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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, 2016

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	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 Regulations 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, or a smaller reporting company. See the definitions of "large accelerated filer," "accelerated filer" and "smaller reporting 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 ☐

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 42,046,218 shares held by non-affiliates as of June 30, 2016 (computed based on the closing price on such date as reported on the NASDAQ Global Select Market) was $1,236,579,271.

As of February 17, 2017, there were 47,229,877 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 2017 Annual Meeting of Stockholders are incorporated by reference in Part III of this Form 10-K.

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. Forward-looking statements include statements about:

- 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;
- the potential benefits of our cloud-based SaaS technology and technology-enabled services to clients and students;
- anticipated launch dates of new client programs;
- the predictability, visibility and recurring nature of our business model;
- our ability to acquire new clients and expand programs with existing clients;
- 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 clients' programs;
- our ability to affect or increase student retention in our clients' programs;
- our growth strategy;
- the scalability of our cloud-based SaaS technology;
- our expected expenses in future periods and their relationship to revenue;
- potential changes in regulations applicable to us or our clients; and
- the amount of time that we expect our cash balances and other available financial resources to 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.

2U, Inc.
FORM 10-K

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PART I

Item 1. Business

Our Mission

2U partners with great colleges and universities to build what we believe is the world's best online education. Our platform provides a comprehensive fusion of technology, services and data architecture to transform our clients, historically campus-based universities of the highest quality and rigor, into digital versions of themselves. Why should a student need to pick up their life, quit their job and move to attend a graduate program at a great university? With 2U's solutions, they don't have to anymore.

Overview

We are a leading provider of cloud-based software-as-a-service, or SaaS, technology and technology-enabled services that enable leading nonprofit colleges and universities to deliver their degree programs at scale to students anywhere. Our SaaS technology consists of an innovative online learning environment, where our clients deliver their high-quality educational content to students in a live, intimate and engaging setting. We also provide a comprehensive suite of integrated applications, including a content management system and a customer relationship management system, that serve as the back-end infrastructure of the programs we enable. This technology is fused with technology-enabled services, including student acquisition services, content development services, student and faculty support, clinical placement services, and admissions applications advising services. This suite of technology tightly integrated with technology-enabled services, optimized with data analysis and machine learning techniques, provides a comprehensive set of capabilities that would otherwise require the purchase of multiple, disparate point solutions, and allows our clients' programs to expand and operate at scale, providing the comprehensive infrastructure colleges and universities need to attract, enroll, educate, support and graduate their students.

We provide the significant domain expertise and operating capacity our clients require to scale and operate successfully in the online environment. Utilizing data analysis and machine learning techniques, the technology-enabled services we provide are designed to improve enrollment and retention of our clients' students as well as to provide those students with a complete, high-quality educational experience. We have primary responsibility for identifying qualified students for our clients' programs, generating potential student interest in the programs and driving applications to the programs. We deploy sophisticated digital program marketing and student acquisition capabilities, and we work closely with our clients to help them create highly engaging multimedia instructional content for delivery through our innovative learning environment, Online Campus. We also provide the services that support the complete lifecycle of a higher education program, including advising prospective students through the admissions application process, providing technical, success coaching and other support, facilitating accessibility to individuals with disabilities, facilitating in-program field placements, conducting faculty recruiting, immersion support, and obtaining state regulatory approvals.

Through our experience launching and operating programs with leading nonprofit colleges and universities, we have developed a proprietary program-selection algorithm, which enables us to systematically identify degrees at colleges and universities that we believe have the highest probability of success—for us, our clients, and their students. The algorithm not only enables us to deploy capital with greater confidence, but it also provides our clients with greater assurance of, and visibility into, program success.

We believe that by delivering high-quality degree programs online using our solutions, our clients can improve educational outcomes and career opportunities for a larger number of students and, by doing so, broaden the global reach of their brands while maintaining their academic rigor and admissions standards. By deploying our solutions, clients give their students, who receive the same

degree or credit as their on-campus counterparts and generally pay equivalent tuition, the option of pursuing their educations without potentially incurring the burden of moving, leaving existing employment or giving up family and community support networks. This can substantially reduce the total cost of obtaining a degree and lower a student's total debt burden. It can also allow students for whom relocating is not an option to obtain a higher quality education than they might be able to access in their local communities.

Our compensation from our clients consists primarily of a specified share of the tuition and fees paid to our clients by students in the programs we enable, which we believe aligns our interests with those of our clients. This revenue model, combined with long contractual terms typically between 10 and 15 years, enables us to make the investment in technology, integration, content production, program marketing, student and faculty support and other services necessary to create large, successful programs. In addition, a significant percentage of our annual revenue is related to students returning to our clients' programs after their first semester. In the twelve months ended December 31, 2016, 62% of our revenue was related to students who had enrolled and completed their first semester prior to the start of the year. We believe this high percentage of revenue attributable to returning students contributes to the predictability and recurring nature of our business.

We have achieved significant growth in a relatively short period of time. For the years ended December 31, 2016, 2015 and 2014, our revenue was $205.9 million, $150.2 million and $110.2 million, respectively. For the years ended December 31, 2016, 2015 and 2014, our net losses were $20.7 million, $26.7 million and $29.0 million, respectively, and our Adjusted EBITDA, a non-GAAP measure, was $4.5 million, a loss of $6.6 million and a loss of $14.8 million, respectively. For a reconciliation of Adjusted EBITDA to net loss, see "Selected Financial Data—Adjusted EBITDA." From our inception through December 31, 2016, more than 24,000 unique individuals have enrolled as students in our clients' programs, and 83% of students who have entered these programs have either graduated or remain enrolled. By the time the last of these individuals graduate or leave our clients' programs, we estimate that they will have generated more than $1.5 billion in total program tuition and fees for our clients.

Our Approach

Our approach to providing our solutions to leading nonprofit colleges and universities is as follows:

- ***Data-Driven Approach to Program Selection.*** Through our experience launching and operating programs with leading nonprofit colleges and universities, we have developed a proprietary program-selection algorithm to drive the process for identifying new programs and clients. Our algorithm draws on a wide variety of data including the operating history of our existing programs, and is based on key market variables, including the existing market size of a degree, potential student demographics and client characteristics. We believe our approach to identifying potential programs enables us to systematically identify degrees at colleges and universities in specific geographic regions that we believe have the highest probability of success. Not only does it enable us to deploy capital with greater confidence, it also provides our clients with greater assurance of, and visibility into, program success.

- ***Long-Term Relationships.*** Our client relationships are characterized by close, ongoing collaboration with faculty and administration, as well as a deep integration between our clients' academic missions and operations and our solutions. Our compensation from our clients consists primarily of a specified share of the tuition and fees paid to our clients by students in the programs we enable, which we believe aligns our interests with those of our clients. This revenue model, combined with long contractual terms, enables us to make the investment in technology, integration, content production, program marketing, student and faculty support and other services necessary to create large, successful programs.

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

- ***Driving High Quality Student Outcomes.*** We are committed to delivering the technology and services required to ensure that every student and faculty member is fully supported throughout the life of each program. This model is designed to enable our clients to deliver academic programs that align with their brands and produce positive student outcomes, not only in educational achievement but also in terms of the following key measures of success.

    - *Net Promoter Score.* We regularly conduct Net Promoter Score® surveys with the students in each of our client programs. Net Promoter Score is a commonly used measure of customer loyalty and satisfaction. We believe that the favorable scores typically received demonstrate that we deliver our solutions in an effective and user-friendly manner.

    - *Retention.* Our model is designed to support student satisfaction with, and retention in, our clients' programs. Through December 31, 2016, 83% of students who have ever entered our clients' programs have either graduated or remain enrolled.

    - *First Attempt Board Pass Rates.* In client programs that lead to licensure, we track and measure first attempt board pass rates to ensure that students in our client programs are achieving their desired goals. In 2015, the first attempt board pass rate in Georgetown University's family nurse practitioner program was 97%.

- ***Attractive Financial Model with Significant Predictability and Visibility.*** We believe our financial model delivers significant operating leverage and visibility. Given the long-term nature of our contracts and the insight we receive from our program selection algorithm, we are able to benefit from increasing enrollments in clients' programs as those programs mature, leading to both revenue growth and expanding operating margins. In addition, we believe the significant portion of our revenue that is typically attributable to returning students contributes to the predictability and recurring nature of our business.

- ***Data-Driven Approach to Marketing.*** We believe that our shared marketing funnel of prospective students across our client programs in the same or similar degree verticals delivers marketing leverage that allows us to acquire additional students for the same cost. The revenue generated by those additional students allows us to deploy additional marketing spend for programs in that degree vertical to acquire even more students for those programs. In addition, we use data analytics and machine learning to ensure that our marketing efforts are focused on finding prospective students for the right programs at times when conversion is more likely.

Our Growth Strategy

We intend to continue our industry leadership as a provider of cloud-based SaaS technology and technology-enabled services that enable leading 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 Programs in New Graduate Degree Verticals.*** Add graduate-level programs with new and current clients in new degree verticals within our core market of selective colleges and universities.

- ***Add Programs in Current Graduate Degree Verticals.*** Add graduate-level programs with new and current clients in degree verticals in which we have existing programs. We believe this approach, which we refer to as our Multiple Program Vertical strategy, will enable us to leverage our program marketing investments across multiple client programs within specific academic disciplines, expanding the number of students who can access high-quality educations and significantly decreasing student acquisition costs within those disciplines.

- ***Increase Enrollment at Existing Clients' Programs.*** Increase student enrollments within the existing programs we enable for our clients. We will seek to accomplish this by acquiring an increasing number of students for our clients' existing degree programs and by diversifying and innovating our degree offerings within a program.

- ***Grow International, Undergraduate and Non-Degree Presence.*** We believe that there is significant international demand for our solutions 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 additional high-quality digital education experiences to undergraduate students, and students seeking non-degree alternatives, such as certificates. As we evaluate these growth strategies, we periodically consider, and are currently considering, acquisitions or investment opportunities in complementary businesses, joint ventures, services and technologies and intellectual property rights in an effort to expand our product offerings outside of our core business, 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.

Our Solutions

Our solutions consist of our cloud-based SaaS technology fused with technology-enabled services, which we optimize with data analysis and machine learning techniques. This suite of technology and services allows our clients' programs to expand and operate at scale, and provides the comprehensive infrastructure colleges and universities need to attract, enroll, educate, support and graduate their students.

Proprietary, Cloud-Based SaaS Technology

Online Campus

Our innovative online learning environment, Online Campus, enables our clients to offer high-quality educational content together with instructor-led classes in a live, intimate and engaging setting, averaging 12 students per session, all accessible through proprietary web-based and mobile applications. Online Campus allows our clients to provide a personalized learning environment for faculty and students as well as a robust online educational community.

Online Campus powers the following:

- *Virtual, Live Classes and Groups.* Online Campus enables a variety of live, small-group class sessions that are accessed online. Through Online Campus, instructors can simultaneously lead video group discussions, customize the virtual classroom to their individual styles and display a variety of documents, images, charts, notes and videos. Additionally, Online Campus is available for students to collaborate in planned or ad hoc study or work groups, regardless of day or time.

- *Delivery of High-Quality, Engaging Content.* Through Online Campus, we and our clients collaboratively create, publish and deliver video and other asynchronous content, interactive course lectures, individual and group assignments and assessments. We have developed technology solutions to augment our content delivery capabilities, including our Bi-Directional Learning Tool, a technology we initially created to facilitate the Socratic method of teaching law.

This technology enhances interaction between a faculty member and students, both individually and as a group, by blending asynchronous content and real-time student responses in the online environment.

Integrated Back-End Applications

Our integrated back-end applications launch, operate and support our clients' programs, and seamlessly communicate between their existing university information technology systems and our information technology systems. In addition, these applications provide clients with real-time data and deep analytical insight related to student performance and engagement, student satisfaction, and enrollment.

Our back-end applications include the following:

- *New Program Launch and Operations.* We use an application we call Central Park, which unifies our suite of applications and better automates the standup of technology infrastructure for new client programs, so that we can launch new client programs more quickly and efficiently. In addition, Central Park has a graphic interface that allows non-technology oriented employees to create a program website, initiate online applications for students and build Online Campus for a program. We also use an application we call Uber-Conf, which translates program-specific code to simplify program-specific complexity. We believe that this application simplifies not only the effort we are required to expend in launching new programs, but also enables non-technology oriented employees to support the data analytics and operational needs across our business.

- *University Systems Integration.* We use an application we call Port Authority, which integrates our technology with our 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 clients to author, review and deploy the asynchronous content for their online programs through Online Campus. The content management system includes a set of project management and collaboration tools that allow our 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 online admissions application process for prospective students of our clients' programs. OARS is integrated with the primary marketing site for each program, directly funneling prospective students into each client's existing admissions application process and providing automated workflow for that process. Additionally, our system automates faculty review and student notification to improve the efficiency of these processes.

- *Customer Relationship Management.* We have developed customer relationship management deployments configured for each client's specific program characteristics. Each deployment serves as the data hub for scheduling, student acquisition, student application, faculty admissions review, enrollment and student support for each program. Our clients and our staff, as appropriate, can review, maintain and track this information to ensure that functions driven both by the client and by us are properly coordinated.

Technology-Enabled Services

We offer a comprehensive suite of technology-enabled services, many of which are optimized with data analytics and machine learning techniques, that support the complete lifecycle of a higher education program. These services include the following:

- *Content Development.* Leveraging our content management system, our content development staff works closely with our clients' faculty in a collaborative process to produce high-quality, engaging online coursework and content. We produce scripted and casual videos in studio and on location, transform static content into interactive materials and ultimately assemble customized online course materials for delivery through our Online Campus. While our clients retain control of and responsibility for the curricula, we work closely with them to present the content in a highly engaging manner.

- *Student Acquisition.* Leveraging data analytics and machine learning techniques, we provide dedicated program marketing services to drive applications for each client program. Our marketing teams develop creative assets, such as websites related to the fields of study of our clients' programs, and execute campaigns aimed at acquiring students cost-effectively. Our search engine optimization team supports our prospective student generation efforts across all of our clients' programs. Our campaigns are focused on finding the right prospective student at the right time in his or her search.

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

- *Student and Faculty Support:* We augment each student's academic experience by assigning a dedicated advisor to provide ongoing individualized non-academic support. We also provide a dedicated support team that supports and trains university administration and faculty on how to use our solutions to facilitate outstanding live instruction.

- *In-Program Student Field Placements:* Our field placement team is dedicated to securing in-program field placement opportunities for students enrolled in our clients' programs. Leveraging a geo-location database, we work closely with faculty to identify and approve sites that meet curriculum requirements. Through December 31, 2016, our placement team has facilitated nearly 32,000 individual in-program field placements in approximately 25,000 organizations around the world.

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

- *State Authorization Services.* Each online program we enable for a client must comply with state authorization requirements in each state where the students enrolled in the program reside. We work with most of our clients to identify and satisfy state authorization requirements.

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

- *Faculty Recruiting.* With our solutions our clients can identify and employ highly qualified teaching faculty without geographic constraint. We effectively act as a search firm for our clients, attracting, cultivating and vetting a pool of faculty candidates for our clients. Our clients make all faculty hiring decisions, but we support them in creating a broader pool of potential faculty than they could on their own.

Benefits of Using Our Solutions

Using our solutions, our clients can:

- ***Extend Institutional Mission and Reach.*** Extend their brands and fulfill their missions by delivering high-quality education programs online to students anywhere in the world while maintaining their academic rigor and admissions standards. Our clients are able to reach students who otherwise may not have been able to enroll in their programs, thereby furthering their marketplace recognition and extending their institutional presence beyond geographic limitations.

- ***Increase Revenue.*** Increase their overall enrollments significantly, thereby growing their tuition revenue. Students who enroll in the programs we enable generally pay the same tuition as on-campus students.

- ***Increase Scalability.*** Extend beyond their physical boundaries and capacity constraints to scale programs without the investment typically required to acquire, educate and service incremental on-campus students. Our clients can focus on providing high quality, rigorous education at scale without needing to address the increased operational complexity related to delivering online education to students anywhere in the world.

- ***Deliver a Differentiated, Engaging Learning Environment.*** Leverage advanced software technology to enable highly interactive learning experiences through Online Campus. Instructors are able to lead live, intimate discussions in seminar-style classes with an average of 12 students per session. Students are able to access Online Campus using proprietary web-based and mobile applications and engage with rich, multimedia-based educational content. We believe that this dynamic, interactive learning environment is more engaging and impactful than traditional educational environments or other approaches to online education, encouraging students to remain in our clients' programs through graduation.

- ***Utilize Ongoing Data and Analytical Insight.*** Track the engagement and learning outcomes of their online students to a significantly greater degree than for their on-campus students. Through our analytics and reporting functions, clients can follow key data related to asynchronous student participation, class attendance, homework submission and overall engagement, and can provide timely intervention or support services as appropriate. This helps clients improve learning outcomes for their students.

- ***Increase Speed to Market.*** Implement and scale an online degree program faster than they could on their own. We work closely with our clients' faculty to develop engaging asynchronous multimedia course content, and apply our sophisticated digital marketing expertise to attract potential students for our clients' programs. Our clients do not need to spend time installing servers, networking equipment or other infrastructure to ensure a scalable, reliable program offering.

Technology

Our cloud-based SaaS technology is designed to deliver an exceptional end-user experience in a secure environment. To increase the speed at which we develop and enhance our solutions, we use

open-source technology and custom development of our own instructional design tools and learning components.

Our technology stack resides completely in the cloud, with a high level of security and horizontal scalability. We work with Amazon Web Services, our cloud hosting provider, to ensure high levels of redundancy and general preparedness. We have the ability to manage hundreds of server instances in Amazon Web Services and elsewhere through our automated deployment technologies.

Our application programming interface, or API, is at the core of all of our SaaS technology providing a standardized way to provision, manage, engage and deliver content to students, faculty and administrators. The API supports advanced analytics that allow us to search and analyze student usage data to evaluate course content, inform continuous technology development and improve user experiences. The API manages authentication and access for our entire technology stack and is designed to manage and interface with new technologies as they are introduced.

Our development process follows best practices in web security, including formal design reviews by operations security consultants, threat modeling and risk assessments. All deployed software undergoes recurring penetration testing performed by certified industry experts. Our security risk assessment reviews begin during the design phase and continue through ongoing operations.

All of the applications and application components within our SaaS technology are designed from the ground up to produce significant, readable and interpretable data to centralized systems in the form of monitors and logs that allow us to proactively identify and mitigate potential capacity, performance and security issues. We design our SaaS technology to industry security standards as well as requirements set out in current applicable regulations and standards.

New Program Pipeline

We dedicate the bulk of our program marketing and sales efforts to acquiring students for our clients' programs, and have developed highly sophisticated internet-based program marketing and student acquisition capabilities. However, we do maintain a small sales team targeted at new client or program acquisition. Our new clients and programs are largely generated through a direct approach to selected colleges and universities and we use a proprietary program selection algorithm to develop our pipeline of target programs based on a combination of degree vertical, college or university and geographic region. This data-centric model uses internally generated, publicly available and purchased data on degree vertical size, selectivity, student demographics, competition and other factors to identify opportunities we believe will have the best prospects of long-term success.

Clients

Our clients are leading nonprofit colleges and universities who primarily use our solution to offer full graduate degree programs online. We have grown our client and program base significantly since our inception from one client with one program in 2008 to 17 clients with 38 programs today. A full listing of all 38 announced programs can be found at investor.2u.com. Through our uncompromising focus on quality and deep understanding of the higher education environment, we believe we have become not only a valued provider of the technology and services our clients use to implement and manage their critical online education operations, but also a trusted steward of their brands. We currently have announced long-term client contracts with 17 universities and colleges to operate a total

of 38 programs. At the end of 2016, we had launched 24 programs in 17 different degree verticals. In 2017, we plan to launch the following ten programs:

University/School	Program Name	Expected Program Launch Date
The George Washington University—Milken Institute School of Public Health	HealthInformatics@GW	January 2017
Syracuse University—Maxwell School of Citizenship and Public Affairs	ExecutiveMPA@Syracuse	July 2017
University of Southern California—Jimmy Iovine and Andre Young Academy for Arts, Technology and the Business of Innovation	Design@USC	August 2017
Vanderbilt University—Peabody College of Education and Human Development	Peabody Online	September 2017
Pepperdine University—School of Law	Law@Pepperdine	September 2017
New York University—Steinhardt School of Culture, Education, and Human Development	OT@NYU	September 2017
New York University—Steinhardt School of Culture, Education, and Human Development	Counseling for Mental Health and Wellness	September 2017
Syracuse University	DataScience@Syracuse	October 2017
University of Dayton—School of Business Administration	MBA@Dayton	October 2017
Pepperdine University—Graduate School of Education and Psychology	Psychology@Pepperdine	October 2017

Our long-term client contracts do not include termination rights for convenience. Most contracts impose liquidated damages for a client's non-renewal, unless the client otherwise terminates due to our uncured breach. Each of our clients owns all of the academic content that we help them develop, although we are generally not obligated to develop content that will be functional anywhere but within Online Campus.

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 client. In addition, any limitation on our ability to offer competitive programs becomes inapplicable if a 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 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.

Our two longest running programs, launched in 2009 and 2010, are with the University of Southern California, or USC. For the years ended December 31, 2016 and 2015, 34% and 43%, respectively, of our revenue was derived from these two programs. We expect that these programs will continue to account for a large portion of our revenue until our other client programs become more mature and achieve significantly higher enrollment levels.

We have a contract with the USC Rossier School of Education, or Rossier, to enable various education programs, including a Master of Arts in Teaching program, or MAT program, a Doctor of

Education program and a Master of Education in School Counseling program. We also have contracts with the USC Suzanne Dworak-Peck School of Social Work to enable both a Master of Social Work (MSW) program and a Master of Nursing program. We amended our contract with Rossier in April 2016 and our contract with the School of Social Work for the MSW program in November 2015. Under the terms of each amended contract, the initial terms expire on June 30, 2030, we are entitled to a specified percentage of the net program proceeds, which is reduced over time, and we agreed to provide fixed and contingent cash payments over time.

Both contracts provide for automatic renewal for successive three-year terms unless either party gives one-year notice of non-renewal, and liquidated damages if Rossier or the School of Social Work, as the case may be, fails to renew its respective contract after any term.

Our programs with Simmons College accounted for 18% and 16% of our revenue for the years ended December 31, 2016 and 2015, respectively. Our programs with the University of North Carolina accounted for 11% and 12% of our revenue for the years ended December 31, 2016 and 2015, respectively.

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 methods of delivering education online. Several competitors provide solutions that compete with some of the capabilities of our solutions. Two such competitors, EmbanetCompass and Deltak, were acquired in 2012 by Pearson and John Wiley & Sons, respectively, both of which are large education and publishing companies. There are also several private companies, including HotChalk and Everspring Partners, providing some or all of the services we provide, and these companies may choose to pursue some of the institutions we target. In addition, 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 programs at nonprofit institutions matures. We believe the principal competitive factors in our market include the following:

- brand awareness and reputation;
- ability of online programs to deliver desired student outcomes;
- robustness and evolution of technology offering;
- breadth and depth of service offering;
- ability to invest in launching and operating programs;
- expertise in program marketing, student acquisition and student retention;
- quality of user experience;
- ease of deployment and use of solutions;
- level of customization, configurability, integration, security, scalability and reliability of solutions; and
- quality of 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 high-quality technology solutions,

meet client needs for content development, and acquire, support and retain students who achieve high-quality outcomes.

Intellectual Property

We protect our intellectual property by relying on a combination of copyrights, trademarks, trade secrets, patent applications 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, and other distinctive logos associated with our brand. We also have two patent applications pending in the United States, which are directed to computer-implemented processes that facilitate asynchronous student responses to teacher questions.

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.

Portions of our solutions rely upon third-party licensed intellectual property.

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 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 clients. Our failure, or that of our clients, to comply with education laws could adversely impact our operations. As a result, we work closely with our 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. All of our 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 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 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 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 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 client institutions 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 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 (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 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 clients. To avoid an issue under the misrepresentation rule and similar rules, we assure that all marketing materials are approved in advance by our 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 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 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 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 programs or offer new degree programs of our clients.

State regulatory requirements for online education are inconsistent between states, change frequently and, in some instances, are outmoded. In addition, the interpretation of state authorization regulations is subject to substantial discretion by the state agency responsible for enforcing the regulations. Some states have enacted legislation or issued regulations that specifically address online educational programs, some of which may affect our operations.

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. However, 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.

We monitor state law developments closely and work closely with our 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, 2016, we had 1,119 full-time employees and 90 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.

Facilities

Our headquarters are located in Lanham, Maryland where we occupy approximately 153,000 square feet under a lease that expires in 2028. We also currently lease approximately 94,000 square feet in Landover, Maryland, in connection with our former corporate headquarters, which expires in July, 2018.

In February 2017, we signed a lease for new office space in Brooklyn, New York, which we expect to occupy in 2018 after we vacate our current offices in New York City. The lease covers three floors totaling approximately 80,000 square feet and will expire approximately eleven years and nine months after the lease commencement date. We expect that the new space will allow us to accommodate our growth in the local area.

We also currently lease an aggregate of approximately 114,000 square feet of space in New York, California, Colorado, North Carolina, Virginia and Hong Kong. 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.

Legal Proceedings

From time to time, we may become involved in legal proceedings arising in the ordinary course of our business. We are not presently a party to any material legal proceedings, nor are we a party to any legal proceedings that, if determined adversely to us, would individually or taken together have a material adverse effect on our business, operating results, financial condition or cash flows.

Available Information

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 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 the Company 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, the Company's 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 client program in 2009. 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 $20.7 million, $26.7 million and $29.0 million during the years ended December 31, 2016, 2015 and 2014, 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 client programs and increase our program marketing and sales efforts to drive the acquisition of potential students in these programs. 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 can provide no assurance as to whether or when we will achieve profitability. If we are not able to achieve and maintain profitability, 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 programs. If we fail to attract new colleges and universities as clients, 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 for their offering of degree programs online. In particular, to engage new clients, we need to convince nonprofit colleges and universities, 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 for an online degree program. The delivery of degree-granting programs online 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 there can be no assurance that online programs of the kind we develop with our clients will ever achieve significant market acceptance.

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

Building awareness of our clients' programs is critical to our ability to acquire prospective students for our clients' programs and generate revenue. A substantial portion of our expenses is attributable to program marketing and sales efforts dedicated to attracting potential students to our clients' programs. Because we generate revenue based on a portion of the tuition and fees that our clients bill to the students enrolled in their programs, it is critical to our success that we identify prospective students who meet our clients' admissions criteria in a cost-effective manner, and that enrolled students remain active in our clients' programs.

The following factors, many of which are largely outside of our control, may prevent us from successfully driving and maintaining student enrollment in our clients' programs 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 clients' online degree programs to increased scrutiny. Online learning programs that we or our competitors offer 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 programs in general are not an effective way to educate students, whether or not our clients' programs achieve satisfactory performance, which could make it difficult for us to successfully attract prospective students for our clients' programs. Students may be reluctant to enroll in online programs 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 program marketing efforts.* We invest substantial resources in developing and implementing data-driven program marketing strategies that focus on identifying the right potential student at the right time. Our program 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 high-quality prospective students, or if the costs associated with the execution of this strategy increase, our revenue could be adversely affected.

- *Damage to client reputation.* Because we market a specific client degree program to potential students, the reputations of our clients are critical to our ability to enroll students. Many factors affecting our clients' reputations are beyond our control and can change over time, including

their academic performance and ranking among nonprofit educational institutions offering a particular degree program.

- *Lack of interest in the degree offered by the program.* We may encounter difficulties attracting qualified students for degree programs 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 degrees in the disciplines offered by our clients.

- *Our lack of control over our clients' admissions decisions.* Even if we are able to identity prospective students for a program, there is no guarantee that students will be admitted to that program. Our clients retain complete discretion in their 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 clients' 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 clients' 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 clients' programs may be affected by changes in the U.S. economy and, to a lesser extent, by global economic conditions. An improvement in economic conditions in the United States and, in particular, an improvement in the U.S. unemployment rate, may reduce demand among potential students for higher 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 higher educational opportunities for their employees or discourage existing or potential students from pursuing higher 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 clients' programs. If one or more of these factors reduces student demand for our clients' programs, 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 additional clients for new programs, which would negatively impact our ability to expand our business.

Disruption to or failures of our SaaS technology could reduce client and student satisfaction with our clients' programs and could harm our reputation.

The performance and reliability of our SaaS technology is critical to our operations, reputation and ability to attract new clients, as well as our student acquisition and retention efforts. Our clients rely on this technology to offer their programs online, and students access this technology on a frequent basis as an important part of their educational experience. Accordingly, any errors, defects, disruptions or other performance problems with our SaaS technology could damage our or our clients' reputations, decrease student satisfaction and retention and impact our ability to attract new students and clients. If any of these problems occur, our clients may, following notice and our failure to cure, terminate their agreements with us, or make indemnification or other claims against us. In addition, sustained or recurring disruptions in our SaaS technology could adversely affect our and our clients' compliance with applicable regulations and accrediting body standards.

Our market may be limited based on the types of nonprofit colleges and universities we target for online degree programs.

We primarily market our integrated solution to selective nonprofit colleges and universities, a market that is necessarily limited. Some of the contracts we enter into with our clients contain limitations on our ability to contract with other institutions to offer the same degree program, and maintaining good relations with our clients may mean that we may be less likely to approach certain institutions that they regard as their direct competitors to offer similar programs, even if we are allowed to do so under our contracts. Moreover, because of the long-term nature of our client contracts, and because of the relationships of trust we strive to build with our current clients, we generally will not be able or willing to terminate our existing client relationships to pursue a competitive program with another college or university, even if it may prove to be more profitable to us. Instead, we may continue with a program that does not generate expected levels of revenue to us, or one from which we may not be able to fully recover the program marketing and sales expenses we incur in attracting students to enroll in the program, if, for example, the client limits enrollment in the program. As a result, the nature of our contracts and our relationships with our clients could restrict the overall revenue potential of our business.

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 client contracts.

Certain of our client contracts limit our ability to enable competitive programs with other schools. 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 clients' contracts with us, we have agreed with certain clients 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 is desirable, and we may therefore agree with additional 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 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 our offering of competitive programs, our ability to grow our business and achieve profitability would be impaired.

Our clients may disagree with our decision to offer competitive programs under the contracts we have with them.

Our contracts with our clients include terms addressing the parties' respective rights to offer competitive programs. For example, some of our 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 that client. Some of our other contracts prohibit us from offering competitive programs with specific schools. In addition, any contract limitations on our ability to offer competitive programs are inapplicable if our 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 described in the contract at the time it was executed. If we elect to offer competitive programs in reliance on these contractual provisions, our clients may disagree with our interpretation of those provisions or with our interpretation of the facts surrounding our decision to offer a competitive program. Any disagreement with our clients over our decision to offer competitive programs could result in claims for breach of contract and equitable relief, and could cause damage to our reputation and impair our ability to grow our business and achieve profitability.

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

The process of identifying specific degree programs at the selective nonprofit colleges and universities, and then negotiating contracts with potential 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 client can be lengthy. Depending on the particular college or university, we may face resistance from university administrators or faculty members during the process.

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

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

Because our client agreements provide that we receive a fixed percentage of the tuition that the clients receive from the students enrolled in their programs, we only begin to recover these costs once students are enrolled and our clients begin billing students for tuition and fees. The time that it takes for us to recover our investment in a new 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 client to fully recover our investment in that client's new program. Because of the lengthy period required to recoup our investment in a program, unexpected developments beyond our control could occur that result in the client ceasing or significantly curtailing a 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 program or achieve our expected level of profitability for the program.

If new programs 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 clients' ability to successfully scale newly launched programs. As we continue aggressively growing our business, we plan to continue to hire new employees at a rapid pace, particularly in our program 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 clients' programs, which would adversely impact our ability to generate revenue, and our clients and the students in their programs 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 client programs, our clients' and their students' experiences may suffer, which could damage our reputation among colleges and universities and their faculty and students.

In addition, if our clients cannot quickly develop the infrastructure and hire sufficient faculty and administrators to handle growing student enrollments, our clients' and their students' experiences with our solutions 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 programs 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 clients' programs;
- assist our clients in recruiting qualified faculty to support their expanding enrollments;
- assist our 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 SaaS technology; and
- deliver high-quality support to our clients and their faculty and students.

Establishing new client programs or expanding existing programs 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 clients' programs does not increase, if we are unable to launch new programs in a cost-effective manner or if we are otherwise unable to manage new client programs effectively, our ability to grow our business and achieve profitability would be impaired, and the quality of our solutions and the satisfaction of our clients and their students could suffer.

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

Once a student is enrolled in a program, we and our client must retain the student over the life of the degree program to generate ongoing revenue. Our strategy involves offering high-quality support to students enrolled in our clients' programs 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, 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 clients.* Because revenue from a particular program is directly attributable to the level of student enrollment in the program, our ability to grow our revenue from a client relationship depends on the client continuing to offer its online program to students, as well as the growth of enrollment in that program. Although our contracts with clients generally require that the client expand enrollment in their programs to include all qualified applicants, our only recourse if they choose not to do so is termination of the exclusivity limitations on developing programs with other colleges or universities that are included in our agreements with our clients. Despite the agreements we have in place with our clients, our clients could limit enrollment in their programs, cease providing the programs

altogether or significantly curtail or inhibit our ability to promote their programs, any of which would negatively impact our revenue.

- *Lack of support from client faculty members.* It takes a significant time commitment and dedication from our clients' faculty members to work with us to develop course content designed for an online learning environment. Our 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 clients' faculty of the value in the time and effort they will spend developing the course program. Lack of support from faculty could cause the quality of our clients' programs to decline, which could contribute to decreased student satisfaction and retention.

- *Student dissatisfaction.* Enrolled students may drop out of our clients' programs based on their individual perceptions of the value they are getting from the program. For example, we may face retention challenges as a result of students' dissatisfaction with the quality of course content and presentation, dissatisfaction with our clients' faculty, changing views of the value of our clients' programs and degrees offered and perceptions of employment prospects following completion of the program. Factors outside our control related to student satisfaction with, and overall perception of, a program 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 include personal factors, such as ability to continue to pay tuition, ability to meet the rigorous demands of the program, 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 a program, which would negatively impact our return on investment for the particular program, and could compromise our ability to grow our business and achieve profitability.

We currently have, and for the foreseeable future expect to continue to have, a small number of programs that contribute a meaningful portion of our revenue and generate positive earnings and cash flow. Therefore we expect that the loss, or material underperformance, of any one of these programs could hurt our future financial performance.

Of the programs we operate, only a small number contribute a significant portion of our revenue and generate positive earnings and cash flow. As a result, the material underperformance of any one of these programs could have a disproportionate effect on our business.

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

Our two longest running programs, launched in 2009 and 2010, are with the University of Southern California, or USC. For the years ended December 31, 2016 and 2015, 34% and 43%, respectively, of our revenue was derived from these two programs. We expect that these programs will continue to account for a large portion of our revenue until our other 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 two programs. Further, the faculty or administrators of these two schools could become resistant to offering their online programs through our solutions, making it more difficult for us to attract and retain students. These graduate schools are not required to expand student enrollment in their online programs and, upon the expiration of their contracts, they are not required to continue using us as the

provider of their online programs. If either 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.

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

We rely on our reputation for delivering high-quality online programs and recommendations from existing clients to attract potential new clients. Therefore, the loss of any single client program, or the failure of any 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 are breached or fail and result in unauthorized disclosure of data, we could lose clients, fail to attract new clients and be exposed to protracted and costly litigation.

Maintaining security of our SaaS technology is of critical importance for our clients because it stores and transmits proprietary and confidential university and student information, which may include sensitive personally identifiable information that is subject to stringent legal and regulatory obligations. As a technology company, we face an increasing number of threats to our SaaS technology, including unauthorized activity and access, system viruses, worms, malicious code and organized cyberattacks, any of which could breach our security and disrupt our solutions and our clients' programs. 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 clients and students, cause existing clients to scale back their programs or elect not to renew their agreements, cause prospective students not to enroll or students to stay enrolled in our clients' programs, 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 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.

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 program 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 client base, enhance our solutions, develop new programs with new and existing clients, attract a sufficient number of qualified students in a cost-effective manner, satisfy the requirements of our existing clients, respond to competitive challenges or otherwise execute our business plan. Although our business has experienced significant growth in the past, we cannot provide any assurance that our revenue will continue to grow at the same rate 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 program 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.

There are no guarantees that we will 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 solutions could suffer, which could negatively affect our reputation, results of operations and overall business.

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

We may in the future acquire complementary products, services, technologies or businesses. We also may enter into relationships with other businesses to expand our ability to provide our solutions in the United States and in international markets. 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. 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. In particular, we may encounter difficulties assimilating or integrating the businesses, technologies, products, personnel, or operations of acquired companies, particularly if the key personnel of the acquired company choose not to work for us, the acquired company's technology is not compatible with ours, or we have difficulty retaining the customers of any acquired business due to changes in management or otherwise. Additionally, we may encounter difficulties integrating the acquired companies with our standardized accounting systems as necessary to provide us with the accounting controls needed to comply with our continued financial reporting requirements as a public company. Acquisitions may also disrupt our business, divert our resources, and require significant management attention that would otherwise be available for the development of our business. Any problems or delays associated with the integration or the failure to complete the integrations on a timely basis could adversely affect our ability to report financial information, including the filing of our quarterly or annual reports with the SEC on a timely and accurate basis. Moreover, the anticipated benefits of any acquisition, investment, or business relationship may not be realized or we may be exposed to unknown liabilities, including litigation against the companies we may acquire. For one or more of those transactions, we may:

- issue additional equity securities that would dilute our 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 clients 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.

Our primary competitors include EmbanetCompass and Deltak, which were acquired in 2012 by Pearson and John Wiley & Sons, respectively, both of which are large education and publishing companies. There are also several private companies, including HotChalk and Everspring, providing some or all of the services we provide, and these companies may choose to pursue some of the institutions we target. In addition, colleges and universities may choose to continue using or to develop their own online learning solutions in-house, rather than pay for our solutions.

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 from a client. The competitive landscape may also result in longer and more complex sales cycles with a prospective client or a decrease in our market share among selective nonprofit colleges and universities seeking to offer online degree programs, 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 client opportunities or force us to offer our solutions on less favorable economic terms, including

- competitors may develop service offerings that our potential clients 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 client and student requirements, and devote greater resources to the acquisition of qualified students than we can; and
- 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.

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 solutions to these institutions, this negative media attention may nevertheless add to skepticism about online higher education generally, including our solutions.

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 clients' programs. 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 client base and grow our clients' programs, which would make it difficult to continue to grow our business.

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 clients and the significant nature of each new client relationship, our senior management team is heavily involved in the 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 program marketing and sales, technology and content development and support teams to continue to attract and retain qualified students in our clients' programs, 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 clients' programs and the students enrolled in these programs. 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 clients, loss of expertise or know-how and unanticipated recruitment and training costs.

If certain awards under our stock plans are deemed to have not expired in accordance with their terms, we could be liable to certain award holders for substantial amounts.

Each of our 2008 Stock Incentive Plan and 2014 Equity Incentive Plan provide that vested stock option awards issued under those plans expire upon the occurrence of certain events. For example, each plan provides, among other things, that stock options expire and are no longer exercisable upon

the earlier to occur of 90 days after a separation of service, or, depending on the specific circumstances of the grantee, 5 or 10 years after the grant date. Award recipients under these plans have failed and may fail in the future to exercise their stock options within the prescribed time frame or may otherwise fail to comply with terms and conditions of the plans or the corresponding award agreements resulting in the expiration of those option awards. Award recipients with expired option awards have disagreed and may disagree in the future with our or our Compensation Committee's interpretation of the provisions in the plans or the award agreements. Any disagreement between us and holders of expired option awards regarding the expiration of those awards under the terms of the plan or award agreements could result in claims for breach of contract and other claims that could subject us to costly litigation that could require management time and involvement, regardless of whether such claims have merit.

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 believe that our existing cash balances and the available borrowing capacity under our revolving line of credit, will be sufficient to meet our minimum anticipated cash requirements for at least the next twelve months. We may, however, need to raise additional funds to respond to business challenges or opportunities, accelerate our growth, develop new programs or enhance our solutions. 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.

Our employees located outside of the United States and the international residents applying to and enrolling in our clients' programs expose us to international risks.

Operating in international markets requires significant resources and management attention and subjects us to regulatory, economic and political risks that are different from those in the United States. We have a branch office in Hong Kong for program marketing and student support. Because we have employees in Hong Kong, we are subject to Hong Kong's compensation and benefits regulations, which differ from compensation and benefits regulations in the United States. Further, acquiring international applicants and enrollments for our clients requires us to comply with international data privacy regulations of the countries from which our clients' programs draw applicants and enrollments. Failure to comply with international regulations or to adequately adapt to international markets could harm our ability to successfully operate our business and pursue our business goals.

Future programs or other offerings with colleges and universities outside the United States could expose us to risks inherent in international operations.

One element of our growth strategy is to expand our international operations and establish a worldwide client base. We cannot assure you that our expansion efforts into international markets will be successful. Our experience with attracting clients in the United States may not be relevant to our ability to attract clients in other emerging markets. In addition, we would face risks in doing business internationally that could constrain our operations and compromise our growth prospects, including:

- the need to localize and adapt online degree programs or other offerings for specific countries, including translation into foreign languages and ensuring that these programs enable our clients to comply with local education laws and regulations;

- data privacy laws that may require data to be handled in a specific manner;
- difficulties in staffing and managing foreign operations, including employment laws and regulations; different pricing environments, longer sales cycles, longer accounts receivable payment cycles and collections issues;
- 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;
- 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;
- unstable regional and economic political conditions; and
- fluctuations in currency exchange rates or restrictions on foreign currency.

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, 2016, 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. We have completed an analysis of the stock ownership changes through December 31, 2016, and determined that a greater than 50% ownership change of one or more of its 5-percent shareholders occurred. Absent a subsequent ownership change, all of our net operating losses subject to the ownership change should be available. Therefore, despite the fact that an ownership change occurred, such change is not expected to limit our ability to utilize carryforward net operating losses before expiration. In addition, 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 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.

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

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

Higher education is heavily regulated. All of our clients participate in Title IV federal student financial assistance programs under the Higher Education Act of 1965, as amended, or HEA, and are subject to extensive regulation by the U.S. Department of Education, or 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 any of our clients were to be found to be in non-compliance with any of these laws, regulations, standards or policies, the 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 client's program to decline.

The regulations, standards and policies of our clients' regulators change frequently and are often subject to interpretation. Changes in, or new interpretations of, applicable laws, regulations or standards could compromise our 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 clients' regulators will be interpreted, or whether our 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 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 were held in 2013-2016 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 clients could compromise our ability to drive revenue through their programs or make our solutions 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 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 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 client colleges and universities.

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 clients, or in action that does not involve us, could require us to change our business model and renegotiate the terms of our 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 clients for substantial fines, sanctions or other liabilities.

Even though the DCL clarifies that tuition revenue-sharing arrangements with our 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 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 client's program, a client's financial charges or the employability of a 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 clients could hurt our reputation, result in the termination of client contracts, require us to pay fines or other monetary penalties or require us to pay the costs associated with indemnifying a client from private claims or government investigations.

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

Our clients must be authorized in certain states to offer online programs, 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 a client's ability to enroll students in that state, render the client and its students ineligible to participate in Title IV programs in that state, diminish the attractiveness of the client's program and ultimately compromise our ability to generate revenue and become profitable.

In addition, if we or any of our clients 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 client to offer programs in that state or limit our ability to perform our contractual obligations to our client in that state.

If our clients fail to maintain institutional or programmatic accreditation for their programs, our revenue could be materially affected.

The loss or suspension of a client's accreditation or other adverse action by the client's institutional or programmatic accreditor would render the institution or its program ineligible to participate in Title IV programs, could prevent the client from offering certain educational programs and could make it impossible for the graduates of the 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 program.

Our future growth could be impaired if our 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 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 client institutions are requesting, and such delays could in turn delay the timing of our ability to generate revenue from our clients' programs.

If more state agencies require specialized approval of our clients' programs, 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 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 professional programs when offered online. However, more states could pass laws requiring professional programs offered by our clients, 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 solutions less attractive to clients, and our clients could be barred from operating in some states entirely.

If the personally identifiable information we collect from students is unlawfully acquired, accessed or obtained, we could be required to pay substantial fines and bear the cost of investigating the data breach and providing notice to individuals whose personally identifiable information was unlawfully accessed.

In providing services to our clients, we collect personally identifiable information from students and prospective students, such as names, social security numbers and birth dates. In the event that the personally identifiable information is unlawfully accessed or acquired, the majority of states have laws that require institutions to investigate and immediately disclose the data breach to students, usually in writing. Under the terms of our contracts with our clients, we would be responsible for the costs of investigating and disclosing these data breaches to the clients' students. In addition to costs associated with investigating and fully disclosing a data breach in such instances, we could be subject to substantial monetary fines or private claims by affected parties and our reputation would likely be harmed.

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 from disclosing personally identifiable information from a student's education records without the student's consent. Our 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, 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 clients and could harm our reputation. Further, in the event that we disclose student information in violation of FERPA, the DOE could require a client to suspend our access to their student information for at least five years.

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 client agreements require us to indemnify our clients against claims that our solutions infringe the intellectual property rights of third parties.

Future litigation may be necessary to defend ourselves or our 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 clients;
- cause delays or stoppages in providing our solutions;
- 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 clients, we may be prohibited from developing, commercializing or continuing to provide some or all of our bundled technology-enabled solutions 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 for the unauthorized duplication, distribution or other use of materials posted online.

In some instances, university personnel or students, or our employees or independent contractors, may post to Online Campus various articles or other third-party content for use in class discussions or within asynchronous lessons. The laws governing the fair use of these third-party materials are imprecise and adjudicated on a case-by-case basis, which makes it challenging to adopt and implement appropriately balanced institutional policies governing these practices. As a result, we could incur liability to third parties for the unauthorized duplication, 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 uses of such material, which may include changing or removing content from courses or altering the functionality of Online Campus, or to pay monetary damages.

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

We regard the protection of our intellectual property, which includes trade secrets, copyrights, trademarks, domain names and patent applications, 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 have also begun seeking patent protection for our processes, including two patent applications pending in the United States. These pending applications are directed to computer-implemented processes that facilitate asynchronous student responses to teacher questions. We cannot predict whether these pending patent applications will result in issued patents that will effectively protect our intellectual property. Even if a patent issues, the patent may be circumvented or its validity may be challenged in proceedings before the U.S. Patent and Trademark Office. In addition, we cannot assure you that every significant feature of our products and services will be protected by any patent or patent application.

We also 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 solutions. 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.

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

A substantial portion of our cloud-based SaaS technology 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 solutions that incorporate the open source software for no cost, that we make available source code for modifications or derivative works we create based upon, incorporating or using the open source software and that we license such modifications or derivative works under the terms of the particular open source license. If an author or other third party that distributes open source software we use were to allege that we had not complied with the conditions of one or more of these licenses, we could be required to incur significant legal expenses defending against such allegations and could be subject to significant damages, including being enjoined from the offering of our solutions that contained the open source software and being required to comply with the foregoing conditions, which could disrupt our ability to offer the affected solutions. We could also

be subject to suits by parties claiming ownership of what we believe to be open source software. Litigation could be costly for us to defend, have a negative effect on our operating results and financial condition and require us to devote additional research and development resources to change our products.

Individuals that appear in content hosted on Online Campus may claim violation of their rights.

Faculty and students that appear in video segments hosted on Online Campus may claim that proper assignments, licenses, consents and releases were not obtained for use of their likenesses, images or other contributed content. Our clients are contractually required to 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 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 clients' programs, which may vary from year to year;
- changes in the student enrollment and retention levels in our clients' programs from one term to the next;
- changes in our key metrics or the methods used to calculate our key metrics;
- changes in our clients' tuition rates;
- the timing and amount of our program marketing and sales expenses;
- costs necessary to improve and maintain our SaaS technology; and
- changes in the prospects of the economy generally, which could alter current or prospective clients' or students' spending priorities, or could increase the time it takes us to launch new client programs.

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.

We incur increased costs and demands upon management as a result of being a public company.

As a public company listed in the United States, we incur significant additional legal, accounting and other costs. These additional costs could negatively affect our financial results. In addition, changing laws, regulations and standards relating to corporate governance and public disclosure, including regulations implemented by the SEC and the NASDAQ Global Select Market, may increase legal and financial compliance costs and make some activities more time-consuming. These laws, regulations and standards are subject to varying interpretations and, as a result, their application in practice may evolve over time as new guidance is provided by regulatory and governing bodies. We intend to invest resources to comply with evolving laws, regulations and standards, and this investment may result in increased general and administrative expenses and a diversion of management's time and attention from revenue-generating activities to compliance activities. If, notwithstanding our efforts to comply with new laws, regulations and standards, we fail to comply, regulatory authorities may initiate legal proceedings against us and our business may be harmed.

Failure to comply with these rules might also make it more difficult for us to obtain some types of insurance, including director and officer liability insurance, and we might be forced to accept reduced policy limits and coverage or incur substantially higher costs to obtain the same or similar coverage. The impact of these events could also make it more difficult for us to attract and retain qualified persons to serve on our board of directors, on committees of our board of directors or as members of senior management.

Item 1B. Unresolved Staff Comments

None.

Item 2. Properties

Our headquarters are located in Lanham, Maryland where we occupy approximately 153,000 square feet under a lease that expires in 2028. We also currently lease approximately 94,000 square feet in Landover, Maryland, in connection with our former corporate headquarters, which expires in July, 2018.

In February 2017, we signed a lease for new office space in Brooklyn, New York, which we expect to occupy in 2018 after we vacate our current offices in New York City. The lease covers three floors totaling approximately 80,000 square feet and will expire approximately eleven years and nine months after the lease commencement date. We expect that the new space will allow us to accommodate our growth in the local area.

We also currently lease an aggregate of approximately 114,000 square feet of space in New York, California, Colorado, North Carolina, Virginia and Hong Kong. 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

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, 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.

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.

	2016			
	First Quarter	Second Quarter	Third Quarter	Fourth Quarter
High	$ 27.50	$ 29.87	$ 38.91	$ 38.49
Low	14.94	21.76	28.78	29.34

	2015			
	First Quarter*	Second Quarter	Third Quarter	Fourth Quarter
High	$ 25.77	$ 33.01	$ 39.69	$ 35.72
Low	16.69	24.20	29.18	18.81

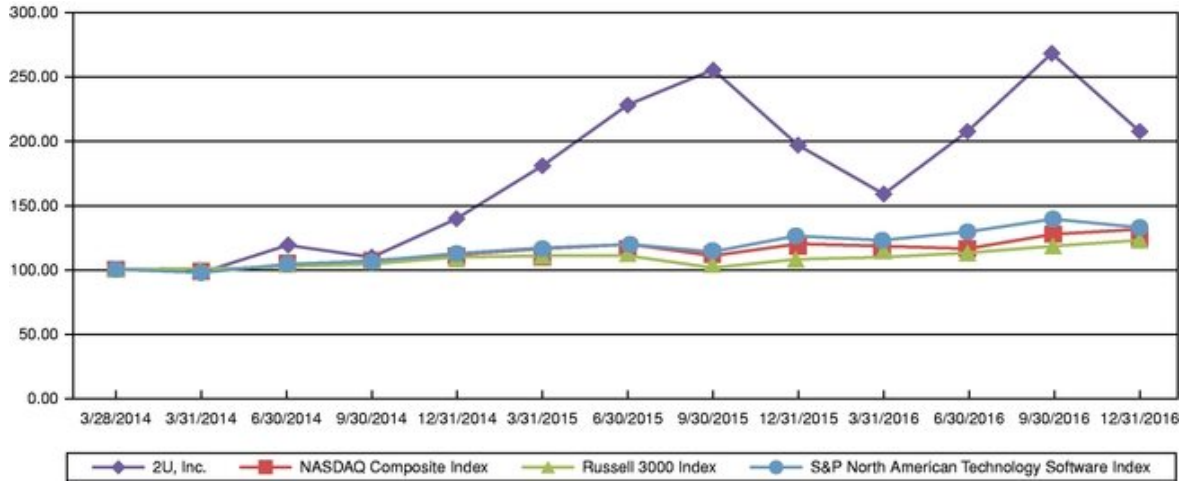
* Beginning on March 28, 2014

As of February 17, 2017, there were 46 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, 2016, 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, 2016
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.

Use of Proceeds from Offering of Common Stock

September 2015 Public Offering

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. We received net proceeds of $117.1 million, which we intend to use for general corporate purposes.

Item 6. Selected Financial Data

See the information for the years 2012 through 2016 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 50 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 50 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 low 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, 2016.

Foreign Currency Exchange Risk

All of our current client contracts are denominated in U.S. dollars. Therefore, we have minimal, if any, foreign currency exchange risk with respect to our revenue.

We have a branch office in Hong Kong for program marketing and student support and incur expenses related to its operations. The functional currency of this office is Hong Kong dollars, which exposes us to changes in foreign currency exchange rates. Hong Kong dollar currency rates have historically been tied to the U.S. dollar, however. In addition, because of the small size of our Hong Kong office and the relatively nominal amount of our expenses denominated in Hong Kong dollars, we do not expect any material effect on our financial position or results of operations from fluctuations in exchange rates. However, our exposure to foreign currency exchange risk may change over time as business practices evolve or we expand internationally, and if our exposure increases, adverse movement in foreign currency exchange rates could have a material adverse impact on our financial results.

Inflation

We do not believe that inflation has had a material effect on our business, financial condition or results of operations. Through our pricing model, we benefit from price increases implemented by our clients, and we continue to monitor inflation-driven cost increases in order to minimize their effects through productivity improvements and cost containment efforts. If our costs were to become subject to significant inflationary pressures, the price increases implemented by our clients and our own pricing strategies might not fully offset the higher costs. Our inability or failure to do so could harm our business, financial condition and results of operations.

Item 8. Financial Statements and Supplementary Data

See the Company's consolidated financial statements at December 31, 2016, and for the periods then ended, together with the report of KPMG LLP thereon and the information contained in Note 14 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 50 hereof.

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

None.

Item 9A. Controls and Procedures

Evaluation of Disclosure Controls and Procedures

An evaluation was performed by our management, with the participation of our Chief Executive Officer (our Principal Executive Officer) and our Chief Financial Officer (our Principal Financial Officer), of the effectiveness of our disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)), as of December 31, 2016. Based on that evaluation, our Chief Executive Officer and Chief Financial Officer have concluded that our disclosure controls and procedures, as designed and implemented, are effective in ensuring that information required to be disclosed by us in the reports that we file or submit under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in the Securities and Exchange Commission's rules and forms and is accumulated and communicated to management, including the Chief Executive Officer and Chief Financial Officer, in a manner that allows timely decisions regarding required disclosure.

Management's Report on Internal Control Over Financial Reporting

Management's report set forth on page 70 is incorporated herein by reference.

Changes in Internal Control Over Financial Reporting

There have been no changes in our internal control over financial reporting that occurred during the period covered by this Annual Report on Form 10-K 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 2017 Annual Meeting of Stockholders or our 2017 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 2017 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 2017 Proxy Statement under the captions "Board of Directors and Committees," "Election of Directors," "Management" and "Section 16(a) Beneficial Ownership Reporting Compliance."

Item 11. Executive Compensation

The information required by Item 11 is hereby incorporated by reference to the sections of our 2017 Proxy Statement under the captions "Executive Compensation" and "Director Compensation."

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 2017 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 2017 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 2017 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 Selected Financial Data of this Annual Report on Form 10-K.

(b) Financial Statements

See the Index to Consolidated Financial Information on page 50 hereof.

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 24, 2017

By: /s/ CHRISTOPHER J. PAUCEK

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

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

Signature	Title	Date
/s/ CHRISTOPHER J. PAUCEK Christopher J. Paucek	Chief Executive Officer and Director (Principal Executive Officer)	February 24, 2017
/s/ CATHERINE A. GRAHAM Catherine A. Graham	Chief Financial Officer (Principal Financial Officer)	February 24, 2017
/s/ ANDREA PAPACONSTANTOPOULOS Andrea Papaconstantopoulos	Chief Accounting Officer (Principal Accounting Officer)	February 24, 2017
/s/ PAUL A. MAEDER Paul A. Maeder	Director and Chairman of the Board	February 24, 2017
/s/ MARK J. CHERNIS Mark J. Chernis	Director	February 24, 2017
/s/ TIMOTHY M. HALEY Timothy M. Haley	Director	February 24, 2017
/s/ JOHN M. LARSON John M. Larson	Director	February 24, 2017

Signature	Title	Date
/s/ CORETHA M. RUSHING Coretha M. Rushing	Director	February 24, 2017
/s/ ROBERT M. STAVIS Robert M. Stavis	Director	February 24, 2017
/s/ SALLIE L. KRAWCHECK Sallie L. Krawcheck	Director	February 24, 2017
/s/ EARL LEWIS Earl Lewis	Director	February 24, 2017
/s/ EDWARD S. MACIAS Edward S. Macias	Director	February 24, 2017

2U, Inc.

INDEX TO CONSOLIDATED FINANCIAL INFORMATION

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 leading provider of cloud-based software-as-a-service, or SaaS, technology and technology-enabled services that enable leading nonprofit colleges and universities to deliver their degree programs at scale to students anywhere. Our SaaS technology consists of an innovative online learning environment, where our clients deliver their high-quality educational content to students in a live, intimate and engaging setting. We also provide a comprehensive suite of integrated applications, including a content management system and customer relationship management, that serve as the back-end infrastructure of the programs we enable. This technology is fused with technology-enabled services, including student acquisition services, content development services, student and faculty support, clinical placement services, and admissions applications advising services, each of which we optimize with data analysis and machine learning techniques. This suite of technology and services allows our clients' programs to expand and operate at scale, providing the comprehensive infrastructure colleges and universities need to attract, enroll, educate, support and graduate their students.

We have achieved significant growth in a relatively short period of time. Full course equivalent enrollments in our clients' programs grew from 41,034 during the twelve months ended December 31, 2014 to 77,344 during the twelve months ended December 31, 2016, representing a compound annual growth rate of 37%. From our inception through December 31, 2016, more than 24,000 unique individuals have enrolled as students in our clients' programs. For the years ended December 31, 2016, 2015 and 2014, our revenue was $205.9 million, $150.2 million and $110.2 million, respectively. However, because we must incur significant technology, content development, program marketing and sales expenses well in advance of generating revenue under a new client program, we have a history of losses despite our revenue growth. In order to become profitable, our revenue from existing client programs will need to increase at a rate faster than the expenses we will incur in connection with the launch of new client programs.

We believe our business strategy will continue to offer significant opportunities for growth, but it also presents a number of risks and challenges. In particular, to remain competitive, we will need to continue to innovate in a rapidly changing landscape for the application of technology like ours to the delivery of higher education. As described above, we have added, and we intend to continue to add, programs with new and existing clients in a number of new and existing degree verticals each year. We also have increased and intend to continue to increase new student enrollments at existing client programs. To do so, we will need to convince new clients as to the quality and value of our solutions, cost-effectively identify qualified students for our clients' programs and help our clients retain those students once enrolled. We must also be able to successfully execute our business strategy while navigating constantly changing higher education laws and regulations applicable to our clients and, in some cases to ourselves, particularly the incentive compensation rule that generally prohibits making incentive payments related to student acquisition. We seek to ensure that addressing all of these risks and challenges does not divert our management's attention from continuing to build on the strengths that we believe have driven the growth of our business over the last several years. We believe our focus

on delivering our bundle of technology and services, maintaining the integrity of our clients' educational brands and enabling strong student outcomes will contribute to the success of our business. However, we may not be successful in addressing and managing the many challenges and risks that we face.

Our Business Model

The key elements of our business model are described below.

Revenue Drivers and Predictability

Substantially all of our revenue is derived from revenue-share arrangements with our clients, under which we receive a contractually specified percentage of the amounts students pay them in tuition and other fees. Accordingly, the primary driver of our revenue growth is the increase in the number of student course enrollments in our clients' programs. This in turn is influenced primarily by three factors:

- our ability to increase the number of programs offered by our clients, either by adding new clients or by expanding the number of client programs;
- our ability to identify and acquire prospective students for our clients' programs; and
- our ability, and that of our clients, to retain the students who enroll in their programs.

In the near term, we expect the primary drivers of our financial results to continue to be our first two programs with the University of Southern California, which are our longest running programs, which we launched in 2009 and 2010, and our programs with Simmons College, which launched between 2013 and 2016. For the years ended December 31, 2016, 2015 and 2014, 34%, 43% and 55%, respectively, of our revenue was derived from the two University of Southern California programs. For the years ended December 31, 2016, 2015 and 2014, 18%, 16% and 8%, respectively, of our revenue was derived from the Simmons College programs. We expect that the two programs with the University of Southern California and our programs with Simmons College will continue to account for a large portion of our revenue even though that portion should decline as other client programs become more mature and achieve higher enrollment levels.

Program Marketing and Sales Expense

Our most significant expense in each fiscal period has been program marketing and sales expense, which relates primarily to student acquisition activities. We have primary responsibility for identifying qualified students for our clients' programs, generating potential student interest in the programs and driving applications to the programs. While our clients make all admissions decisions, the number of students who enroll in our clients' programs in any given period is significantly dependent on the amount we have spent on these student acquisition activities in prior periods. Accordingly, although most of our clients' 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 program marketing and sales expense for existing programs going forward to generate a continuous pipeline of new enrollments. For new programs, we begin incurring program marketing and sales costs as early as nine months prior to the start of a new client program.

We typically identify prospective students for our clients' programs between three months and two or more years before they ultimately enroll. For the students currently enrolled in our clients' programs and those who have graduated, the average time from our initial prospective student acquisition to initial enrollment was approximately seven months. For the students who have graduated from these programs, the average time from initial enrollment to graduation was 22 months. Based on the student retention rates and patterns we have observed in our clients' programs, we estimate that, for our

current programs, the average time from a student's initial enrollment to graduation will be approximately two years.

Accordingly, our program 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 program 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 clients' programs as a result of current period program 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 program marketing and sales expense as expressed in our financial statements. Further, we believe that our program 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 program marketing and sales expense to ensure that across our portfolio of client programs, our cost to acquire students for these programs 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 program. 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 program 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 from program to program depending on the degree being offered, where that program is in its lifecycle and whether we enable the same or similar degrees at other universities.

Period-to-Period Fluctuations

Our revenue, cash position, accounts receivable and deferred revenue can fluctuate significantly from quarter to quarter due to variations driven by the academic schedules of our clients' programs. These programs generally start classes for new and returning students an average of four times per year. Class starts 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 classes our client programs have in session, and therefore the number of students enrolled, will vary from month to month and quarter to quarter, leading to variability in our revenue.

Our clients' programs often have academic terms that straddle two fiscal quarters. Our 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. Because we generally receive payments from our clients 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 clients 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 also fluctuate from quarter to quarter, driven primarily by our program marketing and sales activity. We typically reduce our paid search and other program 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 program marketing and sales expense during the fourth quarter. In addition, because we begin spending on program 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 client program, these costs as a percentage of revenue fluctuate, sometimes significantly, depending on the timing of new client programs and anticipated program launch dates.

Components of Operating Results and Results of Operations

Full-Year 2016 Highlights

- Revenue was $205.9 million, an increase of 37.1% from $150.2 million for the year ended December 31, 2015.
- Net loss was $(20.7) million, or $(0.44) per share, compared to $(26.7) million, or $(0.63) per share for the year ended December 31, 2015.
- Adjusted EBITDA was $4.5 million, compared to an adjusted EBITDA loss of $(6.6) million for the year ended December 31, 2015.

Revenue

Substantially all of our revenue consists of a contractually specified percentage of the amounts our clients bill to their students for tuition and fees, less credit card fees and other specified charges we have agreed to exclude in certain of our client contracts, which we refer to as net program proceeds. Most of our contracts have 10 to 15 year initial terms. We recognize revenue ratably over the service period, which we define as the first through the last day of classes for each academic term in a client's program.

We establish a refund allowance for our share of tuition and fees ultimately uncollected by our clients.

We also offered rebates to a limited group of students who enrolled in a specific client program between 2009 and 2011, which we will be required to pay to such students if they complete their degrees and pre-specified, post-graduation work requirements within a defined period of time after graduation. For students in this group who are still enrolled in the program, we accrue the rebate liability as they continue through the program towards graduation. In addition, all students in this group are required to certify to us each September as to their continuing eligibility for these rebates. For those students who do not make such certification and are therefore no longer eligible for the rebate, because, for example, they have failed to meet their post-graduation work requirements, we reduce the allowance accordingly at that time. As of December 31, 2016 and 2015, 61 and 81 students, respectively, remained eligible to receive these rebates. These rebates and refunds offset the net program proceeds that we recognize as revenue.

In addition to providing access to our SaaS technology, we provide technology-enabled services that support the complete lifecycle of a higher education program, 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. 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.

We generally receive payments from our clients early in each academic term, prior to completion of the service period. We record these advance payments as deferred revenue until the services are delivered or until our obligations are otherwise met, at which time we recognize the revenue. As of each balance sheet date, deferred revenue is a current liability and represents the excess amounts we have billed or received over the amounts we have recognized as revenue in the consolidated statements of operations as of that date.

Revenue for the year ended December 31, 2016 was $205.9 million, an increase of $55.7 million, or 37.1%, from $150.2 million for the year ended December 31, 2015. The increase was primarily attributable to a 35.6% increase in period-over-period full course equivalent enrollments in our client programs, from 57,019 for the year ended December 31, 2015 to 77,344 for the year ended December 31, 2016. Of the increase in full course equivalent enrollments, 476, or 2.3% of the total increase, were attributable to client programs launched during the 12 months ended December 31, 2016.

Revenue for the year ended December 31, 2015 was $150.2 million, an increase of $40.0 million, or 36.2%, from $110.2 million for the year ended December 31, 2014. The increase was primarily attributable to a 39.0% increase in period-over-period full course equivalent enrollments in our client programs, from 41,034 for the year ended December 31, 2014 to 57,019 for the year ended December 31, 2015. Of the increase in full course equivalent enrollments, 3,354, or 21.0% of the total increase, were attributable to client programs launched during the 12 months ended December 31, 2015.

Costs and Expenses

Costs and expenses consist of servicing and support costs, technology and content development costs, program marketing and sales expenses and general and administrative expenses. To support our anticipated growth, we expect to continue to hire new employees (which will increase both our cash and non-cash stock-based compensation costs), increase our program promotion and student acquisition efforts, expand our technology infrastructure and increase our other program support capabilities. As a result, we expect our costs and expenses 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.

Non-cash stock-based compensation expense is a component of compensation cost within each of the four cost and expense categories described above. In early 2014, the Compensation Committee of our Board of Directors approved a framework for granting equity awards under our 2014 Equity Incentive Plan. Under this framework, the majority of our equity awards are made on or around April 1 of each year and typically have four-year vesting periods. As such, non-cash stock-based compensation expense is expected to continue to increase year-over-year until four years after the initial early-2014 grants.

Servicing and support. Servicing and support expense consists primarily of cash and non-cash stock-based compensation costs related to program management and operations, as well as costs for technical support for our SaaS technology and faculty and student support. It includes costs to facilitate in-program field placements, student immersions and other student enrichment experiences and costs to assist our clients with their state compliance requirements. It also includes software licensing, telecommunications and other costs to provide access to our SaaS technology for our clients and their students.

Servicing and support costs for the year ended December 31, 2016 were $41.0 million, an increase of $9.0 million, or 27.9%, from $32.0 million for the year ended December 31, 2015. This increase was due primarily to a $5.4 million increase in cash compensation costs, a $1.0 million increase in non-cash stock-based compensation costs and a $0.5 million increase in travel and related expenses as we increased our headcount in this area by 26% to serve a growing number of students and faculty in

existing and new client programs and a $0.9 million increase in costs associated with student immersion courses and on-campus initiatives. Additionally, software licensing costs increased by $0.7 million, while other servicing and support costs increased $0.5 million. As a percentage of revenue, servicing and support costs decreased from 21.4% for the year ended December 31, 2015 to 19.9% for the same period of 2016, as client programs continued to mature and greater operational efficiencies were achieved.

Servicing and support costs for the year ended December 31, 2015 were $32.0 million, an increase of $5.2 million, or 19.3%, from $26.8 million for the year ended December 31, 2014. This increase was due primarily to a $3.9 million increase in compensation costs, and a $0.2 million increase in travel and related expenses as we increased our headcount in this area by 25% to serve a growing number of students and faculty in existing and new client programs. Additionally, costs for student support services increased by $0.6 million, software licensing costs increased by $0.3 million and costs for facilitating in-program field placements increased by $0.2 million. As a percentage of revenue, servicing and support costs decreased from 24.4% for the year ended December 31, 2014 to 21.4% for the same period of 2015, as client programs continued to mature and greater operational efficiencies were achieved.

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

Technology and content development costs for the year ended December 31, 2016 were $33.3 million, an increase of $6.1 million, or 22.3%, from $27.2 million for the year ended December 31, 2015. This increase was due primarily to a $0.8 million increase in cash compensation costs (net of amounts capitalized for technology and content development), a $0.8 million increase in non-cash stock-based compensation costs, a $0.5 million increase in employee technological equipment expenditures and a $0.3 million increase in travel and related expenses, as we increased our headcount in this area by 31% to support the launch of new client programs and scaling of existing programs. Additionally, the increase in the number of courses that have been developed for our client programs resulted in $1.8 million of higher amortization expense associated with our capitalized technology and content development costs and higher cloud-based hosting services of $0.7 million. Finally, technology consulting expense increased by $0.1 million, while other technology and content development expense increased by $1.1 million. As a percentage of revenue, technology and content development costs decreased from 18.1% for the year ended December 31, 2015 to 16.2% for the same period of 2016, as we have continued to achieve scale.

Technology and content development costs for the year ended December 31, 2015 were $27.2 million, an increase of $4.6 million, or 20.3%, from $22.6 million for the year ended December 31, 2014. This was due primarily to a $2.8 million increase in compensation costs (net of capitalized amounts for software and content development) as we increased our headcount in this area by 23% to support additional client program launches and scaling of existing client programs. Further, an increase of $1.4 million resulted from higher depreciation expense associated with our capitalized internal use software and content development costs, primarily as a result of an increase in the number of courses that have been developed for our client programs. Additionally, costs related to our cloud-based server usage increased by $0.4 million to support a greater number of our clients' programs. As a percentage of revenue, technology and content development costs decreased from 20.5% for the year ended December 31, 2014 to 18.1% for the same period of 2015, as we have continued to achieve scale.

Program marketing and sales. Program marketing and sales expense consists primarily of costs related to student acquisition. This includes the cost of online advertising and prospective student generation, as well as cash and non-cash stock-based compensation costs for our program marketing, search engine optimization, marketing analytics and admissions application counseling personnel. We expense all costs related to program marketing and sales as they are incurred.

Program marketing and sales expense for the year ended December 31, 2016 was $106.6 million, an increase of $23.7 million, or 28.6%, from $82.9 million for the year ended December 31, 2015. This increase was due primarily to a $11.6 million increase in direct internet marketing costs to acquire students for our clients' programs. Additionally, cash compensation costs increased by $8.0 million, non-cash stock-based compensation costs increased by $0.3 million, rent expense increased by $1.0 million and travel and related expenses increased by $0.6 million as we increased our headcount in this area by 21% to acquire students for, and drive revenue growth in, new client programs. Finally, advertising expenses increased by $0.7 million, depreciation and amortization of fixed assets increased by $0.4 million, and other program marketing and sales expenses increased by $1.1 million to support our program marketing efforts. As a percentage of revenue, program marketing and sales expense decreased from 55.2% for year ended December 31, 2015 to 51.8% for the same period of 2016, reflecting a higher year-over-year percentage increase in revenue than the increase in expense.

Program marketing and sales expense for the year ended December 31, 2015 was $82.9 million, an increase of $17.7 million, or 27.1%, from $65.2 million for the year ended December 31, 2014. This increase was due primarily to an $8.4 million increase in direct internet marketing costs to acquire students for our clients' programs. Additionally, compensation costs increased by $8.0 million as we increased our headcount in this area by 29% to acquire students for, and drive revenue growth in, new client programs, while advertising expenses increased by $0.2 million and other program marketing and sales expenses increased by $1.1 million to support our program marketing efforts. As a percentage of revenue, program marketing and sales expense decreased from 59.2% for year ended December 31, 2014 to 55.2% for the same period of 2015, reflecting a higher year-over-year percentage increase in revenue than the increase in expense.

General and administrative. General and administrative expense consists primarily of cash and non-cash stock-based compensation costs for employees in our executive, administrative, finance and accounting, legal, communications and human resources functions. Additional expenses include 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.

General and administrative expense for the year ended December 31, 2016 was $46.0 million, an increase of $11.9 million, or 34.9%, from $34.1 million for the year ended December 31, 2015. This increase was due primarily to a $4.3 million increase in cash compensation costs and a $2.0 million increase in non-cash stock-based compensation costs as we increased in our headcount in this area by 35% to support our growing business. Further, software expenses primarily related to the implementation of our enterprise resource planning system integration increased by $2.5 million, employee education benefits increased by $2.5 million, accounting services and other professional fees increased by $1.1 million and other general and administrative costs increased by $0.5 million. These increases were partially offset by a $1.0 million signing bonus of a key executive in June 2015, which consisted of cash and a common stock award signing bonus. As a percentage of revenue, general and administrative expense decreased slightly from 22.7% for the year ended December 31, 2015 to 22.4% for the same period of 2016.

General and administrative expense for the year ended December 31, 2015 was $34.1 million, an increase of $10.7 million, or 45.7%, from $23.4 million for the year ended December 31, 2014. This was due primarily to a $6.7 million increase in compensation costs and $1.0 million increase in travel and related expenses, as we increased our headcount in this area by 22% to support our growth.

Additionally, we recorded a $0.8 million charge related to the execution of a new lease for our Maryland headquarters, costs for higher education benefits we provide to our employees increased by $0.5 million, while legal and other professional fees increased by $0.7 million. Further, insurance costs increased by $0.1 million and other general and administrative costs increased by $0.9 million. As a percentage of revenue, general and administrative expense increased from 21.2% for the year ended December 31, 2014 to 22.7% for the same period of 2015.

Other Income (Expense)

Other income (expense) consists of interest income, interest expense and other expenses. 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 and convertible notes prior to their conversion and changes in our preferred stock warrant liability as a result of changes in the fair value of such warrants (through April 2, 2014).

The fair value of our preferred stock warrant liability was reassessed at the end of each reporting period and any increase in fair value was recognized in other expense, while any decrease in fair value was recognized in other income. Upon completion of our initial public offering, or IPO, the preferred stock warrants automatically became warrants to purchase common stock. At that time, we reclassified the preferred stock warrant liability to additional paid-in capital and no further changes in fair value were recognized in other income or expense.

For the year ended December 31, 2015, other expense consisted of a loss on an investment we made in an early stage entity to test international marketing channels.

Total other income (expense) for the year ended December 31, 2016 was $0.3 million, an increase of $0.9 million, or 154.8%, from an other loss of $0.6 million for the same period of 2015. This increase was primarily driven by lower interest expense of $0.5 million and higher interest income of $0.2 million. Also contributing to the year-over-year increase in other income (expense) was a $0.3 million write-down on an investment which occured during 2015.

Total other income (expense) for the year ended December 31, 2015 was a net expense of $0.6 million, a decrease of $0.5 million, or 43.3%, from $1.1 million for the same period of 2014. This decrease was primarily driven by lower interest expense of $0.7 million and higher interest income of $0.1 million. Also, during 2015 we invested in an early stage entity which is establishing an international marketing channel. Due to the risk of recoverability of this investment, we estimated the fair value of the investment to be zero, recorded a write-down on the investment to fair value and recognized a $0.3 million charge in other expense, which partially offset the decrease to other income (expense).

Income Tax (Expense) Benefit

Income tax expense 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. We incurred immaterial state and foreign income tax liabilities for the years ended December 31, 2016, 2015 and 2014.

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,		
	2016	2015	2014
Revenue	100.0%	100.0%	100.0%
Costs and expenses:			
Servicing and support	19.9%	21.4%	24.4%
Technology and content development	16.2	18.1	20.5
Program marketing and sales	51.8	55.2	59.2
General and administrative	22.4	22.7	21.2
Total costs and expenses	110.3	117.4	125.3
Loss from operations	(10.3)	(17.4)	(25.3)
Other income (expense):			
Interest expense	0.0	(0.4)	(1.1)
Interest income	0.2	0.1	0.1
Other	0.0	(0.1)	0.0
Total other income (expense)	0.2	(0.4)	(1.0)
Net loss	(10.1)%	(17.8)%	(26.3)%

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 and Deferred Revenue

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.

We primarily derive our revenue from long-term contracts that typically range from 10 to 15 years in length. Under these contracts, we enable access to our cloud-based technology and provide technology-enabled marketing, content development and supporting services to our clients and their faculty and students. We are entitled to a contractually specified percentage of net program proceeds from our clients. These net program proceeds represent gross proceeds billed by our clients to students, less credit card fees and other specified charges we have agreed to exclude in certain of our client contracts. A refund allowance is established for our share of tuition and fees ultimately uncollected by

our clients. We also offered rebates to a group of students who enrolled in a specific client program between 2009 and 2011, which we will pay to the student if he or she completes the degree and certain post-graduation work requirements within a specified period of time. These rebates and refunds offset the net program proceeds recognized as revenue. Revenue is recognized ratably over the service period, which we define as the first through the last day of classes for each academic term in a client's program. We invoice our clients based on enrollment reports that are generated by our clients. In some instances, these enrollment reports are received prior to the conclusion of the drop/add period. In such cases, we establish a reserve against revenue, if necessary, based on our estimate of changes in enrollments expected prior to the end of the drop/add period.

We generate substantially all of our revenue from multiple-deliverable contractual arrangements with our clients. Under each of these arrangements, we provide (i) cloud-based technology that serves as a learning platform for our client's faculty and students and which also enables a comprehensive range of other client functions, (ii) program marketing and application services for student acquisition, (iii) in conjunction with the client's faculty members, content development for courses and (iv) faculty and student support services, including technical field training and support, non-academic student advising and academic progress monitoring.

In order to treat deliverables in a multiple-deliverable contractual arrangement as separate units of accounting, deliverables must have standalone value upon delivery. The services are provided primarily in support of courses offered through our through solutions and for students of the online courses delivered through our solutions. Accordingly, we haves determined that no individual deliverable has standalone value upon delivery and, therefore, deliverables within our multiple-deliverable arrangements do not qualify for treatment as separate units of accounting. Accordingly, we consider all deliverables to be a single unit of accounting and recognize revenue from the entire arrangement over the term of the service period.

Advance payments are recorded as deferred revenue until the services are delivered or obligations are met, at which time revenue is recognized. Deferred revenue as of a particular balance sheet date represents the excess of amounts received as compared to amounts recognized in revenue in the consolidated statements of operations as of the end of the reporting period, and such amounts are reflected as a current liability on our consolidated balance sheets.

Accounts Receivable and Allowance for Doubtful Accounts

Our accounts receivable are stated at net realizable value. We extend a minimal amount of uncollateralized credit to our clients. We utilize the allowance method to provide for doubtful accounts based on management's evaluation of the collectability of the amounts due. Our 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 our estimates. As of December 31, 2016 and 2015, we determined that no significant allowances for doubtful accounts were necessary.

Internally-Developed Software Costs

We capitalize certain costs associated with internally-developed 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 depreciated on a straight-line method over the estimated useful life of the software, which is generally three years.

Capitalized Content Development Costs

We work with each of our clients' faculty members to develop and maintain educational content that is delivered to their students through our cloud-based technology. The online content developed jointly by us and our clients consists of subjects chosen and taught by client's faculty members and incorporates references and examples designed to remain relevant over extended periods of time. Online delivery of the content, combined with live, face-to-face instruction, provides us with rapid user feedback, which we use to make ongoing corrections, modifications and improvements to the course content. Our clients retain all intellectual property rights to the developed content, although we retain the rights to the content packaging and delivery mechanisms. Much of our new content development uses proven delivery platforms and is therefore primarily subject-specific in nature. As a result, a significant portion of content development costs qualify for capitalization due to the focus of our development efforts on the unique subject matter of the content. Similar to on-campus programs offered by our clients, the online degree programs that we enable offer numerous courses for each degree. We therefore capitalize our development costs on a course-by-course basis.

We develop content on a course-by-course basis in conjunction with the faculty for each client program. The 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. We are then responsible for, and incur all of the expenses related to, the conversion of the materials provided by each client into a format suitable for delivery through our cloud-based technology.

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 clients' programs for delivery through our solutions. Capitalization ends when content has been fully developed by both us and the 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.

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 consider what we believe to be comparable publicly traded companies, discounted free cash flows, and an analysis of our enterprise value in estimating the fair value 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, adjusted for estimated forfeitures. 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, 2016, 2015 and 2014, we recorded stock-based compensation expense of $15.8 million, $12.5 million and $7.5 million, respectively. Information about the assumptions used in the calculation of stock-based compensation expense is set forth in Note 9 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, 2016, unrecognized compensation expense related to unvested options totaled $11.6 million and will be recognized over a weighted-average period of approximately 2.1 years.

As of December 31, 2016, unrecognized compensation expense related to unvested restricted stock units was $19.2 million and will be recognized over a weighted-average period of approximately 2.4 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.

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.

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, we discuss revenue and the components of loss from operations in the section above entitled "—Components of Operating Results and Results of Operations." Additionally, we utilize other key metrics to evaluate the success of our growth strategy, including measures we refer to as platform revenue retention rate and full course equivalent enrollments in our clients' programs.

Platform Revenue Retention Rate

We measure our platform revenue retention rate for a particular period by first identifying the group of programs that our clients launched with our solutions before the beginning of the prior year comparative period. We then calculate our platform revenue retention rate by comparing the revenue we recognized for this group of programs in the reporting period to the revenue we recognized for the

same group of programs in the prior year comparative period, expressed as a percentage of the revenue we recognized for the group in the prior year comparative period.

The following table sets forth our platform revenue retention rate for the periods presented, as well as the number of programs included in the platform revenue retention rate calculation. For all of these periods, our platform revenue retention rate was greater than 100% because we had no programs terminate and full course equivalent enrollments in the aggregate increased year-over-year. There is no direct correlation between the platform revenue retention rate and the number of programs included in the calculation of that rate. However, there may be a correlation between the platform revenue retention rate and the average maturity of the programs included in the calculation of that rate because newer programs tend to have higher percentage growth rates.

	Year Ended December 31,		
	2016	2015	2014
Platform revenue retention rate	123.0%	120.2%	112.4%
Number of programs included in comparison(1)	12	9	4

(1) Reflects the number of programs operating both in the reported period and in the prior year comparative period.

Full Course Equivalent Enrollments in Our Clients' Programs

We measure full course equivalent enrollments in our clients' programs by determining, for each of the courses offered during a particular period, the number of students enrolled in that course multiplied by the percentage of the course completed during that period. We use this metric to account for the fact that many courses offered by our clients 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 in our client programs during a period. This number is derived by dividing our total revenue for a period by the number of full course equivalent enrollments during that same period. This amount may vary from period to period depending on the academic calendars of our clients, the relative growth rates of programs with varying tuition levels, the launch of new programs with higher or lower than average net tuition costs and annual tuition increases instituted by our clients. As a part of our growth strategy, we are actively targeting new graduate-level clients in academic disciplines for which we have existing programs. Over time, this strategy is likely to reduce our average revenue per full course equivalent. However, we believe this approach will enable us to leverage our program marketing investments across multiple client programs within specific academic disciplines, significantly decreasing student acquisition costs within those disciplines and more than offsetting any decline in average revenue per full course equivalent enrollment.

The following table sets forth the full course equivalent enrollments and average revenue per full course equivalent enrollment in our clients' programs for the periods presented.

	Year Ended December 31,		
	2016	2015	2014
Full course equivalent enrollments in our clients' programs	77,344	57,019	41,034
Average revenue per full course equivalent enrollment in our clients' programs	$ 2,662	$ 2,634	$ 2,687

Adjusted EBITDA

Adjusted EBITDA represents our earnings before net interest (income) expense, income taxes, depreciation and amortization, adjusted to eliminate stock-based compensation expense, which is a non-cash item. 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 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,		
	2016	2015	2014
		(in thousands)	
Net loss	$ (20,684)	$ (26,733)	$ (28,999)
Adjustments:			
Interest expense	35	552	1,213
Interest income	(383)	(167)	(92)
Depreciation and amortization expense	9,750	7,220	5,572
Stock-based compensation expense	15,823	12,499	7,527
Total adjustments	25,225	20,104	14,220
Adjusted EBITDA (loss)	$ 4,541	$ (6,629)	$ (14,779)

Liquidity and Capital Resources

Sources of Liquidity

On December 31, 2013, we entered into a credit agreement with Comerica Bank for a revolving line of credit with an aggregate commitment not to exceed $37.0 million. On January 21, 2014, we borrowed $5.0 million under this line of credit and repaid this borrowing in full on February 18, 2014.

On December 31, 2015, we amended our credit agreement with Comerica Bank to reduce the aggregate amount we may borrow to $25.0 million and extend the maturity date through April 29, 2016, and on January 30, 2017, we amended our credit agreement to extend the maturity date through March 1, 2017. No amounts were outstanding under this credit agreement as of December 31, 2016. We intend to extend this agreement under comparable terms, prior to expiration.

Certain of our operating lease agreements entered into prior to December 31, 2016 require security deposits in the form of cash or an unconditional, irrevocable letter of credit. As of December 31, 2016, we have entered into standby letters of credit totaling $7.1 million, as security deposits for the applicable leased facilities. These letters of credit reduced the aggregate amount we may borrow under our revolving line of credit to $17.9 million. In addition, on February 13, 2017, we entered into a standby letter of credit totaling $4.4 million, as a security deposit for our leased facility in Brooklyn, New York. This letter of credit reduced the aggregate amount we may borrow under its revolving line of credit to $13.5 million.

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 Bank'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 client 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, 2016 and 2015, our adjusted quick ratios were 5.43 and 7.90, 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, the lenders may require repayment in full of all principal and interest outstanding. If we fail to repay such amounts, the lenders could foreclose on the assets we have pledged as collateral under the line of credit. We are currently in compliance with all such covenants.

Public Offering of Common Stock

On April 2, 2014, we closed our IPO in which we issued and sold 8,626,377 shares of common stock resulting in net proceeds of $100.3 million. 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. Refer to Note 1 in the "Notes to Consolidated Financial Statements" included in Part II, Item 8 of this Annual Report on Form 10-K for additional details.

Working Capital

The following table summarizes our cash and cash equivalents, accounts receivable and working capital for the periods presented:

	As of December 31,		
	2016	2015	2014
	(in thousands)		
Cash and cash equivalents	$ 168,730	$ 183,729	$ 86,929
Accounts receivable, net	7,860	975	350
Working capital	143,629	160,310	66,220

Our cash at December 31, 2016 was held for working capital purposes. 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,		
	2016	2015	2014
	(in thousands)		
Cash provided by (used in):			
Operating activities	$ 5,210	$ (9,267)	$ (11,685)
Investing activities	(24,518)	(15,945)	(10,982)
Financing activities	4,309	122,012	102,584

Operating Activities

For the year ended December 31, 2016, net cash provided by operating activities was $5.2 million, consisting of $25.6 million in non-cash items and a $0.3 million net cash inflow from changes in

working capital, partially offset by a net loss of $20.7 million. Non-cash items consisted of non-cash stock compensation charges of $15.8 million and depreciation and amortization expense of $9.8 million. The increase in cash resulting from changes in working capital consisted of a $3.1 million increase in accrued compensation and related benefits, a $2.2 million increase in payments to certain of our university clients in exchange for contract extensions and various marketing and other rights and a $2.2 million change in other assets and other liabilities, partially offset by a $6.9 million increase in accounts receivable and other changes of $0.3 million.

For the year ended December 31, 2015, net cash used in operating activities was $9.3 million, consisting of a net loss of $26.7 million and a $3.1 million net cash outflow from changes in working capital, partially offset by $20.5 million in non-cash items. Non-cash items consisted of non-cash stock compensation charges of $12.5 million, depreciation and amortization expense of $7.2 million and a $0.8 million charge related to the execution of a new lease agreement for our Maryland headquarters. The decrease in cash resulting from changes in working capital consisted of a $4.0 million increase in prepaid expenses and other current assets, a $3.7 million increase in payments to certain of our university clients in exchange for contract extensions and various marketing and other rights, partially offset by an increase in accrued compensation and related benefits of $4.3 million and other changes of $0.3 million.

For the year ended December 31, 2014, net cash used in operating activities was $11.7 million, consisting of a net loss of $29.0 million, partially offset by $13.1 million in non-cash items and a $4.2 million net cash inflow from changes in working capital. Non-cash items consisted of non-cash stock compensation charges of $7.5 million and depreciation, amortization expense of $5.6 million. The increase in cash resulting from changes in working capital consisted of an increase in accrued compensation and related benefits of $3.1 million and a $3.0 million increase accrued expenses and other current liabilities primarily due to higher accrued program marketing costs and an increase of $0.7 million related to the change in the fair value of the Series D redeemable convertible preferred stock warrants prior to their conversion to additional paid-in capital upon the closing of the initial public offering, partially offset by decreases in accounts payable of $2.6 million.

Investing Activities

For the year ended December 31, 2016, net cash used in investing activities was $24.5 million, consisting primarily of $16.7 million in costs related to internal-use software and content developed to support a greater number of launched programs. Additionally, purchases of property and equipment were $7.7 million, primarily related to leasehold improvement expenditures related to our new office operating leases, and other investing activities of $0.1 million.

For the year ended December 31, 2015, net cash used in investing activities was $15.9 million, consisting primarily of $12.4 million in costs related to internal-use software and content developed to support a greater number of launched programs. Additionally, $2.0 million was related to the purchase of amortizable intangible assets associated with our marketing domain names and $0.3 million related to an investment we made in an early stage entity to test international marketing channels, while other purchases of property and equipment were $1.2 million.

For the year ended December 31, 2014, net cash used in investing activities was $11.0 million, consisting primarily of $9.5 million in costs related to internal-use software and content developed to support a greater number of launched programs, and $1.5 million related to purchases of property and equipment.

Financing Activities

For the year ended December 31, 2016, net cash provided by financing activities was $4.3 million, consisting primarily of $4.9 million in proceeds received from the exercise of stock options, partially

offset by $0.6 million of cash used for the payment of employee withholding taxes related to the release of restricted stock units.

For the year ended December 31, 2015, net cash provided by financing activities was $122.0 million, consisting primarily of $117.1 million in net proceeds from our public offering of common stock and $5.3 million in proceeds received from the exercise of stock options, partially offset by $0.4 million of cash used for the payment of employee withholding taxes related to the release of restricted stock units.

For the year ended December 31, 2014, net cash provided by financing activities was $102.6 million, consisting primarily of $100.3 million in net proceeds from our initial public offering. In addition, we received net cash of $2.3 million from the exercise of stock options.

Operating and Capital Expenditure Requirements

In 2016, we had new capital asset additions of $30.8 million, which was primarily comprised of $17.0 million in capitalized technology and content development costs and $11.7 million of leasehold improvements and other facilities-related capital costs. Of the $30.8 million increase, our cash capital expenditures were $24.4 million, with the difference consisting of landlord-funded leasehold improvement allowances and other accrued capital expenditures. In 2017, we expect new capital asset additions of approximately $64 to $69 million, of which approximately $11 to $13 million will be funded by landlord leasehold improvement allowances.

Contractual Obligations and Commitments

We have non-cancelable operating leases for our office space, and we are also contractually obligated to make fixed payments to certain of our university clients in exchange for contract extensions and various marketing and other rights.

We have a $25.0 million line of credit from Comerica Bank (with letters of credit reducing the aggregate amount we may borrow to $17.9 million) and no amounts were outstanding as of December 31, 2016. In addition, on February 13, 2017, we entered into a standby letter of credit totaling $4.4 million, as a security deposit for our leased facility in Brooklyn, New York. This letter of credit reduced the aggregate amount that we may borrow under our revolving line of credit to $13.5 million.

The following table summarizes our obligations under non-cancelable operating leases and commitments to certain of our clients in exchange for contract extensions and various marketing and other rights at December 31, 2016. Future events could cause actual payments to differ from these amounts.

	Payment due by period				
Contractual Obligations	Total	Less than 1 year	1 - 3 years	3 - 5 years	More than 5 years
			(in thousands)		
Operating lease obligations	$ 96,191	$ 6,924	$ 16,145	$ 16,903	$ 56,219
Payments to clients	16,003	4,978	4,750	1,250	5,025
Total	$ 112,194	$ 11,902	$ 20,895	$ 18,153	$ 61,244

We have entered into a specific program agreement under which we would be obligated to make future minimum program payments to a 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, and because we believe any contingent payments under this agreement would likely be immaterial, 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.

Off-Balance Sheet Arrangements

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.

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.

Management's Report on Internal Control Over Financial Reporting

Management of 2U, Inc. is responsible for establishing and maintaining adequate internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)). The Company's internal control over financial reporting is designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with accounting principles generally accepted in the United States of America.

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

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

The Company's management assessed the effectiveness of internal control over financial reporting as of December 31, 2016. In making this assessment, management used the criteria set forth in *Internal Control—Integrated Framework* issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO) in 2013. Management has concluded that, as of December 31, 2016, the Company's internal control over financial reporting was effective based on these criteria.

The effectiveness of the Company's internal control over financial reporting as of December 31, 2016, has been audited by KPMG LLP, an independent registered public accounting firm, as stated in their report included herein.

Report of Independent Registered Public Accounting Firm

The Board of Directors and Stockholders
2U, Inc.:

We have audited the accompanying consolidated balance sheets of 2U, Inc. and subsidiaries (the Company) as of December 31, 2016 and 2015, and the related consolidated statements of operations, changes in stockholders' equity (deficit), and cash flows for each of the years in the three-year period ended December 31, 2016. 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 conducted our audits in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, the consolidated financial statements referred to above present fairly, in all material respects, the financial position of 2U, Inc. and subsidiaries as of December 31, 2016 and 2015, and the results of their operations and their cash flows for each of the years in the three-year period ended December 31, 2016, 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), 2U, Inc.'s internal control over financial reporting as of December 31, 2016, based on criteria established in *Internal Control—Integrated Framework (2013)* issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO), and our report dated February 24, 2017 expressed an unqualified opinion on the effectiveness of the Company's internal control over financial reporting.

/s/ KPMG LLP

McLean, Virginia
February 24, 2017

Report of Independent Registered Public Accounting Firm

The Board of Directors and Stockholders
2U, Inc.:

We have audited 2U, Inc.'s internal control over financial reporting as of December 31, 2016, based on criteria established in *Internal Control—Integrated Framework (2013)* issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO). 2U, Inc.'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 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 conducted our audit in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether effective internal control over financial reporting was maintained in all material respects. Our audit included obtaining an understanding of internal control over financial reporting, assessing the risk that a material weakness exists, 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.

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.

In our opinion, 2U, Inc. maintained, in all material respects, effective internal control over financial reporting as of December 31, 2016, based on criteria established in *Internal Control—Integrated Framework (2013)* issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO).

We also have audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States), the consolidated balance sheets of 2U, Inc. and subsidiaries as of December 31, 2016 and 2015, and the related consolidated statements of operations, changes in stockholders' equity (deficit), and cash flows for each of the years in the three-year period ended December 31, 2016 and our report dated February 24, 2017 expressed an unqualified opinion on those consolidated financial statements.

/s/ KPMG LLP

McLean, Virginia
February 24, 2017

2U, Inc.

Consolidated Balance Sheets

(in thousands, except share and per share amounts)

	December 31, 2016	December 31, 2015
Assets		
Current assets:		
Cash and cash equivalents	$ 168,730	$ 183,729
Accounts receivable, net	7,860	975
Advances to clients	567	1,508
Prepaid expenses and other assets	7,541	6,695
Total current assets	184,698	192,907
Property and equipment, net	15,596	3,621
Capitalized technology and content development costs, net	31,867	22,628
Advances to clients, non-current	2,100	1,042
Prepaid expenses, non-current	7,052	7,099
Other non-current assets	3,007	3,744
Total assets	$ 244,320	$ 231,041
Liabilities and stockholders' equity		
Current liabilities:		
Accounts payable	$ 3,729	$ 4,544
Accrued compensation and related benefits	16,491	13,405
Accrued expenses and other liabilities	17,712	12,039
Deferred revenue	3,137	2,609
Total current liabilities	41,069	32,597
Non-current liabilities	8,014	2,655
Total liabilities	49,083	35,252
Commitments and contingencies (Note 7)		
Stockholders' equity:		
Preferred stock, $0.001 par value, 5,000,000 shares authorized, 0 shares issued and outstanding as of December 31, 2016 and 2015	—	—
Common stock, $0.001 par value, 200,000,000 shares authorized, 47,151,635 shares issued and outstanding as of December 31, 2016; 45,776,455 shares issued and outstanding as of December 31, 2015	47	46
Additional paid-in capital	371,455	351,324
Accumulated deficit	(176,265)	(155,581)
Total stockholders' equity	195,237	195,789
Total liabilities and stockholders' equity	$ 244,320	$ 231,041

See accompanying notes to consolidated financial statements.

2U, Inc.

Consolidated Statements of Operations

(in thousands, except share and per share amounts)

	Year Ended December 31,		
	2016	2015	2014
Revenue	$ 205,864	$ 150,194	$ 110,239
Costs and expenses:			
Servicing and support	40,982	32,047	26,858
Technology and content development	33,283	27,211	22,621
Program marketing and sales	106,610	82,911	65,218
General and administrative	46,021	34,123	23,420
Total costs and expenses	226,896	176,292	138,117
Loss from operations	(21,032)	(26,098)	(27,878)
Other income (expense):			
Interest expense	(35)	(552)	(1,213)
Interest income	383	167	92
Other	—	(250)	—
Total other income (expense)	348	(635)	(1,121)
Loss before income taxes	(20,684)	(26,733)	(28,999)
Income tax expense	—	—	—
Net loss	(20,684)	(26,733)	(28,999)
Preferred stock accretion	—	—	(89)
Net loss attributable to holders of common stock	$ (20,684)	$ (26,733)	$ (29,088)
Net loss per share attributable to holders of common stock, basic and diluted	$ (0.44)	$ (0.63)	$ (0.91)
Weighted-average shares of common stock outstanding, basic and diluted	46,609,751	42,420,356	32,075,107

See accompanying notes to consolidated financial statements.

2U, Inc.

Consolidated Statements of Changes in Stockholders' Equity (Deficit)

(in thousands, except share amounts)

	Common Stock		Additional Paid-In Capital	Accumulated Deficit	Total Stockholders' Equity (Deficit)
	Shares	Amount			
Balance, December 31, 2013	7,629,133	8	7,817	(99,849)	(92,024)
Exercise of stock options	940,642	1	2,281	—	2,282
Grant of common stock	5,000	—	55	—	55
Accretion of issuance costs on redeemable convertible preferred stock	—	—	(89)	—	(89)
Stock-based compensation expense	—	—	7,527	—	7,527
Conversion of redeemable convertible preferred stock to common stock	23,501,208	23	98,113	—	98,136
Conversion of Series D warrants to common stock warrants	—	—	821	—	821
Issuance of common stock from initial public offering, net of issuance costs	8,626,377	9	100,293	—	100,302
Exercise of warrants to purchase common stock	32,709	—	—	—	—
Net loss	—	—	—	(28,999)	(28,999)
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

See accompanying notes to consolidated financial statements.

2U, Inc.

Consolidated Statements of Cash Flows

(in thousands)

	Year Ended December 31,		
	2016	2015	2014
Cash flows from operating activities			
Net loss	$ (20,684)	$ (26,733)	$ (28,999)
Adjustments to reconcile net loss to net cash provided by (used in) operating activities:			
Depreciation and amortization	9,750	7,220	5,572
Stock-based compensation expense	15,823	12,499	7,527
Charge related to execution of new lease agreement	—	884	—
Changes in operating assets and liabilities:			
(Increase) decrease in accounts receivable, net	(6,885)	(625)	1,485
Increase in advances to clients	(117)	(875)	(1,094)
Increase in prepaid expenses and other current assets	(973)	(4,001)	(374)
(Decrease) increase in accounts payable	(815)	2,251	(2,565)
Increase in accrued compensation and related benefits	3,086	4,317	3,123
Increase in accrued expenses and other liabilities	1,052	1,216	2,978
Increase in deferred revenue	528	703	640
Decrease (increase) in payments to clients	2,234	(3,664)	(826)
Decrease (increase) in other assets and other liabilities, net	2,211	(2,709)	153
Other	—	250	695
Net cash provided by (used in) operating activities	5,210	(9,267)	(11,685)
Cash flows from investing activities			
Capitalized technology and content development cost expenditures	(16,728)	(12,358)	(9,454)
Purchases of property and equipment	(7,648)	(1,256)	(1,499)
Other	(142)	(2,331)	(29)
Net cash used in investing activities	(24,518)	(15,945)	(10,982)
Cash flows from financing activities			
Proceeds from exercise of stock options	4,859	5,336	2,282
Proceeds from issuance of common stock, net of offering costs	—	117,112	100,302
Proceeds from revolving line of credit	—	—	5,000
Payment on revolving line of credit	—	—	(5,000)
Other	(550)	(436)	—
Net cash provided by financing activities	4,309	122,012	102,584
Net (decrease) increase in cash and cash equivalents	(14,999)	96,800	79,917
Cash and cash equivalents, beginning of period	183,729	86,929	7,012
Cash and cash equivalents, end of period	$ 168,730	$ 183,729	$ 86,929
Supplemental disclosure of non-cash investing and financing activities			
Accrued capital expenditures	$ 6,729	$ 415	$ 557
Accretion of issuance costs on redeemable convertible preferred stock	—	—	89
Common stock granted in exchange for consulting services received	—	—	55

See accompanying notes to consolidated financial statements.

2U, Inc.

Notes to Consolidated Financial Statements

1. Description of the Business

2U, Inc. (the "Company") was incorporated as 2Tor Inc. in the State of Delaware in April 2008 and changed its name to 2U, Inc. on October 11, 2012. Under long-term agreements, the Company provides an integrated solution comprised of cloud-based software-as-a-service ("SaaS"), fused with technology-enabled services (together, the "Platform"), that allows leading colleges and universities to deliver high-quality online degree programs, extending the universities' reach and distinguishing their brands. The Company's SaaS technology consists of (i) a comprehensive learning environment ("Online Campus"), which acts as the hub for all student and faculty academic and social interaction, and (ii) a comprehensive suite of integrated applications, which the Company uses to launch, operate and support the Company's clients' programs. The Company also provides a suite of technology-enabled services optimized with data analysis and machine learning techniques that support the complete lifecycle of a higher education program, 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.

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, at an issuance price of $34.00 per share. The Company received net proceeds of $117.1 million after deducting underwriting discounts and commissions of $5.5 million and other offering expenses of approximately $0.6 million.

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

Certain prior period amounts in the consolidated balance sheets, consolidated statements of cash flows and the notes thereto have been reclassified to conform to the current period's presentation. Specifically, capitalized technology costs have been reclassified out of property and equipment and have been combined with capitalized content development costs. These reclassifications had no impact on total assets or investing activities previously reported for any periods presented.

Use of Estimates

The preparation of financial statements in accordance with U.S. GAAP requires management to make certain estimates and assumptions that affect the amounts reported in the consolidated financial statements and accompanying notes. On an ongoing basis, the Company evaluates its estimates, including those related to the useful lives of long-lived assets, fair value measurements and income taxes, among others. 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)

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.

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.

During the year ended December 31, 2016, three clients each accounted for 10% or more of the Company's revenue, as follows: $71.0 million, $36.7 million and $22.1 million, which equals 35%, 18% and 11% of total revenue, respectively.

During the year ended December 31, 2015, three clients each accounted for 10% or more of the Company's revenue, as follows: $65.2 million, $23.8 million and $17.6 million, which equals 43%, 16% and 12% of total revenue, respectively.

During the year ended December 31, 2014, three clients each accounted for 10% or more of the Company's revenue, as follows: $61.1 million, $15.9 million and $14.6 million, which equals 55%, 14% and 13% of total revenue, respectively.

As of December 31, 2016, two clients each accounted for 10% or more of the Company's accounts receivable balance, as follows: $5.8 million and $1.4 million, which equals 74% and 17% of total accounts receivable, respectively. As of December 31, 2015, one client accounted for more than 10% of the Company's accounts receivable balance, as follows: $0.2 million, which equals 18% of total accounts receivable.

Accounts Receivable and Allowance for Doubtful Accounts

Accounts receivable are stated at net realizable value. The Company extends a minimal amount of uncollateralized credit to its clients. The Company utilizes the allowance method to provide for doubtful accounts based on management's evaluation of the collectability of the amounts due. The Company's 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 the Company's estimates. As of December 31, 2016 and 2015, the Company determined that no significant allowances for doubtful accounts were necessary.

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.

2U, Inc.

Notes to Consolidated Financial Statements (Continued)

2. Significant Accounting Policies (Continued)

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.

Assets Measured at Fair Value on a Recurring Basis

The Company evaluates its financial assets and liabilities subject to fair value measurements on a recurring basis to determine the appropriate level in which to classify them for each reporting period. This determination requires significant judgments to be made. The Company had Level 1 money market investments of $137.9 million and $155.6 million included in cash and cash equivalents as of December 31, 2016 and 2015, respectively.

Advances to Clients

The Company is contractually obligated to pay advances to certain of its clients in order to fund start-up expenses of the program on behalf of the client. Advances to 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

2U, Inc.

Notes to Consolidated Financial Statements (Continued)

2. Significant Accounting Policies (Continued)

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.

Capitalized Technology and Content Development Costs

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.

The Company works with each client's faculty members to develop and maintain educational content that is delivered to their students through Online Campus. The online content developed jointly by the Company and its clients consists of subjects chosen and taught by clients' faculty members and incorporates references and examples designed to remain relevant over extended periods of time. Online delivery of the content, combined with live, face-to-face instruction, provides the Company with rapid user feedback that it uses to make ongoing corrections, modifications and improvements to the course content. The Company's clients retain all intellectual property rights to the developed content, although the Company retains the rights to the content packaging and delivery mechanisms. Much of the Company's new content development uses proven delivery platforms and is therefore primarily subject-specific in nature. As a result, a significant portion of content development costs qualify for capitalization due to the focus of the Company's development efforts on the unique subject matter of the content. Similar to on-campus programs offered by the Company's clients, the online degree programs enabled by the Company offer numerous courses for each degree. The Company therefore capitalizes its development costs on a course-by-course basis.

The Company develops content on a course-by-course basis in conjunction with the faculty for each client program. The 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 client into a format suitable for delivery through Online Campus.

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 clients' programs for delivery via Online Campus. Capitalization ends when content has been fully developed by both the Company and the client, at which time amortization of the capitalized content development costs begins. 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

2U, Inc.

Notes to Consolidated Financial Statements (Continued)

2. Significant Accounting Policies (Continued)

of the respective capitalized content program, which is generally five years. The estimated useful life corresponds with the Company's 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.

Other Non-Current Assets

The Company records amounts paid more than 12 months in advance of being incurred as prepaid expenses, non-current. In addition, the Company has certain other assets that are long-term in nature, which are classified as other non-current assets. These consist primarily of other amortizable intangible assets associated with the Company's marketing websites and related domain names and security deposits on leased office facilities.

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. For the years ended December 31, 2016 and 2015, no impairment of long-lived assets was deemed to have occurred.

Revenue Recognition and Deferred Revenue

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.

The Company primarily derives its revenue from long-term contracts that typically range from 10 to 15 years in length. Under these contracts, the Company enables access to its Platform to its clients and their faculty and students. The Company is entitled to a contractually specified percentage of net program proceeds from its clients. These net program proceeds represent gross proceeds billed by clients to students, less credit card fees and other specified charges the Company has agreed to exclude in certain of its client contracts.

The Company generates substantially all of its revenue from multiple-deliverable contractual arrangements with its clients. Under each of these arrangements, the Company provides (i) access to Online Campus, which serves as a learning platform for its client's faculty and students and which also enables a comprehensive range of other client functions, (ii) access to operations applications which

2U, Inc.

Notes to Consolidated Financial Statements (Continued)

2. Significant Accounting Policies (Continued)

provide the content management, admissions application processing, customer relationship management, and other functionality necessary to effectively operate the Company's clients' programs and (iii) technology-enabled services that support the complete lifecycle of a higher education program, 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.

In order to treat deliverables in a multiple-deliverable contractual arrangement as separate units of accounting, deliverables must have standalone value upon delivery. The technology-enabled services within the Platform are provided primarily in support of programs delivered through Online Campus, and for students of the programs delivered through Online Campus. Accordingly, the Company has determined that no individual deliverable has standalone value upon delivery and, therefore, deliverables within the Company's multiple-deliverable arrangements do not qualify for treatment as separate units of accounting. Therefore, 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.

Advance payments are recorded as deferred revenue until services are delivered or obligations are met, at which time revenue is recognized. Deferred revenue as of a particular balance sheet date represents the excess of amounts received as compared to amounts recognized in revenue in the consolidated statements of operations as of the end of the reporting period, and such amounts are reflected as a current liability on the Company's consolidated balance sheets.

Program Marketing and Sales Expense

The majority of the marketing and sales costs incurred by the Company are directly related to acquiring students for its clients' programs, with lesser amounts related to the Company's own marketing and advertising efforts. For the years ended December 31, 2016, 2015 and 2014, expenses related to the Company's own marketing and advertising efforts were not material. All such costs are expensed as incurred and reported in program marketing and sales expense in the Company's consolidated statements of operations.

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.

2U, Inc.

Notes to Consolidated Financial Statements (Continued)

2. Significant Accounting Policies (Continued)

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, adjusted for estimated forfeitures. 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.

Basic and Diluted Loss per Common Share

The Company uses the two-class method to compute net loss per share of common stock because the Company has issued securities, other than common stock, that contractually entitle the holders to participate in dividends and earnings of the Company. The two-class method requires earnings for the period to be allocated between common stock and participating securities based upon their respective rights to receive distributed and undistributed earnings. Holders of each series of the Company's redeemable convertible preferred stock (prior to their conversion to common stock) were entitled to participate in distributions, when and if declared by the board of directors, that are made to holders of common stock, and as a result are considered participating securities.

Under the two-class method, for periods with net income, basic net income per share of common stock is computed by dividing the net income attributable to holders of common stock by the weighted-average number of shares of common stock outstanding during the period. Net income attributable to holders of common stock is computed by subtracting from net income the portion of current year earnings that the participating securities would have been entitled to receive pursuant to their dividend rights had all of the year's earnings been distributed. No such adjustment to earnings is made during periods with a net loss, as the holders of the participating securities have no obligation to fund losses. Diluted net loss per share of common stock is computed under the two-class method by using the weighted-average number of shares of common stock outstanding, plus, for periods with net income attributable to holders of common stock, the potential dilutive effects of stock options and warrants. In addition, the Company analyzes the potential dilutive effect of the outstanding participating securities under the "if-converted" method when calculating diluted earnings per share, in which it is assumed that the outstanding participating securities convert into common stock at the beginning of the period. The Company reports the more dilutive of the approaches (two-class or "if-converted") as its diluted net income per share during the period. Due to net losses for the years ended December 31, 2016, 2015 and 2014, basic and diluted loss per share were the same, as the effect of potentially dilutive securities would have been anti-dilutive.

Comprehensive Loss

The Company's net loss equals comprehensive loss for all periods presented as the Company has no material components of other comprehensive income. Therefore, no consolidated statements of comprehensive income are included in the consolidated financial statements for any periods presented.

Recent Accounting Pronouncements

In August 2016, the Financial Accounting Standards Board ("FASB") issued Accounting Standards Update ("ASU") No. 2016-15, *Statement of Cash Flows (Topic 230): Classification of Certain Cash*

2U, Inc.

Notes to Consolidated Financial Statements (Continued)

2. Significant Accounting Policies (Continued)

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.

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 is adopting this ASU on January 1, 2017, and does not believe that this standard will have a material impact on its consolidated financial position or related disclosures.

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 November 2015, the FASB issued ASU No. 2015-17, *Income Taxes (Topic 740): Balance Sheet Classification of Deferred Taxes* . The ASU eliminates the requirement to classify deferred tax assets and liabilities between current and noncurrent. The ASU requires classification of all deferred tax asset and liability balances as noncurrent. The amendments in this ASU are effective for fiscal years beginning after December 15, 2016, with early adoption permitted. Adoption of the ASU is either retrospective to each prior period presented, or prospective. As of December 31, 2015, the Company early adopted the ASU prospectively. Adoption of this standard did not have a material impact on the Company's consolidated financial position or related disclosures.

In April 2015, the FASB issued ASU No. 2015-05, *Intangibles—Goodwill and Other—Internal-Use Software (Subtopic 350-40): Customer's Accounting for Fees Paid in a Cloud Computing Arrangement* . The ASU provides guidance to customers in a cloud computing arrangement to determine whether the arrangement includes a software license. When a cloud computing arrangement includes a software license, the customer is required to account for the license element of the arrangement consistent with the acquisition of other software licenses. The amendments in this ASU are effective for fiscal years beginning after December 15, 2015. The Company adopted this ASU on January 1, 2016. Adoption of this standard did not have a material impact on the Company's consolidated financial position or related disclosures.

In April 2015, the FASB issued ASU No. 2015-03, *Interest—Imputation of Interest (Subtopic 835-30): Simplifying the Presentation of Debt Issuance Costs* . The ASU simplifies the

2U, Inc.

Notes to Consolidated Financial Statements (Continued)

2. Significant Accounting Policies (Continued)

presentation of debt issuance costs by requiring that such costs be presented in the consolidated balance sheets as a direct deduction from the carrying value of the associated debt instrument, consistent with debt discounts. Subsequent to the issuance of this ASU, the SEC staff announced that the presentation of debt issuance costs associated with line-of-credit arrangements may be presented as an asset. This announcement was codified by the FASB in ASU No. 2015-15. The amendments in these ASUs are effective for fiscal years beginning after December 15, 2015. The Company adopted this ASU on January 1, 2016. Adoption of this standard did not have a material impact on the Company's consolidated financial position or related disclosures.

In January 2015, the FASB issued ASU No. 2015-01, *Income Statement—Extraordinary and Unusual Items (Subtopic 225-20): Simplifying Income Statement Presentation by Eliminating the Concept of Extraordinary Items* . The ASU simplifies income statement presentation by eliminating the concept of extraordinary items. The amendments in this ASU are effective for fiscal periods beginning after December 15, 2015. The Company adopted this ASU on January 1, 2016. Adoption of this standard did not have a material impact on the Company's consolidated financial position or related disclosures.

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 does not expect the new standard to have a significant impact on its 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 standards"). The new revenue standards may be applied retrospectively to each prior period presented or retrospectively with the cumulative effect recognized as of the date of adoption. During 2016, the Company has made measurable progress towards completing the evaluation of the potential changes from adopting the new standard on our future financial reporting and disclosures. The Company has engaged an independent third-party expert to assist with the implementation of this standard, has completed the review of the Company's contracts portfolio and has made significant progress in the review of current accounting policies and practices to identify potential differences that could result from applying the requirements of the new standard to our revenue contracts. The Company will continue to evaluate the impact that the new revenue standards will have, if any, on the Company's consolidated financial statements and related disclosures and is still

2U, Inc.

Notes to Consolidated Financial Statements (Continued)

2. Significant Accounting Policies (Continued)

determining the method of adoption that will be elected. The Company will adopt this new standard on January 1, 2018, and plans on giving additional updates on progress made towards adoption and further conclusions in its Form 10-Q's of 2017.

3. Accounts Receivable and Allowance for Doubtful Accounts

Accounts receivable, net consists of the following:

	December 31,	
	2016	2015
	(in thousands)	
Accounts receivable	$ 7,859	$ 360
Other receivables	1	615
Accounts receivable, net	$ 7,860	$ 975

The changes in allowance for doubtful accounts are as follows:

	Balance at Beginning of Period	Additions Charged to Expense	Deductions	Balance at End of Period
	(in thousands)			
Allowance for doubtful accounts:				
Year ended December 31, 2016	$ —	$ —	$ —	$ —
Year ended December 31, 2015	—	—	—	—
Year ended December 31, 2014	12	—	(12)	—

2U, Inc.

Notes to Consolidated Financial Statements (Continued)

4. Property and Equipment and Other Amortizable Intangible Assets

Property and equipment consisted of the following as of:

	December 31,	
	2016	2015
	(in thousands)	
Computer hardware	$ 3,935	$ 2,911
Furniture and office equipment	2,204	1,666
Leasehold improvements	6,689	1,837
Leasehold improvements in process	6,864	—
Total	19,692	6,414
Accumulated depreciation and amortization	(4,096)	(2,793)
Property and equipment, net	$ 15,596	$ 3,621
Other amortizable intangible assets, net	$ 2,263	$ 2,396

Depreciation and amortization expense of property and equipment and other amortizable intangible assets was $2.0 million, $1.2 million and $1.0 million for the years ended December 31, 2016, 2015 and 2014, respectively.

As of December 31, 2016, the estimated future depreciation and amortization expense for property and equipment placed in service and other amortizable intangible assets is as follows (in thousands):

2017	$ 2,279
2018	2,035
2019	1,723
2020	1,434
2021	1,187
Thereafter	2,337
Total	$ 10,995

2U, Inc.

Notes to Consolidated Financial Statements (Continued)

5. Capitalized Technology and Content Development Costs

Capitalized technology and content development costs consisted of the following as of:

	December 31, 2016			December 31, 2015		
	Gross Carrying Amount	Accumulated Amortization	Net Carrying Amount	Gross Carrying Amount	Accumulated Amortization	Net Carrying Amount
	(in thousands)					
Capitalized technology costs	$ 12,988	$ (7,822)	$ 5,166	$ 8,564	$ (5,697)	$ 2,867
Capitalized technology costs in process	4,112	—	4,112	1,640	—	1,640
Total capitalized technology costs	17,100	(7,822)	9,278	10,204	(5,697)	4,507
Capitalized content development costs	33,353	(15,367)	17,986	24,796	(10,931)	13,865
Capitalized content development costs in process	4,603	—	4,603	4,256	—	4,256
Total capitalized content development costs	37,956	(15,367)	22,589	29,052	(10,931)	18,121
Capitalized technology and content development costs, net	$ 55,056	$ (23,189)	$ 31,867	$ 39,256	$ (16,628)	$ 22,628

Amortization expense related to capitalized technology was $2.1 million, $1.6 million and $1.4 million for the years ended December 31, 2016, 2015 and 2014, respectively. This expense is included in technology and content development costs in the accompanying consolidated statements of operations.

The Company recorded amortization expense related to capitalized content development costs of $5.7 million, $4.5 million and $3.2 million for the years ended December 31, 2016, 2015 and 2014, respectively.

As of December 31, 2016, the estimated future amortization expense for the capitalized technology and content development costs placed in service is as follows (in thousands):

2017	$ 8,082
2018	6,876
2019	4,844
2020	2,614
2021	736
Thereafter	—
Total	$ 23,152

2U, Inc.

Notes to Consolidated Financial Statements (Continued)

6. Non-current Liabilities

Non-current liabilities consisted of the following as of:

	December 31,	
	2016	2015
	(in thousands)	
Lease-related liabilities	$ 7,620	$ 2,165
Other	394	490
Total non-current liabilities	$ 8,014	$ 2,655

7. Commitments and Contingencies

Line of Credit

On December 31, 2013, the Company entered into a credit agreement for a revolving line of credit with an aggregate commitment not to exceed $37.0 million. On January 21, 2014, the Company borrowed $5.0 million under this line of credit and repaid this borrowing in full on February 18, 2014.

On December 31, 2015, the Company amended this credit agreement to reduce the aggregate amount it may borrow to $25.0 million, and on January 30, 2017, the Company amended this credit agreement to extend the maturity date through March 1, 2017. No amounts were outstanding under this credit agreement as of December 31, 2016. The Company intends to extend this agreement under comparable terms, prior to expiration.

Certain of the Company's operating lease agreements entered into prior to December 31, 2016 require security deposits in the form of cash or an unconditional, irrevocable letter of credit. As of December 31, 2016, the Company has entered into standby letters of credit totaling $7.1 million, as security deposits for the applicable leased facilities. These letters of credit reduced the aggregate amount the Company may borrow under its revolving line of credit to $17.9 million. In addition, on February 13, 2017, the Company entered into a standby letter of credit totaling $4.4 million, as a security deposit for its leased facility in Brooklyn, New York. This letter of credit reduced the aggregate amount the Company may borrow under its revolving line of credit to $13.5 million.

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 Bank'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.

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 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

2U, Inc.

Notes to Consolidated Financial Statements (Continued)

7. Commitments and Contingencies (Continued)

1.10 to 1.00. As of December 31, 2016 and 2015, the Company's adjusted quick ratio was 5.43 and 7.90, 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 lenders may require repayment in full of all principal and interest outstanding. If the Company fails to repay such amounts, the lenders could foreclose on the assets pledged as collateral under the line of credit. The Company is currently in compliance with all such covenants.

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, 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.

Program Marketing and Sales Commitments

Certain of the agreements entered into between the Company and its clients require the Company to commit to meet certain staffing and spending investment thresholds related to program 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.

Operating Leases

The Company leases office facilities under non-cancelable operating leases in Maryland, New York, California, Colorado, North Carolina, Virginia and Hong Kong. The Company also leases office equipment under non-cancelable leases. As of December 31, 2016, the future minimum lease payments were as follows (in thousands):

2017	$ 6,924
2018	7,829
2019	8,316
2020	8,083
2021	8,820
Thereafter	56,219
Total future minimum lease payments	$ 96,191

2U, Inc.

Notes to Consolidated Financial Statements (Continued)

7. Commitments and Contingencies (Continued)

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 $2.5 million and $0.6 million as of December 31, 2016 and 2015, respectively. The Company does not have any subleases as of December 31, 2016.

Total rent expense from non-cancelable operating lease agreements (net of sublease income of $0.3 million, $0.3 million and $0.3 million) was $5.8 million, $3.5 million and $2.6 million for the years ended December 31, 2016, 2015 and 2014, respectively.

Fixed Payments to Clients

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

2017	$ 4,978
2018	3,875
2019	875
2020	625
2021	625
Thereafter	5,025
Total future minimum program payments	$ 16,003

Contingent Payments to Clients

The Company has entered into specific program agreements under which it would be obligated to make future minimum program payments to a 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, and because it believes any contingent payments under this agreement would likely be immaterial, the Company has excluded such payments from the table above.

2U, Inc.

Notes to Consolidated Financial Statements (Continued)

8. Income Taxes

The Company had domestic losses before income taxes of $20.7 million, $26.7 million and $29.0 million for the years ended December 31, 2016, 2015 and 2014, respectively.

A reconciliation between the Company's statutory federal income tax rate and the effective tax rate for the years ended December 31, is as follows:

	2016	2015	2014
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	5.5	7.7	5.8
Non-deductible expenses	(4.4)	(2.0)	(2.8)
Change in valuation allowance	(36.6)	(39.1)	(32.4)
Other	0.5	(1.6)	(5.6)
Effective tax rate	0.0%	0.0%	0.0%

The significant components of the Company's deferred tax assets and liabilities as of December 31 are as follows:

	2016	2015
	(in thousands)	
Deferred tax assets:		
Accrued expenses and other	$ 2,757	$ 1,899
Accrued compensation and related benefits	4,317	3,306
Rebate reserve	126	167
Deferred rent	1,028	282
Stock-based compensation	7,127	4,971
Net operating loss carryforwards	61,995	54,967
Valuation allowance	(62,297)	(54,739)
Total deferred tax assets	$ 15,053	$ 10,853
Deferred tax liabilities:		
Prepaid expenses	$ (1,524)	$ (875)
Capitalized content development costs	(9,368)	(7,583)
Capitalized software development costs	(3,848)	(1,886)
Property and equipment	(313)	(509)
Total deferred tax liabilities	$ (15,053)	$ (10,853)
Net deferred tax assets/liabilities	$ —	$ —

2U, Inc.

Notes to Consolidated Financial Statements (Continued)

8. 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, 2016	$ 54,739	$ 7,558	$ —	$ 62,297
Year ended December 31, 2015	44,309	10,430	—	54,739
Year ended December 31, 2014	34,921	9,388	—	44,309

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, 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 that are in effect for the year in which the differences are expected to reverse. Deferred tax assets are subject to periodic recoverability assessments. Recognition of deferred tax assets is appropriate only if the likelihood of realization of such assets is more likely than not to occur. Valuation allowances are established, when necessary, to reduce deferred tax assets to the amount that more likely than not will be realized.

At December 31, 2016, the Company had a federal net operating loss ("NOL") carryforward of approximately $198.2 million, which expires between 2029 and 2036. 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. A full valuation allowance has been established to offset the net deferred tax assets as the Company has not generated taxable income since inception and does not have sufficient deferred tax liabilities to recover the deferred tax assets. The total increase in the valuation allowance was $7.6 million for the year ended December 31, 2016. 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. In addition, a certain portion of the above NOL carryforwards may be subject to Internal Revenue Code section 382 limitations, which may limit their future use.

The Company completed an analysis of its stock ownership changes through December 31, 2016 in accordance with Internal Revenue Code section 382 and the Treasury Regulations promulgated thereunder, and determined that a greater than fifty percent ownership change of one or more of its 5-percent shareholders occurred. Absent a subsequent ownership change, all of the Company's net operating losses subject to the ownership change should be available. Therefore, despite the fact that an ownership change occurred, such change is not expected to limit the ability of the Company to utilize the carryforward net operating losses of approximately $198.2 million prior to expiration.

The Company applies the provisions of ASC 740-10 to uncertain tax positions. ASC 740-10 clarifies accounting for income taxes by prescribing a minimum probability threshold that a tax position must meet before a financial statement benefit is recognized. If the probability for sustaining a tax position is greater than fifty percent, then the tax position is warranted and recognition should be at the highest amount that would be expected to be realized upon settlement. The Company did not identify any tax positions that would be required for inclusion in the financial statements. As of December 31, 2016, the Company had not made any changes to its tax positions since December 31, 2015.

2U, Inc.

Notes to Consolidated Financial Statements (Continued)

8. Income Taxes (Continued)

The Company recognizes interest and penalties related to uncertain tax positions in income tax expense. As of December 31, 2016 and 2015, the Company had no accrued interest or penalties related to 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 2012, 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.

9. Stockholders' Equity

Immediately upon the closing of the IPO on April 2, 2014, the Company's certificate of incorporation was amended and restated to, among other things, authorize 200,000,000 shares of common stock and 5,000,000 shares of preferred stock.

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.

As of December 31, 2016, 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, 2016, the Company had reserved a total of 9,337,334 of its authorized shares of common stock for future issuance as follows:

Outstanding stock options	4,882,237
Possible future issuance under 2014 Equity Incentive Plan	3,042,163
Outstanding restricted stock units	1,412,934
Total shares of common stock reserved for future issuance	9,337,334

The compensation committee of the Company's board of directors, acting under authority delegated from the board of directors, granted on January 1, 2017, option awards to employees to purchase an aggregate of 2,839 shares of common stock at an exercise price of $30.15 and restricted stock unit awards for an aggregate of 2,875 shares of common stock, in each case under the 2014 Equity Incentive Plan (as defined in Note 9 below).

10. 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.

2U, Inc.

Notes to Consolidated Financial Statements (Continued)

10. Stock-Based Compensation (Continued)

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 2,357,579 and 2,288,820 on January 1, 2017 and 2016, 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, 2016, the Company had 3,042,163 shares reserved for issuance under the 2014 Plan. Further, as of December 31, 2016, under the 2014 Plan, options to purchase 2,165,914 shares of the Company's common stock were outstanding at a weighted-average exercise price of $19.21 per share and 1,412,934 restricted stock units were outstanding.

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.

2U, Inc.

Notes to Consolidated Financial Statements (Continued)

10. Stock-Based Compensation (Continued)

As of December 31, 2016, options to purchase 2,716,323 shares of the Company's common stock were outstanding under the 2008 Plan at a weighted-average exercise price of $3.99 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:

	Year Ended December 31,		
	2016	2015	2014
	(in thousands)		
Servicing and support	$ 3,245	$ 2,270	$ 1,468
Technology and content development	2,392	1,548	794
Program marketing and sales	1,317	1,057	676
General and administrative	8,869	7,624	4,589
Total stock-based compensation expense	$ 15,823	$ 12,499	$ 7,527

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 option, expected stock price volatility and dividend yield. Additionally, the recognition of expense requires estimation of the number of options that will ultimately vest and those that will be forfeited. The Company estimates the expected forfeitures of share-based awards at the grant date and recognizes the compensation cost only for those awards expected to vest.

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 historical volatilities for publicly traded stock of comparable companies 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.

2U, Inc.

Notes to Consolidated Financial Statements (Continued)

10. Stock-Based Compensation (Continued)

Prior to the IPO, the Company determined for financial reporting purposes the estimated per share fair value of its common stock at various grant dates using contemporaneous valuations performed in accordance with the guidance outlined in the American Institute of Certified Public Accountants Practice Aid, "Valuation of Privately-Held Company Equity Securities Issued as Compensation," also known as the Practice Aid. In conducting the contemporaneous valuations, the Company used relevant information available and considered all objective and subjective factors that it believed to be relevant for each valuation conducted, including management's best estimate of the Company's business condition, prospects and operating performance at each valuation date.

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,		
	2016	2015	2014
Risk-free interest rate	1.1% - 1.9%	1.5% - 1.9%	1.7% - 2.1%
Expected term (years)	5.43 - 6.50	5.56 - 6.08	5.11 - 6.25
Expected volatility	50%	50%	50% - 55%
Dividend yield	0%	0%	0%

The following is a summary of the stock option activity for the year ended December 31, 2016:

	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, 2015	5,298,510	$ 8.07	6.66	$ 105,595
Granted	758,547	23.57	9.00	
Exercised	(1,011,153)	4.82	2.94	
Forfeited	(154,493)	20.37		
Expired	(9,174)	18.22		
Outstanding balance at December 31, 2016	4,882,237	10.74	6.30	95,081
Exercisable at December 31, 2016	3,394,702	6.54	5.37	80,159
Vested and expected to vest at December 31, 2016	4,772,843	10.47	6.24	94,201

The weighted-average grant date fair value of the Company's stock options granted during the years ended December 31, 2016, 2015 and 2014 was $11.41, $12.54 and $5.71 per share, respectively.

The total unrecognized compensation cost related to the unvested options as of December 31, 2016 was $11.6 million and will be recognized over a weighted-average period of approximately 2.1 years.

The aggregate intrinsic value of the options exercised during the years ended December 31, 2016, 2015 and 2014 was $24.9 million, $25.8 million and $16.2 million, respectively.

2U, Inc.

Notes to Consolidated Financial Statements (Continued)

10. Stock-Based Compensation (Continued)

Restricted Stock Units

Throughout 2016 and 2015, 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, 2015	1,220,008	$ 17.97
Granted	701,668	23.30
Vested	(368,927)	17.04
Forfeited	(139,815)	20.60
Outstanding balance at December 31, 2016	1,412,934	20.60

The total compensation cost related to the nonvested restricted stock units not yet recognized as of December 31, 2016 was $19.2 million and will be recognized over a weighted-average period of approximately 2.4 years.

11. 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 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, 2016, 2015 and 2014:

	Year Ended December 31,		
	2016	2015	2014
Stock options	4,882,237	5,298,510	5,850,211
Restricted stock units	1,412,934	1,220,008	992,665

2U, Inc.

Notes to Consolidated Financial Statements (Continued)

11. Net Loss per Share (Continued)

Basic and diluted net loss per share attributable to holders of common stock is calculated as follows:

	Year Ended December 31,		
	2016	2015	2014
Numerator (in thousands):			
Net loss attributable to holders of common stock	$ (20,684)	$ (26,733)	$ (29,088)
Denominator:			
Weighted-average shares of common stock outstanding, basic and diluted	46,609,751	42,420,356	32,075,107
Net loss per share attributable to holders of common stock, basic and diluted	$ (0.44)	$ (0.63)	$ (0.91)

12. Segment and Geographic Information

Operating segments are defined as components of an enterprise for which discrete financial information is available that is evaluated regularly by the chief operating decision maker ("CODM") for purposes of allocating resources and evaluating financial performance. The Company's CODM reviews the financial information presented on a consolidated basis for purposes of allocating resources and evaluating financial performance. As such, the Company's operations constitute a single operating segment and one reportable segment. The Company offers similar services to substantially all of its clients, which primarily represent well-recognized nonprofit colleges and universities in the United States. Substantially all assets were held and all revenue was generated in the United States during all periods presented.

13. 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, 2016, 2015 and 2014, the Company made employer contributions of $1.1 million, $0.8 million and $0.6 million, respectively.

