

5. Goodwill and Amortizable Intangible Assets

As a result of the acquisition of GetSmarter, the Company recorded goodwill of $68.2 million within its Short Course Segment as of July 1, 2017. As of December 31, 2017, goodwill was $72.0 million. The difference between the date of acquisition and year end was $3.8 million, due to changes in foreign currency.

2U, Inc.

Notes to Consolidated Financial Statements (Continued)

5. Goodwill and Amortizable Intangible Assets (Continued)

Amortizable intangible assets consisted of the following as of:

		December 31, 2017			December 31, 2016		
	Estimated Average Useful Life (in years)	Gross Carrying Amount	Accumulated Amortization	Net Carrying Amount	Gross Carrying Amount	Accumulated Amortization	Net Carrying Amount
				(in thousands)			
Capitalized technology	3	$ 27,108	$ (9,486)	$ 17,622	$ 17,100	$ (7,822)	$ 9,278
Capitalized content development	4	55,872	(21,417)	34,455	37,956	(15,367)	22,589
University client relationships	9	29,443	(1,636)	27,807	—	—	—
Trade names and domain names	10	12,119	(1,242)	10,877	2,761	(497)	2,264
Total amortizable intangible assets, net		$ 124,542	$ (33,781)	$ 90,761	$ 57,817	$ (23,686)	$ 34,131

Included in the amounts presented above are $15.6 million and $8.7 million of in process capitalized technology and content development as of December 31, 2017 and December 31, 2016, respectively.

The Company recorded amortization expense related to amortizable intangible assets of $14.0 million, $8.0 million and $6.1 million for the years ended December 31, 2017, 2016 and 2015, respectively.

As of December 31, 2017, the estimated future amortization expense for amortizable intangible assets placed in service is as follows (in thousands):

2018	$ 17,571
2019	15,595
2020	12,102
2021	8,216
2022	5,404
Thereafter	16,296
Total	$ 75,184

On January 19, 2018, the Company entered into an agreement to purchase a perpetual source code license and services of $14.5 million for the Learn.co platform from Flatiron School, Inc., a wholly owned subsidiary of WeWork Companies, Inc.

6. Commitments and Contingencies

Legal Contingencies

From time to time, the Company may become involved in legal proceedings or other contingencies in the ordinary course of its business. The Company is not presently involved in any legal proceeding or other contingency that, if determined adversely to it, would individually or in the aggregate have a material adverse effect on its business, operating results, financial condition or cash flows. Accordingly,

6. Commitments and Contingencies (Continued)

the Company does not believe that there is a reasonable possibility that a material loss exceeding amounts already recognized may have been incurred as of the date of the balance sheets presented herein.

Marketing and Sales Commitments

Certain of the agreements entered into between the Company and its university clients require the Company to commit to meet certain staffing and spending investment thresholds related to marketing and sales activities. In addition, certain of the agreements require the Company to invest up to agreed upon levels in marketing the programs to achieve specified program performance. The Company believes it is currently in compliance with all such commitments.

Future Minimum Payments to University Clients

The Company is contractually obligated to make payments to certain of its university clients in exchange for contract extensions and various marketing and other rights. Currently, the future minimum payments to the Company's university clients in exchange for contract extensions and various marketing and other rights were as follows (in thousands):

2018	$ 5,975
2019	875
2020	625
2021	625
2022	625
Thereafter	4,400
Total future minimum payments to university clients	$ 13,125

Contingent Payments to University Clients

The Company has entered into specific program agreements under which it would be obligated to make future minimum program payments to a university client in the event that certain program metrics, partially associated with programs not yet launched, are not achieved. Due to the dependency of these calculations on future program launches, the amounts of any associated contingent payments cannot be reasonably estimated at this time. As the Company cannot reasonably estimate the amounts of the contingent payments, the Company has excluded such payments from the table above.

7. Operating Leases

In February 2017, the Company signed a lease for new office space in Brooklyn, New York, and began occupying the space in December 2017. The lease covers three floors totaling approximately 80,000 square feet, requires total future minimum lease payments of approximately $52.5 million and will expire approximately 12 years after the July 1, 2017 lease commencement date. Related to this lease, the Company could be eligible for certain state and local incentives that are dependent on construction build, employment levels, the Company's taxable income and other factors. The Company is in the process of applying for such eligibility, but is not currently able to assess the potential benefit these incentives may yield over the lease term.

2U, Inc.

Notes to Consolidated Financial Statements (Continued)

7. Operating Leases (Continued)

The Company leases office facilities under non-cancelable operating leases in Maryland, New York, California, Colorado, North Carolina, Virginia, Hong Kong, South Africa and the United Kingdom. The Company also leases office equipment under non-cancelable leases. As of December 31, 2017, the future minimum lease payments were as follows (in thousands):

2018	$ 9,308
2019	11,862
2020	11,549
2021	13,685
2022	13,719
Thereafter	82,187
Total future minimum lease payments	$ 142,310

The future minimum lease payments due under non-cancelable operating lease arrangements contain fixed rent increases over the term of the lease. Rent expense on these operating leases is recognized over the term of the lease on a straight-line basis. The excess of rent expense over actual lease payments is reported in non-current liabilities in the accompanying consolidated balance sheets. The deferred rent liability related to these leases totaled $6.5 million and $2.5 million as of December 31, 2017 and 2016, respectively. The Company does not have any subleases as of December 31, 2017.

Total rent expense from non-cancelable operating lease agreements (net of sublease income of zero, $0.3 million and $0.3 million) was $8.5 million, $5.8 million and $3.5 million for the years ended December 31, 2017, 2016 and 2015, respectively.

8. Debt

Lines of Credit

On December 31, 2013, the Company entered into a credit agreement with Comerica for a revolving line of credit with an aggregate commitment not to exceed $37.0 million. On December 31, 2015, the Company amended this credit agreement to reduce the aggregate amount it may borrow to $25.0 million. In June 2017, the Company and Comerica amended this credit agreement pursuant to which, among other things, Comerica consented to the Company's acquisition of GetSmarter and the Company's formation of certain subsidiaries in connection therewith. On January 31, 2018, the Company amended this credit agreement to extend the maturity date through March 31, 2018. No amounts were outstanding under this credit agreement as of December 31, 2017 or 2016. The Company intends to extend this agreement under comparable terms, prior to expiration.

Under this revolving line of credit, the Company has the option of borrowing funds subject to (i) a base rate, which is equal to 1.5% plus the greater of Comerica's prime rate, the federal funds rate plus 1% or the 30-day LIBOR plus 1%, or (ii) LIBOR plus 2.5%. For amounts borrowed under the base rate, the Company may make interest-only payments quarterly, and may prepay such amounts with no penalty. For amounts borrowed under LIBOR, the Company makes interest-only payments in periods of one, two and three months and will be subject to a prepayment penalty if such borrowed amounts are repaid before the end of the interest period.

2U, Inc.

Notes to Consolidated Financial Statements (Continued)

8. Debt (Continued)

Borrowings under the line of credit are collateralized by substantially all of the Company's assets. The availability of borrowings under this credit line is subject to compliance with reporting and financial covenants, including, among other things, that the Company achieves specified minimum three-month trailing revenue levels during the term of the agreement and specified minimum six-month trailing profitability levels for some university client programs, measured quarterly. In addition, the Company is required to maintain a minimum adjusted quick ratio, which measures short-term liquidity, of at least 1.10 to 1.00. As of December 31, 2017 and 2016, the Company's adjusted quick ratio was 5.44 and 5.43, respectively.

The covenants under the line of credit also place limitations on the Company's ability to incur additional indebtedness or to prepay permitted indebtedness, grant liens on or security interests in its assets, carry out mergers and acquisitions, dispose of assets, declare, make or pay dividends, make capital expenditures in excess of specified amounts, make investments, loans or advances, enter into transactions with affiliates, amend or modify the terms of material contracts, or change its fiscal year. If the Company is not in compliance with the covenants under the line of credit, after any opportunity to cure such non-compliance, or it otherwise experiences an event of default under the line of credit. The Company is currently in compliance with all such covenants.

Certain of the Company's operating lease agreements entered into prior to December 31, 2017 require security deposits in the form of cash or an unconditional, irrevocable letter of credit. As of December 31, 2017, the Company has entered into standby letters of credit totaling $11.5 million as security deposits for the applicable leased facilities. Additionally, in June 2017, the Company entered into standby letters of credit totaling $3.5 million in connection with two government grants, as described later in this Note. These letters of credit reduced the aggregate amount the Company may borrow under its revolving line of credit to $10.0 million.

The Company's Short Course Segment had $1.9 million of revolving debt facilities that matured on December 31, 2017. These facilities were subsequently extended with a borrowing base of $1.3 million and will mature on March 31, 2018. As of December 31, 2017, there were no amounts outstanding under these facilities and the interest rate was 10.25%.

Government Grants

On June 22, 2017, the Company executed a conditional loan agreement and received financing from Prince George's County, Maryland that provides for a grant in the form of a forgivable loan of $1.5 million. The financing was secured by a letter of credit pursuant to the Company's line of credit with Comerica. The conditional loan obligation is recorded as deferred government grant obligations on the consolidated balance sheets. The proceeds from this loan are to be used in connection with the relocation of 2U's headquarters, leasehold improvements thereto and other purposes. The loan has a maturity date of June 22, 2027, and bears interest at a rate of 3% per annum. If 2U does not employ at least 650 employees at its Lanham headquarters at any time during the term of the loan period or otherwise defaults on the loan, the entire principal balance, plus accrued interest, will become due and payable. If 2U does not employ at least 1,300 employees at its Lanham headquarters by January 1, 2020, the Company will be required to repay a prorated portion of the loan ($2,252 per employee, for every employee below 1,300), plus interest. During the year ended December 31, 2017, the Company did not incur a material amount of interest expense on this forgivable loan.

2U, Inc.

Notes to Consolidated Financial Statements (Continued)

8. Debt (Continued)

On June 27, 2017, 2U Harkins Road LLC (a wholly owned subsidiary of the Company) executed a loan agreement and received financing from the Department of Commerce (a principal department of the State of Maryland) that provides for a grant in the form of a forgivable loan of $2.0 million. The financing was secured by a letter of credit pursuant to the Company's line of credit with Comerica. The conditional loan obligation is recorded as "Deferred government grant obligations" on the consolidated balance sheets. The proceeds from this loan are to be used in connection with the relocation of 2U's headquarters, leasehold improvements thereto and other purposes. The loan has a maturity date of December 31, 2026, and bears interest at a rate of 3% per annum. If 2U does not employ at least 650 employees at its Lanham headquarters at any time during the term of the loan period or otherwise defaults on the loan, the entire principal balance, plus accrued interest, will become due and payable. If 2U does not employ at least 1,600 employees at its Lanham headquarters by December 31, 2020, and at each December 31 thereafter through 2026, the Company will be required to repay a prorated portion of the loan ($2,105 per employee, for every employee below 1,600), plus interest. During the year ended December 31, 2017, the Company did not incur a material amount of interest expense on this forgivable loan.

9. Income Taxes

The following table presents the components of loss before income taxes:

	Year Ended December 31,		
	2017	2016	2015
		(in thousands)	
Loss before income taxes:			
United States	$ (25,002)	$ (20,684)	$ (26,733)
Foreign	(5,718)	—	—
Total	$ (30,720)	$ (20,684)	$ (26,733)

For the year ended December 31, 2017, the Company had a tax benefit of $1.3 million, which is solely related to a deferred tax benefit. For the years ended December 31, 2016 and 2015, the Company did not have a current or deferred tax provision or benefit.

2U, Inc.

Notes to Consolidated Financial Statements (Continued)

9. Income Taxes (Continued)

A reconciliation between the Company's statutory federal income tax rate and the effective tax rate is presented below:

	Year ended December 31,		
	2017	2016	2015
U.S. statutory federal income tax rate	35.0%	35.0%	35.0%
Increase (decrease) resulting from:			
U.S. state income taxes, net of federal benefits	9.9	5.5	7.7
Foreign tax rate differential	(1.4)	—	—
Non-deductible expenses	(1.8)	(1.5)	(1.0)
Stock-based compensation	40.9	(2.9)	(1.0)
Change in valuation allowance	29.8	(36.6)	(39.1)
Change in tax rate	(108.0)	—	—
Other	(0.2)	0.5	(1.6)
Effective tax rate	4.2%	0.0%	0.0%

The significant components of the Company's deferred tax assets and liabilities are as follows:

	As of December 31,	
	2017	2016
	(in thousands)	
Deferred tax assets:		
Accrued expenses and other	$ 2,395	$ 2,757
Accrued compensation and related benefits	3,524	4,317
Rebate reserve	20	126
Deferred rent	6,924	1,028
Stock-based compensation	6,874	7,127
Deferred income	191	—
Foreign net operating loss carryforwards	1,704	—
U.S net operating loss carryforwards	69,425	61,995
Valuation allowance	(71,101)	(62,297)
Total deferred tax assets	$ 19,956	$ 15,053
Deferred tax liabilities:		
Prepaid expenses and other	$ (355)	$ (1,524)
Capitalized content development costs	(8,600)	(9,368)
Capitalized software development costs	(4,356)	(3,848)
Property and equipment	(4,720)	(313)
Intangibles	(12,012)	—
Total deferred tax liabilities	$ (30,043)	$ (15,053)
Net deferred tax liabilities	$ (10,087)	$ —

2U, Inc.

Notes to Consolidated Financial Statements (Continued)

9. Income Taxes (Continued)

Deferred tax valuation allowances and changes in deferred tax valuation allowances are as follows:

	Balance at Beginning of Period	Additions Charged to Expense	Deductions	Balance at End of Period
	(in thousands)			
Income tax valuation allowance:				
Year ended December 31, 2017	$ 62,297	$ 17,967	$ (9,163)	$ 71,101
Year ended December 31, 2016	54,739	7,558	—	62,297
Year ended December 31, 2015	44,309	10,430	—	54,739

At December 31, 2017, the Company had a U.S. net operating loss ("NOL") carryforward of approximately $253.2 million, which expires between 2029 and 2037. The gross amount of the state NOL carryforwards is equal to or less than the federal NOL carryforwards and expires over various periods based on individual state tax laws. The Company also had an NOL carryforward of $6.7 million in its foreign jurisdictions which do not expire. A full valuation allowance has been established to offset its net deferred tax assets in the U.S. and certain foreign jurisdictions as the Company has not generated taxable income since inception and does not have sufficient deferred tax liabilities to recover the deferred tax assets in these jurisdictions. The total increase in the valuation allowance was $8.8 million for the year ended December 31, 2017. The utilization of the NOL carryforwards to reduce future income taxes will depend on the Company's ability to generate sufficient taxable income prior to the expiration of the NOL carryforwards. Under the provisions of Internal Revenue Code Section 382, certain substantial changes in the Company's ownership may result in a limitation on the amount of U.S. net operating loss carryforwards that could be utilized annually to offset future taxable income and taxes payable. The Company does not expect such limitation, if any, to impact the use of the net operating losses prior to their expiration.

As of December 31, 2017 and 2016, the Company has not recognized any amounts for uncertain tax positions.

The Company has analyzed its filing positions in all significant federal, state and foreign jurisdictions where it is required to file income tax returns, as well as open tax years in these jurisdictions. With few exceptions, the Company is no longer subject to U.S. federal, state and local tax examinations by tax authorities for the years prior to 2014, though the NOL carryforwards can be adjusted upon audit and could impact taxes owed in open tax years. No income tax returns are currently under examination by the taxing authorities.

On December 22, 2017, the Tax Act and Jobs Act of 2017 (the "Tax Act") was enacted into law and the new legislation contains certain key tax provisions that affected the Company. The Tax Act affects the Company by (i) reducing the U.S. tax rate to 21% effective January 1, 2018, (ii) impacting the values of the Company's deferred assets and liabilities, (iii) changing the Company's ability to utilize future net operating losses and (iv) requiring a one-time tax on any of the Company's unrepatriated foreign earnings and profits ("E&P") in 2017.

Pursuant to U.S. GAAP, changes in tax rates and tax laws are accounted for in the period of enactment, and the resulting effects are included as components of the income tax provision related to continuing operations within the same period. Therefore, the following changes in the tax laws have been accounted for in 2017. The Company's deferred tax assets and liabilities and offsetting valuation

2U, Inc.

Notes to Consolidated Financial Statements (Continued)

9. Income Taxes (Continued)

allowance have been remeasured at the new enacted tax rate as of December 31, 2017. The amount of U.S. net operating losses that the Company has available and the Company's ability to utilize them to reduce future taxable income is not impacted by the Tax Act. However, the Tax Act may impact the amount and ability to utilize net operating losses generated by the Company in the future. Additionally, the Company believes that any undistributed amounts of foreign earnings and profits potentially included in taxable income would be offset by net operating losses; therefore, no transition tax is due by the Company in 2017.

The Company is required to recognize the effect of the tax law changes in the period of enactment, such as re-measuring its U.S. deferred tax assets and liabilities as well as reassessing the net realizability of deferred tax assets and liabilities. In December 2017, the SEC issued Staff Accounting Bulletin No. 118, *Income Tax Accounting Implications of the Tax Cuts and Jobs Act* ("SAB 118"), which allows entities to record provisional amounts during a measurement period not to extend beyond one year of the enactment date. The Company considers the E&P and other items to be provisional and expects to complete its analysis within the measurement period in accordance with SAB 118, although it does not expect there to be any adjustment to the income tax benefit (expense) on the Company's consolidated statements of operations and comprehensive loss during the re-measurement period.

10. Stockholders' Equity

On September 30, 2015, the Company sold 3,625,000 shares of its common stock to the public, including 525,000 shares sold pursuant to the underwriters' over-allotment option. The Company received net proceeds of $117.1 million, which the Company intends to use for general corporate purposes, including expenditures for marketing, sales, technology and content development in connection with new program launches and growing existing programs.

On September 11, 2017, the Company sold 4,047,500 shares of its common stock to the public, including 547,500 shares sold pursuant to the underwriters' over-allotment option. The Company received net proceeds of $189.5 million, which the Company intends to use for general corporate purposes, including expenditures for graduate program and short course marketing, technology and content development, in connection with new graduate program and short course launches and growing existing graduate programs and short courses.

As of December 31, 2017, the Company was authorized to issue 205,000,000 total shares of capital stock, consisting of 200,000,000 shares of common stock and 5,000,000 shares of preferred stock. At December 31, 2017, the Company had reserved a total of 11,388,192 of its authorized shares of common stock for future issuance as follows:

Outstanding stock options	4,559,176
Possible future issuance under 2014 Equity Incentive Plan	4,415,593
Outstanding restricted stock units	1,413,423
Available for future issuance under employee stock purchase plan	1,000,000
Total shares of common stock reserved for future issuance	11,388,192

11. Stock-Based Compensation

The Company provides equity-based compensation awards to employees, independent contractors and directors as an effective means for attracting, retaining and motivating such individuals. The Company maintains two share-based compensation plans: the 2014 Equity Incentive Plan (the "2014 Plan") and the 2008 Stock Incentive Plan (the "2008 Plan"). Upon the effective date of the 2014 Plan in January 2014, the Company ceased using the 2008 Plan to grant new equity awards, and began using the 2014 Plan for grants of new equity awards.

2014 Plan

In February 2014, the Company's stockholders approved the 2014 Plan. The 2014 Plan provides for the grant of incentive stock options to the Company's employees and its parent and subsidiary corporations' employees, and for the grant of nonstatutory stock options, restricted stock awards, restricted stock unit awards, stock appreciation rights, performance stock awards and other forms of stock compensation to the Company's employees, consultants and directors. The 2014 Plan also provides for the grant of performance-based cash awards to the Company's employees, consultants and directors.

A total of 2,800,000 shares of the Company's common stock were initially reserved for issuance pursuant to the 2014 Plan. In addition, the shares reserved for issuance under the 2014 Plan include (a) those shares reserved but unissued under the 2008 Plan, and (b) shares returned to the 2008 Plan as the result of expiration or termination of awards (provided that the maximum number of shares that may be added to the 2014 Plan pursuant to (a) and (b) is 5,943,348 shares). The number of shares of the Company's common stock that may be issued under the 2014 Plan will automatically increase on January 1st of each year, for a period of ten years, from January 1, 2015 continuing through January 1, 2024, by 5% of the total number of shares of the Company's common stock outstanding on December 31st of the preceding calendar year, or a lesser number of shares as may be determined by the Company's board of directors. The shares available for issuance increased by 2,625,292 and 2,357,579 on January 1, 2018 and 2017, respectively, pursuant to the automatic share reserve increase provision under the 2014 Plan.

In addition, shares subject to outstanding stock awards granted under the 2008 Plan and 2014 Plan that (i) expire or terminate for any reason prior to exercise or settlement; (ii) are forfeited because of the failure to meet a contingency or condition required to vest such shares or otherwise return to the Company; or (iii) are reacquired, withheld (or not issued) to satisfy a tax withholding obligation in connection with an award or to satisfy the purchase price or exercise price of a stock award, return to the 2014 Plan's share reserve and become available for future grant under the 2014 Plan, up to the maximum number of shares of 5,943,348.

As of December 31, 2017, the Company had 4,415,593 shares reserved for issuance under the 2014 Plan. Further, as of December 31, 2017, under the 2014 Plan, options to purchase 2,412,307 shares of the Company's common stock were outstanding at a weighted-average exercise price of $24.77 per share and 1,413,423 restricted stock units were outstanding.

The compensation committee of the Company's board of directors, acting under authority delegated from the board of directors, granted on January 1, 2018, option awards to employees to purchase an aggregate of 8,731 shares of common stock at an exercise price of $64.51, restricted stock unit awards for an aggregate of 7,609 shares of common stock and performance stock awards for an aggregate of 56,575 shares of common stock, in each case under the 2014 Plan.

2U, Inc.

Notes to Consolidated Financial Statements (Continued)

11. Stock-Based Compensation (Continued)

2008 Plan

In October 2008, the Company's stockholders approved the Company's 2008 Plan. The 2008 Plan was most recently amended on May 8, 2013. The 2008 Plan provided for the grant of incentive stock options to the Company's employees and the employees of the Company's subsidiaries, and for the grant of nonstatutory stock options, restricted stock awards and deferred stock awards to the Company's employees, directors and consultants. Upon the effective date of the 2014 Plan, the Company ceased using the 2008 Plan to grant new equity awards, and began using the 2014 Plan for grants of new equity awards. Accordingly, as of January 30, 2014, no shares were available for future grant under the 2008 Plan. However, the 2008 Plan will continue to govern the terms and conditions of outstanding awards granted thereunder.

As of December 31, 2017, options to purchase 2,146,864 shares of the Company's common stock were outstanding under the 2008 Plan at a weighted-average exercise price of $4.22 per share.

Stock-Based Compensation Expense

Stock-based compensation expense related to stock-based awards is included in the following line items in the accompanying consolidated statements of operations and comprehensive loss:

	Year Ended December 31,		
	2017	2016	2015
		(in thousands)	
Curriculum and teaching	$ 3	$ —	$ —
Servicing and support	4,036	3,245	2,270
Technology and content development	3,306	2,392	1,548
Marketing and sales	1,742	1,317	1,057
General and administrative	12,843	8,869	7,624
Total stock-based compensation expense	$ 21,930	$ 15,823	$ 12,499

Prior to January 1, 2017, the Company adjusted stock-based compensation expense for estimated forfeitures of stock-based awards. As described in the "Recent Accounting Pronouncements" section of Note 2, beginning on January 1, 2017, the Company accounts for forfeitures (and the impact on stock-based compensation expense) as they occur.

Stock Options

The terms of stock option grants, including the exercise price per share and vesting periods, are determined by the Company's board of directors or the compensation committee thereof. Stock options are granted at exercise prices of not less than the estimated fair market value of the Company's common stock at the date of grant. Stock options are generally subject to service-based vesting conditions and vest at various times from the date of the grant, with most options vesting in tranches, generally over a period of four years. Stock options granted under the 2014 Plan and the 2008 Plan are subject to service-based vesting conditions, and generally expire ten years from the grant date.

The Company values stock options using the Black-Scholes-Merton option pricing model, which requires the input of subjective assumptions, including the risk-free interest rate, expected life of the

2U, Inc.

Notes to Consolidated Financial Statements (Continued)

11. Stock-Based Compensation (Continued)

option, expected stock price volatility and dividend yield. The risk-free interest rate assumption is based upon observed interest rates for constant maturity U.S. Treasury securities consistent with the expected term of the Company's employee stock options. The expected life represents the period of time the stock options are expected to be outstanding and is based on the "simplified method." Under the "simplified method," the expected life of an option is presumed to be the mid-point between the vesting date and the end of the contractual term. The Company used the "simplified method" due to the lack of sufficient historical exercise data to provide a reasonable basis upon which to otherwise estimate the expected life of the stock options. Expected volatility is based on the historical volatility of the Company's common stock over the estimated expected life of the stock options. The Company assumed no dividend yield because dividends are not expected to be paid in the near future, which is consistent with the Company's history of not paying dividends.

The following table summarizes the assumptions used for estimating the fair value of the stock options granted for the periods presented.

	Year Ended December 31,		
	2017	2016	2015
Risk-free interest rate	2.0% - 2.1%	1.1% - 1.9%	1.5% - 1.9%
Expected term (years)	6.00 - 6.08	5.43 - 6.50	5.56 - 6.08
Expected volatility	46% - 49%	50%	50%
Dividend yield	0%	0%	0%

The following is a summary of the stock option activity for the year ended December 31, 2017:

	Number of Options	Weighted-Average Exercise Price per Share	Weighted-Average Remaining Contractual Term (in years)	Aggregate Intrinsic Value (in thousands)
Outstanding balance at December 31, 2016	4,882,237	$ 10.74	6.30	$ 95,081
Granted	605,640	40.90	8.95	
Exercised	(846,821)	7.81	3.97	
Forfeited	(65,853)	23.63		
Expired	(16,027)	13.26		
Outstanding balance at December 31, 2017	4,559,176	15.10	5.88	225,283
Exercisable at December 31, 2017	3,357,682	8.96	4.92	186,529
Vested and expected to vest at December 31, 2017	4,559,176	15.10	5.88	225,283

The weighted-average grant date fair value of the Company's stock options granted during the years ended December 31, 2017, 2016 and 2015 was $19.65, $11.41 and $12.54 per share, respectively.

The total unrecognized compensation cost related to the unvested options as of December 31, 2017 was $15.6 million and will be recognized over a weighted-average period of approximately 2.4 years.

The aggregate intrinsic value of the options exercised during the years ended December 31, 2017, 2016 and 2015 was $24.9 million, $24.9 million and $25.8 million, respectively.

11. Stock-Based Compensation (Continued)

Restricted Stock Units

Throughout 2017 and 2016, the Company granted restricted stock units under the 2014 Plan to the Company's directors and certain of the Company's employees. The terms of the restricted stock unit grants under the 2014 Plan, including the vesting periods, are determined by the Company's board of directors or the compensation committee thereof. Restricted stock units are generally subject to service-based vesting conditions and vest at various times from the date of the grant, with most restricted stock units vesting in equal annual tranches, generally over a period of four years.

The following is a summary of restricted stock unit activity:

	Number of Restricted Stock Units	Weighted-Average Grant Date Fair Value per Share
Outstanding balance at December 31, 2016	1,412,934	$ 20.60
Granted	620,259	41.74
Vested	(494,504)	18.98
Forfeited	(125,266)	26.16
Outstanding balance at December 31, 2017	1,413,423	29.95

The total compensation cost related to the nonvested restricted stock units not yet recognized as of December 31, 2017 was $31.5 million and will be recognized over a weighted-average period of approximately 2.1 years.

Employee Stock Purchase Plan

On June 5, 2017, the Company's stockholders voted upon and approved the Company's 2017 Employee Stock Purchase Plan (the "ESPP"). The ESPP provides for (i) multiple offering periods each year and (ii) that the purchase price for shares of the Company's common stock purchased under the ESPP will not be less than 85% of the fair market value of the Company's common stock on the purchase date. Notwithstanding the foregoing, the Compensation Committee of the Company's Board of Directors may exercise its discretion, subject to certain conditions, to make changes to certain aspects of the ESPP including, but not limited to, the length of the offering periods and that the purchase price will be 85% of the lesser of the fair market value of 2U's common stock on the purchase date or the fair market value of 2U's common stock on the first day of the offering period. The first offering period begins on January 1, 2018, and will end on June 30, 2018. Eligible employees will be able to select a rate of payroll deduction between 1% and 15% of their salary or wage compensation received from the Company as in effect at the start of the offering period, subject to a maximum payroll deduction per calendar year of $25,000. The ESPP is intended to qualify as an employee stock purchase plan under Section 423 of the Internal Revenue Code. A maximum of 1,000,000 shares of 2U's common stock may be issued under the ESPP, subject to adjustments for certain capital transactions.

12. Net Loss per Share

Diluted net loss per share is the same as basic net loss per share for all periods presented because the effects of potentially dilutive items were anti-dilutive, given the Company's net loss. The following

12. Net Loss per Share (Continued)

securities have been excluded from the calculation of weighted-average shares of common stock outstanding because the effect is anti-dilutive for the years ended December 31, 2017, 2016 and 2015:

	Year Ended December 31,		
	2017	2016	2015
Stock options	4,559,176	4,882,237	5,298,510
Restricted stock units	1,413,423	1,412,934	1,220,008

Basic and diluted net loss per share is calculated as follows:

	Year Ended December 31,		
	2017	2016	2015
Numerator (in thousands):			
Net loss	$ (29,423)	$ (20,684)	$ (26,733)
Denominator:			
Weighted-average shares of common stock outstanding, basic and diluted	49,062,611	46,609,751	42,420,356
Net loss per share, basic and diluted	$ (0.60)	$ (0.44)	$ (0.63)

13. Segment and Geographic Information

As a result of the acquisition of GetSmarter on July 1, 2017, the Company's operations consist of two operating segments and two reportable segments: the Graduate Program Segment and the Short Course Segment. The Company's Graduate Program Segment provides services to well-recognized nonprofit colleges and universities primarily in the United States to enable the online delivery of graduate programs. The Company's Short Course Segment provides premium online short courses to working professionals. The reportable segments represent businesses for which separate financial information is utilized by the chief operating decision maker for the purpose of allocating resources and evaluating performance.

During the year ended December 31, 2017, four university clients in the Graduate Program Segment each accounted for 10% or more of the Company's consolidated revenue, as follows: $77.6 million, $48.2 million, $30.1 million and $28.3 million, which equals 27%, 17%, 11% and 10% of the Company's consolidated revenue, respectively. During the year ended December 31, 2016, three university clients in the Graduate Program Segment each accounted for 10% or more of the Company's consolidated revenue, as follows: $71.0 million, $36.7 million and $22.1 million, which equals 35%, 18% and 11% of the Company's consolidated revenue, respectively.

As of December 31, 2017, two university clients in the Graduate Program Segment each accounted for 10% or more of the Company's consolidated accounts receivable balance, as follows: $9.4 million and $2.0 million, which equals 67% and 14% of the Company's consolidated accounts receivable, respectively. As of December 31, 2016, two university clients in the Graduate Program Segment each accounted for 10% or more of the Company's consolidated accounts receivable balance, as follows: $5.8 million and $1.4 million, which equals 74% and 17% of the Company's consolidated accounts receivable, respectively.

13. Segment and Geographic Information (Continued)

For the Company's Short Course Segment, revenue and accounts receivable are derived from individual students, rather than directly from university clients. For the year ended December 31, 2017, revenue associated with the Company's three largest university clients in this segment accounted for approximately 82% of the segment's revenue, which was less than 10% of the Company's consolidated revenue on a combined basis. As of December 31, 2017, none of the student accounts receivable balances within this segment accounted for more than 10% of the Company's consolidated accounts receivable.

Segment Performance

The following table summarizes financial information regarding each reportable segment's results of operations for the periods presented:

	Year Ended December 31,		
	2017	2016	2015
	(dollars in thousands)		
Revenue*			
Graduate program segment	$ 270,432	$ 205,864	$ 150,194
Short course segment	16,320	—	—
Total revenue	$ 286,752	$ 205,864	$ 150,194
Segment profitability**			
Graduate program segment	$ 13,022	$ 4,541	$ (6,629)
Short course segment	(1,606)	—	—
Total segment profitability	$ 11,416	$ 4,541	$ (6,629)
Segment profitability margin***			
Graduate program segment	5%	2%	(4)%
Short course segment	(1)%	—	—
Total segment profitability margin	4%	2%	(4)%

* The Company did not have any material intersegment revenues for any periods presented.

** The Company evaluates segment profitability as net income or net loss, as applicable, before net interest income (expense), taxes, depreciation and amortization, foreign currency gains or losses, acquisition-related gains or losses and stock-based compensation expense. Some or all of these items may not be applicable in any given reporting period.

*** The Company defines segment profitability margin as segment profitability as a percentage of segment revenue

2U, Inc.

Notes to Consolidated Financial Statements (Continued)

13. Segment and Geographic Information (Continued)

The following table reconciles net loss to total segment profitability:

	Year Ended December 31,		
	2017	2016	2015
		(in thousands)	
Net loss	$ (29,423)	$ (20,684)	$ (26,733)
Adjustments:			
Interest income	(371)	(383)	(167)
Interest expense	87	35	552
Foreign currency loss	866	—	—
Depreciation and amortization expense	19,624	9,750	7,220
Income tax benefit	(1,297)	—	—
Stock-based compensation expense	21,930	15,823	12,499
Total adjustments	40,839	25,225	20,104
Total segment profitability	$ 11,416	$ 4,541	$ (6,629)

The Company's total assets by segment are as follows:

	December 31, 2017	December 31, 2016
	(in thousands)	
Total assets		
Graduate program segment	$ 359,597	$ 244,320
Short course segment	122,465	—
Total assets	$ 482,062	$ 244,320

Geographical Information

The Company's non-U.S. revenue for the year ended December 31, 2017, determined based upon the university client's functional currency, was $10.0 million, entirely from the Short Course Segment's operations outside of the U.S. The Company did not have non-U.S. revenue for the years ended December 31, 2016 and 2015. The Company's long-lived assets in non-U.S. countries as of December 31, 2017 totaled approximately $0.7 million. The Company did not have non-U.S. long-lived assets as of December 31, 2016.

14. Retirement Plan

The Company has established a 401(k) plan for eligible employees to contribute up to 100% of their compensation, limited by the IRS-imposed maximum contribution amount. The Company matches 33% of each employee's contribution up to 6% of the employee's salary deferral. For the years ended December 31, 2017, 2016 and 2015, the Company made employer contributions of $1.3 million, $1.1 million and $0.8 million, respectively.

2U, Inc.

Notes to Consolidated Financial Statements (Continued)

15. Related Party Transactions

During the years ended December 31, 2016 and 2015, the Company subleased office space to an entity that was, upon execution of the sublease in 2011, a greater than 5% stockholder. The lease required the subtenant to reimburse the Company for the allocated cost of the office space subleased. The Company had no transactions with this related party during the year ended December 31, 2017, other than the repayment of a $0.1 million security deposit in connection with the expiration of the sublease in December 2016. For the years ended December 31, 2016 and 2015, the Company recorded $0.3 million and $0.3 million, respectively, as rental income from this related entity.

The Company utilized the marketing and event planning services of a company that is partially owned by one of the Company's former executives. The Company had no transactions with this related party during the year ended December 31, 2017. The Company recorded $1.4 million and $1.7 million for the expenses incurred related to the services provided by this related party for the years ended December 31, 2016 and 2015, respectively. No material amounts were due to the related party or recorded in accounts payable on the consolidated balance sheets as of December 31, 2017 and 2016.

16. Quarterly Financial Information (Unaudited)

The following tables set forth certain unaudited quarterly financial data for 2017 and 2016. This unaudited information has been prepared on the same basis as the audited information included elsewhere in this Annual Report and includes all adjustments necessary to present fairly the information set forth therein. The operating results are not necessarily indicative of results for any future period.

