

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

FORM 10-K

[X] ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

For the fiscal year ended March 31, 2018

Commission file number 000-21783



**8x8, Inc.**

(Exact name of Registrant as Specified in its Charter)

Delaware

(State or Other Jurisdiction of Incorporation or Organization)

77-0142404

(I.R.S. Employer Identification Number)

2125 O'Nel Drive  
San Jose, CA 95131

(Address of Principal Executive Offices including Zip Code)

(408) 727-1885

(Registrant's Telephone Number, Including Area Code)

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

<u>Title of each class</u>	<u>Name of each exchange on which registered</u>
COMMON STOCK, PAR VALUE \$.001 PER SHARE	New York Stock Exchange

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

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

Indicate by check mark 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 reports), and (2) has been subject to such filing requirements for the past 90 days. YES  NO

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). YES  NO

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

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

Large accelerated filer  Accelerated filer  Non-accelerated filer  Smaller reporting company  Emerging growth company   
(Do not check if a smaller reporting company)

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

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

Based on the closing sale price of the Registrant's common stock on the NASDAQ Capital Market System on September 30, 2017, the aggregate market value of the voting stock held by non-affiliates of the Registrant was approximately \$1.2 billion. For purposes of this disclosure, shares of common stock held by officers and directors of the Registrant, and any beneficial owners of more than 5% of the outstanding shares of common stock that the Registrant believes may be

affiliates, have been excluded as shares that might be deemed to be held by affiliates. The determination of affiliate status for this purpose is not necessarily a conclusive determination for any other purpose.

The number of shares of the Registrant's common stock outstanding as of May 23, 2018 was 93,004,774.

## DOCUMENTS INCORPORATED BY REFERENCE

Items 10, 11, 12, 13 and 14 of Part III incorporate information by reference from the Proxy Statement to be filed within 120 days of March 31, 2018 for the 2018 Annual Meeting of Stockholders.

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### 8X8, INC.

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Forward-Looking Statements and Risk Factors

Statements contained in this annual report on Form 10-K, or Annual Report, regarding our expectations, beliefs, estimates, intentions or strategies are forward-looking statements within the meaning of Section 27A of the Securities Act of 1933 and Section 21E of the Securities Exchange Act of 1934. Any statements contained herein that are not statements of historical fact may be deemed to be forward-looking statements. For example, words such as "may," "will," "should," "estimates," "predicts," "potential," "continue," "strategy," "believes," "anticipates," "plans," "expects," "intends," and similar expressions are intended to identify forward-looking statements. You should not place undue reliance on these forward-looking statements. Actual results and trends may differ materially from historical results and those projected in any such forward-looking statements depending on a variety of factors. These factors include, but are not limited to:

- market acceptance of new or existing services and features,
- customer acceptance and demand for our cloud communication and collaboration services,
- changes in the competitive dynamics of the markets in which we compete,
- the quality and reliability of our services,
- customer cancellations and rate of churn,
- our ability to scale our business,
- customer acquisition costs,
- our reliance on infrastructure of third-party network services providers,
- risk of failure in our physical infrastructure,
- risk of failure of our software,
- our ability to maintain the compatibility of our software with third-party applications and mobile platforms,
- continued compliance with industry standards and regulatory requirements in the United States and foreign countries in which we make our software solutions available, and the costs of such compliance,
- risks relating to our strategies and objectives for future operations, including the execution of integration plans and realization of the expected benefits of our acquisitions,
- the amount and timing of costs associated with recruiting, training and integrating new employees,
- timing and extent of improvements in operating results from increased spending in marketing, sales, and research and development,
- introduction and adoption of our cloud software solutions in markets outside of the United States,
- risk of cybersecurity breaches,
- general economic conditions that could adversely affect our business and operating results,
- implementation and effects of new accounting standards and policies in our reported financial results, and
- potential future intellectual property infringement claims and other litigation that could adversely effect our business and operating results.

The forward-looking statements may also be impacted by the additional risks faced by us as described in this Annual Report, including those set forth under the section entitled "Risk Factors." All forward-looking statements included in this Annual Report are based on information available to us on the date hereof, and we assume no obligation to update any such forward-looking statements. Readers are urged to carefully review and consider the various disclosures made in this Annual Report, which attempt to advise interested parties of the risks and factors that may affect our business, financial condition, results of operations and prospects.

Our fiscal year ends on March 31 of each calendar year. Each reference to a fiscal year in this Annual Report, refers to the fiscal year ended March 31 of the calendar year indicated (for example, fiscal 2018 refers to the fiscal year ended March 31, 2018). Unless the context requires otherwise, references to "we," "us," "our," "8x8" and the "Company" refer to 8x8, Inc. and its consolidated subsidiaries.

## ITEM 1. BUSINESS

### Overview

A provider of enterprise cloud communications solutions, 8x8 helps businesses get their employees, customers and applications talking, and to make people more connected and productive worldwide. From a unified, proprietary platform, we offer unified communications, team collaboration, conferencing, contact center, analytics and other services to our business customers on a Software-as-a-Service (SaaS) model.

Small businesses were the first to transition their communications to the cloud starting several years ago, often based on its cost effectiveness, ease of deployment and inherent flexibility. Now, larger businesses that have adopted cloud-based solutions for other applications and processes are increasingly looking to modernize their communications in a similar fashion. We believe this adoption is being driven by the convergence of several market trends, including the increasing costs of maintaining installed legacy communications systems; the fragmentation resulting from use of multiple on-premises systems, which has worsened as workforces have become more distributed and international; and the proliferation of personal mobile devices in the workplace.

Our solutions offer businesses a secure, reliable and simplified approach for businesses to transition their legacy, on-premises communications systems to the cloud. Our comprehensive solution, built from core cloud technologies that we own and manage internally, enables 8x8 customers to rely on a single provider for their global communications, contact center and customer support requirements. Combining these services allows our customers to eliminate information silos and expose vital, real-time communications data spanning multiple services, applications and devices which, in turn, can improve productivity, business performance and customer experience.

Our customers are spread across more than 150 countries and range from small businesses to large enterprises with more than 10,000 employees. In recent years, we have increased our focus on the mid-market and enterprise customer segments, and in fiscal 2018, we generated a majority of our new services revenue from customers in these business segments.

### **The Challenge**

Businesses today face increasing cost and complexity with deployments of communications and collaboration solutions. Companies of all sizes are managing a global, distributed workforce that seeks to leverage multiple forms of communication in their day-to-day interactions. The rapid rise of mobile devices in the enterprise has created demand for bring-your-own-device (BYOD) integration as part of a typical business' communications needs. CIOs and IT leaders are also increasingly focused on delivering superior customer experience as a strategic priority, and seeking ways to leverage their communications infrastructure to enable more personalized and productive customer interactions. Companies are looking to increase their competitive edge by also integrating their communications with Enterprise Resource Planning (ERP), Customer Relationship Management (CRM), Human Capital Management (HCM) applications, and other back-office IT (information technology) systems within their communications infrastructure. Further complicating matters, business users are circumventing their IT departments by using a variety of self-selected third-party tools for team communications and collaboration, driving a shift in the buying center for communications and collaboration from IT to individuals, a phenomenon known in the industry as "shadow IT."

We believe traditional on-premises communications systems are unable to accommodate all of these needs in a cost-efficient manner. In addition to being difficult to deploy and expensive to maintain in multiple locations for a globally distributed workforce, these solutions often fail to provide the mobility, business continuity and integration capabilities required by modern business customers. BYOD demands from employees further complicate the delivery of a company-wide communication system using on-premises equipment. The result is a patchwork of communications systems with security risks that stretch across the organization and lost productivity.

### **The 8x8 Solution**

We offer a scalable cloud communications platform comprising voice, chat, team collaboration, contact center, and analytics for businesses of all sizes across the globe. The key attributes of the 8x8 solution include:

- **Intelligent Communication and Collaboration within a Single Integrated Software Platform.** We believe that integrated communications and collaboration drives more efficient employee and customer engagement and greater business productivity. We are unique among our competitors in that we own the core technology and manage the platform behind all of our services (voice, call center and collaboration). We believe having control over our entire platform enables us to deliver a more unified and seamless experience for our customers across all aspects of the service — from the user interface, to the technical support experience. In addition, our 8x8 Sameroom technology helps our customers tear down information silos by providing interoperability among multiple third-party collaboration tools.
- **Big Data, Analytics, and Artificial Intelligence.** We have developed a suite of web-based analytics tools to help customers make informed decisions based on underlying communications data associated with 8x8 services and supported devices. We continue to make strategic investments in Artificial Intelligence (AI) and Machine Learning (ML) to develop new capabilities and features for our customers such as context-rich customer engagements, intelligent call routing and faster first-call resolution.

- **Global Reach®.** 8x8's Global Reach® initiative refers to our global strategy to provide enterprise-grade quality of service, reliability, security and support for our multinational customers. Our platform utilizes intelligent geo-routing technology, and leverages 15 data centers across seven dispersed regions - United States, Canada, United Kingdom, Continental Europe, Asia, South America, and Australia - to provide consistently high call quality to customers worldwide.
- **Integration with Third-Party Business Applications.** Our software uses a combination of open application program interfaces (APIs) and pre-built integrations to retrieve contextually relevant data from, and to enhance the functionality of, customers' third-party applications, including Salesforce, Microsoft Dynamics, Google, NetSuite, Zendesk, Oracle Sales Cloud, Bullhorn, and Hubspot.
- **Intuitive User Experience.** Our web, desktop and mobile interfaces act as the communications portal for all 8x8 services and provide customers with a familiar and consistent user experience across all endpoints.
- **Rapid Deployment.** Business agility in the global, modern economy is a competitive necessity, and we embrace the notion that communication services should be deployable as quickly as possible. Our services can generally be provisioned in minutes from web-based administrative tools. We have automated our provisioning, billing and other systems to provide greater speed and flexibility in deployment for our customers. To ensure consistency and quality across our products and customer base, we have developed a standard, yet flexible, deployment methodology that we refer to as Elite Touch®. We apply this systematic approach to all of our deployments, regardless of size or complexity.
- **Committed Service Quality over the Public Internet.** We currently offer our qualifying enterprise customers an "end-to-end" service level agreement (SLA), with meaningful uptime and voice quality commitments, backed by service credits and a no-penalty early termination right for the customer under specified conditions.
- **Emphasis on Security and Compliance.** We have invested heavily in achieving compliance with various industry standards, and we believe we have created a top-down culture of security and compliance, including a commitment to secure architecture and development.

## Our Strategy

We are committed to developing and delivering the most innovative, reliable, scalable and secure cloud software for global business communications. Our strategy is informed by evolving market dynamics, including the growing adoption of cloud communications, collaboration and contact center software by larger commercial and enterprise customers, along with the unique attributes of our technology.

Key elements of our strategy include:

- **Positioning, Selling and Supporting our X Series Product Line.** We expect to launch 8x8's latest product innovation, X Series, in or around June 2018. Exemplifying our vision of a truly unified customer engagement solution, we expect X-Series to be an array of packaged offerings that have increasingly powerful engagement capabilities, including the packages that combine traditionally segregated unified communications and contact center services into a single comprehensive offering. We intend to continue investing in positioning, selling and supporting X-Series.
- **Providing Superior, Enterprise Grade Functionality.** We have invested in our software and software delivery infrastructure to provide a high-level of availability, reliability, security and compliance, and will continue to invest in this area. We intend to continue to expand our customer deployment and support capabilities, including our program management, professional services, and partner delivery capabilities, to meet the needs of larger, multinational customers.
- **Delivering One System of Engagement, providing for One System of Intelligence.** We believe business communications solutions are increasingly requiring a breadth of software capabilities, from simple voice and team collaboration to complex multi-channel contact center capabilities, and we expect this trend to continue. We believe our ability to deliver a full spectrum of capabilities within a single cloud platform from a single vendor is a competitive advantage, especially for larger customers. We refer to this comprehensive set of services and capabilities that manages all communications into and out of an enterprise on a single cloud platform as a "system of engagement." By providing a common set of interaction capabilities and information about how an enterprise communicates with customers, partners, and employees, the "system of engagement" becomes the key business system to improve customer, partner, and employee experience with that enterprise. Additionally, we plan to continue expanding these services within our platform, including extending our contact center capabilities, adding deeper collaboration services, and bringing to market an increasing number of analytics-driven applications — in the process further enhancing the system of engagement to what we refer to as a "system of intelligence."
- **Expanding our Global Footprint.** As more and more businesses establish international operations, we believe companies will view traditional communication solutions bridging multiple geographies and carrier networks as cumbersome and expensive. We will continue to focus on expanding our ability to effectively and efficiently deliver our services into the countries and regions we currently serve. In addition, we plan to continue expanding the distribution of our services into new countries through a combination of organic growth, regional acquisitions, and channel partners.

- **Acquiring Strategic Assets.** We continue to identify, acquire and integrate strategic technologies, assets and businesses to expand the breadth and adoption of our cloud software offerings and drive growth, both domestically and internationally.

## Our Products

Powered by company-owned and managed technologies, 8x8's solutions serve businesses of all sizes, scaling readily to serve large, globally distributed enterprise customers. All of our core software components work together and can be combined into different bundles depending on the business needs of our customers.

Over the course of fiscal 2018, we offered a variety of **classic** products:

- **8x8 Virtual Office** is a self-contained, feature rich, end-to-end solution that delivers high quality voice and unified communications-as-a-service globally.
- **8x8 Virtual Contact Center** is a multi-channel cloud-based contact center solution that enables even the smallest contact center to enjoy customer experience and agent productivity benefits that were previously available only to large contact centers at a much higher cost.
- **8x8 Virtual Office Meetings** is a cloud-based video conferencing and collaboration solution that enables secure, continuous collaboration with borderless high definition (HD) video and audio communications from mobile and desktop devices anywhere in the world.
- **8x8 Sameroom** provides an interoperability platform that enables cross-team messaging and collaboration within a large organization and between organizations. With the Sameroom technology, our customers can collaborate across more than twenty disparate team messaging solutions.
- **Script8 (Scripting Engine)** is a dynamic communications flow and routing engine that offers a scripting environment for intelligently routing communications data for specific workflows. Script8 allows end-users to create simple, personalized and customizable communications experiences, including communications control, external data source integration and intelligent routing.

While these components have worked well together, the capabilities of these products are being further integrated into a unified suite that we refer to as 8x8 X Series. We began releasing integrated product suites during our fiscal 2018 with offerings such as Virtual Office X8 Editions. During fiscal 2019, we will be accelerating the transition by driving X Series adoption.

We intend to offer the following product plans and capabilities in the **8x8 X Series**:

- **X1 through X4** are integrated suites that will provide efficient, intelligent, cloud-based, enterprise engagement solutions. The packages will deliver high quality voice and unified communications-as-a-service globally, enabling end users to use a single business phone number to place and receive calls at any supported device (including desktop phones, computers with the 8x8 desktop software installed and mobile devices with the 8x8 mobile app installed) over a broadband internet connection. Additionally, in ascending order, each package will incrementally offer more features expected by demanding communications and collaboration customers today, such as auto attendants; worldwide extension dialing; corporate directory with click-to-call functionality; presence, messaging and chat; call recording; call monitoring; internet fax; and the ability to interact contextually with inbound communication (email, call or chat). Customers can mix and match packages within their business to most effectively meet the needs of individual users.
- **X Series Meetings** is a cloud-based video conferencing and collaboration solution that enables secure, continuous collaboration with borderless high definition (HD) video and audio communications from mobile and desktop devices anywhere in the world. Meetings is integrated within the X Series desktop and mobile experience, allowing users to schedule meetings, initiate instant collaboration on the fly, transition instant messaging conversations into a meeting from a single application, share content, and record meetings.

- **Open Team Messaging Platform** provides an integrated open team messaging platform to facilitate modern modes of communication with support for direct messages, public and private team messaging rooms, short messaging service (SMS), presence, emojis, and @mentions. 8x8 Sameroom technology provides interoperability between 8x8 Team Messaging and 3rd party messaging platforms for cross-team messaging and collaboration interactions between internal and external departments and organizations.
- **X5 through X8** will deliver employee experience and deep customer engagement through integrated cloud communication, contact center software and collaboration solutions. These packages build off the preceding X Series bundles, adding intelligent, easy-to-use, rapid to deploy cloud contact center solutions or more robust omni-channel cloud contact center solutions. Additionally, each package will incrementally offer different features, such as self-services configuration, programmable IVR tool, automatic queuing and routing, skills-based routing, browser-based agent console, multimedia management, real-time monitoring and reporting, internal chat, voice recording and logging, historical reporting, customer call back, contact and case management tools, and speech analytics.

## Our Technology

We introduced our first communications SaaS offering in 2002, and have since expanded our solutions, features and capabilities. Our services are powered by internally-owned and operated technologies and are delivered to our customers from our cloud communications platform. From inception through March 31, 2018 we have been awarded more than 150 United States patents covering a variety of voice and video communications, signaling, processing, analytics, and storage technologies. Many of our current patents apply to the communications software used in our various SaaS solutions.

We developed our Global Reach patented technology with the goal of ensuring that 8x8 voice communications, placed or received anywhere on the globe on any compatible device, can have the same consistent quality as a local call within a single area code. Many hosted Voice over Internet Protocol (VoIP) solutions route call data through the same, predetermined data center, regardless of the physical or geographic location of callers. By contrast, when an end-user makes a call using our solution, our patented technology seeks out the closest data center to the caller's location, subject to service quality, security and data sovereignty considerations. We call this "geo-routing." Our proprietary technologies take into account current Internet and carrier network conditions and determine the best route virtually instantaneously, ensuring that latency is minimized within the available routing options.

Our software solutions provide mission critical services to our business customers. Therefore, we have developed technologies and architectures that embed high reliability and uptime into our software.

We believe one of the key areas that differentiates 8x8 from our competitors is the quality of our real-time service delivery over the public Internet. Real-time voice is perhaps the most difficult application to be delivered over the public Internet as there is no time for retransmission and there is little buffering that can be done without impacting the quality of a real-time conversation. As such, quality of the connection well beyond just the available bandwidth is the most important element of service delivery for VoIP. By having diverse routes and connectivity as well as full and granular Border Gateway Protocol (BGP) control over these connections, 8x8 is constantly inspecting the state of the Internet to optimize our service delivery to customers.

In addition, we have instrumented hundreds of thousands of 8x8 endpoints to provide details of quality of connection information at the end of each call to 8x8's internal network operations environment. This is possible due to our full control over the core networking stack and the transit connections in our data centers.

Our technologies include a number of deployment methodologies that promote consistency and efficiency in the implementation of our services, while driving customer adoption of our more advanced software features. We also manage and port existing business numbers globally, and we provide local number porting services in more than 40 countries. Our software provides connectivity to emergency services and other services required by telecommunications regulations in different regions of the world. We have developed our own proprietary billing software which is closely integrated with our products.

Finally, a key aspect of our technology, especially critical for larger enterprise customers and certain industry verticals, such as healthcare, is our emphasis on security and compliance, which we have addressed through specific measures such as our end-to-end encryption technologies and certifications with various regulations and industry standards as described above.

## **Sales, Marketing and Promotional Activities**

We market our services directly to end users through a variety of means, including search engine marketing and optimization, third-party lead generation sources, industry conferences, trade shows, webinars, and digital advertising channels. We employ a direct sales organization, consisting of inside and field-based sales agents, and we partner with an indirect channel partner network consisting of value-added resellers (VARs), master agents, independent software vendors (ISVs), system integrators and service providers. We typically contract directly with the end customer and use these channel partners to identify, qualify and manage prospects throughout the sales cycle, although we also have arrangements with a number of partners who resell our services to their own customers, with whom we do not contract directly. For mid-market and enterprise customers, our sales professionals work closely with inside technical support, sales engineers and deployment specialists to develop customized solution proposals based on individual customer requirements.

In fiscal 2018, we invested in new and unique demand generation programs for our channel partners, including new partner enablement tracks with dedicated resources, online customer return on investment (ROI) tools, co-branded marketing materials and our "PartnerConnect" portal which, among other capabilities, allows partners to launch and manage multi-touch digital co-marketing campaigns. We also continued to invest in developing partner deployment and support certification programs.

We believe the 8x8 partner channel strategy has been a critical component of our strategy for winning large and mid-market enterprise business, and in this most recent fiscal year, we significantly expanded and enhanced our global partner program.

## **Competition**

Given the size and stage of the current market opportunity and the breadth of our communications and collaboration service platform, we face competition from many companies, including other cloud services providers, communications and collaboration software vendors and incumbent telephone companies and other resellers of legacy communications equipment. For more information regarding the risks associated with such competition, please refer to our "Risk Factors" below.

### ***Cloud Communications and Contact Center Services Providers***

For customers looking to implement cloud-based communications, we compete with other cloud communication software providers such as RingCentral, Fuze, Vonage, Five9 and InContact/Nice. We believe that the integration of our services over a common platform, including contact center, differentiates our services from those offered by these competitors.

### ***Large Internet and Cloud Services Vendors***

We also face competition from communications and collaboration software vendors such as Cisco, Google, Amazon Web Services and Microsoft, some of which are well established in the communications industry while others have only recently begun to market cloud communications solutions. Some of these competitors have developed strong software solutions for its respective communications and/or collaboration silo. Many of these competitors are substantially larger, better capitalized, and more well-known than we are. However, we believe that a collective deployment of these software solutions is likely to be more expensive and cumbersome for customers, when compared to similar deployments of our services.

### ***Incumbent Telephony Companies and Legacy Equipment Providers***

Our cloud-based software replaces wire line business voice services sold by incumbent telephone and cable companies such as AT&T, CenturyLink, Comcast, and Verizon Communications, often in conjunction with on-premises hardware solutions from companies like Avaya, Cisco and Mitel. We believe that the solutions offered by these competitors are typically more expensive to adopt, require cumbersome on-premises implementations, and need regular hardware and IT infrastructure upgrades. Furthermore, the offerings often do not provide all the functionality needed for larger customers to integrate their communication systems with their IT infrastructure, therefore requiring additional system integration investments.



## **Operations**

Our operations infrastructure consists of data management, monitoring, control, and billing systems that support all of our products and services. We have invested substantial resources to develop and implement our real-time call management information system. Key elements of our operations infrastructure include a prospective customer quotation portal, customer provisioning, customer access, fraud control, network security, call routing, call monitoring, media processing and normalization, call reliability, detailed call record storage and billing and integration with third-party applications. We maintain a call-switching platform in software that manages call admission, call control and call rating and routes calls to an appropriate destination or customer premises equipment.

### *Network Operations Center*

We maintain global network operations centers at our headquarters in San Jose, California and in Cluj-Napoca, Romania, and employ experienced staff in voice and data operations in US, UK, and Romania to provide 24-hour operations support, seven days per week. We use various tools to monitor and manage elements of our network and our partners' networks in real time. We also monitor the network elements of some of our larger business customers. Additionally, our network operations centers provide technical support to troubleshoot equipment and network problems. We also rely upon the network operations centers and resources of our telecommunications carrier partners and data center providers to augment our monitoring and response efforts.

In the event of a major disruption at a data center, such as a natural disaster, failover between data centers for 8x8 Virtual Office is designed to occur almost instantly and with minimal disruption. In addition, most of the maintenance services performed by 8x8 do not interrupt the service we provide to customers. For example, we can move the core call flow processing from one data center to another without dropping a call. We offer local redundancy (i.e., failover to a data center within the same region) as a standard feature of 8x8 Virtual Contact Center, and geographical redundancy (i.e., failover to a data center in a different region) can be enabled as an option to provision geo-redundant tenants on multiple sites.

### *Customer and Technical Support*

8x8 maintains a global customer support organization with operations in the United States, United Kingdom, Philippines, Singapore, and Romania. Customers can access 8x8 customer support services directly from the company website, or receive multi-channel technical support via phone, chat, web and email. Emergency support is available on a 24x7 basis.

We take a lifecycle approach to customer support, supporting customers from onboarding to deployment and training, and through the renewal process, to drive greater user adoption of 8x8 services. For our larger enterprise customers, our Elite Touch implementation methodology utilizes a Deployment Management team and provides active support through the "go-live" date at each customer site. We also have an Elite Customer Success Program, and, for a certain profile of customer, a dedicated Customer Success Manager, as a single point of contact for every aspect of the post-sale relationship. Finally, we offer a variety of training classes through our 8x8 Academy, either through instructor-led classes or self-paced eLearning.

### *Interconnection Agreements*

We are a party to telecommunications interconnect and service agreements with VoIP providers and public switched telephone network (PSTN) telecommunications carriers in the United States and other global regions. Pursuant to these agreements, VoIP calls originating on our network can be terminated on other VoIP networks or the PSTN, and likewise, calls originating on other VoIP networks and the PSTN can be terminated on our network.

## **Research and Development**

The cloud communications market is characterized by rapid technological changes and advancements, typical of most SaaS markets. Accordingly, we make substantial investments in the design and development of new products and services, as well as the development of enhancements and features to our existing products and services, and make these enhancements available to our customers frequently. Research and development expenses in each of the fiscal years ended March 31, 2018, 2017 and 2016 were \$34.8 million, \$27.5 million, and \$24.0 million, respectively.

We plan to invest in expanding the set of services within our platform, including extending our contact center capabilities, adding deeper collaboration services, and bringing an increasing number of analytics-driven applications to market. Our development programs continue to focus on the integration and functionality of our products and services with other SaaS products, such as Google's GSuite, Salesforce.com, NetSuite, Zendesk and others. We also plan to continue investing in our AI and ML research, to develop more intelligent features for our services.

We currently employ individuals in research, development and engineering activities in our facilities in San Jose, California, London, England and Cluj, Romania as well as outsourced software development consultants.

### **Regulatory Matters**

In the United States, VoIP and other software communications and collaboration services, like ours, have been subject to less regulation at the state and federal levels than traditional telecommunications services. The FCC has subjected VoIP service providers to a smaller subset of regulations that apply to traditional telecommunications service providers and has not yet classified VoIP services as either telecommunications or information. The FCC is currently examining the status of VoIP service providers and the services they provide in multiple open proceedings.

Many state regulatory agencies impose taxes and other surcharges on VoIP services, and certain states take the position that offerings by VoIP providers are intrastate telecommunications services and therefore subject to state regulation. These states argue that if the beginning and end points of communications are known, and if some of these communications occur entirely within the boundaries of a state, the state can regulate that offering. We believe that federal regulations largely pre-empt state regulations that treat VoIP offerings in the same manner as providers of traditional telecommunications services. However, there are many areas of regulation where pre-emption has not been resolved as a matter of law. It is possible that the FCC could determine that VoIP services are not information services, or that there could be a judicial or legislative determination that the states are not pre-empted from regulating VoIP services as traditional telecommunications services. We cannot predict how or when these issues will be resolved or the potential future impact on our business at this time.

In addition to regulations addressing Internet telephony and broadband services, other regulatory issues relating to the Internet generally could affect our ability to provide our services. Congress has adopted legislation that regulates certain aspects of the Internet including online content, user privacy, taxation, liability for third-party activities and jurisdiction. In addition, a number of initiatives pending in Congress and state legislatures would prohibit or restrict advertising or sale of certain products and services on the Internet, which may have the effect of raising the cost of doing business on the Internet generally.

Internationally, we are subject to a complex patchwork of regulations that vary from country to country. Some countries have adopted laws that make the provision of VoIP services illegal within the country. Other countries have adopted laws that impose stringent licensing obligations on providers of VoIP services like ours. In many countries, it is not clear how laws that have historically been applied to traditional telecommunications providers will be applied to providers of VoIP services like us. On May 4, 2016, the EU formally adopted the General Data Protection Regulation, or GDPR, which became effective on May 25, 2018, and will replace the Data Protection Directive 95/46/EC. The GDPR imposes new obligations on all companies, including us, and substantially increases potential liability for all companies, including us, for failure to comply with data protection rules.

The effect of any future laws, regulations and orders, or any changes in existing laws or their enforcement, on our operations cannot be determined. But as a general matter, increased regulation and the imposition of additional funding obligations increases service costs that may or may not be recoverable from our customers. An increase in these costs could make our services less competitive with traditional telecommunications services, if we increase our prices, or decrease our profit margins, if we attempt to absorb such costs.

Federal, state, local and foreign governmental organizations are considering other legislative and regulatory proposals that would regulate and/or tax applications running over the Internet. We cannot predict whether new taxes will be imposed on our services, and depending on the type of taxes imposed, whether and how our services would be affected thereafter. Increased regulation of the Internet may decrease its growth and hinder technological development, which may negatively impact the cost of doing business via the Internet or otherwise materially adversely affect our business, financial condition and results of operations. Please refer to Part I, Item 1A "Risk Factors," for a discussion of regulatory risks, proceedings and issues that could adversely affect our business and operating results in the future.

## **Intellectual Property and Proprietary Rights**

Our ability to compete depends, in part, on our ability to obtain and enforce intellectual property protection for our technology in the United States and internationally. We currently rely primarily on a combination of trade secrets, patents, copyrights, trademarks and licenses to protect our intellectual property. From inception through March 31, 2018 we have been awarded more than 150 United States patents, which we expect to expire between 2018 and 2035. We have additional patent applications pending. We cannot predict whether our pending patent applications will result in issued patents.

To protect our trade secrets and other proprietary information, we require our employees to sign agreements providing for the maintenance of confidentiality and also the assignment of rights to inventions made by them while employed by us. There can be no assurance that our means of protecting our proprietary rights in the United States or abroad will be adequate or that competition will not independently develop technologies that are similar or superior to our technology, duplicate our technology or design around any of our patents. In addition, the laws of foreign countries in which our products are or may be sold may not protect our intellectual property rights to the same extent as do the laws of the United States. Our failure to protect our proprietary information could cause our business and operating results to suffer.

We are also subject to the risks of adverse claims and litigation alleging infringement of the intellectual property rights of others. Such claims and litigation could require us to expend substantial resources and distract key employees from their normal duties, which could have a material adverse effect on our operating results, cash flows and financial condition. The communications and software industries are subject to frequent litigation regarding patent and other intellectual property rights. Moreover, the VoIP service provider community has historically been a target of patent holders. There is a risk that we will be a target of assertions of patent rights and that we may be required to expend significant resources to investigate and defend against such assertions of patent rights. For information about specific claims, please refer to Part I, Item 1A, Risk Factors - "Our infringement of a third party's proprietary technology could disrupt our business" and Part I, Item 3. "LEGAL PROCEEDINGS."

We utilize certain technology, including hardware and software, that we license from third parties. Most of these licenses are on standard commercial terms made generally available by the companies providing the licenses. To date, the cost and terms of these licenses individually has not been material to our business. There can be no assurance that the technology licensed by us will continue to provide competitive features and functionality or that licenses for technology currently utilized by us or other technology which we may seek to license in the future will be available to us on commercially reasonable terms or at all, however. The loss of, or inability to maintain, existing licenses could result in shipment delays or reductions until equivalent technology or suitable alternative products could be developed, identified, licensed and integrated, and could harm our business.

## **Geographic Areas**

We have two reportable segments. Financial information relating to revenues generated in different geographic areas are set forth in Note 9 to our consolidated financial statements contained in Part II, Item 8 of this Annual Report.

## **Employees**

As of March 31, 2018, our workforce consisted of 1,225 full time employees spread across the globe. None of our employees are represented by a labor union or are subject to a collective bargaining arrangement.

## **Available Information**

We were incorporated in California in February 1987 and reincorporated in Delaware in December 1996. We maintain a corporate Internet website at the address <http://www.8x8.com>. The contents of this website are not incorporated in or otherwise to be regarded as part of this Annual Report. We file reports with the Securities and Exchange Commission, or SEC, which are available on our website free of charge. These reports include annual reports on Form 10-K, quarterly reports on Form 10-Q, current reports on Form 8-K and amendments to such reports, each of which is provided on our website as soon as reasonably practical after we electronically file such materials with or furnish them to the SEC. You can also read and copy any materials we file with the SEC at the SEC's Public Reference Room at 100 F Street, NE, Washington, DC 20549. You can obtain additional information about the operation of the Public Reference Room by calling the SEC at 1.800.SEC.0330. In addition, the SEC maintains a website ([www.sec.gov](http://www.sec.gov)) that contains reports, proxy and information statements, and other information regarding issuers that file electronically with the SEC, including 8x8.

## Executive Officers of the Registrant

Our executive officers as of the date of this report are listed below.

**Vikram Verma, Chief Executive Officer.** Vikram Verma, age 53, has served as Chief Executive Officer since September 2013 and as a director since January 2012. From October 2008 through August 2013, Mr. Verma was President of Strategic Venture Development for Lockheed Martin. From 2006 through 2008, Mr. Verma was President of the IS&GS Savi Group, a division of Lockheed Martin. Prior to 2006, Mr. Verma was Chairman and Chief Executive Officer of Savi Technology, Inc. Mr. Verma received a B.S.E.E. degree from Florida Institute of Technology, a M.S.E. degree from the University of Michigan in electrical engineering, and the graduate degree of Engineer in Electrical Engineering from Stanford University.

**Bryan Martin, Chairman and Chief Technology Officer.** Bryan Martin, age 50, has served as Chairman of the Board of Directors since December 2003, has served as Chief Technology Officer since September 2013 and as a director since February 2002. From February 2002 to September 2013, he served as Chief Executive Officer. From March 2007 to November 2008, and again from April 2011 to December 2011, he served as President. From February 2001 to February 2002, he served as our President and Chief Operating Officer. He served as our Senior Vice President, Engineering Operations from July 2000 to February 2001 and as Chief Technical Officer from August 1995 to August 2000. He also served as a director of the Company from January 1998 through July 1999. In addition, Mr. Martin served in various technical roles for the Company from April 1990 to August 1995. He received a B.S. and an M.S. in Electrical Engineering from Stanford University.

**Mary Ellen Genovese, Chief Financial Officer.** Mary Ellen Genovese, age 59, has served as our Chief Financial Officer since November 2014. Ms. Genovese had been serving as our Senior Vice President of Human Resources since July 2014 and prior to that, as a consultant to the Company since April 2012. Prior to joining the Company, from 2008 to 2011, Ms. Genovese served as a consultant to a Fortune 50 security company. From 2004 through 2006, Ms. Genovese was the Chief Financial Officer of Savi Technology, Inc. Prior to joining Savi Technology, she was Chief Financial Officer of Trimble Navigation Limited from 2000 to 2004. Between 1992 and 2000, Ms. Genovese worked at Trimble in a succession of other financial and accounting positions, including VP of Finance and Corporate Controller. Ms. Genovese holds a B.S. Degree in Accounting from Fairfield University and received her CPA license from the State of Connecticut.

**Darren Hakeman, Senior Vice President of Strategy, Analytics and Corporate Development.** Darren Hakeman, age 48, has served as our Senior Vice President of Strategy, Analytics and Corporate Development since September 2017. Mr. Hakeman previously served as Senior Vice President of Product and Strategy since September 2013, and was a consultant to the Company starting in May 2013. From 2009 to 2013, Mr. Hakeman worked as a strategic advisor to leading Silicon Valley companies and emerging start-ups including Agari, Blackfire Research, and a major global security company. Prior to 2009, he served as Senior Vice President of Operations for a SaaS Business Unit of Lockheed Martin that emerged following Lockheed's acquisition of Savi Technology, Inc. He received a B.S. and an M.S. in Electrical Engineering from Stanford University.

**Henrik Gerdes, Chief Accounting Officer.** Henrik Gerdes, age 42, has served as our Chief Accounting Officer, since March 2017. Prior to joining the Company, Mr. Gerdes, served as Corporate Controller and Treasurer at Rocket Fuel Inc. from 2014 through March 2017, Director of Finance at TIBCO Software Inc. from 2011 through 2014, and SEC reporting manager at Quinstreet Inc. from 2010 through 2011. Between 2002 and 2010, Mr. Gerdes served in different positions at PricewaterhouseCoopers in Germany and San Jose, USA. Mr. Gerdes holds a Masters of Business Economics from University of Goettingen, Germany.

**Dejan Deklich, Chief Product Officer.** Dejan Deklich, age 43, has served as our Chief Product Officer since September 2017. Mr. Deklich had been serving as our Senior Vice President of Research and Development since February 2017. Prior to joining the Company, Mr. Deklich served as Vice President of Platform and Cloud at Splunk from January 2013 to September 2016. Mr. Deklich also held various senior roles at Nice System post Merced Systems acquisition, as well as Atribbutor, Yahoo and IBM Research. Mr. Deklich holds a Masters of Science degree in Computer Engineering from Santa Clara University and Masters in Physics from University of Bremen, Germany.

**Rani Hublou, Chief Marketing Officer.** Rani Hublou, age 53, has served as our Chief Marketing Officer since May 2017. Prior to joining the Company, from February 2015 to April 2017, Ms. Hublou served as Chief Product and Marketing Officer at Comprehend Systems. From 2009 to 2014, Ms. Hublou was the Chief Marketing Officer of PSS Systems. From 2001 to 2004, Ms. Hublou served as Senior Vice President of Marketing at BEA Systems. Ms. Hublou received both B.S. and M.S. degrees in Industrial Engineering from Stanford University.

## ITEM 1A. RISK FACTORS

If any of the following risks actually occur, our business, results of operations and financial condition could suffer significantly.

### **Our success depends on the growth and customer acceptance of our services.**

Our future success depends on our ability to significantly increase revenue generated from sales of our cloud software solutions to business customers, including small and mid-size businesses (SMBs) and mid-market and larger distributed enterprises. To increase our revenue, we must add new customers and encourage existing customers to continue their subscriptions (on terms favorable to us), increase their usage of our services, and/or purchase additional services from us. For customer demand and adoption of our cloud communications solutions to grow, the quality, cost and feature benefits of these services must compare favorably to those of competing services. For example, our cloud unified communications and contact center services must continue to evolve so that high-quality service and features can be consistently offered at competitive prices. As our target markets mature, or as competitors introduce lower cost and/or more differentiated products or services that compete or are perceived to compete with ours, we may be unable to renew or extend our agreements with existing customers or attract new customers, or new business from existing customers, on favorable terms, which could have an adverse effect on our revenue and growth.

The rate at which our existing customers purchase any new or enhanced services we may offer depends on a number of factors, including general economic conditions, the importance of these additional features and services to our customers, the quality and performance of our cloud communications solutions, and the price at which we offer them. If our customers react negatively to our new or enhanced service offerings, such as our new X series suite of products, or our efforts to upsell are otherwise not as successful as we anticipate, our business may suffer. Our sales strategies must also continue to evolve and adapt as our market matures, for example through the offering of additional customer self-service tools and automation for the SMB segment and the development of new and more sophisticated sales channels that leverage the strengths of our partners. In addition, marketing and selling new and enhanced features and services may require increasingly sophisticated and costly sales and marketing efforts that may require us to incur additional expenses and negatively impact the results of our operations.

To support the successful marketing and sale of our services to new and existing customers, we must continue to offer high-quality training, deployment, and customer support. Providing these services effectively requires that our customer support personnel have industry-specific technical knowledge and expertise, which may make it difficult and costly for us to locate and hire qualified personnel, particularly in the competitive labor market in Silicon Valley where we are headquartered. Our support personnel also require extensive training on our products, which may make it difficult to scale up our support operations rapidly. The importance of high-quality customer support will increase as we expand our business globally and pursue new mid-market and distributed enterprise customers. If we do not help our customers quickly resolve post-deployment issues and provide effective ongoing support, our ability to sell additional features and services to existing customers will suffer and our reputation may be harmed.

### **As more of our sales efforts are targeted at enterprise customers, our sales cycle may become more time-consuming and expensive, we may encounter pricing pressure and implementation and customization challenges, and we may have to delay revenue recognition for some complex transactions, all of which could harm our business and operating results.**

We currently derive a majority of our revenues from sales of our cloud software solutions to mid-market and larger distributed enterprises, and we believe increasing our sales to these customers is key to our future growth. Our sales cycle, which is the time between initial contact with a potential customer and the ultimate sale to that customer, is often lengthy and unpredictable for larger enterprise customers. Many of our prospective enterprise customers do not have prior experience with cloud-based communications and, therefore, typically spend significant time and resources evaluating our solutions before they purchase from us. Similarly, we typically spend more time and effort determining their requirements and educating these customers about the benefits and uses of our solutions. Enterprise customers also tend to demand more customizations, integrations and additional features than SMB customers. As a result, we may be required to divert more sales and engineering resources to a smaller number of large transactions than we have in the past, which means that we will have less personnel available to support other segments or that we will need to hire additional personnel, which would increase our operating expenses.

It is often difficult for us to forecast when a potential enterprise sale will close, the size of the customer's initial service order and the period over which the deployment will occur, which impacts our recognition of revenue. Enterprise customers may delay their purchases from one quarter to another as they assess their budget constraints, negotiate early contract terminations with their existing providers or wait for us to develop new features. Any delay in closing, or failure to close, a large enterprise sales opportunity in a particular quarter or year could significantly harm our projected growth rates and cause the amount of new sales we book to vary significantly from quarter to quarter. We also may have to delay revenue recognition on some of these transactions until the customer's technical or implementation requirements have been met.

In some cases, we may enter into a contract with a large enterprise customer, such as a preferred vendor agreement, that has little or no minimum purchase commitment but establishes the terms on which the customer's affiliates, clients or franchisees (as the case may be) may order services from us in the future. We may expend significant time and resources becoming a preferred vendor without booking significant sales from the opportunity until months or years after we sign the initial agreement. If we are unsuccessful in selling our services to the prospective purchasers under these agreements, we may not recognize revenue in excess of the expenses we incur in pursuing these opportunities, which could adversely impact our profitability and cash flow.

**We also face significant risks in implementing and supporting the services we sell to mid-market and larger distributed enterprises and, if we do not manage these efforts effectively, our recurring service revenue may not grow at the rate we expected, and our business and results of operations could be materially and adversely affected.**

We have a limited history of selling our services to larger businesses and have experienced, and may continue to experience, new challenges in deploying and providing ongoing support for the solutions we sell to large customers.

Larger customers' networks are often more complex than those of smaller customers and generally require participation from the customer information technology (IT) team, and there is no guarantee that resources with adequate expertise will be available when we deploy our services. The lack of local resources may prevent us from ensuring the proper deployment of our services, which can in turn adversely impact the quality of services that we deliver over our customers' networks, and/or may result in delays in the implementation of our services. This may create a public perception that we are unable to deliver high quality of service to our customers, which could harm our reputation and make it more difficult to attract new customers and retain existing customers. Moreover, larger customers tend to require higher levels of customer service and individual attention (including periodic business reviews and in-person visits, for example), which may increase our costs for implementing and delivering services. If a customer is unsatisfied with the quality of services we provide or the quality of work performed by us or a third party, we may decide to incur costs beyond the scope of our contract with the customer in order to address the situation and protect our reputation, which may in turn reduce or eliminate the profitability of our contract with the customer. In addition, negative publicity related to our larger customer relationships, regardless of its accuracy, could harm our reputation and make it more difficult for us to compete for new business with current and prospective customers.

We also face challenges building and training an integrated sales force capable of addressing the services and features of our comprehensive product suite, as well as a staff of expert engineering and customer support personnel capable of addressing the full range of installation and deployment issues that tend to arise more frequently with larger customers. Also, we have only limited experience in developing and managing sales channels and distribution arrangements for larger businesses. If we fail to effectively execute the sale, deployment and ongoing support of our services to mid-market and larger distributed enterprises, our results of operations and our overall ability to grow our customer base could be materially and adversely affected.

**Intense competition in the markets in which we compete could prevent us from increasing or sustaining our revenue growth and increasing or maintaining profitability.**

The cloud communications industry is competitive, and we expect it to become increasingly competitive in the future. We may also face competition from companies in adjacent or overlapping industries.

In connection with our unified communication services, we face competition from other providers of cloud communication services, such as RingCentral, Fuze, Vonage, Dialpad, Nextiva and ShoreTel (acquired by Mitel in 2017). In connection with our cloud contact center services, we face competition from other providers of cloud and premise-based contact center software services, such as NICE/inContact, Five9 and Interactive Intelligence.

In addition, because many of our target customers have historically purchased communications services from incumbent telephone companies along with legacy on-premises communication equipment, we compete with these customers' existing providers. These competitors include, for example, AT&T, CenturyLink, Comcast and Verizon Communications in the United States, as well as local incumbent communications providers in the international markets where we operate, such as Vodafone, Telefonica, Orange,

America Movil and Deutsche Telekom, all in conjunction with on-premises hardware solutions from companies like Avaya, Cisco and Mitel. We may face competition from large Internet and cloud service companies such as Google Inc., Amazon Inc., Oracle Corporation and Microsoft Corporation, any of which might launch a new cloud-based business communications service, expand its existing offerings or acquire other cloud-based business communications companies in the future.

Many of our current and potential competitors have longer operating histories, significantly greater resources and brand awareness, and a larger base of customers than we have. As a result, these competitors may have greater credibility with our existing and potential customers. They also may be able to adopt more aggressive pricing policies and devote greater resources to the development, promotion and sale of their products. Our competitors may also offer bundled service arrangements that present a more differentiated or better integrated product to customers. Increased competition could require us to lower our prices, reduce our sales revenue, lower our gross profits and/or cause us to lose market share. In addition, many of our customers are not subject to long-term contractual commitments and have the ability to switch from our services to our competitors' offerings on relatively short notice. Given the significant price competition in the markets for our services, we may be at a disadvantage compared with those competitors who have substantially greater resources than us or may otherwise be better positioned to withstand an extended period of downward pricing pressure. The adverse impact of a shortfall in our revenues may be magnified by our inability to adjust our expenses to compensate for such shortfall. Announcements, or expectations, as to the introduction of new products and technologies by our competitors or us could cause customers to defer purchases of our existing products, which also could have a material adverse effect on our business, financial condition or operating results.

**The market for cloud software solutions is subject to rapid technological change, and we depend on new product and service introductions in order to maintain and grow our business, including in particular our recently announced X-Series product line.**

We operate in an emerging market that is characterized by rapid changes in customer requirements, frequent introductions of new and enhanced products and services, and continuing and rapid technological advancement. To compete successfully in this emerging market, we must continue to design, develop, manufacture, and sell highly scalable new and enhanced cloud software solutions products and services that provide higher levels of performance and reliability at lower cost. If we are unable to develop new products and services that address our customers' needs, to deliver our cloud software solutions applications in one seamless integrated product offering that addresses our customers' needs, or to enhance and improve our products and services in a timely manner, we may not be able to achieve or maintain adequate market acceptance of our services. Our ability to grow is also subject to the risk of future disruptive technologies. Access and use of our products and services is provided via the cloud, which, itself, has been disruptive to the previous premises-based model.

If new technologies emerge that are able to deliver communications and collaboration solutions services at lower prices, more efficiently, more conveniently or more securely, such technologies could adversely impact our ability to compete.

If we are unable to develop new features and services internally due to factors such as competitive labor markets, high employee turnover, lack of management ability or a lack of other research and development resources, we may miss market opportunities. Further, many of our competitors have historically spent a greater amount of funds on their research and development programs, and those that do not may be acquired by larger companies that would allocate greater resources to our competitors' research and development programs. In addition, there is no guarantee that our research and development efforts will succeed, or that our new products and services will enable us to maintain or grow our revenue or recover our development costs. Our failure to maintain adequate research and development resources, to compete effectively with the research and development programs of our competitors and to successfully monetize our research and development efforts could materially and adversely affect our business and results of operations.

We announced in March 2018 that we would be launching our new product line, branded "X Series," in or around June 2018. We expect to market X-Series as an array of prepackaged services (designated X2, X4, X5, etc.), which start at the most basic version of our unified communications solution, and add engagement capabilities at each new level, with the top-tier X Series packages combining unified communications and contact center services into a single offering. Customer demand for our X Series product line will depend on a number of factors, including, for example, factors inherent to the product itself, such as quality of service, reliability, feature availability, and ease of use; and factors relating to our ability to implement, support and market and sell the service effectively. More fundamentally, the success of X Series may depend on whether the market for unified communications, collaborations and contact center services is trending towards convergence of these three solutions into a single system, as we are predicting. We cannot be certain that this market trend will occur according to the timeline we are expecting, or at all. For example, if the various components of our service were to become commoditized and standardized in a way that diminishes the benefits of a single platform for customers, there may be less demand for a unified suite of services like X Series. Low customer demand could make it more difficult for us to win the business of new customers or gain additional business from existing customers, either of which in turn could cause our service revenue to grow more slowly than we expect, or to remain flat or even decrease in future periods.

**We have a history of losses and are uncertain of our future profitability.**

We recorded an operating loss of approximately \$104 million for the fiscal year ended March 31, 2018 and ended the period with an accumulated deficit of approximately \$201 million. We expect to incur operating losses in our current fiscal year as we continue to invest in growth. As we expand our geographic reach and range of service offerings, and further invest in research and development, sales and marketing, and other areas of our business, we will need to increase revenues in order to generate sustainable operating profit. Given our history of fluctuating revenues and operating losses, we cannot be certain that we will be able to achieve or maintain operating profitability on an annual basis or on a quarterly basis in the future.

**Our churn rate may increase in future periods due to customer cancellations or other factors, which may adversely impact our revenue or require us to spend more money to grow our customer base.**

Our customers generally do not have long-term contracts with us and may discontinue their subscriptions for our services after the expiration of their initial subscription period, which typically range from one to three years. In addition, our customers may renew for lower subscription amounts or for shorter contract lengths. We may not accurately predict cancellation rates for our customers. Our cancellation rates may increase or fluctuate as a result of a number of factors, including customer usage, pricing changes, number of applications used by our customers, customer satisfaction with our service, the acquisition of our customers by other companies and deteriorating general economic conditions. If our customers do not renew their subscriptions for our service or decrease the amount they spend with us, our revenue will decline and our business will suffer.

Our average monthly business service revenue churn was less than 1% over the past two fiscal years. Our method of computing this revenue churn rate may be different from methods used by our competitors and other companies in our industry to compute their publicly disclosed churn rates. As a result, only limited reliance can be placed on our churn rate when attempting to compare it with other companies. Also, our churn rate can vary based on events that may not be indicative of actual trends in our business. Our churn rate could increase in the future if customers are not satisfied with our service. Other factors, including increased competition from other providers of communications and collaborations services, alternative technologies, and adverse business conditions also influence our churn rate.

Because of churn, we must acquire new customers on an ongoing basis to maintain our existing level of customers and revenues. As a result, marketing expenditures are an ongoing requirement of our business. If our churn rate increases, we will have to acquire even more new customers in order to maintain our existing revenues. We incur significant costs to acquire new customers, and those costs are an important factor in determining our net profitability. Therefore, if we are unsuccessful in retaining customers or are required to spend significant amounts to acquire new customers beyond those budgeted, our revenue could decrease and our net loss could increase.

Our rate of customer cancellations may increase in future periods due to a number of factors, some of which are beyond our control, such as the financial condition of our customers or the state of credit markets. In addition, a single, protracted service outage or a series of service disruptions, whether due to our services or those of our carrier partners, may result in a sharp increase in customer cancellations.

Due to the length of our sales cycle, especially in adding new mid-market and larger distributed enterprises as customers, we may also experience delays in acquiring new customers to replace those that have terminated our services. Such delays would be exacerbated if general economic conditions worsen. An increase in churn, particularly in challenging economic times, could have a negative impact on the results of our operations.