14. Related Party Transactions

During the years ended December 31, 2016, 2015 and 2014, 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. For the years ended December 31, 2016, 2015 and 2014, the Company recorded $0.3 million, $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 recorded $1.4 million, $1.7 million and $1.6 million for the expenses incurred related to the services provided by this related party for the years ended December 31, 2016, 2015 and 2014, respectively. No material amounts were due to the

2U, Inc.

Notes to Consolidated Financial Statements (Continued)

14. Related Party Transactions (Continued)

related party or recorded in accounts payable on the consolidated balance sheets as of December 31, 2016 and 2015.

15. Quarterly Financial Information (Unaudited)

The following tables set forth certain unaudited quarterly financial data for 2016 and 2015. 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, 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
Program 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)
Other income (expense):				
Interest expense	(26)	(9)	—	—
Interest income	92	91	37	163
Other	—	—	—	—
Total other income (expense)	66	82	37	163
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.

Notes to Consolidated Financial Statements (Continued)

15. Quarterly Financial Information (Unaudited) (Continued)

	Three Months Ended			
	March 31, 2015	June 30, 2015	September 30, 2015	December 31, 2015
	(in thousands, except share and per share amounts)			
Revenue	$ 34,612	$ 35,238	$ 37,092	$ 43,252
Costs and expenses:				
Servicing and support	7,550	7,903	7,845	8,749
Technology and content development	6,134	6,466	7,082	7,529
Program marketing and sales	19,587	21,526	21,567	20,231
General and administrative	6,711	8,871	8,477	10,064
Total costs and expenses	39,982	44,766	44,971	46,573
Loss from operations	(5,370)	(9,528)	(7,879)	(3,321)
Other income (expense):				
Interest expense	(126)	(126)	(127)	(173)
Interest income	28	24	21	94
Other	—	—	(250)	—
Total other income (expense)	(98)	(102)	(356)	(79)
Net loss	$ (5,468)	$ (9,630)	$ (8,235)	$ (3,400)
Net loss per share:				
Basic and diluted	$ (0.13)	$ (0.23)	$ (0.20)	$ (0.07)
Weighted-average shares used in computing net loss per share:				
Basic and diluted	40,978,741	41,362,476	41,645,894	45,651,475

2U, Inc.
Selected Financial Data

The following selected consolidated financial data for the years ended December 31, 2016, 2015, 2014, 2013 and 2012, and the selected consolidated balance sheet data as of December 31, 2016, 2015, 2014, 2013 and 2012 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,				
	2016	2015	2014	2013	2012
	(in thousands, except share and per share amounts)				
Consolidated Statement of Operations Data:					
Revenue	$ 205,864	$ 150,194	$ 110,239	$ 83,127	$ 55,879
Costs and expenses:					
Servicing and support	40,982	32,047	26,858	22,718	14,926
Technology and content development	33,283	27,211	22,621	19,472	8,299
Program marketing and sales	106,610	82,911	65,218	54,103	45,390
General and administrative	46,021	34,123	23,420	14,840	10,342
Total costs and expenses	226,896	176,292	138,117	111,133	78,957
Loss from operations	(21,032)	(26,098)	(27,878)	(28,006)	(23,078)
Other income (expense):					
Interest expense	(35)	(552)	(1,213)	27	(73)
Interest income	383	167	92	26	38
Other	—	(250)	—	—	—
Total other income (expense)	348	(635)	(1,121)	53	(35)
Loss before income taxes	(20,684)	(26,733)	(28,999)	(27,953)	(23,113)
Income tax expense	—	—	—	—	—
Net loss	(20,684)	(26,733)	(28,999)	(27,953)	(23,113)
Preferred stock accretion	—	—	(89)	(347)	(339)
Net loss attributable to common stockholders	$ (20,684)	$ (26,733)	$ (29,088)	$ (28,300)	$ (23,452)
Net loss per share attributable to common stockholders, basic and diluted	$ (0.44)	$ (0.63)	$ (0.91)	$ (3.81)	$ (3.33)
Weighted-average common shares outstanding used in computing net loss per share attributable to common stockholders, basic and diluted	46,609,751	42,420,356	32,075,107	7,432,055	7,037,090
Other Financial Data:					
Adjusted EBITDA (loss)(1)	$ 4,541	$ (6,629)	$ (14,779)	$ (21,245)	$ (18,814)

(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 Adjusted

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

	As of December 31,				
	2016	2015	2014	2013	2012
	(in thousands)				
Consolidated Balance Sheet Data:					
Cash and cash equivalents	$ 168,730	$ 183,729	$ 86,929	$ 7,012	$ 25,190
Accounts receivable, net	7,860	975	350	1,835	248
Total assets	244,320	231,041	113,039	28,652	39,877
Total liabilities	49,083	35,252	25,028	22,629	13,467
Total redeemable convertible preferred stock	—	—	—	98,047	92,706
Additional paid-in capital	371,455	351,324	216,818	7,817	5,483
Total stockholders' equity	195,237	195,789	88,011	(92,024)	(66,296)

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 Adjusted EBITDA to net loss, the most directly comparable GAAP financial measure.

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 results as reported under 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 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 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 Adjusted EBITDA to net loss for each of the periods indicated:

	Year Ended December 31,				
	2016	2015	2014	2013	2012
			(in thousands)		
Net loss	$ (20,684)	$ (26,733)	$ (28,999)	$ (27,953)	$ (23,113)
Adjustments:					
Interest expense	35	552	1,213	(27)	73
Interest income	(383)	(167)	(92)	(26)	(38)
Depreciation and amortization expense	9,750	7,220	5,572	4,335	2,869
Stock-based compensation expense	15,823	12,499	7,527	2,426	1,395
Total adjustments	25,225	20,104	14,220	6,708	4,299
Adjusted EBITDA (loss)	$ 4,541	$ (6,629)	$ (14,779)	$ (21,245)	$ (18,814)

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.

Exhibit Index

Exhibit Number	Description	Form	File No.	Exhibit Number	Filing Date	Filed Herewith
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	
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, and Addenda dated as of April 12, 2010 and July 22, 2011.	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	

Exhibit Number	Description	Form	File No.	Exhibit Number	Filing Date	Filed Herewith
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	
10.10†	Summary of Non-Employee Director Compensation Plan.	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	
10.13†	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 Robert L. Cohen.	S-1/A	333-194079	10.16	March 17, 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	
10.15	Sublease, by and between the Registrant and Noodle Education, Inc., dated as of November 16, 2011.	S-1	333-194079	10.17	February 21, 2014	
10.16	Office Lease, by and between Lanham Office 2015 LLC and 2U Harkins Road LLC, dated as of December 23, 3015.					X
10.17	Agreement of Lease, by and between 55 Prospet Owner LLC and 2U NYC, LLC, dated as of February 13, 2017.					X
21.1	Subsidiaries of the Registrant.					
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
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.

Exhibit 10.16

OFFICE LEASE

BY AND BETWEEN

LANHAM OFFICE 2015 LLC
(as landlord)

AND

2U HARKINS ROAD LLC
(as tenant)

7900 HARKINS ROAD
LANHAM, MARYLAND

TABLE OF CONTENTS

OFFICE LEASE

THIS OFFICE LEASE (this " **Lease** ") is dated as of the 23rd day of December, 2015 (the " **Effective Date** "), by and between LANHAM OFFICE 2015 LLC, a Delaware limited liability company (" **Landlord** "), and 2U HARKINS ROAD LLC, a Delaware limited liability company (" **Tenant** ").

ARTICLE I

DEFINITIONS

" **2nd Floor Amenities** " has the meaning set forth in Section 2.5(a) .

" **2nd Floor Build-Out Work** " has the meaning set forth in the Work Agreement.

" **2nd Floor Build-Out Allowance** " has the meaning set forth in Section 2.5(b) .

" **2nd Floor Premises** " has the meaning set forth in Section 2.5(a) .

" **2U Building Hours** " means 8:00 a.m. to 8:00 p.m. on Monday through Friday and 8 a.m. to 1 p.m. on Saturday (excluding Holidays), and such additional hours, if any, as Landlord from time to time determine.

" **Abated Costs** " has the meaning set forth in Section 4.2(c) .

" **Abated Initial Premises Costs** " has the meaning set forth in Section 4.2(c) .

" **Abated Must Take Expansion Premises Costs** " has the meaning set forth in Section 4.2(c) .

" **Abatement Commencement Date** " has the meaning set forth in Section 15.3(a) .

" **Abatement Period** " has the meaning set forth in Section 4.2(c) .

" **Acceleration Notice** " has the meaning set forth in Section 2.6(a)

" **Access Easement** " has the meaning set forth in Section 24.1 .

" **ADA** " has the meaning set forth in the definition of Requirements.

" **Additional Back-Up Generator** " has the meaning set forth in Section 14.4 .

" **Additional Back-Up Power** " has the meaning set forth in Section 14.4 .

" **Affiliate** " or " **affiliate** " means (i) any Person which directly or indirectly controls, is under common control with or is controlled by any other Person or (ii) any ownership (direct or indirect) by one Person of ten percent (10%) or more of the ownership interests of another Person. For purposes of this definition, "controls," "under common control with," and

"controlled by" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities or otherwise.

" **Affiliate Assignment** " has the meaning set forth in Section 7.2(a) .

" **Affiliate Sublease** " has the meaning set forth in Section 7.2(a) .

" **Affiliate Successor** " has the meaning set forth in Section 7.2(a) .

" **Affiliate Transaction** " has the meaning set forth in Section 7.2(a) .

" **Affiliate User** " has the meaning set forth in Section 7.2(f) .

" **Alteration** " means an alteration, decoration, installation, improvement, repair, addition or other physical change in, to or about any portion of the Building.

" **Alteration Threshold** " has the meaning set forth in the definition of Permitted Nonstructural Alteration.

" **Amenity Build-Out Allowance** " has the meaning set forth in Section 2.3(b) .

" **Amenity Space** " means part of the first (1 st) floor of the Building, as more particularly described in Section 28.1 herein below.

" **Amenity Space Plan** " has the meaning set forth in the Work Agreement.

" **Amenity Space Renovations Work** " has the meaning set forth in the Work Agreement.

" **Ancillary Permitted Use** " means the following uses, to the extent permitted under applicable laws and ordinances and/or permits and approvals, that are ancillary to Office Use in connection with business being conducted by Tenant in the Premises: one or more pantries, one or more employee kitchens and cafeterias, employee fitness centers (and related locker rooms and showers), executive bathrooms with showers, one or more employee bar or lounge areas (including, a themed employee lounge area), presentation areas, conferences, lounge areas, corporate or corporate sponsored events connected to Tenant's ordinary business, meeting and gathering areas, one or more screening rooms, one or more performance rooms, board rooms, a day care center for Tenant's employees, exhibition areas, classrooms for Tenant's employees and training purposes, data room/center directly related to Tenant's business, an auditorium, sound rooms, storage areas, conference rooms, libraries, messenger and mail room facilities, reproduction and copying facilities, mechanical rooms for the supplemental HVAC Units, file rooms, and other lawful ancillary uses customarily found in office buildings where the major tenant is a technology company; provided that such uses shall not include any activities not related to corporate activities of Tenant; and further provided, in all cases, Tenant obtains (at its cost and expense but with Landlord's reasonable cooperation, if needed, provided that Landlord has no obligation to incur any costs or liabilities in connection with such cooperation) any and all required permits, licenses and certificates for such Ancillary Permitted Uses (including, without

limitation, any changes to the certificate of occupancy for the Building necessitated by such Ancillary Permitted Uses).

" **Ancillary Terrace Permitted Uses** " means the following uses of the Roof Terrace by Tenant and its Invitees (which, in all cases, are not open to the general public): lounge areas, running track, meeting and gathering areas, and any ancillary purposes reasonably related to any of the foregoing; provided, in all cases, Tenant obtains (at its cost and expense but with Landlord's reasonable cooperation, if needed, provided that Landlord has no obligation to incur any costs or liabilities in connection with such cooperation) any and all required permits, licenses and certificates for such Ancillary Terrace Permitted Uses (including, without limitation, any changes to the certificate of occupancy for the Building necessitated by such Ancillary Terrace Permitted Uses).

" **Annual Expense Statement** " has the meaning set forth in Section 5.2(d) .

" **Annual Tax Statement** " has the meaning set forth in Section 5.4 .

" **Approved Transferee** " has the meaning set forth in Section 7.3 .

" **assign** " has the meaning set forth in Section 7.1(a)(1) .

" **Architect's Statement** " has the meaning set forth in Section 17.3(b)(i) .

" **Auditorium** " has the meaning set forth in Section 28.1(a) .

" **Back Up Costs** " has the meaning set forth in Section 14.4 .

" **Bankruptcy Code** " has the meaning set forth in Section **Error! Reference source not found.** .

" **Base Building Cap** " has the meaning set forth in the Work Agreement.

" **Base Building Condition Cap Work** " has the meaning set forth in the Work Agreement.

" **Base Building Condition Work** " has the meaning set forth in the Work Agreement.

"Base Building Condition Delivery Date " has the meaning set forth in the Work Agreement.

" **Base Building Condition Target Delivery Date** " has the meaning set forth in the Work Agreement.

" **Base Capacity** " has the meaning set forth in Section 14.3(a) .

" **Base Rent** " means, collectively, the Initial Premises Base Rent and each of the Must Take Expansion Premises Base Rents.

“ **Base Rent Annual Escalation Percentage** ” means Three and Three Tenths percent (3.3%).

“ **BOMA Measurement Standard** ” means the 2010 BOMA Standard Method of Measurement ANSI - Z 65.1 2010.

“ **Brokers** ” means Serten Advisors, LLC, which is sometimes referred to herein as “ **Tenant’s Broker** .”

“ **Building** ” means the twelve (12) story building containing approximately Three Hundred Nine Thousand Three Hundred Three (309,303.18) total RSF as of the date hereof and located at 7900 Harkins Road, Lanham, Maryland 20706.

“ **Building Common Areas** ” means all of the common facilities in or around the Land that are owned or controlled by Landlord and which are designed and intended, from time to time, to be used on a non-exclusive use, without the express permission of Landlord, by the tenants and other occupants of the Building in common with Landlord and each other, including the Lobby (which is to be used by Tenant and all other Tenant Invitees as access to and from the Premises by individuals), the Amenity Space, the fire stairs (which are to be used by Tenant and all other Invitees solely for emergency egress in an emergency, except as provided in Section 25.5), outdoor walkways and plazas (if any), parking areas and exterior entrances to the Building.

“ **Building Fitness Center** ” has the meaning set forth in Section 2.4(e) .

“ **Building Hours** ” 8:00 a.m. to 6:00 p.m. on Monday through Friday (excluding Holidays), and such additional hours, if any, as Landlord from time to time determine.

“ **Building Structure and Systems** ” has the meaning set forth in Section 8.2 .

“ **Building Systems** ” has the meaning set forth in Section 8.2 .

“ **Business Days** ” means Mondays through Fridays excluding Holidays.

“ **Capital Improvement** ” means any alteration, addition, repair or replacement (whether structural or nonstructural) made by Landlord to the Building (including the Building Common Areas) or equipment or systems thereof that, under GAAP, is properly classified as a capital expenditure.

“ **Capital Transaction** ” has the meaning set forth in Section 25.4(b) .

“ **Case** ” has the meaning set forth in Section 20.2 .

“ **CGL Insurance** ” has the meaning set forth in Section 13.2(a) .

“ **Change in Control** ” means, with respect to Tenant or Guarantor, (i) a merger, consolidation or transfer of the direct or indirect ownership interest of Tenant or Guarantor in which the stockholders of Tenant or Guarantor immediately prior to such transaction would own, in the aggregate, less than fifty percent (50%) of the total combined voting power of all classes

of capital stock of the surviving Person normally entitled to vote for the election of directors of the surviving or acquiring Person or (ii) the sale by Tenant or Guarantor of all or substantially all such Tenant or Guarantor's assets in one transaction or in a series of related transactions.

" **Claimant** " has the meaning set forth in Section 25.25 .

" **Claimant Act** " has the meaning set forth in Section 25.25 .

" **Competitor** " has the meaning set forth in Section 31.1(a) .

" **Competitor Covenants** " has the meaning set forth in Section 31.1(a) .

" **Competitor Restrictions** " has the meaning set forth in Section 31.1(a) .

" **Consent Needed Transaction** " has the meaning set forth in Section 7.3.

" **Consumable Expenses** " has the meaning set forth in Section 5.2(b) .

" **Decorative Alteration** " means a Nonstructural Alteration consisting of painting (and/or other wall covering), window treatments, carpeting, flooring, installation of doors and internal windows within the Premises, installation of Tenant's furniture, trade fixtures and a manner that is not attached to the Premises (other than the anchoring of customary cabinetry, furniture, fixtures and equipment).

" **Default Rate** " has the meaning set forth in Section 19.7(a) .

" **Delivery Block** " is defined in the Work Agreement.

" **Demolition Work Delivery Date** " has the meaning set forth in the Work Agreement.

" **Demolition Work Target Delivery Date** " has the meaning set forth in the Work Agreement.

" **Demolition Plan** " has the meaning set forth in the Work Agreement.

" **Demolition Work** " has the meaning set forth in the Work Agreement.

" **Early Must Take Instance** " has the meaning set forth in Section 2.6(a) .

" **Early Must Take Possession Date** " has the meaning set forth in Section 2.6(a) .

" **Effective Date** " has the meaning set forth in the Preamble.

" **Electric Cost** " means the product of (i) Usage multiplied by (ii) the Landlord's Rate, for the period that corresponds to the period during which Usage was measured.

" **Electrical Dispute Notice** " has the meaning set forth in Section 14.3(a) .

" **Elevator Abatement Date** " has the meaning set forth in Section 15.3(b) .

“ **Elevator Interruption** ” has the meaning set forth in Section 15.3(b) .

“ **Elevator Untenantability Notice** ” has the meaning set forth in Section 15.3(b) .

“ **Emergency Generator System** ” has the meaning set forth in Section 14.4 .

“ **Environmental Default** ” has the meaning set forth in Section 6.3(b) .

“ **Environmental Law** ” has the meaning set forth in Section 6.3(a) .

“ **Event of Bankruptcy** ” has the meaning set forth in Section **Error! Reference source not found.** .

“ **Event of Default** ” has the meaning set forth in Section 19.1 .

“ **Excess First Floor Costs** ” has the meaning set forth in Section 2.7(a) .

“ **Excluded Expenses** ” has the meaning set forth in Section 5.2(b) .

“ **Excluded RSF** ” has the meaning set forth in the definition of Initial Premises Base Rent.

“ **Executive Order** ” has the meaning set forth in Section 25.23 .

“ **Expansion Premises** ” has the meaning set forth in Section 29.1(a) .

“ **Expense Statement** ” has the meaning set forth in Section 5.2(e) .

“ **Expiration Date** ” has the meaning set forth in Section 3.1 .

“ **Extra Rent** ” has the meaning set forth in Section 19.2 .

“ **Factors** ” has the meaning set forth in Section 26.2 .

“ **Fair Market Rent** ” has the meaning set forth in Section 26.2(a) .

“ **Final Delivery Block** ” is defined in the Work Agreement.

“ **First Delivery Block** ” is defined in the Work Agreement.

“ **Final Target Delivery Day** ” means April 1, 2017.

“ **First Renewal Term** ” has the meaning set forth in Section 26.1 .

“ **Fitness Center** ” has the meaning set forth in Section 2.5(a) .

“ **Food Hall/Deli** ” has the meaning set forth in Section 28.1(a) .

" **Food Service Area** " has the meaning set forth in Section 28.1(a) .

" **Food Trucks** " has the meaning set forth in Section 28.1(b) .

" **Force Majeure Event** " or " **Force Majeure Events** " has the meaning set forth in Section 25.25 .

" **Guarantor** " means 2U, Inc., a Delaware corporation.

" **Guaranty** " means that certain Guaranty and Subordination Agreement executed by Guarantor in the form of **Exhibit I** attached hereto.

" **Hazardous Materials** " has the meaning set forth in Section 6.3(a) .

" **Holidays** " means New Year's Day, President's Day, Memorial Day, Martin Luther King, Jr.'s Birthday, Fourth of July, Labor Day, Thanksgiving Day and Christmas Day.

" **Independent Engineer** " means a reputable, independent, licensed engineer or other reputable, independent licensed professional consultant, in either case selected by Landlord and having expertise in the area at issue, and who has not been hired by Landlord or any affiliate of Landlord within the prior five (5) years.

" **Initial Build-Out Allowance** " has the meaning set forth in Section 2.2(d) .

" **Initial Build-Out Work** " has the meaning set forth in the Work Agreement.

" **Initial Premises** " means (i) floors 2, 8, 9, 10, 11 and 12 containing an aggregate 168,422.64 RSF, and (ii) the Roof Terrace which shall have no allocable RSF.

" **Initial Premises Base Rent** " means, for the first Lease Year, an amount equal to Twenty and 50/100 Dollars ($20.50) multiplied by the RSF of the Initial Premises, less 15,545.44 RSF on the 2 nd Floor Premises (the " **Excluded RSF** "), and subject to escalation as provided in Section 4.3 . For the absence of doubt, Tenant is not required to pay Base Rent on 15,545.44 RSF on the 2 nd Floor Premises but shall be responsible for paying additional rent for the entire 2 nd Floor Premises.

" **Initial Term** " means eleven (11) years and nine (9) months, commencing on the Lease Commencement Date.

" **Insolvency Requirements** " has the meaning set forth in Section 20.1 .

" **Intended Must Take Delivery Date** " has the meaning set forth in Section 2.6(a) .

" **Invitee** " means any invitee, employee, subtenant, assignee, contractor, client, licensee, customer or guest of Tenant or any Permitted Occupant; provided that "Invitee" shall not include Landlord or any other tenant of the Building, any contractor engaged by or behalf of Landlord or any other tenant of the Building, or any invitee, employee, customer, vendor or guest of Landlord or any other tenant of the Building.

" **Issuer Requirement** " has the meaning set forth in Section 11.3 .

" **Janitorial Services** " has the meaning set forth in Section 14.2(a) .

" **KW** " means kilowatts.

" **KWHR** " means kilowatt hours.

" **Land** " has the meaning set forth in Section 5.1 .

" **Landlord** " has the meaning set forth in the Preamble.

" **Landlord Delay** " or " **Landlord's Delay** " has the meaning set forth in the Work Agreement.

" **Landlord Indemnitees** " has the meaning set forth in Section 15.1(a) .

" **Landlord Notice Address** " c/o Cohen Equities, 675 Third Avenue, Suite 2400, New York, NY 10017, Attention: Meir Cohen.

" **Landlord Party** " means any of Landlord, any Affiliate of Landlord, and Landlord's then managing and leasing agents for the Building, the employees, principals, invitees, guests, agents and contractors of the foregoing.

" **Landlord Payment Address** " c/o Cohen Equities, 675 Third Avenue, Suite 2400, New York, NY 10017, Attention: Meir Cohen.

" **Landlord's FMV** " has the meaning set forth in Section 26.2(a) .

“ **Landlord’s Initial Work** ” as defined in Section 1.3(a)(i) of the Work Agreement.

“ **Landlord’s Lien** ” has the meaning set forth in Section 19.6 .

“ **Landlord’s Rate** ” means the actual amount at which Landlord from time to time purchases each KW and KWHR of electricity for the same period from the utility company inclusive of any taxes or other charges in connection therewith and appearing on the utility company invoice for such period, taking into account all applicable abatements, time of day discounts, deductions and rebates.

“ **Landlord’s Restoration Condition** ” has the meaning set forth in Section 17.2 .

“ **Landlord’s Review Period** ” has the meaning set forth in Section 7.3 .

“ **Landlord’s Work** ” has the meaning set forth in the Work Agreement.

“ **Landlord’s Work Target Delivery Date** ” has the meaning set forth in the Work Agreement.

“ **Late Charge** ” has the meaning set forth in Section 19.7(b) .

“ **Lease** ” has the meaning set forth in the Preamble.

“ **Lease Assumption** ” has the meaning set forth in Section 11.2 .

“ **Lease Commencement Date** ” has the meaning set forth in Section 3.2 .

“ **Lease Term** ” means the Initial Term and shall also include any properly exercised Renewal Options described in Article XXVI .

“ **Lease Year** ” shall mean a period of twelve (12) consecutive months commencing on the Lease Commencement Date, and each successive twelve (12) month period thereafter; provided, however, that if the Lease Commencement Date is not the first day of a month, then the second Lease Year shall commence on the first day of the month in which the first anniversary of the Lease Commencement Date occurs.

“ **Letter of Credit** ” has the meaning set forth in Section 11.3 .

“ **Lobby** ” has the meaning set forth in Section 2.4(a)

“ **Lobby Renovations Allowance** ” has the meaning set forth in Section 2.4(a) .

“ **Lobby Renovations Plan** ” has the meaning set forth in the Work Agreement.

“ **Lobby Renovations Work** ” has the meaning set forth in the Work Agreement.

“ **Material Event of Default** ” means an Event of Default pursuant to Section 19.1(a)(1) , Section 19.1(a)(2) , Section 19.1(b) , Section 19.1(d) , Section 19.1(g) or Section 19.1(h) .

“ **Measurement Schedule** ” has the meaning set forth in the definition of RSF.

“ **Metered Costs** ” has the meaning set forth in Section 5.2(c) .

“ **Metroplex Cap** ” has the meaning set forth in Section 30.1(a) .

“ **Metroplex Landlord** ” has the meaning set forth in Section 30.2(a) .

“ **Metroplex Lease** ” has the meaning set forth in Section 30.1(a) .

“ **Metroplex Premises** ” has the meaning set forth in Section 30.1(a) .

“ **Metroplex Rent** ” has the meaning set forth in Section 30.1(a) .

“ **Minimum Parking Amount** ” has the meaning set forth in Section 24.3 .

“ **Mock Up Space** ” has the meaning set forth in Section 3.4 .

“ **Monthly Operating Expense Payment** ” has the meaning set forth in Section 5.2(d) .

“ **Monthly Real Estate Tax Payment** ” has the meaning set forth in Section 5.2(d) .

“ **Mortgage** ” has the meaning set forth in Section 7.1(d) .

“ **Must Take Allowance** ” has the meaning set forth in Section 2.6(c) .

“ **Must Take Commencement Date** ” has the meaning set forth in Section 3.5 .

“ **Must Take Expansion Premises** ” means individually and collectively, each of floors 5, 6 and 7 of the Building more particularly designated on **Exhibit A** , each containing the RSF set forth on the Measurement Schedule attached hereto as **Exhibit E** .

“ **Must Take Expansion Premises Base Rent** ” means, with respect to the Initial Term an amount equal to the RSF contained in the applicable Must Take Expansion Premises, multiplied by the Per RSF Base Rent then in effect, and with respect to the Renewal Term, the Per RSF Base Rent as determined as set forth in Article XXVI .

“ **Named Tenant** ” means 2U Harkins Road LLC, a Delaware limited liability company.

“ **Negotiating Period** ” has the meaning set forth in Section 26.2 .

“ **Net Worth** ” has the meaning set forth in Section 7.2(a) .

“ **Net Worth Parties** ” has the meaning set forth in Section 7.2(a) .

“ **Net Worth Supplemental Security Deposit Amount** ” has the meaning set forth in Section 7.2(b) .

“ **Net Worth Threshold** ” has the meaning set forth in Section 7.2(a) .

“ **New Subtenant** ” has the meaning set forth in Section 30.2(b) .

“ **Nonstructural Alteration** ” means an Alteration in and to the interior of the Premises only, which, in Landlord’s reasonable determination, shall be any Alterations that (i) will not necessitate any changes, replacements or additions to columns or floors or other structural elements of the Building, (ii) are not readily visible to the exterior of the Building, or the Building Common Areas (including the Lobby), (iii) will not adversely affect the Building Systems or the roof, or (iv) would not have a negative impact on any building warranty (but excluding any warranty exclusively covering Tenant’s Property). For the absence of doubt, the installation of cabling within the Premises within the walls, risers and conduits is deemed to be a Nonstructural Alteration.

“ **Offer** ” has the meaning set forth in Section 29.1(b)(1) .

“ **Office Sharing** ” has the meaning set forth in Section 7.2(c) .

“ **Office Use** ” means standard office use in accordance with similar Class A office buildings in the Prince George’s County, Maryland submarket of comparable age and condition, without regard to the Plans, Tenant’s Ancillary Permitted Use or Ancillary Terrace Permitted Uses.

“ **officer** ” has the meaning set forth in Section 15.1(d) .

“ **Operating Expenses** ” has the meaning set forth in Section 5.2(b) .

“ **Parking Easement** ” has the meaning set forth in Section 24.1 .

“ **Parking Lot** ” has the meaning set forth in Section 24.1 .

“ **Parking Structure** ” has the meaning set forth in the Parking Easement.

“ **Per RSF Base Rent** ” means (i) for the Initial Term, Twenty and 50/100 Dollars ($20.50), provided that on the first day of the second Lease Year and on each anniversary thereof during the Lease Term, the Per RSF Base Rent in effect shall be increased by an amount equal to the product of (a) the Base Rent Annual Escalation Percentage, multiplied by (b) the Per RSF Base Rent in effect immediately before the increase and (ii) for each Renewal Term, the Per RSF Base Rent shall be determined as set forth in Article XXVI and shall escalate annually in accordance with Section 4.3 below.

“ **Permitted Nonstructural Alteration** ” means a Nonstructural Alteration the cost of which, together with the cost of all other such Nonstructural Alterations undertaken in any twelve (12) month period (exclusive of the initial fit out of any portion of the Premises), is not more than $200,000.00 (the “ **Alteration Threshold** ”) (increased each Lease Year by five percent (5%)) for each floor in which such Nonstructural Alteration is undertaken. With respect to Nonstructural Alterations undertaken on a partial floor, the Alteration Threshold shall be decreased in proportion to the percentage of the RSF of such floor not included in the Premises.

“ **Permitted Occupants** ” shall mean, collectively, Tenant, its permitted successors, assigns and subtenants, Permitted Users and Affiliate Users.

“ **Permitted Structural Alteration** ” means any Structural Alteration that is an item to be completed pursuant to the Work Agreement.

“ **Permitted Successor** ” has the meaning set forth in Section 7.2(a) .

“ **Permitted Users** ” has the meaning set forth in Section 7.2(c) .

“ **Permitted Uses** ” means, (1) with respect to all floors of the Premises, Office Use and the Ancillary Permitted Uses, and (2) with respect to the Roof Terrace, any Ancillary Terrace Permitted Uses.

“ **Permitees** ” has the meaning set forth in Section 24.2 .

“ **Person** ” means any individual, partnership, corporation, limited liability company, trust, unincorporated organization, governmental authority or any other form of entity.

“ **Plan Review Period** ” has the meaning set forth in Section 9.4(b)(i) .

“ **Plan Revision Review Period** ” has the meaning set forth in Section 9.4(b)(i) .

“ **Premises** ” means

(a) as of the Lease Commencement Date, the Initial Premises; plus

(b) as of each Must Take Commencement Date, the applicable Must Take Expansion Premises, plus

(c) such additional space as Tenant may hereafter lease at the Building pursuant to Article XXVI (ROFR).

" **Premises Consumable Services"** has the meaning set forth in Section 5.2(b).

" **Projected Savings** " has the meaning set forth in Section 5.2(b) .

" **Proposed Transfer Commencement Date** " has the meaning set forth in Section 7.3 .

" **Proposed Transfer Space** " has the meaning set forth in Section 7.3 .

" **Prospect** " has the meaning set forth in Section 29.1(b)(1) .

" **Public Transaction** " has the meaning set forth in Section 7.2(a) .

" **Publicly Traded Entity** " means a Person whose securities are listed on a national securities exchange or quoted on an automated quotation system. Landlord acknowledges that as of the date hereof, Guarantor is a Publicly Traded Entity.

" **Real Estate Taxes** " has the meaning set forth in Section 5.3(b) .

" **Reasonable Parking Alternative** " has the meaning set forth in Section **Error! Reference source not found.** 3 .

" **Removal Cost** " has the meaning set forth in Section 9.2(b) .

" **Renewal Notice** " has the meaning set forth in Section 26.1(a) .

" **Renewal Options** " means two (2) options for five (5) years each, as more particularly described in Article XXVI below.

" **Renewal Terms** " has the meaning set forth in Section 26.1 .

" **Renewal Term Base Rent** " has the meaning set forth in Section 26.1(b) .

" **Renewed Premises** " has the meaning set forth in Section 26.1(a) .

" **Rent Credit Amount** " has the meaning set forth in Section 4.6 .

" **Required Condition** " has the meaning set forth in Section 8.2 .

" **Required Delivery Condition** " has the meaning set forth in Work Agreement.

" **Required Removables** " has the meaning set forth in Section 9.2(b) .

" **Required SNDA Form** " has the meaning set forth in Section 21.4 .

" **Requirements** " means all present and future laws, ordinances (including without limitation, zoning ordinances and land use requirements), requirements, orders, directives, rules, resolutions, codes, and regulations of all governmental authorities, and the direction or order of any public officer pursuant to law, then having jurisdiction over the Building, Landlord and/or Tenant, (including, without limitation, the Americans with Disabilities Act (the " **ADA** ") and the regulations promulgated thereunder, as the same may be amended from time to time) and Environmental Laws.

" **Restoration Period** " has the meaning set forth in Section 17.3(b)(ii) .

" **ROFR Premises** " has the meaning set forth in Section 29.1(b)(1) .

" **ROFR Procedure** " has the meaning set forth in Section 29.1(b) .

" **Roof Terrace** " has the meaning set forth in Section 27.2 .

" **RSF** " means the rentable square footage of the Building and other applicable square footages of the Premises are set forth in the chart attached as **Exhibit E** hereto (the " **Measurement Schedule** "). Landlord and Tenant agree that the areas listed on the Measurement Schedule have been ratified and agreed to by Landlord and Tenant for all purposes under this Lease. Landlord and Tenant further acknowledge and agree that the Measurement Schedule shall be used in connection with any measurement of the Premises and all other space in the Building for any purpose under this Lease, subject to Landlord's right to re-measure the Premises or any portion thereof and to adjust the Measurement Schedule in connection with, and solely due to, (i) any alteration or improvement that physically expands the Building, or (ii) a measurement of a partial floor added to the Premises; provided that the entire floor in which such partial floor is located shall not exceed the RSF for such floor set forth on the Measurement Schedule. Any adjustment to the Measurement Schedule pursuant to the foregoing shall be performed by an architect, licensed in Prince George's County, Maryland, selected by Landlord and subject to verification by Tenant's architect, in both cases upon application of the BOMA Measurement Standard to such re-measurement, physical expansion or partial floor, as applicable.

" **Second Article IX Request** " has the meaning set forth in Section 9.4(b)(i) .

" **Second Renewal Term** " has the meaning set forth in Section 26.1 .

" **Second Request** " has the meaning set forth in Section 7.3 .

" **Security Deposit Amount** " means, subject to the reduction set forth in Section 11.1 herein below, Six Million and No/100 Dollars ($6,000,000.00).

" **Services Abatement Event** " has the meaning set forth in Section 15.3(a) .

" **Services Abatement Period** " has the meaning set forth in Section 15.3(a) .

" **SNDA** " has the meaning set forth in Section 21.4 .

“ **Specialty Alterations** ” has the meaning set forth in Section 9.2(b) .

“ **Stated Must Take Commencement Date** ” has the meaning set forth in Section 3.5 .

“ **Structural Alteration** ” means any Alteration that is not a Nonstructural Alteration or Decorative Alteration.

“ **sublet** ” has the meaning set forth in Section 7.1(a)(1) .

“ **Submetered Costs** ” has the meaning set forth in Section 5.2(c) .

“ **Subsequent Build-Out Work** ” has the meaning set forth in Section 2.6(a) .

“ **Substantial Casualty** ” has the meaning set forth in Section 15.3(a)

“ **successor landlord** ” has the meaning set forth in Section 21.3(a) .

“ **Successor Transaction** ” has the meaning set forth in Section 7.2(a) .

“ **Takeover Sublease** ” has the meaning set forth in Section 30.2(a).

“ **Tax Benefits** ” has the meaning set forth in Section 5.6 .

“ **Tax Statement** ” has the meaning set forth in Section 5.4 .

“ **Temporary Usage Charge** ” has the meaning set forth in Section 5.3(g)

“ **Tenant** ” has the meaning set forth in the Preamble.

“ **Tenant Delay** ” or “ **Tenant's Delay** ” has the meaning set forth in the Work Agreement.

“ **Tenant Expense Dispute Notice** ” has the meaning set forth in Section 5.2(e) .

“ **Tenant Improvement Allowance** ” means, as applicable (and individually and collectively), the Initial Build-Out Allowance; the Amenity Build-Out Allowance; the Lobby Renovations Allowance; the 2 nd Floor Build-Out Allowance; and the Must Take Allowance, as subject to the reallocations by Tenant permitted by the Work Agreement.

“ **Tenant Indemnitees** ” has the meaning set forth in Section 15.2(b) .

“ **Tenant Invitee** ” means an Invitee of Tenant.

“ **Tenant Notice Address** ” means 8201 Corporate Drive, Suite 900, Landover, MD 20785, Attention: Chief Financial Officer, until Tenant has commenced full business operations at the Premises, and thereafter, the Premises, Attention: Chief Financial Officer, after Tenant has commenced full business operations at the Premises. With a copy to: General Counsel.

“ **Tenant Tax Statement Dispute Notice** ” has the meaning set forth in Section 5.4 .

“ **Tenant’s 2 nd Floor Completion Date** ” has the meaning set forth in Section 2.2(d) .

“ **Tenant’s Broker** ” has the meaning set forth in the definition of Brokers.

“ **Tenant’s Completion Date** ” has the meaning set forth in Section 2.2(d) .

“ **Tenant’s FMV** ” has the meaning set forth in Section 26.2(a) .

“ **Tenant’s Initial Premises Completion Date** ” has the meaning set forth in Section 2.2(d) .

“ **Tenant’s Plans** ” has the meaning set forth in Section 9.4(a) .

“ **Tenant’s Property** ” means all paneling, workstations, trade fixtures, machinery and equipment, signage, supplemental HVAC units, UPS, server racks, fitness equipment, audio-visual equipment, kitchen equipment (excluding any equipment in the Food Hall/Deli), communications equipment and office furniture, whether or not attached to or built into the Premises, which are installed in the Premises by or for the account of Tenant or Permitted User and paid for by Tenant or such Permitted User, and all furniture, furnishings and other articles of movable personal property owned by Tenant or any other Tenant Invitee and located in the Premises.

“ **Tenant’s Proportionate Share** ” means the percentage set forth on the Measurement Schedule opposite the applicable floor of the Building. With respect to partial floors, if any, Tenant’s Proportionate Share shall be a percentage determined by dividing RSF of the partial floor by Three Hundred Nine Thousand Three Hundred Three (309,303.18) total RSF.

“ **Tenant’s Request Notice** ” has the meaning set forth in Section 7.3 .

“ **Tenant’s Restoration Work** ” has the meaning set forth in Section 17.1(c) .

“ **Tenant’s Work** ” has the meaning set forth in the Work Agreement.

“ **Third Appraiser** ” has the meaning set forth in Section 26.2(a) .

“ **Threshold Successors** ” has the meaning set forth in Section 10.1 .

“ **Trustee** ” has the meaning set forth in Section **Error! Reference source not found.** .

“ **Unavoidable Delay** ” has the meaning set forth in the Work Agreement.

“ **Untenantability Notice** ” has the meaning set forth in Section 15.3(a) .

“ **Usage** ” means actual usage of electricity for each calendar month or such other period as Landlord shall determine and shall include the quantity and peak demand KWHR and KW.

“ **Utilities** ” has the meaning set forth in Section 5.2(c) .

" **Work Agreement** " means the agreement set forth as **Exhibit B** annexed hereto and incorporated herein, as such may be amended and modified by mutual written agreement between Landlord and Tenant.

ARTICLE II

PREMISES

2.1 **Lease of Premises** . Tenant leases the Premises from Landlord for the Lease Term upon the conditions and covenants set forth in this Lease, together with the exclusive right to use the Roof Terrace and the non-exclusive right to use the Amenity Space as provided in Section 27.2 and Article XXVIII herein below. Tenant will have the non-exclusive right to use and access the following: (i) common and public areas of the Building as shown on **Exhibit E** , (ii) subject to Article XXIV , the Parking Lot (or, when constructed, the Parking Structure), and (iii) the other Building Common Areas. Except as may otherwise be expressly provided in this Lease (including, without limitation, as provided in Article XXVII (Roof Rights and Roof Terrace) herein below and **Exhibit H** (Roof Access Agreement) attached hereto), the lease of the Premises does not include the right to use the roof, mechanical rooms, electrical closets, janitorial closets, telephone rooms or other non-common or non-public areas of the Building. It is expressly understood and agreed that no Building shaftways and risers shall be deemed part of the Premises but that Tenant shall have reasonable access to and use of such shaftways and risers that are part of Building Common Areas serving the Premises for its cables, wiring, conduits, vents, tubes and piping as contemplated by this Lease without charge.

2.2 **Delivery of Initial Premises** .

(a) Landlord represents that, to the best of its knowledge, the use of the Premises by Tenant for Office Use is permitted by all Requirements and insurance requirements applicable to the Building.

(b) Landlord, at its sole cost and expense (but with respect to the Base Building Condition Cap Work, subject to the Base Building Cap), shall promptly undertake and complete Landlord's Initial Work at the Initial Premises and the Must Take Expansion Premises in accordance with terms and conditions of hereof and the Work Agreement. Landlord shall use all commercially reasonable efforts to commence and to complete (i) the Demolition Work in substantial conformity with the Demolition Plan in the Required Delivery Condition by the applicable Demolition Work Target Delivery Date, (ii) the Base Building Condition Work (exclusive of the Base Building Condition Cap Work) in the Required Delivery Condition on or before the applicable Base Building Condition Target Delivery Date (with respect to the Initial Premises) and on or before the applicable Must Take Base Building Condition Target Delivery Date (with respect to each Must Take Expansion Premises), (iii) the Base Building Condition Cap Work in the Required Delivery Condition on or before the expiration of the Initial Post-Delivery Work Period (with respect to the Initial Premises) and (iv) any Base Building Post-Delivery Work relating solely with respect each floor of the Must Take Expansion Premises in the Required Delivery Condition on or before the expiration of the Must Take Expansion Premises Post-Delivery Work Period, in each case, subject to extension attributable to Tenant Delay and Unavoidable Delay (as limited by Section 3.3(f)) . Notwithstanding that the Tenant

has the right to delay accepting delivery of the Final Delivery Block in accordance with Section 1.13(b)(ii) of the Work Agreement, the Lease Commencement Date for the entire Initial Premises shall remain December 1, 2016, subject to the extensions set forth in this Lease and the Work Agreement.

(c) Landlord acknowledges that Tenant cannot commence Tenant's Work at the Initial Premises until Landlord's Initial Work for the Initial Premises is in the Required Delivery Condition nor can Tenant commence Tenant's Work on any floor of the Must Take Expansion Premises until Must Take Expansion Premises is in the Required Delivery Condition.

(d) Subject to the terms hereof, upon acceptance of the applicable Delivery Block, Tenant shall undertake and substantially complete the construction of the Initial Build Out Work of the Initial Premises (exclusive of the 2 nd Floor Premises Work) in substantial conformity with the Initial Build-Out Plan by April 1, 2017, subject to extension attributable for Landlord Delay and Unavoidable Delay (" **Tenant's Initial Premises Completion Date** "). Subject to the terms hereof, Tenant shall undertake and substantially complete the construction the 2 nd Floor Build-Out Work in substantial conformity with the 2 nd Floor Plan by April 1, 2018, subject to extension attributable for Landlord Delay and Unavoidable Delay (" **Tenant's 2 nd Floor Completion Date** ", and together with " **Tenant's Initial Premises Completion Date** ", " **Tenant's Completion Date** "). Landlord shall pay Tenant an allowance equal to the product of (a) Forty-Eight and 00/100 Dollars ($48.00) multiplied by (b) the number of RSF for the Initial Premises (excluding the RSF of the 2 nd Floor Premises) (the " **Initial Build-Out Allowance** ") for the Initial Build-Out Work. Tenant shall pay all costs and expenses with respect to the Initial Build-Out Work, to the extent such costs and expenses for the Initial Build-Out Work (together with reallocations of the Tenant Improvement Allowance permitted by the Work Agreement to the Initial Build-Out Allowance) exceed the Initial Build-Out Allowance.

2.3 **Amenity Space Build - Out** .

(a) Landlord represents that it has no knowledge that (i) the Food Service Area portion of the Amenity Space intended to be used for food service/deli cannot be used for such intended use nor (ii) the Auditorium portion of the Amenity Space cannot be used as an auditorium and assembly space.

(b) Subject to the terms hereof and the Work Agreement, Landlord shall undertake and complete the Amenity Space Renovations Work, and shall use all commercially reasonable efforts to complete the Amenity Space Renovations Work in substantial conformity with Amenity Space Plan by the Final Target Delivery Day, subject to extension attributable to Tenant Delay and Unavoidable Delay (as limited by Section 3.3(f)). The Amenity Space Renovations Work shall be undertaken, to the extent reasonably possible, in such a manner as a minimize noise, dust and any disruption to Tenant's business, Tenant's Work or access to the Premises. Notwithstanding the foregoing, Landlord shall not be required to spend more than Five Hundred Thousand and No/100 Dollars ($500,000.00) for the Amenity Space Renovations Work (the " **Amenity Build-Out Allowance** "), which shall allocated to the Food Service Area and Auditorium as Tenant shall reasonably determine, subject to reallocations of the Tenant Improvement Allowance permitted by the Work Agreement to and from the Amenity Build-Out Allowance and any limitations set forth herein or in the Work Agreement. Tenant shall pay all

costs and expenses (including a construction supervision fee to Landlord equal to one percent (1%) of all hard construction costs with respect to the development and/or renovation of the Amenity Space) for the Amenity Space Renovations Work, to the extent such costs and expenses for the Amenity Space Renovations Work exceed the Amenity Build-Out Allowance (subject to reallocation as permitted by the Work Agreement).

(c) Landlord shall endeavor to keep Tenant informed of the Amenity Space Renovations Work costs and the timing of the completion of each component of the Amenity Space Renovations Work. Except as for the reallocation permitted in the Work Agreement, Tenant shall not receive any credit, cash or otherwise, for any unused portion of the Amenity Build-Out Allowance.

(d) Notwithstanding anything to the contrary contained herein, Landlord acknowledges that, subject to reallocations by Tenant to and from the Amenity Build-Out Allowance permitted pursuant to the Work Agreement, the Amenity Build-Out Allowance is intended to be allocated to renovations and installations of and to the Amenity Space required by Tenant as set forth in the Amenity Space Plan and no portion of the Amenity Build-Out Allowance (or any amounts paid by Tenant in excess thereof) shall be utilized for renovations and installations not set forth the Amenity Space Plan (including renovations required to cause the Amenity Space to comply with the Amenity Space Use, unless caused by Tenant's modifications to the Amenity Space or the Lobby). The Amenity Space Plan shall include, among other things, the interior finishes (i.e., floor, ceiling and wall finishes, to the extent Tenant elects to modify such interior finishes) for the Amenity Space.

2.4 **Lobby Renovations** .

(a) Subject to the terms hereof, Landlord shall undertake and complete the Lobby Renovations Work of the lobby of the Building (such space, the " **Lobby** "), and shall reasonably endeavor to complete the Lobby Renovations Work in substantial conformity with the Lobby Renovation Plan by the Final Target Delivery Day, subject to extension attributable to Tenant Delay or Unavoidable Delay (subject to the 30 day limit as provided in Section 3.3(f)). The Lobby Renovations Work shall be undertaken, to the extent reasonably possible, in such a manner as a minimize noise, dust and any disruption to Tenant's business. During the Lobby Renovations Work, Tenant and its Invitees shall have reasonable access to and through the lobby via (at a minimum) an unobstructed, temporarily demised path with secure access with an area within the lobby available as a reception and security area with access to the elevator bank and the Premises. Notwithstanding the foregoing, Landlord shall not be required to spend more than Five Hundred Thousand and No/100 Dollars ($500,000.00) (the " **Lobby Renovations Allowance** ") on the Lobby Renovations Work. Tenant shall pay all costs and expenses (including a construction supervision fee to Landlord equal to one percent (1%) of all hard construction costs with respect to the Lobby Renovations Work), to the extent such costs and expenses for the Lobby Renovations Work exceed the Lobby Renovations Allowance (subject to the reallocations to and from the Lobby Renovation Allowance by Tenant permitted by the Work Agreement). Landlord shall endeavor to keep Tenant informed of the Lobby Renovations Work costs and the timing of the completion of each component thereof.

(b) Notwithstanding anything to the contrary contained herein, Landlord acknowledges that, subject to reallocations by Tenant permitted pursuant to the Work Agreement, the Lobby Renovations Allowance is intended to be allocated to renovations and installations of and to the Lobby required by Tenant as set forth in the Lobby Renovations Plan and no portion of the Lobby Renovations Allowance (or any amounts paid by Tenant in excess thereof) shall be utilized for renovations and installations not set forth in the Lobby Renovation Plan. The Lobby Renovations Plan shall include, among other things, the interior finishes (i.e., floor, ceiling and wall finishes to the extent Tenant elects to modify such interior finishes) for the Lobby.

(c) Tenant shall have the right, at its sole cost and expense, to install a security desk, security system and turnstiles in the Lobby at any time during the Lease Term.

(d) So long as Tenant (or an Affiliate User and/or Permitted Successor) continues to occupy any portion of the Premises, all installations and renovations made to the Lobby (and the Amenity Space) as part of the Lobby Renovations Plan and the Amenity Space Plan, respectively, shall not be removed or altered by Landlord (unless required to comply with a legal or insurance requirement) without Tenant's consent and Landlord shall consult with Tenant as part of any comprehensive modifications to the Lobby or the Amenity Space.

(e) Landlord shall have the right, at its sole cost and expense at Landlord's sole option, to use the portion of the Lobby described in cross-hatching on **Exhibit F** for a fitness center for use by other tenants of the Building (the " **Building Fitness Center** "). The Building Fitness Center is not part of the Lobby Renovations Work .

2.5 **2nd Floor Premises** .

(a) Tenant shall lease the 2nd floor (the " **2nd Floor Premises** ") to be used as a fitness center and/or employee lounge (the " **Fitness Center** ") for the exclusive use of Tenant and Tenant's Invitees (" **2nd Floor Amenities** ") and Office Use. The 2nd Floor Premises shall be part of the Initial Premises; provided however, for the purposes of calculating Base Rent for the Lease Term (including for any Renewal Term), Base Rent for the 2nd Floor Premises shall be calculated as if the 2nd Floor comprised only 12,000 RSF (and shall be included as such in the Initial Premises Base Rent) however, Tenant's Proportionate Share shall include the full RSF for the 2nd Floor Premises. Tenant shall pay Base Rent and additional rent with respect to the 2nd Floor Premises in accordance with the terms for the other portions of the Initial Premises and shall be entitled to the abatement of Base Rent and additional rent for the 2nd Floor Premises in accordance with Section 4.2 .

(b) Subject to the terms hereof, Tenant shall undertake and complete the 2nd Floor Build-Out Work. Except for Landlord's Initial Work, Landlord shall pay Tenant an allowance equal to Six Hundred Thousand and No/100 Dollars ($600,000.00) (the " **2nd Floor Build-Out Allowance** ") on the 2nd Floor Build-Out Work to be distributed to Tenant pursuant to the Work Agreement and subject to the reallocations to and from the 2nd Floor Build-Out Allowance by Tenant permitted by the Work Agreement. Tenant shall pay all costs and expenses with respect to the 2nd Floor Build-Out Work, to the extent such costs and expenses for the 2nd Floor Build-Out Work exceed the 2nd Floor Build-Out Allowance. For clarity, the 2nd Floor

Build-Out Allowance is the only Tenant Improvement Allowance Landlord is required to provide with respect to the 2 nd Floor Premises (subject to Tenant's right to reallocate the Tenant Improvement Allowance pursuant to the Work Agreement).

(c) For so long as Tenant uses any portion on the 2 nd Floor Premises as a Fitness Center, Tenant shall be responsible, at Tenant's sole cost and expense, to furnish, operate, maintain and staff the Fitness Center and to install, repair, replace and maintain any equipment therein. Notwithstanding the foregoing, Tenant shall be permitted to convert all or any portion of the 2 nd Floor Premises to any other Permitted Use.

2.6 **Must Take Expansion Premises** .

(a) Subject to the terms hereof, Landlord will make each Must Take Expansion Premises with Landlord's Initial Work complete and each applicable Must Take Allowance available to Tenant up to three hundred sixty (360) days prior to each applicable Stated Must Take Commencement Date for Tenant's construction of the space (each a " **Subsequent Build-Out Work** "), subject to extension attributable to Tenant Delay and Unavoidable Delay (as limited by Section 3.3(f)). If Tenant desires to accelerate the delivery of any Must Take Expansion Premises and the corresponding Must Take Allowance, Tenant shall give Landlord at least at least one hundred twenty (120) days' advance notice (an " **Acceleration Notice** ") prior to the date Tenant intends to access such Must Take Expansion Premises specified in such Acceleration Notice to commence the Subsequent Build-Out Work therein (the " **Intended Must Take Delivery Date** "). As used herein, the " **Early Must Take Possession Date** ," in each case, shall mean the date that Tenant and/or its vendors/contractors physically access a Must Take Expansion Premises to commence work with building permits (vs. accessing the space for planning or inspection purposes) after Landlord has delivered possession of such Must Take Expansion Premises to Tenant in the Required Delivery Condition (provided that in no event shall such date extend beyond the applicable Stated Must Take Commencement Date for such Must Take Expansion Premises, unless due to Landlord Delay or Unavoidable Delay, as limited by Section 3.3(f)). If Tenant accelerates the Stated Must Take Commencement Date for any Must Take Expansion Premises pursuant to this Section 2.6 , the Abatement Period for each Must Take Expansion Premises will commence on the Early Must Take Possession Date (an " **Early Must Take Instance** "). If Tenant does not accelerate the Stated Must Take Commencement Date pursuant to this Section 2.6 , the Abatement Period for each such Must Take Expansion Premises will commence on the Stated Must Take Commencement Date. If requested by Landlord, within a reasonable time after the Stated Must Take Commencement Date or Early Must Take Possession Date, as applicable, Tenant shall execute and deliver to Landlord a certificate confirming that Landlord's Initial Work with respect to such Must Take Expansion Premises is substantially completed.

(b) In the event of an Early Must Take Instance, Tenant shall pay all additional rent applicable to the RSF of such Must Take Expansion Premises (including, without limitation, by increasing Tenant's Proportionate Share of Operating Expenses and Real Estate Taxes in accordance with Sections 5.2(a) and 5.3(a)) from the Early Must Take Possession Date and all other terms and conditions of this Lease shall be applicable thereto.

(c) Tenant shall pay all costs and expenses incurred in connection with each Subsequent Build-Out Work, to the extent such costs and expenses exceed an allowance provided by Landlord equal to the product of (a) Forty-Six and 50/100 Dollars ($46.50) multiplied by (b) the number of RSF of rentable area in each applicable Must Take Expansion Premises, multiplied by (c) a ratio, the numerator of which shall be equal to the number of days between the applicable Must Take Commencement Date and the date which is 4,289 days after the Lease Commencement Date (i.e. 11 years and 9 months, assuming a 365 day year), and the denominator of which shall be equal to 4,289 the (each such allowance, a " **Must Take Allowance** "). By way of example only, assuming the 7th floor consists of 28,175 RSF and the Must Take Commencement Date for the 7th floor is the first anniversary of the Lease Commencement Date, then the Must Take Allowance for the 7th floor would be $1,198,611.65 calculated as follows:

$46.50 x 28,175.44 RSF = $1,310,157.96 (0.9149) [i.e. 3,924/4289] = $1,198,611.65

Except as provided below, Tenant shall not receive any credit, cash or otherwise, for any unused portion of any Must Take Allowance; provided however that upon written notice to Landlord no later than sixty (60) days after each applicable scheduled Must Take Commencement Date (time being of the essence), Tenant may convert any Must Take Allowance to be used for Tenant's purchase of other leasehold improvements to be made in accordance with the terms and provisions hereof to any other portion of the Premises (including any future Must Take Expansion Premises) leased by Tenant as the time of the applicable Must Take Commencement Date; provided that Tenant shall not be permitted to convert any future Must Take Allowance for any Must Take Expansion Premises for which a Must Take Commencement Date has not occurred.

(d) Prior to a Must Take Commencement Date and provided the applicable Must Take Expansion Premises has not been leased or otherwise utilized, and further provided that such temporary use will not interfere with any of Landlord's construction or build-out obligations, upon thirty (30) days prior written notice to Landlord, Tenant may have temporary or periodic use (not to exceed three (3) consecutive days at once, nor ten (10) days in the aggregate) of the Must Take Expansion Premises, for a nominal charge, for Tenant functions. In connection therewith, at Landlord's election, Landlord and Tenant shall enter into a revocable license agreement in form and substance satisfactory to Landlord.

(e) For avoidance of doubt, Landlord shall perform and complete the Demolition Work with respect to each Must Take Expansion Premises at the same time as Landlord performs the Demolition Work with respect to the Initial Premises. Landlord will complete the Base Building Condition Work with respect to each Must Take Expansion Premises on the earlier of the Intended Early Must Take Possession Date (if accelerated) or the Stated Must Take Commencement Date (as applicable).

2.7 **Tenant ' s Construction Payments** .

(a) If the Amenity Space Renovations Work (pursuant to the Amenity Space Plans) or Lobby Renovations Work (pursuant to the Lobby Plans) costs more than the amount of the Amenity Build-Out Allowance or Lobby Renovations Allowance (as such may be increased

or decreased by Tenant using the reallocations permitted in the Work Agreement) (" **Excess First Floor Costs** "), then Tenant shall pay such Excess First Floor Costs directly to any contractors completing such work as and when due to such contractors (provided Landlord has timely provided the invoices and payment information to Tenant). Tenant's failure to timely make any payments of Excess First Floor Costs hereunder, regardless if Tenant has a good faith basis for withholding or delaying such payment, shall not relieve Tenant from its obligation to discharge (or bond) any lien resulting from Tenant's failure to timely pay the same. Tenant agrees to defend, indemnify and hold Landlord harmless from any claim, cost or liability incurred in connection with Tenant's failure to pay such Excess First Floor Costs, including reasonable attorneys' fees and expenses.

(b) For the Initial Build-Out Work, the 2 nd Floor Build-Out Work, the Amenity Space Renovations Work , the Lobby Renovation Work and the Subsequent Build-Out Work, Landlord shall in no event be required to advance any funds, spend any funds or incur any costs or expense in excess of the aggregate Tenant Improvement Allowances for such work (including, as the result of any reallocation of any portion of such Tenant Improvement Allowance as may be permitted under this Lease or the Work Agreement).

ARTICLE III

TERM

3.1 **Term** . All of the provisions of this Lease shall be in full force and effect from and after the date first above written. The Lease Term shall commence on the Lease Commencement Date. If the Lease Commencement Date is not the first day of a month, then the Lease Term shall be the period set forth in the definition of "Lease Term" in Article I , plus the partial month in which the Lease Commencement Date occurs, and the last day of the Lease Term shall be the " **Expiration Date** ". For purposes of clarity, the Lease Term includes any properly exercised renewal or extension of the term of this Lease.

3.2 **Lease Commencement Date** . Subject to the extensions set forth in this Lease and the Work Agreement, the " **Lease Commencement Date** " shall be December 1, 2016.

3.3 **Failure to Deliver .**

(a) Subject to Section 3.3(f) of this Lease, if Landlord does not make the Initial Premises in its entirety available for delivery to Tenant in the Required Delivery Condition by the Base Building Condition Target Delivery Date, then the Abatement Period applicable to the Initial Premises pursuant to Section 4.2(a) below shall be extended as follows: (i) one (1) day for each day after the Base Building Condition Target Delivery Date that the entire Initial Premises is not available to be delivered to Tenant in the Required Delivery Condition up to forty-five (45) days; (ii) one and one half (1 ½) days for each day after forty-five (45) days after the Base Building Condition Target Delivery Date that the entire Initial Premises is not available to be delivered to Tenant in the Required Delivery Condition up to ninety (90) days, and (iii) thereafter two (2) days for each day after ninety (90) days after the Base Building Condition Target Delivery Date that the entire Initial Premises is not available to be delivered to Tenant in the Required Delivery Condition. (As an example to the above, if the Base Building

Delivery Date was 100 days after the Base Building Target Delivery Date, the Abatement Period would be extended for 142½ days (45 days for the first 45 days plus 77½ days for the second 45 days plus 20 days for the last 10 days)). As used in this Section 3.3(a), the phrase "not available to be delivered" or similar phrases mean that Landlord has not tendered possession and delivery of the Initial Premises in the Required Delivery Condition, subject to Tenant's rights to delay acceptance of delivery and possession of the Final Delivery Block as set forth in Section 1.13(b)(ii) of the Work Agreement.

(b) Landlord shall be required to complete Landlord's Initial Work (exclusive of the Base Building Condition Cap Work) for the Premises in its entirety in order to satisfy the Required Delivery Condition for the applicable portion of the Premises. In regards to the Initial Premises, Tenant shall not be required to take possession or accept delivery of less than a full Delivery Block in the Required Delivery Condition. Tenant shall not be required to take possession or accept delivery of the Initial Premises until the Base Building Condition Target Delivery Date (and may delay possession and acceptance of delivery for the Final Delivery Block as provided in Section 1.13(b)(ii) of the Work Agreement) regardless of whether the entire Initial Premises is in the Required Delivery Condition before such date such that the applicable Base Building Condition Delivery Date would have occurred but for Section 3.3(a) (provided that Tenant, in its sole and absolute discretion, may elect accept such early possession and delivery by Landlord but only upon Tenant's delivery of a written notice to Landlord specifically agreeing to accept such possession and delivery prior to the Base Building Condition Target Delivery Date).

(c) Tenant will give Landlord no less than one hundred twenty (120) days' prior notice of when it reasonably expects in good faith to commence the installation of its furniture and work stations within the Initial Premises (such one hundred twenty (120) day time period, the " **Initial Premises Post-Delivery Work Period** "), and with respect to the Must Take Expansion Premises, within such space (such one hundred twenty (120) day time period, the " **Must Take Expansion Premises Post-Delivery Work Period** ", and together with the Initial Premises Post-Delivery Work Period, the " **Post-Delivery Work Period** "), and Landlord will coordinate and complete its applicable Base Building Condition Cap Work during the applicable Post-Delivery Work Period. If Landlord does not deliver the Base Building Condition Cap Work Substantially Complete on or before the expiration of the applicable Post-Delivery Work Period, Tenant shall be entitled to a rent credit of $200.00 per day until the Base Building Condition Cap Work is Substantially Complete.

(d) If Landlord does not deliver any Must Take Expansion Premises in the Required Delivery Condition by the earlier of the applicable Stated Must Take Commencement Date applicable to such floor or Intended Must Take Delivery Date set forth in the applicable Acceleration Notice (a " **Deemed Early Must Take Possession Date** "), then the Abatement Period applicable to such floor's Base Rent pursuant to Section 4.2(a) below (as may be modified by Section 2.6 above) shall be extended as follows: one (1) day for each day after the earlier of the Stated Must Take Commencement Date or the Deemed Early Must Take Possession Date that the applicable Must Take Expansion Premises has not been delivered to

Tenant in the Required Delivery Condition up to thirty (30) days; two (2) days for each day after thirty (30) days after the earlier of the Stated Must Take Commencement Date or the Deemed Early Must Take Possession Date that the applicable Must Take Expansion Premises has not been delivered to Tenant in the Required Delivery Condition up to forty-five (45) days, and thereafter two and one-half (2-1/2) days for each day after forty five (45) days after the earlier of the Stated Must Take Commencement Date or Deemed Early Must Take Possession Date that the applicable Must Take Expansion Premises has not been delivered to Tenant in the Required Delivery Condition. (As an example to the above, if the Delivery Date of the applicable Must Take Expansion Premises was 60 days after the earlier of the Stated Must Take Commencement Date or the Deemed Early Must Take Possession, the Abatement Period for such Must Take Expansion Premises would be extended for days (30 days for the first 30 days plus 30 days for the second 15 days plus 37½ days for the last 15 days))

(e) Notwithstanding anything to the contrary contained in the Lease or the Work Agreement, in no event shall Tenant be responsible for any Premises Consumable Expenses or Tenant's Proportionate Share of Operating Expenses or Real Estate Taxes for a Must Take Expansion Premises until the applicable Must Take Commencement Date.

(f) Notwithstanding anything to the contrary contained in the Lease or the Work Agreement, in connection with the performance and completion of Landlord's Work, Landlord is entitled to extensions for Tenant Delays (subject to the requirements of Section 1.11 of the Work Agreement) and Landlord is entitled to up to (but not in excess of) thirty (30) days of extensions in the aggregate for Unavoidable Delays. If a Tenant Delay and an Unavoidable Delay occur at the same time, they shall run concurrently and not consecutively. Provided Landlord has complied with the notice provisions of Article XXV , during the continuation of an Unavoidable Delay, Landlord's obligation to complete any item of Landlord's Work or deliver any portion of the Premises shall be extended for up to such thirty (30) day period without penalty to Landlord (including, the Abatement Period, the Lease Commencement Date and/or the Must Take Commencement Date, as applicable, shall not change or be extended); provided that the applicable Tenant's Completion Date shall be extended one day for each day of such Unavoidable Delay. Upon Landlord's utilization of 30 days of Unavoidable Delay extensions, any further Unavoidable Delay affecting the performance and completion of Landlord's Work shall be a Landlord Delay without the necessity of Tenant delivering additional notices to Landlord, and subject to the penalties contained in this Section 3.3.

3.4 **Mock Up Space** . As soon as reasonably practicable, Landlord shall make available to Tenant a portion of an upper floor of the Building (other than the 3 rd or the 4 th floor) which may or may not be the Initial Premises or Must Take Expansion Premises, but shall be reasonably acceptable to both Landlord and Tenant (containing no more than 2,000 contiguous RSF) following the completion of Demolition Work and Base Building Condition Work on such floor (the " **Mock Up Space** "), in either case on a date reasonably determined by Landlord and reasonably acceptable to Tenant for the purpose of constructing on-site mockups therein; provided that (i) Tenant's use of the Mock-Up Space does not interfere with any of Landlord's Demolition Work or Base Building Condition Work on such floor, (ii) use of the Mock-Up Space shall be at Tenant's sole cost and expense (including any utilities), and (iii) all terms of this Lease shall apply to such use except those regarding the payment of Base Rent and additional rent.

3.5 **Stated Must Take Commencement Date** . Subject to the terms and provisions hereof and provided Tenant has not accelerated the Stated Must Take Commencement Date as

permitted by Section 2.6 , provided that Landlord shall have delivered the applicable Must Take Expansion Premises to Tenant in the Required Delivery Condition, Tenant shall take possession of the applicable floor of each Must Take Expansion Premises no later than as follows (each, a " **Stated Must Take Commencement Date** "):

(a) 7th floor, on or before the first (1 st) anniversary of the Lease Commencement Date;

(b) 6th floor, on or before the second (2 nd) anniversary of the Lease Commencement Date;

(c) 5th floor, on or before the third (3 rd) anniversary of the Lease Commencement Date.

As used herein the " **Must Take Commencement Date** " with respect to a Must Take Expansion Premises shall mean the earlier to occur of (i) the Early Must Take Possession Date (or the Deemed Early Must Take Commencement Date) plus any penalty period with respect to the applicable Must Take Expansion Premises as provided in Section 3.3(d), and (ii) the Stated Must Take Commencement Date for the applicable Must Take Expansion Premises plus any penalty period with respect to the applicable Must Take Expansion Premises as provided in Section 3.3(d). Promptly after each Must Take Commencement Date and applicable Abatement Period for the applicable Must Take Expansion Premises is mutually ascertained, Landlord and Tenant shall execute a certificate confirming the applicable Must Take Commencement Date in a form substantially similar to the form attached to this Lease as **Exhibit D** subject to Landlord's delivery of such Must Take Expansion Premises in the Required Delivery Condition.

ARTICLE IV

BASE RENT

4.1 **Base Rent** .

(a) From and after the Lease Commencement Date, but subject to the applicable Abatement Period set forth in Section 4.2(a), the Rent Credit Amount and any other rent abatement Tenant may be expressly entitled to pursuant to this Lease, Tenant shall pay the Initial Premises Base Rent in equal monthly installments in advance on the first day of each month during a Lease Year. If the Lease Commencement Date is not the first day of a month, then the Initial Premises Base Rent from the Lease Commencement Date until the first day of the following month shall be prorated on a per diem basis at the rate of one-thirtieth (1/30th) of the monthly installment of the Initial Premises Base Rent payable during the first Lease Year, and Tenant shall pay such prorated installment of the Initial Premises Base Rent on the Lease Commencement Date.

(b) Commencing on each applicable Must Take Commencement Date but subject to the applicable Abatement Period set forth in Section 4.2(b) , the Rent Credit Amount and any other rent abatement Tenant may be expressly entitled to pursuant to this Lease, hereof, Tenant shall pay, and Base Rent shall include, the Must Take Expansion Premises Base Rent for such Must Take Expansion Premises. If any Must Take Commencement Date is not the first day

of a month, then the applicable Must Take Expansion Premises Base Rent from the Must Take Commencement Date until the first day of the following month shall be prorated on a per diem basis at the rate of one-thirtieth (1/30th) of the monthly installment of the applicable Must Take Expansion Premises Base Rent payable during the applicable Lease Year, and Tenant shall pay such prorated installment of the Must Take Expansion Premises Base Rent on the Must Take Commencement Date.

4.2 **Abatement Period** .

(a) Provided that no Event of Default has occurred and is continuing, commencing on the Lease Commencement Date, subject to the provisions of Section 3.3 , Landlord agrees to waive the total amount of the following costs for the Initial Premises only for a six (6) month period: (1) all Base Rent due for such period, to be applied in monthly installments for each of the six (6) full months following the Lease Commencement Date, (2) Tenant's additional rent for Tenant's Proportionate Share of Operating Expenses and Real Estate Taxes due for such six (6) month period (including any Metered Costs), (3) all Consumable Expenses, (4) any Temporary Usage Charges and (5) all Submetered Costs for such six (6) month period.

(b) Provided that no Event of Default has occurred and is continuing, commencing on each Must Take Commencement Date, Landlord agrees to waive the total amount of Must Take Expansion Premises Base Rent only (i.e., such abatement shall not include any additional rent for Tenant's Proportionate Share of Operating Expenses and Real Estate Taxes, Consumable Expenses or Submetered Costs for such floor and Tenant shall remain liable for the same) due for a nine (9) month period for such Must Take Expansion Premises, to be applied in monthly installments for each of the nine (9) full months following the applicable Must Take Commencement Date (or earlier, pursuant to Section 2.6(a) of this Lease).

(c) The total amount of Base Rent, Operating Expenses, Real Estate Taxes, Consumable Expenses and Submetered Costs abated pursuant to Section 4.2(a) shall be the " **Abated Initial Premises Costs** " and the total amount of Base Rent abated pursuant to Section 4.2(a) shall be the " **Abated Must Take Expansion Premises Costs** ", and together with the Abated Initial Premises Costs, the " **Abated Costs** ". The six (6) or nine (9) month abatement period pursuant to Section 4.2(a) and (b) , respectively, plus any extensions provided by Section 3.3 or elsewhere in this Lease or Work Agreement shall be the " **Abatement Period** ." For the avoidance of doubt, any cost or expense not expressly included in the Abated Costs, shall be due and payable by Tenant in accordance with this Lease. The escalation of Base Rent calculated pursuant to Section 4.3 shall be calculated without giving effect to any waiver of rent or rent credit provided to Tenant. For clarity, all references to the Abatement Period shall include any extensions thereof provided in Section 3.3 .

4.3 **Base Rent Annual Escalation Percentage** . On the first day of the second Lease Year and each succeeding Lease Year during the Lease Term, the Per RSF Base Rent in effect shall be increased by an amount equal to the product of (a) the Base Rent Annual Escalation Percentage, and (b) the Per RSF Base Rent in effect immediately before the increase.

4.4 **Payment Requirements** . All sums payable by Tenant under this Lease, whether or not stated to be Base Rent, additional rent or otherwise, shall be paid to Landlord in legal tender of

the United States, without setoff, deduction or demand (except as otherwise expressly provided in this Lease or the Work Agreement), at the Landlord Payment Address, or to such other party or such other address as Landlord may designate in writing. Landlord's acceptance of rent after it shall have become due and payable shall not excuse a delay upon any subsequent occasion or constitute a waiver of any of Landlord's rights hereunder. If any sum payable by Tenant under this Lease is paid by check which is returned due to insufficient funds, stop payment order, or otherwise, then: (a) such event shall be treated as a failure to pay such sum when due; and (b) in addition to all other rights and remedies of Landlord hereunder, Landlord shall be entitled (i) to impose, as additional rent, a returned check charge of One Hundred Dollars ($100.00) to cover Landlord's administrative expenses and overhead for processing, and (ii) to require that all future payments be remitted by wire transfer, money order, or cashier's or certified check. Tenant shall have the right to pay any sum due hereunder by wire transfer or ACH.

4.5 **Other Sums Due** . Any additional rent or other sum owed by Tenant to Landlord (other than Base Rent), and any cost, expense, damage or liability incurred by Landlord for which Tenant is liable, shall be considered additional rent payable pursuant to this Lease, and unless expressly provided otherwise pursuant to a different provision of this Lease, such amount shall be paid by Tenant no later than thirty (30) days after the date Landlord notifies Tenant of the amount thereof or makes demand therefor.

4.6 **Additional Rent Credit** . Provided and for so long as no Event of Default shall have occurred and be continuing, commencing on February 1, 2028, Landlord shall apply the Rent Credit Amount (as hereinafter defined) to the next installment(s) of Base Rent payable hereunder until the Rent Credit Amount has been fully applied. The " **Rent Credit Amount** " means $450,000.00. Landlord shall have the right, at its option, to pay the Rent Credit Amount (or any portion thereof then remaining) in a lump sum to Tenant upon the occurrence of sale, financing or refinancing of the Building, and Tenant shall confirm receipt of the same in writing. Upon payment in full of the Rent Credit Amount (whether by application to Base Rent as provided herein or by lump sum payment), the provisions of this Section 4.6 shall be deemed satisfied.

ARTICLE V

OPERATING EXPENSES AND REAL ESTATE TAXES

5.1 **Definitions** . For the purposes of this Article V , the term " **Building** " shall be deemed to include the site upon which the Building is constructed as described in **Exhibit K** (which site is sometimes referred to herein as the " **Land** ").

5.2 **Operating Expenses; Consumable Expenses and Base Building Expenses.**

(a) Operating Expenses. Subject to the limitations set forth in this Section 5.2 , the Abatement Periods as set forth in Section 4.2 and any other rent abatement Tenant may be expressly entitled to pursuant to this Lease, from and after the Lease Commencement Date, Tenant shall pay as additional rent Tenant's Proportionate Share (as such share may increase from time to time as provided in this Lease) of the Operating Expenses for each calendar year falling entirely or partly within the Lease Term. Following each Must Take Commencement Date (subject to the extension of the Abatement Period as set forth in Section 3.3), Tenant's

Proportionate Share with respect to Operating Expenses shall be increased by the Tenant's Proportionate Share set forth opposite such Must Take Expansion Premises in the Measurement Schedule (or with respect to any partial floor subsequently demised by Landlord to Tenant hereunder, as determined in the definition of " **Tenant's Proportionate Share** ").

(b) Consumable Expenses . Subject to the limitations set forth in this Section 5.2, the applicable Abatement Periods as set forth in Section 4.2 and any other rent abatement Tenant may be expressly entitled to pursuant this Lease, from and after the Lease Commencement Date (with respect to the Initial Premises and the Roof Terrace) and from and after the applicable Must Take Commencement Date (with respect to each Must Take Expansion Premises), Tenant shall pay 100% of the costs and expenses of (i) the cleaning and janitorial services with respect to the interior of the applicable portion of the Premises and the Roof Terrace only (including full floor elevator lobbies and core bathroom areas within the applicable portion of the Premises) and (ii) to the extent not capable of being separately submetered, gas (when such is provided to the Premises) and sewer charges (provided the sewer charges are not included in the water submeters) that are attributable solely to the applicable portion of the Premises (collectively, " **Premises Consumable Services** " and the cost thereof, the " **Consumable Expenses** "). For clarity:

(i) in the case of water, gas and sewer costs properly attributable to the Premises that are not possible or feasible to measure by way of submetering, such costs shall be measured by way of overall/general metering and Landlord shall provide reasonable explanation/information together with invoicing to substantiate that such costs are so attributable to the Premises (subject to Tenant's dispute and other rights contained throughout this Agreement);

(ii) in the case of cleaning/janitorial costs, Landlord shall arrange cleaning/janitorial contracts with applicable vendors that specifically identify which portions of the cleaning/janitorial services for the Building are attributable to the Premises or alternatively, arrange for a separate contract for the Premises. Tenant shall have the option (but not the obligation) to arrange its own cleaning/janitorial contract for the Premises directly with applicable vendor(s) if it so wishes to at any time, provided that it first give Landlord with sufficient advance notice so that existing contracts can be terminated or amended to exclude the Premises from their scope of work;

(iii) "Premises Consumable Services" shall not include Building System HVAC (which are either Operating Expenses, subject to Section 5.2(g) or will be separately metered pursuant to Section 14.3) and electricity serving the Premises (Section 14.3 applies to such electrical charges) or any other Building Systems servicing the Building Common Areas or tenants of the Building generally (which are either Operating Expenses, charged directly to the applicable tenant, or with respect to Tenant, charged to Tenant pursuant to Article XIV);

(iv) Landlord will invoice Tenant for Premises Consumable Services monthly and separately from Operating Expenses and

amounts separately determined by meters;

(v) Landlord may not arbitrarily allocate expenses to Premises Consumable Services as opposed to other tenants or the Building Common Areas;

(vi) In no event will Consumables Expenses include Submetered Costs or Excluded Expenses and no cost in connection with Premises Consumable Services will be payable by Tenant until the applicable Abatement Period has expired (with respect to the Initial Premises) or the applicable Must Take Commencement Date (with respect to each floor of the Must Take Expansion Premises); and

(vii) Tenant shall have the right to audit on a semi-annual basis, invoices for Consumable Expenses utilizing the same mechanism set forth in clause 5.2(f) below with respect to Annual Expense Statements.

(c) Landlord to Install Submeters . As part of the Base Building Condition Cap Work, Landlord shall install, at Landlord's sole expense (subject to the Base Building Cap), submeters to ascertain Tenant's actual electrical Usage (including, without limitation, in connection with any Specialty Installations installed by Landlord at Tenant's request, as part of the Lobby Renovations Work and/or Amenity Space Renovations Work). Any such submeter shall exclusively meter such Specialty Alteration, the Usage of the two Building System HVAC units on each floor of the Premises and the airhandlers and condenser water towers on the roof. In addition to the foregoing, also as part of Landlord's Base Building Condition Cap Work, Landlord will install separate meters or submeters to determine (A) electrical Usage within the Food Service Area, (B) electric Usage by other tenants on floors 3 and 4, (C) water usage by Tenant within the Premises, (D) water usage by other tenants, (E) water usage within the rooftop uses and (F) water usage with the Food Service Area. Landlord shall also install submeters for both generators serving the Building. All the costs of all electricity, gas, water, HVAC, sewer and other utility charges of every type and nature (collectively " **Utilities** ") serving the Building (but not exclusive to any tenant space, the Food Service Area, the Premises or the Roof Terrace) where the usage of such utilities is capable of being determined by meters or submeters (and shall be so determined) are collectively or individually referred to herein as " **Metered Costs** " and the costs of all Utilities exclusively serving the Premises or any Specialty Alterations installed by Tenant outside of the Premises are collectively or individually referred to herein as " **Submetered Costs** ."

(d) Definition of Operating Expenses . As used herein, the term " **Operating Expenses** " shall mean the sum of all expenses incurred by Landlord in the ownership, operation, maintenance, repair and cleaning of the Building and Building improvements, the operation, maintenance repair, operating (including but not limited to the Amenity Space and Parking Lot and any other parking facilities serving the Building, and if and when the Parking Structure is completed and conveyed to Landlord in accordance with the Parking Easement, in the ownership, operation, maintenance, repair and cleaning of the Parking Structure), including, but not limited to, the following (but subject to the limitations and provisos set forth in this Section 5.2): (1) Metered Costs (excluding Submetered Costs and to the extent separately metered or submetered, costs for Utilities with respect to Operator's usage or specific tenants' premises or a tenant's Specialty Alterations located outside of such tenant's premises which shall be paid directly by such tenant); (2) costs of Utilities for the Building and Building Common Areas, to the extent such Utilities are not included in Metered Costs or are not separate Submetered Costs

or are not recovered by Landlord under Section 5.2(g), without duplication, (3) premiums and other charges for insurance and deductibles under such insurance policies; (4) management fees and personnel costs of the Building (provided that the management fee percentage charged shall not exceed three percent (3%) of gross revenues from the Building (adjusted for abatements) collected from tenants or other Permitted Occupants of the Building during such calendar year), (5) costs of service and maintenance contracts relating to the Building or Parking Lot (or any Parking Structure constructed as a replacement to the Parking Lot) as a whole (including, without limitation, elevator, generator and HVAC maintenance); (6) operation, maintenance, repair and replacement expenses and supplies; (7) depreciation for Capital Improvements (and any financing costs thereof) (A) required to comply with Requirements (or changes thereto) applicable to the Building or the Parking Lot (or replacement Parking Structure) enacted after the date hereof (amortized over the longest depreciable period required by GAAP, with an interest factor equal to two percent (2%) above the Prime Rate at the time of Landlord's having incurred said expenditure) or (B) which are designed to result in a saving in the amount of Operating Expenses provided that the amount of the cost of any such Capital Improvements under the this clause (7) (B) attributable to any calendar year that may be included in Operating Expenses for such calendar year shall not exceed the estimated savings for such Lease Year as a result of such expenditures by Landlord (the " **Projected Savings** "), which Projected Savings shall be reasonably determined (at the time of or prior to the making of such expenditure by Landlord) by an Independent Engineer, who shall be retained by Landlord (in all such cases the cost thereof shall be included in "Operating Expenses" for the calendar year in which the costs are incurred and subsequent calendar years, amortized over such period of time as the Projected Savings will equal Landlord's cost of such capital improvement, with an interest factor equal to two percent (2%) above the Prime Rate at the time of Landlord having incurred said expenditure); (8) charges for security, janitorial, trash removal, window cleaning and all other cleaning services and supplies furnished to the Building or Parking Lot (or the Parking Structure, as applicable), provided that charges for cleaning services and janitorial services within the Premises are not included by Operating Expenses but will treated as a Consumable Services Expense ; (9) any business, professional and occupational license tax payable by Landlord with respect to the Building or Parking Lot (or the Parking Structure, as applicable); (10) without duplication, reasonable reserves for non-capital replacements, repairs and contingencies; (11) costs of snow removal; (12) any other expense incurred by Landlord in maintaining, repairing, operating or cleaning the Building or Parking Lot, including the Amenity Space and Lobby; (13) costs of maintaining, operating and repairing the Emergency Generator System, and (14) all other costs which are to be included as Operating Expenses as provided in this Lease but without duplication of any other Operating Expenses. Landlord shall reasonably allocate the premiums of any blanket insurance coverages carried by Landlord among the properties covered by such blanket policies and shall provide an explanation of such allocation to Tenant if requested. Notwithstanding anything to the contrary contained in this Lease, Operating Expenses shall not include the cost and items set forth in **Exhibit N** (" **Excluded Expenses** ") and shall be paid without duplication of amounts paid elsewhere in this Lease by Tenant for Premises Consumable Expenses, Submetered Costs for Tenant's Premises specific Usage or usage, Temporary Usage Charges or Real Estate Taxes (and the same shall apply with respect to those charges also).

(e) Operating Expense Statements. Subject to the Abatement Period, Tenant shall make estimated monthly payments to Landlord on account of the amount of Operating Expenses that are expected to be incurred during each calendar year (or portion thereof). At the

beginning of the Lease Term and at the beginning of each calendar year thereafter, Landlord shall submit a statement setting forth Landlord's reasonable estimate of such Operating Expenses and Tenant's Proportionate Share thereof (" **Expense Statement** "). Tenant shall pay to Landlord on the first day of each month following receipt of such Expenses Statement, until Tenant's receipt of the succeeding Annual Expense Statement, an amount equal to one-twelfth (1/12) of each such share (estimated on an annual basis without proration pursuant to Section 5.4) (such monthly installment payment of Tenant's Proportionate Share of Operating Expenses being referred to a " **Monthly Operating Expense Payment** "). From time to time during any calendar year, Landlord may revise Landlord's estimate and adjust Tenant's monthly payments to reflect Landlord's revised estimate and/or the commencement of any Must Take Expansion Premises; provided that in each case Landlord sends a revised Expense Statement to Tenant. Within approximately ninety (90) days after the end of each calendar year, or as soon thereafter as is feasible, Landlord shall submit a statement (each an " **Annual Expense Statement** ") showing (1) a reasonably detailed line item statement of Operating Expenses incurred during the preceding calendar year, (2) Tenant's Proportionate Share of Operating Expenses, and (3) the aggregate amount of Tenant's estimated payments made on account of Operating Expenses during such calendar year. If such Annual Expense Statement indicates that the aggregate amount of such estimated payments exceeds Tenant's actual liability, then Landlord shall credit the net overpayment toward Tenant's next estimated payment(s) pursuant to this Section 5.2 (if applicable) or remit such net overpayment to Tenant within thirty (30) days. If such Annual Expense Statement indicates that Tenant's actual liability exceeds the aggregate amount of such estimated payments, then within thirty (30) days after Landlord's submission thereof, Tenant shall pay the amount of such excess as additional rent.

(f) Tenant Right to Audit . For a period of twelve (12) months after Tenant's receipt of such Annual Expense Statement (or if a supplemental or amended statement is provided, after the delivery of such supplemental or amended statement), Landlord shall upon Tenant's written request therefor, provide such additional information at Tenant's sole reasonable cost as reasonably necessary for Tenant to verify the amount of Operating Expenses incurred during the preceding calendar year. For a period of twelve (12) months after Tenant's receipt of such Annual Expense Statement (or subsequent supplemental or amended statement), Tenant, or an independent, certified public accountant who is hired by Tenant on a non-contingent fee basis and who offers a full range of accounting services and is reasonably acceptable to Landlord, shall have the right, during regular business hours and after giving at least ten (10) days' advance written notice to Landlord, to inspect and complete an audit of Landlord's books and records relating to Operating Expenses for the immediately preceding calendar year. Tenant shall (and shall cause its employees, agents and consultants to) keep the results of any such audit or audited statement strictly confidential. Within such twelve (12) month period, if Tenant disagrees with the Annual Expense Statement, Tenant shall notify Landlord that it disputes the correctness of the Annual Expense Statement (such notice a " **Tenant Expense Dispute Notice** "), specifying the particular respects in which the Annual Expense Statement is claimed to be incorrect. Pending the determination of any such dispute by agreement or litigation as aforesaid, Tenant shall pay to Landlord the amount due under the disputed Annual Expense Statement, within thirty (30) days after Landlord gives same to Tenant, and such payment to be without prejudice to Tenant's position. If upon resolution of such dispute (whether by mutual agreement between Landlord and Tenant or by judicial determination), the amounts paid by Tenant to Landlord for Operating Expenses exceed the amounts to which

Landlord is entitled hereunder, Landlord shall, at Landlord's option, either credit the amount of such excess toward the next monthly payments of Operating Expenses due hereunder or remit such net overpayment to Tenant within thirty (30) days, or if the amounts paid by Tenant to Landlord for Operating Expenses is less than the amounts to which Landlord is entitled hereunder, Tenant shall pay such deficiency to Landlord within (30) days. All of Tenant's costs and expenses of any such audit shall be paid by Tenant unless such audit or audited statement shows that the amounts paid by Tenant to Landlord on account of Operating Expenses for such calendar year exceed the amounts to which Landlord is entitled by more than four percent (4%) in which case Landlord shall pay all costs and expenses of any such audit or audited statement (provided such costs and expenses shall not exceed Five Thousand Dollars ($5,000) in the aggregate) and if such amount exceeds seven percent (7%), Landlord shall pay to Tenant interest at the Default Rate on all overpayments of Operating Expenses for such calendar year accruing from the date of overpayment until paid to Tenant. If Tenant does not notify Landlord in writing of any objection to any Annual Expense Statement within twelve (12) months after receipt thereof (or six (6) months, in the case of Tenant's audit of Consumable Expenses in accordance with Section 5(b)(vii)), then Tenant shall be deemed to have waived such objection for such Annual Expense Statement. Notwithstanding anything to the contrary contained herein, Tenant may not conduct an audit of an Annual Expense Statement more than once each calendar year.

(g) Building System Charges . Notwithstanding anything to the contrary contained in this Lease, so long as Tenant is the sole tenant of the Building, in addition to paying Tenant's Proportionate Share of the cost (as an Operating Expense) Metered Costs (each as set forth in the applicable meter) for the Building System HVAC units and condenser water towers located on the rooftop (Landlord shall install separate meters with respect to such rooftop equipment as part of the Base Building Condition Work) connected to the interior Building System HVAC units, upon the end of the applicable Abatement Period, Tenant will pay an additional amount equal to 50% of such electrical Usage and water usage for the for the Building System HVAC units and condenser water towers located on the rooftop connected to the interior Building System HVAC units in addition to Tenant's Proportionate Share as of such date (the " **Temporary Usage Charge** ") (as an example, if Tenant's Proportionate Share is 55%, so long as there are no other tenants in the Building, in addition to Tenant's Proportionate Share of the cost of the Metered Costs for electricity and water usage for such rooftop units, Tenant will pay half of the remaining cost, i.e., 22.5%, of such electrical Usage and water usage). Upon the commencement of any tenant build out work on any portion of the 3 rd or 4 th floors comprising in the aggregate, no less than 28,175 RSF, Tenant shall no longer be required to pay the Temporary Usage Charge notwithstanding if, at some later date, Tenant is then again the sole tenant of the Building (but Tenant will still be required to pay Tenant's Proportionate Share of such Metered Costs included in Operating Expenses). In addition, if tenants (including Tenant) are allowed to tap their separate supplemental units into the Building System HVAC units and/or condenser water towers, Landlord will reallocate the respective proportionate shares of all tenants with respect to electrical Usage and water usage charges for the Building System HVAC roof top units to reflect such additional users.

(h) Calendar Year . Landlord shall have the one time right, upon twelve (12) months prior notice to Tenant, to change the calculation of Operating Expenses from a calendar year basis to a Lease Year basis (and thereafter all references to "calendar year" in this Section 5.2 shall refer instead to "Lease Year") provided that no such change shall increase Tenant's

costs under this Section 5.2 beyond that would Tenant would have incurred if Landlord has retained the calendar calculation.

5.3 **Real Estate Taxes** .

(a) From and after the Lease Commencement Date but subject to the Abatement Period and any other abatement Tenant is expressly entitled to pursuant to this Lease, Tenant shall pay as additional rent Tenant's Proportionate Share of the Real Estate Taxes for each fiscal year falling entirely or partly within the Lease Term, respectively. Tenant's Proportionate Share with respect to Real Estate Taxes shall be that percentage which is equal to a fraction, the numerator of which is the number of RSF of rentable area in the Initial Premises, and the denominator of which is 309,303.18. Following each Must Take Commencement Date, Tenant's Proportionate Share with respect to Real Estate Taxes shall be increased in accordance with the foregoing formula.

(b) " **Real Estate Taxes** " shall mean (1) all real estate taxes, vault and/or public space rentals, business district or arena taxes, special user fees, rates, and assessments (including general and special assessments, if any), ordinary and extraordinary, foreseen and unforeseen, which are imposed upon Landlord or assessed against the Building, the Land, the outparcels constituting the Parking Lot (or when the Parking Lot is replaced with the Parking Structure, the parcel underlying the Parking Structure) or Landlord's personal property used in connection therewith, (2) any other present or future taxes or governmental charges that are imposed upon Landlord or assessed against the Building or the Land which are in the nature of or in substitution for real estate taxes, including any tax levied on or measured by the rents payable by tenants of the Building, and (3) expenses (including, without limitation, reasonable attorneys' and consultants' fees and court costs) incurred in reviewing, protesting or seeking a reduction of real estate taxes, whether or not such protest or reduction is ultimately successful. Subject to the foregoing, Real Estate Taxes shall not include any inheritance, estate, gift, franchise, corporation, net income or net profits tax assessed against Landlord from the operation of the Building or any late charges caused by Landlord not timely paying any Real Estate Taxes provided that Tenant has timely paid Monthly Real Estate Tax Payments.

5.4 **Estimated Real Estate Tax Payments .** Tenant shall make estimated monthly payments to Landlord on account of the Real Estate Taxes Landlord reasonably estimates to be incurred during each calendar year. At the beginning of the Lease Term and at the beginning of each fiscal tax year thereafter, Landlord shall submit a statement setting forth Landlord's reasonable estimate of such amount and Tenant's Proportionate Share thereof (" **Tax Statement** "). Tenant shall pay to Landlord on the first day of each month following receipt of such statement, until Tenant's receipt of the succeeding annual statement, an amount equal to one-twelfth (1/12) of such share (estimated on an annual basis without proration pursuant to this Section 5.4 , such monthly installment payments required of Tenant under this Section 5.4 being collectively referred to as " **Monthly Real Estate Tax Payments** "). From time to time during any calendar year, Landlord may revise Landlord's estimate and adjust Tenant's monthly payments to reflect Landlord's revised estimate and/or the commencement of any Must Take Expansion Premises. Within approximately ninety (90) days after the end of each calendar year, or as soon thereafter as is feasible, Landlord shall submit a statement (each a " **Annual Tax Statement** ") showing (1) a reasonably detailed line item statement of Real Estate Taxes incurred during the preceding calendar year, (2) Tenant's Proportionate Share of the Real Estate Taxes incurred during the preceding

calendar year, and (3) the aggregate amount of Tenant's estimated payments made on account of Real Estate Taxes during such year. If such Annual Tax Statement indicates that the aggregate amount of such estimated payments exceeds Tenant's actual liability, then Landlord, at Landlord's option, shall either credit the net overpayment toward Tenant's next estimated payment(s) pursuant to this Section (if applicable) or remit such net overpayment to Tenant within thirty (30) days. If such Annual Tax Statement indicates that Tenant's actual liability exceeds the aggregate amount of such estimated payments, then within thirty (30) days after Landlord's submission thereof, Tenant shall pay the amount of such excess as additional rent. Every Annual Tax Statement (including revised Tax Statements) given to Tenant shall be conclusive and binding upon Tenant, unless Tenant shall notify Landlord within twelve (12) months after an Annual Tax Statement is given to Tenant that Tenant disputes the correctness of the computations made thereon (such notice, a " **Tenant Tax Statement Dispute Notice** "), specifying the particular respects in which such computations are claimed to be incorrect. Pending the resolution of such dispute (by agreement or judicial determination), Tenant shall, within thirty (30) days after it is given such disputed Annual Tax Statement, pay any additional rent due in accordance therewith, but such payment shall be without prejudice to Tenant's position. If Tenant does not notify Landlord in writing of any objection to any Annual Tax Statement within twelve (12) months after receipt thereof, then Tenant shall be deemed to have waived such objection.

5.5 **Real Estate Tax Contests** . Landlord may, from time to time, and Tenant may request that Landlord, from time to time, to initiate and prosecute any proceedings permitted by law for the purpose of obtaining an abatement of, or otherwise contesting the validity or amount of Real Estate Taxes. If requested by Tenant, Landlord shall, at no cost to Landlord, keep Tenant reasonably apprised of such proceedings and provide copies of any relevant documents filed in connection therewith. Landlord **'** s reasonable costs and expenses of pursuing any such contest shall be included in Real Estate Taxes. Landlord shall apply Tenant **'** s Proportionate Share of any recovery as a result of any such contest (net of the reasonable cost and expenses therefor), toward Tenant **'** s next estimated payment(s) pursuant to this Section 5.5 .

5.6 **Tax Benefits** . Tenant may seek tax benefits or other incentives from local or state governmental authorities on account of Tenant's occupancy or location in the Building or otherwise but not incentives that result in an abatement, credit or other reduction of Real Estate Taxes (collectively, " **Tax Benefits** ") and Landlord agrees, at Tenant **'** s cost and expense, to reasonably cooperate with Tenant in seeking such Tax Benefits. Tenant shall be entitled to receive 100% of any such Tax Benefits. Tenant agrees to defend, indemnify and hold Landlord harmless from any claim, cost or liability incurred in connection with Landlord **'** s cooperation hereunder or the recapture of any Tax Benefits, including, without limitation, reasonable attorneys **'** fees and expenses.

5.7 **Apportionment** . If the Lease Term commences or expires on a day other than the first day or the last day of a calendar year, respectively, then Tenant's liabilities pursuant to this Article for such calendar year shall be apportioned by multiplying the respective amount of Tenant's Proportionate Share thereof for the full calendar year by a fraction, the numerator of which is the number of days during such calendar year falling within the Lease Term, and the denominator of which is three hundred sixty-five (365).

ARTICLE VI

USE OF PREMISES

6.1 **Permitted Use** . Landlord represents that, to the best of its knowledge, the Initial Premises and each Must Take Expansion Premises can legally be used for Office Use. Tenant shall use and occupy the Premises for the Permitted Use. Tenant shall not use or occupy the Premises for any unlawful purpose, or in any manner that will violate the certificate of occupancy for the Premises. Tenant shall not use or occupy the Premises for any unlawful purpose, or in any manner that will violate the certificate of occupancy for the Premises or the Building (provided Landlord acknowledges that Tenant, at its sole costs and expense, may apply and obtain an amendment to the certificate of occupancy to permit any Permitted Use not otherwise permitted by the current certificate of occupancy and Landlord, at no expense to Landlord, shall reasonably cooperate with such application upon Tenant's request) or that will constitute waste or public nuisance or unreasonably interfere with Landlord or any other tenant of the Building (provided that Landlord acknowledges that Tenant's typical operations often include a large, collaborative, informal and occasionally vocal group discussions and activities which may take place in the Lobby, Amenity Space, the proposed lounge on the 2 nd Floor or the outside Building Common Areas and that such activities do not, per se, unreasonably interfere with Landlord or other tenants). Subject to Section 25.26 , Tenant shall comply with all present Requirements concerning the Tenant's use, occupancy and condition of the Premises and all machinery, equipment, furnishings, fixtures and improvements therein, all of which shall be complied with in a timely manner at Tenant's sole expense. If any such Requirement requires an occupancy or use permit or license for the Premises or the operation of the business conducted therein, then Tenant shall obtain and keep current such permit or license at Tenant's expense and shall promptly deliver a copy thereof to Landlord. Use of the Premises is subject to all covenants, conditions and restrictions of record; Tenant shall not use any space in the Building for the sale of goods to the public at large or for the sale at auction of goods or property of any kind.

6.2 **Occupancy Fees** . Tenant shall pay before delinquency any business, rent or other taxes or fees that are now or hereafter levied, assessed or imposed upon Tenant's use or occupancy of the Premises, the conduct of Tenant's business at the Premises, or Tenant's equipment, fixtures, furnishings, inventory or personal property. If any such tax or fee is enacted or altered so that such tax or fee is levied against Landlord or so that Landlord is responsible for collection or payment thereof, then Tenant shall pay as additional rent the amount of such tax or fee.

6.3 **Hazardous Materials** .

(a) Tenant shall not cause or permit any Hazardous Materials to be generated, used, released, stored or disposed of in or about the Building, provided that Tenant may use and store (x) substances reasonably necessary in the ordinary operation and maintenance of office equipment or Permitted Uses in the Premises (such as food service, gyms, and screening rooms pursuant to the Permitted Uses), (y) construction materials used in connection with any alterations, and (z) fuel oil in one above ground storage tank serving Tenant's emergency generator, if any, provided in each case that such substances are handled, stored and disposed of in accordance with all Requirements. At the expiration or earlier termination of this Lease, Tenant shall surrender the Premises to Landlord free of Hazardous Materials and in compliance

with all Environmental Law. " **Hazardous Materials** " means (a) asbestos and any asbestos containing material and any substance that is then defined or listed in, or otherwise classified pursuant to, any Environmental Law or any other applicable Law as a "hazardous substance," "hazardous material," "hazardous waste," "infectious waste," "toxic substance," "toxic pollutant" or any other formulation intended to define, list, or classify substances by reason of deleterious properties such as ignitability, corrosivity, reactivity, carcinogenicity, toxicity, reproductive toxicity, or Toxicity Characteristic Leaching Procedure (TCLP) toxicity, (b) any petroleum and drilling fluids, produced waters, and other wastes associated with the exploration, development or production of crude oil, natural gas, or geothermal resources, and (c) any petroleum product, polychlorinated biphenyls, urea formaldehyde, radon gas, radioactive material (including any source, special nuclear, or by-product material), medical waste, chlorofluorocarbon, lead or lead-based product, and any other substance whose presence could be detrimental to the Building or the Land or hazardous to health or the environment. " **Environmental Law** " means any present and future Law and any amendments (whether common law, statute, rule, order, regulation or otherwise), permits and other requirements or guidelines of governmental authorities applicable to the Building or the Land and relating to the environment and environmental conditions or to any Hazardous Material (including, without limitation, CERCLA, 42 U.S.C. § 9601 et seq., the Resource Conservation and Recovery Act of 1976, 42 U.S.C. §6901 et seq., the Hazardous Materials Transportation Act, 49 U.S.C. §1801 et seq., the Federal Water Pollution Control Act, 33 U.S.C. §1251 et seq., the Clean Air Act, 33 U.S.C. §7401 et seq., the Toxic Substances Control Act, 15 U.S.C. §2601 et seq., the Safe Drinking Water Act, 42 U.S.C. §300f et seq., the Emergency Planning and Community Right-To-Know Act, 42 U.S.C. §1101 et seq., the Occupational Safety and Health Act, 29 U.S.C. §651 et seq., and any so-called "Super Fund" or "Super Lien" law, any Law requiring the filing of reports and notices relating to hazardous substances, environmental laws administered by the Environmental Protection Agency, and any similar state and local Requirements, all amendments thereto and all regulations, orders, decisions, and decrees now or hereafter promulgated thereunder concerning the environment, industrial hygiene or public health or safety).

(b) Notwithstanding any termination of this Lease, Tenant shall indemnify and hold Landlord, its employees and agents harmless from and against any damage, injury, loss, liability, charge, demand or claim based on or arising out of the presence or removal of, or failure to remove, Hazardous Materials generated, used, released, stored or disposed of by Tenant or any Invitee in or about the Building after Lease Commencement Date. In addition, Tenant shall give Landlord immediate verbal and follow-up written notice of any actual or threatened Environmental Default, which Environmental Default Tenant shall cure in accordance with all Environmental Law and to the satisfaction of Landlord and only after Tenant has obtained Landlord's prior written reasonable consent, which shall not be unreasonably withheld. An " **Environmental Default** " means any of the following caused by the acts of Tenant or any Invitee but only if such Hazardous Materials were generated or brought into the Building by Tenant or any Invitee: a violation of an Environmental Law; a release, spill or discharge of a Hazardous Material on or from the Premises, the Land or the Building; an environmental condition requiring responsive action; or an emergency environmental condition. Upon any Environmental Default, in addition to all other rights available to Landlord under this Lease, at law or in equity, Landlord shall have the right but not the obligation to immediately enter the Premises, to supervise and approve any actions taken by Tenant to address the Environmental Default, and, if Tenant fails to immediately address same to Landlord's reasonable satisfaction,

to perform, at Tenant's sole cost and expense, any lawful action necessary to address same. If any lender or governmental agency shall require testing to ascertain whether an Environmental Default is pending or threatened, then Tenant shall pay the reasonable costs therefor as additional rent. Promptly upon request, Tenant shall execute from time to time affidavits, representations and similar documents concerning Tenant's knowledge and belief regarding the presence of Hazardous Materials at or in the Building, the Land or the Premises.

6.4 **ADA** . Landlord at its expense shall take steps reasonably necessary to comply with Title III of the ADA to the extent same applies directly to the Building Common Areas, but excluding any Specialty Alterations installed by or on behalf of Tenant in the Lobby or Amenity Space, any full floors included in the Premises or any ADA compliance necessitated by Tenant's Plans. Tenant at its sole cost and expense shall be solely responsible for taking any and all measures which are required to comply with the ADA concerning the Premises (including the 2 nd Floor Premises) and Rooftop Terrace (including means of ingress and egress thereto) and the business conducted therein or necessitated by Tenant's Plans. Any Alterations made or constructed by Tenant for the purpose of complying with the ADA or which otherwise require compliance with the ADA shall be done in accordance with this Lease; provided, that Landlord's consent to such Alterations shall not constitute either Landlord's assumption, in whole or in part, of Tenant's responsibility for compliance with the ADA, or representation or confirmation by Landlord that such Alterations comply with the provisions of the ADA.

ARTICLE VII

ASSIGNMENT AND SUBLETTING

7.1 **General Requirements** .

(a) Except as permitted pursuant to Section 7.2 hereof,

1. Tenant shall not, whether directly, indirectly, voluntarily, involuntarily, or by operation of law or otherwise, assign or transfer (collectively, " **assign** ") this Lease or all or any of Tenant's rights hereunder or interest herein, or sublet or permit anyone to use or occupy (collectively, " **sublet** ") the Premises or any part thereof, without in each instance obtaining the prior written consent of Landlord, which consent shall not be unreasonably withheld, conditioned, or delayed. If an Event of Default has occurred and is then continuing under this Lease, such Event of Default shall be deemed to a "reasonable" reason for Landlord withholding its consent to any proposed subletting or assignment. Notwithstanding the foregoing, Landlord may withhold its consent to any proposed assignment or subletting of the Premises if such proposed assignment or subletting does not satisfy the following criteria in Landlord's sole determination: (i) the use of the Premises pursuant to such assignment or sublease is in compliance with Article VI hereof; (ii) the proposed assignee or subtenant is of a type and quality consistent and compatible with a Class A office building located in the Prince George's County, Maryland submarket of similar age and condition, and with the Building and its tenants (in Landlord's discretion, acting reasonably); (iii) the financial condition of the assignee under any such assignment or the sublessee under any such sublease, together with an guarantor of its obligations is reasonably acceptable to Landlord (taking into

consideration initial Tenant's and Guarantor's continued liability hereunder and any security continued to be held by Landlord under Article XI) and not detrimental to the valuation of the property, in Landlord's opinion, acting reasonably; and (iv) the initial Tenant and the Guarantor each remain fully liable as a primary obligor for the payment of all rent and other charges hereunder and for the performance of all its other obligations hereunder and agree to reaffirm their respective obligations in writing.

2. except as permitted by this Article VII , no assignment or sublet hereunder may be effectuated by operation of law or otherwise without the prior written consent of Landlord (not to be unreasonably withheld, conditioned or delayed);

3. any attempted assignment, transfer or other voluntary encumbrance of this Lease or all or any of Tenant's rights hereunder or interest herein, and any sublet or permission to use or occupy the Premises or any part thereof not in accordance with this Article VII shall be void and of no force or effect.

(b) Any assignment or subletting, Landlord's consent thereto, or Landlord's collection or acceptance of rent from any assignee or subtenant shall not be construed either as waiving or releasing Tenant from any of its liabilities or obligations under this Lease as a principal and not as a guarantor or surety or releasing Guarantor from its liabilities under the Guaranty, or, except as permitted by Section 7.2 , as relieving Tenant or any assignee or subtenant from the obligation of obtaining Landlord's prior written consent to any subsequent assignment or subletting. Notwithstanding the foregoing, if Landlord and any assignee of Tenant's interest in this Lease modify or amend this Lease without Tenant's consent so as to increase the obligations of the assignee as the new Tenant under this Lease, Named Tenant's liability shall not be increased, but shall continue as it existed prior to the modification or amendment; provided that such limitation shall only apply to an assignee under Section 7.1 and shall not apply to any Permitted Successor or Affiliate Successor under Section 7.2 .

(c) As security for this Lease, Tenant hereby assigns to Landlord the rent due from any assignee or subtenant of Tenant. For any period during which an Event of Default is continuing, Tenant hereby authorizes each such assignee or subtenant to pay said rent directly to Landlord upon receipt of notice from Landlord specifying same. Landlord's collection of such rent shall not be construed as an acceptance of such assignee or subtenant as a tenant.

(d) Tenant shall not grant any leasehold mortgage with respect to its interest in this Lease (" **Mortgage** ") without Landlord's prior written consent, which consent may be granted or withheld in Landlord's sole and absolute discretion (provided this prohibition shall not prohibit any so-called "all assets" or "blanket" UCC liens or individual lease and equipment financing evidencing by pledges and UCC filings which are permitted without Landlord's consent).

(e) Tenant shall pay to Landlord an administrative fee equal to One Thousand Five Hundred and No/100 Dollars ($1,500.00) in connection with Tenant's request for Landlord to give its consent to any assignment, subletting, or Mortgage, provided that if Landlord's actual reasonable costs and expenses for such review exceed One Thousand Five Hundred and No/100 Dollars ($1,500.00), Tenant shall promptly reimburse Landlord for its actual reasonable costs

and expenses (including attorneys' fees and accounting costs) in lieu of a fixed review fee. Such fee or costs shall be deemed additional rent under this Lease.

(f) Any sublease, assignment or Mortgage requiring Landlord's consent shall, at Landlord's option, be effected on forms reasonably approved by Landlord. Regardless of whether Landlord's consent is required, Tenant shall deliver to Landlord a fully-executed copy of each agreement evidencing a sublease, assignment or Mortgage within twenty (20) days after Tenant's execution thereof.

(g) Except as provided in Section 7.2 below, a Change in Control shall constitute an assignment of this Lease and, except as provided in Section 7.2 below, requires Landlord's prior written consent (not to be unreasonably withheld, conditioned or delayed).

7.2 **Permitted Transfers** .

(a) Notwithstanding anything to the contrary in this Article VII the following transactions shall be permitted without Landlord's prior written consent: (A) (i) the offering, sale or transfer of shares, equity or other ownership interests of Tenant or Guarantor (or any beneficial owner of Tenant or Guarantor) over a national or recognized exchange, foreign or domestic to public holders or (ii) the transfer, conveyance or pledge of any interest in Tenant or Guarantor to the extent that such entity is a Publicly Traded Entity (including a transfer, conveyance or other transaction that results in the delisting of a Publicly Traded Entity), whether by operation of law or otherwise (any transaction described in clause (A)(i) or clause (A)(ii) being a " **Public Transaction** "); a Public Transaction shall be deemed not to be an assignment of this Lease within the meaning of this Article VII regardless of whether a Change in Control is effectuated as the result thereof; (B) provided that no Material Event of Default has occurred and is continuing, transactions (each, a " **Successor Transaction** ") with Tenant or Guarantor (the resulting entity being a " **Permitted Successor** ") that are not effectuated by way of a Public Transaction (i) into or with which Tenant or Guarantor (or any beneficial owner of Tenant or Guarantor) is merged or consolidated (including a reorganization or recapitalization of or with Tenant or Guarantor or such beneficial owner), (ii) in which all or substantially all of Tenant or Guarantor's assets are transferred (provided such Person also assumes substantially all of such specific party's respective liabilities and obligations, including, without limitation, all of Tenant's obligations under this Lease and all of Guarantor's obligations under the Guaranty) as a going concern, or (iii) involving the transfer of shares or ownership interests of Tenant or Guarantor, regardless of whether such transfer results in a Change in Control of a Tenant or Guarantor or any beneficial owner thereof, provided that (1) the Successor Transaction is not solely for the purpose of transferring the leasehold estate created hereby; (2) Tenant or Guarantor, as applicable, to extent Tenant and Guarantor continue to exist, together with any such Permitted Successor, shall remain fully liable for all obligations of Tenant under this Lease, and Guarantor (to the extent it continues to exist) or its Permitted Successor shall remain fully liable for all obligations of Guarantor under the Guaranty (provided that if as a result of such Successor Transaction Tenant and/or Guarantor cease to exist, the obligations of Tenant under this Lease and the obligations of Guarantor under the Guaranty, as applicable, are assumed by such Permitted Successor and/or a replacement guarantor that satisfy the credit and financial requirements set forth in subclause (5) below); (3) Tenant and Guarantor shall reaffirm their respective obligations under this Lease or the Guaranty in writing, as applicable and to the extent

each continues to exist (provided that if as a result of such Successor Transaction Tenant and/or Guarantor cease to exist, the obligations of Tenant under this Lease and the obligations of Guarantor under the Guaranty, as applicable, are assumed by such Permitted Successor and/or a replacement guarantor that satisfy the credit and financial requirements set forth in subclause (5) below); (4) Tenant and Guarantor shall not be released from any of its respective obligations or liabilities under this Lease or Guaranty; (5) immediately after giving effect to such assignment, the aggregate net worth (as determined in accordance with generally accepted accounting principles, consistently applied, " **Net Worth** ") of the Permitted Successor, Tenant (if Tenant continues in existence), Guarantor (if Guarantor continues in existence) and any replacement guarantors of this Lease (collectively, the " **Net Worth Parties** ") is equal to or greater than Fifty Million and No/100 Dollars ($50,000,000.00) (the " **Net Worth Threshold** ") and (6) Tenant delivers to Landlord fully-executed copies of the reaffirmation documents and Successor Transaction documents, within twenty (20) days following the effective date of such Successor Transaction; and (C) provided that no Event of Default has occurred and is continuing, an assignment of Tenant's interest in this Lease (an " **Affiliate Assignment** ") to an Affiliate, or a sublease of or a license to use all or any portion of the Premises (an " **Affiliate Sublease** " and, alternatively, with any Affiliate Assignment, an " **Affiliate Transaction** ") to an Affiliate (in either such case, an " **Affiliate Successor** "); provided that (1) the Affiliate Transaction is not solely for the purpose of transferring the leasehold estate created hereby; (2) Tenant, together with any such Affiliate Successor, shall remain fully liable for all obligations of Tenant under this Lease, Guarantor shall remain fully liable for all obligations of Guarantor under the Guaranty, Tenant and Guarantor shall reaffirm their respective obligations thereunder in writing, and Tenant and Guarantor shall not be released from any of its respective obligations or liabilities under this Lease or Guaranty; (3) at least twenty (20) days prior to such effectuating the proposed Affiliate Transaction, Tenant provides to Landlord such documentation as may be required by Landlord to confirm that any assignee or subtenant claimed by Tenant to be an Affiliate is in fact an Affiliate; (4) with respect to an Affiliate Sublease, such Affiliate Sublease contains confirms that (a) the term under such Sublease shall not exceed the Lease Term hereunder, (b) such Sublease shall be subordinate in all respects to this Lease and any Mortgages, but subject to the provisions of any subordination, non-disturbance and attornment agreement which may be in effect at such time, (c) such Affiliate Successor subtenant shall have no privity with Landlord; (5) if at any time prior to the expiration or earlier termination of the term of such sublease, this Lease shall expire or be sooner terminated for any reason, then the term of such sublease shall simultaneously terminate; and (6)Tenant shall deliver to Landlord fully-executed copies of the reaffirmation documents and Affiliate Transaction documents within twenty (20) days following the effective date of such Affiliate Transaction.

(b) Notwithstanding anything to the contrary in clause (B) (5) of subsection (a) above, (A) if the aggregate Net Worth of the Net Worth Parties is less than the Net Worth Threshold, Tenant shall be obligated to deliver to Landlord (and shall be deemed to have satisfied the Net Worth Threshold if it delivers to Landlord) concurrently with the effective date of the Successor Transaction, an additional Letter of Credit (or supplement or replacement to the Letter of Credit then required by Article XI), such that the aggregate Security Deposit Amount of the Letter(s) of Credit then held by Landlord pursuant to this clause and Article XI equals Six Million Dollars ($6,000,000) (the " **Net Worth Supplemental Security Deposit Amount** ") and (B) if after delivery of a Letter of Credit(s) in the Net Worth Supplemental Security Deposit Amount as required by this Section 7.2(b) , the Net Worth Parties provide Landlord with financial statements

that demonstrate to Landlord's reasonable satisfaction that, the Net Worth of the Net Worth Parties then equal or exceed the Net Worth Threshold and Tenant requests in writing that Landlord reduce the Letter of Credit to the amount then required by Article XI , provided no Event of Default has occurred and is then continuing, Landlord shall promptly permit Tenant to replace the Letter of Credit with a Letter of Credit in the amount then required by Article XI .

(c) Notwithstanding anything to the contrary in this Article VII , without obtaining Landlord's consent, Tenant may share, from time to time, portions of the Premises (" **Office Sharing** ") with one or more Persons with whom Tenant has a bona fide business relationship (and not for the purpose of providing short term office space such as We Work or similar companies) (each a " **Permitted User** ") while any such Person is working on a project with Tenant at the Premises, provided with respect to any Office Sharing that is for a period of more than six (6) months, Tenant delivers prior written notice thereof to Landlord, (ii) Tenant does not physically subdivide the space so shared to provide separate access for such space to the elevator lobby, and (iii) the percentage of the Premises subject to Office Sharing shall not exceed 7,500 of RSF of the Premises at any one time (not including the lounge within the 2 nd Floor Premises). The foregoing Office Sharing arrangement shall not be considered an assignment of this Lease or a sublet of the Premises (by operation of law or otherwise).

(d) Provided that Tenant gives Landlord at least thirty (30) days prior written notice of the same, a mere change or conversion of Tenant's corporate form (as an example and without limitation, a conversion from a corporation to a limited liability company or a change of Tenant's state of formation), at any time or from time to time during the Lease Term, shall be deemed not to be an assignment of this Lease and Landlord shall have no right to consent to any such change or conversion.

(e) Any default of any provision hereunder caused by any such Permitted User or an Affiliate User shall be deemed a default of such provision by Tenant. Nothing contained in this Lease (including the provisions of this Article VII) or otherwise (including the provision of any services to the Premises) shall be deemed to (a) create any landlord-tenant or other relationship between Landlord and any Permitted User or Affiliate User, or (b) create any contractual liability or duty on the part of Landlord to any Permitted User or Affiliate User.

(f) As of the date hereof, Tenant does not have any employees and Guarantor substantially employs the personnel who will occupy the Premises. Notwithstanding anything to the contrary contained in this Lease, it is understood and agreed that any employees of Affiliates of the Named Tenant shall be permitted to occupy the Premises and use Building amenities as if such employees were direct employees of Tenant (each an " **Affiliate User** ") and no such occupancy by any Affiliate User shall be considered an assignment of the Lease or a sublet of the Premises (by operation of law or otherwise). The provisions of this Section 7.2(f) are personal to the Named Tenant and shall be void and of no force or effect upon any assignment or sublease, except with respect to an Affiliate Transaction.

7.3 **Request for Consent** . If at any time during the Lease Term, Tenant desires to assign, sublet or Mortgage all or part of this Lease or the Premises to any Person for which Landlord's consent is required by this Article VII (a " **Consent Needed Transaction** "), then in connection with Tenant's request to Landlord for Landlord's consent thereto, Tenant shall give notice to Landlord

in writing (" **Tenant's Request Notice** ") containing: the identity of the proposed assignee, subtenant or other party and a description of its business; the terms of the proposed assignment, subletting or other transaction; the commencement date of the proposed assignment, subletting or other transaction (the " **Proposed Transfer Commencement Date** "); the area proposed to be assigned, sublet or otherwise encumbered (the " **Proposed Transfer Space** "); the most recent and previous three (3) consecutive years' financial statements (if available) or other evidence of financial responsibility of such proposed assignee, subtenant or other party reasonably satisfactory to Landlord. Landlord shall approve or deny such request for consent as soon as practicable but no later than twenty one (21) Business Days after receipt of Tenant's Request Notice and any other documents requested by Landlord to evaluate such Consent Needed Transaction (such review period, " **Landlord's Review Period** " and any Person so approved or deemed approved, being an " **Approved Transferee** "). If by the eleventh (11 th) Business Day of Landlord's Review Period, Landlord has not responded to Tenant's request for Landlord's consent to the proposed assignment or subletting, Tenant shall have the right to provide Landlord with a second written request for consent (a " **Second Request** ") that specifically identifies the proposed transaction and contains the following statement in at least 14 pt. bold and capital letters: " **THIS IS A SECOND REQUEST FOR LANDLORD'S CONSENT TO THE PROPOSED TRANSACTION DESCRIBED HEREIN PURSUANT TO THE PROVISIONS OF ARTICLE VII OF THE LEASE. IF LANDLORD FAILS TO RESPOND WITHIN TEN (10) BUSINESS DAYS AFTER ITS RECEIPT OF THIS NOTICE, THEN LANDLORD SHALL BE DEEMED TO HAVE CONSENTED TO THE PROPOSED TRANSACTION DESCRIBED HEREIN** ." Notwithstanding the notice provisions contained in Section 25.7 of this Lease, in order to be effective each Second Request shall be sent to both (1) Meir Cohen, and (2) C. Vincent Leon-Guerrero, Esq. in the manner set forth in Section 25.7 for notices. If Landlord fails to respond to such Second Request within ten (10) Business Days after receipt by Landlord of the Second Request (time being of the essence), Landlord shall be deemed to have consented to the proposed transaction only. In the event Landlord timely notifies Tenant that Landlord refuses to grant its consent to the proposed assignment or subletting which is a Consent Needed Transaction, Landlord agrees to simultaneously provide Tenant with reasons for so refusing its consent in writing.

7.4 **Transferees Bound** . All restrictions and obligations imposed pursuant to this Lease on Tenant shall be deemed to extend to any subtenant, assignee, licensee, concessionaire or other occupant or transferee, and Tenant shall cause such person to comply with such restrictions and obligations. Any assignee shall be deemed to have assumed obligations as if such assignee had originally executed this Lease and at Landlord's request shall execute promptly a document confirming such assumption. Each sublease is subject to the condition that if the Lease Term is terminated or Landlord succeeds to Tenant's interest in the Premises by voluntary surrender or otherwise, at Landlord's option the subtenant shall be bound to Landlord for the balance of the term of such sublease and shall attorn to and recognize Landlord as its landlord under the then executory terms of such sublease or, at Landlord's sole option, the subtenant shall execute a direct lease with Landlord on Landlord's then-current standard form.

7.5 **REIT Limitations** . Notwithstanding anything contained in this lease to the contrary, neither Tenant nor any other Person having an interest in the possession, use, occupancy or utilization of the Premises shall enter into any lease, sublease, license, concession, assignment or other agreement for use, occupancy or utilization for space in the Premises which provides for

rental or other payment for such use, occupancy or utilization based in whole or in part on the net income or profits derived by any person from the party leased, used, occupied or utilized (other than an amount based on a fixed percentage or percentages of receipts or sales), and Tenant agrees that any such proposed lease, sublease, license, concession, assignment or other agreement shall be absolutely void and ineffective as a conveyance of any right or interest in the possession, use, occupancy or utilization of any part of the Premises.

ARTICLE VIII

MAINTENANCE AND REPAIRS

8.1 **Tenant ' s Repair Obligations** . During the Lease Term, Tenant shall promptly make all repairs, perform all maintenance, and make all replacements in and to the Premises (provided however, that with respect to the Roof Terrace, Tenant shall only be required to make such maintenance or repairs (i) required to be made to any Alterations to the Roof Terrace or Tenant's Property on the Roof Terrace made or installed by Tenant, (ii) required by reason of any such Alterations or Tenant's Property, and (iii) required by reason of Tenant's or any of its Invitees damage, regardless if caused by such party's negligence or intentional misconduct) that are necessary or desirable to keep the Premises in good condition and repair, in a clean, safe and tenantable condition, and otherwise in accordance with all Requirements and the requirements of this Lease applicable to Tenant. Tenant shall maintain all fixtures, furnishings and equipment and lighting fixtures and bulbs located in, or exclusively serving, the Premises in clean, safe and sanitary condition, shall take good care thereof and make all required repairs and replacements thereto. Tenant shall give Landlord prompt written notice upon Tenant obtaining actual knowledge of any defects or damage to the structure of, or equipment or fixtures in, the Building or any part thereof. Tenant shall suffer no waste or injury to any part of the Premises and shall, at the expiration or earlier termination of the Lease Term, surrender the Premises broom clean in an order and condition at least equal to the order and condition on applicable date that each such portion of the Premises was delivered to Tenant (and with respect to any Must Take Expansion Premises, as of the date Tenant first commences business operating within such Must Take Expansion Premises), subject to subsequent Alterations, ordinary wear and tear and as otherwise provided in Article XVII (Damage or Destruction). Except as otherwise provided in Article XVII (Damage or Destruction), all injury, breakage and damage to the Premises and to any other part of the Building or the Land caused by any act or omission of any Invitees or Tenant, shall be repaired by and at Tenant's expense, except that Landlord shall have the right at Landlord's option to make any such repair and to charge Tenant for all costs and expenses incurred in connection therewith.

8.2 **Landlord ' s Repair Obligations** . Subject to Tenant's obligations in Section 8.1 and elsewhere in this Lease, Landlord shall keep the exterior and demising walls, exterior windows, load bearing elements, foundations, facade, roof (including the Roof Terrace), the Amenity Space (and the components thereof) and Building Common Areas that form a part of the Building, and the building mechanical, vertical lift, turnstiles, parking access controls, security systems, telecommunication systems, back up generators, sprinkler and life safety systems, elevators, electrical, HVAC and plumbing systems, pipes and conduits that are provided by Landlord in the operation of the Building (collectively, the " **Building Structure and Systems** " and such building mechanical, vertical lift, turnstiles, parking access controls, security systems,

telecommunication systems, back up generators, sprinkler and life safety systems, elevators, electrical, HVAC and plumbing systems, pipes and conduits only, the " **Building Systems** "), clean and in good working order and condition in the standard appearance, operation and repair of similar Class A office buildings in the Prince George's County, Maryland submarket of comparable age and condition (the " **Required Condition** ") and in compliance with applicable Requirements in all material respects. Promptly after becoming aware of any item needing repair or replacements (structural and non-structural) or of any item not meeting the Required Condition, subject to Tenant's obligations in Section 8.1 and elsewhere in this Lease, Landlord will make such repairs and replacements thereto. Notwithstanding any of the foregoing to the contrary: (a) maintenance and repair of special tenant areas within the Premises, facilities, finishes and equipment (including, but not limited to, any special fire protection equipment, telecommunications and computer equipment, kitchen/galley equipment within the Premises, supplemental air-conditioning equipment serving the Premises only and all other furniture, furnishings and equipment of Tenant and all Alterations) shall be the sole responsibility of Tenant and shall be deemed not to be a part of the Building Structure and Systems.

ARTICLE IX

ALTERATIONS

9.1 **Alterations** .

(a) Tenant shall perform any Alterations within the Building only in accordance with, and subject to, this Article and the other applicable provisions of this Lease.

(b) No Alterations of any nature, including Structural Alteration or any Alterations outside the Premises or to the exterior of the Premises, shall be made by Tenant without Landlord's prior written consent in each instance, except as otherwise expressly permitted in this Article.

(c) With Landlord's prior written consent in each instance, which consent shall not be unreasonably withheld, conditioned or delayed, Tenant may, from time to time during the Lease Term, at its sole expense, make Structural Alterations, Nonstructural Alterations and any non-Permitted Structural Alterations.

(d) Landlord's consent shall not be required for any Decorative Alterations and Permitted Nonstructural Alterations, provided that (i) same are performed in accordance with, and subject to, this Article and all other applicable provisions of this Lease, and (ii) prior to commencing any such Decorative Alteration or Permitted Nonstructural Alteration, Tenant gives to Landlord a notice of Tenant's intention to perform such Decorative Alteration(s) or Permitted Nonstructural Alteration(s), which notice, to be effective, shall be accompanied by a reasonably detailed description of the Decorative Alteration(s) or Permitted Nonstructural Alteration(s) that Tenant intends to perform, the estimated commencement date and completion date of such Decorative Alterations(s) or Permitted Nonstructural Alteration(s), and the estimated cost thereof.

(e) Any Alterations made by Tenant shall be made (a) in a good, workmanlike, first-class and prompt manner; (b) using new materials only; (c) to the extent Landlord's consent is required under this Article IX , by a contractor, on days, at times and under the supervision of an architect (if applicable) approved in writing by Landlord (in each case, not reasonably withheld, conditioned or delayed); (d) to the extent Landlord's consent is required under this Article IX , in accordance with plans and specifications (if applicable) prepared by an engineer or architect reasonably acceptable to Landlord (if an engineer, architect and/or plans and specifications are applicable to such Alterations), which plans and specifications shall be approved in writing by Landlord at Landlord's standard reasonable charge, (e) in accordance with all Requirements, (f) after obtaining builder's risk insurance set forth in Section 13.2(b) , and (g) in the case of any Alteration exceeding the Alteration Threshold, after Tenant has delivered to Landlord documentation reasonably satisfactory to Landlord evidencing Tenant's financial ability to complete the Alteration in accordance with the provisions of this Lease. Alterations that require Landlord's consent shall be made by Tenant in accordance with plans and specifications prepared by an engineer or architect reasonably acceptable to Landlord (as applicable), which plans and specifications shall be approved in writing by Landlord in accordance with the standard for approval for such Alterations provided above in this Section 9.1 . Notwithstanding the foregoing, for any Alterations involving tie-ins to the Building fire and life safety equipment or systems, Tenant may only use contractors and subcontractors approved by Landlord in Landlord's sole discretion or designated by Landlord.

(f) If any lien (or a petition to establish such lien) is filed in connection with any Alteration performed by or on behalf of Tenant or in connection with any work to be paid for by Tenant under Section 2.7 , such lien (or petition) shall be discharged by Tenant within twenty (20) 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. If Landlord gives its consent to Tenant making of any Alteration, such consent shall not be deemed to be an agreement or consent by Landlord to subject its interest in the Premises or the Building to any liens which may be filed in connection therewith.

(g) Promptly after the completion of an Alteration (other than a Decorative Alteration), Tenant at its expense shall deliver to Landlord three (3) sets of accurate as-built drawings showing such Alteration in place.

(h) If any Alterations that require Landlord's prior consent are performed by Tenant without the prior written consent of Landlord, Landlord shall have the right at Tenant's expense to cause Tenant to either correct such Alterations to comply with plans and specifications that Landlord would approve, or to remove the same.

(i) Notwithstanding anything to the contrary contained herein, Landlord shall have the option (to be exercised by notice delivered to Tenant within ten (10) days after Tenant submits the Plans therefore) to make any Structural Alterations requested by Tenant, at Tenant's cost. Any Structural Alterations made by Landlord shall be undertaken and completed by Landlord (a) in a good, workmanlike, first-class and prompt manner; (b) using new materials only; (c) by a contractor, on days, at times and under the supervision of an architect (if applicable) approved in writing by Tenant (in each case, not reasonably withheld, conditioned or delayed); (d) substantially in accordance with Tenant's Plans (subject to such modifications that

Landlord shall reasonably require and Tenant shall reasonably approve in writing) which plans and specifications shall be approved in writing by Tenant, (e) at market rates (subject to close bids from no less than three contractors per trade, to be selected by Tenant) and (e) in accordance with all Requirements.

9.2 **End of Term Removal; Tenant ' s Property** .

(a) All Tenant's Property shall be and shall remain the property of Tenant and may be removed by it at any time during the Lease Term; provided that if any of Tenant's Property is removed, Tenant or any party or person entitled to remove same shall repair or pay the actual cost of repairing any damage to the Premises or to the Building resulting from such removal.

(b) All Alterations to the Premises or the Building that are not Tenant's Property made by either party shall immediately become the property of Landlord and shall remain upon and be surrendered with the Premises as a part thereof at the expiration or earlier termination of the Lease Term; provided that Landlord's election, Tenant shall be required to remove any Required Removables (defined below) installed by Tenant and restore any damage to the Premises caused or occasioned by such removal. Within twenty (20) days of Landlord's receipt of Tenant's written request for Landlord's consent to any Alterations requiring Landlord's consent or any Specialty Alterations (defined below) located entirely within the Premises (including any Specialty Alterations installed as part of the Initial Build-Out Work), Landlord shall advise Tenant if removal of said Alterations will be required at the end of the Lease Term (collectively, the " **Required Removables** "), provided that any specialty amenities built by or on behalf of Tenant within the lobby or on the Rooftop Terrace shall be deemed Required Removables. "Required Removables" shall not include existing slab cuts or internal staircases. As used herein, " **Specialty Alterations** " shall mean improvements which are not standard office installations, such as kitchens (other than a pantry or break area installed for the use of Tenant's employees only and of the type normally found in the space of similarly sized office tenants in comparable buildings), executive bathrooms, raised computer floors, computer room installations, supplemental HVAC equipment and components, safe deposit boxes, vaults, reinforcement of floors, Structural Alterations (including slab cuts and internal staircases, if any created after Effective Date) provided that cabling, conduits and lighting shall be deemed not to be Required Removables and Tenant shall have no obligation to remove the same. Landlord shall have the right at Tenant's expense to repair all damage and injury to the Premises or the Building caused by such removal or to require Tenant to do the same. If any Tenant's Property is not removed by Tenant prior to the expiration or earlier termination of the Lease Term, the same shall at Landlord's option become the property of Landlord and shall be surrendered with the Premises as a part thereof; provided, however, that Landlord shall have the right at Tenant's expense to remove from the Premises such Tenant's Property and any Required Removables. If Tenant fails to return the Premises to Landlord as required by this Section 9.2 , then Tenant shall pay to Landlord, as additional rent, all actual costs incurred by Landlord in effecting such removal (the " **Removal Cost** "). Pending the determination of such dispute by agreement or judicial determination as aforesaid Tenant may either (x) pay the amounts in dispute pending the results of such hearing or deposit the disputed amounts with the court in escrow, which deposit shall satisfy Tenant's payment obligations hereunder while the dispute is pending or (y) submit such dispute to a court of competent jurisdiction for a judicial determination and pay the amount

in dispute pending the results of such determination, which amounts shall be applied by Landlord towards the Removal Cost.