	Three Months Ended			
	March 31, 2017	June 30, 2017	September 30, 2017	December 31, 2017
	(in thousands, except share and per share amounts)			
Revenue	$ 64,829	$ 64,995	$ 70,250	$ 86,678
Costs and expenses				
Curriculum and teaching	—	—	1,792	4,817
Servicing and support	10,925	13,458	12,939	13,445
Technology and content development	9,205	11,140	12,735	12,846
Marketing and sales	34,670	37,242	41,311	37,700
General and administrative	13,664	13,930	17,227	17,844
Total costs and expenses	68,464	75,770	86,004	86,652
Income (loss) from operations	(3,635)	(10,775)	(15,754)	26
Interest income	196	53	18	104
Interest expense	—	(1)	(36)	(50)
Other income (expense), net	—	(1,031)	59	106
Income (loss) before income taxes	(3,439)	(11,754)	(15,713)	186
Income tax benefit (expense)	—	—	974	323
Net income (loss)	$ (3,439)	$ (11,754)	$ (14,739)	$ 509
Net income (loss) per share, basic	$ (0.07)	$ (0.25)	$ (0.30)	$ 0.01
Net income (loss) per share, diluted	$ (0.07)	$ (0.25)	$ (0.30)	$ 0.01
Weighted-average shares used in computing net income (loss) per share, basic	47,237,341	47,668,397	48,961,914	52,330,067
Weighted-average shares used in computing net income (loss) per share, diluted	47,237,341	47,668,397	48,961,914	56,593,108

2U, Inc.

Notes to Consolidated Financial Statements (Continued)

16. Quarterly Financial Information (Unaudited) (Continued)

	Three Months Ended			
	March 31, 2016	June 30, 2016	September 30, 2016	December 31, 2016
	(in thousands, except share and per share amounts)			
Revenue	$ 47,444	$ 49,110	$ 51,960	$ 57,350
Costs and expenses				
Servicing and support	9,512	10,260	10,351	10,859
Technology and content development	7,275	8,842	8,670	8,496
Marketing and sales	23,656	27,483	28,165	27,306
General and administrative	10,447	10,944	11,569	13,061
Total costs and expenses	50,890	57,529	58,755	59,722
Loss from operations	(3,446)	(8,419)	(6,795)	(2,372)
Interest income	92	91	37	163
Interest expense	(26)	(9)	—	—
Loss before income taxes	(3,380)	(8,337)	(6,758)	(2,209)
Income tax benefit (expense)	—	—	—	—
Net loss	$ (3,380)	$ (8,337)	$ (6,758)	$ (2,209)
Net loss per share, basic and diluted	$ (0.07)	$ (0.18)	$ (0.14)	$ (0.05)
Weighted-average shares used in computing net loss per share, basic and diluted	45,953,082	46,494,464	46,903,628	47,075,167

2U, Inc.
Selected Financial Data

The following selected consolidated financial data for the years ended December 31, 2017, 2016, 2015, 2014 and 2013, and the selected consolidated balance sheet data as of December 31, 2017, 2016, 2015, 2014 and 2013 are derived from our audited consolidated financial statements. Our historical results are not necessarily indicative of the results to be expected in the future. The selected consolidated financial data should be read together with Item 7 "Management's Discussion and Analysis of Financial Condition and Results of Operations" and in conjunction with the consolidated financial statements, related notes, and other financial information included elsewhere in this Annual Report on Form 10-K.

	Year Ended December 31,				
	2017	2016	2015	2014	2013
	(in thousands, except share and per share amounts)				
Consolidated Statement of Operations Data:					
Revenue	$ 286,544	$ 205,864	$ 150,194	$ 110,239	$ 83,127
Costs and expenses					
Curriculum and teaching	6,609	—	—	—	—
Servicing and support	50,767	40,982	32,047	26,858	22,718
Technology and content development	45,926	33,283	27,211	22,621	19,472
Marketing and sales	150,923	106,610	82,911	65,218	54,103
General and administrative	62,457	46,021	34,123	23,420	14,840
Total costs and expenses	316,682	226,896	176,292	138,117	111,133
Loss from operations	(30,138)	(21,032)	(26,098)	(27,878)	(28,006)
Interest income	371	383	167	92	26
Interest expense	(87)	(35)	(552)	(1,213)	27
Other income (expense), net	(866)	—	(250)	—	—
Loss before income taxes	(30,720)	(20,684)	(26,733)	(28,999)	(27,953)
Income tax benefit	1,297	—	—	—	—
Net loss	(29,423)	(20,684)	(26,733)	(28,999)	(27,953)
Preferred stock accretion	—	—	—	(89)	(347)
Net loss attributable to common stockholders	$ (29,423)	$ (20,684)	$ (26,733)	$ (29,088)	$ (28,300)
Net loss per share attributable to common stockholders, basic and diluted	$ (0.60)	$ (0.44)	$ (0.63)	$ (0.91)	$ (3.81)
Weighted-average common shares outstanding used in computing net loss per share attributable to common stockholders, basic and diluted	49,062,611	46,609,751	42,420,356	32,075,107	7,432,055
Other Financial Data:					
Adjusted EBITDA (loss)(1)	$ 11,416	$ 4,541	$ (6,629)	$ (14,779)	$ (21,245)

(1) Adjusted EBITDA is a financial measure not in accordance with generally accepted accounting principles, or GAAP. For more information about adjusted EBITDA and a reconciliation of net

loss, the most directly comparable financial measure calculated and presented in accordance with GAAP, to adjusted EBITDA, see the section below titled "Adjusted EBITDA."

	As of December 31,				
	2017	2016	2015	2014	2013
			(in thousands)		
Consolidated Balance Sheet Data:					
Cash and cash equivalents	$ 223,370	$ 168,730	$ 183,729	$ 86,929	$ 7,012
Accounts receivable, net	14,174	7,860	975	350	1,835
Total assets	482,062	244,320	231,041	113,039	28,652
Total liabilities	94,230	49,083	35,252	25,028	22,629
Total redeemable convertible preferred stock	—	—	—	—	98,047
Additional paid-in capital	588,289	371,455	351,324	216,818	7,817
Total stockholders' equity (deficit)	387,832	195,237	195,789	88,011	(92,024)

Adjusted EBITDA

To provide investors with additional information regarding our financial results, we have provided within this Annual Report on Form 10-K adjusted EBITDA, a non-GAAP financial measure. We have provided a reconciliation below of net loss, the most directly comparable GAAP financial measure, to adjusted EBITDA.

We have included adjusted EBITDA in this Annual Report on Form 10-K because it is a key measure used by our management and board of directors to understand and evaluate our core operating performance and trends, to prepare and approve our annual budget and to develop short-and long-term operational plans. In particular, the exclusion of certain expenses in calculating adjusted EBITDA can provide a useful measure for period-to-period comparisons of our core business. Accordingly, we believe that adjusted EBITDA provides useful information to investors and others in understanding and evaluating our operating results in the same manner as our management and board of directors.

Our use of adjusted EBITDA has limitations as an analytical tool, and you should not consider it in isolation or as a substitute for analysis of our financial results as reported under U.S. GAAP. Some of these limitations are:

- although depreciation and amortization are non-cash charges, the assets being depreciated and amortized may have to be replaced in the future, and adjusted EBITDA does not reflect cash capital expenditure requirements for such replacements or for new capital expenditure requirements;
- adjusted EBITDA does not reflect changes in, or cash requirements for, our working capital needs;
- adjusted EBITDA does not reflect acquisition related gains or losses such as, but not limited to, post-acquisition changes in the value of contingent consideration reflected in operations;
- adjusted EBITDA does not reflect the potentially dilutive impact of equity-based compensation;
- adjusted EBITDA does not reflect interest or tax payments that may represent a reduction in cash available to us; and
- other companies, including companies in our industry, may calculate adjusted EBITDA differently, which reduces its usefulness as a comparative measure.

Because of these and other limitations, you should consider adjusted EBITDA alongside other U.S. GAAP-based financial performance measures, including various cash flow metrics, net income (loss) and our other GAAP results. The following table presents a reconciliation of net loss to adjusted EBITDA for each of the periods indicated:

	Year Ended December 31,				
	2017	2016	2015	2014	2013
	(in thousands)				
Net loss	$ (29,423)	$ (20,684)	$ (26,733)	$ (28,999)	$ (27,953)
Adjustments:					
Interest income	(371)	(383)	(167)	(92)	(26)
Interest expense	87	35	552	1,213	(27)
Foreign currency loss	866	—	—	—	—
Depreciation and amortization expense	19,624	9,750	7,220	5,572	4,335
Income tax benefit	(1,297)	—	—	—	—
Stock-based compensation expense	21,930	15,823	12,499	7,527	2,426
Total adjustments	40,839	25,225	20,104	14,220	6,708
Adjusted EBITDA (loss)	$ 11,416	$ 4,541	$ (6,629)	$ (14,779)	$ (21,245)

Exhibit 10.18

DENVER CITY CENTER

OFFICE LEASE

SRI TEN DCC LLC,
A DELAWARE LIMITED LIABILITY COMPANY,
LANDLORD

AND

2U, INC.,
A DELAWARE CORPORATION,
TENANT

DATED AS OF: MAY 11, 2016

Table of Contents
(continued)

		Page
1.	Premises	1
2.	Certain Basic Lease Terms	1
3.	Term; Delivery of Possession of Premises	2
4.	Condition of Premises	4
5.	Monthly Rent	7
6.	Security Deposit	8
7.	Additional Rent: Increases in Operating Expenses and Tax Expenses	8
8.	Use of Premises; Compliance with Law	12
9.	Alterations and Restoration	13
10.	Repair	14
11.	Abandonment	14
12.	Liens	15
13.	Assignment and Subletting	15
14.	Indemnification of Landlord	18
15.	Insurance	19
16.	Mutual Waiver of Subrogation Rights	20
17.	Utilities	20
18.	Personal Property and Other Taxes	23
19.	Rules and Regulations	23
20.	Surrender; Holding Over	23
21.	Subordination and Attornment	24
22.	Financing Condition	24
23.	Entry by Landlord	24
24.	Insolvency or Bankruptcy	25
25.	Default and Remedies	25
26.	Damage or Destruction	28
27.	Eminent Domain	28
28.	Landlord’s Liability; Sale of Building	29
29.	Estoppel Certificates	30
30.	Right of Landlord to Perform	30
31.	Late Charge; Late Payments	30
32.	Attorneys’ Fees; Waiver of Jury Trial	30
33.	Waiver	31
34.	Notices	31
35.	Notice of Surrender	31
36.	Defined Terms and Marginal Headings	31
37.	Time and Applicable Law	32
38.	Successors	32
39.	Entire Agreement; Modifications	32
40.	Light and Air	32
41.	Name of Building	32
42.	Severability	32
43.	Authority	32
44.	No Offer	32
45.	Real Estate Brokers	32
46.	Consents and Approvals	32
47.	Reserved Rights	33
48.	Financial Statements	33
49.	Substitution of Premises	33
50.	Nondisclosure of Lease Terms	33
51.	Signage Rights	34
52.	Parking	34
53.	Transportation Management	35
54.	Renovation of the Project and Other Improvements	35
55.	Quiet Enjoyment	36
56.	No Discrimination	36
57.	Renewal Option	36
58.	Right of First Offer	37
59.	Existing Sublease Protection; Limited Termination Right	39

EXHIBITS
A — Outline of Premises
B — Rules and Regulations

Table of Contents
(continued)

	Page
C — Form of Commencement Date Letter	
D — Current Janitorial Specifications	

LEASE

THIS LEASE is made as of the 11th day of May, 2016, between **SRI TEN DCC LLC** , a Delaware limited liability company (" ***Landlord*** "), and **2U, INC.** , a Delaware corporation (" ***Tenant*** ").

1. **Premises.** Landlord hereby leases to Tenant, and Tenant hereby leases from Landlord, on the terms and conditions set forth herein, the space outlined on the attached **Exhibit A** (the " ***Premises*** "). The Premises are located on the floor(s) specified in Paragraph 2 below of the building (the " ***Building*** ") located at 707 Seventeenth Street, Denver, Colorado. The Building, the parcel(s) of land (the " ***Land*** ") on which the Building is located and the other improvements on the Land (including the walkways and landscaping) are referred to herein as the " ***Real Property.*** " The Real Property is a part of the office and retail project (which includes rights to portions of two (2) parking garages) commonly known as Denver City Center (the " ***Project*** ").

Tenant's lease of the Premises shall include the right to use, in common with others and subject to the other provisions of this Lease, the public lobbies, entrances, stairs, elevators and other public portions of the Building, as well as the common areas (including all amenities available) of the other portions of the Project that are pertinent to Tenant's occupancy and use of the Premises. Tenant shall comply with all recorded covenants, conditions and restrictions currently or hereinafter affecting the Project and agrees that this Lease shall be subject and subordinate thereto. All of the windows and outside walls of the Premises and any space in the Premises used for shafts, stacks, pipes, conduits, ducts, electrical equipment or other utilities or Building facilities are reserved solely to Landlord and Landlord shall have rights of access through the Premises, subject to the provisions of Paragraph 23 hereof, for the purpose of operating, maintaining and repairing the same.

2. **Certain Basic Lease Terms.** As used herein, the following terms shall have the meaning specified below:

a. **Floor(s) on which the Premises are located:** 28 and 26. The Premises consists of all of the leasable space on Floors 28 and 26. The Premises are currently designated as Suites 2800 and 2600, which designation may be subject to change by Landlord upon written notice to Tenant. Landlord and Tenant agree that for the purpose of this Lease, the Premises shall be deemed to contain 50,068 rentable square feet (" ***RSF*** ") of space in the aggregate, of which 25,071 RSF is located on the 28th floor (the " ***28th Floor Premises*** ") and 24,997 RSF is located on the 26th floor (the " ***26th Floor Premises*** "). Landlord shall have no right to relocate Tenant from the Premises during the term of this Lease and any extensions thereof.

b. **Lease term:** Approximately eight (8) years and two (2) months, commencing on the date of Substantial Completion or deemed Substantially Completed (as described in Paragraph 4(d) below) of the 28th Floor Tenant Improvements (as described in Paragraph 4(a) below) to be constructed in the 28th Floor Premises pursuant to Paragraph 4 (the " ***Commencement Date*** "), and ending on the last day of the ninety-eighth (98th) full calendar month thereafter (the " ***Expiration Date*** "). Landlord and Tenant acknowledge and agree that the delivery of the 26th Floor Premises will occur after the Commencement Date, as more fully described in Paragraph 3, and that Tenant will not be responsible for payment of Monthly Rent or Additional Rent with respect to the 26th Floor Premises until the 26th Floor Premises Commencement Date (as defined in Paragraph 3(b)(ii) below) but such delayed delivery of the 26th Floor Premises shall not postpone the Commencement Date or extend the Lease term hereunder.

c. **Monthly Rent:**

28th Floor Premises:

10/1/16 - 6/30/17*	Free/Abated (the " ***28th Floor Premises Abatement Period*** ")
7/1/17 - 6/30/18	$23.00/RSF/year ($48,052.75 per month)
7/1/18 - 6/30/19	$23.75/RSF/year ($49,619.69 per month)
7/1/19 - 6/30/20	$24.50/RSF/year ($51,186.63 per month)
7/1/20 - 6/30/21	$25.25/RSF/year ($52,753.56 per month)
7/1/21 - 6/30/22	$26.00/RSF/year ($54,320.50 per month)
7/1/22 - 6/30/23	$26.75/RSF/year ($55,887.44 per month)
7/1/23 - 6/30/24	$27.50/RSF/year ($57,454.38 per month)
7/1/24 - 11/30/24	$28.25/RSF/year ($59,021.31 per month)

---

*This rental table assumes that the Commencement Date will occur on the Estimated Commencement Date (hereinafter defined). If the Commencement Date occurs on a day other than the Estimated Commencement Date, all dates will be modified appropriately in the Commencement Letter (hereinafter defined) so that the 28th Floor Premises Abatement Period shall be a period of nine (9) months, and the Lease term shall consist of eight (8) years and two (2) months (plus any partial month at

the beginning of the Lease term, if the Commencement Date occurs other than on the first day of a calendar month).

26th Floor Premises:

4/1/17 - 8/31/17**	Free/Abated (the " ***26th Floor Premises Abated Rent Period*** ")
9/1/17 - 3/31/18	$23.00/RSF/year ($47,910.92 per month)
4/1/18 - 3/31/19	$23.75/RSF/year ($49,473.23 per month)
4/1/19 - 3/31/20	$24.50/RSF/year ($51,035.54 per month)
4/1/20 - 3/31/21	$25.25/RSF/year ($52,597.85 per month)
4/1/21 - 3/31/22	$26.00/RSF/year ($54,160.17 per month)
4/1/22 - 3/31/23	$26.75/RSF/year ($55,722.48 per month)
4/1/23 - 3/31/24	$27.50/RSF/year ($57,284.79 per month)
4/1/24 - 11/30/24:	$28.25/RSF/year ($58,847.10 per month)

**This rental table assumes that the 26th Floor Premises Commencement Date (hereinafter defined) will occur on the Estimated 26th Floor Premises Commencement Date (hereinafter defined). If the 26th Floor Premises Commencement Date occurs on a day other than the Estimated 26th Floor Premises Commencement Date, all dates will be modified appropriately in the Commencement Letter so that the 26th Floor Premises Abated Rent Period shall be a period of five (5) months, and the Lease term for the 26th Floor Premises will end co-terminus with the Expiration Date.

d. **Security Deposit:** One Million One Hundred Thousand and No Dollars ($1,100,000.00), in the form of either a Cash Deposit or a Letter of Credit (as each of such terms is defined in Paragraph 6).

e. **Tenant's Share:** 28th Floor Premises - 4.49% / 26th Floor Premises - 4.48%.

f. **Business of Tenant:** Education technology company.

g. **Real estate broker(s):** Jones Lang LaSalle, Landlord's broker and Savills Studley, Tenant's broker.

3. **Term; Delivery of Possession of Premises.**

a. **Term.** The term of this Lease shall commence on the Commencement Date (as defined in Paragraph 2(b)) and, unless sooner terminated pursuant to the terms hereof or at law, shall expire on the Expiration Date (as defined in Paragraph 2(b)). Within ten (10) Business Days (hereinafter defined) of either party's request after the 26th Floor Premises Commencement Date, Landlord and Tenant shall execute a letter in substantially the form of **Exhibit C** attached hereto confirming the Commencement Date, the 26th Floor Premises Commencement Date and the Expiration Date (the " ***Commencement Letter*** "). At Landlord's option, Landlord may elect to bifurcate the commencement letter and send a letter confirming the Commencement Date and delivery of the 28th Floor Premises, and a separate commencement letter confirming the 26th Floor Premises Commencement Date at such time as that date is established.

b. **Delivery of Possession.**

1. **28th Floor Premises.** The 28th Floor Premises shall be delivered to Tenant upon Substantial Completion of the 28th Floor Premises Tenant Improvements to be constructed in the Premises by Landlord pursuant to Paragraph 4. Landlord estimates that the 28th Floor Premises Tenant Improvements will be Substantially Completed by October 1, 2016 (the " ***Estimated Commencement Date*** "). If Substantial Completion of the 28th Floor Premises Tenant Improvements and delivery of possession of the 28th Floor Premises is delayed for any reason whatsoever, this Lease shall not be void or voidable, except as expressly provided herein. Further, no delay in delivery of possession of the 28th Floor Premises to Tenant shall operate to extend the term of this Lease or amend Tenant's obligations under this Lease, except as expressly provided herein. Except as expressly provided herein, in no event shall Landlord be liable to Tenant for any delay in completion of the 28th Floor Tenant Improvements caused or occasioned by strikes, lockout, labor disputes, shortages of material or labor, fire or other casualty, acts of God or any other cause beyond the reasonable control of Landlord (collectively, " ***Force Majeure*** "). Notwithstanding the foregoing, if delivery of possession of the 28th Floor Premises has not occurred by October 15, 2016 (the " ***28th Floor Final Target Delivery Date*** "), unless such failure is due to Force Majeure or a Tenant Delay, then Tenant shall be entitled, as its sole and exclusive remedy for such delay (except as provided in subparagraph (iv) below), to an extension of the 28th Floor Premises Abatement Period for one (1) day for each day after the 28th Floor Final Target Delivery Date that the entire 28th Floor Premises has not been delivered to Tenant Substantially Completed; and if delivery of possession of the 28th Floor Premises has not occurred within thirty (30) days following the 28th Floor Final Target Delivery Date, unless such failure is due to Force Majeure or a Tenant Delay, then Tenant

shall be entitled, as its sole and exclusive remedy for such delay (except as provided in subparagraph (iv) below), to an extension of the 28th Floor Premises Abatement Period for one and one half (1.5) of a day for each day after thirty (30) days following the 28th Floor Final Target Delivery Date that the entire 28th Floor Premises has not been delivered to Tenant Substantially Completed; and if delivery of possession of the 28th Floor Premises has not occurred within sixty (60) days following the 28th Floor Final Target Delivery Date, unless such failure is due to Force Majeure or a Tenant Delay, then Tenant shall be entitled, as its sole and exclusive remedy for such delay (except as provided in subparagraph (iv) below), to an extension of the 28th Floor Premises Abatement Period for two (2) days for each day after sixty (60) days following the 28th Floor Final Target Delivery Date that the entire 28th Floor Premises has not been delivered to Tenant Substantially Completed.

2. **26th Floor Premises.** The 26th Floor Premises shall be delivered to Tenant upon Substantial Completion of the 26th Floor Premises Tenant Improvements to be constructed in the Premises by Landlord pursuant to Paragraph 4 (such date, the " ***26th Floor Premises Commencement Date*** "). Landlord estimates that the 26th Floor Premises Tenant Improvements will be Substantially Completed by April 1, 2017 (the " ***Estimated 26th Floor Premises Commencement Date*** "). If Substantial Completion of the 26th Floor Premises Tenant Improvements and delivery of possession of the 26th Floor Premises is delayed for any reason whatsoever, this Lease shall not be void or voidable. Further, no delay in delivery of possession of the 26th Floor Premises to Tenant shall operate to extend the term of this Lease or amend Tenant's obligations under this Lease, except as expressly provided herein. In no event shall Landlord be liable to Tenant for any delay in completion of the 26th Floor Tenant Improvements caused or occasioned by Force Majeure. Notwithstanding the foregoing, if delivery of possession of the 26th Floor Premises has not occurred by the Estimated 26th Floor Premises Commencement Date, unless such failure is due to Force Majeure or a Tenant Delay, then Tenant shall be entitled, as its sole and exclusive remedy for such delay (except as provided in subparagraph (iv) below), to an extension of the 26th Floor Premises Abatement Period for one (1) day for each day after the Estimated 26th Floor Premises Commencement Date that the entire 26th Floor Premises has not been delivered to Tenant Substantially Completed.

3. **General Building Condition.** In addition to the foregoing provisions: (A) the Building structure, roof systems, and existing Building systems within the Premises (including the fire/life-safety communications systems) for which Landlord is responsible hereunder shall be in good working condition as of the date of delivery of the 28th Floor Premises and 26th Floor Premises, respectively; (B) Landlord shall make available to Tenant a reasonable amount of riser space in the Building for Tenant's electric, voice and data use, in such amounts and locations as reasonably designated by Landlord; and (C) Landlord will provide a path of travel to and from the Premises that complies with Title III of the Americans with Disabilities Act as of the date of delivery of the 28th Floor Premises and 26th Floor Premises, respectively, and maintain such path during the term of this Lease.

4. **Tenant's Limited Termination Rights.**

(i) **28th Floor Premises.** Notwithstanding anything herein to the contrary, if delivery of the 28th Floor Premises has not occurred within one hundred eighty (180) days after the 28th Floor Final Target Delivery Date (the " ***First Limited Termination Right Outside Date*** "), unless such failure is due to Force Majeure or a Tenant Delay (in which case the First Limited Termination Right Outside Date shall be extended day-for-day for each day attributable to Force Majeure or Tenant Delay), then Tenant shall have the right, as its sole and exclusive remedy, in lieu of continuing the extension of the 28th Floor Abated Rent Period as provided in subparagraph (i) above, to terminate this Lease as provided in this subparagraph (iv)(A) (" ***First Limited Termination Right*** "). Tenant shall exercise its First Limited Termination Right, if at all, by giving Landlord written notice of such exercise within ten (10) days following the First Limited Termination Right Outside Date (the " ***First Limited Termination Right Notice*** "). Provided that (1) the 28th Floor Premises have not been delivered to Tenant in the condition required by the terms of this Lease prior to Tenant giving the First Limited Termination Right Notice; and (2) Tenant timely gives its First Limited Termination Right Notice, then this Lease shall automatically terminate as of the next Business Day following Landlord's receipt of the First Limited Termination Right Notice (the " ***First Limited Early Termination Date*** "). If Tenant has previously been granted access to any portion of the Premises under the terms of this Lease, Tenant shall vacate any such portions of the Premises and return the same to Landlord in the condition required under the terms of this Lease by the First Limited Early Termination Date. If Tenant does not timely exercise its First Limited Termination Right, then Tenant will be deemed to have waived its First Limited Termination Right and to have elected to continue to extend the 28th Floor Abated Rent Period as provided above.

(ii) **26th Floor Premises.** Notwithstanding anything herein to the contrary, if delivery of the 26th Floor Premises has not occurred within one hundred eighty (180) days after the Estimated 26th Floor Commencement Date (the " ***Second Limited Termination Right Outside Date*** "), unless such failure is due to Force Majeure or a Tenant Delay (in which case the Second Limited Termination Right Outside Date shall be extended day-for-day for each day attributable to Force Majeure

or Tenant Delay), and if Tenant has not previously exercised its First Limited Termination Right as provided herein, then Tenant shall have the right, as its sole and exclusive remedy, in lieu of continuing the extension of the 26th Floor Abated Rent Period as provided in subparagraph (ii) above, to terminate this Lease as provided in this subparagraph (iv)(A) (" ***Second Limited Termination Right*** "). Tenant shall exercise its Second Limited Termination Right, if at all, by giving Landlord written notice of such exercise within ten (10) days following the Second Limited Termination Right Outside Date (the " ***Second Limited Termination Right Notice*** "). Provided that (1) the 26th Floor Premises have not been delivered to Tenant in the condition required by the terms of this Lease prior to Tenant giving the Second Limited Termination Right Notice; and (2) Tenant timely gives its Second Limited Termination Right Notice, then this Lease shall automatically terminate as of the next Business Day following Landlord's receipt of the Second Limited Termination Right Notice (the " ***Second Limited Early Termination Date*** "). If Tenant has previously been granted access to any portion of the Premises under the terms of this Lease, Tenant shall vacate any such portions of the Premises and return the same to Landlord in the condition required under the terms of this Lease by the Second Limited Early Termination Date. If Tenant does not timely exercise its Second Limited Termination Right, then Tenant will be deemed to have waived its Second Limited Termination Right and to have elected to continue to extend the 26th Floor Abated Rent Period as provided above.

c. **Early Occupancy.** If, at Tenant's request, Landlord permits Tenant to take occupancy of the 28th Floor Premises prior to the Commencement Date and/or the 26th Floor Premises prior to the 26th Floor Premises Commencement Date, then the Commencement Date and/or the 26th Floor Premises Commencement Date, respectively, shall be the date of such early occupancy by Tenant; provided, however, that the Expiration Date shall not be affected by such early occupancy.

4. **Condition of Premises.** Except as otherwise expressly provided in this Paragraph 4, Tenant shall accept the Premises in their "as-is" state and condition and Landlord shall have no obligation to make or pay for any improvements or renovations in or to the Premises, subject to latent defects in the Tenant Improvements of which Tenant notifies Landlord within one hundred eighty (180) days after substantial completion thereof, and any punchlist items on a mutually agreed upon punchlist.

a. **Tenant's Plans; Approval of Plans.** No later than June 1, 2016 (the " ***Outside Construction Documents Delivery Date*** "), Tenant shall submit to Landlord complete, finished and detailed architectural, mechanical, electrical and plumbing drawings and specifications to include Tenant's partition and furniture layout, reflected ceiling, telephone and electrical outlets and equipment rooms, doors (including hardware and keying schedule), glass partitions, windows (if any), critical dimensions, structural loading requirements, millwork, finish schedules, air conditioning and heating systems, ductwork and electrical facilities, together with all supporting information and delivery schedules with respect to the 28th Floor Premises (the " ***28th Floor Premises Construction Documents*** ") and no later than September 1, 2016, Tenant shall submit all of the foregoing documents with respect to the 26th Floor Premises (the " ***26th Floor Premises Construction Documents*** ") (the 28th Floor Premises Construction Documents and the 26th Floor Premises Construction Documents are referred to together and, each individually generally where the context so requires, as the " ***Construction Documents*** "). The Construction Documents shall be prepared by Gensler or such other architects and/or engineers approved by Landlord in writing in advance, such approval not to be unreasonably withheld, conditioned or delayed. The Construction Documents shall comply with all applicable laws and shall be presented in Landlord's format satisfactory for filing with the appropriate governmental authorities for required permits and licenses. Tenant shall be responsible for all costs associated with the Construction Documents, except as expressly set forth to the contrary below and application of Landlord's Allowance. Following receipt of Tenant's Construction Documents, Landlord (or its designated architectural and/or engineering firm) shall approve or disapprove such documents in writing within three (3) Business Days after receipt thereof. If Landlord disapproves, Landlord shall provide Tenant in writing specific reasons for such disapproval. Tenant shall submit corrected Construction Documents within seven (7) days of receipt of Landlord's disapproval notice. Landlord shall approve or disapprove the corrected Construction Documents within three (3) additional Business Days from receipt thereof. This procedure shall be followed until all objections have been resolved and the Construction Documents approved in writing by Tenant and Landlord; provided, however, that if reasonably acceptable construction plans and specifications have not been completed and approved by Landlord and Tenant on or before the date that is thirty (30) days after the date hereof for any reason other than the delay or other fault of Landlord or Landlord's architect, then such failure shall constitute a Tenant Delay under Paragraph 4(e) below. (The Construction Documents, as approved in writing by Tenant and Landlord, are hereinafter called the " ***Final Plans,*** " the improvements to be constructed in the 28th Floor Premises in accordance with the Final Plans are hereinafter called the " ***28th Floor Premises Tenant Improvements*** ," the improvements to be constructed in the 26th Floor Premises in accordance with the Final Plans are hereinafter called the "26th Floor Premises Tenant Improvements," and the 28th Floor Premises Tenant Improvements and the 26th Floor Premises Tenant Improvements are referred to together herein as the " ***Tenant Improvements*** "). Because the timing differs for completion of the 26th Floor Tenant Improvements and the 28th Floor Tenant Improvements, there may be a separate planning process for each of the 26th Floor Tenant Improvements and the 28th Floor Tenant Improvements, in which case the term " ***Final Plans*** "

when used herein shall be deemed to refer to the Final Plans for the applicable portion of the Tenant Improvements. If Tenant does not deliver the Construction Documents by the Outside Construction Documents Delivery Date, each day after such date until Tenant delivers the Construction Documents to Landlord as required herein shall constitute a day of Tenant Delay, and without limiting the generality of Landlord's remedies for Tenant Delay, shall cause a day-for-day postponement of the Estimated Commencement Date, the 28th Floor Final Target Delivery Date and the Estimated 26th Floor Premises Commencement Date.

b. **Competitive Bids; Selection of Contractor; Preparation of Budget.** As soon as reasonably possible after the approval by Landlord and Tenant of the Final Plans, Landlord shall seek three (3) competitive bids. Two of the bids shall be sought from general contractors from Landlord's approved bidding list and one of the bids shall be sought from a qualified general contractor identified by Tenant if Tenant identifies such general contractor at the time it submits to Landlord the 28th Floor Premises Construction Documents. Only subcontractors from Landlord's approved subcontractor list shall be allowed to work on the mechanical, electrical and plumbing components of the Building. Tenant shall be invited to the bid opening and allowed to participate in the selection of the successful bidder; provided Landlord shall make the final selection of the general contractor (the " ***Contractor*** "). Once selected, Landlord shall cause Contractor to receive bids from qualified subcontractors for each major trade working on the Tenant Improvements. When Contractor has received responses to its bid request, Contractor will analyze the same and Landlord or Contractor will provide Tenant with a copy of the recommended sub-contractors' bids and estimated budget for the Tenant Improvements, based upon the recommended sub-contractors' bids and including Contractor's fee, the Construction Management Fee (as defined in Paragraph 4(f) below) and a reasonable contingency. As soon as reasonably practicable, but not more than three (3) Business Days after the receipt of Contractor's bid analysis and estimated budget, Tenant shall approve or reasonably disapprove of the estimated budget or approve or reasonably disapprove of particular line items in the estimated budget. If Tenant disapproves of the budget or any line item thereon within such three (3) Business Day period, then Landlord shall cause the architect to modify the Final Plans to satisfactorily address the desired change to the budget within three (3) Business Days. Any and all revisions to the Final Plans shall be subject to Landlord's reasonable approval. Upon the revision of the Final Plans, Landlord shall cause Contractor to promptly prepare and submit to Tenant a revised estimated budget. Tenant shall respond to the revised estimated budget in the manner described above with regard to the initial budget. Any delay in Substantial Completion of the 28th Floor Tenant Improvements and/or the 26th Floor Tenant Improvements caused by any revision requested or required by Tenant to the Final Plans or the initial estimated budget or any subsequently revised budget shall constitute a Tenant Delay as defined in Paragraph 4(e) below. In the event Tenant shall fail to raise any objections to the initial budget or any revised budget within the three (3) Business Day period(s) described above, Tenant shall be deemed to have approved the proposed budget or revised budget, as applicable The budget, as approved by Landlord and Tenant, is referred to hereinafter as the " ***Final Budget*** ". Because the timing differs for completion of the 26th Floor Tenant Improvements and the 28th Floor Tenant Improvements, there may be a separate contracting and budgeting process for each of the 26th Floor Tenant Improvements and the 28th Floor Tenant Improvements, in which case the term "Final Budget" when used herein shall be deemed to refer to the Final Budget for the applicable portion of the Tenant Improvements.