**We may not be able to scale our business efficiently or quickly enough to meet our customers' growing needs, in which case our operating results could be harmed.**

As usage of our cloud software solutions by mid-market and larger distributed enterprises expands and as customers continue to integrate our services across their enterprises, we are required to devote additional resources to improving our application architecture, integrating our products and applications across our technology platform, integrating with third-party systems, and maintaining infrastructure performance. As our customers gain more experience with our services, the number of users and transactions managed by our services, the amount of data transferred, processed and stored by us, the number of locations where our service is being accessed, and the volume of communications managed by our services have in some cases, and may in the future, expand rapidly. In addition, we will need to appropriately scale our internal business systems and our services organization, including customer support and services and regulatory compliance, to serve our growing customer base. Any failure of or delay in these efforts could cause impaired system performance and reduced customer satisfaction. These issues could reduce the attractiveness of our cloud software solutions to customers, resulting in decreased sales to new customers, lower renewal rates by existing customers, the issuance of service credits, or requested refunds, which could hurt our revenue growth and our reputation. These system upgrades and the expansion of our support and services have been and will continue to be expensive and complex, requiring management time and attention and increasing our operating expenses. We could also face inefficiencies or operational failures as a result of our efforts to scale our infrastructure and information technology systems. There are inherent risks associated with upgrading, improving and expanding our information technology systems and we cannot be sure that the expansion and improvements to our infrastructure and systems will be fully or effectively implemented on a timely basis, if at all. These efforts may reduce revenue and our margins and adversely impact our financial results.



**To provide our services, we rely on third parties for all of our network connectivity and co-location facilities.**

We currently use the infrastructure of third-party network service providers, including the services of Equinix, Inc., and Level 3 Communications, Inc., to provide all of our cloud services over their networks rather than deploying our own networks.

We also rely on third-party network service providers to originate and terminate substantially all of the PSTN calls using our cloud-based services. We leverage the infrastructure of third-party network service providers to provide telephone numbers, PSTN call termination and origination services, and local number portability for our customers rather than deploying our own network throughout the United States and internationally. This decision has resulted in lower capital and operating costs for our business in the short-term, but has reduced our operating flexibility and ability to make timely service changes. If any of these network service providers cease operations or otherwise terminate the services that we depend on, the delay in switching our technology to another network service provider, if available, and qualifying this new service provider could have a material adverse effect on our business, financial condition or operating results. The rates we pay to our network service providers may also increase, which may reduce our profitability and increase the retail price of our service.

There can be no assurance that these service providers will be able or willing to supply cost-effective services to us in the future or that we will be successful in signing up alternative or additional providers. Although we believe that we could replace our current providers, if necessary, our ability to provide service to our subscribers could be impacted during any such transition, which could have an adverse effect on our business, financial condition or results of operations. The loss of access to, or requirement to change, the telephone numbers we provide to our customers also could have a material adverse effect on our business, financial condition or operating results.

Due to our reliance on these service providers, when problems occur in a network, it may be difficult to identify the source of the problem. The occurrence of hardware and software errors, whether caused by our service or products or those of another vendor, may result in the delay or loss of market acceptance of our products and any necessary revisions may force us to incur significant expenses. Under the terms of the "end-to-end" service level commitments that we make for the benefit of qualifying customers, we are potentially at risk for service problems experienced by these service providers. Customers who do not qualify for these enhanced service level commitments may nevertheless hold us responsible for these service issues and seek service credits, early termination rights or other remedies. Accordingly, service issues experienced by our service provider partners may harm our reputation as well as our business, financial condition or operating results.

**Internet access providers and Internet backbone providers may be able to block, degrade or charge for access to or bandwidth use of certain of our products and services, which could lead to additional expenses and the loss of users.**

Our products and services depend on the ability of our users to access the Internet, and certain of our products require significant bandwidth to work effectively. In addition, users who access our services and applications through mobile devices, such as smartphones and tablets, must have a high-speed connection, such as Wi-Fi, 3G, 4G or LTE, to use our services and applications. Currently, this access is provided by companies that have significant and increasing market power in the broadband and Internet access marketplace, including incumbent telephone companies, cable companies and mobile communications companies. Some of these providers offer products and services that directly compete with our own offerings, which give them a significant competitive advantage. Some of these broadband providers have stated that they may exempt their own customers from data-caps or offer other preferred treatment to their customers. Other providers have stated that they may take measures that could degrade, disrupt or increase the cost of user access to certain of our products by restricting or prohibiting the use of their infrastructure to support or facilitate our offerings, or by charging increased fees to us or our users to provide our offerings, while others, including some of the largest providers of broadband Internet access services, have committed to not engaging in such behavior. These providers have the ability generally to increase their rates, which may effectively increase the cost to our customers of using our cloud software solutions.

On January 4, 2018, the Federal Communications Commission, or FCC, released an order that largely repeals rules that the FCC had in place which prevented broadband internet access providers from degrading or otherwise disrupting a broad range of services provisioned over consumers' and enterprises' broadband internet access lines. The FCC's January 4, 2018, Order is not yet effective and there are efforts in Congress to prevent the Order from becoming effective.

Additionally, a number of state attorneys general have filed an appeal of the FCC's January 4, 2018, Order and others may also appeal the Order. We cannot predict whether the FCC's January 4, 2018, Order will become effective or whether it will withstand appeal.

Many of the largest providers of broadband services, like cable companies and traditional telephone companies, have publicly stated that they will not degrade or disrupt their customers' use of applications and services, like ours. If such providers were to degrade, impair or block our services, it would negatively impact our ability to provide services to our customers, likely result in lost revenue and profits, and we would incur legal fees in attempting to restore our customers' access to our services. Broadband internet access providers may also attempt to charge us or our customers additional fees to access services like ours that may result in the loss of customers and revenue, decreased profitability, or increased costs to our offerings that may make our services less competitive. We cannot predict the potential impact of the FCC's January 4, 2018, Order on us at this time.

**Our physical infrastructure is concentrated in a few facilities and any failure in our physical infrastructure or services could lead to significant costs and disruptions and could reduce our revenue, harm our business reputation and have a material adverse effect on our financial results.**

Our leased network and data centers are subject to various points of failure. Problems with cooling equipment, generators, uninterruptible power supply, routers, switches, or other equipment, whether or not within our control, could result in service interruptions for our customers as well as equipment damage. Because our services do not require geographic proximity of our data centers to our customers, our infrastructure is consolidated into a few large data center facilities. Any failure or downtime in one of our data center facilities could affect a significant percentage of our customers. The total destruction or severe impairment of any of our data center facilities could result in significant downtime of our services and the loss of customer data. Because our ability to attract and retain customers depends on our ability to provide customers with highly reliable service, even minor interruptions in our service could harm our reputation. Additionally, in connection with the expansion or consolidation of our existing data center facilities from time to time, there is an increased risk that service interruptions may occur as a result of server relocation or other unforeseen construction-related issues.

We have experienced interruptions in service in the past. While we have not experienced a material increase in customer attrition following these events, the harm to our reputation is difficult to assess. We have taken and continue to take steps to improve our infrastructure to prevent service interruptions, including upgrading our electrical and mechanical infrastructure. However, service interruptions continue to be a significant risk for us and could materially impact our business.

Any future service interruptions could:

- cause our customers to seek service credits, or damages for losses incurred;
- require us to replace existing equipment or add redundant facilities;
- affect our reputation as a reliable provider of communications services;
- cause existing customers to cancel or elect to not renew their contracts; or
- make it more difficult for us to attract new customers.

Any of these events could materially increase our expenses or reduce our revenue, which would have a material adverse effect on our operating results.

We may be required to transfer our servers to new data center facilities in the event that we are unable to renew our leases on acceptable terms, or at all, or the owners of the facilities decide to close their facilities, and we may incur significant costs and possible service interruption in connection with doing so. In addition, any financial difficulties, such as bankruptcy or foreclosure, faced by our third-party data center operators, or any of the service providers with which we or they contract, may have negative effects on our business, the nature and extent of which are difficult to predict. Additionally, if our data centers are unable to keep up with our increasing needs for capacity, our ability to grow our business could be materially and adversely impacted.

**We depend on third-party vendors for IP phones and software endpoints, and any delay or interruption in supply by these vendors would result in delayed or reduced shipments to our customers and may harm our business.**

We rely on third-party vendors for IP phones and software endpoints required to utilize our service. We currently do not have long-term supply contracts with any of these vendors. As a result, most of these third-party vendors are not obligated to provide products or services to us for any specific period, in any specific quantities or at any specific price,

except as may be provided in a particular purchase order. The inability of these third-party vendors to deliver IP phones of acceptable quality and in a timely manner, particularly the sole source vendors, could adversely affect our operating results or cause them to fluctuate more than anticipated. Additionally, some of our products may require specialized or high-performance component parts that may not be available in quantities or in time frames that meet our requirements.

**If we do not or cannot maintain the compatibility of our communications and collaboration software with third-party applications and mobile platforms that our customers use in their businesses, our revenue will decline.**

The functionality and popularity of our cloud software solutions depends, in part, on our ability to integrate our services with third-party applications and platforms, including enterprise resource planning, customer relations management, human capital management and other proprietary application suites. Third-party providers of applications and application programmable interfaces, or APIs, may change the features of their applications and platforms, restrict our access to their applications and platforms or alter the terms governing use of their applications and APIs and access to those applications and platforms in an adverse manner. Such changes could functionally limit or terminate our ability to use these third-party applications and platforms in conjunction with our services, which could negatively impact our offerings and harm our business. If we fail to integrate our software with new third-party back-end enterprise applications and platforms used by our customers, we may not be able to offer the functionality that our customers need, which would negatively impact our ability to generate revenue and adversely impact our business.

Our services also allow our customers to use and manage our cloud software solutions on smartphones, tablets and other mobile devices. As new smart devices and operating systems are released, we may encounter difficulties supporting these devices and services, and we may need to devote significant resources to the creation, support, and maintenance of our mobile applications. In addition, if we experience difficulties in the future integrating our mobile applications into smartphones, tablets or other mobile devices or if problems arise with our relationships with providers of mobile operating systems, such as those of Apple Inc. or Google Inc., our future growth and our results of operations could suffer.

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

Our customers use our service to manage important aspects of their businesses, and any errors, defects, disruptions to our service or other performance problems with our service could hurt our reputation and may damage our customers' businesses. Our services and the systems infrastructure underlying our cloud communications platform incorporate software that is highly technical and complex. Our software has contained, and may now or in the future contain, undetected errors, bugs, or vulnerabilities. Some errors in our software code may only be discovered after the code has been released. Any errors, bugs, or vulnerabilities discovered in our code after release could result in damage to our reputation, loss of users, loss of revenue, or liability for damages, any of which could adversely affect our business and financial results. We implement bug fixes and upgrades as part of our regularly scheduled system maintenance, which may lead to system downtime. Even if we are able to implement the bug fixes and upgrades in a timely manner, any history of defects, or the loss, damage or inadvertent release of confidential customer data, could cause our reputation to be harmed, and customers may elect not to purchase or renew their agreements with us and subject us to service performance credits, warranty claims or increased insurance costs. The costs associated with any material defects or errors in our software or other performance problems may be substantial and could materially adversely affect our operating results.

**Vulnerabilities to security breaches, cyber intrusions and other malicious acts could adversely impact our business.**

Our operations depend on our ability to protect our network from interruption by damage from unauthorized entry, computer viruses or other events beyond our control. In the past, we may have been subject to denial or disruption of service, or DDOS, and we may be subject to DDOS attacks in the future. We cannot assure you that our backup systems, regular data backups, security protocols, DDOS mitigation and other procedures that are currently in place, or that may be in place in the future, will be adequate to prevent significant damage, system failure or data loss.

Critical to our provision of service is the storage, processing, and transmission of our customers' data, which may include confidential and sensitive information. Customers may use our services to store, process and transmit a wide variety of confidential and sensitive information such as credit card, bank account and other financial information, proprietary information, trade secrets or other data that may be protected by intellectual property laws, and personally

identifiable information. We may be targets of cyber threats and security breaches, given the nature of the information we store, process and transmit and the fact that we provide communications services to a broad range of businesses.

In addition, we use third-party vendors which in some cases have access to our data and our customers' data. Despite the implementation of security measures by us or our vendors, our computing devices, infrastructure or networks, or our vendors computing devices, infrastructure or networks may be vulnerable to hackers, computer viruses, worms, other malicious software programs or similar disruptive problems due to a security vulnerability in our or our vendors' infrastructure or network, or our vendors, customers, employees, business partners, consultants or other internet users who attempt to invade our or our vendors' public and private computers, tablets, mobile devices, software, data networks, or voice networks. If there is a security vulnerability in our or our vendors' infrastructure or networks that is successfully targeted, we could face increased costs, liability claims, reduced revenue, or harm to our reputation or competitive position.

Depending on the evolving nature of cyber threats, we may have to increase our investment in maintaining the security of our networks and data, and our profitability may be adversely impacted, or we may have to increase the price of our services which may make our offerings less competitive with other communications providers.

If an individual obtains unauthorized access to our network, or if our network is penetrated, our service could be disrupted and sensitive information could be lost, stolen or disclosed which could have a variety of negative impacts, including legal liability, investigations by law enforcement and regulatory agencies, and exposure to fines or penalties, any of which could harm our business reputation and have a material negative impact on our business. In addition, to the extent we market our services as compliant with particular laws governing data privacy and security, such as Health Insurance Portability and Accountability Act and foreign data protection laws, or provide representations or warranties as to such compliance in our customer contracts, a security breach that exposes protected information may make us susceptible to a number of contractual claims as well as claims related to our marketing.

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

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

**Failure to comply with laws and contractual obligations related to data privacy and protection could have a material adverse effect on our business, financial condition and operating results.**

We are subject to the data privacy and protection laws and regulations adopted by federal, state and foreign governmental agencies, including GDPR. Data privacy and protection is highly regulated and may become the subject of additional regulation in the future. For example, lawmakers and regulators worldwide are considering proposals that would require companies, like us, that encrypt users' data to ensure access to such data by law enforcement authorities. Privacy laws restrict our storage, use, processing, disclosure, transfer and protection of personal information, including credit card data, provided to us by our customers as well as data we collect from our customers and employees. We strive to comply with all applicable laws, regulations, policies and legal obligations relating to privacy and data protection. However, if we fail to comply, we may be subject to fines, penalties and lawsuits, and our reputation may suffer. We may also be required to make modifications to our data practices that could have an adverse impact on our business.

Governmental entities, class action lawyers and privacy advocates are increasingly examining companies' data collection, processing, use, storing, sharing, transferring and transmitting or personal data and data linkable to individuals. Self-regulatory codes of conduct, enforcement actions by regulatory agencies, and lawsuits by private parties could impose additional compliance costs on us, negatively impacting our profitability, as well as subject us to unknown potential liabilities. These evolving laws, rules and practices may also curtail our current business activities which may also result in slimmer profit margins and reduce new opportunities.

We are also subject to the privacy and data protection-related obligations in our contracts with our customers and other third parties. Any failure, or perceived failure, by us to comply with federal, state, or international laws, including laws and regulations regulating privacy, data or consumer protection, or to comply with our contractual obligations related to privacy, could result in proceedings or actions against us by governmental entities, contractual parties or others, which could result in significant liability to us as well as harm to our reputation. Additionally, third parties on which we rely enter into contracts to protect and safeguard our customers' data. Should such parties violate these agreements or suffer a breach, we could be subject to proceedings or actions against us by governmental entities, contractual parties or others, which could result in significant liability to us as well as harm to our reputation.

On July 12, 2016, the European Commission adopted the "Privacy Shield" which replaced the European Union-U.S. Safe Harbor Framework. Beginning on August 1, 2016, companies were able to self-certify for inclusion in the Privacy Shield program which allows for the transfer of personal data between the EU and the U.S. We are currently participating in Privacy Shield and we also rely on other methods recognized under relevant EU law to transfer personal data between the EU and the U.S. Additionally, on May 4, 2016, the EU formally adopted the General Data Protection Regulation, or GDPR, which became effective on May 25, 2018, and will replace the Data Protection Directive 95/46/EC. The GDPR imposes new obligations on all companies, including us, and substantially increases potential liability for all companies, including us, for failure to comply with data protection rules.

The regulatory landscape applicable to data transfers between the EU and other countries with similar data protection laws, and the U.S. remains unsettled. There is ongoing litigation in the EU, as well as calls by certain political and governmental bodies in the EU to re-evaluate data transfers between the EU and the U.S., that could negatively impact the existing legally acceptable methods for transferring data between the EU and the U.S. on which we rely as do many other companies. Moreover, while we established alternative methods to transfer data between the EU and U.S. that addressed certain legal uncertainties that previously existed, some independent data regulators have adopted the position that other forms of compliance, including the methods we rely upon now as do many other companies, are also invalid.

Although GDPR has already gone into effect, there is still considerable uncertainty as to how to interpret and implement many of its provisions. It is particularly challenging for companies operating in the cloud services space, like us, to interpret and implement the GDPR. If we fail to properly implement the GDPR for any reason, we may be subject to fines and penalties. The GDPR may also change our business operations in ways that we cannot currently predict that could increase our operating costs, decrease our profitability, or result in increased prices for our retail offerings that may make our services less competitive. We cannot evaluate our potential liability at this time.

**We could be liable for breaches of security on our website, fraudulent activities of our users, or the failure of third-party vendors to deliver credit card transaction processing services.**

A fundamental requirement for operating an Internet-based, worldwide cloud software solutions and electronically billing our customers is the secure transmission of confidential information and media over public networks. Although we have developed systems and processes that are designed to protect consumer information and prevent fraudulent credit card transactions and other security breaches, failure to mitigate such fraud or breaches may subject us to costly breach notification and other mitigation obligations, class action lawsuits, investigations, fines, forfeitures or penalties from governmental agencies that could adversely affect our operating results. The law relating to the liability of providers of online payment services is currently unsettled and states may enact their own rules with which we may not comply. We rely on third-party providers to process and guarantee payments made by our subscribers up to certain limits, and we may be unable to prevent our customers from fraudulently receiving goods and services. Our liability risk will increase if a larger fraction of transactions effected using our cloud-based services involve fraudulent or disputed credit card transactions.

We may also experience losses due to subscriber fraud and theft of service. Subscribers have, in the past, obtained access to our service without paying for monthly service and international toll calls by unlawfully using our authorization codes or by submitting fraudulent credit card information. If our existing anti-fraud procedures are not adequate or effective, consumer fraud and theft of service could have a material adverse effect on our business, financial condition and operating results.

**Natural disasters, war, terrorist attacks or malicious conduct could adversely impact our operations and could degrade or impede our ability to offer services.**

Our cloud communications services rely on uninterrupted connection to the Internet through data centers and networks. Any interruption or disruption to our network, or the third parties on which we rely, could adversely impact our ability to provide service. Our network could be disrupted by circumstances outside of our control including natural disasters, acts of war, terrorist attacks or other malicious acts including, but not limited to, cyber-attacks. Our headquarters, global networks operations center and one of our third-party data center facilities are located in the San Francisco Bay Area, a region known for seismic activity. Should any of these events occur and interfere with our ability to operate our network even for a limited period of time, we could incur significant expenses, lose substantial amounts of revenue, suffer damage to our reputation, and lose customers. Such an event may also impede our customers' connections to our network, since these connections also occur over the Internet, and would be perceived by our customers as an interruption of our services, even though such interruption would be beyond our control. Any of these events could have a material adverse impact on our business.

**Our infringement of a third party's proprietary technology could disrupt our business.**

There has been substantial litigation in the communications, cloud communication services, semiconductor, electronics, and related industries regarding intellectual property rights and, from time to time, third parties may claim that we, our customers, our licensees or parties indemnified by us are infringing, misappropriating or otherwise violating their intellectual property rights. Third parties may also claim that our employees have misappropriated or divulged their former employers' trade secrets or confidential information. Our broad range of current and former technology, including IP telephony systems, digital and analog circuits, software, and semiconductors, increases the likelihood that third parties may claim infringement by us of their intellectual property rights.

During our 2017 fiscal year, we were named as defendants in two lawsuits, each brought by a non-practicing entity and alleging infringement of a single patent. During our 2016 fiscal year, we were similarly named as defendants in two lawsuits in which we were alleged to have infringed patents. We were able to settle all four lawsuits relatively quickly, although we have in the past been involved in patent infringement lawsuits that spanned several years. Certain technology necessary for us to provide our services may, in fact, be patented by other parties either now or in the future. If such technology were held under patent by another person, we would have to negotiate a license for the use of that technology, which we may not be able to negotiate at a price that is acceptable or at all. The existence of such a patent, or our inability to negotiate a license for any such technology on acceptable terms, could force us to cease using such technology and offering products and services incorporating such technology.

If we are found to be infringing on the intellectual property rights of any third-party in lawsuits or proceedings that may be asserted against us, we could be subject to monetary liabilities for such infringement, which could be material. We could also be required to refrain from using, manufacturing or selling certain products or using certain processes, either of which could have a material adverse effect on our business and operating results. From time to time, we have received, and may continue to receive in the future, notices of claims of infringement, misappropriation or misuse of other parties' proprietary rights. There can be no assurance that we will prevail in these discussions and actions or that other actions alleging infringement by us of third-party patents will not be asserted or prosecuted against us. Furthermore, lawsuits like these may require significant time and expense to defend, may divert management's attention away from other aspects of our operations and, upon resolution, may have a material adverse effect on our business, results of operations, financial condition and cash flows.

**Inability to protect our proprietary technology would disrupt our business.**

We rely, in part, on trademark, copyright, and trade secret law to protect our intellectual property in the United States and abroad. We seek to protect our software, documentation, and other written materials under trade secret and copyright law, which afford only limited protection. We currently have several United States patent applications pending. We cannot predict whether such pending patent applications will result in issued patents, and if they do, whether such patents will effectively protect our intellectual property. The intellectual property rights we obtain may not be sufficient to provide us with a competitive advantage, and could be challenged, invalidated, infringed or misappropriated. We may not be able to protect our proprietary rights in the United States or internationally (where effective intellectual property protection may be unavailable or limited), and competitors may independently develop technologies that are similar or superior to our technology, duplicate our technology or design around any patent of ours.

We attempt to further protect our proprietary technology and content by requiring our employees and consultants to enter into confidentiality and assignment of inventions agreements and third parties to enter into nondisclosure agreements. These agreements may not effectively prevent unauthorized use or disclosure of our confidential information, intellectual property or technology and may not provide an adequate remedy in the event of unauthorized use or disclosure of our confidential information, intellectual property or technology.

Litigation may be necessary in the future to enforce our intellectual property rights, to determine the validity and scope of our proprietary rights or the rights of others, or to defend against claims of infringement or invalidity. Such litigation could result in substantial costs and diversion of management time and resources and could have a material adverse effect on our business, financial condition, and operating results. Any settlement or adverse determination in such litigation would also subject us to significant liability.

We also may be required to protect our proprietary technology and content in an increasing number of jurisdictions, a process that is expensive and may not be successful, or which we may not pursue in every location. In addition, effective intellectual property protection may not be available to us in every country, and the laws of some foreign countries may not be as protective of intellectual property rights as those in the United States. Additional uncertainty may result from changes to intellectual property legislation enacted in the United States and elsewhere, and from interpretations of intellectual property laws by applicable courts and agencies. Accordingly, despite our efforts, we may be unable to obtain and maintain the intellectual property rights necessary to provide us with a competitive advantage.

**We may have difficulty attracting or retaining personnel with the technical skills and experience necessary to support our growth.**

Companies in the cloud communications industry compete aggressively for top talent in all areas of business, but particularly sales and marketing, professional services and engineering, where employees with industry experience, technical knowledge and specialized skill sets are particularly valued. Demand can be expected to increase if cloud communications continues to gain a greater share of the global communications market. Some of our competitors may respond to these competitive pressures by increasing employee compensation, paying more on average than we pay for the same position. Any such disparity in compensation could make us less attractive to candidates as a potential employer, which in turn may make it more difficult for us to hire and retain qualified employees. Training an individual who lacks prior cloud communications experience to be successful in a sales or technical role can take months or even years.

When an employee of 8x8 leaves to work for a competitor, not only are we impacted by the loss of the individual resource, but we also face the risk that the individual will share our trade secrets with the competitor in violation of their contractual and legal obligations to us. Our competitors have in the past and may in the future target their hiring efforts on a particular department, and if we lose a group of employees to a competitor over a short time period, our day-to-day operations may be impaired. While we may have remedies available to us through litigation, they would likely take significant time and expense and divert management attention from other areas of the business.

If we increase employee compensation (beyond levels that reflect customary performance-based and/or cost-of-living adjustments) in response to competitive pressures, we may sustain greater operating losses than we predicted in the near term, and we may not achieve profitability within the timeframe we had expected, or at all.

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

An important component of our growth strategy involves the further expansion of our operations and customer base internationally. We have formed several subsidiaries outside the United States, including a Romanian subsidiary that contributes significantly to our research and development efforts. We have also acquired two UK-based companies. The risks and challenges associated with sales and other operations outside the United States are different in some ways from those associated with our operations in the United States, and we have a limited history addressing those risks and meeting those challenges. Our current international operations and future initiatives will involve a variety of risks, including:

- localization of our services, including translation into foreign languages and associated expenses;
- regulation of our services as traditional telecommunications services, requiring us to obtain authorizations or licenses to operate in foreign jurisdictions, or alternatively preventing us from selling our full suite of services, or any services at all, in such jurisdictions;
- changes in a specific country or region's regulatory requirements, taxes, trade laws, or political or economic conditions;
- more stringent regulations relating to data security and the unauthorized use of, access to, and transfer of, commercial and personal information, particularly in the EU;
- differing labor regulations, especially in the EU and Latin America, where labor laws are generally more advantageous to employees as compared to the United States, including deemed hourly wage and overtime regulations in these locations;
- challenges inherent in efficiently managing an increased number of employees over large geographic distances, including the need to implement appropriate systems, policies, benefits and compliance programs;
- difficulties in managing a business in new markets with diverse cultures, languages, customs, legal systems, alternative dispute systems and regulatory systems;
- increased travel, real estate, infrastructure and legal compliance costs associated with international operations;
- different pricing environments, longer sales cycles, longer accounts receivable payment cycles and other collection difficulties;
- currency exchange rate fluctuations and the resulting effect on our revenue and expenses, and the cost and risk of entering into hedging transactions if we chose to do so in the future;
- limitations on our ability to reinvest earnings from operations in one country to fund the capital needs of our operations in other countries;
- laws and business practices favoring local competitors or general preferences for local vendors;
- limited or insufficient intellectual property protection;
- political instability or terrorist activities;

- exposure to liabilities under anti-corruption and anti-money laundering laws, including the U.S. Foreign Corrupt Practices Act, the UK Bribery Act 2010 and similar laws and regulations in other jurisdictions; and
- adverse tax burdens and foreign exchange controls that could make it difficult to repatriate earnings and cash.

We have limited experience in operating our business internationally, which increases the risk that any potential future expansion efforts that we may undertake will not be successful. We expect to invest substantial time and resources to expand our international operations. If we are unable to do this successfully and in a timely manner, our business and operating results could be materially adversely affected.

**Acquisitions may divert our management's attention, result in dilution to our stockholders and consume resources that are necessary to sustain our business.**

In the last four years we have acquired several businesses. If appropriate opportunities present themselves, we may make additional acquisitions or investments or enter into joint ventures or strategic alliances with other companies. Risks commonly encountered in such transactions include:

- the difficulty of assimilating the operations and personnel of the combined companies;
- the risk that we may not be able to integrate the acquired services or technologies with our current services, products, and technologies;
- the potential disruption of our ongoing business;
- the diversion of management attention from our existing business;
- the inability of management to maximize our financial and strategic position through the successful integration of the acquired businesses;
- difficulty in maintaining controls, procedures, and policies;
- the impairment of relationships with employees, suppliers, and customers as a result of any integration;
- the loss of an acquired base of customers and accompanying revenue;
- the loss of an acquired base of customers and accompanying revenue while trying to transition the customer from the legacy systems to 8x8's technology due to mismatch of the features, usability, packaging, or pricing at the renewal times;
- the loss of an acquired base of customers and accompanying revenue due to failure and/or lack of maintenance/support for the legacy services and/or equipment/software/services being end of life;
- additional regulatory compliance obligations and costs associated with the acquired operations;
- litigation arising from or relating to the transaction;
- the assumption of leased facilities, other long-term commitments or liabilities that could have a material adverse impact on our profitability and cash flow; and
- the dilution to our existing stockholders from the issuance of additional shares of common stock or reduction of earnings per outstanding share in connection with an acquisition that fails to increase the value of our company.

As a result of these potential problems and risks, among others, businesses that we may acquire or invest in may not produce the revenue, earnings, or business synergies that we anticipate. For example, during our 2018 fiscal year, we discontinued marketing ContactNow, which we had acquired through our purchase of DXI Limited in 2015, as a stand-alone product. In addition, there can be no assurance that any potential transaction will be successfully completed or that, if completed, the acquired business or investment will generate sufficient revenue to offset the associated costs or other potential harmful effects on our business.

**The United Kingdom's withdrawal from the EU may adversely impact our operations in the United Kingdom and elsewhere.**

On June 23, 2016, voters in the United Kingdom approved an advisory referendum to withdraw from the EU. The political uncertainty that it has raised extends to regulatory uncertainty associated with the proposed exit from the EU. Since the vote to withdraw from the EU, negotiations and arrangements between the United Kingdom, the EU and other countries outside of the EU have been, and will continue to be, complex and time consuming. The potential withdrawal could adversely impact our UK subsidiary, Voicenet Solutions Ltd., and add operational complexities that did not previously exist. Currently, the most immediate impact may be to the relevant regulatory regimes under which Voicenet operates, including the offering of communications services, as well as data privacy. The timing of the proposed exit was recently agreed upon and is now scheduled for May 2019, with a transition period running through December 2020. However, the impact on regulatory regimes remains uncertain. At this time, we cannot predict the impact that an actual exit from the EU will have on Voicenet nor the potential collateral impact it may have on our operations elsewhere including the U.S.



**Our future operating results may vary substantially from period to period and may be difficult to predict.**

Our historical operating results have fluctuated significantly and will likely continue to fluctuate in the future, and a decline in our operating results could cause our stock price to fall. On an annual and a quarterly basis, there are a number of factors that may affect our operating results, some of which are outside our control. These include, but are not limited to:

- changes in market demand;
- the timing of customer subscriptions for our cloud software solutions;
- customer cancellations;
- changes in the competitive dynamics of our market, including consolidation among competitors or customers;
- lengthy sales cycles and/or regulatory approval cycles;
- new product introductions by us or our competitors;
- extent of market acceptance of new or existing services and features;
- the mix of our customer base and sales channels;
- the mix of services sold;
- the number of additional customers, on a net basis;
- the amount and timing of costs associated with recruiting, training and integrating new employees;
- unforeseen costs and expenses related to the expansion of our business, operations and infrastructure;
- continued compliance with industry standards and regulatory requirements;
- material security breaches or service interruptions due to cyberattacks or infrastructure failures or unavailability;
- introduction and adoption of our cloud software solutions in markets outside of the United States;
- changes in the recognition pattern of revenues and operating expenses as a result of new regulations, accounting principles and their interpretations, such as Financial Accounting Standards Board's Accounting Standards Update ("ASU") No. 2014-09, Revenue from Contracts with Customers (Topic 606); and
- general economic conditions.

Due to these and other factors, we believe that period-to-period comparisons of our results of operations are not meaningful and should not be relied upon as indicators of our future performance. It is possible that in some future periods our results of operations may be below the expectations of public market analysts and investors. If any of these were to occur, the price of our common stock would likely decline significantly.

In addition, changes in regulatory and accounting principles, and our interpretation of these and judgments used in applying them to our facts and circumstances, could have a material effect on our results of operations and financial condition. We also need to revise our business processes, systems and controls which requires significant management attention and may negatively affect our financial reporting obligations.

**Our products must comply with industry standards, FCC regulations, state, local, country-specific and international regulations, and changes may require us to modify existing products and/or services.**

In addition to reliability and quality standards, the market acceptance of telephony over broadband IP networks is dependent upon the adoption of industry standards so that products from multiple manufacturers are able to communicate with each other. Our cloud-based communications and collaboration services rely heavily on communication standards such as SIP, MGCP and network standards such as TCP/IP and UDP to interoperate with other vendors' equipment. There is currently a lack of agreement among industry leaders about which standard should be used for a particular application, and about the definition of the standards themselves. These standards, as well as audio and video compression standards, continue to evolve. We also must comply with certain rules and regulations of the FCC regarding electromagnetic radiation and safety standards established by Underwriters Laboratories, as well as similar regulations and standards applicable in other countries. Standards are frequently modified or replaced. As standards evolve, we may be required to modify our existing products or develop and support new versions of our products. We must comply with certain federal, state and local requirements regarding how we interact with our customers, including marketing practices, consumer protection, privacy, and billing issues, the provision of 9-1-1 or other international emergency services, including location data and the quality of service we provide to our customers. The failure of our products and services to comply, or delays in compliance, with various existing and evolving standards could delay or interrupt

volume production of our communications and collaboration services, subject us to fines or other imposed penalties, or harm the perception and adoption rates of our service, any of which would have a material adverse effect on our business, financial condition or operating results.

For example:

- **Regulation of our services as telecommunications services may require us to obtain authorizations or licenses to operate in foreign jurisdictions and comply with legal requirements applicable to traditional telephony providers.** Regulators around the world, including those in the European Union generally do not distinguish between our cloud-based communications services and traditional telephony services. By entering additional international markets we may subject ourselves to significant regulation from foreign telecommunications authorities, including obligations to obtain telecommunications licenses and authorizations, complying with consumer protection laws and cooperating with local law enforcement authorities. This regulation impacts our ability to differentiate ourselves from incumbent service providers and imposes substantial compliance costs on us. Regulation restricts our ability to compete and, in some jurisdictions, it may restrict how we are able to expand our service offerings. Moreover, the regulatory environment is constantly evolving and changes to the applicable regulations may have an adverse effect upon our business by imposing additional compliance costs, modifying our technology and operations and in general affecting our profitability.
- **Reform of federal and state Universal Service Fund programs and payment of regulatory and other fees in international markets, could increase the cost of our service to our customers diminishing or eliminating our pricing advantage.** The FCC and a number of states are considering reform or other modifications to Universal Service Fund programs. Furthermore, the FCC has ruled that states can require us to contribute to state Universal Service Fund programs. A number of states already require us to contribute, while others are actively considering extending their programs to include the services we provide. At the same time, foreign regulatory authorities may impose regulatory fees or other contributions on our services. Should the FCC, states or foreign regulators adopt new contribution mechanisms or otherwise modify contribution obligations that increase our contribution burden, we will either need to raise the amount we currently collect from our customers to cover these obligations or absorb the costs, which would reduce our profit margins. We currently pass-through Universal Service Fund contributions and certain other fees to our customers, which may result in our services becoming less competitive as compared to those provided by others.
- **We may become subject to state regulation for certain service offerings.** Certain states take the position that offerings by VoIP providers, like us, are intrastate and therefore subject to state regulation. These states argue that if the beginning and end points of communications are known, and if some of these communications occur entirely within the boundaries of a state, the state can regulate that offering. We believe that the FCC has preempted states from regulating VoIP services like ours in the same manner as providers of traditional telecommunications services. We cannot predict how this issue will be resolved or its impact on our business at this time.
- **The FCC adopted rules concerning call completion rates to rural areas of the United States.** It is possible that we, like other providers in the communications marketplace, may be subject to fines or other enforcement actions should the FCC determine that our call completion rates to rural areas are, or have been, unacceptable.
- **The FCC and foreign regulators may require providers like us to comply with regulations related to how we present bills to customers.** The adoption of such obligations may require us to revise our bills and may increase our costs of providing service which could either result in price increases or reduce our profitability.
- **There may be risk associated with our ability to comply with U.S. and foreign rules concerning disabilities access requirements and the FCC and foreign regulators may expand disabilities access requirements to additional services we offer.** We cannot predict whether we will be subject to additional accessibility requirements or whether any of our service offerings that are not currently subject to disabilities access requirements will be subject to such obligations. It is possible that we, like other providers in the communications marketplace, may be subject to fines or other enforcement actions if we are found not to be in compliance with the FCC's and foreign accessibility requirements.
- **There may be risks associated with our ability to comply with requirements of the Telecommunications Relay Service and similar foreign statutes.** The FCC requires providers of interconnected VoIP services to comply with certain regulations pertaining to people with disabilities and to contribute to the Telecommunications Relay Services fund. We are also required to offer 7-1-1 abbreviated dialing for access to relay services. At the same time, several foreign regulators also mandate accessibility requirements for people with disabilities. It is possible that we, like other providers in the communications marketplace, may be subject to fines or other enforcement actions if we are found not to be in compliance with these requirements, including the FCC's 7-1-1 abbreviated dialing obligations.

- ***There may be risks associated with our ability to comply with the requirements of U.S. and foreign law enforcement agencies.*** The FCC requires all interconnected VoIP providers to comply with the Communications Assistance for Law Enforcement Act, or CALEA. Similarly, foreign regulatory frameworks require VoIP providers to comply with local assistance to law enforcement laws and cooperation with local authorities in conducting wiretaps, pentraps and other surveillance activities. The FCC and other regulators may allow VoIP providers to comply with CALEA and similar statutes through the use of a service provided by a trusted third-party with the ability to extract call content and call-identifying information from a VoIP provider's network. Regardless of our reliance on a third party for compliance, it is possible that we, like other providers in the communications marketplace, may be subject to fines or other enforcement actions if we are found not to be in compliance with our obligations under CALEA or other similar assistance with law enforcement statutes.
- ***U.S. and foreign regulations may require us to deploy an E-911 or access to emergency service that automatically determines the location of our customers.*** In 2007, the FCC released a Notice of Proposed Rulemaking, in which it tentatively concluded that all interconnected VoIP providers that allow customers to use their service in more than one location (nomadic VoIP service providers, such as us), must utilize an automatic location technology that meets the same accuracy standards which apply to providers of commercial mobile radio services (mobile phone service providers). Since then, the FCC has been conducting proceedings and inquiries concerning the implementation of such a rule, including possible changes to the manner providers provision E-911 services on mobile applications. At the same time, foreign regulatory authorities, have conducted similar proceedings mandating VoIP providers in the applicable jurisdiction to provide caller location data when completing calls to the local emergency service numbers. The outcome of these proceedings cannot be determined at this time and we may or may not be able to comply with any such obligations that may be adopted. At present, we currently have no means to automatically identify the physical location of one of our customers on the Internet. We cannot guarantee that emergency calling service consistent with the FCC's order and other similar foreign orders will be available to all of our customers, especially those accessing our services from outside of the United States. Compliance with these obligations could result in service price increases and could have a material adverse effect on our business, financial condition or operating results.
- ***The FCC adopted orders reforming the system of payments between regulated carriers that we partner with to interface with the public switch telephone network.*** The FCC reformed the system under which regulated providers of telecommunications services compensate each other for various types of traffic, including VoIP traffic that terminates on the PSTN and applied new call signaling requirements to VoIP providers and other service providers. The FCC's new rules require, among other things, interconnected VoIP providers, like us, that originate interstate or intrastate traffic destined for the PSTN, to transmit the telephone number associated with the calling party to the next provider in the call path. Intermediate providers must pass calling party number or charge number signaling information they receive from other providers unaltered, to subsequent providers in the call path. While we believe we are in compliance with this rule, to the extent that we pass traffic that does not have appropriate calling party number or charge number information, we could be subject to fines, cease and desist orders, or other penalties. The FCC's Order reforming payments between carriers for various types of traffic may result in increasing the payments we make to underlying carriers to access the PSTN, which may result in us increasing the retail price of our service, potentially making our offering less competitive with traditional providers of telecommunications services, or may reduce our profitability.

**Our emergency and E-911 calling services are different from those offered by traditional wireline telephone companies and may expose us to significant liability. There may be risks associated with limitations associated with E-911 and other emergency dialing with the 8x8 service.**

Both our emergency calling service and our E-911 calling service are different, in significant respects, from the emergency calling services offered by traditional wireline telephone companies in the United States and abroad. In each case, the differences may cause significant delays, or even failures, in callers' receipt of the emergency assistance they need.

The FCC may determine that our nomadic emergency calling service does not satisfy the requirements of its VoIP E-911 order because, in some instances, our nomadic emergency calling service requires that we route an emergency call to a national emergency call center instead of connecting our customers directly to a local public-safety answering point through a dedicated connection and through the appropriate selective router. Similarly, foreign telecommunications regulators may determine that our nomadic emergency calling service does not meet applicable local emergency dialing and location requirements.

Delays our customers may encounter when making emergency services calls and any inability of the answering point to automatically recognize the caller's location or telephone number can result in life threatening consequences. Customers may, in the future, attempt to hold us responsible for any loss, damage, personal injury or death suffered as a result of any failure of our E-911 services and other emergency dialing services.

The New and Emerging Technologies 911 Improvement Act of 2008 provides public safety entities, interconnected VoIP providers and others involved in handling 911 calls the same liability protections when handling 911 calls from interconnected VoIP users as from mobile or wired telephone service users. The applicability of the liability protections to our national call center service is unclear at the present time.

**Alleged or actual failure of our solutions to comply with regulations governing outbound dialing, including regulations under the Telephone Consumer Protection Act of 1991 and similar foreign statutes, could harm our business, financial condition, results of operations and cash flows.**

The legal and contractual environment surrounding calling consumers and wireless phone numbers is complex and evolving. In the United States, two federal agencies, the Federal Trade Commission ("FTC") and the FCC, and various states have enacted laws including, at the federal level, the Telephone Consumer Protection Act of 1991, or TCPA, that restrict the placing of certain telephone calls and texts to residential and wireless telephone subscribers by means of automatic telephone dialing systems, prerecorded or artificial voice messages and fax machines. Internationally, we are also subject to similar laws imposing limitations on marketing calls to wireline and wireless numbers and compliance with do not call rules. These laws require companies to institute processes and safeguards to comply with these restrictions. Some of these laws can be enforced by the FTC, FCC, State Attorneys General, foreign regulators or private party litigants. In these types of actions, the plaintiff may seek damages, statutory penalties, costs and/or attorneys' fees.

It is possible that the FTC, FCC, foreign regulators, private litigants or others may attempt to hold our customers, or us as a software provider, responsible for alleged violations of these laws. In the event that litigation is brought, or fines are assessed, against us, we may not successfully enforce or collect upon any contractual indemnities we may have from our customers. Additionally, any changes to these laws or their interpretation that further restrict calling consumers, any adverse publicity regarding the alleged or actual failure by companies, including our customers and competitors, to comply with such laws, or any governmental or private enforcement actions related thereto, could result in the reduced use of our solution by our clients and potential clients, which could harm our business, financial condition, results of operations and cash flows.

**Failure of our back-end information technology systems to function properly could result in significant business disruption.**

We rely on IT systems to manage numerous functions of our internal operations, some of which were internally developed IT systems that were not fully integrated among themselves, or with our third-party ERP system. These IT systems require specialized knowledge for which we have to train new personnel, and if we were to experience an unusual increase in attrition of our IT personnel, we may not be adequately equipped to respond to an IT system failure. These IT systems were developed at a time when we provided services primarily to SMB customers and they may not be able to accommodate the requirements of larger enterprises as effectively as more modern and flexible solutions. Continued reliance on these systems may harm us competitively and impede our efforts to sell to larger enterprises.

Although we are in the process of upgrading a number of our IT systems, including our ERP software, our quote-to-cash software and our customer service and support software, we face risks relating to these transitions. For example, we may incur greater costs than we anticipate to train our personnel on the new systems; we may experience more errors in our records during the transition; and we may be delayed in meeting our various reporting obligations. To the extent any of these risks or events impact our customer service, we may experience an increase in customer attrition, which could have a material adverse impact on our results of operations.

**Our inability to use software licensed from third parties, or our use of open source software under license terms that interfere with our proprietary rights, could disrupt our business.**

Our technology platform incorporates software licensed from third parties, including some software, known as open source software, which we use without charge. Although we monitor our use of open source software, the terms of many open source licenses to which we are subject have not been interpreted by U.S. or foreign courts, and there is a risk that such licenses could be construed in a manner that imposes unanticipated conditions or restrictions on our ability to provide our platform to our customers. In the future, we could be required to seek licenses from third parties in order to continue offering our platform, which licenses may not be available on terms that are acceptable to us, or at all. Alternatively, we may need to re-engineer our platform or discontinue use of portions of the functionality provided by our platform. In addition, the terms of open source software licenses may require us to provide software that we develop using such software to others on unfavorable license terms. Our inability to use third-party software could result in disruptions to our business, or delays in the development of future offerings or enhancements of existing offerings, which could impair our business.

**Decreasing telecommunications rates and increasing regulatory charges may diminish or eliminate our competitive pricing advantage versus legacy providers.**

Decreasing telecommunications rates may diminish or eliminate the competitive pricing advantage of our services, while increased regulation and the imposition of additional regulatory funding obligations at the federal, state, local and foreign level could require us to either increase the retail price for our services, thus making us less competitive, or absorb such costs, thus decreasing our profit margins. International and domestic telecommunications rates have decreased significantly over the last few years in most of the markets in which we operate, and we anticipate these rates will continue to decline in all of the markets in which we do business or expect to do business. Users who select our services to take advantage of the current pricing differential between traditional telecommunications rates and our rates may switch to traditional telecommunications carriers if such pricing differentials diminish or disappear, and we will be unable to use such pricing differentials to attract new customers in the future. Continued rate decreases would require us to lower our rates to remain competitive in the United States and abroad and would reduce or possibly eliminate any gross profit from our services. In addition, we may lose subscribers for our services.

**Certain provisions in our charter documents and Delaware law could discourage takeover attempts and lead to management entrenchment.**

Our restated certificate of incorporation and amended and restated bylaws contain provisions that could have the effect of delaying or preventing changes in control or changes in our management without the consent of our board of directors, including, among other things:

- no cumulative voting in the election of directors, which limits the ability of minority stockholders to elect director candidates;
- the ability of our board of directors to issue shares of preferred stock and to determine the price and other terms of those shares, including preferences and voting rights, without stockholder approval, which could be used to significantly dilute the ownership of a hostile acquirer;
- the exclusive right of our board of directors to elect a director to fill a vacancy created by the expansion of our board of directors or the resignation, death or removal of a director, which prevents stockholders from being able to fill vacancies on our board of directors;
- a prohibition on stockholder action by written consent, which forces stockholder action to be taken at an annual or special meeting of our stockholders;
- the requirement that a special meeting of stockholders may be called only by a majority vote of our Board of Directors or by stockholders holding shares of our common stock representing in the aggregate a majority of votes then outstanding, which could delay the ability of our stockholders to force consideration of a proposal or to take action, including the removal of directors;
- the ability of our board of directors, by majority vote, to amend our amended and restated bylaws, which may allow our board of directors to take additional actions to prevent a hostile acquisition and inhibit the ability of an acquirer to amend our amended and restated bylaws to facilitate a hostile acquisition; and
- advance notice procedures with which stockholders must comply to nominate candidates to our board of directors or to propose matters to be acted upon at a stockholders' meeting, which may discourage or deter a potential acquirer from conducting a solicitation of proxies to elect the acquirer's own slate of directors or otherwise attempting to obtain control of us.

We are also subject to certain anti-takeover provisions under the General Corporation Law of the State of Delaware, or the DGCL. Under Section 203 of the DGCL, a corporation may not, in general, engage in a business combination with any holder of 15% or more of its capital stock unless the holder has held the stock for three years or (i) our board of directors approves the transaction prior to the stockholder acquiring the 15% ownership position, (ii) upon consummation of the transaction that resulted in the stockholder acquiring the 15% ownership position, the stockholder owns at least 85% of the outstanding voting stock (excluding shares owned by directors or officers and shares owned by certain employee stock plans) or (iii) the transaction is approved by the board of directors and by the stockholders at an annual or special meeting by a vote of 66 2/3% of the outstanding voting stock (excluding shares held or controlled by the interested stockholder). These provisions in our restated certificate of incorporation and amended and restated bylaws and under Delaware law could discourage potential takeover attempts.

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

None.

## **ITEM 2. PROPERTIES**

Our principal operations are located in San Jose, California, in two facilities that consist of approximately 140,831 square feet of combined leased office space. The leases expire in 2019 and 2020, respectively. In January 2018, we entered into a lease for a new office building in San Jose. We intend to move our employees and operations from our two existing offices to the new office building in phases, beginning in the fourth quarter of fiscal year 2019.

Outside the United States our operations are conducted primarily in leased office space located in the United Kingdom (primarily used for sales and support in Europe) and Romania (primarily used for research and development).

In addition, we lease space from third-party datacenter hosting facilities under co-location agreements in the United States and in a number of countries across the globe, including South America, Europe, Asia, and the South Pacific.

We believe that we will be able to obtain additional space at other locations at commercially reasonable terms to support our continuing expansion. For additional information regarding our obligations under leases, see Note 5 to the consolidated financial statements contained in Part II, Item 8 of this Annual Report.

## **ITEM 3. LEGAL PROCEEDINGS**

From time to time, we become involved in various legal claims and litigation that arise in the normal course of our operations. While the results of such claims and litigation cannot be predicted with certainty, we are not currently aware of any such matters that we believe would have a material adverse effect on our financial position, results of operations or cash flows.

As of May 24, 2018, the Company was not a party in any material litigation matters.

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

Not applicable.

## **PART II**

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

Since December 8, 2017, our common stock is traded under the symbol "EGHT" and is listed on the New York Stock Exchange, Inc. (NYSE). Previous to December 8, 2017, our common stock traded under the symbol "EGHT" and was listed on the Nasdaq Global Select Market of the Nasdaq Stock Market national securities exchange.

We have never paid cash dividends on our common stock and have no plans to do so in the foreseeable future. As of May 23, 2018, there were 214 holders of record of our common stock.