9.3 **Landlord Work** . Landlord is under no obligation to make any Alterations in or to the Premises or the Building except as set forth herein and in the Work Agreement or as otherwise expressly provided in this Lease.

9.4 **Plans, etc** .

(a) With respect to any Alteration (except for, subject to the provisions of Section 9.1(d) above, Decorative Alterations), Tenant shall advise Landlord thereof and, at Tenant's sole cost and expense (including the reasonable costs of any third party engineer or consultant retained by Landlord in connection herewith), shall have prepared by a licensed architect or engineer approved by Landlord (which approval shall not be unreasonably withheld or delayed), and deliver to Landlord for Landlord's reasonable approval, completed, fully coordinated and reasonably detailed architectural, mechanical and electrical working drawings, plans and specifications therefor, including construction drawings and documents and plans and specifications for the sprinkler, fire and life safety systems, and any amendments or modifications to the foregoing (such complete and reasonably detailed working drawings, plans and specifications being herein referred to as " **Tenant's Plans** "), which approval shall not be unreasonably withheld, conditioned, or delayed. Notwithstanding the foregoing provisions of this Section 9.4(a) and Section 9.4(b) below (which Section 9.4(b) shall not apply to Permitted Non-Structural Alterations), Landlord's approval shall not be required for Tenant's Plans for Permitted Nonstructural Alterations, provided, however, Tenant shall deliver the same to Landlord as provided herein for informational purposes only. Tenant may submit Tenant's Plans in interim plan phases or stages (such as schematic drawings or design development drawings) to Landlord for approval provided that (a) such interim plan phases or stages are reasonably complete such that approval in phase or stage is appropriate and the nature of the work shown on such plans is ascertainable, and (b) Landlord's approval of any such interim plan phase or stage shall not be deemed to be the approval of Tenant's Plans to the extent inconsistent with such interim plan phases or stages or not reasonably inferable therefrom. Landlord shall review and approve any such interim plan phases or stages subject to the same conditions applicable to Landlord's review and approval of Tenant's Plans.

(b) (i) For the purposes of this subsection (b), " **Plan Review Period** " means twenty (20) Business Days for Tenant's Plans in respect of Alterations, and " **Plan Revision Review Period** " means fifteen (15) Business Days for revised Tenant's Plans in respect of Alterations.

(i) Provided Tenant has delivered the Tenant's Plans to Landlord as required above, Landlord shall respond to Tenant's request to approve Tenant's Plans by the last day of the Plan Review Period after Landlord receives a complete set of Tenant's Plans (which may be delivered for approval in stages as same are developed; e.g., including schematic and design development phases), and Landlord shall respond to Tenant's request to approve revisions to Tenant's Plans (or phase or stage thereof) by the last day of the Plan Revision Review Period after Landlord receives such revisions. Landlord's approval of any Tenant's Plans (or phase or stage thereof or revisions thereto)

shall not be effective unless same is in writing. If Landlord fails to approve or disapprove the Tenant's Plans (or phase or stage thereof or any revisions thereto) so submitted by Tenant by the tenth (10th) Business Day of the applicable Plan Review Period or fifth (5 th) Business Date of the applicable Plan Revision Review Period, as the case may be, at any time after such tenth (10th) Business Day (with respect to a Plan Review Period) or fifth (5 th) Business Day (with respect to a Plan Revision Review Period) until Landlord approves or disapproves the Tenant's Plans (or phase or stage thereof or revisions thereto) so submitted by Tenant, Tenant shall have the right to provide Landlord with a second written request for approval (a " **Second Article IX Request** ") that specifically identifies the applicable Tenant's Plans (or phase or stage thereof or revisions thereto) and contains the following statement in bold and capital letters: "THIS IS A SECOND ARTICLE IX REQUEST FOR APPROVAL OF TENANT'S PLANS AND/OR REVISIONS THERETO PURSUANT TO THE PROVISIONS OF SECTION 9.4 OF THE LEASE. IF LANDLORD FAILS TO RESPOND WITHIN [FIVE (5)] [TEN(10] BUSINESS DAYS AFTER ITS RECEIPT OF THIS NOTICE, THEN LANDLORD SHALL BE DEEMED TO HAVE APPROVED THE TENANT'S PLANS (AND REVISIONS THERETO, IF ANY) DESCRIBED HEREIN." If Landlord fails to respond to such Second Article IX Request within five (5) Business Days (with respect to a Plan Revision Review Period) or ten (10) Business Days (with respect to a Plan Review Period), as applicable, after receipt by Landlord of the Second Article IX Request, the Tenant's Plans (or phase or stage thereof or revisions thereto) in question shall be deemed approved by Landlord, but only to the Tenant's Plans (or phase or stage thereof or revisions thereto) so submitted and identified in such Second Article IX Request. Notwithstanding the notice provisions contained in Section 25.7 of this Lease, in order to be effective each Second Article IX Request shall be sent to both (1) Meir Cohen, and (2) C. Vincent Leon-Guerrero, Esq. in the manner set forth in Section 25.7 for notices. If Landlord fails to respond to such Second Request within five (5) Business Days (with respect to a Plan Revision Review Period) or ten (10) Business Days (with respect to a Plan Review Period), as applicable, after receipt by Landlord of the Second Request (time being of the essence), Landlord shall be deemed to have approved the Tenant's Plans described therein only.

ARTICLE X

SIGNS

10.1 **Facade Signage** . Subject to approval by Landlord, Prince George's County and all other governing authorities with jurisdiction thereof, and subject to Tenant obtaining at its sole cost and expense any and all required government and zoning approvals, Tenant shall have the exclusive right to signage on the exterior façade and roof of the Building, which signage may consist of two (2) exterior Building signs, stating Tenant's name and logo provided that Tenant continues to occupy at least seventy percent (70%) of the RSF in the Building, such requirement to consider and include the Must Take Expansion Premises as occupied floors prior to their respective Must Take Commencement Dates. Tenant's right to signage on the exterior façade of the Building shall be personal to 2U, Inc. and any Permitted Successor or Affiliate assignee that continues to occupy at least seventy percent (70%) of the RSF in the Building (collectively, the " **Threshold Successors** "). Subject to any Requirements, Tenant shall have the right to illuminate

the Façade signage provided that Tenant obtains, at its sole cost and expense, any approvals required under any applicable Requirements.

10.2 **Monument Signage**. Subject to approval by Prince George's County and all other governing authorities with jurisdiction thereof, Landlord, at Landlord's expense, shall provide a non-exclusive monument sign in front of the Building with Tenant's name and logo, which shall be the largest, highest and most prominent sign on any such monument, provided that Tenant continues to occupy more than fifty percent (50%) of the RSF in the Building, such requirement to consider and include the Must-Take Floors as occupied floors prior to their respective Must Take Commencement Dates. Notwithstanding the foregoing, Tenant, at tenant's sole cost and expense, shall obtain any required approvals for Tenant's monument signage. The exact location of said monument signage shall be determined by Landlord in Landlord's sole discretion upon consultation with Tenant. Tenant's right to signage on the monument sign shall be personal to 2U, Inc. and its Threshold Successors.

10.3 **Entrance Signage**. Subject to approval by Prince George's County and all other governing authorities with jurisdiction thereof, at Tenant's expense, Tenant shall have the non-exclusive right to place signage stating Tenant's name and logo at the main entrance the Building in a location, type and size reasonably approved by Landlord. Tenant shall also have the right to place signage stating Tenant's name and logo at the main entrance to the Premises and within the Premises.

10.4 **Installation**. Tenant shall maintain, insure and operate all signage, and except as otherwise expressly provided herein, shall pay all costs incurred in installing, maintaining, insuring, operating (including connecting, providing and consuming utilities therefor) and removing such signage. Tenant will coordinate installation of said signage, which installation shall be performed by a contractor selected by Tenant and reasonably approved by Landlord and shall be at Tenant's expense. Landlord shall have the right to approve the materials, color, design, weight, lettering, location and other aspects of such signage; provided however that with respect to all signage under this Article X, Landlord hereby pre-approves Tenant's logo and colors. Upon the termination of Tenant's signage rights (or the expiration or termination of the Lease), Tenant shall, at its expense, remove said signage from the Building and repair any damage so as to return the same to its condition prior to the installation of said signage.

10.5 **Interior Signage**. Tenant may, at its sole cost and expense, install, "entry suite" signage that depicts the name and logo of Tenant, any Permitted Occupant that is then occupying the floor of the Building in question, and any clients of Tenant or any Permitted Occupant in the elevator lobbies on the floors (other than the ground floor) in which the Premises are situated and/or adjacent to the doors to the Premises (other than on the ground floor), provided Tenant, at its sole cost and expense clean and maintain such signage in good order and condition. Landlord's approval for the aesthetics of such signage (e.g., the lettering, content, size, medium, design and colors, as opposed to the method of attachment and other physical aspects of such signage) shall not be required for the installation of any such signage in any elevator lobby of any floor the Building occupied by Tenant (it being agreed that Landlord shall have no approval rights of signage, artwork, media and the like within the Premises). Landlord will list Tenant's name and name of any Tenant Affiliates occupying the Premises in the Building electronic directory.

ARTICLE XI

SECURITY DEPOSIT

11.1 **Security Deposit Amount; Reduction** . On or before January 15, 2016, Tenant shall deposit with Landlord the Security Deposit Amount as a security deposit which shall be security for the performance by Tenant of all of Tenant's obligations, covenants, conditions and agreements under this Lease. Landlord shall not be required to maintain such security deposit in a separate non-commingled, interest bearing account. Except as may be required by law, Tenant shall not be entitled to interest on the security deposit. If there shall be any uncured Event of Default under this Lease by Tenant, then Landlord shall have the right, but shall not be obligated, to use, apply or retain all or any portion of the security deposit for the payment of any (a) Base Rent, additional rent or any other sum as to which Tenant is in default beyond applicable notice and cure period, or (b) amount Landlord may spend or become obligated to spend, or for the compensation of Landlord for any losses incurred, by reason of Tenant's default (including, but not limited to, any damage or deficiency arising in connection with the reletting of the Premises). If any portion of the security deposit is so used or applied, then within three (3) Business Days after Landlord gives written notice to Tenant of such use or application, Tenant shall deposit with Landlord cash in an amount sufficient to restore the security deposit to the original Security Deposit Amount, and Tenant's failure to do so shall constitute an Event of Default under this Lease. Provided no Event of Default has occurred and is then continuing (as of each of the following dates), the Security Deposit Amount shall be reduced to:

1. Five Million and No/100 Dollars ($5,000,000.00) on the Lease Commencement Date (provided that (w) Tenant is continuously occupying the Initial Premises, (x) all lien waivers for the Initial Build Out have been provided to Landlord from both the Approved General Contractor (as defined in the Work Agreement) and each contractor, subcontractor, materialman and supplier or any other party entitled to claim a mechanics or other lien on account of Tenant's Work to the extent of the amount paid to such parties (other than (y) subcontractors, materialman and suppliers performing work or supplying materials, or such other parties performing services, with a value of less than $150,000 under one contract, unless and to the extent Tenant obtains final lien waivers from the same or the time period and (z) those waivers related to claims for which the time period for filing a lien has expired without a filing of a lien));

2. Four Million and No/100 Dollars ($4,000,000.00) on the first (1st) day of twenty-fifth (25 th) month of the Lease Term;

3. Two Million and No/100 Dollars ($2,000,000.00) on the first (1st) day of the forty-ninth (49 th) month of the Lease Term; and

4. One Million and No/100 Dollars ($1,000,000.00) on the first (1st) day of the one hundred and eighth (108 th) month of the Lease Term; which $1,000,000 Security Deposit Amount shall remain in effect through the expiration of the Lease Term.

11.2 **Transfer of Security Deposit** . If Landlord transfers the security deposit to any purchaser or other transferee of Landlord's interest in the Building, then provided such purchaser or assignee assumes the obligations of "Landlord" under this Lease (a " **Lease Assumption** "), Tenant shall look only to such purchaser or transferee for the return of the security deposit, and Landlord shall be released from all liability to Tenant for the return of such security deposit. Tenant acknowledges that the holder of any Mortgage shall not be liable for the return of any security deposit made by Tenant hereunder unless such holder actually receives such security deposit. Tenant shall not pledge, mortgage, assign or transfer the security deposit or any interest therein.

11.3 **Letter of Credit** . Tenant shall have the right to deliver to Landlord an unconditional, irrevocable letter of credit (the " **Letter of Credit** ") in substitution for the cash security deposit, subject to the following terms and conditions. Such Letter of Credit shall be (a) in form and substance reasonably satisfactory to Landlord; (b) at all times in the amount of the then Security Deposit Amount, and shall permit multiple draws; (c) issued by a commercial bank reasonably acceptable to Landlord from time to time and either located in the Washington, D.C. metropolitan area or the continental United States from which draws can be made via facsimile meeting the Issuer Requirement below (provided that subject to the terms and conditions hereof, as of the Effective Date, Landlord pre-approves Comerica as the issuer of the Letter of Credit); (d) made payable to, and expressly transferable and assignable at no charge by, Landlord or the holder of any Mortgage secured by the Building (which transfer/assignment shall be conditioned only upon the execution of a written assumption document in connection therewith); provided, however, that in the event the issuing bank of the Letter of Credit charges a fee for a transfer and/or assignment, any and all fees shall be payable by Tenant; (e) payable at sight to a local branch of the issuer of a simple sight draft or via facsimile; (f) of a term not less than one year; and (g) at least thirty (30) days prior to the then-current expiration date of such Letter of Credit, either (1) renewed (or automatically and unconditionally extended) from time to time through the sixtieth (60 th) day after the expiration of the Lease Term, or (2) replaced with cash in the amount of the Security Deposit Amount. Notwithstanding anything in this Lease to the contrary, any cure or grace periods set forth in this Lease shall not apply to any of the foregoing, and, specifically, if Tenant fails to timely comply with the requirements of subsection (g) above, then Landlord or its assignee shall have the right to immediately draw upon the Letter of Credit without notice to Tenant and apply the proceeds to the security deposit. Each Letter of Credit shall be issued by a commercial bank that has a credit rating with respect to certificates of deposit, short term deposits or commercial paper of at least P-2 (or equivalent) by Moody's Investor Service, Inc., or at least A-2 (or equivalent) by Standard & Poor's Corporation (the " **Issuer Requirement** "), and shall be otherwise acceptable to Landlord in its sole and absolute discretion. If the issuer's credit rating is reduced below P-2 (or equivalent) by Moody's Investors Service, Inc. or below A-2 (or equivalent) by Standard & Poor's Corporation, then Landlord shall have the right to require that Tenant obtain from a different issuer a substitute Letter of Credit that complies in all respects with the requirements of this Section ; provided however that if Comerica's credit rating falls below the Issuer Requirement, then Tenant shall not be required to replace such Letter of Credit unless Comerica's credit rating falls below P-3 (or equivalent) by Moody's Investor Service, Inc., or below A-3 (or equivalent) by Standard & Poor's Corporation. Tenant's failure to obtain such substitute Letter of Credit within thirty (30) day following Landlord's written demand therefor (with no other notice or cure or grace period being applicable thereto, notwithstanding anything in this Lease to the contrary) shall entitle Landlord to immediately draw upon the then

existing Letter of Credit in whole or in part, without notice to Tenant. In the event the issuer (including Comerica) of any Letter of Credit held by Landlord is placed into receivership or conservatorship by the Federal Deposit Insurance Corporation or any successor or similar entity, then, effective as of the date such receivership or conservatorship occurs, said Letter of Credit shall be deemed to not meet the requirements of this Section , and within ten (10) days thereof, Tenant shall replace such Letter of Credit with either a replacement Letter of Credit or cash. If Tenant fails to deliver to Landlord such substitute Letter of Credit or cash within such ten (10) day period (with no other notice or cure or grace period being applicable thereto, notwithstanding anything in this Lease to the contrary), then Landlord shall be entitled to immediately draw upon the then existing Letter of Credit; provided further that if Landlord is prevented from drawing upon such Letter of Credit for any reason, then notwithstanding anything in this Lease to the contrary, Tenant's failure to deliver such substitute Letter of Credit or cash within such original ten (10) day period shall constitute an Event of Default for which there shall be no notice or grace or cure periods being applicable thereto. Any failure or refusal of the issuer to honor the Letter of Credit shall be at Tenant's sole risk and shall not relieve Tenant of its obligations hereunder with respect to the security deposit.

ARTICLE XII

INSPECTION

12.1 **Inspection** . At reasonable times upon reasonable advance notice (except in an emergency), which notice may be oral if practical under the circumstances (except that no oral or written notice shall be required in an emergency),Tenant shall permit Landlord, its agents and representatives, and the holder of any Mortgage secured by the Building, to enter the Premises without charge therefor and without diminution of the rent payable by Tenant in order to examine, inspect or protect the Premises and the Building, to make such alterations and/or repairs as may be provided for by this Lease, as may be mutually agreed upon by the parties, as Landlord may be required or permitted to make under this Lease or by Requirements, or in order to repair and maintain the Building or other parts of the real property, or as Landlord may deem necessary or reasonably desirable or to exhibit the same to brokers, prospective tenants, lenders, purchasers and others. Landlord shall repair any damage to the Premises or any property of Tenant or Invitees caused by Landlord's negligent acts or omissions in connection with such access. Landlord may not store any supplies or tools in the Premises. Except in the event of an emergency, Landlord shall endeavor to minimize disruption to Tenant's normal business operations in the Premises in connection with any such entry. Except in cases of emergency, at Tenant's option, Tenant may require Landlord to be accompanied by an employee or representative of Tenant.

ARTICLE XIII

INSURANCE

13.1 **Rate Increase** . If any increase in the rate of fire insurance or other insurance is due to any activity, equipment or other item of Tenant, then (whether or not Landlord has consented to such activity, equipment or other item) Tenant shall pay as additional rent due hereunder the amount of such increase. The statement of any applicable insurance company or insurance rating

organization (or other organization exercising similar functions in connection with the prevention of fire or the correction of hazardous conditions) that an increase is due to any such activity, equipment or other item shall be conclusive evidence thereof.

13.2 **Tenant 's Insurance** .

(a) Commencing as of the Lease Commencement Date and continuing throughout the Lease Term, Tenant shall obtain and maintain (1) commercial general liability insurance (written on an occurrence basis) including contractual liability coverage, premises and operations coverage, broad form property damage coverage and independent contractors coverage, and containing an endorsement for personal injury (" **CGL Insurance** "), (2) business interruption insurance, (3) all-risk (Special Form, Replacement Cost) property insurance, (4) comprehensive automobile liability insurance (covering automobiles owned by Tenant, if any), (5) worker's compensation insurance, (6) employer's liability insurance, and (7) excess/umbrella insurance (written on an occurrence basis). Such commercial general liability insurance shall be in minimum amounts typically carried by prudent tenants engaged in similar operations, but in no event shall be in an amount less than Two Million Dollars ($2,000,000) combined single limit per occurrence with a Four Million Dollar ($4,000,000) annual aggregate. Such business interruption insurance shall be in minimum amounts typically carried by prudent tenants engaged in similar operations, but in no event shall be in an amount less than the Base Rent then in effect during any Lease Year. Such property insurance shall be in an amount not less than that required to replace all of the original tenant improvements installed in the Premises pursuant to the Work Agreement, any Alterations to any Must Take Expansion Premises, all other Alterations and all other contents of the Premises (including, without limitation, Tenant's trade fixtures, decorations, furnishings, equipment and personal property). Such automobile liability insurance shall be in an amount not less than One Million Dollars ($1,000,000) for each accident. Such worker's compensation insurance shall carry minimum limits as defined by the law of the jurisdiction in which the Building is located (as the same may be amended from time to time). Such employer's liability insurance shall be in an amount not less than One Million Dollars ($1,000,000) for each accident, One Million Dollars ($1,000,000) disease-policy limit, and One Million Dollars ($1,000,000) disease-each employee. Such excess/umbrella liability insurance shall be in minimum amounts typically carried by prudent tenants engaged in similar operations, but in no event shall be in an amount less than Five Million Dollars ($5,000,000.00) annual aggregate.

(b) In addition to the foregoing, at any time Tenant is performing any Alterations or other work in the Premises, including without limitation any build-out work in any Must Take Expansion Premises, Tenant shall maintain the additional insurance described on **Exhibit O** hereto.

(c) All such insurance shall: (1) be issued by a company that is licensed to do business in the jurisdiction in which the Building is located, that has been approved in advance by Landlord and that has a rating equal to or exceeding A:XI from Best's Insurance Guide; (2) name Landlord, the managing agent of the Building and the holder of any Mortgage secured by the Building as additional insureds and/or loss payees (as applicable); (3) intentionally deleted; (4) provide that the insurer thereunder waives all right of recovery by way of subrogation against Landlord, its partners, agents, employees, and representatives, in connection with any loss or

damage covered by such policy; (5) be acceptable in form and content to Landlord; (6) with respect to CGL Insurance only, be primary and non-contributory; (7) contains an endorsement for cross liability and severability of interests; and (8) contain an endorsement prohibiting cancellation or failure to renew without the insurer first giving Landlord thirty (30) days' prior written notice (by regular mail) of such proposed action. No such policy shall contain any deductible provision except as otherwise approved in writing by Landlord, which approval shall not be unreasonably withheld. Landlord reserves the right from time to time to require Tenant to obtain higher minimum amounts or different types of insurance if it becomes customary for other landlords of first-class office buildings in the Washington, D.C., metropolitan area to require similar sized tenants in similar industries to carry insurance of such higher minimum amounts or of such different types of insurance. Tenant shall deliver a certificate (on Acord Form 27) of all such insurance and receipts evidencing payment therefor (and, upon request, copies of all required insurance policies, including endorsements and declarations) to Landlord concurrently with Tenant's execution of this Lease and at least annually thereafter. Tenant shall give Landlord immediate notice in case of fire, theft or accident in the Premises, and in the case of fire, theft or accident in the Building if involving Tenant, its agents, employees or Invitees. Neither the issuance of any insurance policy required under this Lease nor the minimum limits specified herein shall be deemed to limit or restrict in any way Tenant's liability arising under or out of this Lease.

13.3 **Waiver of Subrogation** .

(a) Landlord agrees that it will include in its all-risk property insurance policies appropriate clauses pursuant to which the insurance companies (i) waive all right of subrogation against Tenant with respect to losses payable under such policies and/or (ii) agree that such policy or policies shall not be invalidated should the insured waive in writing prior to a loss any or all right of recovery against any party for losses covered by such policy or policies.

(b) Tenant agrees to include, in its all-risk property insurance policy or policies on Tenant's Property, appropriate clauses pursuant to which the insurance company or companies (i) waive the right of subrogation against Landlord with respect to losses payable under such policy or policies and/or (ii) agree that such policy or policies shall not be invalidated should the insured waive in writing prior to a loss any or all right of recovery against any party for losses covered by such policy or policies.

(c) To the extent of the waiver included in Landlord's all-risk property insurance policy pursuant to subsection (a) above or, if Landlord fails to comply with its obligations under such subsection (a), to the extent of the waiver which would have been included if Landlord had procured the same, Landlord hereby waives any and all right of recovery which it might otherwise have against Tenant, its affiliates, successors, assigns, subtenants, and their respective servants, agents and employees, for loss or damage occurring to the Building and the fixtures, appurtenances and equipment therein, to the extent the same is covered by Landlord's insurance, notwithstanding that such loss or damage may result from the negligence or fault of Tenant, its servants, agents or employees. To the extent of the waiver included in Tenant's all-risk property insurance policy pursuant to subsection (b) above or, if Tenant fails to comply with its obligations under such subsection (b), to the extent of the waiver which would have been included if Tenant had procured the same, Tenant hereby waives any and

all right of recovery which it might otherwise have against Landlord, its affiliates, successors, assigns, tenants, and their respective servants, agents, and employees for loss or damage to Tenant's furniture, furnishing, fixtures and other property removable by Tenant under the provisions hereof to the extent the same is covered by Tenant's insurance, notwithstanding that such loss or damage may result from the negligence or fault of Landlord, its servants, agents or employees, or such other tenant and the servants, agents or employees thereof.

(d) Each of Landlord and Tenant hereby agrees to advise each other promptly if the clauses to be included in their respective insurance policies pursuant to subsections (a) and (b) above cannot be obtained, and thereafter to furnish the other with a certificate of insurance showing the naming of the other as an additional insured, as aforesaid. Each of Landlord and Tenant hereby also agrees to notify the other promptly, but no later than thirty (30) days after such party becomes aware, of any cancellation or change of the terms of any such policy which would affect such clauses or naming. All such policies which name both Landlord and Tenant as additional insureds shall, to the extent obtainable without material charge (unless the additional insured agrees to pay the same), contain agreements by the insurers to the effect that no act or omission of any additional insured will invalidate the policy as to the other additional insureds.

13.4 **Landlord 's Insurance**. Landlord shall maintain in respect of the Building at all times during the term of this Lease:

(a) standard "All-Risk" (or its then equivalent) property insurance, covering the Building in amounts equal to the full replacement cost of the Building at the time in question;

(b) Commercial General Liability Insurance (including contractual liability) in an amount not less than less than One Million Dollars ($1,000,000) combined single limit per occurrence with a Two Million Dollar ($2,000,000) annual aggregate (with commercially reasonable deductibles for similar Class A office buildings in the Prince George's County, Maryland submarket of comparable age and condition);

(c) Employer's Liability Insurance in an amount not less than One Million Dollars ($1,000,000), with a waiver of subrogation endorsement;

(d) Umbrella excess liability insurance over the insurance required by subsections (ii) and (iii) of this Section with combined, minimum coverage of Twenty Million Dollars ($25,000,000.00);

(e) boiler and machinery coverage on a replacement cost basis; and

(f) Workers' Compensation Insurance, as applicable, in statutory limits.

(g) Landlord covenants to maintain the foregoing insurance subject to such commercially reasonable deductibles for similar Class A office buildings in the Prince George's County, Maryland submarket of comparable age and condition.

ARTICLE XIV

SERVICES AND UTILITIES

14.1 **Building System HVAC** .

(a) Landlord represents that the current Building System HVAC is adequate to maintain an indoor temperature for Office Use. Landlord will supply heating and cooling (i) to the Premises during 2U Building Hours, and (ii) to the Lobby and the Amenity Space during Building Hours suitable for Office Use. Tenant shall be solely responsible for costs of installing supplemental HVAC as Tenant may require in the Premises.

(b) Landlord shall not be liable for any failure to maintain comfortable atmosphere conditions in all or any portion of the Premises due to excessive heat generated by any equipment or machinery installed by Tenant (with or without Landlord's consent), due to any impact that Tenant's furniture, equipment, machinery, millwork or layout of the Premises may have upon the delivery of HVAC to the Premises or during time periods where occupant density is in excess of design standards of the existing Building System HVAC.

(c) If Tenant requires Building System HVAC beyond the hours specified in this Section 14.1 above (including in the Auditorium), Landlord will furnish the same, provided Tenant gives Landlord sufficient advance notice of such requirement but in any event no later than 3:00 p.m. on the date of the requested service (provided if the date(s) of requested service fall on any Holiday, then such notice shall be provided by 3:00 p.m. on the last Business Day prior to such Holiday). Subject to the provisions of Section 5.2(b) , Tenant shall pay for such extra service in accordance with Landlord's then-current schedule, which shall reflect Landlord's actual cost of providing such service, including labor and cost of electricity and wear and tear on equipment and shall remit payment for the same to Landlord within thirty (30) days of receipt of an invoice therefor. If the same after-hours service is also requested by other tenants on the same floor as Tenant, the charge therefor to each tenant requesting such after-hours service shall be a pro-rated amount based upon the square footage of the leased premises of all tenants requesting such after-hours services.

14.2 **Janitorial Services; Landscaping and Snow Removal** .

(a) Subject to the provisions of Section 5.2(b) , Landlord will provide cleaning, janitorial services and garbage removal (the " **Janitorial Services** ") to the Premises during the Lease Term on Monday through Friday (or at Landlord's option, Sunday through Thursday) only (excluding Holidays) after 6:00 p.m. on Monday through Friday and after 9:00 a.m. on weekends, as applicable. If Tenant requires or requests any supplemental Janitorial Services (to the extent Tenant has not separately contracted for such services as provided in Section 5.2(b)), such supplemental services shall be billed to Tenant at reflect Landlord's actual cost of providing such service and Tenant shall remit payment for the same to Landlord within thirty (30) days of receipt of an invoice therefor.

(b) Landlord will provide Tenant with the Building's cleaning specifications upon Landlord's selection of a cleaning contractor for the performance of the Janitorial Services.

In the event the Janitorial Services being provided by any cleaning contractor are poor or inadequate in Tenant's reasonable judgment, Tenant shall deliver written notice thereof to Landlord (describing the problems in reasonable detail); following receipt of such written notice, Landlord will exercise commercially reasonable efforts for a period of sixty (60) days to correct such problems with the cleaning contractor. After such 60-day period, if the problems identified in Tenant's notice persist, and provided the RSF of the Premises does not fall below the RSF of the Initial Premises as of the Effective Date, at Tenant's election, Landlord will terminate the current cleaning contractor and hire a new cleaning contractor to provide the Janitorial Services, which new cleaning contractor shall be selected by Landlord and reasonably acceptable to Tenant.

(c) In the event Tenant uses the Lobby or the Amenity Space for any Tenant event after 2U Business Hours, to the extent Tenant uses the services of the Building's cleaning contractor to clean up after such event, Tenant shall pay Landlord's actual cost of providing such service and Tenant shall remit payment for the same to Landlord within thirty (30) days of receipt of an invoice therefor.

(d) Landlord will maintain the landscaping in the Building Common Areas, and shall provide snow removal service for the Building Common Areas (but excluding any portions of the roof) and Parking Lot, and shall provide exterior window washing service in accordance with similar Class A office buildings in the Prince George's County, Maryland submarket of comparable age and condition.

14.3 **Electricity** .

(a) Base Capacity . It is Tenant's responsibility to confirm prior to Effective Date that the Building is equipped with electrical service of an average demand load of not less than six (6) watts per usable square foot of the Premises and exclusive of the operation of the Building Structure and Systems (including Building System HVAC units) that serve the Premises (the " **Base Capacity** "). Tenant, at its sole cost and expense, shall distribute the electricity within the Premises from the electrical panel(s) and shall have the right to re-distribute such capacity to various portions of the Premises in such amounts as Tenant elects.

(b) Payment of Submetered Cost for Tenant's Electric Cost; Disputes . Landlord, from time to time but not more often than monthly, shall give to Tenant an invoice indicating the period during which Tenant's Usage for the Premises or any of Tenant's Specialty Installations (as determined by the submeters which exclusively meter the Premises or such Specialty Installations) was measured and the amount of Tenant's Electric Cost payable by Tenant to Landlord for such period. Tenant shall pay to Landlord the amount of Tenant's Electric Cost for the Premises and Tenant's Specialty Installations (as a Submetered Cost) set forth on such invoices, as additional rent, within thirty (30) days after Tenant is given such invoices. In addition, if any tax is imposed upon Landlord by any governmental authority with respect to the purchase, sale or resale of electrical energy supplied to Tenant hereunder, then, to the extent permitted by law, such taxes shall be paid by Tenant to Landlord, as additional rent (to the extent not already included in Landlord's Rate). Notwithstanding the foregoing, Landlord agrees to use commercially reasonable efforts to maintain a valid resale certificate at any time during the Lease Term that Landlord is supplying electricity hereunder and further agrees that Tenant shall

only be required to pay sales tax in respect of additional rent related to Tenant's Usage the one time as a pass-through (as a separate line item on Landlord's bill to Tenant); it being agreed by the parties that Tenant will not be obligated or liable to double pay any particular sales taxes in respect of additional rent for Tenant's Usage. Every invoice for electricity given by Landlord pursuant to this Section 14.3(a) shall be conclusive and binding upon Tenant unless within one hundred twenty (120) days after the receipt of such statement Tenant shall notify Landlord that it disputes the correctness of the statement, specifying the particular respects in which the statement is claimed to be incorrect based on the provisions of this Section 14.3(a) (an " **Electrical Dispute Notice** "). If Tenant delivers the Electrical Dispute Notice, Landlord agrees, at no cost or expense to Landlord, to grant Tenant's representatives (who shall be either Tenant's regular employees or a CPA from a qualified and reputable audit firm of Tenant's selection which regularly performs such inspections), reasonable access to those books and records of Landlord relevant to such dispute (other than privileged materials) for the purpose of verifying electricity charges calculated pursuant to this Section 14.3(a) and to have and make copies of any and all bills and vouchers relating to such dispute on the terms and conditions otherwise applicable to Tenant's review of Expense Statements and Annual Statements. Pending the determination of such dispute by agreement or judicial determination, Tenant shall pay to Landlord the amounts in accordance with the disputed statement, within thirty (30) days after Landlord gives same to Tenant, and such payment to be without prejudice to Tenant's position. If the dispute shall be determined in Tenant's favor, Landlord shall either pay or credit (at Landlord's option) to Tenant the amount of Tenant's overpayment without interest unless such dispute reveals an overcharge to Tenant in excess of seven percent (7%) of the amount due with respect to the applicable calendar year, in which case the payment or credit of such overpayment shall include interest at the Default Rate from the date(s) of such overpayment relates to the date such overpayment is refunded or credited.

(c) Repair of Submeters . Tenant may, from time to time (but in no event more than once every twelve (12) months), check the accuracy of the electric submeter(s) serving the Premises, at Tenant's expense, using the services of a testing agency/lab designated by Landlord and reasonably acceptable to Tenant. If the results shall disclose that the electric submeter(s) (or any of them) shall be inaccurate (other than to a *di minimus* extent), then such submeter(s) shall be repaired or replaced by Landlord, and Landlord and Tenant shall make a retroactive adjustment of the electric payments which have been made based on such inaccurate electric meter(s) or submeter(s); provided that only electricity charges made during the twelve (12) month period prior to receipt of the testing results shall be subject to retroactive adjustments.

(d) Additional Capacity . If at any time during the Lease Term Tenant determines that Tenant requires the electrical service being furnished to any portion of the Premises to be greater than Base Capacity, Tenant may request that Landlord, at Tenant's sole cost and expense, provide (i) up to four (4) watts per usable square foot, on a demand load basis, of additional power to each floor of the Premises. Landlord will not unreasonably withhold, condition or delay its consent to such a request should Tenant demonstrate the need for such power to Landlord's reasonable satisfaction and should the Building have sufficient available capacity for the provision of such additional power taking into account the needs of current and future tenants of the Building as reasonably determined by Landlord and Landlord reasonably determines that the delivery of such additional power to Tenant will not adversely affect electricity service to the Building or other tenants. Tenant shall be responsible for all actual out-

of-pocket costs Landlord incurs associated with providing additional power to the Premises and shall the same within thirty (30) days of receipt of an invoice therefor. For clarity, the Electric Costs for any such additional capacity shall be billed to Tenant in accordance with Section 14.3(c) .

14.4 **Generator** . Landlord shall maintain in good working order and condition and adequately fueled fuel oil generator emergency generator system for the Building (such emergency generator system being referred to herein collectively as the " **Emergency Generator System** "). Tenant may, at Tenant's sole cost and expense, non-exclusively connect to the second 1500kW generator (the " **Additional Back-Up Generator** ") solely for the purpose of Tenant's back-up emergency power needs in the Premises in an amount not to exceed Tenant's Proportionate Share of 1500kW of the capacity of such Additional Back-Up Generator, such additional capacity being referred to herein as " **Additional Back-Up Power** " (provided that, so long as Tenant is the sole tenant of the Building, Tenant can utilize 100% of the Additional Back Up Power, and pay 100% of the Back Up Costs or if Tenant is not the sole tenant of the Building but less than all other tenants elect to connect to the Additional Back-Up, Tenant shall be entitled to utilize more than Tenant's Proportionate Share of such Additional Back Up Power as grossed up to reflect the use of less than all the other tenants (calculated to provide that other using tenant's applicable proportionate shares shall be similarly grossed up to equal 100% of use) and pay such grossed up Tenant's Proportionate Share of Back Up Costs). Landlord shall bill Tenant for Tenant's actual amounts of any costs or expenses for use of the Additional Back-Up Generator, including without limitation, fuel (as indicated on the fuel submeter(s)), maintenance, repairs, and replacement costs (collectively, " **Back Up Costs** ") and Tenant shall pay the same within thirty (30) days of receipt of an invoice therefor. In no event shall Tenant be entitled to connect to the Emergency Generator System.

14.5 **Elevator** . Landlord shall provide elevator service from the Lobby to the Premises by having no less than four (4) passenger elevators (i.e. not elevators primarily intended as freight elevators) (A) in active service at all times during 2U Building Hours and (B) in service and subject to call twenty-four (24) hours per day seven (7) days per week; provided that temporary loss of any elevators for routine inspection or repair and maintenance shall permitted notwithstanding the foregoing or the provisions of Section 15.3 to the contrary. With respect to the other two elevators (that is, the elevators beyond the four (4) aforementioned passenger elevators), Landlord shall not allow for such elevators to be out of service for any period of time beyond the period of time reasonably necessary to effectuate maintenance/repairs/replacements to same or to use such elevators for freight or other necessary purposes to operate the Building, it being recognized that Tenant expects the shared use of all elevators in the Building rather than just the four (4) aforementioned passenger elevators. Notwithstanding anything to the contrary contained herein, in no event shall any tenant of the Building be given exclusive use of an elevator except for limited times during such tenant's initial build out or subsequent renovation of its space (not to exceed 180 days with respect to such work for each tenant) or for times which are not 2U Building Hours (other than Saturday) in which such tenants are moving in, out or about the Building.

14.6 **Security** . Landlord, at Landlord's expense (but subject to reimbursement as an Operating Expense), will provide a monitored card or key access system to the Building, the Premises, amenity areas, fitness area, roof and elevators. Landlord, at Landlord's expense, shall supply the

initial cards and/or keys for the above in a quantity as reasonably required by Tenant. In addition, provided Tenant's RSF footage does not fall below that of the Initial Premises, Landlord shall have a security guard policing the parking lot and grounds from 5:00 p.m. to 10:00 p.m. Monday through Friday. Tenant may, at Tenant's expense, install its own security system in the Premises, provided that such security system shall not impair Landlord's right to access to the Premises as provided in this Lease.

14.7 **Access**. Commencing on the Base Building Work Delivery Date, Tenant shall have access to the Building, the Amenity Space and the Premises twenty-four (24) hours per day each day of the year (except in the event of an emergency) (for clarity, Tenant's access to the Amenity Space after Business Hours shall not require Landlord or Operator to keep the food service operations in the Food Service Area open).

14.8 **Water**. Landlord shall furnish domestic hot and cold water to the Premises for drinking, food service, cleaning, lavatory purposes and shower use. If water is used for any other purpose (including cafeteria and/or private or executive lavatory purposes that include showers), Landlord, as part of Landlord **'** s Base Building Condition Work, at Landlord **'** s sole cost and expense, shall install submeters to exclusively measure the consumption of such portions of the Premises thereof where water is being used for any other purpose, in which event Tenant shall pay for 100% of the Submetered Costs for the quantities of water furnished to such portions as shown on such submeters exclusively measuring the Premises at Landlord **'** s actual cost thereof, within thirty (30) days after Landlord **'** s submission of an invoice therefor from time to time.

14.9 **Submetered Costs**. Tenant shall pay any other Submetered Costs not specifically included in Section 14.3 (Electricity) and Section 14.8 (Water) above, based upon the quantities of Utilities used by Tenant as shown on such submeters installed within the Premises (and exclusively serving the Premises) based upon Landlord's actual cost of such Utility, within thirty (30) days after Landlord's submission of an invoice therefor from time to time.

ARTICLE XV

LIABILITY OF LANDLORD

15.1 **Landlord Liability** .

(a) Neither Landlord, nor the lessors under any superior lease, nor the holders of any superior mortgages, nor any of their respective its agents, officers, directors, shareholders, partners or principals (disclosed or undisclosed) (collectively, " **Landlord Indemnitees** ") shall be liable to Tenant, any Invitee or any other person or entity for any damage (including indirect and consequential damage), injury, loss or claim (including claims for the interruption of or loss to business) based on or arising out of any cause whatsoever (except as otherwise provided in Section 15.3 below), including without limitation the following: repair to any portion of the Premises or the Building; interruption in the use of the Premises or any equipment therein; any accident or damage resulting from any use or operation (by Landlord, Tenant or any other person or entity) of elevators or heating, cooling, electrical, sewerage or plumbing equipment or apparatus; termination of this Lease by reason of damage to the Premises or the Building; any fire, robbery, theft, vandalism, mysterious disappearance or any other casualty; actions of any other tenant of the Building or of any other person or entity; failure or inability to furnish any service specified in this Lease; and leakage in any part of the Premises or the Building from water, rain, ice or snow that may leak into, or flow from, any part of the Premises or the Building, or from drains, pipes or plumbing fixtures in the Premises or the Building. If any condition exists which may be the basis of a claim of constructive eviction, then Tenant shall give Landlord written notice thereof and a reasonable opportunity to correct such condition in accordance with Section 15.3 below, and in the interim Tenant shall not claim that it has been constructively evicted or is entitled to a rent abatement. Any property placed by Tenant or any Invitee in or about the Premises or the Building shall be at the sole risk of Tenant, and Landlord shall not in any manner be held responsible therefor. Any person receiving an article delivered for Tenant shall be acting as Tenant's agent for such purpose and not as Landlord's agent. For purposes of this Article, the term " **Building** " shall be deemed to include the Land and the Parking Lot. Notwithstanding the foregoing provisions of this Section , Landlord shall not be released from liability to Tenant for any physical injury to any natural person caused by Landlord's willful misconduct or gross negligence to the extent such injury is not covered by insurance (a) carried by Tenant or such person, or (b) required by this Lease to be carried by Tenant; provided, however, that Landlord shall not under any circumstances be liable for any consequential or indirect damages.

(b) Wherever in this Lease an indemnification is for the benefit of Landlord, such indemnification shall also be for the benefit of all Landlord Indemnitees, regardless of whether or not expressly so provided.

(c) Tenant shall not have the right to set off or deduct any amount allegedly owed to Tenant pursuant to any claim against Landlord from any rent or other sum payable to Landlord. Tenant's sole remedy for recovering upon such claim shall be to institute an independent action against Landlord, which action shall not be consolidated with any action of Landlord.

(d) If Tenant or any Invitee is awarded a money judgment against Landlord, then recourse for satisfaction of such judgment shall be limited to execution against Landlord's estate and interest in the Building. No other asset of Landlord, any partner, director, member, officer or trustee of Landlord (each, an " **officer** ") or any other person or entity shall be available to satisfy or be subject to such judgment, nor shall any officer or other person or entity be held to have personal liability for satisfaction of any claim or judgment against Landlord or any officer.

15.2 **Indemnification** .

(a) To the fullest extent permitted by law, but subject to the requirements and limitations set forth in Section 13.3(c) ,Tenant shall (i) defend, indemnify and save harmless Landlord and all Landlord Indemnitees against and from any and all claims (x) based on or arising from, in whole or in part (A) the manner of use of or occupancy of the Premises, the management of the Premises by Tenant or any Tenant Invitees or the conduct of any business therein, (B) any act or omission of Tenant or Tenant's Invitees, (C) any default under any of the terms, covenants or conditions of this Lease on Tenant's part to observe, perform or comply with, or (D) any work done, or any condition created (other than by, or on behalf of, Landlord or any Landlord Indemnitees for Landlord's or Tenant's account) in or about the Premises, by Tenant or any Tenant Invitee, during the Lease Term or during the period of time, if any, prior to the Lease Commencement Date or applicable Must Take Commencement Date that Tenant may have been given access to the Premises or during the period of time after the expiration of the Lease Term that Tenant or any Tenant Invitee remains in possession or occupancy of the Premises or any portion thereof, or (y) arising from any negligent act or omission or otherwise intentional misconduct of Tenant or any of its subtenants or licensees or its or their employees, agents or contractors even if the claims described in (x) or (y) above arise out of the concurrent negligence (but not gross negligence) of Landlord or any the Landlord Indemnitees, and (ii) reimburse to Landlord and the Landlord Indemnitees all reasonable costs and expenses (including reasonable attorneys' fees) paid or incurred by Landlord or any of the Landlord Indemnitees in connection with each such claim or action or proceeding brought thereon. In case any action or proceeding be brought against Landlord or any of the Landlord Indemnitees by reason of any such claim, Tenant, upon notice from Landlord, shall resist and defend such action or proceeding by attorneys reasonably acceptable to Landlord, Landlord agreeing that the attorneys for the insurance company providing Tenant's insurance are acceptable.

(b) To the fullest extent permitted by law, but subject to the requirements and limitations set forth in Section 13.3(c) , Landlord shall (i) indemnify and save harmless Tenant and all agents, officers, directors, shareholders, partners or principals (disclosed or undisclosed) of Tenant (the " **Tenant Indemnitees** ") against and from any and all claims, losses, costs and expenses arising from any property damage or physical injury caused by Landlord's gross negligence or willful misconduct, (ii) reimburse to Tenant and the Tenant Indemnitees all reasonable costs and expenses (including reasonable attorneys' fees) paid or incurred by Tenant or any of the Tenant Indemnitees in connection with each such claim or action or proceeding brought thereon. In case any action or proceeding be brought against Tenant or any of the Tenant Indemnitees by reason of any such claim, Landlord, upon notice from Tenant, shall resist and defend such action or proceeding by attorneys reasonably acceptable to Tenant, Tenant agreeing that the attorneys for the insurance company providing Landlord's insurance are acceptable.

(c) Except as set forth in Section 22.1 with respect to Tenant holding over in the Premises after the expiration of the Term, neither Landlord nor Tenant shall be liable to the other for any indirect or consequential damages to the other.

15.3 **Interruption of Essential Services** .

(a) Anything herein contained to the contrary notwithstanding, if (i) for any reason, including, without limitation, Landlord's acts or omissions or a Force Majeure Event (but specifically excluding for the purposes of this Section 15.3 , an event arising under Article XVII , the remedy for which are addressed in such Article), there is a material loss of HVAC, electricity, or water to any portion of the Premises (such event being hereinafter referred to as a " **Services Abatement Event** "), and such Services Abatement Event renders untenantable (which shall include inaccessible) at least a full floor of the Premises (or, solely with respect to a Services Abatement Event affecting the 2 nd Floor Premises, at least thirty-three percent (33%) of the 2 nd Floor Premises), and (ii) Landlord receives notice from Tenant of the Services Abatement Event and of the fact that Tenant is prevented from, and (other than with respect to an Elevator Interruption) has actually ceased using one or more full floors of the Premises (or, solely with respect to a Services Abatement Event affecting the 2 nd Floor Premises, at least thirty-three percent (33%) of such premises) and of the specific portions of the Premises that Tenant is prevented from, and has actually ceased using (such notice being hereinafter referred to as the " **Untenantability Notice** "), (iii) for at least (A) five (5) consecutive Business Days after Landlord's receipt of the Untenantability Notice (or ten (10) consecutive Business Days in the event such untenantability results solely from a Force Majeure Event) (for the purposes of this Section 15.3 , Friday and Monday are consecutive Business Days), or (B) at least seven (7) Business Days (whether or not consecutive) in any forty-five (45) day period (or at least fifteen (15) Business Days (whether or not consecutive) in any sixty (60) day period in the event such untenantability results solely from Force Majeure Event) after Landlord's receipt of the Untenantability Notice, in any case arising out of the same Services Abatement Event (the Business Day following the last Business Day of the foregoing periods, as the case may be, being hereinafter called the " **Abatement Commencement Date** "), and, except with respect to an Elevator Interruption, as a result of the Services Abatement Event, Tenant actually ceases using, and continues not to use, such specific portions of the Premises (provided that the entry by representatives of Tenant to the affected area that is the subject of an Untenantability Notice on a limited basis solely to retrieve files and documents or to maintain equipment in such affected portion or any unaffected portion of Premises shall not by itself be deemed to be reoccupying for the ordinary conduct of its business), (iv) the Services Abatement Event is not the result of any act or (where Tenant has a duty to act) omission of Tenant, and (v) no Event of Default then exists (other than an Event of Default substantially caused by such Services Abatement Event), then , in addition to Tenant's other rights and remedies at law or equity, Base Rent and all additional rent relating to Operating Expenses, Consumable Expenses, Real Estate Taxes and Submetered Costs (including Temporary Usage Costs) then payable by Tenant under this Lease with respect to the floors(s) rendered untenantable as contemplated in this Section 15.3(a) shall be reduced as provided in subsection (c) below.

(b) In addition, if for any reason, including, without limitation, Landlord's acts or omissions or a Force Majeure Event (but specifically excluding for the purposes of this Section 15.3 , an event arising under Article XVII , the remedy for which are addressed in such Article) (i)

Landlord receives notice from Tenant of an Elevator Interruption (such notice being hereinafter referred to as the " **Elevator Untenantability Notice** ") (A) that two (2) elevator cars (or more) out of six (6) are unavailable for Tenant's use for a significant portion of a 2U Business Day for (x) at least thirty (30) consecutive Business Days (for the purposes of this Section 15.3 , Friday and Monday are consecutive Business Days) or (y) thirty (30) non-consecutive Business Days in any ninety (90) day period, in each case following the delivery of an Elevator Untenantability Notice, one half (½) of a full upper floor of the Premises shall be deemed untenantable as of the applicable Elevator Abatement Date notwithstanding that Tenant is still conducting business in the Premises, (B) that three (3) elevator cars (out of six (6) elevators) are unavailable for Tenant's use for a significant portion of a 2U Business Day for (x) at least seven (7) consecutive Business Days or for a significant portion of the day or (y) at least ten (10) non-consecutive Business Days in any thirty (30) day period, in each case following the delivery of an Elevator Untenantability Notice, two and one half (2 ½) full upper floors of the Premises shall be deemed untenantable as of the applicable Elevator Abatement Date notwithstanding that Tenant is still conducting business in the Premises; (C) that there are more than three (3) elevators but not all elevators are unavailable for Tenant's use during a significant portion of the day for (x) three (3) consecutive Business Days, or (y) at least seven (7) non-consecutive Business Days in any thirty (30) day period, in each case following the delivery of an Elevator Untenantability Notice, three and a half (3 ½) full upper floors of the Premises shall be deemed untenantable as of the applicable Elevator Abatement Date regardless of whether Tenant is still conducting business in the Premises or (D) that there are no elevators in service (out of six (6) elevators) during a significant portion of a 2U Business Day for (x) any three (3) consecutive Business Days or (y) for four (4) non-consecutive Business Days in a fourteen (14) day period, in each case following the delivery of an Elevator Untenantability Notice, then four (4) full upper floors of the Premises shall be deemed untenantable as of the applicable Elevator Abatement Date regardless of whether Tenant is still conducting business in the Premises (each event in this clause (b) being hereinafter referred to as a " **Elevator Interruption** " and the day following the last day of the foregoing 30 consecutive Business Day, 30 non-consecutive Business Day, 7 consecutive Business Days, 10 non-consecutive Business Day, 3 consecutive Business Days, 7 non-consecutive Business Days, 3 consecutive Business Days, or 4 non-consecutive Business Days, as the case may be, being hereinafter called the " **Elevator Abatement Date** "), (ii) the Elevator Interruption is not the result of any act or (where Tenant has a duty to act) omission of Tenant, and (iii) no Event of Default then exists (other than an Event of Default substantially caused by such Elevator Interruption) then, in addition to Tenant's other rights and remedies at law or equity, the rents payable by Tenant under this Lease shall be reduced as provided in subsection (c) below.

(c) Provided that the conditions described in clauses (i) through (v) of subsection (a) above or in clauses (i) through (iii) of subsection (b) above have been satisfied during the period (the " **Services Abatement Period** ") commencing on the applicable Abatement Commencement Date (with respect to a Services Abatement Event) or the applicable Elevator Abatement Date (with respect to an Elevator Interruption) and ending on the last day that the Premises (or the applicable portions thereof) is untenantable (or deemed untenantable) as result of the Services Abatement Event or Elevator Interruption, the rents payable by Tenant under this Lease that are attributable to the Services Abatement Period shall be reduced by an amount equal to (i) the annual Base Rent, Tenant's Proportionate Share of Operating Expenses and Real Estate Taxes per RSF, payable during, or attributable to, the applicable Services Abatement Period,

divided by (ii) 365, and multiplied by (iii) the number of days during the Services Abatement Period, and multiplied further by (iv) the RSF of the portion of the Premises that is so untenantable or deemed untenantable (such area may change from time to time).

(d) The rights and remedies of Tenant set forth in this Section shall not be deemed a waiver by Tenant of Landlord's continued obligation to make the repair or to provide the service in question nor cure Landlord's default of its obligations under the Lease with respect to Landlord's failure to make such repair or provide such service.

ARTICLE XVI

RULES

16.1 **Rules and Regulations**. Tenant and Invitees shall at all times abide by and observe the rules specified in **Exhibit C**. Tenant and Invitees shall also abide by and observe any other reasonable rule that Landlord may promulgate from time to time for the operation and maintenance of the Building, provided that notice thereof is given and such rule is not inconsistent with the provisions of this Lease. Tenant may, within thirty (30) days following notice of any changes to the rules and regulations, dispute the reasonableness of any rules Tenant believes (i) are unreasonable to Tenant taking into consideration Tenant's rights and obligations under the Lease or (ii) have an adverse impact on Tenant or (iii) are unusual for similar Class A Buildings located in the Prince George's County, Maryland submarket by written notice to Landlord, in which case the parties shall meet to resolve such dispute within 30 days after the delivery of Tenant's notice and, if they are unable for any reason to resolve such dispute within such 30 day period, either party may submit such dispute to a court of competent jurisdiction and during the pendency of such lawsuit, Tenant shall comply with such disputed change to the rules and regulations. Notwithstanding the foregoing, Tenant shall have no obligation to comply with such amendments to the rules and regulations (and any amendments shall be deemed not to be reasonable) if the same (w) limit Tenant's use of the Premises, the Lobby and the Amenity Space for the Permitted Uses, (x) increase costs payable by Tenant to Landlord under this Lease unless required under applicable Requirements or to a de minimis extent, (y) increase Tenant's obligations beyond a de minimis extent subject to the terms of this Lease or (z) limit Tenant's access to the Lobby, Amenity Space or the Premises. All rules shall be binding upon Tenant and enforceable by Landlord as if they were contained herein. Nothing contained in this Lease shall be construed as imposing upon Landlord any duty or obligation to enforce such rules, or the terms, conditions or covenants contained in any other lease, as against any other tenant, and Landlord shall not be liable to Tenant for the violation of such rules by any other tenant or its employees, agents, assignees, subtenants, invitees or licensees. Landlord shall use reasonable efforts not to enforce any rule or regulation in a manner which unreasonably discriminates against Tenant.

ARTICLE XVII

DAMAGE OR DESTRUCTION

17.1 **Damage or Destruction** .

(a) If the Building or the Premises shall be partially damaged or partially destroyed by fire or other casualty and as a result thereof a portion of the Premises becomes untenantable or inaccessible, the Base Rent and additional rent payable under this Lease shall be abated on a per rentable square foot basis based on the RSF of that portion of the Premises as shall have been rendered untenantable as a result of such damage or destruction for the period, commencing on the date such portion of the Premises becomes untenantable or inaccessible and ending on the date next preceding the earlier of (i) the date on which the Landlord's Restoration Condition is substantially complete or on which that portion of the Premises otherwise becomes tenantable and accessible for Tenant to commence Tenant's Restoration Work, plus an additional period of up to six (6) months for Tenant to complete restoration of Tenant's Restoration Work, and (ii) the date on which Tenant or any Permitted User occupies such portion of the Premises for the conduct of its business. For purposes of this Section 17.1 , the term "untenantable" shall mean, with respect to any portion of the Premises, that Tenant is not reasonably able to conduct its business in that portion of the Premises affected in substantially the same manner as was conducted in such space immediately prior to such fire or other casualty. If this Lease is terminated pursuant to this Article, then Base Rent and any additional rent payable under this Lease shall be payable only to the date of the casualty that caused the termination of the Lease.

(b) If the Building, the Lobby, the Amenity Space or the Premises shall be totally (which shall be deemed to include substantially all) damaged or destroyed by fire or other casualty and as a result thereof all (or substantially all) of the Premises becomes untenantable or inaccessible, the Base Rent and any additional rent payable under this Lease shall be abated for the period commencing on the date such portion of the Premises became untenantable or inaccessible and ending on the date next preceding the earlier of (i) the date the Required Landlord Restoration is substantially complete or on which the Premises otherwise becomes tenantable and accessible (exclusive of any Tenant's Work or other Alterations) plus an additional of up to six (6) months for Tenant to complete restoration of Tenant's Work or other Alterations, and (ii) the date on which Tenant occupies the Premises for the conduct of its business; provided, however, that Landlord and Tenant shall use reasonable efforts to cooperate in connection with such restoration to provide the parties with shortest possible restoration period through the coordination of their respective work.

(c) Promptly after the date on which the Landlord Restoration Condition is substantially complete, Tenant shall commence, and thereafter diligently proceed with, the repair, restoration and replacement of all Alterations (including Tenant's Work) and Tenant's Property (" **Tenant's Restoration Work** ") **.**

17.2 **Restoration** . If any damage or destruction described in Section 17.1 above occurs, then, provided this Lease shall not have been terminated as in Section 17.3 below provided, Landlord shall repair or restore such damage or destruction with reasonable dispatch after notice to it of the damage or destruction (including repair and restoration of any Landlord **'** s Work), the Lobby and the Amenity Space; provided, however, that Landlord shall not be required to make any repairs or restoration that are the obligation of Tenant or any other tenant in the Building to make; and provided further that Landlord shall not be required to repair, replace or move any of Tenant **'** s Property nor to repair or restore any Tenant **'** s Work or other Alterations (such damage or destruction that Landlord is expressly obligated to repair or restore pursuant to this Section 17.2 being herein referred to as the " **Landlord's Restoration Condition** "). Notwithstanding the

foregoing Landlord can complete restoration of the Lobby and Amenity Space after the end of the Restoration Period and concurrently with Tenant ' s Work, provided the Premises floors have been turned over to Tenant for Tenant ' s Work and provided further that Tenant has an appropriate path to access the elevators and Premises to perform its work and that the Lobby and Amenity Space restoration is completed no later than the date Tenant takes occupancy of the Premises for normal business operations.

17.3 **Termination Rights** .

(a) If more than fifty percent (50%) the Building or the Premises shall be totally or substantially damaged or destroyed by fire or other casualty, or if the Building shall be so damaged or destroyed by fire or other casualty (whether or not the Premises are damaged or destroyed) as to require a reasonably estimated expenditure of more than fifty percent (50%) of the full replacement cost of the Building immediately prior to the casualty (either, a " **Substantial Casualty** "), then in either such case Landlord may terminate this Lease by giving Tenant notice to such effect within ninety (90) days after the date of the casualty. In addition, and notwithstanding anything herein to the contrary, Landlord shall also have the right to terminate this Lease if (1) in connection with a Substantial Casualty, notwithstanding the Landlord has maintained the insurance coverage required to be maintained hereby, the actual insurance proceeds are insufficient to pay the full cost of such restoration, (2) the holder of any Mortgage secured by the Building fails or refuses to make such insurance proceeds available for such repair and restoration (provided that Landlord agrees to use commercially reasonable efforts to cause the applicable loan documents to provide that such holder will make insurance proceeds available for restoration so long as there is at least three years left in the Lease Term, including by way of an early exercise by Tenant of a renewal term, and to use best efforts to cause such holder to make such insurance proceeds available for restoration,) or (3) after a Substantial Casualty, as the result of the changes to zoning Requirements, the Building cannot be rebuilt to at least 75% of its current FAR or cannot be used for Office Use after restoration.

(b) Upon a Substantial Casualty:

(i) Unless Landlord elects to terminate this Lease as provided in Section 17.3(a) hereof, within ninety (90) days after the date of such casualty, Landlord shall give to Tenant a statement (the " **Architect's Statement** ") from a reputable, independent architect, licensed as an architect in Prince George's County, reasonably selected by Landlord, that sets forth such architect's good faith estimate and assumptions as to when the repairs to the Building and Premises will be substantially complete.

(ii) If (A) such architect estimates in the Architect's Statement that the repairs to the Building and the Premises will be substantially complete more than twelve (12) months after the date of such casualty or (B) the repairs or restoration that Landlord is obligated to make are not substantially completed within the greater of (x) the aforementioned twelve (12) month period, as applicable, after the date of such casualty or (y) the lesser period of time originally estimated by such architect (which period, in either subclause (x) or (y), shall be extended for up to 120 days if Landlord is delayed in making such repairs by reason of a noticed Force Majeure Event (such period, as same may be so extended, the " **Restoration Period** ")), then, Tenant may elect to terminate this

Lease by giving notice of such termination to Landlord. For Tenant's notice of termination to be effective, it must be given, in the case of clause "(A)" within sixty (60) days after the date Landlord gives to Tenant the Architect's Statement, or, in the case of clause "(B)," within thirty (30) days after the last day of the Restoration Period as originally noticed by Landlord, time being of the essence in both cases. If a Substantial Casualty occurs in the last eighteen (18) months of the Lease Term and the Restoration Period is more than one-third (1/3) of the then-remaining Lease Term then either Landlord or Tenant may elect to terminate this Lease by giving notice of such termination to the other party (provided that Landlord's termination election shall be revoked in the event Tenant elects to renew the Lease as permitted by Article XXVI). For Landlord or Tenant's notice of termination pursuant to the preceding sentence to be effective, it must be given within sixty (60) days after the receipt of the Architect's Statement, time being of the essence. Notwithstanding the foregoing, if Tenant fails to give Landlord such notice of termination in the manner and in the time period set forth above, then Tenant's right to terminate this Lease shall be null and void, and of no further force or effect, and this Lease shall continue in full force and effect, subject to the other provisions of this Lease .

(iii) In the event Landlord shall fail to deliver an Architect's Statement as required above (time being of the essence), Tenant may obtain an Architect's Statement and such Architect's Statement shall be deemed substituted for the one that Landlord would be required to deliver.

(c) If, in accordance with, and subject to, the provisions of this Section 17 , either Landlord or Tenant give the other such notice of termination (and Landlord's notice is not revoked as provided above) the Lease Term shall expire as fully and completely on the date which is thirty (30) days after the date on which Landlord or Tenant gives the other such notice of termination, as if such termination effective date were the Expiration Date, and on or prior to such termination effective date (provided that Tenant shall not have any obligation to remove any Tenant's Property or Specialty Alterations), Tenant shall quit, surrender and vacate the Premises in accordance with the applicable provisions of this Lease, without prejudice, however, to Landlord's rights and remedies against Tenant under the provisions of this Lease in effect prior to such termination effective date, and any Base Rent or additional rent owing prior to the date of casualty shall be paid up to such date, and any payments of Base Rent or additional rent made by Tenant which were on account of any period subsequent to the date of the casualty (less any amounts of other rents then owing to Landlord) shall be returned to Tenant.

17.4 **Cooperation** . Each of Landlord and Tenant shall cooperate with each other as is reasonably required to enable each to collect all of the insurance proceeds (including rent insurance proceeds) from their respective insurance companies applicable to damage or destruction of the Premises or the Building by fire or other casualty.

17.5 **Compensation** . No damages, compensation or claim shall be payable by Landlord for inconvenience, loss of business or reasonable annoyance arising from any repair or restoration of any portion of the Premises or of the Building pursuant to this Article.

ARTICLE XVIII

CONDEMNATION

18.1 If one-third or more of the Premises, or the use or occupancy thereof, shall be taken or condemned by any governmental or quasi-governmental authority for any public or quasi-public use or purpose or sold under threat of such a taking or condemnation (collectively, **"** condemned **"**), then, this Lease shall terminate on the day prior to the date title thereto vests in such authority and rent shall be apportioned as of such date. If less than one-third of the Premises or occupancy thereof is condemned, then this Lease shall continue in full force and effect as to the part of the Premises not so condemned, except that as of the date title vests in such authority Tenant shall not be required to pay rent with respect to the part of the Premises so condemned. Notwithstanding anything herein to the contrary, if twenty-five percent (25%) or more of the Land or the Building is condemned, then whether or not any portion of the Premises is condemned, either Landlord or Tenant shall have the right to terminate this Lease as of the date title vests in such authority. Notwithstanding the foregoing, it shall not be considered a condemnation if Tenant's use of parking at the Building is diminished in a way that does not materially detrimentally interfere with Tenant's use of the Premises.

18.2 All awards, damages and other compensation paid on account of such condemnation shall belong to Landlord, and Tenant assigns to Landlord all rights to such awards, damages and compensation. Tenant shall not make any claim against Landlord or such authority for any portion of such award, damages or compensation attributable to damage to the Premises, value of the unexpired portion of the Lease Term, loss of profits or goodwill, leasehold improvements or severance damages. Nothing contained herein, however, shall prevent Tenant from pursuing a separate claim against the authority for relocation expenses and for the value of Tenant's Property and any Alterations paid by Tenant.

18.3 Any elimination or shutting off of light, air, or view by any structure which may be erected on lands adjacent to the Land shall in no way effect this Lease or impose any liability on Landlord provided not caused by Landlord or any affiliate of Landlord.

18.4 In the event of any taking of less than the whole of the Building which does not result in a termination of this Lease, or in the event of a taking for a temporary use or occupancy of all or any part of the Premises which does not extend beyond the Expiration Date, Landlord, at its expense, and to the extent any award or awards shall be sufficient for the purpose, shall proceed with reasonable diligence to repair, alter and restore (a) the remaining parts of the Building to substantially the condition such portion existed prior to the taking to the extent that the same may be feasible and so as to constitute a complete and tenantable Building and (b) the Premises to substantially the condition existing prior to the taking.

ARTICLE XIX

DEFAULT

19.1 **Events of Default** . In addition to those events or circumstances described in this Lease as an Event of Default, each of the following shall constitute an " **Event of Default** ":

(a) Tenant's failure to make when due any payment of (1) the Base Rent, (2) subject to Section 19.1(b) , any Monthly Operating Expense Payment or Monthly Real Estate Tax Payment or (3) any other additional rent or other sum payable hereunder when due and the payment in question is not paid in full within five (5) Business Days after Tenant is given a notice specifying such default for any Base Rent or Monthly Operating Expense Payment or Monthly Real Estate Tax Payment and ten (10) Business Days after Tenant is given notice specifying such default for any other additional rent or other payment;

(b) Tenant's failure to pay any monthly installment of Monthly Operating Expense Payment or Monthly Real Estate Tax Payment after reset or change in the monthly amount by Landlord and such non-payment continues for more than ten (10) Business Days after Tenant is given notice specifying such default for any other additional rent or other payment;

(c) Tenant's failure to perform or observe any covenant or condition of this Lease not otherwise specifically described in this Section 19.1 ; provided, however, no Event of Default shall be deemed to have occurred unless such failure continues for thirty (30) days after Landlord delivers written notice thereof to Tenant, unless such failure is of such nature that it cannot be cured within such thirty (30) day period, in which case no Event of Default shall occur so long as Tenant shall commence the curing of the failure within such thirty (30) day period and shall thereafter diligently prosecute the curing of same but in no event later than ninety (90) days after the date notice is given by Landlord to Tenant, or such shorter period as is appropriate if such failure can be cured in a shorter period;

(d) an Event of Bankruptcy as specified in Article XX ;

(e) any voluntary subletting, assignment, transfer, Mortgage of the Premises or this Lease not permitted by Article VII ;

(f) any default by Guarantor under the Guaranty beyond any notice and cure period;

(g) failure of Tenant to maintain the security deposit in accordance with Article XI above; or

(h) any failure to maintain the insurance required pursuant to Article XIII above.

19.2 **Remedies** . During the continuation of an Event of Default (even if prior to the Lease Commencement Date), then the provisions of this Section shall apply. Landlord shall have the right, at its sole option, to terminate this Lease in accordance with applicable law; provided that prior to exercising such termination right, Landlord shall give Tenant ten (10) Business Days' notice of Landlord's intention to exercise such termination right (it being expressly agreed that such notice, to the extent permitted by applicable law, shall run concurrent with any notice required to be delivered under applicable law, and not in addition thereto). In addition, with or without terminating this Lease, Upon the delivery of ten (10) Business Days' notice to Tenant, Landlord may re-enter (including, without limitation, changing the locks to the Premises), terminate Tenant's right of possession and take possession of the Premises. The provisions of this Article shall operate as a notice to quit, and except as required in this Section 19.2 , Tenant hereby waives any other notice to quit or notice of Landlord's intention to re-enter the Premises

or terminate this Lease. If necessary, Landlord may proceed to recover possession of the Premises under applicable laws, or by such other proceedings, including re-entry and possession, as may be applicable. If Landlord elects to terminate this Lease and/or elects to terminate Tenant's right of possession, everything contained in this Lease on the part of Landlord to be done and performed shall cease without prejudice, however, to Tenant's liability for all Base Rent, additional rent and other sums specified herein. Whether or not this Lease and/or Tenant's right of possession is terminated, Landlord shall have the right, at its sole option, to terminate any renewal or expansion right contained in this Lease and to grant or withhold any consent or approval pursuant to this Lease in its sole and absolute discretion; provided that if such Event of Default is subsequently cured and this Lease remains in effect, then such options and Landlord's consent standard shall be restored. Landlord may relet the Premises or any part thereof, alone or together with other premises, for such term(s) (which may extend beyond the date on which the Lease Term would have expired but for Tenant's Event of Default) and on such terms and conditions (which may include any concessions or allowances granted by Landlord) as Landlord, in its sole and absolute discretion, may determine, but Landlord shall not be liable for, nor shall Tenant's obligations hereunder be diminished by reason of, any failure by Landlord to relet all or any portion of the Premises or to collect any rent due upon such reletting. Whether or not this Lease and/or Tenant's right of possession is terminated or any suit is instituted, Tenant shall be liable for any Base Rent, additional rent, damages or other sum which may be due or sustained prior to such default, and for all costs, fees and expenses (including, but not limited to, reasonable attorneys' fees and costs, brokerage fees, expenses incurred in enforcing any of Tenant's obligations under the Lease or in placing the Premises in first-class rentable condition, advertising expenses, and any concessions or allowances granted by Landlord) incurred by Landlord in pursuit of its remedies hereunder and/or in recovering possession of the Premises and renting the Premises to others from time to time plus other actual damages suffered or incurred by Landlord on account of Tenant's default. Tenant also shall be liable for additional damages which at Landlord's election shall be either one or a combination of the following: (a) an amount equal to the Base Rent and additional rent due or which would have become due from the date of Tenant's default through the remainder of the Lease Term, less the amount of rental, if any, which Landlord receives during such period from others to whom the Premises may be rented (other than any additional rent received by Landlord as a result of any failure of such other person to perform any of its obligations to Landlord), which amount shall be computed and payable in monthly installments, in advance, on the first day of each calendar month following Tenant's default and continuing until the date on which the Lease Term would have expired, it being understood that separate suits may be brought from time to time to collect any such damages for any month(s) (and any such separate suit shall not in any manner prejudice the right of Landlord to collect any damages for any subsequent month(s)), or Landlord may defer initiating any such suit until after the expiration of the Lease Term (in which event such deferral shall not be construed as a waiver of Landlord's rights as set forth herein and Landlord's cause of action shall be deemed not to have accrued until the expiration of the Lease Term), and it being further understood that, to the extent permitted by applicable law, if Landlord elects to bring suits from time to time prior to reletting the Premises, Landlord shall be entitled to its full damages through the date of the award of damages without regard to any Base Rent, additional rent or other sums that are or may be projected to be received by Landlord upon reletting of the Premises; or (b) an amount equal to the sum of (i) all Base Rent, additional rent and other sums due or which would be due and payable under this Lease as of the date of Tenant's default

through the end of the scheduled Lease Term, plus (ii) all expenses (including broker and attorneys' fees) and value of all vacancy periods projected by Landlord to be incurred in connection with the reletting of the Premises, minus (iii) any Base Rent, additional rent and other sums which Tenant proves by a preponderance of the evidence would be received by Landlord upon reletting of the Premises from the end of the vacancy period projected by Landlord through the expiration of the scheduled Lease Term. Such amount shall be discounted using a discount factor equal to the yield of the Treasury Note or Bill (as published by *The Wall Street Journal* or similar or successor publication at the time), as appropriate, having a maturity period approximately commensurate to the remainder of the Lease Term, and such resulting amount shall be payable to Landlord in a lump sum on demand, it being understood that upon payment of such liquidated and agreed final damages, Tenant (and Guarantor) shall be released from further liability under this Lease with respect to the period after the date of such payment, and that Landlord may bring suit to collect any such damages at any time after an Event of Default shall have occurred. In the event Landlord relets the Premises together with other premises or for a term extending beyond the scheduled expiration of the Lease Term, it is understood that Tenant will not be entitled to apply any base rent, additional rent or other sums generated or projected to be generated by either such other premises or in the period extending beyond the scheduled expiration of the Lease Term (collectively, the " **Extra Rent** ") against Landlord's damages. Similarly in proving the amount that would be received by Landlord upon a reletting of the Premises as set forth in clause (iii) above, Tenant shall not take into account the Extra Rent. The provisions contained in this Section shall be in addition to, and shall not prevent the enforcement of, any claim Landlord may have against Tenant for anticipatory breach of this Lease. Nothing herein shall be construed to affect or prejudice Landlord's right to prove, and claim in full, unpaid rent accrued prior to termination of this Lease. If Landlord is entitled, or Tenant is required, pursuant to any provision hereof to take any action upon the termination of the Lease Term, then Landlord shall be entitled, and Tenant shall be required, to take such action also upon the termination of Tenant's right of possession. Notwithstanding anything to the contrary contained in this Section 19.2 or applicable law, none of the damages described in this Section 19.2 shall be indirect or consequential damages (it is intended that this Section 19.2 describes actual damages only and, for the avoidance of doubt and notwithstanding anything to the contrary anywhere in this Lease except for Section 22.1 with respect to Tenant holding over in the Premises after the expiration of the Term, Tenant shall not be liable for indirect or consequential damages). Except for claims under Section 22.1, Landlord expressly waives any right or claim to or for indirect or consequential damages from Tenant.

19.3 **Waiver** . Tenant hereby expressly waives, for itself and all persons claiming by, through or under it, any right of redemption, re-entry or restoration of the operation of this Lease under any present or future law, including without limitation any such right which Tenant would otherwise have in case Tenant shall be dispossessed for any cause, or in case Landlord shall obtain possession of the Premises as herein provided.

19.4 **Cumulative Rights** . All rights and remedies of Landlord set forth in this Lease are cumulative and in addition to all other rights and remedies available to Landlord at law or in equity, including those available as a result of any anticipatory breach of this Lease. The exercise by Landlord of any such right or remedy shall not prevent the concurrent or subsequent exercise of any other right or remedy. No delay or failure by Landlord to exercise or enforce any of Landlord's rights or remedies or Tenant's obligations shall constitute a waiver of any such rights,

remedies or obligations. Landlord shall not be deemed to have waived any default by Tenant unless such waiver expressly is set forth in a written instrument signed by Landlord. If Landlord waives in writing any default by Tenant, such waiver shall not be construed as a waiver of any covenant, condition or agreement set forth in this Lease except as to the specific circumstances described in such written waiver.

19.5 **No Waiver** . If Landlord shall institute proceedings against Tenant and a compromise or settlement thereof shall be made, then the same shall not constitute a waiver of the same or of any other covenant, condition or agreement set forth herein, nor of any of Landlord's rights hereunder. Neither the payment by Tenant of a lesser amount than the monthly installment of Base Rent, additional rent or of any sums due hereunder nor any endorsement or statement on any check or letter accompanying a check for payment of rent or other sums payable hereunder shall be deemed an accord and satisfaction. Landlord may accept the same without prejudice to Landlord's right to recover the balance of such rent or other sums or to pursue any other remedy. Notwithstanding any request or designation by Tenant, Landlord may apply any payment received from Tenant to any payment then due. No re-entry by Landlord, and no acceptance by Landlord of keys from Tenant, shall be considered an acceptance of a surrender of this Lease.

19.6 **Landlord 's Lien** . As security for the performance of Tenant **'** s obligations, Tenant grants to Landlord a lien (" **Landlord Lien** ") upon and a security interest in Tenant **'** s existing or hereafter acquired personal property, inventory, furniture, furnishings, fixtures, equipment, licenses, permits and all other tangible and intangible property, assets and accounts, and all additions, modifications, products and proceeds thereof, including, without limitation, such tangible property which has been used at the Premises, purchased for use at the Premises, located at any time in the Premises or used or to be used in connection with the business conducted or to be conducted in the Premises, whether or not the same may thereafter be removed from the Premises, and including, without limitation, all stock and partnership interests now or hereafter owned by Tenant, legally or beneficially, in any entity which manages, owns or operates the business to be conducted in or upon the Premises. The Landlord Lien shall be in addition to all rights of distraint available under applicable law. Notwithstanding the foregoing, Landlord **'** s lien shall automatically be subordinate to any lender who has a blanket lien on Tenant **'** s assets, and Landlord agrees to subordinate the Landlord Lien in favor of any of any future equipment and personal property lenders or lessors of Tenant pursuant to a subordination agreement reasonably acceptable to Landlord. In addition to the foregoing, Landlord agrees to enter into a **"** collateral access agreement **"** (or an agreement that gives such lender or lessor the right to enter into the Building and the Premises and remove Tenant **'** s property) reasonably acceptable to Landlord and provided that Tenant is a party to such agreement.

19.7 **Default Rate; Late Charges** .

(a) If Tenant fails to make any payment to any third party or to do any act herein required to be made or done by Tenant, then Landlord may, but shall not be required to, make such payment or do such act. The taking of such action by Landlord shall not be considered a cure of such default by Tenant or prevent Landlord from pursuing any remedy it is otherwise entitled to in connection with such default. If Landlord elects to make such payment or do such act, then all expenses incurred by Landlord, plus interest thereon at a rate (the " **Default Rate** ") equal to the rate per annum which is five (5) whole percentage points higher than the

prime rate published in the Money Rates section of *The Wall Street Journal* (or, if no such rate is published therein for any reason, then the prime rate as published in a comparable publication selected by Landlord), from the date incurred by Landlord to the date of payment thereof by Tenant, shall constitute additional rent due hereunder; provided, however, that nothing contained herein shall be construed as permitting Landlord to charge or receive interest in excess of the maximum rate then allowed by law.

(b) If Tenant fails to make any payment of Base Rent, additional rent or any other sum on or before the date such payment is due and payable (without regard to any grace period specified in Section 19.1), then Tenant shall pay to Landlord a late charge of five percent (5%) of the amount of such payment (" **Late Charge** "); provided however that so long as no Event of Default has occurred and is continuing, Landlord will waive the Late Charge (but not the imposition of the Default Rate thereon) with respect to the first instance of a late payment in a twelve (12) month period. In addition, such payment and such late fee shall bear interest at the Default Rate from the date such payment or late fee, respectively, became due to the date of payment thereof by Tenant; provided, however, that nothing contained herein shall be construed as permitting Landlord to charge or receive interest in excess of the maximum rate then allowed by law. Such late charge and interest shall constitute additional rent due hereunder without any notice or demand. Notwithstanding anything to the contrary, Landlord shall waive the late charge once in each Lease year, provided that such payment is made within the five (5) day period after receipt of Landlord's non-payment notice.

(c) If more than one natural person or entity shall constitute Tenant, then the liability of each such person or entity shall be joint and several. If Tenant is a general partnership or other entity the partners or members of which are subject to personal liability, then the liability of each such partner or member shall be joint and several. No waiver, release or modification of the obligations of any such person or entity shall affect the obligations of any other such person or entity.

ARTICLE XX

BANKRUPTCY

20.1 An **"** Event of Bankruptcy **"** is the occurrence with respect to any of Tenant or Guarantor of any of the following: (a) such person becoming insolvent, as that term is defined in Title 11 of the United States Code (the **"** Bankruptcy Code **"**) or under the insolvency laws of any state (the **"** Insolvency Requirements **"**); (b) appointment of a receiver or custodian for substantially all of the property of such person; (c) filing by such person of a voluntary petition under the provisions of the Bankruptcy Code or Insolvency Requirements; (d) filing of an involuntary petition against such person as the subject debtor under the Bankruptcy Code or Insolvency Requirements, which either (1) is not dismissed within ninety (90) days after filing, or (2) results in the issuance of an order for relief against the debtor; (e) such person making or consenting to an assignment for the benefit of creditors or a composition of creditors; or (f) the dissolution of Tenant or Guarantor not permitted under Section 7.2.

20.2 Upon occurrence of an Event of Bankruptcy, Landlord shall have all rights and remedies available pursuant to Article XIX; provided, however, that while a case (the **"** Case **"**) in which Tenant is the

subject debtor under the Bankruptcy Code is pending, Landlord's right to terminate this Lease shall be subject, to the extent required by the Bankruptcy Code, to any rights of Tenant or its trustee in bankruptcy (collectively, **"** Trustee **"**) to assume or assume and assign this Lease pursuant to the Bankruptcy Code. After the commencement of a Case: (i) Trustee shall perform all post-petition obligations of Tenant under this Lease; and (ii) if Landlord is entitled to damages (including, without limitation, unpaid rent) pursuant to the terms of this Lease, then all such damages shall be entitled to administrative expense priority pursuant to the Bankruptcy Code. Any person or entity to which this Lease is assigned pursuant to the Bankruptcy Code shall be deemed without further act or deed to have assumed all of the obligations arising under this Lease on and after the date of assignment, and any such assignee shall upon request execute and deliver to Landlord an instrument confirming such assumption. Trustee shall not have the right to assume or assume and assign this Lease unless Trustee promptly (a) cures all defaults under this Lease, (b) compensates Landlord for damages incurred as a result of such defaults, (c) provides adequate assurance of future performance on the part of Trustee as debtor in possession or Trustee's assignee, and (d) complies with all other requirements of the Bankruptcy Code. If Trustee fails to assume or assume and assign this Lease in accordance with the requirements of the Bankruptcy Code within sixty (60) days after the initiation of the Case, then Trustee shall be deemed to have rejected this Lease. If this Lease is rejected or deemed rejected, then Landlord shall have all rights and remedies available to it pursuant to Article XIX. Adequate assurance of future performance shall require, among other things, that the following minimum criteria be met: (1) Tenant's gross receipts in the ordinary course of business during the thirty (30) days preceding the Case must be greater than ten (10) times the next monthly installment of Base Rent and additional rent due; (2) Both the average and median of Tenant's monthly gross receipts in the ordinary course of business during the seven (7) months preceding the Case must be greater than the next monthly installment of Base Rent and additional rent due; (3) Trustee must pay its estimated pro-rata share of the cost of all services performed or provided by Landlord (whether directly or through agents or contractors and whether or not previously included as part of Base Rent) in advance of the performance or provision of such services; (4) Trustee must agree that Tenant's business shall be conducted in a first-class manner, and that no liquidating sale, auction or other non-first-class business operation shall be conducted in the Premises; (5) Trustee must agree that the use of the Premises as stated in this Lease shall remain unchanged and that no prohibited use shall be permitted; (6) Trustee must agree that the assumption or assumption and assignment of this Lease shall not violate or affect the rights of other tenants of the Building; (7) Trustee must pay at the time the next monthly installment of Base Rent is due, in addition to such installment, an amount equal to the monthly installments of Base Rent, and additional rent due for the next six (6) months thereafter, such amount to be held as a security deposit; (8) Trustee must agree to pay, at any time Landlord draws on such security deposit, the amount necessary to restore such security deposit to its original amount; (9) Trustee must comply with all duties and obligations of Tenant under this Lease; and (10) All assurances of future performance specified in the Bankruptcy Code must be provided.

ARTICLE XXI

SUBORDINATION

21.1 **Subordination** . Subject to the provisions of Section 21.4 (including and expressly conditioned upon Tenant **'** s receipt of an SNDA (as hereinafter defined) from the holder of a

superior mortgage and lessor of a superior lease substantially in the Required SNDA Form (as hereinafter defined)), this Lease, and all rights of Tenant hereunder, are and shall be subject and subordinate in all respects to all ground leases, overriding leases and underlying leases of the Land and/or the Building and/or the Premises now or hereafter existing and to all mortgages which may now or hereafter affect the Land, the Parking Lot and/or the Building and/or any of such leases, whether or not such mortgages shall also cover other lands and/or buildings, to each and every advance made or hereafter to be made under such mortgages, and to all renewals, modifications, replacements and extensions of such leases and such mortgages and spreaders and consolidations of such mortgages. Subject to the provisions of Section 21.4 (including and expressly conditioned upon Tenant ' s receipt of an SNDA from the holder of a superior mortgage and lessor of a superior lease substantially in the Required SNDA Form), this Section 21.1 shall be self - operative and no further instrument of subordination shall be required. In confirmation of such subordination, Tenant shall execute and deliver any instrument that Landlord, the lessor of any such lease or the holder of any such mortgage or any of their respective successors in interest may reasonably request to evidence such subordination (provided that such holder of a superior mortgage or lessor of a superior lease complies with Section 21.4 and provided further that any such instrument is substantially in the form of the Required SNDA Form) within twenty (20) days after such request. The leases to which this Lease is, at the time referred to, subject and subordinate pursuant to this Article are hereinafter sometimes referred to as " superior leases, " the mortgages to which this Lease is, at the time referred to, subject and subordinate are hereinafter sometimes referred to as " superior mortgages, " and the lessor of a superior lease or its successor in interest at the time referred to is sometimes hereinafter referred to as a " lessor. " Landlord represents that, there are no superior leases or " ground leases " in existence with respect to the Property.

21.2 **Notice to Superior Parties** . Subject to the terms of any SNDA in effect (provided the same in the Required SNDA Form), in the event of any act or omission of Landlord that would give Tenant the right, immediately or after lapse of a period of time, to cancel or terminate this Lease, Tenant shall not exercise such termination right (i) until it has given written notice of such act or omission or the accrual of such claim or right, to the holder of each superior mortgage and the lessor of each superior lease in each case whose name and address shall previously have been furnished to Tenant, and (ii) until a reasonable period (not to exceed thirty (30) days beyond the length of the period provided to Landlord hereunder or if no period is so provided, sixty (60) days) for remedying such act or omission shall have elapsed following the giving of such notice and following the time when such holder or lessor shall have become entitled under such superior mortgage or superior lease, as the case may be, to remedy the same, provided such holder or lessor shall with due diligence give Tenant written notice of intention to, and commence and continue to remedy such act or omission, plus such additional time as may reasonably be required to either (a) obtain possession and control of the Building and thereafter cure the breach or default with reasonable diligence and continuity or (b) obtain the appointment of a receiver and give such receiver a reasonable period of time in which to cure the default. This Section 21.2 shall not apply to Tenant's right to terminate the Lease pursuant to Article XVII (Damage or Destruction) or Article XVIII (Condemnation).

21.3 **Attornment** .

(a) Subject to the terms of any SNDA in effect if the lessor of a superior lease or the holder of a superior mortgage shall succeed to the rights of Landlord under this Lease, whether through possession or foreclosure action or delivery of a new lease or deed, or if a superior lease shall terminate or be terminated for any reason, then, at the election and upon demand of the party so succeeding to Landlord's rights, as the successor owner of the property of which the Premises is a part, or as the mortgagee in possession thereof, or otherwise (such party, owner or mortgagee being herein sometimes called the " **successor landlord** "), Tenant shall attorn to and recognize such successor landlord as Tenant's landlord under this Lease, and shall promptly execute and deliver any instrument that such successor landlord may reasonably request to evidence such attornment. Subject to the terms of any SNDA in effect, upon such attornment, this Lease shall continue in full force and effect as, or as if it were, a direct lease between the successor landlord and Tenant, upon all of the executory terms, conditions and covenants as are set forth in this Lease and shall be applicable after such attornment.

(b) The foregoing provisions shall inure to the benefit of any successor landlord, shall apply to the tenancy of Tenant notwithstanding that this Lease may terminate upon the termination of the superior lease, and shall be self-operative upon any such demand, without requiring any further instrument to give effect to said provisions. Subject to Section 4 , Tenant, however, upon demand of any successor landlord, agrees to execute, from time to time, an instrument in confirmation of the foregoing provisions, satisfactory to such successor landlord, in which Tenant shall acknowledge such attornment.

21.4 **Non-Disturbance** . Notwithstanding anything contained in this Article to the contrary, Tenant's subordination and attornment to any superior mortgage and superior lease as provided in this Article is expressly conditioned upon (1) simultaneously with the Effective Date, Landlord obtaining from the holder of any existing superior mortgage an executed and acknowledged non disturbance agreement substantially in the form annexed hereto as **Exhibit G** (a " **SNDA** " and the form, the " **Required SNDA Form** ") and (2) Landlord obtaining from any future lessor under a ground lease and/or future holder of a mortgagee, an SNDA substantially in the Required SNDA Form (or on such future lender's standard form, provided the terms are substantially consistent with the Required SNDA Form). Provided Landlord delivers such fully executed and acknowledged SNDA substantially in the Required SNDA Form, such agreement shall be executed by Tenant and returned to Landlord within fifteen (15) Business Days of Landlord's request therefor.

ARTICLE XXII

HOLDING OVER

22.1 Tenant acknowledges that it is extremely important that Landlord have substantial advance notice of the date on which Tenant will vacate the Premises, because Landlord will require an extensive period to locate a replacement tenant and because Landlord plans its entire leasing and renovation program for the Building in reliance on the Expiration Date. Tenant also acknowledges that if Tenant fails to surrender the Premises or any portion thereof at the expiration or earlier termination of the Lease Term, then it will be conclusively presumed that the value to Tenant of remaining in possession, and the loss that will be suffered by Landlord as a result thereof, far exceed the Base Rent and additional rent that would have been payable had

the Lease Term continued during such holdover period. Therefore, if Tenant (or anyone claiming through Tenant) does not immediately surrender the Premises or any portion thereof upon the expiration or earlier termination of the Lease Term, then the rent payable by Tenant hereunder shall be increased to equal: (1) one hundred fifty percent (150%) of the Base Rent that would have been payable pursuant to the provisions of this Lease if the Lease Term and continued during such holdover period for the first three (3) months of the holdover period, and (2) double the Base Rent that would have been payable pursuant to the provisions of this Lease if the Lease Term had continued during such holdover period thereafter. Such rent shall be computed by Landlord and paid by Tenant on a monthly basis and shall be payable on the first day of such holdover period and the first day of each calendar month thereafter during such holdover period until the Premises have been vacated. Notwithstanding any other provision of this Lease, Landlord's acceptance of such rent shall not in any manner adversely affect Landlord's other rights and remedies. Any such holdover shall be deemed to be a tenancy-at-sufferance and not a tenancy-at-will or tenancy from month-to-month. In no event shall any holdover be deemed a permitted extension or renewal of the Lease Term, and nothing contained herein shall be construed to constitute Landlord's consent to any holdover or to give Tenant any right with respect thereto.

ARTICLE XXIII

COVENANTS OF LANDLORD

23.1 Landlord covenants that it has the right to enter into this Lease, and that if Tenant shall perform timely all of its obligations hereunder, then, subject to the provisions of this Lease, Tenant shall during the Lease Term peaceably and quietly occupy and enjoy the full possession of the Premises without hindrance by Landlord or any party claiming through or under Landlord.

23.2 Landlord reserves the following rights: (a) to change the street address and name of the Building (provided that so long as Cohen Equities NY LLC (or any Affiliate thereof) controls the Landlord, the Building shall continue to be known a "7900 Harkins Road" (unless the address of the Building is changed, in which event the name may be changed to the new address) and at no time shall the name of the Building be changed to the name of a Competitor); (b) to change the arrangement and location of entrances, passageways, doors, doorways, corridors, stairs, toilets or other public parts of the Building (but not the Amenity Space or the Lobby); (c) to erect, use and maintain pipes, wires, structural supports, ducts and conduits in and through the Premises as may be necessary for Landlord to comply with its obligations under this Lease, to operate the Building and/or to exercise any of its rights hereunder, provided such equipment, pipes, ducts and conduits shall be installed in locations that do not materially adversely affect the layout or reduce the useable area of the Premises by more than a de minimis amount and such equipment, pipes, ducts and conduits shall either be concealed behind, beneath or within partitioning, columns, ceilings or floors located or to be located in the Premises, or completely furred at points immediately adjacent to partitioning, columns or ceilings located or to be located in the Premises (and Landlord shall use reasonable efforts to the extent practicable to minimize any inconvenience to Tenant in connection with the performance of such work); (d) to resubdivide the Land or to combine the Land with other lands after the construction of the Parking Structure, if and when such Parking Structure is constructed; (g) to construct improvements (including kiosks) on the Land and in the public and Building Common Areas; (h) to prohibit smoking in

the entire Building or portions thereof (including the Premises) and on the Land, so long as such prohibitions are in accordance with applicable Requirements; and (i) if any excavation or other substructure work shall be made or authorized to be made upon land adjacent to the Building or the Land, subject to Landlord not unreasonably interfering with the operation of Tenant's business in the Premises, to enter the Premises for the purpose of doing such work as is required to preserve the walls of the Building and to preserve the land from injury or damage and to support such walls and land by proper foundations. Landlord may exercise any or all of the foregoing rights without being deemed to be guilty of an eviction, actual or constructive, or a disturbance of Tenant's business or use or occupancy of the Premises.

ARTICLE XXIV

PARKING AND ACCESS EASEMENTS

24.1 During the Lease Term, subject to the terms of that certain Easement and Restrictive Covenant Agreement dated November 21, 2007 and recorded in Liber 28935, folio 226 in the Land Records of Prince George's County Maryland (as same may be amended from time to time, collectively, the " **Parking Easement** ") and that certain Declaration of Access Easement, dated August 22, 2002, and recorded in the Land Records of Prince George's County in Liber R.E.P. Book 16152, folio 644, as modified a certain Waiver Regarding Access Easement, dated November 21, 2007, and recorded in the Land Records of Prince George's County in Liber R.E.P. Book 28935, folio 247 (the " **Access Easement** "), copies of which is attached hereto as **Exhibit J** , Tenant shall have the non-exclusive use of the parking area under the Parking Easement, as such area may change or be modified under the Parking Easement (or the Parking Structure, if and when completed in accordance with the Parking Easement) serving the Building (either, the " **Parking Lot** ") for unreserved parking of standard-sized passenger automobiles for Tenant's Invitees and Permitted Occupants at no charge to Tenant, the Invitees or the Permitted Occupants. Prior to the Lease Commencement Date, Landlord shall install parking controls including automatic arms with un-manned payment and validation systems reasonably acceptable to Tenant. Tenant shall not separately assign, sublet or transfer any parking permits except to Invitees and Permitted Occupants and any attempted assignment, sublet, or transfer of such parking permits in violation of such prohibition shall be void.

24.2 Landlord represents to the best of its knowledge that there are no less than 1,069 striped parking spaces exclusive to the Building currently located in the Parking Lot and that when the Parking Structure is constructed and operational there will be no less than the maximum amount of parking spaces specified in Section 3.1(a) of the Parking Easement. In no event shall Landlord permit parties that are not related to tenants of the Building to use the Parking Lot other than for building management, visitors, vendors, Food Trucks, Permitted Occupants, service providers of the Building or as required by Legal Requirements (collectively, " **Permitees** "). So long as Tenant is the sole tenant in the Building, Tenant shall the right to use all of the Parking Lot (less any reasonable number of spaces reserved by Landlord for Permitees); provided if Tenant is not the sole tenant in the Building, then upon written notice to Tenant, Tenant shall have the right to use Tenant's Proportionate Share of the Parking Lot (and Tenant's Proportionate Share of the Parking Lot, together with any other proportionate shares' of other tenants of the Building shall be grossed up whenever the Building is not 100% occupied).

24.3 In the event the number of parking spaces in the Parking Lot or the Parking Structure at any time falls below 3.30 parking spaces per 1,000 RSF of the Premises (the " **Minimum Parking Amount** "), Landlord shall provide, at Landlord's sole cost and expense (subject to the provisions below should such costs cause a material adverse change to Landlord's financial condition), a reasonable parking alternative (a " **Reasonable Parking Alternative** ") to Tenant for the deficiency, reasonably acceptable to Tenant. Tenant will not be unreasonable in not accepting a proposed Reasonable Parking Alternative if:

(a) the proposed location is not a secure well lit lot;

(b) the proposed location is more than five (5) miles by road to the Building;

(c) if the proposed location is more than .3 miles from the Building, Landlord does not provide either a shuttle service or valet service reasonably acceptable to Tenant.

Any shuttle service provided by Landlord must be provided at such time and frequency as is acceptable to Tenant taking into consideration the working hours of its employees so as to not unreasonably inconvenience its employees. In the event that cost to be paid by Landlord to provide such shuttle or valet services (but not the alternative lots), is so excessive as to cause a material adverse change to Landlord's financial condition, Landlord and Tenant will discuss Tenant's sharing a portion of the excessive costs of such services or finding an alternative service (but not location) that is less excessively costly.

24.4 Should the parties be unable to agree on a Reasonable Alternate Parking Solution (after discussing possible alternatives) at least ninety (90) days prior to the loss of parking becoming physically effective then either party may submit such dispute to a court of competent jurisdiction. Notwithstanding anything to the contrary, Landlord shall have the right to re-stripe the Parking Lot if such restriping will yield additional parking spaces and would be in compliance with Requirements; provided that Landlord shall consult with Tenant and consider Tenant's reasonable input prior to performing any restriping. No such restriping shall adversely affect Tenant or reduce the parking spaces from the number that existed immediately prior to such restriping.

24.5 So long as Tenant occupies more than fifty percent (50%) of the Building, Tenant shall have the right, at its sole cost and expense, to offer valet parking service to its employees Invitees and to designate a portion of the Parking Lot (or Parking Structure) for the exclusive use of such valet service, subject to Landlord's reasonable approval as to the size and location of such portion. So long as Tenant occupies more than fifty percent (50%) of the Building, Landlord shall not offer any other tenants in the Building any "reserved" or priority parking spaces in the Parking Lot or Parking Structure.

24.6 Except for the restrictions below in this Section 24.6 and in Section 24.7 below, no other provision of this Lease shall (i) prohibit Landlord from entering into any amendment or modification contemplated by the terms of the Parking Easement, (ii) prohibit Landlord from cooperating with the owner(s) of the Outparcels (as defined in the Parking Easement) with respect to any matter under the Parking Easement, including, without limitation, the construction

and conveyance of the Parking Structure, or (iii) be a representation or warranty that the Outparcel Owner(s) are prohibited from entering into any amendments or modifications to the Parking Easement; provided however that Landlord agrees that it shall not waive any provision of the Parking Easement or execute any amendment or modification to the Parking Easement in any manner that would reduce the number of parking spaces available to the Building in the Parking Lot from 1,069 or change the location of the Parking Structure except as currently described in the Parking Easement; nor shall Landlord, as successor to the Parcel C Owner consent to "Permitted Additional Parking" without consulting with Tenant; provided however that such restrictions shall not act to, or require Landlord to default or breach any of its obligations under the Parking Easement. Further, Landlord shall use all commercially reasonable efforts permitted under the Parking Easement to obtain the maximum possible number of parking spaces in the Parking Lot (or in the Parking Structure if it comes into existence) at no additional cost to Landlord for use by the Building, including asserting the right to 1,305 parking spaces under the circumstances where such amount becomes possible. In the event that additional spaces are made available to the Building, Tenant shall be entitled to Tenant's Proportionate Share of any such additional spaces.

24.7 Landlord agrees that is shall not modify, amend or waive any provisions of the Access Easement without Tenant's consent which shall not be unreasonably withheld provided that Tenant shall be not to be deemed to be unreasonable from withholding its consent to any modification of the Access Easement or to any elimination of the Common Access Drives (as defined in the Access Easement) which would reduce the number of access points to Harkins Road and Ellin Road or which otherwise impede or interfere with convenient vehicular and pedestrian access to and from the Building and the Parking Lot or Parking Structure and Harkins Road and Ellin Road or would otherwise adversely impact Tenant.

ARTICLE XXV

GENERAL PROVISIONS

25.1 **No Representations .** Tenant acknowledges that neither Landlord nor any broker, agent or employee of Landlord has made any representation or promise with respect to the Premises or the Building except as herein expressly set forth or the Work Agreement, and no right, privilege, easement or license is being acquired by Tenant except as herein expressly set forth.

25.2 **No Joint Venture** . Nothing contained in this Lease shall be construed as creating any relationship between Landlord and Tenant other than that of landlord and tenant. Tenant shall not use the name of the Building for any purpose other than as the address of the business to be conducted by Tenant in the Premises, use the name of the Building as Tenant's business address after Tenant vacates the Premises.

25.3 **Broker .** Landlord and Tenant each warrants to the other that in connection with this Lease it has not employed or dealt with any broker, agent or finder, other than the Broker(s). Landlord acknowledges that Landlord shall pay any commission or fee due to the Broker(s) pursuant to a separate agreement. Pursuant to such separate agreement, a fee will be paid to Tenant's Broker, as more particularly set forth in such agreement (including that Tenant's Broker shall be paid fifty percent (50%) upon full execution of this Lease Agreement (provided that the

cash security deposit is first paid or the Letter of Credit is first provided, as applicable) and fifty percent (50%) upon Tenant accepting full possession of each respective portion of the Premises over the course of the Lease Term; that no renewal commission shall be payable; and that any abatements shall be deducted from the rent that the commission payable to Tenant's Broker is based upon). Tenant shall indemnify and hold Landlord harmless from and against any claim for brokerage or other commissions asserted by any broker, agent or finder employed by Tenant, with whom Tenant has dealt, or asserts any claim any claim for brokerage or other commissions by, through or under Tenant, other than the Broker(s).

25.4 **Estoppel** .

(a) From time to time (but subject to Section 25.4(b) hereof) upon not less than twenty (20) days' prior written notice, time being of the essence, Tenant and each subtenant, assignee, licensee or concessionaire or occupant of Tenant shall execute, acknowledge and deliver to Landlord and/or any other person or entity designated by Landlord, a written statement certifying: (a) 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 stating the modifications); (b) the dates to which the rent and any other charges have been paid; (c) whether or not to Tenant's knowledge after reasonable inquiry, Landlord is in default in the performance of any obligation, and if so, specifying the nature of such default; (d) whether or not, to Tenant's knowledge after reasonable inquiry, if Tenant has any defenses or claims against Landlord and/or any claims of offset against Landlord, and if so, specifying the nature of such defenses or claims; (e) the address to which notices to Tenant are to be sent; (f) that this Lease is subject and subordinate to all mortgages encumbering the Building or the Land; (g) that Tenant has accepted the Premises and that all work thereto has been completed (or if such work has not been completed, specifying the incomplete work); and (h) such other matters as Landlord may reasonably request regarding the Building or this Lease. From time to time (but subject to Section 25.4(b) hereof) upon not less than twenty (20) days' prior written notice, time being of the essence, Guarantor shall (and Tenant shall cause Guarantor) to execute, acknowledge and deliver to Landlord and/or any other person or entity designated by Landlord, a written statement certifying: (a) that the Guaranty is unmodified and in full force and effect; (b) whether or not, to Tenant's knowledge after reasonable inquiry, if Guarantor has any defenses or claims against Landlord and/or any claims of offset against Landlord, and if so, specifying the nature of such defenses or claims; (c) the address to which notices to Tenant are to be sent; and (d) such other matters as Landlord may reasonably request regarding the Building or this Lease. Any such statement may be relied upon by any owner of the Building or the Land, any prospective purchaser of the Building or the Land, any holder or prospective holder of a mortgage or any other person or entity. In the event that Tenant or Guarantor fails to timely delivery an estoppel hereunder, each Tenant and Guarantor appoints Landlord as Tenant's attorney-in-fact (which appointment is coupled with an interest) to execute such estoppel on Tenant's behalf.

(b) The parties agree that requests for a statement pursuant to Section 25.4(a) shall not be made more frequently than twice in any twelve (12) month period provided that in connection with a financing or sale of the Building or any interest therein (a " **Capital Transaction** ") such requests can be made an additional two (2) times in any twelve (12) month period (for a maximum of four (4) times in such twelve month period). Notwithstanding the

foregoing, during the continuation of an Event of Default, Landlord may request such statements on a monthly basis.

(c) From time to time upon not less than twenty (20) days' prior written notice, Landlord shall execute, acknowledge and deliver to Tenant a written statement certifying: (a) 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 stating the modifications); (b) the dates to which the rent and any other charges have been paid; (c) whether or not to Landlord's actual knowledge, Tenant is in default in the performance of any obligation, and if so, specifying the nature of such default; (d) the address to which notices to Tenant are to be sent; and (e) such other matters as Tenant may reasonably request regarding the Building or this Lease. Any such statement may be relied upon by Tenant or any of Tenant's lenders.

25.5 **Fire Stairs** . Subject to the provisions of this Lease and applicable Requirements, Tenant shall have the non-exclusive right to use the Building's fire stairs for walking between its contiguous full floors in order to obtain access to the Premises. In using said stairs, Tenant shall comply with the terms of this Lease as well as any applicable Requirements. Tenant, at its sole cost and expense, shall have the right to upgrade lighting and finishes in the fire stairway subject to Landlord's prior approval, which approval shall not be unreasonably withheld, delayed or conditioned. Landlord shall maintain the fire stair doors and ensure compliance of the fire stairs with applicable Requirements at Landlord's cost and expense (which shall be part of Operating Expenses). Tenant shall have the right, at Tenant's sole cost and expense, to install security access system between the fire stairs and any Tenant-exclusive floors in the Building, provided that Tenant obtains any necessary approvals, and operates and maintains such security system, in accordance with applicable Requirements.

25.6 **WAIVER OF JURY TRIAL; SERVICE OF PROCESS VENUE** . LANDLORD, TENANT, AND ALL GENERAL PARTNERS EACH WAIVES TRIAL BY JURY IN ANY ACTION, PROCEEDING, CLAIM OR COUNTERCLAIM BROUGHT IN CONNECTION WITH ANY MATTER ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS LEASE, THE RELATIONSHIP OF LANDLORD AND TENANT HEREUNDER, TENANT'S USE OR OCCUPANCY OF THE PREMISES, AND/OR ANY CLAIM OF INJURY OR DAMAGE. TENANT CONSENTS TO SERVICE OF PROCESS AND ANY PLEADING RELATING TO ANY SUCH ACTION AT THE PREMISES; LANDLORD AND TENANT EACH WAIVES ANY OBJECTION TO THE VENUE OF ANY ACTION FILED IN ANY COURT SITUATED IN THE JURISDICTION IN WHICH THE BUILDING IS LOCATED, AND WAIVES ANY RIGHT, CLAIM OR POWER, UNDER THE DOCTRINE OF FORUM NON CONVENIENS OR OTHERWISE, TO TRANSFER ANY SUCH ACTION TO ANY OTHER COURT.

25.7 **Notices** . All notices or other communications required under this Lease shall be in writing and shall be deemed duly given and received when delivered in person (with receipt therefor), on the next Business Day after deposit with a recognized overnight delivery service, or on the second day after being sent by certified or registered mail, return receipt requested, postage prepaid, to the following addresses: (a) if to Landlord, at each of the Landlord Notice Addresses specified in Article I , with a copy to McCandlish Lillard, 11350 Random Hills Road, Suite 500, Fairfax, Virginia 22030, Attention: C. Vincent Leon-Guerrero, Esq.; (b) if to Tenant, at the

Tenant Notice Address specified in Article I. Either party may change its address for the giving of notices by notice given in accordance with this Section. If Landlord or the holder of any mortgage notifies Tenant that a copy of any notice to Landlord shall be sent to such holder at a specified address, then Tenant shall send (in the manner specified in this Section and at the same time such notice is sent to Landlord) a copy of each such notice to such holder, and no such notice shall be considered duly sent unless such copy is so sent to such holder. Any such holder shall have the rights set forth in Section 21.4. Any cure of Landlord's default by such holder shall be treated as performance by Landlord.

25.8 **Severance**. Each provision of this Lease shall be valid and enforceable to the fullest extent permitted by law. If any provision of this Lease or the application thereof to any person or circumstance shall to any extent be invalid or unenforceable, then such provision shall be deemed to be replaced by the valid and enforceable provision most substantively similar to such invalid or unenforceable provision, and the remainder of this Lease and the application of such provision to persons or circumstances other than those as to which it is invalid or unenforceable shall not be affected thereby. Nothing contained in this Lease shall be construed as permitting Landlord to charge or receive interest in excess of the maximum rate allowed by law.

25.9 **General Rules of Interpretation**. Feminine, masculine or neuter pronouns shall be substituted for those of another form, and the plural or singular shall be substituted for the other number, in any place in which the context may require such substitution.

25.10 **Successors and Assigns**. The provisions of this Lease shall be binding upon and inure to the benefit of the parties and each of their respective representatives, successors and assigns, subject to the provisions herein restricting assignment or subletting.

25.11 **Entire Agreement**. This Lease and the Transfer Agreement contain and embody the entire agreement of the parties hereto and supersede all prior agreements, negotiations, letters of intent, proposals, representations, warranties, understandings, suggestions and discussions, whether written or oral, between the parties hereto. Any representation, inducement, warranty, understanding or agreement that is not expressly set forth in this Lease shall be of no force or effect. This Lease may be modified or changed in any manner only by an instrument signed by both parties. This Lease includes and incorporates all Exhibits attached hereto.

25.12 **Successor Landlord**. Landlord shall have the right to freely assign this Lease (and all of its rights and obligations hereunder) and the Guaranty at any time without notice to or consent of Tenant. In the event of any transfer or transfers of Landlord's interest in the Premises, the transferor and its successors and assigns shall automatically shall be relieved of any and all obligations on the part of Landlord accruing from and after such assignment or transfer. Should Landlord effectuate a transfer of any kind, Tenant shall be required to cooperate in all necessary coordination with such transferee, including providing a replacement Letter of Credit.

25.13 **Jurisdiction**. This Lease shall be governed by the Requirements of the jurisdiction in which the Building is located. There shall be no presumption that this Lease be construed more strictly against the party who itself or through its agent prepared it, it being agreed that all parties hereto have participated in the preparation of this Lease and that each party had the opportunity to consult legal counsel before the execution of this Lease.

25.14 **Headings** . Headings are used for convenience and shall not be considered when construing this Lease.

25.15 **No Offer** . The submission of an unsigned copy of this document to Tenant shall not constitute an offer or option to lease the Premises. This Lease shall become effective and binding only upon execution and delivery by both Landlord and Tenant.

25.16 **Time of Essence** . Time is of the essence with respect to each of Tenant's and Landlord's obligations hereunder.

25.17 **Counterpart** . This Lease may be executed in multiple counterparts, each of which shall be deemed an original and all of which together constitute one and the same document. Faxed signatures shall have the same binding effect as original signatures.

25.18 **Memorandum of Lease** . Neither Landlord nor Tenant shall record this Lease or any memorandum thereof.

25.19 **Survival** . Tenant's liabilities and obligations with respect to the period prior to the expiration or earlier termination of the Lease Term shall survive such expiration or earlier termination.

25.20 **No Representation** . Landlord's review, approval and consent powers (including the right to review plans and specifications) are for its benefit only. Such review, approval or consent (or conditions imposed in connection therewith) shall be deemed not to constitute a representation concerning legality, safety or any other matter.

25.21 **Surrender** . At the expiration or earlier termination of the Lease Term, Tenant shall deliver to Landlord all keys and security cards to the Building and the Premises, whether such keys were furnished by Landlord or otherwise procured by Tenant, and shall inform Landlord of the combination of each lock, safe and vault, if any, in the Premises.

25.22 **Duly Executed** . Each of Landlord and Tenant and the person executing and delivering this Lease on Landlord's or Tenant's behalf represents and warrants that such person is duly authorized to so act; that each of Landlord and Tenant, as applicable, is duly organized, is qualified to do business in the jurisdiction in which the Building is located, is in good standing under the Requirements of the state of its organization and the Requirements of the jurisdiction in which the Building is located, and has the power and authority to enter into this Lease; and that all action required to authorize Landlord and Tenant, as applicable, and such person to enter into this Lease has been duly taken.

25.23 **OFAC** . Each of Landlord and Tenant, each as to itself, hereby represents its compliance with all applicable anti-money laundering laws, including, without limitation, the USA Patriot Act, and the laws administered by the United States Treasury Department's Office of Foreign Assets Control, including, without limitation, Executive Order 13224 (" **Executive Order** "). Each of Landlord and Tenant further represents (i) that it is not, and it is not owned or controlled directly or indirectly by any person or entity, on the SDN List published by the United States Treasury Department's Office of Foreign Assets Control and (ii) that it is not a person otherwise identified by government or legal authority as a person with whom a U.S. Person is prohibited

from transacting business. As of the date hereof, a list of such designations and the text of the Executive Order are published under the internet website address www.ustreas.gov/offices/enforcement/ofac.

25.24 **Guarantor 's Financials** .

(a) Within ten (10) Business Days after Landlord's request Tenant shall deliver to Landlord Guarantor's most recent audited financial statements. Landlord agrees to hold the financial statements and other such additional information subject to customary confidentiality conditions. Tenant warrants that all such financial information heretofore and hereafter submitted is and shall be correct and complete.

(b) Notwithstanding the foregoing, so long as Guarantor's audited annual financial statements are publically filed, Tenant shall have no obligation to comply with the requirements of Section 25.24(a) .

25.25 **Force Majeure Event** . If, by reason of: (i) strikes or other labor troubles, not caused by an act or omission of the party claiming the benefit of such delay (a " **Claimant** ") or any affiliate of such Claimant or any contractors hired by such Claimant or an affiliate of such Claimant (a " **Claimant Act** ") (ii) governmental prohibitions, preemptions, restrictions or other controls, (iii) any Requirement compliance which is not required because of Claimant Act (but not normal and customary delays of governmental or regulatory authorities in issuing permits and certificates, inspecting work or closing permits), (iv) shortages of fuel, supplies or labor not caused by a Claimant Act, (v) acts of God or the elements (such as tornado, hurricane, flood, snow, etc. and abnormally inclement weather for the season), (vi) civil commotion, acts of war, terrorism or the public enemy, (vii) fire or other casualty or catastrophe, (viii) accidents not caused by a Claimant Act, or (ix) any other cause beyond Claimant's reasonable control but specifically excluding, however, (A) weather conditions that are reasonably foreseeable as to frequency, duration and severity in their season of occurrence, (B) financial inability, or (C) reasonably foreseeable field conditions (each of the events described in the preceding clauses being herein referred to as an " **Force Majeure Event** ," and, collectively, " **Force Majeure Events** "), the observance, performance or compliance with, any non-monetary obligation (i.e., any obligation other than the obligation to pay a sum of money) on the part of Claimant to observe, perform or comply with, is prevented or delayed, including the inability to supply, provide or furnish, or a delay in supplying, providing or furnishing, any service expressly or implicitly to be supplied, provided or furnished, or the inability to make, or a delay in making, any alteration, decoration, installation, improvement, repair, addition or other physical change in, to or about the Premises or any other portion of the Building, or the inability to supply, or a delay in supplying, any equipment, fixtures or other materials, then, for so long as the Claimant shall be unable to observe, perform or comply with, or shall be delayed in the observance, performance or compliance with, any such non-monetary obligation, this Lease and Tenant's obligation to pay rent hereunder and Landlord's or Tenant's, as applicable, obligation to observe, perform and comply with all of the other obligations on their respective parts to observe, perform or comply with, shall in no way be affected, impaired or excused, and, except as otherwise expressly provided to the contrary in this Lease, the Claimant's obligation to observe, perform or comply with any such non-monetary obligation shall be excused for the period during which the Force Majeure Event prevents or delays such observance, performance or compliance. For purposes of

this Lease, Force Majeure Events shall be deemed to exist only after the date that the applicable Claimant notifies the other party in writing of such delay. After such initial notification, the Claimant shall promptly after request of the other party (made no more often than once every ten (10) days) notify the other party of the status of such delay. Each party shall use all commercially reasonable efforts to mitigate the delay caused by any event of Force Majeure Event to the extent reasonably commercially practicable, but, without the necessity of employing overtime labor unless such party elects to do so within its sole discretion or unless the other party elects to pay for such overtime labor. Each party shall provide the other with notice of any occurrence of Force Majeure Event as soon as reasonably practicable as a condition to such party claiming any extension of time under this Lease (including without limitation under the Work Agreement) due to Force Majeure Event. A Force Majeure Event shall be deemed not to occur until the Claimant delivers the other party notice of the Force Majeure Event. Under no circumstances shall the non-payment of money or a failure attributable to a lack of funds be deemed to be (or to have caused) an event of Force Majeure Event.

25.26 **Contests** .

(a) Tenant may, at its expense contest, by appropriate proceedings prosecuted diligently and in good faith, the validity, or applicability to the Premises, of any Requirement with which Tenant is obligated to comply pursuant to the provisions of this Lease, and Landlord shall cooperate with Tenant in such proceedings, provided that:

(i) Landlord shall not be subject to criminal penalty or to prosecution for a crime nor shall the Premises or any part thereof be subject to being condemned or vacated, by reason of non-compliance or otherwise by reason of such contest;

(ii) Tenant shall defend, indemnify and hold harmless Landlord from and against any and all actions, proceedings, claims, deficiencies, judgments, suits, losses, obligations, penalties, liabilities, damages, costs and expenses (including court costs and reasonable legal fees and disbursements) which Landlord shall suffer by reason of such non-compliance or contest;

(iii) such non-compliance or contest shall not constitute or result in any violation of any superior lease or superior mortgage, or if such superior lease and/or superior mortgage shall permit such non-compliance or contest on condition of the taking of action or furnishing of security by Landlord, such action shall be taken and such security shall be furnished at the expense of Tenant; and

(iv) Tenant shall keep Landlord advised as to the status of such proceedings.

(b) Without limiting the application of subsection (a)(i) above thereto, Landlord shall be deemed subject to prosecution for a crime within the meaning of said subsection, if Landlord, or any officer, director, partner, member, principal or employee of Landlord individually, is charged with a crime of any kind or degree whatever, whether by service of a summons or otherwise, unless such charge is withdrawn before Landlord or such

officer, director, partner, member, principal or employee (as the case may be) is required to plead or answer thereto.

ARTICLE XXVI

RENEWAL

26.1 **Renewal Term** . So long as (i) there exists no uncured Event of Default by Tenant, and (ii) this Lease is still in full force and effect, Tenant shall have the right, exercisable at Tenant's option, to renew the term of this Lease for two (2) successive terms of five (5) years for all of the then Premises demised under this Lease as of the exercise of the applicable option or less than all such space provided that Tenant renews at least fifty percent (50%) of the Premises originally demised by this Lease (including any Must Take Expansion Premises). If exercised, and if the conditions applicable thereto have been satisfied, the first renewal term of this Lease (the " **First Renewal Term** ") shall commence immediately following the end of the initial Lease Term and the second renewal term of this Lease (the " **Second Renewal Term** ") shall commence immediately following the end of the First Renewal Term. (Collectively the First and Second Renewal Terms shall be referred to herein as the " **Renewal Terms** ".) The rights of renewal herein granted to Tenant are personal to Named Tenant and any Threshold Successor of Named Tenant (and may not be exercised by any other transferee, assignee or subtenant of original Tenant) and shall be subject to, and shall be exercised in accordance with, the following terms and conditions:

(a) Tenant shall exercise an option for a Renewal Term by providing Landlord irrevocable written notice no later than eighteen (18) months prior to the expiration of the then-current term of this Lease that it desires to exercise its right of renewal for a Renewal Term (the " **Renewal Notice** ") for the portion of the Premises as described in the Renewal Notice (the " **Renewed Premises** ").

(b) All terms and conditions of this Lease shall remain in full force and effect during the Renewal Terms, except that commencing on the first (1 st) day of such Renewal Term, the Per RSF Base Rent for Renewed Premises for such Renewal Period shall be equal to the greater of (1) the Per RSF Base Rent in effect for the prior Lease Year, as escalated, and (2) ninety-five percent (95%) of the Fair Market Rent for the RSF of the Renewed Premises, as determined in accordance with the process set forth in Section 26.2 below (the " **Renewal Term Base Rent** "); provided however that in no event shall the Per RSF Base Rent for a Renewal Term be less than the Per RSF Base Rent in effect for the prior Lease Year, as escalated and no Per RSF Base Rent shall be allocated to the Excluded RSF.

(c) The Per RSF Base Rent, as adjusted at the commencement of the Renewal Terms, shall continue to escalate annually on the first day of each Lease Year, in accordance with Section 4.3 of this Lease.

(d) If there exists an uncured Event of Default under this Lease on the date Tenant sends a Renewal Notice or at any time thereafter until a Renewal Term is to commence, at Landlord's election, such Renewal Term shall not commence.

(e) Tenant's right of renewal with respect to a Renewal Term shall lapse and be of no further force or effect if Tenant fails to timely provide a Renewal Notice. If Tenant's right of renewal with respect to a Renewal Term lapses for any reason, then Tenant's right of renewal with respect to any subsequent Renewal Term shall automatically lapse and be of no further force or effect.

(f) An amendment confirming exercise of each applicable Renewal Term and specifying the Per RSF Base Rent adjustment for such Renewal Term shall be executed by Landlord and Tenant within thirty (30) days after the determination of the Per RSF Base Rent for such Renewal Term, after conclusion of the process set forth in Section 26.2 .

26.2 **Fair Market Rent** . Tenant and Landlord agree to negotiate for thirty (30) days after receipt by Landlord of the Renewal Notice for the applicable Renewal Term (the " **Negotiating Period** ") to determine Fair Market Rent for purposes of this Section 26.2 based on the following factors: the stated or quoted Per RSF Base Rent (base rent, including renewal free rent/abatement) that would be received by landlords renting space of quality, size and location comparable to the Premises in comparable buildings in the Landover/Lanham submarket for a five (5) year renewal term, adjusted to reflect the additional rent provided herein, and taking into account all other relevant factors (the " **Factors** "). If the parties are unable to agree on Fair Market Rent for purposes of this Section 26.2 during the Negotiating Period, then the Fair Market Rent shall be determined as follows:

(a) Within ten (10) days of the Negotiating Period, Landlord and Tenant shall each appoint an appraiser (as defined below) to determine the fair market rent. Each appraiser shall deliver to Landlord and Tenant its written report conforming to USPAP (Uniform Standards of Professional Appraisal Practice) setting forth its determination of fair market rent based on the Factors (respectively, " **Landlord's FMV** " and " **Tenant's FMV** "). If the fair market rent of the two (2) appraisers are within five percent (5%) of one another, the "Fair Market Rent" under this Section 26.2 shall be the average of the two (2) appraised values. If the fair market rents are not within five percent (5%) of one another, then the two (2) appraisers shall choose an independent third appraiser within ten (10) days after delivery of their respective reports. If the two (2) appraisers cannot agree on the appointment of the third appraiser within such time, the parties shall thereupon make application to the American Institute of Real Estate Appraisers to appoint a third appraiser. If the American Institute of Real Estate Appraisers does not act within thirty (30) days, the parties shall make application to the Circuit Court for Prince George's County, Maryland to appoint such third appraiser. The third appraiser (" **Third Appraiser** ") shall be directed to issue a written appraisal conforming to USPAP the fair market rent of the Premises based on the Factors. The final "Fair Market Rent" under this Section 26.2 shall be the either Landlord's FMV or Tenant's FMV, as selected by the Third Appraiser.

(b) All appraisers shall be members of the American Institute of Real Estate Appraisers (MAI) who are familiar with appraisal procedures and have at least ten (10) years' experience in the Prince George's County Maryland commercial real estate rental market.

(c) Each party shall bear the costs of its own appraiser. The cost of the Third Appraiser, if incurred, shall be borne equally by the parties.

(d) Landlord and Tenant shall each act in a commercially reasonable fashion throughout the process of determining the Fair Market Rent.

(e) Upon the determination of the Fair Market Rent as provided above, the Fair Market Rent for the applicable Renewal Term shall be adjusted as provided in Section 26.1(a) .

(f) Upon the determination of the Renewal Term Base Rent for an applicable Renewal Term, Landlord and Tenant will enter into a confirmation certificate setting for the Renewal Term Base Rent for the applicable Renewal Term.

ARTICLE XXVII

ROOF RIGHTS AND ROOF TERRACE

27.1 **Roof Access** . Subject to the terms and conditions of this Lease and the Roof Access Agreement attached hereto as **Exhibit H** , during the Lease Term Tenant, at Tenant's sole cost and expense, but without any additional rental therefor, shall have continuous access to and use of the Building roof, subject to local governmental codes and other Requirements, for the installation and maintenance of its communication and HVAC equipment.

27.2 **Roof Terrace** . Tenant shall have sole and exclusive use of the roof top "penthouse" and the exterior portions of the roof; provided that Landlord shall have the right to use and access the Roof Terrace to perform or exercise any of its rights under this Lease. Subject to Landlord's reasonable approval (not to be unreasonably withheld, conditioned or delayed), and; provided that both Landlord and Tenant reasonably agree that the same is feasible and will not cause any material damage or degradation of value to the Building or Building Systems, Tenant shall have the right to install a deck on the roof of the Building (the " **Roof Terrace** "), at Tenant's sole cost and expense, in a mutually agreeable location and based on mutually agreeable dimensions for the deck. At Tenant's request, Landlord agrees to contract for the installation and maintenance of the Roof Terrace; provided that Landlord and Tenant mutually agree on the terms and procedures for payment of the same by Tenant. The construction of the Roof Terrace shall be governed by Article IX (Alterations) hereof; provided that at all times all work on the roof shall be controlled and supervised by Landlord, at Tenant's cost and expense. In no event shall Tenant make or cause to be made any penetration through the roof without the prior written reasonable consent of Landlord. Should Landlord consent to Tenant's penetration through the roof, Tenant shall use Landlord's roofing contractor to repair or re-flash Tenant's roofing penetrations. Tenant shall deliver to Landlord a certification letter from such roofing contractor stating that all roof repairs and penetrations have been made in compliance with the roof warranty. Tenant's right to install the Roof Terrace shall be subject to applicable Requirements, as well as Landlord's review and reasonable approval of Tenant's plans and specifications therefor. Following construction of the Roof Terrace, provided the rentable square footage of the Premises does not fall below the rentable square footage of the Initial Premises as of the Effective Date (in which event, at Landlord's election, such right shall be non-exclusive, in common with other tenants of the Building), Tenant shall have the exclusive right to use the Roof Terrace, in accordance with all rules and regulations adopted by Landlord, in its reasonable discretion, in connection therewith. Tenant shall indemnify and hold Landlord harmless from any claims, injury or damage that results from Tenant's installation and use of the Roof Terrace, however, Tenant shall either carry

or reimburse Landlord for the appropriate insurance addressing such rooftop installation. Notwithstanding anything to the contrary contained herein, Tenant shall not be required to remove the Roof Terrace at the expiration or earlier termination of the Lease Term, provided such Roof Terrace has been maintained by Tenant and is in good condition, reasonable wear and tear accepted.

ARTICLE XXVIII

AMENITY SPACE

28.1 **Amenity Space** .

(a) Landlord shall allocate a portion of the first floor of the Building as the Amenity Space, which shall be comprised of: (x) the area of the existing kitchen area located in the Amenity Space, together with the existing space adjacent thereto, as an food hall/deli, serving hot and cold food, having a general store style concept (the " **Food Hall/Deli** " and such area, the " **Food Service Area** "), to the extent permitted by applicable Requirements; and (y) the existing auditorium located on the Amenity Space for auditorium use (the " **Auditorium** "). Tenant shall have the right, at Tenant's sole cost and expense, to install audio-visual and/or sound equipment in the Auditorium, provided that Landlord shall have no liability for any damage or loss to any such equipment.

(b) The costs of operating and maintaining the Food Hall/Deli once it is constructed by Landlord as required in Section 2.3 shall be the sole responsibility of Landlord (or the third party operator(s) that Landlord engages to operate the Food Hall/Deli (the " **Operator** ")). Landlord shall be responsible for engaging the Operator to operate the Food Hall/Deli, subject to Tenant's reasonable approval; Tenant shall be responsible for engaging third party operators for all other amenities within the Amenity Space. Landlord acknowledges that the food offerings, quality and experience are important to the Tenant and its employees. Landlord will use commercially reasonable efforts to ensure that the Operator takes Tenant's needs and preferences into account in its culinary offerings and that Tenant has reasonable influence over such culinary offerings. Landlord shall endeavor to have the Operator commence operations within the Food Hall/Deli upon completion of the Food Hall/Deli, subject to extension attributable to Tenant Delay and Unavoidable Delay (as limited by Section 3.3(f)). There shall be no obligation for the Landlord to maintain or subsidize the operation of the Food Hall/Deli if Tenant and its employees/visitors do not generate sufficient demand for such business to be reasonably viable (meaning such operations will not economically "breakeven") in the Building; provided however if Landlord intends to cease operations in the Food Hall/Deli pursuant to the foregoing, Landlord shall give Tenant at least thirty (30) days prior notice and Tenant shall have the right, at its sole cost and expense, to operate, or to engage an operator to operate, the Food Hall/Deli for the benefit of Tenant and any other tenants in the Building. Following development/renovation thereof in accordance with Sections 2.3 and 9.1 herein above, other tenants, Tenant and only its employees who maintain offices in the Building shall be entitled to use the Amenity Space, on a non-exclusive basis, in accordance with reasonable rules and regulations related thereto as provided by Landlord from time to time, during the 2U Building Hours on Business Days.

Notwithstanding the foregoing, Tenant may arrange for food trucks (" **Food Trucks** ") to operate in proximity to the Building, provided that:

1. The Food Trucks do not locate within or otherwise interfere with parking, fire lanes or other areas reasonably designated by Landlord;

2. The Food Trucks be subject to any applicable municipal and other regulatory approvals and shall operate in compliance with all applicable restrictions and rules;

3. The Food Trucks shall be subject to any other reasonable rules and regulations imposed by Landlord; and

4. The Food Trucks shall be subject to compliance with any other applicable third party restrictions.

(c) All costs of operating and maintaining the Auditorium (including, any subsequent staffing as necessary to effectively operate the Auditorium) to the extent not attributable to use by a specific tenant, including Tenant, may be included in Operating Expenses to the extent such costs are not excluded from Operating Expenses (in accordance with the terms hereof).

28.2 **Additional Amenities** . In addition to the aforesaid amenities, Landlord shall allow Tenant, at Tenant's expense, to install amenities for Tenant's employees, of a nature and in an area which shall be acceptable by Landlord, within the Premises. Landlord shall have the right to approve (acting reasonably) Tenant's proposed amenities. In addition, notwithstanding anything to the contrary contained herein, Landlord, at Landlord's sole discretion, shall have the right to request that Tenant restore said amenity area(s) to the same condition at the time of delivery of said area(s) at the time of approval of proposed amenities, prior to the expiration or earlier termination of this Lease.

ARTICLE XXIX

EXPANSION RIGHTS

29.1 **Right of First Refusal** .

(a) Tenant shall have the following expansion rights with respect to the full third (3 rd) floor, and the full fourth (4 th) floor of the Building (each of the third (3 rd) floor and the fourth (4 th) floor, an " **Expansion Premises** "). Commencing on the Effective Date, Tenant may, at any time and from time to time, lease the ROFR Premises pursuant to the ROFR Procedure (as defined below).