Notwithstanding anything to the contrary in this Paragraph 4.b. or elsewhere in this Paragraph 4, Landlord and Tenant agree that, although the Final Budget represents a good faith estimate by Contractor of the costs of the construction of the Tenant Improvements, the Final Budget is only an estimate based on information presently known by Contractor with regard to the present condition of the Premises and the anticipated costs of the design and construction of the Tenant Improvements. Tenant hereby authorizes Landlord to make expenditures from the contingency category of the Final Budget to cover any unforeseen expenses; provided, however, in no event may Landlord spend amounts in excess of the Final Budget contingency without Tenant's prior written consent.

c. **Changes.** If Tenant requests any change, addition or alteration in or to the Final Plans (" ***Changes*** "), Landlord, or at Landlord's election, Tenant, shall cause Tenant's architect to prepare additional plans implementing such Change (which additional plans shall be subject to Landlord's reasonable approval) and any reasonable architectural or other similar charges incurred by Landlord in connection therewith shall be added to the cost of the Tenant Improvements. As soon as practicable after the completion of such additional plans, Landlord shall notify Tenant in writing (which may be via e-mail to Tenant's designated construction representative) of the estimated cost of the Change. Within three (3) Business Days after receipt of such cost estimate, Tenant shall notify Landlord in writing whether Tenant approves the Change. If Tenant approves the Change, Landlord shall proceed with the Change and the cost of the Change shall be added to the cost of the Tenant Improvements and the Final Budget adjusted accordingly. If Tenant fails to approve the Change within such three (3) Business Day period, the requested Change shall not be incorporated into the Tenant Improvements.

d. **Construction; Substantial Completion.** Landlord shall cause Contractor to commence the construction of the Tenant Improvements as soon as is reasonably possible after the

approval by Landlord and Tenant of the Final Plans and the Final Budget. Landlord shall provide and cause to be installed only those wall terminal boxes and/or floor monuments required for Tenant's telephone or computer systems as are shown on the Final Plans. Landlord will provide ordinary power wiring to locations shown on the Final Plans and shall provide and cause to be installed conduits as required for Tenant's telephone and computer systems as shown on the Final Plans, but shall in no event install, pull or hook up such wires or provide wiring necessary for special conditioned power to the Premises. Further, notwithstanding anything to the contrary herein, Landlord and Tenant shall cooperate with each other to resolve any space plan issues raised by applicable local building codes. Each of the 28th Floor Tenant Improvements and 26th Floor Tenant Improvements shall be deemed to be " ***Substantially Completed*** " when it has been completed in accordance with the Final Plans and is vacant and broom clean, subject only to correction or completion of "Punch List" items, which items shall be limited to minor items of incomplete or defective work or materials or mechanical maladjustments that are of such a nature that they do not materially interfere with or impair Tenant's use of the Premises for Tenant's business and the City of Denver has issued a certificate of occupancy (or any other necessary required governmental approvals, if a certificate of occupancy is not necessary) for such space. The definition of "Substantially Completed" shall also apply to the terms "Substantial Completion" and "Substantially Complete". Notwithstanding the foregoing, if Substantial Completion or any portion of the Tenant Improvements is delayed as a result of any Tenant Delay, the Tenant Improvements will be deemed Substantially Complete on the date that such Tenant Improvements would have been substantially completed absent such Tenant Delay for purposes of determining the Commencement Date, the 26th Floor Premises Commencement Date, and the commencement of the 28th Floor Premises Abated Rent Period and the 26th Floor Premises Abated Rent Period.

e. **Tenant Delays.** Tenant shall be responsible for, and shall pay to Landlord, any and all actual and reasonable costs and expenses incurred by Landlord in connection with any actual delay in the commencement or completion of any Tenant Improvements and any increase in the cost of Tenant Improvements caused by (i) Tenant's failure to respond to Landlord's request for information required for the completion of the construction plans and specifications within five (5) Business Days of Landlord's request, as required in Paragraph 4(a) above, (ii) Tenant's failure to provide its written approval or disapproval of the construction plans and specifications (or any revisions thereto) within the time periods specified in Paragraph 4(a) above, (iii) Tenant's failure to provide its approval or disapproval regarding the budget within the time periods specified in Paragraph 4(b) above, (iv) any Changes requested by Tenant in the Final Plans (including any cost or delay resulting from proposed changes that are not ultimately made), (v) any failure by Tenant to timely pay any amounts due from Tenant hereunder, including any additional costs resulting from any Change (it being acknowledged that if Tenant fails to make or otherwise delays making such payments, Landlord may stop work on the Tenant Improvements rather than incur costs which Tenant is obligated to fund but has not yet funded and any delay from such a work stoppage will be a Tenant Delay), (vi) the inclusion by Tenant in the Tenant Improvements of any so-called "long lead" materials (such as fabrics, paneling, carpeting or other items that are not readily available within industry standard lead times (*e.g.* , custom made items that require time to procure beyond that customarily required for standard items, or items that are currently out of stock and will require extra time to back order) and for which no suitable substitutes exist) provided Landlord shall use commercially reasonable efforts to notify Tenant (which may be via e-mail to Tenant's designated construction representative) that the items are long lead items, (vii) Tenant's failure to respond within three (3) Business Days to reasonable inquiries by Landlord or Contractor regarding the construction of the Tenant Improvements, or (vii) any other delay in the delivery of the Premises actually caused by Tenant. Each of the foregoing that actually causes a delay in the delivery of the Premises is referred to herein as a " ***Tenant Delay*** ".

f. **Cost of Tenant Improvements; Landlord's Allowance.** Landlord shall bear the cost of the construction of the Tenant Improvements (exclusive of the costs incurred by Tenant for preparation of the Construction Documents, which shall be borne by Tenant, but including the Contractor's fee and the Construction Management Fee (as defined below)), limited however to a maximum expenditure by Landlord therefor of Two Million Five Hundred Three Thousand Four Hundred and No/100ths Dollars ($2,503,400.00) (" ***Landlord's Allowance*** "). Except as provided below, no portion of Landlord's Allowance may (i) be applied toward the costs of the Construction Documents, or toward the cost of equipment, trade fixtures, moving expenses, furniture, signage, free rent or computer cabling, (ii) be applied to any portion of the Premises which is then the subject of a sublease (except to an Affiliate (hereinafter defined)), or (iii) be used to prepare any portion of the Premises for a proposed subtenant or assignee (except an Affiliate). Notwithstanding the foregoing, Tenant may utilize a portion of the Landlord's Allowance, not to exceed Five Hundred Thousand Six Hundred Eighty and No/100ths Dollars ($500,680.00) in the aggregate, toward the cost of the Construction Documents or other architectural or engineering expenses incurred by Tenant, moving costs, and furniture, fixtures and equipment for the Premises. Tenant shall not be responsible for the use of the elevators or electricity during the construction of the Tenant Improvements.

Tenant shall pay for all costs of the construction of the Tenant Improvements in excess of Landlord's Allowance (the " ***Excess Cost*** "). Based on the estimated cost of the construction of the Tenant

Improvements, as shown on the Final Budget (the " ***Estimated Costs*** "), the prorata share of the Estimated Costs payable by Landlord and Tenant shall be determined and an appropriate percentage share established for each (a " ***Share of Costs*** "). Tenant and Landlord shall fund the cost of the construction (including the applicable portion of the applicable fees) as the same is performed, in accordance with their respective Share of Costs for the construction, with Landlord's payments being made as and when required in its contract with the Contractor and Tenant's payments being made to Contractor within thirty (30) days of written demand. At such time as Landlord's Allowance has been entirely disbursed, Tenant shall pay the remaining Excess Cost, if any, which payments shall be made in installments as construction progresses in the same manner as Tenant's payments of Tenant's Share of Costs were paid.

Notwithstanding the foregoing, Landlord shall retain from the amount of Landlord's Allowance, as compensation to Landlord for review of the Construction Documents and the Final Plans, and for construction inspection, administration and construction management with regard to the Tenant Improvements, a sum (the " ***Construction Management Fee*** ") equal to three percent (3%) of the hard cost of construction of the Tenant Improvements. At the time Landlord makes any disbursement of Landlord's Allowance, Landlord shall retain from Landlord's Allowance, as a partial payment of the Construction Management Fee, a proportionate amount of the Construction Management Fee based upon Landlord's reasonable estimation of the amount required to be withheld from each disbursement in order to ensure that the entire Construction Management Fee is retained over the course of construction on a prorata basis. At such time as Landlord's Allowance has been entirely disbursed, Tenant shall, within thirty (30) days of written demand, pay to Landlord the remainder, if any, of the Construction Management Fee not yet paid to Landlord.

g. **Space Planning Allowance.** In addition to the Landlord's Allowance, Landlord will provide Tenant with an allowance of up to Seven Thousand Five Hundred Ten and 20/100ths Dollars ($7,510.20) toward the costs of Tenant's space planning (the " ***Space Planning Allowance*** "). At Landlord's option, Landlord shall either pay such Space Planning Allowance directly to Tenant's architect, or to Tenant, within thirty (30) days after receipt from Tenant of Tenant's documented invoice therefor.

h. **Special Provisions Regarding 26th Floor Restrooms.** Landlord has constructed and installed restrooms within the 28th Floor Premises in compliance with applicable Legal Requirements, including the Americans with Disabilities Act at the time that such restrooms were constructed and installed. In addition, as part of the 26th Floor Premises Tenant Improvements, Landlord shall upgrade the existing restrooms within the 26th Floor Premises to the same standard as the restrooms currently existing in the 28th Floor Premises and in accordance with all applicable Legal Requirements at the time that such upgrades are installed (the " ***26th Floor Restroom Upgrades*** "). The 26th Floor Restroom Upgrades shall be performed at Landlord's sole cost and expense (and not paid out of the Landlord's Allowance). After delivery of the Premises to Tenant all currently existing restrooms in the 28th Floor Premises and in the 26th Floor Premises shall be Tenant's responsibility to maintain and repair hereunder, as such restrooms shall be part of the Premises hereunder.

5. **Monthly Rent.**

a. Commencing as of the Commencement Date, and continuing thereafter on or before the first day of each calendar month during the term hereof, Tenant shall pay to Landlord, as monthly rent for the Premises, the Monthly Rent specified in Paragraph 2 above. If Tenant's obligation to pay Monthly Rent hereunder commences on a day other than the first day of a calendar month, or if the term of this Lease terminates on a day other than the last day of a calendar month, then the Monthly Rent payable for such partial month shall be appropriately prorated on the basis of a thirty (30)-day month. Monthly Rent and the Additional Rent specified in Paragraph 7 shall be paid by Tenant to Landlord, in advance, without deduction, offset, prior notice or demand, except as otherwise specifically set forth herein, in immediately available funds of lawful money of the United States of America, or by good check as described below, to the lockbox location designated by Landlord, or to such other person or at such other place as Landlord may from time to time designate in writing. Payments made by check must be drawn either on a Colorado financial institution or on a financial institution that is a member of the federal reserve system. Notwithstanding the foregoing, Tenant shall pay to Landlord together with Tenant's execution of this Lease an amount equal to the Monthly Rent payable for each of the 28th Floor Premises and the 26th Floor Premises the first full calendar month of the Lease term after Tenant's obligation to pay Monthly Rent shall have commenced hereunder for the 28th Floor Premises and the 26th Floor Premises, respectively, which amount shall be applied to the Monthly Rent first due and payable hereunder for the 28th Floor Premises and the 26th Floor Premises, respectively.

b. All amounts payable by Tenant to Landlord under this Lease, or otherwise payable in connection with Tenant's occupancy of the Premises, in addition to the Monthly Rent hereunder and Additional Rent under Paragraph 7, shall constitute rent owed by Tenant to Landlord hereunder.

---

c. Subject to Paragraph 31 below, any rent not paid by Tenant to Landlord when due shall bear interest from the date due to the date of payment by Tenant at an annual rate of interest (the " ***Interest Rate*** ") equal to the lesser of (i) fifteen percent (15%) per annum or (ii) the maximum annual interest rate allowed by law on such due date for business loans (not primarily for personal, family or household purposes) in Colorado not exempt from the usury law. Failure by Tenant to pay rent when due, including any interest accrued under this subparagraph, shall constitute an Event of Default (as defined in Paragraph 25 below) giving rise to all the remedies afforded Landlord under this Lease and at law for nonpayment of rent.

d. No security or guaranty which may now or hereafter be furnished to Landlord for the payment of rent due hereunder or for the performance by Tenant of the other terms of this Lease shall in any way be a bar or defense to any of Landlord's remedies under this Lease or at law.

6. **Security Deposit.** Upon execution of this Lease, Tenant shall pay to Landlord either a cash deposit (" ***Cash Deposit*** ") or a letter of credit for the benefit of Landlord (" ***Letter of Credit*** ") in the amount specified in Paragraph 2(d) above as security for Tenant's performance of all of Tenant's covenants and obligations under this Lease (such deposit, whether in the form of a Cash Deposit or Letter of Credit, being referred to generally herein as the " ***Security Deposit*** ").

a. **Terms Regarding Letter of Credit.** If Tenant elects to provide a Letter of Credit, such Letter of Credit shall be irrevocable and unconditional, shall be addressed to Landlord (and/or any other beneficiary designated by Landlord in writing), issued in a form and substance and by a financial institution reasonably approved by Landlord, in Landlord's sole discretion, and shall be transferable one (1) or more times by Landlord without the consent of Tenant. Landlord hereby pre-approves Comerica as the issuer of the letter of credit. In the event that the term of the Letter of Credit obtained by Tenant is less than the Lease term plus thirty (30) days, Tenant shall provide to Landlord, sixty (60) days prior to the expiration of the term of the Letter of Credit, a substitute Letter of Credit, in form, scope, and substance satisfactory to Landlord, all in its sole discretion, for the duration of the Lease term plus thirty (30) days. Tenant

agrees to pay upon Landlord's request, any and all costs or fees charged in connection with the Letter of Credit that arise due to: (i) Landlord's sale or transfer of all or any portion of the Building or Real Property; or (ii) the addition, deletion, or modification of any beneficiary under the Letter of Credit. The bank issuing the Letter of Credit shall have banking offices in the city in which the Building is located, at which offices the Letter of Credit may be drawn. Tenant agrees that upon any Event of Default by Tenant under the terms and provisions of this Lease, including the failure of Tenant to timely deliver any replacement Letter of Credit, Landlord shall have the right to receive payment under any Letter of Credit of the entire amount of such Letter of Credit at such time, and any such amounts received by Landlord shall be held by Landlord and applied in accordance with this Lease in the same manner as a Cash Deposit.

b. **Terms Regarding Cash Deposit.** If Tenant elects to provide a Cash Deposit, such Cash Deposit shall not constitute an advance rent deposit or an advance payment of any other kind, nor a measure of Landlord's damages upon Tenant's default. Landlord shall not be required to segregate the Cash Deposit from its other funds and no interest shall accrue or be payable to Tenant with respect thereto. Landlord may (but shall not be required to) use the Cash Deposit or any portion thereof to cure any Event of Default or to compensate Landlord for any actual and reasonable damage Landlord incurs as a result of Tenant's failure to perform any of its covenants or obligations hereunder, it being understood that any use of the Cash Deposit shall not constitute a bar or defense to any of Landlord's remedies under this Lease or at law. In such event and upon written notice from Landlord to Tenant specifying the amount of the Cash Deposit so utilized by Landlord and the particular purpose for which such amount was applied, Tenant shall deposit with Landlord an amount sufficient to return the Cash Deposit to an amount equal to one hundred percent (100%) of the amount specified in Paragraph 2(d) within ten (10) Business Days of Tenant's receipt of Landlord's notice, and if Tenant fails to do so, such failure shall constitute an Event of Default. If Tenant is not in default at the expiration or termination of this Lease, Landlord shall return to Tenant the Cash Deposit or the balance thereof then held by Landlord within thirty (30) days from the later to occur of (i) the date Tenant surrenders possession of the Premises to Landlord in accordance with this Lease; or (ii) the Expiration Date or earlier termination of this Lease; provided, however, that in no event shall any such return be construed as an admission by Landlord that Tenant has performed all of its covenants and obligations hereunder. No holder of a Superior Interest (as defined in Paragraph 21 below), nor any purchaser at any judicial or private foreclosure sale of the Real Property or any portion thereof, shall be responsible to Tenant for the Cash Deposit unless and only to the extent such holder or purchaser shall have actually received the same.

7. **Additional Rent: Increases in Operating Expenses and Tax Expenses.**

a. **Operating Expenses.** Tenant shall pay to Landlord, at the times hereinafter set forth, Tenant's Share, as specified in Paragraph 2(e) above, of the Operating Expenses (as defined below) incurred by Landlord in each calendar year (or portion thereof) during the Lease term for each applicable portion of the Premises as to which this Lease is in effect, and only for such period of time when rent is

due for such portion of the Premises. The amounts payable under this Paragraph 7(a) and Paragraph 7(b) below are termed " ***Additional Rent*** " herein. Notwithstanding anything to the contrary contained in this Lease, Additional Rent shall be abated in full for the 28th Floor Premises during the 28th Floor Premises Abated Rent Period and Additional Rent shall be abated in full for the 26th Floor Premises during the 26th Floor Premises Abated Rent Period.

The term " ***Operating Expenses*** " shall mean the total costs and expenses incurred by Landlord in connection with the management, operation, maintenance, repair and ownership of the Real Property, including, without limitation, the following costs: (1) salaries, wages, bonuses and other compensation (including hospitalization, medical, surgical, retirement plan, pension plan, union dues, life insurance, including group life insurance, welfare and other fringe benefits, and vacation, holidays and other paid absence benefits) relating to employees of Landlord or its agents engaged in the operation, repair, or maintenance of the Real Property at or below the level of General Manager; (2) payroll, social security, workers' compensation, unemployment and similar taxes with respect to such employees of Landlord or its agents at or below the level of General Manager, and the cost of providing disability or other benefits imposed by law or otherwise, with respect to such employees; (3) the cost of uniforms (including the cleaning, replacement and pressing thereof) provided to such employees; (4) premiums and other charges incurred by Landlord with respect to fire, other casualty, rent and liability insurance, any other insurance as is deemed necessary or advisable in the commercially reasonable judgment of Landlord, or any insurance required by the holder of any Superior Interest (as defined in Paragraph 21 below), and costs of repairing an insured casualty to the extent of the deductible amount under the applicable insurance; (5) water charges and sewer rents or fees (unless directly metered and paid by a tenant other than through Operating Expense pass-throughs); (6) license, permit and inspection fees; (7) sales, use and excise taxes on goods and services purchased by Landlord in connection with the operation, maintenance or repair of the Real Property and Building systems and equipment; (8) telephone, telegraph, postage, stationery supplies and other expenses incurred in connection with the operation, maintenance, or repair of the Real Property; (9) management fees and expenses (provided that the management fee percentage charged shall not exceed three percent (3%) of gross revenues from the Building; (10) costs of repairs to and maintenance of the Real Property, including building systems and appurtenances thereto and normal repair and replacement of worn-out equipment, facilities and installations, but excluding the replacement of major building systems (except to the extent provided in (16) and (17) below); (11) fees and expenses for janitorial, window cleaning, guard, extermination, water treatment, rubbish removal, plumbing and other services and inspection or service contracts for elevator, electrical, mechanical, HVAC and other building equipment and systems or as may otherwise be necessary or proper for the operation, repair or maintenance of the Real Property; (12) costs of supplies, tools, materials, and equipment used in connection with the operation, maintenance or repair of the Real Property; (13) accounting, legal and other professional fees and expenses; (14) fees and expenses for painting the exterior or the public or common areas of the Building and the cost of maintaining the sidewalks, landscaping and other common areas of the Real Property; (15) costs and expenses for electricity, chilled water, air conditioning, water for heating, gas, fuel, steam, heat, lights, power and other energy related utilities required in connection with the operation, maintenance and repair of the Real Property (unless directly metered and paid by a tenant other than through Operating Expense pass-throughs); (16) the cost of any capital improvements made by Landlord to the Real Property (including the Premises, unless such costs are Tenant's responsibility pursuant to Paragraph 8 of this Lease) or capital assets acquired by Landlord after the Commencement Date in order to comply with any local, state or federal law, ordinance, rule, regulation, code or order of any governmental entity or insurance requirement (collectively, " ***Legal Requirement*** ") with which the Real Property was not required to comply as of the Commencement Date; (17) the cost of any capital improvements made by Landlord to the Building or capital assets that are in good faith by Landlord intended to reduce other Operating Expenses; (18) costs related to the operation of the Parking Facilities (as defined in Paragraph 53 below); (19) the cost of furniture, draperies, carpeting, landscaping and other customary and ordinary items of personal property (excluding paintings, sculptures and other works of art) provided by Landlord for use in common areas of the Building or the Real Property or in the Building office (to the extent that such Building office is dedicated to the operation and management of the Real Property); provided, however, that leasing or rental costs of a rotating or other art program for the common areas of the Building or the Real Property shall be included in Operating Expenses; (20) any expenses and costs resulting from substitution of work, labor, material or services in lieu of any of the above itemizations; and (21) Building office rent or rental value. If the Real Property is or becomes subject to any covenants, conditions or restrictions, reciprocal easement agreement, common area declaration or similar agreement, then Operating Expenses shall include all fees, costs or other expenses allocated to the Real Property under such agreement. With respect to the costs of items included in Operating Expenses under (16) and (17), such costs shall be amortized over the useful life of such item, as reasonably determined by Landlord using sound real estate accounting principles, together with interest on the unamortized balance at a rate per annum equal to three (3) percentage points over the six-month United States Treasury bill rate in effect at the time such item is constructed or acquired, or at such higher rate as may have been paid by Landlord on funds borrowed for the purpose of constructing or acquiring such item, but in either case not more than the maximum rate permitted by law at the time such item is constructed or acquired.

Operating Expenses shall not include the following: (i) depreciation on the Building or equipment or systems therein; (ii) debt service; (iii) rental under any ground or underlying lease; (iv) interest (except as expressly provided in this Paragraph 7(a)); (v) Tax Expenses (as defined in Paragraph 7(b) below); (vi) attorneys' fees and expenses incurred in connection with lease negotiations or disputes with prospective Building tenants, occupants or third parties or ; (vii) the cost (including any amortization thereof) of any improvements or alterations which would be properly classified as capital expenditures according to generally accepted property management practices (except to the extent expressly included in Operating Expenses pursuant to this Paragraph 7(a)); (viii) the cost of decorating, improving for tenant occupancy, painting or redecorating portions of the Building to be demised to tenants; (ix) executive salaries; (x) leasing costs (including real estate broker's or other leasing commissions and similar fees, advertising, lease takeover or rental assumption obligations, architectural costs, engineering fees and other similar professional costs in connection with lease negotiations) and the cost of tenant improvements or tenant allowances (including any improvement allowances being made available under this Lease), rent concessions or inducements made for tenants of the Building (including permit, license and inspection fees and any other contribution by Landlord to the cost of tenant improvements) in any case in connection with leasing or attempting to lease space in the Building); (xi) costs that are otherwise expressly excluded from Operating Expenses pursuant to the express terms of this Lease; (xii) overhead and profit increments paid to subsidiaries or affiliates of Landlord for management or other services on or to the Building or for supplies or other materials to the extent that the cost of the services, supplies or materials materially exceed the amounts normally payable for similar goods and services under similar circumstances (taking into account the market factors in effect on the date any relevant contracts were negotiated) in comparable buildings in the downtown Denver, Colorado central business district; (xiii) any expense for which Landlord is contractually entitled to be reimbursed by a tenant or other party (other than through a provision similar to the first paragraph of this Paragraph 7(a)), including, without limitation, payments for Excess Services; or (xiv) costs and expenses resulting from the gross negligence or willful misconduct of Landlord or its employees, contractors or agents.

b. **Tax Expenses.** Tenant shall pay to Landlord as Additional Rent under this Lease, at the times hereinafter set forth, Tenant's Share, as specified in Paragraph 2(e) above, of the Tax Expenses (as defined below) incurred by Landlord during each calendar year (or portion thereof) during the Lease term.

The term " ***Tax Expenses*** " shall mean all taxes, assessments (whether general or special), excises, transit charges, housing fund assessments or other housing charges, improvement districts, levies or fees, ordinary or extraordinary, unforeseen as well as foreseen, of any kind, which are assessed, levied, charged, confirmed or imposed on the Real Property, on Landlord with respect to the Real Property (including the Parking Facilities), on the act of entering into leases of space in the Real Property, on the use or occupancy of the Real Property or any part thereof, with respect to services or utilities consumed in the use, occupancy or operation of the Real Property, on any improvements, fixtures and equipment and other personal property of Landlord located in the Real Property and used in connection with the operation of the Real Property, or on or measured by the rent payable under this Lease or in connection with the business of renting space in the Real Property, including, without limitation, any gross income tax or excise tax levied with respect to the receipt of such rent, by the United States of America, the State of Colorado, City and County of Denver, any political subdivision, public corporation, district or other political or public entity or public authority, and shall also include any other tax, fee or other excise, however described, which may be levied or assessed in lieu of, as a substitute (in whole or in part) for, or as an addition to, any other Tax Expense. Tax Expenses shall include reasonable attorneys' and professional fees, costs and disbursements incurred in connection with proceedings to contest, determine or reduce Tax Expenses. If it shall not be lawful for Tenant to reimburse Landlord for any increase in Tax Expenses as defined herein, the Monthly Rent payable to Landlord prior to the imposition of such increases in Tax Expenses shall be increased to net Landlord the same net Monthly Rent after imposition of such increases in Tax Expenses as would have been received by Landlord prior to the imposition of such increases in Tax Expenses.

Tax Expenses shall not include federal, state or local income, franchise, transfer, inheritance or capital stock taxes, unless, due to a change in the method of taxation, any of such taxes is levied or assessed against Landlord in lieu of, as a substitute (in whole or in part) for, or as an addition to, any other charge which would otherwise constitute a Tax Expense.

c. **Adjustment for Occupancy Factor; Allocation of Operating Expenses and Tax Expenses.** Notwithstanding any other provision herein to the contrary, in the event the Building is not fully occupied during any calendar year during the term, an adjustment shall be made by Landlord in computing Operating Expenses for such year that vary by occupancy so that the Operating Expenses shall be computed for such year as though the Building had been fully occupied during such year. In addition, if any particular work or service includable in Operating Expenses is not furnished to a tenant who has undertaken to perform such work or service itself, Operating Expenses shall be deemed to be increased by an amount equal to the additional Operating Expenses which would have been incurred if Landlord had furnished such work or service to such tenant. The parties agree that statements in this Lease to the effect

that Landlord is to perform certain of its obligations hereunder at its own or sole cost and expense shall not be interpreted as excluding any cost from Operating Expenses or Tax Expenses if such cost is an Operating Expense or Tax Expense pursuant to the terms of this Lease.

Landlord shall have the right to equitably allocate some or all of Operating Expenses among particular classes or groups of tenants in the Building (for example, retail tenants) to reflect Landlord's good faith determination that measurably different amounts or types of services, work or benefits associated with Operating Expenses are being provided to or conferred upon such classes or groups. Further, Landlord shall have the right from time to time, to equitably allocate some or all of the Operating Expenses and/or Tax Expenses among different buildings of the Project. In such event, Landlord shall reasonably determine a method of allocating such Operating Expenses and/or Tax Expenses attributable to such other buildings of the Project to the Building and Tenant shall be responsible for paying its proportionate share of such expenses.

d. **Intention Regarding Expense Pass-Through.** It is the intention of Landlord and Tenant that, except as otherwise expressly provided herein, the Monthly Rent paid to Landlord throughout the term of this Lease shall be absolutely net of all Tax Expenses and Operating Expenses, and the foregoing provisions of this Paragraph 7 are intended to so provide. Following the reconciliation at the end of the year, it is the intention of Landlord and Tenant that Landlord shall not recover from Tenant more than 100% of the costs and expenses actually incurred for Tax Expenses and Operating Expenses.

e. **Notice and Payment.** On or before the first day of each calendar year during the term hereof, but no later than 180 days after the first day of the calendar year, Landlord shall give to Tenant written notice of Landlord's estimate of the Additional Rent, if any, payable by Tenant pursuant to Paragraphs 7(a) and 7(b) for such calendar year. On or before the first day of each month during each such subsequent calendar year, Tenant shall pay to Landlord one-twelfth (1/12th) of the estimated Additional Rent; provided, however, that if Landlord's notice is not given prior to the first day of any calendar year Tenant shall continue to pay Additional Rent on the basis of the prior year's estimate until the month that is no less than ten (10) Business Days after Landlord's notice is given. If at any time it appears to Landlord that the Additional Rent payable under Paragraphs 7(a) and/or 7(b) will vary from Landlord's estimate by more than five percent (5%), Landlord may, by written notice to Tenant, revise its estimate for such year, and subsequent payments by Tenant for such year shall be based upon the revised estimate. On the first monthly payment that is no less than ten (10) Business Days date after any new estimate is delivered to Tenant, Tenant shall also pay any accrued cost increases, based on such new estimate.

f. **Annual Accounting.** Within one hundred fifty (150) days after the close of each calendar year during the Lease term, or as soon after such one hundred fifty (150) day period as practicable, Landlord shall deliver to Tenant a statement of the Additional Rent payable under Paragraphs 7(a) and 7(b) for such year. If the annual statement shows that Tenant's payments of Additional Rent for such calendar year pursuant to Paragraph 7(e) above exceeded Tenant's obligations for the calendar year, Landlord shall credit the excess to the next succeeding installments of estimated Additional Rent. If the annual statement shows that Tenant's payments of Additional Rent for such calendar year pursuant to Paragraph 7(e) above were less than Tenant's obligation for the calendar year, Tenant shall pay the deficiency to Landlord within thirty (30) days after delivery of such statement. Landlord's annual statement shall be final and binding upon Landlord and Tenant unless either party, within one-hundred twenty (120) days after Tenant's receipt thereof, shall contest or correct, as applicable, any item therein by giving written notice to the other, specifying each item contested or corrected, as applicable, and the reason therefor. Landlord and Tenant shall endeavor in good faith to resolve any issues raised by Tenant with regard to Operating Expenses and Taxes Expenses covered by the annual statement and, in connection therewith, Landlord shall provide Tenant with pertinent information reasonably required for Tenant to review the contested items covered by the annual statement. All of Tenant's costs and expenses of any such review of an annual statement shall be paid by Tenant except that, if the review shows an aggregate overstatement of Operating Expenses of five percent (5%) or more, and Landlord's auditors concur in such findings (or, in the absence of such concurrence, such overstatement is confirmed by a court of competent jurisdiction or such other dispute resolution mechanism as to which the parties mutually agree in writing), then Landlord shall bear all reasonable costs of the review. Notwithstanding the foregoing, Tenant's right to contest any portion of the annual statement shall be conditioned upon (i) Tenant having paid the total amounts billed by Landlord under this Paragraph 7 within the time stipulated in Paragraph 7(e) above and above in this Paragraph 7(f) for payment (including, without limitation, the contested amounts), such payment to be without prejudice to Tenant's position and (ii) Tenant executing a commercially reasonable non- disclosure agreement providing for Tenant to keep confidential the information delivered to Tenant and the results of any such contest or any action taken by Landlord in response thereto. Notwithstanding the foregoing, the Tax Expenses included in any such annual statement may be modified by any subsequent adjustment or retroactive application of Tax Expenses by the taxing authority affecting the calculation of such Tax Expenses.

g. **Proration for Partial Lease Year.** If this Lease commences on a day other than the first day of a calendar year or terminates on a day other than the last day of a calendar year, the Additional Rent payable by Tenant pursuant to this Paragraph 7 applicable to such partial calendar year shall be prorated on the basis that the number of days of such partial calendar year bears to three hundred sixty (360).

8. **Use of Premises; Compliance with Law.**

a. **Use of Premises.** The Premises shall be used solely for general office purposes for the business of Tenant as described in Paragraph 2(g) above, ancillary office purposes thereto, and for no other use or purpose, and the Landlord represents that the Premises can be used for such purposes, subject to the terms and conditions of this Lease.

Tenant shall not do or suffer or permit anything to be done in or about the Premises or the Project, nor bring or keep anything therein, which would in any way subject Landlord, Landlord's agents or the holder of any Superior Interest (as defined in Paragraph 21) to any liability, increase the premium rate of or affect any fire, casualty, liability, rent or other insurance relating to the Project or any of the contents of the Building, or cause a cancellation of, or give rise to any defense by the insurer to any claim under, or conflict with, any policies for such insurance. If any act or omission of Tenant results in any such increase in premium rates, Tenant shall pay to Landlord upon demand the amount of such increase. Tenant shall not do or suffer or permit anything to be done in or about the Premises or the Project which will in any way obstruct or interfere with the rights of other tenants or occupants of the Project or injure or annoy them, or use or suffer or permit the Premises to be used for any immoral, unlawful or objectionable purpose, nor shall Tenant cause, maintain, suffer or permit any nuisance in, on or about the Premises or the Project. Without limiting the foregoing, no loudspeakers or other similar device which can be heard outside the Premises shall, without the prior written approval of Landlord, be used in or about the Premises. Tenant shall not commit or suffer to be committed any waste in, to or about the Premises. Landlord may from time to time conduct fire and life safety training for tenants of the Building, including evacuation drills and similar procedures. Tenant agrees to participate in such activities as reasonably requested by Landlord. Landlord shall use commercially reasonable efforts to provide Tenant with no less than five (5) Business Days advance written notice (which may be given via e-mail to Tenant's designated office representative) of such drills and similar procedures.

Tenant agrees not to employ any person, entity or contractor for any work in the Premises (including moving Tenant's equipment and furnishings in, out or around the Premises) whose presence Tenant believes, in its reasonable discretion, is likely to give rise to a labor or other disturbance in the Building and, if necessary to prevent such a disturbance in a particular situation, Landlord may require Tenant to employ union labor for the work.

b. **Compliance with Law.** Tenant shall not do or permit anything to be done in or about the Premises which will in any way conflict with any Legal Requirement (as defined in Paragraph 7(a)(16) above) now in force or which may hereafter be enacted. Tenant, at its sole cost and expense, shall promptly comply with all such present and future Legal Requirements relating to the condition, use or occupancy of the Premises (unless the Premises are not in compliance with any Legal Requirement as of the Commencement Date [unless such failure is as a result of Tenant's Construction Documents for the Tenant Improvements to comply with Legal Requirements] or the same is Landlord's responsibility under the terms of this Lease), and shall perform all work to the Premises or other portions of the Project required to effect such compliance (or, at Landlord's election, Landlord may perform such work and Tenant shall reimburse Landlord for the actual and reasonable costs of such work). Notwithstanding the foregoing, however, Tenant shall not be required to perform any structural changes to the Premises or other portions of the Project unless such changes are related to or affected or triggered by (i) Tenant's Alterations (as defined in Paragraph 9 below), (ii) Tenant's particular use of the Premises (as opposed to Tenant's use of the Premises for general office purposes in a normal and customary manner), (iii) Tenant's particular employees or employment practices, or (iv) the construction of initial improvements to the Premises (although, in connection with (iv), Landlord may agree to waive this requirement after review of the Final Plans). The judgment of any court of competent jurisdiction or the admission of Tenant in an action against Tenant, whether or not Landlord is a party thereto, that Tenant has violated any Legal Requirement shall be conclusive of that fact as between Landlord and Tenant. Tenant shall promptly furnish Landlord with any notices received from any insurance company or governmental agency or inspection bureau regarding any unsafe or unlawful conditions within the Premises or the violation of any Legal Requirement. Upon Landlord's written request, Tenant shall deliver to Landlord, in form reasonably acceptable to Landlord, information relating to Tenant's electricity consumption at the Premises or any other matter related to Tenant's occupancy to the extent such requested information is required in order for Landlord to comply with reporting requirements imposed upon Landlord by any federal, state or local law regarding energy use or any other matter.

c. **Hazardous Materials.** Tenant shall not cause or permit the storage, use, generation, release, handling or disposal (collectively, " ***Handling*** ") of any Hazardous Materials (as

defined below), in, on, or about the Premises or the Project by Tenant or any agents, employees, contractors, licensees, subtenants, customers, guests or invitees of Tenant (collectively with Tenant, " ***Tenant Parties*** "), except that Tenant shall be permitted to use normal quantities of office supplies or products (such as copier fluids or cleaning supplies) customarily used in the conduct of general business office activities (" ***Common Office Chemicals*** "), provided that the Handling of such Common Office Chemicals shall comply at all times with all Legal Requirements, including Hazardous Materials Laws (as defined below). Notwithstanding anything to the contrary contained herein, however, in no event shall Tenant permit any usage of Common Office Chemicals in a manner that may cause the Premises or the Project to be contaminated by any Hazardous Materials or in violation of any Hazardous Materials Laws. Tenant shall promptly advise Landlord in writing of (a) any and all enforcement, cleanup, remedial, removal, or other governmental or regulatory actions instituted, completed, or threatened pursuant to any Hazardous Materials Laws relating to any Hazardous Materials affecting the Premises; and (b) all claims made or threatened by any third party against Tenant, Landlord, the Premises or the Project relating to damage, contribution, cost recovery, compensation, loss, or injury resulting from any Hazardous Materials on or about the Premises. Without Landlord's prior written consent which consent shall not be unreasonably withheld, conditioned or delayed, Tenant shall not take any remedial action or enter into any agreements or settlements in response to the presence of any Hazardous Materials in, on, or about the Premises. Tenant shall be solely responsible for and shall indemnify, defend and hold Landlord and all other Indemnitees (as defined in Paragraph 14(b) below), harmless from and against all Claims (as defined in Paragraph 14(b) below), arising out of or in connection with, or otherwise relating to (i) any Handling of Hazardous Materials by any Tenant Party or Tenant's breach of its obligations hereunder, or (ii) any removal, cleanup, or restoration work and materials necessary to return the Project or any other property of whatever nature located on the Project to their condition existing prior to the Handling of Hazardous Materials in, on or about the Premises by any Tenant Party. Tenant's obligations under this paragraph shall survive the expiration or other termination of this Lease. For purposes of this Lease, " ***Hazardous Materials*** " means any explosive, radioactive materials, hazardous wastes, or hazardous substances, including without limitation asbestos containing materials, PCB's, CFC's, or substances defined as "hazardous substances" in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. Section 9601-9657; the Hazardous Materials Transportation Act of 1975, 49 U.S.C. Section 1801-1812; the Resource Conservation and Recovery Act of 1976, 42 U.S.C. Section 6901-6987; or any other Legal Requirement regulating, relating to, or imposing liability or standards of conduct concerning any such materials or substances now or at any time hereafter in effect (collectively, " ***Hazardous Materials Laws*** ").

d. **Applicability of Paragraph.** The provisions of this Paragraph 8 are for the benefit of Landlord, the holder of any Superior Interest (as defined in Paragraph 21 below), and the other Indemnitees only and are not nor shall they be construed to be for the benefit of any tenant or occupant of the Building.