The following table sets forth the range of high and low close prices for each period indicated:

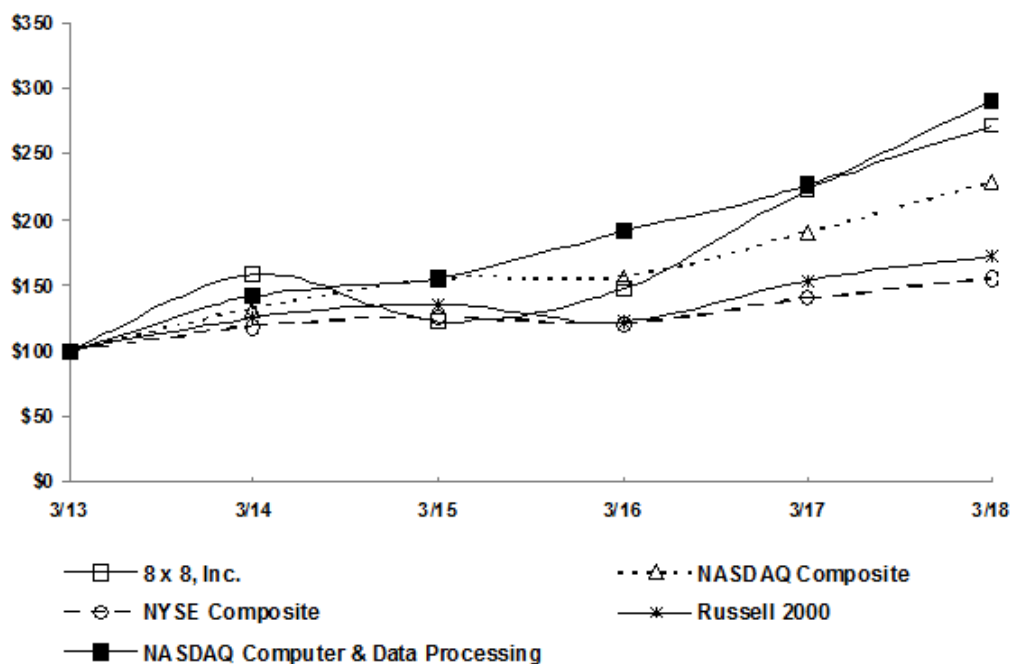
Period	<u>High</u>	<u>Low</u>
Fiscal 2018:		
First quarter	\$ 15.35	\$ 12.70
Second quarter	\$ 14.80	\$ 12.70
Third quarter	\$ 14.80	\$ 12.20
Fourth quarter	\$ 20.25	\$ 14.40
Fiscal 2017:		
First quarter	\$ 14.61	\$ 10.19
Second quarter	\$ 15.43	\$ 12.94
Third quarter	\$ 15.63	\$ 13.05
Fourth quarter	\$ 16.50	\$ 14.20

See Item 12 of Part III of this Annual Report regarding information about securities authorized for issuance under our equity compensation plans.

The graph below shows the cumulative total stockholder return over a five year period assuming the investment of \$100 on March 31, 2013 in each of 8x8's common stock, the NASDAQ Composite Index and the NASDAQ Telecommunications Index. The graph is furnished, not filed, and the historical return cannot be indicative of future performance.

### COMPARISON OF 5 YEAR CUMULATIVE TOTAL RETURN\*

Among 8 x 8, Inc., the NASDAQ Composite Index, the NYSE Composite Index, the Russell 2000 Index and the NASDAQ Computer & Data Processing Index



\*\$100 invested on 3/31/13 in stock or index, including reinvestment of dividends. Fiscal year ending March 31.

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## Issuer Purchases of Equity Securities

There was no activity under the Repurchase Plan for the three months ended March 31, 2018. The dollar value of shares that may yet to be purchased under the Repurchase plan is approximately \$7.1 million.

## ITEM 6. SELECTED FINANCIAL DATA

The following table sets forth selected consolidated financial data of 8x8 Inc. for each year in the five year period ended March 31, 2018. The following selected consolidated financial data is qualified by reference to and should be read in conjunction with "Management's Discussion and Analysis of Financial Condition and Results of Operations" and with the consolidated financial statements, related notes thereto and other financial information included elsewhere in this Annual Report on Form 10-K.

	Years Ended March 31,				
	2018	2017	2016	2015	2014
	(in thousands, except per share amounts)				
Total revenues	\$ 296,500	\$ 253,388	\$ 209,336	\$ 162,413	\$ 128,597
Net income (loss)	\$ (104,497)	\$ (4,751)	\$ (5,120)	\$ 1,926	\$ 2,514
Net income (loss) per share:					
Basic	\$ (1.14)	\$ (0.05)	\$ (0.06)	\$ 0.02	\$ 0.03
Diluted	\$ (1.14)	\$ (0.05)	\$ (0.06)	\$ 0.02	\$ 0.03
Total assets	\$ 277,209	\$ 333,855	\$ 313,452	\$ 295,624	\$ 299,203
Accumulated deficit	\$ (201,464)	\$ (114,610)	\$ (109,859)	\$ (104,739)	\$ (106,665)
Total stockholders' equity	\$ 218,774	\$ 288,601	\$ 275,306	\$ 272,211	\$ 278,178



**OVERVIEW**

We are a leading provider of global cloud communications and customer engagement solutions to over a million business users worldwide. Our suite of products integrates cloud communications, conferencing, collaboration and contact center solutions so today's organization can deliver exceptional employee and customer experiences. Our technology provides one integrated platform for employees and customers engagement solutions, as well as a real-time data analytics platform for constant learning and improvement.

**SUMMARY AND OUTLOOK**

Our total service revenue grew 19% year-over-year to \$280.4 million. We continued to show an increase in our average monthly service revenue per customer (ARPU), which grew to \$450, compared with \$412 in fiscal 2017, as we are selling more to mid-market and enterprise customers. Service revenue from mid-market and enterprise customers represented 58% of total service revenue and grew 29% over the prior year. We also increased the number of deals where customers purchase our integrated communications and contact center solution, which we have referred to as combination deals.

In order to position ourselves for our next phase of growth, we pursued several strategic initiatives.

First, we split our internal sales operations into two separate business units—Small Business and eCommerce, aimed at businesses with 1 to 99 employees, and Mid-market and Enterprise, aimed at businesses with 100 or more employees. By establishing two separate business units for sales purposes, this will allow us to optimize our sales and marketing strategies around the specific needs of each customer segment.

Second, we expanded the scope of our channel programs. The 8x8 channel strategy has been instrumental in winning large and mid-market enterprise customers, and we believe the channel will play a key role in further scaling our business. In fiscal 2018, we expanded and enhanced our global partner program, including through the training, enablement and certification of an increasing number of partners, and in August 2017, we launched a formal channel enablement program.

Third, we continued the advancement of our technology and product development to build a comprehensive and integrated platform of solutions. We announced the upcoming launch of the X Series: a seamless integration of our contact center, meeting, and video conferencing into a unified suite. The X series will encompass a suite of products ranging from X1 through X8. It is designed to be a single system of enterprise engagement that will unlock rich data and insights that are not available to businesses that rely on multiple platforms and multiple providers for their communications, collaborations and contact center needs. Artificial Intelligence and Machine Learning will be foundational elements to our X Series solutions, and our commitment to these technologies led to investments and key hires in fiscal 2018 as well as the acquisition of MarianaIQ Inc. in April 2018.

Fourth, we continued to expand our global footprint. International markets outside of the US and Canada represented 10% of total revenue in fiscal 2018. We announced our expansion into France and we continued to build sales capacity in Australia. We also enhanced our global carrier network and have customers accessing our services from over 150 countries around the world. Lastly, we grew headcount to over 1,200 employees worldwide. We hired talent across the organization with a primary focus on sales, marketing and product innovation functions in the United States and European offices.

As we continue to focus on our market opportunity, we intend to further increase our investments in engineering, marketing, sales, deployment, and customer support activities. We expect our expenses to grow materially in all of these categories, and we are targeting a year-over-year growth rate for service revenue, excluding revenue from DXI, of approximately 25% in our fourth fiscal quarter of 2019. In achieving these objectives, we face many risks, including those described under "RISK FACTORS."

**SELECTED OPERATING STATISTICS**

We periodically review certain key business metrics, within the context of our articulated performance goals, in order to evaluate the effectiveness of our operational strategies, allocate resources and maximize the financial performance of our business. The selected operating statistics include the following:

	Selected Operating Statistics				
	March 31, 2018	Dec. 31, 2017	Sept. 30, 2017	June 30, 2017	March 31, 2017
Business customers average monthly service revenue per customer (1)	\$ 469	\$ 454	\$ 442	\$ 432	\$ 426
Monthly business service revenue churn (2)(3)	0.3%	0.4%	0.4%	0.6%	0.7%
Overall service margin	81%	83%	81%	82%	83%
Overall product margin	-45%	-27%	-17%	-22%	-9%
Overall gross margin	75%	78%	75%	76%	77%

- (1) Business customer average monthly service revenue per customer is service revenue from business customers in the period divided by the number of months in the period divided by the simple average number of business customers during the period.
- (2) Business customer service revenue churn is calculated by dividing the service revenue lost from business customers (after the expiration of 30-day trial) during the period by the simple average of business customer service revenue during the same period and dividing the result by the number of months in the period.
- (3) Excludes DXI business customer service revenue churn for all periods presented.

## RESULTS OF OPERATIONS

The following discussion should be read in conjunction with our Consolidated Financial Statements and related notes included elsewhere in this Annual Report.

We have minimal seasonality in our business, but typically sales of new subscriptions in our fourth fiscal quarter are greater than in any of the first three quarters of the fiscal year. We believe this occurs because the customers we target have a tendency to spend a relatively greater portion of their annual capital budgets at the beginning of the calendar year compared with each of the last three quarters of the year.

### REVENUE

	Years Ended March 31,			Year-over-Year Change			
	2018	2017	2016	2017 to 2018		2016 to 2017	
	<i>(dollar amounts in thousands)</i>						
Service revenue	\$ 280,430	\$ 235,816	\$ 192,241	\$ 44,614	18.9%	\$ 43,575	22.7%
Percentage of total revenue	94.6%	93.1%	91.8%				

Service revenue consists primarily of revenues attributable to the provision of our 8x8 cloud communication and collaboration software solutions.

The increase in fiscal year 2018, compared with fiscal year 2017, was primarily attributable to an increase in our business customer subscriber base (net of customer churn) in particular, to mid-market and enterprise customers, our fastest growing customer segments, and an increase in the average monthly service revenue per customer. Our business service subscriber base grew from approximately 49,200 customers at the end of fiscal 2017 to more than 53,800 customers on March 31, 2018. Average monthly service revenue per customer for the fiscal year increased from \$412 for fiscal 2017 to \$450 for fiscal 2018. We expect growth in the number of business customers and average monthly service revenue per customer to continue to grow in fiscal 2019.

The increase in fiscal year 2017, compared with fiscal year 2016, was primarily attributable to an increase in our business customer subscriber base (net of customer churn), in particular, to mid-market and enterprise customers, and an increase in the average monthly service revenue per customer. Our business service subscriber base grew from approximately 45,700 customers at the end of fiscal 2016 to approximately 49,200 customers on March 31, 2017. Average monthly service revenue per customer for the fiscal year increased from \$367 for fiscal 2016 to \$412 for fiscal 2017. These growth factors were partially offset by the discontinuance of a certain customer segment of the United Kingdom based platform-as-a-service (DXI PaaS) that was acquired in fiscal 2016 as part of the DXI acquisition, and the decline of the GBP exchange rate to the USD.

	Years Ended March 31,			Year-over-Year Change			
	2018	2017	2016	2017 to 2018		2016 to 2017	
	<i>(dollar amounts in thousands)</i>						
Product revenue	\$ 16,070	\$ 17,572	\$ 17,095	\$ (1,502)	-8.5%	\$ 477	2.8%
Percentage of total revenue	5.4%	6.9%	8.2%				

Product revenue consists primarily of revenues from sales of IP telephones in conjunction with our cloud telephony service. Product revenue is only dependent on the number of customers who choose to purchase an IP telephone in conjunction with our service instead of using the solution on their cell phone or computer. We expect customers to continue to adopt our mobile and desktop solutions in the future.

No single customer represented more than 10% of our total revenues during fiscal 2018, 2017 or 2016.

The following table illustrates our net revenues by geographic area. Revenues are attributed to countries based on the destination of shipment and the customer's service address.

	<b>Years Ended March 31,</b>		
	<b>2018</b>	<b>2017</b>	<b>2016</b>
Americas (principally US)	90%	89%	87%
Europe (principally UK)	10%	11%	13%
	100%	100%	100%

**COST OF REVENUE**

	<b>Years Ended March 31,</b>			<b>Year-over-Year Change</b>			
	<b>2018</b>	<b>2017</b>	<b>2016</b>	<b>2017 to 2018</b>		<b>2016 to 2017</b>	
	<i>(dollar amounts in thousands)</i>						
Cost of service revenue	\$ 50,689	\$ 42,400	\$ 37,078	\$ 8,289	19.5%	\$ 5,322	14.4%
Percentage of service revenue	18.1%	18.0%	19.3%				

Cost of service revenue primarily consists of costs associated with network operations and related personnel, communication origination and termination services provided by third-party carriers, and technology licenses, and amortization of internally developed software.

The increase in cost of service revenue for fiscal 2018 from fiscal 2017 was primarily due to a \$1.9 million increase in third-party network service expenses (due to increased call volumes associated with our subscription revenue growth), a \$1.7 million increase in amortization of capitalized software, a \$1.0 million increase in payroll and related expenses, a \$1.0 million increase in licenses and fees, a \$0.6 million increase in depreciation expense, and a \$0.5 million increase in amortization of intangibles.

The increase in cost of service revenue for fiscal 2017 from fiscal 2016 was primarily due to a \$2.6 million increase in third party network service expenses, a \$0.6 million increase in licenses and fees, a \$0.6 million increase in stock-based compensation expenses, a \$0.5 million increase in amortization expense, a \$0.4 million increase in payroll and related expenses, a \$0.4 million increase in computer supply expenses, and a \$0.2 million increase in temporary personnel, consulting and outside service expenses.

We expect service gross margin to remain at comparable levels for fiscal 2019.

	<b>Years Ended March 31,</b>			<b>Year-over-Year Change</b>			
	<b>2018</b>	<b>2017</b>	<b>2016</b>	<b>2017 to 2018</b>		<b>2016 to 2017</b>	
	<i>(dollar amounts in thousands)</i>						
Cost of product revenue	\$ 20,482	\$ 19,714	\$ 20,168	\$ 768	3.9%	\$ (454)	-2.3%
Percentage of product revenue	127.5%	112.2%	118.0%				

The cost of product revenue consists primarily of IP telephones, estimated warranty obligations and direct and indirect costs associated with product purchasing, scheduling, shipping and handling.

The increase in the cost of product revenue for fiscal 2018 from fiscal 2017 was primarily due to the increase in the shipment of equipment to our business customers.

The decrease in the cost of product revenue for fiscal 2017 from fiscal 2016 was primarily due to a \$0.2 million decrease in the shipment of equipment to our business customers.

**RESEARCH AND DEVELOPMENT EXPENSES**

	<b>Years Ended March 31,</b>			<b>Year-over-Year Change</b>			
	<b>2018</b>	<b>2017</b>	<b>2016</b>	<b>2017 to 2018</b>		<b>2016 to 2017</b>	
	<i>(dollar amounts in thousands)</i>						
Research and development	\$ 34,797	\$ 27,452	\$ 24,040	\$ 7,345	26.8%	\$ 3,412	14.2%
Percentage of total revenue	11.7%	10.8%	11.5%				

Historically, our research and development expenses have consisted primarily of personnel, consulting and equipment costs necessary for us to conduct our development and engineering efforts.

The increase in research and development expenses for fiscal 2018 from fiscal 2017 was primarily attributable to a \$4.0 million increase in payroll and related expenses, net of capitalized costs, and a \$2.2 million increase in stock-based compensation expenses.

The increase in research and development expenses for fiscal 2017 from fiscal 2016 was primarily attributable to a \$6.8 million increase in payroll and related expenses, a \$1.2 million increase in temporary personnel, consulting and outside service expenses, a \$1.2 million increase in facility and other allocated costs (which is based on employee headcount), a \$0.8 million increase in stock-based compensation expenses, a \$0.2 million increase in travel costs, partially offset by \$7.0 million of capitalized payroll and consulting costs.

For fiscal 2019, we expect research and development expenses to increase in absolute dollars and as a percentage of revenue as we continue to invest in our development efforts.

**SALES AND MARKETING EXPENSES**

	<b>Years Ended March 31,</b>			<b>Year-over-Year Change</b>			
	<b>2018</b>	<b>2017</b>	<b>2016</b>	<b>2017 to 2018</b>		<b>2016 to 2017</b>	
	<i>(dollar amounts in thousands)</i>						
Sales and marketing	\$ 184,044	\$ 139,277	\$ 109,379	\$ 44,767	32.1%	\$ 29,898	27.3%
Percentage of total revenue	62.1%	55.0%	52.3%				

Sales and marketing expenses consist primarily of personnel and related overhead costs for sales, marketing, and customer service which includes deployment engineering and technical support. Such costs also include outsourced customer service call center operations, sales commissions, trade shows, advertising and other marketing and promotional expenses.

The increase in sales and marketing expenses for fiscal 2018 from fiscal 2017 was primarily due to a \$17.5 million increase in payroll and related expenses from an increase in our sales force, deployment engineering, and customer success teams, a \$6.7 million increase in allocated costs, a \$5.0 million increase in advertising, a \$4.3 million increase in third-party sales commissions, a \$3.1 million increase in stock-based compensation expenses, a \$2.6 million increase in consulting and outside service expenses and a \$2.4 million increase in travel expenses.

The increase in sales and marketing expenses for fiscal 2017 from fiscal 2016 was primarily due to a \$16.6 million increase in payroll and related expenses from expanding our sales force, deployment engineering, and customer success teams, a \$5.0 million increase in facility and allocated costs, a \$2.6 million increase in stock-based compensation expenses, a \$2.1 million increase in third-party sales commissions, a \$1.5 million increase in travel and meal expenses, a \$1.3 million increase in advertising, a \$0.5 million increase in credit card processing fees, a \$0.5 million increase in public relations costs, a \$0.5 million increase in bad debt expense, a \$0.3 million increase in depreciation expense, offset partially by a \$0.8 million decrease in temporary personnel, consulting and outside service expenses, and a \$0.3 million decrease in amortization expense due to intangibles acquired in acquisitions.

For fiscal 2019, we expect selling and marketing expenses to increase in absolute dollars as we continue to invest in our sales and marketing programs.

GENERAL AND ADMINISTRATIVE EXPENSES

	Years Ended March 31,			Year-over-Year Change			
	2018	2017	2016	2017 to 2018		2016 to 2017	
	<i>(dollar amounts in thousands)</i>						
General and administrative	\$ 38,915	\$ 31,214	\$ 25,745	\$ 7,701	24.7%	\$ 5,469	21.2%
Percentage of total revenue	13.1%	12.3%	12.3%				

General and administrative expenses consist primarily of personnel and related overhead costs and professional service fees for finance, legal, human resources, employee recruiting, and general management.

The increase in general and administrative expenses for fiscal 2018 from fiscal 2017 was primarily due to a \$3.4 million increase in payroll and related expenses, a \$2.4 million increase in stock-based compensation expenses and a \$1.1 million increase in depreciation expense.

The increase in general and administrative expenses for fiscal 2017 from fiscal 2016 was primarily due to a \$1.4 million increase in payroll and related expenses, a \$1.3 million increase in temporary personnel, consulting and outside service expenses, a \$1.1 million increase in stock-based compensation expenses, and a \$0.7 million increase in legal, accounting and tax expenses.

For fiscal 2019, we expect general and administrative expenses to increase in absolute dollars in order to support the growth of our business.

IMPAIRMENT OF EQUIPMENT, INTANGIBLES AND GOODWILL

	Years Ended March 31,			Year-over-Year Change			
	2018	2017	2016	2017 to 2018		2016 to 2017	
	<i>(dollar amounts in thousands)</i>						
Impairment of equipment, intangible assets and goodwill	\$ 9,469	\$ -	\$ -	\$ 9,469	100.0%	\$ -	-100.0%
Percentage of total revenue	3.2%	0.0%	0.0%				

In fiscal 2018, we recorded a \$9.5 million impairment charge for goodwill and other assets associated with DXI as a result in the Company's change in product and marketing strategy for the use of DXI's technology.

INTEREST INCOME AND OTHER, NET

	Years Ended March 31,			Year-over-Year Change			
	2018	2017	2016	2017 to 2018		2016 to 2017	
	<i>(dollar amounts in thousands)</i>						
Interest income and other, net	\$ 3,693	\$ 1,792	\$ 1,107	\$ 1,901	106.1%	\$ 685	61.9%
Percentage of total revenue	1.2%	0.7%	0.5%				

This item primarily consisted of interest income earned on our cash, cash equivalents and investments in fiscal 2018, 2017 and 2016. In fiscal 2018, \$1.4 million of the cash held in an escrow fund from our 2015 acquisition of DXI was returned to us and recorded as other income.

	Years Ended March 31,			Year-over-Year Change	
	2018	2017	2016	2017 to 2018	2016 to 2017
	<i>(dollar amounts in thousands)</i>				
Provision (benefit) for income taxes	\$ 66,294	\$ (126)	\$ (847)	\$ 66,420	N/A
Percentage of total revenue	22.4%	0.0%	-0.4%	\$ 721	-85.1%

For the twelve months ended March 31, 2018, we recorded an income tax expense of \$66.3 million, mostly related to the recording of a full valuation allowance established against our deferred tax assets in the quarter ended December 31, 2017. For the twelve months ended March 31, 2017, we recorded an income tax benefit of \$0.1 million, all of which related to loss from operations.

We record deferred taxes based on differences between the financial statement basis and tax basis of assets and liabilities and available tax loss and credit carryforwards. In evaluating our ability to utilize our deferred tax assets, we consider available evidence, both positive and negative, in determining future taxable income on a jurisdiction-by-jurisdiction basis. We record a valuation allowance against deferred tax assets if, based on the weight of the evidence, it is more likely than not that some portion or all of the deferred tax assets will not be realized. A significant item of objective negative evidence considered was the historical three-year cumulative pretax loss reached in fiscal 2018. As a result, we recorded a full valuation allowance against our U.S. deferred tax assets in the period ended December 31, 2017.

The Tax Cuts and Jobs Act ("the Act") that was enacted on December 22, 2017, significantly reformed the Internal Revenue Code of 1986, as amended. The Act contains significant changes to corporate taxation, including reduction of the corporate tax rate from 35% to 21%, limitation of the tax deduction for interest expense to 30% of earnings, limitation of the deduction for net operating losses to 80% of current year taxable income and elimination of net operating loss carrybacks, one time taxation of offshore earnings at reduced rates regardless of whether they are repatriated, elimination of U.S. tax on foreign earnings (subject to certain important exceptions), immediate deductions for certain new investments instead of deductions for depreciation expense over time, and modifying or repealing many business deductions and credits. In the third quarter of fiscal 2018, we remeasured our deferred tax assets and liabilities based on the rates at which they are expected to reverse in the future, which is generally 21%. We recorded no one-time transition tax liability for our foreign subsidiaries as our preliminary calculations concluded we do not have any untaxed foreign accumulated earnings.

We estimate our annual effective tax rate at the end of each quarter. In estimating the annual effective tax rate, we consider, among other things, annual pre-tax income, permanent tax differences, the geographic mix of pre-tax income and the application and interpretations of existing tax laws. We record the tax effect of certain discrete items, which are unusual or occur infrequently, in the interim period in which they occur, including changes in judgment about deferred tax valuation allowances. The determination of the effective tax rate reflects tax expense and benefit generated in certain domestic and foreign jurisdictions. However, jurisdictions with a year-to-date loss where no tax benefit can be recognized are excluded from the annual effective tax rate.

#### LIQUIDITY AND CAPITAL RESOURCES

As of March 31, 2018, we had \$152.3 million of cash, cash equivalents and investments. In addition, we held \$8.1 million as deposit as restricted cash in support of a letter of credit, securing a lease for a new facility in San Jose, California, which we expect to occupy by January 2019. By comparison, at March 31, 2017, we had \$175.0 million in cash, cash equivalents and investments. We believe that our existing cash, cash equivalents and investment balances, and our anticipated cash flows from operations will be sufficient to meet our working capital and expenditure requirements for the next twelve months.

#### Fiscal 2018 to Fiscal 2017

Net cash provided by operating activities for fiscal 2018 was \$22.0 million, compared with \$28.5 million provided by operating activities for fiscal 2017. Cash used in or provided by operating activities has historically been affected by:

- the amount of net income or loss;
- the amount of non-cash expense items such as deferred income tax, depreciation, amortization and impairments;
- the expense associated with stock options and stock-based awards; and

- changes in working capital accounts, particularly in the timing of collections from receivable and payments of obligations.

Net cash used in investing activities was \$7.3 million in fiscal 2018, compared with \$22.2 million used in investing activities in fiscal 2017. The cash used in investing activities during fiscal 2018 was primarily related to property and equipment investments of \$9.2 million and the capitalized internal software development costs of \$12.5 million. This was partially offset by \$13.0 million of proceeds from sales and maturities of investments, net of purchases of investments.

Net cash used in financing activities was \$16.4 million in fiscal 2018, compared with \$1.6 million provided by financing activities in fiscal 2017. Our financing activities for fiscal 2018 used cash of \$17.9 million for the repurchase of 1.4 million shares of our common stock under our announced stock repurchase program, \$4.5 million to settle payroll tax obligations and \$1.1 million to make payments for lease obligations. These outflows were partially offset by \$7.2 million from the issuance of common stock under employee stock purchase plans.

#### *Fiscal 2017 to Fiscal 2016*

Net cash provided by operating activities for fiscal 2017 was \$28.5 million.

Net cash used in investing activities was \$22.2 million in fiscal 2017, which comprised investments in property and equipment of \$8.9 million, cost for capitalized internal software development costs of \$5.5 million and net purchases of investments of \$4.9 million. The cash outflow related to the LeChat acquisition was \$2.9 million.

Net cash provided by financing activities was \$1.6 million in fiscal 2017, compared with \$7.2 million in fiscal 2016. Our financing activities for fiscal 2017 used cash of \$3.0 million for share repurchases to settle payroll tax obligations. This cash use was offset by \$5.1 million proceeds from the issuance of common stock under employee stock purchase plans. During fiscal 2017, we did not repurchase shares from the market under a stock repurchase program.

#### **Contractual Obligations**

Future operating lease payments, capital lease payments and purchase obligations at March 31, 2018 for the next five years were as follows (in thousands):

	<b>Year Ending March 31,</b>						<b>Total</b>
	<b>2019</b>	<b>2020</b>	<b>2021</b>	<b>2022</b>	<b>2023</b>	<b>Thereafter</b>	
Capital leases	\$ 1,054	\$ 456	\$ 53	\$ 5	\$ -	\$ -	\$ 1,568
Office leases	5,876	6,754	9,093	8,970	8,448	54,936	94,077
Purchase obligations							
Third party customer support provider	1,358	-	-	-	-	-	1,358
Third party network service providers	1,916	8	-	-	-	-	1,924
	<u>\$ 10,204</u>	<u>\$ 7,218</u>	<u>\$ 9,146</u>	<u>\$ 8,975</u>	<u>\$ 8,448</u>	<u>\$ 54,936</u>	<u>\$ 98,927</u>

Our capital lease obligations consist of leases for computer equipment.

Our office lease obligations consist of our principal facility and various leased facilities under operating lease agreements, which expire on various dates from fiscal 2018 through fiscal 2032. The Company leases its current headquarters facility in San Jose, California under an operating lease agreement that expires in October 2019.

In the fourth quarter of 2018, we entered into a 132-month lease to rent approximately 162,000 square feet for a new Company headquarters in San Jose, California. The lease term begins on January 1, 2019 or such earlier date on which the Company first commences to conduct business on the premises. The Company has the option to extend the lease for one additional five-year term, on substantially the same terms and conditions as the prior term but with the base rent rate adjusted to fair market value at that time.

## **CRITICAL ACCOUNTING POLICIES & ESTIMATES**

Our consolidated financial statements are prepared in conformity with accounting principles generally accepted in the United States of America. Note 1 to the consolidated financial statements in Part II, Item 8 of this Report describes the significant accounting policies and methods used in the preparation of our consolidated financial statements.

We have identified the policies below as some of the more critical to our business and the understanding of our results of operations. These policies may involve a higher degree of judgment and complexity in their application and represent the critical accounting policies used in the preparation of our consolidated financial statements. Although we believe our judgments and estimates are appropriate, actual future results may differ from our estimates. If different assumptions or conditions were to prevail, the results could be materially different from our reported results. The impact and any associated risks related to these policies on our business operations is discussed throughout Management's Discussion and Analysis of Financial Condition and Results of Operations where such policies affect our reported and expected financial results.

### **Use of Estimates**

The preparation of the consolidated financial statements in conformity with accounting principles generally accepted in the United States requires management to make estimates and assumptions that affect the reported amounts of assets, liabilities and equity and disclosure of contingent assets and liabilities at the date of the consolidated financial statements and the reported amounts of revenues and expenses during the reporting period. On an on-going basis, we evaluate such estimates, including, but not limited to, those related to, revenue recognition, bad debts, returns reserve for expected cancellations, income and sales tax, and litigation and other contingencies. We base our estimates on historical experience and on various other assumptions that are believed to be reasonable under the circumstances, the results of which form the basis for making judgments about the carrying value of assets and liabilities, and equity that are not readily apparent from other sources. Our actual results could differ from those estimates under different assumptions or conditions.

Additional information regarding risk factors that may impact our estimates is included above under Part I, Item 1A, "Risk Factors."

### **Revenue Recognition**

Our revenue recognition policies are also described in Note 1 to the consolidated financial statements in Part II, Item 8 of this Annual Report. As described below, significant management judgments and estimates must be made and used in connection with the revenue recognized in any accounting period. Material differences may result in the amount and timing of our revenue for any period if our management made different judgments or utilized different estimates.

#### *Service and Product Revenue*

We recognize service revenue, mainly from subscription services related to our cloud-based voice, call center, video, and collaboration solutions, when persuasive evidence of an arrangement exists, delivery has occurred, or services have been rendered, price is fixed or determinable and collectability is reasonably assured. We defer recognition of service revenues in instances when cash receipts are received before services are delivered, and we recognize deferred revenues ratably, over the course of the contract, as services are provided.

Under the terms of our typical subscription agreements, new customers can terminate their service within 30 days of order placement and receive a full refund of fees previously paid. We have determined that we have sufficient history of subscriber conduct to make a reasonable estimate of cancellations within the 30-day trial period. Therefore, we recognize new subscriber revenue that is fixed and determinable and that is not contingent on future performance or future deliverables, in the month in which the new order was shipped, net of an allowance for expected cancellations.

We recognize revenue from product sales, mainly IP telephones, for which there are no related services to be rendered upon shipment to customers provided that persuasive evidence of an arrangement exists, the price is fixed or determinable, title has transferred, collection of resulting receivables is reasonably assured, there are no customer acceptance requirements, and there are no remaining significant obligations. Gross outbound shipping and handling charges are recorded as revenue, and the related costs are included in cost of goods sold. Reserves for returns and allowances for customer sales are recorded at the time of shipment. In accordance with the Financial Accounting Standards Board ("FASB") Accounting Standards Codification ("ASC") 605, *Revenue Recognition*, we defer revenue from shipments to distributors, retailers, channel partners, and resellers, where the right of return exists, until the products have been sold to the end customer.



We record revenue net of any sales and service related taxes and mandatory government charges that are billed to our customers. We believe this approach results in consolidated financial statements that are more easily understood by users.

### *Multiple Element Arrangements*

ASC 605-25, *Revenue Recognition - Multiple Element Arrangements*, requires that revenue arrangements with multiple deliverables be divided into separate units of accounting if the deliverables in the arrangement meet specific criteria. The provisioning of the 8x8 cloud service with the accompanying 8x8 IP telephone constitutes a revenue arrangement with multiple deliverables. For arrangements with multiple deliverables, we allocate the arrangement consideration to all units of accounting based on their relative selling prices. In such circumstances, the accounting principles establish a hierarchy to determine the relative selling price to be used for allocating arrangement consideration to units of accounting as follows: (i) vendor-specific objective evidence of fair value ("VSOE"), (ii) third-party evidence of selling price ("TPE"), and (iii) best estimate of the selling price ("BESP").

VSOE generally exists only when we sell the deliverable separately, on more than a limited basis, at prices within a relatively narrow range. When VSOE cannot be established, we attempt to establish the selling price of deliverables based on relevant TPE. TPE is determined based on manufacturer's prices for similar deliverables when sold separately, when possible. As we have historically been unable to establish a selling price using VSOE or TPE, we use BESP for the allocation of arrangement consideration. The objective of BESP is to determine the price at which we would transact a sale if the product or service was sold on a stand-alone basis. BESP is generally used for offerings that are not typically sold on a stand-alone basis or for new or highly customized offerings. We determine BESP for a product or service by considering multiple factors including, but not limited to:

- the price list established by our management which is typically based on general pricing practices and targeted gross margin of products and services sold; and
- analysis of pricing history of new arrangements, including multiple element and stand-alone transactions.

In accordance with the guidance of ASC 605-25, when we enter into revenue arrangements with multiple deliverables we allocate arrangement consideration, among the products and subscriber services based on their relative selling prices. Arrangement consideration allocated to the sold products that is fixed or determinable and that is not contingent on future performance or future deliverables is recognized as product revenues during the period of the sale less the allowance for estimated returns during the 30-day trial period. Arrangement consideration allocated to subscriber services that is fixed or determinable and that is not contingent on future performance or future deliverables is recognized ratably as service revenues as the related services are provided, which is generally over the initial contract term.

### **Collectability of Accounts Receivable**

We must make estimates of the collectability of our accounts receivable. Management specifically analyzes accounts receivable, including historical bad debts, customer concentrations, customer creditworthiness, current economic trends and changes in our customer payment terms when evaluating the adequacy of the allowance for doubtful accounts. If the financial condition of our customers deteriorates, our actual losses may exceed our estimates, and additional allowances would be required.

### **Goodwill and Other Intangible Assets**

Goodwill and intangible assets with indefinite useful lives are not amortized. Goodwill represents the excess fair value of consideration transferred over the fair value of net assets acquired in business combinations. The carrying value of goodwill and indefinite lived intangible assets are not amortized but are annually tested for impairment and more often if there is an indicator of impairment.

We perform an annual goodwill impairment test on January 1 of each year and during the year, whenever a triggering event for such an assessment is identified. During the third quarter of fiscal year 2018, we changed our product and marketing strategy for the use of DXI's technology and re-assessed the profitability outlook which triggered us testing the recorded goodwill for impairment. First, we estimated the fair value of our three reporting units using the market approach. Under the market approach, we utilized the market capitalization of our publicly-traded shares and comparable company information to determine revenue multiples which were used to determine the fair value of each reporting unit. Based on this approach, we determined that there was an indication of impairment only for our DXI reporting unit in the UK as the carrying value including goodwill exceeded its estimated fair value. As largely independent cash flows could not be attributed to any assets individually we evaluated DXI's assets and liabilities as one asset group. Then we estimated the fair value of DXI's using discounted cash flow methods to determine the implied fair value of goodwill. The difference between this implied fair value of the goodwill and its carrying value was recorded as impairment. The outcome of the analysis resulted in a non-cash expense for impairment of property and equipment, intangible assets and goodwill of \$0.3 million, \$1.2 million and \$8.0 million, respectively, which was recorded during the third quarter of fiscal year 2018 as a separate line item in our Consolidated Statements of Operations.

#### **Internal - Use Software Development Costs**

We account for computer software developed or obtained for internal use in accordance with ASC 350-40, *Internal Use Software* (ASC 350-40), which requires capitalization of certain software development costs incurred during the application development stage. In accordance with authoritative guidance, we begin to capitalize our costs to develop software when preliminary development efforts are successfully completed, management has authorized and committed project funding, and it is probable that the project will be completed and the software will be used as intended. Once the project has been completed, these costs are amortized on a straight-line basis over the estimated useful life of the related asset, generally estimated to be three years. Costs incurred prior to meeting these criteria together with costs incurred for training and maintenance are expensed as incurred and recorded in research and development expense on our consolidated statements of operations.

#### **Income and Other Taxes**

As part of the process of preparing our consolidated financial statements we are required to estimate our income taxes in each of the jurisdictions in which we operate. This process requires us to estimate our actual current tax expense and to assess temporary differences resulting from book-tax accounting differences for items such as accrued vacation. These differences result in deferred tax assets and liabilities, which are included within our consolidated balance sheet. We must then assess the likelihood that our deferred tax assets will be recovered from future taxable income and to the extent we believe that recovery is not likely, we must establish a valuation allowance.

Significant management judgment is required to determine the valuation allowance recorded against our net deferred tax assets, which include net operating loss and tax credit carry forwards. The valuation allowance is based on our estimates of taxable income by jurisdiction in which we operate and the period over which our deferred tax assets will be recoverable.

In evaluating our ability to utilize our deferred tax assets, we consider available evidence, both positive and negative, in determining future taxable income on a jurisdiction-by-jurisdiction basis. We record a valuation allowance against deferred tax assets if, based on the weight of the evidence, it is more likely than not that some portion or all of the deferred tax assets will not be realized. A significant item of objective negative evidence considered was the historical three-year cumulative pretax loss as of the end of our third quarter. As a result, we recorded a full valuation allowance against our U.S. deferred tax assets during that period. As of March 31, 2018, we maintained a full valuation allowance against our net deferred tax asset on the consolidated balance sheet.

We estimate our annual effective tax rate at the end of each quarter. In estimating the annual effective tax rate, we consider, among other things, annual pre-tax income, permanent tax differences, the geographic mix of pre-tax income and the application and interpretations of existing tax laws. We record the tax effect of certain discrete items, which are unusual or occur infrequently, in the interim period in which they occur, including changes in judgment about deferred tax valuation allowances. The determination of the effective tax rate reflects tax expense and benefit generated in certain domestic and foreign jurisdictions. However, jurisdictions with a year-to-date loss where no tax benefit can be recognized are excluded from the annual effective tax rate.

We have received inquiries, demands or audit requests from several state, municipal and 9-1-1 taxing agencies seeking payment of taxes that are applied to or collected from the customers of providers of traditional public switched telephone network services.

## **Stock-Based Compensation**

We account for our employee stock options, stock purchase rights, restricted stock units, and restricted performance stock units granted under the provisions of ASC 718 - *Stock Compensation*. Under the provisions of ASC 718, stock-based compensation cost is measured at the grant date, based on the estimated fair value of the award, and is recognized as an expense over the employee's requisite service period (generally the vesting period of the equity grant), net of estimated forfeitures.

Compensation expense for stock-based payment awards is recognized over the requisite service period using the straight-line method and includes the impact of estimated forfeitures.

To value option grants under the Equity Compensation Plans for stock-based compensation, we used the Black-Scholes option valuation model. Fair value determined using the Black-Scholes option valuation model varies based on assumptions used for the expected stock prices volatility, expected life, risk-free interest rates and future dividend payments. We used the historical volatility of our stock over a period equal to the expected life of the options. The expected life assumptions represent the weighted-average period stock-based awards are expected to remain outstanding. We established expected life assumptions through the review of historical exercise behavior of stock-based award grants with similar vesting periods. The risk-free interest rate was based on the closing market bid yields on actively traded U.S. treasury securities in the over-the-counter market for the expected term equal to the expected term of the option. The dividend yield assumption was based on our history and expectation of future dividend payout.

To value restricted performance stock units under the Equity Compensation Plans, we used a Monte Carlo simulation model. Fair value determined using the Monte Carlo simulation model varies based on the assumptions used for the expected stock price volatility, the correlation coefficient between the Company and the NASDAQ Composite Index, risk-free interest rates, and future dividend payments. We used the historical volatility and correlation of our stock and the Index over a period equal to the remaining performance period as of the grant date. The risk-free interest rate was based on the closing market bid yields of actively traded U.S. treasury securities in the over-the-counter market for the expected term equal to the remaining performance period as of the grant date. The dividend yield assumption was based on our history of not paying dividends.

## **Recently Issued and Adopted Accounting Pronouncements**

Recent accounting pronouncements are detailed in Note 1 to our Consolidated Financial Statements included in Part II, Item 8 of this Annual Report on Form 10-K.

## **ITEM 7A. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK**

### **Interest Rate Fluctuation Risk**

The primary objective of our investment activities is to preserve principal while maximizing income without significantly increasing risk. Some of the securities in which we invest may be subject to market risk. This means that a change in prevailing interest rates may cause the principal amount of the investment to fluctuate. To minimize this risk, we may maintain our portfolio of cash equivalents and investments of short durations in a variety of securities, including commercial paper, money market funds, debt securities and certificates of deposit. The risk associated with fluctuating interest rates is limited to our investment portfolio and we do not believe that a 10% change in interest rates would have a material impact on our interest income.

During the three years ended March 31, 2018, 2017 and 2016, we did not have any outstanding debt instruments other than equipment under capital leases which have fixed interest rates. Therefore, we were not exposed to market risk relating to interest rates for outstanding debt.

### **Foreign Currency Exchange Risk**

We have foreign currency risks related to our revenue and operating expenses denominated in currencies other than the U.S. dollar, primarily the British Pound, causing both our revenue and our operating results to be impacted by fluctuations in the exchange rates.

Gains or losses from the translation of certain cash balances, accounts receivable balances and intercompany balances that are denominated in these currencies impact our net income (loss). A hypothetical decrease in all foreign currencies against the US dollar of 10 percent, would not result in a material foreign currency loss on foreign-denominated balances, at March 31, 2018. As our foreign operations expand, our results may be more impacted by fluctuations in the exchange rates of the currencies in which we do business.

At this time, we do not, but we may in the future, enter into financial instruments to hedge our foreign currency exchange risk.

## ITEM 8. FINANCIAL STATEMENTS AND SUPPLEMENTARY DATA

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The Board of Directors and Stockholders  
8x8, Inc.

***Opinions on the Financial Statements and Internal Control over Financial Reporting***

We have audited the accompanying consolidated balance sheets of 8x8, Inc. (the "Company") as of March 31, 2018 and 2017, the related consolidated statements of operations, comprehensive income (loss), stockholders' equity, and cash flows for each of the three years in the period ended March 31, 2018, and the related notes (collectively referred to as the "consolidated financial statements"). We also have audited the Company's internal control over financial reporting as of March 31, 2018, based on criteria established in *Internal Control - Integrated Framework (2013)* issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO).

In our opinion, the consolidated financial statements referred to above present fairly, in all material respects, the consolidated financial position of the Company as of March 31, 2018 and 2017, and the consolidated results of its operations and its cash flows for each of the three years in the period ended March 31, 2018, in conformity with accounting principles generally accepted in the United States of America. Also in our opinion, the Company maintained, in all material respects, effective internal control over financial reporting as of March 31, 2018, based on criteria established in *Internal Control - Integrated Framework (2013)* issued by COSO.

***Basis for Opinions***

The Company's management is responsible for these consolidated financial statements, for maintaining effective internal control over financial reporting, and for its assessment of the effectiveness of internal control over financial reporting, included in the accompanying *Management's Report on Internal Control Over Financial Reporting* under Item 9A. Our responsibility is to express an opinion on the Company's consolidated financial statements and an opinion on the Company's internal control over financial reporting based on our audits. We are a public accounting firm registered with the Public Company Accounting Oversight Board (United States) ("PCAOB") and are required to be independent with respect to the Company in accordance with the U.S. federal securities laws and the applicable rules and regulations of the Securities and Exchange Commission and the PCAOB.

We conducted our audits in accordance with the standards of the PCAOB. Those standards require that we plan and perform the audits to obtain reasonable assurance about whether the consolidated financial statements are free of material misstatement, whether due to error or fraud, and whether effective internal control over financial reporting was maintained in all material respects.

Our audits of the consolidated financial statements included performing procedures to assess the risks of material misstatement of the consolidated financial statements, whether due to error or fraud, and performing procedures to respond to those risks. Such procedures included examining, on a test basis, evidence regarding the amounts and disclosures in the consolidated financial statements. Our audits also included evaluating the accounting principles used and significant estimates made by management, as well as evaluating the overall presentation of the consolidated financial statements. Our audit of internal control over financial reporting included obtaining an understanding of internal control over financial reporting, assessing the risk that a material weakness exists, and testing and evaluating the design and operating effectiveness of internal control based on the assessed risk. Our audits also included performing such other procedures as we considered necessary in the circumstances. We believe that our audits provide a reasonable basis for our opinions.

***Definition and Limitations of Internal Control Over Financial Reporting***

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

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

/s/ Moss Adams LLP

San Francisco, California  
May 30, 2018

We have served as the Company's auditor since 2009.

**8X8, INC.**  
**CONSOLIDATED BALANCE SHEETS**  
**(IN THOUSANDS, EXCEPT SHARE AND PER SHARE AMOUNTS)**

	<b>March 31,</b>	
	<b>2018</b>	<b>2017</b>
<b>ASSETS</b>		
Current assets:		
Cash and cash equivalents	\$ 31,703	\$ 41,030
Short-term investments	120,559	133,959
Accounts receivable, net	16,296	14,264
Other current assets	10,040	8,101
Total current assets	178,598	197,354
Property and equipment, net	35,732	24,061
Intangible assets, net	11,958	17,038
Goodwill	40,054	46,136
Non-current deferred tax asset	-	48,859
Restricted cash	8,100	-
Other assets	2,767	407
Total assets	\$ 277,209	\$ 333,855
<b>LIABILITIES AND STOCKHOLDERS' EQUITY</b>		
Current liabilities:		
Accounts payable	\$ 23,899	\$ 18,631
Accrued compensation	17,412	11,508
Accrued taxes	6,367	5,354
Deferred revenue	2,559	2,144
Other accrued liabilities	6,026	5,707
Total current liabilities	56,263	43,344
Non-current liabilities	2,153	1,850
Non-current deferred revenue	19	60
Total liabilities	58,435	45,254
Commitments and contingencies (Note 5)		
Stockholders' equity:		
Preferred stock, \$0.001 par value:		
Authorized: 5,000,000 shares;		
Issued and outstanding: no shares at March 31, 2018 and 2017	-	-
Common stock, \$0.001 par value:		
Authorized: 200,000,000 shares;		
Issued and outstanding: 92,847,354 shares and 91,500,091 shares at March 31, 2018 and 2017, respectively	93	91
Additional paid-in capital	425,790	412,762
Accumulated other comprehensive loss	(5,645)	(9,642)
Accumulated deficit	(201,464)	(114,610)
Total stockholders' equity	218,774	288,601
Total liabilities and stockholders' equity	\$ 277,209	\$ 333,855

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

**8X8, INC.**  
**CONSOLIDATED STATEMENTS OF OPERATIONS**  
**(IN THOUSANDS, EXCEPT PER SHARE AMOUNTS)**

	<b>Years Ended March 31,</b>		
	<b>2018</b>	<b>2017</b>	<b>2016</b>
Service revenue	\$ 280,430	\$ 235,816	\$ 192,241
Product revenue	16,070	17,572	17,095
Total revenue	296,500	253,388	209,336
Operating expenses:			
Cost of service revenue	50,689	42,400	37,078
Cost of product revenue	20,482	19,714	20,168
Research and development	34,797	27,452	24,040
Sales and marketing	184,044	139,277	109,379
General and administrative	38,915	31,214	25,745
Impairment of goodwill, intangible assets and equipment	9,469	-	-
Total operating expenses	338,396	260,057	216,410
Loss from operations	(41,896)	(6,669)	(7,074)
Other income, net	3,693	1,792	1,107
Loss before provision (benefit) for income taxes	(38,203)	(4,877)	(5,967)
Provision (benefit) for income taxes	66,294	(126)	(847)
Net loss	\$ (104,497)	\$ (4,751)	\$ (5,120)
Net loss per share:			
Basic	\$ (1.14)	\$ (0.05)	\$ (0.06)
Diluted	\$ (1.14)	\$ (0.05)	\$ (0.06)
Weighted average number of shares:			
Basic	92,017	90,340	88,477
Diluted	92,017	90,340	88,477

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

**8X8, INC.**  
**CONSOLIDATED STATEMENTS OF COMPREHENSIVE INCOME (LOSS)**  
**(IN THOUSANDS)**

	<b>Years Ended March 31,</b>		
	<b>2018</b>	<b>2017</b>	<b>2016</b>
Net loss	\$ (104,497)	\$ (4,751)	\$ (5,120)
Other comprehensive income (loss), net of tax			
Unrealized gains (losses) on investments in securities	(259)	70	(50)
Foreign currency translation adjustment	4,256	(5,528)	(2,025)
Comprehensive loss	<u>\$ (100,500)</u>	<u>\$ (10,209)</u>	<u>\$ (7,195)</u>

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



**8X8, INC.**  
**CONSOLIDATED STATEMENTS OF STOCKHOLDERS' EQUITY**  
**(IN THOUSANDS, EXCEPT SHARES)**

	<u>Common Stock</u>		<u>Additional Paid-in Capital</u>	<u>Accumulated Other Comprehensive Income (Loss)</u>	<u>Accumulated Deficit</u>	<u>Total</u>
	<u>Shares</u>	<u>Amount</u>				
<b>Balance at March 31, 2015</b>	88,065,528	\$ 88	\$ 378,971	\$ (2,109)	\$ (104,739)	\$ 272,211
Issuance of common stock under stock plans	2,218,470	2	5,386	-	-	5,388
Withholding taxes from stock plans	(30,702)	-	(466)	-	-	(466)
Repurchase of common stock	(1,392,135)	(1)	(11,189)	-	-	(11,190)
Stock-based compensation expense	-	-	16,334	-	-	16,334
Issuance of common stock for acquisition of DXI	352,044	-	-	-	-	-
Income tax benefit from stock-based compensation	-	-	224	-	-	224
Unrealized investment gain (loss)	-	-	-	(50)	-	(50)
Foreign currency translation adjustment	-	-	-	(2,025)	-	(2,025)
Net loss	-	-	-	-	(5,120)	(5,120)
<b>Balance at March 31, 2016</b>	<u>89,213,205</u>	<u>89</u>	<u>389,260</u>	<u>(4,184)</u>	<u>(109,859)</u>	<u>275,306</u>
Issuance of common stock under stock plans	2,576,785	3	4,557	-	-	4,560
Withholding taxes from stock plans	(289,899)	(1)	(3,003)	-	-	(3,004)
Stock-based compensation expense	-	-	21,462	-	-	21,462
Income tax benefit from stock-based compensation	-	-	486	-	-	486
Unrealized investment gain (loss)	-	-	-	70	-	70
Foreign currency translation adjustment	-	-	-	(5,528)	-	(5,528)
Net loss	-	-	-	-	(4,751)	(4,751)
<b>Balance at March 31, 2017</b>	<u>91,500,091</u>	<u>91</u>	<u>412,762</u>	<u>(9,642)</u>	<u>(114,610)</u>	<u>288,601</u>
Issuance of common stock under stock plans, less withholding taxes	2,709,990	3	2,179	-	-	2,182
Repurchase of common stock	(1,362,727)	(1)	(17,933)	-	-	(17,934)
Stock-based compensation expense	-	-	28,782	-	-	28,782
Unrealized investment gain (loss)	-	-	-	(259)	-	(259)
Foreign currency translation adjustment	-	-	-	4,256	-	4,256
Adjustment from adoption of ASU 2016-9	-	-	-	-	17,643	17,643
Net loss	-	-	-	-	(104,497)	(104,497)
<b>Balance at March 31, 2018</b>	<u>92,847,354</u>	<u>\$ 93</u>	<u>\$ 425,790</u>	<u>\$ (5,645)</u>	<u>\$ (201,464)</u>	<u>\$ 218,774</u>

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

**8X8, INC.**  
**CONSOLIDATED STATEMENTS OF CASH FLOWS**  
**(IN THOUSANDS)**

	<b>Years Ended March 31,</b>		
	<b>2018</b>	<b>2017</b>	<b>2016</b>
<b>Cash flows from operating activities:</b>			
Net loss	\$ (104,497)	\$ (4,751)	\$ (5,120)
Adjustments to reconcile net loss to net cash provided by operating activities:			
Depreciation	8,171	6,084	4,994
Amortization of intangibles	5,033	3,762	3,557
Impairment of goodwill and long-lived assets	9,469	15	640
Amortization of capitalized software	2,513	591	456
Stock-based compensation expense	29,176	21,462	16,334
Tax benefit from stock-based compensation expense	-	(486)	(224)
Deferred income tax expense (benefit)	66,273	(411)	(1,493)
Gain on escrow settlement	(1,393)	-	-
Other	677	1,196	1,273
Changes in assets and liabilities:			
Accounts receivable	(2,402)	(4,799)	(4,539)
Other current and noncurrent assets	(3,149)	(2,515)	(1,520)
Accounts payable and accruals	11,860	8,135	9,482
Deferred revenue	310	195	(273)
Net cash provided by operating activities	<u>22,041</u>	<u>28,478</u>	<u>23,567</u>
<b>Cash flows from investing activities:</b>			
Purchases of property and equipment	(9,178)	(8,851)	(4,894)
Cost of capitalized software	(12,486)	(5,516)	(2,095)
Proceeds from escrow settlement	1,393	-	-
Purchase of investments	(115,224)	(140,026)	(126,723)
Sales of investments	27,841	41,288	56,302
Proceeds from maturities of investments	100,382	93,795	64,361
Acquisition of businesses, net of cash acquired	-	(2,884)	(23,246)
Net cash used in investing activities	<u>(7,272)</u>	<u>(22,194)</u>	<u>(36,295)</u>
<b>Cash flows from financing activities:</b>			
Capital lease payments	(1,079)	(674)	(446)
Payment of contingent consideration	(150)	(300)	(200)
Repurchase of common stock, including for withholding taxes	(22,440)	(3,003)	(11,653)
Tax benefit from stock-based compensation expense	-	486	224
Proceeds from issuance of common stock under employee stock plans	7,229	5,087	4,827
Net cash (used in) provided by financing activities	<u>(16,440)</u>	<u>1,596</u>	<u>(7,248)</u>
Effect of exchange rate changes on cash	444	(426)	442
Net (decrease) increase in cash and cash equivalents	(1,227)	7,454	(19,534)
Cash, cash equivalents and restricted cash, beginning of year	41,030	33,576	53,110
Cash, cash equivalents and restricted cash, end of year	<u>\$ 39,803</u>	<u>\$ 41,030</u>	<u>\$ 33,576</u>
<b>Supplemental and non-cash disclosures:</b>			
Acquisition of property and equipment, net in connection with acquisitions of businesses	\$ -	\$ -	\$ 1,453
Acquisition of capital lease in connection with acquisitions of businesses	-	-	1,332
Equipment acquired under capital leases	765	1,152	573
Interest paid	36	16	44
Income taxes paid	38	460	445

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

## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

**1. THE COMPANY AND SIGNIFICANT ACCOUNTING POLICIES****THE COMPANY**

8x8, Inc. ("8x8" or the "Company") was incorporated in California in February 1987 and was reincorporated in Delaware in December 1996.