(b) The term " **ROFR Procedure** " shall mean:

1. Landlord shall notify Tenant once Landlord and a bona fide prospect (the " **Prospect** ") have had ongoing substantive discussions (i.e., as evidenced by Landlord's receipt of a bona fide and substantive written counter proposal from the

Prospect that is acceptable to Landlord) (the " **Offer** "), to lease all or any portion of any Expansion Premises; provided that the Offer (as described in the Offer, the " **ROFR Premises** ") must at a minimum contain the following terms in clear and unambiguous language: base rent, rent concessions, work allowance, condition of the ROFR Premises upon delivery by Landlord, Landlord's work;

2. All other terms and conditions (except for the Lease Term, rent and the additional rent, which shall be as set forth below) with respect to the ROFR Premises shall be equal to the terms set forth in the Offer;

3. For a period of ten (10) Business Days after receipt of any such notice from Landlord, Tenant shall have the right to elect to lease the ROFR Premises from Landlord upon the terms and conditions set forth in the Offer, commencing on the date the ROFR Premises is available as set forth in the terms and conditions set forth in the Offer. In the event Tenant agrees to lease the ROFR Premises within such ten (10) Business Day period, for an additional five (5) Business Day period, Landlord and Tenant shall negotiate and execute an amendment to this Lease indicating the location and configuration of the ROFR Premises. The RSF of full floors and the increase to Tenant's Proportionate Share shall be as set forth in the Measurement Schedule and the RSF of partial floors and the increase to Tenant's Proportionate Share shall be determined in the process described in the definition of "RSF." Landlord shall promptly notify Tenant in writing of the measurement, and verification by Tenant's architect shall be completed within ten (10) days after Landlord's notice. If Tenant rejects the ROFR Premises or the five (5) Business Day period expires, Landlord may lease the ROFR Premises to the Prospect;

4. In no event shall Tenant have the right to lease less than all of the ROFR Premises designated by Landlord;

5. Tenant shall be obligated to pay additional rent with respect to the ROFR Premises in accordance with the provisions of Article V of this Lease;

6. The term of the lease for the ROFR Premises shall be coterminous with the Lease Term;

7. No abatements, allowances or other concessions shall apply with respect to any ROFR Premises except as otherwise set forth in the Offer;

8. The rent for the ROFR Premises shall be the same as the Per RSF Base Rent then in effect for the Premises; and

9. If the Prospect does not enter into a lease for the ROFR Premises within one hundred eighty (180) days of the Offer, if the Offer is modified in any material respect or if a new Offer is tendered to Landlord, then Landlord shall follow the ROFR Procedure with respect to such modified or new Offer.

(c) If an Event of Default by Tenant has occurred and is continuing beyond any applicable notice and cure period, on the date Landlord's notice is given to Tenant by

Landlord or at any time thereafter but prior to the commencement of the term any expansion space and if such Event of Default is not cured within the applicable notice and cure period, if any, provided in this Lease, then, at Landlord's option, Tenant's right to lease the ROFR Premises shall lapse and be of no further force or effect.

ARTICLE XXX

METROPLEX II ASSUMPTION

30.1 **Metroplex Lease** .

(a) Guarantor currently leases 65,681 square feet (" **Metroplex Premises** ") under a lease for certain premises at 8201 Corporate Drive, Landover, MD that expires July 31, 2018 (" **Metroplex Lease** "). The current rent per square foot under the Metroplex Lease ranges from $24.83 per rentable square foot to $27.46 per rentable square foot. Guarantor represents and warrants to Landlord that as of the date hereof (a) Guarantor has delivered to Landlord a true, correct and complete copy of the Metroplex Lease, including all addenda, amendments or modifications thereto and all such amendments or modifications are listed on **Exhibit M** attached hereto, (b) the Metroplex Lease is in full force and effect and there are no defaults beyond applicable notice and cure periods that have occurred thereunder that remain uncured, (c) the Metroplex Lease has not been modified or amended, except by any amendments referenced above, (d) the Metroplex Lease comprises the entire agreement between Guarantor and Metroplex regarding the Metroplex Premises, (e) the Metroplex Premises contains approximately 65,681 rentable square feet of office space, (f) the Metroplex Lease expires on July 31, 2018, and (g) the base rental obligations due for the remaining term of the Metroplex Lease (as of the date hereof) are set forth on **Exhibit M** attached hereto (" **Metroplex Rent** "). Guarantor shall indemnify, hold harmless and defend Landlord from and against any and all claims arising out of a breach of the representations and warranties set forth in this Article XXX .

(b) Landlord represents that it has thoroughly reviewed the Metroplex Lease and understands its obligations as a subtenant thereunder.

30.2 **Takeover**

(a) Simultaneously with the execution of this Lease, Landlord, as subtenant, and Guarantor, as sublandlord, will enter into sublease of the Metroplex Lease substantially in the form of **Exhibit P** (the " **Takeover Sublease** ") provided that, as provided in the Takeover Sublease, the effectiveness of the Takeover Sublease shall be subject to the parties obtaining the consent of the landlord under the Metroplex Lease (the " **Metroplex Landlord** ") to the Takeover Sublease. Each of Landlord and Guarantor shall use all commercially reasonable efforts to obtain the consent of the Metroplex Landlord to the Takeover Sublease. Landlord shall provide to Metroplex Landlord information and materials (i.e., financial statements) it reasonably requests in connection with its consideration of the Takeover Sublease and Landlord. If requested by the Metroplex Landlord, Landlord shall provide a reasonable cash security to Metroplex Landlord, provided that the Metroplex Cap (as such term is defined below) shall be reduced by the amount of such cash security until such cash security is either returned to Landlord or Metroplex

Landlord draws on such cash security as the result of a default by Landlord under the Metroplex Lease, at which time, such amount shall be added back to the Metroplex Cap.

(b) This Lease and Tenant's obligations hereunder shall not be contingent on the Metroplex Landlord agreeing to or consenting to the Takeover Sublease. However, if Guarantor and Landlord are not able to obtain the consent of the Metroplex Landlord to the Takeover Sublease for reasons other than Landlord's failure to use commercially reasonable efforts to obtain the consent of the Metroplex Landlord, as provided above, within one hundred twenty (120) days after submission of the Takeover Sublease, together with submission of all additional items pursuant to Section 30.2(a) above, if requested, then (x) the Takeover Sublease shall be void and of no further force and effect (in accordance with its terms), however, pursuant to this Lease, Landlord shall remain obligated to make timely monthly payments of the Metroplex Rent up to a cap of $2,850,000.00 (the " **Metroplex Cap** ") directly to Guarantor as set forth in the Takeover Sublease, as and when payable under the Metroplex Lease, which payments shall commence on the Lease Commencement Date, and (y) Guarantor and Landlord shall use commercially reasonable efforts to find a third-party subtenant acceptable to Guarantor and Metroplex Landlord, each in their sole discretion (" **New Subtenant** "). If Guarantor and Landlord are able to find such a New Subtenant, and such New Subtenant enters into a sublease of the Metroplex Lease with Guarantor, the actual payments by New Subtenant under such sublease attributable to Metroplex Rent shall be paid to Guarantor by such New Subtenant, and Landlord's monthly payment of the Metroplex Rent shall be reduced by the monthly payment of Metroplex Rent actually received by Guarantor from such New Subtenant.

(c) In connection with an sale of the Building by Landlord, (i) if the Takeover Sublease is still in effect having been consented to by Metroplex Landlord, provided that Landlord has not subleased or licensed the Metroplex Premises to another unaffiliated occupant, then the Takeover Sublease shall terminate simultaneously with the sale of the Building and Landlord shall prepay in one lump sum the remaining balance of the Metroplex Rent payable by Landlord up to the Metroplex Cap or (ii) if the Takeover Sublease has been voided because Metroplex Landlord did not consent to the Takeover Sublease, then Landlord shall have the option, upon the sale of the Building, to prepay in one lump sum the remaining balance of the Metroplex Rent payable by Landlord up to the Metroplex Cap.

30.3 **Default** . The parties agree that a default by Landlord or Guarantor under the Takeover Sublease shall not be a default by Landlord or Tenant hereunder and any claims or judgments in favor of either Landlord or Guarantor under the Takeover Sublease shall be pursued separately and neither party shall be entitled to set-off any such claims or judgments against such party's obligations or liabilities under this Lease or the Guaranty.

ARTICLE XXXI

NON-COMPETITION

31.1 **Non - Competition** .

(a) Landlord covenants that during the Lease Term, Landlord shall not lease any space in the Building, or grant any signage rights in or on the Building to any of the companies lists on **Exhibit L** (and any successors or assigns thereto) (each such company, a " **Competitor** " and such restrictions, the " **Competitor Restrictions** "). So long as any of the Competitor Restrictions are in effect, Landlord shall (i) obtain in any lease or occupancy agreement in the Building entered into after the Effective Date a covenant not to assign, sublease, license or otherwise transfer the same to any Competitor in violation of this paragraph, (ii) promptly remove any signage in violation of the Competitor Restriction, and (iii) use its commercially reasonable efforts (including diligently seeking summary dispossess or eviction proceedings or seeking other injunctive relief) to enforce the Competitor Restrictions under any such lease entered into after the Effective Date (collectively, " **Competitor Covenants** ").

(b) If Landlord breaches a Competitive Restriction or fails to enforce a Competitor Covenant or Tenant reasonably believes that Landlord will breach a Competitor Restriction or not enforce a Competitor Covenant, Tenant shall have the right to exercise any and all rights and all remedies at law or in equity, against Landlord, and at Tenant's option, the applicable tenant or proposed tenant (or subtenant or proposed subtenant) to enjoin such breach or anticipated breach. In addition to the foregoing (and not in limitation thereof), Tenant shall have the right to bring an action in Landlord's name, at Landlord's cost and expense, to enforce the Competitor Restrictions against any tenant or occupant of the Building who may be in violation of such Competitor Restrictions as incorporated into its lease or occupancy agreement, provided that Tenant first obtains a final judgment concluding that Landlord failed to act in accordance with its obligations under this Section and thereafter Landlord fails to take and pursue such actions as are necessary to correct Landlord's failure within fifteen (15) days of such determination and continuously prosecute such actions to completion.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, Landlord, Tenant and Guarantor have executed this Lease under seal as of the day and year first above written.

WITNESS/ATTEST:

Name:

LANDLORD:

LANHAM OFFICE 2015 LLC , a Delaware limited liability company

By: (SEAL)
Name:
Title:

WITNESS/ATTEST:

Name:

TENANT:

2U HARKINS ROAD LLC , a Delaware limited liability company
By: [SEAL]
Name:
Title:

GUARANTOR:

WITNESS/ATTEST:

Guarantor is executing this Lease solely for the purpose of agreeing to be bound by the provisions of Article XXX hereof.

2U, INC. , a Delaware corporation

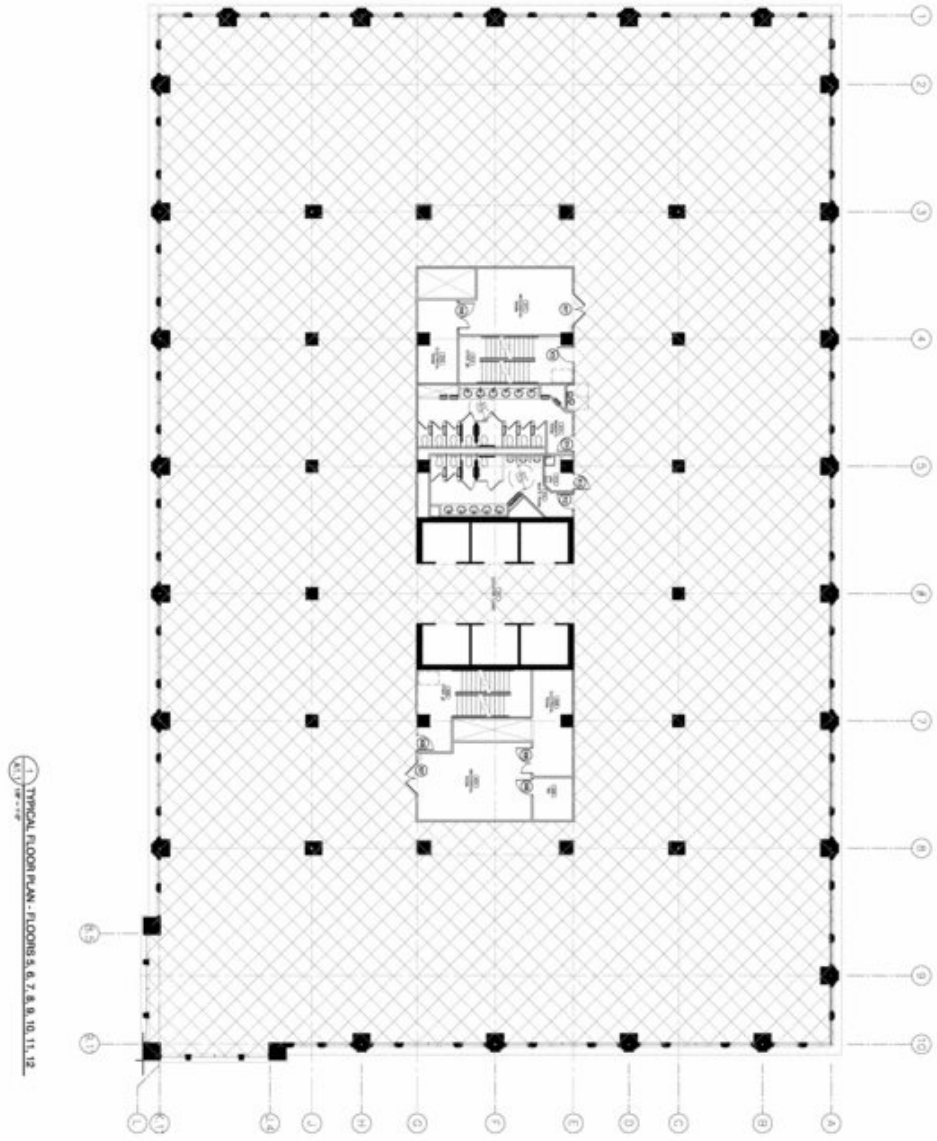
By: [SEAL]
Name:
Title:

Name:
Title:

EXHIBIT A

PLAN SHOWING PREMISES

Attached.



1 TYPICAL FLOOR PLAN - FLOORS 5, 6, 7, 8, 9, 10, 11, 12

7900 HARKINS RD
LANHAM, MD 20706

TYP. FLOOR PLAN

A1.1

SAA ARCHITECTURE, LLC

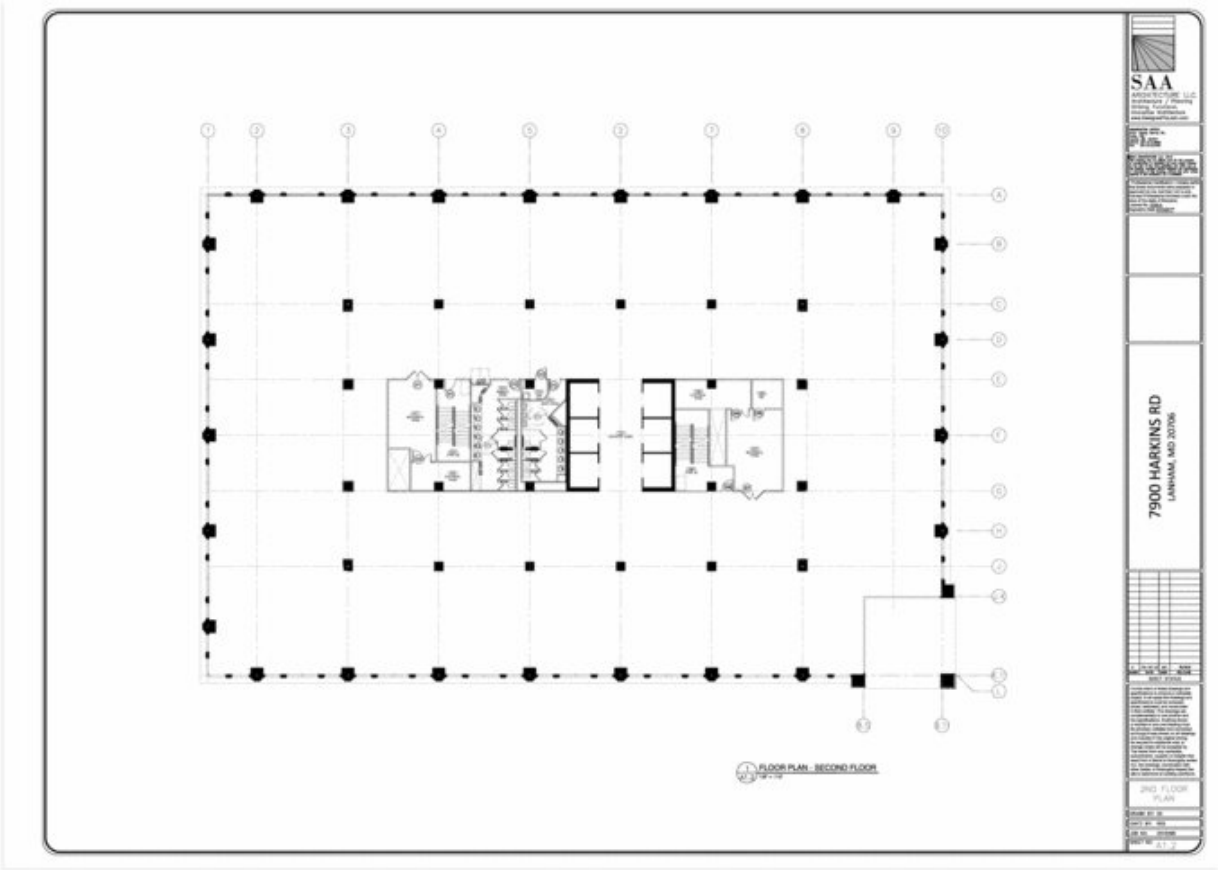


EXHIBIT B

WORK AGREEMENT

EXHIBIT B

WORK AGREEMENT

This Exhibit (" **Work Agreement** ") is attached to and made a part of that certain Lease Agreement dated as of December 23, 2015 (the " **Lease** "), by and between LANHAM OFFICE 2015 LLC, a Delaware limited liability company (" **Landlord** "), and 2U HARKINS ROAD LLC, a Delaware limited liability company (" **Tenant** "). Terms used but not defined in this Work Agreement shall have the meaning ascribed to them in the Lease.

1.1 **Definitions** .

" **2nd Floor Build-Out Work** " is defined in Section 1.3(d) below.

" **2nd Floor Plan** " is defined in Section 1.5(d) below.

" **AAA** " means the American Arbitration Association and any successors thereto.

" **Amenity Space Plan** " is defined in Section 1.5(d) below.

" **Amenity Space Renovations Work** " is defined in Section 1.3(e) below.

" **Anticipated Date of Substantial Completion** " is defined in Section 1.9(a) below.

" **Approved Change Order** " is defined in Section 1.5(f) below.

" **Approved Architect** " means an architect of good reputation and experience with projects similar to the project contemplated by this Work Agreement and the Lease, fully insured and bondable, licensed as an architect in Prince George's County, Maryland, and reasonably acceptable to Landlord and Tenant. Both Landlord and Tenant agree that Heather Nevin of Gensler satisfies the above criteria and is designated an Approved Architect. So long as no Event of Default has occurred and is then continuing, Landlord shall not replace Heather Neven (and Gensler) as the Approved Architect for the Lobby Renovations Work or the Amenity Space Renovations Work without Tenant's consent, to be withheld in Tenant's sole discretion but Landlord may replace Heather Nevin and Gensler at any time with respect to the Demolition Work and the Base Building Condition Work.

" **Approved Examiner** " means a certified public accountant or other qualified professional who is a member of a reputable, independent certified public accounting firm or other reputable, qualified professional services firm having at least fifty (50) accounting professionals who are certified public accountants and who is mutually acceptable to Landlord and Tenant; provided that if Landlord and Tenant are unable to agree upon an Approved Examiner then Landlord and Tenant shall each appoint a certified public accountant and each appointee shall appoint a single certified public accountant or other qualified professional meeting the qualifications set forth above to be the Approved Examiner. Each of Landlord and Tenant shall bear the costs of its appointee hereunder and share equally the costs of the Approved Examiner.

" **Approved GC Contract** " is defined in Section 1.6(b)(i) below.

" **Approved General Contractor** " means a general contractor of good reputation and experience with projects similar to the project contemplated by this Work Agreement and the Lease, fully insured and bondable, licensed as a general contractor in Prince George's County, Maryland, and

reasonably acceptable to Landlord and Tenant. Both Landlord and Tenant agree that James G. Davis Construction Corporation (" **Davis** ") satisfies the above criteria and is designated an Approved General Contractor. So long as no Event of Default has occurred and is then continuing, Landlord shall not replace Davis as the Approved General Contractor for the Lobby Renovation or the Amenity Space Renovations Work without Tenant's consent, to be withheld in Tenant's sole discretion but Landlord may replace Davis at any time with respect to the Demolition Work and the Base Building Condition Work.

" **Base Building Cap** " shall have the meaning set forth in Schedule I .

" **Base Building Condition Cap Work** " shall have the meaning set forth in Schedule I.

" **Base Building Condition Delivery Date** " has the meaning set forth in Section 1.13(b)(ii) below.

" **Base Building Condition Target Delivery Date** " has the meaning set forth in Section 1.13(b)(ii) below.

" **Base Building Condition Work** " shall have the meaning set forth in Section 1.3(a)(i) below.

" **Base Building Condition Cap Work** " shall have the meaning set forth in Schedule I.

" **Change Order Request** " is defined in Section 1.5(f) below.

" **Completion Mechanism** " is defined in Section 1.13(a)(iii) below.

" **Cosmetic Lien Waiver Cap** " is defined in Section 1.6(c) below.

" **Cosmetic Lien Waiver Cap Adjustment Date** " is defined in Section 1.6(c) below.

" **CPI** " is defined in Section 1.6(c) below.

" **Delivery** " is defined in Schedule I .

" **Delivery Date** " means, individually and collectively, each Base Building Condition Delivery Date, the Demolition Work Delivery Date and Final Block Delivery Date.

" **Delivery Block** " means either or both of the First Delivery Block and the Final Delivery Block.

" **Demolition Work** " is defined in Section 1.13(a)(ii) below.

" **Demolition Work Commencement Date** " is defined in Section 1.13(a)(ii) below.

"Demolition Work Target Delivery Date" is defined in Section 1.13(a)(iii) below

"Demolition Work Delivery Date" is defined in Section 1.13(a)(iii) below.

" **Demolition Plan** " is defined in Section 1.13(a)(i) below.

" **Engineers** " is defined in Section 1.5(a)(i) below.

" **Final Delivery Block** " means floors 2 and 8 of the Initial Premises.

" **Final Plans** " or " **Final Plan** " is defined in Section 1.5(c) below.

" **First Delivery Block** " means floors 9, 10, 11 and 12 of the Initial Premises.

" **Final Target Delivery Day** " has the meaning set forth in the Lease.

" **Initial Build-Out Work** " is defined in Section 1.3(b) below.

" **Initial Build-Out Plan** " is defined in Section 1.5(d) below.

" **Initial Demolition Plan** " is defined in Section 1.13(a)(i) below.

" **Initial Punch List** " is defined in Section 1.9(b) below.

" **Inspection Date** " is defined in Section 1.9(b) below.

" **KGO** " is defined in Section 1.6(a) below.

" **Landlord** " is defined in the Preamble.

" **Landlord Delay** " or " **Landlord's Delay** " is defined in Section 1.12(a) below.

" **Landlord Target Delivery Date** " is defined in Section 1.13(e)(i) below.

" **Landlord Missed Target Delivery Date** " is defined in Section 1.13(e)(i) below.

" **Landlord's Delivery Notice** " is defined in Section 1.9(a) below.

" **Landlord's Initial Work** " is defined in Section 1.3(a)(i) below.

" **Landlord's Notice Recipient** " is defined in Section 1.2(b) below.

" **Landlord's Representative** " is defined in Section 1.2(b) below.

" **Landlord's Work** ", means collectively, the Demolition Work, the Base Building Condition Work, the Base Building Condition Cap Work, the Lobby Renovations Work and the Amenity Space Renovations Work; and each are a separate " **Component of Landlord's Work** ".

" **Lease** " is defined in the Preamble.

" **Lobby** " shall mean the lobby of the Building.

" **Lobby Renovations Work** " is defined in Section 1.3(c) below.

" **Lobby Renovations Plan** " is defined in Section 1.5(d) below.

" **Periodic Payment** " is defined in Section 1.3(h)(ii) below.

" **Plans** " or " **Plan** " is defined in Section 1.5(b)(i) below.

" **Punch List** " is defined in Section 1.9(b) below.

" **Required Delivery Condition** " means, (A) with respect to the Initial Premises (other than the 2 nd Floor Premises), Landlord's Initial Work (exclusive of the Base Building Condition Cap Work) is substantially complete (and with respect to the Demolition Work, in accordance with the Demolition Plan) for the Initial Premises (exclusive of the 2 nd Floor Premises) and the Initial Premises is vacant and broom clean, (B) with respect to the 2 nd Floor Premises, Landlord's Initial Work (exclusive of the Base Building Condition Cap Work) is substantially complete in accordance with the Demolition Plan for the 2 nd Floor Premises and the 2 nd Floor Premises is vacant and broom clean, (C) with respect to the Lobby, the Lobby Renovations Work is substantially complete in accordance with the Lobby Renovations Plan, (D) with respect to the Amenity Space, the Amenity Space Renovations Work is substantially complete in accordance with the Amenity Space Plan, and (E) with respect to any Must Take Expansion Premises, the Demolition Work is substantially complete in accordance with the Demolition Plan for such Must Take Expansion Premises, the Base Building Condition Work is complete for such Must Take Expansion Premises and such Must Take Expansion Premises is vacant and broom clean.

"Target Delivery Date " means, individually and collectively, the Demolition Work Target Delivery Date, the Demolition Work Commencement Date, the Base Building Condition Target Delivery Date, Final Target Delivery Date and with respect to the Must Take Expansion Premises, the earlier of the Intended Early Must Take Possession Date or the Stated Must Take Commencement Date.

" **Tenant** " is defined in the Preamble.

" **Tenant Delay** " or " **Tenant's Delay** " is defined in Section 1.11(a) below.

" **Tenant Missed Target Delivery Date** " is defined in Section 1.13(e)(i) below.

" **Tenant Target Delivery Date** " is defined in Section 1.13(e)(i) below.

" **Tenant's Notice Recipient** " is defined in Section 1.2(a) below.

" **Tenant's Representative** " is defined in Section 1.2(a) below.

" **Tenant's Request** " is defined in Section 1.3(h)(ii) below.

" **Tenant's Work** " means collectively, the Initial Build-Out Work, the 2 nd Floor Build-Out Work and any Subsequent Build-Out Work.

" **Tenant's Work Allowance** " means, collectively, the Initial Build-Out Allowance, the 2 nd Floor Build-Out Allowance; the Amenity Build-out Allowance, the Lobby Renovations Allowance and the Must Take Allowance.

" **Tenant's Work Allowance Conditions** " is defined in Section 1.3(h)(ii) below.

" **Unavoidable Delays** " shall mean, collectively, any delays caused by Force Majeure Events or delays caused by repair and restoration obligations pursuant to either Article XVII of the Lease (Damage or Destruction) or Article XVIII of the Lease (Condemnation).

" **Walk-Through** " is defined in Section 1.9(b) below.

1.2 **Authorized Representatives** .

(a) Tenant's Authorized Representative . Tenant designates Eric Thorpe and Dave Leimenstoll (" **Tenant ' s Authorized Representative** ") as the persons individually authorized to make all decisions, give all authorizations, and initial all plans, drawings, change orders and approvals on behalf of

Tenant pursuant to this Work Agreement. Landlord shall not be obligated to respond to or act upon any such matter unless authorized in writing to do so by Tenant's Representative. Tenant may change the individuals designated as Tenant's Representative (permanently or temporarily, e.g., during vacation periods for the person then acting as Tenant's Representative) on not less than two (2) Business Days prior written notice to Landlord (which notice shall specifically state whether such designation is temporary or permanent, and if temporary, the period for which such temporary designation is effective). Approval or consent by the Tenant's Representative (including by any person temporarily designated as Tenant's Representative pursuant to the preceding sentence for the period such temporary designation is so effective) is deemed to be approval or consent by Tenant under the Lease for the purposes of this Work Agreement. Tenant's Representative may designate other persons (" **Tenant** ' **s Notice Recipient** ") for purposes of receipt of notices and submissions under this Work Agreement on not less than ten (10) Business Days' written notice to Landlord, which notice shall contain a phone number and e-mail address for such persons. The Tenant's Notice Recipient shall have no authority to act on behalf of Tenant, but notices to Tenant's Representative under this Work Agreement shall be sent with a copy to the Tenant's Notice Recipient. Tenant may change the individuals designated as Tenant's Notice Recipient on not less than two (2) Business Days' prior written notice to Landlord.

(b) Landlord's Authorized Representative . Landlord designates Meir Cohen and Jane Luger (" **Landlord** ' **s Authorized Representative** ") as the persons individually authorized to make all decisions, give all authorizations, and initial all plans, drawings, change orders and approvals on behalf of Landlord pursuant to this Work Agreement. Tenant shall not be obligated to respond to or act upon any such matter unless authorized in writing to do so by Landlord's Representative. Landlord may change the individuals designated as Landlord's Representative (permanently or temporarily, e.g., during vacation periods for the person then acting as Landlord's Representative) on not less than two (2) Business Days prior written notice to Tenant (which notice shall specifically state whether such designation is temporary or permanent, and if temporary, the period for which such temporary designation is effective). Approval or consent by the Landlord's Representative (including by any person temporarily designated as Landlord's Representative pursuant to the preceding sentence for the period such temporary designation is so effective) is deemed to be approval or consent by Landlord under the Lease for the purposes of this Work Agreement. Landlord's Representative may designate other persons (" **Landlord** ' **s Notice Recipient** ") for purposes of receipt of notices and submissions under this Work Agreement by at least ten (10) Business Days' written notice to Tenant, which notice shall contain a phone number and e-mail address for such persons. The Landlord's Notice Recipient shall have no authority to act on behalf of Landlord, but notices to Landlord's Representative under this Work Agreement shall be sent with a copy to the Landlord's Notice Recipient. Landlord may change the individuals designated as Landlord's Notice Recipient on not less than two (2) Business Days' prior written notice to Tenant.

1.3 **Landlord's Work and Tenant's Work** .

(a) Landlord's Initial Work .

(i) Landlord, utilizing an Approved General Contractor, shall perform (i) all Demolition Work for the Premises (including the Must Take Expansion Premises) pursuant the Demolition Plan and (ii) all construction required to conform the Premises and the Building to the Base Building Condition described on Schedule I (the " **Base Building Condition Work** " together with Demolition Work but excluding the Base Building Condition Cap Work, collectively, " **Landlord's Initial Work** "). As set forth on Schedule I, the Base Building Condition Cap Work is subject to the Base Building Cap.

(ii) Landlord's Initial Work and the Base Building Condition Cap Work shall be performed and completed by Landlord at Landlord's sole cost and expense; provided that with

respect to the Base Building Condition Cap Work, Landlord shall not be required to expend more than the Base Building Cap. For the avoidance of doubt, the Base Building Cap shall apply to all the Base Building Condition Cap Work, including, without limitation, such work to be performed to the Initial Premises and the Must Take Expansion Premises.

(b) Initial Premises Build-Out Work . Promptly upon Landlord's completion of Landlord's Initial Work for the Initial Premises and Tenant's finalization of the Initial Build-Out Plan as provided below, Tenant shall, utilizing the services of an Approved General Contractor and under the supervision of an Approved Architect, perform the build-out of all leasehold improvements within the Initial Premises in accordance with the Initial Build-Out Plan (the " **Initial Build - Out Work** ") and the terms of this Work Agreement and shall substantially complete the same on or before the applicable Tenant's Completion Date (as set forth in Section 2.2(d) of the Lease) it being recognized that the timing of Tenant's Completion Date shall not affect the Lease Commencement Date under the Lease.

(c) Lobby Renovations Work . Promptly upon Landlord's completion of Landlord's Initial Work for the Lobby (if any) and the mutual finalization of the Lobby Renovations Plan as provided below, Landlord shall, utilizing the services of an Approved General Contractor and under the supervision of an Approved Architect, perform the renovation of the Lobby (the " **Lobby Renovations Work** ") in accordance with Section 2.4 of the Lease and this Work Agreement.

(d) 2 nd Floor Premises . Promptly upon Landlord's completion of Landlord's Initial Work for the 2 nd Floor Premises and the finalization of the 2 nd Floor Plan as provided below, Tenant shall, utilizing an Approved General Contractor and under the supervision of an Approved Architect, perform the build-out of the 2 nd Floor Premises (the " **2 nd Floor Build - Out Work** ") in accordance with the terms of Section 2.5 of the Lease and this Work Agreement.

(e) Amenity Space . Promptly upon Landlord's completion of Landlord's Initial Work for the Amenity Space (if any) and the mutual finalization of the Amenity Space Plan as provided below, Landlord shall, utilizing an Approved General Contractor and under the supervision of an Approved Architect, perform the development or renovation, as applicable, of the Amenity Space (the " **Amenity Space Renovations Work** ") in accordance with the terms of Section 2.3 of the Lease and this Work Agreement.

(f) Base Building Condition Cap Work . Landlord shall (to the extent applicable) utilizing an Approved General Contractor and under the supervision of an Approved Architect, substantially complete the Base Building Condition Cap Work in accordance with the terms of Section 2.2 of the Lease and this Work Agreement.

(g) Must Take Expansion Premises . Subject to the terms of Schedule I hereof, Landlord shall, utilizing an Approved General Contractor and under the supervision of an Approved Architect, perform all construction required to conform the applicable Must Take Expansion Premises to the condition described on Schedule I in accordance with the terms of Section 2.6 of the Lease and this Work Agreement (and to the extent applicable, subject to the Base Building Cap).

(h) Funding of Tenant's Work .

(i) Landlord agrees to pay to Tenant, in accordance with, and subject to, the provisions of this Section 1.3(h) , an amount not to exceed Tenant's Work Allowance.

(ii) Subject to the provisions of this Section, Landlord hereby agrees to make periodic payments of portions of the Tenant's Work Allowance to Tenant as Tenant's Work

progresses, in accordance with the terms and conditions hereinafter set forth (the " **Tenant's Work Allowance Conditions** "). Tenant shall submit to Landlord from time to time, but not more
often than once per month, requisitions (each such requisition being herein referred to as a " **Tenant's Request** ") for such periodic payments (each, a " **Periodic Payment** ") with respect to the portion of the Tenant's Work performed subsequent to the immediately preceding Tenant's Request, if any, the form of which Tenant's Request shall be AIA G702/703, or otherwise as reasonably designated by Landlord, together with the following:

(A) copies of bills or paid receipted invoices from the contractors and subcontractors for portions of Tenant's Work performed through the date of such Tenant's Request, and from the materialmen and suppliers for the materials and supplies supplied through the date of such Tenant's Request;

(B) a certificate from Tenant or Tenant's architect that such portion of the Tenant's Work has been completed substantially in accordance with the Tenant's Plans and revisions thereto theretofore approved by Landlord (to the extent that such approval is required); and

(C) lien waivers (which may be conditional with respect to amounts payable under the requisition in question) from the general contractor(s) and/or construction manager, and/or each direct contractor, subcontractor, materialman and supplier (other than subcontractors, materialman and suppliers performing work or supplying materials with a value of less than the Cosmetic Lien Waiver Cap under one contract, unless and except to the extent Tenant obtains partial lien waivers from the same) of (i) Tenant, (ii) its general contractor(s) or (iii) its construction manager, to the extent of the work performed and materials and supplies supplied, as applicable, through the date of such Tenant's Request (to the extent not already provided to Landlord).

(iii) Except to the extent previously submitted to Landlord pursuant to this Section 1.3(h) , within a reasonable time after the completion of the Tenant's Work, Tenant shall deliver to Landlord the following items:

(A) copies of bills or paid receipted invoices from the contractors and subcontractors who performed the Tenant's Work and from the materialmen and suppliers who supplied the materials and supplies for the Tenant's Work;

(B) a certificate from Tenant or Tenant's architect that all Tenant's Work has been substantially completed substantially in accordance with the Tenant's Plans and revisions thereto theretofore approved by Landlord (to the extent such approval is required); and

(C) final lien waivers (which may be conditional with respect to amounts payable under the final requisition in question) from the construction manager and each contractor, subcontractor, materialman and supplier to the extent of the amount paid to such parties (other than subcontractors, materialman and suppliers performing work or supplying materials with a value of less than Cosmetic Lien Waiver Cap under one contract, unless and except to the extent Tenant obtains final lien waivers from the same).

(iv) Provided the Tenant's Work Allowance Conditions are then being satisfied, within fifteen (15) days after Landlord's receipt of Tenant's Request together with the accompanying documentation, Landlord shall pay to Tenant a Periodic Payment in the amount of

one hundred percent (100%) of the total allowable costs (including soft costs, subject to the limitations herein contained) set forth in Tenant's Request.

(v) In the event that Landlord does not fund any installment of the Tenant's Work Allowance within twenty (20) days following Tenant's satisfaction of the applicable conditions under this Section 1.3(h) for the disbursement of same, Tenant may give to Landlord (and any mortgagee to which Tenant has delivered a SNDA) a notice of such failure which shall contain a legend in not less than 14 point font bold upper case letters stating "FAILURE TO FUND THE REQUESTED TENANT'S WORK ALLOWANCE IN THE AMOUNT OF $ IN 10 DAYS SHALL RESULT IN TENANT'S ABILITY, AS FURTHER EXPLAINED IN SECTION 1.3(h) OF THE WORK AGREEMENT, TO OFFSET SUCH AMOUNT FROM THE BASE RENT", and if Landlord does not provide the requested Tenant's Work Allowance funds within ten (10) days after Landlord's receipt of such notice, then Tenant shall be permitted to offset such amount against the Base Rent due and owing hereunder together with interest at the Default Rate on a monthly basis until the full amount of the Tenant's Work Allowance has been recouped by Tenant; provided, however, that if Landlord notifies Tenant that Landlord disputes Tenant's entitlement to the Tenant's Work Allowance or such portion thereof, Tenant may not offset any amount on account thereof unless and until such dispute is finally resolved. Any such disputes regarding Tenant's entitlement to the Tenant's Work Allowance that are not resolved between the parties within ten (10) days following such notice by Landlord shall be resolved in accordance with Section 1.10 of this Work Agreement.

1.4 **Costs**.

(a) Initial Build-Out Work and Base Building Condition Cap Work. Section 2.2 of the Lease is incorporated herein.

(b) 2nd Floor Build-Out Work. Section 2.5 of the Lease is incorporated herein.

(c) Lobby Renovations Work. Section 2.4 of the Lease is incorporated herein.

(d) Amenity Space Renovations Work. Section 2.3 of the Lease is incorporated herein.

(e) Allocation of Tenant Improvement Allowances. Notwithstanding the designation of the application of the Initial Build-Out Allowance to the Initial Build-Out Work; the Amenity Build-Out Allowance to the Amenity Space Renovations Work; the Lobby Renovations Allowance to the Lobby Renovations Work; and the 2nd Floor Build-Out Allowance to the 2nd Floor Build-Out Work, Tenant shall have the right to allocate (i) up to twenty-five percent (25%) of the Amenity Build-Out Allowance and Lobby Renovation Allowance to other Tenant Improvement Allowances (ii) up to 100% of the Initial Build-Out Allowance and the 2nd Floor Build-Out Allowance to other Tenant Improvement Allowances as Tenant shall elect, in its sole discretion; and (iii) any Must Take Allowance in accordance with Section 2.6(c) of the Lease; provided, however, that notwithstanding anything herein to the contrary, at least ninety-four percent (94%) of the aggregate Tenant Improvement Allowance shall be used to fund the "hard costs" of the Initial Build-Out Work, the 2nd Floor Build-Out Work, the Lobby Renovations Work, the Amenity Space Renovations Work. No more than six percent (6%) of the Initial Build-Out Allowance may be used for "soft costs" of the Initial Build-Out Work, the 2nd Floor Build-Out Work, the Lobby Renovations Work, the Amenity Space Renovations Work.

(f) Tenant Audit Right. Within ninety (90) days following the completion of each Component of Landlord's Work in the Required Delivery Condition, Landlord shall provide Tenant with

a final accounting in reasonable detail, together with all backup and supporting materials reasonably requested by Tenant, prepared by Landlord for all amounts incurred in connection with such Component of Landlord's Work. Upon mutual agreement of the finality thereof, there shall be adjustments between Landlord and Tenant to the end that Landlord or Tenant has underpaid or overpaid any amount due from such party pursuant to the terms of this Work Agreement. Any overpayment by Tenant shall be payable by Landlord to Tenant within thirty (30) days after the determination thereof. In the event that Tenant and Landlord are unable to agree on the finality of any adjustments after using good faith efforts to resolve the same for at least thirty (30) days, then Tenant and Landlord shall appoint an Approved Examiner to resolve any such adjustments, whose determination shall be binding upon the parties. Any underpayment by Tenant shall be due and payable within thirty (30) days after determination thereof.

(g) Subsequent Build-Out Work. Section 2.6 of the Lease is incorporated herein.

(h) Costs and Expenses in Excess of the Applicable Allowance . In no event shall Landlord be required to advance any funds, spend any funds or incur any costs or expense in excess of the applicable Tenant Improvement Allowance or the aggregate Tenant Improvement Allowance (including any reallocation of any portion of such Tenant Improvement Allowance as may be permitted).

(i) Landlord's Initial Work. Landlord shall be solely responsible for costs and expenses for the Demolition Work and the Base Building Condition Work for the Premises (provided that the Base Building Condition Cap Work shall be subject to the Base Building Cap).

(j) Depreciation . Notwithstanding anything in the Lease or otherwise, Landlord shall have the right to the full benefit of depreciation available to it under the Lease or under this Work Agreement; provided nothing herein is intended to prevent Tenant from claiming the benefit of depreciation available to it under the Lease or Work Agreement.

1.5 **Plans for Landlord's Work and Tenant's Build Out Work** .

(a) Architect and Engineers .

(i) Tenant shall employ an Approved Architect to prepare, together with the Engineers, the Initial Build-Out Plan, the 2nd Floor Plan, the Lobby Renovations Plan, the Amenity Space Plan and each Subsequent Build Out Plan. Tenant (or at Tenant's option, Landlord) shall employ a qualified, licensed engineering firm mutually acceptable to Landlord and Tenant (the " **Engineers** ") to prepare, together with an Approved Architect, the Plans. If Tenant opts to have Landlord employ the Engineers, then the costs of the same and the preparation of the Plans shall be deducted from the applicable Tenant Improvement Allowance. Landlord shall provide Tenant with all current as-built base Building plans, including structural, plumbing, mechanical and electrical plans, as required by an Approved Architect and the Engineers to the extent in Landlord's possession or control (and in the event Landlord does not have access to such base Building plans, Landlord shall cause Engineer and Approved Architect to prepare the same, and the costs of the same shall be deducted from the Tenant Improvement Allowance). At Tenant's option, Landlord shall pay an Approved Architect and/or Engineers directly for the Plans, and if so paid by Landlord, the amount thereof shall be deducted from the applicable Tenant Improvement Allowance.

(ii) Landlord, at Landlord's sole cost, shall employ an Approved Architect to prepare the Demolition Plan.

(b) Initial Plans .

(i) Tenant shall cause an Approved Architect and the Engineer to prepare the following proposed drawings (as applicable) (the " **Plans** ", and individually a " **Plan** ") for each of (1) the Initial Build-Out Plan, (2) the 2 nd Floor Plan, (3) each Subsequent Build Out Plan, (4) the Lobby Renovations Plan and (5) the Amenity Space Plan, in form approved by Tenant, for submission to Landlord for Landlord's approval (which approval shall not be unreasonably withheld, conditioned or delayed), as applicable to each Plan:

(A) A space plan, which shall indicate partition layout, door location, special equipment types, floor load requirements exceeding one hundred (100) pounds per square foot live load, telephone and electrical outlet locations, and the seating capacity of all conference rooms;

(B) Architectural working drawings, which shall include: master legend, construction plan, reflected ceiling plan, telephone and electrical outlet layout, finish plan and all architectural details, elevations and specifications necessary to construct the Initial Premises;

(C) MEP drawings (consisting of HVAC, electrical, telephone, and plumbing);

(D) Finish schedule (consisting of wall finishes and floor finishes and miscellaneous details); and

(E) Each Plan shall conform with the plans for the Building (as provided by Landlord) and existing as-built conditions and comply with all rules and regulations and other requirements of any governmental authorities having or asserting jurisdiction over the Premises or the Building (subject to Tenant's right to obtain a change to the certificate of occupancy to accommodate any design requirement). Tenant shall pay all fees in connection with filing Tenant's construction documents, obtaining permits and obtaining final approval by government authorities and said fees can be paid directly by the Landlord as part of each applicable Tenant Improvement Allowance if requested by the Tenant.

(c) Demolition Plan. Landlord, at Landlord's sole cost, shall cause an Approved Architect and the Engineer to prepare the Demolitions Plans for each floor of the Premises (also, the " **Plans** ", and individually a " **Plan** ").

(d) Plan Approval . Except for the approval of the Demolition Plan, which shall be pursuant to Section 1.13(a)(i) below, approval of the Plans shall be pursuant to the requirements and time periods set forth in Section 9.4 of the Lease with respect to approval of "Tenant's Plans." As used herein, " **Initial Build - Out Plan** ," the " **2 nd Floor Plan** ," the " **Lobby Renovations Plan** ," the " **Amenity Space Plan** , and " **Subsequent Build-Out Plan** " shall mean each such Plan, as revised, which has been approved by Landlord and Tenant in writing; and each such approved plan is sometimes referred to herein as a " **Final Plan** " and collectively as the " **Final Plans** ."

(e) Requirements . Each Plan shall comply with all Requirements. Neither review nor approval by Landlord of any Plan or the resulting Plan shall constitute a representation or warranty by Landlord that such plans either (i) are complete or suitable for their intended purpose, or (ii) comply with applicable Requirements, it being expressly agreed by Tenant that Landlord assumes no responsibility or liability whatsoever to Tenant or to any other person or entity for such completeness, suitability or compliance. In addition to the foregoing, with respect to the Lobby Renovations Plan, Landlord and Tenant shall mutually collaborate with an Approved Architect and Engineer to develop a cutting edge

concept plan for the redesign and re-imagineering of the Lobby to appropriately reflect the nature of Tenant's businesses. The Lobby design shall be initiated and primarily driven by Tenant and Landlord agrees to incorporate such design concepts and agrees that it shall not unreasonably withhold its consent to such design concepts or final approval of the Lobby Renovations Plan so long as reasonable consideration is given to the needs of future tenants. Landlord and Tenant agree that the design concept for the Lobby could include (unless Tenant otherwise determines) a sport court (such as racketball, basketball or similar sport court) and shall incorporate 2U, Inc.'s colors.

(f) Change Orders . Tenant may, from time to time, by written request to Landlord (a " **Change Order Request** ") request Landlord's approval of one or more changes to the Initial Build-Out Plan, the Subsequent Build-Out Plan, the 2 nd Floor Plan, the Lobby Renovations Plan or the Amenity Space Plan, which Landlord approval shall not be unreasonably withheld, conditioned or delayed. Within ten (10) days of receipt of a Change Order Request, Landlord shall endeavor to either approve such Change Order Request, which approval shall include the proposed pricing and construction schedule modifications as a result thereof, or provide a statement of reasons for denial of such Change Order Request. Landlord and Tenant shall consult with each other in good faith (including, to extent reasonably necessary, by including their respective consultants in such discussions) to consider pricing, alternative approaches and value engineering recommendations or to resolve any denial by Landlord to a Change Order Request. Landlord shall not be obligated to perform such Change Order Request until Landlord and Tenant have mutually approved the same, including, without limitation, pricing, construction schedule modifications and other terms and conditions (an " **Approved Change Order** "). Any additional costs or expenses attributable to any Approved Change Order shall be deducted from the applicable Tenant Improvement Allowance or, if such allowance has been exceeded, paid directly by Tenant in accordance with Section 2.7 of the Lease. Any delays in Landlord's Work resulting or arising from a Change Order Request and/or any Approved Change Order shall be deemed a Tenant Delay.

(g) Elevators . Landlord shall provide no less than four (4) elevators 24/7 as needed by Tenant and Tenant's construction team for Tenant's Build-Out Work, except as Landlord may be required to repair elevators during Tenant's Build-Out Work (provided that in no event shall the number of working elevators go below three (3)).

(h) HVAC . Landlord shall be required to provide HVAC and other Utilities during Business Hours during Tenant's Build-Out Work and Subsequent Build Out Work.

1.6 **Performance of Work** .

(a) Project Management . Landlord and Tenant shall oversee and manage the Lobby Renovation Work and the Amenity Space

Renovations Work. Tenant shall have a right of access to enter the Premises for the purpose of inspecting the Lobby Renovations Work, the Amenity Space Renovations Work and Tenant's Work in progress at all reasonable times after the Lease is fully executed, provided, however, that Tenant shall use good faith efforts to minimize interference with the performance of Lobby Renovation Work and the Amenity Space Renovations Work in exercising such right. Landlord and Tenant shall reasonably cooperate in coordinating the Lobby Renovations Work with Tenant's need to access the Lobby in connection with Tenant's Work. Tenant shall hire KGO Project Management (" **KGO** ") to manage the construction of the Lobby Renovation Work and the Amenity Space Renovations Work on behalf of both Tenant and Landlord and Tenant's Work on behalf of Tenant. Landlord's Authorized Representative shall work with KGO and shall jointly manage the construction of the Lobby Renovation Work and the Amenity Space Renovations Work The fee paid to KGO for providing such services for all build-out work contemplated by this Work Agreement or the Lease shall be deducted from the applicable Tenant Improvement Allowance.

(b) General Contractor .

(i) Landlord shall hire and enter into a fee and general conditions on a full and complete open book basis contract with an Approved General Contractor (each such contract, the " **Approved GC Contract** ") for the Lobby Renovations Work and the Amenity Space Renovations Work pursuant to the applicable Plans. The terms and conditions of Approved GC Contract for the Lobby Renovations Work and the Amenity Space Renovations Work shall be subject to the approval of Tenant, not to be unreasonably withheld, conditioned or delayed. Such Approved General Contractor shall solicit bids under open book pricing from at least three (3) subcontractors with respect to major items of the Lobby Renovations Work and the Amenity Space Renovations Work for all trades, including but not limited to mechanical, engineering and plumbing contractors, drywall contractors, painting contractors and carpet contractors; Landlord and Tenant shall be entitled to submit names of qualified subcontractors to include in the bidding process. All subcontractor bids shall be shared with Landlord and Tenant during the bid process and each of Landlord and Tenant may provide input on the selection of such subcontractors and necessary value engineering (provided that KGO shall act as Tenant's and Landlord's point of contact with respect to all such matters). Approved General Contractor shall not be required to purchase building stocked materials or use building standard materials. Any existing materials that Tenant reuses (e.g., lights, doors, frames, hardware, etc.) shall be at no cost to Tenant and shall not be deducted from the applicable Tenant Improvement Allowance. Tenant shall promptly review and approve the dispersal of funds to Approved General Contractor prior to any payment being made.

(ii) Tenant shall hire an Approved General Contractor for the construction and outfitting of Tenant's Work and an Approved Architect for the development of Plans for Tenant's Work and the supervision of such Approved General Contractor, each pursuant to a separate contracts to be negotiated by Tenant.

(c) Landlord Payments for Tenant's Work . Subject to the terms and provisions of this Work Agreement and the Lease, with respect Tenant's Work, upon Tenant's authorization and upon receipt of bona fide lien (or partial lien) waivers subject to payment only, Landlord shall pay all actual, reasonable costs and expenses of an Approved Architect, the Engineer and Tenant's contractors (including an Approved General Contractor) directly within thirty (30) days of submission of invoices and other customary documentation to evidence such work and any late payments shall accrue interest at the Default Rate (as provided above); provided in no event shall Landlord be obligated to advance any funds or pay any sum of money in excess of the Tenant Improvement Allowance (or such amount thereof that has not yet been expended or allocated to the payment of any cost or expense). No lien waivers shall be required for any contractors, subcontractors, vendors or suppliers performing work or supplying materials valued less than the Cosmetic Lien Waiver Cap (defined below) in the aggregate for any particular project, which is solely cosmetic in nature. As used herein, the " **Cosmetic Lien Waiver Cap** " means thirty thousand dollars ($30,000) provided that on the first day of the second (2nd) Lease Year and each anniversary thereafter during the Lease Term (each a " **Cosmetic Lien Waiver Cap Adjustment Date** "), the Cosmetic Lien Waiver Cap then in effect shall be increased by an amount equal to the product of (i) the Cosmetic Lien Waiver Cap then in effect, multiplied by (ii) the percentage increase between the CPI (defined below) in effect for the month preceding the previous Cosmetic Lien Waiver Cap Adjustment Date (or, with respect to the first scheduled adjustment under this paragraph, the month preceding the Lease Commencement Date) and the CPI in effect for the month preceding the then current Cosmetic Lien Waiver Cap Adjustment Date. Such adjusted Cosmetic Lien Waiver Cap shall continue in effect as the Cosmetic Lien Waiver Cap until the next Cosmetic Lien Waiver Cap Adjustment Date. As used in this Work Agreement the term " **CPI** " means the Consumer Price Index for All Urban Consumers (CPI-U), U.S. City Average, all items (1982-84), as published by the United States Department of Labor,

Bureau of Labor Statistics. If the CPI is changed so that a base year other than 1982-84 is used, then the CPI shall be adjusted in accordance with the conversion factor published by the Bureau of Labor Statistics. If the CPI is discontinued or revised, the CPI used for purposes of this Work Agreement shall be adjusted or replaced by Landlord with an index or measure reasonably calculated by Landlord to measure the change in the cost of living in a manner consistent with the CPI.

1.7 **Substantial Completion** . Each Component of Landlord's Work shall be deemed to have been "substantially complete" when such work has been completed with respect to the applicable Final Plan (or with respect to certain Base Building Condition Work not requiring plans, in compliance with Schedule I), with the exception of the Punch List items as identified pursuant to Section 1.9 below, as reasonably determined by Landlord.

1.8 **Possession** . Tenant's taking of possession of the Premises (or the portion thereof) shall constitute Tenant's acknowledgment that the Premises (or such portion) are in good condition and that all work and materials are satisfactory, except as to Punch List items.

1.9 **Inspection; Punch List** .

(a) Landlord shall give Tenant written notice (" **Landlord ' s Delivery Notice** ") on or about thirty (30) days prior to the anticipated date of substantial completion of a Component of Landlord's Work and the Initial Premises (the " **Anticipated Date of Substantial Completion** ").

(b) Following the giving of the applicable Landlord's Delivery Notice, Landlord and Tenant shall schedule the time and date (the " **Inspection Date** ") on which the Walk-Through (as defined below) shall be conducted, which shall be a Business Day reasonably anticipated to be at least ten (10) Business Days prior to the Anticipated Date of Substantial Completion. On the Inspection Date, Landlord and Tenant (including any of its representatives, which shall include Tenant's Representative and Approved Architect) shall conduct a joint walk-through and review and inspect the applicable Component of Landlord's Work (collectively, the " **Walk - Through** "). During the Walk-Through, Landlord and Tenant shall jointly prepare a list of the minor so-called "punch list" items of construction, decoration, mechanical adjustments, installations or connections, the non-completion of which does not, either individually or in the aggregate, interfere, in any material way, with Tenant's ability to conduct its business or otherwise use the applicable portion of the Premises or the Building, as applicable (a " **Punch List** " and such initial list, the " **Initial Punch List** ") with Tenant delivering any requested changes to such Initial Punch List within seven (7) days after the Walk-Through. It is anticipated that there will be a separate Walk-Through for each Component of Landlord's Work.

(c) Subject to the terms and provisions of this Work Agreement and the Lease, Landlord shall diligently complete the items on the Punch List; provided in no event shall "substantial completion" of the applicable portion of the Premises or Building, as applicable, be delayed by the Walk-Through or creation of the Punch List.

1.10 **Construction Disputes** .

(a) Any disputes between Landlord and Tenant regarding (i) whether Landlord has unreasonably withheld its consent or approval to a matter under this Work Agreement, where Landlord's consent is to be reasonable, (ii) substantial completion of any Component of Landlord's Work or whether any such Component has been delivered in the Required Delivery Condition, (iii) whether a Landlord Delay has occurred or has been properly noticed, (iv) whether a Tenant Delay has occurred or has been properly noticed, (v) whether an Unavoidable Delay has occurred or has been properly noticed, if applicable, or (vi) whether Tenant is entitled to be funded Tenant's Work Allowances, shall be governed

by this Section 1.10 . Landlord and Tenant shall use good faith reasonable efforts to resolve any such dispute prior to seeking arbitration on such matter under Section 1.10(b) below.

(b) Notwithstanding anything contained herein to the contrary it is the intent of both parties that arbitration be used only as a final resort to resolving any disputes and that in no event shall the institution of arbitration by either party cause the stoppage of any work under this Work Agreement. If after using good faith reasonable efforts to resolve any such dispute remains unresolved, either party may give the other party ten (10) days' notice of such party's intent to submit such dispute for binding resolution by arbitration in the District of Columbia under the Expedited Procedures provisions of the AAA; provided, however, that with respect to any such arbitration under this Work Agreement (i) the AAA shall, within two (2) Business Days after such submission or application, select a single arbitrator meeting the requirements set forth in the following paragraph, (ii) the Notice of Hearing shall be two (2) Business Days in advance of the hearing, (iii) the hearing shall be limited to a maximum duration of two (2) Business Days, with each party having no more than (A) two (2) hours to present its case, (B) two (2) hours to cross examine or interrogate persons supplying information or documentation on behalf of the other party, and (C) one (1) hour to summarize in a closing statement such party's case and (iii) the arbitrator shall make a determination within three (3) Business Days after the conclusion of the hearing, which decision (x) shall be limited to a decision upon (1) whether Landlord acted reasonably in withholding its consent or approval or otherwise acted in an arbitrary or capricious manner where Landlord had a duty to act reasonably as expressly required by the terms hereof, or (2) the specific dispute presented to the arbitrator, as applicable, (y) notwithstanding anything to the contrary contained herein, shall not award damages, and (z) shall be final and conclusive on the parties whether or not a judgment shall be entered in any court. All actions necessary to implement the decision of the arbitrator shall be undertaken as soon as possible, but in no event later than ten (10) Business Days after the rendering of such decision. The arbitrator's determination may be entered in any court having jurisdiction thereof. If any party fails to appear at a duly scheduled and noticed hearing, the arbitrator is hereby expressly authorized (but not directed) to enter judgment for the appearing party. The time periods set forth in this paragraph shall be time of the essence.

(c) The arbitrator conducting any arbitration shall be bound by the provisions of the Lease and this Work Agreement and shall not have the power to add to, subtract from, or otherwise modify such provisions. Landlord and Tenant agree to sign all documents and to do all other things reasonably necessary, without prejudice to such party, to submit any such matter to arbitration and further agree to, and hereby do, waive any and all rights they or either of them may at any time have to revoke their agreement hereunder to submit to arbitration and to abide by the decision rendered thereunder which shall be binding and conclusive on the parties and shall constitute an "award" by the arbitrator within the meaning of the AAA rules and applicable law. Judgment may be had on the decision and award of the arbitrator so rendered in any court of competent jurisdiction. The arbitrator shall be a qualified, disinterested and impartial person who shall have had at least ten (10) years' experience in District of Columbia in a calling connected with the matter of the dispute. Landlord and Tenant shall, subject to the immediately preceding paragraph, each have the right to appear and be represented by counsel before said arbitrator and to submit such data and memoranda in support of their respective positions in the matter in dispute as may reasonably be necessary or appropriate in the circumstances. Each party hereunder shall pay its own costs, fees and expenses in connection with any arbitration or other action or proceeding brought under this Section 1.10 , provided that all fees payable to the AAA for services rendered in connection with the resolution of the dispute shall be paid by the unsuccessful party, as determined by the arbitrator. Notwithstanding any contrary provisions hereof, Landlord and Tenant agree that (i) the arbitrator may not award or recommend any damages to be paid by either party and (ii) in no event shall either party be liable for, nor be entitled to recover, any damages.

1.11 **Tenant Delay** .

(a) " **Tenant Delay** " or " **Tenant** ' **s Delay** " means any actual delay in Landlord's Work to the extent caused by any act or omission of any nature of Tenant or its agents, employees, contractors, subcontractors or Invitees (provided that for the purposes of this definition, Invitee shall not include Approved General Contractor), including, without limitation, (1) delay caused by Tenant's failure to comply with any of its obligations in this Work Agreement or the Lease, (2) any delay caused by an Approved Change Order, or (3) delay caused by Tenant's Request for long lead time materials, finishes or installations A Tenant Delay will commence as provided below, but, except as otherwise expressly provided herein, in no event shall Tenant Delay commence earlier than the actual activity or occurrence that causes such Tenant Delay and shall continue only through the date that such activity or occurrence shall cease to constitute a Tenant Delay; provided, however, all simultaneous delays which constitute a Tenant Delay hereunder shall be deemed to run concurrently and not consecutively and shall not be "double" counted.

(b) Tenant shall not be charged for any Tenant Delay unless Landlord shall have delivered notice to Tenant of such Tenant Delay within five (5) Business Days after Landlord has actual knowledge of the circumstances giving rise to such Tenant Delay, which notice shall refer to the circumstances giving rise to such Tenant Delay. The period of Tenant Delay shall not commence until the first Business Day after the date when such notice shall have been delivered to Tenant. Notice of any Tenant Delay shall (i) identify the act, omission or failure to act of Tenant, its agents or contractors that is the alleged cause of the Tenant Delay, (ii) expressly state that such delay shall be a Tenant Delay pursuant to the terms of this Work Agreement and (iii) set forth, to the extent practicable, Landlord's good faith estimate of the period of such delay.

(c) Subject to the foregoing, if any Tenant Delay occurs, and such Tenant Delay causes an actual delay in the substantial completion (or completion) of any item of Landlord's Work, then for purposes of determining the date on which such item of Landlord's Work has been substantially completed (or completed), such date shall be deemed, for all purposes of this Work Agreement, to be the date on which Landlord would have substantially completed (or completed) the applicable item of Landlord's Work, but for such Tenant Delay. Nothing in this Section shall be deemed to relieve Landlord of the responsibility to complete Landlord's Work.

1.12 **Landlord Delay** .

(a) " **Landlord Delay** " or " **Landlord** ' **s Delay** " means any actual delay in Landlord's Work or Tenant's Work under this Work Agreement to the extent caused by any act or omission of any nature of Landlord or its agents, employees, contractors, subcontractors or Invitees, including, without limitation, any delay caused by a Landlord Missed Target Delivery Date, any delay caused by violations of law on the Building (provided that they are not caused by Tenant), Landlord's failure to timely pay contractors (provided that such failure is not caused by Tenant's failure to pay Landlord, where Tenant has a duty to pay Landlord with respect to such payment), failure to timely review, comment and approve plans and specifications, failure to procure needed permits, failure to provide appropriate access to the Building and Premises, or failure to provide appropriate work conditions for contractors (including utilities).

(b) Landlord Delay will commence as provided below, but, except as otherwise expressly provided herein, in no event shall Landlord Delay commence earlier than the actual activity or occurrence that causes such Landlord Delay and shall continue only through the date that such activity or occurrence shall cease to constitute a Landlord Delay; provided, however, all simultaneous delays which constitute a Landlord Delay hereunder shall be deemed to run concurrently and not consecutively and shall not be "double" counted.

(c) Landlord shall not be charged for any Landlord Delay unless Tenant shall have delivered notice to Landlord of such Landlord Delay within five (5) Business Days after Tenant has actual knowledge of the circumstances giving rise to such Landlord Delay, which notice shall refer to the circumstances giving rise to such Landlord Delay. The period of Landlord Delay shall not commence until the first Business Day after the date when such notice shall have been delivered to Landlord. Notice of any Landlord Delay shall (i) identify the act, omission or failure to act of Landlord, its agents or contractors that is the alleged cause of the Landlord Delay, (ii) expressly state that such delay shall be a Landlord Delay pursuant to the terms of this Work Agreement and (iii) set forth, to the extent practicable, Tenant's good faith estimate of the period of such delay.

1.13 **Delivery Schedule** .

(a) Demolition .

(i) As soon as possible after the Effective Date, Landlord's Representative, together with an Approved Architect selected by Landlord and an Approved General Contractor selected by Landlord shall jointly conduct a pre-bid walk through of the Premises such that the Approved Architect can prepare an initial demolition plan of the Premises including an itemization of certain improvements and/or fixtures that are to be designated to be retained and/or left in place (the " **Retained Improvements** "). After the pre-bid walk through, Landlord's Approved Architect shall promptly prepare a demolition plan and scope for each floor of the Premises (including the Must Take Expansion Premises) indicating the Retained Improvements (the " **Initial Demolition Plan** "). Landlord shall approve (or comment on) the Initial Demolition Plan, after nonbinding consultation with Tenant, within ten (10) Business Days after receipt of the Initial Demolition Plan and five (5) Business Days after receipt of the revised plan (as finally approved, the " **Demolition Plan** "), time being of the essence with respect to Landlord's obligations set forth in this sentence with respect to the approval and comment on the Initial Demolition Plans. The Demolition Plan will include all demolition work that is typical for premises similar to the Premises. It is estimated it will take an Approved Architect 30 days after the pre-bid walk through to prepare the Initial Demolition Plan and Landlord shall use all diligent efforts to cause Approved Architect to prepare and deliver the Demolition Plan within 30 day period.

(ii) Upon finalization of the Demolition Plan, the Approved General Contractor selected by Landlord shall promptly make the appropriate application for a demolition permit (and Landlord shall promptly sign any permit application requiring the property owner's signature). Within forty-five (45) days after Landlord has finalized the Demolition Plan but subject to the receipt of the demolition permits, Landlord shall commence the demolition of the Premises in accordance with the Demolition Plan (the " **Demolition Work** " and such date, the " **Demolition Work Commencement Date** "). Landlord shall advise Tenant in writing that the Demolition Work Commencement Date has occurred; provided however notwithstanding anything contained in this Work Agreement or the Lease to the contrary, Landlord shall not be charged with any "Landlord Delay" if Landlord fails to commence the Demolition Work by the Demolition Work Commencement Date; provided that Landlord completes the Base Building Condition Work by the Base Building Condition Target Delivery Date as provided below).

(iii) Landlord shall use all commercially diligent efforts to complete the Demolition Work within the Initial Premises and the Must Take Expansion Premises ninety (90) days after the Demolition Work Commencement Date (the " **Demolition Work Target Delivery Date** ") and notify Tenant of the completion thereof pursuant to the procedure set forth in Section

1.7 through Section 1.10 of this Work Agreement (the " **Completion Mechanism** " and the actual date of completion, the " **Demolition Work Delivery Date** ").

(b) Base Building Condition Work .

(i) Intentionally Omitted.

(ii) Landlord shall use all commercially diligent efforts make the Initial Premises available for delivery to Tenant with Landlord's Initial Work complete in the Required Delivery Condition within fifteen (15) days after the Demolition Work Target Delivery Date, and notify Tenant of the completion thereof pursuant to the Completion Mechanism (such target date, the " **Base Building Condition Target Delivery Date** " and the date Landlord tenders delivery in the Required Delivery Condition, the " **Base Building Condition Delivery Date** "), provided that Tenant shall have the option, upon written notice to Landlord at any time prior to the Base Building Condition Delivery Date, to delay accepting delivery of the Final Delivery Block for up to 180 days after the Base Building Condition Delivery Date (the date Tenant actually accepts delivery of the Final Delivery Block, if later than Tenant's acceptance of the First Delivery Block, being the " **Final Block Delivery Date** "). In no event shall (A) the Base Building Condition Delivery Date be earlier than the Base Building Condition Target Delivery Date, (B) Tenant be required to accept delivery of the any portion of the Initial Premises prior to the Base Building Condition Target Delivery Date or (c) Tenant's election to delay acceptance of delivery of the Final Delivery Block permit Landlord to delay having the entire Initial Premises available for delivery to Tenant in the Required Delivery Condition on the Base Building Condition Target Delivery Date (subject to extension attributable to Tenant Delay and Unavoidable Delay which is subject to the 30 day limit as provided in Section 3.3(f) of the Lease). As used in the Lease and the Work Agreement, the phrase "available for delivery" and similar phrases means that the Initial Premises is in the Required Delivery Condition and delivery and possession has been tendered by Landlord to Tenant, subject to Tenant's rights to delay acceptance of delivery and possession of the Final Delivery Block as provided above.

(iii) Each floor of the Must Take Expansion Premises shall be delivered to Tenant in the Required Delivery Condition on the earlier of the Intended Must Take Possession Date (if an Acceleration Notice has been given) or the Stated Must Take Commencement Date for such floor.

(c) Base Building Condition Cap Work . Landlord shall use all commercially diligent efforts to complete the Base Building Condition Cap Work as required by the time periods set forth in Section 2.2 of the Lease.

(d) Lobby/Amenity Space . Promptly upon Tenant delivering to Landlord Final Plans with respect to each of the Lobby Renovations Work and the Amenity Space Renovations Work to Landlord, Landlord shall use all commercially diligent efforts to substantially complete the Lobby Renovations Work and the Amenity Space Renovations Work and deliver both in the Required Delivery Condition on or before the Final Target Delivery Date (and Landlord shall notify Tenant thereof pursuant to the Completion Mechanism). Notwithstanding the foregoing, as a condition to the Lease Commencement Date occurring, Tenant and its Invitees must have reasonable, safe access to and through the lobby via (at a minimum) by way of an unobstructed, temporarily demised path with secure access with an area within the lobby available as a reception and security area with access to the elevator bank and the Premises, in all cases, in compliance with all Requirements.

(e) Delivery Date .

(i) Any Target Delivery Date required to be met by Tenant above (a " **Tenant Target Delivery Date** ") which is not achieved by the applicable Target Delivery Date (as such deadline may have been extended due to a Landlord Delay or an Unavoidable Delay) shall be a " **Tenant Missed Target Delivery Date** " and any delay caused by such Tenant Missed Target Delivery Date shall be considered a Tenant Delay. The failure of Landlord to substantially complete the Amenity Space Renovations Work and the Lobby Renovation by the Final Target Delivery Date, have the Initial Premises in the Required Delivery Condition and available for delivery to Tenant on or before the Base Building Condition Target Delivery Date, or deliver each floor of the Must Take Expansion Premises in the Required Delivery Condition on the earlier of the Intended Early Must Take Possession Date (if an Acceleration Notice has been given) or the Stated Must Take Commencement Date for such floor (as such deadlines may have been extended due to a Tenant Delay or an Unavoidable Delay as limited by Section 3.3(f) of the Lease) (each such Target Delivery Date, a " **Landlord Target Delivery Date** ") shall be a " **Landlord Missed Target Delivery Date** " and any delay caused by such Landlord Missed Target Delivery Date shall be considered a Landlord Delay and shall not require any additional notice from Tenant. For purposes of clarity, the "Target Delivery Dates" and "Delivery Dates" as described herein include only certain of Landlord's and Tenant's obligations hereunder, and failure to include an obligation of Landlord or Tenant under this Work Agreement as a "Target Delivery Date" and "Delivery Date" shall not be deemed to relieve Landlord or Tenant of the responsibility to complete such obligation in accordance with the terms of the Lease and this Work Agreement.

(ii) Landlord's failure to deliver a Component of Landlord's Work by the applicable Landlord Target Delivery Date (as such deadline may be extended above), shall not give Tenant the right to terminate the Lease but shall give rise to Tenant's rights and remedies set forth in Section 3.3 of the Lease.

(iii) This Section 1.13 is subject to the requirements of Section 3.3 of the Lease.

[Remainder of Page Intentionally Blank]

SCHEDULE I to Work Agreement

BASE BUILDING CONDITION

Landlord shall, at Landlord's sole cost and expense (but subject to the Base Building Cap with respect to the Base Building Condition Cap Work), perform the following work in a workmanlike manner and in accordance with all applicable building codes and the plans and specifications for the Building ; provided that Landlord shall not be required to install new infrastructure so long as the existing infrastructure complies with the Requirements and is in good working order and condition for Office Use.

The items listed below are based upon building standard materials and specifications and represent the work and materials customarily provided by Landlord in connection with the initial preparation of a premise for Tenant's occupancy. Landlord shall have the right to make reasonable substitutions for particular items described herein. As used herein, " **Delivery** " or " **Delivered** " means that Landlord has delivered the Initial Premises and the Must Take Expansion Premises, as applicable, to Tenant in the Required Delivery Condition. For clarity, Landlord shall not have any responsibility to replace or install any light fixtures as part of Landlord's Work (provided that Tenant may install light fixtures and pay for the same out of the applicable Tenant Work Allowances).

The following items of Landlord's Work for the Premises and the Building are collectively referred to as " **Base Building Condition Work** " and are to be completed on or before the Base Building Condition Work Target Delivery Date unless a different date is indicated below.

1. Intentionally Deleted;

2. At the time of Delivery, each floor of the Premises shall be broom clean, vacant, free of debris;

3. At the time of Delivery, all core areas and hardware to be good condition assuming Office Use;

4. At the time of Delivery, all Building Structures and Systems shall be in good working order and condition in compliance with all Requirements assuming Office Use (and subject to Section 6.4 of the Lease). Should any Building Systems HVAC require full replacement during the first five (5) years of the Lease Term, Landlord shall replace same at its cost with equipment of similar size and utility provided that such replacement costs shall not be included in Operating Expenses or otherwise passed through to Tenant and provided further that any repair, maintenance and minor replacement costs for the Building System HVAC incurred after the applicable Abatement Period may be included in Operating Expenses;

5. All exterior building standard blinds including repair or replacement of existing blinds on an as needed basis to be Delivered when and as required by Section 3.3(c) of the Lease;

6. The installation of any meters, submeters and related equipment required by the Lease when and as required by Section 5.2(c) of the Lease;

7. The installation of parking controls including automatic arms with an unmanned payment and validation system reasonably acceptable to Tenant (Tenant shall be permitted to use the same access control cards for the parking access as the premises) at access points in the Parking Lot shall be Delivered when and as required by Section 3.3(c) of the Lease.

The items described in #3, #5, #6 and #7 above, in addition to being Base Building Condition Work are also referred are to collectively as " **Base Building Condition Cap Work** ." As used herein, the " **Base Building Cap** " shall mean the amount of $300,000. If the work required by Landlord to satisfy the Base Building Condition Cap Work exceeds the Base Building Cap, then such costs in excess of the Base Building Cap shall be deducted from the applicable Tenant Improvement Allowance. Landlord shall keep Tenant reasonably informed about the cost of the Base Building Cap Work (including providing Tenant copies of any estimates obtained).

EXHIBIT C

RULES AND REGULATIONS

This Exhibit is attached to and made a part of that certain Lease Agreement dated as of December 23, 2015 (the " **Lease** "), by and between LANHAM OFFICE 2015 LLC, a Delaware limited liability company (" **Landlord** "), and 2U HARKINS ROAD LLC, a Delaware limited liability company (" **Tenant** ").

The following rules and regulations have been formulated for the safety and well-being of all tenants of the Building. Strict adherence to these rules and regulations is necessary to guarantee that every tenant will enjoy a safe and undisturbed occupancy of its premises. Any violation of these rules and regulations by Tenant shall constitute a default by Tenant under the Lease.

A. ALL TENANTS.

The following rules shall be applicable to all tenants of the Building:

1. Tenant shall not obstruct or encumber or use for any purpose other than ingress and egress to and from the Premises any sidewalk, entrance, passage, court, elevator, vestibule, stairway, corridor, hall or other part of the Building not exclusively occupied by Tenant. No bottles, parcels or other articles shall be placed, kept or displayed on window ledges, in windows or in corridors, stairways or other public parts of the Building. Tenant shall not place any showcase, mat or other article outside the Premises.

2. Landlord shall have the right to control and operate the public portions of the Building and the facilities furnished for common use of the tenants, in such manner as Landlord deems best for the benefit of the tenants generally. Tenant shall not permit the visit to the Premises of persons in such numbers or under such conditions as to interfere with the use and enjoyment of the entrances, corridors, elevators and other public portions or facilities of the Building by other tenants. Tenant shall coordinate in advance with Landlord's property management department all deliveries to the Building so that arrangements can be made to minimize such interference. Canvassing, soliciting and peddling in the Building are prohibited, and Tenant shall cooperate to prevent the same.

3. Tenant shall not use the water fountains, water and wash closets, and plumbing and other fixtures for any purpose other than those for which they were constructed, and Tenant shall not place any debris, rubbish, rag or other substance therein (including, without limitation, coffee grounds). All damages from misuse of fixtures shall be borne by the tenant causing same.

4. Tenant shall not bring any vehicle, animal, bird or pet of any kind into the Building, except service animals for persons visiting the Premises, and a reasonable amount of non-service dogs, provided that such dogs do not violate any municipal or other regulatory restrictions and further provided that if the presence of such dogs causes a detriment or nuisance to any other tenants in the Building (or to any other parties) then Landlord may impose reasonable restrictions on same in order to eliminate such detriment or nuisance.

5. Except as specifically provided to the contrary in the Lease, Tenant shall not cook or permit any cooking on the Premises, except for microwave cooking and use of coffee machines by Tenant's employees for their own consumption. Tenant shall not cause or permit any unusual or objectionable odor to be produced upon or emanate from the Premises.

6. Tenant shall not make any unseemly or disturbing noise or unreasonably disturb or interfere with occupants of the Building.

7. Tenant shall not place on any floor a load exceeding the floor load per square foot which such floor was designed to carry. Landlord shall have the right to reasonably prescribe the weight, position and manner of installation of safes and other heavy equipment and fixtures. Landlord shall have the right to repair at Tenant's expense any damage to the Premises or the Building caused by Tenant's moving property into or out of the Premises or due to the same being in or upon the Premises or to require Tenant to do the same. Tenant shall not receive into the Building or carry in the elevators any safes, freight, furniture, equipment or bulky item except as approved by Landlord, and any such furniture, equipment and bulky item shall be delivered only through the designated delivery entrance of the Building and the designated freight elevator at designated times. Tenant shall remove promptly from any sidewalk adjacent to the Building any furniture, furnishing, equipment or other material there delivered or deposited for Tenant.

8. Tenant shall be permitted to install a key-card access system for the Premises, so long as Tenant provides Landlord with access cards. Tenant, upon the termination of its tenancy, shall deliver to Landlord the keys or access cards to all doors which have been furnished by Landlord to Tenant.

9. Landlord reserves the right to exclude from the Building at all times any person who does not properly identify himself to the Building management or attendant on duty. Landlord may require all persons admitted to or leaving the Building to show satisfactory identification and to sign a register.

10. Tenant shall not use or permit the use of the Premises for lodging, dwelling or sleeping.

11. Tenant shall not request Landlord's employees to perform any work or do anything outside of such employees' regular duties without Landlord's prior written reasonable consent. Tenant's special requirements will be attended to only upon application to Landlord, and any such special requirements shall be billed to Tenant in accordance with the schedule of charges maintained by Landlord from time to time or as is agreed upon in writing in advance by Landlord and Tenant.

12. There shall not be used in any space, or in the public halls of the Building, either by any tenant or by jobbers or others in the delivery or receipt of merchandise, any hand trucks, except those equipped with rubber tires and side guards. Tenant shall be responsible for any loss or damage resulting from any deliveries made by or for Tenant.

13. Tenant shall not install or permit the installation of any wiring for any purpose on the exterior of the Premises other than the Roof Terrace and/or Roof Premises.

14. Unless otherwise expressly provided in the Lease, Tenant shall not use, occupy or permit any portion of the Premises to be used or occupied for the manufacture or sale of liquor.

15. Tenant shall not remove, alter or replace the ceiling light diffusers, ceiling tiles or air diffusers in any portion of the Premises without the prior written reasonable consent of Landlord.

16. Tenant shall not in any manner deface any part of the Premises or the Building. No stringing of wires, boring or cutting shall be permitted except with Landlord's prior written reasonable consent. Any floor covering installed by Tenant shall have an under layer of felt rubber, or similar sound deadening substance, which shall not be affixed to the floor by cement or any other non-soluble adhesive materials.

17. Should Tenant's use and occupancy of the Premises require the installation of supplemental cooling, and should the Building contain a closed loop, Tenant agrees that its supplemental cooling requirements will be serviced by tapping into the Building's closed loop.

18. Each Tenant shall handle its newspapers and "office paper" in compliance with applicable Requirements and shall conform with any recycling plan reasonably instituted by Landlord.

19. Tenant shall not bring or keep, or permit to be brought or kept, in the Building any weapon or flammable, combustible or explosive fluid, chemical or substance other than those used in Tenant's business equipment.

20. Tenant shall comply with all workplace smoking Requirements. There shall be no smoking in bathrooms, elevator lobbies, elevators, and other common areas.

21. Landlord may, upon request of Tenant, waive Tenant's compliance with any of the rules, provided that (a) no waiver shall be effective unless signed by Landlord, (b) no waiver shall relieve Tenant from the obligation to comply with such rule in the future unless otherwise agreed in writing by Landlord, (c) no waiver granted to any tenant shall relieve any other tenant from the obligation of complying with these rules and regulations, and (d) no waiver shall relieve Tenant from any liability for any loss or damage resulting from Tenant's failure to comply with any rule.

22. In the event of any conflict between any provisions Lease (and/or any rights or benefits granted Tenant thereunder) and these rules and regulations, the provisions set forth in the Lease shall control.

EXHIBIT D

CERTIFICATE AFFIRMING THE MUST TAKE COMMENCEMENT DATE

This Certificate is being provided pursuant to that certain Office Lease, dated as of December 23, 2015 (the " **Lease** "), by and between LANHAM OFFICE 2015 LLC, a Delaware limited liability company (" **Landlord** "), and (" **Tenant** "). The parties to the Lease desire to confirm the following:

1. The Must Take Commencement Date for Floor [7, 6, 5] (the " **Applicable Must Take Expansion Premises** ") is , 20 .

2. Tenant confirms that the Base Building Condition Work for the Applicable Must Take Expansion Premises has been completed.

IN WITNESS WHEREOF, Landlord and Tenant have executed this Certificate under seal on , 20 .

WITNESS/ATTEST:

LANDLORD:

LANHAM OFFICE 2015 LLC , a Delaware limited liability company

By: (SEAL)
Name:
Title:

Name:

WITNESS/ATTEST:

TENANT:

2U HARKINS ROAD LLC , a Delaware limited liability company
By: [SEAL]
Name:
Title:

Name:

EXHIBIT E

MEASUREMENT SCHEDULE

Floor	RSF	Tenant's Proportionate Share
12	28,175.44	100%
11	28,175.44	100%
10	28,175.44	100%
9	28,175.44	100%
8	28,175.44	100%
7	28,175.44	100%
6	28,178.78	100%
5	28,175.44	100%
4	28,175.44	
3	28,175.44	
2	27,545.44	100%
1		
TOTAL	309,303.18	

EXHIBIT F

LOCATION OF BUILDING FITNESS CENTER

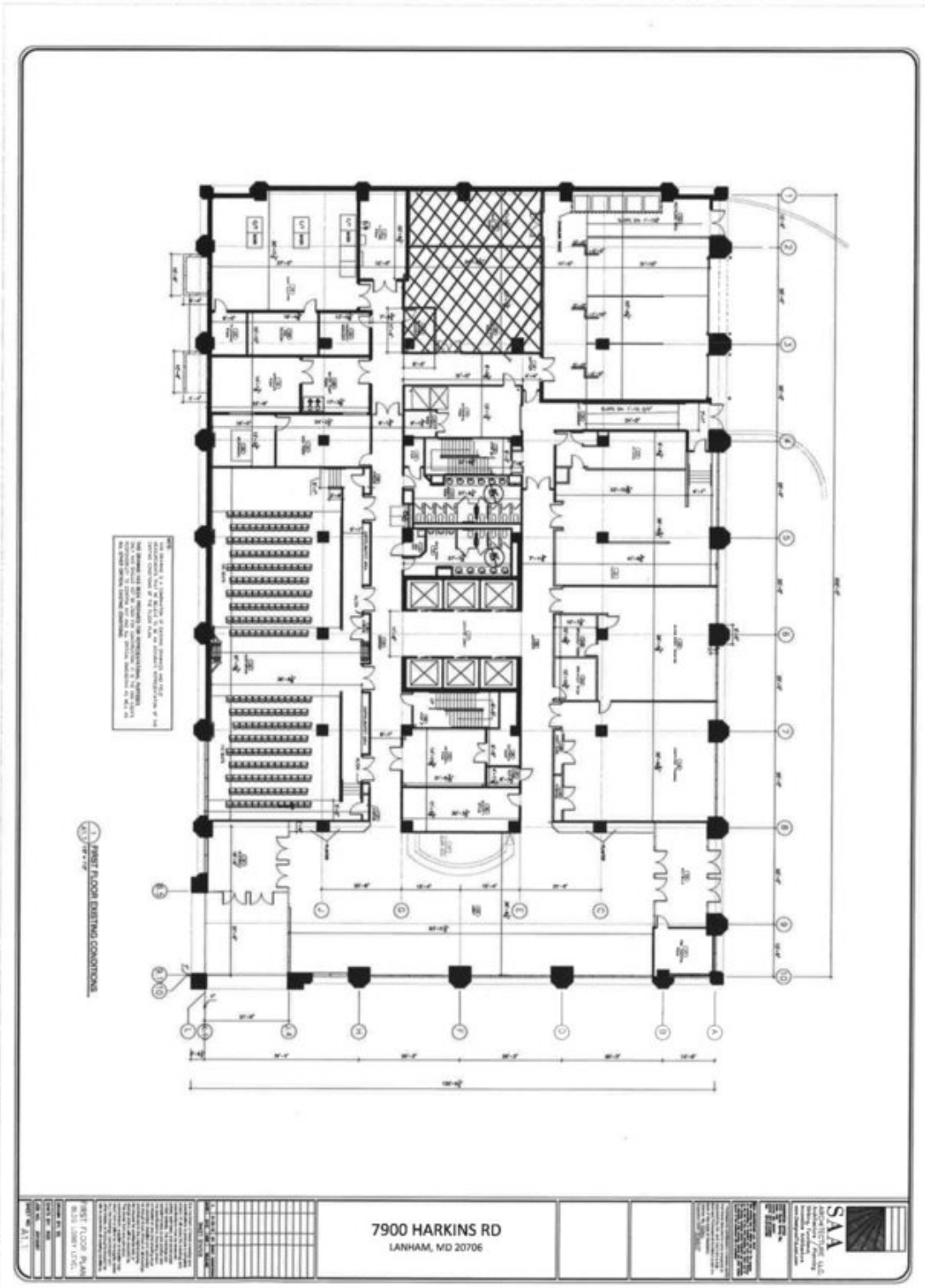

FIRST FLOOR EXISTING CONDITIONS
7900 HARKINS RD
LANHAM, MD 20706
SAA

EXHIBIT G

SUBORDINATION, NONDISTURBANCE AND ATTORNMENT AGREEMENT

Attached.

Execution Version

RETURN TO:

Thompson Hine LLP
335 Madison Avenue (12th Floor)
New York, NY 10017
Attention: Mario J. Suarez, Esq.

SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT

THIS SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT (hereinafter referred to as " Agreement ") made this 23rd day of December, 2015, among 2U HARKINS ROAD LLC, a Delaware limited liability company (together with its successors and assigns, hereinafter referred to as " Tenant ") having an address at 8201 Corporate Drive, Suite 900, Landover, MD 20785, until Tenant has commenced full business operations at the Premises, and thereafter, the Premises, LANHAM OFFICE 2015 LLC, a Delaware limited liability company having an address at 675 Third Avenue (Suite 2400), New York, NY 10017 (together with its successors and assigns, including any Successor Landlord, hereinafter referred to as " Landlord "), and TCA CRE LOANS LLC, a Delaware limited liability company having an address at 280 Park Avenue, 5th Floor, New York, NY 10017 (together with its successors and assigns, hereinafter referred to as " Lender ").

R E C I T A L S:

A. Concurrently herewith, Landlord and Tenant are entering into a certain Office Lease, dated as of the date hereof (the " Lease ") in the building known as "Metroview," 7900 Harkins Road, Lanham, MD 20706 (hereinafter referred to as the " Premises "), located at the real property more particularly described on Exhibit A attached hereto (hereinafter referred to as the " Property ").

B. Lender has made a loan to Landlord on and subject to the terms, provisions, covenants and conditions set forth in that certain Loan Agreement dated as of July 30, 2015 made by and between Landlord and Lender (as amended, modified, extended, supplemented, restated or replaced from time to time, the " Loan Agreement ") in the approximate principal amount of $40,973,888.00 (hereinafter referred to as the " Loan ") secured by a purchase money deed of trust, mortgage or security deed (as the same may be amended, restated, extended, or otherwise modified from time to time, the " Deed of Trust ") from Landlord to Lender covering the Property, including the Premises.

C. Lender, Landlord and Tenant desire to evidence their understanding with respect to the Deed of Trust and the Lease as hereinafter provided.

D. Capitalized terms used but not defined herein shall have their respective meanings set forth in the Lease.

NOW, THEREFORE, for and in consideration of the mutual covenants herein contained, the sum of Ten Dollars ($10.00) and other good and valuable considerations, the receipt and sufficiency of which are hereby acknowledged, and notwithstanding anything in the Lease to the contrary, it is hereby agreed as follows:

1. Subordination and Consent .

(a) Lender hereby consents to Landlord entering into the Lease and the Sublease Agreement, dated the date hereof, between Landlord, as subtenant, and 2U, Inc. (" Parent ") as

sublandlord with respect to Parent's current leasehold estate at 8201 Corporate Drive, Landover, Maryland (the " Takeover Sublease ") provided, however, that notwithstanding the foregoing, nothing contained herein shall be construed as a consent to, approval of, or ratification by Lender of, any of the particular provisions of the Lease or Takeover Sublease or any matter referred to or contained therein (except as may be expressly approved herein).

(b) Subject to the terms of this Agreement, Lender, Tenant and Landlord do hereby covenant and agree that the Lease with all rights, options, liens and charges created thereby (including, without limitation, any option or rights contained in the Lease, or otherwise existing, to acquire any or all of the Premises, or any superior leasehold interest therein), is and shall continue to be subject and subordinate in all respects to the Deed of Trust and to any renewals, modifications, consolidations, replacements and extensions thereof and to all advancements made thereunder. Tenant acknowledges that Landlord will execute and deliver to Lender an assignment of the Lease as security for the Loan, and Tenant hereby expressly consents to such assignment.

(c) Landlord authorizes and directs Tenant to honor any written demand or notice from Lender instructing Tenant to pay rent or other sums due under the Lease to Lender rather than Landlord (a " Payment Demand "), regardless of any other, or contrary, notice or instruction which Tenant may receive from Landlord before or after Tenant's receipt of such Payment Demand. Tenant may rely upon any notice, instruction, Payment Demand, certificate, consent, or other document which is from and signed by Lender, and Tenant shall have no duty to Landlord to investigate the same or the circumstances under which the same was given by Lender. Tenant agrees that upon Lender's Payment Demand, Tenant will timely remit any and all payments due under the Lease directly to, and payable to the order of, Lender, and in connection therewith: (x) any payment made by Tenant to Lender in response to a Payment Demand shall be deemed proper payment by Tenant of such sum pursuant to the Lease, (y) Tenant shall be entitled to full credit under the Lease for any rent or other sums paid to Lender pursuant to a Payment Demand to the same extent as if the same were paid directly to Landlord, and (z) Landlord hereby releases and discharges Tenant of and from any liability to Landlord on account of any such payments. The delivery by Lender of a Payment Demand, or Tenant's compliance therewith, shall not relieve Landlord of any Landlord's obligations under the Lease. Tenant shall not be in default under the Lease solely as the result of Tenant's delivery of payments of rent and other sums due under the Lease to Lender or any other required payee thereof in compliance with a Payment Demand, notwithstanding any dispute between Landlord and Lender which may arise as to the existence or non-existence of a default under the Deed of Trust or as to Lender's authority to notify Tenant to direct payments to Lender. Notwithstanding the foregoing, in connection with any funds payable by Tenant to Landlord under the Work Agreement, Lender and Landlord agree that Tenant has the option to make such payments directly to the contractor to whom such payment is then owing rather than to Lender or Landlord regardless of the delivery of a Payment Demand, provided such payment is made in accordance with all applicable provisions of the Work Agreement and the Lease.

2. Nondisturbance . So long as the Lease is in full force and effect and Tenant is not in default beyond any applicable notice and cure period that would permit Landlord to terminate the Lease or exercise any remedy to dispossess provided for in the Lease, Lender will not (i) disturb, interfere with or deprive Tenant of its leasehold estate or right (or the right of any party claiming by or through Tenant) to use, occupy and possess the Premises or utilize other portions of the Property under or by virtue of the terms of the Lease (including, without limitation, all rights, privileges, access rights, expansion and renewal options), or (ii) name or join Tenant (or any party claiming by or through Tenant) as a defendant in any exercise of Lender's rights and remedies arising upon a default under the Deed of Trust, including, without limitation, entry or foreclosure of the Deed of Trust, acceptance of a deed or

assignment in lieu of foreclosure, or exercise of a power of sale under the Deed of Trust, unless applicable law requires Tenant (or any party claiming by or through Tenant) to be made a party in any action relating thereto as a condition to proceeding against Landlord or in order for Lender to avail itself and prosecute such rights and remedies under the Deed of Trust. In the latter case, Lender may join Tenant (or party claiming by or through Tenant) as a defendant in such action but only to the extent necessary under applicable law in order for Lender to avail itself of and complete any foreclosure or other action or proceeding initiated by Lender pursuant to the Deed of Trust and not for the purpose of terminating the Lease or otherwise adversely affecting Tenant's rights (or the rights of any party claiming by or through Tenant) under the Lease (including, without limitation, all rights, privileges, access rights, expansion and renewal options) or this Agreement in such action. Tenant acknowledges and agrees that it has no right or option of any nature whatsoever, whether pursuant to the Lease or otherwise, to purchase the Premises or the Property, or any portion thereof or any interest therein, and to the extent that Tenant has had, or hereafter acquires, any such right or option, the same is hereby acknowledged to be subject and subordinate to the Deed of Trust and is hereby waived and released as against Lender.

3. Attornment . From and after the Takeover Date (hereinafter defined), (x) Tenant shall attorn to and recognize the Successor Landlord (hereinafter defined) as Tenant's landlord under the Lease, and Successor Landlord shall, except as provided in this Agreement, recognize all of the terms, covenants and conditions of the Lease for the balance of the term thereof remaining (including any renewal terms), with the same force and effect as if the Successor Landlord were Landlord and Tenant shall perform all of the terms, covenants and conditions of the Lease to be performed by Tenant for the balance of the term thereof remaining (including any renewal terms) for the benefit of such Successor Lender, with the same force and effect as if the Successor Landlord were Landlord, and (y) the Lease shall continue in full force and effect as a direct lease between the Successor Landlord and Tenant and said recognition and attornment shall be effective and self-operative without the execution of any further instruments subject however to the terms of this Agreement. Although said recognition and attornment shall be self-operative, Tenant further covenants and agrees to execute and deliver upon request of Lender an appropriate agreement of attornment to such Successor Landlord may reasonably request to confirm said subordination by Tenant, provided such agreement is consistent with the terms of this Agreement.

4. Lease Defaults . If any act or omission of Former Landlord or its successor-in-interest would give Tenant the right, either immediately or after lapse of time, to terminate the Lease, Tenant shall not exercise such right to terminate the Lease until: (a) Tenant shall have given written notice of such act or omission to Former Landlord and Lender; (b) Former Landlord shall have failed to remedy same within the time period stated in the Lease for effecting such cure (or, if no such time period is specified, within no more than thirty (30) days after receipt of such written notice); and (c) Lender (or, if applicable, Successor Landlord) shall not have cured such default within the time period in the preceding clause (b) for Landlord's cure plus sixty (60) days; provided this Paragraph shall not apply to or limit in any way, Tenant's termination rights or otherwise extend the time period for the exercise of such termination rights (nor the date any termination is effective), under Article XVII or Article XVIII of the Lease.

5. Obligations and Liability of Lender . Notwithstanding anything to the contrary in the Lease or the Deed of Trust but subject to this Agreement, from and after the Takeover Date, neither Lender nor any Successor Landlord, shall be:

(a) liable for any act or omission of Former Landlord which occurs prior to the Takeover Date, or bound by any obligation to make any payment to Tenant which was required to be made in connection with any such act or omission of Former Landlord **)** , except to the extent that (i) such act or omission continues after the date that Lender or such Successor Landlord succeeds to landlord's interest in the Lease, and (ii) such act or omission of such prior landlord is

of a nature can be cured by performing a service or making a repair ;

(b) subject to any offsets, defenses or counterclaims which Tenant may be entitled to assert against Former Landlord, except for (i) any defenses which Tenant might have to claims that accrued and that relate to a period prior to the Takeover Date, but only to the extent the related prior claim against Tenant is pursued by Successor Landlord, or (ii) any right expressly set forth in the Lease (including the Work Agreement) to an offset, abatement or credit that has been timely applied prior to the Takeover Date and which has not been exhausted prior to such Takeover Date, it being agreed that Successor Landlord shall recognize any such offsets, abatements or credits that have not been exhausted prior to the Takeover Date and that may thereafter accrue; or

(c) bound by any payment of rent or additional rent by Tenant to Former Landlord for more than one month in advance of the applicable payment date; or

(d) bound by any amendment or modification of the Lease made without the written consent of Lender, but only if the consent of Lender to such amendment or modification was required pursuant to the terms of the Deed of Trust or any other loan document; it being agreed that, notwithstanding anything to the contrary contained in the Deed of Trust or such other loan document, no such consent shall be required for any an amendment or modification which is (i) entered into to confirm the unilateral exercise by Tenant of a specific right or option granted to Tenant under the Lease (including, without limitation, rights of first offer or refusal renewals and expansion options notwithstanding Landlord's participation in such exercise as provided in the Lease), (ii) non-material and expressly contemplated to be entered into under the provisions of the Lease, such as to confirm the commencement date, rent commencement date, or other dates or facts, or (iii) to address an administrative matter (such as a change of a notice address); nothing contained in this Agreement shall require Lender's consent to any approvals under the Work Agreement (including without limitation, approval of plans and alterations to the Building and the Premises as described in the Work Agreement or change orders thereto) provided the same is occurs in accordance with the Work Agreement; and provided further that the foregoing shall not be construed, or be deemed to affect, modify or waive in any respect Lender's rights under the Deed of Trust or the other loan documents,

provided, however, and notwithstanding anything to the contrary contained herein, Tenant may assert any claims for rental abatement, offsets and rent credits permitted under the terms of the Tenant's Rights Sections (as hereinafter defined) whether arising on, before or after the Takeover Date (i) against Former Landlord and (ii) to the extent such rent credits, offsets or abatements have not been fully exhausted as of the Takeover Date or continue to accrue after the Takeover Date, against Lender or any Successor Landlord; and the foregoing shall not be construed to relieve Successor Landlord of liability under the Lease first arising and accruing after the Takeover Date; and provided further for purposes of clarity, it is hereby acknowledged and agreed that as of the Takeover Date, Lender and any Successor Landlord shall be bound by all of the terms, covenants and conditions of the Lease for the balance of the term thereof remaining, including but not limited to the following obligations, each to the extent required under the Lease and, as applicable, the Takeover Sublease:

(t) performance of any and all construction and delivery obligations of Former Landlord under the Lease and Work Agreement which have not yet been completed or delivered by Former Landlord as of the Takeover Date;

(u) payment of all sums payable by Former Landlord under the Takeover Sublease and, without duplication, under Section 30.2 of the Lease;

(v) payment of all sums payable by Former Landlord under Section 2.2, Section 2.3, Section 2.4, Section 2.5, Section 2.6, Section 4.6 and Article XXIV of the Lease and Section 1.3(h) and Section 1.4 of the Work Agreement which have not yet been fully paid as of the Takeover Date (including the right to offset the same against rental payments as provided in Section 1.3(h) of the Work Agreement to the extent such offsets have not been fully exhausted as of the Takeover Date);

(w) any rent credits, offsets or abatements to which Tenant may be entitled as set forth in Section 3.3(a), Section 3.3(b), Section 3.3(d), Section 4.2(a), Section 4.2(b), Section 4.2(c), Section 4.6, Section 5.2(e), Section 5.2(f), Section 5.4, Section 14.3(c), Section 15.3, Article XVII or Article XVIII of the Lease or Section 1.3(h) of the Work Agreement which, in any case, have not yet been fully applied, credited, offset or exhausted against amounts payable by Tenant under the Lease as of the Takeover Date (clauses (u), (v) and (w) are collectively referred to as the " Tenant's Rights Sections ");

(y) payment of any commission fees payable by Former Landlord to the Serten Advisors, LLC as provided in Section 25.3 of the Lease and as more fully set forth in the Commission Agreement, dated , between Serten Advisors, LLC and Former Landlord to the extent any amounts are still unpaid as of the Takeover Date; and

(z) any options or rights of Tenant under the Lease, including but not limited to the Must Take Extension Premises, any Renewal Terms or option to lease the ROFR Premises and the Expansion Premises.

6. Definitions . The following terms shall have the following meanings for purposes of this Agreement:

(a) " Former Landlord " means Landlord and any other party that was landlord under the Lease at any time before the Takeover Date.

(b) " Successor Landlord " means any party that succeeds to the rights of landlord under the Lease as the result of a Takeover Event.

(c) " Takeover Date " means the date on which Successor Landlord shall have succeeded to the rights of Former Landlord (including Landlord) under the Lease as a result of Takeover Event.

(d) " Takeover Event " means: (i) foreclosure under the Deed of Trust; (ii) any other exercise by Lender of rights and remedies (whether under the Deed of Trust or under applicable law, including bankruptcy law) as holder of the Deed of Trust, as a result of which a Successor Landlord becomes owner or ground lessor of the Property; (iii) delivery by Former Landlord to, and acceptance by, Lender (or its designee or nominee) of a deed, assignment or other conveyance of Former Landlord's interest in the Property in lieu of any of the foregoing, or (iv) any other event in which Lender or its designee shall succeed to the rights of Former Landlord under the Lease.

7. Severability . If any portion or portions of this Agreement shall be held invalid or inoperative, then all of the remaining portions shall remain in full force and effect, and, so far as is reasonable and possible, effect shall be given to the intent manifested by the portion or portions held to be invalid or inoperative.

8. Governing Law . This Agreement shall be governed by and construed in accordance with the laws of the State of Maryland.

9. Conflicts . If this Agreement conflicts with the Lease or the Deed of Trust, then this Agreement shall govern as between the parties and any Successor Landlord, including upon any attornment pursuant to this Agreement, but the foregoing shall not modify any of the rights or obligations between Landlord and Tenant under the Lease prior to any such attornment. This Agreement supersedes, and constitutes full compliance with, any provisions in the Lease that provide for subordination of the Lease to, or for delivery of nondisturbance agreements by the holder of, the Deed of Trust.

10. Notices . So long as the Deed of Trust remains outstanding and unsatisfied, Tenant will mail or deliver to Lender, at the address and in the manner hereinbelow provided, a copy of all notices permitted or required to be given to the Landlord by Tenant under and pursuant to the terms and provisions of the Lease. All notices or other communications required or permitted to be given pursuant to the provisions hereof shall be in writing and shall be considered as properly given if (i) mailed to the addressee by first class United States mail, postage prepaid, registered or certified with return receipt requested, (ii) by delivering same in person to the addressee, or (iii) by delivery to a third party commercial delivery service for same day or next day delivery to the office of the addressee with proof of delivery. Notice so given shall be effective, as applicable, upon (i) the third (3rd) day following the day such notice is deposited with the U.S. Postal Service, (ii) delivery to the addressee, or (iii) upon delivery to such third party delivery service. Notice given in any other manner shall be effective only if and when received by the addressee. For purposes of notice, the addresses of the parties shall be:

Lender:

TCA CRE LOANS LLC
280 Park Avenue (5th Floor)
New York, NY 10017
Attention: Houdin Honarvar, Esq.

with a copy to:

Thompson Hine LLP
335 Madison Avenue (12th Floor)
New York, New York 10017
Attention: Mario J. Suarez, Esq.

Landlord:

LANHAM OFFICE 2015 LLC
675 Third Avenue (Suite 2400),
New York, NY 10017
Attention: Mr. Meir Cohen

Tenant:

Prior to the date that Tenant has commenced full business operations at the Premises:

2U HARKINS ROAD LLC
8201 Corporate Drive
Suite 900

Landover, MD 20785
Attention: Chief Financial Officer
With a copy to: General Counsel

On or after the date that Tenant has commenced full business operations at the Premises:

2U HARKINS ROAD LLC
7900 Harkins Road
Landover, MD 20706
Attention: Chief Financial Officer
With a copy to: General Counsel

with a copy to:

Skadden, Arps, Slate, Meagher & Flom LLP
Four Times Square
New York, New York 10036
Attention: Marco Caffuzzi, Esq.

Notwithstanding the foregoing, any party shall have the right to change its address for notice hereunder to any other location within the continental United States by the giving of thirty (30) days' notice to the other parties in the manner set forth herein.

11. Successors and Assigns . This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, legal representatives, successors, successors-in-title and assigns; provided, however, that in the event of the assignment or transfer of the interest of Lender, upon the assumption of the successor or assignee, all obligations and liabilities of the assigning Lender under this Agreement shall terminate, and thereupon all such obligations and liabilities shall be the responsibility of such party to whom Lender's interest is assigned or transferred. When used herein, the term "landlord" refers to Landlord and to any successor to the interest of Landlord under the Lease and "Lender" refers to Lender and to any assignee of the note secured by the Deed of Trust and Lender's servicer of the Loan, if any.

12. Tenant's Personal Property . In no event shall the Deed of Trust cover or encumber (and shall not be construed as subjecting in any manner to the lien thereof) any of trade fixtures, business equipment, furniture, signs, or other personal property at any time placed on or about the Premises or the Building by or for Tenant or its subtenants or licensees.

13. Counterparts . This Agreement may be executed in one or more counterparts, each of which when so executed shall be deemed to be an original, but all of which when taken together shall constitute one and the same instrument.

14. Waiver of Jury Trial . All of parties hereto together with Successor Landlord hereby mutually waive all right to trial by jury in any summary or other action, proceeding, or counterclaim arising out of or in any way connected with this Agreement.

15. Headings . The headings, captions, and arrangements used in this Agreement are for convenience only and shall not affect the interpretation of this Agreement.

16. Limited Recourse . Tenant and all others shall look solely to the interest of the Lender in the Property for the payment of any claim hereunder or for the performance of any obligation,

agreement, contribution or term to be performed or observed by Lender hereunder or under the Deed of Trust or any other agreement or document securing or collateral to the Deed of Trust.

(Signature page follows)

IN WITNESS WHEREOF, the parties hereto have executed this Agreement under seal as of the date first above written.

LENDER

TCA CRE LOANS LLC, a Delaware limited liability company

By: Taconic Capital Advisors L.P.

By: _____
Name:
Title:

[Signatures Continue on Following Page]

Signature Page to Subordination, Non-Disturbance and Attornment Agreement

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TENANT:

2U HARKINS ROAD LLC

By: 2U, Inc., its sole member

By: _____
Name:
Title:

[Signatures Continue on Following Page]

Signature Page to Subordination, Non-Disturbance and Attornment Agreement

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LANDLORD

LANHAM OFFICE 2015 LLC,
a Delaware limited liability company

By: CTI SPV II LLC,
a Delaware limited liability company
Its: Managing Member

By: Cohen Family Asset Management LLC,
a Delaware limited liability company
Its: Sole Member

By: _____
Name: Meir Cohen
Title: Manager

ACKNOWLEDGMENT

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

On the day of , in the year 2015, before me, the undersigned, personally appeared Meir Cohen, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Notary Public

ACKNOWLEDGMENT

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

On the day of , in the year 2015, before me, the undersigned, personally appeared , personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

_____
Notary Public

Notary Page to Subordination, Non-Disturbance and Attornment Agreement

ACKNOWLEDGMENT

STATE OF MARYLAND)
) ss.:
COUNTY OF PRINCE GEORGE)

On this the day of , in the year 2015, before me, the undersigned officer, personally appeared , personally known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same for the purposes therein contained.

In witness whereof I hereunto set my hand and official seal.

Notary Public

EXHIBIT A

PROPERTY DESCRIPTION

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN PRINCE GEORGE'S COUNTY OF THE STATE OF MARYLAND, AND IS DESCRIBED AS FOLLOWS:

All of those lots or parcels of land located in Prince George's County, Maryland, and more particularly described as follows:

Being known and designated as Parcel C, as shown on the plat entitled: "Plat of Correction, Plat Four, Parcels C thru K, Metroview, which Plat is recorded among the Land Records of Prince George's County, Maryland in Plat Book R.E.P. No. 193, folio 65.

Together with those rights of ingress and egress as set forth in Liber 28935 folio 247, confirming the Declaration of Access Easement recorded in Liber 16152, folio 644, as recorded among the Land Records of Prince George's County, Maryland and

Together with those easements for parking purposes, pedestrian and vehicular ingress and egress, utility lines and surface parking, as set forth in Liber 28935, folio 226, as recorded among the Land Records of Prince George's County, Maryland.

EXHIBIT H

ROOF ACCESS AGREEMENT

THIS ROOF ACCESS AGREEMENT (this " **License** ") is made as of this day of December , 2015, by and between LANHAM OFFICE 2015 LLC, a Delaware limited liability company (" **Landlord** ") and 2U HARKINS ROAD LLC, a Delaware limited liability company (" **Tenant** ").

RECITALS

WHEREAS, Landlord has this day entered into that certain Office Lease (the lease, together with any amendments and/or modifications thereto, the " **Lease** ") of certain demised premises more particularly described in the Lease as the "Premises" (the " **Premises** ") in an office building located at 7900 Harkins Road, Lanham, Maryland; and

WHEREAS, Tenant has requested that Landlord allow the installation of Tenant's HVAC and communications equipment on the roof of the Building and Landlord is agreeable to entering into this instrument, whereby a license relative thereto would be granted but only on the terms and conditions hereinafter set forth.

NOW THEREFORE, for and in consideration of the premises set forth below and other good and valuable consideration, the adequacy, receipt and sufficiency of which are hereby acknowledged by Landlord and Tenant, Landlord and Tenant hereby agree as follows:

1. Recitals . The Recitals set forth above are correct and are incorporated into, and constitute a part of, this License.

2. License for Rooftop Equipment .

(a) Subject to the terms hereof and the approval of Prince George's County and all other governing authorities with jurisdiction thereof, Landlord hereby grants to Tenant (and Tenant hereby accepts) a non-exclusive revocable license (the " **License** ") to install the Rooftop Equipment (as defined below) and Facilities (also defined below) as such installation is described herein, and to maintain, operate and repair same and, at the conclusion of the License, to remove same from the Building, all to be at Tenant's sole cost and expense.

(b) The term of the License shall be coterminous with the term of the Lease; provided, however, that the term of the License may be terminated by Tenant prior to the Expiration Date by providing not less than sixty (60) days prior written notice to Landlord.

(c) The " **Rooftop Equipment** " consists of HVAC equipment and communications receiving and transmitting dish antennae, as specified in Schedule 1 attached to and made a part hereof. The " **Facilities** " consists of all equipment, conduits and materials and other facilities related to the Rooftop Equipment. Landlord shall determine the location of the Rooftop Equipment, and the location of the Facilities, all in its reasonable discretion. The plans and specifications for installation of the Rooftop Equipment and the Facilities at the Building,

including, among other things, the proposed mounting method, the location and point of entry to the Building, and the cable route, conduits and type information, shall in every instance be subject to Landlord's prior written approval which shall not be unreasonably withheld, conditioned or delayed. The Rooftop Equipment shall include a non-penetrating building mounts. The point of entry of the cable that is part of the Rooftop Equipment shall be at such point as Landlord shall determine in its reasonable judgment.

(d) Tenant hereby acknowledges and agrees that the Rooftop Equipment (including all components thereof) and the Facilities are the property of Tenant; provided however, that at the expiration or earlier termination of the Lease or the License, if the Rooftop Equipment or any portion thereof of any of the Facilities are not removed from the Building by or at the direction of Tenant within thirty (30) days following said expiration or termination, the same shall be deemed abandoned by Tenant and, at Landlord's option, may be claimed as the property of Landlord, free of all claims of Tenant.

(e) The Rooftop Equipment and the Facilities shall be installed by the employees, agents or contractors of Tenant, only in accordance with plans and specifications that shall have been previously reasonably approved by Landlord and any construction or installation work shall be controlled and supervised by Landlord, at Tenant's cost and expense. Landlord agrees that it will reasonably cooperate with Tenant in connection with the installation of the Rooftop Equipment and Facilities and the performance of any work required in connection therewith and the submission of any materials to governmental entities as may be required for any permits or other approvals necessary with respects thereto; provided, however, that Tenant shall promptly reimburse Landlord for all costs and expenses incurred by Landlord in connection with any of the said activities. Tenant agrees to immediately remove or cause to be removed (by bonding or otherwise), and all mechanic's lien(s) which are in any way related to the installation, maintenance, operation, and/or removal of the Rooftop Equipment and/or the Facilities, all at Tenant's sole cost and expense, within thirty (30) days after any such liens(s) encumber the Building or any portion thereof.

(f) Upon reasonable prior notice to Landlord, Landlord will permit Tenant reasonable access to the approved location of the Rooftop Equipment and the Facilities, as needed, to install, maintain, operate and/or remove the Rooftop Equipment and the Facilities.

(g) Landlord may request that Tenant relocate the Rooftop Equipment and/or the Facilities. Tenant will cooperate with Landlord to identify an alternate location on, or about, the Building which will comply with Landlord's requirements and applicable governmental requirements and will provide to the extent reasonably possible, adequate reception for the Rooftop Equipment, it being hereby understood that Landlord makes no warranties or representations as to the adequacy of such reception or otherwise, hereunder. If Landlord were to make a discretionary request to relocate the Rooftop Equipment or the Facilities, then all expenses incurred in relocating the Rooftop Equipment or the Facilities pursuant to this Paragraph shall be borne by Landlord. If a relocation request from Landlord is made as a result of governmental requirements, then Tenant shall bear all costs of such relocation. Landlord will endeavor to provide Tenant with reasonable access to such alternate location.

(h) Tenant agrees (and will insure) that the Rooftop Equipment, and all Facilities will be installed in accordance with all applicable local and building rules of construction and codes. Tenant shall at all times maintain the Rooftop Equipment and the Facilities in good order and repair and Tenant shall be responsible for any and all costs and expenses incurred in connection with such repairs to the Rooftop Equipment and/or the Facilities, including without limitation, the installed conduits running from the Rooftop Equipment to the Premises, Tenant's installation, repair, maintenance and operation of the Rooftop Equipment and the Facilities shall be subject to and performed in accordance with all terms and conditions of the Lease, as well as applicable governmental codes, laws, rules, regulations and/or ordinances in effect from time to time. Tenant shall be entitled, in connection with the installation and use of the Rooftop Equipment, to run conduits (of a type approved in writing by Landlord) from the Rooftop Equipment to the Premises, in order to connect Tenant's related equipment in the Premises to the Rooftop Equipment. Tenant shall be required to pay the actual cost of any and all electricity, maintenance and operation costs (and any and all other costs and expenses) required or incurred in connection with the Rooftop Equipment and/or any related Facilities.

(i) If access to the Rooftop Equipment or Facilities is impeded or in the event existing communications equipment within the Building interferes with the Rooftop Equipment or Facilities, Landlord and Tenant agree to identify a new location for the Rooftop Equipment and Facilities satisfactory to Landlord and the Rooftop Equipment and Facilities will be relocated thereto. Such relocation will be at Tenant's sole cost and expense.

(j) Tenant hereby agrees that it will (and hereby does) indemnify, protect, defend and hold Landlord harmless from and against any claims, liabilities, judgments, costs or expenses (including, without limitation, all costs of litigation and attorney's fees and expenses) arising out of, or related to Tenant's installation and use of the Rooftop Equipment and Facilities and any breach by Tenant of its obligations under this License. This subsection (j) shall survive any termination of the License and/or the Lease as amended hereby.

(k) Tenant agrees not to unreasonably interfere with the operation of the communications equipment of other tenants within the Building. The Rooftop Equipment and Facilities may not be used in any fashion which would cause any inference with any other antennae, radio systems or microwave dishes on, adjacent to, at the Building now or hereafter installed. In the event Tenant's Rooftop Equipment and/or Facilities cause any such interference that cannot be eliminated within a reasonable length of time, not to exceed one hundred twenty (120) hours, Tenant's rights under this License shall, at the sole and exclusive option of Landlord, cease and terminate whereupon Tenant shall promptly remove the Rooftop Equipment and Facilities from the Building in accordance with the terms of this License.

(l) Should Tenant ever remove or relocate the Rooftop Equipment and/or Facilities, Tenant will restore the Building to its condition prior to the placement of the Rooftop Equipment and Facilities on the Building, reasonable wear and tear expected. Upon its vacation of the Premises, or upon termination or expiration of the Lease, Tenant agrees that this paragraph (l) shall survive. Within thirty (30) days following the termination or expiration of the Lease, Tenant shall, at its sole cost and expense, remove the Rooftop Equipment and Facilities and restore the Building in accordance with the terms of this paragraph.

(m) Tenant shall be responsible for obtaining all necessary permits and approvals from the FCC and from all other governmental agencies and/or political subdivisions having jurisdiction over installation, maintenance, operation, repair, and/or removal of the Rooftop Equipment and Facilities. Copies of all permits and approvals shall be submitted to Landlord once they are obtained.

(n) Any default by Tenant of the provisions of this License shall be deemed a default of the Lease but shall be subject to such notice and cure periods applicable to similar defaults under the Lease.

(o) Landlord makes no representations whatsoever regarding the suitability or adequacy of the Building or any portion thereof relative to the installation, maintenance, operation repair and/or removal of the Rooftop Equipment or Facilities, Landlord specifically disclaims any and all warranties, expressed or implied, relative thereto. Tenant acknowledges and agrees that the portions of the Building that may be subject to this License, are accepted by Tenant in an "AS IS WHERE IS" condition.

3. Successors and Assigns . This License shall inure to the benefit of, and be binding upon the parties hereto and their respective successors and approved assigns. Tenant may not assign or sublicense this License without Landlord's prior written consent, which consent may be granted or withheld in Landlord's sole discretion; provided however that Tenant shall be permitted to assign or sublicense this License in connection with a permitted assignment or sublease, as applicable, of the Lease in accordance with the terms thereof. Nothing in this License shall prohibit or restrict Landlord from assigning its interests under the Lease.

4. Entire Agreement . This License and the Lease sets forth the entire agreement between the parties with respect to the License granted herein. There have been no additional oral or written representations or agreements relative thereto. Under no circumstances shall this License be deemed to grant any rights to Tenant not specifically provided herein.

5. Governing Law . This License shall be governed by and construed in accordance with the laws of the State of Maryland without regard to conflicts of laws principles thereof.

6. No Waiver; Time of Essence . The failure of either party to enforce any of the respective rights or remedies hereunder, or to promptly enforce any such rights or remedies, shall not constitute a waiver thereof nor give rise to any estoppel against such party nor excuse any of the parties hereto from their respective obligations hereunder. Any waiver of such right or remedy must be in writing and signed by the party to be bound and must expressly state that such right or remedy has been or thereby is waived. This License is subject to enforcement at law or in equity, including actions for damages or specific performance. Time is of the essence hereof.

7. Successive Actions . Separate and successive actions may be brought hereunder to enforce any of the provisions hereof at any time and from time to time. No action hereunder shall preclude any subsequent action, and Guarantor hereby waives any covenants to the maximum extent permitted by law not to assert any defense in the nature of splitting of causes of action or merger of judgments.

8. Attorneys' Fees . In the event it is necessary for Landlord to retain the services of an attorney or any other consultants in order to enforce this License, or any portion hereof, Tenant shall promptly pay to Landlord any and all costs and expenses, including, without limitation, attorneys' fees, incurred by Landlord as a result thereof and such costs, fees and expenses shall be included in the costs of the case to the extent the Landlord wins the issue under contest.

9. Counterparts . This License may be executed in any number of counterparts, each of which shall be effective only upon delivery and thereafter shall be deemed an original, and all of which shall be taken to be one and the same instrument, for the same effect as if all parties hereto had signed the same signature page. Any signature page of this License may be detached from any counterpart of this License without impairing the legal effect of any signatures thereon and may be attached to another counterpart of this License identical in form hereto but having attached to it one or more additional signature pages.

[continued on following page]

IN WITNESS WHEREOF, the parties hereto have executed and sealed this Rooftop Equipment License as of the date aforesaid.

WITNESS/ATTEST:

LANDLORD:

LANHAM OFFICE 2015 LLC , a Delaware limited liability company

Name: _____

By: _____ (SEAL)
Name: _____
Title: _____

WITNESS/ATTEST:

TENANT:

2U HARKINS ROAD LLC , a Delaware limited liability company

Name: _____

By: _____ [SEAL]
Name: _____
Title: _____

EXHIBIT I

FORM OF GUARANTY

GUARANTY AND SUBORDINATION AGREEMENT

THIS GUARANTY AND SUBORDINATION AGREEMENT (this " **Agreement** "), made as of the day of , 2015, by 2U, INC., a Delaware corporation (" **Guarantor** "), in favor of LANHAM OFFICE 2015 LLC, a Delaware limited liability company (" **Landlord** ").

W I T N E S S E T H:

A. Landlord has this day entered into that certain Office Lease (the lease and the Work Agreement attached thereto as Exhibit B , together with any amendments and/or modifications thereto, the " **Lease** ") of certain demised premises more particularly described in the Lease as the "Premises" (the " **Premises** ") located at 7900 Harkins Road, Lanham, Maryland with 2U Harkins Road LLC, Delaware limited liability company (" **Tenant** ");

B. Tenant is a wholly-owned subsidiary of Guarantor;

C. Landlord has required, as a condition to entering into the Lease, Guarantor to be a guarantor of each and every obligation imposed upon Tenant by the Lease; and

D. Capitalized terms used but not defined herein shall have the respective meanings set forth in the Lease.

NOW, THEREFORE, to induce Landlord to enter into the Lease and in consideration of the foregoing premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Guarantor, for itself, its successors and assigns, hereby covenants and agrees for the benefit of Landlord, as follows:

1. Guaranty . Guarantor does hereby unconditionally and irrevocably guarantee to Landlord the full, complete and timely performance of all obligations imposed on Tenant by the terms of the Lease, including, but not limited to, the full, complete and timely payment of rent and all other sums due by Tenant under the Lease and the payment as required by the Lease of all damages to Landlord which may result from Tenant's breach of any provision of the Lease (collectively, the " **Obligations** ").

2. Guaranty of Payment and Performance . Guarantor acknowledges and agrees that this is a guaranty of payment and performance and not mere collection. Guarantor is executing this Agreement as a primary obligor and not merely as a surety. The liability of Guarantor under this Agreement shall be direct and immediate and not conditional or contingent upon the pursuit of any remedies against Tenant or any other person or entity. Guarantor waives any right to require that an action be brought against Tenant or any other person or entity. In the event, on account of the Bankruptcy Reform Act of 1978, as amended, or any other debtor relief law (whether statutory, common law, case law or otherwise) of any jurisdiction whatsoever, now or

hereafter in effect, which may be or become applicable, Tenant shall be relieved of the Lease or any debt, obligation or liability as provided in the Lease, Guarantor shall nevertheless be fully liable for the complete and timely performance of all obligations imposed on Tenant by the Lease throughout the entire term of the Lease, all to the same extent as if Guarantor had been the original tenant thereunder and the Lease shall be deemed unaffected by any such relief granted to Tenant. If there occurs an Event of Default under the Lease which is not cured within any applicable grace or cure period, Landlord shall have the right to enforce its rights, powers and remedies thereunder or hereunder, in any order to the maximum extent permitted by law, and all rights, powers and remedies provided thereunder or hereunder or by law or in equity. If the obligations guaranteed hereby are partially performed, paid or discharged by reason of the exercise of any of the remedies available to Landlord, this Agreement shall nevertheless remain in full force and effect, and Guarantor shall continue to be liable for all remaining obligations guaranteed hereby, even though any rights which Guarantor may have against Tenant may be destroyed or dismissed by the exercise of any such remedy. If at any time any payment by Tenant of any obligation under the Lease is rescinded or must otherwise be restored or returned upon the insolvency, bankruptcy, dissolution, liquidation or reorganization of Tenant or upon or as a result of the appointment of a receiver, intervener or conservator of, or trustee or similar officer for, Tenant or any substantial part of its property or otherwise, Guarantor's obligations hereunder with respect to such payment shall be reinstated as though such payment had been due but not made at such time.

3. Waivers by Guarantor . To the extent permitted by law, Guarantor hereby waives and agrees not to assert or take advantage of:

(a) Any right to require Landlord to proceed against Tenant or any other person or entity or to proceed against or exhaust any security held by Landlord at any time or to pursue any other remedy in Landlord's power or under any other agreement before proceeding against Guarantor;

(b) Any defense that may arise by reason of the incapacity, lack of authority, death or disability of any other person or persons or the failure of Landlord to file or enforce a claim against the estate (in administration, bankruptcy or any other proceeding) of any other person or persons;

(c) Any defense based upon an election of remedies by Landlord;

(d) Any right or claim or right to cause a marshaling of the assets of Tenant or Guarantor;

(e) Any invalidity, irregularity or unenforceability, in whole or in part, of any one or more provisions of the Lease; and

(f) Any modification of the Lease or of any obligation of Tenant thereunder by amendments to the Lease, by waivers granted by Landlord or by operation of law or by action of any court, whether pursuant to the Bankruptcy Reform Act of 1978, as amended, or any other debtor relief law (whether statutory, common law, case law or otherwise) of any jurisdiction whatsoever, now or hereafter in effect, or otherwise.

4. Subordination . Guarantor hereby unconditionally and irrevocably subordinates all payments due or to become due by Tenant to Guarantor, by reason of any and all debts or other obligations, including the obligation to pay salaries or other compensation (collectively " **Debt Payments** "), to the payment of any monetary Obligations; provided, however, that as long as no Event of Default has occurred and is then continuing under the Lease, after the payment of each monthly installment of Rent, Guarantor shall be entitled to receive any Debt Payments due for such month.

5. General Provisions .

(a) Survival . This Agreement shall be deemed to be continuing in nature and shall remain in full force and effect and shall survive the exercise of any remedy by Landlord under the Lease unless and until the Obligations have been indefeasibly paid and performed in full.

(b) No Subrogation; No Recourse Against Landlord . Notwithstanding the satisfaction by Guarantor of any liability hereunder, Guarantor's rights of subrogation, contribution, reimbursement or indemnity, if any, or any right of recourse to or with respect to the assets or property of Tenant, shall be subject and subordinate to the rights of Landlord. Guarantor expressly agrees not to exercise any and all rights of subrogation against Landlord.

(c) Entire Agreement; Amendment; Severability . This Agreement contains the entire agreement between the parties respecting the matters herein set forth and supersedes all prior agreements, whether written or oral, between the parties respecting such matters. Any amendments or modifications hereto, in order to be effective, shall be in writing and executed by Landlord and Guarantor. A determination that any provision of this Agreement is unenforceable or invalid shall not affect the enforceability or validity of any other provision, and any determination that the application of any provision of this Agreement to any person or circumstance is illegal or unenforceable shall not affect the enforceability or validity of such provision as it may apply to any other persons or circumstances.

(d) Governing Law; Binding Effect; Waiver of Acceptance . This Agreement shall be governed by and construed in accordance with the laws of the State of Maryland without regard to conflicts of laws principles thereof. This Agreement shall bind Guarantor, its successors and assigns (but in the event of an assignment, Guarantor shall not be relieved of its obligations hereunder), and shall inure to the benefit of Landlord, its successors and assigns. Guarantor hereby waives any acceptance of this Agreement by Landlord and this Agreement shall immediately be binding upon Guarantor.

(e) Notices . All notices, demands, requests or other communications to be sent by one party to the other hereunder or required by law shall be in writing and shall be deemed to have been validly given or served by delivery of the same in person to the intended addressee, or certified mail or by depositing the same with Federal Express or another reputable private courier service for next business day delivery to the intended addressee at its address set forth below or at such other address as may be designated by such party as herein provided. All notices, demands and requests shall be effective upon such personal delivery, or one (1) business day after being deposited with the private courier service, or two (2) business days after being

deposited in the United States mail as required above. Rejection or other refusal to accept or the inability to deliver because of changed address of which no notice was given as herein required shall be deemed to be receipt of the notice, demand or request sent. By giving to the other party hereto at least seven (7) days' prior written notice thereof in accordance with the provisions hereof, each party shall have the right from time to time to change their respective addresses and each shall have the right to specify as its address any other address within the United States of America.

If to the Landlord:	Lanham Office 2015 LLC c/o Cohen Equities 675 Third Avenue Suite 2400 New York, New York 10017 Attention: Meir Cohen
	with a copy to: McCandlish Lillard 11350 Random Hills Road Suite 500 Fairfax, Virginia 22030 Attn: C. Vincent Leon-Guerrero, Esq.
If to Guarantor:	2U, Inc. _____ _____ Attn: _____
with a copy to:	Skadden, Arps, Slate, Meagher & Flom LLP Four Times Square New York, New York 10036 Attn: Marco Caffuzzi, Esq.

(f) No Waiver; Time of Essence . The failure of either party to enforce any of the respective rights or remedies hereunder, or to promptly enforce any such rights or remedies, shall not constitute a waiver thereof nor give rise to any estoppel against such party nor excuse any of the parties hereto from their respective obligations hereunder. Any waiver of such right or remedy must be in writing and signed by the party to be bound and must expressly state that such right or remedy has been or thereby is waived. This Agreement is subject to enforcement at law or in equity, including actions for damages or specific performance. Time is of the essence hereof.

(g) Captions for Convenience . The captions and headings of the sections and paragraphs of this Agreement are for convenience of reference only and shall not be construed in interpreting the provisions hereof.

(h) Attorneys' Fees . In the event it is necessary for Landlord to retain the services of an attorney or any other consultants in order to enforce this Agreement, or any portion hereof, Guarantor shall promptly pay to Landlord any and all costs and expenses, including reasonable attorneys' fees, incurred by Landlord as a result thereof and such costs, fees and expenses shall be included in the costs of the case to the extent the Landlord wins the issue under contest.

(i) Successive Actions . Separate and successive actions may be brought hereunder to enforce any of the provisions hereof at any time and from time to time. No action hereunder shall preclude any subsequent action, and Guarantor hereby waives any covenants to the maximum extent permitted by law not to assert any defense in the nature of splitting of causes of action or merger of judgments.

(j) Reliance . Landlord would not enter into the Lease without this Agreement. Accordingly, Guarantor intentionally, irrevocably and unconditionally enters into the covenants and agreements as set forth above and understand that, in reliance upon and in consideration of such covenants and agreements, the Lease has been made.

(k) Intentionally Omitted.

(l) Counterparts . This Agreement may be executed in any number of counterparts, each of which shall be effective only upon delivery and thereafter shall be deemed an original, and all of which shall be taken to be one and the same instrument, for the same effect as if all parties hereto had signed the same signature page. Any signature page of this Agreement may be detached from any counterpart of this Agreement without impairing the legal effect of any signatures thereon and may be attached to another counterpart of this Agreement identical in form hereto but having attached to it one or more additional signature pages.

(m) Authority . Guarantor hereby represents and warrants that: (i) Guarantor is a duly organized entity, validly existing and in good standing under the laws of the State of Delaware, (ii) Guarantor has full right and authority to enter into this Agreement, and (iii) the person signing on behalf of Guarantor is authorized to do so.

(n) Consent to Jurisdiction and Venue . To the maximum extent permitted by law, Guarantor hereby irrevocably submits to the jurisdiction of any Maryland State or Federal court sitting in Prince George's County, County or the U.S. District Court for the District of Maryland over any suit, action or proceeding arising out of or relating to this Agreement or the Lease. Guarantor hereby agrees that Landlord shall have the option in its sole discretion to lay the venue of any such suit, action or proceeding in the courts of the State of Maryland or the United States of America for the District of Maryland and irrevocably waives to the fullest extent permitted by law any objection which Guarantor may now or hereafter have to the laying of the venue of any such suit, action or proceeding brought in such court and any claim that any suit, action or proceeding brought in such court has been brought in an inconvenient forum. Guarantor

agrees that a final judgment of any such suit, action or proceeding brought in such court shall be conclusive and binding upon Guarantor.

[signatures appear next page]

IN WITNESS WHEREOF, Guarantor has executed this Agreement under seal as of the day and year first above written.

ATTEST/WITNESS:

By: _____
Name: _____
Title: _____

GUARANTOR:
2U, INC. , a Delaware corporation

By: _____
Name: _____
Title: _____

EXHIBIT J

PARKING EASEMENT

Attached.