9. **Alterations and Restoration.**

a. Except as set forth in this Paragraph 9(a), Tenant shall not make or permit to be made any alterations, modifications, additions, decorations or improvements to the Premises, or any other work whatsoever that would directly or indirectly involve the penetration (excluding penetration to hang artwork or other lightweight items) or removal (whether permanent or temporary) of, or require access through, in, under, or above any floor, wall or ceiling, or surface or covering thereof in the Premises (collectively, " ***Alterations*** "), except as expressly provided in this Paragraph 9. If Tenant desires any Alteration, Tenant must obtain Landlord's prior written approval of such Alteration which shall not be unreasonably withheld, delayed, or conditioned. Notwithstanding the foregoing, Landlord's consent shall not be required for any Alterations* consisting of painting (and/or other wall covering), window treatments, carpeting, flooring, installation of doors and internal windows within the Premises, and the installation of Tenant's furniture and trade fixtures, so long as none of the foregoing require a building permit to perform and the costs with respect to the foregoing do not exceed $100,000.00 (such Alterations, the " ***Decorative Alterations*** "). At least five (5) Business Days prior to commencing any Decorative Alterations, Tenant shall give to Landlord a notice of Tenant's intention to perform such Decorative Alteration, which notice shall be accompanied by a reasonably detailed description of the Decorative Alterations that Tenant intends to perform. Other than the requirement of Landlord's consent being waived for Decorative Alterations or as otherwise expressly set forth in this Paragraph 9, Tenant shall otherwise abide by all of the provisions of this Paragraph 9 with respect to Decorative Alterations.

All Alterations shall be made at Tenant's sole cost and expense (including the expense of complying with all present and future Legal Requirements, including those regarding asbestos, if applicable, and any other work required to be performed in other areas within or outside the Premises by reason of the Alterations). For all Alterations other than Decorative Alterations, Tenant shall either (i) arrange for Landlord to perform the work on terms and conditions acceptable to Landlord and Tenant, each in its sole discretion or (ii) bid the project out to contractors approved by Landlord in writing in advance (which approval shall not be unreasonably withheld, conditioned or delayed). Tenant shall provide Landlord with a copy of the information submitted to bidders at such time as the bidders receive their copy. Regardless of the

contractors who perform the work pursuant to the above, except with respect to Decorative Alterations, Tenant shall pay Landlord within ten (10) Business Days after written demand therefor prior to or during the course of such construction an amount (the " ***Alteration Operations Fee*** ") equal to five percent (5%) of the total hard cost of the Alteration (and for purposes of calculating the Alteration Operations Fee, such cost shall include architectural and engineering fees, but shall not include permit fees) for any Alterations under $500,000 and three percent (3%) of the total hard cost of the Alteration for any Alterations over $500,00 as compensation to Landlord for Landlord's internal review of Tenant's Plans and general oversight of the construction (which oversight shall be solely for the benefit of Landlord and shall in no event be a substitute for Tenant's obligation to retain such project management or other services as shall be necessary to ensure that the work is performed properly and in accordance with the requirements of this Lease). Tenant shall also reimburse Landlord for Landlord's expenses such as electrical energy consumed in connection with the work, freight elevator operation, additional cleaning expenses, additional security services, fees and charges paid to third party architects, engineers and other consultants for review of the work and the plans and specifications with respect thereto and to monitor contractor compliance with Building construction requirements, and for other miscellaneous costs incurred by Landlord as result of the work.

All such work shall be performed diligently and in a first-class workmanlike manner and in accordance with plans and specifications approved by Landlord, and shall comply with all Legal Requirements and Landlord's reasonable construction standards, procedures, conditions and requirements for the Building as in effect from time to time (including Landlord's requirements relating to insurance and contractor qualifications). Tenant shall deliver to Landlord, within thirty (30) days following the completion of the Alterations, a copy of as-built drawings of the Alterations in a form reasonably acceptable to Landlord. In no event shall Tenant employ any person, entity or contractor to perform work in the Premises whose presence Tenant believes, in its reasonable opinion, is likely to give rise to a labor or other disturbance in the Building. Default by Tenant in the payment of any sums agreed to be paid by Tenant to Landlord for or in connection with an Alteration which continues beyond any applicable notice and cure periods pursuant to Paragraph 25 hereof (regardless of whether such agreement is pursuant to this Paragraph 9 or separate instrument) shall entitle Landlord to all the same remedies as for non-payment of rent hereunder. Any Alterations, including, without limitation, moveable partitions that are affixed to the Premises (but excluding moveable, free standing partitions) and all carpeting, shall at once become part of the Building and the property of Landlord. Tenant shall give Landlord not less than five (5) days prior written notice of the date the construction of the Alteration is to commence. Landlord may post and record an appropriate notice of non-responsibility with respect to any Alteration, and Tenant shall maintain any such notices posted by Landlord in or on the Premises until such time as such posting is no longer required.

b. At Landlord's sole election any or all Alterations made for or by Tenant shall be removed by Tenant from the Premises at the expiration or sooner termination of this Lease and the Premises shall be restored by Tenant to their condition prior to the making of the Alterations, ordinary wear and tear and damage by casualty excepted. The removal of the Alterations and the restoration of the Premises shall be performed by a general contractor selected by Tenant and reasonably approved by Landlord, in which event Tenant shall pay the general contractor's fees and costs in connection with such work. Any separate work letter or other agreement which is hereafter entered into between Landlord and Tenant pertaining to Alterations shall be deemed to automatically incorporate the terms of this Lease without the necessity for further reference thereto. Notwithstanding the foregoing, unless Landlord states in writing at the time of giving its written consent to a proposed Alteration that all or any element of such Alteration shall be removed at the expiration or other termination of the term of this Lease, Tenant shall not be required to remove said Alteration.

10. **Repair.** By taking possession of the Premises, Tenant agrees that the Premises are in good condition and repair subject to latent defects of which Tenant notifies Landlord in writing within one hundred eighty (180) days after taking possession. Tenant, at Tenant's sole cost and expense, shall keep the Premises and every part thereof (including the interior walls and ceilings of the Premises, those portions of the Building systems located within and exclusively serving the Premises, and improvements and Alterations) in good condition and repair. It is specifically understood and agreed that, except as specifically set forth in this Lease, Landlord has no obligation and has made no promises to alter, remodel, improve, repair, decorate or paint the Premises or any part thereof, and that no representations respecting the condition of the Premises or the Building have been made by Landlord to Tenant. Tenant hereby waives the right to make any repairs to the Premises or Real Property at Landlord's expense.

11. **Abandonment.** Upon the expiration or earlier termination of this Lease, or if Tenant permanently abandons or surrenders and stops paying rent for all or any part of the Premises or is dispossessed of the Premises by process of law, or otherwise, any movable furniture, equipment, trade fixtures, or other personal property belonging to Tenant and left on the Premises shall at the option of Landlord be deemed to be abandoned and, whether or not the property is deemed abandoned, Landlord shall have the right to remove such property from the Premises and charge Tenant for the reasonable and actual cost for removal and any restoration of the Premises as provided in Paragraph 9. Landlord may

charge Tenant for the storage of Tenant's property left on the Premises at reasonable rates, or, Landlord may, at its option, store Tenant's property in a public warehouse at Tenant's reasonable expense. Notwithstanding the foregoing, neither the provisions of this Paragraph 11 nor any other provision of this Lease shall impose upon Landlord any obligation to care for or preserve any of Tenant's property left upon the Premises, and Tenant hereby waives and releases Landlord from any claim or liability in connection with the removal of such property from the Premises and the storage thereof. Landlord's action or inaction with regard to the provisions of this Paragraph 11 shall not be construed as a waiver of Landlord's right to require Tenant to remove its property, restore any damage to the Premises and the Building in the condition required by the terms of this Lease caused by such removal, and make any restoration required pursuant to Paragraph 9 above.

12. **Liens.** Tenant shall not permit any mechanic's, materialman's or other liens arising out of work performed at the Premises by or on behalf of Tenant to be filed against the fee of the Real Property nor against Tenant's interest in the Premises. Landlord shall have the right to post and keep posted on the Premises any notices which it deems necessary for protection from such liens. If any such liens are filed, Tenant shall discharge such lien within ten (10) Business Days after Tenant receives actual knowledge thereof, at Tenant's sole cost and expense, by the payment thereof or by the filing of a bond reasonably acceptable to Landlord. Landlord may, upon ten (10) Business Days' written notice to Tenant, without waiving its rights based on such breach by Tenant and without releasing Tenant from any obligations hereunder, pay and satisfy the same and in such event the sums so paid by Landlord shall be due and payable by Tenant immediately upon demand, with interest from the date paid by Landlord through the date Tenant pays Landlord, at the Interest Rate. Tenant agrees to indemnify, defend and hold Landlord and the other Indemnitees (as defined in Paragraph 14(b) below) harmless from and against any Claims (as defined in Paragraph 14(b) below) for mechanics', materialmen's or other liens in connection with any Alterations, repairs or any work performed, materials furnished or obligations incurred by or for Tenant.

13. **Assignment and Subletting.**

a. **Landlord's Consent.** Landlord's and Tenant's agreement with regard to Tenant's right to transfer all or part of its interest in the Premises is as expressly set forth in this Paragraph 13. Tenant agrees that, except upon Landlord's prior written consent, which consent shall not (subject to Landlord's rights under Paragraph 13(d) below) be unreasonably withheld, delayed, or conditioned, neither this Lease nor all or any part of the leasehold interest created hereby shall, directly or indirectly, voluntarily or involuntarily, by operation of law or otherwise, be assigned, mortgaged, pledged, encumbered or otherwise transferred by Tenant or Tenant's legal representatives or successors in interest (collectively, an " ***assignment*** ") and neither the Premises nor any part thereof shall be sublet or be used or occupied for any purpose by anyone other than Tenant (collectively, a " ***sublease*** "). Any assignment or subletting which requires but is entered into without Landlord's prior written consent shall, at Landlord's option, be voidable and shall constitute an Event of Default entitling Landlord to terminate this Lease and to exercise all other remedies available to Landlord under this Lease and at law.

The parties hereto agree and acknowledge that, among other circumstances for which Landlord may reasonably withhold its consent to an assignment or sublease, it shall be reasonable for Landlord to withhold its consent where: (i) the assignment or subletting would increase the operating costs for the Building or the burden on the Building services, or generate additional foot traffic, elevator usage or security concerns in the Building, or create an increased probability of the comfort and/or safety of Landlord and other tenants in the Building being compromised or reduced, as reasonably determined by Landlord; (ii) the space will be used for a school or training facility (excluding internal training), an entertainment, sports or recreation facility, retail sales to the public (unless Tenant's permitted use is retail sales), a personnel or employment agency, an office or facility of any governmental or quasi-governmental agency or authority, a place of public assembly (including without limitation a meeting center, theater or public forum), any use by or affiliation with a foreign government (including without limitation an embassy or consulate or similar office), or a facility for the provision of social, welfare or clinical health services or sleeping accommodations (whether temporary, daytime or overnight); (iii) the proposed assignee or subtenant (or any person which directly or indirectly controls, is controlled by, or is under common control with the proposed assignee or subtenant) is a current tenant of the Building (unless Landlord does not have sufficient space within the Project for such tenant) or has negotiated with Landlord within the preceding one hundred twenty (120) days (or is currently negotiating with Landlord) to lease space in the Project; (iv) Landlord reasonably disapproves of the proposed assignee's or subtenant's reputation or creditworthiness; (v) Landlord determines that the character of the business that would be conducted by the proposed assignee or subtenant at the Premises, or the manner of conducting such business, would be inconsistent with the character of the Building as a first-class office building; (vi) the proposed assignee or subtenant is an entity or related to an entity with whom Landlord or any affiliate of Landlord has had adverse dealings within the two (2) year period prior to the requested assignment or sublease; (vii) the assignment or subletting may conflict with any exclusive uses granted to other tenants of the Project, or with the terms of any easement, covenant, condition or restriction, or other agreement affecting the Project; (viii) the assignment or subletting would involve a change in use from

that expressly permitted under this Lease; (ix) Landlord determines, in its reasonable opinion, that the proposed assignee will be unable to perform all of Tenant's obligations under this Lease or the proposed subtenant will be unable to perform all of its obligations under the proposed sublease or (x) as of the date Tenant requests Landlord's consent or as of the date Landlord responds thereto, an Event of Default by Tenant under this Lease shall have occurred and be continuing. Landlord's foregoing rights and options shall continue throughout the entire term of this Lease.

For purposes of this Paragraph 13, the following events shall be deemed an assignment or sublease, as appropriate: (i) the issuance of equity interests (whether stock, partnership interests or otherwise) in Tenant or any subtenant or assignee, or any entity controlling any of them, to any person or group of related persons, in a single transaction or a series of related or unrelated transactions, such that, following such issuance, such person or group shall have Control (as defined below) of Tenant or any subtenant or assignee; (ii) a transfer of Control of Tenant or any subtenant or assignee, or any entity controlling any of them, in a single transaction or a series of related or unrelated transactions (including, without limitation, by consolidation, merger, acquisition or reorganization), except that the transfer of outstanding capital stock or other listed equity interests by persons or parties through the "over-the-counter" market or any recognized national or international securities exchange, shall not be included in determining whether Control has been transferred; (iii) **INTENTIONALLY OMITTED** ; (iv) a change or conversion in the form of entity of any subtenant or assignee, or any entity controlling any of them, which has the effect of limiting the liability of any of the partners, members or other owners of such entity beyond the liability that any such partners, members or other owners of such entity had prior to the date of such change or conversion; or (v) the agreement by a third party to assume, take over, or reimburse Tenant for, any or all of Tenant's obligations under this Lease, in order to induce Tenant to lease space with such third party. " ***Control*** " shall mean direct or indirect ownership of fifty percent (50%) or more of all of the voting stock of a corporation or fifty percent (50%) or more of the legal or equitable interest in any other business entity, or the power to direct the operations of any entity (by equity ownership, contract or otherwise).

If this Lease is assigned, whether or not in violation of the terms of this Lease, Landlord may collect rent from the assignee. If the Premises or any part thereof is sublet, Landlord may, upon an Event of Default by Tenant hereunder, collect rent from the subtenant. In either event, Landlord may apply the amount collected from the assignee or subtenant to Tenant's monetary obligations hereunder.

The consent by Landlord to an assignment or subletting hereunder shall not relieve Tenant or any assignee or subtenant from the requirement of obtaining Landlord's express prior written consent to any other or further assignment or subletting. In no event shall any subtenant be permitted to assign its sublease or to further sublet all or any portion of its subleased premises without Landlord's prior written consent, which consent may be withheld by Landlord in its reasonable discretion. Neither an assignment or subletting nor the collection of rent by Landlord from any person other than Tenant, nor the application of any such rent as provided in this Paragraph 13(a) shall be deemed a waiver of any of the provisions of this Paragraph 13(a) or release Tenant from its obligation to comply with the provisions of this Lease and Tenant shall remain fully and primarily liable for all of Tenant's obligations under this Lease. If Landlord approves of an assignment or subletting hereunder and this Lease contains any renewal options, expansion options, rights of first refusal, rights of first negotiation or any other rights or options pertaining to additional space in the Building, such rights and/or options shall not run to the subtenant or assignee, it being agreed by the parties hereto that any such rights and options are personal to the Tenant originally named herein (and to any Affiliate to which this Lease may be assigned as provided in Paragraph 13(h) below) and may not otherwise be transferred.

b. **Processing Expenses.** Tenant shall pay to Landlord, as Landlord's cost of processing each proposed assignment or subletting, an amount equal to the sum of (i) Landlord's reasonable attorneys' and other professional fees, plus (ii) the sum of One Thousand Dollars ($1,000.00) for the cost of Landlord's administrative, accounting and clerical time (collectively, " ***Processing Costs*** "), and the amount of all direct and indirect costs and expenses incurred by Landlord arising from the assignee or sublessee taking occupancy of the subject space (including, without limitation, costs of freight elevator operation for moving of furnishings and trade fixtures, security service, janitorial and cleaning service, and rubbish removal service). Notwithstanding anything to the contrary herein, Landlord shall not be required to process any request for Landlord's consent to an assignment or subletting until Tenant has paid to Landlord the amount of Landlord's estimate of the Processing Costs and all other direct and indirect costs and expenses of Landlord and its agents arising from the assignee or subtenant taking occupancy. Notwithstanding the foregoing, the fee for Processing Costs for a transfer to an Affiliate under Paragraph 13(h) hereof shall be the sum of Five Hundred Dollars ($500.00).

c. **Consideration to Landlord.** In the event of any assignment or sublease, whether or not requiring Landlord's consent, Landlord shall be entitled to receive, as additional rent hereunder, fifty percent (50%) of any consideration (including, without limitation, payment for leasehold improvements) paid by the assignee or subtenant for the assignment or sublease and, in the case of a sublease, fifty percent (50%) of the excess of the amount of rent paid for the sublet space by the subtenant over the amount of Monthly Rent under Paragraph 5 above, Additional Rent under Paragraph 7 above

attributed to the sublet space for the corresponding month, and all reasonable and actual out-of-pocket costs incurred by Tenant for tenant improvements and/or leasing commissions incurred in connection with such subletting or assignment. To effect the foregoing, Tenant shall deduct from the monthly amounts received by Tenant from the subtenant or assignee as rent or consideration, the Monthly Rent and Additional Rent payable by Tenant to Landlord for the subject space a portion of the reasonable and actual out-of-pocket costs incurred by Tenant for tenant improvements and/or leasing commissions incurred in connection with such subletting or assignment evenly spread across the term of the sublease or assignment, and fifty percent (50%) of the then remaining sum shall be paid promptly to Landlord by Tenant. If there is more than one sublease under this Lease, the amounts (if any) to be paid by Tenant to Landlord pursuant to this Paragraph 13.c., shall be separately calculated for each sublease and amounts due Landlord with regard to any one sublease may not be offset against rental and other consideration pertaining to or due under any other sublease.

d. **Procedures.** If Tenant desires to assign this Lease or any interest therein or sublet all or part of the Premises (other than in connection with a transfer to an Affiliate under Paragraph 13(h) below), Tenant shall give Landlord written notice thereof and the terms proposed (the " ***Sublease Notice*** "), which Sublease Notice shall be accompanied by Tenant's proposed assignment or sublease agreement (in which the proposed assignee or subtenant shall be named, shall be executed by Tenant and the proposed assignee or subtenant, and which agreement shall otherwise meet the requirements of Paragraph 13(e) below), together with a current financial statement of such proposed assignee or subtenant and any other information reasonably requested by Landlord. Landlord shall have the prior right and option (to be exercised by written notice to Tenant given within thirty (30) days after receipt of Tenant's notice) (i) in the case of any proposed sublet, to sublet from Tenant any portion of the Premises proposed by Tenant to be sublet, for the term for which such portion is proposed to be sublet, but at the lesser of the proposed sublease rent or the same rent (including Additional Rent as provided for in Paragraph 7 above) as Tenant is required to pay to Landlord under this Lease for the same space, computed on a pro rata square footage basis; provided, however, that if the portion of the Premises proposed by Tenant to be sublet consists of space on more than one floor of the Building, Landlord may exercise (or not exercise) its sublet option under this clause (i) separately as to the proposed sublet space on each such floor, (ii) to terminate this Lease as it pertains to the portion of the Premises proposed by Tenant to be sublet or assigned; provided, however, that if the portion of the Premises proposed by Tenant to be sublet consists of space on more than one floor of the Building, Landlord may exercise (or not exercise) its termination option under this clause (ii) separately as to the proposed sublet space on each such floor, or (iii) to approve or reasonably disapprove the proposed assignment or sublease. If Landlord exercises its option in (i) above, then Landlord may, at Landlord's sole cost, construct improvements in the subject space and, so long as the improvements are suitable for general office purposes, Landlord shall have no obligation to restore the subject space to its original condition following the termination of the sublease (and in no event shall Tenant have any removal or restoration obligation with respect to any improvements constructed in the subject space by Landlord). If Landlord fails to exercise any such option to sublet or to terminate, this shall not be construed as or constitute a waiver of any of the provisions of Paragraphs 13(a), (b), (c) or (d) herein. If Landlord exercises any option to sublet or to terminate, any costs of demising the portion of the Premises affected by such subleasing or termination shall be borne by Tenant. In addition, Landlord shall have no liability for any real estate brokerage commission(s) or with respect to any of the costs and expenses that Tenant may have incurred in connection with its proposed assignment or subletting, and Tenant agrees to indemnify, defend and hold Landlord and all other Indemnitees harmless from and against any and all Claims (as defined in Paragraph 14(b) below), including, without limitation, claims for commissions, arising from such proposed assignment or subletting. Landlord's foregoing rights and options shall continue throughout the entire term of this Lease.

e. **Documentation.** No permitted assignment or subletting by Tenant shall be effective until there has been delivered to Landlord a fully executed counterpart of the assignment or sublease which expressly provides that (i) the assignee or subtenant may not further assign this Lease or the sublease, as applicable, or sublet the Premises or any portion thereof, without Landlord's prior written consent (which, in the case of a further assignment proposed by an assignee of this Lease, shall not be unreasonably withheld, conditioned or delayed, subject to Landlord's rights under the provisions of this Paragraph 13, and in the case of a subtenant's assignment of its sublease or further subletting of its subleased premises or any portion thereof, may be withheld in Landlord's sole and absolute discretion), (ii) the assignee or subtenant will comply with all of the provisions of this Lease, and Landlord may enforce the Lease provisions directly against such assignee or subtenant, (iii) in the case of an assignment, the assignee assumes all of Tenant's obligations under this Lease arising on or after the date of the assignment, and (iv) in the case of a sublease, the subtenant agrees to be and remain jointly and severally liable with Tenant for the payment of rent pertaining to the sublet space in the amount set forth in the sublease, and for the performance of all of the terms and provisions of this Lease applicable to the sublet space. In addition to the foregoing, no assignment or sublease by Tenant shall be effective until there has been delivered to Landlord a fully executed counterpart of Landlord's consent to assignment or consent to sublease form. The failure or refusal of a subtenant or assignee to execute any such instrument shall not release or discharge the subtenant or assignee from its liability as set forth above. Notwithstanding the

foregoing, however, no subtenant or assignee shall be permitted to occupy the Premises or any portion thereof unless and until such subtenant or assignee provides Landlord with certificates evidencing that such subtenant or assignee is carrying all insurance coverage required of such subtenant or assignee under this Lease.

f. **No Merger.** Without limiting any of the provisions of this Paragraph 13, if Tenant has entered into any subleases of any portion of the Premises, the voluntary or other surrender of this Lease by Tenant, or a mutual cancellation by Landlord and Tenant, shall not work a merger, and shall, at the option of Landlord, terminate all or any existing subleases or subtenancies or, at the option of Landlord, operate as an assignment to Landlord of any or all such subleases or subtenancies. If Landlord does elect that such surrender or cancellation operate as an assignment of such subleases or subtenancies, Landlord shall in no way be liable for any previous act or omission by Tenant under the subleases or for the return of any deposit(s) under the subleases that have not been actually delivered to Landlord, nor shall Landlord be bound by any sublease modification(s) executed without Landlord's consent or for any advance rental payment by the subtenant in excess of one month's rent.

g. **Special Transfer Prohibitions.** Notwithstanding anything set forth above to the contrary, Tenant may not (a) sublet the Premises or assign this Lease to any person or entity in which Landlord owns an interest, directly or indirectly (by applying constructive ownership rules set forth in Section 856(d)(5) of the Internal Revenue Code (the " ***Code*** "); or (b) sublet the Premises or assign this Lease in any other manner which could cause any portion of the amounts received by Landlord pursuant to this Lease or any sublease to fail to qualify as "rents from real property" within the meaning of Section 856(d) of the Code, or which could cause any other income received by Landlord to fail to qualify as income described in Section 856(c)(2) of the Code.

h. **Affiliates.** Notwithstanding anything to the contrary in Paragraphs 13(a) and 13(d), but subject to Paragraphs 13(b), 13(c), 13(e), 13(f) and 13(g), Tenant may assign this Lease or sublet the Premises or any portion thereof, without Landlord's consent, to any partnership, corporation or other entity which controls, is controlled by, or is under common control with Tenant or Tenant's parent (control being defined for such purposes as ownership of more

than 50% of the equity interests in, and the power to direct the management of, the relevant entity), or to any partnership, corporation or other entity resulting from a merger, acquisition or consolidation with Tenant or Tenant's parent, or to any person or entity which acquires all or substantially all the assets of Tenant as a going concern (including by means of a purchase of all or substantially all of Tenant's stock) (collectively, an " ***Affiliate*** "), provided that (i) Landlord receives at least ten (10) days' prior written notice of the assignment or subletting, together with evidence that the requirements of this Paragraph 13(g) have been met, (ii) the Affiliate's net worth is not less than Tenant's net worth as of the date of this Lease, (iii) except in the case of an assignment where the assignor is dissolved as a matter of law following the series of transactions of which the assignment is a part (*e.g* . a merger) and where such assignor makes sufficient reserves for contingent liabilities (including its obligations under this Lease) as required by applicable law, the Affiliate remains an Affiliate for the duration of the subletting or the balance of the term in the event of an assignment, (iv) the Affiliate assumes (in the event of an assignment) in writing all of Tenant's obligations under this Lease, and agrees (in the event of a sublease) that such subtenant will, at Landlord's election, attorn directly to Landlord in the event that this Lease is terminated by Landlord for any reason, (v) Landlord receives a fully executed copy of an assignment or sublease agreement between Tenant and the Affiliate, (vi) in the case of an assignment by means of a purchase of all or substantially all of Tenant's stock, the essential purpose of such assignment is to transfer an active, ongoing business with substantial assets in addition to this Lease, and in the case of an assignment (by any means), or a sublease, the transaction is for legitimate business purposes unrelated to this Lease and the transaction is not a subterfuge by Tenant to avoid it obligations under this Lease or the restrictions on assignment and subletting contained herein, and (vii) in the case of a sublease, the Affiliate executes and Tenant delivers to Landlord a fully executed counterpart of Landlord's waiver and acknowledgement form for an Affiliate sublease.

14. **Indemnification of Landlord.**

a. Landlord and the holders of any Superior Interests (as defined in Paragraph 21 below) shall not be liable to Tenant and Tenant hereby waives all claims against such parties for any loss, injury or other damage to person or property in or about the Premises or the Project from any cause whatsoever, including without limitation, water leakage of any character from the roof, walls, basement, fire sprinklers, appliances, air conditioning, plumbing or other portion of the Premises or the Project, or gas, fire, explosion, falling plaster, steam, electricity, or any malfunction within the Premises or the Project, or acts of other tenants of the Building; *provided, however* , that, subject to Paragraph 16 below and to the provisions of Paragraph 28 below regarding exculpation of Landlord from Special Claims, the foregoing waiver shall be inapplicable to any loss, injury or damage resulting from Landlord's or an Indemnitee's gross negligence or willful misconduct.

b. Subject to Paragraph 16 below, Tenant shall hold Landlord and the holders of any Superior Interest, and the constituent shareholders, partners or other owners thereof, and all of their

agents, contractors, servants, officers, directors, employees and licensees (collectively with Landlord, the " ***Indemnitees*** ") harmless from and indemnify the Indemnitees against any and all claims, liabilities, damages, costs and expenses, including reasonable attorneys' fees and costs incurred in defending against the same (collectively, " ***Claims*** "), to the extent arising from (a) the acts or omissions of Tenant or any other Tenant Parties (as defined in Paragraph 8(c) above) in, on or about the Project, or (b) any construction or other work undertaken by or on behalf of Tenant in, on or about the Premises, whether prior to or during the term of this Lease, or (c) any breach or Event of Default under this Lease by Tenant, or (d) any accident, injury or damage, howsoever and by whomsoever caused, to any person or property, occurring in, on or about the Premises; except to the extent such Claims are caused by the gross negligence or willful misconduct of Landlord or Indemnitees. In case any action or proceeding be brought against any of the Indemnitees by reason of any such Claim, Tenant, upon written notice from Landlord, covenants to resist and defend at Tenant's sole expense such action or proceeding by counsel reasonably satisfactory to Landlord. The provisions of this Paragraph 14(b) shall survive the expiration or earlier termination of this Lease with respect to any injury, illness, death or damage occurring prior to such expiration or termination.

c. Landlord shall hold Tenant harmless from and indemnify Tenant against any claim incurred in connection with or arising from any injury, illness, or death to any person or damage to any property to the extent (i) such injury, illness, death or damage is caused by the gross negligence or willful misconduct of Landlord or its agents or employees, and (ii) such claim is not included within the risks insured against under the insurance that Tenant is required to carry under Paragraph 15 below. The provisions of this Paragraph 14(c) shall survive the termination of this Lease with respect to any injury, illness, death or damage occurring prior to such termination. Notwithstanding anything to the contrary set forth in this Paragraph 14(c) or elsewhere in this Lease, in no event shall Landlord be liable for any consequential or remote damages, or for loss of or damage to artwork, currency, jewelry, bullion, securities or other property in the Premises, not in the nature of ordinary fixtures, furnishings, equipment and other property used in general business office activities and functions. Landlord's indemnification obligations under this Paragraph 14(c) are subject to the provisions of Paragraph 16 below.

15. **Insurance.**

a. **Tenant's Insurance; Coverage Amounts.** Tenant shall, at Tenant's expense, maintain during the term of this Lease (and, if Tenant occupies or conducts activities in or about the Premises prior to or after the term hereof, then also during such pre-term or post-term period): (i) commercial general liability insurance including contractual liability coverage, with minimum coverages of Five Million Dollars ($5,000,000.00) per occurrence combined single limit for bodily injury and property damage, Five Million Dollars ($5,000,000.00) for products-completed operations coverage, One Hundred Thousand Dollars ($100,000.00) fire legal liability, Five Million Dollars ($5,000,000.00) for personal and advertising injury, with a Six Million Dollars ($6,000,000.00) general aggregate limit, for injuries to, or illness or death of, persons and damage to property occurring in or about the Premises or otherwise resulting from Tenant's operations in the Building, provided that the foregoing coverage amounts may be provided through any combination of primary and umbrella/excess coverage policies; (ii) property insurance protecting Tenant against loss or damage by fire and such other risks as are insurable under then-available standard forms of "special form" (previously known as "all risk") insurance policies (excluding earthquake and flood but including water damage and earthquake sprinkler leakage), covering Tenant's personal property and trade fixtures in or about the Premises or the Real Property, and any above Building standard Alterations installed in the Premises by or at the request of Tenant (including those installed by Landlord at Tenant's request, whether prior or subsequent to the commencement of the Lease term), for the full replacement value thereof without deduction for depreciation; (iii) workers' compensation insurance in statutory limits; (iv) at least three months' coverage for loss of business income and continuing expenses, providing protection against any peril included within the classification "special form" insurance, excluding earthquake and flood but including water damage and earthquake sprinkler leakage; and (v) if Tenant operates owned, leased or non-owned vehicles on the Real Property, comprehensive automobile liability insurance with a minimum coverage of Two Million Dollars ($2,000,000.00) per occurrence, combined single limit; provided that the foregoing coverage amount may be provided through any combination of primary and umbrella/excess coverage policies. In no event shall any insurance maintained by Tenant hereunder or required to be maintained by Tenant hereunder be deemed to limit or satisfy Tenant's indemnification or other obligations or liability under this Lease. Landlord reserves the right to increase the foregoing amount of liability coverage from time to time as Landlord reasonably determines is required to adequately protect Landlord and the other parties designated by Landlord from the matters insured thereby (*provided, however* , that Landlord makes no representation that the limits of liability required hereunder from time to time shall be adequate to protect Tenant), and to require that Tenant cause any of its contractors, vendors, movers or other parties conducting activities in or about or occupying the Premises to obtain and maintain insurance as reasonably determined by Landlord and as to which Landlord and such other parties designated by Landlord shall be additional insureds.

b. **Policy Form.** Each insurance policy required pursuant to Paragraph 15.a. above shall be issued by an insurance company authorized to do business in the State of Colorado and with a general policyholders' rating of " ***A-*** " or better and a financial size ranking of " ***Class VIII*** " or higher in the most recent edition of Best's Insurance Guide. Tenant shall provide Landlord with not less than thirty (30) days' prior written notice if an insurance policy obtained by Tenant hereunder is materially changed, cancelled or will be allowed to lapse. If any of the above policies are subject to deductibles, the deductible amounts shall not exceed amounts approved in advance in writing by Landlord. The liability policies and any umbrella/excess coverage policies carried pursuant to clauses (i) and (v) of Paragraph 15(a) above shall (i) name Landlord and all the other Indemnitees and any other parties designated by Landlord as additional insureds, (ii) provide that no act or omission of Tenant shall affect or limit the obligations of the insurer with respect to any other insured and (iii) provide that the policy and the coverage provided shall be primary, that Landlord, although an additional insured, shall nevertheless be entitled to recovery under such policy for any damage to Landlord or the other Indemnitees by reason of acts or omissions of Tenant, and that any coverage carried by Landlord shall be noncontributory with respect to policies carried by Tenant. The property insurance policy carried under item (ii) of Paragraph 15(a) above shall include all waiver of subrogation rights endorsements necessary to effect the provisions of Paragraph 16 below. Each such insurance policy required of Tenant pursuant to this Paragraph 15, or a certificate thereof, shall be delivered to Landlord by Tenant on or before the effective date of such policy and thereafter Tenant shall deliver to Landlord renewal policies or certificates at least thirty (30) days prior to the expiration dates of expiring policies. If Tenant fails to procure such insurance or to deliver such policies or certificates, Landlord may, at its option, procure the same for Tenant's account, and the cost thereof shall be paid to Landlord by Tenant upon demand. Landlord may at any time, and from time to time, inspect and/or copy any and all insurance policies required by this Lease.

c. **No Implication.** Nothing in this Paragraph 15 shall be construed as creating or implying the existence of (i) any ownership by Tenant of any fixtures, additions, Alterations, or improvements in or to the Premises or (ii) any right on Tenant's part to make any addition, Alteration or improvement in or to the Premises.

d. **Landlord's Insurance.** During the term hereof, Landlord shall keep the Building (excluding any above Building standard Alterations installed in the Premises by or at the request of Tenant (including those installed by Landlord at Tenant's request, whether prior or subsequent to the commencement of the Lease term) insured through reputable insurance underwriters against perils covered by then-available standard forms of "special form" (previously known as "all risk") insurance policies, as such policies are in use from time to time for comparable first-class high-rise office buildings in downtown Denver, Colorado (excluding, at Landlord's option, perils such as earthquake, flood and other standard exclusions), with a deductible provision deemed commercially reasonable by Landlord, in an amount or amounts equal to not less than ninety percent (90%) of the full replacement value of the Building (excluding the land and the footings, foundations and installations below the basement level), or such greater percentage as shall be required to preclude Landlord from being deemed a coinsurer, without deduction for depreciation, including the costs of demolition and debris removal, or such other fire and property damage insurance as Landlord shall reasonably determine to give substantially equal or greater protection. Throughout the term hereof, Landlord shall carry commercial general liability insurance with commercially reasonable amounts and coverage.