The Company is a leading provider of enterprise cloud communications solutions, including unified communications, team collaboration, contact center, and analytics, integrated over a single Software-as-a-Service (SaaS) platform. The 8x8 Communications Cloud™ offers businesses a secure, reliable and simplified approach to transitioning their legacy, on-premises communications systems to the cloud. This comprehensive solution, built from owned and managed cloud technologies, enables customers to rely on a single provider for their global communications and contact center capabilities as well as customer support requirements. 8x8 customers are spread across more than 100 countries and range from small businesses to large enterprises. Since fiscal 2004, substantially all revenue has been generated from the sale of communications services and related hardware. Prior to fiscal 2003, the Company's main business was Voice over Internet Protocol semiconductors.

The Company's fiscal year ends on March 31 of each calendar year. Each reference to a fiscal year in these notes to the consolidated financial statements refers to the fiscal year ended March 31 of the calendar year indicated (for example, fiscal 2018 refers to the fiscal year ended March 31, 2018).

**PRINCIPLES OF CONSOLIDATION**

The consolidated financial statements include the accounts of 8x8 and its subsidiaries. All material intercompany accounts and transactions have been eliminated.

**Reclassification**

Certain software development costs capitalized in accordance with ASC 350-40, *Internal-Use Software* (ASC 350-40), that were presented in other long-term assets in the Company's consolidated balance sheets as of March 31, 2017 are presented as property and equipment for the consolidated balance sheet as of March 31, 2018. Assets in the amount of \$7.7 million, net of accumulated amortization, have been reclassified in the consolidated balance sheet as of March 31, 2017 to conform to the current period presentation. The reclassification had no impact on the Company's previously reported consolidated net income (loss), cash flows, or basic or diluted net income per share amounts.

Certain amounts previously reported within the Company's consolidated balance sheets and consolidated statements of cash flows have been reclassified within each financial statement section to conform to the current period presentation. The reclassification had no impact on the Company's previously reported net loss, cash flows, or basic or diluted net loss per share amounts.

**USE OF ESTIMATES**

The preparation of the consolidated financial statements in conformity with accounting principles generally accepted in the United States requires management to make estimates and assumptions that affect the reported amounts of assets, liabilities and equity and disclosure of contingent assets and liabilities at the date of the consolidated financial statements and the reported amounts of revenues and expenses during the reporting period. On an ongoing basis, the Company evaluates its estimates, including, but not limited to, those related to bad debts, returns reserve for expected cancellations, income and sales tax, and litigation and other contingencies. The Company bases its estimates on historical experience and on various other assumptions. Actual results could differ from those estimates under different assumptions or conditions.

## REVENUE RECOGNITION

### *Service and Product Revenue*

The Company recognizes service revenue, mainly from subscription services to its cloud-based voice, call center, video and collaboration solutions, when persuasive evidence of an arrangement exists, delivery has occurred or services have been rendered, price is fixed or determinable and collectability is reasonably assured. The Company defers recognition of service revenues in instances when cash receipts are received before services are delivered and recognizes deferred revenues ratably, over the course of the contract, as services are provided.

Under the terms of the Company's typical subscription agreements, new customers can terminate their service within 30 days of order placement and receive a full refund of fees previously paid. The Company has determined that it has sufficient history of subscriber conduct to make a reasonable estimate of cancellations within the 30-day trial period. Therefore, the Company recognizes new subscriber revenue that is fixed or determinable and that is not contingent on future performance or future deliverables in the month in which the new order was shipped, net of an allowance for expected cancellations. The Company recognizes revenue from product sales, mainly IP telephones, for which there are no related services to be rendered upon shipment to customers provided that persuasive evidence of an arrangement exists, the price is fixed or determinable, title has transferred, collection of resulting receivables is reasonably assured, there are no customer acceptance requirements, and there are no remaining significant obligations. Gross outbound shipping and handling charges are recorded as revenue, and the related costs are included in cost of goods sold. Reserves for returns and allowances for customer sales are recorded at the time of shipment. In accordance with the Financial Accounting Standards Board ("FASB") Accounting Standards Codification ("ASC") 605, *Revenue Recognition*, the Company records shipments to distributors, retailers, channel partners, and resellers, where the right of return exists, as deferred revenue. The Company defers recognition of revenue on product sales to resellers until the products have been sold to the end-customer.

The Company records revenue net of any sales and service related taxes and mandatory government charges that are billed to its customers. The Company believes this approach results in consolidated financial statements that are more easily understood by users.

### *Multiple Element Arrangements*

ASC 605-25, *Revenue Recognition - Multiple Element Arrangements*, requires that revenue arrangements with multiple deliverables be divided into separate units of accounting if the deliverables in the arrangement meet specific criteria. The provisioning of the cloud service with the accompanying IP telephone constitutes a revenue arrangement with multiple deliverables. For arrangements with multiple deliverables, the Company allocates the arrangement consideration to all units of accounting based on their relative selling prices. In such circumstances, the accounting principles establish a hierarchy to determine the relative selling price to be used for allocating arrangement consideration to units of accounting as follows: (i) vendor-specific objective evidence of fair value ("VSOE"), (ii) third-party evidence of selling price ("TPE"), and (iii) best estimate of the selling price ("BESP").

VSOE generally exists only when a Company sells the deliverable separately, on more than a limited basis, at prices within a relatively narrow range. When VSOE cannot be established, the Company attempts to establish the selling price of deliverables based on relevant TPE. TPE is determined based on manufacturer's prices for similar deliverables when sold separately, when possible. As the Company has historically been unable to establish a selling price using VSOE or TPE, it uses a BESP for the allocation of arrangement consideration. The objective of BESP is to determine the price at which the Company would transact a sale if the product or service was sold on a stand-alone basis. BESP is generally used for offerings that are not typically sold on a stand-alone basis or for new or highly customized offerings. The Company determines BESP for a product or service by considering multiple factors including, but not limited to:

- the price list established by its management which is typically based on general pricing practices and targeted gross margin of products and services sold; and
- analysis of pricing history of new arrangements, including multiple element and stand-alone transactions.

In accordance with the guidance of ASC 605-25, when the Company enters into revenue arrangements with multiple deliverables the Company allocates arrangement consideration, among the products and subscriber services based on their relative selling prices. Arrangement consideration allocated to the sold products that is fixed or determinable and that is not contingent on future performance or future deliverables is recognized as product revenues during the period of the sale less the allowance for estimated returns during the 30-day trial period. Arrangement consideration allocated to subscriber services that is fixed or determinable and that is not contingent on future performance or future deliverables is recognized ratably as service revenues as the related services are provided, which is generally over the initial contract term.

## **CASH, CASH EQUIVALENTS AND INVESTMENTS**

The Company considers all highly liquid investments with an original maturity of three months or less to be cash equivalents.

At March 31, 2018 and 2017, all investments were classified as available-for-sale and reported at fair value, based either upon quoted prices in active markets, quoted prices in less active markets, or quoted market prices for similar investments, with unrealized gains and losses, net of related tax, if any, included in other comprehensive income (loss) and disclosed as a separate component of stockholders' equity. Realized gains and losses on sales of all such investments are reported within the caption of other income in the consolidated statements of operations and computed using the specific identification method. The Company classifies its investments as current based on the nature of the investments and their availability for use in current operations. The Company's investments in marketable securities are monitored on a periodic basis for impairment. In the event that the carrying value of an investment exceeds its fair value and the decline in value is determined to be other-than-temporary, an impairment charge is recorded and a new cost basis for the investment is established. These available-for-sale investments are primarily held in the custody of one major financial institution.

## **ACCOUNTS RECEIVABLE ALLOWANCE**

The Company estimates the amount of uncollectible accounts receivable at the end of each reporting period based on the aging of the receivable balance, current and historical customer trends, and communications with its customers. Amounts are written off only after considerable collection efforts have been made and the amounts are determined to be uncollectible.

## **PROPERTY AND EQUIPMENT**

Property and equipment are stated at cost less accumulated depreciation and amortization. Depreciation and amortization are computed using the straight-line method. Estimated useful lives of three years are used for equipment, software and software development costs and five years for furniture and fixtures. Amortization of leasehold improvements is computed using the shorter of the remaining facility lease term or the estimated useful life of the improvements.

Maintenance, repairs and ordinary replacements are charged to expense. Expenditures for improvements that extend the physical or economic life of the property are capitalized. Gains or losses on the disposition of property and equipment are recorded in the Consolidated Statements of Operations.

Construction in progress primarily relates to costs to acquire or internally develop software for internal use not fully completed as of March 31, 2018.

## **ACCOUNTING FOR LONG-LIVED ASSETS**

The Company reviews the recoverability of its long-lived assets, such as property and equipment, definite lived intangibles or capitalized software, when events or changes in circumstances occur that indicate that the carrying value of the asset or asset group may not be recoverable. Examples of such events could include a significant disposal of a portion of such assets, an adverse change in the market involving the business employing the related asset or a significant change in the operation or use of an asset. The assessment of possible impairment is based on the Company's ability to recover the carrying value of the asset or asset group from the expected future cash flows (undiscounted and without interest charges) of the related operations. If these cash flows are less than the carrying value of such asset or asset group, an impairment loss is recognized for the difference between estimated fair value and carrying value. The measurement of impairment requires management to estimate the fair value of long-lived assets and asset groups through future cash flows. See Note 4 for further discussion on impairment charges incurred.

## **GOODWILL AND OTHER INTANGIBLE ASSETS**

Goodwill represents the excess fair value of consideration transferred over the fair value of net assets acquired in business combinations. Goodwill and intangible assets with indefinite useful lives are not amortized but are tested annually for impairment and more often if there is an indicator of impairment. The Company has determined that it has three reporting units and allocates goodwill to the reporting units for the purposes of its annual impairment test.

The Company's annual goodwill impairment test is performed on January 1 each year. No goodwill impairment charges were recorded in the periods presented.

Intangible assets with finite useful lives are amortized on a straight-line basis over the periods benefited. Amortization expense for the customer relationship intangible asset is included in sales and marketing expenses. Amortization expense for technology is included in cost of service revenue.

## **WARRANTY EXPENSE**

The Company accrues for estimated product warranty cost upon revenue recognition. Accruals for product warranties are calculated based on the Company's historical warranty experience adjusted for any specific requirements.

## **RESEARCH & DEVELOPMENT AND SOFTWARE DEVELOPMENT COSTS**

Software developed or obtained for internal use in accordance with ASC 350-40, *Internal-Use Software* (ASC 350-40), is capitalized during the application development stage. In accordance with authoritative guidance, the Company begins to capitalize costs to develop software when preliminary development efforts are successfully completed, management has authorized and committed project funding, and it is probable that the project will be completed, and the software will be used as intended. Once the project has been completed, these costs are amortized on a straight - line basis over the estimated useful life of the related asset, generally estimated to be three years. Costs incurred prior to meeting these criteria together with costs incurred for training and maintenance are expensed as incurred and recorded in research and development expense on our consolidated statements of operations. The Company classifies software development costs associated with the development of the Company's products and services as property and equipment. See Note 3 for further details.

## **ADVERTISING COSTS**

Advertising costs are expensed as incurred and were \$14.5 million, \$9.5 million and \$8.5 million for the years ended March 31, 2018, 2017 and 2016, respectively.

## **FOREIGN CURRENCY TRANSLATION**

The Company has determined that the functional currency of each of its foreign subsidiaries are the subsidiary's local currency. The Company believes this most appropriately reflects the current economic facts and circumstances of the Company's subsidiaries' operations. The assets and liabilities of the subsidiaries are translated at the applicable exchange rate as of the end of the balance sheet period and revenue and expenses are translated at an average rate over the period presented. Resulting currency translation adjustments are recorded as a component of accumulated other comprehensive income or loss within the stockholder's equity.

## **BUSINESS SEGMENTS**

The Company has two reportable segments, Americas and Europe. The Americas segment is primarily North America. The Europe segment is primarily the United Kingdom. Each operating segment provides similar products and services.

The Company's chief operating decision makers, the Chief Executive Officer, Chief Financial Officer, and Chief Technology Officer, evaluate performance of the Company and makes decisions regarding allocation of resources based on geographical results.

The Company's CODMs evaluate the performance of its operating segments based on revenues and net income. The Company does not allocate research and development, sales and marketing, general and administrative, amortization expense, stock-based compensation expense, and commitment and contingencies for each segment as management does not consider this information in its evaluation of the performance of each operating segment. Revenues are attributed to each segment based on the ordering location of the customer or ship to location.

### **CONCENTRATIONS**

Financial instruments that potentially subject the Company to significant concentrations of credit risk consist principally of cash and cash equivalents, investments and trade accounts receivable. The Company has cash equivalents and investment policies that limit the amount of credit exposure to any one financial institution and restrict placement of these funds to financial institutions evaluated as highly credit-worthy. The Company has not experienced any material losses relating to its investments.

The Company sells its products to business customers and distributors. The Company performs ongoing credit evaluations of its customers' financial condition and generally does not require collateral from its customers. At March 31, 2018 and 2017, no customer accounted for more than 10% of accounts receivable.

The Company purchases all of its hardware products from suppliers that manufacture the hardware directly. The inability of any supplier to fulfill supply requirements of the Company could materially impact future operating results, financial position or cash flows.

The Company also relies primarily on third-party network service providers to provide telephone numbers and PSTN call termination and origination services for its customers. If these service providers failed to perform their obligations to the Company, such failure could materially impact future operating results, financial position and cash flows.

### **FAIR VALUE OF FINANCIAL INSTRUMENTS**

The Company defines fair value 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. When determining the fair value measurements for assets and liabilities required or permitted to be recorded at fair value, the Company considers the principal market or the most advantageous market in which it would transact.

The accounting guidance for fair value measurement requires the Company to maximize the use of observable inputs and minimize the use of unobservable inputs when measuring fair value. Observable inputs are inputs that reflect the assumptions market participants would use in valuing the asset or liability and are developed based on market data obtained from sources independent of the Company. Unobservable inputs are inputs that reflect the Company's assumptions about the factors that market participants would use in valuing the asset or liability developed based on the best information available in the circumstances.

The standard establishes a fair value hierarchy based on the level of independent, objective evidence surrounding the inputs used to measure fair value by requiring that the most observable inputs be used when available. A financial instrument's categorization within the fair value hierarchy is based upon the lowest level of input that is significant to the fair value measurement. The fair value hierarchy is as follows:

- Level 1 applies to assets or liabilities for which there are quoted prices in active markets for identical assets or liabilities that the Company has the ability to access at the measurement date.
- Level 2 applies to assets or liabilities for which there are inputs other than quoted prices included in Level 1 that are observable for the asset or liability, either directly or indirectly, such as quoted prices for similar assets or liabilities in active markets; quoted prices for identical assets or liabilities in markets with insufficient volume or infrequent transactions (less active markets).
- Level 3 applies to assets or liabilities for which fair value is derived from valuation techniques in which one or more significant inputs are unobservable, including the Company's own assumptions.

The estimated fair value of financial instruments is determined by the Company using available market information and valuation methodologies considered to be appropriate. The carrying amounts of the Company's cash and cash equivalents, accounts receivable and accounts payable approximate their fair values due to their short maturities. The Company's investments are carried at fair value.

### **ACCOUNTING FOR STOCK-BASED COMPENSATION**

The Company accounts for its employee stock options and other stock awards under the provisions of ASC 718 - *Stock Compensation*. Stock-based compensation cost is measured at the grant date, based on the estimated fair value of the award, and is recognized as an expense over the employee's requisite service period (generally the vesting period of the equity grant), net of estimated forfeitures.

To value option grants the Company uses the Black-Scholes option valuation model. Fair value determined using the Black-Scholes option valuation model varies based on assumptions used for the expected stock prices volatility, expected life, risk-free interest rates and future dividend payments. The Company used the historical volatility of its stock over a period equal to the expected life of the options. The expected life assumptions represent the weighted-average period stock-based awards are expecting to remain outstanding. These expected life assumptions were established through the review of historical exercise behavior of stock-based award grants with similar vesting periods. The risk-free interest rates were based on the closing market bid yields of actively traded U.S. treasury securities in the over-the-counter market for the expected term equal to the expected term of the option. The dividend yield assumption is based on the Company's history of not paying dividends.

The Company issued performance stock units (PSUs) to a group of executives with vesting that is contingent on both market performance and continued service during the fiscal year ended March 31, 2018:

- These PSUs vest (1) 50% on September 19, 2019 and (2) 50% on September 19, 2020, in each case subject to the performance of the Company's common stock relative to the Russell 2000 Index (the benchmark) during the period from grant date through such vesting date. A 2x multiplier will be applied to the total shareholder returns (TSR) for each 1% of positive or negative relative TSR, and the number of shares earned will increase or decrease at the end of each respective performance measurement period by 2% of the target numbers. In the event the Company's common stock performance is below negative 30% relative to the benchmark, no shares will be issued.

The Company issued PSUs to a group of executives with vesting that is contingent on both market performance and continued service during the fiscal year ended March 31, 2017:

- These PSUs vest (1) 50% on September 22, 2018 and (2) 50% on September 27, 2019, in each case subject to the performance of the Company's common stock relative to the Russell 2000 Index (the benchmark) during the period from grant date through such vesting date. A 2x multiplier will be applied to the total shareholder returns (TSR) for each 1% of positive or negative relative TSR, and the number of shares earned will increase or decrease by 2% of the target numbers. In the event the Company's common stock performance is below negative 30%, relative to the benchmark, no shares will be issued.

To value these market-based PSUs under the Equity Compensation Plans, the Company used a Monte Carlo simulation model on the date of grant. Fair value determined using the Monte Carlo simulation model varies based on the assumptions used for the expected stock price volatility, the correlation coefficient between the Company and the NASDAQ Composite Index, risk-free interest rates, and future dividend payments.

### **COMPREHENSIVE INCOME (LOSS)**

Comprehensive income (loss), as defined, includes all changes in equity (net assets) during a period. The difference between net income (loss) and comprehensive income (loss) is due to foreign currency translation adjustments and unrealized gains or losses on investments classified as available-for-sale.



## **NET INCOME (LOSS) PER SHARE**

Basic net income (loss) per share is computed by dividing net income (loss) available to common stockholders (numerator) by the weighted average number of vested, unrestricted common shares outstanding during the period (denominator). Diluted net income (loss) per share is computed on the basis of the weighted average number of shares of common stock plus the effect of dilutive potential common shares outstanding during the period using the treasury stock method unless their effect is anti-dilutive. Dilutive potential common shares include outstanding stock options and employee restricted purchase rights.

## **DEFERRED RENT**

The Company recognizes rent expense on a straight-line basis for all operating lease arrangements with the difference between required lease payments and rent expense recorded as deferred rent. The difference results from rent holidays, rent escalations and tenant improvement allowances, which are amortized over the lease term.

## **RECENTLY ADOPTED ACCOUNTING PRONOUNCEMENTS**

In November 2015, the Financial Accounting Standards Board (FASB) issued Accounting Standards Update (ASU) No. 2015-17, *Income Taxes - Balance Sheet Classification of Deferred Taxes (Topic 740)*. This ASU requires all deferred tax liabilities and assets to be presented in the balance sheet as noncurrent. As permitted, the Company early adopted this standard prospectively during the quarter ended June 30, 2016. The adoption of this standard resulted in reclassifying current deferred income tax assets to noncurrent deferred income tax assets and current deferred income tax liabilities to noncurrent deferred income tax liabilities. No prior periods were retrospectively adjusted.

In March 2016, the FASB issued ASU No. 2016-09, *Compensation - Stock Compensation (Topic 718): Improvements to Employee Share-Based Payment Accounting*, which is intended to simplify several aspects of the accounting for share-based payment transactions, including the income tax consequences, classification of awards as either equity or liabilities, and classification on the statement of cash flows. As a result of the adoption in fiscal year 2018, stock-based compensation excess tax benefits or tax deficiencies will be reflected in the consolidated statement of operations within the provision for income taxes.

In November 2016, the FASB issued ASU No. 2016-18, *Statement of Cash Flows (Topic 230)*, which provides guidance on how restricted cash or restricted cash equivalents should be included with cash and cash equivalents when reconciling the beginning-of-period and end-of-period total amounts shown on the statement of cash flows. The Company elected to early adopt this ASU for fiscal year 2018 and disclosed restricted cash in the amount of \$8.1 million in the consolidated balance sheets as of March 31, 2018. No prior periods were retrospectively adjusted.

In January 2017, the FASB issued ASU No. 2017-04, *Intangibles and Other (Topic 350): Simplifying the Test for Goodwill Impairment*, which eliminates the requirement to calculate the implied fair value of goodwill but rather require an entity to record an impairment charge based on the excess of a reporting unit's carrying value over its fair value. This amendment is effective for annual or interim goodwill impairment tests in fiscal years beginning after December 15, 2019. The Company elected to early adopt this ASU for fiscal year 2018. No prior periods were retrospectively adjusted.

## **RECENT ACCOUNTING PRONOUNCEMENTS**

In May 2014, the FASB issued ASU 2014-09, *Revenue from Contracts with Customers (Accounting Standards Codification 606 or ASC 606)*, which replaces numerous requirements in U.S. GAAP and provide companies with a single revenue recognition model for recognizing revenue from contracts with customers. ASC 606 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 in an amount that reflects the consideration to which the entity expects to be entitled in exchange for those goods or services. It defines a five-step process to achieve this core principle and, in doing so, more judgment and estimates are required within the revenue recognition process than are required under current GAAP (ASC 605).

The new standard permits the use of either the full retrospective or modified retrospective transition method. The Company adopted the new standard effective April 1, 2018 using the modified retrospective method. Under the retrospective method prior period financial information is not revised, but instead a cumulative impact is recorded on the day of adoption with a corresponding offset recorded to stockholder's equity.

Under the new standard, the Company expects in some cases to recognize revenue earlier than under ASC 605 guidance when the customer receives services or equipment for a reduced consideration at the onset of an arrangement, for example the initial month's services or equipment are discounted, as a result of the elimination of contingent revenue guidance. Under ASC 605 guidance, amounts allocated to delivered items are limited to amounts that are not contingent on the provision of future services. The impact of adopting the new standard on the Company's total revenues and deferred revenue is not expected to be material.

With the adoption of ASC 606 the Company also adopted ASC 340-40, Other Assets and Deferred Costs - Contracts with Customers, which requires the deferral of incremental costs of obtaining a customer contract which, under the old guidance, were expensed as incurred. Under the new standard, the Company will defer all incremental sales commission costs and amortize them over the expected period of benefit, which is estimated to be five years. The amortization cost will be charged to sales and marketing costs on the consolidated statements of operations. The Company expects the cumulative impact of these deferred costs to be approximately \$35 million to \$40 million with a corresponding decrease to accumulated deficit as of April 1, 2018.

There will not be any significant tax impact to the Company's consolidated statements of operations and consolidated balance sheet relating to the adoption of the new standard due to the valuation allowance recorded against to the Company's deferred tax assets.

The Company has established new accounting policies, is implementing processes, and implementing internal controls necessary to support the requirements of the new standard.

In February 2016, the FASB issued ASU No. 2016-02, *Leases (Topic 842)*, which requires companies to generally recognize on the balance sheet operating and financing lease liabilities and corresponding right-of-use assets. The update also requires qualitative and quantitative disclosures designed to assess the amount, timing, and uncertainty of cash flows arising from leases. The update requires the use of a modified retrospective transition approach, which includes a number of optional practical expedients that entities may elect to apply. This amendment is effective for fiscal years beginning after December 15, 2018, including interim periods within those fiscal years. Early adoption is permitted. The Company is currently assessing the impact of this pronouncement to its consolidated financial statements.

In June 2016, the FASB issued ASU No. 2016-13, *Financial Instruments - Credit Losses (Topic 326): Measurement of Credit Losses on Financial Instruments*, which provides guidance for measurement and recognition of expected credit losses for financial assets held based on historical experience, current conditions, and reasonable and supportable forecasts that affect the collectability of the reported amount. The amendment is effective for fiscal years beginning after December 15, 2019. Early adoption is permitted for fiscal years beginning after December 15, 2018. The Company is currently assessing the impact of this pronouncement to its consolidated financial statements.

In August 2016, the FASB issued ASU No. 2016-15, *Statement of Cash Flows (Topic 230): Classification of Certain Cash Receipts and Cash Payments*, which provides guidance on how certain cash receipts and cash payments are to be presented and classified in the statement of cash flows. This amendment is effective for fiscal years beginning after December 15, 2017, and interim periods within those fiscal years. Early adoption is permitted. The Company is currently assessing the impact of this pronouncement to its Consolidated Statements of Cash Flows.

In October 2016, the FASB has issued ASU No. 2016-16, *Income Taxes (Topic 740): Intra-Entity Transfers of Assets Other Than Inventory*, which provides guidance on how an entity should recognize the income tax consequences of an intra-entity transfer of an asset other than inventory when the transfer occurs. This amendment is effective for fiscal years beginning after December 15, 2017, and interim periods within those fiscal years. Early adoption is permitted. The Company is currently assessing the impact of this pronouncement to its consolidated financial statements.

In January 2017, the FASB has issued ASU No. 2017-01, *Business Combinations (Topic 805): Clarifying the Definition of a Business*, which clarifies the definition of a business with the objective of adding guidance to assist entities with evaluating whether transactions should be accounted for as acquisitions (or disposals) of assets or businesses. This amendment is effective for fiscal years beginning after December 15, 2017, and interim periods within those fiscal years. Early adoption is permitted. The Company is currently assessing the impact of this pronouncement to its consolidated financial statements.

## 2. FAIR VALUE MEASUREMENTS

Cash, cash equivalents, available-for-sale investments, and contingent consideration were (in thousands):

<b>As of March 31, 2018</b>	<b>Amortized Costs</b>	<b>Gross Unrealized Gain</b>	<b>Gross Unrealized Loss</b>	<b>Estimated Fair Value</b>	<b>Cash and Cash Equivalents</b>	<b>Short-Term Investments</b>
Cash	\$ 16,499	\$ -	\$ -	\$ 16,499	\$ 16,499	\$ -
<b>Level 1:</b>						
Money market funds	15,204	-	-	15,204	15,204	-
<b>Subtotal</b>	<b>31,703</b>	<b>-</b>	<b>-</b>	<b>31,703</b>	<b>31,703</b>	<b>-</b>
<b>Level 2:</b>						
Commercial paper	13,254	-	(8)	13,246	-	13,246
Corporate debt	70,631	6	(296)	70,341	-	70,341
Municipal securities	3,385	3	(1)	3,387	-	3,387
Asset backed securities	27,063	1	(119)	26,945	-	26,945
Agency bond	4,183	-	(35)	4,148	-	4,148
International government securities	2,497	-	(5)	2,492	-	2,492
<b>Subtotal</b>	<b>121,013</b>	<b>10</b>	<b>(464)</b>	<b>120,559</b>	<b>-</b>	<b>120,559</b>
Total assets	\$ 152,716	\$ 10	\$ (464)	\$ 152,262	\$ 31,703	\$ 120,559

<b>As of March 31, 2017</b>	<b>Amortized Costs</b>	<b>Gross Unrealized Gain</b>	<b>Gross Unrealized Loss</b>	<b>Estimated Fair Value</b>	<b>Cash and Cash Equivalents</b>	<b>Short-Term Investments</b>
Cash	\$ 29,122	\$ -	\$ -	\$ 29,122	\$ 29,122	\$ -
<b>Level 1:</b>						
Money market funds	11,908	-	-	11,908	11,908	-
Mutual funds	2,000	-	(194)	1,806	-	1,806
<b>Subtotal</b>	<b>43,030</b>	<b>-</b>	<b>(194)</b>	<b>42,836</b>	<b>41,030</b>	<b>1,806</b>
<b>Level 2:</b>						
Commercial paper	19,144	8	-	19,152	-	19,152
Corporate debt	83,995	61	(58)	83,998	-	83,998
Asset backed securities	26,906	4	(22)	26,888	-	26,888
Mortgage backed securities	116	-	(1)	115	-	115
Agency bond	2,000	-	-	2,000	-	2,000
<b>Subtotal</b>	<b>132,161</b>	<b>73</b>	<b>(81)</b>	<b>132,153</b>	<b>-</b>	<b>132,153</b>
Total assets	\$ 175,191	\$ 73	\$ (275)	\$ 174,989	\$ 41,030	\$ 133,959
<b>Level 3:</b>						
Contingent consideration	\$ -	\$ -	\$ -	\$ 148	\$ -	\$ -
Total liabilities	\$ -	\$ -	\$ -	\$ 148	\$ -	\$ -

Contractual maturities of investments as of March 31, 2018 are set forth below (in thousands):

	<b>Estimated Fair Value</b>
Due within one year	\$ 69,721
Due after one year	50,838
Total	\$ 120,559

### **Contingent Consideration and Escrow Liability**

The Company's contingent consideration liability, included in other accrued liabilities on the consolidated balance sheets as of March 31, 2017, was associated with the Quality Software Corporation (QSC) acquisition made in the first quarter of fiscal year 2016. This contingent liability was classified as level 3 within the fair value hierarchy. The remaining liability of \$0.1 million was settled and paid during the year ended March 31, 2018.

### 3. PROPERTY AND EQUIPMENT

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

	March 31,	
	2018	2017
Computer equipment	\$ 29,761	\$ 24,293
Software development costs	20,144	8,265
Software licenses	8,663	7,380
Leasehold improvements	6,573	5,579
Furniture and fixtures	1,637	1,411
Construction in progress	2,394	689
	<u>69,172</u>	<u>47,617</u>
Less: accumulated depreciation and amortization	<u>(33,440)</u>	<u>(23,556)</u>
	<u>\$ 35,732</u>	<u>\$ 24,061</u>

### 4. INTANGIBLE ASSETS AND GOODWILL

The carrying value of intangible assets consisted of the following (in thousands):

	March 31, 2018			March 31, 2017		
	Gross Carrying Amount	Accumulated Amortization	Net Carrying Amount	Gross Carrying Amount	Accumulated Amortization	Net Carrying Amount
Technology	\$ 19,702	\$ (10,535)	\$ 9,167	\$ 18,685	\$ (7,010)	\$ 11,675
Customer relationships	9,776	(7,366)	2,410	9,419	(6,187)	3,232
Trade names/domains	2,108	(1,727)	381	2,036	-	2,036
In-process research and development	95	(95)	-	95	-	95
Total acquired identifiable intangible assets	<u>\$ 31,681</u>	<u>\$ (19,723)</u>	<u>\$ 11,958</u>	<u>\$ 30,235</u>	<u>\$ (13,197)</u>	<u>\$ 17,038</u>

At March 31, 2018, annual amortization of definite lived intangible assets, based upon existing intangible assets and current useful lives, is estimated to be the following (in thousands):

	Amount
2019	\$ 4,002
2020	3,171
2021	2,790
2022	1,766
2023	229
Total	<u>\$ 11,958</u>

#### Impairment of Long-Lived Assets and Goodwill

During the third quarter of fiscal year 2018, the Company changed its product and marketing strategy for the use of DXI's technology and re-assessed DXI's profitability outlook. This triggered the requirement that the Company test the recorded goodwill for impairment in accordance with ASC 350-20-35, as amended by ASU 2017-04 (see Footnote 1, Recently Adopted Accounting Pronouncements). First, the Company estimated the fair value of its three reporting units using the market approach. Under the market approach, the Company utilized the market capitalization of its publicly-traded shares and comparable company information to determine revenue multiples which were used to determine the fair value of the reporting unit. Based on this approach, the Company determined that there was an indication of impairment only for its DXI reporting unit, which is within the Company's Europe reporting segment, as the carrying value including goodwill exceeded the estimated

fair value. As largely independent cash flows could not be attributed to any assets individually the Company evaluated DXI's assets and liabilities as one asset group. Then the Company estimated the fair value of DXI's asset group using discounted cash flow methods to determine the implied fair value of goodwill. The difference between this implied fair value of the goodwill and its carrying value was recorded as impairment. The outcome of the analysis resulted in a non-cash expense for impairment of property and equipment, intangible assets and goodwill of \$0.3 million, \$1.2 million and \$8.0 million, respectively, which was recorded during the third quarter of fiscal year 2018 as a separate line item in the Company's Consolidated Statements of Operations.

The following table provides a summary of the changes in the carrying amounts of goodwill by reporting segment (in thousands):

	<u>Americas</u>	<u>Europe</u>	<u>Total</u>
Balance at March 31, 2016	\$ 25,729	\$ 21,691	\$ 47,420
Additions due to acquisitions	1,580	-	1,580
Foreign currency translation	-	(2,864)	(2,864)
Balance at March 31, 2017	<u>27,309</u>	<u>18,827</u>	<u>46,136</u>
Impairment loss	-	(8,036)	(8,036)
Foreign currency translation	-	1,954	1,954
Balance at March 31, 2018	<u>\$ 27,309</u>	<u>\$ 12,745</u>	<u>\$ 40,054</u>

## 5. COMMITMENTS AND CONTINGENCIES

### *Guarantees*

#### *Indemnifications*

In the normal course of business, the Company may agree to indemnify other parties, including customers, lessors and parties to other transactions with the Company, with respect to certain matters such as breaches of representations or covenants or intellectual property infringement or other claims made by third parties. These agreements may limit the time within which an indemnification claim can be made and the amount of the claim. In addition, the Company has entered into indemnification agreements with its officers and directors.

It is not possible to determine the maximum potential amount of the Company's exposure under these indemnification agreements due to the limited history of prior indemnification claims and the unique facts and circumstances involved in each particular agreement. Historically, payments made by the Company under these agreements have not had a material impact on the Company's operating results, financial position or cash flows. Under some of these agreements, however, the Company's potential indemnification liability might not have a contractual limit.

#### *Product Warranties*

The Company accrues for the estimated costs that may be incurred under its product warranties upon revenue recognition.

#### *Operating Leases*

The Company's operating lease obligations consist of the Company's principal facility and various leased facilities under operating lease agreements, which expire on various dates from fiscal 2018 through fiscal 2026. The Company leases its headquarters facility in San Jose, California under an operating lease agreement that expires in October 2019.

On January 23, 2018, the Company entered into a 132-month lease to rent approximately 162,000 square feet for a new Company headquarters in San Jose, California. The lease term begins on January 1, 2019 or such earlier date on which the Company first commences to conduct business on the premises. The Company has the option to extend the lease for one additional five-year term, on substantially the same terms and conditions as the prior term but with the base rent rate adjusted to fair market value at that time.

Base rent is approximately \$512,000 per month for the first 12 months of the lease, and the rate increases 3% on each anniversary of the lease commencement date. The Company is entitled to full rent abatement during the first 10 months of the lease term and 50% rent abatement during the next four months of the lease term. The Company is also responsible for paying its proportionate share of building and common area operating expenses, property taxes and insurance costs.

The Company is entitled to a one-time tenant improvement allowance of approximately \$13.3 million, the full amount of which must be used within 12 months of the lease commencement date.

The Company has procured a standby letter of credit (LOC) in the amount of \$8.1 million for the benefit of the landlord, which may be drawn down in the event the Company defaults in the payment of its obligations under the lease. The LOC is disclosed as restricted cash on the Company's consolidated balance sheets for the year ending March 31, 2018.

At March 31, 2018, future minimum annual lease payments under non-cancelable operating leases were as follows (in thousands):

Year ending March 31:

2019	\$ 5,876
2020	6,754
2021	9,093
2022	8,970
2023	8,448
Thereafter	<u>54,936</u>
Total	<u>\$ 94,077</u>

Rent expense for the years ended March 31, 2018, 2017 and 2016 was \$5.6 million, \$5.1 million and \$2.1 million, respectively.

*Capital Leases*

The Company has non-cancelable capital lease agreements for office and computer equipment bearing interest at various rates. At March 31, 2018, future minimum annual lease payments under non-cancelable capital leases were as follows (in thousands):

Year ending March 31:

2019	\$ 1,054
2020	456
2021	53
2022	<u>5</u>
Total minimum payments	1,568
Less: Amount representing interest	<u>(60)</u>
	1,508
Less: Short-term portion of capital lease obligations	<u>(1,049)</u>
Long-term portion of capital lease obligations	<u>\$ 459</u>

Capital leases included in computer and office equipment were approximately \$3.5 million and \$2.7 million at March 31, 2018 and 2017, respectively. Total accumulated amortization was approximately \$1.8 million and \$1.0 million at March 31, 2018 and 2017, respectively.

*Minimum Third-Party Customer Support Commitments*

The Company's contract with third-party customer support vendors include minimum monthly commitments and the requirements to maintain the service level for several months. The total contractual minimum commitments were approximately \$1.4 million at March 31, 2018.

### Minimum Third-Party Network Service Provider Commitments

The Company entered into contracts with multiple vendors for third-party network service which expire on various dates through fiscal 2020. At March 31, 2018, future minimum annual payments under these third-party network service contracts were as follows (in thousands):

#### Year ending March 31:

2019	\$ 1,916
2020	8
Total minimum payments	<u>\$ 1,924</u>

### Legal Proceedings

The Company, from time to time, is involved in various legal claims or litigation, including patent infringement claims that can arise in the normal course of the Company's operations. Pending or future litigation could be costly, could cause the diversion of management's attention and could upon resolution, have a material adverse effect on the Company's business, results of operations, financial condition and cash flows.

### State and Municipal Taxes

From time to time, the Company has received inquiries from a number of state and municipal taxing agencies with respect to the remittance of sales, use, telecommunications, excise, and income taxes. Several jurisdictions currently are conducting tax audits of the Company's records. The Company collects or has accrued for taxes that it believes are required to be remitted. The amounts that have been remitted have historically been within the accruals established by the Company. The Company adjusts its accrual when facts relating to specific exposures warrant such adjustment.

## 6. STOCKHOLDERS' EQUITY

In May 2006, the Company's board of directors approved the 2006 Stock Plan ("2006 Plan"). The Company's stockholders subsequently adopted the 2006 Plan in September 2006, and became effective in October 2006. The Company reserved 7,000,000 shares of the Company's common stock for issuance under this plan. The 2006 Plan provides for granting incentive stock options to employees and non-statutory stock options to employees, directors or consultants. The stock option price of incentive stock options granted may not be less than the fair market value on the effective date of the grant. Other types of options and awards under the 2006 Plan may be granted at any price approved by the administrator, which generally will be the compensation committee of the board of directors. Options generally vest over four years and expire ten years after grant. In 2009, the 2006 Plan was amended to provide for the granting of stock purchase rights. The 2006 Plan expired in May 2016. As of March 31, 2018, there are no shares available for future grants under the 2006 Plan.

### **2012 Equity Incentive Plan**

In June 2012, the Company's board of directors approved the 2012 Equity Incentive Plan ("2012 Plan"). The Company's stockholders subsequently adopted the 2012 Plan in July 2012, and became effective in August 2012. The Company reserved 4,100,000 shares of the Company's common stock for issuance under this plan. In August 2014 and 2016, the 2012 Plan was amended to allow for an additional 6,800,000 and 4,500,000 shares reserved for issuance, respectively. The 2012 Plan provides for granting incentive stock options to employees and non-statutory stock options to employees, directors or consultants, and granting of stock appreciation rights, restricted stock, restricted stock units and performance units, qualified performance-based awards and stock grants. The stock option price of incentive stock options granted may not be less than the fair market value on the effective date of the grant. Other types of options and awards under the 2012 Plan may be granted at any price approved by the administrator, which generally will be the compensation committee of the board of directors. Options, restricted stock and restricted stock units generally vest over four years and expire ten years after grant. The 2012 Plan expires in June 2022. As of March 31, 2018, 0.3 million shares remained available under the 2012 Plan.

### **2013 New Employee Inducement Incentive Plan**

In September 2013, the Company's board of directors approved the 2013 New Employee Inducement Incentive Plan ("2013 Plan"). The Company reserved 1,000,000 shares of the Company's common stock for issuance under this plan. In November 2014, the 2013 Plan was amended to allow for an additional 1,200,000 shares reserved for issuance. In July 2015, the Plan was amended to allow for an additional 1,200,000 shares reserved for issuance. In connection with its approval of the August 2016 amendments to the 2012 Plan, the Board of Directors has approved the suspension of future grants under the 2013 Plan, which became effective immediately upon stockholder approval of the proposed 2012 Plan amendments in August 2016. In addition, the 2013 Plan was amended to reduce the number of shares reserved for issuance under the 2013 Plan to the number of shares that are then subject to outstanding awards under the 2013 Plan,

leaving no shares available for future grant. The 2013 Plan provided for granting non-statutory stock options, stock appreciation rights, restricted stock, restricted stock and performance units and stock grants solely to newly hired employees as a material inducement to accepting employment with the Company. Options were granted at market value on the grant date under the 2013 Plan, unless determined otherwise at the time of grant by the administrator, which generally will be the compensation committee of the board of directors. Options generally expire ten years after grant.

### **2017 New Employee Inducement Incentive Plan**

In October 2017, the Company's board of directors approved the 2017 New Employee Inducement Incentive Plan ("2017 Plan"). The Company reserved 1,000,000 shares of the Company's common stock for issuance under this plan. In January 2018, the 2017 Plan was amended to allow for an additional 1,500,000 shares reserved for issuance. The 2017 Plan provides for granting non-statutory stock options, stock appreciation rights, restricted stock, and performance units and stock grants solely to newly hired employees as a material inducement to accepting employment with the Company. Options are granted at market value on the grant date under the 2017 Plan, unless determined otherwise at the time of grant by the administrator, which generally will be the compensation committee of the board of directors. Options generally expire ten years after grant. As of March 31, 2018, 1.3 million shares remained available under the 2017 plan.

### **Stock-Based Compensation**

The following table summarizes stock-based compensation expense (in thousands):

	<b>Years Ended March 31,</b>		
	<b>2018</b>	<b>2017</b>	<b>2016</b>
Cost of service revenue	\$ 1,821	\$ 1,732	\$ 1,159
Cost of product revenue	-	-	-
Research and development	6,418	3,762	2,914
Sales and marketing	11,654	8,832	6,133
General and administrative	9,283	7,136	6,128
Total	<u>\$ 29,176</u>	<u>\$ 21,462</u>	<u>\$ 16,334</u>

### **Stock Options, Stock Purchase Right and Restricted Stock Unit Activity**

Stock Option activity under all the Company's stock option plans since March 31, 2015, is summarized as follows:

	<b>Number of Shares</b>	<b>Weighted Average Exercise Price Per Share</b>
Outstanding at March 31, 2015	5,327,907	\$ 5.19
Granted	723,776	8.63
Exercised	(1,162,175)	2.56
Canceled/Forfeited	<u>(96,242)</u>	8.06
Outstanding at March 31, 2016	4,793,266	6.29
Granted	407,392	14.63
Exercised	(603,998)	2.34
Canceled/Forfeited	<u>(134,248)</u>	8.41
Outstanding at March 31, 2017	4,462,412	7.52
Granted	609,135	14.95
Exercised	(773,897)	3.95
Canceled/Forfeited	<u>(299,365)</u>	13.05
Outstanding at March 31, 2018	<u>3,998,285</u>	\$ 8.93
Vested and expected to vest at March 31, 2018	<u>3,998,285</u>	\$ 8.93
Exercisable at March 31, 2018	<u>3,025,925</u>	\$ 7.66



Stock Purchase Right activity since March 31, 2015 is summarized as follows:

	Number of Shares	Weighted Average Grant-Date Fair Market Value	Weighted Average Remaining Contractual Term (in Years)
Balance at March 31, 2015	223,835	\$ 5.92	1.50
Granted	-	-	
Vested and released	(115,789)	5.32	
Forfeited	(25,875)	7.40	
Balance at March 31, 2016	82,171	6.30	0.76
Granted	-	-	
Vested and released	(69,426)	6.00	
Forfeited	(1,375)	6.72	
Balance at March 31, 2017	11,370	8.10	1.09
Granted	-	-	
Vested and released	(6,395)	8.26	
Forfeited	-	-	
Balance at March 31, 2018	4,975	\$ 7.88	0.10

Restricted Stock Unit activity since March 31, 2015 is summarized as follows:

	Number of Shares	Weighted Average Grant Date Fair Value	Weighted Average Remaining Contractual Term (in Years)
Balance at March 31, 2015	2,698,686	\$ 7.33	1.88
Granted	2,681,997	8.78	
Vested and released	(589,788)	7.79	
Forfeited	(246,096)	8.15	
Balance at March 31, 2016	4,544,799	8.08	1.67
Granted	2,491,877	15.15	
Vested and released	(1,600,831)	7.89	
Forfeited	(496,795)	9.56	
Balance at March 31, 2017	4,939,050	11.57	1.55
Granted	3,481,870	14.41	
Vested and released	(1,833,038)	10.27	
Forfeited	(652,339)	12.73	
Balance at March 31, 2018	5,935,543	\$ 13.51	1.60

The total intrinsic value of options exercised in the years ended March 31, 2018, 2017 and 2016 was \$9.0 million, \$7.2 million and \$9.2 million, respectively. As of March 31, 2018, there was \$63.9 million of unamortized stock-based compensation expense related to unvested stock options and awards which is expected to be recognized over a weighted average period of approximately 2.5 years.

#### **1996 Employee Stock Purchase Plan**

The Company's 1996 Stock Purchase Plan ("Employee Stock Purchase Plan") was adopted in June 1996 and became effective upon the closing of the Company's initial public offering in July 1997. Under the Employee Stock Purchase Plan, 500,000 shares of common stock were initially reserved for issuance. At the start of each fiscal year, the number of shares of common stock subject to the Employee Stock Purchase Plan increases so that 500,000 shares remain available for issuance. In May 2006, the Company's board of directors approved a ten-year extension of the Employee Stock Purchase Plan. Stockholders approved a ten-year extension of the Employee Stock Purchase Plan at the 2006

Annual Meeting of Stockholders held September 18, 2006. The Employee Stock Purchase Plan is effective until August 2017. During fiscal 2018, 2017 and 2016, approximately 0.4 million, 0.3 million, and 0.4 million shares, respectively, were issued under the Employee Stock Purchase Plan.

The Employee Stock Purchase Plan permits eligible employees to purchase common stock through payroll deductions at a price equal to 85% of the fair market value of the common stock at the beginning of each two-year offering period or the end of a six month purchase period, whichever is lower. When the Employee Stock Purchase Plan was reinstated in fiscal 2005, the offering period was reduced from two years to one year. The contribution amount may not exceed ten percent of an employee's base compensation, including commissions, but not including bonuses and overtime. In the event of a merger of the Company with or into another corporation or the sale of all or substantially all of the assets of the Company, the Employee Stock Purchase Plan provides that a new exercise date will be set for each option under the plan which exercise date will occur before the date of the merger or asset sale.

As of March 31, 2018, there was approximately \$0.5 million of total unrecognized compensation cost related to employee stock purchases. This cost is expected to be recognized over a weighted average period of 0.5 years.

*Assumptions Used to Calculate Stock-Based Compensation Expense*

The fair value of each of the Company's option grants has been estimated on the date of grant using the Black-Scholes pricing model with the following assumptions:

	<b>Years Ended March 31,</b>		
	<b>2018</b>	<b>2017</b>	<b>2016</b>
Expected volatility	41%	44%	53%
Expected dividend yield	-	-	-
Risk-free interest rate	1.8% to 2.4%	1.1% to 2.2%	1.5% to 1.8%
Weighted average expected term (in years)	4.8 years	4.9 years	5.4 years
Weighted average fair value of options granted	\$ 5.70	\$ 5.74	\$ 4.17

The estimated fair value of stock purchase rights granted under the Employee Stock Purchase Plan was estimated using the Black-Scholes pricing model with the following weighted-average assumptions:

	<b>Years Ended March 31,</b>		
	<b>2018</b>	<b>2017</b>	<b>2016</b>
Expected volatility	40%	37%	43%
Expected dividend yield	-	-	-
Risk-free interest rate	1.33%	0.65%	0.39%
Weighted average expected term (in years)	0.8 years	0.8 years	0.8 years
Weighted average fair value of rights granted	\$ 4.10	\$ 4.19	\$ 3.25

**Stock Repurchases**

In October 2015, the Company's board of directors authorized the Company to purchase an additional \$15.0 million of its common stock from time to time until October 20, 2016 under the 2015 Repurchase Plan. The plan expired in October 2016 with an unused authorized repurchase amount of \$15.0 million.