2007 NOV 21 P 2:54

28935 226

CLERK OF THE CIRCUIT COURT

PRINCE GEORGE'S COUNTY, MD
APPROVED BY
#03
NOV 2 1 2007
$ N/A RECORDATION TAX PAID
$ N/A TRANSFER TAX PAID

Recording Requested By and
When Recorded Return to:

Commercial Settlement Services, LLC
1829 Reisterstown Road, Suite 380
Baltimore, Maryland 21208
Attn: Howard Perlow

(Space above for Recorder's Use)

IMP FD SURE $ 20.00
RECORDING FEE 75.00
TOTAL 95.00
Rest PG83 Rcpt # 68555
PM LJJ Blk # 9532
Nov 21, 2007 02:55 PM

EASEMENT AND RESTRICTIVE COVENANT AGREEMENT

THIS EASEMENT AND RESTRICTIVE COVENANT AGREEMENT (this "**Agreement**") is executed effective as of November 21 2007, by **VINGARDEN ASSOCIATES, A MARYLAND LIMITED PARTNERSHIP**, a Maryland limited partnership ("**Vingarden**"), and 7900 Harkins Rd Holdings, LLC, a Delaware limited liability company (the "**Parcel C Owner**").

RECITALS

A. Vingarden is the owner in fee simple of Parcels D, E, F, G, H and I as shown on that Plat entitled "Plat of Correction, Plat Four, Parcels C Thru K, Metroview" (the "**Plat**"), which Plat is recorded among the land records of Prince George's County, Maryland in Plat Book R.E.P. 193, folio 65.

B. Parcel C Owner is the owner in fee simple of Parcel C as shown on the Plat.

C. The parcels shown on the Plat are hereinafter individually referred to as a "**Parcel**" or as "**Parcel C**", "**Parcel D**", "**Parcel E**", "**Parcel F**", "**Parcel G**", "**Parcel H**" and "**Parcel I**", as the case may be, and collectively referred to as the "**Property**". The owner of fee simple title to a Parcel is hereinafter referred to as an "**Owner**"; and the Owner of Parcel C is hereinafter referred to as the "**Parcel C Owner**", the Owner of Parcel D is hereinafter referred to as the "**Parcel D Owner**", the Owner of Parcel E is hereinafter referred to as the "**Parcel E Owner**", the Owner of Parcel F is hereinafter referred to as the "**Parcel F Owner**", the Owner of Parcel G is hereinafter referred to as the "**Parcel G Owner**", the Owner of Parcel H is hereinafter referred to as the "**Parcel H Owner**" and the Owner of Parcel I is hereinafter referred to as the "**Parcel I Owner**". The owner(s) of Parcels D through I shall be collectively referred to herein as either the "**Owners of the Outparcels**" or the "**Outparcel Owners**".

D. A building containing approximately 325,000 square feet and known as 7900 Harkins Road, New Carrollton, Maryland (the "**Parcel C Building**") is located on Parcel C and is owned by the Parcel C Owner.

E. Immediately prior to the recordation of this Agreement, Vingarden was the Owner of Parcels C through I and the Parcel C Building. In its capacity as Owner of Parcels D through I (the "**Outparcels**"), Vingarden permitted itself (in its capacity as Owner of Parcel C and the Parcel C Building) to utilize a portion of the Outparcels as

surface parking in order to satisfy the Minimum Parking Requirement (as defined in Section 3.1(f)) applicable to the Parcel C Building.

F. The Owners wish to bind the Outparcels and the Outparcel Owners by granting easements and imposing on the Outparcels covenants running with the land in favor of Parcel C, which easements and covenants shall (i) create easements for parking purposes, pedestrian and vehicular ingress and egress and utility lines, on, over and across Parcels D through I prior to the Conveyance Date (hereinafter defined), (ii) permit the Owner of Parcel C to have the right to use the Parking Portion (as defined herein) for surface parking benefiting Parcel C and/or the Parcel C Building until the Conveyance Date, and (iii) impose certain restrictions on the Outparcel Owners' use of the Outparcels.

AGREEMENT

NOW THEREFORE, for and in consideration of the premises and the mutual rights and obligations hereinafter set forth and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

1. Easements.

(a) Vingarden hereby grants and conveys to Parcel C Owner, its successors and assigns, for the benefit of Parcel C, easements on, over and across Parcels D through I for the following purposes at no cost to Parcel C Owner, except as provided in Section 2 below (the "**Permitted Uses**"): (i) the exclusive right to use the Parking Portion for parking purposes, provided that the Parking Portion (together with the Additional Permitted Parking, if any (as defined in Section 3.1(f)) shall at all times contain at least that number of parking spaces required to comply with the Minimum Parking Requirement; (ii) non-exclusive pedestrian and vehicular ingress, egress and access to and from the Parking Portion; and (iii) utility lines to the Parcel C Building in such locations as may exist on the date hereof or as may be granted under Section 3.3 below. The "**Parking Portion**" shall initially be located in the area shown on the aerial map attached hereto as **Exhibit A**.

(b) Notwithstanding the provisions of Section 1(a) but subject to the provisions of Section 1(c), the Outparcel Owners may reconfigure the parking spaces and improvements (and ingress, egress and access thereto) upon the Outparcels from time to time provided that (i) the Minimum Parking Requirement is satisfied at all times, (ii) the Outparcel Owners give Parcel C Owner at least thirty (30) days prior notice before commencing any such re-configuration and shall diligently pursue completion of any such re-configuration, which notice shall be accompanied by a diagram showing the proposed re-configuration of the Parking Portion, (iii) the manner in which the reconfiguration of the Parking Portion is conducted does not unreasonably interfere with Parcel C Owner's use of the Outparcels for the Permitted Uses, and (iv) the reconfigured Parking Portion contains improvements which are substantially similar to those improvements made to the previously configured Parking Portion (including improvements, if any, made by Parcel C Owner pursuant to Section 2.1(a)).

(c) If the number of spaces in the Parking Portion must be expanded in order to satisfy the Minimum Parking Requirement, then Parcel C Owner shall give notice thereof to the Outparcel Owners and the Outparcel Owners shall (except as permitted pursuant to Section 3 in connection with the construction of the Parking Structure) remove any improvements on the Outparcels (including any fence) which would interfere with the use of the Outparcels for the Permitted Uses within sixty (60) days after receipt of such notice (such sixty (60) day period, the "**Expansion Notice Period**"). After the Expansion Notice Period, the term "Parking Portion" shall mean all of the Outparcels, and Parcel C Owner shall be solely responsible for any reconfiguration of the Parking Portion upon the Outparcels, and Parcel C Owner shall have exclusive use of the Outparcels (except as permitted pursuant to Section 3 in connection with the construction of the Parking Structure).

(d) Parcel C Owner hereby acknowledges, agrees and confirms that the easements granted in Section 1(a) above shall not prevent the Outparcel Owner from utilizing any portion of the Outparcels that is not included in the Parking Portion for any purpose whatsoever, provided that such use or purpose shall not unreasonably interfere with Parcel C Owner's use of the Outparcels for the Permitted Uses. In particular, Parcel C Owner acknowledges, agrees and confirms that:

(i) At the Outparcel Owner's election, all or part of Parcel D or Parcel E may be used by the Outparcel Owners for the construction of the Parking Structure (as defined in Section 3.1 below); provided that the Outparcel Owners must first reconfigure the Parking Portion in accordance with Section 1(b) so that, together with any Permitted Additional Parking (as defined in Section 3.1(g)), the Minimum Parking Requirement on the balance of the Outparcels shall be satisfied at all times; and provided further, that in no event shall the use of driveways leading from Harkins Road to Parcel D or Parcel E by the Owners of the Outparcels, or any of them, unreasonably interfere with the free flow of vehicular and pedestrian traffic to and from Parcel C, any other portion of the Property, Harkins Road or Ellin Road; and

(ii) If the Outparcel Owners utilize a portion of Parcel D or E for the construction of the Parking Structure, such activities (including the use of construction equipment on or over the driveways leading to Parcel D or E from time to time) will not constitute a violation of the easements granted in Section 1(a) herein, unless access to or use of the Parking Portion is blocked.

2. Maintenance of Improvements on the Outparcels.

2.1 Maintenance.

(a) Subject to the rights of the Outparcel Owners as provided in this Agreement, until the Conveyance Date, Parcel C Owner shall have the right (but not the obligation), at its expense, to further improve the Parking Portion for the purpose of accommodating the Permitted Uses. Until the Conveyance Date, Parcel C Owner shall (i) maintain, at its expense, in a clean and neat condition, and in compliance with all applicable laws, rules and regulations of governmental authorities having jurisdiction, all

surface parking areas within the Parking Portion, and the driveways, sidewalks, lighting systems and other improvements and amenities exclusively serving such parking spaces or located within the Parking Portion, and (ii) diligently prosecute repairs of any and all damage caused to the Outparcels by the Parcel C Owner or any of its contractors, subcontractors, licenses, tenants, employees or invitees. If any such repairs are not promptly performed, the Outparcel Owners may perform such repairs after five (5) days (but immediately if an emergency) following the delivery of notice of the need for such repairs to the Parcel C Owner and the Parcel C Owner shall reimburse the Outparcel Owners for any commercially reasonable third party costs incurred by the Outparcel Owners in connection with the performance of such repairs. Such reimbursement shall be made within thirty (30) days after the Outparcel Owners' delivery to Parcel C Owner of any such third party invoice respecting such repairs.

(b) The Outparcel Owners shall be responsible (i) for all maintenance of any portion of the Outparcels which are not within the Parking Portion (including all driveways, sidewalks, lighting systems and other requirements and amenities which are not exclusively serving the parking spaces within the Parking Portion or located within the Parking Portion), in accordance with the same standards set forth in Section 2.1(a) above, (ii) for all costs of any re-configuration of the Parking Portion (including ingress, egress and access thereto) and/or re-striping of the surface parking areas within the initial or any reconfigured Parking Portion, and (iii) to diligently prosecute repairs of any and all damage caused to the surface parking areas, driveways, sidewalks, lighting systems and other improvements and amenities on the Outparcels and the Additional Property (as defined in Section 3.1(g)) by the Outparcel Owners or any of their contractors, subcontractors, licensees, employees or invitees, whether in connection with the construction of the Parking Structure or otherwise. If any such repairs are not promptly performed, Parcel C Owner may perform such repair after five (5) days (but immediately if an emergency) following the delivery of notice to the Outparcel Owners and the Outparcel Owners shall reimburse Parcel C Owner for any commercially reasonable third party costs incurred by Parcel C Owner in connection with the performance of such repairs. Such reimbursement shall be made within thirty (30) days after Parcel C Owner's delivery to the Outparcel Owners of any such third party invoice respecting such repairs.

2.2 Insurance.

(a) Until the Conveyance Date, the Outparcel Owners shall maintain commercial general liability insurance for personal injury, death and property damage liability in amounts not less than $2,000,000.00 per occurrence, $2,000,000.00 aggregate and $3,000,000.00 umbrella coverage or such lesser amount as Parcel C Owner may accept, for personal injury, death and property damage occurring upon, in or about the Outparcels. The deductible for such insurance policies shall not exceed a commercially reasonable amount. Parcel C Owner and its mortgagee shall be named as an additional insured under such insurance policies and shall be given not less than thirty (30) days advance written notice of any cancellation or non-renewal of insurance. The Outparcel Owners shall provide Parcel C Owner with certificates of such insurance from time to time upon written request to evidence that such insurance is in force.

Notwithstanding the foregoing sentence, in the event that a claim is asserted by or against Parcel C Owner that is to be covered under the insurance policy obtained by the Outparcel Owners, the Outparcel Owners shall provide Parcel C Owner with a copy of the insurance policy within five (5) business days after receipt of a request therefor. Such insurance may be written by additional premises endorsement on any master policy of insurance carried by the Outparcel Owners which may cover other property in addition to the Outparcels. All insurance shall be issued by insurers which are licensed to do business in the State of Maryland and shall be rated A+ or better by Best's Rating Agency.

(b) Parcel C Owner will reimburse the Outparcel Owners for Parcel C's Pro Rata Share (as defined herein) of any premium charged for the insurance described in Section 2.2(a) herein. The Outparcel Owners shall send an invoice to Parcel C Owner for such insurance premiums along with copies of the invoice from the applicable insurer. Parcel C Owner shall pay such Pro Rata Share to the Outparcel Owners within thirty (30) days after receipt of the invoice.

(c) Upon failure at any time on the part of the Outparcel Owners to procure the insurance required by Section 2.2(a) and/or deliver to Parcel C Owner a certificate of such insurance, Parcel C Owner may, in its sole discretion, procure such insurance and pay the premium therefor, and the Outparcel Owners shall within five (5) days of demand pay to Parcel C Owner the premium for such insurance, less Parcel C Owner's Pro Rata Share.

(d) Notwithstanding any provision of this Agreement to the contrary, neither Parcel C Owner nor the Outparcel Owners shall be liable to the other or to any insurance company (by way of subrogation or otherwise) insuring the other party to the extent of any loss or damage which is covered by the insurance obtained pursuant to Section 2.2. Notwithstanding the foregoing sentence, the recipient of the insurance proceeds shall be responsible for paying the insurance deductible.

2.3 Taxes. Until the Conveyance Date, Parcel C Owner shall pay to the Outparcel Owners its Pro Rata Share of real estate taxes for the Outparcels. The Outparcel Owners shall send an invoice to Parcel C Owner for such payment, along with copies of the tax bills for all of the Outparcels. Parcel C Owner shall pay such Pro Rata Share to the Outparcel Owners by the later of (a) ten (10) business days after receipt of the invoice or (b) five (5) days prior to the due date for such taxes. Such tax payments shall be billed no more frequently than twice per year.

2.4 Pro Rata Share. For purposes of Sections 2.2 and 2.3 of this Agreement, Parcel C Owner's Pro Rata Share shall be equal to a fraction, the numerator of which is the number of striped surface parking spaces satisfying the Minimum Parking Requirement (currently 1,100), and the denominator of which is the total number of striped surface parking spaces on the Outparcels, but not less than 1,305; provided, however, that after the Expansion Notice Period and prior to the Outparcel Owner's commencement of construction of the Parking Structure, Parcel C Owner's Pro Rata Share shall be 100%.

3. Construction of Parking Structure.

3.1 Parking Structure.

(a) The Owners of the Outparcels have the right, at their sole option, to construct a parking structure (the "**Parking Structure**") on the Parking Structure Parcel (as defined below) subject to the terms of this Section and at the sole cost and expense of the Owners of the Outparcels. The Parking Structure shall include a number of parking spaces for passenger vehicles equal to at least the greater of (x) thirteen hundred five (1,305) non-tandem parking spaces (including such number of non-compact and handicapped parking spaces as are required by applicable law), or (y) the Minimum Parking Requirement.

(b) The Parking Structure shall: (i) be constructed in a good and workmanlike manner substantially in accordance with all plans and specifications prepared by the Owners of the Outparcels and approved by Parcel C Owner in its commercially reasonable discretion and all applicable governmental agencies; (ii) have an exterior surface consistent with the design of the exterior surface of the Parcel C Building; (iii) be constructed by (A) a general contractor and major subcontractors which are experienced in the construction of parking garages and approved by Parcel C Owner in its reasonable discretion, and which provide completion bonds until the Parking Structure is completed and the certificate of occupancy is obtained ("major subcontractors" being those subcontractors having contracts valued at fifteen percent (15%) or more of the general contractor's contract), or in lieu of such third party completion bond, a commercially reasonable guaranty of completion and performance is given to Parcel C Owner by Berman Enterprises Limited Partnership, or an affiliate with a net worth at least equal to the cost to construct the Parking Structure, as reasonably estimated by the Outparcel Owners at the time the guaranty is given (the "**Net Worth Minimum Amount**") or (B) a company owned or controlled by any combination of Dennis Berman, Gary Berman, Brian Berman, Kevin Berman and Jeffrey Berman, in which case Parcel C Owner's approval is deemed granted, provided that a commercially reasonable guaranty of completion and performance is given to Parcel C Owner by Berman Enterprises Limited Partnership, or an affiliate with a net worth at least equal to the Net Worth Minimum Amount; (iv) be paid for pursuant to a financing plan, any lien of which is expressly subordinate to this Agreement; (v) have all utility services provided to the Parking Structure separately metered with the service lines for each such utility placed substantially within the boundaries of utility easements granted to utility companies, and if such utility easements will encumber Parcel C or the Parking Structure Parcel, the provisions thereof must be approved by Parcel C Owner in its reasonable discretion; (vi) be constructed in accordance with all applicable laws (including environmental), rules and regulations of government authorities having jurisdiction, including without limitation, the terms of all permits and other approvals granted by the governmental authorities having jurisdiction; and (vii) not be subject to any proffers or other ongoing financial obligations or assessments (other than real estate taxes) to governmental authorities or otherwise imposed on the owner of the Parking Structure by virtue of private agreement other than those approved by Parcel C Owner in its sole discretion. In addition, the Outparcel Owners shall not commence construction unless

and until such time as the number of surface parking spaces on the then-Parking Portion (as reconfigured by the Outparcel Owners in accordance with Section 1(b) to conform to the proposed construction) together with the number of parking spaces provided by the Outparcel Owners as Permitted Additional Parking satisfies the Minimum Parking Requirement. In the event that a guaranty of completion and performance is given pursuant to Section 3.1(b)(iii) hereunder the guarantor shall provide to Parcel C Owner financial statements demonstrating such guarantor's net worth, and such financial statements shall be certified by Gary and Dennis Berman.

(c) The Owners of the Outparcels shall at their sole cost and expense obtain all permits and other governmental approvals required for the construction, operation and occupancy of the Parking Structure, including, without limitation, a certificate of occupancy for the same. Subject to advance notice and such reasonable safety restrictions as the Outparcel Owners or the general contractor may require, Parcel C Owner, its agents and employees, shall have free access, at Parcel C Owner's expense, to inspect all work in the course of construction of the Parking Structure, which requests shall not exceed once per month. In addition, Parcel C Owner shall have a period of thirty (30) days following receipt of a written notice of completion for the Parking Structure from the Outparcel Owners to inspect the Parking Structure and provide the Outparcel Owners with a list of defective items. The Outparcel Owners shall promptly repair any such defective items. If the repair of any minor defective items (as identified by Parcel C Owner) will not interfere with Parcel C Owner's use of the Parking Structure, such minor defective items may be repaired after the Conveyance Date, but must be repaired no later than sixty (60) days after the Conveyance Date. If the Outparcel Owners fail to repair such defective items within such sixty (60) day period, then Parcel C Owner may repair such defective items and the Outparcel Owners shall, within ten (10) days of demand, pay to Parcel C Owner all costs and expenses incurred by Parcel C Owner with respect to such repairs. The Owners of the Outparcels, or any of them, shall also make available to Parcel C Owner, within five (5) days after the receipt of the request of Parcel C Owner (but not more frequently than once per month), all agreements, permits, approvals, plans, surveys, reports, construction bonds and other documents reasonably requested from time-to-time by Parcel C Owner in connection with the construction of the Parking Structure and/or the Subdivision (as defined below) or Condominium (as defined below), including but not limited to copies of any lien waivers received from the general contractor and all major subcontractors.

(d) Promptly following completion of construction of the Parking Structure substantially in accordance with the provisions of Section 3.1 (as reasonably determined by Parcel C Owner), the procurement of all permits and other approvals of governmental authorities required for the use and operation of the same, and the creation of the Parking Structure Parcel by recordation of the Subdivision and/or Condominium documents referenced in Section 3.2 hereof, the Owners of the Outparcels shall at their sole cost and expense (except that one-half of all transfer and recordation taxes associated with the same shall be paid by the Owners of the Outparcels and the other one-half shall be paid by Parcel C Owner) convey to Parcel C Owner by special warranty deed containing covenants of further assurances good and marketable fee simple title to the Parking Structure Parcel, free of all liens, encumbrances and other

matters of record, other than those matters of record for Parcel D or Parcel E (as applicable) existing as of the date of this Agreement, and any easements contemplated by this Agreement or otherwise approved by Parcel C Owner in its reasonable discretion (the "**Permitted Exceptions**"); provided, however, that if prior to such conveyance Parcel C Owner provides the Outparcel Owners with a written report from a reputable environmental engineer concluding that there are recognized environmental conditions on the Parking Structure Parcel that are violative of applicable environmental laws, the conveyance of the Parking Structure Parcel shall be delayed until such time as the identified recognized environmental conditions have been removed or remediated by the Outparcel Owners to the reasonable satisfaction of Parcel C Owner. Together with the above-referenced conveyance, the Owners of the Outparcels shall convey to Parcel C Owner (to the extent assignable) all of their right, title, and interest in and to all permits and other approvals issued by governmental authorities in connection with the Parking Structure, including, without limitation, a certificate of occupancy for the same, and all warranties issued by contractors, subcontractors, and material providers in connection with the Parking Structure, all free of liens and other encumbrances, and having been fully paid for by the Owners of the Outparcels. The provisions of this Section 3.1(d) shall be subject to the requirement of Section 3.2, and in the event of any inconsistency, the provisions of Section 3.2 shall prevail. The date that the deed to the Parking Structure Parcel and the amendment to this Agreement (as required by Section 3.3) are both recorded in the Land Records of Prince George's County (or other applicable location) shall be the "**Conveyance Date**".

(e) With respect to the conveyance of the Parking Structure and the Parking Structure Parcel to Parcel C Owner, all real property taxes, installment payments of special assessment liens, sewer charges, utility charges and normally prorated operating expenses paid as of the Conveyance Date shall be prorated as of 12:01 a.m. on the Conveyance Date. The Owners agree to make further adjustments to correct any prorations made or not made in error.

(f) The "**Minimum Parking Requirement**" shall be the greater of (i) the number of parking spaces required under any lease for the Parcel C Building existing as of the date of this Agreement (as such number of parking spaces may change pursuant to any such lease from time to time, but without regard to any modifications or amendments of such lease after the date of this Agreement), or (ii) the number of parking spaces required by applicable zoning laws and regulations in effect as of the date of this Agreement for the use of the Parcel C Building as a general office use, provided that in either instance none of the parking spaces shall be tandem parking spaces.

(g) The "**Permitted Additional Parking**" is the number of additional surface parking spaces provided by the Outparcel Owners during construction of the Parking Structure on property located outside of the Property (the "**Additional Parcel**") and consented to by the tenant of the Parcel C Building. The cost of providing and maintaining (in accordance with the standards set forth in Section 2.1) the Additional Permitted Parking shall be borne solely by the Outparcel Owners, including but not limited to, all insurance for the Additional Parcel (as required in accordance with Section

2.2), all taxes for the Additional Parcel, and shuttle bus service between the Additional Parcel and Parcel C during such business hours required by the tenant of the Parcel C Building. Parcel C Owner shall, at Outparcel Owner's request, permit the Outparcel Owners to meet with such tenant and reasonably cooperate in an effort to obtain such tenant's consent to the Additional Permitted Parking. During construction of the Parking Structure, the number of parking spaces included in the Additional Permitted Parking shall be added to the number of parking spaces included in the Parking Portion for purposes of determining whether the Minimum Parking Requirement is satisfied. The Outparcel Owners shall hold harmless and indemnify Parcel C Owner against any actions hereunder that cause Parcel C Owner to be in default under any lease for the Parcel C Building satisfying the requirements of Section 3.5 hereof and any costs incurred by Parcel C Owner to cure any such default.

3.2 Subdivision of or Condominium Containing Parcel D or E.

(a) If the Outparcel Owners elect to construct the Parking Structure, then prior to the Conveyance Date, the Owners of the Outparcels shall cause Parcel D or Parcel E to be subdivided to create a separate legal parcel (the "**Subdivision**") or subjected to a commercial condominium (the "**Condominium**") in which the Parking Structure shall constitute a separate legal condominium unit for that portion of Parcel D or Parcel E upon which the Parking Structure will be constructed, together with such additional portions of such Parcel as are reasonably required to accommodate other improvements, equipment and appurtenances necessary to the use, operation and occupancy of the Parking Structure and such additional portions of such Parcel (non-exclusive where permitted by law) as are required by law applicable to the subdivision of land or creation of a commercial condominium (the "**Parking Structure Parcel**"). The owner of the Parking Structure Parcel shall be an Owner hereunder and, until the Conveyance Date, the Parking Structure Parcel shall be an Outparcel hereunder.

(b) Parcel C Owner acknowledges that the Condominium may contain improvements constructed within condominium units located above or contiguous with the Parking Structure, in which event such other condominium units shall be retained by the Owner of Parcel D or Parcel E, as applicable. Such Subdivision or Condominium shall occur upon terms and pursuant to a plat of subdivision or commercial condominium documents, as applicable, in form approved by Parcel C Owner in its reasonable discretion, and at the sole cost and expense of the Owners of the Outparcels. The Outparcel Owner(s) will use commercially reasonable efforts to cause the Condominium to contain minimal common elements such that the Owner of the Parking Structure Parcel shall have minimal ongoing monetary obligations with respect to such common elements of the Condominium. The documents creating the Condominium shall provide that (i) each owner of a Condominium unit shall be responsible for maintaining such unit (and the costs thereof), and (ii) the costs of maintaining such common elements shall be borne by the owners of the Condominium units in proportion to the square footage of each Condominium unit.

3.3 Amendment to Agreement. Prior to the Conveyance Date, the Owners of the Outparcels shall prepare an amendment to this Agreement (the

"**Amendment**"), which shall effective as of the Conveyance Date: (i) establish easements over Parcels D through I for pedestrian and vehicular ingress and egress to and from Harkins Road, Ellin Road, Parcel C and the Parking Structure Parcel, for the benefit of Parcel C and the Parking Structure Parcel; (ii) establish utility easements over Parcels D through I to provide for the maintenance, operation and replacement of utility lines serving Parcel C as of the date of this Agreement, to the extent easements for the same are not recorded among the Land Records of Prince George's County, Maryland as of the date of this Agreement or prior to the Conveyance Date in accordance with Section 3.1; (iii) establish utility easements over the Outparcels (exclusive of the Parking Structure Parcel) to provide for the installation, maintenance, operation and replacement of utility lines to serve the Parking Structure Parcel; (iv) establish drainage easements over the Outparcels (exclusive of the Parking Structure Parcel) to serve Parcel C and the Parking Structure Parcel; and (v) terminate the easement granted in Section 1(a) above. The Amendment shall also address each Owner's obligation to maintain the pedestrian and vehicular access ways on each Owner's Parcel in a good state of repair and in a safe and orderly condition, with the exception that each Owner shall be liable for any damage to another Owner's Parcel caused by the willful misconduct of such first Owner. The terms of the Amendment shall be proposed by the Outparcel Owners but shall be subject to the approval of Parcel C Owner in its reasonable discretion. The Amendment shall be recorded against the Property among the Land Records of Prince George's County by the Owners of the Outparcels, at their sole cost, concurrently with their conveyance to Parcel C Owner of fee simple title to the Parking Structure Parcel and shall be superior to all matters of record for the Outparcels, other than those existing as of the date of this Agreement and the Subdivision or Condominium documents prepared in accordance with the terms of this Agreement.

3.4 Requests for Approval. If Parcel C Owner receives a written request from the Outparcel Owners to approve or consent to any matter as to which the Parcel C Owner's consent or approval is required under this Agreement, such matter shall be deemed to be approved or consented to for all purposes of this Agreement unless Parcel C Owner delivers to the Outparcel Owners within ten (10) business days of its receipt of the request for approval or consent (time being of the essence) a written rejection of such request. The written rejection shall set forth with specificity the reason(s) for rejecting the request. Any written request from the Outparcel Owners for Parcel C Owner's approval or consent shall specifically state that, pursuant to the terms of this Agreement, failure to approve or disapprove the item within ten (10) business days is deemed approval. Where Parcel C Owner's approval or consent shall be in its reasonable discretion, such approval shall not be unreasonably withheld, conditioned or delayed.

3.5 Parcel C Leases. Parcel C Owner hereby covenants and agrees that until the Conveyance Date, it shall not enter into or modify any lease (or leases) for the Parcel C Building which lease or modification thereof (a) requires the landlord to provide a greater number of parking spaces than 1,305, or (b) provides for any greater consent or other rights (with respect to parking issues) to the tenant(s) therein than are provided as of the date of this Agreement.

3.6 Parcel C Owner Expenses. Within thirty (30) days after the delivery from time to time by Parcel C Owner of its request to the Outparcel Owners (which request shall include copies of invoices), the Outparcel Owners shall reimburse Parcel C Owner for all commercially reasonable third party costs and expenses (including, without limitation, consultants', engineers', lenders' and attorneys' fees) incurred by Parcel C Owner in connection with the matters addressed in Sections 3.1, 3.2 and 3.3 above, including, without limitation, those incurred in connection with reviewing submissions to it made by any of the Outparcel Owners.

4. Negative Covenants - General. Except as expressly provided or contemplated in this Agreement, prior to the Conveyance Date, the Owners of the Outparcels, or any of them, shall not without Parcel C Owner's written consent, which consent may be withheld in Parcel C Owner's absolute discretion: (i) modify the legal status of all or any portion of the Outparcels, or any of them, by modification to zoning, approvals, permits or otherwise if such modification alters the Outparcel Owners' obligation to provide parking in accordance with this Agreement or unreasonably interferes with Parcel C Owner's use of the Outparcels for the Permitted Uses; (ii) permit any modification to the physical condition of all or any portion of the Outparcels, or any of them, with improvements or otherwise which would unreasonably and adversely interfere with Parcel C Owner's use of the Outparcels for the Permitted Uses; (iii) permit any deed of trust, other instrument to secure financing, or other lien to be filed or imposed on all or any portion of the Outparcels that is not expressly subordinate to this Agreement; (iv) record any subdivision plat, condominium plat or map with respect to any Outparcel if such would unreasonably interfere with Parcel C Owner's use of the Outparcels for the Permitted Uses; or (v) enter into any agreement or arrangement which may result in the imposition of any ongoing monetary or other financial obligation or liability upon the Parking Structure, the Owner of the Parking Structure and/or the Parking Structure Parcel. The negative covenants contained in this Section 4 shall automatically terminate and be deemed null and void effective as of the Conveyance Date.

5. Negative Covenants – Tax District. The Owners of the Outparcels, or any of them, shall not without Parcel C Owner's written consent, which consent may be withheld in Parcel C Owner's absolute discretion: (i) execute and file a petition or application to include Parcel C and/or the Parking Structure Parcel in a special taxing district, special assessment district, special benefits district or similar arrangement (a "**Tax District**") with any of the Outparcels, or to have Parcel C and/or the Parking Structure Parcel subject to any liability for property tax assessed in a manner, amount or rate that is other than the manner or more than the amount and/or rate that are generally applicable to commercial properties in Prince George's County, Maryland; and (ii) if as a result of a breach or violation of Section 5(i), Parcel C and/or the Parking Structure Parcel is included in a Tax District or becomes subject to a tax amount or rate that is other than those generally applicable to commercial property in Prince George's County, Maryland, each Owner of the Outparcels shall be jointly and severally liable to indemnify and/or pay, either to or on behalf of Parcel C Owner or its assigns, any additional taxes, and any penalties and interest for late payment of such taxes, to the extent that the taxes imposed on Parcel C and/or the Parking Structure Parcel are higher than those that would

be imposed in the manner, amount and/or rate that is then generally applicable to commercial properties in Prince George's County, Maryland.

6. Condemnation. In the event all or any portion of the Property is taken under power of eminent domain or conveyed by the Owner of the same under threat thereof, any award shall be paid solely to the Owners of the portion of the Property taken, each in a sum equal to the value of each Owner's respective interest in the subject portion of the Property taken or conveyed, to be determined with respect to all relative facts existing at the time of such proceeding. Notwithstanding the foregoing to the contrary, if the Outparcel Owners are not able to satisfy the Minimum Parking Requirement solely because of a condemnation of a portion of the Outparcels, then (i) if the number of parking spaces then legally allowable is less than the number of parking spaces comprising the Minimum Parking Requirement prior to such taking, then upon Outparcel Owner's option, either (1) the Outparcel Owners can provide Parcel C Owner with sufficient additional parking outside of the Outparcels to satisfy the Minimum Parking Requirement or (2) the Outparcel Owners shall grant Parcel C Owner the right to claim the condemnation award attributable to the loss of any parking spaces taken, in which case the number of parking spaces needed to satisfy the Minimum Parking Requirement (as set forth in Section 3.1(f)) shall be reduced by the number of parking spaces so taken; and (iii) the references in Sections 2.4 and 3.5 of this Agreement to 1,305 parking spaces shall be reduced (if less) to the maximum number of surface parking spaces then legally allowable on the Outparcels.

7. Benefits and Obligations of Easements to Run with Land. Each and all of the easements, covenants, conditions and restrictions contained herein are for the mutual benefit of the Owners. Such covenants shall run with the Property and every portion thereof, and shall be binding on the Owners' respective successors-in-interest to ownership of fee title to the Property and every portion thereof. Each of the covenants are imposed on the Property and every portion thereof as covenants running with the land to benefit and burden the Property and every portion thereof.

8. Injunctive Relief and Damages. In the event of any breach or threatened breach of any restriction or other provision of this Agreement by the Owners of the Outparcels, or any of them, Parcel C Owner may prosecute any proceeding at law or in equity to enjoin such breach or threatened breach and to recover reasonable, actual third party costs and expenses attributable to such breach, not including consequential damages, and the Owners of the Outparcels shall promptly reimburse to Parcel C Owner all reasonable third party costs and expenses (including, without limitation, reasonable attorneys fees) incurred by it in connection therewith, within thirty (30) days after delivery from time-to-time by Parcel C Owner of a request for the same to the Owners of the Outparcels, or any of them. In the event of a breach of Section 5(i), Parcel C Owner's sole remedy shall be the indemnification provided in Section 5(ii).

9. Miscellaneous.

9.1 Notices. Any notice, request, or other communication to be given by any party hereunder shall be in writing and shall be delivered personally, sent by

recognized overnight delivery service with recipient's signature required, or sent by registered or certified mail, postage prepaid, return receipt requested, or sent by fax provided that any fax must be accompanied by notice sent by another method described herein, addressed as follows:

(a) If to the Owner of Parcel C, to:

c/o UrbanAmerica, L.P. II
30 Broad Street, 31st Floor
New York, NY 10004
Attn: Hal Reiff, CFO
Fax: 212-785-9419

With a copy to:

Gordon, Feinblatt, Rothman, Hoffberger & Hollander, LLC
233 E. Redwood St.
Baltimore, MD 21202
Attn: Danielle Stager Zoller, Esq.
Fax: 410-576-4182

(b) If to any Owner of an Outparcel, to:

Vingarden Associates,
A Maryland Limited Partnership
c/o Brian Berman
5410 Edson Lane #220
Rockville, MD 20852
Fax: 301-816-1556

With a copy to:

Greenberg Traurig, LLP
1750 Tysons Blvd., 12th Floor
McLean, VA 22102
Attn: Richard J. Melnick, Esq.
Fax: 703-714-8310

or to such other person or place as either party shall furnish to the other in writing in accordance with this Section; provided, however, that the Owners of the Outparcels may only designate one address for notice. Any such notice or communication mailed in compliance with the requirements of this Section shall be deemed to have been given and received on the date received or refused.

9.2 Integration; Waiver. Neither this Agreement nor any provision hereof may be waived, modified, amended, discharged, or terminated except by an

instrument signed by the Owner of the portion of the Property against whom the enforcement of such waiver, modification, amendment, discharge, or termination is sought, and then only to the extent set forth in such instrument. No waiver by any Owner of any failure to comply with its obligations hereunder shall be deemed a waiver of any other or subsequent failure to so comply.

9.3 No Merger. Notwithstanding that fee simple title to any portion of the Property may now or hereafter be owned by the same individual or entity, the easements, rights, obligations, restrictions and other terms of this Agreement shall not be deemed to be extinguished by merger or otherwise and the same shall be perpetual and shall not be extinguished, except by an instrument duly executed by all the Owners and recorded among the Land Records of Prince George's County, Maryland. Any costs to be incurred in implementing the provisions of this Agreement other than the cost of maintaining the Outparcels for the Permitted Uses prior to the Conveyance Date, shall be borne or reimbursed by the Owners of the Outparcels.

9.4 Construction. The captions in this Agreement are inserted for reference only and in no way define, describe or limit the scope or intent of this Agreement or of any of the provisions hereof. Whenever required by the context of this Agreement, the singular shall include the plural and the masculine shall include the feminine and vice versa. All references in this Agreement to Articles, Sections and Exhibits are references to the Articles and the Sections of this Agreement and the Exhibits attached hereto, as the case may be, unless expressly otherwise designated in the context. The Recitals at the beginning of this Agreement are incorporated herein by this reference. All Exhibits attached hereto are incorporated herein by reference.

9.5 Binding Effect. The declarations, limitations, easements, restrictions, reservations, covenants, conditions and other provisions of this Agreement, are imposed as covenants running with the land and equitable servitudes, and shall run with the Property and all interests in the Property, and be binding upon the Owners and their respective successors and assigns, and all parties having or acquiring any right, title or interest in or to the Property or any portion thereof, their heirs, personal representatives, successors and assigns, and inure to the benefit of each Owner of a Parcel. If more than one person and/or entity shall become the owner of fee simple title to any portion of the Property, then the liability of each such person and entity hereunder shall be joint and several with respect to the subject portion of the Property. The Owners of the Outparcels shall be jointly and severally liable for all obligations and liabilities imposed on them respectively pursuant to this Agreement and such joint and several liability shall survive the Conveyance Date for a period of twelve (12) months.

9.6 Non-Liability. Parcel C Owner agrees that it shall look solely to the Owner of each Outparcel but not to any of the partners, members, officers, employees or agents of each such Owner, to enforce its rights hereunder, and that the partners, members, officers, employees or agents of each Owner of an Outparcel shall not have any personal obligation or liability hereunder.

9.7 No Third Party Beneficiary. The provisions of this Agreement are for the exclusive benefit of the Owner of fee simple title to Parcel C, and not for the benefit of any third person, nor shall this Agreement be deemed to have conferred any rights, express or implied, upon any third person.

9.8 Governing Law. This Agreement shall be governed by, and construed in accordance with, the laws of the State of Maryland without regard to its conflicts of laws principles.

9.9 Venue and Waiver by Jury. EACH OWNER OF ANY PORTION OF THE PROPERTY WAIVES TRIAL BY JURY IN ANY ACTIONS, PROCEEDING, CLAIM OR COUNTERCLAIM BROUGHT AGAINST ANY OTHER OWNER OF FEE TITLE TO A PORTION OF THE PROPERTY IN CONNECTION WITH ANY MATTER ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT.

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

9.11 Further Assurances. Each Owner shall each execute at the request of any other Owner, such further reasonable documentation as may be necessary to effectuate the purposes of this Agreement.

9.12 Entire Agreement. This Agreement constitutes the entire and complete agreement between the parties hereto and supersedes any prior oral or written agreements between the parties with respect to the Property, or any portion thereof.

10. Counterparts. This Agreement may be executed in counterparts, and all counterparts so executed shall constitute one Easement and Restrictive Covenant Agreement, binding upon all of the parties hereto.

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK.]

IN WITNESS WHEREOF, the undersigned have executed this Agreement effective as of the date first written above.

VINGARDEN ASSOCIATES,
A Maryland Limited Partnership

By: Dengar Corporation,
Its General Partner

By: Brian E. Berman
Its: Vice President

7900 Harkins Rd Holdings, LLC

By: Hal Reiff
Its: Executive Vice President

IN WITNESS WHEREOF, the undersigned have executed this Agreement effective as of the date first written above.

VINGARDEN ASSOCIATES,
A Maryland Limited Partnership

By: Dengar Corporation,
Its General Partner

By: Brian E. Berman
Its: Vice President

7900 Harkins Rd Holdings, LLC

By: Hal Reiff
Its: Executive Vice President

STATE OF MARYLAND)
)
COUNTY OF _____)

I HEREBY CERTIFY that on this ___ day of _____, 2007, before me, the Subscriber, a Notary Public in and for the State and County aforesaid, duly commissioned and qualified, personally appeared Brian E. Berman who acknowledged himself to be the Vice President of Dengar Corporation, a Maryland corporation, the general partner of Vingarden Associates, A Maryland Limited Partnership, and that he, as such corporate officer, being authorized so to do, executed the aforegoing written instrument on behalf of such limited partnership for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

My Commission Expires: _____
[NOTARIAL SEAL]

STATE OF NEW YORK)
COUNTY OF Richmond)

I HEREBY CERTIFY that on this 20th day of November, 2007, before me, the Subscriber, a Notary Public in and for the State and County aforesaid, duly commissioned and qualified, personally appeared Hal Reiff who acknowledged him/herself to be the Executive Vice President of 7900 Harkins Rd Holdings, LLC, a Delaware limited liability company, and that he/she, as such officer, being authorized so to do, executed the aforegoing written instrument on behalf of such limited liability company for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

SHAWN KANE
NOTARY PUBLIC, State of New York
No. 01KA6169134
Qualified in Richmond County
Commission Expires June 4, 2011

My Commission Expires: _____

[NOTARIAL SEAL]

STATE OF MARYLAND)
)
COUNTY OF Montgomery)

I HEREBY CERTIFY that on this 19 day of November, 2007, before me, the Subscriber, a Notary Public in and for the State and County aforesaid, duly commissioned and qualified, personally appeared Brian E. Berman who acknowledged himself to be the Vice President of Dengar Corporation, a Maryland corporation, the general partner of Vingarden Associates, A Maryland Limited Partnership, and that he, as such corporate officer, being authorized so to do, executed the aforegoing written instrument on behalf of such limited partnership for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

My Commission Expires: 10/12/2010
[NOTARIAL SEAL]

STATE OF NEW YORK)

COUNTY OF _____)

I HEREBY CERTIFY that on this ___ day of _____, 2007, before me, the Subscriber, a Notary Public in and for the State and County aforesaid, duly commissioned and qualified, personally appeared Hal Reiff who acknowledged him/herself to be the Executive Vice President of 7900 Harkins Rd Holdings, LLC, a Delaware limited liability company, and that he/she, as such officer, being authorized so to do, executed the aforegoing written instrument on behalf of such limited liability company for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

My Commission Expires: _____

[NOTARIAL SEAL]

28935 244

This instrument has been prepared under the supervision of the undersigned, an Attorney duly admitted to practice before the Court of Appeals of Maryland.

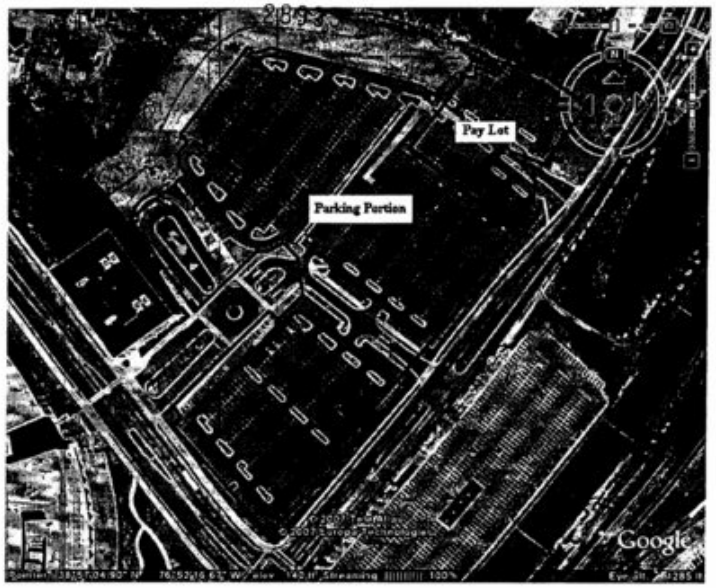
Richard J. Melnick

Richard J. Melnick, Esq.

EXHIBIT A

Diagram Showing Parking Portion

28935 246



9106

(1)

COMMERCE TITLE COMPANY, INC.
Commercentre West Ste. 200
1777 Reisterstown Road
PIKESVILLE MD 21208

16152 644

DECLARATION OF ACCESS EASEMENT

THIS DECLARATION OF ACCESS EASEMENT ("Easement") is made this 22nd day of August, 2002, by VINGARDEN ASSOCIATES, A MARYLAND LIMITED PARTNERSHIP, a Maryland limited partnership (together with its successors in interest, "Declarant"). & Consideration

WITNESSETH:

WHEREAS, Declarant is the owner of certain real property consisting of approximately 18.65 acres of land located in New Carrolton, Prince George's County, Maryland, more particularly described on Exhibit "A" attached hereto and made a part hereof (the "Property"); and

WHEREAS, Declarant has divided the Property into the separate and distinct parcels shown on the plat recorded among the Land Records of Prince George's County, Maryland (the "Land Records") in Plat Book REP 193, folio 65 (the "Plat"), a reduced copy of a survey of which is attached hereto as Exhibit "B" (the "Survey"); and

WHEREAS, that portion of the Property described as "Parcel C" ("Parcel C") on the Plat, is or will be improved with an office building (the "Building"), of which, together with parking facilities, and related improvements located on the Property, Computer Sciences Corporation, a Nevada corporation ("CSC") is a tenant; and

WHEREAS, the Property is or will be improved by drive isles and driveways intended to be used as a common means of ingress and egress to and from Parcel C (and any other portion of the Property containing parking facilities intended to serve Parcel C) and Harkins Road, a public right of way ("Harkins Road") and Ellin Road, a public right of way ("Ellin Road"); and

WHEREAS, Declarant desires to establish and create an easement on, over and across the above described drive isles and driveways for purposes of ingress and egress to and from Parcel C (and any other portion of the Property containing parking facilities intended to serve Parcel C) and Harkins Road and Ellin Road, for the benefit of (i) Parcel C, and (ii) the owner(s) from time to time of a fee simple interest in Parcel C, CSC, and any subtenant, successor or assign of CSC's interest in Parcel C (collectively, the "Parcel C Parties").

IMP FEE SURC $ 5.00
RECORDING FEE 20.00
TOTAL 25.00
Rcpt# PG93 Rcpt # 74747
REP LJJ Blk # 6829
Aug 28, 2002 01:43 PM

NOW, THEREFORE, in consideration of the foregoing recitals, each of which are incorporated in and made a substantive part of this Easement, the sum of One Dollar ($1.00), and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Declarant hereby declares and covenants as follows:

1. Declarant hereby establishes, declares, grants, and conveys to the Parcel C Parties, for the benefit of Parcel C and the Parcel C Parties, as an easement appurtenant to Parcel C, a non-exclusive perpetual easement and right of passage, free of charge, on, through, over and across all of the driveways and drive isles shown on the Site Plan (the "Common Access Drives") for purposes

PRINCE GEORGE'S COUNTY, MD.
NO TRANSFER/RECORDATION
TAXES TO BE COLLECTED
DATE 8-28-2002 BY

CLERK OF THE CIRCUIT COURT
2002 AUG 28 P 1:43

of vehicular and pedestrian ingress and egress to and from Parcel C (and any other portion of the Property containing parking facilities intended to serve Parcel C), Harkins Road and Ellin Road.

2. The Parcel C Parties shall have full, free and uninterrupted use of the Common Access Drives for the purposes named herein and shall have all rights and privileges reasonably necessary to the exercise of this Easement. This Easement shall not be construed to, nor does it or is it intended to create, any easement, license, privilege, dedication or right of any nature whatsoever in the general public or for any public purpose whatsoever, or in any party other than the Declarant and the Parcel C Parties.

3. Except for matters beyond Declarant's control, or as may otherwise be required by law, neither Declarant nor any owner of any portion of the Property (referred to individually herein as an "Owner", and collectively as the "Owners") shall take any action with respect to the Common Access Drives that would interfere or be inconsistent with the use of the Common Access Drives by the Parcel C Parties for the purposes named herein or erect or allow to remain within the Common Access Drives any walls, fences, barriers or other obstructions so as to interfere with the free flow of vehicular and pedestrian traffic to and from Parcel C (and any other portion of the Property containing parking facilities intended to serve Parcel C) and Harkins Road and Ellin Road; provided, however, that the Parcel C Parties shall permit temporary obstructions within the Common Access Drives at such times and for such durations as are reasonable under the circumstances, or which are consented to in writing by CSC. Subject to the preceding sentence, no Owner shall cause, authorize or permit any truck or other vehicle or personal property of any kind used by, or for the benefit of, such Owner, its tenants, employees, agents, contractors, guests or invitees, to be parked, stopped or left standing in or on any portion of the Common Access Drives, except for temporary stopping for purposes of pick-up and deliveries, and provided that during such temporary stops convenient vehicular and pedestrian access to and from Parcel C (and any other portion of the Property containing parking facilities intended to serve Parcel C) and Harkins Road and Ellin Road is maintained.

4. Declarant and any other Owner(s), at its or their sole expense, shall (severally and not jointly) maintain those portions of the Common Access Drives which are located on that portion of the property owned by Declarant or such other Owner(s) in a good state of repair and in a safe and orderly condition; provided, however, CSC shall be liable for any damage to the Common Access Drives (ordinary wear and tear excepted) caused by the willful misconduct of CSC or CSC's agents, contractors, employees, licensees and subtenants. Subject to the preceding sentence, this Easement shall not be construed to impose any maintenance obligations on any Parcel C Party, nor shall this Easement relieve the Declarant of any of its obligations under any agreement with CSC or any other tenant related to occupancy of the Building.

5. Declarant may modify or amend this Easement at any time with the prior written consent of CSC, such consent not to be unreasonably withheld, delayed or conditioned, but if CSC is dissolved, Declarant may modify or amend this Easement in its sole and absolute discretion. Notwithstanding the preceding sentence, CSC shall not be deemed unreasonable in withholding its consent to any modification of this Easement, or to any elimination or relocation of the Common Access Drives, which would reduce the number of access points to Harkins Road and Ellin Road or which would otherwise impede or interfere with convenient vehicular

and pedestrian access to and from Parcel C (or any other portion of the Property containing parking facilities intended to serve Parcel C) and Harkins Road and Ellin Road.

6. Notwithstanding that any portion of the Property and the Common Access Drives may now or hereafter be owned by the same individual or entity, the easements and rights herein granted shall not be deemed to be extinguished by merger or otherwise and the same shall be perpetual and shall not be extinguished, except by an instrument duly executed by the Owners, and consented to by CSC, which instrument shall be recorded among the Land Records.

7. All provisions of this Easement, including the benefits and burdens, shall touch, concern and run with the land and be binding upon and inure to the benefit of Declarant, any other Owners of any portion of the Property, and the Parcel C Parties. Without limiting the preceding sentence hereof, each transfer of CSC's leasehold interest, and each transfer of the Property or any portion thereof shall expressly be made subject to the terms and provisions of this Easement, as the same may be hereafter amended or modified.

8. The Parcel C Parties shall have the right to enforce this Easement by any proceeding at law or in equity against any Owner violating or attempting to violate any of the provisions of this Easement. In any such action to enforce the terms of this Easement, the non-prevailing party shall be obligated to pay the reasonable out-of-pocket court costs and attorney's fees of the prevailing party.

9. Provided CSC consents, which consent shall not be unreasonably withheld, delayed or conditioned, Declarant shall be permitted to change the location, size and configuration of the Common Access Drives; provided, however, that (a) such changes shall result in alternative access areas approximately comparable in size and number to the Common Access Drives, (b) the number of access points to Harkins Road and Ellin Road shall not be reduced, and (c) the alternative access areas shall provide convenient and direct vehicular and pedestrian access to and from Parcel C (or any other portion of the Property containing parking facilities intended to serve Parcel C) and Harkins Road and Ellin Road.

10. No delay or omission by any party in exercising any right or power accruing upon any non-compliance or failure of performance by the other party under the provisions of this Easement shall impair any such right or power or be construed to be a waiver thereof. A waiver by any party of any covenant, condition, provision or performance under this Easement shall not be construed to be a waiver of any succeeding breach thereof or of any other covenant, condition, provision or performance of this Easement.

11. This Easement shall be governed by and construed and enforced in accordance with the laws of the State of Maryland without giving effect to the principles of conflicts of law.

12. The terms and provisions of this Easement are severable and in the event that any term or provision of this Easement is deemed to be invalid or unenforceable for any reason, the remaining terms and provisions hereof shall remain in full force and effect and be enforceable to the fullest extent permitted by law.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the undersigned has caused this Easement to be executed by the signatures of its duly authorized representative as of the day and year first above written.

WITNESS:

Dennis L. Berman
President

DECLARANT:

VINGARDEN ASSOCIATES, A MARYLAND LIMITED PARTNERSHIP, a Maryland limited partnership

By: Dengar Corporation, a Maryland corporation, its general partner

By: [SEAL]
Name: Gary C. Berman
Title: Vice President

STATE OF MD *

COUNTY OF A.A. * **to wit:**
*

I HEREBY CERTIFY that on this 21 day of August, 2002, before me, the Subscriber, a Notary Public in and for the State and County aforesaid, duly commissioned and qualified, personally appeared Gary Berman who acknowledged himself to be the V. President of Dengar Corporation, a Maryland corporation, general partner of Vingarden Associates, A Maryland Limited Partnership, a Maryland limited partnership, and that he, as such corporate officer, being authorized so to do, executed the aforegoing written instrument on behalf of such limited partnership for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Notary Public

My Commission Expires: MY COMMISSION EXPIRES 12-04-05

[NOTARIAL SEAL]

This instrument has been prepared under the supervision of the undersigned, an Attorney duly admitted to practice before the Court of Appeals of Maryland.

Richard J. Melnick

Richard J. Melnick

EXHIBIT "A"

DESCRIPTION OF THE PROPERTY

Parcels 'C, D, E, F, G, H and I' as shown on a plat of subdivision entitled 'Plat of Correction, Plat Four, Metroview' (the "Plat"), which Plat is recorded among the Land Records of Prince George's County, Maryland in Plat Book REP 193, folio 65.

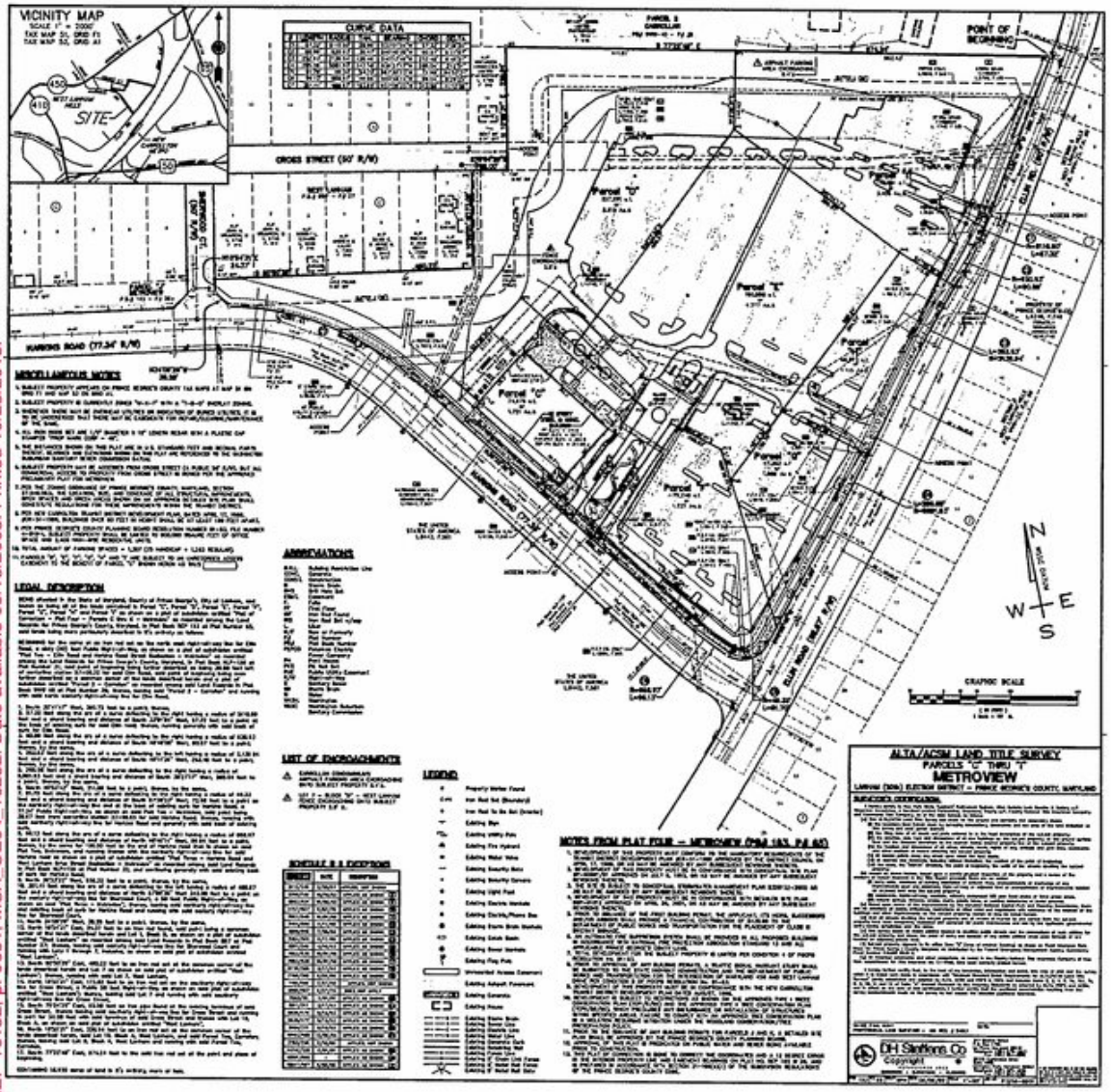
EXHIBIT "B"

SURVEY

Survey by DH Steffens Co., captioned "ALTA/ACSM Land Title Survey Parcels "C" thru "I" Metroview Lanham (20th) Election District – Prince George's County, Maryland" dated August 20, 2002.

See attached.

COMMERCE TITLE COMPANY, INC.
Commercentre West Ste. 200
1777 Reisterstown Road
PIKESVILLE, MD 21208



28935 247

WAIVER REGARDING ACCESS EASEMENT

THIS WAIVER REGARDING ACCESS EASEMENT (this "Agreement") is made effective this 21 day of November, 2007, by and between **VINGARDEN ASSOCIATES, A MARYLAND LIMITED PARTNERSHIP,** a Maryland limited partnership ("Declarant") and **7900 HARKINS RD HOLDINGS, LLC,** a Delaware limited liability company ("Parcel C Owner").

Recitals

WHEREAS, Declarant is the owner in fee simple of Parcels D, E, F, G, H and I as shown on that plat entitled "Plat of Correction, Plat Four, Parcels C Thru K, Metroview" (the "Plat"), which Plat is recorded among the Land Records of Prince George's County, Maryland in Plat Book R.E.P. 193, folio 65; and

WHEREAS, Parcel C Owner is the owner in fee simple of Parcel C as shown on the Plat, having acquired Parcel C from Declarant by deed dated of even date herewith and recorded or intended to be recorded immediately prior hereto; and

WHEREAS, Declarant executed and recorded that certain Declaration of Access Easement dated August 22, 2002, and recorded among the aforesaid Land Records in Liber R.E.P. No. 16152, folio 644 (the "Easement"), which Easement provides, inter alia, that Declarant may modify or amend the Easement in its sole and absolute discretion if CSC is dissolved; and

WHEREAS, capitalized terms not defined herein shall have the meanings given to such terms in the Easement; and

2007 NOV 21 P 2:55

CLERK OF THE CIRCUIT COURT

IMP FD SURE $ 20.00
RECORDING FEE 20.00
TOTAL 40.00
Rcpt # 6083 Rct # 68555
PM LJJ Blk # 9593
Nov 21, 2007 02:55 PM

WHEREAS, the parties hereto wish to confirm that Declarant will not modify or amend the Easement without the consent of Parcel C Owner, its successors and assigns, as more specifically provided herein.

NOW, THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. Incorporation of Recitals. The foregoing recitals are hereby incorporated into and made a part of this Agreement as if fully set forth in this first paragraph.

2. Waiver. Declarant will not modify or amend the Easement without the consent of Parcel C Owner, its successors and assigns, which consent shall not be unreasonably withheld, delayed or conditioned, and hereby waives any right Declarant may have to do otherwise pursuant to the Easement. Notwithstanding the foregoing, Parcel C Owner shall not be deemed unreasonable in withholding its consent for the reasons set forth in Section 5 of the Easement.

PRINCE GEORGE'S COUNTY, MD
APPROVED BY _____
#03
NOV 21 2007

$ N/A RECORDATION TAX PAID
$ N/A TRANSFER TAX PAID

3. Authorization. Declarant certifies to Parcel C Owner that the person signing this Agreement on behalf of Declarant is authorized to execute this Agreement and to bind Declarant hereunder. Parcel C Owner certifies to Declarant that the person signing this Agreement on behalf of Parcel C Owner is authorized to execute this Agreement and to bind Parcel C Owner hereunder.

4. Governing Law. This Agreement shall be governed and construed in accordance with the laws of the State of Maryland.

5. Successors and Assigns. This Agreement shall be binding on the parties hereto and their respective successors and assigns.

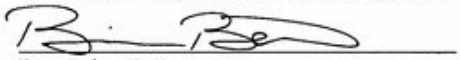
6. Counterparts. This Agreement may be executed in any number of counterparts, all of which taken together shall constitute one and the same instrument.

[Signature Page Follows]

IN WITNESS WHEREOF, this Agreement has been duly executed by each party hereto as of the date and year first above written.

VINGARDEN ASSOCIATES, A Maryland Limited Partnership

By: Dengar Corporation, its general partner



By: Brian E. Berman
Its: Vice President

7900 Harkins Rd Holdings, LLC

_____

By: Hal Reiff
Its: Executive Vice President

IN WITNESS WHEREOF, this Agreement has been duly executed by each party hereto as of the date and year first above written.

VINGARDEN ASSOCIATES, A Maryland Limited Partnership

By: Dengar Corporation, its general partner

By: Brian E. Berman
Its: Vice President

7900 Harkins Rd Holdings, LLC

By: Hal Reiff
Its: Executive Vice President

STATE OF MARYLAND)
CITY/COUNTY OF)

I HEREBY CERTIFY that on this _____ day of _____, 2007, before me, the subscriber, a Notary Public in and for the State aforesaid, personally appeared Brian E. Berman, who acknowledged himself to be the Vice President of Dengar Corporation, the general partner of Vingarden Associates, A Maryland Limited Partnership, and that he, as such officer, being authorized to do so, executed the aforegoing Agreement on behalf of such limited liability company for the purposes contained therein.

AS WITNESS my hand and official seal:

_____
Notary Public
My commission expires: _____

STATE OF NEW YORK)
CITY/COUNTY OF Richmond)

I HEREBY CERTIFY that on this 20th day of November, 2007, before me, the subscriber, a Notary Public in and for the State aforesaid, personally appeared Hal Reiff, who acknowledged himself to be the Executive Vice President of 7900 Harkins Rd Holdings, LLC, a Delaware limited liability company, and that he, as such officer, being authorized to do so, executed the aforegoing Agreement on behalf of such limited liability company for the purposes contained therein.

AS WITNESS my hand and official seal:

SHAWN KANE
NOTARY PUBLIC, State of New York
No. 01KA6168134
Qualified in Richmond County
Commission Expires June 4, 2011

Shawn Kane
Notary Public
My commission expires: _____

This instrument has been prepared by the undersigned, an attorney duly admitted to practice before the Court of Appeals of Maryland.

_____

STATE OF MARYLAND)
CITY/COUNTY OF Montgomery)

I HEREBY CERTIFY that on this 19 day of November, 2007, before me, the subscriber, a Notary Public in and for the State aforesaid, personally appeared Brian E. Berman, who acknowledged himself to be the Vice President of Dengar Corporation, the general partner of Vingarden Associates, A Maryland Limited Partnership, and that he, as such officer, being authorized to do so, executed the aforegoing Agreement on behalf of such limited liability company for the purposes contained therein.

AS WITNESS my hand and official seal:

Notary Public
My commission expires: 10/12/2010

STATE OF NEW YORK)
CITY/COUNTY OF _____)

I HEREBY CERTIFY that on this _____ day of _____, 2007, before me, the subscriber, a Notary Public in and for the State aforesaid, personally appeared Hal Reiff, who acknowledged himself to be the Executive Vice President of 7900 Harkins Rd Holdings, LLC, a Delaware limited liability company, and that he, as such officer, being authorized to do so, executed the aforegoing Agreement on behalf of such limited liability company for the purposes contained therein.

AS WITNESS my hand and official seal:

Notary Public
My commission expires: _____

This instrument has been prepared by the undersigned, an attorney duly admitted to practice before the Court of Appeals of Maryland.

Richard J. Helwig

EXHIBIT K

DESCRIPTION OF LAND

All of those lots or parcels of land located in Prince George's County, Maryland, and more particularly described as follows:

Being known and designated as Parcel C, as shown on the plat entitled: "Plat of Correction, Plat Four, Parcels C thru K, Metroview," which Plat is recorded among the Land Records of Prince George's County, Maryland in Plat Book R.E.P. No. 193, folio 65.

EXHIBIT L

COMPETITOR LIST

KeyPath/Global Health Education
Wiley
Pearson
Bisk
All Campus
Apollidon
Colloquy
Capital Education
ComCourse
D2L Corporation
Educators Serving Educators
Emerge Education
Everspring
Greenwood Hall
Desire2Learn
Helix Education
Integrated Education Services
Joined
Laureate Partners
Learning House/Acatar
Synergis Education
Educate Online
Higher Education Partners
Orbis Education
Significant Systems
Hot Chalk
Academic Partnerships
edX
Coursera
udacity
Blackboard
Moodle
Instructure (Canvas)
udemy
general assembly
code academy
pluralsight
lynda.com
CodeCombat
skillshare
flatiron school
RankU
DeVry University
University of Phoenix
Walden University

EXHIBIT M

METROPLEX RENT

Date	Rent Payable
Dec 2016	137,399
Jan 2017	137,399
Feb 2017	137,399
Mar 2017	141,524
Apr 2017	141,524
May 2017	141,524
Jun 2017	141,524
Jul 2017	141,524
Aug 2017	141,524
Sep 2017	141,524
Oct 2017	141,524
Nov 2017	141,524
Dec 2017	141,524
Jan 2018	141,524
Feb 2018	141,524
Mar 2018	145,763
Apr 2018	145,763
May 2018	145,763
Jun 2018	145,763
Jul 2018	145,763

EXHIBIT N

Exclusions From Operating Expenses

Provision in this Lease for a cost or expense to be Landlord's cost or expense (or sole cost or expense), or at Landlord's cost or expense (or sole cost or expense), shall not affect the inclusion thereof in "Operating Expenses" in accordance with, and subject to, the applicable provisions of this Article

(o) " **Operating Expenses** " shall exclude or have deducted from them, as the case may be, and as shall be appropriate (collectively, " **Excluded Expenses** "):

(i) Real Estate Taxes;

(ii) Leasing costs (including leasing and brokerage commissions and similar fees, lease marketing and advertising expenses, lease takeover or rental assumption obligations, architectural costs, engineering fees and other similar professional costs and legal fees in connection with lease negotiations) and the cost of tenant improvements or tenant allowances, 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;

(iii) Any costs, regardless of whether capital or ordinary in nature, incurred in order to comply with Requirements which are enacted and are applicable to the Building on or prior to the Lease Commencement Date;

(iv) Except as otherwise expressly provided in Section 5.2(d)(6) of the Lease, the cost of any repair, replacement, alteration, addition or change which is a Capital Improvement;

(v) The cost of items, including overtime HVAC or submetered utilities, for which Landlord is directly compensated by payment by tenants, or any other party including this Tenant, which are not included in Base Rent;

(vi) The cost of repairs or replacements incurred by reason of an insured fire or other casualty (or which would have been insured if Landlord had maintained the insurance required hereunder and except to the extent of a commercially reasonable deductible amount in Landlord's insurance policies, consistent with amounts carried by landlords of similar Class A office buildings in the Prince George's County, Maryland submarket of comparable age and condition), or condemnation;

(vii) Advertising and promotional expenditures and any other expense incurred in connection with the renting of space;

(viii) Professional or consulting fees incurred in connection with disputes with tenants or brokers;

(ix) Depreciation of the Building, equipment or other improvements (except as expressly permitted pursuant to Section 5.2(b)(6) of the Lease with respect to amortization of Capital Improvements that are not Excluded Expenses);

(x) Mortgage or mezzanine debt service (including origination fees, prepayment fees, penalties, interest and amortization) and ground rents, and any recording or mortgage tax or expense in connection therewith;

(xi) Costs in connection with financing or refinancing the Building or any interest in Landlord or the creation or amendment of any superior lease, (including without limitation any legal fees and expenses, third party reports, title policies and compliance costs and expenses);

(xii) Costs to prepare a space in the Building for occupancy by a tenant, including painting and decorating, or any cash or other consideration paid by Landlord on account of, with respect to, or in lieu of such preparation;

(xiii) Costs incurred with respect to a sale of all or any portion of the Building or any interest therein or in connection with the purchase or sale of any easements, air or development rights;

(xiv) Costs to acquire, insure by way of a fine arts policy or repair any fine art or other sculptures, paintings or objects of art;

(xv) Costs of clean-up, removal or remediation of any Hazardous Materials from the Building (other than Hazardous Materials brought into the Building or Land by Tenant);

(xvi) Costs incurred by Landlord in connection with services or other benefits (A) of a type not provided to Tenant (or provided to Tenant at separate or additional charge) but that are provided to another tenant or occupant of the Building or (B) provided to other tenants or occupants of the Building at a materially greater level than that provided to Tenant without separate or additional charge, in which case such expenses shall be excluded from Operating Expenses to the extent such expenses exceed the amount which would have been incurred to provide such services or other benefits to such other tenant or occupant at the same level as such services or other benefits are provided to Tenant;

(xvii) The costs of the Base Building Condition Work, the Base Building Condition Cap Work or the installation of submeters;

(xviii) Costs to the extent benefitting and properly allocable to other buildings or properties owned by Landlord (it being acknowledged that if

Landlord incurs any cost which benefits any other building or property owned by Landlord in addition to the Building, Landlord shall be permitted to, and shall, reasonably allocate such expense between the Building and such other building(s) or property(ies) and shall, upon request, provide Tenant with a reasonably detailed explanation of any such allocation and reasonable documentation supporting the same);

(xix) Subject to Section 5.2(b) and Section 5.2(c) of this Agreement, costs of any electricity and Building System HVAC and condenser water or chilled water supplemental systems consumed in or furnished to portions of the Premises or any other RSF in the Building leased (or available to be leased) to other tenant or to the Operator;

(xx) To the extent otherwise billed directly to Tenant, costs and expenses incurred in connection with enforcement of leases, including court costs, accounting fees, auditing fees, attorneys' fees and disbursements in connection with any summary proceeding to dispossess any tenant;

(xxi) Except as may be otherwise expressly provided in Section 5.2(d)(6) of this Lease with respect to specific items, the cost of any services or materials provided by any party related to Landlord, to the extent such cost exceeds the reasonable cost for such services or materials in similar Class A office buildings in the Prince George's County Maryland submarket, absent such relationship;

(xxii) Any compensation paid to clerks, attendants or other Persons in commercial concessions operated for profit by Landlord;

(xxiii) Profits, franchise, gains, estate, income, succession, gift, corporation, unincorporated business and gross receipts taxes imposed upon Landlord, or any interest or penalties for failure to timely pay those taxes or any other taxes;

(xxiv) Costs incurred in connection with making any additions to, or building additional stories on, the Building or its plazas, or adding buildings or other structures adjoining the Building, or connecting the Building to other structures adjoining the Building or reducing the leasable area of the Building;

(xxv) Costs incurred in connection with the acquisition or sale of air rights, transferable development rights, easements or other real property interests;

(xxvi) Expenditures for repairing and/or replacing any defect in any work performed by or on behalf of Landlord pursuant to the provisions of this Lease or elsewhere in the Building, in each case to the extent expenditures for such repairs and/or replacements are recovered by warranty for such work;

(xxvii) Any fees, dues or contributions to charitable organizations, civic organizations, political parties or political action committees;

(xxviii) Costs and expenses resulting from the gross negligence or willful misconduct of Landlord, any Landlord Party or any of Landlord's contractors and any damages and attorneys' fees and disbursements and other costs in connection with any judgment, settlement or arbitration award resulting from any tort liability of Landlord, any Landlord Party or any of Landlord's contractors, except to the extent resulting from the negligence or willful misconduct of any Tenant Invitee;

(xxix) Costs and expenses incurred by Landlord in connection with any obligation of Landlord to indemnify any tenant (including Tenant) pursuant to its lease or otherwise or which result from Landlord's or any other tenant's breach of a lease and except to the extent such cost would otherwise be includable in Operating Expenses;

(xxx) Costs to correct any condition that is in material violation of any representation, warranty or covenant of Landlord made in this Lease or any other lease for the Building;

(xxxi) Costs and expenses incurred by Landlord in connection with the Lobby Renovation, the Amenity Space Renovations Work , the Demolition Work, and the Base Building Condition Work;

(xxxii) Costs that are otherwise expressly excluded from Operating Expenses pursuant to the express terms of this Lease;

(xxxiii) Costs that Landlord incurs in installing (as contrasted with reading, maintaining or repairing, provided that "repairing" as used in this clause xxxiii shall not include replacements) submeters measuring electricity in the portions of the Building that Landlord has leased or that Landlord is offering for lease, or that otherwise constitute leasable space that is not used for the general benefit of the occupants of the Building;

(xxxiv) Costs relating to withdrawal liability or unfunded pension liability under a multi-employer pension plan (under Title IV of the Employee Retirement Income Security Act of 1974, as amended);

(xxxv) Salaries, fringe benefits and other compensation of personnel above the grade of building manager;

(xxxvi) Costs exclusively attributable to the Food Hall/Deli and the Building fitness center (if one is installed by Landlord) insofar as same continues to be operated by a party other Tenant;

(xxxvii) Amounts paid to Landlord or to affiliates of Landlord (except for the payment of management fees as provided in Section 5.2(d) of the Lease) for any services in the Building to the extent such amounts exceed the cost of such services if such services had been rendered by other unaffiliated third parties on a competitive basis;

(xxxviii) Rental cost of items which (if purchased) would be capitalized and excluded from Operating Expenses if exceeding $5,000 in the aggregate of all such rental costs for any calendar year;

(xxxix) Costs to comply with violations of Requirements (unless (i) such compliance costs are not Capital Improvements, (ii) such Capital Improvements would be includable in Operating Expenses pursuant to Section 5.2(d)(6) of the Lease or (iii) such violation is caused by the Tenant's manner of use beyond mere Office Use; provided in the case of items included in clauses (i) or (ii), no interest or penalties can be passed through to tenants including Tenant);

(xl) Capital Improvements in connection with building or renovating the Parking Structure (or renovating the Parking Lot) unless includable in Operating Expenses pursuant to Section 5.2(d)(6) ;

(xli) costs incurred to provided Reasonable Parking Alternative Arrangement pursuant to Section **Error! Reference source not found.** ;

(xlii) Items purchased with Tenant Improvement Allowances; and

(xliii) Duplicative charges for the same item.

EXHIBIT O

CONSTRUCTION INSURANCE REQUIREMENTS

In addition to any insurance which may be required under the Lease, Tenant shall secure, pay for and maintain or cause Tenant's Contractors to secure, pay for and maintain during the continuance of construction and fixturing work within the Building or Premises, insurance in the following minimum coverages and the following minimum limits of liability:

(i) Worker's Compensation and Employer's Liability Insurance with limits of not less than $500,000.00, or such higher amounts as may be required from time to time by any Employee Benefit Acts or other statutes applicable where the work is to be performed, and in any event sufficient to protect Tenant's Contractors from liability under the aforementioned acts.

(ii) Comprehensive General Liability Insurance (including Contractors' Protective Liability) in an amount not less than $1,000,000.00 per occurrence, whether involving bodily injury liability (or death resulting therefrom) or property damage liability or a combination thereof with a minimum aggregate limit of $2,000,000.00, and with umbrella coverage with limits not less than $5,000,000.00. Such insurance shall provide for explosion and collapse, completed operations coverage and broad form blanket contractual liability coverage and shall insure Tenant's Contractors against any and all claims for bodily injury, including death resulting therefrom, and damage to the property of others and arising from its operations under the contracts whether such operations are performed by Tenant's Contractors or by anyone directly or indirectly employed by any of them.

(iii) Comprehensive Automobile Liability Insurance, including the ownership, maintenance and operation of any automotive equipment, owned, hired, or non-owned in an amount not less than $500,000.00 for each person in one accident, and $1,000,000.00 for injuries sustained by two or more persons in any one accident and property damage liability in an amount not less than $1,000,000.00 for each accident. Such insurance shall insure Tenant's Contractors against any and all claims for bodily injury, including death resulting therefrom, and damage to the property of others arising from its operations under the contracts, whether such operations are performed by Tenant's Contractors, or by anyone directly or indirectly employed by any of them.

(iv) "Special Causes of Loss" builder's risk insurance upon the entire work to be performed (herein " **Work** ") to the full insurable value thereof. This insurance shall include the interests of Landlord and Tenant (and their respective contractors and subcontractors of any tier to the extent of any insurable interest therein) in the Work and shall insure against the perils of fire and extended coverage and shall include "Special Causes of Loss" builder's risk insurance for physical loss or damage including, without duplication of coverage, theft vandalism and malicious mischief. If portions of the Work are stored off the site of the Building or in transit to said site are not covered under said "Special Causes of Loss" builder's risk insurance, then Tenant shall effect and maintain similar property insurance on such portions of the Work. Any loss insured under said "Special Causes of Loss" builder's risk insurance is to be adjusted with Landlord and Tenant and made payable to Landlord, as trustee for the insureds, as their interests may appear.

All policies (except the worker's compensation policy) shall be endorsed to include as additional insured parties the parties listed on, or required by, the Lease and such additional persons as Landlord may designate. The waiver of subrogation provisions contained in the Lease shall apply to all insurance policies (except the workmen's compensation policy) to be obtained by Tenant pursuant to this paragraph. The insurance policy endorsements shall also provide that all additional insured parties shall be given thirty (30) days' prior written notice of any reduction, cancellation or non-renewal of coverage (except that ten (10) days' notice shall be sufficient in the case of cancellation for non-payment of premium) and shall provide that the insurance coverage afforded to the additional insured parties thereunder shall be primary to any insurance carried independently by said additional insured parties. Additionally, where applicable, each policy shall contain a cross-liability and severability of interest clause.

Without limitation of the indemnification provisions contained in the Lease, to the fullest extent permitted by law Tenant agrees to indemnify, protect, defend and hold harmless Landlord and its employees and agents, from and against all claims, liabilities, losses, damages and expenses of whatever nature arising out of or in connection with the Work or the entry of Tenant or Tenant's Contractors into the Building and the Premises, including, without limitation, mechanic's liens, the cost of any repairs to the Premises or Building necessitated by activities of Tenant or Tenant's Contractors, bodily injury to persons or damage to the property of Tenant, its employees, agents, invitees, licensees or others. It is understood and agreed that the foregoing indemnity shall be in addition to the insurance requirements set forth above and shall not be in discharge of or in substitution for same or any other indemnity or insurance provision of the Lease.

EXHIBIT P

TAKEOVER SUBLEASE

SUBLEASE AGREEMENT

This SUBLEASE AGREEMENT (this " Sublease ") is made as of December 23, 2015 (the " Execution Date ") between **2U, INC.** , a Delaware corporation (" Sublandlord ") and **LANHAM OFFICE 2015 LLC** , a Delaware limited liability company (" Subtenant ").

R E C I T A L S

MPLX-Landover Co LLC (" Prime Landlord "), as landlord, and Sublandlord, as tenant, did enter into that certain Lease Agreement dated June 20, 2008 (the " Original Lease "), as amended by a First Amendment to Lease dated March 20, 2009, a Second Amendment to Lease dated November 15, 2009, a Third Amendment to Lease dated February 5, 2010, a Fourth Amendment to Lease dated March 17, 2010, a Fifth Amendment to Lease dated October 29, 2010, a Sixth Amendment to Lease dated June 22, 2011, a Seventh Amendment to Lease dated October 31, 2012, an Eighth Amendment dated January , 2013, a Ninth Amendment to Lease, dated September 17, 2013, and a License Agreement dated as of December 31, 2013 (as amended, the " License ") (the Original Lease, as amended, and together with the License, as amended, collectively, the " Lease ") for the lease by Sublandlord of certain space consisting of the Premises (as defined on Exhibit A attached hereto and made part hereof) in that certain office building located at 8201 Corporate Drive, Landover, Maryland (the " Building ").

Simultaneously with the Execution Date, Subtenant, as landlord, and a wholly-owned subsidiary of Sublandlord, 2U Harkins Road, LLC, a Delaware limited liability company (" New Lease Tenant "), as tenant, entered into that certain Office Lease (the " New Lease "), for the lease by Sublandlord of certain space located at 7900 Harkins Road, Lanham, Maryland (such space, the " New Premises " and such property, the " Harkins Property ").

In connection with the New Lease, Sublandlord and Subtenant desire to enter into this Sublease, pursuant to the terms of which Subtenant will sublease from Sublandlord, and Sublandlord will sublease to Subtenant the entire Premises.

Capitalized terms used but not defined herein shall have the respective meanings set forth in the Lease.

NOW THEREFORE, for and in consideration of Ten and No/100 Dollars ($10.00) and the mutual covenants and obligations set forth in this Sublease, Sublandlord and Subtenant do hereby agree as follows:

1. Definitions. As used herein, the following terms shall have the following meanings:

(a) " Metroplex Cap " shall mean Subtenant's maximum liability under this Sublease not to exceed Two Million Eight Hundred Fifty Thousand Dollars ($2,850,000.00) plus any Metroplex Excess Cap Rent.

(b) " Metroplex Rent " shall mean (i) all Basic Rental (including, without limitation, all payments described variously as "base rent," "basic rental," "base minimum rent," "fixed rent," "Basic Rental" and "Expansion Premises Basic Rental"), as

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escalated payable during the Term and (ii) license fees payable as the equivalent of "base rent" in connection with the License during the Term.

(c) " Metroplex Excess Cap Rent " shall mean (i) all holdover rent and damages payable as the result of Subtenant (or its subtenants or assignees) remaining in the Premises or the space demised by the License after the expiration of the applicable term, and which holdover is not caused by any act or omission of Sublandlord, (ii) any restoration obligations solely relating to Subtenant's (or its subtenants or assignees) alterations to, or use of, the Subleased Premises, (iii) any additional rent charged by Prime Landlord for additional services, utilities and requests made (or used) by Subtenant (or its subtenants or assignees), and (iv) all amounts payable by Sublandlord as additional rent, damages, interest or a penalty as the result of a breach of an obligation of "tenant" under the Lease caused by or at the direction of Subtenant (or its subtenants or assignees) (collectively, a " Subtenant Default ").

(d) " Rental " shall mean, collectively or individually, Metroplex Rent and Metroplex Excess Cap Rent.

(e) " Required Vacate Condition " means the Premises and license space is vacant, with all of Sublandlord's moveable personal property removed but otherwise in "as is" condition.

(f) " Subleased Premises " shall mean the Premises and if not previously terminated, the space demised by the License.

2. Subleased Premises . Sublandlord does hereby sublease to Subtenant, and Subtenant does hereby sublease and rent from Sublandlord, the Subleased Premises on the terms and conditions set forth herein.

3. Term .

(a) The term of this Sublease (" Sublease Term ") shall begin on the Effective Date and shall expire at 12:00 midnight on the earlier of (i) the early termination date of the Lease or (ii) June 30, 2018 (the " Sublease Expiration Date ").

(b) Notwithstanding anything to the contrary contained herein, Subtenant's rights and obligations hereunder including, without limitation, Subtenant's obligation to pay the Metroplex Rent (subject to the Metroplex Cap) and the Metroplex Excess Cap Rent (collectively, " Subtenant's Obligations ") shall not commence until December 1, 2016 (the " Commencement Date "). From the Effective Date until 12:01 a.m. on December 1, 2016 (the " Transition Period "), Sublandlord shall continue in to have the right of full occupancy and use of the Subleased Premises as set forth in the Lease and exclusively as rights as "Tenant" under the Lease and shall be liable for all obligations of "Tenant" under the Lease during the Transition Period. Sublandlord shall not amend or modify the Lease without Subtenant's prior written consent, which consent shall not be unreasonably withheld, conditioned or delayed, unless such amendment or modification

increases or adversely alters Subtenant's obligations or liabilities under the Lease, in which event Subtenant may grant or withhold its consent thereto in its sole discretion.

(c) Notwithstanding that the Commencement Date has occurred, Sublandlord shall be permitted to continue to occupy the Subleased Premises for up to one hundred twenty (120) days after the Commencement Date (the " Move-Out Period ") without payment to Subtenant or credit against any Metroplex Rent. On the or before the one hundred twentieth (120 th) day after the Commencement Date, Subtenant shall deliver the Subleased Premises to Subtenant in the Required Vacate Condition; provided that the failure of Sublandlord to deliver the Subleased Premises shall not be in default hereunder so long as New Lease Tenant continues to pursue the completion of New Lease Tenant's build out of the New Premises under the New Lease.

4. Rental .

(a) Sublandlord shall deliver to Subtenant (i) on or before November 23, 2016 and before the 24 th day of each month thereafter during the Sublease Term a statement (" Metroplex Rent Statement ") setting forth the monthly installment of Metroplex Rent due on or before the first (1 st) day of the next succeeding month and (ii) from time to time, if applicable, a statement setting forth any Metroplex Excess Cap Rent then due and payable (" Metroplex Excess Cap Rent Statement" and together with the Metroplex Excess Cap Rent Statement, collectively, the " Sublease Rent Statement "). Notwithstanding the foregoing, the failure of Sublandlord to timely deliver a Sublease Rent Statement within the time periods set forth above (if any) or any other period, shall not result in a waiver or release of Subtenant's obligations to pay the Metroplex Rent within five (5) business days after Sublandlord's delivery of a Metroplex Rent Statement and to pay the Metroplex Excess Cap Rent within thirty (30) days after Sublandlord's delivery of a Metroplex Excess Cap Rent Statement.

(b) Subject to the receipt by Subtenant of the foregoing, and subject to the Metroplex Cap, Subtenant shall deliver to Sublandlord, (i) with respect to Metroplex Rent as of the first (1 st) business day of such next succeeding month, Subtenant's check (or wire transfer) payable to Sublandlord for the amount shown on Sublandlord's Metroplex Rent Statement and (ii) with respect to Metroplex Excess Cap Rent, within twenty (20) days after Subtenant's receipt of a Metroplex Excess Cap Rent Statement.

(c) In the event Subtenant shall fail to make any Rental payment required to be made pursuant to the provisions of Paragraphs 4(a) and 4(b) hereof upon the due date, and such failure to pay shall continue (i) with respect to Metroplex Rent, for five (5) business days following a second notice from Sublandlord to Subtenant or (ii) with respect to Metroplex Excess Cap Rent, for thirty (30) days following a second notice from Sublandlord, the amount due from Subtenant to Sublandlord shall accrue interest at the Default Rate (as defined in the New Lease) from the

date originally due, until payment is made (and shall be deemed either Metroplex Rent or Metroplex Excess Cap Rent depending upon the source of the original obligation).

(d) Notwithstanding anything contained herein to the contrary, Subtenant shall not be liable for the following (collectively, " **Excluded Liabilities** ") (i) any defaults, claims, losses or liability under the Lease arising or accruing prior to the Commencement Date, (ii) except as provided below, any defaults, claims, losses or liability under the Lease (including, without limitation, any damages) caused by acts or omissions of Sublandlord at the Subleased Premises before or at the time Sublandlord moves out of the Subleased Premises (including, without limitation, during the Transition Period and the Move-Out Period) unless such default is caused by Subtenant's failure to timely pay the Metroplex Rent, Sublandlord having no duty to advance such funds to the Prime Landlord), (iii) any liability or obligation arising as a result of a default by Sublandlord under the Lease other than a default that is caused by a Subtenant Default, and (iv) any other obligations or liabilities in excess of the Metroplex Cap, other than obligations or liabilities that are Metroplex Excess Cap Rent.

5. Metroplex Cap . The amounts of the following items shall be deducted from the Metroplex Cap, as and when paid by Subtenant: (i) installments of Metroplex Rent, (ii) costs and expenses of any insurance required to maintained by Subtenant under the Lease, and (iii) any operating costs, real estate taxes or similar costs and any additional rent imposed on Subtenant which are not imposed as a result of a Subtenant Default or as the result of Subtenant's acts or omissions (such as, for example and not in limitation, Subtenant's request for or use of additional utilities or services or for an approval by Prime Landlord). Subtenant shall not request any additional utilities or services or Prime Landlord's approval for any matter without first obtaining Sublandlord's approval. Subtenant shall notify Sublandlord of any extraordinary or non-recurring costs or expenses (and the amount thereof) incurred by Subtenant which Subtenant in good faith believes are not Metroplex Excess Cap Rent and which Subtenant intends to deduct from the Metroplex Cap. Once the Metroplex Cap has been reached, Subtenant shall have no further obligations or liabilities under this Lease, except for any Metroplex Excess Cap Rent. In the event that Subtenant pays any Metroplex Rent in excess of the Metroplex Cap (it being understood that Subtenant shall have no obligation to do so) which sums do not constitute Metroplex Excess Cap Rent (the " **Excess Cap Amount** "), Sublandlord shall pay the same to Subtenant within thirty (30) days of an invoice therefor. Sublandlord hereby guarantees the payment of the Excess Cap Amount to Subtenant and shall indemnify, defend and hold harmless Subtenant, Subtenant's partners, subsidiaries, affiliates, officers, directors, employees, agents, attorneys, and representatives of any kind (the " **Indemnitees** ") from and against any and all claims, demands, causes of action, judgments, costs, losses, obligations, fines, penalties and damages (including consequential and punitive damages) liabilities (including strict liability), and expenses (including, without limitation, attorneys' fees, court costs, and other related costs) of any kind or nature whatsoever (collectively, " **Losses** ") that may at any time be incurred by, imposed upon or asserted against such Indemnitees directly or indirectly based on, or arising or resulting from the Lease and this Sublease which exceed the Metroplex Cap,

including, without limitation, any Excess Cap Amount(s), but excluding any Losses which arise solely from a Subtenant Default or are Excess Cap Rent. From time to time during the Sublease Term, but not less than quarterly, Subtenant shall issue a statement to Sublandlord reflecting the Metroplex Cap and any deductions therefrom (" **Metroplex Cap Statement** "), together with evidence of payment of any deductions by Subtenant (other than any amounts paid by Subtenant to Sublandlord). In the event that Sublandlord disagrees with any Metroplex Cap Statement, Sublandlord shall notify Subtenant within ninety (90) days of receipt thereof and Subtenant and Sublandlord shall meet to resolve any disagreement; either party may pursue a such dispute in a court of competent jurisdiction. The provisions of this Paragraph 5 shall survive the expiration or earlier termination of this Sublease.

6. Relationship to Lease .

(a) Subtenant hereby acknowledges that it has received a true, correct and complete copy of the Lease and has read all of the terms and conditions thereof.

(b) Subtenant shall have the right to further assign or sublease the Subleased Premises, subject to obtaining the prior consent of the Prime Landlord (and subject to the standard for such consent contained in the Metroplex Lease) and prior consent of Sublandlord, which consent shall not be unreasonably withheld. All such further assignments or sublettings shall be subject to the terms of the Metroplex Lease, including without limitation, any right of Prime Landlord to recapture of Subleased Premises (or such portion thereof) or profit sharing. Any recapture of the Subleased Premises shall not affect Subtenant's obligation to continue to pay the Metroplex Rent to Sublandlord and any profit sharing with Prime Landlord shall be deemed Excess Cap Rent shall be payable solely by Subtenant to Prime Landlord. The provisions of this Paragraph 6(b) shall survive the expiration or earlier termination of this Sublease.

(c) Subtenant shall not (x) make any alterations to the Subleased Premises or remove any alterations or property from the Subleased Premises unless such alterations or removal are permitted without Prime Landlord's consent under the Lease, or if Prime Landlord's consent is required as a condition to making such alterations or removing such property, such consent has been obtained or (y) exercise any options under the Lease.

(d) This Sublease and Subtenant's rights under this Sublease shall at all times be subject and subordinate to the underlying Lease and Subtenant shall perform all obligations of Sublandlord under said Lease, with respect to the Subleased Premises. Subtenant acknowledges that any termination of the underlying Lease shall extinguish this Sublease provided that if such termination is caused by a Subtenant Default, any costs and expenses incurred by Sublandlord shall be included as Metroplex Excess Cap Rent.

(e) Prime Landlord's consent to this Sublease shall not make Prime Landlord a party to this Sublease, shall not create any privity of contract between Prime Landlord

and Subtenant or other contractual liability or duty on the part of the Prime Landlord to the Subtenant, shall not constitute its consent or waiver of consent to any subsequent sublease or sub-sublease, and shall not in any manner increase, decrease or otherwise affect the rights and obligations of Prime Landlord and Sublandlord under the underlying Lease, in respect of the Subleased Premises. Subtenant shall have no right to assign this Sublease or further sublet the Premises without the prior written consent of Prime Landlord. Any term of this Sublease that in any way conflicts with or alters the provisions of the underlying Lease shall be of no effect as to Prime Landlord and Prime Landlord shall not assume any obligations as landlord under the Sublease and Sublandlord shall not acquire any rights under the Sublease directly assertable against Prime Landlord under the underlying Lease. Sublandlord hereby collaterally assigns to Prime Landlord this Sublease and any and all payments due to Sublandlord from Subtenant as additional security for Sublandlord's performance of all of its covenants and obligations under the underlying Lease, and authorizes Prime Landlord to collect the same directly from Subtenant and otherwise administer the provisions of this Sublease, at the option of Prime Landlord. Subtenant hereby consents to such collateral assignment of this Sublease to Prime Landlord and agrees to observe its obligations created hereby.

7. Buy-Out. Subtenant shall have the right to negotiate an early termination of the Lease with Prime Landlord to be acceptable in Sublandlord's reasonable discretion provided that Subtenant shall pay all costs and expenses of such termination or buy-out directly to Prime Landlord (and such costs and expenses shall not be subject to the Metroplex Cap). The provisions of this Paragraph 7 shall survive the expiration or earlier termination of this Sublease.

8. Default . Any act or omission by Subtenant that would constitute an Event of Default under the Lease shall, subject to the same notice and cure provisions provided in the Lease, be deemed a default by Subtenant under this Sublease. In addition, any failure by Subtenant to pay Rental when due as provided above or to perform any other obligations required under this Sublease shall be deemed a default hereunder. Any such default by Subtenant shall entitle Sublandlord to exercise any and all remedies available to Prime Landlord under the Lease (as if Subtenant was "Landlord" and Sublandlord was "Tenant" under the Lease) or any other remedies available at law or in equity under the laws of the State of Maryland.

9. Insurance and Indemnities . Subtenant hereby agrees to indemnify and hold Prime Landlord harmless, with regard to the Subleased Premises, to the same extent that Sublandlord is required to indemnify and hold Prime Landlord harmless with respect to the Premises. Likewise, Subtenant hereby agrees to obtain and provide evidence satisfactory to Sublandlord, on or before the date of this Sublease, that Subtenant is carrying insurance, with respect to the Subleased Premises and Subtenant's use thereof, in the same amounts and of the same types required to be carried by Sublandlord with regard to the Premises. Subtenant's insurance shall include Sublandlord as additional insured and shall include a waiver of subrogation clause.

10. Subleasing and Assignment . Subtenant shall not sublease or assign its rights under this Sublease or its rights with regard to the Subleased Premises without the prior written consent of Prime Landlord in accordance with the Lease and the prior reasonable written consent of Sublandlord.

11. Condition of Subleased Premises . Subtenant shall not have any obligation with respect to the removal of any improvements or property or restoration and/or repair of the Subleased Premises, including the removal of any signage, at the expiration or sooner termination of the Sublease, nor shall any costs thereof be included in the calculation of the Rental hereunder, except that Subtenant shall be responsible for any costs necessary to restore the Subleased Premises to the Required Vacate Condition at the expiration or sooner termination of the Sublease, to the extent such deviation from the Required Vacate Condition was caused by Subtenant or its employees, members, agents or invitees.

12. Notices . Notices by Sublandlord and Subtenant shall be given to each other in the same manner provided by the Lease, at the following addresses:

Sublandlord:	Until the end of the Move Out Period: 2U, Inc. 8201 Corporate Drive Suite 900, Landover, MD 20785 Attention: Chief Financial Officer With a copy to General Counsel at the above address After the Move Out Period: 2U, Inc. 7900 Harkins Road Lanham MD 20706 Attn: Chief Financial Officer With a copy to General Counsel at the above address And in either case, with a copy to: Skadden, Arps, Slate, Meagher & Flom LLP Four Times Square New York, New York 10036 Attention: Marco Caffuzzi, Esq.
Subtenant:	c/o Cohen Equities 675 Third Avenue

Suite 2400
New York, NY 10017
Attention: Meir Cohen

with a copy to:
McCandlish Lillard
11350 Random Hills Road
Suite 500
Fairfax, Virginia 22030
Attention: C. Vincent Leon-Guerrero, Esq.

13. Signs . Subtenant shall have no right whatsoever to install any new signs in the Subleased Premises, the Premises or the Building without the prior written consent of Prime Landlord pursuant to the Lease.

14. Use . Subtenant shall use and occupy the Subleased Premises only for general office use and reasonable other uses incidental thereto, and for no other purpose. Subtenant shall not violate the prohibitions on use contained in the Lease. No representation or warranty is made by Sublandlord that the Subleased Premises may be lawfully used for Subtenant's intended purposes; and Sublandlord shall have no liability whatsoever to Subtenant if such use is not permitted by the present certificate of occupancy or any applicable zoning or other law or ordinance. Subtenant shall comply with (a) the Lease, (b) any certificate of occupancy relating to the Subleased Premises, (c) all present and future laws, statutes, ordinances, orders, rules, regulations and requirements of all Federal, state and municipal governments asserting jurisdiction over the Subleased Premises and (d) all requirements applicable to the Subleased Premises of the board of fire underwriters and/or the fire insurance rating or similar organization performing the same or similar function.

15. Brokers . Subtenant and Sublandlord each warrants to the other that in connection with this Lease it has not employed or dealt with any broker, agent or finder, other than Sublandlord's broker, Serten Advisors, LLC (the " Broker "). Subtenant shall pay any commission or fee due to the Broker in connection with the New Lease pursuant to a separate agreement and that fee shall not be subject to the Metroplex Cap. There shall no additional fee due to Broker in connection with this Sublease. Sublandlord shall indemnify and hold Subtenant harmless from and against any claim for brokerage or other commissions asserted by any broker, agent or finder employed by Sublandlord, with whom Sublandlord has dealt with respect to the Subleased Premises, or asserts any claim any claim for brokerage or other commissions by, through or under Sublandlord, other than the Broker. Subenant shall indemnify and hold Sublandlord harmless from and against any claim for brokerage or other commissions asserted by any broker, agent or finder employed by Subtenant, with whom Subtenant has dealt with respect to the Subleased Premises, or asserts any claim any claim for brokerage or other commissions by, through or under Subtenant, other than the Broker. The provisions of this Paragraph 15 shall survive the expiration or earlier termination of this Sublease.

16. Prime Landlord Consent . This Sublease shall convey no rights to Subtenant and the " Effective Date " shall be deemed to not have occurred until the date that Prime Landlord

shall have given its written consent hereto in accordance with the terms of the Lease. Sublandlord agrees to diligently pursue Prime Landlord's consent to this Sublease in accordance with Section 11 of the Lease. If Prime Landlord refuses to consent to this Sublease, or elects to terminate the Lease in respect of the Subleased Premises, or does not give its consent to this Sublease for any reason whatsoever by April 1, 2016, (i) Sublandlord shall not be obligated to take any action to obtain such consent, (ii) at any time thereafter until such time as such consent is obtained, either party may elect to terminate this Sublease by written notice to the other, whereupon this Sublease shall be deemed null and void and of no effect (except for those provisions expressly stated herein to survive a termination) provided such notice shall not be effective until the date that is three (3) business days after delivery of such termination notice and shall be deemed rescinded and of no force or effect if the Prime Landlord shall consented during that three (3) business day interval, and (iii) if this Sublease is so terminated and if Subtenant is then in possession of all or any part of the Subleased Premises, Subtenant shall immediately quit and surrender to Sublandlord the Subleased Premises in the condition required hereunder.

17. Early Termination of Sublease. In the event that Subtenant, as fee owner of the Harkins Property , enters into transaction to sell the Harkins Property to an unaffiliated purchaser, so long as Subtenant has not entered into an subleases, licenses or other occupancy agreements for Subleased Premises, Subtenant shall have the right to terminate this Sublease simultaneously with the closing of the sale of the Harkins Property upon not less than ten (10) Business Days prior irrevocable notice to Sublandlord and the payment to Sublandlord, in one lump sum all unpaid Metroplex Rent (not in excess of the Metroplex Cap) plus any Metroplex Excess Cap Rent. The provisions of this Paragraph 17 shall survive the expiration or earlier termination of this Sublease.

18. Miscellaneous .

(a) This Sublease shall be governed by and construed in accordance with the laws of the State of Maryland.

(b) Subtenant and Sublandlord hereby mutually waive all right to trial by jury in any summary or other action, proceeding, or counterclaim arising out of or in any way connected with this Sublease. Subtenant also hereby waives all right to assert or interpose a counterclaim (but not the right to raise or assert valid defenses) in any summary proceeding or other action or proceeding to recover or obtain possession of the Subleased Premises or for nonpayment of Rental. The provisions of this Paragraph 18(b) shall survive the expiration or earlier termination of this Sublease.

(c) To the maximum extent permitted by law, Subtenant hereby irrevocably submits to the jurisdiction of any Maryland State or Federal court sitting in Prince George's County, County or the U.S. District Court for the District of Maryland over any suit, action or proceeding arising out of or relating to this Agreement. The parties hereby agree that venue of any such suit, action or proceeding can only be laid either in the courts of the State of Maryland or the United States of

America for the District of Maryland and irrevocably waive to the fullest extent permitted by law any objection which either may now or hereafter have to the laying of the venue of any such suit, action or proceeding brought in such court and any claim that any suit, action or proceeding brought in either such court has been brought in an inconvenient forum. Subtenant agrees that a final judgment of any such suit, action or proceeding brought in such court shall be conclusive and binding upon Subtenant. The provisions of this Paragraph 18(c) shall survive the expiration or earlier termination of this Sublease.

(d) (i) If Subtenant remains in possession of the Subleased Premises after the Sublease Expiration Date or other earlier termination of the term of this Sublease without a new written lease or written extension of this Sublease, (i) Subtenant shall be deemed a tenant at will, (ii) except that during any such holdover period the Rental then due under this Sublease shall be the greater of (A) one hundred fifty percent (150%) of the Rent payable by Sublandlord under the Metroplex Lease or (B) the amount payable by Sublandlord as holdover rent under the Lease, (iii) there shall be no renewal or extension of this Sublease by operation of law and (iv) notwithstanding any law, regulation, ordinance or governmental order to the contrary, such tenancy at will may be terminated upon thirty (30) days' notice from Sublandlord. The amounts payable by Sublandlord under this Paragraph 15(d) are not subject to the Metroplex Cap. The provisions of this Paragraph 18(d) shall survive the expiration or earlier termination of this Sublease.

(e) Subtenant shall, on the expiration or earlier termination of this Sublease, comply with all of the provisions of the Lease relating to the surrender of the Subleased Premises at the expiration of the term of the Lease and return the Subleased Premises to Sublandlord in broom clean condition; *provided, however,* Subtenant's obligation with respect to removal and restoration shall be limited to (a) the removal of all fixtures installed by Subtenant (including any and all trade fixtures such as its phone switch and security system cabling and its furniture and equipment), (b) the removal of all alterations made by Subtenant and restoration of the Subleased Premises to the condition it was in prior to the making of such alterations, and (c) the repair of any damage to the Subleased Premises or the Building caused by such removal and restoration. Any property left in the Subleased Premises by Subtenant shall be deemed to be abandoned and Sublandlord may dispose of the same without liability to Subtenant. The provisions of this Paragraph 18(e) shall survive the expiration or earlier termination of this Sublease.

(f) Sublandlord's receipt and acceptance of Rental, or Sublandlord's acceptance of performance of any other obligation by Subtenant, with knowledge of Subtenant's breach of any provision of this Sublease, shall not be deemed a waiver of such breach. No waiver by Sublandlord of any term, covenant or condition of this Sublease shall be deemed to have been made unless expressed in writing and signed by Sublandlord.

(g) The provisions of this Sublease, except as herein otherwise specifically provided, shall extend to, bind and inure to the benefit of the parties hereto and their respective successors and permitted assigns. In the event of any assignment or transfer by Sublandlord of the leasehold estate under the Lease, the Sublandlord shall be entirely relieved and freed of all obligations that arise or accrue under this Sublease after the effective date of such assignment or transfer.

(h) Time shall be of the essence with regard to the obligations under this Sublease.

(i) This Sublease may be executed in one or more counterparts, each of which when so executed shall be deemed to be an original, but all of which when taken together shall constitute one and the same instrument.

(j) The headings, captions, and arrangements used in this Sublease are for convenience only and shall not affect the interpretation of this Sublease.

[*Remainder of Page Intentionally Blank; Signature Pages Follows*]

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals, the day and year first above written.

SUBLANDLORD:

2U, INC.,
a Delaware corporation

By : _____
Name:
Title:

[*Signatures Continue on Following Page*]

Signature Page to Sublease Agreement

SUBTENANT:

LANHAM OFFICE 2015 LLC,
a Delaware limited liability company

By: Cohen Holdco SPV LLC, its sole Member

By: CTI SPV II LLC,a Delaware limited liability company
Its: Managing Member

By: Cohen Family Asset Management LLC, a Delaware limited liability company
Its: Sole Member

By: _____
Name: Meir Cohen
Title: Manager

Exhibit A

Premises

The First Floor Premises, the Third Floor Premises, the Fourth Floor Premises, the Sixth Floor Premises, the Ninth Floor Premises and the Lower Level Premises (each as hereinafter defined) shall be referred to collectively as the " Premises " and each premises, individually, as a " Portion of the Premises ."

1. The " First Floor Premises " shall consist of, collectively, the following space on the first floor of the Building:

   (a) approximately Four Thousand Four Hundred Forty Six (4,446) rentable square feet of space known as Suite 190 (the " Suite 190 Premises ")

   (b) approximately One Thousand Three Hundred Thirty Nine (1,339) rentable square feet of space known as Suite 110 (the " Suite 110 Premises ")

   (c) approximately Three Thousand Five Hundred Ninety Nine (3,599) rentable square feet of space known as Suite 120 (the " Suite 120 Premises ")

2. The " Third Floor Premises " shall consist of approximately Five Thousand Eight Hundred Fifteen (5,815) rentable square feet of space known as Suite 350 on the third floor of the Building;

3. The " Fourth Floor Premises " shall consist of, collectively, the following space on the fourth floor of the Building:

   (a) approximately Four Thousand One Hundred Forty Seven (4,147) rentable square feet of space known as Suite 400 (the " Suite 400 Premises ")

   (b) approximately Five Thousand Six Hundred Fifty Three (5,653) rentable square feet of space known as Suite 410 (the " Suite 410 Expansion Premises ")

   (c) approximately Four Thousand Nine Hundred Eighty (4,980) rentable square feet of space known as Suite 450 (the " Suite 450 Premises ")

4. The " Sixth Floor Premises " shall consist of approximately Fourteen Thousand Six Hundred Eighty Six (14,686) rentable square feet of space, which is the entire sixth (6th) floor of the Building;

5. The " Ninth Floor Premises " shall consist of, collectively, the following space on the ninth floor of the Building:

   (a) approximately Three Thousand Two Hundred Forty (3,240) rentable square feet of space known as Suite 950 (the " Suite 950 Expansion Premises ")

(b) approximately Eleven Thousand Three Hundred Eighty-nine (11,389) rentable square feet of space known as Suite 900 (the " Suite 900 Expansion Premises ")

6. The " Lower Level Premises " shall consist of, collectively, the following space on the lower level of the Building:

(a) approximately Three Thousand Four Hundred Thirty One (3,431) rentable square feet of space known as Suite LL-20 (the " Suite LL-20 Expansion Premises ")

(b) approximately Two Thousand Nine Hundred Fifty Six (2,956) rentable square feet of space known as Suite LL-10 (the " Suite LL-10 Expansion Premises ")

Exhibit 10.17

AGREEMENT OF LEASE

55 PROSPECT OWNER LLC ,
Landlord

And

2U NYC, LLC
Tenant

For

The Entire 8 th, 9th and 10 th Floors

At
55 Prospect Street,
Brooklyn, New York

TABLE OF CONTENTS

Schedules and Exhibits

AGREEMENT OF LEASE

THIS AGREEMENT OF LEASE (" **Lease** "), is made as of the 13 th day of February, 2017 (the " **Effective Date** "), by and between **55 PROSPECT OWNER LLC** , as landlord (" **Landlord** "), a Delaware liability company, having an office at c/o Kushner Companies, 666 Fifth Avenue, 15 th Floor, New York, New York 10103 and 2U NYC, LLC,, a Delaware limited liability company, having its office at 8201 Corporate Drive, Suite 900, Landover, MD 20785 (" **Tenant** ").

NOW, THEREFORE , in consideration of the mutual covenants and agreements contained herein, and the rents contemplated hereby, Landlord and Tenant, intending to be legally bound hereby, covenant and agree as follows:

ARTICLE 1
BASIC LEASE PROVISIONS

9 TH AND 10 TH FLOOR PREMISES:	The entire 9th and 10th floors, with each floor comprising 26,500 rentable square feet (as mutually determined by Landlord and Tenant), as more particularly shown by the hatching on the drawings annexed hereto as **Exhibit A-1** and made a part hereof, subject to the terms of this Lease.
EXPANSION PREMISES:	The entire 8th floor, comprising 26,500 rentable square feet (as mutually determined by Landlord and Tenant), as more particularly shown by the hatching on the drawings annexed hereto as **Exhibit A-2** and made a part hereof, subject to the terms of this Lease.
PREMISES	Prior to the Expansion Premises Commencement Date, the 9 th and 10 th Floor Premises. After the Expansion Premises Commencement Date, collectively, the 9 th and 10 th Floor Premises and the Expansion Premises.
BUILDING:	The building, fixtures, equipment and other improvements and appurtenances now located or hereafter erected, located or placed upon the land located at 55 Prospect Street, Brooklyn, New York (the " **Building** ").
REAL PROPERTY:	The Building, together with the plot of land upon which it stands.
THE DUMBO HEIGHTS CAMPUS:	The Building together with the buildings located at 117 Adams Street, 77 Sands Street, 81 Prospect Street, 175 Pearl Street; each in the Borough of Brooklyn, State of New York.
COMMENCEMENT DATE:	The date that is the earlier of (a) the date that Tenant, or a person acting through, or on behalf of, Tenant first occupies any portion of the Premises for the conduct of Tenant's ordinary business, and (b) last of the following to occur: (i) the Lease is fully executed by, and delivered to, both Landlord and Tenant, (ii) the Landlord's Premises Work

	Substantial Completion Date (as herein defined), and (iii) July 1, 2017.
EXPANSION PREMISES COMMENCEMENT DATE:	The date that is the earlier of (a) the date that Tenant, or a person acting through, or on behalf of, Tenant first occupies any portion of the Expansion Premises for the conduct of Tenant's ordinary business and (b) last of the following to occur: (i) the Commencement Date, and (ii) the Expansion Premises Substantial Completion Date (as herein defined).
LANDLORD'S PREMISES WORK SUBSTANTIAL COMPLETION DATE:	The date that Landlord's Premises Work is Substantially Completed in the 9 th and 10 th Floor Premises and in the Roof Deck Area (but exclusive of Tenant Roof Work (as hereinafter defined) and Secondary Base Building Roof Work (as hereinafter defined)) or the date Landlord would have Substantially Completed Landlord's Premises Work (but exclusive of Tenant Roof Work and Secondary Base Building Roof Work) in the 9 th and 10 th Floor Premises but for Tenant Delays.
EXPANSION PREMISES SUBSTANTIAL COMPLETION DATE	The date Landlord's Expansion Premises Work is Substantially Completed in the Expansion Premises or the date Landlord would have Substantially Completed Landlord's Expansion Premises Work in the Expansion Premises but for Tenant Delays.
EXPIRATION DATE:	If the Rent Commencement Date shall be the first day of a calendar month, then the date which is the day immediately preceding the eleventh (11th) year anniversary of the Rent Commencement Date; otherwise, the last day of the month in which the eleventh (11th) year anniversary of the Rent Commencement Date occurs.
TERM:	The period commencing on the Commencement Date and ending on the Expiration Date in accordance with the terms and conditions of this Lease or pursuant to law.
RENT COMMENCEMENT DATE:	The date that is the nine (9) month anniversary of the Commencement Date.
EXPANSION PREMISES RENT COMMENCEMENT DATE:	Expansion Premises Commencement Date
INTEREST RATE:	The lesser of (i) ten (10%) percent per annum, and (ii) the maximum rate permitted by applicable law.
BASE TAXES:	Taxes payable for the Base Tax Year.
BASE TAX YEAR:	The Tax Year commencing July 1, 2017 and ending June 30, 2018; provided if ICAP benefits are not incorporated into Taxes for such Tax Year, the Base Tax Year shall be

	the first Tax Year thereafter that ICAP benefits are obtained for the Real Property and the Taxes payable by Landlord incorporate such benefits. Until a Base Tax Year is so determined, Tenant shall have no obligation to pay any Taxes; provided that if ICAP benefits are not obtained and/or incorporated into Taxes by the Tax Year commencing July 1, 2020 and ending June 30, 2021 (the " **2020/2021 Tax Year** "), then the Base Tax Year shall be the 2020/2021 Tax Year.
BASE OPERATING EXPENSES:	Operating Expenses incurred for the Base Expense Year.
BASE EXPENSE YEAR:	The 2017 calendar year.
TENANT'S PROPORTIONATE SHARE:	20.837% until the Expansion Premises Commencement Date and thereafter 31.255%.
FIXED RENT:	As set forth on **Schedule "A-1"** and **Schedule "A-2"** annexed hereto and made a part hereof.
LETTER OF CREDIT:	$4,362,750.00, subject to the terms of Article 27.
TENANT'S ADDRESS FOR NOTICES:	2U NYC, LLC 8201 Corporate Drive, Suite 900 Landover, MD 20785 Attention: Chief Financial Officer With a copy to: General Counsel With a copy of default and termination notices to: Skadden, Arps, Slate, Meagher & Flom LLP Four Times Square New York, New York 10036 Attention: Christy L. McElhaney, Esq.
LANDLORD'S ADDRESS FOR NOTICES:	55 Prospect Owner, LLC c/o Kushner Companies 666 Fifth Avenue, 15 th Floor New York, New York 10103 Attn: Leasing Department and General Counsel With a copy to: RFR Holding LLC 390 Park Avenue, 3 rd Floor New York, New York 10022 Attn: Mr. Michael Fuchs and Mr. Frank Mangieri and INVESCO Real Estate

	1166 Avenue of the Americas 26 th floor New York, New York 10036 Attn: Mr. James Gillen
PERMITTED USE:	With respect to the 8 th through 10 th Floors, general, executive and administrative office and lawful customary ancillary uses customarily found in Comparable Buildings (as hereinafter defined) in connection therewith, which may include one or more pantries, one or more employee non-cooking kitchens and cafeterias, employee fitness center (and related locker rooms and showers), executive bathrooms with showers, one or more employee r lounge areas, presentation areas, conference rooms, corporate or corporate sponsored events connected to Tenant's ordinary business, meeting and gathering areas, one or more screening rooms, one or more performance rooms, board rooms, a day care center for Tenant's employees, exhibition areas, classrooms for Tenant's employees and training purposes, data room/center directly related to Tenant's business, sound rooms, storage areas, libraries, messenger and mail room facilities, reproduction and copying facilities and file rooms; provided that all such uses shall be in compliance with the terms and conditions of this lease and Requirements (including, without, limitation, the TCO and/or CO, as applicable). With respect to Tenant's Roof Deck Area (as hereinafter defined), the RDA Permitted Use (as hereinafter defined).
LANDLORD'S PREMISES WORK AND LANDLORD'S EXPANSION PREMISES WORK:	" **Landlord's Premises Work** " means collectively, (i) the Base Building Work for the 9th and 10th Floor Premises, (ii) the Primary Base Building Roof Work and (iii) the Premises Build-Out Work. " **Landlord's Work** " means collectively, (i) Landlord's Premises Work, (ii) Tenant's Roof Work and (iii) the Secondary Base Building Roof Work. " **Landlord's Expansion Premises Work** " means collectively (i) the Base Building Work for the Expansion Premises and (ii) the Expansion Premises Build-Out Work.
TENANT'S BROKER:	Savills Studley
LANDLORD'S AGENT:	CBRE, Inc., or any other person or entity designated at any time and, from time to time, by Landlord, in writing to Tenant, as Landlord's Agent.
DEFINITIONS:	The Definitions set forth on **Exhibit B** hereof are incorporated herein by reference.
WORK LETTER	**Exhibit C** with respect to the Landlord's Premises Work and the Roof Work and **Exhibit M** with respect to Landlord's Expansion Premises Work.

ARTICLE 2
PREMISES, TERM, RENT

Section 2.1 Lease of Premises. Subject to the terms of this Lease (including, without limitation, Article 33 hereof), Landlord leases to Tenant and Tenant leases from Landlord the Premises as described in **Article 1** for the Term. In addition, Tenant shall have a right to and Landlord grants to Tenant the right to use, on a non-exclusive basis and in common with other tenants, the Common Areas (as hereinafter defined) of the Building. For so long as Landlord or its Affiliate owns 77 Sands Street, Brooklyn, New York (the " **77 Sands Building** "), Tenant shall have the non-exclusive right to access and use the rooftop of the 77 Sands Building, all in accordance with the reasonable rules and regulations related thereto (whether promulgated by Landlord or the landlord of such Building) and in compliance with Requirements.

Section 2.2 Commencement Date. The Term of this Lease with respect to the 9th and 10th Floor Premises shall commence on the Commencement Date and (unless sooner terminated or extended as hereinafter provided), shall end on the Expiration Date. If Landlord does not tender possession of the 9th and 10th Floor Premises to Tenant on, or before, any specified date, for any reason whatsoever, then, except as expressly provided herein, Landlord shall not be liable for any damage thereby, this Lease shall not be void or voidable thereby, and the Term shall not commence until the Commencement Date. The provisions of this **Section 2.2** are intended to constitute "an express provision to the contrary" within the meaning of Section 223-a of the New York Real Property Law or any successor Requirement. Promptly after the Commencement Date, Landlord may deliver to Tenant a " **Commencement Letter** " setting forth the Commencement Date, the Rent Commencement Date, and the Expiration Date. Tenant's obligation for commencement of the payment of Fixed Rent and Additional Rent under this Lease shall in no way be contingent upon Tenant's receipt of the Commencement Letter.

Section 2.3 Payment of Rent. Tenant shall pay to Landlord, without notice or demand, and without any set-off, counterclaim, abatement or deduction whatsoever, except as may be expressly set forth in this Lease, in lawful money of the United States by check or by wire transfer of funds, Fixed Rent, as set forth on **Schedule "A"** , in equal monthly installments, in advance, on the first day of each month during the Term, commencing (i) with respect to the 9th and 10th Floor Premises on the Rent Commencement Date, and (ii) with respect to the Expansion Premises, on the Expansion Premises Commencement Date, and (b) Additional Rent (as hereinafter defined) commencing (i) with respect to the 9th and 10th Floor Premises on the Commencement Date and (ii) with respect to the Expansion Premises on the Expansion Premises Commencement Date (but in each case subject to the terms of the Lease and Tenant's obligations hereunder, and excluding payment of Tenant's Tax Payment and Operating Expense Payment which shall commence on the dates set forth in Article 7 of this Lease), at the times and in the manner set forth in this Lease. Collectively, Fixed Rent and Additional Rent shall be referred to herein as "Rent". There shall be no separate Fixed Rent payable by Tenant with respect to Tenant's Roof Deck Area.

Section 2.4 First Month's Rent. Tenant shall upon its execution of this Lease pay to Landlord, by check or wire transfer of funds, one month's Fixed Rent, in the amount of $278,250.00 (" **Advance Rent** "). If the Rent Commencement Date is (i) the first day of a calendar month, the Advance Rent shall be credited towards the Fixed Rent payment for the month in which the Rent Commencement Date occurs, or (ii) if the Rent Commencement Date

does not occur on the first day of a calendar month, then on the Rent Commencement Date Tenant shall pay Fixed Rent for the period from the Rent Commencement Date through the last day of such month, and the Advance Rent shall be credited towards Fixed Rent for the next succeeding calendar month.

ARTICLE 3
USE AND OCCUPANCY

Section 3.1 Tenant shall use and occupy the Premises for the Permitted Use in compliance with the terms of this Lease, the TCO and/or Certificate of Occupancy applicable to the Premises, and all applicable Requirements, and for no other purpose subject to the terms of Section 5.1(a), with respect to a permitted amendment of the TCO and/or CO, as applicable. Tenant shall not use or occupy or permit the use or occupancy of any part of the Premises in a manner constituting a Prohibited Use (as hereinafter defined). If Tenant uses the Premises for a purpose constituting a Prohibited Use, then Tenant shall promptly discontinue such use upon notice from Landlord of such violation. Tenant, at its expense, shall procure and at all times maintain and comply with the terms and conditions of all licenses and permits required for the lawful conduct of the Permitted Use in the Premises, as required under this Lease. Notwithstanding anything to the contrary contained in this Lease, Tenant shall not have access to the Premises until June 8, 2017 other than in connection with the performance of Early Access Work (as hereinafter defined), which work shall be performed in accordance with and subject to the terms and conditions hereof.

ARTICLE 4
CONDITION OF THE PREMISES

Section 4.1 Condition. Tenant agrees (a) to accept possession of the 9th and 10th Floor Premises on the Commencement Date in the condition existing on the date hereof, "as is", subject to Landlord's obligation to perform Landlord's Premises Work pursuant to the terms and conditions of **Exhibit C** , and (b) Landlord has no obligation to perform any work, supply any materials, incur any expense or make any alterations or improvements to the Premises or the Building in order to prepare the same for Tenant's initial occupancy of the 9th and 10th Floor on the Commencement Date other than Substantially Complete Landlord's Premises Work (and, subsequent to the Commencement Date, as set forth in the Exhibit C, to Substantially Complete Tenant's Roof Work and the Secondary Base Building Roof Work). Subject to Landlord's obligation to complete any Landlord Work Punch List Items (as defined herein) and Tenant's Roof Work and Secondary Base Building Roof Work, Tenant's occupancy of any portion of the Premises for the conduct of business shall be conclusive evidence, as against Tenant, that Tenant has accepted possession of the Premises, in its then current condition and at the time such possession was taken, the Premises was in the condition required hereby. Upon Substantial Completion of Landlord's Premises Work, Landlord shall notify Tenant that it has Substantially Completed the same. Tenant shall have ten (10) Business Days within which to notify Landlord, in writing, that it disputes Landlord's determination that it has Substantially Completed Landlord's Premises Work and whether any additional items which should be Punch List Items. If Tenant does not provide such list within the foregoing ten (10) Business Days period, it shall be deemed that Landlord's Premises Work has been Substantially Completed. Any dispute as to whether Landlord has Substantially Completed Landlord's Premises Work or Landlord's Expansion Premises Work, or whether an item should be a Punch List Item, shall be resolved in accordance with **Article 34.**

Section 4.2 Landlord's Premises Work/Landlord's Expansion Premises Work.

(a) Landlord will commence the performance of Landlord's Premises Work reasonably promptly following the Final Plans Approval Date (as defined in **Exhibit C**) and Landlord's Expansion Premises Work reasonably promptly following the Expansion Premises Final Plans Approval Date (as defined in **Exhibit M**), subject to Tenant's compliance with the provisions of this Lease (including, without limitation, the terms and conditions of **Exhibit C** , with respect to the Leased Premises Work, and **Exhibit M** , with respect to Landlord's Expansion Premises Work), and, will complete Landlord's Premises Work and Landlord's Expansion Premises Work in a first-class, good and workmanlike manner. Landlord and its employees, contractors and agents shall have access to the 9 th and 10 th Floor Premises at all reasonable times for the performance of Landlord's Premises Work and for the storage of materials reasonably required in connection therewith (and for such time as may be reasonably required). Landlord shall perform Landlord's Premises Work with reasonable due diligence. Landlord shall give Tenant written notice (" **Landlord's Delivery Notice** ") on or about fifteen (15) days prior to the anticipated date of Substantial Completion of Landlord's Premises Work (the " **Anticipated Date of Substantial Completion** "). Following the giving of the applicable Landlord's Delivery Notice, Landlord and Tenant shall schedule the time and date (the " **Inspection Date** ") on which the Walk-Through (as defined below) shall be conducted, which shall be a Business Day reasonably anticipated to be at least five (5) Business Days prior to the Anticipated Date of Substantial Completion. On the Inspection Date, Landlord and Tenant (including any of its representatives, which shall include Tenant's representative and Tenant's architect) shall conduct a joint walk-through and review and inspect Landlord's Premises Work (collectively, the " **Walk-Through** "). During the Walk-Through, Landlord and Tenant shall jointly prepare a list of the minor so-called "punch list" items, the non-completion of which does not, either individually or in the aggregate, interfere, in any material way, with Tenant's ability to conduct its business or otherwise use the applicable portion of the Premises (a " Punch List " and such initial list, the " Initial Punch List ") with Tenant delivering any requested changes to such Initial Punch List within seven (7) days after the Walk-Through. Landlord shall diligently pursue completion of any and all Punch List Items within 60 days after Substantial Completion of Landlord's Premises Work (subject to Tenant Delay and Unavoidable Delay); provided that Landlord shall not unreasonably and materially interfere with Tenant's access to or installations or operations within 9 th and 10 th Floor Premises . The above notice, inspection and Walk-Through procedures and time to complete Punch List Items shall apply to the Substantial Completion of Tenant's Roof Work and, the Secondary Base Building Roof Work (and such Substantial Completion date shall be the " **Roof Substantial Completion Date** ") and Landlord's Expansion Premises Work.

(b) Landlord shall use reasonable efforts to Substantially Complete Landlord's Premises Work and deliver vacant possession of the 9 th and 10 th Floor Premises to Tenant no later than two hundred ten (210) days after the Final Proposed Plans Delivery Date (as hereinafter defined)(provided that if such preliminary plans were not timely submitted to Landlord in stages, as provided by Sections 2.2 and 2.5 of Exhibit C, such two hundred ten (210) day period shall be increased to two hundred fifty five (255) days) (the " **Anticipated Required Delivery Date** "), which Anticipated Required Delivery Date shall be extended for Unavoidable Delays and other Tenant Delays).

(c) Notwithstanding anything contained herein to the contrary, if Landlord's Premises Work has not been Substantially Completed (or deemed Substantially Completed) and Landlord has not delivered vacant possession of the 9 th and 10 th Floor Premises to Tenant on or prior to the date which is sixty (60) days after the Anticipated Required Delivery Date, which date shall be extended by reason of Unavoidable Delay and/or by Tenant Delay (the

" **Outside Date** "), then, provided that on the Outside Date or any time thereafter, no Event of Default exists (and if such an Event of Default does exist, as long as the Lease is not terminated as a result of thereof, then commencing on the curing thereof), and Tenant's occupancy of the 9 th and 10 th Floor Premises for the ordinary conduct of business is actually delayed as a result thereof, and further provided the Commencement Date has not occurred, as Tenant's sole and exclusive remedy in connection therewith, the nine (9) month time period described in the definition of the Rent Commencement Date in Article 1 above shall be extended by one day for each day after the Outside Date that the Commencement Date has not occurred until the Commencement Date occurs (but the Expiration Date shall not be similarly extended).

(d) Notwithstanding anything contained herein to the contrary, if Landlord's Premises Work has not been Substantially Completed (or deemed Substantially Completed) and Landlord has not delivered vacant possession of the 9 th and 10 th Floor Premises to Tenant on or prior to the date which is sixty (60) days after the Outside Date, which date shall be extended by reason of Unavoidable Delay and/or by Tenant Delay (the " **Second Outside Date** "), then, provided that on the Second Outside Date or any time thereafter, no Event of Default exists (and if such a default does exist, as long as the lease is not terminated as a result of thereof, then commencing on the curing thereof), and further provided the Commencement Date has not occurred, as Tenant's sole and exclusive remedy in connection therewith, the nine (9) month time period described in the definition of the Rent Commencement Date in Article 1 above shall be extended by two days for each day after the Second Outside Date that the Commencement Date has not occurred until the Commencement Date occurs (but the Expiration Date shall be similarly extended).

(e) Notwithstanding anything contained herein to the contrary, if Landlord's Premises Work has not been Substantially Completed (or deemed Substantially Completed) and Landlord has not delivered vacant possession of the 9 th and 10 th Floor Premises to Tenant on or prior to the date which is seven (7) months after the Anticipated Required Delivery Date, which date shall be extended by reason of Unavoidable Delay and/or by Tenant Delay (the " **Third Outside Date** "), then in addition to the remedies provided in clause (d) above, as Tenant's exclusive remedy with respect thereto Tenant shall be entitled to complete such work, at Tenant's expense, subject to its right to receive reimbursement from Landlord to the extent described below. Tenant shall only be entitled to complete such work if the following conditions shall be satisfied: (i) Tenant shall deliver notice (a " **Tenant Notice** ") to Landlord stating the nature of such incomplete work and that Tenant intends to complete the same, (ii) Landlord shall fail to deliver a notice to Tenant within 10 days following Tenant's delivery to Landlord of the Tenant Notice stating that Landlord intends to complete such work (which notice shall set forth in reasonable detail the steps Landlord intends to take in completing the same), and (iii) Landlord shall fail within such 10-day period to diligently pursue completion of such work. Substantial Completion of such Landlord's Premises Work shall occur on the date of such Substantial Completion or the date same would have been Substantially Completed if Tenant diligently pursued such completion after the Tenant Notice and Landlord's failure to pursue completion. The extent of the work performed by Tenant in completing such work shall not exceed the work that is reasonably necessary to complete such work. In the event Tenant shall complete such work, then Landlord shall reimburse Tenant for the reasonable out-of-pocket costs incurred by Tenant in completing such work within 30 days following the provision of an invoice therefor (together with reasonable substantiation), unless Landlord is disputing the incompleteness of such work, in which case such dispute shall be resolved by a single arbitrator appointed in accordance with the American Arbitration Association Arbitration Rules for the Real Estate Industry. Landlord shall have no obligation to reimburse Tenant until and unless such dispute is finally resolved in favor of Tenant. In the event Landlord fails to reimburse Tenant as

aforesaid in this Section 4.2(e), Tenant may offset the unreimbursed amount from the next succeeding monthly installment or installments of Rent due and payable hereunder.

(f) Notwithstanding anything contained herein to the contrary, if Tenant Roof Work and Secondary Base Building Roof Work has not been Substantially Completed (or deemed Substantially Completed) on or prior to the date which is the later to occur of (i) one hundred fifty (150) days after the Substantial Completion Date, (ii) May 1, 2018, and (iii) two (2) days after Tenant occupies the Premises (including the 10 th Floor) for the conduct of business, which date in each case shall be extended by reason of Unavoidable Delay and/or by Tenant Delay (the " **Tenant Roof Work Outside Date** "), then, provided that on the Tenant Building Roof Work Outside Date or any time thereafter, no Event of Default exists (and if such an Event of Default does exist, as long as the lease is not terminated as a result of thereof, then commencing on the curing thereof), and Tenant is conducting normal business operations in the 9 th and 10 th Floor Premises then as Tenant's sole and exclusive remedy in connection therewith, Tenant shall be entitled to a credit against Rent next coming due in a per diem amount equal to 10% of the per diem amount of Fixed Rent then payable by Tenant with respect to the Premises (or which would have been due if a rent concession or abatement period was not then occurring, in which event, Tenant shall be credited with such reduction against the next installments of Fixed Rent actually payable) for each day after the Tenant Roof Work Outside Date that Tenant is conducting business in the 9 th and 10 th Floor Premises and Tenant Roof Work and Secondary Base Building Roof Work has not been Substantially Completed until the Tenant Roof Work and the Secondary Base Building Roof Work is Substantially Completed.

(g) Except as otherwise expressly set forth in this Lease to the contrary, there shall be no Rent abatement or allowance to Tenant for a diminution of rental value, no actual or constructive eviction of Tenant, in whole or in part, no relief from any of Tenant's other obligations under this Lease, and no liability on the part of Landlord, by reason of inconvenience, annoyance or injury to business arising from the performance of Landlord's Premises Work or Landlord's Expansion Premises Work, as applicable or the storage of any materials in connection therewith (but only for so long as is reasonably necessary and if reasonably practicable Landlord shall remove such material when not in use), provided that in connection with any such storage (a) the level of any Building service shall not decrease in any material respect from the level required of Landlord in this Lease as a result thereof, (b) Tenant is not deprived of reasonable access to the Building or the Premises. Notwithstanding anything to the contrary contained herein the Substantial Completion of Tenant Roof Work and the Secondary Base Building Roof Work shall not be a condition to Substantial Completion of Landlord's Premises Work or Landlord's Expansion Premises Work for purposes of the Commencement Date and/or Expansion Premises Commencement Date (if applicable), respectively.