16. **Mutual Waiver of Subrogation Rights.** Each party hereto hereby releases the other respective party and, in the case of Tenant as the releasing party, the other Indemnitees, and the respective partners, shareholders, agents, employees, officers, directors and authorized representatives of such released party, from any claims such releasing party may have for damage to the Building, the Premises or any of such releasing party's fixtures, personal property, improvements and alterations in or about the Premises, the Building or the Project that is caused by or results from risks insured against under any "special form" insurance policies actually carried by such releasing party or deemed to be carried by such releasing party; provided, however, that such waiver shall be limited to the extent of the net insurance proceeds payable by the relevant insurance company with respect to such loss or damage (or in the case of deemed coverage, the net proceeds that would have been payable). For purposes of this Paragraph 16, the parties shall be deemed to be carrying any of the insurance policies required pursuant to Paragraph 15 but not actually carried by the party, and Landlord shall also be deemed to carry standard fire and extended coverage policies on the Project. Each party hereto shall cause each such fire and extended coverage insurance policy obtained by it to provide that the insurance company waives all rights of recovery by way of subrogation against the other respective party and the other released parties in connection with any matter covered by such policy.

17. **Utilities.**

a. **Basic Services.** Landlord shall furnish the following utilities and services (" ***Basic Services*** ") for the Premises at all times unless otherwise provided in this Paragraph 17(a): (i) electricity for Building standard lighting and power suitable for the use of the Premises for ordinary general office purposes (of not less than five [5] watts per RSF of the Premises for convenience power

and not less than one [1] watt per RSF for lighting), (ii) during the hours of 7:00 A.M. to 6 P.M. Monday through Friday and from 8 A.M. to 1 P.M. on Saturdays (" ***Business Hours*** ") on Business Days (hereinafter defined), heat, ventilation and air conditioning required in accordance with the HVAC Standards (hereinafter defined), (iii) unheated (or tempered) water for the restroom(s) in the public areas serving the Premises, (iv) elevator service to the floor(s) of the Premises by non-attended automatic elevators for general office pedestrian usage and at least one (1) elevator shall serve the Premises at all times (except in case of emergency) to permit Tenant's employees access to the Premises, and (v) five (5) days per week (excluding public holidays), janitorial services limited to emptying and removal of general office refuse, light vacuuming as needed and window washing as reasonably determined by Landlord. Notwithstanding the foregoing, however, Tenant may use water, heat, air conditioning, electric current, elevator and janitorial service in excess of that provided in Basic Services (" ***Excess Services,*** " which shall include without limitation any power usage other than through existing standard 110-volt AC outlets; electricity in excess of the lesser of that described in clause (i) above or clause (ii) of Paragraph 17(c) below; electricity and/or water consumed by Tenant in connection with any dedicated or supplemental heating, ventilating and/or air conditioning, computer power, telecommunications and/or other special units or systems of Tenant; chilled, heated or condenser water; or water used for any purpose other than ordinary drinking and lavatory purposes), provided that the Excess Services desired by Tenant are reasonably available to Landlord and to the Premises (it being understood that in no event shall Landlord be obligated to make available to the Premises more than the pro rata share of the capacity of any Excess Service available to the Building or the applicable floor of the Building, as the case may be), and provided further that Tenant complies with the procedures established by Landlord from time to time for requesting and paying for such Excess Services and with all other provisions of this Paragraph 17. Tenant, upon such notice as is reasonably required by Landlord, may request HVAC service during hours other than Business Hours and shall pay for such services at Landlord's then current rate. Monday through Friday, except public holidays then generally observed by similar businesses in the downtown Denver, Colorado central business district, shall be referred to as " ***Business Days*** ". Landlord reserves the right to install in the Premises or the Real Property, at Landlord's cost, electric current and/or water meters (including, without limitation, any additional wiring, conduit or panel required therefor) to measure the electric current or water consumed by Tenant or to cause the usage to be measured by other reasonable methods (*e.g* ., by temporary "check" meters or by survey); *provided, however* , that if separate metering is required due to Tenant's Excess Services, Tenant shall be responsible for the actual and reasonable cost of installation of separate meters for Tenant's Premises. Landlord's current janitorial specifications for the janitorial services Landlord shall provide for the Building and Premises are attached as Exhibit D. The attached janitorial services are subject to change from time to time during the Term without prior notice to Tenant so long as they remain consistent with janitorial services provided in similarly situated Class A office buildings in the downtown Denver, Colorado central business district, taking age, size and other relevant operating factors into account. " ***HVAC Standards*** " shall mean (a) HVAC cooling capacity in compliance with current ASHRAE performance standards for general office use; and (b) capacity of at least one (1) ton of cooling per every 375 rentable square feet of the Premises, with the zone count for the Premises to be dictated by the Final Plans for the Premises, but in no event more than one (1) zone for each 1,500 rentable square feet of the Premises.

b. **Payment for Utilities and Services.** The cost of Basic Services shall be included in Operating Expenses. In addition, Tenant shall pay to Landlord within thirty (30) days after Landlord's written demand (i) the cost, at Landlord's prevailing rate, of any Excess Services used by Tenant, (ii) the actual and reasonable cost of installing, operating, maintaining or repairing any meter or other device used to measure Tenant's consumption of utilities, (iii) the actual and reasonable cost of installing, operating, maintaining or repairing any Temperature Balance Equipment (as defined in Paragraph 17(d) below) for the Premises and/or any equipment required in connection with any Excess Services requested by Tenant, and (iv) any actual and reasonable cost otherwise incurred by Landlord in keeping account of or determining any Excess Services used by Tenant. Landlord's failure to bill Tenant for any of the foregoing shall not waive Landlord's right to bill Tenant for the same at a later time.

c. **Utility Connections.** Tenant shall not connect or use any apparatus or device in the Premises (i) using current in excess of 110 volts, or (ii) which would cause Tenant's electrical demand load to exceed an average of two and one-half (2.5) watts per usable square foot, or (iii) which would exceed the capacity of the existing panel or transformer serving the Premises. Tenant shall not connect with electric current (except through existing outlets in the Premises or such additional outlets as may be installed in the Premises as part of initial improvements or Alterations approved by Landlord), or water pipes, any apparatus or device for the purpose of using electrical current or water.

Landlord will not permit additional coring or channeling of the floor of the Premises in order to install new electric outlets in the Premises unless Landlord is satisfied, on the basis of such information to be supplied by Tenant at Tenant's expense, that coring and/or channeling of the floor in order to install such additional outlets will not weaken the structure of the floor.

d. **Temperature Balance.** If the temperature otherwise maintained in any portion of the Premises by the heating, air conditioning or ventilation system is affected as a result of (i) the type

or quantity of any lights, machines or equipment (including without limitation typical office equipment) used by Tenant in the Premises, (ii) the occupancy of such portion of the Premises by more than one person per two hundred (200) square feet of rentable area therein, (iii) an electrical load for lighting or power in excess of the limits specified in Paragraph 17(c) above, or (iv) any rearrangement of partitioning or other improvements, then, if Tenant fails to return the Premises to the temperature normally maintained in the Premises within five (5) days after written notice thereof, Landlord may install any equipment, or modify any existing equipment (including the standard air conditioning equipment) Landlord deems necessary to restore the temperature balance (such new equipment or modifications to existing equipment termed herein " ***Temperature Balance Equipment*** "), and Tenant shall reimburse Landlord for the actual and reasonable costs of such Temperature Balance Equipment. Tenant agrees to keep closed, when necessary, draperies and/or window treatments which, because of the sun's position, must be closed to provide for the efficient operation of the air conditioning system, and Tenant agrees to cooperate with Landlord and to abide by the regulations and requirements which Landlord may prescribe for the proper functioning and protection of the heating, ventilating and air conditioning system. Landlord shall deliver the Premises with an air volume distribution system and air handler on each floor. Landlord makes no representation to Tenant regarding the adequacy or fitness of the heating, air conditioning or ventilation equipment in the Building to maintain temperatures that may be required for, or because of, any computer or communications rooms, machine rooms, conference rooms or other areas of high concentration of personnel or electrical usage, or any other uses other than or in excess of the fractional horsepower normally required for office equipment, and Landlord shall have no liability for loss or damage suffered by Tenant or others occupying the Premises in connection therewith.

e. **Interruption of Services.** Landlord's obligation to provide utilities and services for the Premises are subject to the Rules and Regulations of the Building, applicable Legal Requirements (including the rules or actions of the public utility company furnishing the utility or service), and shutdowns for maintenance and repairs, for security purposes, or due to strikes, lockouts, labor disputes, fire or other casualty, acts of God, or other causes beyond the control of Landlord. In the event of an interruption in, or failure or inability to provide any service or utility for the Premises for any reason, such interruption, failure or inability shall not constitute an eviction of Tenant, constructive or otherwise, or impose upon Landlord any liability whatsoever, including, but not limited to, liability for consequential damages or loss of business by Tenant, or entitle Tenant to any abatement or offset of Monthly Rent, Additional Rent or any other amounts due from Tenant under this Lease. Tenant hereby waives the provisions of any applicable existing or future Legal Requirement permitting the termination of this Lease due to such interruption, failure or inability. Notwithstanding the foregoing, if services and/or utilities are interrupted that materially prevent Tenant from being able to conduct normal business operations for a period of greater than five (5) Business Days (unless such interruption is as a result of a casualty, in which case Paragraph 26 of this Lease shall apply), Tenant, as its sole and exclusive remedy hereunder, shall receive an abatement of Monthly Rent and Additional Rent beginning with the 6th Business Day of interruption until the services and/or utilities are restored, based upon the pro rata portion of the Premises which is rendered unfit for occupancy for the permitted use and actually not used by Tenant as a result of such interruption, except to the extent such interruption is caused by Tenant, its employees, agents, contractors, invitees or licensees.

Except in the case of an emergency, the Landlord will use commercially reasonable efforts to give Tenant at least five (5) Business Days prior notice (which may be given via e-mail to Tenant's designated office representative) if Landlord intends to interrupt any services required to be furnished by the Landlord.

f. **Governmental Controls.** In the event any governmental authority having jurisdiction over the Project or the Building promulgates or revises any Legal Requirement or building, fire or other code or imposes mandatory or voluntary controls or guidelines on Landlord or the Project or the Building relating to the use or conservation of energy or utilities or the reduction of automobile or other emissions (collectively, " ***Controls*** ") or in the event Landlord is required or elects to make alterations to the Project or the Building in order to comply with such mandatory or voluntary Controls, Landlord may, in its sole discretion, comply with such Controls or make such alterations to the Project or the Building related thereto provided that in so doing Landlord shall use commercially reasonable efforts to minimize disruption to Tenant's business operations in the Premises and, if such compliance is voluntary, such alterations shall not adversely affect Tenant's use of the Premises or rights set forth in this Lease. Such compliance and the making of such alterations shall not constitute an eviction of Tenant, constructive or otherwise, or impose upon Landlord any liability whatsoever (except as provided in Paragraph 17(e) above), including, but not limited to, liability for consequential damages or loss of business by Tenant. Without limitation of any provision of Paragraph 8(b) above (entitled " ***Compliance with Law*** "), Tenant shall, upon Landlord's written request, deliver to Landlord information that is readily available to Tenant relating to the Premises that is necessary for the Building to earn and maintain performance certifications (including, without limitation, ENERGY STAR and LEED certification), which information shall be in sufficient detail for the Building to comply with the applicable certification criteria and/or requirements, including, without limitation, those applicable to data centers and to any other particular use that is subject to special certification criteria and/or requirements. To the extent any

such information is confidential, upon Tenant's written request, Landlord shall execute a commercially reasonable confidentiality agreement prior to Tenant's provision thereof.

g. **Access.** Tenant shall have access to the Real Property, Building and Premises 24-hours per day, seven days per week, 365 days per year, subject to access procedures required by Landlord, the Building Rules and Regulations and other limitations set forth in this Lease.

18. **Personal Property and Other Taxes.** Tenant shall pay before delinquency, any and all taxes, fees, charges or other governmental impositions levied or assessed against Landlord or Tenant (a) upon Tenant's equipment, furniture, fixtures, improvements and other personal property (including carpeting installed by Tenant) located in the Premises, (b) by virtue of any Alterations made by Tenant to the Premises, and (c) upon this transaction or any document to which Tenant is a party creating or transferring an interest or an estate in the Premises. If any such fee, charge or other governmental imposition is paid by Landlord, Tenant shall reimburse Landlord for Landlord's payment within ten (10) after written demand therefor.

19. **Rules and Regulations.** Tenant shall comply with the rules and regulations set forth on **Exhibit B** attached hereto, as such rules and regulations may be reasonably modified or amended by Landlord from time to time (the " ***Rules and Regulations*** "). Landlord shall not be responsible to Tenant for the nonperformance or noncompliance by any other tenant or occupant of the Building of or with any of the Rules and Regulations provided that Landlord shall use reasonable efforts to enforce the Rules and Regulations against the other tenants in the Building. In the event of any conflict between the Rules and Regulations and the balance of this Lease, the balance of this Lease shall control.

20. **Surrender; Holding Over.**

a. Surrender. Upon the expiration or other termination of this Lease, Tenant shall surrender the Premises to Landlord vacant and broom-clean, with all improvements and Alterations (except as provided below) in their original condition, except for reasonable wear and tear, damage from casualty or condemnation and any changes resulting from approved Alterations; provided, however, that prior to the expiration or termination of this Lease Tenant shall remove from the Premises any Alterations that Tenant is required by Landlord to remove under the provisions of this Lease and all of Tenant's personal property (including, without limitation, all voice and data cabling) and trade fixtures. If such removal is not completed at the expiration or other termination of this Lease, Landlord may remove the same at Tenant's reasonable expense. Any damage to the Premises or the Building caused by such removal by Tenant shall be repaired promptly by Tenant (including the patching or repairing of ceilings and walls) or, if Tenant fails to do so, Landlord may do so at Tenant's reasonable expense. The removal of Alterations from the Premises shall be governed by Paragraph 9 above. Tenant's obligations under this paragraph shall survive the expiration or other termination of this Lease. Upon expiration or termination of this Lease or of Tenant's possession, Tenant shall surrender all keys to the Premises or any other part of the Building and shall make known to Landlord the combination of locks on all safes, cabinets and vaults that may be located in the Premises.

b. **Holding Over.** If Tenant remains in possession of the Premises after the expiration or earlier termination of this Lease with the express written consent of Landlord, Tenant's occupancy shall be a month-to-month tenancy at a rent agreed upon by Landlord and Tenant, but in no event less than one hundred twenty-five percent (125%) of the Monthly Rent and one hundred percent (100%) of Additional Rent payable under this Lease during the last full month prior to the date of the expiration of this Lease for the first one (1) month of any such holdover, and one hundred fifty percent (150%) of the Monthly Rent and one hundred percent (100%) of the Additional Rent Payable under this Lease during the last full month prior to the date of the expiration of this Lease for any holdover thereafter. Except as provided in the preceding sentence, the month-to-month tenancy shall be on the terms and conditions of this Lease, except that any renewal options, expansion options, rights of first refusal, rights of first negotiation or any other rights or options pertaining to additional space in the Building contained in this Lease shall be deemed to have terminated and shall be inapplicable thereto. Landlord's acceptance of rent after such holding over with Landlord's written consent shall not result in any other tenancy or in a renewal of the original term of this Lease. If Tenant remains in possession of the Premises after the expiration or earlier termination of this Lease without Landlord's consent, Tenant's continued possession shall be on the basis of a tenancy at sufferance and Tenant shall pay as Monthly Rent during the holdover period an amount equal to one hundred fifty percent (150%) of the Monthly Rent and Additional Rent payable under this Lease for the last full month prior to the date of such expiration or termination for the first thirty (30) days of holdover and thereafter two hundred percent (200%) of the Monthly Rent and Additional Rent payable under this Lease for the last full month prior to the date of such expiration or termination.

c. **Indemnification.** Tenant shall indemnify, defend and hold Landlord harmless from and against all Claims incurred by or asserted against Landlord and arising directly or indirectly from Tenant's failure to timely surrender the Premises, including but not limited to (i) any rent payable by

or any loss, cost, or damages, including lost profits, claimed by any prospective tenant of the Premises or any portion thereof, and (ii) Landlord's damages as a result of such prospective tenant rescinding or refusing to enter into the prospective lease of the Premises or any portion thereof by reason of such failure to timely surrender the Premises.

21. **Subordination and Attornment.** This Lease is expressly made subject and subordinate to any mortgage, deed of trust, ground lease, underlying lease or like encumbrance affecting any part of the Real Property or any interest of Landlord therein which is now existing or hereafter executed or recorded, any present or future modification, amendment or supplement to any of the foregoing, and to any advances made thereunder (any of the foregoing being a " ***Superior Interest*** ") without the necessity of any further documentation evidencing such subordination. Notwithstanding the foregoing, Tenant shall, within ten (10) Business Days after Tenant's receipt of Landlord's written request, execute and deliver to Landlord a document evidencing the subordination of this Lease to a particular Superior Interest. Tenant hereby irrevocably appoints Landlord as Tenant's attorney-in-fact to execute and deliver any such instrument in the name of Tenant if Tenant fails to do so within such time and such failure continues for five (5) Business Days after receipt of a second request from Landlord to execute and delivery any such instrument. If the interest of Landlord in the Real Property or the Building is transferred to any person (" ***Purchaser*** ") pursuant to or in lieu of foreclosure or other proceedings for enforcement of any Superior Interest, Tenant shall immediately attorn to the Purchaser, and this Lease shall continue in full force and effect as a direct lease between the Purchaser and Tenant on the terms and conditions set forth herein, provided that Purchaser acquires and accepts the Real Property or the Building subject to this Lease. Upon Purchaser's request, including any such request made by reason of the termination of this Lease as a result of such foreclosure or other proceedings, Tenant shall enter in to a new lease with Purchaser on the terms and conditions of this Lease applicable to the remainder of the term hereof. Notwithstanding the subordination of this Lease to Superior Interests as set forth above, the holder of any Superior Interest may at any time (including as part of foreclosure or other proceedings for enforcement of such Superior Interest), upon written notice to Tenant, elect to have this Lease be prior and superior to such Superior Interest. Landlord will use commercially reasonable efforts, at Tenant's cost for the reasonable and actual costs therefor, to obtain a Subordination, Non-Disturbance and Attornment Agreement for the benefit of Tenant from Landlord's current lender and any future lender on such lender's standard form. Notwithstanding the foregoing, if at any time during the Lease term Tenant leases and occupies ten percent (10%) or more of the Building, Landlord agrees that it shall be a condition to Tenant's obligation to subordinate this Lease to any Superior Interest that does not exist as of the date of this Lease that such future holder provide, at Tenant's cost, a Subordination, Non-Disturbance and Attornment Agreement for the benefit of Tenant on such lender's standard form.

22. **Financing Condition.** If any lender or ground lessor that intends to acquire an interest in, or holds a mortgage, ground lease or deed of trust encumbering any portion of the Project should require either the execution by Tenant of an agreement requiring Tenant to send such lender written notice of any default by Landlord under this Lease and giving such lender the right to cure such default until such lender has completed foreclosure, and preventing Tenant from terminating this Lease (to the extent such termination right would otherwise be available) unless such default remains uncured after foreclosure has been completed, and/or any modification of the agreements, covenants, conditions or provisions of this Lease, then Tenant agrees that it shall, within ten (10) days after Landlord's written request, execute and deliver such agreement and modify this Lease as required by such lender or ground lessor; provided, however, that no such modification shall affect the length of the term or increase the rent payable by Tenant under Paragraphs 5 and 7. Tenant acknowledges and agrees that its failure to timely execute any such agreement or modification required by such lender or ground lessor may cause Landlord serious financial damage by causing the failure of a financing transaction and giving Landlord all of its rights and remedies under Paragraph 25 below, including its right to damages caused by the loss of such financing, provided that such failure by Tenant continues for five (5) days after a second written notice the stating the following in bold, capital letters on the first page of the notice: **"MUST BE RESPONDED TO BY LANDLORD WITHIN FIVE (5) DAYS OR TENANT MAY BE SUBJECT TO SERIOUS DAMAGES."**

23. **Entry by Landlord.** Landlord may, at any and all reasonable times, and except in the event of an emergency or to deliver regularly-scheduled janitorial or other similar services, with 24 hours' prior notice to Tenant (which may be given orally or via e-mail to Tenant's designated representative) enter the Premises to (a) inspect the same and to determine whether Tenant is in compliance with its obligations hereunder, (b) supply janitorial and any other service Landlord is required to provide hereunder, (c) show the Premises to prospective lenders, purchasers or tenants (provided that so long as no Event of Default is continuing, Landlord will not show the Premises to prospective Tenants other than during the last twelve (12) months of the term of this Lease unless Tenant reasonably consents to the same), (d) post notices of nonresponsibility, and (e) alter, improve or repair the Premises or any other portion of the Project. In connection with any such alteration, improvement or repair, Landlord may erect in the Premises or elsewhere in the Project scaffolding and other structures reasonably required for the work to be performed. Subject to Paragraph 17.e, in no event shall such entry or work entitle Tenant to an abatement of rent, constitute an eviction of Tenant, constructive or otherwise, or impose upon

Landlord any liability whatsoever, including but not limited to liability for consequential damages or loss of business or profits by Tenant. Landlord shall use good faith efforts to cause all such work to be done in such a manner as to cause as little interference to Tenant as reasonably possible without incurring additional, material expense. Landlord shall at all times retain a key with which to unlock all of the doors in the Premises, except Tenant's vaults and safes. If an emergency necessitates immediate access to the Premises, Landlord may use whatever force is necessary to enter the Premises and any such entry to the Premises shall not constitute a forcible or unlawful entry into the Premises, a detainer of the Premises, or an eviction of Tenant from the Premises, or any portion thereof.

24. **Insolvency or Bankruptcy.** The occurrence of any of the following shall constitute an Event of Default under Paragraph 25 below:

a. Tenant ceases doing business as a going concern, makes an assignment for the benefit of creditors, is adjudicated an insolvent, files a petition (or files an answer admitting the material allegations of such petition) seeking for Tenant any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar arrangement under any state or federal bankruptcy or other law, or Tenant consents to or acquiesces in the appointment, pursuant to any state or federal bankruptcy or other law, of a trustee, receiver or liquidator for the Premises, for Tenant or for all or any substantial part of Tenant's assets; or

b. Tenant fails within sixty (60) days after the commencement of any proceedings against Tenant seeking reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any state or federal bankruptcy or other Legal Requirement, to have such proceedings dismissed, or Tenant fails, within sixty (60) days after an appointment pursuant to any state or federal bankruptcy or other Legal Requirement without Tenant's consent or acquiescence, of any trustee, receiver or liquidator for the Premises, for Tenant or for all or any substantial part of Tenant's assets, to have such appointment vacated; or

c. Tenant is unable, or admits in writing its inability, to pay its debts as they mature; or

d. Tenant gives notice to any governmental body of its insolvency or pending insolvency, or of its suspension or pending suspension of operations.

In no event shall this Lease be assigned or assignable by reason of any voluntary or involuntary bankruptcy, insolvency or reorganization proceedings, nor shall any rights or privileges hereunder be an asset of Tenant, the trustee, debtor-in-possession, or the debtor's estate in any bankruptcy, insolvency or reorganization proceedings.

25. **Default and Remedies.**

a. **Events of Default.** The occurrence of any of the following shall constitute an " ***Event of Default*** " by Tenant:

1. Tenant fails to pay when due Monthly Rent, Additional Rent or any other rent due hereunder; provided, however, that with respect to the first two (2) such failures in any calendar year, such failure shall not constitute an Event of Default hereunder unless such failure shall continue for five (5) Business Days after written notice to Tenant.

2. Intentionally omitted; or

3. Tenant fails to deliver any estoppel certificate pursuant to Paragraph 29 below, subordination agreement pursuant to Paragraph 21 above, or document required pursuant to Paragraph 22 above, within the applicable period set forth therein and such failure continues beyond two (2) additional Business Days after receipt of additional written notice to Tenant stating in bold all capital letters SECOND AND FINAL NOTICE BEFORE EVENT OF DEFAULT; or

4. Tenant violates the bankruptcy and insolvency provisions of Paragraph 24 above; or

5. Tenant makes or has made or furnishes or has furnished any warranty, representation or statement to Landlord in connection with this Lease, or any other agreement made by Tenant for the benefit of Landlord, which is or was false or misleading in any material respect when made or furnished; or

6. Tenant assigns this Lease or subleases any portion of the Premises in violation of Paragraph 13 above and fails to cure within five (5) Business Days following written notice thereof; or

7. [Intentionally omitted]; or

8. A default by Tenant occurs under any other lease between Tenant and Landlord within the Project, and Tenant fails to cure such default within the applicable period set forth therein; or

9. Tenant fails to comply with any other provision of this Lease in the manner and within the time required, and such failure shall continue for thirty (30) days after written notice to Tenant (or, if the failure cannot reasonably be cured within such period, such additional time, not to exceed an additional thirty (30) days, provided that Tenant commences action within such thirty (30)-day period and proceeds diligently thereafter to cure such failure).

b. **Remedies.** Upon the occurrence of an Event of Default Landlord shall have the following remedies, which shall not be exclusive but shall be cumulative and shall be in addition to any other remedies now or hereafter allowed by law:

1. Landlord may terminate Tenant's right to possession of the Premises at any time by written notice to Tenant. Tenant expressly acknowledges that in the absence of such written notice from Landlord, no other act of Landlord, including, but not limited to, its re- entry into the Premises, its efforts to re-let the Premises, its re-letting of the Premises for Tenant's account, its storage of Tenant's personal property and trade fixtures, its acceptance of keys to the Premises from Tenant, its appointment of a receiver, or its exercise of any other rights and remedies under this Paragraph 25 or otherwise at law, shall constitute an acceptance of Tenant's surrender of the Premises or constitute a termination of this Lease or of Tenant's right to possession of the Premises.

In the alternative, Landlord may, by written notice to Tenant, terminate this Lease. If Landlord elects to terminate the Lease, the term of this Lease shall end, and all right, title and interest of Tenant hereunder shall expire, on the date stated in such notice.

2. Upon Landlord's termination in writing of Tenant's right of possession of the Premises or Landlord's termination in writing of this Lease, Landlord shall be entitled to recover damages from Tenant as provided under this Lease, pursuant to applicable law or any other applicable existing or future Legal Requirement providing for recovery of damages for such breach, including but not limited to the following:

(i) The reasonable cost of recovering the Premises; plus

(ii) The reasonable cost of removing Tenant's Alterations, trade fixtures and improvements; plus

(iii) All unpaid rent due or earned hereunder prior to the date of termination, less the proceeds of any reletting or any rental received from subtenants prior to the date of termination applied as provided in Paragraph 25.b.2. below, together with interest at the Interest Rate, on such sums from the date such rent is due and payable until the date of the award of damages; plus

(iv) The amount by which the rent which would be payable by Tenant hereunder, including Additional Rent under Paragraph 7 above, as reasonably estimated by Landlord, from the date of termination until the date of the award of damages, exceeds the amount of such rental loss as Tenant proves could have been reasonably avoided, together with interest at the Interest Rate on such sums from the date such rent is due and payable until the date of the award of damages; plus

(v) The amount by which the rent which would be payable by Tenant hereunder, including Additional Rent under Paragraph 7 above, as reasonably estimated by Landlord, for the remainder of the then term, after the date of the award of damages exceeds the amount such rental loss as Tenant proves could have been reasonably avoided, discounted at the rate of the Wall Street Journal prime rate at the time of the award plus one percent (1%); plus

(vi) Such other amounts in addition to or in lieu of the foregoing as may be permitted from time to time by applicable law, including without limitation any other amount necessary to compensate Landlord for all the detriment proximately caused by Tenant's failure to perform its obligations under this Lease or which in the ordinary course of things would be likely to result therefrom.

3. After the occurrence of an Event of Default, Landlord may enter the Premises without terminating this Lease and sublet all or any part of the Premises for Tenant's account to any person, for such term (which may be a period beyond the remaining term of this Lease), at such rents and on such other terms and conditions as Landlord deems advisable. In the event of any such subletting, rents received by Landlord from such subletting shall be applied (i) first, to the payment of the costs of

maintaining, preserving, altering and preparing the Premises for subletting, the other costs of subletting, including but not limited to brokers' commissions, attorneys' fees and expenses of removal of Tenant's personal property, trade fixtures and Alterations; (ii) second, to the payment of rent then due and payable hereunder; (iii) third, to the payment of future rent as the same may become due and payable hereunder; (iv) fourth, the balance, if any, shall be paid to Tenant upon (but not before) expiration of the term of this Lease. If the rents received by Landlord from such subletting, after application as provided above, are insufficient in any month to pay the rent due and payable hereunder for such month, Tenant shall pay such deficiency to Landlord monthly upon demand. Notwithstanding any such subletting for Tenant's account without termination, Landlord may at any time thereafter, by written notice to Tenant, elect to terminate this Lease by virtue of a previous Event of Default.

During the continuance of an Event of Default, for so long as Landlord does not terminate Tenant's right to possession of the Premises and subject to Paragraph 13, entitled Assignment and Subletting, and the options granted to Landlord thereunder, Landlord shall not unreasonably withhold, condition or delay its consent to an assignment or sublease of Tenant's interest in the Premises or in this Lease.

4. During the continuance of an Event of Default, Landlord may enter the Premises without terminating this Lease and remove all Tenant's personal property, Alterations and trade fixtures from the Premises and store them at Tenant's risk and expense if it may do so without disturbing the peace. If Landlord removes such property from the Premises and stores it at Tenant's risk and expense, and if Tenant fails to pay the cost of such removal and storage after written demand therefor and/or to pay any rent then due, then after the property has been stored for a period of thirty (30) days or more Landlord may sell such property at public or private sale, in the manner and at such times and places as Landlord deems commercially reasonable following reasonable notice to Tenant of the time and place of such sale. The proceeds of any such sale shall be applied first to the payment of the expenses for removal and storage of the property, the preparation for and the conducting of such sale, and for attorneys' fees and other legal expenses incurred by Landlord in connection therewith, and the balance shall be applied as provided in Paragraph 25(b)(2) above.

Tenant hereby waives all claims for damages that may be caused by Landlord's reentering and taking possession of the Premises or removing and storing Tenant's personal property pursuant to this Paragraph 25, and Tenant shall indemnify, defend and hold Landlord harmless from and against any and all Claims resulting from any such act except to the extent caused by the gross negligence or willful misconduct of Landlord or its employees, agent or contractors. No reentry by Landlord shall constitute or be construed as a forcible entry by Landlord so long as Landlord complies with all applicable laws in connection with such reentry.

5. Landlord may require Tenant to remove any and all Alterations from the Premises that Tenant is required by Landlord to remove under the provisions of this Lease or, if Tenant fails to do so within ten (10) days after Landlord's written request, Landlord may do so at Tenant's expense.

6. Landlord may cure the Event of Default at Tenant's expense, it being understood that such performance shall not waive or cure the subject Event of Default. If Landlord pays any sum or incurs any expense in curing the Event of Default, Tenant shall reimburse Landlord upon demand for the amount of such payment or expense with interest at the Interest Rate from the date the sum is paid or the expense is incurred until Landlord is reimbursed by Tenant. Any amount due Landlord under this subsection shall constitute additional rent hereunder.

7. Except as provided in Paragraph 23(b) and (c) and Paragraph 8(c), in no other event shall Tenant be liable for indirect, consequential, special, or punitive damages, and except as provided above, Landlord expressly waives any right or claim to or for indirect, consequential, special, or punitive damages from Tenant.

c. **Waiver of Redemption.** Tenant hereby waives, for itself and all persons claiming by and under Tenant, all rights and privileges which it might have under any present or future Legal Requirement to redeem the Premises or to continue this Lease after being dispossessed or ejected from the Premises.

d. **Landlord's Lien.** Intentionally omitted.

e. **Landlord's Duty to Mitigate.** Notwithstanding anything to the contrary herein contained, if there shall occur an Event of Default and Landlord shall seek to exercise its remedies, Landlord shall use commercially reasonable efforts to mitigate any damages caused by such Event of Default, such efforts to include using commercially reasonable efforts to re-let the Premises.

---

26. **Damage or Destruction.**

If all or any part of the Premises or any material portion of the balance of the Real Property is damaged by fire or other casualty or becomes inaccessible, Landlord shall, as soon as reasonably practicable thereafter but no later than sixty (60) days of the date of the damage, give Tenant written notice of Landlord's reasonable estimate of the time required from the date of the damage to repair the damage (the " ***Damage Estimate*** "). Landlord shall use commercially reasonable efforts to diligently proceed to repair the damage and this Lease shall remain in full force and effect if (i) the damage is caused by a peril covered by Landlord's insurance (or required under this Lease to be covered by Landlord's insurance), the proceeds from such insurance are sufficient (without considering any deductible amounts) to repair the damage (an " ***Insured Casualty*** "), and the Damage Estimate is one hundred eighty (180) days or less, or (ii) the damage is caused by a peril not covered (and not required to be covered) by Landlord's insurance or the proceeds from Landlord's insurance are not sufficient (without considering any deductible amounts) to repair the damage (an " ***Uninsured Casualty*** "), and the Damage Estimate is ninety (90) days or less. If the Damage Estimate is more than one hundred eighty (180) days, in the case of an Insured Casualty, or more than ninety (90) days, in the case of an Uninsured Casualty, Landlord, at its option exercised by written notice to Tenant as soon as reasonably practicable but no later than sixty (60) days of the date of the damage, shall either (a) diligently proceed to repair the damage, in which event this Lease shall continue in full force and effect, or (b) terminate this Lease as of the date specified by Landlord in the notice, which date shall be not less than thirty (30) days nor more than sixty (60) days after the date such notice is given, and this Lease shall terminate on the date specified in the notice. If neither Landlord nor Tenant elect to termination this Lease in accordance with this Paragraph, then Landlord shall repair the Premises to its condition immediately prior to the fire or other casualty, subject to the provisions contained in the following sentences. Notwithstanding the foregoing, Landlord shall not be obligated to repair or replace any of Tenant's movable furniture, equipment, trade fixtures, and other personal property, nor any above Building standard Alterations installed in the Premises by or at the request of Tenant (including those installed by Landlord at Tenant's

request, whether prior or subsequent to the commencement of the Lease term), and no damage to any of the foregoing shall entitle Tenant to any abatement, and Tenant shall, at Tenant's sole cost and expense, repair and replace such items. All such repair and replacement of above Building standard Alterations by Tenant shall be constructed in accordance with Paragraph 9 above regarding Alterations.

If the damage is to the Premises or if the Building is so damaged that access to or use and occupancy of the Premises is materially impaired, the Damage Estimate is more than one hundred eighty (180) days, and Landlord does not give notice terminating this Lease within the sixty (60) day period provided above, then Tenant may give notice to Landlord, within fifteen (15) calendar days after the expiration of the aforesaid sixty (60) day period, terminating this Lease as of the date specified in Tenant's termination notice, which date shall not be before the date of such notice or more than thirty (30) days after the date of Tenant's termination notice. If this Lease was not terminated pursuant to the above and Landlord is required by the terms hereof to repair the subject damages, then, if Landlord does not complete the repairs by the date that is one hundred eighty (180) days following the date of the damage (such period to be extended by any delays directly caused by Tenant or its agents), then Tenant may terminate this Lease by providing Landlord with written notice of such termination at any time prior to the date the repairs are completed, which written notice shall specify the termination date, which termination date shall not be before the date of such notice nor more than thirty (30) days after the date of such notice.

Notwithstanding anything to contrary contained in this Paragraph 26, if the initial Damage Estimate is more than ninety (90) days, and the date on which Landlord reasonably anticipates the repairs of such damage will be completed is during the last twelve (12) months of the Lease term, Landlord and Tenant shall each have the option to terminate this Lease by giving written notice to the other, in the case of Landlord together with the Damage Estimate, or, in the case of Tenant, within thirty (30) days of Tenant's receipt of the Damage Estimate, and this Lease shall terminate as of the date specified by the party in its termination notice, which date shall not be before the date of such notice or more than thirty (30) days after the date of such notice.