In May 2017, the Company's board of directors authorized the Company to purchase \$25.0 million of its common stock from time to time under the 2017 Repurchase Plan (the "2017 Plan"). The 2017 Plan expires when the maximum purchase amount is reached, or upon the earlier revocation or termination by the board of directors. The remaining amount available under the 2017 Plan at March 31, 2018 was approximately \$7.1 million.

## 7. INCOME TAXES

The Tax Cuts and Jobs Act ("Tax Act") was enacted on December 22, 2017. Among numerous provisions, the Tax Act reduces the U.S. federal corporate tax rate from 35% to 21%, requires companies to pay a one-time transition tax on earnings of certain foreign subsidiaries that were previously tax deferred, and creates new taxes on certain foreign sourced earnings.

The Company remeasured certain deferred tax assets and liabilities based on the rates at which they are expected to reverse in the future, which is generally 21%. Accordingly, deferred tax assets were adjusted down by about \$23 million in the period ended December 31, 2017. However, because the Company recorded a full valuation allowance, the decrease in deferred tax assets from the tax rate change was fully offset by a corresponding decrease in valuation allowance, and therefore, resulted in no impact to the tax expense.

The one-time transition tax is based on the Company's total post-1986 earnings and profits (E&P) for which U.S. income taxes have been previously deferred. The Company recorded no one-time transition tax liability for its foreign subsidiaries as the Company's preliminary calculations concluded it does not have any untaxed foreign accumulated earnings as of the measurement dates.

In response to the Tax Act, the SEC staff issued guidance on accounting for the tax effects of the Tax Act. The guidance provides a one-year measurement period for companies to complete the accounting. The Company is still analyzing certain aspects of the Act and refining its calculations, which could potentially affect the measurement of these balances or give rise to new deferred tax amounts. The Company has made a reasonable estimate of the effects on its existing deferred tax balances. The Company will continue to make and refine its calculations as additional analysis and more thorough understanding of the tax law is completed.

For the years ended March 31, 2018, 2017 and 2016, the Company recorded a (benefit) provision for income taxes of approximately \$66.3 million, (\$0.1) million and (\$0.8) million, respectively. The components of the consolidated (benefit) provision for income taxes for fiscal 2018, 2017 and 2016 consisted of the following (in thousands):

	<b>March 31,</b>		
	<b>2018</b>	<b>2017</b>	<b>2016</b>
Current:			
Federal	\$ (395)	\$ (7)	\$ 97
State	256	588	551
Foreign	185	112	71
Total current tax provision	<u>46</u>	<u>693</u>	<u>719</u>
Deferred			
Federal	59,837	1,506	95
State	6,664	(1,095)	(854)
Foreign	<u>(253)</u>	<u>(1,230)</u>	<u>(807)</u>
Total deferred tax (benefit) provision	<u>66,248</u>	<u>(819)</u>	<u>(1,566)</u>
Income tax (benefit) provision	<u>\$ 66,294</u>	<u>\$ (126)</u>	<u>\$ (847)</u>

The Company's income (loss) from continuing operations before income taxes included (\$19.7) million, (\$8.4) million and (\$6.9) million of foreign subsidiary loss for the fiscal years ended March 31, 2018, 2017 and 2016, respectively. The Company is permanently reinvesting the earnings of its profitable foreign subsidiaries. The Company intends to reinvest these profits in expansion of overseas operations. If the Company were to remit these earnings, the tax impact would be immaterial.

Deferred tax assets and (liabilities) were comprised of the following (in thousands):

	<b>March 31,</b>	
	<b>2018</b>	<b>2017</b>
Net operating loss carryforwards	\$ 40,465	\$ 36,427
Research and development and other credit carryforwards	11,761	8,614
Stock-based compensation	6,389	6,942
Reserves and allowances	3,181	3,266
Fixed assets and intangibles	378	(3,688)
Net non-current deferred tax assets	<u>62,174</u>	<u>51,561</u>
Valuation allowance	<u>(62,174)</u>	<u>(2,934)</u>
Total	<u>\$ -</u>	<u>\$ 48,627</u>

The Company assesses the realizability of deferred tax assets based on the available evidence, including a history of taxable income and estimates of future taxable income. In assessing the realizability of deferred tax assets, The Company considers whether it is more likely than not that all or some portion of deferred tax assets will not be realized. During the year ended March 31, 2018, the Company recorded a full valuation allowance against its deferred tax assets as it considered the cumulative losses in recent periods to be a substantial negative evidence. At March 31, 2018, management determined that a valuation allowance of approximately \$62.2 million was needed compared with approximately \$2.9 million as of March 31, 2017.

At March 31, 2018, the Company had net operating loss carryforwards for federal and state income tax purposes of approximately \$157.6 million and \$27.5 million, respectively, which expire at various dates between 2029 and 2037. In addition, at March 31, 2018, the Company had research and development credit carryforwards for federal and California tax reporting purposes of approximately \$7.2 million and \$9.1 million, respectively. The federal income tax credit carryforwards will expire at various dates between 2021 and 2038, while the California income tax credits will carry forward indefinitely. A reconciliation of the Company's provision (benefit) for income taxes to the amounts computed using the statutory U.S. federal income tax rate is as follows (in thousands):

	<b>Years Ended March 31,</b>		
	<b>2018</b>	<b>2017</b>	<b>2016</b>
Tax provision at statutory rate	\$ (11,790)	\$ (1,652)	\$ (2,029)
State income taxes before valuation allowance, net of federal effect	(1,042)	108	9
Foreign tax rate differential	(1,188)	885	(769)
Research and development credits	(2,189)	(1,484)	(1,253)
Change in valuation allowance	56,663	(287)	(1,555)
Compensation/option differences	(4,965)	(246)	(471)
Non-deductible compensation	1,132	1,079	944
Tax Act rate change impact	22,630	-	-
Acquisition costs	-	54	230
Expiring California loss carry-forwards	-	-	1,626
Foreign loss not benefited	6,847	780	2,342
Other	196	637	79
<b>Total income tax provision</b>	<b>\$ 66,294</b>	<b>\$ (126)</b>	<b>\$ (847)</b>

For fiscal year ended March 31, 2018, a blended statutory U.S. federal income tax rate of 34% for 9 months and 21% for 3 months was used. For other years, the statutory federal rate of 34% was used.

The Company recognizes the tax benefit from uncertain tax positions if it is more likely than not that the tax positions will be sustained on examination by the tax authorities, based on the technical merits of the position. The tax benefit is measured based on the largest benefit that has a greater than 50% likelihood of being realized upon ultimate settlement. A reconciliation of the beginning and ending amount of unrecognized tax benefits is as follows (in thousands):

	<b>Unrecognized Tax Benefits</b>		
	<b>2018</b>	<b>2017</b>	<b>2016</b>
Balance at beginning of year	\$ 3,331	\$ 2,881	\$ 2,420
Gross increases - tax position in prior period	-	-	82
Gross increases - tax position related to the current year	649	450	379
Balance at end of year	<b>\$ 3,980</b>	<b>\$ 3,331</b>	<b>\$ 2,881</b>

At March 31, 2018, the Company had a liability for unrecognized tax benefits of \$4.0 million, all of which, if recognized, would favorably affect the company's effective tax rate. The Company does not expect its unrecognized tax benefits to change significantly over the next 12 months.

The Company's policy for recording interest and penalties associated with tax examinations is to record such items as a component of operating expense income before taxes. During the fiscal years ended March 31, 2018, 2017 and 2016, the Company did not recognize any interest or penalties related to unrecognized tax benefits.

Utilization of the Company's net operating loss and tax credit carryforwards can become subject to a substantial annual limitation due to the ownership change limitations provided by Section 382 of the Internal Revenue Code and similar state provisions. Such an annual limitation could result in the expiration or elimination of the net operating loss and tax credit carryforwards before utilization. The Company has performed an analysis of its changes in ownership under Section 382 of the Internal Revenue Code. The Company currently believes that the Section 382 limitation will not limit utilization of the carryforwards prior to their expiration, with the exception of certain acquired loss and tax credit carryforwards.

The Company files U.S. federal and state income tax returns in jurisdictions with varying statutes of limitations. The Company is currently under examination by the Internal Revenue Service for the fiscal year ended March 31, 2016 and by the Illinois Department of Revenue for the fiscal years ended March 31, 2015 and 2016. It is too early to predict the outcome of the ongoing examinations. The tax years fiscal 1999 through fiscal 2018 generally remain subject to examination by federal and most state tax authorities.

## 8. NET INCOME (LOSS) PER SHARE

The following is a reconciliation of the weighted average number of common shares outstanding used in calculating basic and diluted net income (loss) per share (in thousands, except share and per share data):

	<b>Years Ended March 31,</b>		
	<b>2018</b>	<b>2017</b>	<b>2016</b>
Numerator:			
Net loss available to common stockholders	\$ (104,497)	\$ (4,751)	\$ (5,120)
Denominator:			
Denominator for basic calculation	92,017	90,340	88,477
Denominator for diluted calculation	92,017	90,340	88,477
Net loss per share:			
Basic	\$ (1.14)	\$ (0.05)	\$ (0.06)
Diluted	\$ (1.14)	\$ (0.05)	\$ (0.06)

The following shares attributable to outstanding stock options and restricted stock purchase rights were excluded from the calculation of diluted earnings per share because their inclusion would have been antidilutive (in thousands):

	<b>Years Ended March 31,</b>		
	<b>2018</b>	<b>2017</b>	<b>2016</b>
Common stock options	3,998	4,462	4,793
Stock units	5,940	4,950	4,628
	<u>9,938</u>	<u>9,412</u>	<u>9,421</u>

## 9. SEGMENT REPORTING

The following tables set forth the segment and geographic information for each period (in thousands):

	Revenue for the Years Ended March 31,		
	2018	2017	2016
Americas (principally US)	\$ 266,034	\$ 227,914	\$ 185,241
Europe (principally UK)	30,466	25,474	24,095
	<u>\$ 296,500</u>	<u>\$ 253,388</u>	<u>\$ 209,336</u>

Revenue is based upon the destination of shipments and the customers' service address. In fiscal 2018, 2017 and 2016 intersegment revenues of approximately \$15.1 million, \$4.9 million, \$1.0 million, respectively, were eliminated in consolidation, and have been excluded from the table above.

	Depreciation and Amortization for the Years Ended March 31,		
	2018	2017	2016
Americas (principally US)	\$ 10,619	\$ 6,842	\$ 5,776
Europe (principally UK)	5,098	3,595	3,231
	<u>\$ 15,717</u>	<u>\$ 10,437</u>	<u>\$ 9,007</u>

	Net Income (Loss) for the Years Ended March 31,		
	2018	2017	2016
Americas (principally US)	\$ (84,792)	\$ 2,557	\$ 940
Europe (principally UK)	(19,705)	(7,308)	(6,060)
	<u>\$ (104,497)</u>	<u>\$ (4,751)</u>	<u>\$ (5,120)</u>

	March 31,			
	2018		2017	
	Total Assets	Property and Equipment, net	Total Assets	Property and Equipment, net
Americas (principally US)	\$ 240,099	\$ 27,270	\$ 284,011	\$ 19,480
Europe (principally UK)	37,110	8,462	49,844	4,581
	<u>\$ 277,209</u>	<u>\$ 35,732</u>	<u>\$ 333,855</u>	<u>\$ 24,061</u>

## 10. ACQUISITIONS

*LeChat, Inc.*

On January 5, 2017, the Company entered into an Agreement and Plan of Merger (the "Agreement") with the preferred and common shareholders LeChat Inc. (LeChat) for the purchase of all the outstanding preferred and common shares of LeChat. The transaction closed on January 6, 2017. The total aggregate purchase price was \$3.1 million, consisting of approximately \$2.4 million paid to the preferred shareholders at closing, \$0.2 million paid to the common shareholders at closing, and approximately \$0.5 million in cash deposited into escrow to be held for two years as security against indemnity claims made by the Company after the closing date.

The Company recorded the acquired tangible and identifiable intangible assets and liabilities assumed based on their estimated fair values. The excess of the consideration transferred over the aggregate fair values of the assets acquired and liabilities assumed was recorded as goodwill. The amount of goodwill recognized was primarily attributable to the expected contributions of the entity to the overall corporate strategy in addition to synergies and acquired workforce of the acquired business. The finite-lived intangible asset consisted of developed technology, with an estimated weighted-average useful life of two years. The fair value assigned to identifiable intangible assets acquired was based on estimates and assumptions made by management using a cost approach method. Intangible assets are amortized on a straight-line basis.

The fair values of the assets acquired and liabilities assumed are as follows (in thousands):

	<u>Fair Value</u>
Assets acquired:	
Cash	\$ 231
Intangible assets	1,200
Other non-current assets	428
Total assets acquired	<u>1,859</u>
Liabilities assumed:	
Current liabilities	(324)
Total liabilities assumed	<u>(324)</u>
Net identifiable assets acquired	1,535
Goodwill	1,580
Total consideration transferred	<u>\$ 3,115</u>

None of the goodwill recognized is deductible for income tax purposes.

Revenue from LeChat from the date of acquisition to March 31, 2017 was immaterial. Total acquisition related costs were immaterial. Pro forma information has not been presented as the impact to the Company's Consolidated Financial Statements was not material.

#### *DXI Group Limited*

On May 26, 2015, the Company entered into a share purchase agreement with the shareholders of DXI Limited, and its wholly owned subsidiaries, (collectively DXI) for the purchase of the entire share capital of DXI. The transaction closed effective May 29, 2015. The total aggregate purchase price was approximately \$22.5 million, consisting of \$18.7 million in cash paid to the DXI shareholders at closing, and \$3.8 million in cash deposited into escrow to be held for two years as security against indemnity claims made by the Company after the closing date. The cash escrow is to be released in annual installments over two years.

The Company recorded the acquired tangible and identifiable intangible assets and liabilities assumed based on their estimated fair values. The excess of the consideration transferred over the aggregate fair values of the assets acquired and liabilities assumed is recorded as goodwill. The amount of goodwill recognized is primarily attributable to the expected contributions of the entity to the overall corporate strategy in addition to synergies and acquired workforce of the acquired business. The finite-lived intangible assets consist of the following: customer relationships, with an estimated weighted-average useful life of two and five years; and developed technology, with an estimated weighted-average useful life of six years. The indefinite lived intangible asset consisted of a tradename. The fair value assigned to identifiable intangible assets acquired was based on estimates and assumptions made by management using income approach methods. Intangible assets are amortized on a straight-line basis.

The fair values of the assets acquired and liabilities assumed are as follows (in thousands):

	<u>Fair Value</u>
Assets acquired:	
Cash	\$ 1,318
Current assets	2,016
Property and equipment	1,453
Intangible assets	<u>13,374</u>
Total assets acquired	<u>18,161</u>
Liabilities assumed:	
Current liabilities and non-current liabilities	<u>(5,734)</u>
Total liabilities assumed	<u>(5,734)</u>
Net identifiable assets acquired	<u>12,427</u>
Goodwill	<u>10,125</u>
Total consideration transferred	<u>\$ 22,552</u>

None of the goodwill recognized is deductible for income tax purposes.

DXI contributed revenue of approximately \$10.0 million and a net loss of approximately (\$3.2) million for the period from the date of acquisition to March 31, 2016. Total acquisition related costs were approximately \$0.9 million, which were included in general and administrative expenses. The Company determined that it is impractical to include pro forma information given the difficulty in obtaining the historical financial information of DXI. Inclusion of such information would require the Company to make estimates and assumptions regarding DXI's historical financial results that the Company believes may ultimately prove inaccurate.

In the second quarter of fiscal 2016, the Company updated its analysis of the valuation of the assets and liabilities acquired, which resulted in an increase of approximately \$1.1 million to goodwill, a decrease in intangible assets of approximately \$1.3 million, and a decrease to current and non-current liabilities of \$0.2 million, compared with the preliminary estimates recorded for the first quarter of fiscal 2016. The impact of the change in preliminary values on the first quarter of fiscal 2016 statement of operations was not material. Therefore, no measurement period adjustment was required.

#### *Quality Software Corporation*

On June 3, 2015, the Company entered into an asset purchase agreement with the shareholder of Quality Software Corporation (QSC) and other parties affiliated with the shareholder and QSC for the purchase of certain assets as per the purchase agreement. The total aggregate fair value of the consideration was approximately \$2.9 million, which \$2.2 million was paid in cash to the QSC shareholder at closing. As part of the aggregate purchase price, there is also \$0.5 million in contingent consideration payable subject to attainment of certain revenue and product release milestones for the acquired business, and \$0.3 million in cash held by the Company in escrow to be retained for two years as security against indemnity claims made by the Company after the closing date. The preliminary fair value of the contingent consideration and escrow amounts was \$0.7 million at the acquisition date.

The Company recorded the acquired identifiable intangible assets and liabilities assumed based on their estimated fair values. The excess of the consideration transferred over the aggregate fair values of the assets acquired and liabilities assumed is recorded as goodwill. The amount of goodwill recognized is primarily attributable to the expected contributions of the entity to the overall corporate strategy in addition to synergies and acquired workforce of the acquired business. The finite-lived intangible assets consist of the following: customer relationships, with an estimated weighted-average useful life of five years; and developed technology, with an estimated weighted-average useful life of six years. The indefinite lived intangible asset consisted of in-process research and development and a tradename. The fair value assigned to identifiable intangible assets acquired was based on estimates and assumptions made by management using income approach methods. Intangible assets are amortized on a straight-line basis.



The fair values of the assets acquired and liabilities assumed are as follows (in thousands):

	<u>Fair Value</u>
Assets acquired:	
Intangible assets	\$ 1,100
Goodwill	1,789
Total consideration transferred	<u>\$ 2,889</u>

QSC's contributions to revenue and income for the period from the date of acquisition to March 31, 2016 were not material. Total acquisition related costs were approximately \$0.1 million, which were included in general and administrative expenses. The Company determined that the acquisition was not deemed to be a material business combination and it is impractical to include such pro forma information given the difficulty in obtaining the historical financial information of QSC. Inclusion of such information would require the Company to make estimates and assumptions regarding QSC's historical financial results that the Company believes may ultimately prove inaccurate.

In the fourth quarter of fiscal 2016, the Company updated its analysis of the valuation of the assets and liabilities acquired, which resulted in an increase of approximately \$0.1million to goodwill, and a decrease in intangible assets of approximately \$0.1 million compared with what was recorded for the third quarter of fiscal 2016. The impact of the change in preliminary values on the first quarter of fiscal 2016 statement of operations was not material. Therefore, no measurement period adjustment was required.

#### **11. SUBSEQUENT EVENTS**

In April 2018, the Company entered into an asset purchase agreement with MarianaIQ, Inc. The total aggregate purchase price was \$3.5 million, consisting of approximately \$2.6 million paid at closing and \$0.9 million in cash deposited into escrow to be held for fifteen months as security against indemnity claims made by the Company after the closing date.

## 12. CONSOLIDATED QUARTERLY FINANCIAL DATA (UNAUDITED)

In thousands, except per share data amounts:

	QUARTER ENDED							
	March 31, 2018	Dec. 31, 2017	Sept. 30, 2017	June 30, 2017	March 31, 2017	Dec. 31, 2016	Sept. 30, 2016	June 30, 2016
Service revenue	\$ 75,325	\$ 71,891	\$ 68,123	\$ 65,091	\$ 62,654	\$ 60,149	\$ 57,717	\$ 55,296
Product revenue	4,019	3,684	4,360	4,007	3,834	3,527	5,466	4,745
Total revenue	<u>79,344</u>	<u>75,575</u>	<u>72,483</u>	<u>69,098</u>	<u>66,488</u>	<u>63,676</u>	<u>63,183</u>	<u>60,041</u>
Operating expenses:								
Cost of service revenue	13,952	12,318	12,757	11,662	10,803	10,525	10,837	10,235
Cost of product revenue	5,826	4,675	5,098	4,884	4,187	4,240	5,782	5,505
Research and development	10,016	8,527	8,311	7,943	7,142	7,095	6,505	6,710
Sales and marketing	52,940	48,830	41,163	41,110	38,228	35,667	33,691	31,691
General, and administrative	10,340	10,003	9,616	8,956	9,814	7,852	6,747	6,801
Impairment of goodwill, intangible assets and equipment	-	9,469	-	-	-	-	-	-
Total operating expenses	<u>93,074</u>	<u>93,822</u>	<u>76,945</u>	<u>74,555</u>	<u>70,174</u>	<u>65,379</u>	<u>63,562</u>	<u>60,942</u>
Loss from operations	<u>(13,730)</u>	<u>(18,247)</u>	<u>(4,462)</u>	<u>(5,457)</u>	<u>(3,686)</u>	<u>(1,703)</u>	<u>(379)</u>	<u>(901)</u>
Other income, net	<u>610</u>	<u>569</u>	<u>463</u>	<u>2,052</u>	<u>583</u>	<u>408</u>	<u>391</u>	<u>410</u>
Loss from operations before provision (benefit) for income taxes	(13,120)	(17,678)	(3,999)	(3,405)	(3,103)	(1,295)	12	(491)
Provision (benefit) for income taxes	142	70,842	(3,453)	(1,236)	(178)	30	(15)	37
Net income (loss)	<u>\$ (13,262)</u>	<u>\$ (88,520)</u>	<u>\$ (546)</u>	<u>\$ (2,169)</u>	<u>\$ (2,925)</u>	<u>\$ (1,325)</u>	<u>\$ 27</u>	<u>\$ (528)</u>
Net income (loss) per share:								
Basic	\$ (0.14)	\$ (0.96)	\$ (0.01)	\$ (0.02)	\$ (0.03)	\$ (0.01)	\$ 0.00	\$ (0.01)
Diluted	\$ (0.14)	\$ (0.96)	\$ (0.01)	\$ (0.02)	\$ (0.03)	\$ (0.01)	\$ 0.00	\$ (0.01)
Shares used in per share calculations:								
Basic	92,526	92,029	91,689	91,643	91,175	90,774	89,987	89,434
Diluted	92,526	92,029	91,689	91,643	91,175	90,774	93,447	89,434

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

None.

### ITEM 9A. CONTROLS AND PROCEDURES

#### Changes in Internal Control Over Financial Reporting

There have not been any changes in the Company's internal control over financial reporting, as such term is defined in Rules 13a-15(f) and 15d-15(f) under the Securities Exchange Act of 1934, as amended (the "Exchange Act") during the most recent fiscal quarter that have materially affected, or are reasonably likely to materially affect, the Company's internal control over financial reporting.

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

##### Evaluation of Disclosure Controls and Procedures

Our management, with the participation of our Chief Executive Officer and Chief Financial Officer, has evaluated the effectiveness of our disclosure controls and procedures, as such term is defined in Rules 13a-15(e) and 15d-15(e) under the Exchange Act, as of March 31, 2018. Based on such evaluation, our Chief Executive Officer and Chief Financial Officer have concluded that, as of March 31, 2018, our disclosure controls and procedures were effective.

##### Management's Report on Internal Control Over Financial Reporting

Our management is responsible for establishing and maintaining adequate internal control over financial reporting, as such term is defined in Rules 13a-15(f) or 15d-15(f) under the Exchange Act. Under the supervision and with the participation of our management, including our chief executive officer and chief financial officer, we conducted an assessment of the effectiveness of our internal control over financial reporting based on criteria established in the framework in *Internal Control - Integrated Framework (2013)* issued by the Committee of Sponsoring Organizations of the Treadway Commission.

Based on this assessment, our management concluded that its internal control over financial reporting was effective as of March 31, 2018.

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 risks that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate.

Moss Adams LLP, an independent registered public accounting firm, has audited and reported on the consolidated financial statements of 8x8, Inc. and on the effectiveness of our internal control over financial reporting. The report of Moss Adams LLP is contained in Item 8 of this Annual Report on Form 10-K.

### ITEM 9B. OTHER INFORMATION

For our 2018 fiscal year, quarterly bonuses under the company's Management Incentive Bonus Plan, or MIP, were determined based on achievement of individual objectives; annual awards were determined based on company performance against predetermine metrics; and both categories of awards were to be paid only if we achieved non-GAAP pre-tax net income (NGNI) at or in excess of specified thresholds - namely, break-even NGNI for quarterly awards, and NGNI at or above 3% of revenue for annual awards.

During the course of our 2018 fiscal year, our board of directors, in consultation with our chief executive officer, authorized strategic expenditures in excess of levels contemplated by our fiscal 2018 budget in order to better position the company for revenue growth in fiscal 2019. Although the company achieved its revenue targets under the MIP, we failed to achieve the minimum NGNI thresholds required for payment of fourth quarter and full year fiscal 2018 bonuses under the MIP.

On May 28, 2018, our compensation committee approved the payment of bonuses to all MIP participants other than our CEO, notwithstanding our failure to satisfy the funding conditions, in the amounts that each participant would have received if all NGNI metrics were excluded from the relevant calculations. We expect that the following named executive officers will receive bonuses on May 31, 2018 in the amounts indicated: Mary Ellen Genovese, CFO, \$128,683.67; Bryan Martin, CTO, \$82,370.77; and Darren Hakeman, Senior Vice President of Strategy, Analytics and Corporate Development, \$84,302.31. Ms. Genovese and Mr. Martin have elected to receive some or all of their bonuses in shares of common stock rather than cash, as described below.

On May 28, 2018, our compensation committee also approved amendments to the MIP to (1) allow payment of bonuses in shares of our common stock in lieu of cash and (2) remove the 90-day waiting period before new hires may be eligible to participate in the MIP. For participants who elect to receive stock in lieu of cash, the number of shares will be determined based on our trading price on the award payment date, i.e., after the participant has made the election to receive stock in lieu of cash.

### **PART III**

Certain information required by Part III is omitted from this Annual Report on Form 10-K. The Registrant will file its definitive Proxy Statement for its Annual Meeting of Stockholders pursuant to Regulation 14A of the Securities Exchange Act of 1934, as amended, not later than 120 days after the end of the fiscal year covered by this Annual Report, and certain information included in the 2018 Proxy Statement is incorporated herein by reference.

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

Information regarding our directors and corporate governance will be presented in our definitive proxy statement for our 2018 Annual Meeting of Stockholders to be held on or about August 10, 2018, which information is incorporated into this Annual Report by reference. However, certain information regarding current executive officers found under the heading "Executive Officers" in Item 1 of Part I hereof is also incorporated by reference in response to this Item 10.

We have adopted a Code of Conduct and Ethics that applies to our principal executive officer, principal financial officer and all other employees at 8x8, Inc. This Code of Conduct and Ethics is posted in the corporate governance section of our website at <http://investors.8x8.com>. We intend to satisfy the disclosure requirement under Item 5.05 of Form 8-K regarding an amendment to, or waiver from, a provision of this Code of Conduct and Ethics by posting such information in the corporate governance section on its website at <http://investors.8x8.com>.

## **ITEM 11. EXECUTIVE COMPENSATION**

Information relating to executive compensation will be presented in our definitive proxy statement for our 2018 Annual Meeting of Stockholders to be held on or about August 10, 2018, which information is incorporated into this Annual Report by reference.

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

Information relating to securities authorized for issuance under equity compensation plans and other information required to be provided in response to this item will be presented in our definitive proxy statement for our 2018 Annual Meeting of Stockholders to be held on or about August 10, 2018, which information is incorporated into this Annual Report by reference. In addition, descriptions of our equity compensation plans are set forth in Part II, Item 8 "FINANCIAL STATEMENTS AND SUPPLEMENTARY DATA – NOTES TO CONSOLIDATED FINANCIAL STATEMENTS -- Note 6 STOCKHOLDERS' EQUITY."

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

Information required to be provided in response to this item will be presented in our definitive proxy statement for our 2018 Annual Meeting of Stockholders to be held on or about August 10, 2018, which information is incorporated into this Annual Report by reference.

## **ITEM 14. PRINCIPAL ACCOUNTANT FEES AND SERVICES**

Information required to be provided in response to this item will be presented in our definitive proxy statement for our 2018 Annual Meeting of Stockholders to be held on or about August 10, 2018, which information is incorporated into this Annual Report by reference.

## ITEM 15. EXHIBITS AND FINANCIAL STATEMENT SCHEDULES

(a)(1) *Financial Statements*. The information required by this item is included in Item 8.

**SCHEDULE II**  
**VALUATION AND QUALIFYING ACCOUNTS**  
(in thousands)

<u>Description</u>	<u>Balance at Beginning of Year</u>	<u>Additions Charged to Expenses</u>	<u>Deductions (a)</u>	<u>Balance at End of Year</u>
Total Allowance for Doubtful Accounts:				
Year ended March 31, 2016:	\$ 416	\$ 509	\$ (339)	\$ 586
Year ended March 31, 2017:	\$ 586	\$ 941	\$ (573)	\$ 954
Year ended March 31, 2018:	\$ 954	\$ 250	\$ (300)	\$ 904

(a) The deductions related to allowance for doubtful accounts represent accounts receivable which are written off.

**(a)(3) Exhibits.** Copies of the exhibits listed will be furnished, upon request, to holders or beneficial owners of the Company's common stock.

Exhibit Number	Exhibit Title
3.1 (a)	<a href="#"><u>Restated Certificate of Incorporation of Registrant, dated August 22, 2012</u></a>
3.2 (b)	<a href="#"><u>Bylaws of Registrant</u></a>
10.1 (c)	<a href="#"><u>Form of Indemnification Agreement between the Registrant and each of its directors and officers</u></a>
10.2 <sup>*.**</sup>	<a href="#"><u>Amended and Restated 2015 Executive Change-In-Control and Severance Policy</u></a>
10.3 <sup>*.**</sup>	<a href="#"><u>2017 Executive Change-In-Control and Severance Policy</u></a>
10.4 <sup>*.**</sup>	<a href="#"><u>Third Amended and Restated Management Incentive Plan</u></a>
10.5 (d)*	<a href="#"><u>Second Amended and Restated 1996 Employee Stock Purchase Plan, as amended, and form of Subscription Agreement</u></a>
10.6 (e)*	<a href="#"><u>Amended and Restated Contactual, Inc. 2003 Stock Option Plan</u></a>
10.7 (e)*	<a href="#"><u>Form of Stock Option Agreement under the Amended and Restated Contactual, Inc. 2003 Stock Option Plan</u></a>
10.8 (f)*	<a href="#"><u>2006 Stock Plan, as amended</u></a>
10.9 (g)*	<a href="#"><u>Form of 2006 Stock Option Agreement under the 2006 Stock Plan</u></a>
10.10 (h)*	<a href="#"><u>Form of Notice of Award of Stock Purchase Right and Stock Purchase Agreement under the 2006 Stock Plan</u></a>
10.11 (i)*	<a href="#"><u>Amended and Restated 2012 Equity Incentive Plan</u></a>
10.12 (j)*	<a href="#"><u>Form of Stock Option Agreement under the Amended and Restated 2012 Equity Incentive Plan</u></a>
10.13 (j)*	<a href="#"><u>Notice of Grant of Restricted Stock Unit Award and Agreement under the 2012 Equity Incentive Plan</u></a>
10.14 (s)*	<a href="#"><u>8x8, Inc. Amended and Restated 2013 New Employee Inducement Incentive Plan</u></a>
10.15 (k)*	<a href="#"><u>Form of Stock Option Agreement under the Amended and Restated 2013 New Employee Inducement Incentive Plan</u></a>
10.16 (k)*	<a href="#"><u>Form of Notice of Grant of Restricted Stock Unit Award and Agreement under the Amended and Restated 2013 New Employee Inducement Incentive Plan</u></a>
10.17 (l)*	<a href="#"><u>8x8, Inc. 2017 New Employee Inducement Incentive Plan</u></a>
10.18 (l)*	<a href="#"><u>Form of Stock Option Agreement under the 8x8, Inc. 2017 New Employee Inducement Incentive Plan</u></a>
10.19 (l)*	<a href="#"><u>Form of Notice of Grant of Restricted Stock Unit Award and Agreement under 8x8, Inc. 2017 New Employee Inducement Incentive Plan</u></a>

- 10.20 (m)\* [Employment Agreement dated September 9, 2013 between the Company and Vikram Verma](#)
- 10.21 (m)\* [Employment Agreement dated September 9, 2013 between the Company and Darren Hakeman](#)
- 10.22 (n)\* [Employment Agreement dated October 6, 2014 between the Company and Mary Ellen Genovese](#)
- 10.23 (c)\* [Amendment to Employment Agreement dated July 31, 2015 between the Company and Vikram Verma](#)
- 10.24 (d)\* [Employment Agreement dated May 15, 2017 between the Company and Rani Hublou](#)
- 10.25 (o)\* [Employment Agreement dated September 4, 2017 between the Company and Dejan Deklich](#)
- 10.26 (p) [Lease dated April 27, 2012, between Registrant and O'Nel Office Holdings, LLC](#)
- 10.27 (q) [Standard Form Office Lease, dated as of January 20, 2016, by and between MNCVAD-Seagate 2665 North First LLC, and the Company.](#)
  
- 10.28 (r) [Lease dated June 22, 2016, between Registrant and One Commercial Street Management Company Limited](#)
- 10.29\*\* [Lease dated January 23, 2018, between CAP Phase 1, LLC and Registrant](#)
- 21.1 (d) [Subsidiaries of Registrant](#)
  - 23.1 [Consent of Independent Registered Public Accounting Firm](#)
  - 24.1 Power of Attorney (included on page 81)
  - 31.1 [Certification of Chief Executive Officer of the Registrant pursuant to Rule 13a-14](#)
  - 31.2 [Certification of Chief Financial Officer of the Registrant pursuant to Rule 13a-14](#)
  - 32.1 [Certification of Chief Executive Officer of the Registrant pursuant to 18 U.S.C. 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002](#)
  - 32.2 [Certification of Chief Financial Officer of the Registrant pursuant to 18 U.S.C. 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002](#)
  
- 101.INS\*\* XBRL Instance Document
- 101.SCH\*\* XBRL Taxonomy Extension Schema
- 101.CAL\*\* XBRL Taxonomy Extension Calculation Linkbase
- 101.DEF\*\* XBRL Taxonomy Extension Definition Linkbase
- 101.LAB\*\* XBRL Taxonomy Extension Label Linkbase
- 101.PRE\*\* XBRL Taxonomy Extension Presentation Linkbase



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\* Indicates management contract or compensatory plan or arrangement.

\*\*Filed herewith.

- (a) Incorporated by reference to exhibit 3.1 to the Registrant's Form 10-K filed May 28, 2013 (File No. 000-21783).
- (b) Incorporated by reference to exhibit 3.2 to the Registrant's Form 8-K filed July 29, 2015 (File No. 000-21783).
- (c) Incorporated by reference to exhibit 10.2 and 10.3 to the Registrant's Form 10-Q filed July 31, 2015 (File No. 000-21783).
- (d) Incorporated by reference to exhibit 10.4, 10.34 and 21.1 to the Registrant's Form 10-K filed May 30, 2017 (File No. 000-21783).
- (e) Incorporated by reference to exhibit 10.16 and 10.17 to the Registrant's Form S-8 filed September 19, 2011 (File No. 333-176895).
- (f) Incorporated by reference to exhibit 10.7 to the Registrant's Form 10-K filed May 26, 2009 (File No. 000-21783).
- (g) Incorporated by reference to exhibit 10.1 to the Registrant's Form 10-Q filed February 7, 2007 (File No. 000-21783).
- (h) Incorporated by reference to exhibit 10.10 to the Registrant's Form 10-K filed May 26, 2009 (File No. 000-21783).
- (i) Incorporated by reference to exhibit 10.19 to the Registrant's Form S-8 filed August 09, 2016 (File No. 333-213032).
- (j) Incorporated by reference to exhibit 10.20 and 10.21 to the Registrant's Form S-8 filed August 28, 2012 (File No. 333-183597).
- (k) Incorporated by reference to exhibit 10.23, 10.24 and 10.25 to the Registrant's Form S-8 filed September 10, 2013 (File No. 333-191080).
- (l) Incorporated by reference to exhibit 10.23, 10.24 and 10.25 to the Registrant's Form S-8 filed November 2, 2017 (File No. 333-221290).
- (m) Incorporated by reference to exhibit 10.2 and 10.6 to the Registrant's Form 10-Q filed November 8, 2013 (File No. 000-21783).
- (n) Incorporated by reference to exhibit 10.2 to the Registrant's Form 10-Q filed October 22, 2014 (File no. 000-21783).
- (o) Incorporated by reference to exhibit 10.36 to the Registrant's Form S-8 filed November 2, 2017 (File No. 000-21783).
- (p) Incorporated by reference to exhibit 10.12 to the Registrant's Form 10-K filed May 24, 2012 (File no. 000-21783).
- (q) Incorporated by reference to exhibit 10.32 to the Registrant's Form 10-K filed May 31, 2016 (File No. 000-21783).
- (r) Incorporated by reference to exhibit 10.33 to the Registrant's Form 10-Q filed July 29, 2016 (File No. 000-21783).
- (s) Incorporated by reference to exhibit 10.34 to the Registrant's Form 10-Q filed November 2, 2016 (File No. 000-21783).

#### **ITEM 16. FORM 10-K SUMMARY**

None.

## SIGNATURES

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, the Registrant, 8x8, Inc., a Delaware corporation, has duly caused this Annual Report on Form 10-K to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of San Jose, State of California, on May 30, 2018.

8X8, INC.

By: /s/ VIKRAM VERMA

Vikram Verma,

Chief Executive Officer

## POWER OF ATTORNEY

KNOW ALL PERSONS BY THESE PRESENT, that each person whose signature appears below constitutes and appoints Vikram Verma and Mary Ellen Genovese, jointly and severally, his attorneys-in-fact, each with the power of substitution, for him in any and all capacities, to sign any amendments to this Annual Report on Form 10-K, and to file the same, with exhibits thereto and other documents in connection therewith, with the Securities and Exchange Commission, hereby ratifying and confirming all that each of said attorney-in-fact, or his substitute or substitutes, may do or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities and Exchange Act of 1934, this Annual Report on Form 10-K has been signed by the following persons in the capacities and on the date indicated:

<u>Signature</u>	<u>Title</u>	<u>Date</u>
<u>/s/ VIKRAM VERMA</u> Vikram Verma	Chief Executive Officer (Principal Executive Officer)	May 30, 2018
<u>/s/ MARY ELLEN GENOVESE</u> Mary Ellen Genovese	Chief Financial Officer and Secretary (Principal Financial Officer)	May 30, 2018
<u>/s/ BRYAN R. MARTIN</u> Bryan R. Martin	Chairman and Chief Technology Officer	May 30, 2018
<u>/s/ HENRIK GERDES</u> Henrik Gerdes	Chief Accounting Officer (Principal Accounting Officer)	May 30, 2018
<u>/s/ GUY L. HECKER</u> Guy L. Hecker, Jr.	Director	May 30, 2018
<u>/s/ ERIC SALZMAN</u> Eric Salzman	Director	May 30, 2018
<u>/s/ IAN POTTER</u> Ian Potter	Director	May 30, 2018
<u>/s/ JASWINDER PAL SINGH</u> Jaswinder Pal Singh	Director	May 30, 2018
<u>/s/ VLADIMIR JACIMOVIC</u> Vladimir Jacimovic	Director	May 30, 2018



**8X8, INC.**  
**EXECUTIVE CHANGE-IN-CONTROL**  
**AND SEVERANCE POLICY**  
**(Amended and Restated Effective as of October 1, 2017)**

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**8X8, INC.**  
**EXECUTIVE CHANGE-IN-CONTROL**  
**AND SEVERANCE POLICY**

**1. INTRODUCTION**

This Executive Change-in-Control and Severance Policy (the "Policy") is established by 8x8, Inc., effective as of June 19, 2015, and hereby amended and restated effective as of October 1, 2017, to provide for the payment of certain benefits in connection with certain terminations of an Executive's employment, including in connection with a potential Change-in-Control of the Company.

**2. DEFINITIONS**

2.1 Administrator. For purposes of this Policy, "Administrator" means the person(s) designated by the Board or the Committee as the administrator of this Policy.

2.2 Board. For purposes of this Policy, the "Board" means the Board of Directors of the Company.

2.3 Cause. For purposes of this Policy, "Cause" means Executive's:

- a. willful failure to attend to Executive's duties that is not cured by Executive within 30 days of receiving written notice from the CEO (or, in the case of the CEO, from the Board) specifying such failure;
- b. material breach of Executive's employment agreement that is not cured by Executive within 30 days of receiving written notice from the CEO (or, in the case of the CEO, from the Board) specifying such breach;
- c. conviction of (or plea of guilty or nolo contendere to) any felony or a misdemeanor involving theft, embezzlement, dishonesty or moral turpitude; or
- d. misconduct resulting in material harm to the Company's business or reputation, including fraud, embezzlement, misappropriation of funds or a material violation of the Executive's Confidential Information, Non-Disclosure and Invention Assignment Agreement.

2.4 Change-in-Control. For purposes of this Policy, "Change-in-Control" means the consummation of any of the following corporate transactions:

- a. an acquisition in one or more related transactions of 45% or more of the Company's common stock or voting securities by a "person" (as defined in Sections 13(d) and 14(d) of the Securities Exchange Act, but excluding the Company, any employee benefit plan of the Company and any corporation controlled by the Company's stockholders) or multiple "persons" acting as a group;

- b. a complete liquidation or dissolution of the Company;
- c. a sale, transfer or other disposition of all or substantially all of the Company's assets; or
- d. a merger, consolidation or reorganization (collectively, a "Business Combination") other than a Business Combination in which (i) the stockholders of the Company receive 50% or more of the stock of the corporation resulting from the Business Combination and (ii) at least a majority of the board of directors of such resulting corporation were incumbent directors of the Company immediately prior to the consummation of the Business Combination and (iii) after which no individual, entity or group (excluding any corporation or other entity resulting from the Business Combination or any employee benefit plan of such corporation or of the Company) who did not own 45% or more of the stock of the resulting corporation or other entity immediately before the Business Combination owns 45% or more of the stock of such resulting corporation or other entity.

2.5 Code. For purposes of this Policy, "Code" means the Internal Revenue Code of 1986, as amended.

2.6 Committee. For purposes of this Policy, "Committee" means the Compensation Committee of the Board.

2.7 Company. For purposes of this Policy, "Company" means 8x8, Inc., a Delaware corporation, and any successor (whether direct or indirect, by purchase, merger, consolidation or otherwise) to all or substantially all of the business and/or assets of 8x8, Inc.

2.8 Constructive Termination. For purposes of this Policy, "Constructive Termination" means the termination of Executive's employment (a) by the Company other than for Cause or Disability or (b) by the Executive for Good Reason.

2.9 Disability. For purposes of this Policy, "Disability" means a physical or mental impairment for which the Executive qualifies for benefits under the Company's long-term disability program, as it may be amended from time to time.

2.10 Equity Award. For purposes of this Policy, "Equity Award" means each incentive award relating to the Company's common stock (whether stock options, stock appreciation rights, shares of restricted stock, restricted stock units, performance shares, performance units or other similar awards).

2.11 Executive. For purposes of this Policy, "Executive" means any one of the following individuals holding such office as of October 1, 2017: the Company's Chief Executive Officer, any officer classified by the Company as an Executive Vice President, and any officer classified by the Company as a Senior Vice President.

2.12 Good Reason. For purposes of this Policy, "Good Reason" means the occurrence of any of the following conditions without Executive's consent, but only if such condition is reported by the Executive within 90 days of Executive's knowledge of such condition and remains uncured 30 days after written notice from Executive to the Board of said condition:

- a. a material reduction in Executive's then-current base salary or annual target bonus (expressed as a percentage of Executive's then-current base salary), except for a reduction proportionate to reductions concurrently imposed on all other members of the Company's executive management;
- b. a material reduction in Executive's then-current employee benefits package, taken as a whole, except for a reduction proportionate to reductions concurrently imposed on all other members of the Company's executive management;
- c. a material reduction in Executive's responsibilities with respect to the Company's overall operations, such that continuity of responsibilities with respect to business operations existing prior to a corporate transaction will serve as a material reduction in responsibilities if such business operations represent only a subsidiary or business unit of the larger Company after the corporate transaction;
- d. a material reduction in the responsibilities of the Executive's direct report, including a requirement for the Chief Executive Officer to report to another officer as opposed to the Company's Board or a requirement for an Executive Vice President or Senior Vice President to report to any officer other than the Company's Chief Executive Officer;
- e. a material breach by the Company of any material provision of Executive's employment agreement;
- f. a requirement that Executive relocate Executive's Company office to a location more than 35 miles from Executive's then-current Company office location, unless such office relocation results in the distance between the new office and Executive's home being closer or equal to the distance between the prior office and Executive's home;
- g. a failure of a successor or transferee to assume the Company's obligations under this Policy; or
- h. a failure to nominate Executive for election as a Board director if at the proper time for nomination, the Executive is a Board member.

2.13 In Connection with a Change-in-Control. For purposes of this Policy, a termination of Executive's employment will be "in Connection with a Change-in-Control" if Executive's employment terminates at any time within three months before, on or within 12 months following a Change-in-Control.



2.14 2017 Policy. For purposes of this Policy, "2017 Policy" means the 8x8, Inc. 2017 Executive Change-in-Control and Severance Policy effective as of October 1, 2017.

2.15 Transaction Price. For purposes of this Policy, "Transaction Price" means the per share consideration paid pursuant to the transaction(s) constituting the Change-in-Control.

2.16 Stock Performance-Based Equity Award. For purposes of this Policy, "Stock Performance-Based Equity Award" means each Equity Award with vesting conditioned all or in part on the per share fair market value of the Company's common stock exceeding one or more target levels.

2.17 TSR Performance-Based Equity Award. For purposes of this Policy, "TSR Performance-Based Equity Award" means each Equity Award with vesting conditioned all or in part on the relative appreciation of the per share fair market value of the Company's common stock versus one or more other publicly-traded securities.

2.18 Time-Based Equity Award. For purposes of this Policy, "Time-Based Equity Award" means each Equity Award that generally vests based only on Executive's service to the Company over a specified time period.

### **3. CHANGE-IN-CONTROL BENEFITS**

If Executive is either employed at the time of a Change-in-Control or experiences a Constructive Termination in Connection with a Change-in-Control, Executive will receive the following change-in-control benefits from the Company:

3.1 Stock Performance-Based Equity Awards. Executive will be deemed to have satisfied the performance vesting condition for 100% of Company shares covered by Executive's outstanding Stock Performance-Based Equity Award(s) that (i) were granted prior to the Change-in-Control and (ii) have a target Company share price for vesting purposes equal to or less than the Transaction Price. The effective date of the foregoing vesting credit will be the date of the Change-in-Control. Any such Stock Performance-Based Equity Awards will continue to vest in accordance with any service-based vesting condition specified in the award agreement(s), except as otherwise provided by Article 4 of this Policy.

3.2 TSR Performance-Based Equity Awards. Executive will be deemed to have satisfied the performance vesting condition for that percentage of the Company shares covered by Executive's TSR Performance-Based Equity Award determined by applying the formula set forth in the award agreement as if (a) the last day of each performance measurement period specified in such agreement were the date of the Change-of-Control and (b) the fair market value of the Company's common stock on such date were the Transaction Price provided, however, that no vesting credit under this Section 3.2 will apply to Executive's TSR Performance-Based Award(s) first granted after the Change-in-Control. The effective date of the foregoing vesting credit will be the date of the Change-in-Control. Any such TSR Performance-Based Equity Awards will continue to vest in accordance with any service-based vesting condition specified in the award agreement(s), except as otherwise provided by Article 4 of this Policy.

#### **4. CHANGE-IN-CONTROL SEVERANCE BENEFITS**

If Executive experiences a Constructive Termination in Connection with a Change-in-Control, Executive will receive the following severance benefits from the Company.

4.1 Earned Amounts. Executive will receive all compensation that is earned but unpaid as of the date of termination, including salary, commissions and accrued but unused paid time off and vacation.

4.2 Cash Severance. Executive will receive a single lump sum severance payment equal to the sum of the percentage of Base Salary and Bonus set forth in the Benefit Schedules applicable to Executive's job title tier. This lump sum payment will be made within 60 days following termination of employment.

4.3 Time-Based Equity Awards. Executive will vest in 100% of Executive's outstanding Time-Based Equity Awards effective as of the Executive's date of termination (or, if later, the date of the Change-in-Control).

4.4 Benefits. For a period of 12 months following the date of termination, (i) Executive will on a monthly basis receive reimbursement of the full premium amount (less withholding taxes) charged under the Consolidated Omnibus Budget Reconciliation Act for continuation of Executive's group health insurance in effect as of the date of termination and (ii) Executive will have the right, on the same basis as other employees of the Company, to participate in and to receive benefits under any Company group medical, dental, life, disability or other group insurance plans, as well as under the Company's, educational assistance, holiday, and other benefit plans and policies.

4.5 Performance-Based Equity Awards. Executive will fully vest in all shares covered by outstanding Stock Performance-Based Equity Awards and TSR Performance-Based Equity Awards for which the performance condition was deemed satisfied pursuant to Article 3 of this Policy. Executive will also receive this vesting acceleration benefit upon a Constructive Termination that occurs more than 12 months after a Change-in-Control (i.e., after such termination is no longer considered to be "in connection with a Change-in-Control").

#### **5. SEVERANCE BENEFITS NOT IN CONNECTION WITH A CHANGE-IN-CONTROL**

If Executive experiences a Constructive Termination during any time period not addressed by Article 4 of this Policy or terminates due to death or Disability at any time, Executive will receive the following severance benefits from the Company.

5.1 Earned Amounts. Executive will receive all compensation that is earned but unpaid as of the date of termination, including salary, commissions and accrued but unused paid time off and vacation.

5.2 Cash Severance. Executive will receive a single lump sum severance payment equal to the sum of the percentage of Base Salary and Bonus set forth in the Benefit Schedules applicable to Executive's job title tier. This lump sum payment will be made within 60 days following termination of employment.

5.3 Time-Based Equity Awards. Executive will vest in that portion (if any) of Executive's outstanding Time-Based Equity Awards set forth in the Benefit Schedules applicable to Executive's job title tier, effective as of the Executive's date of termination (or, if later, the date of the Change-in-Control).

5.4 Benefits. For the period set forth in the Benefit Schedules applicable to Executive's job title tier, (i) Executive will receive payment of the full premium amount (less withholding taxes) charged under the Consolidated Omnibus Budget Reconciliation Act for continuation of Executive's group health insurance in effect as of the date of termination and (ii) Executive will have the right, on the same basis as other employees of the Company, to participate in and to receive benefits under any Company group medical, dental, life, disability or other group insurance plans, as well as under the Company's, educational assistance, holiday, and other benefit plans and policies.

5.5 Performance-Based Equity Awards. Executive will receive no acceleration of outstanding Stock Performance-Based Equity Awards and TSR Performance-Based Equity Awards.