(h) Landlord shall deliver to Tenant an ACP-5 covering the Premises within ten (10) days after request therefor after the Commencement Date

(i) Landlord shall use reasonable efforts to Substantially Complete Landlord's Expansion Premises Work and deliver vacant possession of the Expansion Premises to Tenant no later than two hundred seventy (270) days after the Final Expansion Premises Proposed Plans are delivered to Landlord (provided that if preliminary plans were not timely submitted to Landlord in stages, as provided by Sections 2.2 and 2.5 of Exhibit M, such two hundred seventy (270) day period shall be increased to three hundred (300) days) (the " **Expansion Premises Anticipated Required Delivery Date** "), which Expansion Premises

Anticipated Required Delivery Date shall be extended for Unavoidable Delays and other Tenant Delays).

(j) Notwithstanding anything contained herein to the contrary, if Landlord's Expansion Premises Work has not been Substantially Completed (or deemed Substantially Completed) and Landlord has not delivered vacant possession of the Expansion Premises to Tenant on or prior to the date which is sixty (60) days after the Expansion Premises Anticipated Required Delivery Date, which date shall be extended by reason of Unavoidable Delay and/or by Tenant Delay (the " **Expansion Premises Outside Date** "), then, provided that on the Expansion Premises Outside Date or any time thereafter, no Event of Default exists (and if such an Event of Default does exist, as long as the Lease is not terminated as a result of thereof, then commencing on the curing thereof), and Tenant's occupancy of the Expansion Premises for the ordinary conduct of business is actually delayed as a result thereof, and further provided the Expansion Premises Commencement Date has not occurred, as Tenant's sole and exclusive remedy in connection therewith, Tenant shall be entitled to a credit against Rent next coming due for the Expansion Premises, in a per diem amount equal to the per diem amount of Fixed Rent then payable by Tenant with respect to the Expansion Premises (i.e., 4,637.50), for each day after the Expansion Premises Outside Date that the Expansion Premises Commencement Date has not occurred until the Expansion Premises Commencement Date occurs (but, for the avoidance of doubt, the Expiration Date shall not be extended in connection therewith).

ARTICLE 5
ALTERATIONS

Section 5.1 Tenant's Alterations.

(a) Tenant shall not make any alterations, additions or other physical changes in or about the Premises (collectively, " **Alterations** "), without Landlord's prior consent, which consent shall not be unreasonably withheld, conditioned or delayed, provided such Alterations: (i) are non-structural and do not affect any Building Systems other than by connecting thereto, (ii) affect only the Premises, and other than Alterations on the Tenant's Roof Deck Area, are not visible from the street level outside of the Premises, (iii) do not effect a modification of the Temporary Certificate of Occupancy (" **TCO** ") or the Certificate of Occupancy (" **CO** "), as the case may be, issued for the Building or the Premises and allowing for general office use of the Premises (but the existing Certificate of Occupancy may be amended and updated at Tenant's cost, as necessary and reasonably approved by Landlord, to reflect the completion of approved Alterations that otherwise conform to this Lease, subject to Landlord's obligations and Tenant's rights expressly contained in **Article 3**), and (iv) do not violate any Requirement. Landlord's consent shall not be required for any Alteration that (A) does not require the issuance of a Building Permit by the Department of Buildings of the City of New York, provided such Alteration meets the requirements set forth in (i)-(iv) above (collectively, the " **Reasonable Alteration Conditions** "), provided the cost of such Alteration does not exceed $150,000.00, or (B) an Alteration which is of a purely cosmetic nature in the Premises such as painting, wallpapering, hanging pictures or installing carpeting (collectively, " **Decorative Alterations** "). Tenant shall give Landlord notice prior to performing any Decorative Alteration, the cost of which exceeds $50,000.00, which notice shall contain a description of such Decorative Alteration. Notwithstanding the foregoing, "Alterations" shall not include Landlord's Work or Landlord's Expansion Premises Work which shall all be subject to the requirements of the applicable Work Letter and not this Article 5 (other than Section 5.3 which shall apply to

Landlord's Work and Landlord's Expansion Premises Work), except as otherwise expressly provided in this Lease.

(b) **Plans and Specifications** . Prior to making any Alterations, Tenant, at its reasonable expense, shall (i) submit to Landlord for its approval, which approval shall not be unreasonably withheld, conditioned or delayed as and to the extent required by Section 5.1 above, detailed plans and specifications (" **Alteration Plans** ") of each proposed Alteration (other than Decorative Alterations or Alterations that can be performed by Tenant without Landlord's consent pursuant to **Section 5.1(a)** above), and with respect to any Alteration affecting any Building System other than by connecting thereto, evidence that the Alteration has been designed by, or reviewed and approved by, Landlord's designated engineer for the affected Building System, (ii) obtain all permits, approvals and certificates required by any Governmental Authorities, and (iii) furnish to Landlord duplicate original policies or certificates of worker's compensation (covering all persons to be employed by Tenant, and Tenant's contractors and subcontractors in connection with such Alteration) and commercial general liability (including property damage coverage) insurance and Builder's Risk coverage (as described in **Article 11**), naming Landlord, Landlord's Agent, any Lessor and any Mortgagee of whom Tenant has been notified as additional insureds (provided, however, that for contractors performing work costing less than $200,000.00 (which amount shall increase by 2% each year on a compounding basis) which does not in any manner affect the structural integrity of the Building or any Building Systems or the TCO and/or CO of the Building and are not visible from the street level outside the Building, Landlord shall accept such lower limits of liability insurance then being accepted by landlords of Comparable Buildings [hereinafter defined]). Landlord shall respond to any request for approval of Tenant's plans and specifications for Alterations (the " **Plans** ") within ten (10) Business Days after such request is made. In addition, Landlord agrees to respond to any resubmission of the Plans within seven (7) Business Days after resubmission to Landlord. If Landlord fails to respond to Tenant's request within the applicable review period set forth herein, Tenant shall have the right to provide Landlord with a second request for approval (a " **Second Request** "), which shall specifically identify the Plans to which such request relates, and set forth in bold capital letters the following statement: **IF LANDLORD FAILS TO RESPOND WITHIN FIVE (5) BUSINESS DAYS AFTER RECEIPT OF THIS NOTICE, THE PLANS SHALL BE DEEMED APPROVED AND TENANT SHALL BE ENTITLED TO COMMENCE CONSTRUCTION OF THE ALTERATIONS IN ACCORDANCE WITH THE PLANS AND SPECIFICATIONS PREVIOUSLY SUBMITTED TO LANDLORD AND TO WHICH LANDLORD HAS FAILED TO TIMELY RESPOND.** If Landlord fails to respond to a Second Request within five (5) Business Days after receipt by Landlord, the Plans or revisions thereto for which the Second Request is submitted shall be deemed to be approved by Landlord and Tenant shall be entitled to commence construction of the Alterations or portion thereof to which the Plans relate and which were approved by Landlord, provided that such Plans have (if required) been appropriately filed in accordance with any applicable Requirements (provided that if applicable Requirements require Landlord to sign an application in connection therewith, Landlord shall do so with reasonably promptness provided Landlord does not have any liability or expense in connection therewith), all permits and approvals required to be issued by any Governmental Authority as a prerequisite to the performance of such Alterations shall have been duly issued, and Tenant shall otherwise have complied with all applicable provisions of this Lease relating to the performance of such Alterations.

(c) **Governmental Approvals** . Tenant, at its expense, shall, as and when required, promptly obtain certificates of partial and final approval of such Alterations required by any Governmental Authority and shall, with all reasonable promptness after completion of any Alterations, furnish Landlord with copies thereof, together with "as-built" Plans, marked to reflect

field changes, provided such field changes are not substantial, for such Alterations prepared on an AutoCAD Computer Assisted Drafting and Design System (or such other system or medium as Landlord may reasonably accept), using naming conventions issued by the American Institute of Architects in June, 1990 (or such other naming conventions as Landlord may reasonably accept) and magnetic computer media of such record drawings and specifications translated in DWG format or another format reasonably acceptable to Landlord. Landlord shall promptly and expeditiously cooperate with Tenant, at no cost or expense to Landlord, in obtaining any permits or approvals necessary from any Governmental Authority having jurisdiction in connection with the performance of Tenant's Alterations.

(d) Hazardous Materials .

(i) Landlord represents to Tenant that to the best of Landlord's knowledge there will be no Hazardous Materials in violation of applicable Requirements (i) in the 9 th and 10 th Floor Premises or the Building on the Commencement Date, (ii) in Tenant's Roof Deck Area on the delivery thereof with the Secondary Base Building Roof Work and Tenant's Roof Deck Work Substantially Complete), or (iii) in the Expansion Premises on the Expansion Premises Commencement Date.

(ii) Notwithstanding anything to the contrary contained herein, if in connection with any future approved Alterations, Requirements mandate that Hazardous Materials (defined as same on the date hereof) be abated, removed, encapsulated or remediated from within the Premises or Tenant's Roof Deck Area and not core areas or areas around columns that are not typically accessible by tenants in connection with Alterations, Landlord shall, at its sole (but reasonable) cost and expense, perform such work as it deems necessary and as required by any Governmental Authority after notice (a " **HazMat Work Notice** ") from Tenant thereof to comply with Requirements (" **Landlord's HazMat Work** "). Tenant shall use commercially reasonable efforts to minimize the extent of such abatement. In the event Landlord is required to perform Landlord's HazMat Work as aforesaid, Landlord shall diligently perform the same (using overtime work) at a time to be mutually agreed upon by Landlord and Tenant. Tenant will afford Landlord and its employees, contractors and agents access to the Premises at all reasonable times for the performance of Landlord's HazMat Work and for the storage of materials reasonably required in connection therewith, and Tenant will avoid any unreasonable interference by any Tenant Party with the performance of such work. Upon Landlord's request, all Tenant Parties shall vacate the Premises during the performance of Landlord's HazMat Work (and Landlord shall not be obligated to perform Landlord's HazMat Work if any Tenant Party fails to do so) and Tenant shall, at Landlord's sole cost and expense, remove or relocate Tenant's Property in the Premises during the performance of Landlord's HazMat Work so as not to unreasonably interfere with the performance of Landlord's HazMat Work and to protect same against damage or loss during the performance of Landlord's HazMat Work (and Landlord shall not be obligated to perform Landlord's HazMat Work if any Tenant Party fails to do so). Except as otherwise specifically set forth herein, there shall be no Rent abatement or allowance to Tenant or a diminution of rental value, no actual or constructive eviction of Tenant, in whole or in part, no relief from any of Tenant's other obligations under this Lease, and no liability on the part of Landlord, by reason of inconvenience, delay, annoyance or injury to business or

to Tenant's installations (or the performance of Alterations) or Tenant's Property in the Premises arising from the performance of Landlord's HazMat Work or the storage of any materials in connection therewith.

(iii) In furtherance of Landlord's obligations set forth in Section 5.1(d)(ii) above with respect to the Premises, if Tenant is prevented from conducting its business in the entire Premises or performing approved work and/or obtaining a required permit therefor (and Tenant shall not actually conduct business in the Premises or does not actually perform such work, as applicable) as a result of required Landlord's HazMat Work, no Event of Default then exists, the Hazardous Materials required to be removed were not introduced by Tenant (or anyone acting by or through Tenant), and Landlord shall fail to substantially complete such HazMat Work within three (3) Business Days after receipt of the HazMat Work Notice (subject to Unavoidable Delay and/or Tenant Delay) and notice that Tenant is unable to conduct business in the entire Premises or perform (or to obtain required permit(s) for) approved work as the result of such (the " HazMat Work Abatement Date "), then, as Tenant's sole and exclusive remedy therefor, Tenant shall receive a credit against Fixed Rent in the amount equal to one (1) day of then Fixed Rent for the Premises per day for each day after the Landlord's HazMat Work Abatement Date that Tenant is not occupying the Premises for the conduct of business until the Landlord's HazMat Work is Substantially Complete or Tenant occupies the Premises for the conduct of business. If, however, Tenant shall continue to conduct business or perform work in the Premises during the period when such Landlord's HazMat Work is required, then Tenant shall not receive any credit against Fixed Rent attributable thereto.

(iv) Notwithstanding anything to the contrary contained herein, if Tenant shall only be prevented from conducting business or performing Alterations, as applicable, in a portion of the Premises (as opposed to the entire Premises) as a result of required Landlord's HazMat Work, then if Landlord shall not substantially complete such Landlord's HazMat Work on or prior to the HazMat Work Abatement Date, Tenant shall be entitled to receive, as Tenant's sole and exclusive remedy therefor, the credit against Fixed Rent to which Tenant would be entitled pursuant to Section 5.1(d)(iii) above, provided that the same shall be prorated by multiplying the aggregate amount thereof by a fraction, the numerator of which shall be the rentable square footage (" **RSF** ") of the portion of the Premises then leased by Tenant and affected by the applicable violation and the denominator of which shall be the total RSF of the Premises then leased by Tenant. If, however, Tenant shall continue to conduct business or perform Tenant's Work in the applicable portion of the Premises during the period when such Landlord's HazMat Work is required, then Tenant shall not receive any credit against Fixed Rent attributable thereto.

Section 5.2 Manner and Quality of Alterations. All Alterations shall be performed (a) in a good and workmanlike manner, (b) substantially in accordance with the Alteration Plans, and by contractors reasonably approved by Landlord, (c) in compliance with all Requirements, the terms of this Lease and all reasonable Building standard construction procedures and regulations then prescribed by Landlord, provided the same do not reduce Tenant's rights hereunder other than to a *de minimis* extent, and provided, further, that any conflict between such procedures and regulations and the terms and conditions of this Lease, shall be resolved

in favor of the terms and conditions of this Lease, and (d) at Tenant's expense. All materials and equipment shall be of first quality and at least equal to the applicable standards for the Building then established by Landlord, and no such materials or equipment (other than Tenant's Property) shall be subject to any lien or other encumbrance. At Tenant's request and if and to the extent Landlord maintains such a list, Landlord shall furnish Tenant with a list of contractors (" **Landlord's Contractor List** "), which shall contain the names of at least three (3) contractors for each trade other than in respect of any Building Systems. Tenant shall be required to use Landlord's designated contractor(s) to perform any work connecting the premises to a building system up to the point of entry to the Premises, including, without limitation, Class E and fire alarm system work, and BMS System, and Landlord's expediter, provided that such contractor(s) shall charge such rates as are substantially similar, customary and competitive when compared to other contractors performing such work for Comparable Buildings. If Tenant engages any contractor set forth on Landlord's Contractor List, Tenant shall not be required to obtain Landlord's consent to such contractor, provided Tenant shall be required to obtain Landlord's confirmation (which confirmation may be oral) that such contractor remains on Landlord's Contractor List. If Landlord shall not then maintain a list of approved contractors for the Building, or if Tenant desires to use a contractor who is not named on such list, Landlord shall not unreasonably withhold, condition or delay its approval of any reputable contractor proposed by Tenant (except for those contractors performing work on Building Systems), provided such contractor shall provide Landlord upon written request with appropriate positive references and reasonable proof of financial responsibility reasonably satisfactory to Landlord. Landlord shall, within ten (10) Business Days after receiving any request from Tenant for such approval, together with such references and proof, respond to such request. If Landlord fails to respond to Tenant's request within the applicable review period set forth in this Section 5.2 related to contractor approval, Tenant shall have the right to provide Landlord with a second request for approval (a " **Second Contractor Request** "), which shall specifically identify the contractor to which such request relates, and set forth in bold capital letters the following statement: **IF LANDLORD FAILS TO RESPOND WITHIN FIVE (5) BUSINESS DAYS AFTER RECEIPT OF THIS NOTICE, THE CONTRACTOR SHALL BE DEEMED APPROVED AND TENANT SHALL BE ENTITLED TO USE SUCH CONTRACTOR FOR APPLICABLE WORK AT THE BUILDING.** If Landlord fails to respond to a Second Contractor Request within five (5) Business Days after receipt by Landlord, the contractor for which the Second Contractor Request is submitted shall be deemed to be approved by Landlord and Tenant shall be entitled use such contractor for applicable work at the Building, provided the use of such contractor shall otherwise comply with all applicable provisions of this Lease relating to contractors performing services at the Building. At Tenant's request and if and to the extent Landlord maintains such a list, Landlord shall furnish Tenant with a list of contractors (containing at least 3 contractors for each trade other than in respect of any Building System) approved by Landlord (which list may change from time to time), who may perform on behalf of Tenant the types of Alterations described on such request. If Tenant engages any contractor set forth on such list, Tenant shall not be required to obtain Landlord's consent to such contractor, provided Tenant shall be required to obtain Landlord's confirmation that such contractor remains on such list unless, prior to the execution of an agreement between Tenant (either directly or through another contractor or subcontractor) and such contractor (or, if no written agreement is entered into, prior to the commencement of work by the contractor), Landlord shall notify Tenant that such contractor has been removed from such list. If Landlord shall not then maintain a list of approved contractors for the Building or if Tenant desires to use a contractor who is not named on such list, Landlord shall not unreasonably withhold its approval of any reputable contractor proposed by Tenant (except for those contractors performing work on Building Systems), provided such contractor shall provide Landlord with appropriate positive references and proof of financial responsibility and insurance coverages reasonably satisfactory to Landlord.

Section 5.3 Removal of Tenant's Property. Tenant's Property shall remain the property of Tenant and Tenant may remove the same at any time on or before the Expiration Date, as the same may be extended. On or prior to the Expiration Date, as the same may be extended, Tenant shall, at Tenant's cost and expense, remove Specialty Installations and all of Tenant's Property (other than cables or wires running from the basement of the Building to the Premises (or the Roof Deck Area), between the floors of the Premises (or the Roof Deck Area), or above any hung ceilings that have been designated by Landlord for future use by Tenant or another tenant of the Building) and close up any slab penetrations made by Tenant in the Premises, if any. For purposes of this lease, " **Specialty Installation(s)** " shall mean installations consisting of, but not limited to, kitchens (but not customary office pantries that do not have cooking equipment), executive bathrooms (but not any ADA compliant bathroom installed in addition to the core bathrooms), raised computers floors, computer installations, communication installations and wiring, security systems, fire detection and suppression systems, vaults, internal staircases, dumbwaiters, pneumatic tubes, vertical and horizontal transportation systems and other installations of similar character or nature that are above and beyond standard or typical office installations. The Slab Cut (as defined in **Exhibit C**), the Stairway/Lift (as defined in **Exhibit C**) shall not constitute a Specialty Installation (but all other slab cuts (including, without limitation, slab cuts required for any internal staircases between the office floors) shall be deemed to be Specialty Installations). Notwithstanding the foregoing, the Skylight (as defined in **Exhibit C**) as depicted (in all material respects) on the Layout Plan shall not constitute a Specialty Installation and Tenant shall have no responsibility to remove the Skylight at the end of the Term, but shall be required to deliver it at the end of the Term in good condition, reasonable wear and tear and casualty excepted. Unless otherwise expressly communicated by Landlord to the contrary by notice to Tenant, on or before the Expiration Date or sooner termination of this Lease, Tenant shall, at its sole cost and expense, remove all Specialty Installation(s) from the Premises and restore all slab and wall penetrations to the condition that existed prior to such penetrations (such removal and repair work being hereinafter referred to as the " **Restoration Work** "); provided, however, that no installations or alterations made as part of the Landlord's Premises Work (as presently defined on **Exhibit C** attached hereto) shall be considered Specialty Installations (including without limitation, slab cuts for the stairs to the roof and hydraulic vertical lifts as part of Landlord's Premises Work). Tenant's obligation and liability with respect to the removal of Specialty Installation(s), and Tenant's Property and the performance of the Restoration Work shall survive the Expiration Date (as same may be extended) or sooner expiration or termination of this lease. Notwithstanding anything contained in this Section to the contrary, if in Tenant's request for Landlord's approval of the Alteration Plans for any Alteration, Tenant expressly requests in all **CAPS AND BOLD FACE TYPE** that Landlord notify Tenant of the particular Specialty Installations thereon along with Landlord's approval of such plans, then Landlord, if it approves the Alterations Plan in question, shall also notify Tenant in such approval of those certain Specialty Installations thereon. Tenant shall repair and restore, in a good and workmanlike manner, any damage to the Building or the Building caused by Tenant's removal of any Specialty Alterations or Tenant's Property or closing of any slab penetrations by Tenant or on behalf of Tenant, and upon default thereof, Tenant shall reimburse Landlord for Landlord's reasonable out-of-pocket cost of repairing or restoring such damage or Landlord's demolition, as the case may be. Any Alterations or Tenant's Property not so removed shall be deemed abandoned and Landlord may retain or remove and dispose of same after five (5) Business Days written notice to Tenant, and repair and restore any damage caused thereby, at Tenant's reasonable out-of-pocket cost and without accountability or liability to Tenant. Notwithstanding the foregoing, Landlord at any time may elect for Tenant to leave such Specialty Installations in the Premises and not remove same, in which case if Landlord will be removing such items, then Tenant shall pay Landlord, as additional rent, within ten (10) days after notice from Landlord that such Specialty Installations

may remain, Landlord's good faith estimate of the cost to remove such Specialty Installations that may remain. Notwithstanding any of the foregoing to the contrary, if Tenant is obligated to remove any Specialty Alterations or close any slab penetrations identified by Landlord as Specialty Alterations (if not otherwise specifically identified in this Lease as such) prior to the Expiration Date as set forth herein and perform any repair/restoration work in connection therewith as described above in this **Section 5.3**), Tenant shall have the right not to perform such work (such work, collectively the " **Expiration Date Work** ") by providing notice to Landlord at least 9 months prior to the Expiration Date (TIME BEING OF THE ESSENCE) and by paying Landlord the actual out-of-pocket cost of performing such work (which shall include, without limitation, the employment by Landlord of a project manager) within 30 days after demand therefor, which obligation shall expressly survive the Expiration Date or sooner termination of the Term. In addition, Tenant shall pay to Landlord or its designee, upon demand, an administrative fee with respect to the performance of the Expiration Date Work and the scheduling of Building equipment, facilities and personnel in connection therewith, which fee shall be equal to 3% of the costs of the Expiration Date Work. In furtherance of the preceding sentence, at Landlord's election, within 10 days following request from Landlord, and as a condition precedent to Landlord's obligation to perform the Expiration Date Work, Tenant shall deposit with Landlord, in cash, an amount equal to 125% of the estimated cost, as reasonably determined by Landlord after obtaining the arms-length bid from at least one contractor or service provider (which is not an affiliate of Landlord) with experience performing similar work, of the performance the Expiration Date Work (such amount, the " **Estimated Expiration Date Work Amount** "). Any Estimated Expiration Date Work Amount deposited with Landlord pursuant to the immediately preceding sentence shall be applied by Landlord to the performance of the Expiration Date Work. If Landlord performs the Expiration Date Work, then during Landlord's performance thereof, Landlord shall periodically reconcile the actual cost of the performance of the Expiration Date Work compared with the Estimated Expiration Date Work Amount deposited by Tenant with Landlord, and upon the determination of any overpayment or underpayment by Tenant, as the case may be, Landlord shall pay to Tenant any overpayment, or Tenant shall pay to Landlord any underpayment, as applicable, within 30 days after such determination and, if applicable, Tenant's receipt of a reasonably detailed invoice therefor from Landlord. The Expiration Date Work performed by Landlord, if applicable, shall be performed by Landlord after the Expiration Date. In the event that (i) Tenant has elected to have Landlord perform the Expiration Date Work, (ii) Tenant has otherwise complied with the terms and conditions of this **Section 5.3** , (iii) no Event of Default has occurred and is continuing hereunder, and (iv) Tenant has timely vacated the Premises, removed Tenant's Property therefrom, and surrender the same to Landlord free of all tenancies and occupants, then Tenant shall not be deemed to be in holdover pursuant to **Section 18.2** hereof if Landlord has failed to complete the Expiration Date Work on or prior to the Expiration Date.

Section 5.4 Mechanic's Liens. Tenant, at its expense, shall discharge any lien or charge recorded or filed against the Real Property in connection with any work done or claimed to have been done by or on behalf of, or materials furnished or claimed to have been furnished to, Tenant, within thirty (30) days after Tenant's receipt of notice thereof by payment, filing the bond required by law or otherwise in accordance with law.

Section 5.5 Labor Relations. Tenant shall not employ, or permit the employment of, any contractor, mechanic or laborer, or permit any materials to be delivered to or used in the Building, if, in Landlord's reasonable judgment, such employment, delivery or use will interfere or cause any conflict with other contractors, mechanics or laborers engaged in the construction, maintenance or operation of the Building by Landlord, Tenant or others. If such interference or conflict occurs, upon Landlord's request, Tenant shall cause all contractors, mechanics or

laborers causing such interference or conflict to leave the Building immediately. Landlord confirms that no Building staff or employees are presently unionized. Landlord agrees to use and follow good construction practice in order to coordinate Landlord's Work or Landlord's Expansion Premises Work with any other work that either Landlord, or any other tenant at the Building, including Tenant, may be performing at the same time but without an obligation to use overtime labor. Notwithstanding anything to the contrary contained herein, Tenant shall be permitted to use non-union labor in the performance of Alterations, including Tenant's Initial Installations, provided all such labor shall be in harmony with all other workers in the Building and shall not create disruption or work stoppages.

Section 5.6 Tenant's Costs. Except as expressly set forth herein, Tenant shall pay to Landlord, as Additional Rent within thirty (30) days of written request for same from Landlord together with supporting documentation therefor, all reasonable third-party out-of-pocket costs actually incurred by Landlord in connection with any Alterations, including costs incurred in connection with (a) Landlord's review of Alteration Plans for such Alterations (including review of requests for approval thereof) and (b) the provision of Building personnel during the performance of any Alteration(s), to operate elevators or otherwise to facilitate such Alterations. Tenant shall, upon request, provide Landlord with reasonable evidence of all amounts expended by it for Alterations (including any "soft costs").

Section 5.7 Tenant's Equipment. Tenant shall provide notice to Landlord prior to moving any heavy machinery, heavy equipment, freight, bulky matter or fixtures (collectively, " **Equipment** ") into or out of the Building and shall pay to Landlord any costs actually incurred by Landlord (without mark-up) in connection therewith. If such Equipment requires special handling, Tenant agrees (a) to employ only persons holding all necessary licenses to perform such work, (b) that all work performed in connection therewith shall comply with all applicable Requirements and (c) that such work shall be done only during hours reasonably designated by Landlord.

Section 5.8 Legal Compliance. The approval of Alteration Plans, or consent by Landlord to the making of any Alterations, does not constitute Landlord's representation that such Plans or Alterations comply with any Requirements. Landlord shall not be liable to Tenant or any other party in connection with Landlord's approval of any Alteration Plans, or Landlord's consent to Tenant's performing any Alterations. If any Alterations made by or on behalf of Tenant, require Landlord to make any alterations or improvements to any part of the Buildings in order to comply with any Requirements, Tenant shall pay all reasonable actual costs and expenses incurred by Landlord in connection with such alterations or improvements.

Section 5.9 Floor Load. Tenant shall not place a load upon any floor of the Premises that is in violation of Requirements or that exceeds the particular live load the floor load was designed to carry. To the extent Tenant's floor load requires the floors (or any portion thereof) of the Premises to be reinforced, Tenant shall be responsible for all costs related thereto (and any changes made by Tenant in connection therewith shall be subject to the terms and conditions of this Lease); provided that Landlord shall not unreasonably withhold its approval to such reinforcement so long as same is performed using good and customary construction and engineering practices.

Section 5.10 Security System. Landlord hereby approves in concept the installation by Tenant of a customary security system within the Premises which is compatible with the Building System, subject to Landlord's receipt and approval of final plans and specifications therefor (which approval shall not be unreasonably withheld, conditioned or delayed), all of

which shall be performed in accordance with all of the applicable terms and conditions of this Lease

Section 5.11 Contemplated Alterations. Without in any way limiting Tenant's obligation to submit Plans and Landlord's right to review and approve of Alterations as set forth above in the applicable Work Letter and Tenant's obligation to comply with all applicable terms and conditions of this Lease in connection therewith, Landlord acknowledges in concept only that in connection with the Premises Build-Out Work and the Expansion Premises Build-Out Work, Tenant contemplates installing internal staircases to connect the 8 th floor to the 9 th floor and the 9 th floor to the 10 th floor floors which internal staircases may require structural reinforcement of the respective floors if reasonably recommended by Tenant's structural engineer (the " **Internal Staircase Work** "), which reinforcement installation shall be subject to Landlord's reasonable approval.

Section 5.12 Early Access. Tenant shall have the right from time to time to come onto the Premises and Tenant's Roof Deck Area for inspections and measurements and for up to 30 days immediately prior to the date of Substantial Completion of Landlord's Premises Work to access the Premises and Tenant's Roof Deck Area, upon prior notice to Landlord at times reasonably designated by Landlord, for purposes of taking measurements, conducting due diligence and inspections thereof, installing wiring and cabling, installing workstations, building-out the IT room, and accessing the IT closets in the Premises at the same time that Landlord performs Landlord's Premises Work (collectively, the " **Early Access Work** "). Landlord and Tenant shall use reasonable efforts to cooperate with each other so as to permit Tenant's access and Landlord's performance of work in the Premises and Tenant's Roof Deck Area at the same time. If Tenant's access to the Premises or Tenant's Roof Deck Area interferes with the performance by Landlord of Landlord's Premises Work, Landlord shall, notwithstanding the foregoing, have the right to notify Tenant of such interference (which notification may be oral) and Tenant shall immediately discontinue such interference. Such access to the Premises or Tenant's Roof Deck Area by Tenant prior to the Commencement Date shall not be deemed to be use and occupancy by Tenant of the Premises nor Tenant having taken possession of the Premises for purposes of determining the Commencement Date but shall otherwise be subject to all of the terms of the Lease. Notwithstanding anything to the contrary contained herein, Tenant shall be entitled to notice of a claimed Tenant Delay as and to the extent provided in a Work Letter.

ARTICLE 6
REPAIRS

Section 6.1 Landlord's Repair and Maintenance. Except as provided in Section 6.2 or Section 6.4 below, Landlord shall operate, maintain and replace, if necessary, except for such repairs as are expressly made the obligation of Tenant as provided in **Section 6.2** hereof, make all necessary repairs (both structural and nonstructural) to (i) the Building Systems up to the point of entry to the Premises, and (ii) the public portions of the Building and Common Areas, and (iii) the structural elements of the Building, both exterior and interior, including the roof, external windows, parapet walls, foundation and curtain walls thereof, in a manner consistent with Building Standard.

Section 6.2 Tenant's Repair and Maintenance. Subject to repair of Landlord's Premises Work, Tenant's Roof Work and Base Building Roof Work

by Landlord if covered by warranty or if a defect is discovered within one (1) year after the Commencement Date and notice of such defect was given to Landlord within such one (1) year period (which defect was

not caused by Tenant's negligence or willful misconduct) and Section 6.4 below, Tenant shall promptly, at its expense and in compliance with **Article 5** , make all nonstructural repairs, to the Premises and the fixtures, equipment and appurtenances therein (including all electrical, plumbing, heating, ventilation and air conditioning systems installed by Tenant, sprinklers and life safety systems and all other systems exclusively serving the Premises and/or in and serving the Premises from the point of connection to the Building Systems and the roof lift and related equipment installed by Landlord (collectively, " **Tenant Fixtures** ") as and when needed to preserve the Premises in good working order and condition, except for (x) reasonable wear and tear and damage as a result of a casualty in the Premises for which Tenant is not responsible or (y) such repairs as are required as the result of the negligence or willful misconduct of Landlord, Landlord's Agent, or their respective employees or contractors. Subject to waiver of subrogation in Section 11.2 hereof and except for casualty, all damage to the Building or to any portion thereof or to any Tenant's Fixtures or any other reason, event and/or condition requiring structural or nonstructural repair caused by or directly resulting from any (i) negligence or willful misconduct of a Tenant Party, (ii) Tenant's particular manner of use of the Premises, (iii) Alterations performed by Tenant, (iv) Tenant's placement of FF&E and/or property, and/or (v) Tenant's breach of any of the terms of this Lease, shall be repaired at Tenant's expense by (A) Tenant, if the required repairs are nonstructural in nature and do not affect any Building System, or (B) Landlord, if the required repairs are structural in nature, involve replacement of exterior window glass or affect any Building System outside of the point of connection to the Premises. All Tenant repairs shall be of good quality utilizing new construction materials of comparable quality as the construction material in existence as of the Commencement Date. In the event Tenant shall fail to make a repair or perform a maintenance obligation(s) on its part to be performed under this **Section 6.2** , after the expiration of applicable notice and cure periods or if none are specified thirty (30) days of written notice thereof, Landlord may make such repair or perform such maintenance obligation(s), at Tenant's expense (immediately, and without advance notice, in the case of emergency). All actual, reasonable out of pocket costs and expenses incurred by Landlord in connection with the making of such repair or performance of such maintenance obligation by, or on behalf of Landlord, and all actual, reasonable out-of-pocket costs and expenses, including reasonable counsel fees and disbursements, incurred by Landlord, as a result of such failure by Tenant under this Lease, in any action or proceeding brought by Landlord, shall be paid by Tenant to Landlord within thirty (30) days of demand, with interest thereon at the Interest Rate from the date incurred by Landlord.

Section 6.3 Restorative Work. Landlord reserves the right to make all changes, alterations, additions, improvements, repairs or replacements to the Building and Building Systems, including changing the arrangement or location of entrances or passageways, doors and doorways, corridors, elevators, stairs, toilets or other Common Areas (collectively, " **Restorative Work** "), as Landlord deems reasonably necessary or desirable, and to take all materials into the Premises reasonably required for the performance of such Restorative Work upon reasonable advanced notice to Tenant (except in the case of an emergency when no advanced notice shall be required and in a commercially reasonable and customary manner), provided that (a) the level of any Building service shall not decrease from the level required of Landlord in this Lease as a result thereof other than to an immaterial extent (other than as required by Requirements or temporary changes in the level of such services during the performance of any such Restorative Work), (b) Tenant is not deprived of reasonable access to the Premises or the Tenant's Roof Deck Area except on a temporary basis, (c) there is no reduction in the ceiling heights of the Premises other than to an immaterial extent, (d) the usable area of the Premises and the Tenant's Roof Deck Area is not to be reduced beyond an immaterial extent, and (e) such Restorative Work shall not adversely affect the layout or use of the Premises (including, without limitation, by materially changing the location of the core

bathrooms or the elevator shafts, or lowering the ceiling heights other than to an immaterial extent) or the Tenant's Roof Deck Area on a permanent basis except to an immaterial extent, and further provided that in respect of Tenant's Roof Deck Area, such Restorative Work shall not include vertical improvements or additions which materially and adversely affect Tenant's use thereof unless required for proper function of the Building or to comply with Requirements (and in such cases no reasonable an practical alternative is available to Landlord). Landlord shall use reasonable efforts to minimize interference with Tenant's use and occupancy of the Premises and the Tenant's Roof Deck Area (as applicable) during the performance of such Restorative Work. During the course of performance of such Restorative Work, Landlord shall use all commercially reasonable efforts not to, reduce the level of any Building service nor decrease the same in any material respect from the level required of Landlord in this Lease as a result thereof (other than necessary temporary changes in the level of such services during the performance of any such Restorative Work, and Landlord shall use reasonable efforts such that continued access by Landlord or its contractors or agents does not unreasonably interfere with Tenant's ordinary use and occupancy of the Premises and the Tenant's Roof Deck Area. In connection with any access by Landlord pursuant to this **Section 6.3** , Landlord shall promptly repair damage, if any, caused by such entry, subject to the terms of **Section 11.2** below. There shall be no abatement of Rent or allowance to Tenant for a diminution of rental value, no actual or constructive eviction of Tenant, in whole or in part, no relief from any of Tenant's other obligations under this Lease, and no liability on the part of Landlord by reason of inconvenience, annoyance or injury to business arising from Landlord or others performing, or failing to perform, any Restorative Work, in accordance with the terms hereof, except as otherwise expressly provided herein. In entering the Premises and/or the Tenant's Roof Deck Area pursuant to this **Section 6.3** , Landlord shall use reasonable efforts to minimize interference with Tenant's use and occupancy of the Premises and the Tenant's Roof Deck Area during any such entry, provided Landlord shall not be required to perform work on an overtime basis unless Tenant delivers to Landlord a written request to proceed using overtime labor and Tenant agrees therein to reimburse Landlord, within thirty (30) days after demand therefor, for any overtime and/or additional expenses incurred by Landlord in complying therewith. Tenant shall have the right to have a representative accompany any party entering the Premises pursuant to this **Section 6.3** (except in cases of emergency) provided such representative is made available at the time of such entry.

Section 6.4 Notwithstanding anything to the contrary contained herein, Landlord shall maintain and repair the air-package HVAC units (" **Air-Package HVAC Units** ") existing in the Premises on the Commencement Date subject to the terms and conditions of this Section 6.4. Landlord shall maintain an air conditioning service maintenance contract (the " **Maintenance Contract** ") with a reputable air conditioning contractor or servicing organization after Tenant takes possession of the Premises for the conduct of Tenant's business, at Tenant's reasonable cost and expense (and the cost therefor shall be deemed to be additional rent payable within 30 days of demand). The Air-Package HVAC Units are and shall at all times remain the property of Landlord, and at the expiration or sooner termination of this Lease Tenant shall surrender to Landlord the Air-Package HVAC Units. Tenant shall not make any changes or additions to the Air-Package HVAC Units. In the event the Air-Package HVAC Units need repair which is not fully covered by the Maintenance Contract (at no additional cost), or replacement, then Landlord shall be responsible for such repair or replacement, as the case may be, at Tenant's cost except replacement of "major" component parts shall be at Landlord's sole cost, provided the need for such replacement, as the case may be, did not result from the negligence, willful misconduct, misuse, or improper use of Tenant or any Tenant Party.

ARTICLE 7
INCREASES IN TAXES AND OPERATING EXPENSES

Section 7.1 Definitions. For the purposes of this **Article 7** with respect to Taxes, the following terms shall have the meanings set forth below:

(a) " **Assessed Valuation** " shall mean the amount for which the Building is assessed pursuant to the applicable provisions of the City Charter and the Administrative Code of New York, or any successor Requirements, for the purpose of imposition of Taxes.

(b) Intentionally Omitted.

(c) " **Base Taxes** " are defined in **Article 1** .

(d) " **Comparison Year** " shall mean each Tax Year all or a portion of which occurs during the Term, commencing with the Tax Year immediately following the Base Tax Year.

(e) **"Statement** " shall mean a written statement containing a comparison of (i) the Base Taxes and the Taxes for any Comparison Year.

(f) " **Tax Year** " shall mean the twelve month period from July 1 through June 30 (or such other period as hereinafter may be duly adopted by the City of New York as its fiscal year for real estate tax purpose).

(g) " **Taxes** " shall mean (i) all real estate taxes, assessments (including any ICAP benefits and any assessments made as a result of the Building being within a business improvement), and other governmental levies, impositions or charges, whether general, special, ordinary, extraordinary, foreseen or unforeseen, which may be assessed, levied or imposed upon all or any part of the Real Property, and (ii) all expenses (including reasonable attorneys' fees and disbursements and experts' and other witnesses' fees) actually incurred in contesting any of the foregoing or the Assessed Valuation of the Building (such expenses shall be included in Base Taxes if incurred during the Base Tax Year, or included in Taxes if incurred in a Comparison Year). Taxes shall not include (x) fines, interest or penalties together with any interest or costs with respect to the foregoing incurred by Landlord as a result of Landlord's late payment of Taxes or failure to pay any Taxes required to be paid, (y) capital levy, franchise, transfer, gift, inheritance, succession, estate or net municipal, state or federal income taxes imposed upon Landlord or tenants of the Building, or (z) unincorporated business taxes, income or profit tax, or any transfer or mortgage recording tax imposed upon any owner of the Real Property or Building. If Landlord elects to pay any assessment in annual installments, then (i) such assessment shall be deemed to have been so divided and to be payable in the maximum number of installments permitted by law, and (ii) there shall be deemed included in Taxes for each Comparison Year the installments of such assessment becoming payable during such Comparison Year. If at any time the methods of taxation prevailing on the Commencement Date shall be altered so that in lieu of or as an addition to the whole or any part of Taxes, there shall be assessed, levied or imposed (1) a tax, assessment, levy, imposition or charge based on the income or rents received from the Building whether or not wholly or partially as a capital levy or otherwise, (2) a tax, assessment, levy, imposition or charge measured by or based in whole or in part upon all or any part of the Building and imposed upon Landlord, (3) a license fee measured by the rents, or (4) any other tax, assessment, levy, imposition, charge or license fee however described or imposed, then to the extent the same shall be similarly treated as Taxes

by owners of Comparable Buildings all such alternative or additional taxes, assessments, levies, impositions, charges or license fees or the part thereof so measured or based shall be deemed to be Taxes.

Section 7.2 Tenant's Tax Payment.

(a) If the Taxes payable for any Tax Year or portion of a Tax Year beginning with the Tax Year commencing immediately following the Base Tax Year, Tenant shall pay to Landlord Tenant's Proportionate Share of such excess (" **Tenant's Tax Payment** ") as Additional Rent. For each Comparison Year, Landlord shall furnish to Tenant a written statement setting forth Landlord's reasonable estimate of Tenant's Tax Payment for such Tax Year (the " **Tax Estimate** "). Tenant shall pay to Landlord on the 1st day of each month prior to and during such Comparison Year (but not more than six (6) months prior to the start of such Comparison Year) an amount equal to 1/12th of the Tax Estimate for such Tax Year (" **Tenant's Monthly Tax Payment** "). If Landlord furnishes a Tax Estimate for a Comparison Year subsequent to the commencement thereof, then (i) until the 1st day of the month following the month in which the Tax Estimate is furnished to Tenant, Tenant shall pay to Landlord on the 1st day of each month an amount equal to the monthly sum payable by Tenant to Landlord under this **Section 7.2(a)** for the last month of the preceding Comparison Year; (ii) promptly after the Tax Estimate is furnished to Tenant or together therewith, Landlord shall give written notice to Tenant stating whether the installments of the Tax Estimate previously made for such Comparison Year were greater or less than the installments of the Tax Estimate to be made for such Comparison Year in accordance with the Tax Estimate, and (x) if there shall be a deficiency, Tenant shall pay the amount thereof within 30 days after receipt of written demand, or (y) if there shall have been an overpayment, Landlord shall credit the amount thereof against subsequent payments of Rent next coming due hereunder (or if there shall be no subsequent payments of Rent next coming due, Landlord shall pay to Tenant the amount of such overpayment within thirty (30) days; and (iii) on the 1st day of the month following ten (10) Business Days' notice, and on the 1st day of each month thereafter throughout the remainder of such Comparison Year (and the next comparison year until a new estimate or statement is provided), Tenant shall pay to Landlord an amount equal to 1/12th of the Tax Estimate. Landlord may, at any time, furnish to Tenant a revised Tax Estimate for such Comparison Year, and in such case, Tenant's Tax Payment for such Comparison Year shall be adjusted and any deficiencies paid (including, without limitations as a result of late billing of Tenant) or overpayments credited, as the case may be, substantially in the same manner as provided in the preceding sentence. Within 180 days after the end of each Comparison Year, Landlord shall furnish to Tenant a Statement of Taxes applicable to Tenant's Tax Payment payable for such Comparison Year together with copies of the actual Tax bills used in connection with such calculation (if received), and (A) if such Statement shall show that the sums so paid by Tenant were less than Tenant's Tax Payment due for such Comparison Year, Tenant shall pay to Landlord the amount of such deficiency within 30 days after delivery of the Statement to Tenant, or (B) if such Statement shall show that the sums so paid by Tenant were more than such Tenant's Tax Payment, Landlord shall credit such overpayment against subsequent payments of Rent next coming due, if any (or if there shall be no subsequent payments of Rent next coming due, Landlord shall pay to Tenant the amount of such overpayment within thirty (30) days). If there shall be any increase in the Taxes for any Tax Year during the Term, whether during or after such Tax Year, or if there shall be any decrease in the Taxes for any Tax Year, Tenant's Tax Payment for such Comparison Year shall be appropriately adjusted and any deficiencies paid or overpayments credited (or repaid), as the case may be, substantially in the same manner as provided in the preceding sentence. Landlord agrees that the Base Tax Year shall be the first Tax Year that ICAP benefits are obtained and applicable for the Real Property. Until a Base Tax Year is so determined, Tenant

shall have no obligation to pay Tenant's Proportionate Share of any Taxes, unless ICAP benefits are not obtained (or are obtained but withdrawn) on or before the 2020/2021 Tax Year, then in such case the Base Tax Year shall be the 2020/2021 Tax Year.

(b) Only Landlord may institute proceedings to reduce the Assessed Valuation of the Building and the filing of any such proceeding by Tenant without Landlord's consent shall constitute an Event of Default. If the Base Taxes are reduced, the Additional Rent previously paid or payable on account of Tenant's Tax Payment hereunder for all Comparison Years shall be recomputed on the basis of such reduction, and Tenant shall pay to Landlord, within thirty (30) days after demand therefore, any deficiency between the amount of such Additional Rent previously computed and paid by Tenant to Landlord, and the amount due as a result of such recomputation. If the Base Taxes are increased, then Landlord shall either pay to Tenant, or at Landlord's election, credit against subsequent payments of Rent due, if any (or if there shall be no subsequent payments of Rent next coming due, Landlord shall pay to Tenant the amount of such overpayment within twenty (20) Business Days), the amount by which such Additional Rent previously paid on account of Tenant's Tax Payment exceeds the amount actually due as a result of such recomputation. If Landlord receives a refund of Taxes for any Comparison Year, Landlord shall, at its election, either pay to Tenant, or credit against subsequent payments of Rent due hereunder (or if there shall be no subsequent payments of Rent next coming due, Landlord shall pay to Tenant the amount of such overpayment within twenty (20) Business Days), an amount equal to Tenant's Proportionate Share of the refund, net of any reasonable, actual, out of pocket expenses incurred by Landlord in achieving such refund, which amount shall not exceed Tenant's Tax Payment paid for such Comparison Year. Landlord shall not be obligated to file any application or institute any proceeding seeking a reduction in Taxes or the Assessed Valuation. The benefit of any exemption or abatement relating to all or any part of the Building shall accrue to the benefit of Landlord provided, however, that Taxes for the Base Tax Year and all Comparison Years shall be computed by taking into account any such exemption or abatement.

(c) Tenant shall be responsible for any applicable occupancy or rent tax now in effect or hereafter enacted to the extent Tenant is primarily liable for same or if applicable to Tenant's use and occupancy of the Premises and, if such tax is payable by Landlord, Tenant shall pay such amounts to Landlord within thirty (30) days following Tenant's receipt of Landlord's written request therefor.

(d) Tenant shall be obligated to make Tenant's Tax Payment regardless of whether Tenant may be exempt from the payment of any taxes as the result of any reduction, abatement, or exemption from Taxes granted or agreed to by any Governmental Authority, or by reason of Tenant's diplomatic or other tax exempt status.

Section 7.3 Operating Expense Definitions. For the purposes of this **Article 7** with respect to Operating Expenses, the following terms shall have the meanings set forth below:

(a) " **Base Operating Expenses** " shall mean the Operating Expenses as stated in Article 1 for the "Base Expense Year".

(b) " **Comparison Year** " shall mean with respect to Operating Expenses, each calendar year commencing subsequent to the first day of the Base Expense Year.

(c) " **Operating Expenses** " shall mean the aggregate of all costs and expenses paid or incurred by or on behalf of Landlord in connection with the ownership,

operation, repair and maintenance of the Real Property, including the rental value of Landlord's Building office and capital improvements to the Building incurred after the Base Expense Year only if such capital improvement either (i) is reasonably intended to result in a reduction in Operating Expenses (as for example, a labor-saving improvement) provided, the amount included in Operating Expenses in any Comparison Year from and after the Commencement Date shall not exceed an amount equal to the savings reasonably anticipated to result from the installation and operation of such improvement, and/or (ii) is made during any Comparison Year to cause the Building to be in compliance with Requirements enacted after the Commencement Date. Such capital improvements shall be amortized (with interest at the Base Rate) on a straight-line basis over such period as Landlord shall reasonably determine in accordance with GAAP or other customary and uniform ownership accounting practices, and the amount included in Operating Expenses in any Comparison Year shall be equal to the annual amortized amount. Operating Expenses shall not include any Excluded Expenses. If during all or part of the Base Expense Year or any Comparison Year, Landlord shall not furnish any particular item(s) of work or service (which would otherwise constitute an Operating Expense) to any leasable portions of the Building for any reason, then, for purposes of computing Operating Expenses for such period, the amount included in Operating Expenses for such period shall be increased by an amount equal to the costs and expenses that would have been reasonably incurred by Landlord during such period if Landlord had furnished such item(s) of work or service to such portion of the Building. In determining the amount of Operating Expenses for the Base Expense Year or any Comparison Year, if less than 100% of the Building rentable area is occupied by tenants at any time during the Base Expense Year or any such Comparison Year, Operating Expenses shall be determined for the Base Expense Year or such Comparison Year to be an amount equal to the like expenses which would normally be expected to be incurred had such occupancy been 100% throughout the Base Expense Year or such Comparison Year. For each calendar year or portion thereof occurring during the Term (including the Base Expense Year), Operating Expenses shall include a management fee of three percent (3%) of all rents and other charges made to and/or collected from all office tenants of the Building during such calendar year (or which would have been made to and/or collected if the Building was one hundred percent (100%) occupied with office tenants paying rent as provided under their respective leases for the entire year, assuming for purposes of this calculation that rents and other charges payable in respect of any unoccupied office space would be payable at the average rate of rents and other charges payable in respect of all occupied office space, in each case on a per rentable square foot basis, for such calendar year), but excepting in any event rent and other charges collected from tenants or other permitted occupants with respect to Building retail spaces, the provisions of this clause to apply regardless of the actual management fee, or increases in the actual management fee, incurred by Landlord during such calendar year or portion thereof (i.e., any management fee paid by Landlord in excess of the management fee permitted under this clause shall not be an Operating Expense).

(d) "Excluded Expenses" shall mean: (a) Taxes; (b) franchise or income taxes imposed upon Landlord; (c) mortgage amortization and interest; (d) leasing commissions; (e) the cost of tenant installations and decorations incurred in connection with preparing space for any Building tenant, including work letters and concessions; (f) the cost of the Base Building Work, (g) any amounts payable for rent under Superior Leases, if any except similar operating expenses; (h) wages, salaries and benefits paid to any persons above the grade of property manager or chief engineer and their immediate supervisor; (i) legal and accounting fees relating to (A) disputes with tenants, prospective tenants or other occupants of the Building, (B) disputes with purchasers, prospective purchasers, mortgagees or prospective mortgagees of the Building or the Real Property or any part of either, or (C) negotiations of leases, contracts of sale or mortgages; (j) costs of services provided to other tenants of the Building on a "rent-inclusion"

basis which are not provided to Tenant on such basis in which event such costs shall be excluded from Base Expenses (provided if such services are no longer provided on a rent-inclusion basis, such cost shall be retroactively included in Base Operating Expenses if not then included; (k) costs that are reimbursed out of insurance, warranty or condemnation proceeds, or which are reimbursed by Tenant or other tenants other than pursuant to an expense escalation clause; (l) costs in the nature of penalties or fines; (m) costs for services, supplies or repairs paid to any related entity in excess of costs that would be payable in an "arm's length" or unrelated situation for comparable services, supplies or repairs; (n) allowances, concessions or other costs and expenses of improving or decorating any demised or demisable space in the Building; (o) appraisal, advertising and promotional expenses in connection with leasing of the Building; (p) the costs of installing, operating and maintaining a specialty improvement, including a cafeteria, lounge, lodging or private dining facility, or an athletic, luncheon or recreational club unless Tenant is permitted to make use of such facility without additional cost (other than payments for key deposits, use of towels or other incidental items) or on a subsidized basis consistent with other users; (q) any costs or expenses (including fines, interest, penalties and legal fees) arising out of Landlord's failure to timely pay Operating Expenses or Taxes; (r) costs incurred in connection with the removal, encapsulation or other treatment of asbestos or any other Hazardous Materials existing in the Building or on the Real Property as of the date hereof, and defined as a Hazardous Material as of the date hereof, and (s) rental cost of items which (if purchased) would be capitalized and excluded from Operating Expenses; (t) costs in connection with the creation or amendment of any Superior Lease (including without limitation any legal fees and expenses, third party reports, title policies and compliance costs and expenses); (u) the portion of any fee or expenditure paid to any Affiliate of Landlord which exceeds the amount which would be paid for comparable services and/or goods in the absence of such relationship; (v) auditing fees in connection with tenant (including Tenant) disputes; (w) depreciation or amortization, except as provided in the definition of Operating Expenses above; (x) costs relating to withdrawal liability or unfunded pension liability under the Multi-Employer Pension Plan Act or other Requirement; (y) expenditures for repairing and/or replacing any defect in any work performed by or on behalf of Landlord pursuant to the provisions of this Lease or elsewhere in the Building, in each case to the extent expenditures for such repairs and/or replacements are recovered by warranty for such work; (z) any fees, dues or contributions to charitable organizations, civic organizations, political parties or political action committees; (aa) costs and expenses resulting from the gross negligence or willful misconduct of Landlord, any Landlord Party or any of Landlord's contractors and any damages and attorneys' fees and disbursements and other costs in connection with any judgment, settlement or arbitration award resulting from any tort liability of Landlord, any Landlord Party or any of Landlord's contractors; (bb) costs and expenses incurred by Landlord in connection with any obligation of Landlord to indemnify any tenant (including Tenant) pursuant to its lease or otherwise or which solely result from Landlord's or any other tenant's breach of a lease and except to the extent such cost would otherwise be includable in Operating Expenses; (cc) costs relating to any conversion to of the Building to a condominium or dissolution of such condominium; (dd) costs of purchasing, insuring, repairing or removing works of fine art and in excess of customary Building artwork; (ee) reserves for bad debt, rental loss, or any similar charge not involving payment of money to third parties; (ff) costs of organizing or maintaining Landlord as an entity, such as annual registration fees for limited liability companies or partnerships, and legal and accounting fees in organizing or maintaining Landlord as an entity; (gg) costs to correct any condition that is in material violation of any representation, warranty or covenant of Landlord made in this Lease, but only if costs relating to the item to be corrected are not otherwise includable in Operating Expenses; (hh) costs that are otherwise expressly excluded from Operating Expenses pursuant to the express terms of this Lease; (ii) omitted; (jj) the cost of any repair, replacement or restoration or other work occasioned by fire, windstorm or other casualty insured under a

standard “all risk” policy of insurance (regardless of whether Landlord has in fact maintained such insurance) other than commercially reasonable deductible amounts or self-retention, in each case consistent with amounts carried by landlords of comparable office buildings or the exercise by government authorities of the right of eminent domain (whether taking is total or partial) or condemnation, to the extent Landlord is compensated therefore and in either case, subject to the limitations on reimbursements for capital expenditures; (kk) costs incurred in connection with the financing or refinancing of the Real Property or any interest (direct or indirect) in Landlord, or a sale or transfer of all or any portion of the Real Property (including the acquisition or sale of air rights, transferable development rights, easements or other real property interests) or any interest therein or in any Person of whatever tier owing an interest therein (including without limitation any legal fees and expenses, third party reports, title policies and compliance costs and expenses);payments made to tenants or their landlords to take over leases; and (ll) the cost of capital improvements other than those expressly included in Operating Expenses pursuant to Article 7.

(e) “ **Statement** ” with respect to Operating Expenses shall mean a reasonably detailed and customary statement containing a comparison of the Base Operating Expenses and the Operating Expenses for any Comparison Year, which shall include major categories of expenses and be reasonably similar to such statements provided at Comparable Buildings as reasonably determined by Landlord.

Section 7.4 Tenant’s Operating Payment. (a) If the Operating Expenses payable for any Comparison Year exceed the Base Operating Expenses, Tenant shall pay to Landlord Tenant’s Proportionate Share of such excess (“Tenant’s Operating Payment”). For each Comparison Year, Landlord shall furnish to Tenant a statement setting forth Landlord’s reasonable estimate of Tenant’s Operating Payment for such Comparison Year (the “Expense Estimate”). Tenant shall pay to Landlord on the 1st day of each month during such Comparison Year an amount equal to 1/12 of the Expense Estimate (“Tenant’s Monthly Operating Payment”). If Landlord furnishes an Expense Estimate for a Comparison Year subsequent to the commencement thereof, then (i) until the 1st day of the month following the month in which the Expense Estimate is furnished to Tenant, Tenant shall pay to Landlord on the 1st day of each month an amount equal to the monthly sum payable by Tenant to Landlord under this Section 7.4 during the last month of the preceding Comparison Year, (ii) promptly after the Expense Estimate is furnished to Tenant or together therewith, Landlord shall give notice to Tenant stating whether the installments of Tenant’s Operating Payment previously made for such Comparison Year were greater or less than the installments of Tenant’s Operating Payment to be made for such Comparison Year in accordance with the Expense Estimate, and (A) if there shall be a deficiency, Tenant shall pay the amount thereof within 30 days after demand therefor, or (B) if there shall have been an overpayment, Landlord shall credit the amount thereof against subsequent payments of Rent due hereunder, and (iii) on the 1st day of the month following the month in which the Expense Estimate is furnished to Tenant, and on the 1st day of each month thereafter throughout the remainder of such Comparison Year, Tenant shall pay to Landlord an amount equal to 1/12 of the Expense Estimate.(b) Landlord shall endeavor to furnish to Tenant a final Statement for the immediately preceding Comparison Year on or before July 1st of each Comparison Year. If the Statement shows that the sums paid by Tenant under this Section 7.4 exceeded the actual amount of Tenant’s Operating Payment for such Comparison Year, Landlord shall credit the amount of such excess against subsequent payments of Rent due hereunder. If the Statement shows that the sums so paid by Tenant were less than Tenant’s Operating Payment for such Comparison Year, Tenant shall pay the amount of such deficiency within 10 Business Days after delivery of the Statement to Tenant.

Section 7.5 Non-Waiver; Disputes

(a) Landlord's failure to render any Statement on a timely basis with respect to any Comparison Year shall not prejudice Landlord's right to thereafter render a Statement with respect to such Comparison Year or any subsequent Comparison Year, nor shall the rendering of a Statement prejudice Landlord's right to thereafter render a corrected Statement for that Comparison Year, provided, however, in no event shall Tenant have any liability hereunder with respect to any Statement or corrected Statement not delivered to Tenant within two (2) years following the Comparison Year in question, or earlier termination of the Lease (except for Taxes for a Comparison Year that are then being contested by Landlord in accordance with **Section 7.2 (b)** , in which event the foregoing two (2) year period shall commence on the Expiration Date, or early termination date, as the case may be, and shall end on the date that a final determination is rendered by the Department of Taxation and Finance of the City of New York for the Comparison Year contested.

(b) Each Statement sent to Tenant shall be conclusively binding upon Tenant unless Tenant (i) pays to Landlord when due the amount set forth in such Statement, without prejudice to Tenant's right to dispute such Statement, and (ii) within 120 days after such Statement is sent requests to review backup information in respect of such Statement, provided, however, that Tenant's right to review and/or dispute the Statement for the Base Expense Year shall be exercised, if at all, concurrently with Tenant's first review of the Statement for the first Comparison Year. Upon Tenant's request, Landlord shall provide Tenant or its representative any information as shall reasonably be necessary to enable Tenant to assess the accuracy of the Operating Expenses applicable to such Statement and, if applicable, the Operating Expenses for the Base Expense Year. Each Statement shall be conclusively binding upon Tenant unless Tenant (or its representative) shall, within 90 days after such information is provided to Tenant, send a written notice to Landlord objecting to such Statement and specifying the reasons for Tenant's claim that such Statement is incorrect. Tenant agrees that Tenant will not employ, in connection with any review or dispute under this Lease, any person or entity who is to be compensated in whole or in part, on a contingency fee basis. If the parties are unable to resolve any dispute as to the correctness of such Statement within 30 days following such notice of objection, either party may refer the issues raised to a nationally recognized independent public accounting firm mutually acceptable to Landlord and Tenant, and the decision of such accountants shall be conclusively binding upon Landlord and Tenant. In connection therewith, Tenant and such accountants shall execute and deliver to Landlord a confidentiality agreement, in form and substance reasonably satisfactory to Landlord, whereby such parties agree not to disclose to any third party any of the information obtained in connection with such review. Tenant shall pay the fees and expenses relating to such procedure, unless such accountants determine that Landlord overstated Operating Expenses by more than 5% for such Comparison Year, in which case Landlord shall pay such fees and expenses. Except as provided in this Section, Tenant shall have no right whatsoever to dispute by judicial proceeding or otherwise the accuracy of any Statement. If the parties hereto are unable to mutually agree to a nationally recognized accounting firm, then either party, on behalf of both, may request appointment of such accountants by the American Arbitration Association.

Section 7.6 Proration. If the Commencement Date is not January 1, the Additional Rent for the applicable Comparison Year shall be apportioned on the basis of the number of days in the year from the Commencement Date to the following December 31. If the Expiration Date occurs on a date other than December 31, any Additional Rent under this **Article 7** for the Comparison Year in which such Expiration Date occurs shall be apportioned on the basis of the number of days in the year from January 1 to the Expiration Date. Upon the expiration or earlier

termination of this Lease, any Additional Rent under this **Article 7** shall be adjusted or paid within 30 days after submission of the Statement for the last Comparison Year.

Section 7.7 No Reduction in Rent. In no event shall any decrease in Taxes or Operating Expenses in any Comparison Year below the Base Taxes or Base Operating Expenses, respectfully, result in a reduction in the Fixed Rent or any other component of Additional Rent payable hereunder.

ARTICLE 8
REQUIREMENTS OF LAW

Section 8.1 Compliance with Requirements.

(a) **Tenant's Compliance** . Tenant, at its cost and expense, shall comply with all Requirements applicable to the Premises and/or Tenant's use or occupancy thereof, including, without limitation, the installation of a life safety system in the Premises from the point of connection into the base Building life safety system, in accordance with all applicable Requirements governing the installation, maintenance and operation of such system (subject to the terms of Article 5 above) provided, however, that Tenant shall not be obligated to comply with any Requirements requiring any structural alterations to the Building or alterations to Building Systems beyond the point of connection to the Premises, unless the application of such Requirements arises from (i) the specific manner and nature of Tenant's use or occupancy of the Premises, as distinct from general office use, (ii) Alterations made by Tenant, (iii) a breach by Tenant of any of the provisions of this Lease, or (iv) the negligence or willful misconduct of Tenant. Subject to the provisions of **Article 12,** any repairs or alterations required to be made by Tenant for compliance with applicable Requirements to the extent required by this **Section 8.1(a)** shall be made at Tenant's expense (1) by Tenant in compliance with **Article 5** if such repairs or alterations are nonstructural and do not affect any Building System outside of the Premises and to the extent such repairs or alterations do not affect areas outside the Premises, or (2) by Landlord if such repairs or alterations are structural or affect any Building System or to the extent such repairs or alterations affect areas outside the Premises, provided, however, the foregoing provisions of this **Section 8.1(a)** shall not be construed to require Tenant to perform structural Alterations, unless the same are required due to clauses (i), (ii), or (iii) of the immediately preceding sentence. If Tenant obtains written notice or otherwise has actual knowledge of any failure to comply with any Requirements applicable to the Premises (where Tenant has a duty to comply with such Requirements), Tenant shall give Landlord prompt notice thereof. Tenant hereby agrees to indemnify Landlord for any actual costs, loss, injury, expense or fees (including reasonable attorneys' fees) incurred by reason of such non-compliance that is the responsibility of Tenant as provided in this **Section 8.1(a)** . If Tenant's occupancy of the Premises, based on Tenant's pro-rata share of any partial floor of a Building that it occupies violates the density requirements set forth in the existing TCO or Certificate of Occupancy for such Building for any full floor or the portion of such floor that it occupies, then Tenant shall either (i) modify the Building's TCO or Certificate of Occupancy, as the case may be, to permit such occupancy, or (ii) take all action necessary to put the Premises in compliance with such density requirements (i.e., if the TCO or Certificate of Occupancy permits 100 persons on a floor and Tenant occupies one-half of such floor, then Tenant shall not be permitted to have more than 50 people occupy such floor).

(b) **Hazardous Materials** . Tenant shall not cause (or permit): (i) any Hazardous Materials to be brought into the Building, (ii) the storage

or use of Hazardous Materials in or about the Building or the Premises (subject to the second sentence of this

Section 8.1[b]), in the case of clause (i) and (ii), and then in any manner other than in full compliance with any Requirements), or (iii) the escape, disposal or release of any Hazardous Materials brought into the premises by or through any Tenant Party within or in the vicinity of the Building (provided none of the foregoing shall apply to Hazardous Materials in the Building as of the Commencement Date). Nothing herein shall be deemed to prevent Tenant's use and storage of any Hazardous Materials customarily used in the ordinary course of Permitted Use or in connection with Alterations, provided such use is customary and in accordance with all Requirements and consistent with Building Standard. Tenant shall be responsible, at its expense, for all matters directly or indirectly based on, or arising or resulting from the presence of Hazardous Materials in the Building which is caused or permitted by a Tenant Party. Tenant shall provide to Landlord copies of all communications received by Tenant with respect to any Requirements relating to Hazardous Materials, and/or any claims made in connection therewith. Landlord or its agents may perform non-invasive environmental inspections of the Premises at all reasonable times upon not less than twenty-four (24) hours' notice to Tenant (except in the case of an emergency, in which case the inspection may be performed at any time and without advance notice to Tenant); provided, that any such access by Landlord and/or its agents shall be subject to all the terms and conditions of this Lease, including using commercially reasonable efforts to minimize any interference with the conduct of Tenant's business in the Premises.

(c) **Landlord's Compliance** . Landlord, at its cost and expense, shall comply with (or cause to be complied with) all Requirements applicable to the Common Areas and the Building which are not the obligation of Tenant in accordance with the terms hereof and/or the need for such compliance was not caused by Tenant, to the extent that non-compliance (i) would impair Tenant's use and occupancy of the Premises for the Permitted Use (as opposed to Tenant's particular manner of use of the Premises) and Tenant's Roof Deck Area for the RDA Permitted Uses, or (ii) would threaten the health and safety of Tenant and Tenant Parties, (iii) would delay Tenant's ability to start or finish any Alterations, (iv) would result in the imposition upon Tenant or any Tenant Party of civil or criminal penalties or (v) would violate any insurance policy maintained by Tenant or render the same null and void. Landlord represents that (A) the Premises on the Substantial Completion Date will be in compliance in all material respects with applicable laws and requirements of public authorities (including, without limitation, the ADA in respect of access thereto) having jurisdiction over the Building and (B) Tenant's Roof Deck Area on the Substantial Completion Date for Tenant's Roof Work and the Secondary Base Building Roof Work will be in compliance in all material respects with applicable laws and requirements of public authorities (including, without limitation, the ADA) having jurisdiction over the Building. For the avoidance of doubt, (i) Landlord shall have no obligation to obtain a public assembly permit in respect of Tenant's Roof Deck Area and/or in connection with the Roof Work, and (ii) whether or not a public assembly permit is obtained shall not affect the Commencement Date or Rent Commencement Date.

(d) **Landlord's Insurance** . Tenant shall not cause or knowingly permit any action or condition that would (i) invalidate or conflict with Landlord's insurance policies provided the same shall be commercially reasonable, (ii) violate applicable rules, regulations and guidelines of the Fire Department, Fire Insurance Rating Organization or any other authority having jurisdiction over the Building, (iii) cause an increase in the premiums of fire insurance for the Building over that payable with respect to Comparable Buildings (unless Tenant pays such increase), or (iv) result in Landlord's insurance companies' refusing to insure the Building or any property therein in amounts and against risks as reasonably determined by Landlord. Landlord hereby represents that, to the best of Landlord's actual knowledge as of the date hereof, Tenant's use of the Premises for the Permitted Use and the Tenant's Roof Deck Area for the

RDA Permitted Use (i) does not violate any condition of Landlord's insurance policies referred to in this **Article 8** , and (ii) will not cause an increase in the rate of fire insurance applicable to the Building to an amount higher than it otherwise would be. If fire insurance premiums for the Building increase as a result of Tenant's failure to comply with the provisions of this **Section 8.1** , Landlord shall provide reasonable proof thereof and Tenant shall promptly cure such failure and reimburse Landlord for the actual cost of the increased fire insurance premiums paid by Landlord as a result of such failure by Tenant. For purposes of clarity, Tenant acknowledges that Tenant's failure to so promptly cure shall be a default hereunder.

(e) **Certain Violations** If the existence of any violations of Requirements noted of record against the Real Property (other than any such violations created by any Tenant Party or which will be cured by Tenant by the performance of the Initial Installations) shall actually delay (or prevent) Tenant from obtaining any governmental permits, consents, approvals or other documentation required by Tenant for (A) the performance of any Initial Installation or Alteration affecting a full floor or more, or (B) the lawful occupancy of any portion of the Premises upon completion of any Initial Installations or Alterations affecting a full floor or more, therein (it being understood that the imposition of conditions by a Governmental Authority requiring the cure of any such violation as a condition precedent to obtaining any such governmental permits, consents, approvals or other documentation which shall so actually delay Tenant from obtaining any required governmental permits, consents, approvals or other documentations shall be deemed such a prevention or delay), then, upon the giving of notice by Tenant to Landlord of such prevention or delay and of the applicable violations, (x) Landlord shall promptly commence and thereafter diligently prosecute to completion the cure and removal of record of such violations, (y) Tenant shall be entitled to an abatement of rent equal to the Fixed Rent and Additional Rent allocable to the affected portion of the Premises for the period commencing on the date Tenant gives to Landlord notice of such prevention or delay and ending on the earlier of the (i) date Tenant is no longer prevented from obtaining such governmental permit, consent or approval (ii) the date Tenant obtains such governmental permit, consent or approval or a waiver of such requirement continuing thereafter for the duration of such prevention or delay, and (iii) the date Tenant commences or continues the performance of such affected work or occupies the Premises for the conduct of business.

Section 8.2 Tenant Fire and Life Safety; Sprinkler. If the Fire Insurance Rating Organization or any Governmental Authority or any of Landlord's insurers requires any modifications and/or alterations be made or any additional equipment be supplied in connection with the sprinkler system or fire alarm and life-safety system serving the Premises or Building by reason of Tenant's manner of use or occupancy of the Premises (as opposed to mere Office Use), or any Alterations performed by Tenant, or Tenant's Property, or other contents of the Premises (which are not customary office contents), Landlord (to the extent outside of the Premises) or Tenant (to the extent within the Premises) shall make such modifications and/or Alterations, and supply such additional equipment, in either case at Tenant's cost and expense.

Section 8.3 Landlord Fire and Life Safety; Sprinkler. Landlord shall maintain, repair and replace, if necessary, at Landlord's sole cost and expense, the Building Systems situated outside of the Premises, including, but not limited to, the main sprinkler valves and risers, base building fire alarm systems and devices. In addition, Landlord shall also provide sufficient points of connection to the base Building fire alarm system for Tenant's fire alarm input and output devices as well as for Tenant sub-systems (e.g., pre-action sprinkler system), in compliance with all applicable New York City code Requirements. Any modification to the base Building infrastructure shall be at Landlord's sole cost and expense, unless such modification is necessitated by reason of Tenant's Alteration(s), gross negligence or willful misconduct. In

connection with Tenant's performance of any Alterations, Tenant shall not be required, but shall be permitted, to perform daily drain-downs of the sprinkler system, at Tenant's cost and expense in accordance with all applicable Requirements.

ARTICLE 9
SUBORDINATION

Section 9.1 Subordination and Attornment.

(a) This Lease is subject and subordinate to all Mortgages and Superior Leases (now and/or hereafter), and, at the request of any Mortgagee or Lessor, Tenant shall attorn to such Mortgagee or Lessor, its successors in interest or any purchaser in a foreclosure sale. Notwithstanding the foregoing, provided that this Lease shall then be in full force and effect and no Event of Default shall then exist, then as a condition to Tenant's obligation to subordinate this Lease to any future Mortgage or Superior Lease, Landlord shall secure from any future Mortgagee or Superior Lessor, as applicable, at no cost or expense of Landlord, a subordination, non-disturbance and attornment agreement (" **SNDA** ") in a reasonable and customary form (and Tenant agrees that the form of SNDA attached hereto as **Exhibit N** or a form substantially comparable thereto (the " **Approved SNDA Form** ") is reasonable and customary) provided that Tenant shall execute and deliver any such SNDA in such Approved SNDA Form within ten (10) days following Landlord's request therefor, time being of the essence, failing which this Lease shall be deemed to be subordinate pursuant to the terms of this Article 9 .

(b) Subject to Section 9.1(a) above, if a Lessor or Mortgagee or any other person or entity shall succeed to the rights of Landlord under this Lease, whether through possession or foreclosure action or the delivery of a new lease or deed, then at the request of the successor landlord and upon such successor landlord's written agreement to accept Tenant's attornment and to recognize Tenant's interest under this Lease, Tenant shall be deemed to have attorned to and recognized such successor landlord as Landlord under this Lease. The provisions of this **Section 9.1** are self-operative and require no further instruments to give effect hereto; provided, however, that Tenant shall promptly execute and deliver any instrument that such successor landlord may reasonably request (i) evidencing such attornment, (ii) setting forth the terms and conditions of Tenant's tenancy, and (iii) containing such other terms and conditions as may be reasonably required by such Mortgagee or Lessor, provided such terms and conditions do not increase the Rent, increase Tenant's other obligations or adversely affect Tenant's rights under this Lease, in each case beyond a de minimis extent and are in accordance with the Approved SNDA Form.

(c) Upon such attornment this Lease shall continue in full force and effect as a direct lease between such successor landlord and Tenant upon all of the terms, conditions and covenants set forth in this Lease subject to the terms of the SNDA entered into by Tenant and such successor landlord (substantially as set forth in the Approved SNDA Form with reasonable modifications to reflect completion of Landlord's Work and other applicable changes (whether or not executed)).

(d) Tenant shall from time to time within ten (10) Business Days of request from Landlord execute and deliver any documents or instruments that may be reasonably required by any Mortgagee or Lessor to confirm any subordination.

Section 9.2 Mortgage or Superior Lease Defaults. Any Mortgagee may elect that this Lease shall have priority over the Mortgage and, upon notification to Tenant by such Mortgagee, this Lease shall be deemed to have priority over such Mortgage, regardless of the date of this Lease. In connection with any financing of the Real Property, Tenant shall consent to any reasonable modifications of this Lease requested by any lending institution, provided such modifications do not increase the Rent or increase the other obligations, or materially decrease Landlord's obligations, or adversely affect the rights, of Tenant under this Lease.

Section 9.3 Tenant's Termination Right. As long as any Superior Lease or Mortgage exists, Tenant shall not seek to terminate this Lease by reason of any act or omission of Landlord until (a) Tenant shall have given notice of such act or omission to all Lessors and/or Mortgagees of which it has been provided actual notice, and (b) a reasonable period of time (not to exceed 120 days) shall have elapsed following the giving of notice of such default and the expiration of any applicable notice or grace periods (unless such act or omission is not capable of being remedied within a reasonable period of time), during which period such Lessors and/or Mortgagees shall have the right, but not the obligation, to remedy such act or omission and thereafter diligently proceed to so remedy such act or omission. If any Lessor or Mortgagee elects to remedy such act or omission of Landlord, Tenant shall not seek to terminate this Lease so long as such Lessor or Mortgagee is proceeding with reasonable diligence to effect such remedy (not to exceed 120 days). This Section 9.3 does not apply to Tenant's ability to terminate this Lease in accordance with Sections 11.5, 11.6, and 12.1(d) or in connection with a termination permitted by Section 10.1(b).

Section 9.4 Provisions. The provisions of this **Article 9** shall (a) inure to the benefit of Landlord, any future owner of the Building or the Real Property, Lessor or Mortgagee and any sublessor.

Section 9.5 Future Condominium Declaration. This Lease and Tenant's rights hereunder are and will be subject and subordinate to any condominium declaration, by-laws and other instruments (collectively, the " **Declaration** ") which may be recorded in order to subject the Building to a condominium form of ownership pursuant to Article 9-B of the New York Real Property Law or any successor Requirement, provided that the Declaration does not by its terms increase the Rent, materially increase Tenant's non-Rent obligations or materially and adversely affect Tenant's rights under this Lease. At Landlord's request, and subject to the foregoing proviso, Tenant will execute and deliver to Landlord an amendment of this Lease confirming such subordination and modifying this Lease to conform to such condominium regime and the condominium board delivers a subordination, non-disturbance and attornment agreement form reasonably satisfactory to Tenant

Section 9.6 Current Mortgagee SNDA. This Lease shall be binding on the parties upon full execution and delivery hereof but shall not be effective until delivery of an SNDA which meets the standard sets forth in Section 9.1(a) in the Approved SNDA Form from Landlord's current Mortgagee. If Landlord shall fail to deliver to Tenant such an SNDA from its current Mortgagee within 60 days following the date on which this lease is fully-executed and delivered by Tenant and Landlord, Tenant shall have the right for 10 days after the expiration of such 60-day period to either waive the requirement of delivery of an SNDA or cancel this Lease by giving Landlord notice of such cancellation election (time being of the essence), whereupon this Lease shall become null and void as of the date which is 10 days after the giving of such notice of cancellation unless Landlord delivers such SNDA within 10 days after Tenant gave such cancellation notice, in which case Tenant's cancellation notice shall be void and this Lease shall continue in full force and effect. The failure by Tenant to expressly and timely cancel this Lease

as aforesaid within such 10-day period shall constitute a waiver by Tenant of any right to cancel this Lease on account of the non-delivery of such an SNDA and this Lease shall thereafter be fully enforceable and not subject to cancellation.

ARTICLE 10
SERVICES

Section 10.1 Electricity.

(a) Landlord shall redistribute or furnish electricity to or for the use of Tenant in the 9 th and 10 th Floor Premises (but not Tenant's Roof Deck Area, subject to Landlord's Premises Work) for the operation of Tenant's electrical systems and equipment in the Premises, at a level sufficient to accommodate a load of six (6) watts per usable foot on a connected load basis (excluding usage for base Building Systems including heating, ventilation and air conditioning) (the " Electrical Capacity "). Any electrical distribution work a part of Landlord's Premises Work shall be Premises Build-Out Work, except work to bring the Electric Capacity to the floor of the 9 th and 10 th Floor Premises or that is required in connection with Base Building Work, and any electrical distribution work a part of Landlord's Expansion Premises Work shall be Expansion Build-Out Work, except work to bring the Electric Capacity to the floor of the Expansion Premises. Landlord shall redistribute or furnish the electricity provided for herein to the electrical closets servicing each floor of the Premises, and subject to all applicable provisions of this Lease, Tenant shall have the right, at Tenant's expense, to redistribute such electricity within the Premises in Tenant's discretion, except to the extent that such redistribution would cause damage to or overloading of the Electrical Equipment (as hereinafter defined) and wiring of the Building as reasonably determined by Landlord, subject to the following sentence. In the event Tenant surrenders a portion of the Premises to Landlord, whether by recapture or otherwise, Tenant shall surrender such portion with a reasonable and proportionate amount of Electrical Capacity allocable thereto. Any such redistribution shall be deemed a Specialty Installation.

(b) **Submetering** . Landlord shall, at its sole cost and expense, prior to the Commencement Date, provide at least one (1) submeter on each floor of the Premises, to measure Tenant's electrical consumption therein, which submeters Tenant shall, at its cost and expense, maintain throughout the Term, as the same may be extended. Tenant shall effective the Commencement Date, pay to Landlord, from time to time, but no more frequently than monthly, for its consumption of electricity at the Premises, a sum equal the product obtained by multiplying 103% of (i) the Cost Per Kilowatt Hour, and (ii) the actual number of kilowatt hours of electric current consumed by Tenant in such billing period. If any tax is imposed upon Landlord's receipts from the sale or resale of electricity to Tenant, Tenant shall pay such tax if and to the extent permitted by law as if Tenant were the ultimate consumer of such electricity. Bills for such amounts shall be rendered to Tenant in writing at such times as Landlord may elect, but not more frequently than monthly and at least thirty (30) days prior to the due date thereof. Landlord shall not terminate electricity service to the Premises until replacement metering is in place and operational. Tenant shall not be obligated or liable to double pay any particular sales taxes in respect of charges for electricity (and Tenant shall not double pay any costs related to a demand charge due to the fact that more than one such meter measures electricity to the Premises). Landlord agrees to maintain a valid resale certificate at any time during the Term that Landlord is reselling (on a submetered basis) electricity to Tenant for use in the Premises.

(c) Tenant shall furnish, install and replace, as required and at its own cost and expense, all lighting fixtures, tubes, lamps, bulbs, ballasts and outlets required in the Premises. All such fixtures, tubes, lamps, bulbs, ballasts and outlets so installed shall become Landlord's property upon the expiration or sooner termination of this Lease.

(d) Tenant shall at all times comply with the rules and regulations of the utility company supplying electricity to the Building or which Tenant has notice. Tenant shall not use any electrical equipment which, in Landlord's reasonable judgment, would exceed the Electrical Capacity for the Premises. In the event that Tenant's electrical use actually exceeds the Electric Capacity (the " Excess Usage "), Landlord shall so notify Tenant of same, and Tenant shall immediately cease the Excess Usage, subject to the provisions of this clause (e) . Within 15 days after receipt of such notice, Tenant may reasonably request additional electrical capacity (by delivery of a so-called " Load Letter " to Landlord from a reputable electrical consultant, specifying the amount requested and that same is required for the normal conduct of Tenant's business and operation of equipment in the Premises) be made available to Tenant. If after delivery of a satisfactory Load Letter to Landlord, Landlord, reasonably determines that Tenant's Excess Usage requirements (not to exceed 2 additional watts per usable square foot) necessitate installation of any additional and reasonable quantities of risers, feeders or other electrical distribution equipment (collectively, " Electrical Equipment "), Landlord shall, at Tenant's cost and expense, install such additional Electrical Equipment, provided that Landlord (subject to the next sentence), in its reasonable judgment, determines that (i) such installation is practicable any necessary shaft space is available (as determined by Landlord in its reasonable judgment taking into account, without limitation, the then tenant occupancy throughout the Building), (ii) such additional Electrical Equipment is permissible under applicable Requirements, and (iii) the installation of such Electrical Equipment will not cause permanent damage to the Building or the Premises, cause or create a hazardous condition, entail excessive or unreasonable alterations, interfere with or limit electrical usage by other tenants or occupants of the Buildings or exceed the limits of the switchgear or other facilities serving the Buildings, or require power in excess of that available from the utility serving the Buildings. Notwithstanding anything to the contrary in the previous sentence, Landlord confirms to Tenant that the Building is capable, at a commercially reasonable cost, of providing power to the Premises at least substantially consistent with the power required for the Permitted Use conducted in Comparable Buildings; and so long as Tenant's power requirements do not exceed such standard, the conditions described in clauses "i," "ii," and "iii" of the previous sentence shall be deemed satisfied. Landlord shall make available additional power for Tenant's use. Landlord shall reasonably determine the conduit path for Tenant to access such additional power, and Tenant shall pay Landlord, as Additional Rent, all costs shall be determined in accordance with the formula set forth in Section 10.1(b) above for such additional power.

(e) Tenant shall provide Landlord with reasonable access, upon reasonable prior notice (except in the case of an emergency in which case no notice shall be required) to any elevator machine rooms located within the Premises. Landlord shall use all reasonable efforts not to unreasonably interfere with the conduct of Tenant's ordinary business at the Premises with respect to such access, subject to Tenant's right of abatement under **Section 10.11** if a Substantial Portion of the Premises becomes Untenantable (but only to the extent Tenant is entitled to such abatement in accordance with the terms and conditions of **Section 10.11)** . Landlord shall provide Tenant with a reasonable amount of shaft space (as reasonably determined by Landlord) from the telecommunications "point of entry room" of the Building to the Premises, which shaft space shall be free of Hazardous Materials, at no additional charge to Tenant.

(f) Notwithstanding anything to the contrary in this Lease, at no additional charge to Tenant, Landlord shall provide to Tenant reasonably sufficient unobstructed, Hazardous Materials free, shaft space from the Telecom "Point of Entry" room in the Building to the Premises and Tenant's Roof Deck Area (the " Dedicated Shaft ") to run reasonable and customary communications wiring for Tenant's use, subject to the terms and conditions of this Lease

(g) For the avoidance of doubt, Landlord shall not be required to run connections for electricity and/or water to Tenant's Roof Deck Area, except to the extent such work is provided for as part of Landlord's Work.

Section 10.2 Elevators. Landlord shall provide passenger elevator service to the Premises twenty-four (24) hours per day, seven (7) days per week; provided, however, Landlord may reasonably limit passenger elevator service during times other than Business Hours provided, however, there shall be at least one (1) passenger elevator available on call to serve the Premises at all times, subject to police emergency and/or Unavoidable Delay. Landlord shall provide at least one freight elevator serving the Premises upon Tenant's prior request, on a non-exclusive "first come, first serve" basis with other tenants of the Building, on all Business Days from 8:00 a.m. to 6:00 p.m. Monday through Friday.

Section 10.3 Heating, Ventilation and Air Conditioning. Landlord shall provide, in accordance with the HVAC specifications to the HVAC Design Space Conditions set forth on **Schedule "C"** annexed hereto, heating, ventilation and air-conditioning (" **HVAC** ") to the Premises during the hours of 8:00 a.m. to 8:00 p.m. Monday through Friday, and upon written request by 2 p.m. of the preceding Business Day, if needed by Tenant, during the hours of 9:00 a.m. to 1:00 p.m. on Saturdays (" **HVAC Business Hours** ") (except in all such cases for Observed Holidays (as hereinafter defined) during the applicable seasons at times of the year as reasonably determined by Landlord. Landlord shall have access, at reasonable times and upon reasonable prior notice (except in the case of an emergency, in which case notice shall not be required) to all air-cooling, fan, ventilating and machine rooms and electrical closets and all other mechanical installations of Landlord in or in proximity to the Premises (collectively, " **Mechanical Installations** "), and Tenant shall not construct partitions or other obstructions (which partitions or obstructions are not subject to Landlord's prior approval in accordance with the provision of **Article 5**), which may interfere other than to a de minimis extent with Landlord's access thereto or the moving of Landlord's equipment to and from the Mechanical Installations. No Tenant Party shall at any time enter the Mechanical Installations or tamper with, adjust, or otherwise affect such Mechanical Installations. Landlord shall not be responsible if the HVAC System fails to provide cooled or heated air, as the case may be, to the Premises in accordance with the Design Standards by reason of (i) any equipment installed by, for or on behalf of Tenant, which has an electrical load in excess of the average electrical load and human occupancy factors for the HVAC System as designed, or (ii) any improper rearrangement of partitioning or other Alterations made or performed by, for or on behalf of Tenant, or (iii) Tenant failing to keep all of the operable windows in the Premises closed, and lower the blinds when necessary because of the sun's position, whenever the HVAC System is in operation or as and when required by any Requirement. Tenant shall reasonably cooperate with Landlord and shall abide by the rules and regulations which Landlord may reasonably prescribe for the proper functioning and protection of the HVAC System. Tenant shall have, within the HVAC specifications to the HVAC Design Space Conditions set forth on **Schedule "C"** annexed hereto during HVAC Business Hours, reasonable control over the temperature (within the design specifications of the system) within the Premises through the means of a thermostat

located within the Premises or other applicable means and to the extent areas are affected by changing the thermostat.

Section 10.4 Overtime HVAC. If Tenant desires any HVAC services during times other than HVAC Hours (" **Overtime HVAC Hours** "), then Tenant shall deliver notice (which notice may be via email to Frank Janos at frank.janos@cbre.com (which email address Landlord may change from time to time upon notice to Tenant) to the Building office (i) at least six (6) hours prior to the time that Tenant desires such service to be provided if such service is desired on Monday through Friday, and (ii) at least prior to 2 p.m. of the previous business day in advance of the time that Tenant desires such service to be provided if such service is desired on weekends and/or Observed Holidays (provided, however, that Landlord shall use reasonable efforts to arrange such service on such shorter notice as Tenant shall provide) and Tenant shall pay the then established Building rate for such service except if such service is provided on proper advance request for periods between 9:00 a.m. to 1:00 p.m. on Saturdays (except for Observed Holidays). The current rate for HVAC during Overtime HVAC Hours at the Buildings is $200.00 per hour. Tenant shall pay for a minimum of 4 hours of use if not contiguous to Business Hours. HVAC charges during Overtime HVAC Hours shall only be subject to increases based on CPI increase (but not less than Landlord's actual out-of-pocket cost).

Section 10.5 Overtime Freight Elevators. There shall be no charge to Tenant for the furnishing of any freight elevator service to the Premises other than during Overtime Periods. If Tenant desires any such services during Overtime Periods, Tenant shall deliver notice to the Dumbo Heights Campus office requesting such services (i) at least six (6) hours prior to the time that Tenant desires such service to be provided if such service is desired on Monday through Friday, and (ii) at least one business day in advance of the time that Tenant desires such service to be provided if such service is desired on weekends and/or Observed Holidays; provided, however, that Landlord shall use reasonable efforts to arrange such service on such shorter notice as Tenant shall provide. All use of the freight elevator during Overtime Periods shall be exclusive to Tenant for the reserved period. If Landlord furnishes freight elevator service during Overtime Periods, Tenant shall pay to Landlord the actual cost thereof to Landlord at the then established rates for such services in the Building. The current rate for freight elevator service is $150.00 per hour. Tenant shall pay for a minimum of 4 hours of use if not contiguous to Business Hours. Costs during Overtime Periods for such freight services shall only be subject to increases CPI increase (but not less than Landlord's actual out-of-pocket cost). Tenant shall, at no additional charge, be entitled to use the Building's freight elevator during Overtime Periods comprising thirty (30) hours in the aggregate in connection with Tenant's initial move into the Premises.

Section 10.6 Cleaning. Landlord shall, at its cost and expense, cause the Common Areas to be cleaned five (5) days per week, substantially in accordance with the standards set forth in **Exhibit D** annexed hereto and made a part hereof **,** using materials and methods which are consistent with "environmentally friendly" criteria. Tenant shall, at its cost and expense, be responsible to supply cleaning services to the Premises and Tenant's Roof Deck Area on all business days, including, without limitation, such portions of the Premises used for (i) the storage, preparation, service or consumption of food or beverages, (ii) for an exhibition area, (iii) mailroom, storage, or a shipping room, or substantially similar purposes, (iv) bathrooms, showers or exercise facilities. Tenant's cleaning contractor shall be subject to Landlord's prior approval, which approval shall not be unreasonably withheld, conditioned or delayed.

Section 10.7 Water. Landlord shall provide reasonable office use quantities of hot and cold water service to (i) the existing wet columns located in the Premises (but Tenant shall be

responsible to distribute such water throughout the Premises), and (ii) the core bathrooms on each floor of the Premises, each subject to Landlord's Premises Work and Landlord's Expansion Premises Work. In the event Tenant desires that hot water be provided, Tenant shall, at Tenant's cost and expense, install a hot water heater to provide such hot water, and a meter(s) to measure Tenant's consumption of electricity and water in connection with such service to the Premises, subject to Landlord's Premises Work and Landlord's Expansion Premises Work. If Tenant requires water in connection with any purpose that is not typical office use, other than those set forth above, Tenant shall pay for the cost of bringing such additional water to the Premises and Landlord shall, at Tenant's reasonable cost and expense, install a meter to measure the Tenant's consumption of such water. Tenant shall be responsible for all reasonable costs associated with the maintenance, repair and replacement, if any, of the hot water heater and meter(s) as provided above.

Section 10.8 Refuse Removal. Landlord shall, in conformity with its sustainability efforts at the Buildings, provide refuse removal services at the Buildings for ordinary office refuse and rubbish, incidental to Tenant's Permitted Use. Tenant shall pay to Landlord Landlord's reasonable charge for the removal of (i) wet refuse, and (ii) to the extent that the refuse generated by Tenant exceeds the refuse customarily generated by general office tenants. Tenant shall not dispose of any refuse in the Common Areas, and if Tenant does so, Tenant shall be liable for Landlord's reasonable charge for such removal.

Section 10.9 Condenser Water. Tenant shall, at its cost and expense, be permitted to install independent supplemental water-cooled air conditioning units (" **Tenant's Supplemental Units** ") in Tenant's equipment rooms, subject to the provisions of **Article 5** including, without limitation, the requirement to obtain Landlord's prior approval thereto, which approval shall not be unreasonably withheld. Landlord shall provide up to ten (10) tons of condenser water for each full floor then comprising the Premises (except that in respect of the 10 th floor only, Landlord shall provide up to fifteen (15) tons of condenser water) (" **Condenser Capacity** ") to a wet column in the Premises in connection with Tenant's Supplemental Units (24 hours per day, 7 days per week, and 365 days per year). Tenant can reasonably allocate such condenser water among the floors of the Premises. Tenant shall pay Landlord an annual charge for such condenser water throughout the term of this Lease, which charge is $450.00 per ton of the Condenser Capacity, payable in annual installments, and shall be payable whether or not Tenant utilizes such amount of condenser water. In addition, Tenant shall connect Tenant's Supplemental Units to Tenant's electric submeters and pay for electric consumption therefor in accordance with **Section 10.1** above. Notwithstanding the foregoing to the contrary, Tenant shall have the right to reduce or increase the number of tons of condenser water which it desires by providing Landlord with written notice of such reduced or increased amount no later than the date that is twenty (24) months immediately following the date of this Lease; such increase shall be subject to availability, in Landlord's sole judgment. After that deadline, Landlord shall nevertheless reasonably endeavor to accommodate any such request by Tenant, subject however to capacity constraints and reasonable reservations for the remainder of the Building. Notwithstanding anything to the contrary contained herein, all condenser valved and capped outlets on each floor of the Premises for Supplemental Units shall be installed by Tenant (subject to compliance with all applicable terms of this Lease), at Tenant's sole cost. Tenant shall have the right, at Tenant's expense, to redistribute the aggregate amount of condenser water provided to it hereunder within the Premises in Tenant's discretion, except to the extent that such redistribution would cause damage to or overloading of the Building Systems as reasonably determined by Landlord. In the event Tenant requests condenser water in amounts which are in excess of the amounts reserved above, Landlord shall use reasonable efforts to provide such excess amount, up to an additional 10 tons, subject to availability as

reasonably determined by Landlord, provided that Tenant shall pay all costs related to providing such excess condenser water (including, without limitation, all costs related to installing equipment required to deliver such water to the Premises and Landlord's then Building standard charge for such water). If, after the first anniversary of the Expansion Premises Commencement Date (or at such earlier date, at Tenant's sole option), Tenant fails to utilize any quantity of condenser water for 180 days or more in a one year period, Landlord shall have the right upon notice to Tenant to irrevocably reduce the number of tons of condenser water to which Tenant is entitled by the number of such unutilized tons, in which case Landlord shall only charge Tenant for such lower number of tons of condenser water.

Section 10.10 Telecommunications. Landlord currently expects to provide dark fiber connection within the Building through its current single provider, Hudson Fiber (" **Landlord's Fiber Provider** "). Landlord's Fiber Provider shall manage all telecommunications connectivity for the Building. If Tenant shall desire a separate fiber line to serve the Premises, Tenant shall contract directly with Landlord's Fiber Provider (or use a reputable telecom provider that Landlord approves in advance), at Tenant's cost and expense, for such service. Landlord hereby acknowledges and represents that any such agreements shall conform to the telecommunication standards adopted by the Landlord for the Building to accommodate high tech tenants, and that the same shall be on Landlord's standard form of such agreement. If Tenant requests that Landlord grant access to the Building to a telecommunications service provider designated by Tenant for purposes of providing telecommunications services to Tenant, Landlord shall respond to such request within thirty (30) days. Landlord shall not unreasonably withhold, condition or delay its consent to Tenant receiving telecommunications services from providers requested by Tenant to have access to the Building's facilities, subject to compliance with Landlord's reasonable requirements. All telecom provider work and access for Tenant shall be at Tenant's sole cost. Commencing on the Commencement Date, Tenant shall be permitted to use a reasonable amount of unobstructed, secure Landlord designated shaft space from the Telecom "Point of Entry" room in the Building to the Premises, without any additional charge, which shaft space shall be free of Hazardous Materials. Such reasonable amount shall not exceed Tenant's pro rata share of available shaft space within the Building.

Section 10.11 Service Interruptions.

(a) Subject to the provisions of **Section 10.11(b)** below, Landlord reserves the right to suspend any service when necessary, by reason of Unavoidable Delays, accidents or emergencies, or for Restorative Work which, in Landlord's commercially reasonable judgment, are necessary or appropriate until such Unavoidable Delay, accident or emergency shall cease or such Restorative Work is completed and Landlord shall not be liable for any interruption, curtailment or failure to supply services. Landlord shall use reasonable efforts to minimize interference with Tenant's use and occupancy of the Premises as a result of any such interruption, curtailment or failure of or defect in such service, or change in the supply, character and/or quantity of electrical service, and to restore any such services, remedy such situation and minimize any interference with Tenant's business. Subject to the provisions of **Section 10.11(b)** below, the exercise of any such right or the occurrence of any such failure by Landlord shall not constitute an actual or constructive eviction, in whole or in part, entitle Tenant to any compensation, abatement or diminution of Rent, relieve Tenant from any of its obligations under this Lease, or impose any liability upon Landlord or any Indemnitees by reason of inconvenience to Tenant, or interruption of Tenant's business, or otherwise. Landlord shall provide Tenant with thirty (30) days advance written notice of any scheduled electric shutdowns, or if unscheduled, such advance notice as is practicable under the circumstances

(b) Except as expressly set forth herein, Landlord shall not be liable in any way to Tenant for any failure, defect or interruption of, or change in the supply, character and/or quantity of electric service furnished to the Premises (including, without limitation, if due to Unavoidable Delay) for any reason, nor shall there be any allowance to Tenant for a diminution of rental value, nor shall the same constitute an actual or constructive eviction of Tenant, in whole or in part, or relieve Tenant from any of its Lease obligations, and no liability shall arise on the part of Landlord by reason of inconvenience, annoyance or injury to business whether electricity or gas is provided by public or private utility or by any electricity generation system owned and operated by Landlord. Notwithstanding anything to the contrary contained in this Lease with the exception of **Articles 11** and **12** relating to casualty and condemnation, respectively, if without the fault or neglect of Tenant or any person claiming through or under Tenant, any Substantial Portion of the Premises is rendered Untenantable for a period of five (5) consecutive Business Days (unless attributable to Unavoidable Delays then fifteen (15) consecutive Business Days), or in either such case twelve (12) Business Days in any 30-day period after Tenant shall have notified Landlord in writing of such Untenantability (an " Untenantability Notice "), by reason of (i) any stoppage or interruption of any Essential Service required to be provided by Landlord under this Lease or (ii) any repair or work performed by Landlord in the Building and attributable to Landlord's acts not the result of a Tenant's act, Tenant's negligence or willful misconduct, Tenant's breach of this Lease, and/or by reason of a casualty or condemnation, and Tenant is not using the Substantial Portion of the Premises so affected, then for the period commencing on the 6 th Business Day, 16th Business Day, or 13 th Business Day, as the case may be, after Tenant delivers the Untenantability notice and has ceased using the affected area, then, as Tenant's sole remedy in connection therewith (except for an action for constructive eviction, which is not deemed waived, provided that Tenant may not commence any such action unless the entire Premises is Untenantable for at least sixty (60) consecutive days), then, Fixed Rent and all Additional Rent related to Operating Expenses and Taxes then payable by Tenant under this Lease with respect to the Substantial Portion of the Premises rendered Untenantable until such Substantial Portion of the Premises is no longer Untenantable or Tenant is using or occupying such space, Rent shall be appropriately abated, on a per rentable square foot basis, with respect only to such Substantial Portion. "Untenantable" means that Tenant (or any other permitted user) shall be unable to use the Premises or the applicable portion thereof for the conduct of its business in the manner in which such business is ordinarily conducted, and shall not be using or in occupancy of the Premises or the applicable portion thereof (provided that the entry by representatives of Tenant to the affected area on a limited basis solely to retrieve files and documents or to maintain or safeguard equipment in such affected portion or any unaffected portion of Premises shall not by itself be deemed to be reoccupying for the ordinary conduct of its business). "Essential Service" shall mean (a) HVAC service, (b) electrical service, (c) water service, (d) elevator service, or (e) unless a reasonable alternative is provided by Landlord (which shall mean that a reasonable number of alternate bathrooms are provided for Tenant's use within five (5) floors of the Premises and the duration of the need to use such alternate bathrooms does not exceed 25 consecutive days or 35 days over a 60 day period), sewer service. "Substantial Portion" shall mean (i) at least 30% of the usable area of any floor of the Premises, (ii) any critical server room located within the Premises, or (iii) all men's bathrooms or all women's bathrooms located within the Premises.

(c) The rights and remedies of Tenant set forth in this Section 10.11 shall not be deemed a waiver by Tenant of Landlord's continued obligation to make the repair or to provide the service in question required by the terms of this Lease, with respect to Landlord's failure to make such repair or provide such service.

Section 10.12 Building Security. Subject to the terms of this Lease Landlord shall, at its cost and expense (provided same may be included as an Operating Expense), provide protection and security type services (which shall include, without limitation, a manned lobby desk or similar type of coverage) seven (7) days per week, twenty-four (24) hours per day, at the Building, comparable to that which the owners of Comparable Buildings (as hereinafter defined) would provide. The lobby of the building will be attended and will have access control and surveillance comprising of turnstiles, card readers in the elevators and cameras in the lobby, loading dock, elevators and building exteriors subject to reasonable changes as Landlord deems prudent and consistent with Building Standards. Landlord shall also place Tenant's name in any Building directory (fixed or electronic) that may be located in the lobby of the Building.

Section 10.13 Signage and Building Name. Tenant shall, at its cost and expense, be permitted to install and display an identification sign with Tenant's Name on the elevator vestibule on the floor of each full floor of the Premises leased by Tenant, subject to compliance with applicable laws and obtaining Landlord prior approval as to the size, color, specifications, materials and method of installation of such signage, which approval shall not be unreasonably withheld conditioned or delayed; and such other signage to be approved by Landlord in its sole discretion. All signage shall be subject to compliance with all applicable laws, ordinances and zoning regulations. Tenant hereby acknowledges and agrees that Landlord shall have no liability in connection with such signage and shall have no obligation whatsoever in connection with the maintenance, repair or replace, if necessary of the same, which shall be the sole obligation of Tenant. Unless otherwise directed by Landlord, in writing, Tenant shall, at its cost and expense, on, or before, the Expiration Date, or early termination of this Lease, remove all such signage and repair any damage to the Buildings and/or the Premises caused by such removal. Landlord agrees that, except to the extent required by Requirements, provided that (i) this lease is in full force and effect, (ii) Tenant named herein, its Affiliates, and/or a Successor Entity is the then Tenant, (iii) Tenant, Permitted Users, Affiliates and/or a Permitted Transferee is in occupancy of at least 50% of the Premises (which shall include at least the 9 th and 10 th floor Premises being leased by Tenant) and at least 75% of the tenth (10 th) floor of the Building, and (iv) no Event of Default then exists, Landlord shall not permit signage (other than Tenant's signage) to be installed or erected in the cross hatched areas shown on **Exhibit J** attached hereto.

Section 10.14 Building Services/Access. Tenant shall have access to and use of the Premises and the Tenant's Roof Deck Area seven (7) days per week, twenty-four (24) hours per day, subject to Unavoidable Delay (as hereinafter defined) and police emergency. Landlord shall throughout the Term, as the same may be extended, maintain the Buildings in a first-class manner and shall provide all of the services expressly set forth in this Lease (i.e., heating and air conditioning, elevator service, security, repairs and maintenance, Building directory and cleaning of the Common Areas) in the manner and to the extent required hereunder.

Section 10.15 Fire Stairs. Tenant shall have a right to use the fire stairs serving contiguous floors of the Premises (and the fire stairs serving the Tenant's Roof Deck Area, if applicable) (the " **Fire Stairs** ") only for access between the floors of the Building on which the Premises (and Tenant's Roof Deck Area, if applicable) are located, at no additional rental charge to Tenant, provided that (a) such use shall be in compliance with Requirements, (b) with respect to the Fire Stairs serving the contiguous floors of the Premises, such use shall not adversely affect Landlord's Building insurance beyond a de minimis extent, (c) Tenant shall comply with all of Landlord's reasonable rules and regulations adopted in good faith in effect on the date hereof or adopted in accordance with **Article 23** (which shall not limit the hours of use),

(d) access doors to the Fire Stairs shall never be propped or blocked open, (e) Tenant shall not store or place anything in the Fire Stairs or otherwise impede ingress thereto or egress therefrom, (f) Tenant shall not permit or suffer any Tenant Party to use any portion of the Fire Stairs other than for ingress and egress between the different floors of the Premises (and Tenant's Roof Deck Area, if applicable), except in case of emergency, (g) use of the Fire Stairs shall not unreasonably disturb any other tenants or occupants of the Building, (h) Tenant shall, at its sole cost and expense, at Landlord's election (provided that Landlord shall bear such cost with respect to Tenant's Roof Deck Area), (1) install automatic door closing devices reasonably satisfactory to Landlord on all doors between the Fire Stairs and the floors of the Premises (and the Tenant's Roof Deck Area), (2) tie such devices into the base-Building fire-alarm and life-safety system, and (3) maintain the fire doors in good operable condition, free of dents and painted annually, (i) subject to applicable re-entry rules and regulations from time to time in effect, Tenant shall, at its sole cost and expense, install a key-card locking system satisfactory to Landlord on all doors between the Fire Stairs and the floors of the Premises (and Tenant's Roof Deck Area, if applicable). All of the provisions of this Lease in respect of insurance and indemnification shall apply to the Fire Stairs as if the Fire Stairs were part of the Premises. Subject to the provisions of this Section, Tenant may paint the Fire Stairs and install light fixtures therein and make such other Decorative Alterations as Landlord shall approve.

Section 10.16 **BMS** . Tenant, at its sole cost and expense, shall have the right, but not the obligation, subject to such reasonable rules and regulations promulgated by Landlord and the applicable provisions of this Lease including without limitation, Landlord's approval thereof, to install within the Premises all equipment reasonably necessary to monitor certain equipment of Tenant through the Building's Building Management System (the " **BMS** "), on a view only access basis, except that from such equipment installed by Tenant, Tenant shall be permitted to control the Supplemental HVAC Units and the variable air volume devices that are within and exclusively serve the Premises. To the extent Tenant installs equipment connecting to the BMS that is compatible with the BMS (Tenant having no obligation to do so), then Tenant shall be fully responsible for such equipment being compatible with the Building's BMS, as same may be modified, upgraded and/or replaced during the Term and all required installations in connection therewith and Tenant shall use Landlord's designated contractor and/or vendor.

ARTICLE 11
INSURANCE; PROPERTY LOSS OR DAMAGE

Section 11.1 Tenant's Insurance.

(a) Commencing as of the earlier of: (x) Tenant's actual access to the Premises and (y) the Commencement Date (with respect to the Premises and Tenant's Roof Deck Area) and as of the Expansion Premises Commencement Date (with to the Expansion Premises),Tenant, at its expense, shall obtain and keep in full force and effect during the Term:

(i) a policy of commercial general liability insurance on an occurrence basis against claims for personal injury, bodily injury, death and/or property damage occurring in or about the Buildings, under which Tenant is named as the insured and Landlord, Landlord's Agent and any Lessors and any Mortgagees whose names have been furnished to Tenant, are named as additional insureds (the " **Insured Parties** "). Such insurance shall provide primary coverage without contribution from any other insurance carried by or for the benefit of the Insured Parties, and Tenant shall obtain blanket broad-form contractual liability coverage to insure its indemnity obligations set forth in **Article 25** . The minimum limits of

liability applying exclusively to the Premises shall be a combined single limit with respect to each occurrence in an amount of not less than $5,000,000; provided, however, that Landlord shall retain the right to require Tenant to increase such coverage from time to time to that amount of insurance which in Landlord's reasonable judgment is then being customarily required by landlords for similar office tenants of similar office space in Comparable Buildings (but such increase shall not be greater than the increase in CPI between the Commencement Date and the applicable increase year. The self-insured retention for such policy shall not exceed $25,000;

(ii) insurance against loss or damage by fire, and such other risks and hazards as are insurable under then available standard forms of "Special Form Causes of Loss" or "All Risk" property insurance policies with extended coverage, insuring Tenant's Property, Landlord's Premises Work and Landlord's Expansion Premises Work (excluding the Base Building Work and the Base Building Roof Work in each case which shall be covered by Landlord's property insurance) and all Alterations to the Premises to the extent such Alterations exceed the cost of the improvements typically performed in connection with the initial occupancy of tenants in the Buildings (" **Building Standard Installations** "), for the full insurable value thereof or replacement cost thereof, having a deductible amount, if any, not in excess of $50,000;

(iii) during the performance of any Alteration, until completion thereof, Builder's Risk insurance on an "all risk" basis and on a completed value form including a Permission to Complete and Occupy endorsement, for full replacement value covering the interest of Landlord and Tenant (and their respective contractors and subcontractors) in all work incorporated in the Building and all materials and equipment in or about the Premises, provided that this subsection (iii) shall not apply so long as Landlord (and not Tenant) performs Landlord's Work and Landlord's Expansion Premises Work;

(iv) Workers' Compensation Insurance, as required by law; and

(v) Business Interruption Insurance coverage for a period of at least twelve (12) months.

(b) All insurance required to be carried by Tenant (i) shall be non-cancellable unless Landlord receives thirty (30) days' (ten (10) days in case of cancellation for non-payment of premiums) prior notice of the same, by certified mail, return receipt requested (or if such notice to Landlord is not obtainable from the insurance company, then Tenant shall promptly notify Landlord of the same after receipt of such notice from the insurance company), and (ii) shall be effected under valid and enforceable policies issued by reputable insurers admitted to do business in the State of New York and rated in Best's Insurance Guide, or any successor thereto as having a "Best's Rating" of "A-" or better and a "Financial Size Category" of at least "IX" or better or, if such ratings are not then in effect, the equivalent thereof or such other financial rating as Landlord may at any time reasonably consider appropriate.

(c) On or prior to the Commencement Date, Tenant shall deliver to Landlord appropriate policies or certificates of insurance (" **Certificate[s] of Insurance** "), including evidence of waivers of subrogation required to be carried pursuant to this **Article 11** and that the Insured Parties are named as additional insureds (the **"Policies** "). Evidence of each

renewal or replacement of the Policies shall be delivered by Tenant to Landlord at least ten (10) days prior to the expiration of the Policies. In lieu of the Policies, Tenant, at Tenant's option, may deliver to Landlord a certification from Tenant's insurance company (on the form currently designated "Accord 27" (Evidence of Property Insurance) and "Accord 25-S" (Certificate of Liability Insurance), or the equivalent, provided that attached thereto is an endorsement to Tenant's commercial general liability policy naming the Insured Parties as additional insureds, which endorsement (x) is at least as broad as ISO policy form "CG acceptable to Landlord with Additional Insured — Managers or Lessors of Premises" (current State-Approved Edition) and (y) expressly provides coverage for the negligence of the additional insureds, which certification shall be binding on Tenant's insurance company, and (z) shall be effective on or prior to the Commencement Date (or the date on which Tenant or any person by or through Tenant accesses the Premises for any reason, if earlier), with written evidence thereof from Tenant's insurance company to follow within 30 days after such effective date. The policy and certificate shall expressly provide that such certification conveys to the Insured Parties all the rights and privileges afforded under the commercial general liability Policies as primary insurance. A copy of the Certificate of Insurance acceptable to Landlord is annexed hereto as **Schedule "B "** and made a part hereof.

(d) Landlord shall (i) keep the Building insured against damage and destruction by fire, vandalism, and other perils under "all risk" property insurance, and (ii) maintain a policy of commercial general liability insurance for claims for personal injury, death and/or property damage occurring in or about the Buildings; both as to (i) and (ii) above, consistent with the insurance requirements of any Mortgage then affecting the Building or, in the event there is no Mortgage encumbering the Building, then consistent with limits general maintained by owners of Comparable Buildings.

(e) Tenant shall have the right to satisfy its obligations under **Section 11.1(a)** by means of any so-called blanket policy or policies of insurance covering the Premises and other premises of Tenant or its Affiliates; provided that each such policy shall in all respects comply with **Section 11.1(a)** and shall specify that the portion of the total coverage of such policy that is allocated to the Premises is in the amounts required pursuant to **Section 11.1(a)** and shall provide that the amount of coverage afforded thereunder with respect to the Premises shall not be reduced below the limits required hereunder by claims thereunder against such other premises.

Section 11.2 Waiver of Subrogation. Landlord and Tenant shall each procure an appropriate clause in or endorsement to any property insurance covering the Building or the Premises, as the case may be, and personal property, fixtures and equipment located therein, wherein the insurer waives subrogation or consents to a waiver of right of recovery, and Landlord and Tenant agree not to make any claim against, or seek to recover from, the other for any loss or damage to its property or the property of others resulting from fire or other hazards. Tenant acknowledges that Landlord shall not carry insurance on, and shall not be responsible for, (i) damage to any Above Building Standard Installations, (ii) Tenant's Property, (iii) the Skylight, (iv) Landlord's Premises Work (other than the Base Building Work and the Base Building Roof Work (but excluding the Skylight which shall be Tenant's obligation to insure)), and (iv) any loss suffered by Tenant due to interruption of Tenant's business, except as expressly set forth in **Section 11.1(d)** above.

Section 11.3 Restoration. If the Premises are damaged by fire or other casualty, or if the Building is damaged, Landlord shall, to the extent of the insurance proceeds received therefor (including, without limitation, that Landlord shall only be responsible to repair the

Skylight to the extent of the insurance proceeds assigned and promptly paid to Landlord by Tenant and only if such Skylight and the entire roof membrane surrounding such Skylight is substantially damaged), be responsible only to repair and restore the Building (including the Common Areas) Base Building Work and the Base Building Roof Work to substantially the condition it existed prior to such event (collectively, the " **Casualty Work** "), subject to the provisions of any Mortgage or Superior Lease, but Landlord shall have no obligation to repair or restore (i) Tenant's Property, (ii) any other portion of Landlord's Premises Work, or (iii) any Alterations or improvements to the Premises. Until the date which is the earlier of (1) 120 days following the date on which the Casualty Work is Substantially Completed (or would have been Substantially Completed but for Tenant Delay) and Tenant has reasonable access to the Premises, or (2) the date on which Tenant occupies the portion of the Premises that has been damaged for the normal conduct of business, (i) with respect to the Premises, Rent shall be reduced in the proportion by that area of the part of the Premises which is not usable (or accessible), and is not used by Tenant bears to the total area of the Premises, and Rent shall be reduced on a floor by floor basis in the same manner and if more than thirty (30%) percent of the usable square footage of the Premises shall be inaccessible, the Premises shall be deemed to be wholly unusable (and untenantable) and (ii) with respect to the Tenant's Roof Deck Area, Rent shall be reduced by 10% if 33% (or more) of usable square footage of Tenant's Roof Deck Area is not usable (or accessible) provided if the Premises and the Tenant's Roof Deck Area are both not usable (or inaccessible) in no event shall the Rent be reduced below zero (0). This **Article 11** constitutes an express agreement governing any case of damage or destruction of the Premises or the Building by fire or other casualty, and which shall supersede any Requirement providing for such contingency in the absence of an express agreement, and any other law of like nature and purpose now or hereafter in force, shall have no application in any such case. This **Article 11** constitutes an express agreement governing any case of damage or destruction of the Premises or the Building by fire or other casualty, and Section 227 of the Real Property Law of the State of New York, which provides for such contingency in the absence of an express agreement, and any other law of like nature and purpose now or hereafter in force, shall have no application in any such case.

Section 11.4 Landlord's Termination Right. If the Premises or the Building shall be totally damaged or destroyed by fire or other casualty, or if the Building shall be so damaged or destroyed by fire or other casualty (whether or not the Premises are damaged or destroyed) that its repair or restoration requires more than 12 months or the expenditure of more than 30% of the full insurable value of the Building immediately prior to the casualty (as estimated in any such case by a third-party reputable contractor, registered architect or licensed professional engineer designated by Landlord), and provided Landlord shall terminate leases covering no less than 75% of the office space in the Building then leased to tenants in the Building (including Tenant), then in such case Landlord may terminate this Lease by giving Tenant notice to such effect within 60 days after the date of the casualty. If this Lease is so terminated, (v) the Term shall expire upon the 30th day after such notice is given, (w) Tenant shall vacate the Premises and surrender the same to Landlord, (x) Tenant's liability for Rent with respect to such portion of the Premises affected shall cease as of the date of the damage, (y) any prepaid Rent for any period after the date of the damage shall be refunded by Landlord to Tenant, and (z) if the lease is so terminated, Landlord shall return to Tenant the Letter of Credit together with a letter addressed to the Issuing Bank acknowledging that Landlord has no further right to draw thereon.

Section 11.5 Tenant's Termination Right. If the Premises and/or the Tenant's Roof Deck Area are damaged and are thereby rendered "wholly untenantable" (as hereinafter described), or if a Building shall be so damaged that Tenant is deprived of reasonable access to

the Premises and/or the Tenant's Roof Deck Area, use of the Premises for the Permitted Use, use of the Tenant's Roof Deck Area for the RDA Permitted Use and if Landlord elects or shall be obligated to restore the Premises and the Tenant's Roof Deck Area, Landlord shall, within sixty (60) days following the date of the damage, cause a contractor or architect selected by Landlord to give notice (the " **Restoration Notice** ") to Tenant of the date by which such contractor or architect estimates the restoration of the Premises (excluding any Above Building Standard Installations) shall be Substantially Completed. If such date, as set forth in the Restoration Notice, is more than twelve (12) months from the date of such damage, then Tenant shall have the right to terminate this Lease by giving notice (the " **Termination Notice** ") to Landlord not later than thirty (30) days following delivery of the Restoration Notice to Tenant. If Tenant delivers a Termination Notice, this Lease shall be deemed to have terminated as of the date of the giving of the Termination Notice, in the manner set forth in the second sentence of **Section 11.4** . Notwithstanding anything to the contrary contained in this **Section 11.5** , in the event that the Restoration Notice set forth in **Section 11.5** provides (a) for an estimated date of completion that is less than twelve (12) months from the date of the casualty and the restoration of the Premises is not Substantially Completed within twelve (12) months from the date of the casualty, or (b) for an estimated date of completion that is more than twelve (12) months from the date of the casualty and Tenant did not deliver a Termination Notice with respect thereto, but the restoration of the Premises is not Substantially Completed within sixty (60) days following the estimated date of completion in such Restoration Notice, then, in either of such events, Tenant shall have a right, upon thirty (30) days prior written notice to Landlord to give a Termination Notice as a result thereof and, unless Landlord Substantially Completes such restoration within the foregoing thirty (30) day period, the Lease shall be terminated in the manner provided in the second sentence of **Section 11.4** . For purposes of this **Section 11.5** and **11.6** , the Premises shall be deemed "wholly untenantable" if Tenant shall be precluded from using such material portion of the Premises as Tenant reasonably determines, in good faith, is required for the conduct of Tenant's ordinary business in substantially the manner that existed immediately prior to the casualty (provided however, that if Landlord believes in good faith, that Tenant's determination that the Premises are "wholly untenantable" is then unreasonable, such dispute shall be resolved in accordance with arbitration as set forth in **Article 34** below) provided that if more than thirty (30%) percent of the usable square footage of the Premises shall be inaccessible, the Premises shall be deemed to be wholly untenantable which shall not be subject to dispute.

Section 11.6 Final Eighteen Months. Notwithstanding anything in this **Article 11** to the contrary, if any significant casualty during the final eighteen (18) months of the Term, as the same may be extended, renders the Premises all or partially wholly untenantable, and the restoration of the Premises is not Substantially Completed or capable of being Substantially Completed within six (6) months from the date of the casualty, either Landlord or Tenant may terminate this Lease by notice to the other party within thirty (30) days after the occurrence of such damage and this Lease shall expire on the thirtieth (30 th) day following the date of such notice.

Section 11.7 Landlord's Liability. Any Building employee to whom any property shall be entrusted by or on behalf of Tenant shall be deemed to be acting as Tenant's agent with respect to such property and neither Landlord nor its agents shall be liable for any damage to such property, or for the loss of or damage to any such property of Tenant by theft or otherwise. None of the Insured Parties shall be liable for any injury or damage to persons or property or interruption of Tenant's business in each case resulting from fire or other casualty, any damage caused by other tenants or persons in the Building or by construction of any private, public or

quasi-public work, or any latent defect in the Premises or in the Building (except that Landlord shall be required to repair the same to the extent provided in **Article 6**).

ARTICLE 12

EMINENT DOMAIN

Section 12.1 Taking.

(a) **Total Taking** . If all or substantially all of the Building or the Premises shall be acquired or condemned for any public or quasi-public purpose (a " **Taking** "), this Lease shall terminate and the Term shall end as of the date of the vesting of title and Rent shall be prorated and adjusted as of such date.

(b) **Partial Taking** . Upon a Taking of only a part of a Building or the Premises then, except as hereinafter provided in this **Article 12** , this Lease shall continue in full force and effect, provided that from and after the date of the vesting of title, Rent shall be modified to reflect the reduction of the Premises and/or the Building as a result of such Taking.

(c) **Landlord's Termination Right** . Whether or not the Premises are affected, Landlord may, by notice to Tenant, within sixty (60) days following the date upon which Landlord receives notice of the Taking of all or a substantial portion of the Building or the Premises, terminate this Lease, provided that Landlord elects to terminate leases (including this Lease) affecting at least fifty (50%) percent of the rentable area of the Building (excluding any rentable area leased by Landlord or its Affiliates).Notwithstanding anything to the contrary contained herein, if Landlord shall be required to spend more than it collects as an award to restore the portion of the Premises to a self-contained rental unit, or if any Mortgagee or Superior Lessor shall retain such award without regard to Landlord's obligation to restore, Landlord may terminate this Lease upon thirty (30) days' written notice to Tenant.

(d) **Tenant's Termination Right** . If the part of the Real Property so taken contains more than twenty-five (25%) percent of the total area of the Premises or if, by reason of such Taking, Tenant no longer has reasonable means of access to the Premises or use of the Premises in a manner reasonably comparable to that conducted prior to such Taking, Tenant may terminate this Lease by notice to Landlord given within thirty (30) days following the date upon which Tenant is given notice of such Taking. If Tenant so notifies Landlord, this Lease shall end and expire upon the thirtieth (30th) day following the giving of such notice. If a part of the Premises shall be so taken and this Lease is not terminated in accordance with this **Section 12.1** Landlord, without being required to spend more than it collects as an award, shall restore that part of the Premises not so taken to a self-contained rental unit substantially equivalent (with respect to character, quality, appearance and services) to that which existed immediately prior to such Taking, excluding Tenant's Property and Above Building Standard Installations, provided, however, if Landlord is unable to perform the restoration required hereunder because the same would cost more than the award, Tenant shall have the right to terminate this Lease by notice to Landlord given within thirty (30) days following the date upon which Tenant is notified of such circumstance.

(e) **Apportionment of Rent** . Upon any termination of this Lease pursuant to the provisions of this **Article 12** , Rent, as the same may have been reduced pursuant to

Section 12.1(b) shall be apportioned as of, and shall be paid or refunded up to and including, the date of such termination.

Section 12.2 Awards. Upon any Taking, Landlord shall receive the entire award for any such Taking, and Tenant shall have no claim against Landlord or the condemning authority for the value of any unexpired portion of the Term or Tenant's Alterations; and Tenant hereby assigns to Landlord all of its right in and to such award. Nothing contained in this **Article 12** shall be deemed to prevent Tenant from making a separate claim in any condemnation proceedings for the then value of any Tenant's Property or Above Building Standard Installations included in such Taking and for any moving expenses, provided any such award is in addition to, and does not result in a reduction of, the award made to Landlord.

Section 12.3 Temporary Taking. If all or any part of the Premises is taken temporarily during the Term for any public or quasi-public use or purpose, Tenant shall give prompt notice to Landlord and the Term shall not be reduced or affected in any way and Tenant shall continue to pay all Rent payable by Tenant, with a proportionate reduction or abatement, and to perform all of its other obligations under this Lease, except to the extent prevented from doing so by the condemning authority, and Tenant shall be entitled to receive any award or payment from the condemning authority for such use, which shall be received, held and applied by Tenant as a trust fund for payment of the Rent falling due.

ARTICLE 13
ASSIGNMENT AND SUBLETTING

Section 13.1 Consent Requirements.

(a) **No Transfers** . Except as expressly set forth herein, Tenant shall not assign, mortgage, pledge, encumber, or otherwise transfer this Lease, whether by operation of law or otherwise, and shall not sublet, or permit, or suffer the Premises or any part thereof to be used or occupied by others (whether for desk space, mailing privileges or otherwise), without Landlord's prior consent, which consent shall not be unreasonably withheld, conditioned or delayed in accordance with this **Article 13** . Any assignment, sublease, mortgage, pledge, encumbrance or transfer in contravention of the provisions of this **Article 13** shall be void and shall constitute an Event of Default.

(b) **Collection of Rent** . If, without Landlord's consent (unless Landlord's consent is not required hereunder), this Lease is assigned, or any part of the Premises is sublet or occupied by anyone other than Tenant (by operation of law or otherwise), Landlord may collect rent from the assignee, subtenant or occupant, and apply the net amount collected to the Rent herein reserved. No such collection shall be deemed a waiver of the provisions of this **Article 13** , an acceptance of the assignee, subtenant or occupant as tenant, or a release of Tenant from the performance of Tenant's covenants hereunder, and in all cases Tenant shall remain fully liable for its obligations under this Lease.

(c) **Further Assignment/Subletting** . Landlord's consent to any assignment or subletting shall not relieve Tenant from the obligation to obtain Landlord's consent to any further assignment or subletting, if such consent is required hereunder. In no event shall any permitted subtenant assign or encumber its sublease or further sublet any portion of its sublet space, or otherwise suffer or permit any portion of the sublet space to be used or occupied by others, except with the consent of Landlord which shall be granted or withheld using the same standards set forth in **Section 13.4** .

Section 13.2 Tenant's Notice. If Tenant desires to assign this Lease or sublet all or any portion of the Premises for all or substantially all of the remaining term of the Lease (other than as may be expressly permitted without Landlord's consent pursuant to this Lease), Tenant shall give notice thereof to Landlord, which shall be accompanied by (i) a statement reasonably detailing the identity of the proposed assignee or subtenant (" **Transferee** "), the nature of its business and its proposed use of the Premises, and a description of the portion of the Premises to be sublet (in the case of a sublease), (ii) current financial information with respect to the Transferee, including its most recent financial statement, (iii) with respect to an assignment of this Lease or sublet of all or a portion of the Premises, a bona-fide term sheet, lease assignment or sublease, in either case describing all of the material terms and conditions of the proposed assignment or sublease, and (iv) with respect to a sublet of all or a part of the Premises, a description of the portion of the Premises to be sublet, and a bona-fide term sheet or sublease describing all of the material terms and conditions of the proposed sublease (collectively, a " **Transferee Notice** "). Except as provided below,, a Transferee Notice shall be deemed an irrevocable offer from Tenant to Landlord, whereby Landlord, in its sole discretion may either, by written notice to Tenant (a " **Landlord Recapture Notice** "): (x) sublease, or landlord's designee may sublease such space (the " **Leaseback Space** ") from Tenant upon the terms and conditions set forth in the Transferee Notice (if the proposed transaction is a sublease of all or part of the Premises), provided that, for the avoidance of doubt, such sublease shall be subject to the terms and conditions of Section 13.7 below, (y) terminate this Lease if the proposed transaction is an assignment or a sublease (whether by one sublease or a series of related or unrelated subleases) of all or substantially all of the Premises, or (z) terminate this Lease with respect to the Leaseback Space (if the proposed transaction is a sublease of part of the Premises). If Landlord exercises its option to terminate this Lease in the case where Tenant desires either to assign this Lease or sublet (whether by one sublease or a series of related or unrelated subleases) all or substantially all of the Premises, then, this Lease shall end and expire on the date that such assignment or sublet was to be effective or commence, as the case may be, and the Rent shall be paid and apportioned to such date, and Landlord shall be free to lease the Premises (or any part thereof) to any third party including, without limitation, Tenant's prospective assignee or subtenant. If Landlord exercises its option to terminate this Lease in part in any case where Tenant desires to sublet a portion of the Premises, then, (a) this Lease shall end and expire with respect to such portion of the Premises on the date that the proposed sublease was to commence; and (b) from and after such date the Rent shall be adjusted, based upon the proportion that the rentable area of the Premises remaining bears to the total rentable area of the Premises; and (c) Tenant shall pay to Landlord, upon demand, the costs actually incurred by Landlord in physically separating such portion of the Premises from the balance of the Premises and in complying with any laws and requirements of any public authorities relating to such separation. Said options may be exercised by Landlord by notice to Tenant at any time within twenty-five (25) days after such notice has been given by Tenant to Landlord; and during such twenty-five (25) day period Tenant shall not assign this Lease nor sublet such space to any person (other than as permitted herein without Landlord's consent). Notwithstanding anything to the contrary contained herein, in the event Landlord sends a Landlord Recapture Notice to Tenant in order to exercise a right of recapture under this **Section 13.2** in respect only of a sublease which is 7,500 rentable square feet or less, then, for a period of five (5) Business Days (time being of the essence) after Tenant's receipt of the Landlord Recapture Notice, Tenant shall have the right to withdraw the Transferee Notice related to such sublease sent to Landlord by delivery to Landlord of a notice withdrawing such Transferee Notice within said five (5) Business Day period. In a case of such timely withdrawal by Tenant, the Transferee Notice and Landlord's Recapture Notice shall both be deemed null and void and Tenant shall not be permitted to sublease the space in question unless and until Tenant again complies with all the provisions of this Article 13. If Landlord fails to timely deliver a Landlord Recapture Notice, then

Landlord shall be deemed to have waived its right of recapture under this **Section 13.2** with respect thereto, and provided the proposed assignment or sublease complies with the conditions set forth in **Section 13.4** below, Landlord's consent to the proposed assignment or subletting shall not be unreasonably withheld, conditioned or delayed in accordance with said **Section 13.4** . It is understood and agreed that Landlord shall have no right under this Section 13.2 through Section 13.3 to terminate the Lease or sublet the space by a Landlord Recapture Notice if the space Tenant proposes to sublease is for term that is less than substantially all the remainder of the Term.

Section 13.3 Landlord Leaseback. If Landlord exercises its option to sublet the Leaseback Space in accordance with the provisions above, such sublease to Landlord or its designee (as subtenant) shall be at the rentals set forth in the proposed sublease, and shall be for the same term as that of the proposed subletting, and such sublease shall provide that:

(a) it shall be expressly subject to all of the covenants, agreements, terms, provisions and conditions of this Lease except such as are irrelevant or inapplicable, and except as otherwise expressly set forth to the contrary in this Section;

(b) it shall be upon the same terms and conditions as those contained in the proposed sublease, except such as are irrelevant or inapplicable and except as otherwise expressly set forth to the contrary in this Section;

(c) it shall give the sublessee the unqualified and unrestricted right, without Tenant's permission, to assign such sublease or any interest therein and/or to sublet the Leaseback Space or any part or parts of the Leaseback Space and to make any and all changes, alterations, and improvements in the space covered by such sublease at no cost or liability to Tenant and if the proposed sublease will result in all or substantially all of the Premises being sublet, grant Landlord or its designee the option to extend the term of such sublease for the balance of the term of this Lease less one (1) day (provided that Tenant shall have no obligation to restore the Leaseback Space to any previous condition);

(d) any assignee or further subtenant, of Landlord or its designee, may, at the election of Landlord, be permitted to make alterations, decorations and installations in the Leaseback Space or any part thereof and shall also provide in substance that any such alterations, decorations and installations in the Leaseback Space therein made by any assignee or subtenant of Landlord or its designee may be removed, in whole or in part, by such assignee or subtenant, at its option, prior to or upon the expiration or other termination of such sublease provided that such assignee or subtenant, at its expense, shall repair any damage and injury to that portion of the Leaseback Space so sublet caused by such removal;

(e) (i) the parties to such sublease expressly negate any intention that any estate created under such sublease be merged with any other estate held by either of said parties, (ii) any assignment or subletting by Landlord or its designee (as the subtenant) may be for any purpose or purposes that Landlord, in Landlord's uncontrolled discretion, shall deem suitable or appropriate, Tenant shall and will at all times provide and permit reasonably appropriate means of ingress to and egress from the Leaseback Space so sublet by Tenant to Landlord or its designee (the cost and expense and means of ingress and egress shall be as specified in Transfer notice), (iv) Landlord, at Tenant's expense, may make such alterations as may be required or deemed necessary by Landlord to physically separate the Leaseback Space from the balance of the Premises and to comply with any laws and requirements of public authorities relating to such separation, (v) that at the expiration of the term of such sublease,

Tenant will accept the Leaseback Space in its then existing condition, subject to the obligations of the sublessee to make such repairs thereto as may be necessary to preserve the Leaseback Space in good order and condition (and, if applicable, remove alterations made thereto by Landlord or its sublessee and restore the Leaseback Space to its previous condition if, and to the extent, the subtenant would have the obligation to remove alterations made by or on behalf of the subtenant at the end of the sublease term and restore the Leaseback Space to its previous condition). If Landlord exercises its option to sublet the Leaseback Space, Landlord shall indemnify and save Tenant harmless from all obligations under this Lease as to the Leaseback Space only during the period of time it is so sublet;

(f) performance by Landlord, or its designee, under a sublease of the Leaseback Space shall be deemed performance by Tenant of any similar obligation under this Lease and any default under any such sublease shall not give rise to a default under a similar obligation contained in this Lease, nor shall Tenant be liable for any default under this Lease or deemed to be in default hereunder if such default is occasioned by or arises from any act or omission of the subtenant under such sublease or is occasioned by or arises from any act or omission of any occupant holding under or pursuant to any such sublease; and

(g) If Landlord exercises its option to sublet the Leaseback Space:

(i) Tenant shall be relieved of Tenant's obligations under this Lease with respect to the Leaseback Space arising during the term of such sublease other than Tenant's obligation to pay Rent with respect thereto (without limiting the generality of the foregoing, Tenant shall not be liable for any default under this Lease or deemed to be in default under this Lease if such default is occasioned by or arises from any act or omission of Landlord or the subtenant pursuant to such sublease or any person or entity claiming by, through or under any of them);

(ii) Subject to the conditions and limitation contained in this Lease, Landlord hereby agrees to indemnify and hold Tenant harmless from and against any and all costs, expenses (including, without limitation, reasonable attorneys' fees), damages, losses and liabilities in connection with third party claims arising from any act or omission of the subtenant in respect of the Leaseback Space or arising from any act or omission of, anyone occupying by, through or under the subtenant in respect of the Leaseback Space except to the extent the same arose from the negligence or willful misconduct of Tenant;

(iii) Tenant shall have no obligation, at the expiration or earlier termination of the Term, to remove any alteration, installation or improvement made in the Leaseback Space or restore the Leaseback Space to any previous condition; and

(iv) Any consent required of Tenant, as Landlord under the sublease, shall be deemed granted if consent with respect thereto is granted by Landlord under this Lease, and any failure of Landlord (or its designee) to comply with the provisions of the sublease other than with respect to the payment of Rent shall not constitute a default thereunder or hereunder if Landlord shall have consented to such non-compliance.