Notwithstanding anything to the contrary in this Paragraph 26, if damage which would otherwise lead to a right to terminate this Lease results from the willful misconduct of Landlord or Tenant, the party from whose misconduct such damage results shall have no right to terminate this Lease. In the event all or a portion of the Premises is not tenantable and Tenant is not able to occupy all or a portion of the Premises, Monthly Rent and Additional Rent for the portion of the Premises Tenant does not occupy shall abate during such time period.

27. **Eminent Domain.**

a. If all or any part of the Premises is taken by any public or quasi-public authority under the power of eminent domain, or any agreement in lieu thereof (a " ***taking*** "), this Lease shall terminate as to the portion of the Premises taken effective as of the date of taking. If only a portion of the

Premises is taken, Landlord or Tenant may terminate this Lease as to the remainder of the Premises upon written notice to the other party within ninety (90) days after the taking; provided, however, that Tenant's right to terminate this Lease is conditioned upon the remaining portion of the Premises being of such size or configuration that such remaining portion of the Premises is unusable or uneconomical for Tenant's business. Landlord shall be entitled to all compensation, damages, income, rent awards and interest thereon whatsoever which may be paid or made in connection with any taking and Tenant shall have no claim against Landlord or any governmental authority for the value of any unexpired term of this Lease or of any of the improvements or Alterations in the Premises; provided, however, that the foregoing shall not prohibit Tenant from prosecuting a separate claim against the taking authority for an amount separately designated for Tenant's relocation expenses or the interruption of or damage to Tenant's business or as compensation for Tenant's personal property, trade fixtures, Alterations or other improvements paid for by Tenant so long as any award to Tenant will not reduce the award to Landlord.

In the event of a partial taking of the Premises which does not result in a termination of this Lease, the Monthly Rent and Additional Rent under Paragraphs 5 and 7 hereunder shall be equitably reduced. If all or any material part of the Real Property other than the Premises is taken, Landlord may terminate this Lease upon written notice to Tenant given within ninety (90) days after the date of taking.

b. Notwithstanding the foregoing, if all or any portion of the Premises is taken for a period of time of one (1) year or less ending prior to the end of the term of this Lease, this Lease shall remain in full force and effect and Tenant shall continue to pay all rent and to perform all of its obligations under this Lease; provided, however, that Tenant shall be entitled to all compensation, damages, income, rent awards and interest thereon that is paid or made in connection with such temporary taking of the Premises (or portion thereof), except that any such compensation in excess of the rent or other amounts payable to Landlord hereunder shall be promptly paid over to Landlord as received. Landlord and Tenant each hereby waive the provisions of any applicable existing or future Legal Requirement providing for, or allowing either party to petition the courts of the state in which the Real Property is located for, a termination of this Lease upon a partial taking of the Premises and/or the Building.

28. **Landlord's Liability; Sale of Building.** The term " ***Landlord,*** " as used in this Lease, shall mean only the owner or owners of the Real Property at the time in question. Notwithstanding any other provision of this Lease, the liability of Landlord for its obligations under this Lease is limited solely to Landlord's interest in the Real Property as the same may from time to time be encumbered, and no personal liability shall at any time be asserted or enforceable against any other assets of Landlord or against the constituent shareholders, partners, members, or other owners of Landlord, or the directors, officers, employees and agents of Landlord or such constituent shareholder, partner, member or other owner, on account of any of Landlord's obligations or actions under this Lease. In addition, in the event of any conveyance of title to the Real Property, then the grantor or transferor shall be relieved of all liability with respect to Landlord's obligations to be performed under this Lease after the date of such conveyance. In no event shall Landlord be deemed to be in default under this Lease unless Landlord fails to perform its obligations under this Lease, Tenant delivers to Landlord written notice specifying the nature of Landlord's alleged default, and Landlord fails to cure such default within thirty (30) days following receipt of such notice (or, if the default cannot reasonably be cured within such period, to commence action within such thirty (30)-day period and proceed diligently thereafter to cure such default. Upon any conveyance of title to the Real Property, the grantee or transferee shall be deemed to have assumed Landlord's obligations to be performed under this Lease from and after the date of such conveyance, subject to the limitations on liability set forth above in this Paragraph 28. If Tenant provides Landlord with any security for Tenant's performance of its obligations hereunder, Landlord shall transfer such security to the grantee or transferee of Landlord's interest in the Real Property, and upon such transfer Landlord shall be released from any further responsibility or liability for such security. Any claim, defense or other right of Tenant arising in connection with this Lease shall be barred unless Tenant files an action or interposes a defense based thereon within one hundred eighty (180) days after the date of the alleged event on which Tenant is basing its claim, defense or right. Notwithstanding any other provision of this Lease, but not in limitation of the provisions of Paragraph 14(a) above, Landlord shall not be liable for any consequential damages or interruption (except as provided in Paragraph 17(e) or loss of business, income or profits, or claims of constructive eviction, nor shall Landlord be liable for loss of or damage to artwork, currency, jewelry, bullion, unique or valuable documents, securities or other valuables, or for other property not in the nature of ordinary fixtures, furnishings and equipment used in general administrative and executive office activities and functions (all of the foregoing, collectively, " ***Special Claims*** "). Wherever in this Lease Tenant (a) releases Landlord from any claim or liability, (b) waives or limits any right of Tenant to assert any claim against Landlord or to seek recourse against any property of Landlord or (c) agrees to indemnify Landlord against any matters, the relevant release, waiver, limitation or indemnity shall run in favor of and apply to Landlord, the constituent shareholders, partners, members, or other owners of Landlord, and the directors, officers, employees and agents of Landlord and each such constituent shareholder, partner, member or other owner.

29. **Estoppel Certificates.** At any time and from time to time, upon not less than ten (10) Business Days' prior notice from Landlord, Tenant shall execute, acknowledge and deliver to Landlord a statement certifying the commencement date of this Lease, stating that this Lease is unmodified and in full force and effect (or if there have been modifications, that this Lease is in full force and effect as modified and the date and nature of each such modification), that Landlord is not in default under this Lease (or, if Landlord is in default, specifying the nature of such default), that Tenant is not in default under this Lease (or, if Tenant is in default, specifying the nature of such default), the current amounts of and the dates to which the Monthly Rent and Additional Rent has been paid, and setting forth such other matters as may be reasonably requested by Landlord. Any such statement may be conclusively relied upon by a prospective purchaser of the Real Property or by a lender obtaining a lien on the Real Property as security. If Tenant fails to deliver such statement within the time required hereunder, such failure shall be conclusive upon Tenant that (i) this Lease is in full force and effect, without modification except as may be represented by Landlord, (ii) there are no uncured defaults in Landlord's performance of its obligations hereunder, (iii) not more than one month's installment of Monthly Rent has been paid in advance, and (iv) any other statements of fact included by Landlord in such statement are correct. Tenant acknowledges and agrees that its failure to execute such certificate may cause Landlord serious financial damage by causing the failure of a sale or financing transaction and giving Landlord all of its rights and remedies under Paragraph 25 above, including its right to damages caused by the loss of such sale or financing.

30. **Right of Landlord to Perform.** If Tenant fails to make any payment required hereunder (other than Monthly Rent and Additional Rent) or fails to perform any other of its obligations hereunder, Landlord may, but shall not be obliged to, and without waiving any default of Tenant or releasing Tenant from any obligations to Landlord hereunder, make any such payment or perform any other such obligation on Tenant's behalf. Tenant shall pay to Landlord, within ten (10) Business Days of Landlord's written demand therefor, one hundred ten percent (110%) of all reasonable and actual sums so paid by Landlord and all necessary incidental costs incurred by Landlord in connection with the performance by Landlord of an obligation of Tenant. If such sum is not paid by Tenant within the required ten (10) Business Day period, interest shall accrue on such sum at the Interest Rate from the end of such ten (10) Business Day period until paid by Tenant. Further, Tenant's failure to make such payment within such ten (10) Business Day period shall entitle Landlord to the same rights and remedies provided Landlord in the event of non-payment of rent.

31. **Late Charge; Late Payments.** Tenant acknowledges that late payment of any installment of Monthly Rent or Additional Rent or any other amount required under this Lease will cause Landlord to incur costs not contemplated by this Lease and that the exact amount of such costs would be extremely difficult and impracticable to fix. Such costs include, without limitation, processing and accounting charges, late charges that may be imposed on Landlord by the terms of any encumbrance or note secured by the Real Property and the loss of the use of the delinquent funds. Therefore, if any installment of Monthly Rent or Additional Rent or any other amount due from Tenant is not received when due, Tenant shall pay to Landlord on demand, on account of the delinquent payment, an additional sum equal to the greater of (i) five percent (5%) of the overdue amount, or (ii) One Hundred Dollars ($100.00), which additional sum represents a fair and reasonable estimate of the costs that Landlord will incur by reason of late payment by Tenant. Acceptance of any late charge shall not constitute a waiver of Tenant's default with respect to the overdue amount, nor prevent Landlord from exercising its right to collect interest as provided above, rent, or any other damages, or from exercising any of the other rights and remedies available to Landlord. Notwithstanding the foregoing, on the first occasion during any calendar year of the Term, Landlord shall give Tenant notice of such late payment and Tenant shall have a period of five (5) days thereafter in which to make such payment before any late charge or interest (pursuant to Paragraph 5(c)) is assessed, but, after the first such occasion during any calendar year of the Term, such late charge shall be due and payable without such prior notice.

Following the occurrence of three instances in any twelve (12) month period of Tenant's payment of Monthly Rent and/or Additional Rent more than ten (10) days late, Landlord may, upon written notice to Tenant and without prejudice to any other rights or remedies available to Landlord, (i) require that all remaining installments of Monthly Rent and monthly payments of Additional Rent be payable one month in advance and/or (ii) require that Tenant increase the amount of the Security Deposit (if any) by an amount equal to one (1) month's Rent.

32. **Attorneys' Fees; Waiver of Jury Trial.** In the event of any action or proceeding between Landlord and Tenant (including an action or proceeding between Landlord and the trustee or debtor in possession while Tenant is a debtor in a proceeding under any bankruptcy law) to enforce any provision of this Lease, the losing party shall pay to the prevailing party all costs and expenses, including, without limitation, reasonable attorneys' fees and expenses, incurred in such action and in any appeal in connection therewith by such prevailing party. The " ***prevailing party*** " will be determined by the court before whom the action was brought based upon an assessment of which party's major arguments or positions taken in the suit or proceeding could fairly be said to have prevailed over the other party's major arguments or positions on major disputed issues in the court's decision. Notwithstanding the foregoing,

however, Landlord shall be deemed the prevailing party in any unlawful detainer or other action or proceeding instituted by Landlord based upon any default or alleged default of Tenant hereunder if (i) judgment is entered in favor of Landlord, or (ii) prior to trial or judgment Tenant pays all or any portion of the rent claimed by Landlord, vacates the Premises, or otherwise cures the default claimed by Landlord.

If Landlord becomes involved in any litigation or dispute, threatened or actual, by or against anyone not a party to this Lease, but arising by reason of or related to any act or omission of Tenant or any Tenant Party, Tenant agrees to pay Landlord's reasonable attorneys' fees and other costs incurred in connection with the litigation or dispute, regardless of whether a lawsuit is actually filed.

IF ANY ACTION OR PROCEEDING BETWEEN LANDLORD AND TENANT TO ENFORCE THE PROVISIONS OF THIS LEASE (INCLUDING AN ACTION OR PROCEEDING BETWEEN LANDLORD AND THE TRUSTEE OR DEBTOR IN POSSESSION WHILE TENANT IS A DEBTOR IN A PROCEEDING UNDER ANY BANKRUPTCY LAW) PROCEEDS TO TRIAL, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, LANDLORD AND TENANT HEREBY WAIVE THEIR RESPECTIVE RIGHTS TO A JURY IN SUCH TRIAL. Landlord and Tenant agree that this paragraph constitutes a written consent to waiver of trial by jury and each party does hereby authorize and empower the other party to file this paragraph and/or this Lease, as required, with the clerk or judge of any court of competent jurisdiction as a written consent to waiver of jury trial.

33. **Waiver.** No provisions of this Lease shall be deemed waived by either Landlord or Tenant unless such waiver is in a writing signed by the waiving party. The waiver by Landlord or Tenant of any breach of any provision of this Lease shall not be deemed a waiver of any subsequent breach of the same or any other provision of this Lease. No delay or omission in the exercise of any right or remedy of Landlord upon any default by Tenant shall impair such right or remedy or be construed as a waiver. Landlord's acceptance of any payments of rent due under this Lease shall not be deemed a waiver of any default by Tenant under this Lease (including Tenant's recurrent failure to timely pay rent) other than Tenant's nonpayment of the accepted sums, and no endorsement or statement on any check or accompanying any check or payment shall be deemed an accord and satisfaction. Landlord's consent to or approval of any act by Tenant requiring Landlord's consent or approval shall not be deemed to waive or render unnecessary Landlord's consent to or approval of any subsequent act by Tenant.

34. **Notices.** All notices and demands which may or are required to be given by either party to the other hereunder shall be in writing. All notices and demands by Landlord to Tenant shall be delivered personally or sent by United States mail, postage prepaid, or by any reputable overnight or same-day courier, addressed to Tenant at the Premises, or to such other place as Tenant may from time to time designate by notice to Landlord hereunder; provided, however, that prior to the Commencement Date, notices to Tenant shall be addressed to Tenant at 8201 Corporate Drive, Suite 900, Landover, MD 20785. A copy of all notices to Tenant shall also be provided to Cooley LLP, 11951 Freedom Drive, Suite 1500, Reston, Virginia 20190. All notices and demands by Tenant to Landlord shall be sent by United States mail, postage prepaid, or by any reputable overnight or same- day courier, addressed to Landlord in care of Shorenstein Properties LLC, 235 Montgomery Street, 16th floor, San Francisco, California 94104, Attn: Corporate Secretary, with a copy to the management office of the Building, or to such other place as Landlord may from time to time designate by notice to Tenant hereunder. Notices delivered personally or sent same-day courier will be effective immediately upon delivery to the addressee at the designated address; notices sent by overnight courier will be effective one (1) Business Day after acceptance by the service for delivery; notices sent by mail will be effective two (2) Business Days after mailing. In the event that either Landlord or Tenant requests multiple notices hereunder, Landlord or Tenant, as applicable will be bound by such notice from the earlier of the effective times of the multiple notices.

35. **Notice of Surrender.** Intentionally Omitted.

36. **Defined Terms and Marginal Headings.** When required by the context of this Lease, the singular includes the plural. If more than one person or entity signs this Lease as Tenant, the obligations hereunder imposed upon Tenant shall be joint and several, and the act of, written notice to or from, refund to, or signature of, any Tenant signatory to this Lease (including, without limitation, modifications of this Lease made by fewer than all such Tenant signatories) shall bind every other Tenant signatory as though every other Tenant signatory had so acted, or received or given the written notice or refund, or signed. The headings and titles to the paragraphs of this Lease are for convenience only and are not to be used to interpret or construe this Lease. Wherever the term "including" or "includes" is used in this Lease it shall be construed as if followed by the phrase "without limitation." Whenever in this Lease a right, option or privilege of Tenant is conditioned upon Tenant (or any affiliate thereof or successor thereto) being in "occupancy" of a specified portion or percentage of the Premises, for such purposes " ***occupancy*** " shall mean Tenant's (or such affiliate's or successor's) physical occupancy of the space for the conduct of such party's business, and shall not include any space that is subject to a sublease or that has been vacated by such party, other than a vacation of the space as reasonably necessary in

connection with the performance of approved Alterations or by reason of a fire or other casualty or a taking. The language in all parts of this Lease shall in all cases be construed as a whole and in accordance with its fair meaning and not construed for or against any party simply because one party was the drafter thereof.

37. **Time and Applicable Law.** Time is of the essence of this Lease and of each and all of its provisions, except as to the conditions relating to the delivery of possession of the Premises to Tenant, but Landlord shall use commercially reasonable efforts to cause the Premises to be delivered on the dates set forth herein. This Lease shall be governed by and construed in accordance with the laws of the State of Colorado, and the venue of any action or proceeding under this Lease shall be the City and County of Denver, Colorado.

38. **Successors** . Subject to the provisions of Paragraphs 13 and 28 above, the covenants and conditions hereof shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, personal representatives, successors, executors, administrators and assigns.

39. **Entire Agreement; Modifications.** This Lease (including any exhibit, rider or attachment hereto) constitutes the entire agreement between Landlord and Tenant with respect to Tenant's lease of the Premises. No provision of this Lease may be amended or otherwise modified except by an agreement in writing signed by the parties hereto. Neither Landlord nor Landlord's agents have made any representations or warranties with respect to the Premises, the Building, the Real Property or this Lease except as expressly set forth herein, including without limitation any representations or warranties as to the suitability or fitness of the Premises for the conduct of Tenant's business or for any other purpose, nor has Landlord or its agents agreed to undertake any alterations or construct any improvements to the Premises except those, if any, expressly provided in this Lease, and no rights, easements or licenses shall be acquired by Tenant by implication or otherwise unless expressly set forth herein. Neither this Lease nor any memorandum hereof shall be recorded by Tenant.

40. **Light and Air.** Tenant agrees that no diminution of light, air or view by any structure which may hereafter be erected (whether or not by Landlord) shall entitle Tenant to any reduction of rent hereunder, result in any liability of Landlord to Tenant, or in any other way affect this Lease.

41. **Name of Building.** Tenant shall not use the name of the Building for any purpose other than as the address of the business conducted by Tenant in the Premises without the written consent of Landlord. Landlord reserves the right to change the name of the Building at any time in its sole discretion by written notice to Tenant and Landlord shall not be liable to Tenant for any loss, cost or expense on account of any such change of name.

42. **Severability.** If any provision of this Lease or the application thereof to any person or circumstance shall be invalid or unenforceable to any extent, the remainder of this Lease and the application of such provisions to other persons or circumstances shall not be affected thereby and shall be enforced to the greatest extent permitted by law.

43. **Authority.** If Tenant is a corporation, partnership, trust, association or other entity, Tenant and each person executing this Lease on behalf of Tenant, hereby covenants and warrants that (a) Tenant is duly incorporated or otherwise established or formed and validly existing under the laws of its state of incorporation, establishment or formation, (b) Tenant has and is duly qualified to do business in the state in which the Real Property is located, (c) Tenant has full corporate, partnership, trust, association or other appropriate power and authority to enter into this Lease and to perform all Tenant's obligations hereunder, and (d) each person (and all of the persons if more than one signs) signing this Lease on behalf of Tenant is duly and validly authorized to do so.

44. **No Offer.** Submission of this instrument for examination and signature by Tenant does not constitute an offer to lease or a reservation of or option for lease, and is not effective as a lease or otherwise until execution and delivery by both Landlord and Tenant.

45. **Real Estate Brokers.** Tenant represents and warrants that it has negotiated this Lease directly with the real estate broker(s) identified in Paragraph 2 and has not authorized or employed, or acted by implication to authorize or to employ, any other real estate broker or salesman to act for Tenant in connection with this Lease. Landlord and Tenant shall each indemnify, defend and hold the other harmless from and against any and all Claims by any real estate broker or salesman other than the real estate broker(s) identified in Paragraph 2 for a commission, finder's fee or other compensation as a result of the parties entering into this Lease. Landlord shall pay the broker(s) identified in Paragraph 2 a market commission in accordance with the terms of a separate agreement.

46. **Consents and Approvals.** Wherever the consent, approval, judgment or determination of Landlord is required or permitted under this Lease, Landlord may exercise its sole but reasonable discretion in granting or withholding such consent or approval or in making such judgment or

determination unless the provision providing for such consent, approval, judgment or determination specifies the standards under which Landlord may withhold its consent. Whenever Tenant requests Landlord to take any action or give any consent or approval, Landlord must first notify Tenant that it anticipates costs shall be incurred related to such request and if Tenant directs Landlord to nevertheless proceed, Tenant shall reimburse Landlord for all of Landlord's reasonable costs and actual incurred in reviewing the proposed action or consent (whether or not Landlord consents to any such proposed action), including without limitation reasonable attorneys' or consultants' fees and expenses, within ten (10) days after Landlord's delivery to Tenant of a statement of such costs. If it is determined that Landlord failed to give its consent or approval where it was required to do so under this Lease, Tenant's sole remedy will be an order of specific performance or mandatory injunction of the Landlord's agreement to give its consent or approval. The review and/or approval by Landlord of any item shall not impose upon Landlord any liability for accuracy or sufficiency of any such item or the quality or suitability of such item for its intended use. Any such review or approval is for the sole purpose of protecting Landlord's interest in the Real Property, and neither Tenant nor any Tenant Party nor any person or entity claiming by, through or under Tenant, nor any other third party shall have any rights hereunder by virtue of such review and/or approval by Landlord.

47. **Reserved Rights.** Landlord retains and shall have the rights set forth below, exercisable without notice and without liability to Tenant for damage or injury to property, person or business and without effecting an eviction, constructive or actual, or disturbance of Tenant's use or possession of the Premises or giving rise to any claim for rent abatement:

a. To grant to anyone the exclusive right to conduct any business or render any service in or to the Building and its tenants, provided that such exclusive right shall not operate to require Tenant to use or patronize such business or service or to exclude Tenant from its use of the Premises expressly permitted herein.

b. To reduce, increase, enclose or otherwise change at any time and from time to time the size, number, location, lay-out and nature of the common areas and facilities and other tenancies and premises in the Project and to create additional rentable areas through use or enclosure of common areas.

c. If portions of the Project or property adjacent to the Project (collectively, the " ***Other Improvements*** ") are owned by an entity other than Landlord, Landlord, at its option, in its sole and absolute discretion, may enter into an agreement with the owner or owners of any or all of the Other Improvements to provide (i) for reciprocal rights of access and/or use of the Project and the Other Improvements, (ii) for the common management, operation, maintenance, improvement and/or repair of all or any portion of the Project and the Other Improvements, (iii) for the allocation of a portion of the Operating Expenses to the Other Improvements and the operating expenses and taxes for the Other Improvements to the Project, and (iv) for the use or improvement of the Other Improvements and/or the Project in connection with the improvement, construction, and/or excavation of the Other Improvements and/or the Project. Nothing contained herein shall be deemed or construed to limit or otherwise affect Landlord's right to convey all or any portion of the Project or any other of Landlord's rights described in this Lease; provided, however, in the exercise of its rights pursuant to this Section 47, in no event shall Tenant's ability to utilize the Premises for the Permitted Use hereunder be impaired, and if any such agreements conflict with an express obligation of Landlord under this Lease or an express right of Tenant under this Lease, the provisions of this Lease shall control.

48. **Financial Statements.** At any time during the Lease term, within ten (10) Business Days after Landlord's request, Tenant shall furnish to Landlord copies of Tenant's most recent audited financial statements. Upon Tenant's written request, Landlord will enter into a commercially reasonable confidentiality agreement with respect to any such financial statements. Notwithstanding the foregoing, if Tenant is a company which is publicly traded on a nationally-recognized securities exchange and has publicly available financial information, Tenant will be deemed to have complied with the provisions of this Paragraph 48 if it notifies Tenant of where such information can be located.

49. **Substitution of Premises.** Intentionally omitted.

50. **Nondisclosure of Lease Terms.** Tenant agrees that the terms of this Lease are confidential and constitute proprietary information of Landlord, and that disclosure of the terms hereof could adversely affect the ability of Landlord to negotiate with other tenants. Tenant hereby agrees that Tenant and its partners, officers, directors, employees, agents, real estate brokers and sales persons and attorneys shall not disclose the terms of this Lease to any other person without Landlord's prior written consent, except to any to consultants, counsel or brokers of Tenant or to accountants of Tenant in connection with the preparation of Tenant's financial statements or tax returns, to an assignee of this Lease or sublessee of the Premises, or to an entity or person to whom disclosure is reasonably required for the operation of the Tenant or required by applicable law or in connection with any action brought to enforce this Lease.

51. **Signage Rights.**

a. **Prohibitions.** Except to the extent expressly provided in this Paragraph 51, Tenant shall not (i) place or install (or permit to be placed or installed by any Tenant Party) any signs, advertisements, logos, identifying materials, pictures or names of any type on the roof, exterior areas or common areas of the Building or the Project or in any area of the Building, Premises or Project which is visible from the exterior of the Building or outside of the Premises or (ii) place or install (or permit to be placed or installed by any Tenant Party) in or about any portion of the Premises any window covering (even if behind Building standard window coverings) or any other material visible from outside of the Premises or from the exterior of the Building.

b. **Interior Signage and Directories.**

1. Subject to compliance with applicable Legal Requirements, the Building signage criteria and Landlord's prior written consent, (x) in the case where Tenant occupies an entire floor in the Building, Tenant may place in any portion of such floor which is not visible from the exterior of the Building such identification signage as Tenant shall desire and (y) in the case where Tenant occupies less than an entire floor in the Building, directional signage on the floor and signage at the entrance to the Premises shall be in accordance with the Building's signage program with all signage to be at Tenant's cost. All signage described in this Paragraph 52 shall be treated as Tenant's personal property under the provisions of Paragraph 20(a) above with respect to Tenant's obligations at the expiration or early termination of this Lease.

2. Tenant shall be entitled to Tenant's proportionate share of the tenant directory board or monitor located in the main lobby of the Building. To the extent Landlord incurs a cost in adding Tenant's names onto the directory, Tenant shall reimburse Landlord for such costs.

c. **Monument Signage.** During the Lease term, but only so long as (i) Tenant occupies at least seventy-five percent (75%) of the Premises then leased hereunder and (ii) Tenant is not in default under this Lease beyond the expiration of any applicable notice and cure period, Landlord agrees to install, display and maintain, at Tenant's sole expense, signage identifying Tenant's name (the " ***Monument Signage*** ") on the monument sign located on Stout Street. The signage rights granted herein are personal to the specific party originally identified as the " ***Tenant*** " under the Lease and may not be transferred, shared or assigned in whole or in part to any assignee, subtenant or other tenant in the Building; provided, however that in the event that Tenant assigns this Lease to an Affiliate pursuant to Paragraph 13(h) hereof, Landlord agrees it will not unreasonably withhold its consent to transfer of the Monument Signage rights to such Affiliate. The location, size, material, construction and design of the Monument Signage shall be subject to the prior written approval of Landlord, in its sole discretion and compliance with applicable laws. Upon the Expiration Date or earlier termination of Tenant's right to maintain the Monument Signage, Tenant shall pay Landlord all expenses incurred in connection with the removal and disposition of the Monument Signage and the repair of any damage caused by the Monument Signage or its removal.

52. **Parking.**

a. Commencing upon the Commencement Date and continuing throughout the term of this Lease, Landlord shall provide Tenant, on an unassigned, non-exclusive and unlabeled basis, twenty-five (25) parking spaces in the parking facilities which Landlord provides for the use of tenants and occupants of the Building (currently located at either 1847 California Street and/or 1820 California Street, Denver, CO) (the " ***Parking Facilities*** "). In addition, commencing upon the 26th Floor Premises Commencement Date and continuing throughout the term of this Lease, Landlord shall provide Tenant, on an unassigned, non-exclusive and unlabeled basis, twenty-five (25) additional parking spaces in the Parking Facilities. If the Premises are expanded pursuant to Paragraphs 58 or 59 below or otherwise, Tenant shall be entitled to further parking at the same ratio as provided for the 28th Floor Premises and 26th Floor Premises, which is one (1) space per 1,000 rentable square feet of leased space. Tenant shall pay Landlord or the operator of the Parking Facilities, as directed by Landlord, for the parking spaces leased by Tenant hereunder at the rate or charge in effect from time to time for parking in the Parking Facilities, which rates, as of the date of this Lease, are $175.00 per space per month for unreserved parking and $240.00 per space per month for reserved parking, subject to adjustment from time to time by Landlord. Additional parking may be available on a month-to-month basis, subject to availability, at the same rate structure set forth above for parking in the Parking Facilities. Any month-to-month parking provided hereunder may be terminated by Landlord at any time upon thirty (30) days' notice. Landlord reserves the right to relocate such parking spaces to other areas of the Parking Facilities from time to time in Landlord's reasonable discretion.

b. Tenant shall provide Landlord with advance written notice of the names of each individual to whom Tenant from time to time distributes Tenant's parking rights hereunder, and shall cause each such individual to execute the standard waiver form for garage users used in the Parking

Facilities. If the parking charge for a particular parking space is not paid when due, and such failure continues for ten (10) days after written notice to Tenant of such failure, then in addition to any other remedies afforded Landlord under this Lease by reason of nonpayment of rent, Landlord may terminate Tenant's rights under this Paragraph 52 as to such parking space. Further, if at any time Tenant releases to Landlord any parking space provided for in this Paragraph 52, then Tenant's right under this Paragraph 52 to use such released parking space shall automatically forever terminate.

c. The parking spaces to be made available to Tenant hereunder may contain a reasonable mix of spaces for compact cars. Landlord shall take reasonable actions to ensure the availability of the parking spaces leased by Tenant, but Landlord does not guarantee the availability of those spaces at all times against the actions of other tenants of the Project and users of the Parking Facilities. Without limiting the foregoing, in no event shall this Lease be void or voidable, nor shall Landlord be liable to Tenant for any loss or damage, nor shall there be any abatement of rent hereunder (other than the parking charge paid hereunder for any parking space no longer made available), by reason of any reduction in Tenant's parking rights hereunder by reason of strikes, lock-outs, labor disputes, shortages of material or labor, fire, flood or other casualty, acts of God or any other cause beyond the reasonable control of Landlord. Access to the parking spaces to be made available to Tenant shall, at Landlord's option, be by card, pass, bumper sticker, decal or other appropriate identification issued by Landlord, and Tenant's right to use the Parking facilities is conditioned on Tenant's abiding by and shall otherwise be subject to such reasonable rules and regulations as may be promulgated by Landlord or Landlord's designee from time to time for the Parking Facilities. Landlord shall have the right to modify, change, add to or delete the design, configuration, layout, size, ingress, egress, areas, method of operation, and other characteristics of or relating to the Parking Facilities at any time, and/or to provide for nonuse, partial use or restricted use of portions thereof.

d. The parking rights provided to Tenant pursuant to this Paragraph 52 shall be applicable to an Affiliate occupying all or a portion of the Premises or an approved subtenant or assignee.

e. Tenant's visitors may park in the visitor parking areas on a "first-come, first-served" basis, at the rates in effect from time to time for visitor parking. Tenant may, at Tenant's cost, participate in the parking validation program in effect in the Building from time to time.

f. If all or any portion of the Parking Facilities shall be damaged or rendered unusable by fire or other casualty or any taking pursuant to eminent domain proceeding (or deed in lieu thereof), and as a result thereof Landlord or the operator of the Parking Facilities is unable to make available to Tenant the parking provided for herein, then the number of parking spaces shall be proportionately reduced so that the number of parking spaces which Tenant may use in the Parking Facilities after the casualty or condemnation in question shall bear the same ratio to the total number of cars which can be parked in the Parking Facility at such time as the number of cars Tenant had the right to park in the Parking Facility prior to such casualty or condemnation bore to the aggregate number of cars which could be parked therein at that time. The parking charges for any parking spaces rendered unusable shall be abated during the time such spaces cannot be utilized.

53. **Transportation Management.** Tenant shall fully comply with all present or future programs intended to manage parking, transportation or traffic in and around the Project, and in connection therewith, Tenant shall take responsible action for the transportation planning and management of all employees located at the Premises by working directly with Landlord, any governmental transportation management organization or any other transportation-related committees or entities.

54. **Renovation of the Project and Other Improvements.** Tenant acknowledges that portions of the Building, Project and/or the Other Improvements (as defined in Paragraph 47(d) above) may be under construction following Tenant's occupancy of the Premises, and that such construction may result in levels of noise, dust, obstruction of access, etc. which are in excess of that present in a fully constructed project. It is agreed and acknowledged that no representations respecting the condition of the Premises, the Building or the Project have been made by Landlord to Tenant except as specifically set forth in this Lease. Tenant acknowledges and agrees that Landlord may alter, remodel, improve and/or renovate (collectively, the " ***Renovation Work*** ") the Building, Premises, and/or the Project, and in connection with any Renovation Work, Landlord may, among other things, erect scaffolding or other necessary structures in the Building or the Project, restrict access to portions of the Project, including portions of the common areas, or perform work in the Building and/or the Project provided Landlord shall use commercially reasonable efforts to minimize disruption to Tenant's business operations in the Premises during any such Renovation Work. Tenant hereby agrees that such Renovation Work and Landlord's actions in connection with such Renovation Work shall in no way constitute a constructive eviction of Tenant nor entitle Tenant to any abatement of rent. Landlord shall have no responsibility or liability to Tenant for any injury to or interference with Tenant's business arising from any such Renovation Work, and Tenant shall not be entitled to any damages from Landlord for loss of use of the Premises, in whole or in part, or for loss of Tenant's personal property or improvements, resulting from

the Renovation Work or Landlord's actions in connection therewith or for any inconvenience occasioned by such Renovation Work or Landlord's actions in connection therewith. Notwithstanding anything herein to the contrary, Landlord shall use reasonable efforts to minimize any disruption to Tenant's access to the Premises or to its normal business operations and any interruption in services shall be subject to the terms and conditions of Section 17(e).

55. **Quiet Enjoyment.** If, and so long as, Tenant pays the rent and keeps, observes and performs each and every term, covenant and condition of this Lease on the part or on behalf of Tenant to be kept, observed and performed, Tenant shall peaceably and quietly enjoy the Premises throughout the term without hindrance by Landlord or any person lawfully claiming through or under Landlord, subject to the provisions of this Lease.

56. **No Discrimination.** Tenant covenants by and for itself and its successors, heirs, personal representatives and assigns and all persons claiming under or through Tenant that there shall be no discrimination against or segregation of any person or of a group of persons on account of race, color, religion, creed, sex or national origin in the leasing, subleasing, transferring, use, occupancy, tenure or enjoyment of the Premises nor shall Tenant or any person claiming under or through Tenant establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, sublessees, subtenants or assignees of the Premises.