## **6. CONDITIONS FOR PAYMENT OF SEVERANCE**

6.1 Release of Claims. The payment of any severance or other benefits pursuant to Articles 3, 4 or 5 of this Policy will be subject to Executive signing and not revoking a release of claims agreement in a form approved by the Company, and such release becoming effective and irrevocable within 60 days of Executive's termination or such earlier deadline required by the release. Any severance amounts or benefits otherwise payable within 60 days of Executive's termination shall be paid on the 60<sup>th</sup> day following Executive's termination. If the release does not become effective within the time period set forth above, Executive will forfeit all rights to severance payments and benefits under this Policy.

6.2 Confidentiality. The payment of any severance or other benefits pursuant to Articles 3, 4 or 5 of this Policy will be subject to Executive's adherence to Executive's Confidential Information, Non-Disclosure and Invention Assignment Agreement (and/or any similar agreement as the Company and Executive may enter into from time to time).

## **7. COORDINATION WITH OTHER BENEFITS**

7.1 Existing Severance Benefits. Any Executive that is, at the time this Policy is first adopted, subject to an employment agreement providing for severance and/or change-in-control benefits will be subject to, and benefit under, this Policy only if the Executive signs an amendment to his or her employment agreement providing that this Policy supersedes all severance and change-in-control provisions of his or her employment agreement.

7.2 Sole Severance Benefit. If any severance benefits and payments are payable to an Executive under this Policy, then such amounts will be the only severance benefits and payments that are due to Executive upon Executive's Constructive Termination; provided, however, that Executive may be eligible for vesting benefits with respect to Equity Awards granted on or after October 1, 2017 under the 2017 Policy to the extent available thereunder; provided, however, that there shall be no duplication of benefits or payments hereunder.

7.3 Mitigation. Executive will not be required to mitigate the amount of any payment contemplated by this Policy, nor will any earnings that Executive may receive from any other source reduce any such payment.

## 8. LIMITATION ON BENEFITS

8.1 Treatment of Parachute Payments. To the extent that any of the payments and benefits provided for in this Policy or otherwise payable to Executive (the "Payments") constitute "parachute payments" within the meaning of Section 280G of the Code, the amount of such Payments shall be either:

- a. the full amount of the Payments, or
- b. a reduced amount that would result in no portion of the Payments being subject to the excise tax imposed pursuant to Section 4999 of the Code (the "Excise Tax"), whichever of the foregoing amounts, taking into account the applicable federal, state, local and foreign income and employment taxes and the Excise Tax, results in the receipt by Executive, on an after-tax basis, of the greatest amount of benefit. In the event that any Excise Tax is imposed on the Payments, Executive will be fully responsible for the payment of any and all Excise Tax, and the Company will not be obligated to pay all or any portion of any Excise Tax.

8.2 Determination of Amounts. All computations and determinations called for by Section 8.1 shall be promptly determined and reported in writing to the Company and the Executive by independent public accountants or other independent advisors selected by the Company and reasonably acceptable to the Executive (the "Accountants"), and all such computations and determinations shall be conclusive and binding upon the Participant and the Company. For the purposes of such determinations, the Accountants may rely on reasonable, good faith interpretations concerning the application of Sections 280G and 4999 of the Code. The Company and the Executive shall furnish to the Accountants such information and documents as the Accountants may reasonably request in order to make their required determinations. The Company shall bear all fees and expenses charged by the Accountants in connection with these services.

## 9. ADMINISTRATION

The Policy will be administered by the Administrator. The Administrator may interpret the Policy, prescribe, amend and rescind rules and regulations under the Policy and make all other determinations necessary or advisable for the administration of the Policy, subject to all of the provisions of the Policy. The Administrator may delegate any of its duties hereunder to such person or persons from time to time as it may designate.

## 10. AMENDMENT OR TERMINATION

The Board will have the right to amend or terminate this Policy at any time in its sole discretion; provided, however that any amendment or termination reasonably determined to have an adverse effect on the then-eligible Executives (a) must be disclosed to the Executives at least three months prior to taking effect and (b) cannot take effect within three months before, on or within 12 months following any Change-in-Control. Unless earlier terminated, this Policy will terminate automatically on September 30, 2021 (the "Expiration Date"), and no benefits will be provided hereunder with respect to any termination of employment or Change-in-Control occurring after the Expiration Date; provided, however, that such benefits shall then be payable solely as provided in the 2017 Policy.

## 11. NOTICES

11.1 Notice. Notices and all other communications contemplated by this Policy will be in writing and will be deemed to have been duly given when personally delivered or when mailed by U.S. registered or certified mail, return receipt requested and postage prepaid. In the case of Executive, mailed notices will be addressed to him/her at the home address which he/she most recently communicated to the Company in writing. In the case of the Company, mailed notices will be addressed to its corporate headquarters, and all notices will be directed to the attention of the Company's General Counsel.

11.2 Notice of Termination. Any Constructive Termination will be communicated by a notice of termination to the other party hereto given in accordance with Section 11.1 of this Policy. Such notice will indicate the specific termination provision in this Policy relied upon, will set forth in reasonable detail the facts and circumstances claimed to provide a basis for termination under the provision so indicated, and will specify the termination date.

## 12. SECTION 409A

12.1 General. Any benefits payable under this Policy upon an Executive's termination will be interpreted to require that Executive experiences a "separation from service" (as such term is defined in Treasury regulations issued under Code Section 409A). Further, if Executive is a "specified employee" within the meaning of Code Section 409A at the time of his separation from service (other than due to Executive's death), then the severance benefits payable to Executive under this Policy that are considered deferred compensation under Section 409A and are due to Executive on or within the six-month period following his separation from service will accrue during such six-month period and will become payable (without interest) in a lump sum payment on the earlier of (a) the first payroll date that occurs on or after the date six months and one day following the date of Executive's separation from service and (b) the Executive's death. Each payment and benefit payable under this Policy is intended to constitute a separate payment for purposes of Treasury Regulations 1.409A-2(b)(2).

12.2 Reimbursements. Notwithstanding any other provision herein to the contrary, to the extent that any in-kind benefit or reimbursement arrangement provides for a payment that is considered deferred compensation under Section 409A, then such in-kind benefit or reimbursements will be made in accordance with Treasury Regulations 1.409A-3(i)(1)(iv) including: (a) the amount of such in-kind benefits provided in any calendar year and the amount of such expenses eligible for reimbursement in any calendar year will not affect the in-kind benefits to be provided or expenses eligible for reimbursement in any other calendar year; (b) in no event will any such expenses be reimbursed after the last day of the calendar year following the calendar year in which the Executive incurred such expenses; and (c) in no event will any such right to reimbursement or the provision of any in-kind benefit be subject to liquidation or exchange for another benefit or payment.

12.3 Interpretation. The foregoing provisions are intended to comply with the requirements of Code Section 409A so that none of the severance payments and benefits to be provided hereunder will be subject to the additional tax imposed under Code Section 409A, and any ambiguities herein will be interpreted to so comply. Notwithstanding the foregoing, the Company makes no representations as to the tax compliance or treatment of any benefits payable under this Policy. The Company and Executive agree to work together in good faith to consider amendments to this Policy and to take such reasonable actions which are necessary, appropriate or desirable to avoid imposition of any additional tax or income recognition.

### 13. MISCELLANEOUS

13.1 Choice of Law. The validity, interpretation, construction and performance of this Policy will be governed by the laws of the State of California (with the exception of its conflict of laws provisions).

13.2 Integration. Except as provided in Sections 7.1 or 7.2 of this Policy, this Policy represents the entire agreement and understanding between the parties as to the payment of severance or other benefits if Executive's employment with the Company terminates, including in Connection with a Change-in-Control, and supersedes all prior or contemporaneous agreements and the vesting provisions of any Equity Award, with respect to the subject matter of this Policy.

13.3 Severability. In the event that any provision or any portion of any provision hereof becomes or is declared by a court of competent jurisdiction to be illegal, unenforceable, or void, this Policy will continue in full force and effect without said provision or portion of provision. The remainder of this Policy will be interpreted so as best to effect the intent of the Company and Executive.

13.4 Funding. The Company will not be required to fund or otherwise segregate assets to be used for the payment of any benefits under the Policy. The Company will make such payments only out of its general corporate funds, and therefore its obligation to make such payments will be subject to any claims of its other creditors.

13.5 Withholding. The Company may withhold all applicable taxes from payments or benefit due under this Policy.

**8X8, INC.**  
**AMENDED AND RESTATED EXECUTIVE CHANGE-IN-CONTROL**  
**AND SEVERANCE POLICY**

**BENEFIT SCHEDULES AS OF OCTOBER 1, 2017**

<b>Tier</b>	<b>Change-in-Control Benefits</b>	<b>Change-in-Control Severance Benefits</b>	<b>Severance Benefits</b>
<u>Tier One</u> Chief Executive Officer	Stock Performance-Based Equity Awards: Performance condition satisfied for 100% of shares subject to a per-share target price no higher than Transaction Price; any service-based vesting applies thereafter  TSR Performance-Based Equity Awards: Performance condition satisfied for that number of shares determined by relative appreciation of Company common stock through Change-of-Control date; any service-based vesting applies thereafter.	Cash: 100% of Base Salary + 100% of target Bonus  Benefits: 12 months after date of termination  Time-Based Equity Awards: 100% acceleration  Performance-Based Equity Awards: 100% acceleration for shares for which performance criteria deemed satisfied as Change-in-Control benefit	Cash: 150% of Base Salary + prorated % of earned Bonus, based on % of performance period before termination  Benefits: 18 months after date of termination  Time-Based Equity Awards: 12 months acceleration  Performance-Based Equity Awards: 0% acceleration
<u>Tier Two</u> Executive Vice Presidents	See Tier One	Cash: 100% of Base Salary + 0% of Bonus  Benefits: 12 months after date of termination  Time-Based Equity Awards: 100% acceleration  Performance-Based Equity Awards: 100% acceleration for shares for which performance criteria deemed satisfied as Change-in-Control benefit	Cash: 100% of Base Salary + prorated Bonus  Benefits: 12 months after date of termination  Time-Based Equity Awards: no acceleration  Performance-Based Equity Awards: 0% acceleration

<p><u>Tier Three</u> Senior Vice Presidents</p>	<p>See Tier One</p>	<p>Cash: 100% of Base Salary + 0% of Bonus</p> <p>Benefits: 12 months after date of termination</p> <p>Time-Based Equity Awards: 100% acceleration</p> <p>Performance-Based Equity Awards: 100% acceleration for shares for which performance criteria deemed satisfied as Change-in-Control benefit</p>	<p>Cash: 75% of Base Salary + pro-rated Bonus</p> <p>Benefits: 9 months after date of termination</p> <p>Time-Based Equity Awards: no acceleration</p> <p>Performance-Based Equity Awards: 0% acceleration</p>
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**8X8, INC.**  
**2017 EXECUTIVE CHANGE-IN-CONTROL**  
**AND SEVERANCE POLICY**

**(effective as of October 1, 2017)**

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**8X8, INC.**  
**2017 EXECUTIVE CHANGE-IN-CONTROL**  
**AND SEVERANCE POLICY**

**1. INTRODUCTION**

This 2017 Executive Change-in-Control and Severance Policy (the "Policy") is established by 8x8, Inc., effective as of October 1, 2017 (the "Effective Date"), to provide for the payment of certain benefits in connection with certain terminations of an Executive's employment, including in connection with a potential Change-in-Control of the Company.

**2. DEFINITIONS**

- 2.1 Administrator. For purposes of this Policy, "Administrator" means the person(s) designated by the Board or the Committee as the administrator of this Policy.
- 2.2 Board. For purposes of this Policy, the "Board" means the Board of Directors of the Company.
- 2.3 Cause. For purposes of this Policy, "Cause" means Executive's:
- a. willful failure to attend to Executive's duties that is not cured by Executive within 30 days of receiving written notice from the CEO (or, in the case of the CEO, from the Board) specifying such failure;
  - b. material breach of Executive's employment agreement that is not cured by Executive within 30 days of receiving written notice from the CEO (or, in the case of the CEO, from the Board) specifying such breach;
  - c. conviction of (or plea of guilty or nolo contendere to) any felony or a misdemeanor involving theft, embezzlement, dishonesty or moral turpitude; or
  - d. misconduct resulting in material harm to the Company's business or reputation, including fraud, embezzlement, misappropriation of funds or a material violation of the Executive's Confidential Information, Non-Disclosure and Invention Assignment Agreement.
- 2.4 Change-in-Control. For purposes of this Policy, "Change-in-Control" means the consummation of any of the following corporate transactions:
- a. an acquisition in one or more related transactions of 45% or more of the Company's common stock or voting securities by a "person" (as defined in Sections 13(d) and 14(d) of the Securities Exchange Act, but excluding the Company, any employee benefit plan of the Company and any corporation controlled by the Company's stockholders) or multiple "persons" acting as a group;
  - b. a complete liquidation or dissolution of the Company;

c. a sale, transfer or other disposition of all or substantially all of the Company's assets; or

d. a merger, consolidation or reorganization (collectively, a "Business Combination") other than a Business Combination in which (i) the stockholders of the Company receive 50% or more of the stock of the corporation resulting from the Business Combination and (ii) at least a majority of the board of directors of such resulting corporation were incumbent directors of the Company immediately prior to the consummation of the Business Combination and (iii) after which no individual, entity or group (excluding any corporation or other entity resulting from the Business Combination or any employee benefit plan of such corporation or of the Company) who did not own 45% or more of the stock of the resulting corporation or other entity immediately before the Business Combination owns 45% or more of the stock of such resulting corporation or other entity.

2.5 Code. For purposes of this Policy, "Code" means the Internal Revenue Code of 1986, as amended.

2.6 Committee. For purposes of this Policy, "Committee" means the Compensation Committee of the Board.

2.7 Company. For purposes of this Policy, "Company" means 8x8, Inc., a Delaware corporation, and any successor (whether direct or indirect, by purchase, merger, consolidation or otherwise) to all or substantially all of the business and/or assets of 8x8, Inc.

2.8 Constructive Termination. For purposes of this Policy, "Constructive Termination" means the termination of Executive's employment (a) by the Company other than for Cause or Disability or (b) by the Executive for Good Reason.

2.9 Disability. For purposes of this Policy, "Disability" means a physical or mental impairment for which the Executive qualifies for benefits under the Company's long-term disability program, as it may be amended from time to time.

2.10 Equity Award. For purposes of this Policy, "Equity Award" means each incentive award relating to the Company's common stock (whether stock options, stock appreciation rights, shares of restricted stock, restricted stock units, performance shares, performance units or other similar awards) other than incentive awards that are subject to the Original Policy.

2.11 Executive. For purposes of this Policy, "Executive" means any one of the following individuals: the Company's Chief Executive Officer; any officer classified by the Company as an Executive Vice President, including (as of the Effective Date) the Company's Chief Technology Officer, the Company's Chief Marketing Officer, the Company's Chief Product Officer and the Company's Chief Financial Officer; and any officer classified by the Company as a Senior Vice President. Notwithstanding the foregoing, unless an Executive has expressly agreed otherwise with the Company

pursuant to a written waiver of benefits under the Original Policy, any Executive in office immediately prior to the Effective Date shall not be eligible to receive any benefits under this Policy with respect to any termination of employment or Change-in-Control, except with respect to new Equity Awards granted on or after October 1, 2017. Notwithstanding anything to the contrary herein, Executive shall be eligible for all of the benefits provided under the terms of this Policy (and not the Original Policy) upon a Change-in-Control or Constructive Termination occurring after September 30, 2021, except to the extent expressly provided under the terms of the Original Policy.

2.12 Good Reason. For purposes of this Policy, "Good Reason" means the occurrence of any of the following conditions without Executive's written consent, but only if such condition is reported by the Executive within 90 days of Executive's knowledge that such condition has occurred and remains uncured 30 days after written notice from Executive to the Board of said condition:

- a. a material reduction in Executive's then-current base salary or annual target bonus (expressed as a percentage of Executive's then-current base salary), except for a reduction proportionate to reductions concurrently imposed on all other members of the Company's executive management;
- b. a material reduction in Executive's then-current employee benefits package, taken as a whole, except for a reduction proportionate to reductions concurrently imposed on all other members of the Company's executive management;
- c. a material reduction in Executive's responsibilities with respect to the Company's overall operations;
- d. as to the Chief Executive Officer, a requirement for the Chief Executive Officer to report to another officer as opposed to the Company's Board; or a failure to nominate the Chief Executive Officer for election as a Board member if at the proper time for nomination, the Chief Executive Officer is a Board member;
- e. a material breach by the Company of any material provision of Executive's employment agreement;
- f. a requirement that Executive relocate Executive's Company office (a) to a location more than 35 miles from Executive's then-current Company office location, unless such office relocation results in the distance between the new office and Executive's home being closer or equal to the distance between the prior office and Executive's home or (b) that is more than 50 miles from Executive's home, and such relocation results in the distance between the new office and Executive's home being at least 15 miles further than the distance between the prior office and Executive's home; or
- g. a failure of a successor or transferee to assume the Company's obligations under this Policy.

2.13 In Connection with a Change-in-Control. For purposes of this Policy, a termination of Executive's employment will be "in Connection with a Change-in-Control" if Executive's employment terminates at any time within three months before, on or within 12 months following a Change-in-Control.

2.14 Original Policy. For purposes of this Policy, "Original Policy" means the 8x8, Inc. Executive Change-in-Control and Severance Policy dated June 19, 2015, as amended from time to time.

2.15 Transaction Price. For purposes of this Policy, "Transaction Price" means the per share consideration paid pursuant to the transaction(s) constituting the Change-in-Control.

2.16 Stock Performance-Based Equity Award. For purposes of this Policy, "Stock Performance-Based Equity Award" means each Equity Award with vesting conditioned all or in part on the per share fair market value of the Company's common stock exceeding one or more target levels.

2.17 TSR Performance-Based Equity Award. For purposes of this Policy, "TSR Performance-Based Equity Award" means each Equity Award with vesting conditioned all or in part on the relative appreciation of the per share fair market value of the Company's common stock versus one or more other publicly-traded securities.

2.18 Time-Based Equity Award. For purposes of this Policy, "Time-Based Equity Award" means each Equity Award that generally vests based only on Executive's service to the Company over a specified time period.

### **3. CHANGE-IN-CONTROL BENEFITS**

If Executive is either employed at the time of a Change-in-Control or experiences a Constructive Termination in Connection with a Change-in-Control, Executive will receive the following change-in-control benefits from the Company:

3.1 Stock Performance-Based Equity Awards. Executive will be deemed to have satisfied the performance vesting condition for 100% of Company shares covered by Executive's outstanding Stock Performance-Based Equity Award(s) that (i) were granted prior to the Change-in-Control and (ii) have a target Company share price for vesting purposes equal to or less than the Transaction Price. The effective date of the foregoing vesting credit will be the date of the Change-in-Control. Any such Stock Performance-Based Equity Awards will continue to vest in accordance with any service-based vesting condition specified in the award agreement(s), except as otherwise provided by Article 4 of this Policy.

3.2 TSR Performance-Based Equity Awards. Executive will be deemed to have satisfied the performance vesting condition for that percentage of the Company shares covered by Executive's TSR Performance-Based Equity Award determined by applying the formula set forth in the award agreement as if (a) the last day of each performance measurement period specified in such agreement were the date of the Change-of-Control and (b) the fair market value of the Company's common stock on such date were the Transaction

Price provided, however, that no vesting credit under this Section 3.2 will apply to Executive's TSR Performance-Based Award(s) first granted after the Change-in-Control. The effective date of the foregoing vesting credit will be the date of the Change-in-Control. Any such TSR Performance-Based Equity Awards will continue to vest in accordance with any service-based vesting condition specified in the award agreement(s), except as otherwise provided by Article 4 of this Policy.

#### 4. CHANGE-IN-CONTROL SEVERANCE BENEFITS

If Executive experiences a Constructive Termination in Connection with a Change-in-Control, Executive will receive the following severance benefits from the Company.

4.1 Earned Amounts. Executive will receive all compensation that is earned but unpaid as of the date of termination, including salary, commissions and accrued but unused paid time off and vacation.

4.2 Cash Severance. Executive will receive a single lump sum severance payment equal to the sum of the percentage of Base Salary and Bonus set forth in the Benefit Schedules applicable to Executive's job title tier. This lump sum payment will be made within 60 days following termination of employment.

4.3 Time-Based Equity Awards. Executive will vest in 100% of Executive's outstanding Time-Based Equity Awards effective as of the Executive's date of termination (or, if later, the date of the Change-in-Control); provided, however, that Executive will vest in only 50% of Executive's outstanding and then unvested Time-Based Equity Awards if the date of termination or the date of the Change-in-Control (whichever is later) is prior to the 12-month anniversary of Executive's date of hire.

4.4 Benefits. For a period of 12 months following the date of termination, (i) Executive will on a monthly basis receive reimbursement of the full premium amount (less withholding taxes) charged under the Consolidated Omnibus Budget Reconciliation Act for continuation of Executive's group health insurance in effect as of the date of termination and (ii) Executive will have the right, on the same basis as other employees of the Company, to participate in and to receive benefits under any Company group medical, dental, life, disability or other group insurance plans, as well as under the Company's, educational assistance and other benefit plans and policies, to the extent such rights are available, or can be secured on commercially reasonable terms, under such plans and policies.

4.5 Performance-Based Equity Awards. Executive will fully vest in all shares covered by outstanding Stock Performance-Based Equity Awards and TSR Performance-Based Equity Awards for which the performance condition was deemed satisfied pursuant to Article 3 of this Policy. Executive will also receive this vesting acceleration benefit upon a Constructive Termination that occurs more than 12 months after a Change-in-Control (i.e., after such termination is no longer considered to be "in connection with a Change-in-Control").



## 5. SEVERANCE BENEFITS NOT IN CONNECTION WITH A CHANGE-IN-CONTROL

If Executive experiences a Constructive Termination during any time period not addressed by Article 4 of this Policy or terminates due to death or Disability at any time, Executive will receive the following severance benefits from the Company.

5.1 Earned Amounts. Executive will receive all compensation that is earned but unpaid as of the date of termination, including salary, commissions and accrued but unused paid time off and vacation.

5.2 Cash Severance. Executive will receive a single lump sum severance payment equal to the sum of the percentage of Base Salary and Bonus set forth in the Benefit Schedules applicable to Executive's job title tier. This lump sum payment will be made within 60 days following termination of employment.

5.3 Time-Based Equity Awards. Executive will vest in that portion (if any) of Executive's outstanding Time-Based Equity Awards set forth in the Benefit Schedules applicable to Executive's job title tier, effective as of the Executive's date of termination.

5.4 Benefits. For the period set forth in the Benefit Schedules applicable to Executive's job title tier, (i) Executive will receive payment of the full premium amount (less withholding taxes) charged under the Consolidated Omnibus Budget Reconciliation Act for continuation of Executive's group health insurance in effect as of the date of termination and (ii) Executive will have the right, on the same basis as other employees of the Company, to participate in and to receive benefits under any Company group medical, dental, life, disability or other group insurance plans, as well as under the Company's, educational assistance, and other benefit plans and policies, to the extent such rights are available, or can be secured on commercially reasonable terms, under such plans and policies.

5.5 Performance-Based Equity Awards. Executive will receive no acceleration of outstanding Stock Performance-Based Equity Awards and TSR Performance-Based Equity Awards.

## 6. CONDITIONS FOR PAYMENT OF SEVERANCE

6.1 Release of Claims. The payment of any severance or other benefits pursuant to Articles 3, 4 or 5 of this Policy will be subject to Executive signing and not revoking a release of claims agreement in a form approved by the Company, and such release becoming effective and irrevocable within 60 days of Executive's termination or such earlier deadline required by the release. Any severance amounts or benefits otherwise payable within 60 days of Executive's termination shall be paid on the 60<sup>th</sup> day following Executive's termination. If the release does not become effective within the time period set forth above, Executive will forfeit all rights to severance payments and benefits under this Policy.

6.2 Confidentiality. The payment of any severance or other benefits pursuant to Articles 3, 4 or 5 of this Policy will be subject to Executive's adherence to Executive's Confidential Information, Non-Disclosure and Invention Assignment Agreement (and/or any similar agreement as the Company and Executive may enter into from time to time).

## 7. COORDINATION WITH OTHER BENEFITS

7.1 Sole Severance Benefit. If any severance benefits and payments are payable to an Executive under this Policy, then such amounts will be the only severance benefits and payments that are due to Executive's upon Executive's Constructive Termination; provided, however, that any Executive in office immediately prior to the Effective Date may remain eligible for severance benefits and payments under the Original Policy, to the extent available thereunder; provided, however, that there shall be no duplication of such benefits or payments hereunder.

7.2 Mitigation. Executive will not be required to mitigate the amount of any payment contemplated by this Policy, nor will any earnings that Executive may receive from any other source reduce any such payment.

## 8. LIMITATION ON BENEFITS

8.1 Treatment of Parachute Payments. To the extent that any of the payments and benefits provided for in this Policy or otherwise payable to Executive (the "Payments") constitute "parachute payments" within the meaning of Section 280G of the Code, the amount of such Payments shall be either:

- a. the full amount of the Payments, or
- b. a reduced amount that would result in no portion of the Payments being subject to the excise tax imposed pursuant to Section 4999 of the Code (the "Excise Tax"), whichever of the foregoing amounts, taking into account the applicable federal, state, local and foreign income and employment taxes and the Excise Tax, results in the receipt by Executive, on an after-tax basis, of the greatest amount of benefit. In the event that any Excise Tax is imposed on the Payments, Executive will be fully responsible for the payment of any and all Excise Tax, and the Company will not be obligated to pay all or any portion of any Excise Tax.

8.2 Determination of Amounts. All computations and determinations called for by Section 8.1 shall be promptly determined and reported in writing to the Company and the Executive by independent public accountants or other independent advisors selected by the Company and reasonably acceptable to the Executive (the "Accountants"), and all such computations and determinations shall be conclusive and binding upon the Participant and the Company. For the purposes of such determinations, the Accountants may rely on reasonable, good faith interpretations concerning the application of Sections 280G and 4999 of the Code. The Company and the Executive shall furnish to the Accountants such information and documents as the Accountants may reasonably request in order to make their required determinations. The Company shall bear all fees and expenses charged by the Accountants in connection with these services.

## 9. ADMINISTRATION

The Policy will be administered by the Administrator. The Administrator may interpret the Policy, prescribe, amend and rescind rules and regulations under the Policy and make all other determinations necessary or advisable for the administration of the Policy, subject to all of the provisions of the Policy. The Administrator may delegate any of its duties hereunder to such person or persons from time to time as it may designate.

## 10. AMENDMENT OR TERMINATION

The Board will have the right to amend or terminate this Policy at any time in its sole discretion; provided, however that any amendment or termination reasonably determined to have an adverse effect on the then-eligible Executives (a) must be disclosed to the Executives at least three months prior to taking effect and (b) cannot take effect within three months before, on or within 12 months following any Change-in-Control. Unless earlier terminated, this Policy shall expire automatically on September 30, 2027.

## 11. NOTICES

11.1 Notice. Notices and all other communications contemplated by this Policy will be in writing and will be deemed to have been duly given when personally delivered or when mailed by U.S. registered or certified mail, return receipt requested and postage prepaid. In the case of Executive, mailed notices will be addressed to him/her at the home address which he/she most recently communicated to the Company in writing. In the case of the Company, mailed notices will be addressed to its corporate headquarters, and all notices will be directed to the attention of the Company's General Counsel.

11.2 Notice of Termination. Any Constructive Termination will be communicated by a notice of termination to the other party hereto given in accordance with Section 11.1 of this Policy. Such notice will indicate the specific termination provision in this Policy relied upon, will set forth in reasonable detail the facts and circumstances claimed to provide a basis for termination under the provision so indicated, and will specify the termination date.

## 12. SECTION 409A

12.1 General. Any benefits payable under this Policy upon an Executive's termination will be interpreted to require that Executive experiences a "separation from service" (as such term is defined in Treasury regulations issued under Code Section 409A). Further, if Executive is a "specified employee" within the meaning of Code Section 409A at the time of his separation from service (other than due to Executive's death), then the severance benefits payable to Executive under this Policy that are considered deferred compensation under Section 409A and are due to Executive on or within the six-month period following his separation from service will accrue during such six-month period and will become payable (without interest) in a lump sum payment on the earlier of (a) the first payroll date that occurs on or after the date six months and one day following the date of Executive's separation from service and (b) the Executive's death. Each payment and benefit payable under this Policy is intended to constitute a separate payment for purposes of Treasury Regulations 1.409A-2(b)(2).

12.2 Reimbursements. Notwithstanding any other provision herein to the contrary, to the extent that any in-kind benefit or reimbursement arrangement provides for a payment that is considered deferred compensation under Section 409A, then such in-kind benefit or reimbursements will be made in accordance with Treasury Regulations 1.409A-3(i)(1)(iv) including: (a) the amount of such in-kind benefits provided in any calendar year and the amount of such expenses eligible for reimbursement in any calendar year will not affect the in-kind benefits to be provided or expenses eligible for reimbursement in any other calendar year; (b) in no event will any such expenses be reimbursed after the last day of the calendar year following the calendar year in which the Executive incurred such expenses; and (c) in no event will any such right to reimbursement or the provision of any in-kind benefit be subject to liquidation or exchange for another benefit or payment.

12.3 Interpretation. The foregoing provisions are intended to comply with the requirements of Code Section 409A so that none of the severance payments and benefits to be provided hereunder will be subject to the additional tax imposed under Code Section 409A, and any ambiguities herein will be interpreted to so comply. Notwithstanding the foregoing, the Company makes no representations as to the tax compliance or treatment of any benefits payable under this Policy. The Company and Executive agree to work together in good faith to consider amendments to this Policy and to take such reasonable actions which are necessary, appropriate or desirable to avoid imposition of any additional tax or income recognition.

### 13. MISCELLANEOUS

13.1 Choice of Law. The validity, interpretation, construction and performance of this Policy will be governed by the laws of the State of California (with the exception of its conflict of laws provisions).

13.2 Integration. Except to the extent the Original Policy applies to an Executive, this Policy represents the entire agreement and understanding between the parties as to the payment of severance or other benefits if Executive's employment with the Company terminates, including in Connection with a Change-in-Control, and supersedes all prior or contemporaneous agreements and the vesting provisions of any Equity Award, with respect to the subject matter of this Policy.

13.3 Severability. In the event that any provision or any portion of any provision hereof becomes or is declared by a court of competent jurisdiction to be illegal, unenforceable, or void, this Policy will continue in full force and effect without said provision or portion of provision. The remainder of this Policy will be interpreted so as best to effect the intent of the Company and Executive.

13.4 Funding. The Company will not be required to fund or otherwise segregate assets to be used for the payment of any benefits under the Policy. The Company will make such payments only out of its general corporate funds, and therefore its obligation to make such payments will be subject to any claims of its other creditors.

13.5 Withholding. The Company may withhold all applicable taxes from payments or benefit due under this Policy.

**8X8, INC.**  
**2017 EXECUTIVE CHANGE-IN-CONTROL**  
**AND SEVERANCE POLICY**

**BENEFIT SCHEDULES AS OF OCTOBER 1, 2017**

<b>Tier</b>	<b>Change-in-Control Benefits</b>	<b>Change-in-Control Severance Benefits</b>	<b>Severance Benefits</b>
<u>Tier One</u> Chief Executive Officer	<p>Stock Performance-Based Equity Awards: Performance condition satisfied for 100% of shares subject to a per-share target price no higher than Transaction Price; any service-based vesting applies thereafter</p> <p>TSR Performance-Based Equity Awards: Performance condition satisfied for that number of shares determined by relative appreciation of Company common stock through Change-of-Control date; any service-based vesting applies thereafter</p>	<p>Cash: 100% of Base Salary + 100% of target Bonus</p> <p>Benefits: 12 months after date of termination</p> <p>Time-Based Equity Awards: 100% acceleration (50% acceleration, if within 12 months of hire date)</p> <p>Performance-Based Equity Awards: 100% acceleration for shares for which performance criteria deemed satisfied as Change-in-Control benefit</p>	<p>Cash: 150% of Base Salary + prorated % of earned Bonus, based on % of performance period before termination</p> <p>Benefits: 18 months after date of termination</p> <p>Time-Based Equity Awards: 12 months acceleration</p> <p>Performance-Based Equity Awards: 0% acceleration</p>
<u>Tier Two</u> Executive Vice Presidents	See Tier One	<p>Cash: 100% of Base Salary + 0% of Bonus</p> <p>Benefits: 12 months after date of termination</p> <p>Time-Based Equity Awards: 100% acceleration (50% acceleration, if within 12 months of hire date)</p> <p>Performance-Based Equity Awards: 100% acceleration for shares for which performance criteria deemed satisfied as Change-in-Control benefit</p>	<p>Cash: 100% of Base Salary + prorated Bonus</p> <p>Benefits: 12 months after date of termination</p> <p>Time-Based Equity Awards: no acceleration</p> <p>Performance-Based Equity Awards: 0% acceleration</p>

<p><u>Tier Three</u> Senior Vice Presidents</p>	<p>See Tier One</p>	<p>Cash: 100% of Base Salary + 0% of Bonus</p> <p>Benefits: 12 months after date of termination</p> <p>Time-Based Equity Awards: 100% acceleration (50% acceleration, if within 12 months of hire date)</p> <p>Performance-Based Equity Awards: 100% acceleration for shares for which performance criteria deemed satisfied as Change-in-Control benefit</p>	<p>Cash: 75% of Base Salary + pro-rated Bonus</p> <p>Benefits: 9 months after date of termination</p> <p>Time-Based Equity Awards: no acceleration</p> <p>Performance-Based Equity Awards: 0% acceleration</p>
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**8X8, INC.**  
**THIRD AMENDED AND RESTATED MANAGEMENT INCENTIVE BONUS PLAN**  
**Effective: June 22, 2012**  
**Amended: January 23, 2017, May 22, 2017 & May 28, 2018**

**1. PURPOSE**

The purpose of this Third Amended and Restated Management Incentive Bonus Plan (the "Plan") is to promote the success of 8x8, Inc. (the "Company") by providing financial incentives to eligible Employees (individually a "Participant" and collectively the "Participants") to strive for more effective operation of the Company's business. The Company intends to use this Plan to link the interest of stockholders of the Company and Plan Participants by motivating Participants to focus on profitable revenue growth, product quality, completing individual objectives that support the Company's overall business strategy, to attract and retain Participants' services and to create a variable compensation plan that is competitive with other companies in the Company's market.

**2. DEFINITIONS**

The following definitions shall be applicable throughout the Plan:

- a. "Annual Period" means the twelve-month period starting April 1 and ending March 31, which corresponds to the Company's fiscal year as of the Effective Date.
  - b. "Award" means, as applicable, (a) the individual right of a Participant to receive payments under this Plan with respect to Annual and Quarter Periods and related benefits, or (b) the amount of cash (or stock in lieu thereof) paid to a Participant under the Plan with respect to an Annual or Quarter Period.
  - c. "Award Determination Date" means the date following the end of each Annual Period and each Quarter Period that the Compensation Committee of the Company's Board of Directors (the "Committee") meets to review individual and Company performance, which shall in any event be no later than 45 days from the end of each Quarter Period and no later than 60 days from the end of each Annual Period.
  - d. "Effective Date" means June 22, 2012.
  - e. "Employee" means any individual, including an officer, who is a full service employee of the Company or any entity in which the Company beneficially owns more than 50% of the outstanding ownership interests entitled to vote for the election of directors or the equivalent managing body of such entity, determined on a worldwide basis.
  - f. "Participant" has the meaning set forth in Section 1 above.
  - g. "Participation Date" means, for each Participant, the date on which the Participant commences participation in the Plan as determined in accordance with Section 4.
  - h. "Quarter Period" means the three-month period representing the Company's fiscal quarter. The quarters begin on April 1<sup>st</sup>, July 1<sup>st</sup>, October 1<sup>st</sup>, and January 1<sup>st</sup>.
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- i. "Term of the Plan" means the period during which the Plan is effective. This period shall begin on the Effective Date and end on a date to be determined in accordance with Section 10 of the Plan.

### 3. POWERS AND ADMINISTRATION

- a. Administration by the Committee. Subject to any powers to be exercised by the Company's board of directors, in its discretion, the Committee shall administer the Plan and have such powers and duties as are conferred upon it under this Plan, or any amendments thereto, or by the Board of Directors of the Company. The Committee shall have the authority and complete discretion to (i) prescribe, amend and rescind rules relating to the Plan; (ii) select Participants to receive Awards; (iii) construe and interpret the Plan; (iv) make changes in relation to the Term of the Plan; (v) correct any defect or omission, or reconcile any inconsistency in the Plan; (vi) authorize any person to execute on behalf of the Company any instrument required to effectuate the grant of an Award; and (vii) make all other determinations deemed necessary or advisable for the administration of the Plan.
- b. Committee's Interpretation Final. The Committee's interpretation and construction of any provision of the Plan shall be final and binding on all persons claiming an interest in an Award granted or issued under the Plan. Neither the Committee nor any director shall be liable for any action or determination made in good faith with respect to the Plan. The Company, in accordance with its bylaws, shall indemnify and defend such parties to the fullest extent provided by law and such bylaws.
- c. Nontransferability of Awards. An award granted a Participant shall not be assignable or transferable in whole or in part, either voluntarily or by operation of law or otherwise. In the event of the Participant's death, an Award is transferable by the Participant only by will or the laws of descent and distribution. Any attempted assignment, transfer or attachment by any creditor in violation of this Subsection 3(c) shall be null and void.

### 4. ELIGIBILITY AND PARTICIPATION

- a. Eligibility. All executive officers of the Company and other Employees deemed eligible by the Committee shall be eligible to participate in the Plan, and the Committee's grant of an Award to an Employee shall be conclusive evidence of the Committee's determination of that Employee's eligibility. A Participant's participation in the Plan shall be deemed to commence effective as of his or her Participation Date. The Participation Date for an eligible Employee will be (a) the Employee's date of hire or (b) such other date as the Committee may approve (for example, the date of an existing Employee's promotion to a new position). A Participant whose participation in the Plan commences on a date other than on the first day of an Annual Period shall be entitled to receive a pro-rated payment with respect to that Annual Period, based on the number of days the Participant participates in the Plan versus the maximum number of days available for participation during the Annual Period (assuming all other payment conditions are satisfied). Similarly, a Participant shall be entitled to a pro-rated payment with respect to the Quarter Period during which his or her participation in the Plan commences, based on the number of days of actual participation versus the maximum number of days available during the Quarter Period (assuming all other payment conditions are satisfied).
- b. Employment Requirement. Participants must be employed with the Company on the Award Determination Date and on the date the Award is to be paid, to be eligible for an Award payment under the Plan.

c. Participation and Approval. For each Annual Period, the Chief Executive Officer shall present to the Committee a list of recommended Participants employed by the Company or a Company subsidiary at that time together with a recommended target Award for each Participant (other than the Chief Executive Officer) for the fiscal year, which recommendations may be submitted after the commencement of the current Annual Period. The Committee shall review the Chief Executive Officer's report, make any adjustments the Committee deems necessary, and approve target Awards for the Annual Period and, if applicable, Quarter Periods. The Committee or the Chief Executive Officer shall communicate to each Participant his or her participation in the Plan and his or her individual objectives and targets.

## 5. CALCULATION OF AWARDS

### a. Awards Based on Objectives.

i. Awards for the Annual Period shall be based on (A) successful completion of approved individual objectives for such period (as approved at the beginning of the fiscal year), (B) the Company's performance against predetermined metrics (as approved at the beginning of the fiscal year), or (C) some combination of both, as determined by the Committee at the beginning of the relevant fiscal year.

ii. Awards for the Quarter Period shall be based on (A) successful completion of approved individual objectives for such period (as approved at the beginning of the fiscal year or the relevant fiscal quarter), (B) the Company's performance against predetermined metrics (as approved at the beginning of the fiscal year or the relevant fiscal quarter), or (C) some combination of both, as determined by the Committee at the beginning of the relevant fiscal year.

b. Determination of Award Target. Target amounts for Awards for Participants are determined by competitive market information relevant to the job the individual is performing for the Company, the job function of the individual and the individuals' expected contributions to the Company. The target amounts may be a specified dollar amount or a percentage of base pay.

## 6. PAYMENT

All payments are to be made in cash or, in the Committee's sole discretion with respect to any or all Participants, shares of the Company's common stock. All payments are to be made, less applicable federal, state, local and other withholdings, as soon as practicable after the Award Determination Date, but in all events within 2-1/2 months after it. Any shares of common stock paid in lieu of cash pursuant to this Section 6 shall be issued pursuant to, and shall be subject to the terms and conditions of, the Company's Amended and Restated 2012 Equity Incentive Plan (or any successor plan), including, without limitation, the withholding provisions thereof.

## 7. AMENDMENT OF THE PLAN

The Committee may, from time to time, terminate, suspend, or discontinue the Plan, in whole or part, or revise or amend it in any respect whatsoever.

## **8. SOURCE OF FUNDS**

The Plan is funded by a portion of profits in excess of minimum profit targets set forth annually by the Committee. All awards paid under the Plan are paid from the general assets of the Company and are not liabilities of the Company at any time prior to the time when payment is made. Nothing contained in the Plan shall require the Company to segregate any monies from its general funds, or to create any trust or make any special deposit in respect of any amounts payable under the Plan to or for any Participant or group of Participants.

## **9. RIGHTS AS AN EMPLOYEE**

The Plan shall not be construed to give any individual the right to remain in the employ of the Company or to affect the right of the Company to terminate such individual's status as an Employee. Participation in the Plan will not affect participation in any other compensatory plan maintained by the Company.

## **10. EFFECTIVE DATE OF PLAN**

The Plan is effective on the Effective Date and shall remain in effect until such time as the Committee decides to terminate the Plan.

**COLEMAN HIGHLINE****OFFICE LEASE**

This Office Lease (the "**Lease**"), dated as of the date set forth in Section 1 of the Summary of Basic Lease Information (the "**Summary**"), below, is made by and between CAP Phase 1, LLC, a Delaware limited liability company ("**Landlord**"), and 8X8, INC., a Delaware corporation ("**Tenant**").

**SUMMARY OF BASIC LEASE INFORMATION**

TERMS OF LEASE	DESCRIPTION
1. Date:	January 23, 2018
2. Premises (Article 1).	
2.1 Building:	That certain five (5) story building located at 1143 Coleman Avenue, San Jose, California, consisting of 162,557 rentable square feet of space (" <b>RSF</b> "), commonly known as Building One.
2.2 Premises:	The entirety of the 162,557 RSF of the Building, as further set forth in <b>Exhibit A-2</b> to this Lease.
3. Lease Term (Article 2).	
3.1 Length of Term:	One hundred thirty-two (132) full calendar months.
3.2 Lease Commencement Date:	The earlier to occur of (i) the date upon which Tenant first commences to conduct business in the Premises, and (ii) January 1, 2019, subject to Lease Commencement Date Delay, as defined in <u>Section 5</u> of the Tenant Work Letter attached hereto as <b>Exhibit B</b> . In addition, Tenant shall have certain rights to occupy the Premises prior to the Lease Commencement Date for the construction of the Tenant Improvements, phased move- in and limited business operations, subject to, and in accordance with <u>Section 2.2.1</u> of this Lease.
3.3 Lease Expiration Date:	The last day of the one hundred thirty-second (132nd) full calendar month of the Lease Term, subject to the option to renew set forth in <u>Section 2.2</u> of this Lease.
4. Base Rent (Article 3):	

Period During <u>Lease Term</u>	Annual <u>Base Rent</u>	Monthly Installment <u>of Base Rent</u>	Monthly Base <u>Rent per RSF</u>
Months 1 - 12*	\$6,144,654.60	\$512,054.55	\$3.15
Months 13 - 24*	\$6,328,994.28	\$527,416.19	\$3.24
Months 25 - 36	\$6,518,864.16	\$543,238.68	\$3.34
Months 37 - 48	\$6,714,430.08	\$559,535.84	\$3.44
Months 49 - 60	\$6,915,863.04	\$576,321.92	\$3.55
Months 61 - 72	\$7,123,338.96	\$593,611.58	\$3.65
Months 73 - 84	\$7,337,039.16	\$611,419.93	\$3.76
Months 85 - 96	\$7,557,150.36	\$629,762.53	\$3.87
Months 97 - 108	\$7,783,864.92	\$648,655.41	\$3.99
Months 109 - 120	\$8,017,380.84	\$668,115.07	\$4.11
Months 121 - 132	\$8,257,902.24	\$688,158.52	\$4.23

\*Subject to the Base Rent Abatement set forth in Section 3.2 of this Lease below.

5. Tenant's Share (Article 4): Approximately 100%.
6. Permitted Use (Article 5): General office, research and development, laboratory, manufacturing, shipping and receiving uses, and ancillary uses thereto, all of which uses shall comply with (i) all "Applicable Laws," as that term is set forth in Article 24 of this Lease, including "Environmental Laws" and "Environmental Permits" (each as defined in Exhibit G), (ii) all applicable zoning and building codes and (iii) the first-class nature of the Project.
7. Letter of Credit (Article 21): \$8,100,000.00, subject to reduction as set forth in Article 21 below.
8. Parking Pass Ratio (Article 28): Up to 520 unreserved parking passes, commencing on the Lease Commencement Date, as elected by Tenant in writing at any time during the Lease Term. Tenant's electrical vehicle parking rights and certain rights to additional parking are set forth in Article 28 below
9. Address of Tenant (Section 29.18):  
8x8, Inc.  
2125 O'Nel Drive  
San Jose, California 95131 Attention: Chief Financial Officer  
(Prior to Lease Commencement Date)
- and
- 8x8, Inc.  
  
1143 Coleman Avenue, Building 1  
San Jose, California 95110  
Attention: Chief Financial Officer  
(After Lease Commencement Date)
- At all times, with a copy to:
- Pillsbury Winthrop Shaw Pittman LLP  
725 South Figueroa Street, Suite 2800  
Los Angeles, California 90017-5406  
Attention: James M. Rishwain, Jr.
10. Address of Landlord (Section 29.18): See Section 29.18 of the Lease.
11. Brokers(s) (Section 29.24): CBRE, Inc.
13. Tenant Improvement Allowance (Exhibit B): \$15,776,100.00 [i.e., \$13,817,300 in allowance, plus \$2,438,400 in restricted funds, less \$479,000 for the Landlord work on the lobby of the Building], subject to the allocation restrictions described in the Tenant Work Letter.

PREMISES, BUILDING, PROJECT, AND COMMON AREAS

**1.1 Premises, Building, Project and Common Areas.**

1.1.1 **The Premises.** Landlord hereby leases to Tenant and Tenant hereby leases from Landlord the premises set forth in Section 2.2 of the Summary (the "Premises"). The outline of the Premises is set forth in Exhibit A-2 attached hereto. Landlord and Tenant hereby acknowledge and agree that the RSF of the Premises is stipulated as set forth in Section 2.2 of the Summary, and that such RSF shall not be subject to remeasurement or modification. The parties hereto agree that the lease of the Premises is upon and subject to the terms, covenants and conditions herein set forth, and Tenant covenants as a material part of the consideration for this Lease to keep and perform each and all of such terms, covenants and conditions by it to be kept and performed and that this Lease is made upon the condition of such performance. The parties hereto hereby acknowledge that the purpose of Exhibit A-2 is to show the approximate location of the Premises in the "Building," as that term is defined in Section 1.1.2, below, only, and such Exhibit is not meant to constitute an agreement, representation or warranty as to the construction of the Premises, the precise area thereof or the specific location of the "Common Areas," as that term is defined in Section 1.1.3, below, or the elements thereof or of the accessways to the Premises or the "Project," as that term is defined in Section 1.1.2, below. Landlord shall not be obligated to provide or pay for any improvement work or services related to the improvement of the Premises, except as specifically set forth in this Lease and in the Tenant Work Letter attached hereto as Exhibit B (the "Tenant Work Letter"). Tenant also acknowledges that neither Landlord nor any agent of Landlord has made any representation or warranty regarding the condition of the Premises, the Building or the Project or with respect to the suitability of any of the foregoing for the conduct of Tenant's business, except as specifically set forth in this Lease and the Tenant Work Letter.

1.1.1.1 **Landlord's Warranty.** Notwithstanding anything set forth in this Lease to the contrary, upon the Lease Commencement Date, the Base Building, as that term is defined in Section 8.2 of this Lease, shall be in good working condition and repair, and Landlord hereby covenants that the Base Building shall be in good working condition pursuant to the terms and conditions of this Section 1.1.1. Landlord shall, at Landlord's sole cost and expense (which shall not be deemed an Operating Expense, as that term is defined in Section 4.2.4), repair or replace any failed or inoperable portion of such Base Building ("**Landlord's Warranty**"), provided that the need to repair or replace was not caused by the misuse, misconduct, damage, destruction, omissions, and/or negligence (collectively, "**Tenant Damage**") of Tenant, its subtenants and/or assignees, if any, or any company which it acquired, sold or merged with Tenant, or any Tenant Parties, as that term is defined in Section 10.1, below, or by any modifications, Alterations, as that term is defined in Section 8.1 below, or improvements (including the Tenant Improvements) constructed by or on behalf of Tenant. Landlord's Warranty shall not be deemed to require Landlord to replace any portion of any Base Building, as opposed to repair such portion of such Base Building, unless prudent commercial property management practices dictate replacement rather than repair of the item in question. To the extent repairs which Landlord is required to make pursuant to this Section 1.1.1 are necessitated in part by Tenant Damage, then Tenant shall reimburse Landlord for an equitable proportion of the cost of such repair. If it is determined that the Base Building (or any portion thereof) was not in good working condition and repair as of the Lease Commencement Date, Landlord shall not be in default under this Lease, but Landlord, at no cost to Tenant, shall promptly commence such work or take such other action as may be necessary to place the same in good working condition and repair, and shall thereafter diligently pursue the same to completion. The obligation of Landlord under this Section 1.1.1.1 and Landlord's Warranty shall be in place for a period of twelve (12) months following the Lease Commencement Date and shall relate to any matter that is in existence during such twelve month period.

1.1.2 **The Building and The Project.** The Premises is the principal component of the building set forth in Section 2.1 of the Summary (the "**Building**"). The Building is part of a mixed-use project known as "Coleman Highline." The term "**Project**," as used in this Lease, shall mean (i) the Building, (ii) the Common Areas, (iii) the building within the Project known as Building Two depicted on the site plan attached hereto as Exhibit A-1 and located at 1155 Coleman Avenue ("**Building 2**"), which together with the Building, constitute "**Phase 1**" of the Project, (iv) once constructed, up to six (6) other office buildings (commonly known as Buildings Three through Eight), up to two (2) hotels, up to five (5) amenities structures, and up to two (2) retail buildings, all as depicted on the site plan attached hereto as Exhibit A-1, (v) the land (which is improved with landscaping, parking facilities, outdoor amenities areas and other improvements) upon which the Building and the adjacent buildings are located, and (v) at Landlord's discretion, any additional real property, areas, land, buildings or other improvements added thereto outside of the Project; provided that any such additions to the Project will not materially and adversely affect Tenant's use of, access to, the Premises and Building or Tenant's Parking Areas, or materially increase Tenant's monetary obligations under this Lease.