Section 13.4 Conditions to Assignment/Subletting.

(a) If Landlord does not exercise Landlord's option provided under **Section 13.2** , and provided no Event of Default then exists and is continuing, Landlord's consent to the proposed assignment or subletting shall not be unreasonably withheld, conditioned or delayed and shall be granted or denied within twenty-five (25) days (or ten (10) Business Days if a Transferee Notice had been previously provided to Landlord for the assignment or subletting in question and Landlord failed to exercise its right to terminate the Lease or sublet the Leaseback Space, if applicable, in accordance with Section 13.2 or 13.3, as the case may be) after receipt of all required information including a fully executed assignment or sublease agreement, as applicable, accompanied by a notice requesting Landlord's consent and all the information required to be provided with a Transferee Notice, if all of the following conditions are satisfied:

(i) in Landlord's reasonable judgment, the Transferee is engaged in a business or activity, and the Premises will be used in a manner, which (1) is in keeping with the then standards of the Building, and (2) does not violate any restrictions set forth in this Lease;

(ii) Landlord's reasonable judgment, the Transferee is reputable with sufficient financial means (and Landlord, in evaluating such financial means, shall take into account, all relevant factors) to perform all of its obligations under this Lease taking into account any security deposit or financial guaranty offered by the assignor or subtenant or if Tenant is not being released, Tenant;

(iii) if Landlord has comparable space available in the Dumbo Heights Campus that is then available, or becoming available in the next six (6) months), for a comparable term, neither the Transferee nor any Affiliate of the Transferee is then an occupant of the Dumbo Heights Campus;

(iv) if Landlord has comparable space available in the Dumbo Heights Campus that is then available, or becoming available, for a comparable term, the Transferee is not a person or entity (or an Affiliate of a person or entity) with whom Landlord is then or has been within the prior six (6) months actively negotiating in connection with the rental of comparable space in the Building;

(v) there shall be not more than two (2) subtenants plus Tenant on any single floor of the Premises at any one time;

(vi) Tenant shall, reimburse Landlord for all reasonable out-of-pocket expenses incurred by Landlord in connection with such assignment or sublease, including any reasonable investigations as to the acceptability of the Transferee and all reasonable out of pocket legal costs incurred in connection with the granting of any requested consent;

(vii) Tenant shall not list or advertise the Premises to be sublet or assigned with a broker, agent or other entity at a rental rate less than the Fixed Rent at which Landlord is then offering to lease other comparable space in the Building (Landlord shall respond promptly to any request by Tenant for such rental rate); provided, however, that the foregoing shall not prevent Tenant from subleasing any portion of the Premises at a rental rate lower or higher than Landlord is offering to lease comparable space in the Building;

(viii) the Transferee shall not be entitled, directly or indirectly, to diplomatic or sovereign immunity, regardless of whether the Transferee agrees to waive such diplomatic or sovereign immunity, and shall be subject to the service of process in, and the jurisdiction of the courts of, the City and State of New York; and

(ix) any sublease shall provide that the parties thereto shall not reveal the financial terms of the sublease other than to their officers, lenders, brokers, employees and professionals or to the extent required by law.

(b) If Landlord fails to respond to a request for consent to an assignment or subletting proposed by Tenant within twenty-five (25) days or ten (10) Business Days, as the case may be, after Landlord's receipt of all of the information required under **Section 13.2** , Tenant shall have the right to provide Landlord with a second written request for approval (a " **Second Request** "), which shall include all material previously delivered to Landlord together with Tenant's Transferee Notice, and set forth on the first page thereof the following statement in bold capital letters: **IF LANDLORD FAILS TO RESPOND WITHIN FIVE (5) BUSINESS DAYS AFTER RECEIPT OF THIS NOTICE, THEN TENANT SHALL BE ENTITLED TO ENTER INTO THE PROPOSED [ASSIGNMENT] [SUBLEASE] DESCRIBED IN THE NOTICE ENCLOSED HEREWITH, WHICH WAS PREVIOUSLY SUBMITTED TO LANDLORD AND TO WHICH LANDLORD HAS FAILED TO TIMELY RESPOND** . If Landlord fails to respond to a Second Request within five (5) Business Days after receipt by Landlord, the proposed assignment or sublease as to which the Second Request is submitted shall be deemed to be approved by Landlord, and Tenant shall be entitled to enter into such transaction, provided that such assignment or sublease complies with the requirements of this **Article 13** and all other provisions of this Lease applicable there.

(c) With respect to each and every subletting and/or assignment for which Landlord's consent is required and given or deemed given by Landlord under the provisions of this Lease:

(i) the form of the proposed assignment or sublease shall be reasonably satisfactory to Landlord;

(ii) no sublease shall be for a term ending later than one day prior to the Expiration Date (as same may be extended pursuant to the terms hereof);

(iii) Except for Landlord's subletting pursuant to Section 13.3, each sublease shall be subject and subordinate to this Lease and to the matters to which this Lease is or shall be subordinate; and upon the termination of this Lease prior to the Expiration Date, Tenant and each subtenant shall be deemed to have agreed that Tenant has hereby assigned to Landlord, and Landlord may, at its option, accept such assignment of, all right, title and interest of Tenant as sublandlord under such sublease, together with all modifications, extensions and renewals thereof then in effect and such subtenant shall, at Landlord's option, attorn to Landlord pursuant to the then executory provisions of such sublease, except that Landlord shall not be (A) liable for any previous act or omission of Tenant under such sublease (except with respect to any act or omission which continues after such attornment), (B) subject to any counterclaim, offset or defense not expressly provided in such sublease, which theretofore accrued to such subtenant against Tenant, (C) bound by any previous modification of such

sublease not consented to by Landlord or by any prepayment of more than one month's rent (unless actually received by Landlord), (D) bound to return such subtenant's security deposit, if any, except to the extent Landlord shall receive actual possession of such deposit and such subtenant shall be entitled to the return of all or any portion of such deposit under the terms of its sublease, or (E) obligated to make any payment to or on behalf of such subtenant, or to perform any work in the subleased space or the Building, or in any way to prepare the subleased space for occupancy, beyond Landlord's obligations under this Lease. The provisions of this Section 13.4(b)(iv) shall be self-operative, and no further instrument shall be required to give effect to this provision, provided that the subtenant shall execute and deliver to Landlord any instruments Landlord may reasonably request to evidence and confirm such subordination and attornment

(d) **Modifications** . Any modification, amendment or extension of a sublease (other than pursuant to an express provision of such sublease which was approved by Landlord) shall be deemed a sublease for the purposes of **Section 13.1** hereof but unless such modification, amendment or extension adds additional space, Landlord shall have no right to terminate or recapture the premises so demised by such sublease and Section 13.2 and Section 13.3 shall not be applicable.

Section 13.5 Binding on Tenant; Indemnification of Landlord. Notwithstanding any assignment or subletting or any acceptance of rent by Landlord from any Transferee, Tenant and any guarantor shall remain fully liable for the payment of all Rent due and for the performance of all the covenants, terms and conditions contained in this Lease on Tenant's part to be observed and performed, and any default under any term, covenant or condition of this Lease by any Transferee or anyone claiming under or through any Transferee shall be deemed to be a default under this Lease by Tenant. Tenant shall indemnify, defend, protect and hold harmless Landlord from and against any and all Losses resulting from (i) any claims that may be made against Landlord by the Transferee or anyone claiming under or through any Transferee where Landlord withheld its consent to the proposed transaction, or (ii) any claims that may be made against Landlord by any brokers or other persons or entities claiming a commission or similar compensation in connection with the proposed assignment or sublease, irrespective of whether Landlord shall give or decline to give its consent to any proposed assignment or sublease, or if Landlord shall exercise its option to terminate under this **Article 13** .

Section 13.6 Tenant's Failure to Complete. If Landlord consents to a proposed assignment or sublease and such assignment or sublease fails to become effective within one hundred twenty (120) days after giving of such consent, then Tenant shall again comply with all of the provisions and conditions of **Sections 13.2,** and **13.4** before assigning this Lease or subletting all or part of the Premises.

Section 13.7 Profits.

(a) If Tenant enters into any assignment or sublease permitted hereunder or consented to by Landlord (but not any transaction described in **Sections 13.1, 13.8 and 13.11**), Tenant shall, within sixty (60) days following Landlord's consent to such assignment or sublease, deliver to Landlord a list which sets forth the amount of: (i) the commercially reasonable industry standard third-party brokerage fees paid by Tenant in such transaction, (ii) any free rent to be provided under such sublease, (iii) any tenant improvement work allowance or any construction costs paid or to be paid in connection with such transaction and, in the case of any sublease, any actual costs incurred by Tenant in separately demising the sublet space,

and (iv) the reasonable legal fees incurred by Tenant with respect to the assignment or sublet(collectively, " **Transaction Costs** "), together with a list of all of Tenant's Property to be transferred to such Transferee. Tenant shall deliver to Landlord reasonable evidence of the payment of any Transaction Costs within sixty (60) days after the same are paid (and if Tenant shall fail to do so, no such fees or costs for which Tenant shall have failed to provide evidence of payment shall qualify as Transaction Costs). In consideration of such assignment or subletting, Tenant shall pay to Landlord.

(b) In the case of an assignment, on the effective date of the assignment, fifty (50%) percent of all sums and other consideration paid to Tenant by the Transferee for or by reason of such assignment of Tenant's leasehold interest herein (including key money, bonus money and any sums paid for services rendered by Tenant to the Transferee in excess of the fair market value for such services and sums paid for the sale or rental of Tenant's Property, less the then fair market or rental value thereof) after first deducting the Transaction Costs provided, however, that the sums payable under this clause shall be paid by Tenant to Landlord within thirty (30) days of Tenant's receiving same from assignee; or

(c) In the case of a sublease, fifty (50%) percent of any consideration payable under the sublease to Tenant by the Transferee which exceeds on a per square foot basis the Fixed Rent and Additional Rent payable by Tenant under the Lease for the portion of the Premises demised under the sublease in respect of the sublet space (including sums paid for the sale or rental of Tenant's Property, less the then fair market value or rental value thereof) after first deducting the Transaction Costs, which Transactional Costs shall be amortized over the term of the sublease. The sums payable under this clause shall be paid by Tenant to Landlord monthly as and when paid by the subtenant to Tenant.

Section 13.8 Transfers.

(a) **Permitted Transfers** . If Tenant is a legal entity, the transfer (by one or more transfers), directly or indirectly, by operation of law or otherwise, of a majority of the stock or other beneficial ownership interest in Tenant or Guarantor, of all or substantially all of the assets of Tenant or Guarantor, as applicable (collectively " **Ownership Interests** ") shall be deemed a voluntary assignment of this Lease. For purposes of this Article, the term "transfers" shall be deemed to include (x) the issuance of new Ownership Interests either by way of a "public offering", or establishment of a new fund, or otherwise, which results in a majority of the Ownership Interests in Tenant or Guarantor, as applicable, being held by a person or entity which does not hold a majority of the Ownership Interests in Tenant or Guarantor, as applicable on the date hereof, (y) the sale of all or substantially all of Tenant's or Guarantor's assets, as applicable, and (z) except as provided below, the merger or consolidation, reorganization, recapitalization or conversion of Tenant or Guarantor, as applicable, into or with another business entity. Notwithstanding anything to the contrary contained in this Article 13, the provisions of Sections 13.1, 13.2, 13.3, 13.4 (other than Sections 13.4(i), (vii), (viii), and (ix)), 13.6, and 13.7 shall not apply to, and Landlord's consent shall not be required with respect to (i) the transfer of Ownership Interests (or issuance of new Ownership Interests) either directly or indirectly in Guarantor if and so long as the stock of either Tenant or Guarantor is then publicly traded on a nationally recognized stock exchange, (ii) transactions with a business entity(ies) into or with which Tenant or Guarantor, as applicable, is merged or consolidated or converted or to which all or substantially all of Tenant's or Guarantor's assets, as applicable, or a majority of the Ownership Interests of Tenant or Guarantor, as applicable, transferred (any of the foregoing, a " **Successor Entity** "), or (iii) transfers or issuances of Ownership Interests of Tenant or Guarantor, in each such case, so long as with respect to transaction described in clause (ii) or

(iii), (A) such transfer or other transaction was made for a legitimate independent business purpose and not for the principal purpose of transferring this Lease and, in the case of a merger or consolidation only, (B) only if the stock of Guarantor is not then publicly traded on a nationally recognized stock exchange, the Successor Entity has a tangible net worth computed in accordance with generally accepted accounting principles consistently applied that is at least equal to the tangible net worth of Guarantor computed in accordance with generally accepted accounting principles consistently applied as of the date of this Lease (the " **Net Worth Test** ") (it being understood that this subsection (B) shall not apply if the stock of Guarantor is then publicly traded on a nationally recognized stock exchange, (C) only if the Net Worth Test is applicable, proof reasonably satisfactory to Landlord of such net worth is delivered to Landlord at least five (5) Business Days prior to the effective date of any such transaction (or promptly upon Landlord's request); it being agreed that Tenant shall not be required to provide Landlord with prior notice of any such transactions if disclosure is prohibited by confidentiality requirements or by law, in which event Tenant shall provide Landlord with notice within ten (10) days after such transaction has been consummated (i.e., agreements executed and delivered), (D) any such transfer shall be subject and subordinate to all of the terms and provisions of this Lease, and (E) Tenant and Guarantor (except in the event of a merger where Tenant or Guarantor, as applicable, is not the surviving entity or a sale of all or substantially all of Tenant's or Guarantor's assets) shall remain fully liable for all obligations to be performed by Tenant under this Lease. Tenant may also, upon prior notice to Landlord, but without the provisions of **Sections 13.1,13.2, 13.3, 13.4** (other than **Sections 13.4(i), (vii), (viii),** and **(ix)), 13.6 and 13.7** being applicable, permit any Affiliate of Guarantor to accept an assignment of this Lease or sublet or occupy all or part of the Premises, provided such sublease may continue for so long as such entity remains an Affiliate of Guarantor. Any such sublease shall not be deemed to relieve, release, impair or discharge any of Tenant's obligations hereunder. Notwithstanding anything to the contrary contained in this Article 13, if the stock of Guarantor is publicly traded on a nationally recognized stock exchange, then the conversion of Guarantor to a private (i.e., non-publicly traded) entity shall not require Landlord's consent, and the provisions of Sections 13.1, 13.2, 13.3, 13.4 (other than Sections 13.4(i), (vii), (viii), and (ix)), 13.6, and 13.7 shall not apply, provided (A) such conversion is made for a legitimate independent business purpose and not for the principal purpose of transferring this Lease, (B) the Successor Entity (or entity existing after such conversion, as applicable) satisfies the Net Worth Test, and (C) proof reasonably satisfactory to Landlord of such net worth is delivered to Landlord at least five (5) Business Days prior to the effective date of any such transaction (or promptly upon Landlord's request). All of the transfers described in this Section 13.8 that do not require Landlord's consent being referred to as an " **Permitted Transfer** " and such transferees, including Successor Entities, a " **Permitted Transferee** ").

(b) **Applicability** . The limitations and rights set forth in this Section **13.8** shall apply to Transferee(s) of this Lease, and any transfer by any such entity in violation of this **Section 13.8** shall be a transfer in violation of **Section 13.1** .

Section 13.9 Assumption of Obligations. No assignment of this Lease which requires Landlord's consent shall be effective unless and until the Transferee executes, acknowledges and delivers to Landlord an agreement in form and substance reasonably satisfactory to Landlord whereby the assignee (a) assumes Tenant's obligations under this Lease and (b) agrees that, notwithstanding such assignment or transfer, the provisions of **Section 13.1** hereof shall be binding upon it in respect of all future assignments and transfers.

Section 13.10 Tenant's Liability. The joint and several liability of Tenant and any successors-in-interest of Tenant and the due performance of Tenant's obligations under this

Lease shall not be discharged, released or impaired by any agreement or stipulation made by Landlord, or any grantee or assignee of Landlord, extending the time, or modifying any of the terms and provisions of this Lease, or by any waiver or failure of Landlord, or any grantee or assignee of Landlord, to enforce any of the terms and provisions of this Lease, provided, however, the predecessor tenant shall not be liable with respect to any agreement or stipulation which shall increase the obligations of Tenant under this Lease.

Section 13.11 Lease Disaffirmance or Rejection. If at any time after an assignment by Tenant named herein, this Lease is not affirmed or is rejected in any bankruptcy proceeding or any similar proceeding, or upon a termination of this Lease due to any such proceeding, Tenant named herein, upon request of Landlord given after such disaffirmance, rejection or termination (and actual notice thereof to Landlord in the event of a disaffirmance or rejection or in the event of termination other than by act of Landlord), shall (a) pay to Landlord all Rent and other charges due and owing by the assignee to Landlord under this Lease to and including the date of such disaffirmance, rejection or termination, and (b) as "tenant," enter into a new lease of the Premises with Landlord for a term commencing on the effective date of such disaffirmance, rejection or termination and ending on the Expiration Date, at the same Rent and upon the then executory terms, covenants and conditions contained in this Lease, except that (i) the rights of Tenant named herein under the new lease shall be subject to the possessory rights of the assignee under this Lease and the possessory rights of any persons or entities claiming through or under such assignee or by virtue of any statute or of any order of any court, (ii) such new lease shall require all defaults existing under this Lease to be cured by Tenant named herein with due diligence, and (iii) such new lease shall require Tenant named herein to pay all Rent which, had this Lease not been so disaffirmed, rejected or terminated, would have become due under the provisions of this Lease after the date of such disaffirmance, rejection or termination with respect to any period prior thereto. If Tenant named herein defaults in its obligations to enter into such new lease for a period of ten (10) days after Landlord's request, then, in addition to all other rights and remedies by reason of default, either at law or in equity, Landlord shall have the same rights and remedies against Tenant named herein as if it had entered into such new lease and such new lease had thereafter been terminated as of the commencement date thereof by reason of Tenant's default thereunder.

Section 13.12 Permitted Users. (a) Tenant has advised Landlord that one or more parties with whom Tenant (or Guarantor) has a bona fide independent, material and ongoing business relationship or is incubating (each a " **Permitted User** ") and/or an Affiliate of Tenant, may from time to time be using space in the Premises. Notwithstanding anything to the contrary in this Article 13, each Permitted User shall be allowed such use, without Landlord's consent, but upon ten (10) days prior written notice to Landlord upon the following conditions: (i) Landlord shall not be litigating against such proposed Permitted User within the prior 24 months, (ii) the Permitted User shall not be entitled, directly or indirectly, to diplomatic or sovereign immunity and shall be subject to service of process in, and the jurisdiction of the court of, the State of New York, (iii) there will be no separate entrances and/or demising walls for the Permitted User installed to prepare the Premises for a Permitted User, (iv) the aggregate number of rentable square feet occupied by all Permitted Users at any one time shall not exceed 20% of the then rentable square footage of the Premises (except such restriction shall not apply to then Affiliates of Tenant named herein), and (v) Tenant shall receive no rent, payment or other consideration in connection with such occupancy in respect of such space other than nominal rent payments (in no event greater per rentable square foot plus cost reimbursements) than the fixed rent, and escalation rent payable hereunder per rentable square foot) or other consideration for actual services rendered or provided by or for such occupant.

(b) With respect to each and every Permitted User, the following shall apply: (i) each Permitted User shall have no privity of contract with Landlord and therefore shall have no rights under this Lease, and Landlord shall have no liability or obligation to the Permitted User under this Lease for any reason whatsoever in connection with such use or occupancy, which use and occupancy shall be subject and subordinate to this Lease, (ii) each Permitted User shall use the Premises in conformity with all applicable provisions of this Lease, (iii) each Permitted User shall provide evidence of commercial general liability insurance reasonably acceptable to Landlord (not in excess of $2,000,000.00), and (iv) Tenant shall be liable for the acts of such Permitted User in or about the Premises and Building as if same were the acts of Tenant, subject to the terms of this Lease.

ARTICLE 14
ACCESS TO PREMISES

Section 14.1 Landlord's Access.

(a) Landlord, Landlord's agents and utility service providers servicing the Building may, erect, use and maintain concealed ducts, pipes and concealed conduits in and through the Premises provided such use does not (i) cause the usable area of the Premises or the Tenant's Roof Deck Area to be reduced other than to a de minimis extent unless required by Requirements and/or (ii) materially change the location of the core bathrooms, fire stairs, lifts or the elevator shafts, or lower the ceiling heights other than to an immaterial extent) and/or reduce, cover or darken the Skylight, unless required by Requirements. Landlord shall promptly repair any damage to the Premises, the Skylight and Tenant's Roof Deck Area caused by any work performed pursuant to this **Article 14** . The foregoing is not intended to vitiate the provisions of **Section 6.3** or **Section 6.5** .

(b) Landlord, any Lessor or Mortgagee and any other party designated by Landlord and their respective agents shall have the right to enter the Premises and Tenant's Roof Deck Area at all reasonable times, upon reasonable notice (which notice may be oral) except in the case of emergency in which case any limitation on the number of entries and/or advance notice shall not be required (but Landlord shall use commercially reasonable efforts to notify Tenant via telephone or email), to examine the Premises, to show the Premises to prospective purchasers, Mortgagees, Lessors or, in the last twelve (12) months of the Term, tenants, and their respective agents and representatives or others and to perform Restorative Work to the Premises or the Building.

(c) All parts (except surfaces facing the interior of the Premises) of all walls, windows and doors bounding the Premises, all balconies, terraces and roofs adjacent to the Premises, all space in or adjacent to the Premises used for shafts, stacks, stairways, mail chutes, conduits and other mechanical facilities, Building Systems, Building facilities and Common Areas are not part of the Premises, and Landlord shall have the use thereof and access thereto through the Premises, upon reasonable advanced notice (except in the case of an emergency) to Tenant, for the purposes of Building operation, maintenance, alteration and repair subject to Tenant's rights hereunder with respect to designated roof and/or shaft space for Tenant's exclusive use in which event Landlord's use thereof shall be that which is reasonably required to operate and maintain the Building.

(d) Subject to emergency and police conditions and the provisions of **Section 10.11(a)** and **Section 26.16** hereof, Tenant (and Tenant's assignees, sub lessees, invitees, licensees, and employees) shall, during the term of this Lease, have access to and use of the

Premises and, subject to safety conditions, weather, and similar factors, Tenant's Roof Deck Area twenty-four (24) hours per day seven (7) days per week, three hundred sixty-five (365) days a year.

(e) Except in the case of an emergency, Landlord shall use all reasonable efforts, as practical under the circumstances, to comply with Tenant's reasonable security measures when entering the Premises and Tenant's Roof Deck Area.

Section 14.2 Building Name. Landlord has the right at any time to change the name, number or designation by which the Building is commonly known, subject to the terms and conditions of Section 26.1 below.

Section 14.3 Light and Air. If at any time any windows of the Premises are temporarily darkened or covered over by reason of any Restorative Work or for any other reason, Landlord shall diligently complete such work or otherwise act diligently to remove the temporary darkening or covering over of such windows. If there is otherwise a diminution of light, air or view by another structure which may hereafter be erected (whether or not by Landlord), Landlord shall not be liable for any damages and Tenant shall not be entitled to any compensation or abatement of any Rent, nor shall the same release Tenant from its obligations hereunder or constitute an actual or constructive eviction.

ARTICLE 15
DEFAULT

Section 15.1 Tenant's Defaults. Each of the following events shall be an " **Event of Default** " hereunder:

(a) Tenant fails to pay when due any installment of Rent and such default shall continue for (x) five (5) Business Days in respect of Fixed Rent and recurring forms of Additional Rent payable pursuant to Article 7 above and (y) ten (10) Business Days in respect of all Rent which is not Fixed Rent, in any case immediately following written notice of such default is given to Tenant

(b) Tenant fails to observe or perform any other term, covenant or condition of this Lease and such failure continues for more than thirty (30) days (ten (10) days with respect to a default under **Article 3**) immediately following written notice by Landlord to Tenant of such default, or if such default (other than a default under **Article 3**) is of a nature that it cannot be completely remedied within thirty (30) days, failure by Tenant to commence to remedy such failure within said thirty (30) days, and thereafter diligently prosecute to completion all steps necessary to remedy such default, provided in all events the same is completed within one hundred eighty (180) days; or

(c) if Landlord applies or retains any part of the security held by it hereunder, and Tenant fails within ten (10) Business Days after written

notice by Landlord to Tenant to either (i) deposit with Landlord the amount of cash so applied by Landlord, or (ii) provide Landlord with (x) a replacement Letter of Credit (as hereinafter defined), in the full amount required hereunder (less any cash security held by Landlord), or (y) a modification of the Letter of Credit which reinstates the amount so applied; or

(d) Tenant files a voluntary petition in bankruptcy or insolvency, or is adjudicated a bankrupt or insolvent, or files any petition or answer seeking any reorganization,

liquidation, dissolution or similar relief under any present or future federal bankruptcy act or any other present or future applicable federal, state or other statute or law, or makes an assignment for the benefit of creditors or seeks or consents to or acquiesces in the appointment of any trustee, receiver, liquidator or other similar official for Tenant or for all or any part of Tenant's property; or

(e) a court of competent jurisdiction shall enter an order, judgment or decree adjudicating Tenant bankrupt, or appointing a trustee, receiver or liquidator of Tenant, or of the whole or any substantial part of its property, without the consent of Tenant, or approving a petition filed against Tenant seeking reorganization or arrangement of Tenant under the bankruptcy laws of the United States, as now in effect or hereafter amended, or any state thereof, and such order, judgment or decree shall not be vacated or set aside or stayed within ninety (90) days from the date of entry thereof. Upon the occurrence and during the continuance of any one or more of such Events of Default, Landlord may, at its sole option, give to Tenant seven (7) Business Days' written notice of cancellation of this Lease (or of Tenant's possession of the Premises), in which event this Lease and the Term (or Tenant's possession of the Premises) shall terminate (whether or not the Term shall have commenced) with the same force and effect as if the date set forth in the notice were the Expiration Date stated herein; and Tenant shall then quit and surrender the Premises to Landlord, but Tenant shall remain liable for damages as provided in this **Article 15** .

Section 15.2 Landlord's Remedies.

(a) **Possession/Reletting** . If any Event of Default occurs and is continuing or this Lease and the Term, or Tenant's right to possession of the Premises, terminate as provided in **Section 15.1** :

(i) **Surrender of Possession** . Tenant shall quit and surrender the Premises to Landlord, and Landlord and its agents may immediately, or at any time after such termination, re-enter the Premises or any part thereof in accordance with the terms of this Lease, without notice, either by summary proceedings, or by any other applicable action or proceeding, or by force (to the extent permitted by law) or otherwise in accordance with applicable legal proceedings (without being liable to indictment, prosecution or damages therefore), and may repossess the Premises and dispossess Tenant and any other persons or entities from the Premises and remove any and all of their property and effects from the Premises.

(ii) **Landlord's Reletting** . Landlord, at Landlord's option, may relet all or any part of the Premises from time to time, either in the name of Landlord or otherwise, to such tenant or tenants, for any term ending before, on or after the Expiration Date, at such rental and upon such other conditions (which may include concessions and free rent periods) as Landlord, in its sole discretion, may determine. Landlord shall have no obligation to accept any tenant offered by Tenant and shall not be liable for failure to relet or, in the event of any such reletting, for failure to collect any rent due upon any such reletting; and no such failure shall relieve Tenant of, or otherwise affect, any liability under this Lease. Landlord, at Landlord's option, may make such alterations, decorations and other physical changes in and to the Premises as Landlord, in its sole discretion, considers advisable or necessary in connection with such reletting or proposed

releting, without relieving Tenant of any liability under this Lease or otherwise affecting any such liability.

(b) **Tenant's Waiver** . Tenant, on its own behalf and on behalf of all persons or entities claiming through or under Tenant, including all creditors, hereby waives all rights which Tenant and all such persons or entities might otherwise have under any Requirement (i) to the service of any notice of intention to re-enter or to institute legal proceedings, (ii) to redeem, or to re-enter or repossess the Premises, or (iii) to restore the operation of this Lease, after (A) Tenant shall have been dispossessed by judgment or by warrant of any court or judge, (B) any re-entry by Landlord or (C) any expiration or early termination of the term of this Lease, whether such dispossess, re-entry, expiration or termination shall be by operation of law or pursuant to the provisions of this Lease. The words "re-enter," "re-entry" and "re-entered" as used in this Lease shall not be deemed to be restricted to their technical legal meanings.

(c) **Tenant's Breach** . Upon the breach or threatened breach by Tenant, or any persons or entities claiming through or under Tenant, of any term, covenant or condition of this Lease, Landlord shall have the right to enjoin such breach and to invoke any other remedy allowed by law or in equity as if re-entry, summary proceedings and other special remedies were not provided in this Lease for such breach. The rights to invoke the remedies set forth above are cumulative and shall not preclude Landlord from invoking any other remedy allowed at law or in equity.

Section 15.3 Landlord's Damages.

(a) **Amount of Damages** . If this Lease and the Term, or Tenant's right to possession of the Premises, terminate as provided in **Section 15.1** , then:

(i) Tenant shall pay to Landlord all items of Rent payable under this Lease by Tenant to Landlord;

(ii) Landlord may retain all monies, if any, paid by Tenant to Landlord, whether as prepaid Rent, a security deposit or otherwise, which monies, to the extent not otherwise applied to amounts due and owing to Landlord, shall be credited by Landlord against any damages payable by Tenant to Landlord;

(iii) Tenant shall pay to Landlord, in monthly installments, on the days specified in this Lease for payment of installments of Fixed Rent, any Deficiency (as hereinafter defined); it being understood that Landlord shall be entitled to recover the Deficiency from Tenant each month as the same shall arise, and no suit to collect the amount of the Deficiency for any month, shall prejudice Landlord's right to collect the Deficiency for any subsequent month by a similar proceeding; and

(iv) whether or not Landlord shall have collected any monthly Deficiency, Tenant shall pay to Landlord, on demand, in lieu of any further Deficiency and as liquidated and agreed final damages, a sum equal to the amount by which the Rent for the period which otherwise would have constituted the unexpired portion of the Term exceeds the then fair and reasonable rental value of the Premises, for the same period (with both amounts being discounted to present value at a rate of interest equal to the CPI (as hereinafter defined) less the aggregate amount of Deficiencies theretofore collected by Landlord

pursuant to the provisions of **Section 15.3(a)(iii)** for the same period. If, before presentation of proof of such liquidated damages to any court, commission or tribunal, the Premises, or any part thereof, shall have been relet by Landlord to an unaffiliated party for the period which otherwise would have constituted the unexpired portion of the Term, or any part thereof, the amount of rent reserved upon such reletting shall be deemed prima facie, to be the fair and reasonable rental value for the part or the whole of the Premises so relet during the term of the reletting.

(b) **Reletting** . If the Premises or any part thereof, shall be relet together with other space in the Building, the rents collected or reserved under any such reletting and the expenses of any such reletting shall be equitably apportioned for the purposes of this **Section 15.3** . Tenant shall not be entitled to any rents collected or payable under any reletting, whether or not such rents exceeds the Fixed Rent reserved in this Lease. Nothing contained in **Article 15** shall be deemed to limit or preclude the recovery by Landlord from Tenant of the maximum amount allowed to be obtained as damages by any Requirement, or of any sums or damages to which Landlord may be entitled in addition to the damages set forth in this **Section 15.3** .

Section 15.4 Interest. If any payment of Rent is not paid when due, interest shall accrue on such payment, from the date such payment was due until paid at the Interest Rate except that no such interest shall accrue in respect of the first installment or payment that is past due during the Term provided that such installment or payment is not past due for more than five (5) days and, if such installment or payment is past due for more than five (5) days, interest shall accrue thereon from the first day such installment or payment became past due. Such interest and late charges are separate and cumulative and are in addition to and shall not diminish or represent a substitute for any of Landlord's rights or remedies under any other provision of this Lease.

Section 15.5 Other Rights of Landlord. If Tenant fails to pay any Additional Rent when due after the expiration of notice and cure period, Landlord, in addition to any other right or remedy, shall have the same rights and remedies as in the case of a default by Tenant in the payment of Fixed Rent after the expiration of notice and cure periods. If Tenant is in arrears in the payment of Rent, Tenant waives Tenant's right, if any, to designate the items against which any payments made by Tenant are to be credited, and Landlord may apply any payments made by Tenant to any Rent, as Landlord sees fit, regardless of any request by Tenant.

Section 15.6 No Consequential, Etc. Damages. Except for those damages for which Tenant is expressly liable under Article 18, Tenant shall not be liable to Landlord for consequential, punitive, or special damages.

ARTICLE 16
LANDLORD'S RIGHT TO CURE; FEES AND EXPENSES

If an Event of Default occurs and is continuing, Landlord, without waiving such default, may perform the obligations giving rise thereto, at Tenant's cost and expense immediately, and without advance notice, (a) in the case of emergency, or if the default (i) materially interferes with the use by any other tenant of the Building, (ii) materially interferes with the efficient operation of the Building, (iii) results in a violation of any Requirement, or (iv) results or will result in a cancellation of any insurance policy maintained by Landlord, and (b) in any other case if such default continues after the expiration of any applicable notice and grace period except as expressly provided to the contrary in this Lease. All actual out of pocket costs and

expenses incurred by Landlord in connection with any such performance by it and all actual out of pocket costs and expenses, including reasonable counsel fees and disbursements, incurred by Landlord as a result of any default by Tenant under this Lease or in any action or proceeding (including any unlawful detainer proceeding) brought by Landlord or in which Landlord is a party to enforce any obligation of Tenant under this Lease and/or right of Landlord in or to the Premises, shall be paid by Tenant to Landlord within thirty (30) days of demand, with interest thereon at the Interest Rate from the date incurred by Landlord. Except as expressly provided to the contrary in this Lease, all costs and expenses which, pursuant to this Lease are incurred by Landlord and payable to Landlord by Tenant, and all charges, amounts and sums payable to Landlord by Tenant for any property, material, labor, utility or other services which, pursuant to this Lease or at the request and for the account of Tenant, are provided, furnished or rendered by Landlord, shall become due and payable by Tenant to Landlord within thirty (30) days after receipt of Landlord's invoice for such amount.

ARTICLE 17
NO REPRESENTATIONS BY LANDLORD; LANDLORD'S APPROVAL

Section 17.1 No Representations. Except as expressly set forth in this Lease, Landlord and Landlord's agents have made no warranties, representations, statements or promises with respect to the Buildings, the Real Property or the Premises and no rights including, without limitation, any development rights, easements or licenses are acquired by Tenant by implication or otherwise. Tenant is entering into this Lease after full investigation and is not relying upon any statement or representation made by Landlord not embodied in this Lease.

Section 17.2 No Money Damages. Wherever in this Lease Landlord's consent or approval is required, if Landlord refuses to grant such consent or approval, whether or not Landlord expressly agreed that such consent or approval would not be unreasonably withheld, Tenant shall not make or exercise, and Tenant hereby waives, any claim for money damages (including any claim by way of set-off, counterclaim or defense) and/or any right to terminate this Lease based upon Tenant's claim or assertion that Landlord unreasonably withheld, conditioned or delayed its consent or approval. Tenant's sole remedy shall be to bring an action or proceeding to enforce such provision, by specific performance, injunction or declaratory judgment. In no event shall Landlord be liable for, and Tenant, on behalf of itself and all other Tenant Parties, hereby waives any claim for, any indirect, consequential or punitive damages, including loss of profits or business opportunity, arising under or in connection with this Lease.

Section 17.3 Reasonable Efforts. Except as expressly set forth in this Lease, "reasonable efforts" by Landlord shall not include an obligation to employ contractors or labor at overtime or other premium pay rates or to incur any other overtime costs or additional expenses of any extraordinary nature.

ARTICLE 18
END OF TERM

Section 18.1 Expiration. Upon the expiration or other termination of this Lease, Tenant shall quit and surrender the Premises to Landlord vacant, broom clean and in good order and condition, ordinary wear and tear and casualty excepted, and Tenant shall remove all of Tenant's Property (other than any wiring or cabling between the basement of the Building and the Premises between the floors or under the floors of the Premises or above any hung ceilings

designated for use by Tenant or a future tenant of the Building) and any Alterations as may be required pursuant to **Article 5** .

Section 18.2 Holdover Rent. Landlord and Tenant recognize that Landlord's damages resulting from Tenant's failure to timely surrender possession of the entire Premises may be substantial, may exceed the amount of the Rent payable hereunder, and will be impossible to accurately measure. Accordingly, if possession of the entire Premises is not surrendered to Landlord on the Expiration Date or sooner termination of this Lease, in addition to any other rights or remedies Landlord may have hereunder or at law, Tenant shall pay to Landlord for each month (or any portion thereof) during which Tenant holds over in the Premises after the Expiration Date, or sooner termination of this Lease, a sum equal to (A) the greater of (i) 110% of fair market value for the Premises and (ii) 150% times the Rent payable under this Lease for the last full calendar month of the Term, as the same may be extended, for the first sixty (60) days (or portion thereof) that Tenant holds over at the Premises, and (B) the greater of (i) 150% of fair market value for the Premises and (ii) 200% of the Rent payable under this Lease for the last full calendar month of the Term thereafter; plus if possession of the Premises is not surrendered to Landlord within thirty (30) days of the Expiration Date or sooner termination of this Lease, any and all damages including, without limitation, consequential and/or special damages which Landlord may suffer by reason of Tenant's holdover. No holding-over by Tenant, nor the payment to Landlord of the amounts specified above, shall operate to extend the Term hereof. No holding-over by Tenant, nor the payment to Landlord of the amounts specified above, shall operate to extend the Term hereof. Nothing herein contained shall be deemed to permit Tenant to retain possession of the Premises after the Expiration Date or sooner termination of this Lease, and no acceptance by Landlord of payments from Tenant after the Expiration Date or sooner termination of this Lease shall be deemed to be other than on account of the amount to be paid by Tenant in accordance with the provisions of this **Section 18.2** .

Section 18.3 Waiver of Stay. Tenant expressly waives, for itself and for any person or entity claiming through or under Tenant, any rights which Tenant or any such person or entity may have under the provisions of Section 2201 of the New York Civil Practice Requirement and Rules and of any successor Requirement of like import then in force, in connection with any holdover summary proceedings which Landlord may institute to enforce the foregoing provisions of this **Article 18** .

ARTICLE 19
QUIET ENJOYMENT

Provided no Event of Default has occurred and is continuing, Tenant may peaceably and quietly enjoy the Premises without hindrance by Landlord or any person lawfully claiming through or under Landlord, subject to the terms and conditions of this Lease and to all Superior Leases and Mortgages (as same may be modified by the terms of an SNDA in the Approved SNDA Form between Tenant and such superior party).

ARTICLE 20
NO SURRENDER; NO WAIVER

Section 20.1 No Surrender or Release. No act or thing done by Landlord or Landlord's agents or employees during the Term shall be deemed an acceptance of a surrender of the Premises, and no provision of this Lease shall be deemed to have been waived by Landlord, unless such waiver or acceptance of surrender is in writing and is signed by Landlord.

Section 20.2 No Waiver. The failure of either party to seek redress for violation of, or to insist upon the strict performance of, any covenant or condition of this Lease, or any of the Rules and Regulations, shall not be construed as a waiver or relinquishment for the future performance of such obligations of this Lease or the Rules and Regulations, or of the right to exercise such election but the same shall continue and remain in full force and effect with respect to any subsequent breach, act or omission. The receipt by Landlord of any Rent payable pursuant to this Lease or any other sums with knowledge of the breach of any covenant of this Lease on the part of Tenant shall not be deemed a waiver of such breach. The payment by Tenant of any Rent payable pursuant to this Lease or any other sums with knowledge of the breach of any covenant of this Lease on the part of Landlord shall not be deemed a waiver of such breach. No payment by Tenant or receipt by Landlord of a lesser amount than the monthly Rent herein stipulated shall be deemed to be other than a payment on account of the earliest stipulated Rent, or as Landlord may elect to apply such payment, nor shall any endorsement or statement on any check or any letter accompanying any check or payment as Rent be deemed an accord and satisfaction, and Landlord may accept such check or payment without prejudice to Landlord's right to recover the balance of such Rent or pursue any other remedy provided in this Lease.

ARTICLE 21
WAIVER OF TRIAL BY JURY; COUNTERCLAIM

Section 21.1 Jury Trial Waiver **. LANDLORD AND TENANT HEREBY WAIVE TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM BROUGHT BY EITHER PARTY AGAINST THE OTHER ON ANY MATTERS IN ANY WAY ARISING OUT OF OR CONNECTED WITH THIS LEASE, THE RELATIONSHIP OF LANDLORD AND TENANT, TENANT'S USE OR OCCUPANCY OF THE PREMISES, OR THE ENFORCEMENT OF ANY REMEDY WITH RESPECT TO THIS LEASE ANY STATUTE, EMERGENCY OR OTHERWISE.**

Section 21.2 Waiver of Counterclaim. If Landlord commences any summary proceeding against Tenant, Tenant will not interpose any counterclaim of any nature or description in any such proceeding (unless failure to interpose such counterclaim would preclude Tenant from asserting in a separate action the claim which is the subject of such counterclaim), and will not seek to consolidate such proceeding with any other action which may have been or will be brought in any other court by Tenant.

ARTICLE 22
NOTICES

Except as otherwise expressly provided in this Lease, all consents, notices, demands, requests, approvals or other communications given under this Lease shall be in writing and shall be deemed sufficiently given or rendered if delivered by hand either to the Premises or to Tenant's address as set forth in Article 1 (provided a signed receipt is obtained) or if sent by registered or certified mail (return receipt requested) or by a nationally recognized overnight delivery service making receipted deliveries, addressed to Landlord and Tenant as set forth in **Article 1** , and to any Mortgagee or Lessor who shall require copies of notices and whose address is provided in advance to Tenant in writing, or to such other address(es) as Landlord, Tenant or any Mortgagee or Lessor may designate as its new address(es) for such purpose by notice given to the other in accordance with the provisions of this **Article 22** . Any such approval, consent, notice, demand, request or other communication shall be deemed to have been given on the date of receipted delivery, refusal to accept delivery or when delivery is first

attempted but cannot be made due to a change of address for which no notice is given. Notices given by the attorneys for Landlord or Tenant shall be deemed valid notice if sent in accordance with this **Article 22** .

ARTICLE 23
RULES AND REGULATIONS

All Tenant Parties shall observe and comply with the Rules and Regulations. Landlord reserves the right, from time to time, to adopt additional reasonable Rules and Regulations and to amend the Rules and Regulations then in effect; provided, however, that such additional Rules and Regulations shall not adversely affect Tenant's rights or obligations hereunder, other than to a de minimis extent, and provided, further that in the event of any conflict between such additional Rules and Regulations and the terms of this Lease, the terms of this Lease shall prevail. Nothing contained in this Lease shall impose upon Landlord any obligation to enforce the Rules and Regulations or terms, covenants or conditions in any other lease against any other tenant at the Buildings, and Landlord shall not be liable to Tenant for violation of the same by any other tenant, its employees, agents, visitors or licensees, provided that Landlord shall use reasonable efforts so as to not enforce any Rule or Regulation in a discriminatory manner against Tenant as compared to other office tenants in the Building. If Tenant disputes the reasonableness of any of the Rules and Regulation hereafter adopted by Landlord, the dispute shall be resolved by arbitration as provided in **Section 34** hereof, provided, however, that during the pendency of any such arbitration, Tenant shall comply with such Rule and Regulation. Tenant's right to dispute the reasonableness of any additional Rule and Regulation shall be deemed waived unless Tenant shall notify Landlord of such dispute within forty-five (45) days after delivery to Tenant of a notice of the adoption of any such additional Rule and Regulation.

ARTICLE 24
BROKER

Landlord has retained Landlord's Agent as leasing agent, and Tenant has retained Tenant's Broker, in connection with this Lease. Landlord will be solely responsible for any fee that may be payable to Landlord's Agent and Landlord agrees to pay a commission to Tenant's Broker pursuant to a separate agreement. Each of Landlord and Tenant represents and warrants to the other that neither it nor its agents have dealt with any broker in connection with this Lease other than Landlord's Agent and Tenant's Broker. Each of Landlord and Tenant shall indemnify, defend, protect and hold the other party harmless from and against any and all Losses which the indemnified party may incur by reason of any claim of or liability to any broker, finder or like agent (other than Landlord's Agent and Tenant's Broker) arising out of any dealings claimed to have occurred between the indemnifying party and the claimant in connection with this Lease, and/or the above representation being false (except, with respect to Landlord's indemnity only, for any claims made by Serten Advisors (" **Serten** ")). For the avoidance of doubt, Tenant's indemnity in the foregoing sentence applies to claims made by Serten.

ARTICLE 25
INDEMNITY

Section 25.1 Tenant's Indemnity. Subject to the waiver of subrogation required by Section 11.2, Tenant shall not do or permit to be done any act or thing upon the Premises or the Building which may subject Landlord to any liability or responsibility to a third party for injury, damages to persons or property or to any liability by reason of any violation of any Requirement,

and shall exercise such control over the Premises as to fully protect Landlord against any such liability. Tenant shall indemnify, defend, protect and hold harmless Landlord and each of the Indemnitees from and against any and all Losses, resulting from (i) any act or omissions of any Tenant Parties or, (ii) any accident, injury or damage whatsoever caused to any person or to the property of any person and occurring in or about the Premises, except to the extent attributable to the gross negligence or willful misconduct of Landlord, or its employees, agents, contractors, licensees or invitees (collectively, " **Landlord Parties** "), or (iii) any breach, violation or nonperformance of any covenant, condition or agreement of this Lease on the part of Tenant to be fulfilled, kept, observed or performed or (iv) any work performed by or on behalf of Tenant (but not Landlord's Premises Work, Landlord's Expansion Premises Work, Tenant's Roof Deck Work and the Base Building Roof Work). Nothing in this Section shall be interpreted to make Tenant liable for any occurrence that is covered by any property insurance policy that this Lease requires Tenant or Landlord to obtain.

Section 25.2 Landlord's Indemnity. Subject to the waiver of subrogation required by Section 11.2, Landlord shall indemnify, defend and hold harmless Tenant from and against all Losses incurred by Tenant in connection with third party claims arising from any accident, injury or damage whatsoever caused to any person or the property of any person in or about the Building to the extent attributable to the negligence, gross negligence or willful misconduct of Landlord or its employees or agents.

Section 25.3 Defense and Settlement. If any claim, action or proceeding is made or brought against any Indemnitee, then upon demand by an Indemnitee, for which the provisions of **Section 25.1** apply, Tenant, at its sole cost and expense, shall resist or defend such claim, action or proceeding in the Indemnitee's name (if necessary), by attorneys approved by the Indemnitee, which approval shall not be unreasonably withheld, conditioned or delayed (attorneys for Tenant's insurer shall be deemed approved for purposes of this **Section 25.3**). If any claim, action or proceeding is made or brought against any Indemnitee, then upon demand by an Indemnitee, for which the provisions of Section 25.2 apply, Landlord, at its sole cost and expense, shall resist or defend such claim, action or proceeding in the Indemnitee's name (if necessary), by attorneys approved by the Indemnitee, which approval shall not be unreasonably withheld, conditioned or delayed (attorneys for Landlord's insurer shall be deemed approved for purposes of this Section 25.3). Notwithstanding the foregoing, an Indemnitee may retain its own attorneys, at its sole cost and expense, to participate or assist in defending any claim, action or proceeding involving potential liability in excess of the amount available under Tenant's (or as applicable Landlord's) liability insurance carried under **Section 11.1** for such claim. If Tenant or Landlord, as applicable, fails to properly and timely defend or if there is a legal conflict or other conflict of interest, then the other party may retain separate counsel at Tenant's expense. Notwithstanding anything herein contained to the contrary, the indemnifying party may direct the Indemnitee to settle any claim, suit or other proceeding provided that (a) such settlement shall involve no obligation on the part of the Indemnitee, (b) any payments to be made pursuant to such settlement shall be paid in full exclusively by indemnifying party at the time such settlement is reached or otherwise in accordance with any settlement agreement related thereto, (c) such settlement shall not require the Indemnitee to admit any liability, and (d) the Indemnitee shall have received an unconditional release from the other parties to such claim, suit or other proceeding.

ARTICLE 26
MISCELLANEOUS

Section 26.1 Delivery. The submission of this Lease to Tenant shall not constitute an offer and shall not bind the parties hereto in any manner whatsoever until (a) Tenant has duly executed and delivered duplicate counterparts to Landlord, and (b) Landlord has executed and delivered one fully executed counterpart to Tenant.

Section 26.2 Transfer of Real Property. Landlord's obligations under this Lease shall not be binding upon Landlord named herein after the sale, conveyance, assignment or transfer (collectively, a " **Transfer** ") by such Landlord (or upon any subsequent landlord after the Transfer by such subsequent landlord) of its interest in the Buildings, and in the event of any such Transfer, Landlord (and any such subsequent landlord) shall be entirely freed and relieved of all covenants and obligations of Landlord hereunder arising from and after the date of Transfer, but only from and after the date that the transferee of Landlord's interest (or that of such subsequent landlord) in the Buildings, shall have assumed in writing, in a document delivered to Tenant, all obligations under this Lease arising from and after the date of Transfer, and responsibility for any security deposit or letter of credit posted by Tenant under this Lease or any escrow deposit or performance fund posted by Tenant in connection with a Work Letter or Alterations.

Section 26.3 Limitation on Liability. The liability of Landlord for Landlord's obligations under this Lease shall be limited to Landlord's interest in the Building (including the net proceeds of any sale of the Building and any net insurance and condemnation proceeds therefrom) and Tenant shall not look to any other property or assets of Landlord or the property or assets of any direct or indirect partner, member, manager, shareholder, director, officer, principal, employee or agent of Landlord (collectively, the " **Parties** ") in seeking either to enforce Landlord's obligations under this Lease or to satisfy a judgment for Landlord's failure to perform such obligations; and none of the Parties shall be personally liable for the performance of Landlord's obligations under this Lease.

Section 26.4 Entire Document. This Lease (including any Exhibits referred to herein and all supplementary agreements provided for herein) contains the entire agreement between the parties and all prior negotiations and agreements are merged into this Lease. All of the Exhibits attached hereto are incorporated in and made a part of this Lease, provided that in the event of any inconsistency between the terms and provisions of this Lease and the terms and provisions of the Exhibits hereto, the terms and provisions of this Lease shall control.

Section 26.5 Governing Requirement. This Lease shall be governed in all respects by the laws of the State of New York.

Section 26.6 Unenforceability. If any provision of this Lease, or its application to any person or entity or circumstance, shall ever be held to be invalid or unenforceable, then in each such event the remainder of this Lease or the application of such provision to any other person or entity or any other circumstance (other than those as to which it shall be invalid or unenforceable) shall not be thereby affected, and each provision hereof shall remain valid and enforceable to the fullest extent permitted by law.

Section 26.7 Lease Disputes. Except as required by Article 34 the parties agree that all disputes arising, directly or indirectly, out of or relating to this Lease, and all actions to enforce this Lease, shall be dealt with and adjudicated in the state courts of the State of New

York or the federal courts for the Southern District of New York and for that purpose hereby expressly and irrevocably submits itself to the jurisdiction of such courts. Tenant agrees that so far as is permitted under applicable law, this consent to personal jurisdiction shall be self-operative and no further instrument or action, other than service of process in one of the manners specified in this Lease, or as otherwise permitted by law, shall be necessary in order to confer jurisdiction upon it in any such court. To the extent that Tenant has or hereafter may acquire any immunity from jurisdiction of any court or from any legal process (whether through service or notice, attachment prior to judgment, attachment in aid of execution, execution or otherwise) with respect to itself or its property, Tenant irrevocably waives such immunity in respect of its obligations under this Lease.

Section 26.8 Landlord's Agent. Unless Landlord delivers notice to Tenant to the contrary, Landlord's Agent is authorized to act as Landlord's agent in connection with the performance of this Lease, and Tenant shall be entitled to rely upon correspondence received from Landlord's Agent. Tenant acknowledges that Landlord's Agent is acting solely as agent for Landlord in connection with the foregoing; and neither Landlord's Agent nor any of its direct or indirect partners, members, managers, officers, shareholders, directors, employees, principals, agents or representatives shall have any liability to Tenant in connection with the performance of this Lease, and Tenant waives any and all claims against any and all of such parties arising out of, or in any way connected with, this Lease, or the Buildings.

Section 26.9 Estoppel.

(a) Within ten (10) business days following Tenant's receipt of written request from Landlord, any Mortgagee or any Lessor, Tenant shall deliver to Landlord a statement executed and acknowledged by Tenant, in form reasonably satisfactory to Landlord, (i) stating the Commencement Date, the Rent Commencement Date and the Expiration Date, and that this Lease is then in full force and effect and has not been modified (or if modified, setting forth all modifications), (ii) setting forth the date to which the Fixed Rent and any Additional Rent have been paid, together with the amount of monthly Fixed Rent then payable, (iii) stating whether or not, to Tenant's knowledge, Landlord is in default under this Lease, and, if Landlord is in default, setting forth the specific nature of all such defaults, (iv) stating the amount of the security, if any, under this Lease, (v) stating whether there are any subleases or assignments affecting the Premises, (vi) stating the address of Tenant to which all notices and communications under the Lease shall be sent, and (vii) responding to any other matters reasonably requested by Landlord, such Mortgagee or such Lessor with respect to this Building only, and customary to such statement. Tenant acknowledges that any statement delivered pursuant to this **Section 26.9 (a)** may be relied upon by any purchaser or owner of the Building, or all or any portion of Landlord's interest in the Building, or by any Mortgagee, or assignee thereof or by any Lessor, or assignee thereof.

(b) Within ten (10) business days following request from Tenant, Landlord shall, not more than one (1) time in any consecutive twelve (12) month period, deliver to Tenant a statement executed and acknowledged by Landlord, in form reasonably satisfactory to Tenant, (i) stating the Commencement Date, the Rent Commencement Date and the Expiration Date, and that this Lease is then in full force and effect and has not been modified (or if modified, setting

forth all modifications), (ii) setting forth the date to which the Fixed Rent and any Additional Rent have been paid, together with the amount of monthly Fixed Rent and Additional Rent then payable, (iii) stating whether or not, to the best of Landlord's knowledge, Tenant is in default under this Lease, and, if Tenant is in default, setting forth the specific nature of all such defaults, (iv) stating the amount of the security, if any, under this Lease, and (v)

responding to any other matters reasonably requested by Tenant, and customary to such statement. Landlord acknowledges that any statement delivered pursuant to this **Section 26.9(b)** may be relied upon by Guarantor's credit providers, a sublessee of any portion of the Premises or any assignee of this Lease.

Section 26.10 Certain Interpretational Rules. For purposes of this Lease, whenever the words "include", "includes", or "including" are used, they shall be deemed to be followed by the words "without limitation" and, whenever the circumstances or the context requires, the singular shall be construed as the plural, the masculine shall be construed as the feminine and/or the neuter and vice versa. This Lease shall be interpreted and enforced without the aid of any canon, custom or rule of law requiring or suggesting construction against the party drafting or causing the drafting of the provision in question. The captions in this Lease are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope of this Lease or the intent of any provision hereof.

Section 26.11 Parties Bound. The terms, covenants, conditions and agreements contained in this Lease shall bind and inure to the benefit of Landlord and Tenant and, except as otherwise provided in this Lease, to their respective legal representatives, successors, and assigns.

Section 26.12 Counterparts. This Lease may be executed in one or more counterparts, each of which shall be deemed an original, but all of which when taken together will constitute one and the same instrument. The signature page of any counterpart of this Lease may be detached therefrom without impairing the legal effect of the signature(s) thereon provided such signature page is attached to any other counterpart of this Lease identical thereto except having an additional signature page executed by the other party to this Lease attached thereto. Any counterpart of this Lease may be delivered via facsimile, email or other electronic transmission, and shall be legally binding upon the parties hereto to the same extent as originals.

Section 26.13 Survival. All obligations and liabilities of Landlord or Tenant to the other which accrued before the expiration or other termination of this Lease, and all such obligations and liabilities which by their nature or under the circumstances can only be, or by the provisions of this Lease may be, performed after such expiration or other termination, shall survive the expiration or other termination of this Lease. Without limiting the generality of the foregoing, the rights and obligations of the parties with respect to any indemnity under this Lease, the return of the security deposit and with respect to any Rent and any other amounts payable under this Lease, shall survive the expiration or other termination of this Lease.

Section 26.14 Adjacent Excavation; Shoring. If construction shall be performed upon land adjacent to the Real Property, Tenant shall, upon reasonable prior notice, afford to the person or entity causing or authorized to cause such construction license to enter upon the Premises for the purpose of doing such work as such person or entity shall deem reasonably necessary to preserve the wall of the Building from injury or damage and to support the same. In connection with such license, Tenant shall have no right to claim any damages or indemnity against Landlord, or diminution or abatement of Rent, provided that Tenant shall continue to have access to and use of the Premises for the Permitted Use and the Tenant's Roof Deck Area for the RDA Permitted Use.

Section 26.15 No Development Rights. Tenant acknowledges that it has no rights to any development rights, air rights or comparable rights appurtenant to the Real Property and Tenant consents, without further consideration, to any utilization of such rights by Landlord,

subject to the terms and conditions of this Lease. Tenant shall promptly execute and deliver any instruments which may be requested by Landlord, including instruments merging zoning lots, evidencing such acknowledgment and consent. The provisions of this **Section 26.15** shall be construed as an express waiver by Tenant of any interest Tenant may have as a "party in interest" (as such term is defined in Section 12-10 of Zoning Lot of the Zoning Resolution of the City of New York) in the Real Property.

Section 26.16 Rent. All amounts payable by Tenant to or on behalf of Landlord under this Lease, whether or not expressly denominated Fixed Rent, Tenant's Tax Payment, Additional Rent or Rent, shall constitute rent for the purposes of Section 502(b)(6) of the United States Bankruptcy Code.

Section 26.17 Inability to Perform. This Lease and the obligation of Tenant to pay Rent shall not be affected, impaired or excused by any Unavoidable Delays. Landlord shall use reasonable efforts to promptly notify Tenant of any Unavoidable Delay which prevents Landlord from fulfilling any of its obligations under this Lease. Tenant shall promptly notify Landlord of any Unavoidable Delay which prevents Tenant from fulfilling any of its obligations under this Lease.

Section 26.18 Roof Top Use. (a) Landlord grants to Tenant the right to use, on an exclusive basis, the portion of the roof deck set forth on Exhibit K attached hereto (" **Tenant's Roof Deck Area** ") as reasonably permitted by Landlord and pursuant to Landlord's reasonable requirements and the terms of this Lease; provided only that the then Tenant under this Lease leases the entire tenth (10 th) floor of the Building and only one occupant (or one occupant and its Affiliates occupying without separate demising walls) occupies the entire 10 th Floor of the Building. Landlord reserves the right, in its reasonable good faith discretion, at any time to make or allow permanent or temporary changes or replacements to the common areas of the Building roof top and/or Tenant's Roof Deck Area which are required due to Requirements and/or in order to ensure proper functioning of the Building and Building Systems, provided that Landlord shall exhaust all reasonable and practical alternatives (i.e., alternatives which will not create a materially excessive cost or burden on Landlord) prior to making or allowing any such changes or replacements in a manner that will adversely affect Tenant beyond a de minimis extent. In the event that Tenant proposes to partially or fully demise the 10 th Floor of the Building pursuant to what would otherwise be a permitted sublease hereunder, or, Landlord recaptures a portion of the 10 th Floor of the Building in accordance with Article 13 above, then, in both such cases, Landlord and Tenant agree to discuss the possibility of allowing access to the Tenant Roof Deck Area for multiple occupants of the Building in order that such Building occupants may utilize the Tenant Roof Deck Area on a non-exclusive basis, without material additional cost or liability to either party, provided any resolution shall be subject to approval by both Landlord and Tenant.

(b) Tenant's Roof Deck Area shall be used only by Tenant named herein and any Permitted Transferees (as such term is defined in Article 13 hereof), and any other permitted assignees and subtenants (pursuant to the terms of Article 13 hereof) (it being agreed that Tenant shall not be entitled to sublet Tenant's Roof Deck Area separately from another portion of the remainder of the Premises). Tenant shall use Tenant's Roof Deck Area for the RDA Permitted Use (as hereinafter defined), and for no other purpose, and in any event only as provided in and subject to the following terms and conditions (collectively, herein called the " **RDA Guidelines** "):

(i) Landlord reserves the right, upon reasonable notice (which notice may be oral) at reasonable times, or in an emergency at any time, to have access to, and the use of, Tenant's Roof Deck Area to maintain, repair and inspect same or the structural components of the roof of the Building as well as any Building equipment located on the roof of the Building (it being agreed that if any Building equipment located on the roof of the Building unreasonably interferes with Tenant's use or enjoyment of Tenant's Roof Deck Area, then Landlord shall (at Tenant's request and at Landlord's sole cost and expense) relocate such equipment to another area of the roof if, in Landlord's reasonable judgment, such relocation would be feasible and would not disrupt the operation of Building Systems or the provision of services to other tenants in the Building; provided that Landlord acknowledges that it shall relocate all equipment needed to deliver the Tenant's Roof Deck Area substantially in accordance with the approved Layout Plan and to complete Tenant's Roof Work and Base Building Roof Work. Tenant acknowledges that Landlord may place or shall have placed equipment on any portion of the roof of the Building outside of Tenant's Roof Deck Area (but properly screened) to the extent within close proximity of Tenant's Roof Deck Area and which is customary, provided, however, if such equipment is installed following the Lease Commencement Date and materially interferes with Tenant's use of Tenant's Roof Deck Area, then Landlord shall, at Landlord's cost, use reasonable efforts to relocate such equipment to another area on the roof so as to minimize such interference with Tenant's use thereof (provided such relocation would be reasonably feasible and would not materially disrupt the operation of Building Systems or the provision of services to other tenants in the Building);

(ii) At all times Tenant's Roof Deck Area, and Tenant's use thereof shall comply with all Requirements;

(iii) Tenant agrees that it shall not (A) other than the Skylight, enclose any portion of the Tenant's Roof Deck Area except as may be reasonably approved by Landlord and provided such enclosure is in compliance with Requirements and (i) if such enclosure is visible from the street then subject to Landlord's consent, which may be withheld in its sole discretion, and (ii) if such enclosure is not visible from the street, then subject to Landlord's consent, which consent shall not be unreasonably withheld, delayed or conditioned, (B) permit any lodging on any portion of the Tenant's Roof Deck Area or (C) place, hang, affix or otherwise attach anything on the ledges or railings of the Building which is not adequately secured to the Tenant's Roof Deck Area down and in compliance with all Requirements and reasonably approved by Landlord (except that planters and furniture customarily placed on rooftops of Comparable Buildings which are not visible from the Street are not subject to Landlord's prior approval. Tenant shall not place or install anything on the exterior façade of the Building, any portion of the rooftop which does not comprise Tenant's Roof Deck Area, or on the perimeter of the Tenant's Roof Deck Area;

(iv) Subject to the completion of Tenant's Roof Work and the Base Building Roof Work by Landlord, Tenant shall obtain all permits and licenses required by any applicable governmental authority, agency, commission or department with respect to Tenant's use of the Tenant's Roof Deck Area, renew all such permits and licenses as and when required by applicable Requirements

and pay promptly as and when due all taxes, license, permit and other fees or charges imposed in respect thereof;

(v) Tenant shall comply with all Building requirements which, in the reasonable judgment of Landlord, are necessary or advisable to assure the safety of all persons and property that may be adversely affected by Tenant's use of the Tenant's Roof Deck Area. Tenant shall reasonably cooperate (at no cost to Landlord) in connection with Landlord's obligations in respect of the Tenant's Roof Deck Area;

(vi) Except as provided for in the Base Building Roof Work, Landlord shall have no independent obligation to provide any safety features with respect to Tenant's Roof Deck Area and Landlord's not doing so shall not vitiate to any extent any obligation of Tenant to indemnify Landlord hereunder or as otherwise provided for herein;

(vii) Tenant acknowledges that its use of the Tenant's Roof Deck Area is at its sole risk and Tenant acknowledges that Landlord shall not be required to provide any security, or patrol the Tenant's Roof Deck Area or any other portion of the roof the Building in any way whatsoever;

(viii) Intentionally Deleted.

(ix) Subject to the terms and conditions detailed herein, Tenant shall be entitled to separately demise Tenant's Roof Deck Area from other portions of the roof of the Building in a manner reasonably approved by Landlord;

(x) Tenant agrees not to place persons or property on the Tenant's Roof Deck Area in excess of the authorized load permitted thereon based on the design therefor. Tenant shall not use loudspeakers or other sound amplification systems or equipment on the Tenant's Roof Deck Area, or create any noise in violation of Requirements. If Landlord receives multiple written bona fide complaints related to Tenant's noise or vibration levels, then (i) Tenant shall adequately (as reasonably determined by Landlord) remedy the cause for such complaint(s), and (ii) defend, indemnify and hold harmless Landlord and all Landlord Parties from and against any and all loss, cost, damage, liability and expense (including, without limitation, reasonable attorneys' fees and disbursements) that Landlord or any Landlord Party may sustain, in whole or in part arising out of, attributable to or resulting from such complaints and/or the noise which is the subject of such complaints;

(xi) Tenant covenants that the use of Tenant's Roof Deck Area will in no way interfere with the proper functioning of the Building Systems or any other systems installed on the roof of the Building;

(xii) Tenant shall be permitted to make installations to the Premises and Tenant's Roof Deck Area, subject in each case to the terms and conditions of this Lease, as may be reasonably required for Tenant to receive reasonable quantities of water and electricity to the Tenant's Roof Deck Area, provided that in no event shall Landlord be required to provide (A) additional amounts of water to Tenant in excess of the amounts Landlord is required to provide under this

Lease irrespective of such installations and (B) electrical capacity to Tenant's Roof Deck Area in excess of 8 kw;

(xiii) Tenant covenants that the Tenant's Roof Deck Area shall be used by Tenant only in a safe and sanitary manner and in a manner which does not unreasonably disturb the quiet enjoyment of other tenants and occupants in the Building;

(xiv) Insurance required to be maintained by Tenant hereunder shall expressly cover the use of the Tenant's Roof Deck Area and shall, by endorsement or other comparable written instrument, specifically acknowledge or reference coverage for Tenant's use of the Tenant's Roof Deck Area and Tenant shall secure and keep in full force and effect such supplementary insurance with respect to its use of the Tenant's Roof Deck Area as Landlord may reasonably require, provided same is consistent with that required at other first-class office buildings in Manhattan of tenants with rights to roof top spaces similar to that of Tenant's hereunder;

(xv) Tenant shall be liable for the actions or omissions of Tenant or any Tenant Party using Tenant's Roof Deck Area;

(xvi) In no event shall any matter whatsoever be dropped or thrown from the Tenant's Roof Deck Area;

(xvii) Tenant shall not permit Tenant's Roof Deck Area to be used for broadcasting or filming, including, without limitation, use by third party film, television, or communications companies for any commercial or other purpose, without Landlord's prior consent (it being understood that Tenant shall be permitted, subject to the terms and conditions of this Lease, to film and record from Tenant's Roof Deck Area on a limited and infrequent basis, if the subject thereof is directly related to Tenant's business and is for use by Tenant in connection with Tenant's business only);

(xviii) Tenant agrees to defend, indemnify and hold harmless Landlord and all Landlord Parties from and against any and all loss, cost, damage, liability and expense (including, without limitation, reasonable attorneys' fees and disbursements) that Landlord or any Landlord Party may sustain, in whole or in part arising out of, attributable to or resulting from Tenant's or any Tenant Party's use of Tenant's Roof Deck Area (as opposed to being attributable solely to the performance of Tenant's Roof Work or the Base Building Roof Work which shall remain Landlord's responsibility), including damage from any leaks caused by the use of Tenant's Roof Deck Area; provided Tenant shall not indemnify Landlord for any damages arising out of Landlord's, or Landlord's agents, negligence or willful misconduct Tenant's Roof Deck Area;

(xix) If a condition exists giving rise to a repair that affects the Tenant's Roof Deck Area that shall constitute an emergency involving imminent threat to person or property, then Landlord may suspend Tenant's use of the Tenant's Roof Deck Area until such emergency has been eliminated, subject to the terms and conditions of 26.18(c) below;

(xx) Tenant shall at all times keep the drains on the Tenant's Roof Deck Area free of leaves and debris so as to prevent any blockage;

(xxi) Any Alteration that Tenant is permitted to make hereunder with respect to the Tenant's Roof Deck Area shall (A) be deemed a Specialty Alteration if (1) such Alteration is not customary for office tenants of Comparable Buildings leasing outdoor space, and (2) is of such a nature that it cannot be reasonably expected to be desired by a subsequent office tenant of the Building, (otherwise Alterations to the Tenant's Roof Deck shall not constitute Specialty Alterations), (B) not materially impair or invalidate any warranty or guaranty Landlord has with respect to the Tenant's Roof Deck Area or any other portion of the roof of the Building (unless Tenant provides Landlord with a replacement warranty or guaranty that is reasonable acceptable to Landlord), and (C) be performed by Tenant in accordance with all applicable provisions of this Lease and applicable Requirements. It is agreed that Roof Work described on Exhibit C attached hereto including the Skylight on the date hereof (i) is deemed not to be a Specialty Alteration and (ii) will not invalidate any warranty or guaranty Landlord has with respect to the Tenant's Roof Deck Area or any other portion of the roof of the Building;

(xxii) Landlord shall not have any liability to Tenant with respect to any plantings on the Tenant's Roof Deck Area;

(xxiii) No furniture, furnishings, or related installations on Tenant's Roof Deck Area shall be readily visible from the street unless Tenant obtains the prior written approval of Landlord (which approval, in the case of Landlord, may be granted or withheld in accordance with the provisions of Article 5 hereof). All such furniture, furnishings, or related installations shall be installed in such a manner so that they are securely affixed to the roof decking or movable. All movable furniture and installations not so affixed must be stored in an enclosed area of Tenant's Roof Deck Area designated for such purpose whenever not in use; and

(xxiv) Tenant shall comply with all such further precautions and safeguards, if any, reasonably required by Landlord or Landlord's insurance company from time to time with respect to Tenant's use of the Tenant's Roof Deck Area;

(xxv) At Tenant's sole cost and expense, Tenant shall keep and maintain Tenant's Roof Deck Area in a safe and good condition (including the making of ay repairs necessary), provided that Landlord shall maintain and repair the roof membrane and structural elements thereof at (i) Landlord's cost, if the need for such maintenance and repair is not due to the negligence or willful misconduct of Tenant or any Tenant Party, and (ii) at Tenant's sole cost if the need for such maintenance and repair is due to the negligence or willful misconduct of Tenant or any Tenant Party.

(c) Notwithstanding anything to the contrary contained in this Lease, if Tenant is prevented from using at least 33% of the Tenant's Roof Deck Area for the RDA Permitted Use by reason of Landlord's acts, negligence, willful misconduct or a repair or work performed by Landlord in the Building and not (i) as the result of a Tenant's act, Tenant's

negligence, willful misconduct, or Tenant's breach of this Lease or (ii) due to Requirements enacted after the date hereof (except for prohibitions on the using of rooftops in general by commercial office tenants in office buildings in New York City, for similar purposes), and Tenant is not using the entire Roof Deck Area, and such condition continues for a period in excess of five (5) consecutive Business Days (unless attributable to a casualty then in accordance with Article 11 above or if attributable to an Unavoidable Delays then fifteen (15) consecutive Business Days) after (i) Tenant furnishes a notice to Landlord (the " **Roof Abatement Notice** ") stating that Tenant's inability to use Tenant's Roof Deck Area is solely due to such condition, (ii) Tenant does not actually use the affected portion of Tenant's Roof Deck Area during any period of such period for any purpose, and (iii) such condition has not resulted from the negligence or misconduct of any Tenant Party, then, as Tenant's sole remedy, Tenant shall receive a credit against the next installment of Rent due under the Lease in an amount equal to (A) a per diem amount equal to 10% of the per diem amount of Fixed Rent then payable by Tenant with respect to the Premises (or which would have been due if a rent concession or abatement period was not then occurring, in which event, Tenant shall be credited with such reduction against the next installments of Fixed Rent actually payable) (" **Initial Roof Abatement Credit** ") for each day of the period commencing on the 6th Business Day or 16th Business Day (or if attributable to a casualty, in accordance with Article 11), as the case may be, after Tenant delivers the Roof Abatement Notice to Landlord if and ending on the earlier of (x) the date Tenant uses the affected portion of Tenant's Roof Deck Area, and (y) the date on which such condition is substantially remedied. If, however, Tenant is entitled to the Initial Roof Abatement Credit for thirty (30) consecutive Business Days, then from and after such 30 th Business Day, such daily credit shall be increased to a per diem amount equal to 15% of the per diem amount of Fixed Rent then payable by Tenant with respect to the Premises (or which would have been due if a rent concession or abatement period was not then occurring, in which event, Tenant shall be credited with such reduction against the next installments of Fixed Rent actually payable) until the earlier of (x) the date Tenant uses such affected portion of Tenant's Roof Deck Area, and (y) the date on which such condition is substantially remedied; provided that if such credits are applied due to casualty or condemnation, then in no event shall Tenant be entitled to an aggregate rent abatement greater than the amount of Rent payable by Tenant hereunder and applicable for the period to which such abatement is being applied.

Section 26.19 Competitors.(a) Notwithstanding anything to the contrary contained herein, provided that (i) the Original Tenant named herein, its Affiliates and/or its Successor Entities and then an Affiliate of Guarantor are then leasing and then in occupancy of at least 3 full floors (but 2 full floors prior to the Expansion Space Commencement Date) of the Building for the conduct of Tenant's current business, (ii) Tenant is not in default under any of the terms, covenants or conditions of this Lease beyond the applicable cure period, Landlord covenants that it shall not ("Competitor Restrictions") (a) lease on a direct basis any space comprising of more than 15,000 rentable square feet in the Building to any Guarantor Competitor (as hereinafter defined) (provided that nothing contained above shall purport to restrict the transfer of any lease in bankruptcy or any similar proceeding or in any instance where Landlord is required under the terms of a lease in effect prior to the date hereof with another tenant or occupant in the Building not to unreasonably withhold its consent to an assignment or sublease where Landlord believes in good faith under the circumstances that withholding such consent is unreasonable or where no such consent is required), or (b) grant any signage rights in the Building's ground floor lobby area or on the exterior of the Building to a Guarantor Competitor, or (c) name the Building after a Guarantor Competitor. "Guarantor Competitors" shall mean any of the companies listed on Exhibit H. So long as any of the Competitor Restrictions are in effect, Landlord shall promptly remove any signage in violation of the Competitor Restrictions.

(b) If Landlord shall violate (i.e., as opposed to another occupant of the Building causing such violation in breach of its lease or other occupancy agreement with Landlord) any of the provisions of Section 26.19(a) and shall not cure such violation within 30 days after receipt of Tenant's notice thereof (such 30 day period, a " **Violation Cure Period** "), Tenant shall have the right to pay to Landlord Fixed Rent reduced to a level equal to (x) ninety percent (90%) of Fixed Rent due under this Lease for the first 90 days after the end of the Violation Cure Period (a " **Violation 90 Day Period** "), and (y) eighty-five percent (85%) of Fixed Rent due under this Lease after the Violation 90 Day Period ends, provided that at all times in which any such abatement is applicable (i) this lease is in full force and effect, (ii) Tenant named herein, its Affiliates, or a Successor Entity is the then Tenant, (iii) Tenant named herein, its Affiliates, and/or a Successor Entity is in occupancy of at least 50% of the Premises, and (iv) no Event of Default then exists. Tenant's Fixed Rent shall be so reduced until such time as such violation is cured.

(c) Notwithstanding the provisions of Section 26.19(b), if any breach of the provisions of Section 26.19(a) shall occur solely as a result of any action taken by a tenant or occupant in breach of its lease or occupancy agreement, Landlord shall use its commercially reasonable efforts to enforce Tenant's exclusive rights (including diligently and reasonably continuously seeking injunctive relief or other legal redress to cause such breach to end); and provided Landlord is using such diligent and reasonable efforts, Tenant shall not be entitled to reduce Fixed Rent, in connection with such other tenant's breach and the Lease shall remain in full force and effect in accordance with its terms.

Section 26.20 Bike Storage. Tenant shall have the non-exclusive use of the Dumbo Heights Campus bike storage facility, on a first-come first-serve basis, subject to the Dumbo Heights Campus reasonable rules and regulations related thereto.

Section 26.21 Memorandum of Lease. This Lease shall not be recorded; however, at either party's request, Landlord and Tenant shall promptly execute, acknowledge and deliver a memorandum with respect to this Lease in the form of Exhibit L, and the requesting party may record the memorandum at the requesting party's expense. Within 30 days after the end of the Term, Tenant shall enter into such documentation as is reasonably required by Landlord to remove any such memorandum of record.

Section 26.22 Tenant Incentive Programs. (a) Should Tenant, in its sole discretion, elect to apply for benefits under any incentive programs in which Tenant shall, in its discretion, elect to participate (the " Incentive Programs "), the parties hereto agree that:

(i) Following written request, Landlord shall reasonably and with due diligence cooperate with Tenant's incentive program applications, at Tenant's sole cost and expense provided Landlord incurs no expense or liability and same shall not adversely affect the Building or other occupant

(ii) Landlord will enter into such reasonable modifications to the Lease, at no cost to Landlord, as is required by the applicable Incentive Program provided such modification does not increase Landlord's obligations or rights hereunder, reduce Tenant's obligations hereunder, or adversely impact Landlord as reasonably determined by Landlord.

(iii) Tenant and Landlord hereby acknowledge that, notwithstanding anything to the contrary contained herein, all or any portion of the benefit from any such Incentive Program applied for by Tenant and actually received by or

credited to Landlord solely in connection with this Lease shall be the property of Tenant (regardless of whether or not such benefits are larger or smaller than anticipated) and applied as a credit towards Rent next coming due (provided no Event of Default then exists), it being agreed by the parties hereto that the foregoing shall be effected by a deduction from Taxes pursuant to Section 7.1(g) of the amount of any refund, abatement or exemption of Taxes, if any, received by or credited to Landlord pursuant to the applicable Incentive Program.

(b) Notwithstanding anything to the contrary contained herein or in the Incentive Programs, Landlord has made no representations to Tenant with respect to the Incentive Programs, and Landlord shall have no liability or responsibility to Tenant if all or any portion of any benefits from any Incentive Program are not received by or credited to Landlord or are received by or credited to Landlord and are thereafter revoked for any reason other than Landlord's willful failure to comply with the provisions of this Section 26.22

Section 26.23 Landlord's Lien. Landlord hereby agrees, at the request of a Tenant lender or credit provider, to subordinate any statutory "landlord's lien" granted to Landlord under applicable law in Tenant's existing or hereafter acquired personal property, inventory, furniture, furnishings, licenses, permits and all other tangible and intangible property of Tenant located in the Premises (but not improvements, fixtures, or equipment), to any lender who has a blanket lien on Tenant's assets in a manner reasonably satisfactory to Landlord and subject to such lender entering into a reasonably satisfactory "collateral access agreement" (or an agreement reasonably acceptable to Landlord that gives such lender or lessor the right and a reasonable time to enter into the Building and the Premises and remove Tenant's property) and provided that Tenant is a party to such agreement.

ARTICLE 27
SECURITY DEPOSIT

Section 27.1 Letter of Credit. Tenant shall, upon Tenant's execution of this Lease, deliver to Landlord a clean, irrevocable and unconditional letter of credit (the " **Letter of Credit** "), in the amount stated in **Article 1,** as a security deposit (" **Security Deposit** ") for the performance by Tenant of the provisions of this Lease. It is expressly understood and agreed that the aforesaid security deposit is not an advance rental deposit and may not be applied to the last month's Fixed Rent, nor is the security deposit a measure of Landlord's damages in the event of Tenant's default.

Section 27.2 Letter of Credit Requirements. The Letter of Credit shall:

(i) be in the form attached hereto as Exhibit G and made a part hereof with changes reasonably agreed to by Landlord.

(ii) be addressed to Landlord and naming Landlord as beneficiary.

(iii) be issued in a form and substance acceptable to Landlord by a federally insured financial institution which is acceptable to Landlord in Landlord's sole discretion, with minimum assets of Ten Billion Dollars ($10,000,000,000.00) (the " **Minimum Assets** "), with either a location in New York City where such Letter of Credit can be presented, or otherwise specifically provide that the Letter of Credit can be presented by facsimile, hand delivery or overnight courier. As of the date hereof, Landlord hereby approves of Comerica Bank as the Issuing Bank.

(iv) be freely transferable without fee to Landlord or approval of the issuer, and Tenant shall at Tenant's cost: (x) cooperate with Landlord in obtaining an amendment or replacement of the Letter of Credit to reflect any such change in beneficiary under the Letter of Credit; and (y) pay the cost thereof to the extent the issuer charges for such change in beneficiary.

(v) be for a term of one (1) year, subject to automatic one (1) year extensions so that the Letter of Credit is in effect until a date which is at least sixty (60) days after the scheduled Expiration Date, as same may be extended. Tenant shall, on, or before, the date which is forty-five (45) days prior to the expiration of such Letter of Credit, deliver to Landlord a new Letter of Credit satisfying the foregoing requirements in lieu of the Letter of Credit then being held by Landlord. If the issuer of such existing or new Letter of Credit provides notice of its election to not renew such Letter of Credit for any additional period, Tenant shall be required to deliver a new Letter of Credit on, or before the date which is forty-five (45) days prior to the expiration of the term of the Letter of Credit then being held by Landlord. If neither a new Letter of Credit nor a renewal of the Letter of Credit is timely delivered to Landlord, then Landlord may (without prejudicing any other right or remedy available to Landlord) draw down the entire Letter of Credit and, until Tenant delivers to Landlord the new Letter of Credit as required by this Lease hold the drawn cash as a Security Deposit pursuant to this Lease.

(vi) be replaced by a new Letter of Credit if the issuing financial institution: (A) has assets which fall below the Minimum Assets; (B) enters into any form of regulatory or governmental proceeding, including, without limitation, any receivership instituted or commenced by the Federal Deposit Insurance Corporation (the " **FDIC** "); (C) is otherwise declared insolvent, is materially downgraded by the FDIC, or closes for any reason; (D) intentionally omitted; or (E) in any manner communicates (including, without limitation, communications sent by or on behalf of the FDIC) its unwillingness to honor the terms of the Letter of Credit. If Tenant fails to deliver to Landlord the replacement Letter of Credit within ten (10) Business Days following Landlord's written demand for same (or within 45 days if Tenant provides Landlord with cash equal to the full amount of the Letter of Credit within ten (10) Business Days), Landlord shall be entitled to draw down the entire Letter of Credit and, until Tenant delivers to Landlord the replacement Letter of Credit as required by this Lease, hold the drawn cash as a Security Deposit pursuant to this Lease.

(vii) Following a draw by Landlord under the Letter of Credit, at Landlord's election (other than in connection with a draw under clauses (v) or (vi)): (A) be replaced by Tenant within ten (10) Business Days after written notice from Landlord by a new Letter of Credit in the Minimum Amount, in which event the Letter of Credit then held by Landlord shall be terminated (or within 45 days if Tenant provides Landlord with cash equal to the amount so drawn within ten (10) Business Days); or (B) be augmented by Tenant within ten (10) Business Days after written notice from Landlord by an additional Letter of Credit in the amount of a partial draw (the " **Additional Letter of Credit** ") subject to the requirements set forth above (or within 45 days if Tenant provides Landlord with cash equal to the amount so drawn within ten (10) Business Days), in which event the Letter of Credit then held by Landlord and Additional Letter of Credit shall both be held by Landlord.

Section 27.3 Application. In the event Tenant defaults beyond the expiration of applicable notice and cure period in respect of any of the terms, provisions and conditions of this Lease, including, but not limited to, the payment of Fixed Rent or Additional Rent, Landlord may apply or retain the whole or any part of the Security Deposit so deposited to the extent required for the payment of any Fixed Rent and Additional Rent or any other sum as to which

Tenant is in default or for any sum which Landlord may expend by reason of Tenant's default hereunder. If Landlord applies any part of the Security Deposit so deposited, Tenant, upon demand, shall deposit with Landlord the amount so applied so that Landlord shall have the full Security Deposit on hand at all times during the Term. In addition to the foregoing, in the event of a termination of this Lease based upon the default of Tenant, or a rejection of this Lease pursuant to the provisions of the Federal Bankruptcy Code, Landlord shall have the right to retain the Security Deposit to cover the full amount of damages and other amounts due from Tenant to Landlord under this Lease. Any amounts so retained by Landlord shall, at Landlord's election, be applied first to any unpaid Rent and other charges that were due prior to the filing of the petition for protection under the Federal Bankruptcy Code. Tenant hereby covenants and agrees not to oppose, contest or otherwise interfere with any attempt by Landlord to draw down from said Letter of Credit (and/or Additional Letter of Credit) including, without limitation, by commencing an action seeking to enjoin or restrain Landlord from making such draw.

Section 27.4 Transfer. In the event of a sale or foreclosure of the Building, Landlord shall transfer the Security Deposit to the vendee or Mortgagee and, provided the vendee or Mortgagee acknowledges the receipt of the Security Deposit in writing to Tenant, Landlord shall thereupon be released by Tenant from all liability for the return of such Security Deposit; and Tenant agrees to look to the new Landlord solely for the return of said Security Deposit, and it is agreed that the provisions hereof shall apply to every transfer or assignment made of the Security Deposit to a new Landlord.

Section 27.5 Encumbrance. Tenant covenants that it will not assign or encumber, or attempt to assign or encumber, the Letter of Credit deposited hereunder as security, and that neither Landlord nor its successors or assigns shall be bound by any such assignment, encumbrance, attempted assignment, or attempted encumbrance.

Section 27.6 No Waiver. The use of security, as provided in this Article, shall not be deemed or construed as a waiver of Tenant's default or as a waiver of any other rights and remedies to which Landlord may be entitled under the provisions of this Lease by reason of such default, it being intended that Landlord's rights to use the whole or any part of the security shall be in addition to but not in limitation of any such other rights and remedies; and Landlord may exercise any of such other rights and remedies independent of or in conjunction with its rights under this Article.

Section 27.7 Return of Letter of Credit. Within sixty (60) days after the Expiration Date and the vacation of the Premises by Tenant and delivery of the Premises to landlord in the condition required hereunder, the Letter of Credit or such part thereof that has not been applied to cure any defaults, beyond applicable and notice and cure periods, shall be returned to Tenant.

Section 27.8 Extension Option. If Tenant exercises its option to extend the Term pursuant to **Article 31** of this Lease then, not later than 60 days prior to the commencement of the Renewal Term, Tenant shall deliver to Landlord a new Letter of Credit or certificate of renewal or extension evidencing that such new Letter of Credit be for a term of one (1) year, subject to automatic one (1) year extensions so that the Letter of Credit is in effect until a date which is at least sixty (60) days after the scheduled Expiration Date (taking into consideration any then exercised extension option), as same may be extended.

Section 27.9 Reduction. Provided no monetary defaults in payment of either (x) Fixed Rent or (y) additional rent in excess of $25,000, in either case occurred more than three times in any 12 month period, and no Event of Default then exists, then, provided that Tenant complies

with the provisions of this **Section 27.9** , (i) on the third (3 rd) anniversary of the Rent Commencement Date, the Security Deposit shall be reduced to $3,110,625.00, and (ii) provided the Security Deposit shall have previously been reduced pursuant to the preceding clause (i), on the fifth (5 th) anniversary of the Rent Commencement Date the Security Deposit shall be further reduced to $2,504,250.00. The Security Deposit shall be reduced as follows: (A) if the Security Deposit is in the form of cash, Landlord shall, within 10 Business Days following notice by Tenant to Landlord that Tenant is entitled to reduce the Security Deposit pursuant to this **Section 27.9** , deliver to Tenant the amount by which the Security Deposit is reduced, or (B) if the Security Deposit is in the form of a Letter of Credit, Tenant shall deliver to Landlord a consent to an amendment to the Letter of Credit (which amendment must be reasonably acceptable to Landlord in all respects), reducing the amount of the Letter of Credit by the amount of the permitted reduction, and Landlord shall execute such consent and such other documents as are reasonably necessary to reduce the amount of the Letter of Credit in accordance with the terms hereof. If Tenant delivers to Landlord an amendment to the Letter of Credit in accordance with the terms hereof, Landlord shall, within 10 Business Days after delivery of such consent, either (1) provide its reasonable objections to such amendment or (2) execute such consent in accordance with the terms hereof.

ARTICLE 28
OFAC

Neither a Sanctioned Person (as hereinafter defined) nor Sanctioned Entity (as hereinafter defined) will benefit directly or indirectly through this Lease. Landlord and Tenant each (as to itself) hereby respectively covenant and warrant that:

(a) it is not directly or indirectly controlled by a Sanctioned Entity or a Sanctioned Person.

(b) it, nor any of its subsidiaries (a) is a Sanctioned Person, (b) has more than an insubstantial portion of its assets located in Sanctioned Entities, or (iii) derives more than an insubstantial portion of its operating income from investments in, or transactions with, Sanctioned Persons or Sanctioned Entities. OFAC means The Office of Foreign Assets Control of the U.S. Department of the Treasury (" **OFAC** "). "Sanctioned Entity" means: (a) an agency of the government of; (b) an organization directly or indirectly controlled by; or (c) a person resident in a country that is subject to a country sanctions program administered and enforced by OFAC described or referenced at OFAC's website http://www.ustreas.gov/offices/enforcement/ofac/ or as otherwise published from time to time. "Sanctioned Person" means a person named on the list of Specially Designated Nationals maintained by OFAC available at or through OFAC's website http://www.ustreas.gov/offices/enforcement/ofac/ or as otherwise published from time to time.

ARTICLE 29
ICAP

Section 29.1 Landlord may, at Landlord's sole cost and expense, prepare and submit its application for the granting of the New York State Tax Requirement and the Administrative Code of the City of New York, the Industrial and Commercial Abatement Program (" **ICAP** ") tax benefits.

(a) To the extent required by Landlord (with the parties hereby acknowledging that most if not all of the abatement attributable to the ICAP abatement program for the Building will be derived from the applicable work to be performed to the Building), Tenant shall, reasonably cooperate with Landlord, at no material cost (unless Landlord agrees to pay such cost) in good faith in connection with the preparation of the application for the ICAP abatement, including supplying all available information and documentation required of Tenant and/or in connection with Tenant work.

(b) Once the ICAP application has been submitted by Landlord, Landlord shall use all diligent efforts to pursue such application process.

(c) Once the ICAP Abatement shall have been obtained, and thereafter during the Term, Tenant and Landlord shall, in a diligent and timely manner, comply with all of their respective requirements with respect to maintaining and preserving the ICAP Abatement including to duly and timely file all necessary reports, statements and schedules required to maintain the ICAP abatement in full force and effect. Nothing contained in this **Article 29** shall obligate Tenant to take any action or file any report, statement or schedule with respect to the Work or its employees. Additionally, nothing contained in this **Article 29** shall obligate Tenant to take any action or incur any expense beyond what is required of Tenant under and pursuant to the ICAP program so as to allow Landlord to provide required access to the Premises and submit required data and information known only to Tenant in order for Landlord to preserve and maintain the ICAP benefits.

(d) Throughout the term of the ICAP abatement neither Landlord nor Tenant shall knowingly engage in any act or conduct which will jeopardize or void the abatement, subject to circumstances outside their control.

(e) If and to the extent required for purposes of eligibility for the ICAP abatement, Landlord shall perform Landlord's Premises Work and Landlord's Expansion Premises Work and Tenant shall perform all Alterations in material compliance with any ICAP eligibility requirements (including, if and to the extent required for eligibility in connection with the ICAP abatement, any Minority and Women-Owned Business Enterprise firm requirements).

Notwithstanding anything to the contrary contained in this **Article 29** , in the event that Landlord and Tenant are unable to obtain the ICAP abatement as provided herein, this Lease shall nevertheless remain in full force and effect.

Section 29.2 It is further understood and agreed that (in order to enable Landlord to comply with certain requirements of the ICAP abatement):

(a) Tenant (and/or its contractors and subcontractors) agrees to report to Landlord the nature of its business, the number of workers permanently engaged in employment in the Premises, the nature of each worker's employment (i.e., job classification or job title) and the New York City residency of each worker (and the names and addresses of such residents if required by New York City for verification) and Tenant will require that a clause similar to this be contained in any sublease, passing to the benefit of Tenant and of Landlord, if any sublease of all or a portion of the Premises is made;

(b) Tenant (and/or its contractors and subcontractors) shall reasonably cooperate with Landlord, and Tenant (and/or its contractors and subcontractors) will supply such information and comply with such reporting requirements as Landlord advises Tenant are

reasonably necessary to comply with the ICAP Abatement to the extent relating to the Premises, including, but not limited to: (a) such information concerning subleases (including a rent roll with respect thereto); and (b) the filing of employment reports and other such forms with the Division of Labor Services. The parties will assist each other in connection with maintaining eligibility under the ICAP Abatement; and

(c) Tenant agrees to provide reasonable access to the Premises by employees and agents of the Department of Finance of the City of New York, the Division of Labor Services or any such other agency, at all reasonable times.

Upon Landlord's request, Tenant's obligation under this Lease shall be subject to the provisions of (i) Local Law 67 and the Rules and Regulations promulgated thereunder, which requires compliance with the Minority and Women Owned Business Enterprise Program by including at least three (3) NYC Certified Minority and/or Women Owned Businesses in each of their trade categories, and document all outreach and responses via the submission of the ICAP MWBE Compliance Report, and (ii) the provisions of Executive Order Nos. 50 (1980) and 100 (1986) and the Rules and Regulations promulgated thereunder, as the same may, from time to time, be amended. To the extent required, all Alterations must be done in strict compliance with ICAP and the filing of employment reports and other such forms with the Division of Labor Services. The parties will assist each other in connection with maintaining eligibility under ICAP.

ARTICLE 30

MUNICIPAL AND TAX INCENTIVES

Landlord shall, at no cost, expense, liability or adverse effect on Landlord, the Building and/or other tenants, cooperate with Tenant in obtaining any municipal incentives, LEED certifications or tax benefits, including but not limited to REAP benefits, in connection with this Lease and the Premises for which Tenant may qualify or seek to qualify provided that such municipal and tax incentives shall have no adverse impact upon Landlord, the Premises, the Building and/or the Dumbo Heights Campus. Tenant hereby agrees, at Tenant's expense, to comply with Landlord's reasonable requirements in connection with performing work and/or making installations that are compatible with Landlord's LEED (or other comparable) standards for the Building.

ARTICLE 31

RENEWAL TERM

Section 31.1 Renewal Term. Tenant shall have the right to renew the Term for all of the Premises only for one (1) renewal term of 5 (five) years (the " **Renewal Term** ") commencing on the day after the expiration of the initial Term (the " **Renewal Term Commencement Date** ") and ending on the day last day of the calendar month immediately preceding the fifth anniversary of the Renewal Term Commencement Date, unless the Renewal Term shall sooner terminate pursuant to any of the terms of this Lease or otherwise. The Renewal Term shall commence only if (a) Tenant notifies Landlord (the " **Exercise Notice** ") of Tenant's exercise of such renewal right not later than fifteen (15) months prior to the Expiration Date, (b) at the time of the exercise of such right and immediately prior to the Renewal Term Commencement Date, no Event of Default shall have occurred and be continuing hereunder, and (c) Tenant named herein and/or an assignee permitted under **Section 13.8(a)** without Landlord's consent thereof

occupy at least two full contiguous floors in the Building (the " **Occupancy Threshold** ") at the time the Exercise Notice is given. Time is of the essence with respect to the giving of the Exercise Notice. The Renewal Term shall be upon all of the agreements, terms, covenants and conditions of this Lease, except that (x) the Fixed Rent shall be determined as provided in **Section 31.2** , (y) Tenant shall have no further right to renew the Term, and (z) the Base Tax Year shall be the Tax Year commencing on the July 1st of the calendar year in which the Renewal Term Commencement Date occurs and (z) the Base Expense Year shall be the calendar year in which the Renewal term Commencement Date occurs. Upon the commencement of the Renewal Term, (1) the Renewal Term shall be added to and become part of the Term, (2) any reference to "this Lease", to the "Term", the "term of this Lease" or any similar expression shall be deemed to include the Renewal Term, and (3) the expiration of the Renewal Term shall become the Expiration Date. Any termination, cancellation or surrender of the entire interest of Tenant under this Lease at any time during the Term shall terminate any right of renewal of Tenant hereunder.

Section 31.2 Renewal Term Rent. The annual Fixed Rent payable during the Renewal Term shall be equal to the greater of (a) the annual Fair Market Value (as hereinafter defined) as of the Renewal Term Commencement Date and (b) the annual Fixed Rent then in effect at the expiration of the initial term of this Lease. " **Fair Market Value** " shall mean the fair market annual rental value of the Premises as of the Renewal Term Commencement Date for a term equal to the Renewal Term, based on comparable space in the Building, or on comparable space in Comparable Buildings, including all of Landlord's services provided for in this Lease, and with (i) the Premises considered as vacant, and in "as is" condition existing on the Renewal Term Commencement Date, and (ii) the Base Tax Year being the Tax Year commencing on the July 1st of the calendar year in which the Renewal Term Commencement Date occurs. The calculation of Fair Market Value shall also be adjusted to take into account all other relevant factors. Landlord shall advise Tenant (the " **Rent Notice** ") of Landlord's determination of Fair Market Value prior to the Renewal Term Commencement Date. If Tenant disputes Landlord's determination of Fair Market Value, Tenant shall provide its determination of Fair Market Value within 10 days after Landlord delivers the Rent Notice and in such event the dispute shall be resolved by arbitration as provided in **Section 31.3** . If the Fixed Rent payable during the Renewal Term is not determined prior to the Renewal Term Commencement Date, Tenant shall pay Fixed Rent in an amount equal to the Fair Market Value for the Premises as determined by Landlord (the " **Interim Rent** "). Upon final determination of the Fixed Rent for the Renewal Term, Tenant shall commence paying such Fixed Rent as so determined, and within 10 days after such determination Tenant shall pay any deficiency in prior payments of Fixed Rent or, if the Fixed Rent as so determined shall be less than the Interim Rent, Tenant shall be entitled to a credit against the next succeeding installments of Fixed Rent in an amount equal to the difference between each installment of Interim Rent and the Fixed Rent as so determined which should have been paid for such installment until the total amount of the over payment has been recouped.

Section 31.3 Arbitration. If Tenant timely disputes Landlord's determination of Fair Market Value pursuant to **Section 31.2** , Tenant shall give notice to Landlord of such dispute within 10 Business Days after delivery of the Rent Notice (provided a failure to so timely dispute shall be deemed acceptance of Landlord's determination of Fair Market Value), and such dispute shall be determined by arbitration in accordance with the then prevailing Expedited Procedures of the Arbitration Rules for the Real Estate Industry of the American Arbitration Association or its successor for arbitration of commercial disputes, except that the rules shall be modified as follows:

(a) In its demand for arbitration Tenant shall specify the name and address of the person to act as the arbitrator on Tenant's behalf. The arbitrator shall be a real estate broker with at least 10 years full-time commercial brokerage experience who is familiar with the fair market value of first-class office space in the Borough of Brooklyn, City of New York, New York. Failure on the part of Tenant to make the timely and proper demand for such arbitration shall constitute a waiver of the right thereto and the Fixed Rent shall be as set forth in the Rent Notice. Within 10 Business Days after the service of the demand for arbitration, Landlord shall give notice to Tenant specifying the name and address of the person designated by Landlord to act as arbitrator on its behalf, which arbitrator shall be similarly qualified. If Landlord fails to notify Tenant of the appointment of its arbitrator within such 10 Business Day period, and such failure continues for 5 Business Days after Tenant delivers a second notice to Landlord, then the arbitrator appointed by Tenant shall be the arbitrator to determine the Fair Market Value for the Premises.

(b) If two arbitrators are chosen pursuant to Section 31.3(a), the arbitrators so chosen shall meet within 10 Business Days after the second arbitrator is appointed and shall seek to reach agreement on Fair Market Value. If within 20 Business Days after the second arbitrator is appointed the two arbitrators are unable to reach agreement on Fair Market Value then the two arbitrators shall appoint a third arbitrator, who shall be a competent and impartial person with qualifications similar to those required of the first two arbitrators pursuant to Section 31.3(a). If they are unable to agree upon such appointment within 5 Business Days after expiration of such 20 Business Day period, the third arbitrator shall be selected by the parties themselves. If the parties do not agree on the third arbitrator within 5 Business Days after expiration of the foregoing 5 Business Day period, then either party, on behalf of both, may request appointment of such a qualified person by the then president of the Real Estate Board of New York. The third arbitrator shall decide the dispute, if it has not been previously resolved, by following the procedures set forth in Section 31.3(c). Each party shall pay the fees and expenses of its respective arbitrator and both shall share the fees and expenses of the third arbitrator. Attorneys' fees and expenses of counsel and of witnesses for the respective parties shall be paid by the respective party engaging such counsel or calling such witnesses.

(c) Fair Market Value shall be fixed by the third arbitrator in accordance with the following procedures. Concurrently with the appointment of the third arbitrator, each of the arbitrators selected by the parties shall state, in writing, his or her determination of the Fair Market Value supported by the reasons therefor. The third arbitrator shall have the right to consult experts and competent authorities for factual information or evidence pertaining to a determination of Fair Market Value, but any such determination shall be made in the presence of both parties with full right on their part to cross-examine. The third arbitrator shall conduct such hearings and investigations as he or she deem appropriate and shall, within 30 days after being appointed, select which of the two proposed determinations most closely approximates his or her determination of Fair Market Value. The third arbitrator shall have no right to propose a middle ground or any modification of either of the two proposed determinations. The determination he or she chooses as that most closely approximating his or her determination of the Fair Market Value shall constitute the decision of the third arbitrator and shall be final and binding upon the parties. The third arbitrator shall render the decision in writing with counterpart copies to each party. The third arbitrator shall have no power to add to or modify the provisions of this Lease. Promptly following receipt of the third arbitrator's decision, the parties shall enter into an amendment to this Lease evidencing the extension of the Term for the Renewal Term and confirming the Fixed Rent for the Renewal Term, but the failure of the parties to do so shall not affect the effectiveness of the third arbitrator's determination.

(d) In the event of a failure, refusal or inability of any arbitrator to act, his or her successor shall be appointed by him or her, but in the case of the third arbitrator, his or her successor shall be appointed in the same manner as that set forth herein with respect to the appointment of the original third arbitrator.

ARTICLE 32
LANDLORD TAKE-OVER OBLIGATIONS

Section 32.1 Tenant represents and warrants to Landlord:

(a) Tenant is now the lessee under a certain Sublease, dated as of November 11, 2009 between Chelsea Piers L.P., as sublessor (" **Original Guarantor Lessor** ") and 2tor, Inc. (Guarantor's previous name), as sublessee (" **Guarantor** "), for 8,000 rsf at Pier 59 — level 2 (the " **Original Sublease** " and such premises, the " **Pier 59 Premises** "), as amended by (i) a First Amendment to Sublease, dated as of July 26, 2011, between Original Guarantor's Lessor's successor, Waterfront Services, Inc. (" **Guarantor's Present Lessor** ") and Guarantor, which. among other changes, added approximately 8,402 rsf in Pier 60 (the " **Pier 60 Premises** "), (ii) a Second Amendment to Sublease, dated September 19, 2013, between Guarantor's Present Lessor and Guarantor, as sublessee, which among other changes, added 2,632 rsf in Pier 62 identified as Suite 203 (the " **Suite 203 Premises** "), (iii) a Third Amendment to Sublease, dated December 31, 2014, between Guarantor's Present Lessor and Guarantor, which, among other changes, added 1,974 rsf in Pier 62, identified as M100 (the " **M100 Premises** " and together with the Pier 59 Premises, the Pier 60 Premises and the Suite 203 Premises, the " **Guarantor's Present Space** ") and (iv) a Fourth Amendment to Sublease, dated September 30, 2016, which among other changes, extended the term for the Pier 59 Premises from December 31, 2016 to December 31, 2017 (as so amended, " **Guarantor's Present Letting Agreement** "). All annual fixed rent and rental payable by Guarantor under Guarantor's Present Letting Agreement (which agreement shall not be modified without Landlord's consent) on account of utility expenses, operating expenses and taxes, without taking into account holdover penalty, interest or late charges unless attributable to Landlord's wrongful acts (" **Escalation Payments** ") are collectively referred to herein as the " **Takeover Rent** ";

(b) Guarantor has entered into the following sub-subleases of the Guarantor's Present Space: Sublease dated December 16, 2011 between Guarantor, as sub-sublessor, and Noodle Education, Inc with respect to all of the Pier 59 Premises (the " **Noodle Sub-sublease** ") which sub-sublease expires on December 31, 2016;

(c) With the exception of Guarantor's sublease of the Pier 59 Premises, Guarantor's Present Letting Agreement expires December 31, 2019;

(d) Guarantor's Present Letting Agreement has not been modified or supplemented except as described above;

(e) Tenant has provided Landlord a true and correct copy of the Guarantor's Present Letting Agreement;

(f) Tenant has provided Landlord a true and correct copy of the rental invoice to Guarantor under Guarantor's Present Letting Agreement;

(g) To Tenant's knowledge, Guarantor is not in default under any of the terms, covenants or conditions of Guarantor's Present Letting Agreement beyond applicable notice and cure periods;

(h) Guarantor has not received any notice of default pertaining to Guarantor's Present Letting Agreement, and

(i) Except for the Noodle Sub-sublease, there are no subleases, licenses or other occupancy agreements or any other agreement except Guarantor's Present Letting Agreement pertaining to Tenant leasing or occupancy of Guarantor's Present Space and no other party occupies or has a right to occupy or use Guarantor's Present Space.

Section 32.2 Landlord represents and warrants to Tenant that:

(a) Landlord has reviewed Guarantor's Present Letting Agreement.

Section 32.3 Tenant desires to relocate its business to the Premises; however, because Guarantor's Present Letting Agreement does not expire prior to the Commencement Date of this Lease, Landlord has agreed to reimburse Tenant for the Takeover Rent in an aggregate amount up to (but not exceeding) $1,500,000 (the " **Takeover Amount** "), subject to and in accordance with the terms of this Article 32. For the avoidance of doubt, in no event shall Landlord be responsible to reimburse Tenant for the Takeover Rent in an aggregate amount which exceeds $1,500,000. Notwithstanding the foregoing, if the Commencement Date does not occur on or prior to August 15, 2017, then for each day after such date until the Commencement Date occurs, all references to $1,500,000 in this Section shall be reduced by $1,728.11 for each day thereafter until the Commencement Date occurs.

Section 32.4 Commencing as of the date that Guarantor and its affiliates have vacated Guarantor's Present Space and Tenant has commenced occupancy of the Premises for the normal conduct of its business (the " **Takeover Date** "):

(a) Guarantor shall not perform any alterations or other work in Guarantor's Present Space nor enter into any agreements to provide any party with any rights to such space, without in any event, Landlord's consent (not to be unreasonably withheld, conditioned or delayed);

(b) Guarantor shall not, without Landlord's consent (not to be unreasonably withheld, conditioned or delayed), at any time hereafter commit or suffer, any act, deed, matter or thing whatsoever whereby Guarantor's Present Space or any part thereof shall at any time hereafter in any way be impeached, charged, affected, or encumbered by Guarantor or Tenant;

(c) Guarantor shall submit to Landlord, promptly after receipt by Guarantor, true copies of any notices, bills, invoices, statements or other documents received by Guarantor from and after the date hereof in connection with Guarantor's Present Letting Agreement and/or Tenant's occupancy in Guarantor's Present Space;

(d) Subject to the provisions of this Article 32, Landlord agrees to provide Guarantor with the monthly installment of Takeover Rent that Guarantor is required to pay to Guarantor's Present Lessor with respect to the period commencing on the first day of the calendar month following the Takeover Date and ending on the date of the expiration of the term of Guarantor's Present Letting Agreement (or sooner termination thereof provided such

termination includes a release of Guarantor from any Takeover Rent obligations under Guarantor's Present Letting Agreement accruing after such termination date or the termination of this Lease, whichever occurs first. Promptly following Guarantor's receipt of the same, Guarantor shall provide Landlord with a copy of the rent bill for the month preceding the Takeover Date and Landlord shall include in each monthly installment of the Takeover Rent an amount on account of Escalation Payments based on the amounts so shown on such rent bill, subject to the terms of this Article 32. Each monthly installment of the Takeover Rent if applicable, shall at Guarantor's option, either be paid to Guarantor monthly, in advance, on or before the twenty-fifth (25th) day of the month immediately preceding the month for which such sums are due or in the form of a credit against Fixed Rent payable under this Lease, except that if the Takeover Date occurs towards the end of the calendar month, then the payment of Takeover Rent by Landlord on account of the first month following the Takeover Date shall be paid by Landlord to Guarantor within ten (10) business days of the Takeover Date. In furtherance of the foregoing, the Takeover Rent shall not include amounts billed to Guarantor after the Takeover Date that relate in any manner to the period prior to the Takeover Date. In the event that there shall be an abatement of fixed rent and/or Escalation Payments under Tenant's Present Letting Agreement, the Takeover Amount shall be equitably reduced to reflect such abatement (provided that the term of the Tenant's Present Letting Agreement is not automatically extended as the result of such abatement). No payment or credit shall be required by Landlord for periods during which an Event of Default exists; provided that upon Tenant's cure of any such defaults, such payments or credits shall be immediately paid or credited to Guarantor. Landlord shall not be responsible for any additional rent, costs or other charges or payments attributable to Tenant's default, negligence, or misconduct under Guarantor's Present Letting Agreement unless caused by Landlord's Subtenants (as hereinafter defined).

Section 32.5 In the event that the monthly rental amounts Guarantor must pay to Guarantor's Present Lessor shall be modified on account of changes in the Escalation Payments, Guarantor shall advise Landlord and deliver to Landlord a copy of the rent bill from Guarantor's Present Lessor evidencing such modification and the monthly installment of Takeover Rent to be paid by Landlord shall be adjusted to reflect such modification. Tenant acknowledges that Landlord may desire to cause an audit of operating expenses for escalation years occurring any time after the Takeover Date to the extent such audits are permitted by the Tenant's Present Letting Agreement. Tenant shall promptly provide Landlord with a copy of any operating expense statement provided to Tenant after its receipt thereof and, at Landlord's request, shall exercise its right to cause an audit of the same. Any audit shall be performed by personnel selected by Landlord at Landlord's sole cost and expense (but subject to the limitations set forth in Tenant's Present Letting Agreement). Any refund of Escalation Payments on account of the period preceding the first calendar month following the Takeover Date shall be for the benefit of Guarantor and any refunds on account of the period commencing with such month following the Takeover Date shall be for the benefit of Landlord.

Section 32.6 During the period after the Takeover Date, Guarantor agrees, upon request of Landlord, (i) to enter into one or more agreements with Guarantor's Present Lessor surrendering all or any portions of Guarantor's Present Space (including pursuant to Guarantor's Present Lessor's recapture rights), and/or (ii) subject to the approval of Guarantor's Present Lessor, to assign its interest in and to Guarantor's Present Letting Agreement to any assignee or assignees designated by Landlord, and/or (iii) subject to the approval of Guarantor's Present Lessor, and the terms of Guarantor's Present Letting Agreement, enter into one or more subleases affecting all or any portions of Guarantor's Present Space with any sublessee or sublessees designated by Landlord (" **Landlord Subtenants** ") at any rental and upon any other

terms which Landlord may designate in said request, provided said terms do not violate any of the provisions of Guarantor's Present Letting Agreement and provided that Guarantor's obligations under Guarantor's Present Letting Agreement shall not be increased without Guarantor's consent. Any payments to Guarantor's Present Lessor in connection with any of the aforesaid agreements and/or other transactions costs shall be borne by Landlord and not credited against the Takeover Amount (and Landlord agrees to indemnify Tenant and Guarantor in connection with such payments), but such amounts shall be deemed to be Transaction Costs (as hereinafter defined). Guarantor further agrees (i) to reasonably cooperate with Landlord to bring about any such proposed surrender agreement, assignment or sublease and obtain Guarantor's Present Lessor's agreement or consent thereto, including without limitation by delivering a notice to commence the recapture process in the Present Letting Agreement upon Landlord's request provided that no such notice shall be delivered prior to the Takeover Date, and (ii) to timely deliver or cause to be delivered, at any time subsequent to the Takeover Date, the premises affected by any such surrender agreement, assignment or sublease to Guarantor's Present Lessor in the condition required by the surrender agreement or the Present Letting Agreement. Once consummated, Guarantor shall not amend any such transaction documents without Landlord's consent. Landlord shall indemnify, defend and hold Guarantor harmless from and against any direct out-of-pocket loss, cost and expenses, including reasonable attorneys' fees and disbursements (but not holdover costs or consequential damages payable to Guarantor's Present Lessor except as expressly provided below) arising out of a breach of or default under Guarantor's Present Letting Agreement or any damage to the Guarantor's Present Space solely caused by or attributable to any Landlord's Subtenant for failure to comply with the terms of its occupancy agreement with Tenant. Landlord does not need to obtain Guarantor's consent to any proposed Landlord's Subtenant, provided that (i) if Landlord does not obtain Guarantor's consent (or Guarantor is asked by Landlord to consent and Guarantor refuses to consent), Landlord will retain all Sublease Profits (as hereinafter defined), if any, and bear all holdover costs (including consequential damages) incurred by Guarantor under the Present Letting Agreement in connection with such Landlord's Subtenant holdover after the expiration of the applicable term and (ii) if Landlord does obtain Guarantor's consent, Landlord and Guarantor will share the Sublease Profits (50/50) and each bear 50% of the holdover costs (including consequential damages) incurred in connection with such Landlord's Subtenant's holdover.

Section 32.7

(a) In the event that a surrender of all Guarantor's Present Space shall be consummated, Landlord shall have no further obligation to make payments of the Takeover Amount and in the event that a partial surrender is effectuated the Takeover Amount shall be equitably reduced to reflect such surrender taking into account the proportion of the Takeover Rent which is no longer payable.

(b) In the event that Tenant shall receive any consideration as a result of an early termination of Tenant's Present Letting Agreement in excess of the outstanding balance of the Takeover Amount, upon Tenant's actual receipt thereof, Tenant shall promptly reimburse Landlord for any Present Letting Agreement Transaction Costs (as hereinafter defined) up to the then outstanding and unreimbursed Present Letting Agreement Transaction Costs, and any excess consideration may be retained by Tenant.

(c) In the event that any Landlord's Subleases shall be consummated, all fixed and escalation rent and utility payments payable by the subtenants thereunder shall be applied by Guarantor to reduce the balance of the Takeover Amount payable by Landlord to

Tenant. Upon the balance of the Takeover Amount being reduced to zero, then within five (5) business days of Guarantor's receipt of any monthly rental payments in excess of the Takeover Rent and other amounts then payable by Guarantor to Guarantor's Present Lessor under Guarantor's Present Letting Agreement (including any profit sharing if required by Guarantor's Present Letting Agreement) (such amount, " **Guarantor's Monthly Rent Obligation** " and such funds in excess thereof, the " **Excess Monthly Sublease Rent** "), (i) Guarantor shall remit such Excess Monthly Sublease Rent on a monthly basis until Landlord has received a full reimbursement for all Present Letting Agreement Transaction Costs actually incurred by Landlord.

(d) Once Landlord has received a full reimbursement of any Present Letting Agreement Transaction Costs actually incurred by Landlord, all funds in excess thereof (" **Sublease Profits** ") shall be payable as follows: (i) if Guarantor has previously approved such Landlord's Sublease, Guarantor and Landlord shall share such Sublease Profits equally (50/50) and (ii) if Guarantor has not previously approved such Landlord's Sublease, Landlord shall retain all such Sublease Profits

(e) As aforesaid, Guarantor shall not cancel, amend or supplement any sublease without Landlord's consent and Guarantor also shall not waive any right to receive any payment from any subtenant. Guarantor shall use reasonable efforts to enforce the provisions of any such sublease(s) and upon Landlord's request shall take such actions or institute proceedings and diligently pursue the same as directed by Landlord to enforce the provisions of such sublease(s) and to enforce the provisions of Guarantor's Present Letting Agreement, using Landlord's counsel or, at Landlord's election, using Guarantor's counsel at Landlord's reasonable cost and expense (which reasonable costs and expenses shall either be billed directly to Landlord or shall be reimbursed by Landlord to Guarantor). At Landlord's option and to the extent permissible, Guarantor shall assign to Landlord its right to institute, at Landlord's sole cost and expense, proceedings against such subtenant(s) to enforce the provisions of such sublease(s) and/or regain possession of the space affected by such sublease(s).

(f) As used herein, the term " **Present Letting Agreement Transaction Costs** " shall mean any and all reasonable third party costs related to a sublease, assignment, or early termination of Guarantor's Present Letting Agreement incurred by Landlord, including, without limitation, (i) any tenant improvement work allowance or any construction costs paid or to be paid in connection with such transaction, (ii) in the case of any sublease, any actual costs incurred in separately demising the sublet space, (iii) any brokerage payment due to a broker in connection with an assignment, sublease, or early termination of the Present Letting Agreement (which payment shall be paid by Landlord), and (v) any termination fees paid to Guarantor's Present Lessor. Provided Present Letting Agreement Transaction Costs shall not include any indemnification paid or payable to Guarantor or Tenant in connection with Landlord's Subleases.

Section 32.8 In the event that Landlord shall fail to timely pay or reimburse Guarantor for any Takeover Rent or any other amounts payable or reimbursable by Landlord to Guarantor pursuant to this Article 32 (and not in reasonably in dispute by Landlord) and such failure continues for thirty (30) days after Guarantor's notice thereof to Landlord and Guarantor's payment of such outstanding amounts to Guarantor's Present Lessor, Tenant shall have the right, without further notice, so offset such amounts from any Rent payable by Tenant hereunder, provided no Event of Default then exists.

Section 32.9 Guarantor and Tenant shall not cause a default under the Guarantor's Present Letting Agreement. In the event of any such default caused by Tenant or Guarantor, Tenant shall indemnify Landlord and hold Landlord harmless from and against any loss or liability (including, but not limited to, reasonable attorney's fees and expenses) which Landlord may pay or incur by reason of such default.

ARTICLE 33

EXPANSION PREMISES

Section 33.1 Commencing on the Expansion Premises Commencement Date and ending on the Expiration Date, Landlord shall lease to Tenant, and Tenant shall hire from Landlord, the Expansion Premises, and such Expansion Premises shall be added to the Premises, upon and subject to the terms of this Article 33 and **Exhibit M** . Landlord shall be deemed to have tendered possession of the Expansion Premises to Tenant, and Tenant shall be deemed to have accepted possession of the Expansion Premises, on the Expansion Premises Commencement Date, subject to Landlord's obligation hereunder to complete Punch List Items and to correct Expansion Premises Latent Defects (as defined in Exhibit M and subject to the terms thereof).

Section 33.2 The Fixed Rent payable in respect of the Expansion Premises shall be as set forth on " Schedule A-2 " annexed hereto and made a part hereof.

Section 33.3 Landlord shall not be obligated to perform any work with respect to the Expansion Premises or make any contribution to Tenant to prepare such Expansion Premises for Tenant's continued occupancy, other than Landlord's Expansion Premises Work, as set forth in Section 33.6 below.

Section 33.4 Following the Expansion Premises Commencement Date, the Expansion Premises shall be added to and be deemed to be a part of the Premises for all purposes of this Lease (except as otherwise provided in this Article 33 and in respect of Landlord obligations relating to the Premises which accrued prior to the Expansion Premises Commencement Date).

Section 33.5 Tenant has inspected the Expansion Premises and agrees (a) to accept possession of the Expansion Premises in its then condition on the Expansion Premises Commencement Date, subject to the terms of this Lease (including without limitation Section 4.2, as applicable to the Expansion Premises) and Landlord agreeing to Substantially Complete Landlord's Expansion Premises Work, and (b) Landlord has no obligation to perform any work, supply any materials, incur any expense or make any alterations or improvements to the Expansion Premises or the Building in order to prepare the same for Tenant's initial occupancy on the Expansion Premises Commencement Date other than Landlord's Expansion Premises Work and the Base Building Work with respect to the Expansion Premises. Subject to Landlord's obligation to complete any Punch List Items in respect of the Expansion Premises and Expansion Premises Latent Defects, Tenant's occupancy of any portion of the Expansion Premises shall be conclusive evidence, as against Tenant, that Tenant has accepted possession of the Expansion Premises, in its then current condition and at the time such possession was taken, the Expansion Premises was in the condition required hereby.

Section 33.6 Landlord will commence the performance of the Landlord's Expansion Premises Work reasonably promptly following the Expansion Premises Final Plans Approval

Date (as defined in **Exhibit M** attached hereto), subject to Tenant's compliance with the provisions of this Lease, and, will complete Landlord's Expansion Premises Work in a good and workmanlike manner consistent with the standards applicable to the Building. Landlord and its employees, contractors and agents shall have access to the Expansion Premises at all reasonable times for the performance of Landlord's Expansion Premises Work and for the storage of materials reasonably required in connection therewith (and for such time as may be reasonably required). Landlord shall diligently pursue completion of any and all Punch List Items within 60 days after Substantial Completion of Landlord's Expansion Premises Work (subject to Tenant Delay and Unavoidable Delay); provided that Landlord shall not unreasonably and materially interfere with Tenant's access to or installations or operations within the Expansion Premises. Except as otherwise expressly set forth herein to the contrary, there shall be no Rent abatement or allowance to Tenant for a diminution of rental value, no actual or constructive eviction of Tenant, in whole or in part, no relief from any of Tenant's other obligations under this Lease, and no liability on the part of Landlord, by reason of inconvenience, annoyance or injury to business arising from the performance of Landlord's Expansion Premises Work or the storage of any materials in connection therewith.

Section 33.7 Landlord's performance of Landlord's Expansion Premises Work shall be performed pursuant to and in accordance with the terms and conditions of **Exhibit M** attached hereto. For purposes of **Exhibit M** , the "Expansion Premises Contribution" shall mean an amount in dollars which is obtained by multiplying (x) the quotient obtained by dividing (A) the number of full months and the fractional portion of any portion of a month in the period commencing on the Expansion Premises Commencement Date and ending on the Expiration Date and by (B) 141 by (y) $75.00 by (z) 26,500; provided, however, that if the Expansion Premises Commencement Date occurs after the Expansion Premises Outside Date, due solely to delays in the Substantial Completion of the Landlord's Expansion Premises Work caused solely by Landlord (and not caused by Tenant Delay and/or Unavoidable Delay), then the Expansion Premises Commencement Date for the purpose only of the calculation of the Expansion Premises Contribution described in this sentence shall deemed to be the date on which the Expansion Premises Commencement Date would have occurred but for the aforesaid delays caused by Landlord.

Section 33.8 Notwithstanding anything to the contrary contained in this Article 33, provided no Event of Default then exists, then:

(a) if the Landlord's Expansion Premises Work is Substantially Completed on or prior to the twelve (12) month anniversary of the Commencement Date, Tenant shall receive a credit in the aggregate amount of $1,252,125 (the " **Expansion Premises Rent Credit** ") to be applied in equal monthly installments against Fixed Rent in respect of the Expansion Premises next due hereunder (i.e., such amount shall be applied to Fixed Rent for the Expansion Premises only); and

(b) if the Landlord's Expansion Premises Work is substantially completed after the twelve (12) month anniversary of the Commencement Date but prior to the three (3) year anniversary of the Commencement Date, then Tenant shall receive a credit in the aggregate amount equal to the Pro Rata Share Expansion Premises Rent Credit (as hereinafter defined) to be applied in equal monthly installments against Fixed Rent in respect of the Expansion Premises next due hereunder. The "Pro Rata Share Expansion Premises Rent Credit" shall mean the product of (x) $1,715.24 multiplied by (y) the amount of days which occurs during the period commencing on the Expansion Premises Commencement Date and ending on the date which is the three (3) year anniversary of the Commencement Date.

ARTICLE 34
EXPEDITED ARBITRATION

(a) In the event of any dispute under this Lease or a Work Letter with respect to (a) any circumstance hereunder where Landlord agreed not to unreasonably withhold, delay or condition its consent, and Tenant claims that Landlord has in fact unreasonably withheld consent, delayed or conditioned it consent, (b) whether Landlord has Substantially Completed Landlord's Premises Work, the Roof Work or Landlord's Expansion Premises Work, as applicable, or any restoration of the Premises, (c) whether any particular items of Landlord's Premises Work, Landlord's Expansion Premises Work, or Roof Work as applicable, are Punch List Items, (d) whether there has been a Tenant Delay or Unavoidable Delay (including the commencement and duration thereof), (e) whether a new Rule and Regulation is reasonable, or (f) in any arbitration which, pursuant to the express provisions of this Lease, is governed by this Article 34, either party may submit the dispute for resolution by arbitration in the City of New York in accordance with the City of New York under the Expedited Procedures provisions of the Commercial Arbitration Rules of the American Arbitration Association (" **AAA** "), except that the terms of this Article 34 shall supersede any conflicting or otherwise inconsistent rules; provided, however, that with respect to any such arbitration under a Work Letter or with respect to Landlord's Premises Work, the Roof Work or Landlord's Expansion Premises Work (including whether there has been a Tenant Delay or Unavoidable Delay with respect to such work (including the commencement and duration thereof and whether such work has been Substantially Completed and whether an item is a Punch List item) (a " **Construction Dispute** "), (i) the arbitrator shall be a qualified, disinterested and impartial person who shall have had at least ten (10) years' experience in the New York City commercial office market in a calling connected with the matter of the dispute, (ii) the AAA shall, within two (2) Business Days after such submission or application, select a single arbitrator meeting the requirements set forth in the following paragraph, (iii) the arbitration hearing shall commence two (2) Business Days after the selection of the arbitrator, (iv) the hearing shall be limited to a maximum duration of two (2) Business Days, with each party having no more than (A) two (2) hours to present its case, (B) two (2) hours to cross examine or interrogate persons supplying information or documentation on behalf of the other party, and (C) one (1) hour to summarize in a closing statement such party's case and (v) the arbitrator shall make a determination within three (3) Business Days after the conclusion of the hearing which determination shall be limited to a decision upon (1) whether Landlord acted reasonably in withholding its consent or approval or otherwise acted in an arbitrary or capricious manner where Landlord had a duty to act reasonably as expressly required by the terms hereof, or (2) the specific dispute presented to the arbitrator, as applicable. For all other disputes that are not Construction Disputes, provided the rules and regulations of the AAA so permit, (i) the AAA shall, within 2 Business Days after such submission or application, select a single arbitrator having at least ten (10) years' experience in New York City in leasing (with respect to disputes related to failure to give consents to assignments or subleases) or with respect to all other matters experience in the New York City commercial office market in a calling connected with the matter of the dispute management of commercial properties similar to the Building, (ii) the arbitration hearing shall commence 2 Business Days thereafter and shall be limited to a total of seven hours on the date of commencement until completion, with each party having no more than a total of two hours to present its case and to cross-examine or interrogate persons supplying information or documentation on behalf of the other party, and (iii) the arbitrator shall make a determination within 3 Business Days after the conclusion of the presentation of Landlord's and Tenant's cases, which determination shall be limited to a decision upon (A) whether Landlord acted

reasonably in withholding its consent or approval, or (B) the specific dispute presented to the arbitrator, as applicable (and the arbitrator shall not be permitted to modify any of the terms of this Lease).

(b) In all cases, the arbitrator's determination shall be final and binding upon the parties, whether or not a judgment shall be entered in any court. All actions necessary to implement such decision shall be undertaken as soon as possible, but in no event later than 5 Business Days after the rendering of such decision. The arbitrator's determination may be entered in any court having jurisdiction thereof. All fees payable to the AAA for services rendered in connection with the resolution of the dispute shall be paid by the unsuccessful party. The arbitrator shall not be entitled to award monetary damages.

(c) This Section 34 shall survive the expiration or sooner termination of this Lease.

[*signature page follows*]

IN WITNESS WHEREOF, Landlord and Tenant have executed this Lease as of the day and year first above written.