57. **Renewal Option.**

a. **Option to Renew.** Tenant shall have the option to renew this Lease for one (1) additional term of five (5) years, commencing upon the expiration of the initial term of the Lease. The renewal option must be exercised, if at all, by written notice given by Tenant to Landlord not later than twelve (12) months prior to expiration of the initial term of this Lease. Notwithstanding the foregoing, at Landlord's election, this renewal option shall be null and void and Tenant shall have no right to renew this Lease if (i) as of the date immediately preceding the commencement of the renewal period the Tenant originally named herein (or an Affiliate under a transfer permitted by Paragraph 13(h) hereof) is not in occupancy of at least seventy-five percent (75%) of the Premises then demised hereunder or does not intend to continue to occupy the Premises (but intends to assign this Lease or sublet the space in whole or in part other than to an Affiliate), or (ii) on the date Tenant exercises the option or on the date immediately preceding the commencement date of the renewal period Tenant is in default beyond the expiration of any applicable notice and cure periods of any of its obligations under this Lease.

b. **Terms and Conditions.** If Tenant exercises the renewal option, then during the renewal period all of the terms and conditions set forth in this Lease as applicable to the Premises during the initial term shall apply during the renewal term, except that (i) Tenant shall have no further right to renew this Lease, (ii) Tenant shall take the Premises in their then "as-is" state and condition, and (iii) the Monthly Rent payable by Tenant for the Premises shall be the then-fair market rent for the Premises (including concessions) based upon the terms of this Lease, as renewed. Fair market rent shall include the periodic rental increases, if any, that would be included for space leased for the period of the renewal term. For purposes of this Paragraph 57, the term "fair market rent" shall mean the rental rate that would be applicable for a lease term commencing on the commencement date of the renewal term and that would be payable in any arm's length negotiations for the Premises in their then as-is condition, for the renewal term, which rental rate shall be established by reference to rental terms in leases actually executed for comparable space under primary lease (and not sublease), taking into consideration the location of the Building and such amenities as existing improvements, view, floor on which the Premises are situated and the like, situated in first class high-rise office buildings in the downtown Denver, Colorado central business district, in similar physical and economic condition as the Building, engaged in then-prevailing ordinary rental market practices with respect to tenant concessions (if any) (*e.g* . not offering extraordinary rental, promotional deals and other concessions to tenants in an effort to alleviate cash flow problems, difficulties in meeting loan obligations or other financial distress, or in response to a greater than average vacancy rate in a particular building) and taking into account then market concessions (including, but not limited to, any construction allowances and/or rent abatement) and brokerage fees. The fair market rent shall be mutually agreed upon by Landlord and Tenant in writing within the thirty (30) calendar day period commencing six (6) months prior to commencement of the renewal period. If Landlord and Tenant are unable to agree upon the fair market monthly rent within such thirty (30)-day period, then the fair market rent shall be established by appraisal in accordance with the procedures set forth in Paragraph 57(c) below.

c. **Appraisal.** Within fifteen (15) days after the expiration of the thirty (30)-day period for the mutual agreement of Landlord and Tenant as to the fair market rent, each party hereto, at its cost, shall engage a real estate broker to act on its behalf in determining the fair market rent. The brokers each shall have at least ten (10) years' experience with leases in first-class high-rise office buildings in the downtown Denver, Colorado central business district and shall submit to Landlord and Tenant in advance for Landlord's and Tenant's reasonable approval the appraisal methods to be used. If a party does not

appoint a broker within said fifteen (15)-day period but a broker is appointed by the other respective party, the single broker appointed shall be the sole broker and shall set the fair market rent. If the two brokers are appointed by the parties as stated in this paragraph, such brokers shall meet promptly and attempt to set the fair market rent. If such brokers are unable to agree within thirty (30) days after appointment of the second broker, the brokers shall select a third broker meeting the qualifications stated in this paragraph within ten (10) days after the last date the two brokers are given to set the fair market rent. Each of the parties hereto shall bear one-half (1/2) the cost of appointing the third broker and of the third broker's fee. The third broker shall be a person who has not previously acted in any capacity for either party.

The third broker shall conduct his own investigation of the fair market rent, and shall be instructed not to advise either party of his determination of the fair market rent except as follows: When the third broker has made his determination, he shall so advise Landlord and Tenant and shall establish a date, at least five (5) days after the giving of notice by the third broker to Landlord and Tenant, on which he shall disclose his determination of the fair market rent. Such meeting shall take place in the third broker's office unless otherwise agreed by the parties. After having initialed a paper on which his determination of fair market rent is set forth, the third broker shall place his determination of the fair market rent in a sealed envelope. Landlord's broker and Tenant's broker shall each set forth their determination of fair market rent on a paper, initial the same and place them in sealed envelopes. Each of the three envelopes shall be marked with the name of the party whose determination is inside the envelope.

In the presence of the third broker, the determination of the fair market rent by Landlord's broker and Tenant's broker shall be opened and examined. If the higher of the two determinations is 105% or less of the amount set forth in the lower determination, the average of the two determinations shall be the fair market rent, the envelope containing the determination of the fair market rent by the third broker shall be destroyed and the third broker shall be instructed not to disclose his determination. If either party's envelope is blank, or does not set forth a determination of fair market rent, the determination of the other party shall prevail and be treated as the fair market rent. If the higher of the two determinations is more than 105% of the amount of the lower determination, the envelope containing the third broker's determination shall be opened. If the value determined by the third broker is the average of the values proposed by Landlord's broker and Tenant's broker, the third broker's determination of fair market rent shall be the fair market rent. If such is not the case, fair market rent shall be the rent proposed by either Landlord's broker or Tenant's broker which is closest to the determination of fair market rent by the third broker.

d. **Delay in Determination of Monthly Rent.** If the fair market rent is not established prior to the commencement of the renewal period, then Tenant shall continue to pay as Monthly Rent and Additional Rent the sums in effect as of the last day of the initial term of the Lease and, as soon as the fair market rent is determined, Tenant shall immediately pay to Landlord any deficiency in the amount paid by Tenant during such period, or, if Tenant paid excess Monthly Rent during such period, Landlord shall credit such excess payments to the Monthly Rent amounts next due.

58. **Right of First Offer.**

a. **First Offer Right.** Subject to the provisions of this Paragraph 58, throughout the Lease term, (but not during the final thirty-six (36) months of the Lease term, unless the Lease term has been or may be further extended in writing, it being understood that exercise of the Right of First Offer during such thirty-six (36) month period shall, concurrent with Tenant's expansion into the First Offer Space, be deemed to automatically extend this Lease as set forth in Paragraph 57 above) (the " ***Right of First Offer Period*** "), Tenant shall have a continuing right of first offer to lease space within the low-rise elevator bank of the Building (exclusive of the first floor) (the " ***First Offer Space*** ") if the First Offer Space is "available for lease," as defined below, or will become available for lease within twelve (12) months after Landlord's receipt of Tenant's Right of First Offer Rental Notice (as defined below). The First Offer Space shall not be deemed "available for lease" if the tenant under an expiring lease of the First Offer Space desires to renew or extend its lease, whether pursuant to a renewal option or a new arrangement with Landlord, or if any tenant of the Building exercises an option or right of first offer to lease such space, which option or right of first offer existed prior to the date of this Lease.

b. Tenant's Right of First Offer Rental Notice. Tenant may, at any time during the Right of First Offer Period, but no more often than once every twelve (12) months, give Landlord notice of its desire to lease at least 10,000 RSF of the First Offer Space (the " ***Tenant's Right of First Offer Rental Notice*** "). After receipt of Tenant's Right of First Offer Rental Notice, Landlord shall give Tenant written notice (the " ***Landlord's First Offer Notice*** ") identifying any of the First Offer Space of at least 10,000 RSF which space is then available for lease or will become available for lease within twelve (12) months, which Landlord's First Offer Notice shall set forth the available space and the availability date (or estimated availability date) for such space, and identifying the increments in which Landlord would be willing to lease such available space, and shall include the proposed Monthly Rent, Additional Rent and other key terms at which Landlord is willing to lease such available space (such space, as identified in Landlord's First Offer Notice, being referred to herein as the " ***Then Available First Offer Space*** ").

Tenant expressly acknowledges and agrees that Landlord shall have no obligation to give Tenant any notice of availability of any First Offer Space unless Tenant shall have first given Landlord a Tenant's Right of First Offer Rental Notice. Moreover, Tenant shall not give a Tenant's Right of First Offer Rental Notice any more often than one (1) time in any twelve (12) month period.

c. **Exercise of First Offer Right.** If Landlord sends a Landlord's First Offer Notice to Tenant and Tenant desires to lease the Then Available First Offer Space (or such increments thereof that Landlord is willing to lease separately), Tenant shall so notify Landlord in writing (" ***Tenant's Exercise Notice*** ") within seven (7) Business Days after Landlord's delivery of Landlord's First Offer Notice. Tenant must lease the entire Then Available First Offer Space or such increment(s) thereof that Landlord is willing to lease separately, and may not otherwise lease only a portion thereof. For avoidance of doubt, if Tenant desires only 10,000 RSF of space, but the Then Available First Offer Space is being marketed in larger increments, such as full floors, Landlord shall have no obligation to divide the Then Available First Offer Space for Tenant. If Tenant does not deliver a Tenant's Exercise Notice within the required seven (7) Business Day period, then Tenant's right of first offer shall terminate and Landlord shall have the right to lease the Then Available First Offer Space to a third party on any terms Landlord desires and shall have no further obligation to offer the Then Available First Offer Space to Tenant, unless any of such space is available for lease at the time that Tenant provides Landlord with a subsequent Tenant's Right of First Offer Rental Notice as provided in this Paragraph.

d. **Terms and Conditions.** If Tenant timely exercises its right to lease the Then Available First Offer Space, Landlord and Tenant shall promptly enter into an amendment of this Lease adding the Then Available First Offer Space to the Premises on all the terms and conditions set forth in this Lease

as to the Premises originally demised hereunder, except that, if the commencement date for the Then Available First Offer Space is within the first twelve (12) months following the Commencement Date (the " ***Set Terms Period*** "), (i) the Monthly Rent for the Then Available First Offer Space shall be at the same rate per rentable square foot as the Premises, with escalations at the same times as Monthly Rent escalates for the 28th Floor Premises, (ii) Tenant shall receive rent abatement for the Then Available First Offer Space as provided for the 28th Floor Premises, which abatement shall be prorated based on the number of months left in the Lease term as of the commencement date of the Then-Available First Offer Space, (iii) Tenant shall receive an allowance for improvements in the Then Available First Offer Space in an amount equal to $50.00/RSF of the Then Available First Offer Space as of the Commencement Date of this Lease, which allowance shall be prorated based on the number of months left in the Lease term as of the commencement date for the Then-Available First Offer Space; (iv) the term of the lease to Tenant of the Then Available First Offer Space shall commence upon the date the Then Available First Offer Space is delivered to Tenant and shall continue coextensively with the remaining term hereof and any extension thereof, and (v) Tenant's Share for the Then Available First Offer Space shall be calculated by dividing the rentable square footage of the Then Available First Offer Space by the rentable square footage of the Building. If the commencement date for the Then Available First Offer Space is after the Set Terms Period, then the terms and conditions upon which the Then Available Offer Space shall be fair market rent and terms. If Tenant exercises the right of first offer granted herein, Landlord does not guarantee that the Then Available First Offer Space will be available on the stated availability date for the lease thereof, if the then existing occupants of the Then Available First Offer Space shall hold-over, or for any other reason beyond Landlord's reasonable control, but Landlord shall deliver the Then Available First Offer Space to Tenant as soon as commercially reasonably possible after the stated availability date. For purposes of this Paragraph 58(d), the term "fair market rent" shall have the meaning set forth in Paragraph 57(b) above with references therein to the " ***Premises*** " being deemed to refer to the Then Available First Offer Space and disregarding any provisions which by their nature pertain only to the renewal term. The fair market rent shall be mutually agreed upon by Landlord and Tenant in writing within thirty (30) days after Tenant validly exercises its right to lease the Then Available First Offer Space. If Landlord and Tenant are unable to agree upon the fair market monthly rent within such thirty (30)-day period, then the fair market rent shall be established by appraisal in accordance with Paragraph 57.c.

e. **Limitation on Tenant's Right of First Offer.** Notwithstanding the foregoing, if (i) on the date of exercise of the right of first offer, or the date immediately preceding the date the Lease term for any of the First Offer Space is to commence, there exists an outstanding breach of the Lease by Tenant (or, if the breach is subject to a notice and cure period which has not yet lapsed, Tenant fails to cure the breach on or before the last day of the subject cure period), or (ii) on the date immediately preceding the date the Lease term for the First Offer Space is to commence, Tenant named herein (or an Affiliate under a transfer permitted by Paragraph 13(h) hereof) (A) is not in occupancy of at least seventy five percent (75%) of the Premises then leased hereunder or (B) does not intend to continue to occupy the entire Premises then leased hereunder, together with the entire First Offer Space, then, at Landlord's option, the exercise of the right of first offer shall be null and void.

59. **Existing Sublease Protection; Limited Termination Right.**

a. **General Provisions Regarding Sublease; Sublandlord Termination Rights.** Tenant currently is leasing certain space in the Building commonly known as Suite 2300 and consisting of approximately 24,379 rentable square feet of space (the " ***Subleased Premises*** "), pursuant to that certain Sublease between Jacobs Engineering Group Inc. (" ***Sublandlord*** ") and Tenant dated August 24, 2015 (the " ***Sublease*** "). Under the terms of the Office Lease between Landlord and Sublandlord dated August 22, 2011 (as the same has been amended, the " ***Jacobs Lease*** "), Sublandlord has a right to either fully terminate or partially terminate (in full-floor increments) the Jacobs Lease as of January 31, 2019 (such right, the " ***Jacobs Lease Early Termination Right*** " and such early termination date, the " ***Jacobs Lease Early Termination Date*** "). The provisions of this Paragraph 59 shall apply only if (a) Sublandlord timely exercises the Jacob Lease Early Termination Right, and (b) in connection with the exercise of the same, Sublandlord elects to terminate the Jacobs Lease with respect to the floor on which the Subleased Premises are located (the " ***Paragraph 59 Conditions*** "). If the Paragraph 59 Conditions are not satisfied, Tenant shall have no rights, and Landlord shall have no obligations, under this Paragraph 59.

b. **Landlord's Notice if Sublandlord Exercises Jacobs Early Termination Right.** If Sublandlord exercises the Jacobs Lease Early Termination Right and the Paragraph 59 Conditions are met, then, within thirty (30) days following Landlord's receipt of Sublandlord's notice of its exercise of the Jacobs Lease Early Termination Right, Landlord will provide notice to Tenant which shall state either: (i) that Landlord will lease either the Subleased Premises or another full floor of the Building in the same elevator bank as the Subleased Premises (the " ***Alternate Premises*** ") to Tenant on a direct basis on the Direct Lease Terms (hereinafter defined) (" ***Affirmative Direct Lease Notice*** "); or (ii) that Landlord will be unable to lease either the Subleased Premises or any Alternate Premises to Tenant on a direct basis (" ***Negative Direct Lease Notice*** ").

c. **Entry into Direct Lease after Affirmative Direct Lease Notice.** If Landlord provides an Affirmative Direct Lease Notice to Tenant, then Landlord and Tenant will enter into a direct lease for either the Subleased Premises or Alternate Premises, as applicable on the following terms (the " ***Direct Lease Terms*** "): (i) the term for the Subleased Premises or Alternate Premises, as applicable, will commence on the day immediately following the Jacobs Lease Early Termination Date and shall run co-terminus with the term of this Lease, including any extensions or renewals; (ii) the Monthly Rent for the Subleased Premises or Alternate Premises, as applicable, will be at the same rate per rentable square foot as the 28th Floor Premises with escalations at the same time as the 28th Floor Premises; and (iii) all other terms and conditions of this Lease shall apply to the Subleased Premises or Alternate Premises, as applicable, except that (A) if the Subleased Premises are being leased, Tenant shall accept the Subleased Premises in their then current "as is" condition, and Landlord shall have no obligation to improve the same, and (B) if the Alternate Premises are being leased, Landlord will deliver the Alternate Premises to Tenant in substantially the same condition as the Subleased Premises are on such date of delivery, and Landlord shall otherwise have no obligation to improve the same beyond the condition of the Subleased Premises. Landlord will promptly prepare and submit to Tenant an amendment to this Lease outlining the lease of the Subleased Premises or Alternate Premises, as applicable, on the Direct Lease Terms, and Tenant shall execute such lease amendment within thirty (30) days after receipt of the same.

d. **Tenant's Limited Termination Right after Negative Direct Lease Notice.** If Landlord provides a Negative Direct Lease Notice to Tenant, then Tenant shall have the right to terminate this Lease with respect to the entire Premises (the " ***Limited Termination Right*** "), effective as of the last day of the sixty-fifth (65th) full calendar month following the 26th Floor Premises Commencement Date (the " ***Early Termination Date*** "), by providing Landlord written notice (the " ***Limited Termination Notice*** ") no later than fifteen (15) days after receipt of Landlord's Negative Direct Lease Notice. The termination of this Lease pursuant to this Paragraph 59(d) shall be conditioned upon Tenant delivering to Landlord, concurrently with its Limited Termination Notice, a termination fee equal to the following: (ii) a sum equal to the Monthly Rent and Additional Rent due for the Premises for the four (4) months following the Early Termination Date plus, (ii) the unamortized amount, as of the Early Termination Date, of the total of (A) Landlord's costs incurred in connection with the construction of the Tenant Improvements pursuant to Paragraph 4 above, plus (B) the leasing commissions for the Premises, free rent for the Premises, legal fees and other costs reasonably incurred by Landlord in connection with the execution of this Lease. The total of the amounts to be amortized under (A) and (B) above is referred to hereinafter as the " ***Amortization Amount.*** " For purposes of calculating the unamortized portion of the Amortization Amount, the amortization period shall be the period commencing on the Commencement Date of the Lease and ending on the originally scheduled Expiration Date of the initial Lease term, and the amortization shall be on a straight line basis at an annual interest rate of eight percent (8%). Once the Amortization Amount has been determined, upon Tenant's written request, Landlord shall confirm the total Amortization Amount to Tenant in writing. Notwithstanding anything to the contrary above, Tenant's right to terminate this Lease as provided above (y) is personal to the original Tenant named herein and (z) shall, at Landlord's option, be inapplicable if, at the time of delivery of Tenant's Limited Termination Notice, or on the Limited Early Termination Date, there exists an uncured Event of Default under the Lease or a breach of this Lease that subsequently matures into an event of Default. If Tenant

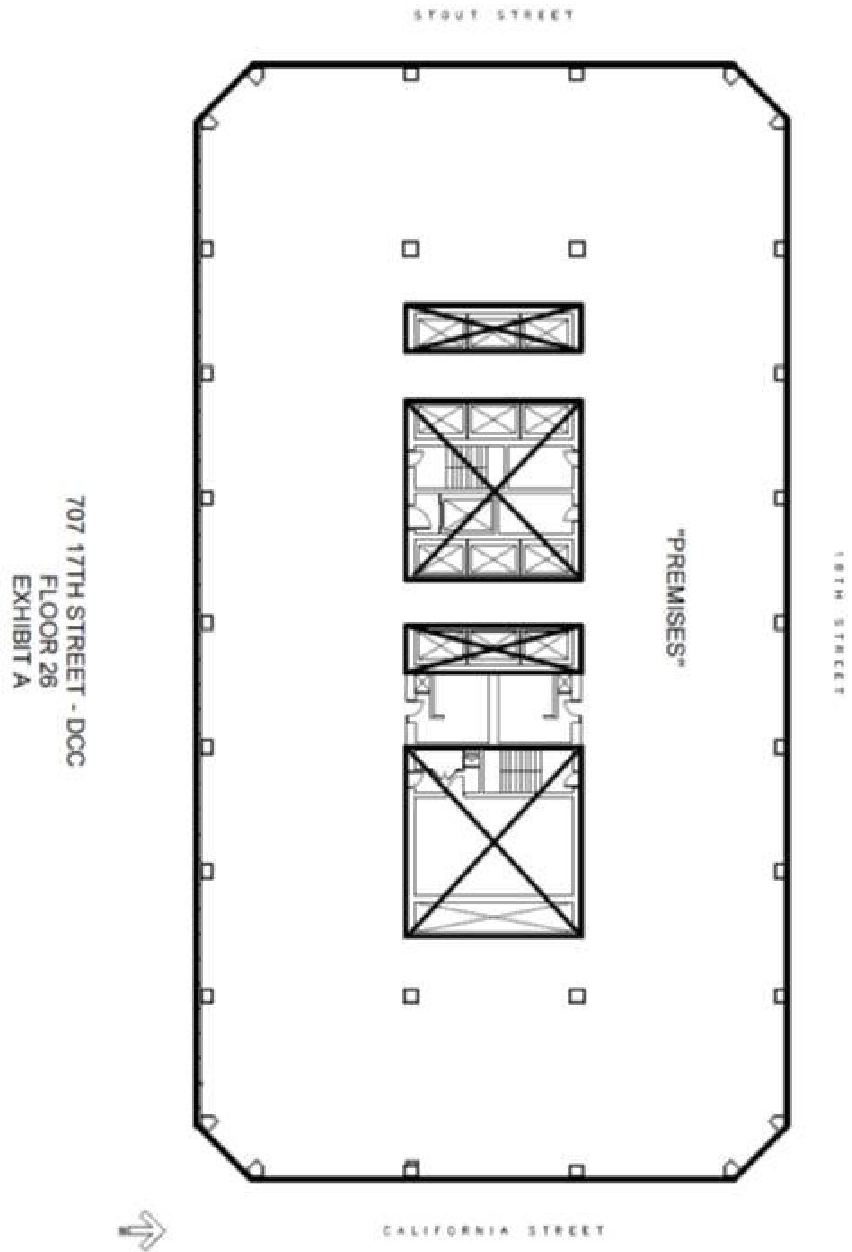
properly exercises its Limited Termination Right, but fails to vacate and surrender the 26th Floor Premises by the Early Termination Date, the provisions of Paragraph 20 above, regarding holding over without Landlord's consent, shall apply to such holdover. In no event shall Tenant's exercise of its Limited Termination Right under this Paragraph 59(d) release either party from their respective obligations arising under the Lease with respect to the Premises during the period prior to the Early Termination Date (or, as to Tenant's obligations, prior to the later of the Early Termination Date or the date Tenant actually vacates and surrenders the Premises to Landlord in the required condition) and such obligations shall survive the partial termination of the Lease. The provisions of this Paragraph 59(d) are intended to be self-operative, but upon Landlord's request, Tenant shall execute and deliver to Landlord an amendment confirming the termination hereunder and the relinquishment of the Premises as provided herein. Lease.

THIS LEASE IS EXECUTED by Landlord and Tenant as of the date set forth at the top of page 1 hereof.

Landlord:	**Tenant:**
SRI TEN DCC LLC, a Delaware limited liability company	**2U, INC., a Delaware corporation**
By: __________	By: __________
Name: __________	Name: __________
Title: __________	Title: __________

EXHIBIT A

OUTLINE OF PREMISES



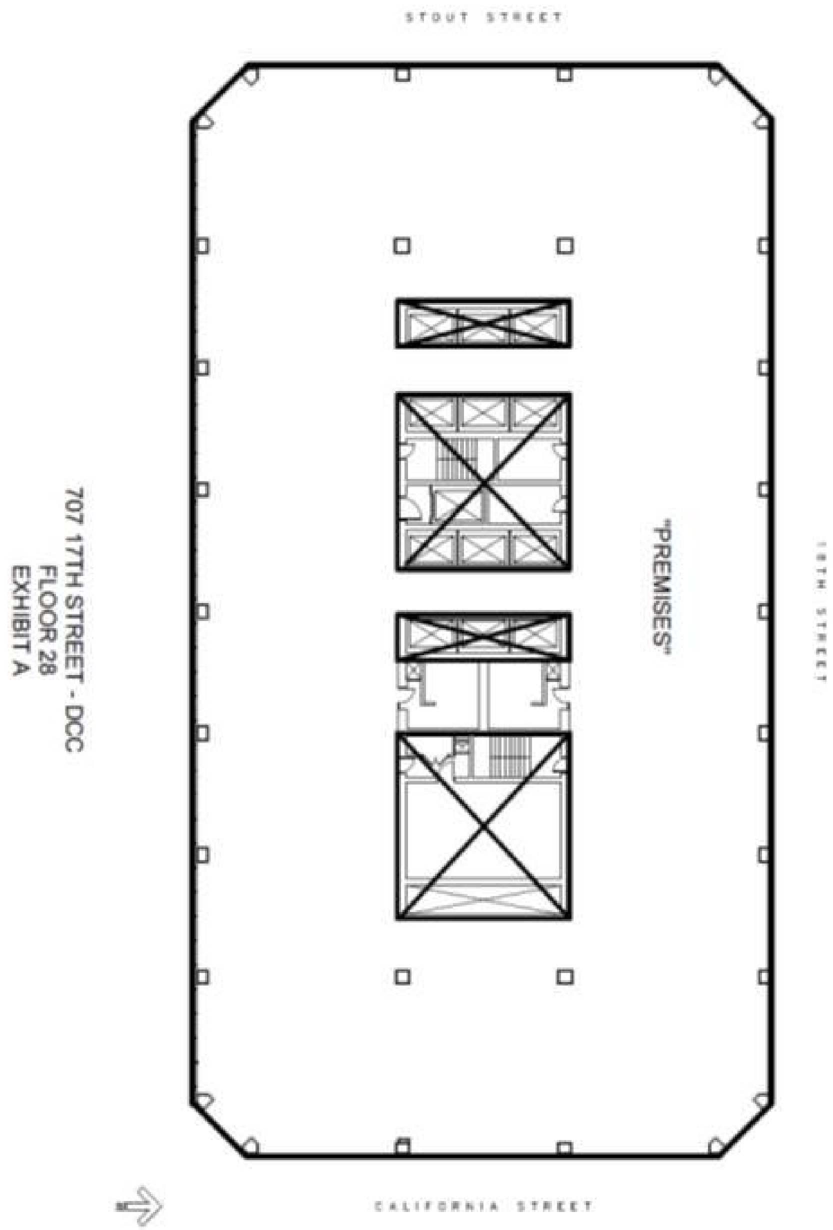

STOUT STREET
707 17TH STREET - DCC
FLOOR 28
EXHIBIT A
"PREMISES"
18TH STREET
CALIFORNIA STREET

EXHIBIT B

RULES AND REGULATIONS DENVER CITY CENTER

1. No sign, placard, picture, advertisement, name or notice shall be inscribed, displayed or printed or affixed on or to any part of the outside or inside of the Building or any part of the Premises visible from the exterior of the Premises without the prior written consent of Landlord, which may be withheld in Landlord's sole discretion. Landlord shall have the right to remove, at Tenant's expense and without notice to Tenant, any such sign, placard, picture, advertisement, name or notice that has not been approved by Landlord.

All approved signs or lettering on doors and walls shall be printed, painted, affixed or inscribed at the expense of Tenant by a person reasonably approved of by Landlord.

If Landlord notifies Tenant in writing that Landlord objects to any curtains, blinds, shades or screens attached to or hung in or used in connection with any window or door of the Premises, such use of such curtains, blinds, shades or screens shall be removed immediately by Tenant. No awning shall be permitted on any part of the Premises.

2. No ice, drinking water, towel, barbering or bootblacking, shoe shining or repair services, or other similar services shall be provided to the Premises, except from persons reasonably authorized by Landlord and at the hours and under regulations reasonably fixed by Landlord.

3. The bulletin board or directory of the Building will be provided exclusively for the display of the name and location of tenants only and Landlord reserves the right to exclude any other names therefrom.

4. The sidewalks, halls, passages, exits, entrances, elevators and stairways shall not be obstructed by any of the Tenant Parties or used by Tenant for any purpose other than for ingress to and egress from its Premises. The halls, passages, exits, entrances, elevators, stairways, balconies and roof are not for the use of the general public and Landlord shall in all cases retain the right to control and prevent access thereto by all persons whose presence in the reasonable judgment of Landlord shall be prejudicial to the safety, character, reputation and interests of the Building and its tenants. No tenant and no employees or invitees of any tenant shall go upon the roof of the Building.

5. Tenant shall not alter any lock or install any new or additional locks or any bolts on any interior or exterior door of the Premises without the prior written consent of Landlord, such consent not to be unreasonably withheld, conditioned or delayed.

6. The toilet rooms, toilets, urinals, wash bowls and other apparatus shall not be used for any purpose other than that for which they were constructed and no foreign substance of any kind whatsoever shall be thrown therein and the expense of any breakage, stoppage or damage resulting from the violation of this rule shall be borne by the tenant who, or whose employees or invitees, shall have caused it.

7. Tenant shall not overload the floor of the Premises or mark, drive nails, screw or drill into the partitions, woodwork or plaster or in any way deface the Premises or any part thereof.

8. No furniture, freight or equipment of any kind shall be brought into the Building without the consent of Landlord (such consent not to be unreasonably withheld conditioned or delayed) and all moving of the same into or out of the Building shall be done at such time and in such manner as Landlord shall reasonably designate. Landlord shall have the right to reasonably prescribe the weight, size and position of all safes and other heavy equipment brought into the Building and also the times and manner of moving the same in and out of the Building. Safes or other heavy objects shall, if considered necessary by Landlord, stand on a platform of such thickness as is necessary to properly distribute the weight. Landlord will not be responsible for loss of or damage to any such safe or property from any cause, and all damage done to the Building by moving or maintaining any such safe or other property shall be repaired at the expense of Tenant. The elevator designated for freight by Landlord shall be available for use by all tenants in the Building during the hours and pursuant to such procedures as Landlord may reasonably determine from time to time. The persons employed to move Tenant's equipment, material, furniture or other property in or out of the Building must be reasonably acceptable to Landlord. The moving company must be a locally recognized professional mover, whose primary business is the performing of relocation services, and must be bonded and fully insured. In no event shall

Tenant employ any person or company whose presence Tenant believes, in its reasonable opinion, is likely to give rise to a labor or other disturbance in the Project. A certificate or other verification of such insurance must be received and approved by Landlord in its reasonable discretion prior to the start of any moving operations. Insurance must be sufficient in Landlord's reasonable opinion, to cover all personal liability, theft or damage to the Project, including, but not limited to, floor coverings, doors, walls, elevators, stairs, foliage and landscaping. Special care must be taken to prevent damage to foliage and landscaping during adverse weather. All moving operations shall be conducted at such times and in such a manner as Landlord shall reasonably direct, and all moving shall take place during non-business hours unless Landlord agrees in writing otherwise, such agreement not to be unreasonably withheld, conditioned or delayed.

9. Tenant shall not employ any person or persons other than the janitor of Landlord for the purpose of cleaning the Premises, unless otherwise agreed to by Landlord, which agreement shall not be unreasonably withheld, conditioned or delayed. Except with the written consent of Landlord, no person or persons other than those reasonably approved by Landlord shall be permitted to enter the Building for the purpose of cleaning the Building or the Premises. Tenant shall not cause any unnecessary labor by reason of Tenant's carelessness or indifference in the preservation of good order and cleanliness.

10. Tenant shall not use, keep or permit to be used or kept any foul or noxious gas or substance in the Premises, or permit or suffer the Premises to be occupied or used in a manner offensive or objectionable to Landlord or other occupants of the Building by reason of unreasonable noise, odors and/or vibrations, or materially and adversely interfere in any way with other tenants or those having business therein, nor shall any animals or birds be brought in or kept in or about the Premises or the Building. In no event shall Tenant keep, use, or permit to be used in the Premises or the Building any guns, firearm, explosive devices or ammunition.

11. No cooking shall be done or permitted by Tenant in the Premises, nor shall the Premises be used for the storage of merchandise, for washing clothes, for lodging, or for any improper, objectionable or immoral purposes. Notwithstanding the foregoing, however, Tenant may maintain and use microwave ovens and equipment for brewing coffee, tea, hot chocolate and similar beverages, provided that Tenant shall (i) prevent the emission of any food or cooking odor from leaving the Premises, (ii) be solely responsible for cleaning the areas where such equipment is located and removing food-related waste from the Premises and the Building, or shall pay Landlord's standard rate for such service as an addition to cleaning services ordinarily provided, (iii) maintain and use such areas solely for Tenant's employees and business invitees, not as public facilities, and (iv) keep the Premises free of vermin and other pest infestation and shall exterminate, as needed, in a manner and through contractors reasonably approved by Landlord, preventing any emission of odors, due to extermination, from leaving the Premises. Notwithstanding clause (ii) above, Landlord shall, without special charge, empty and remove the contents of one (1) 15-gallon (or smaller) waste container from the food preparation area so long as such container is fully lined with, and the contents can be removed in, a waterproof plastic liner or bag, supplied by Tenant, which will prevent any leakage of food related waste or odors; provided, however, that if at any time Landlord must pay a premium or special charge to Landlord's cleaning or scavenger contractors for the handling of food-related or so-called "wet" refuse caused by Tenant, Landlord's obligation to provide such removal, without special charge, shall cease.

12. Tenant shall not use or keep in the Premises or the Building any kerosene, gasoline, or inflammable or combustible fluid or material, or use any method of heating or air conditioning other than that supplied by Landlord.

13. Landlord will direct electricians as to where and how telephone and telegraph wires are to be introduced into the Premises and the Building. No boring or cutting for wires will be allowed without the prior consent of Landlord, such consent not to be unreasonably withheld, conditioned or delayed. The location of telephones, call boxes and other office equipment affixed to the Premises shall be subject to the prior approval of Landlord, such approval not to be unreasonably withheld, conditioned or delayed.

14. Upon the expiration or earlier termination of the Lease, Tenant shall deliver to Landlord the keys of offices, rooms and toilet rooms which have been furnished by Landlord to Tenant and any copies of such keys which Tenant has made. In the event Tenant has lost any keys furnished by Landlord, Tenant shall pay Landlord for such keys.

15. Tenant shall not lay linoleum, tile, carpet or other similar floor covering so that the same shall be affixed to the floor of the Premises, except to the extent and in the manner reasonably approved in advance by Landlord. The actual and reasonable expense of repairing any damage resulting from a violation of this rule or removal of any floor covering shall be borne by the tenant by whom, or by whose contractors, employees or invitees, the damage shall have been caused.

16. No furniture, packages, supplies, equipment or merchandise will be received in the Building or carried up or down in the elevators, except between such hours and in such elevators as shall be reasonably designated by Landlord, which elevator usage shall be subject to the Building's customary charge therefor as established from time to time by Landlord.

17. On Saturdays, Sundays and Building recognized holidays, and on other days between the hours of 6:00 P.M. and 7:30 A.M., access to the Building, or to the halls, corridors, elevators or stairways in the Building, or to the Premises may be refused unless the person seeking access is known to the person or employee of the Building in charge and has a pass or is properly identified. Landlord shall in no case be liable for damages for any error with regard to the admission to or exclusion from the Building of any person. In case of invasion, mob, riot, public excitement, or other commotion, Landlord reserves the right to prevent access to the Building during the continuance of the same by closing the doors or otherwise, for the safety of the tenants and protection of property in the Building.

18. Tenant shall be responsible for insuring that the doors of the Premises are closed and securely locked before leaving the Building and must observe strict care and caution that all water faucets or water apparatus are entirely shut off before Tenant or Tenant's employees leave the Building, and that all electricity, gas or air shall likewise be carefully shut off, so as to prevent waste or damage, and for any negligence or willful misconduct Tenant shall make good all injuries sustained by other tenants or occupants of the Building or Landlord. Landlord shall not be responsible to Tenant for loss of property on the Premises, however occurring, or for any damage to the property of Tenant caused by the employees or independent contractors of Landlord or by any other person.

19. Landlord reserves the right to exclude or expel from the Building any person who, in the judgment of Landlord, is intoxicated or under the influence of liquor or drugs, or who shall in any manner do any act in violation of any of the rules and regulations of the Building.

20. The requirements of any tenant will be attended to only upon application at the office of the Building. Employees of Landlord shall not perform any work or do anything outside of their regular duties unless under special instructions from Landlord, and no employee will admit any person (tenant or otherwise) to any office without specific instructions from Landlord.

21. No vending machine or machines of any description shall be installed, maintained or operated upon the Premises without the prior written consent of Landlord, such consent not to be unreasonably withheld, conditioned or delayed.

22. Subject to Tenant's right of access to the Premises in accordance with Building security procedures, Landlord reserves the right to close and keep locked all entrance and exit doors of the Building on Saturdays, Sundays and Building recognized holidays, and on other days between the hours of 6:30 P.M. and 7:00 A.M., and during such further hours as Landlord may deem reasonably advisable for the adequate protection of the Building and the property of its tenants.

EXHIBIT C

FORM OF COMMENCEMENT DATE LETTER

, 20

Re: Lease, dated as of , 2016 (the " ***Lease*** "), between SRI Ten DCC LLC, a Delaware limited liability company (" ***Landlord*** ") and 2U, Inc., a Delaware corporation (" ***Tenant*** ") for premises on the 26th and 28th floors of the building located at 707 Seventeenth Street, Denver, CO.

Gentlemen or Ladies:

Pursuant to Paragraph 3(a) of your above-referenced Lease, this letter shall confirm the following date:

1. The Commencement Date of the Lease (as defined in Paragraph 2(b) of the Lease) is , which is the date that the 28th Floor Premises were delivered to Tenant in the condition required by the terms of the Lease.

2. The 26th Floor Premises Commencement Date of the Lease (as defined in Paragraph (3)(b)(ii) of the Lease) is , which is the date that the 26th Floor Premises were delivered to Tenant in the condition required by the terms of the Lease.