1.1.3 **Common Areas.** Tenant shall have the non-exclusive right to use in common with other tenants in the Project, and subject to the reasonable rules and regulations referred to in Article 5 of this Lease, those portions of the Project which are provided, from time to time, for use in common by Landlord, Tenant and any other tenants of the Project (such areas, together with such other portions of the Project designated by Landlord, in its discretion, including certain areas designated for the exclusive use of certain tenants, or to be shared by Landlord and certain tenants, are collectively referred to herein as the "**Common Areas**"). The manner in which the Common Areas are maintained and operated shall be at the sole discretion of Landlord and the use thereof shall be subject to such rules, regulations and restrictions as Landlord may make from time to time. Landlord reserves the right to close temporarily, make alterations or additions to, or change the location of elements of the Project and the Common Areas. Except when and where Tenant's right of access is specifically excluded as the result of (i) an emergency, (ii) a requirement by Applicable Law or the Underlying Documents (as that term is defined in Section 4.2.4 below), or (iii) a specific provision set forth in this Lease, Tenant shall have the right of ingress and egress to the Premises and

Tenant's Parking Areas (as that term is defined in Article 28 below) twenty- four (24) hours per day, seven (7) days per week, every day of the year during the Lease Term.

1.1.4 **Amenities Building.** The Project shall include construction of an amenities building ("**Amenities Building**") located at 1149 Coleman Avenue, Santa Clara, California, the location of which Amenities Building is shown on Exhibit A-1 attached hereto. Landlord shall operate the Amenities Building for use by the tenants and occupants of the Building and Buildings Two through Four in the Project, such use may include all or any of the following uses: a fitness center or health club (the "**Fitness Center**"), conference facilities, cafeteria, or any other use consistent with the practices of landlords of Comparable Buildings. The Amenities Building shall, at all times, include a Fitness Center that is accessible and operational no less than six (6) days a week, subject to temporary closures for repairs and maintenance, and closures due to an event of casualty, Force Majeure, or emergency, and subject to Tenant's compliance with Landlord's access rules and procedures. Tenant acknowledges and agrees that the Fitness Center need not be fully staffed at all times. Tenant shall have the non-exclusive right during the Lease Term to use the Amenities Building for the uses made available by Landlord. Landlord reserves the right to control the manner in which the Amenities Building is maintained and operated, and to make alterations or additions to, or to relocate (but not entirely eliminate) the Amenities Building; provided that Landlord shall continue to operate and maintain the Amenities Building consistent with the practices of landlords of Comparable Buildings. Tenant shall comply with such reasonable rules, regulations and requirements relating to the Amenities Building as Landlord may from time to time promulgate (including the requirement, if applicable, that Tenant's employees using the any services provided at the Amenities Building execute Landlord's standard waiver form). Tenant acknowledges and agrees that Landlord shall have the right to include in Operating Expenses costs incurred in connection with the Amenities Building, but otherwise, Tenant's employees shall not be charged for use of the Amenities Building.

1.2 **Right of First Offer.** Landlord hereby grants to the original Tenant set forth in this Lease (the "**Original Tenant**") and any Permitted Transferee Assignee, a one-time right of first offer (the "**Right of First Offer**") with respect to "Available" office space in the Project and consisting of up to the entirety of one (1) full floor (the "**First Offer Space**"), on the terms and conditions set forth in this Section 1.3. The First Offer Space shall be located Building 2, unless First Offer Space in Building 2 is not Available at the time of Tenant's delivery of a "Request Notice", then Landlord shall designate the location of the First Offer Space within another office building in the Project, which other space shall be Available space with the earliest occurring anticipated date of delivery to Tenant. For purposes hereof, First Offer Space shall be "**Available**" if it is (i) unleased as of the date of Landlord's receipt of a "Request Notice", as that term is defined below, (ii) not then subject to any Superior Rights, (iii) not then the subject, in whole or in part, of a lease proposal, letter of intent, term sheet, lease document delivered or received by Landlord within the ninety (90) day period immediately preceding Landlord's receipt of the Request Notice, and (iv) not then the subject, in whole or in part, of leasing negotiations (either orally or in writing) within the ninety (90) day period immediately preceding Landlord's receipt of the Request Notice. Subject to the terms and conditions of Section 1.2.7 below, such Right of First Offer shall be subordinate to any leases entered into by Landlord for the First Offer Space prior to Landlord's receipt of a Request Notice, and subordinate to any lease (even if entered into by Landlord after receipt of a Request Notice) which lease pertains to four (4) full floors or more of a particular building in the Project, including any expansion or must-take space (collectively, the "**Superior Leases**") (including renewals and expansions of any such leases, irrespective of whether any such renewal are currently set forth in such leases or are subsequently granted or agreed upon, and regardless of whether such renewals are consummated pursuant to a lease amendment or a new lease). Such Right of First Offer shall be subordinate to all expansion rights set forth in such Superior Leases, which rights relate to the First Offer Space, including, without limitation, any expansion, first offer, first refusal, first negotiation and other rights, regardless of whether such rights are executed strictly in accordance with their respective terms or pursuant to a lease amendment or a new lease (the "**Superior Rights**"). Notwithstanding any contrary provision in the lease of any Superior Right Holder, such rights of any Superior Right Holder shall continue to be Superior Rights in the event that such Superior Right Holder's lease is renewed or otherwise modified (and irrespective of whether any such renewal is currently set forth in such lease or is subsequently granted or agreed upon, and regardless of whether such renewal is consummated pursuant to a lease amendment or a new lease). All such tenants of Superior Leases, are collectively referred to as the "**Superior Right Holders**".

1.2.1 **Procedure for Offer.** Subject to the terms of this Section 1.2, Tenant may deliver written notice to Landlord (the "**Request Notice**") that Tenant desires to lease Available First Offer Space. Within ten (10) business days following Landlord's receipt of a Request Notice, Landlord shall deliver written notice to Tenant (the "**First Offer Notice**") describing First Offer Space that is then Available. If no space in the Project is Available as of the date of Tenant's delivery of a Request Notice, then Tenant's Right of First Offer shall not terminate, and Tenant shall continue to have a right to deliver a Request Notice, until Landlord is able to send a First Offer Notice pertaining to Available space. Pursuant to such First Offer Notice, Landlord shall offer to lease to Tenant the then available First Offer Space. The First Offer Notice shall describe the space so offered to Tenant and shall set forth the Base Rent and the other "Economic Terms" (as that term is defined herein below) upon which Landlord is willing to lease such space to Tenant. The First Offer Notice shall additionally include a determination as to whether, and if so to what extent, Tenant must provide Landlord with financial security, such as an enhanced security deposit, a letter of credit or guaranty, for Tenant's Rent obligations during the First Offer Term. As used in this Section 1.3, "**Economic Terms**" shall refer to: (i) the rental rate (including additional rent and considering any "base year" or "expense stop" applicable thereto); (ii) the amount of any improvement allowance or the value of any work to be performed by Landlord in connection with the lease of such First Offer Space (which amount is a deduction from the cost to Tenant or such other party); and (iii) the amount of free rent (which amount is a deduction from the cost to Tenant or such other party). Notwithstanding the foregoing, if the First Offer Commencement Date (as that term is defined in Section 1.2.3 below) is anticipated to commence during the first twelve (12) full calendar months of the Lease Term, then the Economic Terms shall be equal to the terms and conditions applicable to the initial Premises (determined on a per RSF basis based on the number of RSF in the First Offer Space, and prorated to reflect any difference in the Lease Term compared to the total term of Tenant's lease of the First Offer Space) (the "**Stipulated Economic Terms**").

1.2.2 **Procedure for Acceptance.** If Tenant wishes to exercise Tenant's Right of First Offer with respect to the space described in the First Offer Notice, then within seven (7) business days of delivery of the First Offer Notice to Tenant, Tenant shall have the right to deliver notice to Landlord ("**Tenant's First Offer Exercise Notice**") of Tenant's election to exercise its right of first offer with respect to the entire space described in the First Offer Notice on the terms contained in such notice. If Tenant does not deliver Tenant's First Offer Exercise Notice within the seven (7) business day period, then Landlord shall be free to enter into a lease ("**Third Party Lease**") for the space described in the First Offer Notice to anyone to whom Landlord desires on any terms Landlord desires; provided, however, if the First Offer Commencement Date is *not* anticipated to commence during the first twelve (12) full calendar months of the Lease Term, then during the 180-day period following the initial delivery of the First Offer Notice to Tenant, the Economic Terms that Landlord is prepared to accept under a Third Party Lease are greater than five percent (5%) more favorable to the tenant than the Economic Terms offered by Landlord to Tenant (as determined using a "Net Equivalent Lease Rate", as defined in **Exhibit F** attached hereto), then Landlord shall first make an offer of such more favorable Economic Terms (as such Economic Terms are determined using a Net Equivalent Lease Rate and adjusted to account for the difference, if any, in the lease term offered to Tenant and the lease term offered to such third party) (the "**New Offer Terms**") to Tenant by written notice (the "**Additional Notice**") setting forth the New Offer Terms, and Tenant shall have five (5) business days from Tenant's receipt of the Additional Notice to accept the New Offer Terms set forth in the Additional Notice (which procedure shall be repeated until Landlord enters into a lease or lease amendment with respect to such First Offer Space which does not require Landlord to deliver another Additional Notice to Tenant pursuant to the terms of this paragraph or Tenant exercises such Right of First Offer, as applicable). If Landlord does not lease the First Offer Space within the foregoing one hundred eighty (180) day period, then Landlord shall also provide Tenant with an Additional Notice prior entering into a Third Party Lease. Landlord shall not be obligated to deliver an Additional Notice, and may enter into a Third Party Lease on any terms Landlord desires, at any time, if First Offer Notice offered to lease the First Offer Space to Tenant on the Stipulated Economic Terms.

1.2.3 **First Offer Term.** Tenant shall commence payment of Rent for the First Offer Space, and the term of the First Offer Space (the "**First Offer Term**") shall commence upon the date set forth in the First Offer Notice (the "**First Offer Commencement Date**") and shall terminate on the Lease Expiration Date.

1.2.4 **Construction in First Offer Space.** Tenant shall take the First Offer Space in its "as is" condition, and Tenant's construction of improvements in the First Offer Space shall comply with the terms of **Article 8** of the First Offer Lease (defined below). Any improvement allowance to which Tenant may be entitled shall be as set forth in the First Offer Notice.

1.2.5 **First Offer Lease.** If Tenant timely exercises its Right of First Offer as set forth herein, then Landlord and Tenant shall, within thirty (30) days thereafter, execute a separate lease for such First Offer Space (the "**First Offer Lease**") which First Offer Lease shall contain the terms and conditions set forth in the First Offer Notice and this **Section 1.2**, and the non-business oriented terms of this Lease, but with appropriate adjustments to reflect the multi-tenant nature of the building in which the First Offer Space is located. Notwithstanding the foregoing, the failure of Landlord and Tenant to execute and deliver such First Offer Lease shall not affect an otherwise valid exercise of Tenant's first offer rights or the parties' rights and responsibilities in respect thereof.

1.2.6 **Termination of Right of First Offer.** The Right of First Offer shall be personal to the Original Tenant and any Permitted Transferee Assignee, and may only be exercised by the Original Tenant or such Permitted Transferee Assignee (and not any other assignee, sublessee or other transferee of Tenant's interest in this Lease). The Right of First Offer granted herein shall terminate upon (i) Tenant's failure to timely exercise its Right of First Offer, (ii) upon the date, if at all, that Landlord enters into Third Party Lease(s) for the entire First Offer Space, (iii) no First Offer Space being Available as of the date of Landlord's receipt of the Request Notice, (iv) the date that Tenant delivers a Transfer Notice (as that term is defined in **Section 14.1** below) pertaining to an assignment of this Lease or the subleasing of twenty-five percent (25%) or more of the RSF of the initial Premises, (v) the last day of the thirty-six (36) month of the Lease Term. Tenant shall not have the right to lease First Offer Space, as provided in this **Section 1.2**, if, as of the date of the attempted exercise of any right of first offer by Tenant, or, at Landlord's option, as of the scheduled date of delivery of such First Offer Space to Tenant, an Event of Default is then occurring under this Lease.

## **ARTICLE 2**

### **LEASE TERM; OPTION TERM**

2.1 **In General.** The terms and provisions of this Lease shall be effective as of the date of this Lease. The term of this Lease (the "**Lease Term**") shall be as set forth in **Section 3.1** of the Summary, shall commence on the date set forth in **Section 3.2** of the Summary (the "**Lease Commencement Date**"), and shall terminate on the date set forth in **Section 3.3** of the Summary (the "**Lease Expiration Date**") unless this Lease is sooner terminated or extended as hereinafter provided. For purposes of this Lease, the term "**Lease Year**" shall mean each consecutive twelve (12) month period during the Lease Term, provided that the last Lease Year shall end on the Lease Expiration Date. Within thirty(30) days following the Lease Commencement Date, Landlord may deliver to Tenant a notice in the form as set forth in **Exhibit C**, attached hereto, which Tenant shall execute and return to Landlord within ten (10) business days of receipt thereof (provided that if said Notice of Lease Term Dates is not factually correct, then Tenant shall make such changes as are necessary to make the Notice of Lease Term Dates factually correct and shall thereafter execute and return such Notice of Lease Term Dates to Landlord within such ten (10) business day period), and thereafter the dates set forth on such Notice of Lease Term Dates shall be conclusive and binding upon Tenant and Landlord, unless Landlord sends a Notice to Tenant rejecting Tenant's changes, whereupon this procedure shall be repeated until the parties mutually agree upon the contents of the Notice of Lease Term Dates. In the event Landlord shall fail to send Tenant the Notice of Lease Term Dates within thirty (30) days following the Lease Commencement



Date, such failure shall not be a default under this Lease, but Tenant may send to Landlord Notice of the occurrence of the Lease Commencement Date substantially in the form of the Notice of Lease Term Dates which Notice of Lease Term Dates Landlord shall acknowledge by executing a copy of the Notice of Lease Term Dates and returning it to Tenant (provided that if said Notice of Lease Term Dates is not factually correct, Landlord shall make such changes to the Notice of Lease Term Dates as are necessary to make such Notice of Lease Term Dates factually correct, which revised Notice of Lease Term Dates shall thereafter be subject to the procedure for finalization set forth in this [Section 2.1](#)).

2.1.1 **Early Occupancy.** Notwithstanding the terms and conditions of [Section 2.1](#) above or [Section 3.1](#) of the Summary, but subject to the terms and conditions of this [Section 2.1.1](#), if the Tenant Improvements are substantially completed prior to the Lease Commencement Date, Tenant shall have the right thereafter to occupy up to two (2) full floors of the Premises prior to the Lease Commencement Date for the conduct of Tenant's business, without such occupancy causing the Lease Commencement Date to occur (the portion of the Premises so occupied by Tenant, as determined in full floor increments is the "**Early Access Premises**"); provided that (i) Tenant shall give Landlord prior written notice of (a) the date of any such early occupancy and (b) the location of the Early Access Premises, (ii) a certificate of occupancy, temporary certificate of occupancy, or legal equivalent shall have been issued by the appropriate governmental authorities for the Early Access Premises, (iii) Tenant has delivered to Landlord satisfactory evidence of the insurance coverage required to be carried by Tenant in accordance with [Article 10](#) below, (iv) the Construction Period (as that term is defined in [Section 10.1.2](#) below) has expired, and (v) except as provided hereinbelow, all of the terms and conditions of the Lease shall apply as though the Lease Commencement Date had occurred (although the Lease Commencement Date shall not actually occur until the occurrence of the same pursuant to the terms of [Section 2.1](#), above) upon Tenant's commencement of the conduct of its business in the Early Access Premises; provided, however, notwithstanding the foregoing, during any such period prior to the Lease Commencement Date that Tenant occupies the Early Access Premises for the conduct of its business (A) Tenant shall only be obligated to pay Base Rent for the Early Access Premises, and not the remainder of the Premises (in the amount otherwise applicable as of the Lease Commencement Date on a per rentable square footage basis), (B) Tenant shall only be obligated to pay Tenant's Share of Direct Expenses attributable to the Early Access Premises, and not the remainder of the Premises to the remainder of the Premises, and (C) Tenant may only utilize the amount of parking passes attributable to the rentable square footage of the Early Access Premises, as determined using the ratio set forth in [Section 9](#) of the Summary.

## 2.2 **Option Term.**

2.2.1 **Option Right.** Landlord hereby grants Original Tenant and its Permitted Transferee Assignee, one (1) option to extend the Lease Term for the entire Premises for a period of five (5) years (the "**Option Term**"). Such option shall be exercisable only by "Notice" (as that term is defined in [Section 29.18](#) of this Lease) delivered by Tenant to Landlord as provided below, provided that, as of the date of delivery of such Notice, (i) Tenant has not then received notice of a monetary or material non-monetary default under this Lease that then remains uncured, and (ii) Tenant has not been in monetary or material non-monetary default under this Lease (beyond the applicable notice and cure periods) more than twice during the prior twenty-four (24) month period. Upon the proper exercise of such option to extend, and provided that, at Landlord's election, as of the end of the Lease Term, Tenant has not then received notice of a monetary or material non-monetary default under this Lease that then remains uncured, then the Lease Term, as it applies to the entire Premises, shall be extended for a period of five (5) years, on all of the same terms and conditions, except that Base Rent shall be equal to Option Rent. The rights contained in this [Section 2.2](#) shall only be exercised by the Original Tenant or its Permitted Transferee Assignee (and not any other assignee, sublessee or other transferee of the Original Tenant's interest in this Lease) if Original Tenant and/or its Permitted Transferee Assignee is in occupancy of at least seventy-five percent (75%) of the initial Premises and any additional space leased by Tenant at the Project after the date of this Lease.

2.2.2 **Option Rent.** The Rent payable by Tenant during the Option Term (the "**Option Rent**") shall be equal to the "Market Rent," as that term is defined in, and determined pursuant to, [Exhibit F](#) attached hereto.

2.2.3 **Exercise of Option.** The option contained in this [Section 2.2](#) shall be exercised by Tenant, if at all, only in the manner set forth in this [Section 2.2](#). Tenant shall deliver notice (the "**Exercise Notice**") to Landlord not more than fifteen (15) months nor less than twelve (12) months prior to the expiration of the initial Lease Term, stating that Tenant is exercising its option. Concurrently with such Exercise Notice, Tenant shall deliver to Landlord Tenant's calculation of the Market Rent (the "**Tenant's Option Rent Calculation**"). Landlord shall deliver notice (the "**Landlord Response Notice**") to Tenant on or before the date which is thirty (30) days after Landlord's receipt of the Exercise Notice and Tenant's Option Rent Calculation, stating that (A) Landlord is accepting Tenant's Option Rent Calculation as the Market Rent, or (B) rejecting Tenant's Option Rent Calculation and setting forth Landlord's calculation of the Market Rent (the "**Landlord's Option Rent Calculation**"). Within ten (10) business days of its receipt of the Landlord Response Notice, Tenant may, at its option, accept the Market Rent contained in the Landlord's Option Rent Calculation. If Tenant does not affirmatively accept or Tenant rejects the Market Rent specified in the Landlord's Option Rent Calculation, the parties shall follow the procedure set forth in [Section 2.2.4](#) below, and the Market Rent shall be determined in accordance with the terms of [Section 2.2.4](#) below. Notwithstanding the foregoing, Tenant shall be permitted to submit a non-binding notice of interest (the "**Interest Notice**") to Landlord not less than fifteen (15) months prior to the expiration of the then Lease Term, and following Landlord's receipt of such Interest Notice, Landlord shall deliver to Tenant not less than thirteen (13) months prior to the expiration of the then Lease Term, Landlord's non-binding estimate of the Option Rent.

2.2.4 **Determination of Market Rent.** In the event Tenant timely and appropriately exercises its option to extend the Lease but rejects the Option Rent set forth in the Landlord's Option Rent Calculation pursuant to [Section 2.2.3](#), above, then Landlord and Tenant shall attempt to agree upon the Option Rent using their best good-faith efforts. If Landlord and Tenant fail to reach agreement upon the Option Rent applicable to the Option Term on

or before the date that is ninety (90) days prior to the expiration of the initial Lease Term (the "**Outside Agreement Date**"), then the Option Rent shall be determined by arbitration pursuant to the terms of this Section 2.2.4. Each party shall make a separate determination of the Option Rent, within five (5) days following the Outside Agreement Date, and such determinations shall be submitted to arbitration in accordance with Section 2.2.4.1 through Section 2.2.4.4, below.

2.2.4.1 Landlord and Tenant shall each appoint one arbitrator who shall by profession be a MAI appraiser, real estate broker, or real estate lawyer who shall have been active over the five (5) year period ending on the date of such appointment in the appraising and/or leasing of first class office properties in the vicinity of the Building. The determination of the arbitrators shall be limited solely to the issue area of whether Landlord's or Tenant's submitted Option Rent is the closest to the actual Option Rent as determined by the arbitrators, taking into account the requirements of Section 2.2.2 of this Lease. Each such arbitrator shall be appointed within fifteen (15) days after the Outside Agreement Date. Landlord and Tenant may consult with their selected arbitrators prior to appointment and may select an arbitrator who is favorable to their respective positions (including an arbitrator who has previously represented Landlord and/or Tenant, as applicable). The arbitrators so selected by Landlord and Tenant shall be deemed "**Advocate Arbitrators**."

2.2.4.2 The two Advocate Arbitrators so appointed shall be specifically required pursuant to an engagement letter within ten (10) days of the date of the appointment of the last appointed Advocate Arbitrator to agree upon and appoint a third arbitrator ("**Neutral Arbitrator**") who shall be qualified under the same criteria set forth hereinabove for qualification of the two Advocate Arbitrators except that (i) neither the Landlord or Tenant or either parties' Advocate Arbitrator may, directly, or indirectly, consult with the Neutral Arbitrator prior or subsequent to his or her appearance, and (ii) the Neutral Arbitrator cannot be someone who has represented Landlord and/or Tenant during the five (5) year period prior to such appointment. The Neutral Arbitrator shall be retained via an engagement letter jointly prepared by Landlord's counsel and Tenant's counsel.

2.2.4.3 Within ten (10) days following the appointment of the Arbitrator, Landlord and Tenant shall enter into an arbitration agreement (the "**Arbitration Agreement**") which shall set forth the following:

- a. Each of Landlord's and Tenant's best and final and binding determination of the Option Rent exchanged by the parties pursuant to Section 2.2.4, above;
- b. An agreement to be signed by the Neutral Arbitrator, the form of which agreement shall be attached as an exhibit to the Arbitration Agreement, whereby the Neutral Arbitrator shall agree to undertake the arbitration and render a decision in accordance with the terms of this Lease, as modified by the Arbitration Agreement, and shall require the Neutral Arbitrator to demonstrate to the reasonable satisfaction of the parties that the Neutral Arbitrator has no conflicts of interest with either Landlord or Tenant;
- c. Instructions to be followed by the Neutral Arbitrator when conducting such arbitration;
- d. That Landlord and Tenant shall each have the right to submit to the Neutral Arbitrator (with a copy to the other party), on or before the date that occurs fifteen (15) days following the appointment of the Neutral Arbitrator, an advocate statement (and any other information such party deems relevant) prepared by or on behalf of Landlord or Tenant, as the case may be, in support of Landlord's or Tenant's respective determination of Option Rent (the "**Briefs**");
- e. That within five (5) business days following the exchange of Briefs, Landlord and Tenant shall each have the right to provide the Neutral Arbitrator (with a copy to the other party) with a written rebuttal to the other party's Brief; provided, however, such rebuttals shall be limited to the facts and arguments raised in the other party's Brief and shall identify clearly which argument or fact of the other party's Brief is intended to be rebutted;
- f. The date, time and location of the arbitration, which shall be mutually and reasonably agreed upon by Landlord and Tenant, taking into consideration the schedules of the Neutral Arbitrator, the Advocate Arbitrators, Landlord and Tenant, and each party's applicable consultants, which date shall in any event be within forty-five (45) days following the appointment of the Neutral Arbitrator;
- g. That no discovery shall take place in connection with the arbitration, other than to verify the factual information that is presented by Landlord or Tenant;
- h. That the Neutral Arbitrator shall not be allowed to undertake an independent investigation or consider any factual information other than presented by Landlord or Tenant, except that the Neutral Arbitrator shall be permitted to visit the Project and the buildings containing the Comparable Transactions;
- i. Tenant shall have the right to present oral arguments to the Neutral Arbitrator at the arbitration for a period of time not to exceed three (3) hours ("**Tenant's Initial Statement**");
- j. Following Tenant's Initial Statement, Landlord shall have the right to present oral arguments to the Neutral Arbitrator at the arbitration for a period of time not to exceed three (3) hours;

- k. That, not later than ten (10) days after the date of the arbitration, the Neutral Arbitrator shall render a decision (the "**Ruling**") indicating whether Landlord's or Tenant's submitted Option Rent is closer to the Option Rent;
- l. That following notification of the Ruling, Landlord's or Tenant's submitted Option Rent determination, whichever is selected by the Neutral Arbitrator as being closer to the Option Rent shall become the then applicable Option Rent; and
- m. That the decision of the Neutral Arbitrator shall be binding on Landlord and Tenant.
- n. If a date by which an event described in Section 2.2.4.3, above, is to occur falls on a weekend or a holiday, the date shall be deemed to be the next business day.

2.2.5 In the event that the Option Rent shall not have been determined pursuant to the terms hereof prior to the commencement of the Option Term, Tenant shall be required to pay the Option Rent, initially provided by Landlord to Tenant, and upon the final determination of the Option Rent, the payments made by Tenant shall be reconciled with the actual amounts due, and the appropriate party shall make any corresponding payment to the other party.

2.3 **Geopolitical Event Termination Right.** Upon the occurrence of one or more of the Termination Conditions (defined below), Landlord and Tenant shall each have the right (the "**Early Termination Right**") to terminate this Lease, subject to the terms of this Section 2.3 below. If either Landlord or Tenant effectively terminates this Lease, pursuant to the terms and conditions of this Section 2.3, then this Lease, shall automatically terminate on the Termination Date (defined below) and be of no further force or effect, and Landlord and Tenant shall be relieved of their respective obligations under this Lease, as of the Termination Date with the same force and effect as if this Lease were scheduled to expire in accordance with its terms as of such Termination Date; provided, however, that Tenant and Landlord shall remain liable under the terms of this Lease with respect to (a) any obligations which specifically survive the expiration or earlier termination of this Lease, and (b) to the period of its tenancy on or before the Termination Date for the performance of all of its obligations under this Lease including, without limitation, with respect to any liability arising on or before such date related to Tenant's use, occupancy or control of the Premises.

2.3.1 **Process for Exercise.** Within thirty (30) days following the first occurrence of any Termination Conditions (the "**Termination Exercise Period**"), either party shall have the right to deliver written notice (the "**Termination Exercise Notice**") to the other party, irrevocably exercising the Early Termination Right, effective as of the date of delivery of the Termination Exercise Notice (the "**Termination Date**"). Upon the occurrence of a Termination Condition, as a courtesy, either Landlord or Tenant may deliver written notice to the other party stating that a Termination Condition has occurred. With respect to Tenant only, the Early Termination Right shall be of no force or effect unless at the time Tenant delivers the Termination Exercise Notice to Landlord and, at Landlord's option, immediately prior to the Termination Date, no Tenant default under this Lease shall have occurred and Tenant timely pays the Termination Fee (as that term is defined below). Tenant shall not be obligated to pay the Termination Fee in the event Landlord, not Tenant, delivers the Termination Exercise Notice. Time is of the essence with respect to the giving of the Termination Exercise Notice and payment of the Termination Fee.

2.3.2 **Termination Fee.** For purposes of this Lease, the "**Termination Fee**" shall mean the greater of (A) the greater of: (i) the total disbursed or allocated Tenant Improvement Allowance (and any tenant improvement allowances disbursed or allocated for any First Offer Space leased by Tenant prior to the expiration of the Early Termination Right) as of the date of delivery of the Termination Exercise Notice, and (ii) (a) \$4,063,925.00 if the Termination Exercise Notice is delivered by Tenant prior to April 1, 2018 and (b) \$8,127,850.00 if the Termination Exercise Notice is delivered by Tenant on or after April 1, 2018 and (B) the total of amount of the disbursed and/or allocated for disbursement Tenant Improvement Allowance as of the Termination Date.

2.3.3 **Expiration of Early Termination Right.** The Early Termination Right shall terminate and be of no further force or effect as of the earliest to occur of: (i) the Lease Commencement Date, (ii) July 1, 2018, and (iii) expiration of the Termination Exercise Period without either party having delivered a Termination Exercise Notice. As to Tenant, the Early Termination Right shall be personal to the Original Tenant and its Permitted Transferee Assignee and may not be exercised by any other assignee, or any sublessee or other transferee of the Original Tenant's interest in this Lease.

### ARTICLE 3

#### BASE RENT

3.1 **In General.** Tenant shall pay, without prior notice or demand (except as specifically set forth in this Lease), to Landlord or Landlord's agent at the management office of the Project, or, at Landlord's option, at such other place as Landlord may from time to time designate in writing, by a check for currency which, at the time of payment, is legal tender for private or public debts in the United States of America, base rent ("**Base Rent**") as set forth in Section 4 of the Summary, payable in equal monthly installments as set forth in Section 4 of the Summary in advance on or before the first day of each and every calendar month during the Lease Term, without any setoff or deduction whatsoever (except as specifically set forth in this Lease). Concurrently with Tenant's execution and

delivery of this Lease to Landlord, Tenant shall pay to Landlord an amount equal to \$512,054.55, which amount shall be applied to the first Base Rent due under this Lease. If any Rent payment date (including the Lease Commencement Date) falls on a day of the month other than the first day of such month or if any payment of Rent is for a period which is shorter than one month, the Rent for any fractional month shall accrue on a daily basis for the period from the date such payment is due to the end of such calendar month or to the end of the Lease Term at a rate per day which is equal to 1/365 of the applicable annual Rent. All other payments or adjustments required to be made under the terms of this Lease that require proration on a time basis shall be prorated on the same basis.

3.2 **Base Rent Abatement.** Provided that no event of default is occurring, and subject to the terms of this Section 3.2 below, then during the last fourteen (14) full calendar months of the Lease Term (collectively, the "**Base Rent Abatement Period**"), Tenant shall be entitled to an abatement of Base Rent otherwise attributable to the Premises for the first ten (10) full calendar months of the Base Rent Abatement Period, and an abatement of fifty percent (50%) of Base Rent attributable to the remaining four (4) full calendar months of the Base Rent Abatement Period (collectively, the "**Base Rent Abatement**"). Tenant acknowledges and agrees that the foregoing Base Rent Abatement has been granted to Tenant as additional consideration for entering into this Lease, and for agreeing to pay the Rent and perform the terms and conditions otherwise required under this Lease. Notwithstanding the foregoing, Landlord shall have the right, at Landlord's option, on a month by month basis commencing on the Lease Commencement Date, to accelerate any remaining Base Rent Abatement relating to a full month during the Base Rent Abatement Period for the Premises forward, to apply to the Base Rent that would otherwise be due with respect to the next occurring month of the Lease Term (the "**Landlord Base Rent Abatement Acceleration Election**"), in which case Tenant shall have no obligation to pay Base Rent attributable to such next occurring month of the Lease Term, and the Base Rent Abatement that is accelerated forward shall no longer be applicable during the Base Rent Abatement Period. Landlord may make such election on a month by month basis with respect to each of the months of the Base Rent Abatement Period. In addition, commencing on the Lease Commencement Date, if Landlord has not exercised the Landlord Base Rent Abatement Acceleration Election on or before the date that the next installment of Base Rent is due under the Lease, and provided that the Lease has not been terminated as a result of any Default of Tenant or rejection of the Lease in bankruptcy (the "**Abatement Condition**"), then Tenant shall have the right, at Tenant's option, on a month by month basis commencing on the Lease Commencement Date, to accelerate any Base Rent Abatement relating to a full month during the Base Rent Abatement Period forward to apply to the Base Rent that would otherwise be due with respect to the next occurring month of the Lease Term (the "**Tenant Base Rent Abatement Acceleration Election**"), in which case Tenant shall have no obligation to pay Base Rent attributable in such next occurring month of the Lease Term, and the Base Rent Abatement that is accelerated forward shall no longer be applicable during the Base Rent Abatement Period. Tenant may not elect to accelerate more than one (1) month of such Base Rent Abatement at any particular time. Notwithstanding the foregoing, as long as the Abatement Condition is satisfied, if Tenant fails to deliver notice to Landlord exercising the Tenant Base Rent Abatement Acceleration Election for a particular month of the Lease Term, then Tenant shall be deemed to have elected to exercise the Tenant Base Rent Abatement Acceleration Election for such month without the requirement of providing notice to Landlord. Notwithstanding the different monetary amount of one (1) full calendar month at the end of the Lease Term from the monetary amount of one (1) full calendar month at the beginning of the Lease Term, the value of any full month of Base Rent Abatement, whether accelerated by Landlord or by Tenant, shall be equal to one (1) full month of Base Rent at the time it is applied. In connection with any sale, financing or refinancing of the Building or Project, Landlord shall have the right to buy out up to four (4) months of the Base Rent Abatement at any time prior to the expiration of the Base Rent Abatement Period by (1) providing written notice thereof to Tenant and (2) paying to Tenant the amount of Base Rent Abatement then remaining due (not to exceed four (4) months) discounted to present value at a per annum rate equal to the Default Rate (as that term is defined in Article 25 below). If Landlord elects to buy out all or a portion of the Base Rent Abatement, Landlord and Tenant shall, at Landlord's option, enter into an amendment to the Lease. In no event shall Landlord be obligated to pay a commission with respect to the Base Rent Abatement and Tenant and Landlord shall each indemnify the other against all costs, expenses, attorneys' fees, and other liability for commissions or other compensation claimed with respect to the Base Rent Abatement by any broker or agent claiming the same by, through or under the indemnifying party.

#### ARTICLE 4

##### ADDITIONAL RENT

4.1 **General Terms.** In addition to paying the Base Rent specified in Article 3 of this Lease, Tenant shall pay "Tenant's Share" of the annual "Direct Expenses," as those terms are defined in Sections 4.2.6 and 4.2.2 of this Lease, respectively. Such payments by Tenant, together with any and all other amounts payable by Tenant to Landlord pursuant to the terms of this Lease, are hereinafter collectively referred to as the "**Additional Rent**", and the Base Rent and the Additional Rent are herein collectively referred to as "**Rent**." All amounts due under this Article 4 as Additional Rent shall be payable for the same periods and in the same manner as the Base Rent and provided that Tenant shall have no obligation to pay any Additional Rent under this Article 4 during the Construction Period, subject to the repayment obligations set forth in Section 10.1.2.3.2 below. Without limitation on other obligations of Tenant which survive the expiration of the Lease Term, the obligations of Tenant to pay the Additional Rent provided for in this Article 4 shall survive the expiration of the Lease Term.

4.2 **Definitions of Key Terms Relating to Additional Rent.** As used in this Article 4, the following terms shall have the meanings hereinafter set forth:

4.2.1 "**Tenant's Share**" shall mean the amount set forth in Section 5 of the Summary.

4.2.2 "**Direct Expenses**" shall mean Operating Expenses and Tax Expenses.

4.2.3 "Expense Year" shall mean each calendar year in which any portion of the Lease Term falls, through and including the calendar year in which the Lease Term.

4.2.4 "Operating Expenses" shall mean all expenses, costs and amounts of every kind and nature which Landlord pays or accrues during any Expense Year because of or in connection with the ownership, management, maintenance, security, repair, replacement, restoration or operation of the Project, or any portion thereof. Without limiting the generality of the foregoing, Operating Expenses shall specifically include any and all of the following: (i) the cost of supplying all utilities to the Common Areas, the cost of operating, repairing, maintaining, and renovating the utility, telephone, mechanical, sanitary, storm drainage, and elevator systems, and the cost of maintenance and service contracts in connection therewith (but excluding the costs of any utilities provided to the Premises and the premises of other tenants of the Project to the extent Tenant is then paying Landlord directly for such utility costs pursuant to Article 6 below); (ii) the cost of licenses, certificates, permits and inspections and the cost of reasonably contesting any governmental enactments which may affect Operating Expenses, and the costs incurred in connection with a governmentally mandated transportation system management program or similar program; (iii) the cost of all insurance carried by Landlord in connection with the Project as reasonably determined by Landlord; (iv) the cost of landscaping, relamping, and all supplies, tools, equipment and materials used in the operation, repair and maintenance of the Project, or any portion thereof; (v) the cost of operation, repair, restoration, and maintenance of all parking areas and amenities areas, including the Amenities Building and any cafeterias and conference spaces; (vi) subject to exclusion (o) below, fees and other costs, including management and/or incentive fees, consulting fees, legal fees and accounting fees, of all contractors and consultants in connection with the management, operation, maintenance and repair of the Project (provided, however, if any of such employees provide services for more than one building, only the prorated portion of those employees' wages, salaries, other compensation and benefits, and taxes reflecting the percentage of their working time devoted to the Project shall be included in Operating Expenses); (vii) payments under any equipment rental agreements and the fair rental value of any management office space; (viii) subject to item (f), below, wages, salaries and other compensation and benefits, including taxes levied thereon, of all persons engaged in the operation, maintenance and security of the Project; (ix) costs under any instrument pertaining to the sharing of costs by the Project; (x) operation, repair, maintenance and replacement of all systems and equipment and components thereof of the Project; (xi) the cost of janitorial, alarm, security and other services (but excluding the costs of janitorial services provided to the premises of other tenants of the Project to the extent Tenant is then providing its own janitorial services to the Premises pursuant to Article 6 below), replacement of wall and floor coverings, ceiling tiles and fixtures in Common Areas, maintenance and replacement of curbs and walkways, repair to roofs (excluding structural portions of the roof) and re-roofing; (xii) amortization (including reasonable interest on the unamortized cost) over such period of time as Landlord shall reasonably determine, of the cost of acquiring or the rental expense of personal property used in the maintenance, operation and repair of the Project, or any portion thereof; (xiii) the cost of capital improvements or other costs incurred in connection with the Project (A) which are reasonably anticipated to reduce current or future Operating Expenses or to enhance or improve the safety or security of the Project or its occupants, or (B) that are required under any governmental law or regulation, but that were not required to be implemented or incurred by the Project on or before the Commencement Date; provided, however, that any capital expenditure shall be amortized (including interest on the amortized cost at the rate of seven percent (7%)) over (X) its reasonable useful life as Landlord shall reasonably determine in accordance with sound real estate management and accounting practices, consistently applied, or (Y) with respect to those items included under item (A) above, their recovery/payback period as Landlord shall reasonably determine in accordance with sound real estate management and accounting practices, consistently applied; and (xiv) costs, fees, charges or assessments imposed by, or resulting from any mandate imposed on Landlord by, any federal, state or local government for fire and police protection, trash removal, community services, or other services which do not constitute Tax Expenses, and (xv) payments under any current or future easement, license, operating agreement, declaration, restrictive covenant, or instrument pertaining to the sharing of costs by the Building, including, without limitation, any covenants, conditions and restrictions affecting the property, and reciprocal easement agreements affecting the property, any parking licenses or agreements, and any agreements with transit agencies affecting the Project (collectively, "**Underlying Documents**"). Notwithstanding the foregoing, for purposes of this Lease, Operating Expenses shall not, however, include:

- a. costs, including legal fees, space planners' fees, advertising and promotional expenses, and brokerage fees incurred in connection with the original construction or development, or original or future leasing of the Project, and costs, including permit, license and inspection costs, incurred with respect to the installation of tenant improvements made for new tenants or other occupants of the Project or incurred in renovating or otherwise improving, decorating, painting or redecorating vacant space for tenants or other occupants of the Project (excluding, however, such costs relating to any Common Areas of the Project or parking facilities);
- b. except as set forth in items (xi), (xii), and (xiii) above, depreciation, interest and principal payments on mortgages and other debt costs, if any, penalties and interest (including tax penalties), costs of capital repairs and alterations, and costs of capital improvements and equipment and costs of repairs to the Building Structure;
- c. costs for which the Landlord is reimbursed by any tenant or occupant of the Project or by insurance by its carrier or any tenant's carrier or by anyone else, or would have been reimbursed if Landlord had carried the insurance Landlord is required to carry pursuant to this Lease, or would have been reimbursed if Landlord had used commercially reasonable efforts to collect such amounts, and electric power costs and other utility costs for which any tenant directly contracts with the local public service company;
- d. any bad debt loss, rent loss, or reserves for bad debts or rent loss, or any reserves of any kind;

- e. costs associated with the operation of the business of the partnership or entity which constitutes the Landlord, as the same are distinguished from the costs of operation of the Project, including general corporate overhead, general and administrative expenses (which shall specifically include, but not be limited to, accounting costs associated with the operation of the Project). Costs associated with the operation of the business of the partnership or entity which constitutes the Landlord include costs of partnership accounting and legal matters, costs of defending any lawsuits with any mortgagee (except as the actions of the Tenant may be in issue), costs of selling, syndicating, financing, mortgaging or hypothecating any of the Landlord's interest in the Project, and costs incurred in connection with any disputes between Landlord and its employees, between Landlord and Project management, or between Landlord and other tenants or occupants;
- f. the wages and benefits of any employee who does not devote substantially all of his or her employed time to the Project unless such wages and benefits are prorated to reflect time spent on operating and managing the Project vis-a-vis time spent on matters unrelated to operating and managing the Project; provided, that in no event shall Operating Expenses for purposes of this Lease include wages and/or benefits attributable to personnel above the level of Project manager or general manager;
- g. amount paid as ground rental for the Project by the Landlord;
- h. except for a Project management fee, overhead and profit increment paid to the Landlord or to subsidiaries or affiliates of the Landlord for services or utilities in the Project to the extent the same exceeds the costs of such services rendered by qualified, first-class unaffiliated third parties on a competitive basis (provided that Landlord shall have the right to include in Operating Expenses service or utility charges paid to affiliates or subsidiaries of Landlord, provided that such costs do not exceed market costs or rates for services or utilities);
- i. all costs of commercial concessions (other than parking) operated by or on behalf of the Landlord, including without limitation rent, operating costs, utility costs and any compensation paid to clerks, attendants or other persons in connection with such concessions;
- j. rentals and other related expenses incurred in leasing air conditioning systems, elevators or other equipment which if purchased the cost of which would be excluded from Operating Expenses as a capital cost, except equipment not affixed to the Project which is used in providing janitorial or similar services and, further excepting from this exclusion such equipment rented or leased to remedy or ameliorate an emergency condition in the Project;
- k. all items and services for which Landlord provides selectively to one or more tenants (other than Tenant) without reimbursement;
- l. any costs expressly excluded from Operating Expenses elsewhere in this Lease;
- m. rent for any office space occupied by Project management personnel to the extent the size or rental rate of such office space exceeds the size or fair market rental value of office space occupied by management personnel of the comparable buildings in the vicinity of the Building, with adjustment where appropriate for the size of the applicable project;
- n. costs, other than those incurred in ordinary maintenance and repair, for sculpture, paintings, fountains or other objects of art;
- o. any management fee which exceeds two percent (2%) of the gross revenues from the Project, adjusted and grossed up to reflect a one hundred percent (100%) occupancy of the Project with all tenants paying full rent, as contrasted with free rent, half-rent and the like, including all tenants paying full Base Rent, Additional Rent, and parking fees from the Project for any calendar year or portion thereof;
- p. costs for repairs to the extent arising from the negligence or willful misconduct of Landlord or its agents, employees, vendors, contractors, or providers of materials or services; and
- q. costs incurred to comply with Applicable Laws relating to the removal of Hazardous Materials (as defined under applicable Environmental Laws), as those terms are defined in **Exhibit G**, which were in existence in the Building or on the Project prior to the Lease Commencement Date, and were of such a nature that a federal, state, local or municipal governmental authority, if it had then had knowledge of the presence of such Hazardous Materials, in the state, and under the conditions that it then existed in the Building or on the Project, would have then required the removal of such Hazardous Materials or other remedial or containment action with respect thereto, but only to the extent those Environmental Laws were then being actively enforced by the applicable government authority; and costs incurred to remove, remedy, contain, or treat Hazardous Materials, which Hazardous Materials re brought into the Building or onto the Project after the date hereof by Landlord or any other tenant of the Project and is of such a nature, at that time, that a federal, state, local or municipal governmental authority, if it had then had knowledge of the presence of such Hazardous Materials, in the state, and under the conditions, that it then exists in the Building or on the Project, would have then required the removal of such Hazardous Materials or other remedial or containment action with respect thereto;
- r. costs incurred to correct violations of Applicable Laws, which violations are Landlord's obligation to correct pursuant to Article 24 below and were in existence in the Building or on the

Project prior to the Lease Commencement Date, and were of such a nature that a federal, state, local or municipal governmental authority, if it had then had knowledge of such violation, would have then required the correction thereof, but only to the extent such Applicable Laws were then being actively enforced by the applicable government authority;

s. tax penalties.

If Landlord is not furnishing any particular work or service (the cost of which, if performed by Landlord, would be included in Operating Expenses) to a tenant who has undertaken to perform such work or service in lieu of the performance thereof by Landlord, Operating Expenses shall be deemed to be increased by an amount equal to the additional Operating Expenses which would reasonably have been incurred during such period by Landlord if it had at its own expense furnished such work or service to such tenant. If the Project is not at least one hundred percent (100%) occupied during any Expense Year, Landlord shall make an appropriate adjustment to the variable components of Operating Expenses for such year to determine the amount of Operating Expenses that would have been incurred had the Project been one hundred percent (100%) occupied; and the amount so determined shall be deemed to have been the amount of Operating Expenses for such year. For purposes of this subsection, variable components include only those component expenses that are affected by variations in occupancy levels.

4.2.5 **Taxes.**

4.2.5.1 "**Tax Expenses**" shall mean all federal, state, county, or local governmental or municipal taxes, fees, charges or other impositions of every kind and nature, whether general, special, ordinary or extraordinary, (including, without limitation, real estate taxes, general and special assessments, transit taxes, leasehold taxes or taxes based upon the receipt of rent, including gross receipts or sales taxes applicable to the receipt of rent, unless required to be paid by Tenant, personal property taxes imposed upon the fixtures, machinery, equipment, apparatus, systems and equipment, appurtenances, furniture and other personal property used in connection with the Project, or any portion thereof), which shall be paid or accrued during any Expense Year (without regard to any different fiscal year used by such governmental or municipal authority) because of or in connection with the ownership, leasing and operation of the Project, or any portion thereof.

4.2.5.2 Tax Expenses shall include, without limitation: (i) Any tax on the rent, right to rent or other income from the Project, or any portion thereof, or as against the business of leasing the Project, or any portion thereof; (ii) Any assessment, tax, fee, levy or charge in addition to, or in substitution, partially or totally, of any assessment, tax, fee, levy or charge previously included within the definition of real property tax, it being acknowledged by Tenant and Landlord that Proposition 13 was adopted by the voters of the State of California in the June 1978 election ("**Proposition 13**") and that assessments, taxes, fees, levies and charges may be imposed by governmental agencies for such services as fire protection, street, sidewalk and road maintenance, refuse removal and for other governmental services formerly provided without charge to property owners or occupants, and, in further recognition of the decrease in the level and quality of governmental services and amenities as a result of Proposition 13, Tax Expenses shall also include any governmental or private assessments or the Project's contribution towards a governmental or private cost-sharing agreement for the purpose of augmenting or improving the quality of services and amenities normally provided by governmental agencies; (iii) any tax or assessment levied in connection with Caltrain or any similar transportation system; (iv) Any assessment, tax, fee, levy, or charge allocable to or measured by the area of the Premises or the Rent payable hereunder, including, without limitation, any business or gross income tax or excise tax derived solely from the receipt of such rent, or upon or with respect to the possession, leasing, operating, management, maintenance, alteration, repair, use or occupancy by Tenant of the Premises, or any portion thereof; and (v) Any assessment, tax, fee, levy or charge, upon this transaction or any document to which Tenant is a party, creating or transferring an interest or an estate in the Premises. All Tax Expenses which are not specifically charged to Tenant because of what Tenant has done, which can be paid by Landlord in installments, shall be paid by Landlord in the maximum number of installments permitted by law (except to the extent inconsistent with the general practice of the Comparable Buildings) and shall be included as Tax Expenses in the year in which the installment is actually paid.

4.2.5.3 Any costs and expenses (including, without limitation, reasonable attorneys' and consultants' fees) incurred in attempting to protest, reduce or minimize Tax Expenses shall be included in Tax Expenses in the Expense Year such expenses are incurred. Tax refunds shall be credited against Tax Expenses and refunded to Tenant regardless of when received, based on the Expense Year to which the refund is applicable, provided that in no event shall the amount to be refunded to Tenant for any such Expense Year exceed the total amount paid by Tenant as Additional Rent under this Article 4 for such Expense Year. Notwithstanding anything to the contrary set forth in this Lease, (a) only Landlord may institute proceedings to reduce Tax Expenses and the filing of any such proceeding by Tenant without Landlord's consent shall constitute an event of default by Tenant under this Lease, and (b) Landlord shall not be obligated to file any application or institute any proceeding seeking a reduction in Tax Expenses. If Tax Expenses for any period during the Lease Term or any extension thereof are increased after payment thereof for any reason, including, without limitation, error or reassessment by applicable governmental or municipal authorities, Tenant shall pay Landlord upon demand Tenant's Share of any such increased Tax Expenses. Notwithstanding anything to the contrary contained in this Section 4.2.5 (except as set forth in Section 4.2.5.1, above), there shall be excluded from Tax Expenses (i) all excess profits taxes, franchise taxes, gift taxes, capital stock taxes, inheritance and succession taxes, estate taxes, federal and state income taxes, and other taxes to the extent applicable to Landlord's general or net income (as opposed to rents, receipts or income attributable to operations at the Project), (ii) any items included as Operating Expenses, and (iii) any items paid by Tenant under Section 4.5 of this Lease.

#### 4.3 Allocation of Direct Expenses

4.3.1 **Method of Allocation.** The parties acknowledge that the Building is part of a multi- building project and that the costs and expenses incurred in connection with the Project (i.e. the Direct Expenses) should be shared between the tenants of the Building and the tenants of the other buildings in the Project. In addition, the Project will be constructed in phases, with certain costs and expenses incurred in connection with a particular phase that should be shared exclusively amongst tenants of a particular phase. Accordingly, as set forth in Section 4.2 above, Direct Expenses (which consists of Operating Expenses and Tax Expenses) are determined annually for the Project as a whole, and portions of the Direct Expenses, which portions shall be determined by Landlord on an equitable basis, shall be allocated to the tenants of the Building (as opposed to the tenants of any other buildings in the Project) and such portions shall be the Direct Expenses for purposes of this Lease. Such portion of Direct Expenses allocated to the tenants of the Building shall include all Direct Expenses attributable solely to the Building, an equitable portion of the Direct Expenses attributable to Phase 1 and an equitable portion of the Direct Expenses attributable to the Project as a whole. For purposes of allocating Direct Expenses during the Lease Term, those Direct Expenses not reasonably attributable exclusively to the Building shall be allocated on a rentable area basis, except where otherwise dictated by prudent commercial property management practices or to achieve an equitable and customary allocation of Direct Expenses. Any costs that are exclusively attributable to a particular building or phase within the Project which does not include a portion of the Premises shall be excluded from the definition of Direct Expenses for purposes of this Lease.