LANDLORD:	TENANT:
55 PROSPECT OWNER, LLC	**2U NYC, LLC**
	By: 2U, Inc., its sole member
By:_____	By: Catherine Graham
Name:	Name: Catherine Graham
Title:	Title: CFO

SIGNATURE PAGE [2U, Inc.] LEASE – 55 PROSPECT STREET / DUMBO HEIGHTS

SCHEDULE "A-1"
FIXED RENT SCHEDULE - INITIAL PREMISES

Period	Annual Rent	Monthly Rent
Commencement Date through and including the day immediately preceding the fifth (5th) anniversary of the Rent Commencement Date (the "First Date").	$ 3,339,000.00	$ 278,250.00
Day immediately following the First Date through and including the Expiration Date.	$ 3,604,000.00	$ 300,333.33

SCHEDULE "A-2"

FIXED RENT SCHEDULE - EXPANSION PREMISES

Period	Annual Rent	Monthly Rent
Expansion Premises Commencement Date through and including the First Date.	$ 1,669,500.00	$ 139,125.00
Day immediately following the First Date through and including the Expiration Date.	$ 1,802,000.00	$ 150,166.67

SCHEDULE "B"
FORM OF INSURANCE CERTIFICATE

See Immediately Following Page

DUMBO

ACORD

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER PRODUCER NAME PRODUCER ADDRESS	CONTACT NAME: PHONE (A/C, No, Ext): E-MAIL ADDRESS:	FAX (A/C, No):
	INSURER(S) AFFORDING COVERAGE	NAIC #
	INSURER A: CARRIER A	
INSURED VENDOR NUME VENDOR ADDRESS	INSURER B:	
	INSURER C:	
	INSURER D:	
	INSURER E:	
	INSURER F:	

COVERAGES CERTIFICATE NUMBER: REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	GENERAL LIABILITY X COMMERCIAL GENERAL LIABILITY CLAIMS-MADE X OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: POLICY X PRO-JECT LOC	Y	Y	POLICY #	EFF DATE	EXP DATE	EACH OCCURRENCE $ 2,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) $ MED EXP (Any one person) $ PERSONAL & ADV INJURY $ 2,000,000 GENERAL AGGREGATE $ 2,000,000 PRODUCTS - COMP/OP AGG $ 2,000,000 $
A	AUTOMOBILE LIABILITY X ANY AUTO ALL OWNED AUTOS X HIRED AUTOS SCHEDULED AUTOS X NON-OWNED AUTOS	Y	Y	POLICY #	EFF DATE	EXP DATE	COMBINED SINGLE LIMIT (Ea accident) $ 1,000,000 BODILY INJURY (Per person) $ BODILY INJURY (Per accident) $ PROPERTY DAMAGE (Per accident) $ $
A	X UMBRELLA LIAB X OCCUR EXCESS LIAB CLAIMS-MADE DED RETENTION $	Y	Y	POLICY #	EFF DATE	EXP DATE	EACH OCCURRENCE $ 10,000,000 AGGREGATE $ $
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N N/A	Y	POLICY #	EFF DATE	EXP DATE	X STATUTE OTHER E.L. EACH ACCIDENT $ 500,000 E.L. DISEASE - EA EMPLOYEE $ 500,000 E.L. DISEASE - POLICY LIMIT $ 500,000
A	PROFESSIONAL LIABILITY (ERRORS & OMISSIONS)			POLICY #	EFF DATE	EXP DATE	$2,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)

RE: PROJECT / LOCATION: WATCHTOWER, 172 PEARL ST., 117 ADAMS ST., 81 & 85 PROSPECT ST., 77 SANDS ST., BROOKLYN, NY 11201,

INCLUDED AS CERTIFICATE HOLDER: Aby Rosen, Michael Fuchs, Jared Kushner, 117 Adams Owner, LLC, 77 Sands Owner, LLC, 85 Prospect Owner, LLC, 81 Prospect Owner, LLC, 175 Pearl Owner, LLC, Dumbo WT Sub, LLC, Dumbo WT Vessure LLC, BRF Watchtower Manager, LLC, BRF Watchtower Member, LLC, Dumbo Promote LLC, Watchtower Property Manager, LLC, Watchtower Construction Manager, LLC, Watchtower Leasing, LLC, RFRIX DUMBO LLC, RF DUMBO HOLDING LLC, KC DUMBO HOLDING LLC Natixis Real Estate Capital LLC

CERTIFICATE HOLDER	CANCELLATION
INVESCO REAL ESTATE A DIVISION OF INVESCO ADVISERS, INC. 13155 NOEL RD., SUITE 500 DALLAS TX 75240	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE

ACORD 25 (2010/05) The ACORD name and logo are registered marks of ACORD

SCHEDULE "C"
HVAC DESIGN SPACE CONDITIONS

Landlord shall provide interior space temperatures of 70 degrees F +/- degrees that will be maintained during the heating seasons throughout the Premises without utilizing interior heat load, on (1) person per 150 rentable square feet and outside dry bulb temperature of 13.0 degrees. Landlord shall provide base building air conditioning capable of maintaining space temperatures 74 degrees F +/- 2 degrees and 50% relative humidity with an interior head load of 5.0 watts/rsf, no interior shading one (1) person per 150 rentable square feet, and outside mean coincident temperatures of 90 degrees F dry bulb, 73 degrees F wet bulb. Minimum 78 degrees F wb on the on the cooling tower.

Landlord shall provide a minimum ventilation of 75 CFM of toilet exhaust per fixture within the bathrooms based on Building standard open installation and one person per 150 rentable square feet.

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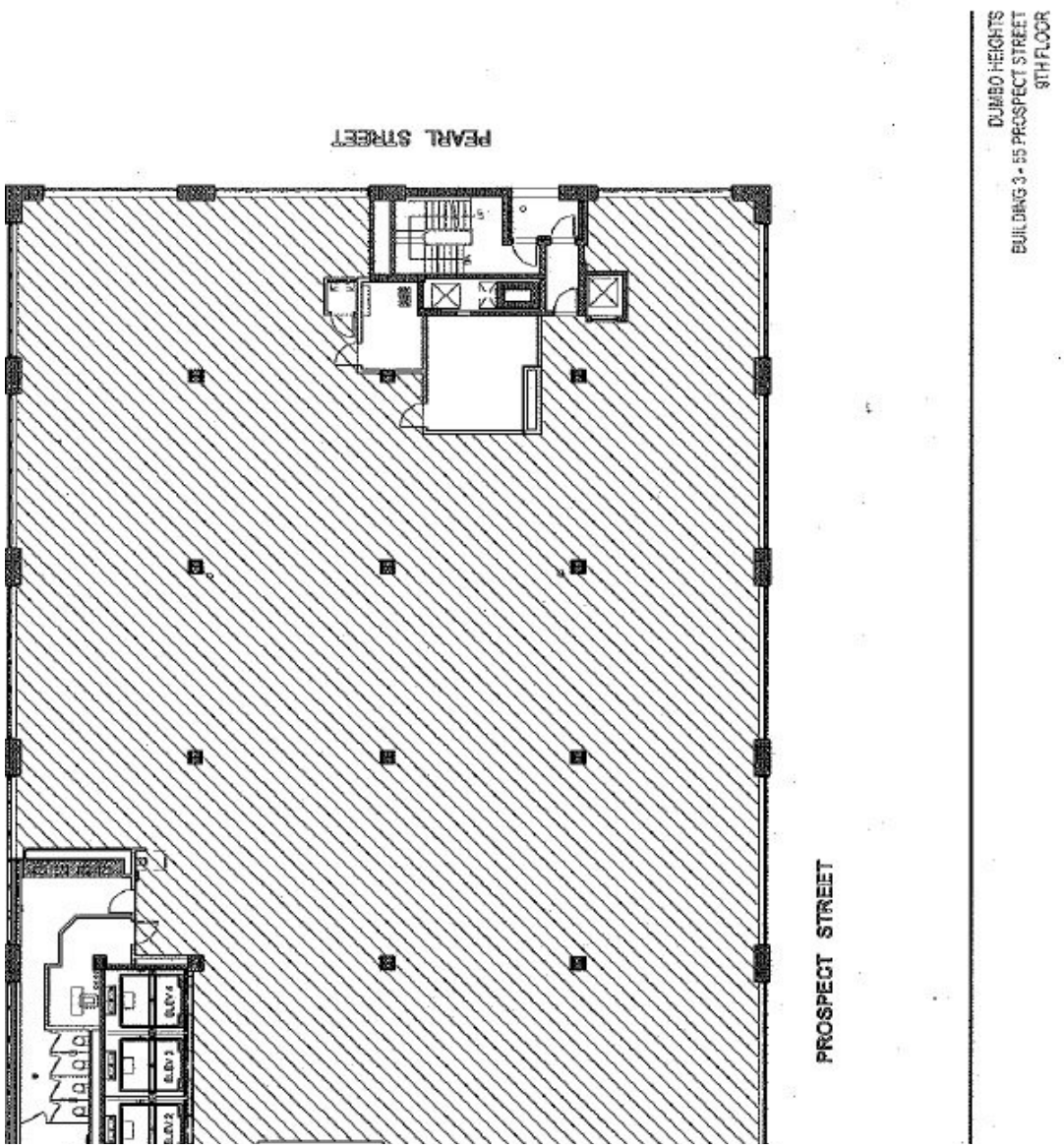
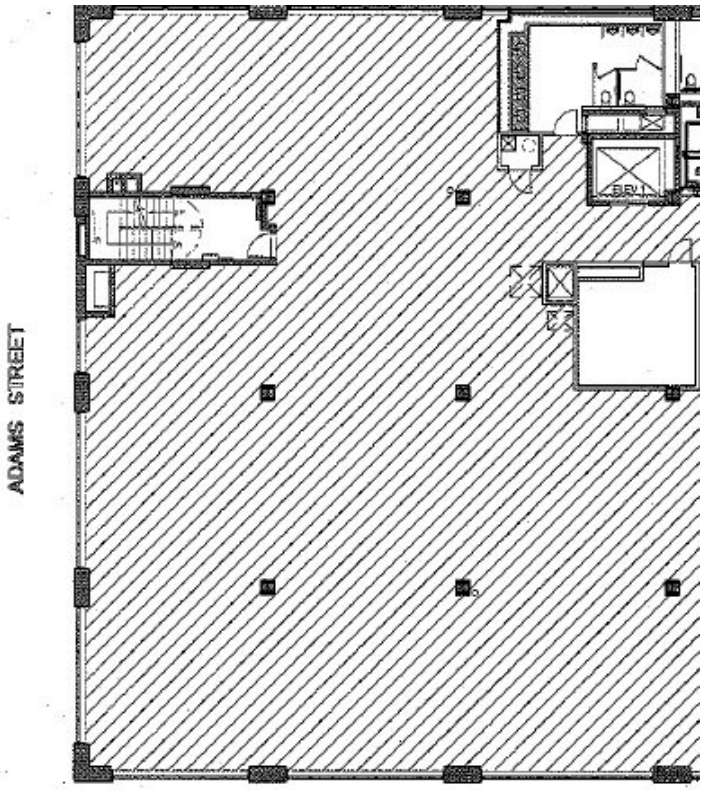
*The foregoing specifications are subject to, and conditioned upon, Tenant's compliance with provisions of Section 10.3 of this Lease and Unavoidable Delays.

EXHIBIT A-1
FLOOR PLAN OF THE PREMISES

The floor plan which follows is intended solely to identify the general location of the Premises (without exact dimensions and locations) and should not be used for any other purpose.





SPECTOR GROUP ARCHITECTS 183 MADISON AVENUE, NEW YORK, NY 10016

PROJECT NUMBER: 13310A00

December 7, 2016

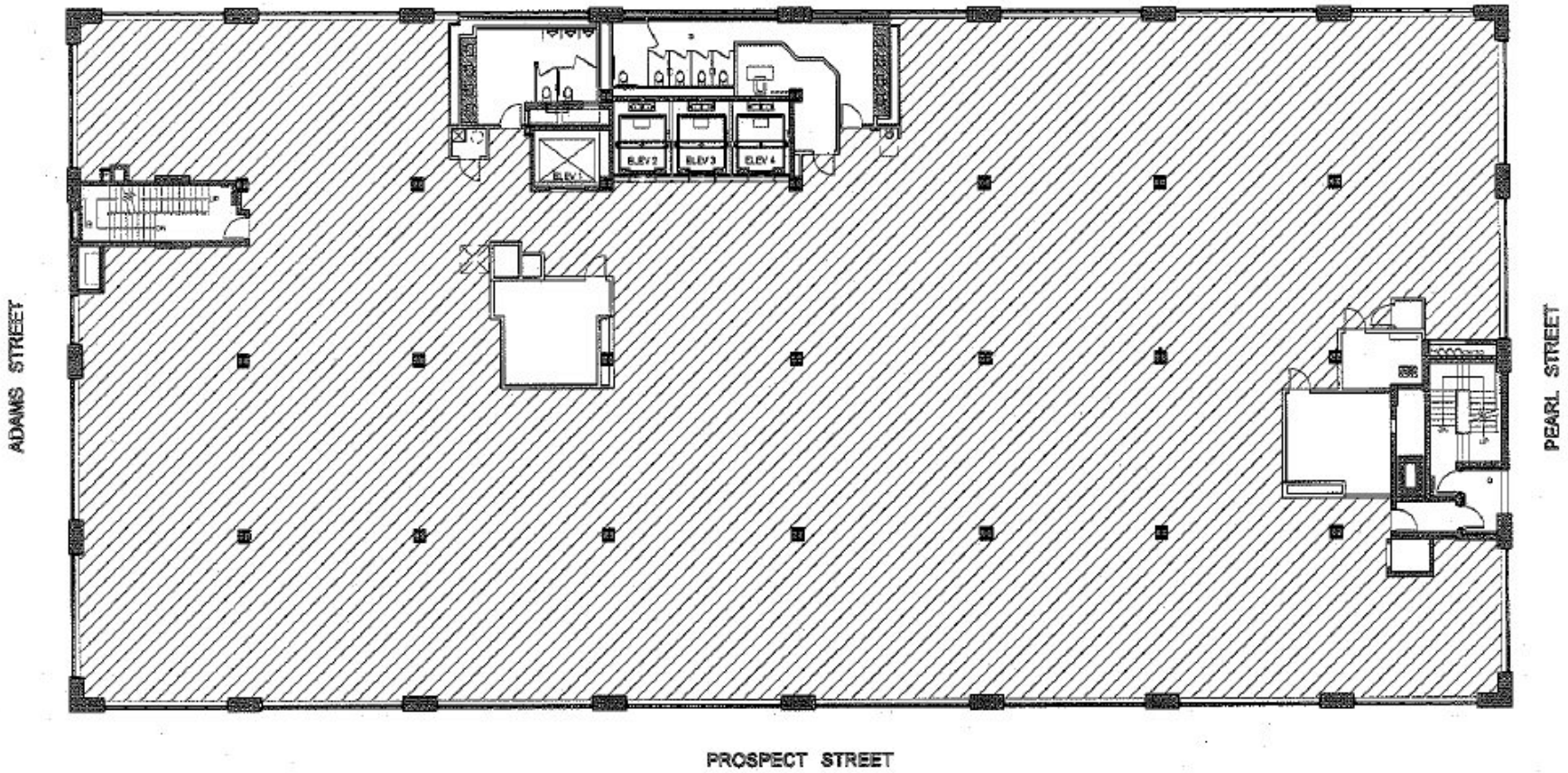
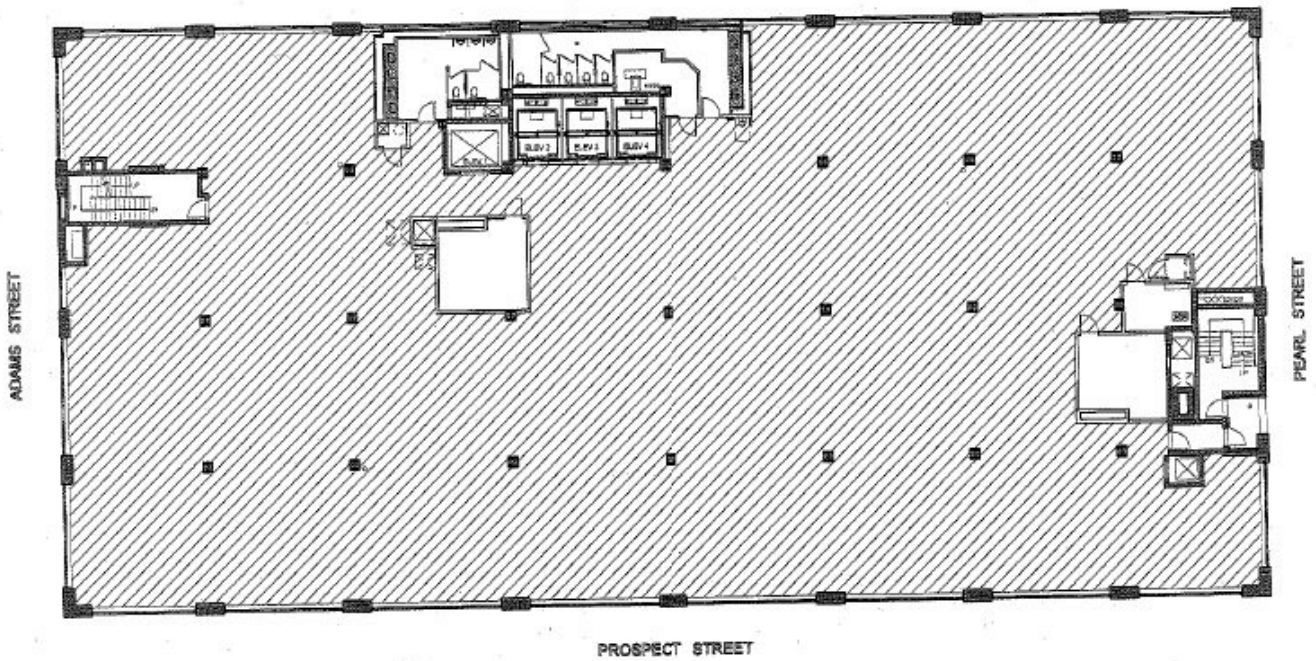

ADAMS STREET
PEARL STREET
PROSPECT STREET
ELEV 1
ELEV 2
ELEV 3
ELEV 4

EXHIBIT A-2
FLOOR PLAN OF THE EXPANSION PREMISES

The floor plan which follows is intended solely to identify the general location of the Expansion Premises (without exact dimensions and locations) and should not be used for any other purpose.



SPECTOR GROUP ARCHITECTS 153 MADISON AVENUE, NEW YORK, NY 10016
PROJECT NUMBER: 13910A00
December 7, 2016

DUMBO HEIGHTS
BUILDING 3 - 55 PROSPECT STREET
8TH FLOOR

EXHIBIT B
DEFINITIONS

Additional Rent: all sums other than Fixed Rent due and payable by Tenant to Landlord under this Lease.

Affiliate: Any person or entity which controls, is under common control with, or which is controlled by, the person or entity in question. For the purposes hereof, "control" shall be deemed to mean ownership of not less than 50% of all of the beneficial voting interests of such entity or the ability to direct the management thereof.

Base Rate: The annual rate of interest publicly announced from time to time by Citibank, N.A., or its successor, in New York, New York as its "base rate" (or such other term as may be used by Citibank, N.A., from time to time, for the rate presently referred to as its "base rate").

Building Systems: The mechanical, electrical, plumbing, sanitary, sprinkler (including vertical standpipes), heating, ventilation air conditioning, security, life-safety, elevator and other service systems or facilities of the Building up to the point of connection of localized distribution to the Premises (excluding, however, supplemental HVAC systems of tenants, sprinklers and the horizontal distribution systems within or exclusively serving the Premises and by which mechanical, electrical, plumbing, sanitary, heating, ventilating and air conditioning, security, life-safety and other service systems are distributed from the base Building risers, feeders, panel boards, etc. for provision of such services to the Premises).

Building Standard : comparable office buildings in the close vicinity to the Building.

Business Days: All days, excluding Saturdays, Sundays and Observed Holidays.

Business Hours: 8:00 a.m. to 6:00 p.m. on Business Days except Observed Holidays (and all other times are considered " **Overtime Periods** ").

Code: The Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder, as amended.

Common Areas: The lobby, sidewalk areas, and other similar areas of general access and the areas on individual multi-tenant floors in the Building devoted to corridors, elevator lobbies, restrooms, and other similar facilities serving the Premises.

Comparable Buildings: Office buildings in the Manhattan Midtown South area that are of comparable age and quality to the Building, taking into account all relevant factors.

Cost Per Kilowatt Hour: (a) The total cost for electricity incurred by Landlord to service the Building during a particular billing period (including energy charges, demand charges, surcharges, time-of-day charges, fuel adjustment charges, rate adjustment charges, taxes, rebates and any other factors used by the public utility company or other provider in computing its charges to Landlord) during such period, divided by (b) the total kilowatt hours purchased by Landlord to provide electricity to the Building during such period.

CPI : the Consumer Price Index for All Urban Consumers published by the Bureau of Labor Statistics of the United States Department of Labor, New York, N.Y. - Northeastern N.J. Area, All Items (1982-84=100), or any successor index thereto, appropriately adjusted.

Deficiency: The difference between (a) the Fixed Rent and Additional Rent for the period which otherwise would have constituted the unexpired portion of the Term, and (b) the net amount, if any, of rents collected under any reletting effected pursuant to the provisions of the Lease for any part of such period (after first deducting from such rents all expenses reasonably incurred by Landlord in connection with the termination of this Lease, Landlord's re-entry upon the Premises and such reletting, including repossession costs, brokerage commissions, reasonable attorneys' fees and disbursements.

Environmental Requirement : means any present and future Requirement and any amendments (whether common law, statute, rule, order, regulation or otherwise), permits and other requirements or guidelines of governmental authorities applicable to the Building or the Real Property and relating to the environment and environmental conditions or to any Hazardous Material (including, without limitation, CERCLA, 42 U.S.C. § 9601 et seq., the Resource Conservation and Recovery Act of 1976, 42 U.S.C. §6901 et seq., the Hazardous Materials Transportation Act, 49 U.S.C. §1801 et seq., the Federal Water Pollution Control Act, 33 U.S.C. §1251 et seq., the Clean Air Act, 33 U.S.C. §7401 et seq., the Toxic Substances Control Act, 15 U.S.C. §2601 et seq., the Safe Drinking Water Act, 42 U.S.C. §300f et seq., the Emergency Planning and Community Right-To-Know Act, 42 U.S.C. §1101 et seq., the Occupational Safety and Health Act, 29 U.S.C. §651 et seq., and any so-called " Super Fund " or " Super Lien " law, any Requirement requiring the filing of reports and notices relating to hazardous substances, environmental laws administered by the Environmental Protection Agency, and any similar state and local Requirements, all amendments thereto and all regulations, orders, decisions, and decrees now or hereafter promulgated thereunder concerning the environment, industrial hygiene or public health or safety).

Governmental Authority : The United States of America, the State of New York, the City of New York, any political subdivision thereof and any agency, department, commission, board, bureau or instrumentality of any of the foregoing, or any quasi-governmental authority, now existing or hereafter created, having jurisdiction over the Real Property, the Building or any portion thereof.

Hazardous Materials : (a) asbestos and any asbestos containing material and any substance that is then defined or listed in, or otherwise classified pursuant to, any Environmental Requirement or any other applicable Requirement as a "hazardous substance," "hazardous material," "hazardous waste," "infectious waste," "toxic substance," "toxic pollutant" or any other formulation intended to define, list, or classify substances by reason of deleterious properties such as ignitability, corrosivity, reactivity, carcinogenicity, toxicity, reproductive toxicity, or Toxicity Characteristic Leaching Procedure (TCLP) toxicity, (b) any petroleum and drilling fluids, produced waters, and other wastes associated with the exploration, development or production of crude oil, natural gas, or geothermal resources, and (c) any petroleum product, polychlorinated biphenyls, urea formaldehyde, radon gas, radioactive material (including any source, special nuclear, or by-product material), medical waste, chlorofluorocarbon, lead or lead-based product, and any other substance whose presence could be detrimental to the Building or the Real Property or hazardous to health or the environment.

HVAC System: The Building System designed to provide heating, ventilation and air conditioning.

Indemnitees: Landlord, Landlord's Agent, each Mortgagee and Lessor, and each of their respective partners, officers, shareholders, directors, members, managers, trustees, beneficiaries, employees, principals, servants, agents, and representatives.

Landlord Party : Landlord and its agents, contractors, subcontractors, employees, invitees or licensees.

Lessor: A lessor under a Superior Lease.

Losses: Any and all actual losses, liabilities, damages, claims, judgments, fines, suits, demands, costs, interest and expenses of any kind or nature (including reasonable attorneys' fees and disbursements) incurred in connection with any claim, proceeding or judgment and the defense thereof, and including all reasonable and actual costs of repairing any damage to the Premises or the Building or the appurtenances of any of the foregoing to which a particular indemnity and hold harmless agreement applies.

Mortgage(s): Any mortgage, trust indenture or other financing document which may now or hereafter affect the Premises, the Building or any Superior Lease and the leasehold interest created thereby, and all renewals, extensions, supplements, amendments, modifications, consolidations and replacements thereof or thereto, substitutions therefore, and advances made thereunder.

Mortgagee(s): Any mortgagee, trustee or other holder of a Mortgage.

Observed Holidays: New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day.

Prohibited Use: Any use or occupancy of the Premises (except the Permitted Use) and Tenant's Roof Deck Area (except the RDA Permitted Use) that in Landlord's reasonable judgment would: (a) cause damage to the Building or any Building Systems ; (b) interfere with the efficient and economical maintenance, operation and repair of the Building or the Building Systems; (c) adversely affect any service provided to, and/or the use and occupancy by, any tenant or occupants of the Building; (d) violate the certificate of occupancy issued for the Premises or the Building, subject to Tenant's right to obtain, at Tenant's cost, an amendment or modification of the same for Tenant's Permitted Use and the RDA Permitted Use, subject to Landlord's reasonable approval provided such amendment does not adversely affect Landlord, the Building or other occupants in any such case beyond a de minimus extent; or (e) result in protests or civil disorder or commotions at, or other disruptions of the normal business activities in, the Building. Prohibited Use also includes the use of any part of the Premises for: (i) intentionally omitted; (ii) the preparation, consumption, storage, manufacture or sale of liquor, tobacco or drugs; (iii) the business of photocopying, multilith or offset printing (except photocopying in connection with Tenant's own business); (iv) intentionally omitted; (v) lodging or sleeping; (vi) the operation of a savings and loan association or off-the-street retail facilities of any financial, lending, securities brokerage or investment activity; (vii) a payroll office (except payroll for Tenant's own personnel); (viii) a barber, beauty or manicure shop; (ix) an employment agency or similar enterprise; (x) offices of any Governmental Authority, any foreign government, the United Nations, or any agency or department of the foregoing (unless any sovereign or diplomatic immunity has been waived in a manner satisfactory to Landlord in

Landlord's sole and absolute discretion); (xi) the manufacture, retail sale, storage of merchandise or auction of merchandise, goods or property of any kind to the general public which could reasonably be expected to create a volume of pedestrian traffic substantially in excess of that normally encountered in the Premises; (xii) the rendering of medical, dental or other therapeutic or diagnostic services; or (xiii) any illegal purposes.

RDA Permitted Use : means the following uses of Tenant's Roof Deck Area by Tenant (which, in all cases, are not open to the general public): lounge areas, corporate or corporate sponsored events, meeting and gathering areas, dining area, and any customary lawful ancillary purposes reasonably related to any of the foregoing; provided, in all cases, (a) Tenant obtains (at its cost and expense but with Landlord's reasonable cooperation, if needed at not cost of liability or adverse effect to Landlord) any and all required permits, licenses and certificates for such use (including, without limitation, any changes to the certificate of occupancy for the Building necessitated by such RDA Permitted Uses), (b) Tenant shall perform and pay for any necessary extermination, exhaust or ventilation and excess cleaning necessitated by the use of such space for such RDA Permitted Uses, (c) such uses shall be in compliance with the terms of this lease and Requirements (including, without, limitation, the TCO and/or CO, as applicable), and (d) such roof uses are customarily found in Comparable Buildings with comparable rooftop use.

Requirements: All present and future laws, rules, orders, ordinances, regulations, statutes, requirements, codes and executive orders, extraordinary and ordinary of (i) all Governmental Authorities, including, without limitation, (A) the Americans With Disabilities Act, 42 U.S.C. §12101 (et seq.) (" **ADA** "), New York City Local Law 58 of 1987, and (B) any law of like import, and all rules, regulations and government orders with respect thereto, and any of the foregoing relating to Hazardous Materials, environmental matters, public health and safety matters, and landmarks preservation, (ii) any applicable fire rating bureau or governing insurance body or other body exercising similar functions, affecting the Building or the maintenance, use or occupation thereof, or any street, avenue or sidewalk comprising a part of or in front thereof or any vault in or under the same. "Requirements" shall also include the terms and conditions of any certificate of occupancy issued for the Premises or the Building (as such may be amended or replaced).

Rules and Regulations: The rules and regulations annexed to and made a part of this Lease as Exhibit E, as they may be modified from time to time for the use, operation and maintenance of the Building, provided that notice thereof is given and such rule is not materially inconsistent with the provisions of this Lease. Landlord reserves the right, from time to time, to adopt additional reasonable Rules and Regulations and to amend the Rules and Regulations then in effect; provided, however, that such additional Rules and Regulations shall not materially adversely affect Tenant's rights or obligations hereunder, and provided, further that in the event of any conflict between such additional Rules and Regulations and the terms of this Lease, the terms of this Lease shall prevail.

Substantial Completion: As to any construction performed by any party, " **Substantial Completion** " or " **Substantially Completed** " means that such work has been completed, in accordance with (a) the provisions of this Lease or a Work Letter applicable thereto, (b) the approved plans and specifications for such work (as such may have been properly modified and approved by Landlord if applicable), and (c) all applicable Requirements (except for the Primary Base Building Roof Work which shall be deemed to be Substantially Completed notwithstanding that Tenant's Roof Deck Area may not comply with all Requirements related thereto until all of the Roof Work is Substantially Complete), except for minor details of construction, decoration

and mechanical adjustments, if any, the non-completion of which does not interfere with Tenant's use of the Premises or Tenant's Roof Deck Area or which in accordance with good construction practice should be completed after the completion of other work in the Premises or the Building (" **Punch List Items** ").

Superior Lease(s): Any ground or underlying lease of the Building or any part thereof heretofore or hereafter made by Landlord and all renewals, extensions, supplements, amendments, modifications, consolidations, and replacements thereof.

Tenant Party: Tenant, its agents and employees, and any subtenants and occupants of the Premises, other than a Landlord Party, and their respective agents, contractors, subcontractors, employees, invitees or licensees.

Tenant's Property: Tenant's movable fixtures and movable partitions, telephone and other movable equipment, computer systems, telecommunications data and other cabling, trade fixtures, furniture, furnishings, and other items of personal property which are removable without material damage to the Buildings.

Unavoidable Delays: Either party's inability to fulfill or delay in fulfilling any of its non-monetary obligations under this Lease expressly or impliedly to be performed by such party or such party's inability to make or delay in making any repairs, additions, Alterations, improvements or decorations or such party's inability to supply or delay in supplying any equipment or fixtures, if such party's inability or delay is due to or arises by reason of strikes, labor troubles, or by any cause whatsoever beyond such party's reasonable control, including governmental preemption in connection with a national emergency, or shortages, or unavailability of labor, fuel, steam, water, electricity or materials, or delays caused by the other party or other tenants, mechanical breakdown, acts of God, enemy action, civil commotion, fire or other casualty (but specifically excluding delays caused by such party's financial difficulties).

Work Letter : shall mean collectively or individually, the Work Letter contained in **Exhibit C** with respect to the initial Premises and the Roof Deck Area and the Expansion Premises Work Letter contained in **Exhibit M** with respect to the Expansion Premises.

EXHIBIT C
WORK LETTER

1. **General** .

1.1 As used herein " **Landlord's Premises Work** " shall mean, collectively the Premises Build-Out Work, the Base Building Work, the Primary Base Building Roof Work and **"Landlord's Secondary Roof Work** " shall mean, collectively the Tenant's Roof Work and the Secondary Base Building Roof Work. The purpose of this Work Letter is to set forth (i) how the interior improvements to the 9 th and 10 th Floor Premises which Tenant desires to have completed in connection with Tenant's initial occupancy of the 9 th and 10 th Floor Premises including, if selected by Tenant as part of Tenant's Plans, the construction of a sky light (the " **Skylight** ") on Tenant's Roof Deck Area as part of the 10 th Floor Premises ceiling (" **Premises Build-Out Work"**) are to be constructed, (ii) who will do the construction of Landlord's Premises Work and the Secondary Roof Work, and (iii) who will pay for the construction of Landlord's Premises Work and Landlord's Secondary Roof Work. Landlord's Premises Work shall include the Base Building Work and (i) the construction of an internal hydraulic lift and stairwell (collectively, the " **Stairway/Lift** ") from the 10th floor to Tenant's Roof Deck Area with a slab cut (the " **Slab Cut** ") to fit Stairway/Lift, (ii) the relocation of toilet exhaust that is on the way of path of egress to the left side fire stair, (iii) the construction of the Skylight, if applicable (i.e., if the applicable plans related thereto are timely submitted and approved by Landlord), (iv) the installation of a roof membrane (collectively, (i), (ii), (iii) (if applicable), and (iv) the " **Primary Base Building Roof Work** "). Landlord's Secondary Roof Work shall also include (i) the installation of a glass extension of the existing parapet wall, in the location set forth on **Exhibit K** , which will comply with Requirements on the day such walls are installed, (ii) the installation of a barrier (the type of such barrier, including materials, height, color, etc. to be reasonably determined by Landlord in consultation with Tenant) between Tenant's Roof Deck Area and the remainder of the roof of the Building, (iii) the installation of a barrier (the type of such barrier including materials, height, color, etc. to be reasonably determined by Landlord in consultation with Tenant) between the Tenant Roof Deck Area and the Building equipment currently located on the roof of the Building, and (iv) the installation of pavers to cover the portion of the Tenant Roof Deck which will allow egress between Fire Stair A and Fire Stair B in the location set forth on **Exhibit K** (collectively, (i), (ii), (iii), and (iv), the " **Secondary Base Building Roof Work** " and together with the Primary Base Building Roof Work, the " **Base Building Roof Work** "). For the avoidance of doubt, the Skylight, and all work related thereto, if applicable, shall be at Tenant's sole cost (but subject to reimbursement from Landlord's Contribution in accordance with the terms hereof).

1.2 The terms, conditions and requirements of the Lease, except where clearly inconsistent or inapplicable to this Work Letter, are incorporated into this Work Letter.

2. **Plans** .

2.1 In accordance with the provisions of this Work Letter, Landlord's Architect shall submit to Landlord complete and detailed architectural, structural, mechanical and engineering plans and specifications (including, without limitation, sprinkler plans) for Landlord's Premises Work (the " **Proposed Plans** "), the cost and expense of which shall be paid for by Landlord (but subject to the terms and conditions of this Work Letter, including, without limitation, reimbursement from the Landlord's Contribution), by Gensler (" **Landlord's Architect** ") which has been engaged by Landlord to prepare the Proposed Plans for Tenant.

The Proposed Plans shall be based upon the layout plan attached hereto as **Exhibit C-1** (the " **Layout Plan** "), which Layout Plan shall include drawings related to the Premises Build-Out work (on the 9 th and 10 th Floors of the Building) and the Roof Work, provided that Tenant may, in its sole discretion, modify the Layout Plan from time to time (subject to the procedure below for Change Orders and identification by Landlord of any Tenant Delays pursuant to the procedures set forth in Section 4 of this Work Letter). If applicable, the Proposed Plans shall include all information reasonably necessary to reflect Tenant's requirements for ductwork, heating, electrical, plumbing and other mechanical systems and all work necessary to connect any special or non-standard facilities to the base-Building mechanical, electrical and structural systems which were communicated to Landlord and Landlord's Architect in accordance with the terms hereof. For the avoidance of doubt, the plans incorporating the Slab Cut, the Stairway/Lift (and any other Base Building Roof Work) shall be prepared by Landlord's Architect at Landlord's sole cost and expense. The Proposed Plans shall, as applicable, include the following:

(a) locations and structural design of the floor area;

(b) indication of the density of occupancy in large work areas;

(c) identification of the location of any food service areas or vending equipment rooms;

(d) identification of areas requiring 24-hour air conditioning;

(e) indication of any partitions that are to extend from floor to underside of structural slab above;

(f) identification of location of rooms for telephone equipment and data;

(g) indication of locations and types of plumbing, if any, required for toilets (other than core facilities), sinks, drinking fountains, and similar installations;

(h) indication of light switching of offices, conference rooms, etc.;

(i) layouts for specially installed equipment, including computers, size and capacity of mechanical and electrical services required, and heat generation of equipment;

(j) indication of dimensioned location of: (i) submeters for measurement of Tenant's consumption of electrical energy pursuant to **Section 10.1** of the Lease (the cost of the submeters shall be a Landlord sole cost), (ii) electrical receptacles (120 volts), including receptacles for wall clocks, and telephone outlets and their respective locations (wall or floor), (iii) electrical receptacles for use in the operation of Tenant's business equipment which requires 208 volts or separate electrical circuits, and (iv) special audio-visual requirements;

(k) indication of number and location of sprinklers;

(l) indication of special fire protection equipment and raised flooring;

(m) reflected ceiling plan;

(n) information concerning air conditioning loads, including, but not limited to, air volume amounts at all supply vents;

(o) non-building standard ceiling heights and/or materials;

(p) materials, colors and designs of wall coverings and finishes;

(q) painting and decorative treatment required to complete all construction;

(r) swing of each door;

(s) schedule for doors (including dimensions for undercutting of doors to clear carpeting) and frames complete with hardware; and

(t) all other information necessary to make the Premises complete and in all respects ready for operation.

2.2 The development of the Proposed Plans by Landlord's Architect is expected to be a collaborative process among Landlord, Tenant and Landlord's Architect, with Landlord reasonably approving progressive stages of plan completion (i.e., 25%, 50% and 75% CDs) at reasonable intervals before April 25, 2017 (and at each interval giving Landlord at least ten (10) Business Days to review each such stage of drawings). Within ten (10) Business Days after Landlord receives a stage of Proposed Plans, Landlord shall either approve or disapprove same (or provide a request for more information), which approval or disapproval shall be in accordance with the standards set forth in Section 5.1(a) of the Lease with respect to Landlord's approval or disapproval of Alterations (and any reasons for disapproval shall be referred to as, a " **Design Problem** "); provided that the failure of Landlord to respond to an initial submission within ten (10) Business Days or a resubmission after Landlord's comment within seven (7) Business Days shall be a Landlord Delay. If Landlord determines that a Design Problem exists, it shall return the Proposed Plans to Tenant together with a reasonably specific explanation of the applicable Design Problem. In such event, Tenant shall be required to make the revisions necessary (which revisions shall not expand the scope of the work but shall only be responses or corrections to Landlord's comments and/or the Design Problem(s) in question) in order to address Landlord's comments and correct the Design Problem(s) in full and, within five (5) Business Days thereafter, return the revised Proposed Plans to Landlord, which Landlord shall then approve or disapprove (or provide a request for more information) within seven (7) Business Days after receipt. Each subsequent stage of plans provided to Landlord shall be a logical progression of the immediately preceding stage of plans approved by Landlord (subject to Change Orders).

2.3 Landlord's standards for approval of a Change Order (as hereinafter defined) shall be subject to the standards set forth in Section 2.2 above. Landlord and Tenant shall exercise all reasonable diligence to cooperate in the expeditious pursuit of plan and contractor approval and the award of the construction contract and subcontracts in connection with Landlord's Premises Work and the Secondary Roof Work, including awarding portions of the construction contracts and obtaining permits based upon partially complete Proposed Plans. Landlord's Architect and the general contractor and construction manager shall have no obligation to self-certify permit applications and/or inspections.

2.4 Other than as specified above in Section 1.1 of this Work Letter and the

Layout Plan (and the natural extension of such work into other structural components and/or the roof area) and any permitted exterior signage as set forth in the Lease, Landlord shall not be required to perform, and Tenant shall not request, work which would (i) require any material modification to the Building Systems or other Building installations outside the Premises, (ii) not comply with all applicable Requirements, and/or (iii) be incompatible with either the temporary or permanent certificate of occupancy issued for the Building (provided the same shall not limit Tenant's right to obtain an amendment to the temporary or permanent certificate of occupancy for the Intended Use and the RDA Permitted Use) or the Building's status as a first-class office building. Any changes required by any Governmental Authority affecting the Premises Build-Out Work or Tenant's Roof Work shall be performed by Landlord, at Tenant's sole cost (subject to reimbursement from Landlord's Contribution or the Roof Contribution) provided that any changes orders required to effect such compliance shall be subject to Tenant's reasonable approval to be granted or withheld within four (4) Business Days after request or such consent is deemed granted (the parties agreeing to work cooperatively to arrive at a mutually satisfactory resolution). Landlord shall give notice to Tenant of any material change in the Proposed Plans required by any Governmental Authority promptly after Landlord receives notice thereof.

2.5 Tenant shall cooperate in the completion of final and mutually acceptable Proposed Plans (the " **Final Proposed Plans** ") based on preliminary plan submissions previously reviewed and approved and shall cause Landlord's Architect to submit the same to Landlord for final approval on or before May 1, 2017 (the date such Final Proposed Plans are actually delivered to Landlord, the " **Final Proposed Plans Delivery Date** "). Within ten (10) Business Days after Landlord receives the Final Proposed Plans, Landlord shall approve or disapprove the same pursuant to the procedures set forth above in Section 2.2 (and such finally approved Final Proposed Plans by Landlord with written approval delivered to Tenant, the " **Final Plans** "), and the date such Final Plans are approved by Landlord shall be the " **Final Plans Approval Date** ". Notwithstanding anything to the contrary contained herein, in order for the Skylight (and the roof membrane) to be Substantially Completed with rest of Landlord's Premises Work, Landlord must receive final architectural and engineering plans related thereto on or prior to February 15, 2017. Landlord shall either approve or disapprove of such plans pursuant to the procedures set forth above in Section 2.2.

2.6 Tenant shall not make any material changes to logical progression of the Proposed Plans nor any changes in the Final Plans without Landlord's prior approval, which approval shall not be unreasonably withheld, conditioned or delayed, provided that, except for the work described in Section 1.1 of this Work Letter and the Layout Plans in accordance with the terms above, Landlord may, in the exercise of its sole and absolute discretion, disapprove any proposed changes adversely affecting the Building's structure, any of the Building Systems, or the exterior appearance or value of the Building (provided that Tenant shall be permitted to make material changes to Proposed Plans to remove the Skylight (or substitute the Skylight with additional stairs, provided that any delay to the Substantial Completion of Landlord's Premises Work caused by such changes shall be deemed to be a Tenant Delay).

3. **Work and Costs** .

3.1 Landlord has engaged Benchmark Builders, Inc. (" **Construction Manager** ") to act as construction manager for the planning and performance of Landlord's Premises Work.

3.2 Subject to the provisions of **Section 2** and this **Section 3** , Landlord shall perform or cause to be performed all of the work depicted on the Final Plans. Landlord shall be

responsible for all the costs and expenses to design and complete the Base Building Work and the Base Building Roof Work. Landlord shall also pay for the Premises Build-Out Work and the Tenant Roof Work depicted on the Final Plans (and all architectural costs, engineering costs, general contractor costs, and the cost of all local and state filing fees and permits required to be obtained in order to perform such work) to the extent and only to the extent of an aggregate expenditure with respect to all the aforementioned costs in an amount not to exceed $3,975,000.00 (" **Landlord's Contribution** "). Tenant shall pay for the cost of any work or materials depicted on the Final Plans and/or other costs directly related to the Premises Build-Out Work, including, without limitation all architectural costs of Landlord's Architect, engineering costs, project management fees, general contractor costs, and the costs of all filing fees and permits required by any Governmental Authority and incurred by Landlord in connection with the Premises Build-Out Work and Tenant's Roof Work, which are in excess of Landlord's Contribution or the Roof Work Contribution, as applicable (" **Tenant's Contribution** "), which excess shall be paid in accordance with the following: (1) 34% of the then estimated (based upon the sum of the winning bids or the amount of the fixed priced or GMP type contract as reasonably determined by Landlord) Tenant's Contribution shall be paid within ten (10) days after submission to Tenant of a reasonably detailed summary with applicable supporting documentation from Landlord or Construction Manager but no earlier than the earlier of awarding or selecting the winning bids for substantially all the Premises Build-Out Work (excluding the Expansion Premises) or sooner finalizing of a fixed price or GMP type contract between Landlord and the Construction Manager or general contractor, (2) 33% of the then estimated (based upon the sum of the winning bids or the amount of the fixed priced or GMP type contract as reasonably determined by Landlord) Tenant's Contribution shall be paid within ten (10) days after 50% of Landlord's Premises Work is Substantially Completed (as reasonably determined Landlord and certified by Landlord's Architect), and (3) the balance of Tenant's Contribution shall be paid within ten (10) days after the earlier of (x) Substantial Completion of Landlord's Premises Work and (y) Tenant's occupancy of the Premises for the conduct of business. The payments to be made by Tenant as provided in this Section 3.2 shall be collectible in the same manner as Additional Rent under the Lease, whether or not the Term of the Lease shall have commenced. The Tenant Contribution shall be immediately payable upon an Event Default. All Change Costs shall be paid as set forth in Section 6 below.

3.3 Landlord shall submit to Tenant, as soon as reasonably practicable, the total estimated cost of the Premises Build-Out Work and Tenant's Roof Work (which shall be updated regularly during the development of the Proposed Plans as provided above).

3.4 To the extent that the Final Plans include any work to the roof which is not Base Building Roof Work (" **Tenant Roof Work** "), Landlord shall perform such Tenant Roof Work as part of Landlord's Premises Work. Upon Tenant's written request made within fifteen (15) days following approval of the Proposed Plans, Landlord shall make available to Tenant up to an additional amount equal to $300,000.00 (the " **Roof Work Contribution** ") and in such event Landlord's Contribution shall include the Roof Work Contribution, *provided* , *however* , that the Roof Work Contribution shall be applied to the costs of Tenant Roof Work and the design, purchase and construction of the Skylight only (and any amount not so applied shall be deducted from Landlord's Contribution). The Primary Base Building Roof Work, Secondary Base Building Roof Work, and the Tenant Roof Work, and the shall be collectively referred to herein as the " **Roof Work** ".

3.5 Landlord has hired, and Tenant approves of, CBRE, Inc. to act as project manager (" **Project Manager** ") to assist with the planning and performance of Landlord's Premises Work. Project Manager shall be paid an amount equal to 3% of the cost of the Premises Build-Out Work and Tenant's Roof Work (the " **Project Manager Fee** "), which shall be

deducted from (as applicable) Landlord's Contribution or the Roof Work Contribution. For the avoidance of doubt, it is agreed that Landlord shall not receive a supervisory or override fee in respect of the performance of Landlord's Premises Work and Tenant's Roof Work.

3.7 Notwithstanding anything to the contrary contained herein or in the Lease, during the performance of Landlord's Premises Work or Tenant's Roof Work, the cost of any overtime freight elevator use shall be limited to the actual costs Landlord incurs for the use thereof (i.e., there shall be no additional mark-up in addition to such actual costs). In that regard, Landlord shall use the services of the overtime freight elevators in a reasonable and customary manner and for reasonable and customary needs in connection with prudent construction practices for similar projects.

3.8. Tenant shall be responsible for $100,000.00 of the cost and expense for any hoists, exterior cranes or sidewalk bridges with respect to Landlord's Premises Work or the Roof Work that is erected or installed in connection with Landlord's Premises Work or the Roof Work (collectively, " **Hoist Costs** "). Landlord shall be responsible for Hoist Costs in excess of $100,000.00.

3.9 Subject to the Hoist Costs and other costs specifically and expressly provided for herein (e.g., costs related to Change Orders as provided herein), Landlord shall be solely responsible for all costs and expense incurred in connection with designing and completing the Base Building Work and the Base Building Roof Work (other than the design and construction of the Skylight which, except for the cost of the roof membrane and its interface with the Skylight, shall be at Tenant's cost, subject to the following sentence), including, without limitation, hard costs, engineering fees, Landlord's Architect's fees, and the Construction Management Fee. Subject to Landlord's Contribution (with respect to the Premises Build-Out Work) and Landlord's Roof Contribution (with respect to Tenant's Roof Work), Tenant shall be solely responsible for the cost and expense of completing the Premises Build-Out Work and Tenant's Roof Work, including, without limitation, hard costs, engineering fees, Landlord's Architect's fees, and the Construction Management Fee related thereto, in addition to the design and construction fees related to the Skylight. Landlord shall be solely responsible for performing all of the foregoing. For the avoidance of doubt, any incremental costs incurred by Landlord in in connection with the cost of the roof membrane and its interface with the Skylight which would not have been incurred had a Skylight not been part of Landlord's Premises Work, shall be at Tenant's cost.

3.10. Within 30 days following the Substantial Completion of Landlord's Work and Landlord's Roof Work and 60 days after final completion of the same, Landlord, upon Tenant's request, shall provide Tenant with a preliminary accounting and then final accounting in reasonable detail, together with all reasonable backup and supporting materials reasonably requested by Tenant, prepared by or for Landlord for all amounts incurred in connection with such Landlord's Work and Landlord's Roof Work (but excluding the Base Building Work and the Primary Base Building Roof Work). Upon mutual agreement of the finality thereof, there shall be adjustments between Landlord and Tenant to the end that Landlord or Tenant has underpaid or overpaid any amount due from such party pursuant to the terms of this Work Letter. Any overpayment by Tenant shall be payable by Landlord to Tenant within thirty (30) days after the determination thereof. In the event that Tenant and Landlord are unable to agree on the finality of any adjustments after using good faith efforts to resolve the same for at least thirty (30) days and after Tenant sends in writing a reasonably detailed explanation of the amounts in dispute, then Tenant and Landlord shall appoint an Approved Examiner to resolve any such adjustments, whose determination shall be binding upon the parties. Any underpayment by

Tenant shall be due and payable within thirty (30) days after determination thereof. " **Approved Examiner** " means a certified public accountant or other qualified professional who is a member of a reputable, independent certified public accounting firm or other reputable, qualified professional services firm having at least fifty (50) accounting professionals who are certified public accountants and who is mutually acceptable to Landlord and Tenant; provided that if Landlord and Tenant are unable to agree upon an Approved Examiner then Landlord and Tenant shall each appoint a certified public accountant and each appointee shall appoint a single certified public accountant or other qualified professional meeting the qualifications set forth above to be the Approved Examiner. Each of Landlord and Tenant shall bear the costs of its appointee hereunder and share equally the costs of the Approved Examiner.

4. **Tenant Delay.**

4.1 If Landlord shall be delayed in Substantially Completing Landlord's Premises Work as a result of any act, neglect, failure or omission of Tenant, its agents, servants, employees, contractors or sub-contractors, including, without limitation, any of the following, such delay shall be a " **Tenant Delay** " to the extent such delay actually results in a delay in the Substantial Completion of Landlord's Premises Work:

(a) Tenant's delay in supplying or failure to supply information or to approve plans, drawings and specifications in accordance with and at the times referred to herein, including **Sections 2** hereof; or

(b) Tenant's request for materials, finishes or installations which are not readily available at the time Landlord is ready to install same (e.g., long lead items); or

(c) Tenant's changes in drawings, plans or specifications submitted to or prepared by Landlord or Landlord's Architect (including, without limitation, any Change Orders, as hereinafter defined); or

(d) the performance of work by a person, firm or corporation employed by Tenant and delays in the completion of the said work by said person, firm or corporation; or

(e) Tenant's failure to timely pay for the cost of Tenant's Contribution pursuant to **Section 3.4;** or

(f) The failure of Landlord to receive the Final Proposed Plans in compliance with the terms hereof by the Final Proposed Plans Delivery Date; or

(g) Any material deviation between the Layout Plans and the Final Proposed Plans.

If the Substantial Completion Date (as hereinafter defined) shall be delayed by reason of Tenant Delay, the Landlord's Premises Work shall be deemed Substantially Completed for the purposes of determining the Commencement Date as of the date that the Landlord's Premises Work would have been Substantially Completed but for any such Tenant Delay as determined by Landlord in its reasonable discretion (provided that Landlord shall continue to use all diligent efforts to complete such Landlord's Premises Work).

To the extent that Tenant submits design drawings or other reasonably detailed to plans to Landlord prior to the submission of the Proposed Plans, Landlord shall use reasonable efforts to delineate items depicted thereon which may be reasonably expected to be long lead items. If long lead items are identified by Landlord, Landlord agrees to use reasonable efforts to mitigate the length of time required to obtain and/or install such items, as applicable, or suggest reasonable alternatives and materials that may not be long lead items.

Tenant acknowledges and agrees that notwithstanding which party engages Landlord's Architect to prepare construction drawings for Landlord's Premises Work, the time periods and dates for which plans are required to be delivered shall be binding upon the parties even if delays are attributable to Landlord's Architect, but subject to delays caused solely by Landlord's wrongful or negligent acts or material changes unilaterally requested by Landlord to Tenant's Premises Work and not in response to Tenant's changes.

4.2 Tenant shall pay to Landlord a sum equal to any actual out-of-pocket incremental additional cost to Landlord in completing Landlord's Premises Work resulting from (i) any Tenant Delay, and/or (ii) on account of any Change Orders (but not any increase in Hoist Costs). Any such sums shall be in addition to any sums payable pursuant to **Sections 3.3, 3.4 and 3.5** hereof and shall be paid to Landlord within 10 Business Days after Landlord submits an invoice to Tenant therefor.

4.3 No Tenant Delay shall be deemed to have occurred unless and until Landlord has provided written notice to Tenant specifying the action or inaction that constitutes a Tenant Delay, except to the extent that Tenant has actual notice or constructive notice (e.g., response time frames pursuant to the terms hereof or circumstances for which the Lease expressly states same is a Tenant Delay) of Tenant Delay, in which case no such notice is required. If such action or inaction is not cured within two (2) Business Days after receipt of such notice, then a Tenant Delay as set forth in such notice shall be deemed to have occurred commencing as of the date such notice is received and continuing for the number of days the substantial completion of Landlord's Premises Work was in fact delayed as a result of such action or inaction (and if no notice is required as aforesaid, then the applicable Tenant Delay shall be deemed to have occurred commencing as of the date of such occurrence of Tenant Delay and continue for the number of days the substantial completion of Landlord's Premises Work was in fact delayed as a result of such action or inaction).

5. **Entry by Tenant and Its Agents; Designation of Tenant's Construction Agent** .

5.1 Except for Early Access Work, as provided in Section 7 of this Work Letter or as otherwise permitted by Landlord, neither Tenant nor its agents, employers, invitees or independent contractors shall enter the Premises during the performance of Landlord's Premises Work within the 9 th Floors and 10 th Floors. Tenant hereby designates Jason Peterman as its authorized agent (" **Tenant's Construction Agent** ") for the purpose of submitting to Landlord and authorizing any Change Orders and for the purpose of consulting with Landlord as to any and all aspects of Landlord's Premises Work.

5.2 If Tenant shall enter upon the Premises or any other part of the Building prior to the Commencement Date, as may be above permitted by Landlord, Tenant shall indemnify and save Landlord harmless from and against any and all Losses arising from or claimed to arise as a result of (i) any act, neglect or failure to act (where Tenant had a duty to

act) of Tenant or anyone entering the Premises or Building with Tenant's permission, or (ii) any other reason whatsoever arising out of Tenant's entry upon the Premises or Building.

6. **Change Orders** . If Tenant requests any change, addition or deletion to the Final Plans (collectively referred to as a " **Change Order** "), then a request for such Change Order shall be submitted to Landlord for Landlord's approval. Landlord shall not unreasonably withhold its consent to any requested Change Order in accordance with the standards set forth in Section 2.2 of this Work Letter, and grant or deny its consent thereto within (x) five (5) Business Days after Landlord's receipt of a Change Order which satisfies all of the Reasonable Alteration Conditions, or (y) ten (10) Business Days after Landlord's receipt of a Change Order which does not satisfy all of the Reasonable Alteration Conditions and if such change is material or extensive, such additional time as may be reasonably required to respond based on the magnitude of such change. Any Design Problem shall be handled in accordance with the correction procedures established therefor in Section 2.2 of this Work Letter. If a Change Order is approved by Landlord, Landlord shall, together with its notice of approval, notify Tenant of its reasonable, good faith estimate (collectively, **"Landlord's Change Estimate"**) of: (i) the cost (or savings) which will be chargeable to Tenant as a result of such Change Order, which cost (or savings) shall the actual additional out-of-pocket incremental cost (or savings) of the Change Order (without additional mark-up paid directly to Landlord), taking into account any costs savings as the result of such Change Order and payable by Tenant to Landlord in connection with such Change Order (" **Change Cost** ") and (ii) the delay, if any, in Substantial Completion of Landlord's Premises Work (which shall include, without limitation, any additional time taken to renew such Change Order and revised plans and/or to obtain required permits or file documents with the NYC DOB, which Landlord shall diligently pursue) by reason of such Change Order (and shall be deemed a Tenant Delay for such delay period subject to Landlord's). Such Change Cost shall include, without limitation, all actual out of pocket costs reasonably incurred by Landlord as a result of any such delay in completion of the Landlord's Premises Work directly resulting from such Change Order, if any, and so specified in Landlord's Change Estimate. Tenant shall within two (2) Business Days after Landlord's delivery to Tenant of Landlord's Change Estimate, notify Landlord in writing whether it desires to proceed with such Change Order. Tenant shall not make any changes to (or that affect beyond a de minimis extent) Landlord's Base Building Work. If such Change Orders increase the cost of constructing the Landlord's Premises Work shown on the Final Plans, such cost shall be added to the cost of Landlord's Premises Work and paid by the parties in accordance with this **Exhibit C** , subject in all events to the Landlord's Contribution. Landlord may, in the exercise of its sole and absolute discretion, disapprove any proposed Change Orders which do not satisfy all of the Reasonable Alteration Conditions. All reasonable and actual delays to the Substantial Completion Landlord's Premises Work resulting from a Change Order submission review (whether or not Landlord proceeds with such change) shall be deemed a Tenant Delay.

7. **Construction Process** . It is intended that performance of Landlord's Premises Work be pursuant to a so-called "Open Book" process, whereby representatives of Landlord, Landlord's Construction Manager and Tenant if same are provided (collectively, the " **Work Parties** ") will work jointly and in good faith to timely prosecute the construction process to completion in accordance with the terms of the Lease. The Work Parties shall endeavor to meet not less than bi-weekly to review the progress of Landlord's Premises Work and promptly resolve any issues that arise during the course thereof. Minutes shall be recorded at all meetings of the Work Parties and cover, to the extent applicable the following:

(i) review of contractor's work schedule to anticipate items of contractor's work next falling due;

(ii) review of shop progress and shop drawing process submitted by contractor;

(iii) tracking of contractor's long-lead items;

(iv) logging of Change Orders;

(v) preparation of detailed minutes of each meeting; and

(vi) review of invoicing process, updating of schedule of value of Landlord's Premises Work and Tenant's Roof Work, excluding Base Building Work.

8. **Substantial Completion** . The determination of the date on which Landlord's Work shall be Substantially Complete, and Punch List Items, shall be handled in accordance with Article 4 of the Lease.

9. **Miscellaneous** .

9.1 This Work Letter shall not be deemed applicable to any additional space added to the original Premises at any time or from time to time, whether by any options under the Lease or otherwise, or to any portion of the original Premises or any additions thereto in the event of a renewal or extension of the initial term of the Lease, whether by any options under the Lease or otherwise, unless expressly so provided in the Lease or any amendment or supplement thereto.

9.2 The failure by Tenant to pay any monies due Landlord pursuant to this Work Letter within 10 Business Days (or such longer period, if applicable) of the date due shall be deemed an Event of Default under the Lease for which Landlord shall be entitled to exercise all remedies available to Landlord for nonpayment of Rent and Landlord, may, if it so elects, discontinue construction of Landlord's Work until all such sums are paid and Tenant has otherwise cured such Event of Default (and any delay in the performance of Landlord's Premises Work resulting therefrom shall be deemed to be a Tenant Delay). All late payments shall bear interest at the Interest Rate.

9.3 Landlord's Work shall be performed by Landlord in material compliance with all Requirements, in a good and workman manner, and in material compliance with the Final Plans.

9.4 Upon Tenant's written request made within fifteen (15) days following the date the Final Plans are approved, TIME BEING OF THE ESSENCE, Landlord shall make available to Tenant up to an additional amount equal to $1,987,500.00 (the " **Additional Landlord's Contribution** ") and in such event Landlord's Contribution shall include the Additional Landlord's Contribution. If Tenant requests the Additional Landlord's Contribution, then Tenant shall pay to Landlord a monthly sum, which shall be deemed Additional Rent and paid together with Tenant's payment of Fixed Rent (without abatement) each month during the Term, equal to the amount necessary to amortize Additional Landlord's Contribution on a straight line basis over the then remaining Term in equal monthly installments with interest thereon at eight percent (8%) per annum. Upon the termination of this Lease prior to the Expiration Date, the entire unamortized portion of the Additional Landlord's Contribution shall immediately become due and owing.

9.5 Any defect in Landlord's Work and the Roof Work (i) of which Tenant has notified Landlord within 12 months after the Premises and the Tenant's Roof Deck Area has

been respectively delivered to Tenant with all of Landlord's Work and Roof Work (as applicable) substantially complete (each, a " **Work Delivery Date** "), and (ii) that had not been caused by a Tenant Party (which for the purposes of this Section 9.5, shall not include Gensler), shall be referred to herein as a " **Latent Defect** ". Landlord shall remedy any Latent Defects provided Tenant notifies Landlord thereof within one year of the Applicable Work Delivery Date. If a defect in Landlord's Work or Roof Work is discovered which is not a Latent Defect, and such defect is covered by a warranty for Landlord's Work and the Roof Work which warranty has not been assigned to Tenant, then Landlord, at its cost, so long as such defect was not caused by a Tenant Party, shall use commercially reasonable efforts to enforce such warranty (but shall have no obligation to commence a lawsuit related thereto).

9.6 Landlord shall use commercially reasonable efforts to obtain market equipment and construction warranties from suppliers supplying materials and equipment as part of Landlord's Work and the Roof Work and contractors performing Landlord's Work and the Roof Work to the extent such warranties are typically provided by such trades To the extent obtained as part of Landlord's Work and Roof Work and assignable, Landlord shall assign to Tenant any warranties from contractors or suppliers to the extent Tenant is responsible for maintaining and repairing the equipment, materials or work the subject of such warranty, pursuant to the terms of the Lease.

10. **Base Building Work** .

10.1 Landlord's Work shall include the following work (the " **Base Building Work** "), which shall be performed at Landlord's sole cost, in accordance with the terms hereof:

1. Landlord shall construct Building standard men's and women's ADA compliant bathrooms in each floor of the 9 th and 10 th Floor Premises.

2. The floors of the 9 th and 10 th Floor Premises shall be repaired or patched as reasonably required (as determined by Landlord) and Landlord will use reasonable efforts to remove any significant and material imperfections to accommodate Tenant's floor covering.

3. Landlord shall perform required and necessary fireproofing (including to penetrations) and enclosure any exposed structural steel.

4. Landlord shall ensure all columns within the 9th and 10th Floor Premises are reasonably repaired and fireproofed or appropriately protected, per code, and ready to accept Tenant finishes.

5. Landlord shall install new windows which shall be in good working order and weather sealed.

6. Landlord shall cause the core walls located on each floor of the 9th and 10th Floor Premises to be reasonably patched and ready to receive Tenant's finishes.

7. Landlord shall demolish all existing sprinkler piping downstream of each floor control valve and provide a temporary construction sprinkler loop on each floor of the Premises which is operational and code compliant. Landlord shall ensure that the temporary loop is connected to the fire alarm system and that water flow tamper switches are in place and operational. For the avoidance of doubt, Tenant, at Tenant's cost shall be responsible for distribution of

sprinkler heads and any modifications to the sprinkler infrastructure as part of Tenant's buildout or to accommodate Tenant's use.

8. Landlord shall provide a hot water piping riser system (supply and return piping) through the Premises (and the location of the risers shall be along the perimeter of the 9 th and 10 th Floor Premises) and perimeter heat in good working order.

9. Landlord shall deliver the main HVAC supply and return ductwork through perimeter wall of MER only, complete with smoke and fire dampers at the core of each floor of the 9 th and 10 th Floor Premises, including wiring to fire alarm and BMS system as required.

10. Landlord shall cause the perimeter heating elements in the Premises to be in working order.

11. Landlord shall deliver the Premises legally demised.

12. Landlord shall ensure that the Building shall have a code compliant fire alarm and life safety system infrastructure with the necessary components (speaker/strobes, manual pulls, smoke detectors, water flows and tamper switches) installed in core common areas. Landlord shall provide a typical life safety infrastructure (including panels and power sources with adequate capacity within the base building fire alarm system to provide for Tenant's reasonable fire life safety requirements on the leased floor(s)).

13. Landlord shall cause the each floor of the Premises to contain valved and capped condenser water outlets.

EXHIBIT C-1
LAYOUT PLAN

The floor plan which follows is intended solely to identify the general location of the Premises (without exact dimensions and locations) and should not be used for any other purpose.

EXHIBIT D
CLEANING SPECIFICATIONS

The Common Areas and sidewalks of the Building used by Tenant shall be cleaned in a commercially reasonable manner, Monday — Friday, except Observed Holidays.

The exterior windows of the Premises shall be cleaned two (2) times per year.

The Loading docks, including recycle bins will be cleaned in a commercially reasonable manner.

EXHIBIT E
RULES AND REGULATIONS

(1) All tenants are required to present their Building Identification Card to security personnel upon entering the Building at all times.

(2) Except as expressly set forth in the Lease, the sidewalks, entrance, passages, courts, elevators, vestibules, stairways, corridors and halls in the Common Areas shall not be obstructed or encumbered by Tenant or used for any purpose other than access to the Premises and for delivery of supplies and equipment in prompt and efficient manner, using elevators and passageways designated for such delivery by Landlord.

(3) No awnings, air condition units, fans or other projections shall be attached to the outside walls of the Building (unless approved by Landlord).

(4) No curtains, blinds, shades or screens, other than those conforming to Building standards as reasonably established by Landlord from time to time, shall be attached to our hung in, or used in connection with, any windows or door of the Premises. All electrical fixtures hung in offices of spaces along the perimeter of the Premises must be of a quality, type, design and bulb color reasonably approved by Landlord.

(5) Except as permitted by the Lease, no sign, advertisement, notice or other lettering shall be exhibited, inscribed, painted or affixed by Tenant on any part of the outside of the Premises or Building or on the inside of the Premises if the same can be seen from the outside of the Premises without in each case the prior written consent of Landlord.

(6) The exterior windows and doors that reflect or admit light and air into the Premises or the halls, passageways or other public places in the Building shall not be covered or obstructed by Tenant.

(7) No showcases or other articles shall be put in front of or affixed to any part of the exterior of the Building, nor placed in the halls, corridors or vestibules, nor shall any article obstruct any air conditioning supply or exhaust without the prior written consent of Landlord.

(8) The water and janitors closets and other plumbing fixtures shall not be sued for any purposes other than those for which they were designed, and no sweepings, rubbish, rags, acids or other substances shall be deposited therein. All damages resulting from any misuses of the fixtures shall be borne by Tenant.

(9) Tenant shall not make, or permit to be made, any unseemly or disturbing notices or disturb or interfere with occupants of neighboring buildings or those having business with them.

(10) Tenant, or any of Tenant's employees, agents, visitors or licensees, shall not at any time bring or keep upon the Premises any inflammable, combustible, or explosive fluid, chemical or substance except as may be expressly provided in the Lease.

(11) No additional locks or bolts of any kind shall be placed upon any of the doors or windows by Tenant, nor shall any changes be made in existing locks or the mechanism thereof, unless Tenant promptly provides Landlord with the key, passcard or combination

thereto. Tenant shall, upon the termination of its tenancy, return to Landlord all keys for locks in the Premises and for all toilet rooms, and in the event of the loss of any keys furnished at Landlord's expense, Tenant shall pay to Landlord the cost thereof.

(12) No vehicles (except bicycles which are permitted) shall be brought into or kept by Tenant in or about the Premises or the Building.

(13) Landlord reserves the right to inspect all safes, freight or other bulky articles to be brought into the Building and to exclude from the Building all safes, freight or other bulky articles which violate any of these Rules and Regulations.

(14) Tenant shall not occupy or permit any portion of the Premises to be occupied for the possession, storage, manufacture or sale of narcotics.

(15) Landlord shall have the right to prohibit any advertising by Tenant which references the Building, in Landlord's reasonably opinion, tends to impair the reputation of the Building or its desirability as a building for offices, and upon written notice from Landlord, Tenant shall immediately refrain or discontinue such advertising. Notwithstanding the foregoing, Tenant may advertise, market and otherwise refer to the Premises in a manner consistent with Tenant's marketing (online and otherwise) of its other properties.

(16) Tenant shall be responsible for all persons for whom a pass is issued at the request of Tenant and shall be liable to Landlord for all acts of such persons.

(17) Tenant shall, at its cost and expense, provide electricity and light for the employees of Landlord doing janitor service or other cleaning, or making repairs or alterations in the Premises

(18) The requirements of Tenant will be attended to only upon written application at the Office of the Building. Building employees shall not perform any work or do anything outside of their regular duties, unless under special instructions from the office of Landlord.

(19) Canvassing, soliciting and peddling in the Building is prohibited and Tenant shall cooperate to prevent the same.

(20) There shall not be used in the Building, either by Tenant or by jobbers or others, any hand trucks except those equipped with rubber tires and side guards. Carts and had trucks of any kind are prohibited in all passenger elevators. All damages resulting from any misuse of the elevators shall be borne by Tenant.

(21) Except as otherwise expressly set forth in the Lease, Tenant shall not do any cooking, conduct any restaurant, luncheonette or cafeteria for the sale or service of food or beverages to its employees or to others, or cause or permit any odors of cooking or other processes or any unusual or objectionable odors to emanate from the Premises; provided, however, that Tenant may have one (1) or more pantries in the Premises and may use therein an ordinary kitchen (as opposed to industrial or commercial) grade dishwasher, refrigerators, sinks, toaster ovens and microwave ovens (collectively referred to herein as " **Permitted Equipment** "), provided that no such use shall require use of a flue or other means of venting, a rotoclone, or similar type equipment. Tenant may use Permitted Equipment to warm, heat, or re-heat foods that are cooked off-site.

(22) Tenant shall keep the entrance door to the Premises closed at all times.

(23) Tenant shall comply with Landlord's rules as promulgated from time to time and delivered in writing to Tenant regarding separation of various types of trash. The amount of any fines incurred by Landlord by reason of Tenant's failure to comply with such rules delivered to Tenant in writing shall be paid by Tenant to Landlord promptly upon demand as Additional Rent.

(24) Smoking within the Building is prohibited

(25) There shall be no storage of any kind allowed in the freight elevator lobby at any time. Storage of any kind in the freight elevator lobby is prohibited by law and is subject to monetary penalties.

(26) Roller blades are prohibited in the Common Areas.

In the case of any conflict between the Rules and Regulations set forth in this Exhibit and the terms and conditions set forth in the main body of the Lease, the provisions of the main body of the Lease shall govern.

EXHIBIT F

INTENTIONALLY DELETED

EXHIBIT G

FORM LETTER OF CREDIT

NAME OF BANK

DATE: _____

LANDLORD'S NAME
ADDRESS

GENTLEMEN:

BY ORDER AND FOR THE ACCOUNT OF OUR CLIENT, WE HEREBY OPEN OUR IRREVOCABLE LETTER OF CREDIT IN YOUR FAVOR FOR AN AMOUNT OF US $ AS FOLLOWS:

1) FUNDS UNDER THIS LETTER OF CREDIT ARE AVAILABLE TO YOU AGAINST YOUR SIGHT DRAFT ON US TOGETHER WITH A COPY OF THIS ORIGINAL LETTER OF CREDIT ON OR BEFORE THE EXPIRATION DATE IN THE EVENT YOU RECEIVE NOTICE THAT THIS LETTER OF CREDIT IS NOT EXTENDED.

2) FUNDS UNDER THIS LETTER OF CREDIT SHALL ALSO BE AVAILABLE TO YOU AT ANY TIME ON OR BEFORE THE EXPIRATION DATE HEREOF AGAINST YOUR SIGHT DRAFT ON US ACCOMPANIED BY A COPY OF THIS LETTER OF CREDIT AND YOUR SIGNED STATEMENT TO THE EFFECT THAT YOU ARE ENTITLED TO DRAW AND WE WILL HONOR SUCH STATEMENT WITHOUT QUESTION OR INQUIRY. DRAFTS MAY BE PRESENTED IN PERSON, BY OVERNIGHT COURIER TO THE FOLLOWING ADDRESS OR BY FACSIMILE TRANSMISSION TO: .

3) EACH DRAFT MUST BEAR UPON ITS FACE THE STATEMENT "DRAWN UNDER LETTER OF CREDIT" No: ISSUED BY .

4) THIS CREDIT SHALL EXPIRE ON [THE DATE WHICH SHALL BE THE 1 ANNIVERSARY OF THE DATE OF THIS LETTER OF CREDIT] BUT IT IS A CONDITION OF THIS LETTER OF CREDIT THAT IT SHALL BE EXTENDED AUTOMATICALLY FOR A PERIOD OF 1 YEAR FROM SAID EXPIRATION DATE AND ANY SUBSEQUENT EXPIRATION DATE, UNLESS AT LEAST SIXTY (60) DAYS PRIOR TO ANY SUCH EXPIRATION DATE, YOU HAVE RECEIVED WRITTEN NOTIFICATION FROM US BY REGISTERED OR OVERNIGHT COURIER OR CERTIFIED MAIL, RETURN RECEIPT REQUESTED, THAT WE ELECT NOT TO EXTEND THIS CREDIT FOR ANY SUCH ADDITIONAL PERIOD. UPON RECEIPT BY YOU OF SUCH NOTICE, YOU MAY DRAW THE AMOUNT OF THIS CREDIT AS SET FORTH IN PARAGRAPH 1 ABOVE. [THE FINAL EXPIRY DATE OF THIS LETTER OF CREDIT SHALL BE 60 DAYS IMMEDIATELY FOLLOWING THE EXPIRATION DATE OF THE LEASE]

5) DRAWINGS IN WHOLE OR IN PART AND TRANSFERS BY BENEFICIARY ARE PERMISSIBLE HEREUNDER WITHOUT CHARGE.

6) WE HEREBY ENGAGE WITH YOU THAT DRAFT(S) DRAWN UNDER AND IN COMPLIANCE WITH THE TERMS OF THIS LETTER OF CREDIT WILL BE ONLY HONORED UPON PROPER PRESENTATION TO US AT OUR COUNTERS BY HAND, OVERNIGHT COURIER OR FACSIMILE:

(YOUR ISSUING BANK)

7) THIS CREDIT IS SUBJECT TO THE UNIFORM CUSTOMS AND PRACTICE FOR DOCUMENTARY CREDITS (2007) REVISION) OF THE INTERNATIONAL CHAMBER OF COMMERCE PUBLICATION NO. 600.

EXHIBIT H

Guarantor Competitors

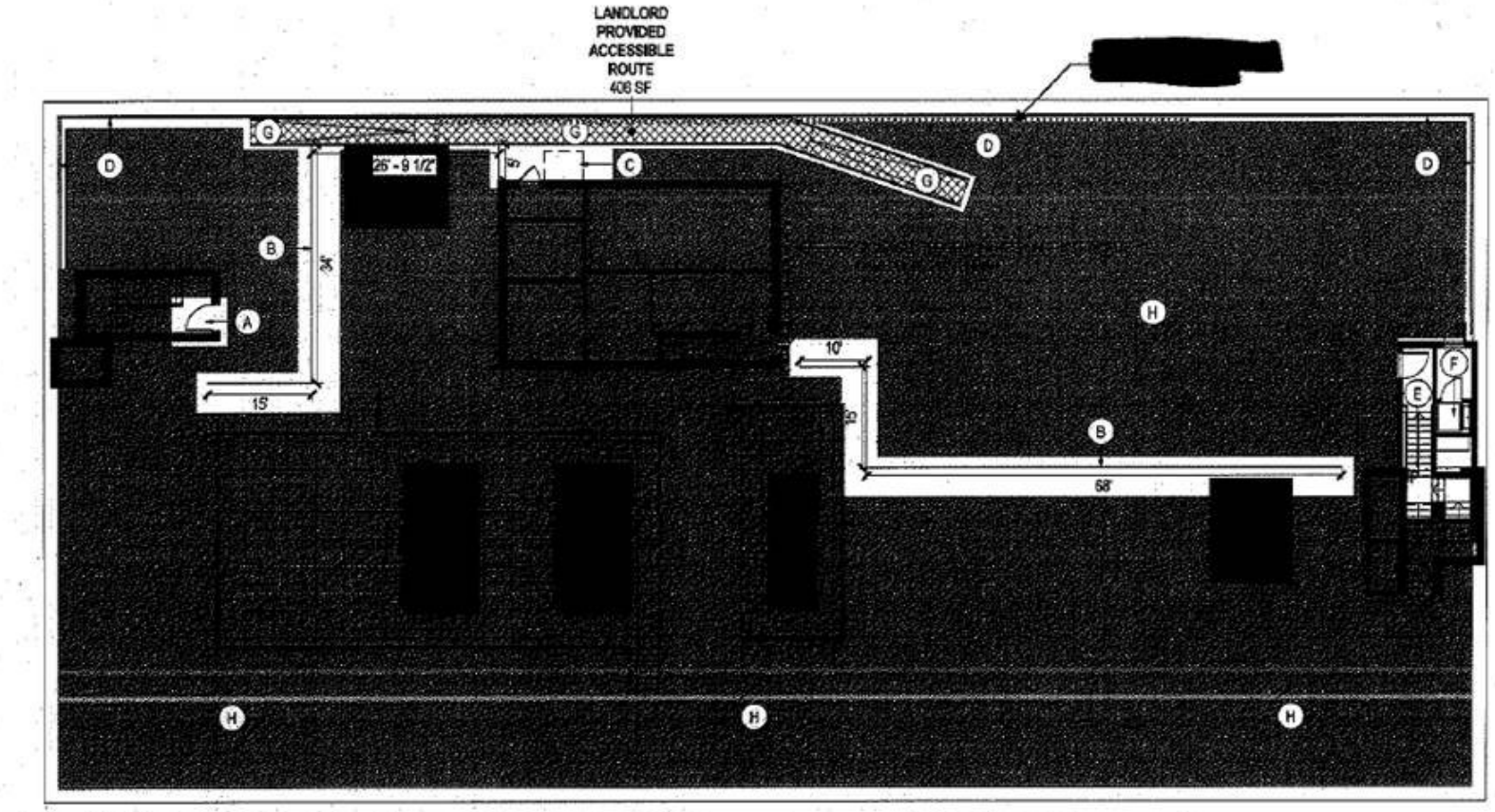
1. All Campus
2. Bisk
3. Blackboard
4. Coursera
5. DeVry University
6. edX
7. Everspring
8. Hot Chalk
9. Instructure (Canvas)
10. Noodle
11. Pearson
12. udacity
13. udemy
14. University of Phoenix
15. Walden University
16. Wiley

EXHIBIT I

INTENTIONALLY DELETED

EXHIBIT J

RESTRICTED SIGNAGE LOCATIONS


LANDLORD
PROVIDED
ACCESSIBLE
ROUTE
406 SF
25' - 9 1/2"
34'
15'
10'
68'
A
B
C
D
E
F
G
H

[redacted]

EXHIBIT K

TENANT'S ROOFTOP AREA

Exhibit G - 6

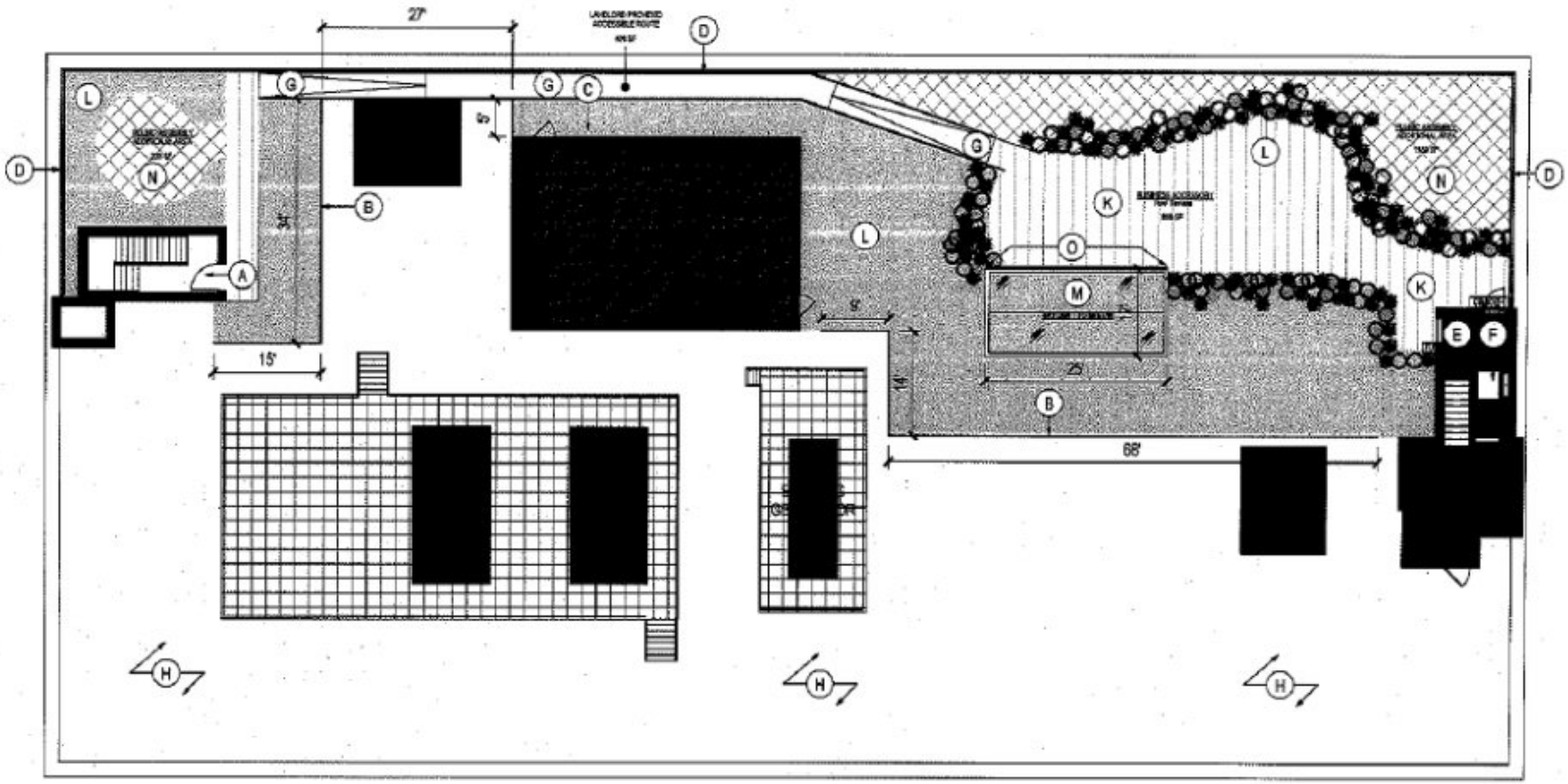


EXHIBIT L

FORM OF MEMORANDUM OF LEASE

FORM OF MEMORANDUM OF LEASE

MEMORANDUM OF LEASE

NAME AND ADDRESS OF LANDLORD	55 Prospect Owner LLC c/o Kushner Companies 666 Fifth Avenue, 15th Floor New York, New York 10103
NAME AND ADDRESS OF TENANT:	2U NYC, LLC 8201 Corporate Drive, Suite 900 Landover, MD 20785
DATE OF EXECUTION OF LEASE:	As of February 13, 2017

DESCRIPTION OF LEASED PREMISES:

The Leased Premises consist of the entire rentable area of the 8th, 9th and 10th floors of the building located at 55 Prospect Street, Brooklyn, New York (the "Building"). The Building is located in the City of New York, County of Brooklyn and State of New York, on the parcel of land that is more particularly described on Exhibit A annexed hereto and made a part hereof.

TERM OF LEASE:

The term of the Lease commences on the date that certain conditions as set forth in Article 1 of the Lease are satisfied, and the initial term thereof is scheduled to expire on (x) if the nine (9) month anniversary of the Commencement Date (the "Rent Commencement Date") is the first day of a calendar month, the date which is the day immediately preceding the eleventh (11th) year anniversary of the Rent Commencement Date, or (y) otherwise, the last day of the month in which the eleventh (11th) year anniversary of the Rent Commencement Date occurs., as applicable.

RENEWAL OPTIONS:

Subject to the provisions of Article 31 of the Lease, the Lease contains one (1) five (5) year extension option. The extension option is more particularly described in Article 31 of the Lease.

TERM OF LEASE GOVERN:

The rights, obligations and remedies of Landlord and Tenant, respectively, with reference to each other and the Leased Premises shall be fixed, determined and governed solely by the terms of the Lease, this being a Memorandum of Lease executed by the parties hereto solely for the purpose of providing an instrument for recording pursuant to Section 291-c of the Real Property Law, in lieu of recording the Lease.

[SIGNATURES APPEAR ON IMMEDIATELY FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties hereto have duly executed this Memorandum of Lease as of the date set forth above.

LANDLORD:	TENANT:
55 PROSPECT OWNER LLC	[_____]
By: _____	By: _____
Name:	Name:
Title:	Title:

State of New York
} SS:
County of

On the day of in the year 201_ before me, the undersigned, a Notary Public in and for said State, personally appeared , personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s) or the person upon behalf of which the individual(s) acted, executed the instrument.

Notary Public

State of New York
} SS:
County of

On the day of in the year 201_ before me, the undersigned, a Notary Public in and for said State, personally appeared , personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s) or the person upon behalf of which the individual(s) acted, executed the instrument.

Notary Public

MEMORANDUM OF LEASE

55 Prospect Owner LLC,

Landlord

2U NYC, LLC,

Tenant

County: Kings

Section:

Block: 63

Lot: 1

RECORD AND RETURN TO:

Skadden, Arps, Slate, Meagher & Flom LLP

Four Times Square

New York, New York 10036

Attention: Christy L. McElhaney, Esq.

885849.01A-NYCSR05A - MSW
1809639.2 29203-0021-000

EXHIBIT M

EXPANSION PREMISES WORK LETTER

1. **General** .

1.1 As used herein " **Landlord's Expansion Premises Work** " shall mean, collectively the Expansion Premises Build-Out Work and the Expansion Premises Base Building Work. The purpose of this Work Letter is to set forth (i) how the interior improvements to the Expansion Premises which Tenant desires to have completed in connection with Tenant's initial occupancy of the Expansion Premises are to be constructed (" **Expansion Premises Build-Out Work** "), (ii) who will do the construction of Landlord's Expansion Premises Work, and (iii) who will pay for the construction of Landlord's Expansion Premises Work.

1.2 The terms, conditions and requirements of the Lease, except where clearly inconsistent or inapplicable to this Work Letter, are

incorporated into this Work Letter.

2. **Plans** .

2.1 In accordance with the provisions of this Expansion Premises Work Letter, an architect engaged by Tenant and approved by Landlord (" **Tenant's Architect** ") shall submit to Landlord for Landlord's approval complete and detailed architectural, structural, mechanical and engineering plans and specifications (including, without limitation, sprinkler plans) for Landlord's Expansion Premises Work (the " **Expansion Premises Proposed Plans** "), the cost and expense of which shall be paid for by Landlord (but subject to the terms and conditions of this Expansion Premises Work Letter, including, without limitation, reimbursement solely from the Expansion Premises Contribution). If applicable, the Proposed Plans shall include all information reasonably necessary to reflect Tenant's requirements for ductwork, heating, electrical, plumbing and other mechanical systems and all work necessary to connect any special or non-standard facilities to the base-Building mechanical, electrical and structural systems. Tenant's submission of the Proposed Plans shall include not less than 5 sets of sepias and 5 sets of black and white prints (or other forms which are customary and are reasonably acceptable to Landlord). The Proposed Plans shall also include the following:

(a) locations and structural design of the floor area;

(b) indication of the density of occupancy in large work areas;

(c) identification of the location of any food service areas or vending equipment rooms;

(d) identification of areas requiring 24-hour air conditioning;

(e) indication of any partitions that are to extend from floor to underside of structural slab above;

(f) identification of location of rooms for telephone equipment and data;

(g) indication of locations and types of plumbing, if any, required for toilets (other than core facilities), sinks, drinking fountains, and similar installations;

(h) indication of light switching of offices, conference rooms, etc.;

(i) layouts for specially installed equipment, including computers, size and capacity of mechanical and electrical services required, and heat generation of equipment;

(j) indication of dimensioned location of: (i) submeters for measurement of Tenant's consumption of electrical energy pursuant to **Section 10.1** of the Lease (the cost of the submeters shall be a Landlord sole cost), (ii) electrical receptacles (120 volts), including receptacles for wall clocks, and telephone outlets and their respective locations (wall or floor), (iii) electrical receptacles for use in the operation of Tenant's business equipment which requires 208 volts or separate electrical circuits, and (iv) special audio-visual requirements;

(k) indication of number and location of sprinklers;

(l) indication of special fire protection equipment and raised flooring;

(m) reflected ceiling plan;

(n) information concerning air conditioning loads, including, but not limited to, air volume amounts at all supply vents;

(o) non-building standard ceiling heights and/or materials;

(p) materials, colors and designs of wall coverings and finishes;

(q) painting and decorative treatment required to complete all construction;

(r) swing of each door;

(s) schedule for doors (including dimensions for undercutting of doors to clear carpeting) and frames complete with hardware; and

(t) all other information necessary to make the Expansion Premises complete and in all respects ready for operation.

2.2 The development of the Expansion Premises Proposed Plans by Tenant's Architect is expected to be a collaborative process among Landlord, Tenant and Tenant's Architect, with Landlord reviewing and reasonably approving progressive stages of plan completion (i.e., 25%, 50% and 75% CDs) at reasonable intervals (and at each interval giving Landlord at least ten (10) Business Days to review each such stage of drawings). Within ten (10) Business Days after Landlord receives a stage of Proposed Plans, Landlord shall either approve or disapprove same (or provide a request for more information), which approval or disapproval shall be in accordance with the standards set forth in Sections 5.1(a) of the Lease with respect to Landlord's approval or disapproval of Alterations (and any reasons for disapproval shall be referred to as, a " **Design Problem** "); provided that the failure of Landlord to respond to an initial submission within ten (10) Business Days or a resubmission after Landlord's comment within seven (7) Business Days shall be a Landlord Delay. If Landlord determines that a Design Problem exists, it shall return the Expansion Premises Proposed Plans to Tenant together with a reasonably specific explanation of the applicable Design Problem. In such event, Tenant shall be required to make the revisions necessary (which

revisions shall not expand the scope of the work but shall only be responses or corrections to Landlord's comments and/or the Design Problem(s) in question) in order to address Landlord's comments and correct the Design Problem(s) in full and, within five (5) Business Days thereafter, return the revised Proposed Plans to Landlord, which Landlord shall then approve or disapprove (or provide a request for more information) within seven (7) Business Days after receipt. Each subsequent stage of plans provided to Landlord shall be a logical progression of the immediately preceding stage of plans approved by Landlord (subject to Change Orders as hereinafter defined). Landlord hereby approves Gensler as Tenant's Architect for purposes of this Workletter.

2.3 Landlord's standards for approval to the Expansion Premises Proposed Plans or a Change Order shall be subject to the standards set forth in Section 2.2 above. Landlord and Tenant shall exercise all reasonable diligence to cooperate in the expeditious pursuit of plan and contractor approval and the award of the construction contract and subcontracts in connection with Landlord's Expansion Premises Work, including awarding portions of the construction contracts and obtaining permits based upon partially complete Expansion Premises Proposed Plans. The general contractor and construction manager shall have no obligation to self-certify permit applications and/or inspections.

2.4 Other than as specified above in Section 1.1 of this Expansion Premises Work Letter and any permitted exterior signage as set forth in the Lease, Landlord shall not be required to perform, and Tenant shall not request, work which would (i) require any material modification to the Building Systems or other Building installations outside the Premises, (ii) not comply with all applicable Requirements, and/or (iii) be incompatible with either the temporary or permanent certificate of occupancy issued for the Building (provided the same shall not limit Tenant's right to obtain an amendment to the temporary or permanent certificate of occupancy for the Intended Use and the RDA Permitted Use) or the Building's status as a first-class office building. Any changes required by any Governmental Authority affecting the Expansion Premises Build-Out Work shall be performed by Landlord, at Tenant's sole cost (subject to reimbursement from Landlord's Expansion Premises Contribution) provided that any changes orders required to effect such compliance shall be subject to Tenant's reasonable approval to be granted or withheld within three (3) Business Days after request or such consent is deemed granted (the parties agreeing to work cooperatively to arrive at a mutually satisfactory resolution). Landlord shall give notice to Tenant of any material change in the Expansion Premises Proposed Plans required by any Governmental Authority promptly after Landlord receives notice thereof.

2.5 Tenant shall diligently pursue completion and approval of the complete set of Expansion Premises Proposed Plans (the " **Final Expansion Premises Proposed Plans** ") based on preliminary plan submissions previously reviewed and approved and to submit the same to Landlord for approval on or before July 1, 2019. Within ten (10) Business Days after Landlord receives the Final Expansion Premises Proposed Plans, Landlord shall either approve or disapprove same pursuant to the procedures set forth above in Section 2.2 (as finally approved by Landlord with written approval delivered to Tenant, the " **Final Expansion Premises Plans** "), and the date such Final Expansion Premises Plans are approved by Landlord shall be the "Final Expansion Premises Plans Approval Date".

2.6 Tenant shall not make any material changes to logical progression of the Proposed Plans nor any changes in the Final Expansion Premises Plans without Landlord's prior approval, which approval shall not be unreasonably withheld, conditioned or delayed, provided that Landlord may, in the exercise of its sole and absolute discretion, disapprove any

proposed changes adversely affecting the Building's structure, any of the Building Systems, or the exterior appearance or value of the Building.

3. **Work and Costs** .

3.1 Landlord will engage a construction manager (" **Construction Manager** ") to act as construction manager for the planning and performance of Landlord's Premises Work, which Construction Manager shall be subject to Tenant's reasonable approval (which approval shall be granted or denied within three (3) business days after request therefor, and the failure to respond within such time period shall be deemed to mean that Tenant has approved the Construction Manager in question).

3.2 Subject to the provisions of **Section 2** and this **Section 3** , Landlord shall perform or cause to be performed all of the work depicted on the Final Expansion Premises Plans. Landlord shall be responsible for all the costs and expenses to design and complete the Expansion Premises Base Building Work. Landlord shall also pay for the Expansion Premises Premises Build-Out Work on the Expansion Premises Final Plans (and all architectural costs, engineering costs, general contractor costs, and the cost of all local and state filing fees and permits required to be obtained in order to perform such work) to the extent and only to the extent of an aggregate expenditure with respect to all the aforementioned costs in an amount not to exceed Landlord's Expansion Premises Contribution (as defined above in the Lease). Tenant shall pay for the cost of any work or materials depicted on the Expansion Premises Final Plans and/or other costs directly related to the Expansion Premises Build-Out Work, including, without limitation all architectural costs of Tenant's Architect, engineering costs, project management fees, general contractor costs, and the costs of all filing fees and permits required by any Governmental Authority and incurred by Landlord in connection with the Expansion Premises Build-Out Work, which are in excess of Landlord's Expansion Premises Contribution (" **Tenant's Expansion Premises Contribution** "), which excess shall be paid in accordance with the following: (1) 34% of the then estimated (based upon the sum of the winning bids or the amount of the fixed priced or GMP type contract as reasonably determined by Landlord) Tenant's Expansion Premises Contribution shall be paid within ten (10) days after submission to Tenant of a reasonably detailed summary with applicable supporting documentation from Landlord or Construction Manager but no earlier than the earlier of awarding or selecting the winning bids for substantially all the Expansion Premises Build-Out Work or sooner finalizing of a fixed price or GMP type contract between Landlord and the Construction Manager or general contractor, (2) 33% of the then estimated (based upon the sum of the winning bids or the amount of the fixed priced or GMP type contract as reasonably determined by Landlord) Tenant's Expansion Premises Contribution shall be paid within ten (10) days after 50% of Landlord's Expansion Premises Work is Substantially Completed (as reasonably determined Landlord and certified by Landlord's Architect), and (3) the balance of Tenant's Expansion Premises Contribution shall be paid within ten (10) days after the earlier of (x) Substantial Completion of Landlord's Expansion Premises Work and (y) Tenant's occupancy of the Expansion Premises for the conduct of business. The payments to be made by Tenant as provided in this Section 3.2 shall be collectible in the same manner as Additional Rent under the Lease, whether or not the Term of the Lease shall have commenced. The Tenant Expansion Premises Contribution shall be immediately payable upon an Event Default. All Change Costs shall be paid as set forth in Section 6 below.

3.3 Landlord shall submit to Tenant, as soon as reasonably practicable, the total estimated cost of the Expansion Premises Build-Out Work (which shall be updated regularly during the development of the Proposed Plans as provided above).

3.4 Intentionally Deleted.

3.5 Tenant approves of CBRE, Inc. (or another project manager selected by Landlord and approved by Tenant (which approval shall be granted or denied within three (3) business days after request therefor, and the failure to respond within such time period shall be deemed to mean that Tenant has approved the project manager in question)) to act as project manager (" **Project Manager** ") to assist with the planning and performance of Landlord's Expansion Premises Work. Project Manager shall be paid an amount equal to 3% of the cost of the Expansion Premises Build-Out Work (the " **Project Manager Fee** "), which shall be deducted from Landlord's Expansion Premises Contribution. For the avoidance of doubt, it is agreed that Landlord shall not receive a supervisory or override fee in respect of the performance of Landlord's Expansion Premises Work.

3.7 Notwithstanding anything to the contrary contained herein or in the Lease, during the performance of Landlord's Expansion Premises Work, the cost of any overtime freight elevator use shall be limited to the actual costs Landlord incurs for the use thereof (i.e., there shall be no additional mark-up in addition to such actual costs). In that regard, Landlord shall use the services of the overtime freight elevators in a reasonable and customary manner and for reasonable and customary needs in connection with prudent construction practices for similar projects.

3.8 Intentionally Deleted.

3.9 Subject to costs specifically and expressly provided for herein (e.g., costs related to Change Orders as provided herein), Landlord shall be solely responsible for all costs and expense incurred in connection with designing and completing the Expansion Premises Base Building Work, including, without limitation, hard costs, architect's fees, and any construction management fee (or the Construction Management Fee, if applicable). Subject to Tenant's receipt of Landlord's Expansion Premises Contribution (with respect to the Expansion Premises Build-Out Work), Tenant shall be solely responsible for the cost and expense of completing the Expansion Premises Build-Out Work, including, without limitation, hard costs, engineering fees, Tenant's Architect's fees, and the Construction Management Fee. Landlord shall be solely responsible for performing all of the foregoing work described in this Section 3.9.

3.10 Within 30 days following the Substantial Completion of Landlord's Expansion Premises and 60 days after final completion of the same, Landlord, upon Tenant's request, shall provide Tenant with a preliminary accounting and then final accounting in reasonable detail, together with all backup and supporting materials reasonably requested by Tenant, prepared by Landlord for all amounts incurred in connection with such Landlord's Work and Landlord's Roof Work (but excluding the Expansion Premises Base Building Work. Upon mutual agreement of the finality thereof, there shall be adjustments between Landlord and Tenant to the end that Landlord or Tenant has underpaid or overpaid any amount due from such party pursuant to the terms of this Work Letter. Any overpayment by Tenant shall be payable by Landlord to Tenant within thirty (30) days after the determination thereof. In the event that Tenant and Landlord are unable to agree on the finality of any adjustments after using good faith efforts to resolve the same for at least thirty (30) days and after Tenant sends in writing a reasonably detailed explanation of the amounts in dispute, then Tenant and Landlord shall appoint an EP Approved Examiner to resolve any such adjustments, whose determination shall be binding upon the parties. Any underpayment by Tenant shall be due and payable within thirty (30) days after determination thereof. " **EP Approved Examiner** " means a certified public accountant or other qualified professional who is a member of a reputable, independent certified

public accounting firm or other reputable, qualified professional services firm having at least fifty (50) accounting professionals who are certified public accountants and who is mutually acceptable to Landlord and Tenant; provided that if Landlord and Tenant are unable to agree upon an EP Approved Examiner then Landlord and Tenant shall each appoint a certified public accountant and each appointee shall appoint a single certified public accountant or other qualified professional meeting the qualifications set forth above to be the EP Approved Examiner. Each of Landlord and Tenant shall bear the costs of its appointee hereunder and share equally the costs of the EP Approved Examiner.

4. **Tenant Delay.**

4.1 If Landlord shall be delayed in Substantially Completing Landlord's Expansion Premises Work as a result of any act, neglect, failure or omission of Tenant, its agents, servants, employees, contractors or sub-contractors, including, without limitation, any of the following, such delay shall be a Tenant Delay to the extent such delay actually results in a delay in the Substantial Completion of Landlord's Expansion Premises Work:

(a) Tenant's delay in supplying or failure to supply information or to approve plans, drawings and specifications in accordance with and at the times referred to herein, including **Sections 2** hereof; or

(b) Tenant's request for materials, finishes or installations which are not readily available at the time Landlord is ready to install same (e.g., long lead items); or

(c) Tenant's changes in drawings, plans or specifications submitted to or prepared by Landlord or Landlord's Architect (including, without limitation, any Change Orders, as hereinafter defined); or

(d) the performance of work by a person, firm or corporation employed by Tenant and delays in the completion of the said work by said person, firm or corporation; or

(e) Tenant's failure to timely pay for the cost of Tenant's Expansion Premises Contribution pursuant to **Section 3.4;** or

(f) Tenant's failure to supply Final Expansion Premises Proposed Plans in compliance with the terms hereof by July 1, 2019.

If the Expansion Premises Substantial Completion Date (as hereinafter defined) shall be delayed by reason of Tenant Delay, the Landlord's Expansion Premises Work shall be deemed Substantially Completed for the purposes of determining the Commencement Date as of the date that the Landlord's Expansion Premises Work would have been Substantially Completed but for any such Tenant Delay as determined by Landlord in its reasonable discretion (provided that Landlord shall continue to use all diligent efforts to complete such Landlord's Expansion Premises Work).

To the extent that Tenant submits design drawings or other reasonably detailed to plans to Landlord prior to the submission of the Expansion Premises Proposed Plans, Landlord shall use reasonable efforts to delineate items depicted thereon which may be reasonably expected to be long lead items. If long lead items are identified by Landlord, Landlord agrees to use reasonable

efforts to mitigate the length of time required to obtain and/or install such items, as applicable, or suggest reasonable alternatives and materials that may not be long lead items.

4.2 Tenant shall pay to Landlord a sum equal to any actual out-of-pocket incremental additional cost to Landlord in completing Landlord's Expansion Premises Work resulting from (i) any Tenant Delay, and/or (ii) on account of any Change Orders. Any such sums shall be in addition to any sums payable pursuant to **Sections 3.3, 3.4 and 3.5** hereof and shall be paid to Landlord within 10 Business Days after Landlord submits an invoice to Tenant therefor.

4.3 No Tenant Delay in respect of Landlord's Expansion Premises Work shall be deemed to have occurred unless and until Landlord has provided written notice to Tenant specifying the action or inaction that constitutes a Tenant Delay, except to the extent that Tenant has actual notice or constructive notice (e.g., response time frames pursuant to the terms hereof or circumstances for which the Lease expressly states same is a Tenant Delay) of Tenant Delay, in which case no such notice is required. If such action or inaction is not cured within two (2) Business Days after receipt of such notice, then a Tenant Delay as set forth in such notice shall be deemed to have occurred commencing as of the date such notice is received and continuing for the number of days the substantial completion of Landlord's Expansion Premises Work was in fact delayed as a result of such action or inaction (and if no notice is required as aforesaid, then the applicable Tenant Delay shall be deemed to have occurred commencing as of the date of such occurrence of Tenant Delay and continue for the number of days the substantial completion of Landlord's Expansion Premises Work was in fact delayed as a result of such action or inaction).

5. **Entry by Tenant and Its Agents; Designation of Tenant's Construction Agent** .

5.1 Except for Expansion Premises Early Access Work, as provided in Section 7 of this Work Letter or as otherwise permitted by Landlord, neither Tenant nor its agents, employers, invitees or independent contractors shall enter the Premises during the performance of Landlord's Expansion Premises Work within the Expansion Premises. Tenant hereby designates Jason Peterman as its authorized agent (" **Tenant's Construction Agent** ") for the purpose of submitting to Landlord and authorizing any Change Orders and for the purpose of consulting with Landlord as to any and all aspects of Landlord's Expansion Premises Work (which designation may be changed by written notice to Landlord).

5.2 If Tenant shall enter upon the Expansion Premises prior to the Expansion Premises Commencement Date, as may be above permitted by Landlord, Tenant shall indemnify and save Landlord harmless from and against any and all Losses arising from or claimed to arise as a result of (i) any act, neglect or failure to act (where Tenant had a duty to act) of Tenant or anyone entering the Expansion Premises or Building with Tenant's permission, or (ii) any other reason whatsoever arising out of Tenant's entry upon the Premises or Building.

6. **Change Orders** . If Tenant requests any change, addition or deletion to the Final Plans (collectively referred to as a " **Change Order** "), then a request for such Change Order shall be submitted to Landlord for Landlord's approval. Landlord shall not unreasonably withhold its consent to any requested Change Order in accordance with the

standards set forth in Section 2.2 of this Work Letter, and grant or deny its consent thereto within (x) five (5) Business Days after Landlord's receipt of a Change Order which satisfies all of the Reasonable Alteration Conditions, or (y) ten (10) Business Days after Landlord's receipt of a Change Order which does not satisfy all of the Reasonable Alteration Conditions and if such change is material or extensive, such additional time as may be reasonably required to respond based on the magnitude of such change. Any Design Problem shall be handled in accordance with the correction procedures established therefor in Section 2.2 of this Work Letter. If a Change Order is approved by Landlord, Landlord shall, together with its notice of approval, notify Tenant of its reasonable, good faith estimate (collectively, **"Landlord's Change Estimate"**) of: (i) the cost which will be chargeable to Tenant as a result of such Change Order, which cost shall the actual additional out-of-pocket incremental cost of the Change Order (without additional mark-up paid directly to Landlord), taking into account any costs savings as the result of such Change Order and payable by Tenant to Landlord in connection with such Change Order (" **Change Cost** ") and (ii) the delay, if any, in Substantial Completion of Landlord's Expansion Premises Work (which shall include, without limitation, any additional time taken to renew such Change Order and revised plans and/or to obtain required permits or file documents with the NYC DOB, which Landlord shall diligently pursue) by reason of such Change Order (and shall be deemed a Tenant Delay for such delay period subject to Landlord's). Such Change Cost shall include, without limitation, all actual out of pocket costs reasonably incurred by Landlord as a result of any such delay in completion of the Landlord's Expansion Premises Work directly resulting from such Change Order, if any, and so specified in Landlord's Change Estimate. Tenant shall within two (2) Business Days after Landlord's delivery to Tenant of Landlord's Change Estimate, notify Landlord in writing whether it desires to proceed with such Change Order. Tenant shall not make any changes to (or that affect beyond a de minimis extent) Landlord's Base Building Work. If such Change Orders increase the cost of constructing the Landlord's Expansion Premises Work shown on the Final Plans, such cost shall be added to the cost of Landlord's Expansion Premises Work and paid by the parties in accordance with this **Exhibit M** , subject in all events to the Landlord's Contribution. Landlord may, in the exercise of its sole and absolute discretion, disapprove any proposed Change Order which do not satisfy all of the Reasonable Alteration Conditions. All reasonable and actual delays to the Substantial Completion Landlord's Expansion Premises Work resulting from a Change Order submission review (whether or not Landlord proceeds with such change) shall be deemed a Tenant Delay.

7. **Construction Process** . It is intended that performance of Landlord's Expansion Premises Work be pursuant to a so-called "Open Book" process, the Work Parties (as defined in Exhibit C) will work jointly and in good faith to timely prosecute the construction process to completion in accordance with the terms of the Lease. The Work Parties shall endeavor to meet not less than bi-weekly to review the progress of Landlord's Expansion Premises Work and promptly resolve any issues that arise during the course thereof. Minutes shall be recorded at all meetings of the Work Parties and cover, to the extent applicable the following:

(vii) review of contractor's work schedule to anticipate items of contractor's work next falling due;
(viii) review of shop progress and shop drawing process submitted by contractor;
(ix) tracking of contractor's long-lead items;
(x) logging of Change Orders;
(xi) preparation of detailed minutes of each meeting; and

(xii) review of invoicing process, updating of schedule of value of Landlord's Expansion Premises Work, excluding Expansion Premises Base Building Work.

8. **Substantial Completion** . The determination of the date on which Landlord's Expansion Premises Work shall be Substantially Complete, and Punch List Items, shall be handled in accordance with Article 4 of the Lease.

9. **Miscellaneous** .

9.1 This Expansion Premises Work Letter shall not be deemed applicable to any additional space added to the original Premises (other than the Expansion Premises) at any time or from time to time, whether by any options under the Lease or otherwise, or to any portion of the original Premises or any additions thereto (other than the Expansion Premises) in the event of a renewal or extension of the initial term of the Lease, whether by any options under the Lease or otherwise, unless expressly so provided in the Lease or any amendment or supplement thereto.

9.2 The failure by Tenant to pay any monies due Landlord pursuant to this Work Letter within 10 Business Days (or such longer period, if applicable) of the date due shall be deemed an Event of Default under the Lease for which Landlord shall be entitled to exercise all remedies available to Landlord for nonpayment of Rent and Landlord, may, if it so elects, discontinue construction of Landlord's Expansion Premises Work until all such sums are paid and Tenant has otherwise cured such Event of Default (and any delay in the performance of Landlord's Expansion Premises Work resulting therefrom shall be deemed to be a Tenant Delay). All late payments shall bear interest at the Interest Rate.

9.3 Landlord's Expansion Premises Work shall be performed by Landlord in material compliance with all Requirements, in a good and workman manner, and in material compliance with the Expansion Premises Final Plans.

9.4 Intentionally Deleted.

9.5 Any defect in Landlord's Expansion Premises Work (i) of which Tenant has notified Landlord within 12 months after the Expansion Premises Commencement Date, and (ii) that had not been caused by a Tenant Party, shall be referred to herein as a " **Latent Defect** ". Landlord shall remedy any Latent Defects provided Tenant notifies Landlord thereof within one year of the Expansion Premises Commencement Date. If a defect in Landlord's Expansion Premises Work is discovered which is not a Latent Defect, and such defect is covered by a warranty for Landlord's Expansion Premises Work and which warranty has not been assigned to Tenant, then Landlord, at its cost, so long as such defect was not caused by a Tenant Party, shall use commercially reasonable efforts to enforce such warranty (but shall have no obligation to commence a lawsuit related thereto).

9.6 Landlord shall use commercially reasonable efforts to obtain market equipment and construction warranties from suppliers supplying materials and equipment as part of Landlord's Expansion Premises Work and contractors performing Landlord's Expansion Premises Work to the extent such warranties are typically provided by such trades. To the extent obtained as part of Landlord's Expansion Premises Work and assignable, Landlord shall assign to Tenant any warranties from contractors or suppliers to the extent Tenant is

responsible for maintaining and repairing the equipment, materials or work the subject of such warranty, pursuant to the terms of the Lease.

10. **Expansion Premises Base Building Work** .

10.1 Landlord's Expansion Premises Work shall include the following work (the " **Expansion Premises Base Building Work** "), which shall be performed at Landlord's sole cost, in accordance with the terms hereof:

1. Landlord shall construct Building standard men's and women's ADA compliant bathrooms on the floor of the Expansion Premises

2. The Expansion Premises floor shall be repaired or patched as reasonably required (as determined by Landlord) and Landlord will use reasonable efforts to remove any significant and material imperfections to accommodate Tenant's floor covering.

3. Landlord shall perform required and necessary fireproofing (including to penetrations) and enclosure any exposed structural steel in the Expansion Premises.

4. Landlord shall ensure all columns within Expansion Premises are reasonably repaired and fireproofed or appropriately protected, per code, and ready to accept Tenant finishes.

5. Landlord shall install new windows in the Expansion Premises which shall be in good working order and weather sealed.

6. Landlord shall cause the core walls located in the Expansion Premises to be reasonably patched and ready to receive Tenant's finishes.

7. Landlord shall demolish all existing sprinkler piping downstream of each floor control valve and provide a temporary construction sprinkler loop on the floor of the Expansion Premises which is operational and code compliant. Landlord shall ensure that the temporary loop is connected to the fire alarm system and that water flow tamper switches are in place and operational. For the avoidance of doubt, Tenant, at Tenant's cost shall be responsible for distribution of sprinkler heads and any modifications to the sprinkler infrastructure as part of Tenant's buildout or to accommodate Tenant's use.

8. Landlord shall provide a hot water piping riser system (supply and return piping) through the Expansion Premises (and the location of the risers shall be along the perimeter of the Expansion Premises) and perimeter heat in good working order.

9. Landlord shall deliver the main HVAC supply and return ductwork through perimeter wall of MER only, complete with smoke and fire dampers at the core of the Expansion Premises, including wiring to fire alarm and BMS system as required.

10. Landlord shall cause the perimeter heating elements in the Expansion Premises to be in working order.

11. Landlord shall deliver the Expansion Premises legally demised

12. Landlord shall provide a typical life safety infrastructure (including panels and power sources with adequate capacity within the base building fire alarm system to provide for Tenant's reasonable fire life safety requirements on the leased floor(s)).

13. Landlord shall cause the Expansion Premises to contain valved and capped condenser water outlets.

EXHIBIT N

APPROVED SNDA FORM

SUBORDINATION, ATTORNMENT AND NON-DISTURBANCE AGREEMENT

THIS SUBORDINATION, ATTORNMENT AND NON-DISTURBANCE AGREEMENT ("***Agreement***") is entered into as of February __, 2017 (the "***Effective Date***") by and between **NATIXIS REAL ESTATE CAPITAL LLC**, a Delaware limited liability company (the "***Mortgagee***") and **2U NYC, LLC**, a Delaware limited liability company, having its office at 8201 Corporate Drive, Suite 900, Landover, MD 20785 (hereinafter, collectively the "***Tenant***"), with reference to the following facts:

55 Prospect Owner LLC, as landlord ("***Landlord***"), a Delaware liability company, having an office at c/o Kushner Companies, 666 Fifth Avenue, 15th Floor, New York, New York 10103 (the "***Landlord***") owns fee simple title or a leasehold interest in the real property described in Exhibit "A" attached hereto (the "***Property***").

Mortgagee is acting as administrative agent under, and Mortgagee and certain other lenders have made available to Borrower, certain loan facilities in the aggregate principal amount of up to Three Hundred Eighteen Million Eight Hundred Forty Thousand and No/100 Dollars ($318,840,000.00) (the "***Loan***").

To secure the Loan, Landlord has encumbered the Property by entering into certain mortgages (individually and collectively, as the same may be amended, restated, supplemented or otherwise modified from time to time, the "***Mortgage***").

Pursuant to the Lease, dated the date hereof (the "***Lease***"), Landlord demised to Tenant the following property (collectively, the "***Leased Premises***"): the entire 9th and 10th Floors of the building known as 55 Prospect, Brooklyn, New York (the "***Building***") and located on the Property together with the right to expand into to the entire 8th Floor of the Building and together with exclusive right to use portions of the roof and shaft space of the Building as described in the Lease.

Tenant and Mortgagee desire to agree upon the relative priorities of their interests in the Property and their rights and obligations if certain events occur.

NOW, THEREFORE, for good and sufficient consideration, Tenant and Mortgagee agree:

1. *Definitions*. The following terms shall have the following meanings for purposes of this Agreement.

(a) *Foreclosure Event*. A "Foreclosure Event" means: (i) foreclosure under the Mortgage; (ii) any other exercise by Mortgagee of rights and remedies (whether under the Mortgage or under applicable law, including bankruptcy law) as administrative agent for the holders of the Loan and/or the Mortgage, as a result of which a Successor Landlord becomes owner of the Property; or (iii) delivery by Former Landlord to, and acceptance by, Mortgagee (or its designee or nominee) of a deed, assignment or other conveyance of Former Landlord's interest in the Property in lieu of any of the foregoing.

(b) *Former Landlord*. A "Former Landlord" means Landlord and any other party that was landlord under the Lease at any time before the occurrence of any attornment under this Agreement.

(c) *Offset Right*. An "Offset Right" means any right or alleged right of Tenant to any offset, defense (other than one arising from actual payment and performance, which payment and

performance would bind a Successor Landlord pursuant to this Agreement), claim, counterclaim, reduction, deduction, or abatement against Tenant's payment of Rent or performance of Tenant's other obligations under the Lease, arising (whether under the Lease or under applicable law) from Landlord's breach or default under the Lease; provided that in no event shall the term Offset Right mean any rental abatement, offsets and rent credits against Rent that is specifically identified in the Tenant's Rights Section of this Agreement.

(d) *Rent*. The "Rent" means any fixed rent, base rent or additional rent under the Lease.

(e) *Successor Landlord*. A "Successor Landlord" means any party that becomes owner of the Property as the result of a Foreclosure Event.

(f) *Other Capitalized Terms*. If the initial letter of any other term used in this Agreement is capitalized and no separate definition is contained in this Agreement, then such term shall have the same respective definition as set forth in the Lease.

2. *Consent*. Mortgagee hereby consents to Landlord entering into the Lease.

3. *Subordination*. The Lease shall be, and shall at all times remain, subject and subordinate to the Mortgage, the lien imposed by the Mortgage, and all advances made under the Mortgage.

4. *Nondisturbance, Recognition and Attornment*.

(a) *No Exercise of Mortgage Remedies Against Tenant*. So long as the Tenant is not in default under the Lease beyond any applicable notice and cure periods (an "***Event of Default***"), Mortgagee shall not name or join Tenant as a defendant in any exercise of Mortgagee's rights and remedies arising upon a default under the Mortgage unless applicable law requires Tenant to be made a party thereto as a condition to proceeding against Landlord or prosecuting such rights and remedies. In the latter case, Mortgagee may join Tenant as a defendant in such action only for such purpose and not to terminate the Lease or otherwise adversely affect Tenant's rights under the Lease or this Agreement in such action.

(b) *Nondisturbance and Attornment*. If an Event of Default by Tenant is not then continuing on the date when Successor Landlord takes title to the Property (the "***Succession Date***") then: (i) Successor Landlord shall not terminate, disturb, interfere with or deprive Tenant of its leasehold estate or right (or the right of any party claiming by or through Tenant) to use, occupy and possess the Leased Premises or utilize other portions of the Building under or by virtue of the terms of the Lease (including, without limitation, all rights, privileges, access rights, expansion and renewal options) except in accordance with the terms of the Lease and this Agreement; (ii) Successor Landlord shall be bound to Tenant under all the terms and conditions of the Lease (except as provided in this Agreement); (iii) Tenant shall recognize and attorn to Successor Landlord as Tenant's direct landlord under the Lease, subject to the terms of this Agreement; and (iv) the Lease shall continue in full force and effect as a direct lease, in accordance with its terms (except as provided in this Agreement), between Successor Landlord and Tenant. Tenant acknowledges notice of the Mortgage and assignment of rents, leases and profits from the Landlord to the Mortgagee. Tenant agrees to continue making payments of rents and other amounts owed by Tenant under the Lease to the Landlord and to otherwise recognize the rights of Landlord under the Lease until notified otherwise in writing by the Mortgagee (as provided in the Mortgage), and after receipt of such notice Tenant agrees thereafter to make all such payments to the Mortgagee, without any further inquiry on the part of the Tenant, and Landlord consents to the foregoing. In such event, Landlord hereby expressly authorizes Tenant to make such payments to Mortgagee and further agrees that any sums paid to Mortgagee shall be in satisfaction of Tenant's obligations under the Lease.

(c) *Further Documentation*. The provisions of this Article 4 shall be effective and self-operative without any need for Successor Landlord or Tenant to execute any further documents. Tenant and Successor Landlord shall, however, confirm the provisions of this Article 4 in writing upon request by either of them within ten (10) days of such request.

5. *Protection of Successor Landlord*. Notwithstanding anything to the contrary in the Lease or the Mortgage, but subject to Section 5(f) hereof, hereof, Successor Landlord shall not be liable for or bound by any of the following matters:

(a) *Claims Against Former Landlord*. Any Offset Right that Tenant may have against any Former Landlord relating to any event or occurrence before the Succession Date, including any claim for damages of any kind whatsoever as the result of any breach by Former Landlord that occurred before the Succession Date.

(b) *Prepayments*. Any payment of Rent that Tenant may have made to Former Landlord more than thirty (30) days before the date such Rent was first due and payable under the Lease with respect to any period after the Succession Date other than, and only to the extent that, either (i) the Lease expressly required such a prepayment, or (ii) such payment was actually delivered to Successor Landlord.

(c) *Payment; Security Deposit*. Any obligation: (i) to pay Tenant any sum(s) that any Former Landlord owed to Tenant unless such sums, if any, shall have been delivered to Mortgagee by way of an assumption of escrow accounts or otherwise; or (ii) with respect to any security deposited with Former Landlord, unless such security was actually delivered to Mortgagee; to commence or complete any initial construction of improvements in the Leased Premises or any expansion or rehabilitation of existing improvements thereon; (iv) to reconstruct or repair improvements following a fire, casualty or condemnation unless Successor Landlord actually receives insurance proceeds to reconstruct or repair the same; and (v) to perform date to day maintenance and repairs (except to the extent expressly required pursuant to the terms of the Lease).

(d) *Modification, Amendment or Waiver*. Any modification or amendment of the Lease, or any waiver of the terms of the Lease, made without Mortgagee's written consent, but only if the consent of Mortgagee to such amendment or modification was required pursuant to the terms of the Mortgage or any other loan document; it being agreed that, notwithstanding anything to the contrary contained in the Mortgage or such other loan document, no such consent shall be required for any an amendment or modification which is (i) entered into to confirm the unilateral exercise by Tenant of a specific right or option granted to Tenant under the Lease (including, without limitation, rights of renewal and expansion options notwithstanding Landlord's participation in such exercise as provided in the Lease), (ii) non-material and expressly contemplated to be entered into under the provisions of the Lease, such as to confirm the commencement date, rent commencement date, or other dates or facts, or (iii) to address an administrative matter (such as a change of a notice address); nothing contained in this Agreement shall require Mortgagee's consent to any approvals under the Work Agreement (including without limitation, approval of plans and alterations to the Building and the Leased Premises as described in the Work Agreement or change orders thereto) provided the same is occurs in accordance with the Work Agreement; and provided further that the foregoing shall not be construed, or be deemed to affect, modify or waive in any respect Mortgagee's rights under the Mortgage or the other loan documents.

(e) *Surrender, Etc*. Any consensual or negotiated surrender, cancellation, or termination of the Lease, in whole or in part, agreed upon between Landlord and Tenant, unless effected unilaterally by Tenant pursuant to the express terms of the Lease.

(f) *Tenant's Rights*. Notwithstanding anything to the contrary contained herein or the Mortgage, Tenant may assert any claims for rental abatement, offsets and rent credits permitted under the terms of the Tenant's Rights Sections (as hereinafter defined) whether arising on, before or after the Succession Date (i) against Former Landlord and (ii) to the extent such rent credits, offsets or abatements have not been fully exhausted as of the Succession Date or continue to accrue after the Succession Date, against Mortgagee or any Successor Landlord; and the foregoing shall not be construed to relieve Successor Landlord of liability under the Lease first arising and accruing after the Succession Date; and provided further for purposes of clarity, it is hereby acknowledged and agreed that as of the Succession Date, subject to the terms of this Agreement, Mortgagee and any Successor Landlord shall be bound by all of the terms, covenants and conditions of the Lease for the balance of the term thereof remaining, including but not limited to the following obligations, each to the extent expressly required under the Lease; provided, however, in no event shall Mortgagee or Successor Landlord incur any liability beyond Mortgagee or Successor Landlord's then equity interest, if any, in the Property, and Tenant shall look exclusively to such equity interest of Lender, if any, in the Property for the payment and discharge of any obligations or liability imposed upon Mortgagee hereunder or under the Lease:

(w) the balance of Tenant's Contribution or Tenant's Expansion Premises Contribution to the extent delivered by Tenant to Former Landlord and not applied, as applicable to Landlord's Work or Landlord's Expansion Premises' Work but only to the extent Mortgagee or Successor Landlord actually receives Tenant's Contribution or Tenant's Expansion Premises Contribution;

(x) any rent credits, offsets, abatements or reductions of Rent to which Tenant may be entitled as set forth in is expressly set forth in the Lease, including, without limitation, the abatement of Rent through the Rent Commencement Date (and any extension of the Rent Commencement Date pursuant to Section 4.2), rent credits, offsets, refunds, abatements of or reduction of Rent set forth in Section 4.2(e), Section 4.2(f), Section 5.1(d)(iii), Section 5.1(d)(iv), , Section 7.2(b), Section 7.4(a), Section 8.1(e), Section 10.11(b), Section 11.3, Section 12.1(b), Section 12.3, Section 26.18(c), Section 26.19(b), Section 26.22(a), Section 31.2, Section 32.4, Section 32.8, and Section 33.8 which, in any case, have not yet been fully applied, credited, offset or exhausted against amounts payable by Tenant under the Lease as of the Succession Date (collectively referred to as the "***Tenant's Rights Sections***"); and

(y) any options or rights of Tenant under the Lease to the Expansion Premises and any Renewal Terms.

6. *Exculpation of Successor Landlord*. Notwithstanding anything to the contrary in this Agreement or the Lease, upon any attornment pursuant to this Agreement, the Lease shall be deemed to have been automatically amended to provide that Successor Landlord's obligations and liability under the Lease shall never extend beyond Successor Landlord's (or its successors' or assigns') interest, if any, in the Leased Premises from time to time, including insurance and condemnation proceeds, security deposits, escrows, Successor Landlord's interest in the Lease, and the proceeds from any sale, lease or other disposition of the Property (or any portion thereof) by Successor Landlord (collectively, the "***Successor Landlord's Interest***"). Tenant shall look exclusively to Successor Landlord's Interest (or that of its successors and assigns) for payment or discharge of any obligations of Successor Landlord under the Lease as affected by this Agreement. If Tenant obtains any money judgment against Successor Landlord with respect to the Lease or the relationship between Successor Landlord and Tenant, then Tenant shall look solely to Successor Landlord's Interest (or that of its successors and assigns) to collect such judgment. Tenant shall not collect or attempt to collect any such judgment out of any other assets of Successor Landlord.

7. *Notice to Mortgagee and Right to Cure*. Tenant shall notify Mortgagee of any default by Landlord under the Lease and agrees that, notwithstanding any provisions of the Lease to the contrary, no notice of cancellation thereof shall be effective unless Mortgagee shall have received notice of default giving rise to such cancellation and (i) in the case of any such default that can be cured by the payment of money, until thirty (30) days shall have elapsed following the giving of such notice or (ii) in the case of any other such default, Former Landlord shall have failed to remedy same within the time period stated in the Lease for effecting such cure (or, if no such time period is specified, within no more than thirty (30) days after receipt of such written notice) and Mortgagee shall not have cured such default within such time period for Landlord's cure plus ninety (90) days (but in no event in excess of 180 days); provided this Article 7 shall not apply to or limit in any way, Tenant's termination rights or otherwise extend the time period for the exercise of such termination rights (nor the date any termination is effective), under Section 10.11(b) of the Lease (provided Tenant shall have delivered an Untenantabily Notice (as defined in the Lease) to Mortgagee with respect to the applicable service interruption at approximately the same time such notice was delivered to Landlord). Notwithstanding the foregoing, Mortgagee shall have no obligation to cure any such default.

8. *Miscellaneous*.

(a) *Notices*. Any notice or request given or demand made under this Agreement by one party to the other shall be in writing, and may be given or be served by hand delivered personal service, or by depositing the same with a reliable overnight courier service or by deposit in the United States mail, postpaid, registered or certified mail, and addressed to the party to be notified, with return receipt requested or by fax transmission, with the original machine- generated transmit confirmation report as evidence of transmission. Notice deposited in the mail in the manner hereinabove described shall be effective from and after the expiration of three (3) days after it is so deposited; however, delivery by overnight courier service shall be deemed effective on the next succeeding business day after it is so deposited and notice by personal service or fax transmission shall be deemed effective when delivered to its addressee or within two (2) hours after its transmission unless given after 3:00 p.m. on a business day, in which case it shall be deemed effective at 9:00 a.m. on the next business day. For purposes of notice, the addresses and telefax number of the parties shall, until changed as herein provided, be as follows:

If to the Mortgagee, at:
Natixis Real Estate Capital LLC
1251 Avenue of the Americas
New York, New York 10020
Attention: Real Estate Administration
Telecopy No.: (212) 891-6101

If to the Tenant, at:
2U NYC, LLC
8201 Corporate Drive, Suite 900
Landover, MD 20785
Attention: Chief Financial Officer
With a copy to: General Counsel

(b) *Successors and Assigns*. This Agreement shall bind and benefit the parties hereto, their successors and assigns, any Successor Landlord, and its successors and assigns. If Mortgagee assigns the Mortgage, then upon delivery to Tenant of written notice thereof accompanied by the assignee's written assumption of all obligations under this Agreement, all liability of the assignor shall terminate.

(c) *Entire Agreement*. This Agreement constitutes the entire agreement between Mortgagee and Tenant regarding the subordination of the Lease to the Mortgage and the rights and obligations of Tenant and Mortgagee as to the subject matter of this Agreement.

(d) *Interaction with Lease and with Mortgage*. If this Agreement conflicts with the Lease, then this Agreement shall govern as between the parties and any Successor Landlord, including upon any attornment pursuant to this Agreement. This Agreement supersedes, and constitutes full compliance with, any provisions in the Lease that provide for subordination of the Lease to, or for delivery of nondisturbance agreements by the holder of, the Mortgage.

(e) *Mortgagee's Rights and Obligations*. Except as expressly provided for in this Agreement, Mortgagee shall have no obligations to Tenant with respect to the Lease.

(f) *Interpretation; Governing Law*. The interpretation, validity and enforcement of this Agreement shall be governed by and construed under the internal laws of the State in which the Leased Premises are located, excluding such State's principles of conflict of laws.

(g) *Amendments*. This Agreement may be amended, discharged or terminated, or any of its provisions waived, only by a written instrument executed by the party to be charged.

(h) *Due Authorization*. Tenant represents to Mortgagee that it has full authority to enter into this Agreement, which has been duly authorized by all necessary actions. Mortgagee represents to Tenant that it has full authority to enter into this Agreement, which has been duly authorized by all necessary actions.

(i) *Execution.* This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.

[THIS SPACE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the Mortgagee and Tenant have caused this Agreement to be executed as of the date first above written.

ATTEST:

MORTGAGEE:

NATIXIS REAL ESTATE CAPITAL LLC,
a Delaware limited liability company

_____
Name:
Title:

By: _____
Name:
Title:

_____
Name:
Title:

By: _____
Name:
Title:

TENANT:

2U NYC, LLC

_____
Name:
Title:

By: _____
Name:
Title:

LANDLORD'S CONSENT

Landlord consents and agrees to the foregoing Agreement, including without limitation the provisions of the last two sentences of Section 4(b) of this Agreement, which was entered into at Landlord's request. The foregoing Agreement shall not alter, waive or diminish any of Landlord's obligations under the Mortgage or the Lease. The above Agreement discharges any obligations of Mortgagee under the Mortgage and related loan documents to enter into a nondisturbance agreement with Tenant. Landlord shall be deemed a party to the Agreement for the purpose of Landlord's agreement set forth in Section 4(b) of this Agreement.

LANDLORD:
55 PROSPECT OWNER, LLC

By: _____
Name:
Title:

Dated: _____

MORTGAGEE'S ACKNOWLEDGMENT

STATE OF _____ :
: SS
COUNTY OF _____ :

On this, the __ day of _____, _____, before me a Notary Public in and for the State of _____, the undersigned officer, personally appeared _____, who acknowledged himself/herself to be a _____ of _____, a _____, and that he/she, being authorized to do so, executed the foregoing instrument for the purposes therein contained by signing the name of the _____ by himself/herself as such officer.

I certify that I am not an officer or director of the above-named bank, banking institution or trust company. [***Strike if inapplicable***]

In witness whereof, I hereunto set my hand and official seal.

_____ [SEAL]
Notary Public

My Commission Expires: _____, 20__

STATE OF _____ :
: SS
COUNTY OF _____ :

On this, the __ day of _____, _____, before me a Notary Public in and for the State of _____, the undersigned officer, personally appeared _____, who acknowledged himself/herself to be a _____ of _____, a _____, and that he/she, being authorized to do so, executed the foregoing instrument for the purposes therein contained by signing the name of the _____ by himself/herself as such officer.

I certify that I am not an officer or director of the above-named bank, banking institution or trust company. [***Strike if inapplicable***]

In witness whereof, I hereunto set my hand and official seal.

_____ [SEAL]
Notary Public

My Commission Expires:_____, 20__

TENANT'S ACKNOWLEDGMENT

STATE OF _____ :
: SS
COUNTY OF _____ :

On this, the __ day of _____, _____, before me a Notary Public in and for the State of _____, the undersigned officer, personally appeared _____, who acknowledged that he/she is the _____ of _____, a _____, and that he/she as such officer, being authorized to do so, executed the foregoing instrument for the purposes therein contained by signing the name of the corporation by himself/herself as such officer.

In witness whereof, I hereunto set my hand and official seal.

_____[SEAL]
Notary Public

My Commission Expires:

_____, 20___

LIST OF EXHIBITS

If any exhibit is not attached hereto at the time of execution of this Agreement, it may thereafter be attached by written agreement of the parties, evidenced by initialing said exhibit.

Exhibit "A" - Legal Description of the Land

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

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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 statements (No. 333-194943) on Form S-8 and (No. 333-207088) on Form S-3 of 2U, Inc. and subsidiaries of our reports dated February 24, 2017, with respect to the consolidated balance sheets of 2U, Inc. and subsidiaries as of December 31, 2016 and 2015, and the related consolidated statements of operations, changes in stockholders' equity (deficit), and cash flows for each of the years in the three-year period ended December 31, 2016, and the effectiveness of internal control over financial reporting as of December 31, 2016, which reports appear in the December 31, 2016 annual report on Form 10-K of 2U, Inc. and subsidiaries.

/s/ KPMG LLP

McLean, Virginia
February 24, 2017

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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 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)) 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.

5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of 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 24, 2017

By: /s/ CHRISTOPHER J. PAUCEK

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

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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 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)) 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.

5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of 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 24, 2017

By: /s/ CATHERINE A. GRAHAM

Name: Catherine A. Graham
Title: *Chief Financial Officer*

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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, 2016 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 24, 2017

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.

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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, 2016 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 24, 2017

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.

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