3. The Expiration Date of the Lease (as defined in Paragraph 2(b) of the Lease) is , which is the last day of the 98th full calendar month following the Commencement Date.

4. Based on the Commencement Date, 26th Floor Premises Commencement Date and Expiration Date, the revised Monthly Rental schedules for the 28th Floor Premises and 26th Floor Premises are as follows: **[To be inserted if the Commencement Date and/or the 26th Floor Commencement Date is/are other than the Estimated Commencement Date and/or the Estimated 26th Floor Commencement Date]**

Please acknowledge Tenant's agreement to the foregoing by executing both duplicate originals of this letter and returning one fully executed duplicate original to Landlord at the address on this letterhead. If Landlord does not receive a fully executed duplicate original of this letter from Tenant evidencing Tenant's agreement to the foregoing (or a written response setting forth Tenant's disagreement with the foregoing) within fifteen (15) days of the date of Tenant's receipt of this letter, and such failure continues for an additional five (5) days after receipt of a second written notice of this letter, Tenant will be deemed to have consented to the terms set forth herein.

Very truly yours,

SRI TEN DCC LLC,
a Delaware limited liability company

By: SHORENSTEIN REALTY SERVICES, L.P., a Delaware limited partnership, manager

By: ______________________________
Its designated signatory

The undersigned agrees to the dates set forth above:

2U, INC., a Delaware corporation

By: ______________________________

Name: ______________________________

Title: ______________________________

EXHIBIT D

JANITORIAL SPECIFICATIONS

I. GENERAL

A. SCHEDULE

All nightly cleaning services shall be performed five (5) nights per week, Monday through Friday. No nightly services (except make-up work required) need be

performed on Saturday, Sunday or legal holidays, unless directed to do so by Owner's Agent. Nightly cleaning operations will commence at 6:00 p.m. Janitorial personnel are not to enter Tenant suites or restrooms on Tenant floors before 6:00 p.m. Separately, Johns Manville Corporation (Floor 12 only at Johns Manville Plaza) and the Colorado Credit Union (Floor 1) are to be cleaned during the hours of 5:30 AM to 9 AM using the "Day Cleaner" listed on the staffing matrix.

B. SUPERVISION

Contractor shall employ competent supervisory personnel ("Supervisor"), who will be capable and will provide all reports required by Owner's Agent. The Supervisor shall provide schedules of all periodic cleaning, inspect the Premises on a regular basis, investigate all tenant complaints, meet with tenant representatives if requested by the Owner's Agent, report all items needing repair or maintenance and generally supervise the entire cleaning of the Premises. The Supervisor will also see to it that all janitorial staff personnel report to their supervisor repairs needed, or any other unusual or unsafe condition(s) they encounter. The Supervisor shall report all such items or conditions to the Owner's Agent in a manner to be agreed upon.

C. PERSONNEL

Contractor shall employ on the Premises only persons skilled and trained in the work assigned to them. Subject to any contractual agreements and applicable law, Contractor shall promptly furnish qualified substitute persons for any personnel that, in the sole opinion of the Owner's Agent, are unsatisfactory. All of Contractor's personnel shall be bonded, and Contractor shall pay all wages, payroll taxes and insurance, and all payments required by contracts that may govern Contractor's personnel.

Contractor shall issue an identification badge to each of its personnel who are on-site. The identification badge will include a photo of the employee, the employee's name and the company name. The employee shall wear the identification badge on his/her uniform at all times in a location that is readily-visible.

D. SUPPLIES AND EQUIPMENT

Contractor shall furnish proper Green cleaning materials, implements, equipment, and supplies for the satisfactory performance of all required services, excepting only that the Owner's Agent will provide all paper towels, toilet tissue, hand soap, trash can liners and feminine hygiene products. Contractor shall furnish the type or means of identification used after agreement with and approval of the Owner's Agent has been obtained.

E. UNIFORMS

Contractor shall provide, clean and maintain all uniforms to each employee, at no charge to employee. Uniforms issued to each employee must meet color, style and quality standards established by Owner's Agent.

Forepersons, Day Porters, and Day Matrons:

The following Cintas item #s are offered as **reference only** and must not to be construed as the only uniform vendor allowed to bid: Schedule 2 — pg. 2

Men

Foreperson/Day Porter — Pleated dress pants - #865
Foreperson/Day Porter — Executive dress shirt - #828

Women

Foreperson/Day Matron — Pleated Dress Pants - #596
Foreperson/Day Matron — Long Sleeve Dress Blouse - #528

Night Staff

Contractor personnel shall dress in clean presentable clothing which is appropriate for an office building environment. All Contractor personnel will display identification of Contractor at all times in a manner which is easily visible to others. Contractor shall furnish the type or means of identification used after agreement with and approval of the Property Manager has been obtained.

F. STORAGE SPACE

The Owner's Agent shall provide Contractor with space free of charge on the Premises for storage of materials, implements and machinery necessary to perform the required cleaning tasks exclusively for the Premises.

G. RULES

Contractor shall at all times maintain good order among its personnel and shall insure compliance with all laws, building rules and regulations and any contracts governing the Contractor's personnel.

H. SECURITY AND INCIDENT REPORTING

While cleaning the Tenant spaces, Contractor's personnel will work behind locked doors and will not admit anyone into the suite, except Contractor's staff. The only exception to the above is if Tenant personnel is still present and instructs Contractor's personnel to leave the door(s) unlocked. Upon completion of nightly services, all lights will be turned off and the suite entrance door(s) checked again to insure they are locked. The Owner's Agent, building engineering personnel or building security personnel will be notified immediately of any incidents or irregularities witnessed or discerned by Contractor's personnel. In the event of an emergency or unusual occurrence which adversely affects the life, health, safety, or security of persons or property at the carious properties, Contractor's personnel shall immediately notify appropriate public safety authorities for emergency assistance, and shall notify the Property Manager and other officials designated by Owner's Agent. Contractor will ensure that day janitors (or day personnel) will participate in quarterly emergency preparedness drills with Building Staff as requested by Owner's Agent. Contractor's personnel will be required to sign into and out of the building when beginning or ending shifts and when/if leaving the Premises for any reason in the middle of the work shift. Contractor's personnel shall follow Owner's Agent's procedures as designated for the secure use and storage of keys and/or access cards, and at not time should any key and/or access card be taken off of the premises of the building. Contractor's employees shall all wear a personalized company identification.

I. PERIODIC CLEANING SCHEDULES AND REPORTS

A schedule of periodic cleaning tasks is to be provided in writing to the Owner's Agent by Contractor within five (5) days of Owner's Agent's request. Contractor shall furnish to Owner's Agent a report which assesses Contractor's compliance in completing periodic cleaning tasks as described in the schedule above and, if not complete, outline the means by which Contractor will complete the work and its anticipated completion date.

J. LIGHTING

Contractor's personnel to secure all lights as soon as possible each night. All burnt out lights are to be reported to janitorial supervisor who will deliver a list to Property Manager.

K. GREEN CLEANING

Contractor will follow the requirements for green cleaning (process, cleaning supplies and equipment) as published by the United States Green Building Council ("USGBC") for its LEED-EB designation. Minimum requirements include:

1. Vacuum cleaners are certified by the Carpet and Rug Institute "Green Label" Testing Program for vacuum cleaners and operate with a sound level of less than 70dBA. HEPA filtration vacuum cleaners are required.
2. Carpet extraction equipment used for restorative deep cleaning shall be certified by the Carpet and Rug
3. Powered floor maintenance equipment, including electric and battery-powered floor buffers and burnishers, shall be equipped with vacuums, guards and/or other devices for capturing fine particulates and operate with a sound level of less than 70dBA.
4. Automated scrubbing machines shall be equipped with variable-speed feed pumps and on-board chemical metering to optimize the use of cleaning fluids. Alternatively, scrubbing machines may use only tap water with no added cleaning products.
5. Battery-powered equipment shall be equipped with environmentally preferable gel batteries.
6. Powered equipment shall be ergonomically designed to minimize vibration, noise and user fatigue.
7. Equipment shall be designed with safeguards, such as rollers or rubber bumpers, to reduce potential damage to building surfaces.
8. Microfiber technology is in use for cleaning. Contractor will be responsible for the cleaning of the microfiber cloths.
9. Chemical concentrates will be used with appropriate dilution control systems to minimize use of chemicals wherever possible.

If applicable, Contractor will follow the requirements for green cleaning (cleaning supplies) as published by the United States Green Building Council ("USGBC") for its LEED-EBOM designation. Minimum requirements include:

1. Hand soaps meet one or more of the following standards:
   - No anti-microbial agents (other than as a preservative) except where required by health codes and other regulations (i.e. food service & health care organizations).
   - Environmental Choice CCD-104 for hand cleaners and hand soaps.
   - Green Seal GS-41, for industrial and institutional hand cleaners.
2. Cleaning products meet one or more of the following standards:
   - Green Seal GS-37 for chemicals for general purpose, bathroom, glass and carpet cleaning.
   - Environmental Choice CCD-110 for cleaning and degreasing compounds.
   - Environmental Choice CCD-146 for hard surface cleaners.
   - Environmental Choice CCD-147 for hard floors.
   - Environmental Choice CCD-148 for carpet and upholstery care.
3. Disinfectants, metal polish, floor finishes, strippers or other products not addressed by 2. above meet one or more of the following standards:
   - Green Seal GS-40, for industrial and institutional floor care products.

- Environmental Choice CCD-112 for digestion additives for cleaning and odor control.
- Environmental Choice CCD-113 for drain or grease trap additives.
- Environmental Choice CCD-115 for odor control additives.
- Environmental Choice CCD-147 for hard floors.
- California Code of Regulations maximum allowable VOC levels for the specific product category.

If applicable, Contractor will follow the requirements for green cleaning (disposable supplies) as published by the United States Green Building Council ("USGBC") for its LEED-EBOM designation. Minimum requirements include:

1. Disposable janitorial paper products and trash bags meet the minimum requirements of one or more of the following programs for the applicable product category:

    - U.S. EPA Comprehensive Procurement Guidelines for janitorial paper and plastic trash can liners. Minimum requirements are:

        - Toilet paper at least 20-100% recovered fiber, including 20-60% post-consumer recovered content.
        - Paper towels at least 40-100% recovered fiber, including 40-60% post-consumer recovered content.
        - Facial tissue at least 10-100% recovered fiber, including 10-15% post-consumer recovered content.
        - Napkins at least 30-100% recovered fiber, including 30-60% post-consumer recovered content.

    - Paper towels and napkins are Green Seal GS-09.
    - Tissue paper is Green Seal GS-01.
    - Toilet tissue is Environmental Choice CCD-082.
    - Hand towels are Environmental Choice CCD-086.
    - Janitorial paper products are derived from rapidly renewable resources or made from tree-free fibers.
    - Plastic trash can liners shall contain at least 10% recovered content.

2. Microfiber technology is in use for cleaning. Contractor will be responsible for the cleaning of the microfiber cloths.

Training and Reporting

Prior to performance of the Work, Contractor shall cause all Contractor Parties to view the property's on-line life safety training video, prepared by Building Safety Solutions http://denvercitycenter.bssnet.com. Owner's Agent will provide directions on how to access site at Contractor's request. Contractor agrees that it is the sole responsibility of Contractor to ensure that Contractor Parties view the property's on-line life safety training video prior to performance of Work.

The Green Cleaning program will include an ongoing training process to ensure compliance with cleaning procedures and recycling requirements and to ensure that the tools and products are being used effectively. The training process will specifically include but not be limited to the following:

- Training on the safe handling and disposal of cleaning chemicals, including a plan for managing hazardous spills or mishandling incidents; and,
- Training on the hazards, use, maintenance, disposal and recycling of cleaning chemicals, dispensing equipment and packaging.

It will be the Contractor's responsibility to design, implement and document the training program.
The Green Cleaning program will include a reporting component to include:

- Maintenance of a log for equipment purchase;
- Equipment repair & maintenance; and,
- Staff training;
- Vendor specifications sheets for each type of equipment in use.

It will be the Contractor's responsibility to design and implement the reporting program and to keep it current at all times. Contractor will be required to submit reports to Owner at Owner's request, but no less frequently than quarterly.

It will be Contractor's responsibility to monitor any changes in the USGBC's requirements for cleaning chemicals and supplies associated with its LEED-EB designation and to timely inform Owner of any such changes as well as any impact the change may have on costs, supply requirements, and/or cleaning procedures.

II. GROUND FLOOR LOBBIES

A. NIGHTLY

1. UNCARPETED FLOORS

Hard-surfaced floors are to be dust mopped, to remove all loose dirt and then damp mopped. Any spills or smudges shall be cleaned as needed. Remove any foreign substances such as gum, grease or tar. The floor, when dry, will be even in appearance and show no streaking from cleaning efforts. If rain mats are in use because of inclement weather, they will be vacuumed, spot cleaned as necessary and then stored appropriately.

2. CARPETED FLOORS

All carpeted floors are to be vacuumed. Care will be taken to vacuum in tight areas and under any furniture. The use of electrical extension cords will not be allowed. Carpet and baseboard will be spot-cleaned as necessary.

3. WALLS AND DOORS

All doors, thresholds, kick plates, and jambs will be thoroughly cleaned as necessary to remove all finger-marks, smudges and spills.

4. LOBBY GLASS

All glass windows, doors and directory board glass will be cleaned and left in a bright condition free of streaks and dust.

5. ELEVATOR CAB DOORS, TRACKS, FLOORS AND THRESHOLDS

Elevator doors and cab walls will be damp-wiped and left in a clean condition free of all dust and streaks. Elevator thresholds will be wiped clean and all dirt and debris removed from door tracks, using a vacuum crevice attachment. Spills and smudges will be cleaned so that the thresholds and tracks are left in a bright, clean condition. All elevator floors will be dust mopped, to remove all loose dirt and then damp mopped. If rain mats are in place because of inclement weather, mats will be vacuumed. All emblems (on floors) and base will be polished.

6. DUSTING -

All horizontal surfaces, including furniture tops and ledges within reach, will be dusted. No feather dusters will be allowed.

7. EXTERIOR ENTRANCE

The exterior entrance will be swept clean and wet mopped. Any emblem inset into the entrance will be polished.

8. MISCELLANEOUS

Signs, sign standards and security podium will be wiped clean and left free of finger-marks and smudges. Bright metal work will be polished. Spot clean all interior architectural metal finishes and granite wall surfaces.

9. PLANTERS

Inspect and maintain public area planters, removing any trash and debris that may accumulate.

B. WEEKLY

1. DUSTING

All hard-surfaced floors will be dust mopped and then machine spray-buffed using an electric buffing machine and the surface brought to a uniform shiny appearance.

2. ELEVATOR CAB FLOORS

Elevator cab floors will be machine spray-buffed using an electric buffing machine and brought to uniform shiny appearance.

3. WINDOW FRAMES

Window frames (interior and exterior) will be dusted and wiped down on both horizontal and vertical surfaces to an 8' height, removing all dust and spots.

C. MONTHLY

1. HIGH DUSTING

All high dusting beyond the reach of normal day to day dusting will be done monthly including tops of revolving doors, drums and caps.

2. ARCHITECTURAL ALUMINUM FINISHES

Thoroughly clean all architectural aluminum fixtures.

3. WINDOW FRAMES

Thoroughly clean all window frames, vertical and horizontal surfaces, wipe dry, leaving a spot free surface.

III. PUBLIC AREAS ABOVE GROUND FLOOR

A. NIGHTLY

1. CARPETED FLOORS

All carpeted floors are to be vacuumed. Care will be taken to vacuum in tight areas and under any furniture. The use of electrical extension cords will not be allowed. Carpet and baseboard will be spot-cleaned as necessary.

2. UNCARPETED FLOORS

All hard-surfaced floors are to be mopped and maintained as needed to preserve a uniformly clean appearance. Special attention will be given to insure that edges, corners, small niches and areas behind doors will be cleaned.

3. WALLS

All walls will be spot-cleaned to remove all smudges, stains and hand marks.

4. DOORS AND JAMBS

All doors and jambs will be spot-cleaned to remove any hand marks, stains, spills or smudges. When completed, doors and jambs shall have a uniform clean appearance. Dust and remove debris from all metal door thresholds.

5. COMMON AREA GLASS AND METAL WORK

All glass and metal accessories, including signs, door hardware, frames, lobby directories, etc. will be wiped clean and left in a uniformly clean condition.

6. DUSTING

Dust all accessories, ledges and other horizontal surfaces. No feather duster will be allowed. Spot cleaning will be completed as necessary.

7. PLANTERS

Inspect and maintain all public area planters; remove any trash and debris that may accumulate.

8. DRINKING FOUNTAINS

Clean and sanitize nightly, wipe dry leaving no spots.

B. MONTHLY

1. UNCARPETED FLOORS

All hard-surfaced floors will be wet-mopped, allowed to dry and then machine spray-buffed.

C. ANNUALLY

1. UNCARPETED FLOORS

All hard-surfaced floors are to be stripped, removing all wax or other coatings down to a bare clean surface. All marks or stains will be removed. Floors will then be refinished and polished and left in a uniform bright condition. All finish spills and splashes will be completely removed from baseboards, walls, doors and jambs.

2. CEILING LIGHTING

Clean light diffusers; remove fingerprints from fixtures, ceiling and grid.

IV. RESTROOMS

A. NIGHTLY

1. FLOORS, BRIGHT-WORK, AND METAL FIXTURES

Floors will be swept clean and wet-mopped using a germicidal detergent containing no deodorants. All watermarks and stains will be wiped from walls, partitions, light switches, and metal fixtures. All bright-work, including mirrors, will be cleaned or polished using only non-abrasive/non-acidic cleaning materials.

2. CERAMIC FIXTURES

Scour, wash and disinfect all basins, shower stalls, toilet bowls and urinals with a germicidal detergent solution free of any deodorants, including marble and tile walls near the urinals. Special care will be taken to insure that areas difficult to access, such as the underside of toilet bowls and urinals, will be cleaned to prevent the building up of calcium and iron oxide deposits.

Wash both sides of all toilet seats with germicidal solution free of any deodorants. No abrasive or acidic cleaning materials will be used. Leave all surfaces spot free.

3. URINAL MODESTY SCREENS

Damp-wipe urinal modesty screens with germicidal solution free of any deodorants. Surfaces are to dry with a uniform appearance, free of any streaks or smudges. No abrasive or acidic cleaning materials will be used. Leave all surfaces spot free.

4. RESTROOM DOORS

All restroom doors will be damp-wiped to remove any hand marks from door and door hardware. No abrasive or acidic cleaning materials will be used. Leave all surfaces spot free.

5. GENERAL

It is the intention of these specifications to keep restrooms thoroughly clean and not to use disinfectant to mask odors. All disinfectants will be deodorant free.

6. TRASH REMOVAL

Remove all waste paper and refuse, including soiled sanitary napkins, to designated areas. All receptacles are to be thoroughly cleaned and washed and new liners installed. All liners shall conform to Landlord's recycling program.

7. PRODUCT DISPENSERS

Fill toilet tissue and paper towel dispensers and holders, seat cover containers, soap dispensers and sanitary napkin machines with Owner's stock nightly. Contractor shall not leave extra or partially used rolls of toilet paper in restrooms. Care should be taken to inspect dispensing fixtures to insure they are operating properly. Report any deficiencies to the Property Manager.

B. WEEKLY

1. DUSTING

Dust the top edges of partitions, ledges, mirrors, HVAC diffusers, and return air grills and other horizontal surfaces, including vents at bottom of walls.

2. PRODUCT DISPENSERS

Collect coins from sanitary napkin and tampon machines and deliver proceeds wrapped in coin rolls to Property Manager.

C. MONTHLY

1. FLOOR DRAINS

Add one cup of water to all restroom floor drains.

D. QUARTERLY

1. FLOORS

Thoroughly clean and reseal all ceramic tile floors using approved sealers.

2. EXPOSED PLUMBING

Damp wipe all exposed plumbing (P-traps under sinks) leaving dust free.

V. TENANT AREAS

A. NIGHTLY

1. CARPETED FLOORS

All carpeted floors will be spot vacuumed nightly. Particular attention will be given to vacuuming under desks. Spot clean as necessary.

2. UNCARPETED FLOORS

All hard-surfaced floors will be spot cleaned where necessary to remove spill and smudges.

3. TRASH REMOVAL, RECYCLING PROGRAM, AND TRASH LINERS

All trash from wastebaskets and trash barrels or other trash, which is identified as such, by signs or notices, will be removed from the premises and deposited in the designated areas for trash. The contents of recycling containers will be removed to the designated collection areas as required. Trash liners will be replaced as necessary but in no event less than weekly. Clean and sanitize trash and recycling containers as required. Owner's recycling program shall be adhered to and supported at all times.

4. COMPOSTING

Remove all composting in kitchen area and replace with bio degradable bags provided by the tenant nightly. (Note: This will expand to other tenants during the term of the contract.)

B. WEEKLY

1. FURNITURE AND ACCESSORIES

Wipe file cabinets, telephones, furniture and accessories to remove spills, smudges and streaks. Sanitize all telephone receivers. Polish desk and furniture tops with appropriate polishing materials. Return chairs and waste baskets to their proper positions.

Wipe with dust cloth all sides of furniture and legs on furniture. Wipe all horizontal surfaces, including window sills, which are not dusted during the nightly dusting. Dust all vinyl base.

2. THRESHOLDS

Clean and polish all metal door thresholds.

3. DOORS, JAMBS AND WALLS

All doors, jambs, walls and window mullions and glass partitions will be spot-cleaned to remove streaks, smudges, hand marks and spills. Give particular attention to areas such as doors, jambs and windows where it is reasonable to expect hand marks will be present. Dust and remove debris from all metal door thresholds.

C. MONTHLY

1. FURNITURE

Vacuum all upholstered furniture.

2. CARPETED FLOORS

All carpeted floor areas that are not accessible, but are easily visible will be vacuumed with portable vacuums. For example, desk wells, areas around planters and spaces between furniture. Thoroughly vacuum under and around all desks and office furniture.

3. UNCARPETED FLOORS

Sweep, dust mop, wet mop, and spray buff all resilient and/or composite floorings with mild detergent solution. Spot clean streaks, smudges and stains as required. Floor should dry free of any streaks or smudges. Dust all vinyl base.

D. QUARTERLY

1. HIGH DUSTING

All horizontal surfaces on furniture, ledges, wainscot, picture frames, wall hangings, etc., that are beyond the reach of normal nightly dusting, will be dusted.

2. UNCARPETED FLOORS

Shower-scrub or otherwise recondition all resilient or composition flooring to provide a level of appearance equivalent to a completely refinished floor.

E. SEMI-ANNUALLY

1. HIGH DUSTING

All ceiling vents, vents located high on the walls or in ceilings, and light fixtures will be dusted. Dust ceiling surfaces other than acoustical ceiling material.

2. HORIZONTAL WINDOW BLINDS

Wipe down all vertical blinds at exterior windows as recommended by manufacturer.

VI. BASEMENT / MAINTENANCE AREAS

A. NIGHTLY

1. UNCARPETED FLOORS

All public areas are to be swept using sweeping compound and then damp mopped.

B. MONTHLY

1. WALLS, DOORS AND JAMBS

All walls, doors and jambs will be spot-cleaned to remove all hand marks, smudges, streaks and spills.

2. DUSTING

All horizontal surfaces, including equipment and furniture, will be dusted with a dust cloth.

C. SEMI-ANNUALLY

1. UNCARPETED FLOORS

All hard-surfaced floors are to be machine scrubbed. Finished floors other than concrete will then be refinished with floor finish and left in a uniform bright condition.

2. WALLS

All walls are to be wiped down with clear water, spot-cleaning where necessary. Dry walls will be free of streaks and smudges.

VII. BUILDING EXTERIOR

A. DAILY / NIGHTLY

1. SIDEWALKS AND RELATED AREAS

Inspections of sidewalks and related areas will be made daily and any spills will be cleaned with a sponge and appropriate cleaning material. Clean sidewalk areas surrounding the building nightly.

2. STREET GUTTERS

Inspect gutters and remove large pieces of trash, broken glass, nails and other debris.

3. EXTERIOR FACADE

Inspect building's exterior facade for graffiti, spills, smudges and, if found, clean with appropriate materials. Any spill, smudge or graffiti that cannot be cleaned thoroughly shall be reported to the Property Manager. Stainless steel and metal surfaces will be cleaned weekly. Stainless steel tops on the 18 th Street light boxes will be wiped down each morning prior to 8:00 AM each weekday.

4. AREA AROUND TRASH COMPACTOR AND DUMPSTERS

Clean trash area in garage nightly.

B. WEEKLY

1. MAIL BOXES AND NEWS VENDING MACHINES

Mail boxes in front of the building and news vending machines located around the building in various locations will have the tops and sides wiped clean with a mild detergent. Additionally, vending machines will be aligned with each other, relative to the curb, in an orderly manner.

C. MONTHLY

1. WINDOW FRAMES, LEDGES

Sweep with soft-bristled brush all horizontal window frames and ledges on the exterior of building.

D. QUARTERLY

1. WINDOW FRAMES AND LEDGES

Clean all horizontal window frames and ledges on the exterior of the building. Care will be taken to touch up the glass panes if the cleaning of the window frames causes any smudges or streaks.

VIII. STAIRWELLS

1. All stairwells will be spot cleaned as necessary and maintained free of debris.

IX. JANITOR CLOSETS, ENGINEERING AREA, AND STORAGE AREAS

1. All janitor's closets, mop sinks, storage rooms or areas, restrooms, lunchrooms and work areas, if applicable, provided by Property Manager for use by Contractor personnel, will be kept clean and orderly at all times. Mop sinks and the area immediately adjacent will be cleaned immediately after each use. Mops shall not be left in water or buckets. Restrooms will be maintained in the same condition as the public restrooms. Service areas will be spot cleaned as necessary. Service area floors should be swept with a broom daily and dust mopped no less than once per week. Finished floors will be stripped and refinished. Empty trash from Engineering and Garage Manager's Offices.

2. Damp mop all composition floors in storerooms and engineering offices. Deodorize and disinfect as required.

3. High dusting of these areas including all pipes, ducts, conduit, ventilation diffusers and grills and mechanical, electrical equipment exposed beneath the hung ceilings outside the mechanical room equipment.

X. DAY SERVICES

A. DAILY

1. The day janitors shall address all janitorial problems and requests that arise during the day and shall perform the duties listed hereafter and any additional duties as may be requested by the Property Manager.
2. Inspect and maintain main lobby and entrance to building: trash pickup, ashtrays, spills, clean glass in the lobby doors (both main doors and garage lobby doors) and vacuuming of rain mats when in use.
3. Inspect and maintain elevator cabs.
4. Install and remove rain mats as necessary.
5. Inspect and maintain lavatories as required checking for cleanliness and adequacy of paper supplies. Fill product dispensers as required.
6. Inspect and maintain exterior of building four times per day.
7. Replace lamps in light fixtures as required. If lamp replacement does not correct the lighting problem, notify building engineering staff of the problem.

B. WEEKLY

1. Clean and polish standpipe fire hose connections on the exterior of building.
2. Clean entrance glass doors, inside and out.

XI. VACANT AREAS

A. NIGHTLY

1. Inspect and maintain all vacant spaces and remove any trash that has accumulated.
2. Ensure that all exterior windows and office/conference room glass are clean of smudges.
3. All other vacant space work will be performed as additional services.

XII. BUILDING SPECIFIC

A. PLAZA

1. DAILY

a. Clean and empty trash receptacles and recycling bins regularly. Final clean should take place prior to end of daily shift.

b. Patrol open areas for trash and debris.

c. Sweep and wipe down all planter horizontal surfaces to be free of dirt, debris and stains.

d. Ensure that areas below planters, benches and around light boxes are clean of trash and debris.

e. Ensure that all planter areas are free of trash. Rocks found in landscaped areas should be returned to rock islands.

f. Bus stop areas (including Stout and 18th Street) should be cleaned, benches wiped down and kept free of trash and debris.

g. Assist with maintaining organization of the Corner Bakery patio furniture.

h. Spring to Fall: Ensure that plaza patio furniture is clean and well organized. Communicate any damage immediately to property management.

i. Assist with graffiti removal. Communicate with property management.

j. Assist with snow removal services. Plaza day porter must be able to operate snow removal equipment.

k. Maintain smoking area along Stout Street. Empty ash urns into metal trash containers. Empty main trash receptacles. Power wash as need during low traffic periods.

l. Provide back up to dock day porter services and other services as needed. This includes plaza paver removal and replacement.

2. WEEKLY

a. Ensure that paver joints are free of dirt and debris.

b. Assist with hand watering planter boxes as needed.

c. Clean the exterior vertical surfaces of glass emergency exit structures located on California and 17th Streets.

3. AS NEEDED

A. Power wash all plaza and building entry paver surfaces and surrounding sidewalks to remove stains from snow melt residue, food spills and other items. Wipe down and clean building exterior glass and metals from overspray. Power washing unit is provided by the property.

B. DOCK

1. DAILY

a. Patrol all areas for trash and debris.

b. Sweep all horizontal surfaces as needed including all corners.

c. Wet Mop all dock high walkways and main hallway leading into the 707 17th Street freight vestibule.

d. Dust all ledges and vertical surfaces including grease trap enclosure and accessible ledges and piping.

e. Maintain areas surrounding the trash compactor and recycling containers. Notify property management of any noticeable damage immediately.

f. Wipe down dock ramp pedestrian railing and traffic bollards.

g. Maintain dock storage areas and keep all equipment and supplies in a well-organized manner.

h. Assist with managing traffic as directed by the Dock Master. Perform back up duties to Dock Master during breaks and between the hours of 3 PM — 5 PM (M-F). Secure dock door at the end of the shift in coordination with the property security vendor.

i. Assist plaza day porter with wiping down plaza mechanical equipment and reporting any noticeable damage to property management immediately.

j. Provide back up to plaza day porter and other services as needed. This includes plaza paver removal and replacement.

2. WEEKLY

a. Verify all drains are free of dirt and debris. Clean as needed.

b. Power scrub all dock high walkways at least weekly or more often as needed.

3. MONTHLY

A. Power wash all drive areas including the exterior dock ramp at least monthly or more often as needed.

END OF SCHEDULE 2 — DESCRIPTION OF WORK

QuickLinks -- Click here to rapidly navigate through this document

EXHIBIT 21.1

Subsidiaries of 2U, Inc.

Name of Subsidiary	Jurisdiction of Incorporation or Organization
2U HK LLC	Delaware
2U Harkins Road LLC	Delaware
2U NYC, LLC	Delaware
2U GetSmarter, LLC	Delaware
2U GetSmarter (US) LLC	Delaware
K2017143886 (South Africa) Proprietary Limited	South Africa
Get Educated International Proprietary Limited	South Africa
Get Educated Proprietary Limited	South Africa
2U GetSmarter (UK) Limited	The United Kingdom
GetSmarter Online Limited	The United Kingdom

QuickLinks

EXHIBIT 21.1

Subsidiaries of 2U, Inc.

QuickLinks -- Click here to rapidly navigate through this document

EXHIBIT 23.1

Consent of Independent Registered Public Accounting Firm

The Board of Directors
2U, Inc.:

We consent to the incorporation by reference in the registration statement (No. 333-207088) on Form S-3 and (Nos. 333-194943 and 333-221964) on Form S-8 of 2U, Inc. of our reports dated February 27, 2018, with respect to the consolidated balance sheets of 2U, Inc. and subsidiaries as of December 31, 2017 and 2016, and the related consolidated statements of operations and comprehensive loss, changes in stockholders' equity, and cash flows for each of the years in the three-year period ended December 31, 2017, and the related notes (collectively, the consolidated financial statements), and the effectiveness of internal control over financial reporting as of December 31, 2017, which reports appear in the December 31, 2017 annual report on Form 10-K of 2U, Inc.

Our report dated February 27, 2018, on the effectiveness of internal control over financial reporting as of December 31, 2017, contains an explanatory paragraph that states that management has excluded from its assessment of the effectiveness of internal control over financial reporting the internal control over financial reporting of Get Educated International Proprietary Limited ("GetSmarter"), which was acquired during the year, and our audit of internal control over financial reporting also excludes an evaluation of the internal control over financial reporting of GetSmarter.

/s/ KPMG LLP

McLean, Virginia
February 27, 2018

QuickLinks

EXHIBIT 23.1

Consent of Independent Registered Public Accounting Firm

QuickLinks -- Click here to rapidly navigate through this document

EXHIBIT 31.1

CERTIFICATION OF CHIEF EXECUTIVE OFFICER

I, Christopher J. Paucek, certify that:

1. I have reviewed this Annual Report on Form 10-K of 2U, Inc.;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

    a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

    b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

    c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

    d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

    a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

    b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: February 27, 2018

By: /s/ CHRISTOPHER J. PAUCEK

Name: Christopher J. Paucek
Title: *Chief Executive Officer*

QuickLinks

EXHIBIT 31.1

CERTIFICATION OF CHIEF EXECUTIVE OFFICER

QuickLinks -- Click here to rapidly navigate through this document

EXHIBIT 31.2

CERTIFICATION OF CHIEF FINANCIAL OFFICER

I, Catherine A. Graham, certify that:

1. I have reviewed this Annual Report on Form 10-K of 2U, Inc.;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

   a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

   b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

   c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

   d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

   a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

   b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: February 27, 2018

By: /s/ CATHERINE A. GRAHAM

Name: Catherine A. Graham
Title: *Chief Financial Officer*

QuickLinks

EXHIBIT 31.2

CERTIFICATION OF CHIEF FINANCIAL OFFICER

EXHIBIT 32.1

**CERTIFICATION OF CEO PURSUANT TO
18 U.S.C. SECTION 1350,
AS ADOPTED PURSUANT TO
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

In connection with the Annual Report on Form 10-K of 2U, Inc. (the "Company") for the year ended December 31, 2017 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Christopher J. Paucek, as Chief Executive Officer of the Company, do hereby certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that, to the best of my knowledge:

(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.

Date: February 27, 2018

By: /s/ CHRISTOPHER J. PAUCEK

Name: Christopher J. Paucek
Title: *Chief Executive Officer*

This certification accompanies the Report pursuant to Section 906 of the Sarbanes-Oxley Act of 2002 and shall not, except to the extent required by the Sarbanes-Oxley Act of 2002, be deemed filed by the Company for purposes of Section 18 of the Securities Exchange Act of 1934, as amended.

A signed original of this written statement required by Section 906 of the Sarbanes-Oxley Act of 2002 has been provided to the Company and will be retained by the Company and furnished to the Securities and Exchange Commission or its staff upon request.

QuickLinks

EXHIBIT 32.1

CERTIFICATION OF CEO PURSUANT TO 18 U.S.C. SECTION 1350, AS ADOPTED PURSUANT TO SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

QuickLinks -- Click here to rapidly navigate through this document

EXHIBIT 32.2

**CERTIFICATION OF CFO PURSUANT TO
18 U.S.C. SECTION 1350,
AS ADOPTED PURSUANT TO
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

In connection with the Annual Report on Form 10-K of 2U, Inc. (the "Company") for the year ended December 31, 2017 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Catherine A. Graham, as Chief Financial Officer of the Company, do hereby certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that, to the best of my knowledge:

(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.

Date: February 27, 2018

By: /s/ CATHERINE A. GRAHAM

Name: Catherine A. Graham
Title: *Chief Financial Officer*

This certification accompanies the Report pursuant to Section 906 of the Sarbanes-Oxley Act of 2002 and shall not, except to the extent required by the Sarbanes-Oxley Act of 2002, be deemed filed by the Company for purposes of Section 18 of the Securities Exchange Act of 1934, as amended.

A signed original of this written statement required by Section 906 of the Sarbanes-Oxley Act of 2002 has been provided to the Company and will be retained by the Company and furnished to the Securities and Exchange Commission or its staff upon request.

QuickLinks

EXHIBIT 32.2

CERTIFICATION OF CFO PURSUANT TO 18 U.S.C. SECTION 1350, AS ADOPTED PURSUANT TO SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002