4.3.2 **Cost Pools.** Landlord shall have the right, from time to time, to equitably allocate some or all of the Direct Expenses for the Project among different portions or occupants of the Project (the "**Cost Pools**"), in Landlord's reasonable discretion. Such Cost Pools may include, but shall not be limited to, the office space tenants, the hotel operator(s) or owner(s), and the retail space tenants of a portion of the Project, and such allocations may be implemented to reflect that certain services or amenities are not provided to certain types of space or tenants, operators or owners of a portion of the Project (including use of the Amenities Building), in which event Tenant's Share of Direct Expenses related to such services or amenities may be equitably adjusted to reflect the space to which such services or amenities are generally provided or attributable (for example, Direct Expenses attributable to the Amenities Building shall be allocated to only tenants with access to and use of the Amenities Building). The Direct Expenses within each such Cost Pool shall be allocated and charged to the tenants within such Cost Pool in an equitable manner, and if applicable, shall be allocated based on the square footage of the space subject to the Cost Pool compared to the total square footage of the Building or Project, as applicable. Any costs allocated to a Cost Pool which does not include a portion of the Premises (e.g., the hotel Cost Pool) shall be excluded from the definition of Direct Expenses for purposes of this Lease. Notwithstanding the foregoing, and notwithstanding the number of actual users of the Amenities Building, after the earlier to occur of (i) the end of the first Lease Year and (ii) Landlord's lease of all or any portion of Building 2, Tenant's Share of Direct Expenses that are allocable to the Amenities Building shall be adjusted to allocate an equitable portion of such Direct Expenses to Building 2 based on the total rentable square footage of Building 2, regardless of whether Building 2 is then fully leased or occupied.

4.4 **Calculation and Payment of Additional Rent.** Tenant shall pay to Landlord, in the manner set forth in Section 4.4.1, below, and as Additional Rent, an amount equal to Tenant's Share of Direct Expenses.

4.4.1 **Statement of Actual Direct Expenses and Payment by Tenant.** Landlord shall give to Tenant following the end of each Expense Year, a statement (the "**Statement**") which shall state the Direct Expenses incurred or accrued for such preceding Expense Year, and which shall indicate the amount of Tenant's Share of Direct Expenses. Upon receipt of the Statement for each Expense Year commencing or ending during the Lease Term, Tenant shall pay, with its next installment of Base Rent due, the full amount of Tenant's Share of Direct Expenses for such Expense Year, less the amounts, if any, paid during such Expense Year as "Estimated Direct Expenses," as that term is defined in Section 4.4.2, below, and if Tenant paid more as Estimated Direct Expenses than the actual Tenant's Share of Direct Expenses, Tenant shall receive a credit in the amount of Tenant's overpayment against Rent next due under this Lease. The failure of Landlord to timely furnish the Statement for any Expense Year shall not prejudice Landlord or Tenant from enforcing its rights under this Article 4. Even though the Lease Term has expired and Tenant has vacated the Premises, when the final determination is made of Tenant's Share of Direct Expenses for the Expense Year in which this Lease terminates, Tenant shall immediately pay to Landlord Tenant's Share of Direct Expenses, and if Tenant paid more as Estimated Direct Expenses than the actual Tenant's Share of Direct Expenses, Landlord shall, within thirty (30) days, deliver a check payable to Tenant in the amount of the overpayment. The provisions of this Section 4.4.1 shall survive the expiration or earlier termination of the Lease Term.

4.4.2 **Statement of Estimated Direct Expenses.** In addition, Landlord shall give Tenant a yearly expense estimate statement (the "**Estimate Statement**") which shall set forth Landlord's reasonable estimate (the "**Estimate**") of what the total amount of Direct Expenses for the then-current Expense Year shall be and the estimated Tenant's Share of Direct Expenses (the "**Estimated Direct Expenses**"). The failure of Landlord to timely furnish the Estimate Statement for any Expense Year shall not preclude Landlord from enforcing its rights to collect any Estimated Direct Expenses under this Article 4, (provided that in the event that such failure continues for a period of six (6) months following receipt of notice from Tenant, Tenant may elect to seek specific performance to cause Landlord to deliver the Estimate Statement) nor shall Landlord be prohibited from revising any Estimate Statement or Estimated Direct Expenses theretofore delivered to the extent necessary; provided, however, any such subsequent revision shall set forth on a reasonably specific basis any particular expense increase. Thereafter, Tenant shall pay, with its next installment of Base Rent due, a fraction of the Estimated Direct Expenses for the then-current Expense Year (reduced by any amounts paid pursuant to the last sentence of this Section 4.4.2). Such fraction shall have as its numerator the number of months which have elapsed in such current Expense Year, including the month of such payment, and twelve (12) as its denominator. Until a new Estimate Statement is furnished (which Landlord shall have the right to deliver to Tenant at any time), Tenant shall pay monthly, with the monthly Base Rent installments, an amount equal to one-twelfth (1/12) of the total Estimated Direct Expenses set forth in the previous Estimate Statement delivered by Landlord to Tenant.



4.4.3 **Refund of Overpayment of Excess.** If the Statement shows that the Direct Expenses for any Expense Year ending or beginning within the Lease Term is less than the Estimated Direct Expenses actually paid by Tenant for that Expense Year, Landlord shall credit Tenant's next payment of Base Rent and Estimated Direct Expenses with the amount by which Tenant's payments of Estimated Direct Expenses exceed the actual Direct Expenses due for that Expense Year. If that Statement is provided to Tenant after the end of the Lease Term, Landlord shall include with the Statement a refund of the amount by which Tenant's payments of Estimated Direct Expenses exceed the actual Direct Expenses due for that Expense Year.

4.5 **Taxes and Other Charges for Which Tenant Is Directly Responsible.**

4.5.1 Tenant shall be liable for and shall pay ten (10) days before delinquency, taxes levied against Tenant's equipment, furniture, fixtures and any other personal property located in or about the Premises. If any such taxes on Tenant's equipment, furniture, fixtures and any other personal property are levied against Landlord or Landlord's property or if the assessed value of Landlord's property is increased by the inclusion therein of a value placed upon such equipment, furniture, fixtures or any other personal property and if Landlord pays the taxes based upon such increased assessment, which Landlord shall have the right to do regardless of the validity thereof but only under proper protest if requested by Tenant, Tenant shall upon demand repay to Landlord the taxes so levied against Landlord or the proportion of such taxes resulting from such increase in the assessment, as the case may be.

4.5.2 If the tenant improvements in the Premises, whether installed and/or paid for by Landlord or Tenant and whether or not affixed to the real property so as to become a part thereof, are assessed for real property tax purposes at a valuation higher than the valuation at which tenant improvements conforming to Landlord's "building standard" in other space in the Building are assessed, then the Tax Expenses levied against Landlord or the property by reason of such excess assessed valuation shall be deemed to be taxes levied against personal property of Tenant and shall be governed by the provisions of Section 4.5.1, above.

4.5.3 Notwithstanding any contrary provision herein, Tenant shall pay prior to delinquency any (i) rent tax or sales tax, service tax, transfer tax or value added tax, or any other applicable tax on the rent or services herein or otherwise respecting this Lease, (ii) taxes assessed upon or with respect to the possession, leasing, operation, management, maintenance, alteration, repair, use or occupancy by Tenant of the Premises or any portion of the Project, including the Project parking facilities; or (iii) taxes assessed upon this transaction or any document to which Tenant is a party creating or transferring an interest or an estate in the Premises.

4.6 **Landlord's Records.** Within one hundred eighty (180) days after receipt of a Statement by Tenant (the "**Audit Period**"), if Tenant disputes the amount of Direct Expenses set forth in the Statement, an independent certified public accountant (which accountant (A) is a member of a nationally or regionally recognized certified public accounting firm which has previous experience in auditing financial operating records of landlords of office buildings, and (B) is not working on a contingency fee basis (i.e., Tenant must be billed based on the actual time and materials that are incurred by the certified public accounting firm in the performance of the audit), designated and paid for by Tenant, may, after reasonable notice to Landlord and at reasonable times, audit Landlord's records with respect to the Statement at Landlord's corporate offices, provided that Tenant is not then in monetary or material non-monetary default under this Lease (beyond the applicable notice and cure periods provided under this Lease). In connection with such audit, Tenant and Tenant's certified public accounting firm shall execute a commercially reasonable confidentiality agreement regarding such audit. Any audit report prepared by Tenant's certified public accounting firm shall be delivered concurrently to Landlord and Tenant within the Audit Period. If after such audit, Tenant still disputes such Direct Expenses, an audit to determine the proper amount shall be made, at Tenant's expense, by an independent certified public accountant (the "**Accountant**") selected by Landlord and subject to Tenant's reasonable approval; provided that if such audit by the Accountant proves that Direct Expenses set forth in the particular Statement were overstated by more than five percent (5%), then the cost of the Accountant and the cost of such audit shall be paid for by Landlord. Tenant hereby acknowledges that Tenant's sole right to audit Landlord's records and to contest the amount of Direct Expenses payable by Tenant shall be the audit rights set forth in this Section 4.7, and Tenant hereby waives any and all other rights to audit such records and/or to contest the amount of Direct Expenses payable by Tenant.

**ARTICLE 5**

**USE OF PREMISES**

5.1 **Permitted Use.** Tenant shall use the Premises solely for the Permitted Use set forth in Section 7 of the Summary and Tenant shall not use or permit the Premises or the Project to be used for any other purpose or purposes whatsoever without the prior written consent of Landlord, which may be withheld in Landlord's sole and absolute discretion. Tenant may operate its business according to prudent industry practices so long as the use or presence of Hazardous Materials is in accordance with the terms and condition set forth in this Article 5 and is otherwise strictly and properly monitored according to, and in compliance with, all then applicable Environmental Laws. Tenant shall comply with all Underlying Documents. Landlord shall comply with all Underlying Documents to the extent necessary to fulfill Landlord's obligations under this Lease.

5.2 **Prohibited Uses.** The uses prohibited under this Lease shall include, without limitation, use of the Premises or a portion thereof for (i) offices of any agency or bureau of the United States or any state or political subdivision thereof; (ii) offices or agencies of any foreign governmental or political subdivision thereof; (iii) offices of any health care professionals or service organization; (iv) schools or other training facilities which are not ancillary to corporate, executive or professional office use; (v) retail or restaurant uses; or (vi) communications firms such as radio and/or television stations. Tenant further covenants and agrees that it shall not use, or suffer or permit any person or persons to use, the Premises or any part thereof for any use or purpose contrary to the rules and regulations

promulgated by Landlord from time to time ("**Rules and Regulations**"), the current set of which (as of the date of this Lease) is attached to this Lease as **Exhibit D**; or in violation of the laws of the United States of America, the State of California, or the ordinances, regulations or requirements of the local municipal or county governing body or other lawful authorities having jurisdiction over the Project, including, without limitation, any such laws, ordinances, regulations or requirements relating to hazardous materials or substances, as those terms are defined by applicable laws now or hereafter in effect; provided, however, Landlord shall not enforce, change or modify the Rules and Regulations in a discriminatory manner and Landlord agrees that the Rules and Regulations shall not be unreasonably modified or enforced in a manner which will unreasonably interfere with the normal and customary conduct of Tenant's business. Tenant shall not do or permit anything to be done in or about the Premises which will in any way damage the reputation of the Project or obstruct or interfere with the rights of other tenants or occupants of the Project, or injure or annoy them or use or allow the Premises to be used for any improper, unlawful or objectionable purpose, nor shall Tenant cause, maintain or permit any nuisance in, on or about the Premises.

5.3 **Hazardous Materials.** Tenant shall comply with the terms specific to Hazardous Materials set forth on **Exhibit G** attached hereto. As a material inducement to Landlord to enter into this Lease with Tenant, Tenant has fully and accurately completed Landlord's Pre-Leasing Environmental Exposure Questionnaire (the "**Environmental Questionnaire**"), which is attached as **Schedule 1 to Exhibit G**.

## ARTICLE 6

### SERVICES AND UTILITIES

6.1 **Standard Tenant Services.** Landlord shall provide the following services on all days (unless otherwise stated below) during the Lease Term, provided that notwithstanding anything to the contrary elsewhere in this Lease, Tenant shall have no obligation to pay any costs under this **Article 6** during the Construction Period.

6.1.1 **HVAC.** Subject to limitations imposed by all governmental rules, regulations and guidelines applicable thereto, Landlord shall provide heating and air conditioning ("**HVAC**") as appropriate, from the Building Systems (the "**BB HVAC System**") for normal office use in the Premises at such temperatures and in such amounts as are standard for comparable buildings with comparable densities and heat loads in the vicinity of the Building (not to exceed the HVAC system's capacity) during any hours specified by Tenant.

6.1.1.1 **Supplemental HVAC.** As a part of the Tenant Improvements and subject to the terms of the Tenant Work Letter, Tenant, at its sole expense (or as a deduction from the Tenant Improvement Allowance), may install supplemental HVAC units in the Premises for the purpose of providing supplemental air-conditioning to the Premises (the "**Tenant HVAC System**"). In accordance with the Tenant Work Letter, all aspects of the Tenant HVAC System (including, but not limited to, any connection to the Building's chilled or condenser water system) shall be subject to Landlord's prior written approval, which approval shall not be unreasonably withheld or delayed. Tenant may not connect into the Building's chilled or condenser water system. Tenant shall be permitted, at Tenant's sole cost and expense, to access 277/480 volts of electricity (subject to availability) from the existing bus duct riser in connection with the Tenant HVAC System. At Landlord's election prior to the expiration or earlier termination of this Lease, Tenant shall leave the Tenant HVAC System in the Premises upon the expiration or earlier termination of this Lease, in which event the Tenant HVAC System shall be surrendered with the Premises upon the expiration or earlier termination of this Lease, and Tenant shall thereafter have no further rights with respect thereto. In the event that Landlord fails to elect to have the Tenant HVAC System left in the Premises upon the expiration or earlier termination of this Lease, then Tenant shall remove the Tenant HVAC System upon the expiration or earlier termination of this Lease, and repair all damage to the Building resulting from such removal, at Tenant's sole cost and expense. Tenant shall be solely responsible, at Tenant's sole cost and expense, for the monitoring, operation, repair, replacement, and removal (subject to the foregoing terms of this **Section 6.1.1.2**), of the Tenant HVAC System, and in no event shall the Tenant HVAC System interfere with Landlord's operation of the Building. Any reimbursements owing by Tenant to Landlord pursuant to this **Section 6.1.1.2** shall be payable by Tenant within five (5) business days of Tenant's receipt of an invoice therefor.

6.1.2 **Electricity.** Notwithstanding any provision to the contrary contained in this Lease, Tenant shall pay the cost of all electricity provided to and/or consumed in the Premises (including normal and excess consumption and including the cost of electricity to operate the HVAC air handlers) directly to Landlord within thirty

(30) days after written notice and as Additional Rent under this Lease (and not as part of Operating Expenses), which electricity shall be measured pursuant to separate submeters, installed by Tenant as part of the construction of the Tenant Improvements. Landlord shall designate the electricity utility provider from time to time. Tenant shall bear the cost of replacement of lamps, starters and ballasts for non-Building standard lighting fixtures within the Premises. Tenant's use of electricity shall never exceed the capacity of the feeders to the Project or the risers or wiring installation, and subject to the terms of **Section 29.29**, below.

6.1.3 **Water.** Landlord shall provide city water from the regular Building outlets for drinking, lavatory and toilet purposes in the Common Areas.

6.1.4 **Janitorial.** Landlord shall not provide janitorial services for the Premises. Tenant shall perform all janitorial services and other cleaning within the Premises in a standard consistent with janitorial services provided in Comparable Buildings, including without limitation, day porter service (including light bulb maintenance and restroom fixtures maintenance), interior window cleaning, cleaning supplies deliveries and stocking, restroom cleaning, other cleaning (including pressure washing, carpet cleaning, etc.), waste and trash removal, and exterminating and pest control. Without Landlord's prior consent, Tenant shall not use (and upon notice from Landlord shall cease using) janitorial service providers who would, in Landlord's reasonable and good faith judgment, disturb labor harmony with the workforce or trades engaged in performing other work, labor or services in or about the Project.

6.1.5 **Elevators.** Landlord shall provide nonexclusive, non-attended automatic passenger elevator service.

Tenant shall cooperate with Landlord at all times and abide by all regulations and requirements that Landlord may reasonably prescribe for the proper functioning and protection of the HVAC, electrical, mechanical and plumbing systems.

6.2 **Overstandard Tenant Use.** Notwithstanding any provision to the contrary contained in this Lease, Tenant shall promptly pay to Landlord, Landlord's standard charge for any services provided to Tenant, at Tenant's request (e.g., locksmithing), which Landlord is not specifically obligated to provide to Tenant pursuant to the terms of this Lease.

6.3 **Interruption of Use.** Except as expressly provided in Section 19.5 of this Lease, Tenant agrees that Landlord shall not be liable for damages, by abatement of Rent or otherwise, for failure to furnish or delay in furnishing any service (including telephone, electrical and telecommunication services), or for any diminution in the quality or quantity thereof, when such failure or delay or diminution is occasioned, in whole or in part, by breakage, repairs, replacements, or improvements, by any strike, lockout or other labor trouble, by inability to secure electricity, gas, water, or other fuel at the Building or Project after reasonable effort to do so, by any riot or other dangerous condition, emergency, accident or casualty whatsoever, by act or default of Tenant or other parties, or by any other cause and such failures or delays or diminution shall never be deemed to constitute an eviction or disturbance of Tenant's use and possession of the Premises, constitute a breach of any implied warranty, or relieve Tenant from paying Rent or performing any of its obligations under this Lease, provided that the foregoing shall not limit Landlord's liability, if any, pursuant to applicable law for personal injury and property damage to the extent caused by the negligence or willful misconduct of Landlord, its agents, employees or contractors. Furthermore, Landlord shall not be liable under any circumstances for a loss of, or injury to, property or for injury to, or interference with, Tenant's business, including, without limitation, loss of profits, however occurring, through or in connection with or incidental to a failure to furnish any of the services or utilities as set forth in this Article 6.

## ARTICLE 7

### REPAIRS

7.1 **Landlord's Repair and Maintenance Obligations.** Landlord shall maintain in good condition and operating order and keep in good order, repair and condition, in a manner consistent with the landlords of the Comparable Buildings, the structural portions of the Buildings, including the foundation, floor/ceiling slabs, roof structure (as opposed to roof membrane), curtain wall, exterior glass and mullions, columns, beams, shafts (including elevator shafts), stairs, stairwells, elevator cab, men's and women's washrooms, Building mechanical, electrical and telephone closets, and all common and public areas servicing the Building, including the parking areas, landscaping and exterior Project signage (collectively, "**Building Structure**") and the Base Building mechanical, electrical, life safety, plumbing, sprinkler systems and HVAC systems which were not constructed by Tenant Parties (collectively, the "**Building Systems**") and the Project Common Areas. Notwithstanding anything in this Lease to the contrary, Tenant shall be required to repair the Building Structure and/or the Building Systems to the extent caused due to Tenant's particular use of the Premises for other than normal and customary business office operations, unless and to the extent such damage is covered by Landlord's Warranty or is covered by insurance carried or required to be carried by Landlord pursuant to Article 10 and to which the waiver of subrogation is applicable (such obligation to the extent applicable to Tenant as qualified and conditioned will hereinafter be defined as the "**BS/BS Exception**"). The costs of performing Landlord's obligations under this Section 7.1 shall be included in Operating Expenses, but only to the extent permitted by Sections 1.1.1.1 and 4.2.4 above.

7.2 **Tenant's Repair and Maintenance Obligations.** Tenant shall, at Tenant's own expense, pursuant to the terms of this Lease, including without limitation Article 8 hereof, keep the Premises, including all improvements, fixtures, equipment, interior window coverings, and furnishings therein, and the floor or floors of the Building on which the Premises is located, in good order, repair and condition at all times during the Lease Term, but such obligation shall not extend to the Building Structure and the Building Systems except pursuant to the BS/BS Exception. In addition, Tenant shall, at Tenant's own expense, but under the supervision and subject to the terms of this Lease, including Article 8 below, and within any reasonable period of time specified by Landlord, promptly and adequately repair all damage to the Premises and replace or repair all damaged, broken, or worn fixtures and appurtenances, but such obligation shall not extend to the Building Structure and the Building Systems except pursuant to the BS/BS Exception (and which are not covered by Landlord's Warranty), except for damage caused by ordinary wear and tear or beyond the reasonable control of Tenant; provided however, that, at Landlord's option, only if Tenant fails to make such repairs, Landlord may, after written notice to Tenant and Tenant's failure to repair within five (5) business days thereafter, but need not, make such repairs and replacements, and Tenant shall pay Landlord the cost thereof, including a percentage of the cost thereof (not to exceed three percent (3%) of the cost of such work, to be uniformly established for the Buildings and/or the Project) sufficient to reimburse Landlord for all overhead, general conditions, fees and other costs or expenses arising from Landlord's involvement with such repairs and replacements forthwith upon being billed for same.

7.3 **Other Terms.** Subject to Article 27 below, Landlord may, but shall not be required to, enter the Premises at all reasonable times, and upon reasonable notice, to make such repairs, alterations, improvements or additions to the Premises or to the Project or to any equipment located in the Project as Landlord shall desire or deem necessary or as Landlord may be required to do by governmental or quasi-governmental authority or court order or decree; provided, however, except for (i) emergencies, (ii) repairs, alterations, improvements or additions required by governmental or quasi-governmental authorities or court order or decree, or (iii) repairs which are the obligation of Tenant hereunder, any such entry into the Premises by Landlord shall be performed in a manner so as not to materially

interfere with Tenant's use of, or access to, the Premises; provided that, with respect to items (ii) and (iii) above, Landlord shall use commercially reasonable efforts to not materially interfere with Tenant's use of, or access to, the Premises. Tenant hereby waives any and all rights under and benefits of subsection 1 of Section 1932 and Sections 1941 and 1942 of the California Civil Code or under any similar law, statute, or ordinance now or hereafter in effect.

## ARTICLE 8

### ADDITIONS AND ALTERATIONS

8.1 **Landlord's Consent to Alterations.** Except as otherwise provided in this Article 8, Tenant may not make any improvements, alterations, additions or changes to the Premises or any mechanical, plumbing or HVAC facilities or systems pertaining to the Premises (collectively, the "**Alterations**") without first procuring the prior written consent of Landlord to such Alterations, which consent shall be requested by Tenant not less than fifteen (15) days prior to the commencement thereof, and which consent shall not be unreasonably withheld, conditioned or delayed by Landlord, provided it shall be deemed reasonable for Landlord to withhold its consent to any Alteration which adversely affects the structural portions or the systems or equipment of the Building or is visible from the exterior of the Building. Notwithstanding the foregoing, Tenant shall be permitted to make Alterations following ten (10) business days' notice to Landlord, but without Landlord's prior consent, to the extent that such Alterations are decorative only (*i.e.*, installation of carpeting or painting of the Premises) or do not affect the Base Building and are not visible from the exterior of the Building and do not involve a cost, in the aggregate, of more than One Hundred Fifty Thousand Dollars (\$150,000.00) during any Lease Year. The construction of the initial improvements to the Premises shall be governed by the terms of the Tenant Work Letter and not the terms of this Article 8.

8.2 **Manner of Construction.** Landlord may impose, as a condition of its consent to any and all Alterations or repairs of the Premises or about the Premises, such requirements as Landlord in its reasonable discretion may deem desirable, including, but not limited to, the requirement that Tenant utilize for such purposes only contractors, subcontractors, materials, mechanics and materialmen selected by Tenant from a list provided and approved by Landlord, the requirement that upon Landlord's request, Tenant shall, at Tenant's expense, remove such Alterations upon the expiration or any early termination of the Lease Term. Tenant shall construct such Alterations and perform such repairs in a good and workmanlike manner, in conformance with any and all Applicable Laws and pursuant to a valid building permit, issued by the City of San Jose, all in conformance with Landlord's construction rules and regulations; provided, however, that prior to commencing to construct any Alteration, Tenant shall meet with Landlord to discuss Landlord's design parameters and code compliance issues. In the event Tenant performs any Alterations in the Premises which require or give rise to governmentally required changes to the "Base Building," as that term is defined below, then Landlord shall, at Tenant's expense, make such changes to the Base Building. The "**Base Building**" shall mean the Building Structure and the Building Systems. In performing the work of any such Alterations, Tenant shall have the work performed in such manner so as not to obstruct access to the Project or any portion thereof, by any other tenant of the Project, and so as not to obstruct the business of Landlord or other tenants in the Project. Tenant shall not use (and upon notice from Landlord shall cease using) contractors, services, workmen, labor, materials or equipment that, in Landlord's reasonable judgment, would disturb labor harmony with the workforce or trades engaged in performing other work, labor or services in or about the Building or the Common Areas. In addition to Tenant's obligations under Article 9 of this Lease, upon completion of any Alterations, Tenant agrees to cause a Notice of Completion to be recorded in the office of the Recorder of the County of Santa Clara in accordance with Section 8182 of the Civil Code of the State of California or any successor statute, and Tenant shall deliver to the Project construction manager a reproducible copy of the "as built" drawings of the Alterations, as well as an electronic CAD file, as well as all permits, approvals and other documents issued by any governmental agency in connection with the Alterations.

8.3 **Payment for Improvements.** If payment is made by Tenant directly to contractors, Tenant shall

(i) comply with Landlord's requirements for final lien releases and waivers in connection with Tenant's payment for work to contractors, and (ii) sign Landlord's standard contractor's rules and regulations. If Tenant orders any work directly from Landlord, Tenant shall pay to Landlord an amount equal to three percent (3%) of the cost of such work to compensate Landlord for all overhead, general conditions, fees and other costs and expenses arising from Landlord's involvement with such work. If Tenant does not order any work directly from Landlord, Tenant shall reimburse Landlord for Landlord's reasonable, actual, out-of-pocket costs and expenses actually incurred in connection with Landlord's review of such work. At Landlord's option, prior to the commencement of construction of any Alteration, Tenant shall provide Landlord with the reasonably anticipated cost thereof, which Landlord shall disburse during construction pursuant to Landlord's standard, commercially reasonable disbursement procedure.

8.4 **Construction Insurance.** In addition to the requirements of Article 10 of this Lease, in the event that Tenant makes any Alterations, prior to the commencement of such Alterations, Tenant shall provide Landlord with evidence that Tenant carries "Builder's All Risk" insurance in an amount approved by Landlord covering the construction of such Alterations, and such other insurance as Landlord may reasonably require, it being understood and agreed that all of such Alterations shall be insured by Tenant pursuant to Article 10 of this Lease immediately upon completion thereof. In addition, Tenant's contractors and subcontractors shall be required to carry Commercial General Liability insurance in an amount approved by Landlord and otherwise in accordance with the requirements of Article 10 of this Lease. Tenant's Contractors and Subcontractors shall name Landlord as an additional insured on their General Liability Policies on a form at least as broad as CG 20 10 11/85.

8.5 **Landlord's Property.** All Alterations, improvements (including the Tenant Improvements), fixtures, equipment and/or appurtenances which may be installed or placed in or about the Premises, from time to time, shall be at the sole cost of Tenant (except as may be deducted from the Tenant Improvement Allowance) and shall immediately be and become part of the Premises and the property of Landlord, except that Tenant may remove

any Alterations, improvements, fixtures and/or equipment which Tenant can substantiate to Landlord have not been paid for with any funds provided to Tenant by Landlord, provided Tenant repairs any damage to the Premises and Building caused by such removal and returns the affected portion of the Premises to the condition existing prior to installation of such Alterations, improvements, fixtures and/or equipment by Tenant. Furthermore, Landlord may, by written notice to Tenant prior to the end of the Lease Term, or given following any earlier termination of this Lease, require Tenant, at Tenant's expense, to remove any Specialty Improvements (defined hereinbelow), and to repair any damage to the Premises and Project caused by such removal; provided, however, if, in connection with its notice to Landlord with respect to any such Specialty Improvements (including any Tenant Improvements), (x) Tenant requests Landlord's decision with regard to the removal of such Specialty Improvements, and (y) Landlord thereafter agrees in writing to waive the removal requirement with regard to such Specialty Improvements, then Tenant shall not be required to so remove such Specialty Improvements. If Tenant fails to complete such removal and/or to repair any damage caused by the removal of any Specialty Improvements, then Landlord may do so and may charge the cost thereof to Tenant. Tenant hereby protects, defends, indemnifies and holds Landlord harmless from and against any liability, cost, obligation, expense or claim of lien in any manner relating to the installation, placement, removal or financing of any such Specialty Improvements, which obligations of Tenant shall survive the expiration or earlier termination of this Lease. "**Specialty Improvements**" means any Alterations or Tenant Improvements other than normal and customary general office improvements. Notwithstanding the foregoing, "**Specialty Improvements**" (i) shall not include conference rooms, or training space and (ii) shall include (a) any Alterations or Tenant Improvements which affect the Base Building, (b) any fitness facility in the Premises, (c) any kitchens, showers, restrooms, washrooms or similar facilities in the Premises that are not part of the Base Building, (d) any private/internal stairways in the Premises (which stairways Tenant shall be required to demolish and cap), (e) any Lines (as that term is defined in Section 29.31 below), (f) any other items, improvements or fixtures which Tenant is expressly required to remove pursuant to the terms of this Lease.

## ARTICLE 9

### COVENANT AGAINST LIENS

Tenant shall keep the Project and Premises free from any liens or encumbrances arising out of the work performed, materials furnished or obligations incurred by or on behalf of Tenant, and shall protect, defend, indemnify and hold Landlord harmless from and against any claims, liabilities, judgments or costs (including, without limitation, reasonable attorneys' fees and costs) arising out of same or in connection therewith. Tenant shall give Landlord notice at least twenty (20) days prior to the commencement of any such work on the Premises (or such additional time as may be necessary under Applicable Laws) to afford Landlord the opportunity of posting and recording appropriate notices of non-responsibility. Tenant shall remove any such lien or encumbrance by bond or otherwise within ten (10) business days after notice by Landlord, and if Tenant shall fail to do so, Landlord may pay the amount necessary to remove such lien or encumbrance, without being responsible for investigating the validity thereof. The amount so paid shall be deemed Additional Rent under this Lease payable upon demand, without limitation as to other remedies available to Landlord under this Lease. Nothing contained in this Lease shall authorize Tenant to do any act which shall subject Landlord's title to the Building or Premises to any liens or encumbrances whether claimed by operation of law or express or implied contract. Any claim to a lien or encumbrance upon the Building or Premises arising in connection with any such work or respecting the Premises not performed by or at the request of Landlord shall be null and void, or at Landlord's option shall attach only against Tenant's interest in the Premises and shall in all respects be subordinate to Landlord's title to the Project, Building and Premises.

## ARTICLE 10

### INDEMNIFICATION AND INSURANCE

#### 10.1 Indemnification and Waiver.

10.1.1 **After Construction Period.** The provisions of this Section 10.1.1 shall have limited application, as provided under Section 10.1.2 below, during the Construction Period (as defined hereinbelow). Tenant hereby assumes all risk of damage to property or injury to persons in, upon or about the Premises during the Lease Term and any period of occupancy of the Premises by Tenant from any cause whatsoever (including, but not limited to, any personal injuries resulting from a slip and fall in, upon or about the Premises) and agrees that Landlord, its partners, subpartners and their respective officers, agents, servants, employees, and independent contractors (collectively, "**Landlord Parties**") shall not be liable for, and are hereby released from any responsibility for, any damage either to person or property or resulting from the loss of use thereof, which damage is sustained by Tenant or by other persons claiming through Tenant, provided that the terms of the foregoing assumption and release shall not apply to the negligence or willful misconduct of Landlord or any Landlord Parties. Tenant shall indemnify, defend, protect, and hold harmless the Landlord Parties from any and all loss, cost, damage, expense and liability (including without limitation court costs and reasonable attorneys' fees) incurred in connection with or arising from any cause in, on or about the Premises (including, but not limited to, a slip and fall) during the Lease Term and any period of occupancy of the Premises by Tenant, any acts, omissions or negligence of Tenant or of any person claiming by, through or under Tenant, or of the contractors, agents, servants, employees, invitees, guests or licensees of Tenant (collectively, "**Tenant Parties**") or any such person, in, on or about the Project or any breach of the terms of this Lease by Tenant, either prior to, during, or after the expiration of the Lease Term, provided that the terms of the foregoing indemnity shall not apply to the negligence or willful misconduct of Landlord or any Landlord Parties. Should Landlord be named as a defendant in any suit brought against Tenant in connection with or arising out of Tenant's occupancy of the Premises, Tenant shall pay to Landlord its actual, documented and reasonable costs and expenses incurred in such suit, including without limitation, its actual professional fees such as reasonable appraisers', accountants' and reasonable attorneys' fees. The provisions of this Section 10.1 shall survive the expiration or sooner termination of this Lease with respect to any claims or liability arising in connection with any event occurring prior

to such expiration or termination. Landlord shall indemnify, defend, protect, and hold harmless Tenant from any and all loss, cost, damage, expense and liability (including without limitation reasonable attorneys' fees) to the extent arising from the negligence or willful misconduct of Landlord in, on or about the Common Areas of the Project, except to the extent caused by the negligence or willful misconduct of Tenant or the Tenant Parties. Further, Tenant's agreement to indemnify Landlord and Landlord's agreement to indemnify Tenant pursuant to this Section 10.1 is not intended and shall not relieve any insurance carrier of its obligations under policies required to be carried pursuant to the provisions of this Lease, to the extent such policies cover the matters subject to Tenant's or Landlord's, as applicable, indemnification obligations; nor shall they supersede any inconsistent agreement of the parties set forth in any other provision of this Lease. The provisions of this Section 10.1 are subject to the terms of Section 29.13 below.

10.1.2 **During Construction Period.** Notwithstanding anything set forth in the foregoing Section 10.1 or any other provision of this Lease or the Tenant Work Letter to the contrary, during the Construction Period only, the following provisions shall be applicable:

10.1.2.1 With respect to any indemnity obligation of Tenant arising at any time during the Construction Period only, (A) the term "**Landlord Parties**" shall mean and shall be limited to CAP Phase 1, LLC, a Delaware limited liability company (or any entity that succeeds to the entire interest of CAP Phase 1, LLC, a Delaware limited liability company as Landlord under this Lease) and shall not include any other person or entity; provided, however, that Landlord may include in any claim owed by Tenant to it any amount which Landlord shall pay or be obligated to indemnify any other person or entity, and (B) any indemnity obligation shall be limited to losses caused by, or arising as a result of any act or failure to act of, Tenant or Tenant's employees, agents or contractors; and

10.1.2.2 Tenant's liability under this Lease for Tenant's actions or failures to act under the Lease during the Construction Period, including, without limitation, (A) Tenant's indemnity obligations (calculated in accordance with Accounting Standards Codification (ASC) 840-40-55-10 through 13) plus (B) all Base Rent and Additional Rent obligations owed by or paid by Tenant, including any prepaid Base Rent paid by Tenant pursuant to the terms and conditions of Section 3.1 above (though the parties acknowledge that Tenant's obligation to pay Base Rent and Additional Rent shall not occur until Tenant is obligated to pay the same pursuant to the terms of Articles 3 and 4 of this Lease) shall be limited to eighty-nine and five-tenths percent (89.5%) of "Landlord's Project Costs" (defined hereinbelow), determined as of the date of Landlord's claim for such amount owed by Tenant. As used herein, "**Landlord's Project Costs**" shall mean the amount capitalized in the Project by Landlord in accordance with U.S. generally accepted accounting principles, plus other costs related to the Project paid to third parties (other than lenders or owners of Landlord), excluding land acquisition costs, but including land carrying costs, such as interest or ground rent incurred during the construction period, and including all costs incurred by Landlord in connection with the development and construction of the Base Building and Common Areas of the Project.

10.1.2.3 For the avoidance of doubt, Landlord and Tenant agree that:

- i. no claim by Landlord for Tenant's repudiation of this Lease at any time shall be limited under this Section 10.1; and
- ii. if during the Construction Period, Landlord makes any claim against Tenant other than under Section 10.1.2.3.1 above, pertaining to any period after the Construction Period and the amount payable by Tenant for such claim is limited by the provisions of Section 10.1.2.2 above, the entire amount (to the extent not theretofore paid) shall be due with interest at the Interest Rate payable as Additional Rent evenly throughout the six (6) months immediately following the Construction Period.
- iii. Effective as of the expiration of the Construction Period, this Section 10.1.2 shall be of no further force or effect.

10.1.3 As used herein, "**Construction Period**" shall mean the period from the date that Landlord commences demolition work for the Project to the date that Landlord substantially completes construction of the Base Building and Common Areas within the Building in accordance with the Tenant Work Letter, regardless of the occurrence of any delays caused by Tenant.

10.2 **Landlord's Insurance.** Throughout the Lease Term, Landlord shall procure and maintain in full force and effect with respect to the Building: (i) a policy or policies of property insurance covering the full replacement value of the Building written on a physical loss or damage basis under a "special form" or "All Risk" form policy, together with any coverages or endorsements required by any lender and/or reasonably deemed prudent by Landlord to carry, such as, without limitation, sprinkler leakage, vandalism and malicious mischief coverage, and earthquake; and (ii) a policy of commercial general liability insurance with a limit of liability of not less than

\$5,000,000 per occurrence insuring Landlord's activities with respect to the Premises and the Building for loss, damage or liability for personal injury or death of any person or loss or damage to property occurring in, upon or about the Premises or the Building. Landlord may meet any of the foregoing occurrence limits with the use of blanket or umbrella policies. Tenant shall, at Tenant's expense, comply with all insurance company requirements pertaining to the use of the Premises that (a) have been disclosed to Tenant by Landlord and (b) pertain to Tenant's business operations, conduct or use of the Premises and the Building, whether imposed by Tenant's insurers, Landlord's insurers, or both. If Tenant's conduct or use of the Premises causes any increase in the premium for such insurance policies then Tenant shall reimburse Landlord for any such increase. Tenant, at Tenant's expense, shall comply with all rules, orders, regulations or requirements of the American Insurance Association (formerly the National Board of Fire Underwriters) and with any similar body.

10.3 **Tenant's Insurance.** Tenant shall maintain the following coverages in the following amounts. Landlord makes no representation or warranty to Tenant that the amount of insurance required to be carried by Tenant

under the terms of this Lease is adequate to fully protect Tenant's interests, nor is Tenant's liability limited to the amount specified herein. Tenant is encouraged to evaluate its insurance needs and obtain whatever additional types or amounts of insurance that it may deem desirable or appropriate.

10.3.1 Commercial General Liability Insurance on an occurrence form covering the insured against claims of bodily injury, personal injury and property damage (including loss of use thereof) arising out of Tenant's operations, and contractual liabilities including a Broad Form endorsement covering the insuring provisions of this Lease and the performance by Tenant of the indemnity agreements set forth in Section 10.1 of this Lease and including products and completed operations coverage for limits of liability on a per location basis of not less than:

Bodily Injury and Property Damage Liability	\$9,000,000 each occurrence \$10,000,000 annual aggregate
Personal Injury Liability	\$9,000,000 each occurrence \$9,000,000 annual aggregate 0% Insured's participation

The limits above can be provided in combination with an excess or umbrella policy. In the event Tenant is unable to procure the prescribed limit in a single policy, an Excess or Umbrella policy will be acceptable only in the event it includes an endorsement specifying that the coverage provided in the Excess or Umbrella policy will provide coverage on a follow form, primary and non-contributory basis for all additional insureds.

The annual aggregate limits of Insurance shall apply separately to this location.

10.3.2 Physical Damage Insurance covering (i) all office furniture, business and trade fixtures, office equipment, free-standing cabinet work, movable partitions, merchandise and all other items of Tenant's property on the Premises installed by, for, or at the expense of Tenant, (ii) the "**Tenant Improvements**," as that term is defined in the Tenant Work Letter, and any other improvements which exist in the Premises as of the Lease Commencement Date (excluding the Base Building) (the "**Original Improvements**"), and (iii) all other improvements, alterations and additions to the Premises. Such insurance shall be written on a "**Special Form**" of physical loss or damage basis, for the full replacement cost value (subject to reasonable deductible amounts) new without deduction for depreciation of the covered items and in amounts that meet any co-insurance clauses of the policies of insurance and shall include coverage for damage or other loss caused by fire or other peril including, but not limited to, vandalism and malicious mischief, theft, sprinkler leakage, bursting or stoppage of pipes, and providing business interruption coverage for a period of one year.

10.3.3 Worker's Compensation and Employer's Liability or other similar insurance pursuant to all applicable state and local statutes and regulations.

10.3.4 Contractual Liability Insurance sufficient to cover Tenant's liability and obligations under this Lease (including, but not limited to, Tenant's third-party indemnity obligations under Section 10.1 of this Lease), but only if such contractual liability insurance is not already included in Tenant's commercial general liability insurance policy and umbrella/excess liability insurance policy.

10.3.5 Commercial Auto Liability Insurance (if applicable) covering automobiles owned, hired or used by Tenant in carrying on its business with limits not less than \$1,000,000 combined single limit for each accident, and scheduled to the umbrella/excess liability insurance policy.

10.3.6 Business Interruption Insurance in an amount sufficient to cover a period of interruption of not less than twelve (12) months.

10.4 **Form of Policies.** The minimum limits of policies of insurance required of Tenant under this Lease shall in no event limit the liability of Tenant under this Lease. Such insurance shall (i) name Landlord, its officers, directors and employees and all other persons and/or entities as reasonably directed by Landlord as additional insureds (hereinafter "**Additional Insureds**"); (ii) specifically cover, including any Additional Insured endorsements, the liability arising out of the ownership, maintenance or use of the Premises and all assumed liability by Tenant under this Lease, including, but not limited to, Tenant's third-party indemnification obligations under Section 10.1 of this Lease; (iii) if Tenant uses a Blanket Additional Insured Form, such form shall not exclude any Additional Insured from coverage because they are not a party to this Lease; (iv) be issued by an insurance company having a rating of not less than A-X in Best's Insurance Guide or which is otherwise acceptable to Landlord and licensed to do business in the State of California; (v) other than with respect to Worker's Compensation coverage, be primary and non-contributory insurance as to all claims thereunder and provide that any insurance carried by Landlord is excess and is non-contributing with any insurance requirement of Tenant; (vi) be in form and content reasonably acceptable to Landlord; (vii) provide that said insurance shall not be canceled or coverage changed unless thirty (30) days' prior written notice shall have been given to Landlord and any mortgagee of Landlord (except for cancellation for non-payment of premium); and (viii) Tenant's commercial general liability coverage (including Additional Insured endorsements, and primary and non-contributory endorsements), property insurance and Worker's Compensation and Employer's Liability coverage shall include a waiver of subrogation endorsement in favor of Landlord. Tenant shall deliver said policy or policies or certificates thereof to Landlord on or before the Lease Commencement Date and at least thirty (30) days before the expiration dates thereof. In the event Tenant shall fail to procure such insurance, or to deliver such policies or certificate, Landlord may, at its option, procure such policies for the account of Tenant, and the cost thereof shall be paid to Landlord within thirty (30) days after delivery to Tenant of bills therefor.

10.5 **Subrogation.** Landlord and Tenant intend that their respective property loss risks shall be borne by reasonable insurance carriers to the extent above provided, and Landlord and Tenant hereby agree to look solely to,

and seek recovery only from, their respective insurance carriers in the event of a property loss to the extent that such coverage is agreed to be provided hereunder. The parties each hereby waive all rights and claims against each other for such losses, and waive all rights of subrogation of their respective insurers, provided such waiver of subrogation shall not affect the right to the insured to recover thereunder. The parties agree that their respective insurance policies are now, or shall be, endorsed such that the waiver of subrogation shall not affect the right of the insured to recover thereunder, so long as no material additional premium is charged therefor. If Landlord or Tenant fail to carry the amounts and types of insurance required to be carried pursuant to this Article 10, in addition to any remedies Landlord or Tenant may have under this Lease, such failure shall be deemed to be a covenant and agreement by the party failing to carry such insurance to self-insure with respect to the type and amount of insurance such party so failed to carry, with full waiver of subrogation with respect thereto.

10.6 **Additional Insurance Obligations.** Not more than once every five (5) years, Landlord may request, and Tenant shall carry and maintain during the entire Lease Term, at Tenant's sole cost and expense, increased amounts of the insurance required to be carried by Tenant pursuant to this Article 10 and such other reasonable types of insurance coverage and in such reasonable amounts covering the Premises and Tenant's operations therein, as may be reasonably requested by Landlord. Tenant shall not be required to procure or maintain increased amounts of insurance or other types of insurance coverage that are (a) beyond those typically maintained by similarly situated parties leasing reasonably similar amounts and types of space for use in Comparable Buildings or (b) not available at commercially reasonable rates.

## ARTICLE 11

### DAMAGE AND DESTRUCTION

11.1 **Repair of Damage to Premises by Landlord.** Tenant shall promptly notify Landlord of any damage to the Premises resulting from fire or any other casualty ("**Casualty**"). If the Premises or any Common Areas serving or providing access to the Premises or Tenant's Parking Areas shall be damaged by Casualty or a Casualty results in the Premises not being provided with services required to be provided by Landlord pursuant to Article 6 above, and if neither Landlord nor Tenant has elected to terminate this Lease under this Article 11, Landlord shall promptly and diligently, subject to reasonable delays for insurance adjustment or other matters beyond Landlord's reasonable control, and subject to all other terms of this Article 11, restore the Original Improvements, Tenant Improvements, Alterations, Base Building and such Common Areas and Tenant's Parking Areas. Such restoration shall be to substantially the same condition of the Base Building and the Common Areas prior to the casualty, except for modifications required by zoning and building codes and other Applicable Laws or by the holder of a mortgage on the Building or Project or any other modifications to the Common Areas deemed desirable by Landlord, which are consistent with the character of the Project, provided that access to the Premises and any common restrooms serving the Premises shall not be materially impaired. Upon the occurrence of any damage to the Premises, upon notice to Tenant from Landlord, Tenant shall assign to Landlord (or to Landlord's insurer, lender or contractor) all insurance proceeds payable to Tenant under Tenant's insurance required under Section 10.3 of this Lease for restoration of the Original Improvements, Tenant Improvements and/or any Alterations, and Landlord shall repair any injury or damage to the Tenant Improvements and the Original Improvements installed in the Premises and shall return such Tenant Improvements and Original Improvements to their original condition; provided that if the cost of such repair by Landlord exceeds the amount of insurance proceeds received by Landlord from Tenant's insurance carrier, as assigned by Tenant, the cost of such repairs shall be paid by Tenant to Landlord prior to Landlord's commencement of repair of the damage.

11.2 **Repair Period Notice.** Landlord shall, within sixty (60) days after the date of a Casualty, provide written notice to Tenant indicating the anticipated period for repairing a Casualty ("**Repair Period Notice**"). The Repair Period Notice shall be accompanied by a certified statement executed by a licensed contractor or architect mutually approved by the parties, certifying the contractor's or architect's opinion regarding the anticipated period for repairing the Casualty. The Repair Period Notice shall also state, if applicable, Landlord's election either to repair or to terminate this Lease under Section 11.3.

11.3 **Landlord's Option to Repair.** Notwithstanding the terms of Section 11.1 of this Lease, Landlord may elect not to rebuild and/or restore the Premises, Building and/or Project, and instead terminate this Lease, by notifying Tenant in writing of such termination within sixty (60) days after the date of discovery of the damage, such notice to include a termination date giving Tenant sixty (60) days to vacate the Premises, but Landlord may so elect only if the Building or Project shall be damaged by fire or other casualty or cause, whether or not the Premises are affected, and one or more of the following conditions is present: (i) in Landlord's reasonable judgment, repairs cannot reasonably be completed within one hundred eighty (180) days after the date of discovery of the damage (when such repairs are made without the payment of overtime or other premiums); (ii) the holder of any mortgage on the Building or Project or ground lessor with respect to the Building or Project shall require that the insurance proceeds or any portion thereof be used to retire the mortgage debt, or shall terminate the ground lease, as the case may be; (iii) the damage is not fully covered by Landlord's insurance policies; (iv) Landlord decides to rebuild the Building or Common Areas so that they will be substantially different structurally or architecturally; (v) the damage occurs during the last twelve (12) months of the Lease Term; or (vi) any owner of any other portion of the Project, other than Landlord, does not intend to repair the damage to such portion of the Project.

11.4 **Tenant's Option to Terminate.** If the Repair Period Notice provided by Landlord indicates that the anticipated period for repairing the Casualty exceeds one hundred eighty (180) days from the date of the Casualty, Tenant may elect to terminate this Lease by providing written notice ("**Tenant's Casualty Termination Notice**") to Landlord within thirty (30) days after receiving the Repair Period Notice. If Tenant does not elect to terminate within this thirty-day (30-day) period, subject to the next succeeding sentence, Tenant shall be considered to have waived the option to terminate. If Tenant was eligible to deliver a Tenant's Casualty Termination Notice, but elected not to deliver



the same, then if after sixty (60) days after the date specified for repair in the Repair Period Notice, the repairs are not substantially completed (as defined in this Lease), Tenant shall have the right to terminate this Lease by written notice to Landlord given within fifteen (15) days after expiration of such sixty (60) day period. In addition, if the Premises or the Building is destroyed or damaged by a Casualty during the last twelve (12) months of the Lease Term, Tenant shall have the option to terminate this Lease by giving written notice to Landlord of the exercise of that option within thirty (30) days after the Casualty.

11.5 **Rent Abatement Due to Casualty.** Landlord and Tenant agree that Tenant's Rent shall be fully abated during the period beginning on the later of (a) the date of the Casualty or (b) the date on which Tenant ceases to occupy the Premises and ending on the date of substantial completion of Landlord's restoration obligations as provided in this Article 11 and a reasonable period of time for Tenant's installation of property, furniture, fixtures and equipment to the extent the same shall have been removed as a result of such Casualty ("**Casualty Abatement Period**"). If, however, Tenant is able to occupy all or a portion of the Premises, Rent shall be abated during the Casualty Abatement Period only for the portion of the Premises not occupiable by Tenant. Except as otherwise provided in this Lease, the Rent abatement provided in this Section is Tenant's sole remedy due to the occurrence of the Casualty. Landlord shall not be liable to Tenant or any other person or entity for any direct, indirect, or consequential damage (including lost profits of Tenant or loss of or interference with Tenant's business), whether or not caused by the negligence of Landlord or Landlord's employees, contractors, licensees, or invitees, due to, arising out of, or as a result of the Casualty (including but not limited to the termination of the Lease in connection with the Casualty). Tenant agrees to maintain business interruption insurance in amounts and with coverage no less than that required to provide coverage regarding such matters.

11.6 **Effective Date of Termination; Rent Apportionment.** If Landlord or Tenant elects to terminate this Lease under this Article 11 in connection with a Casualty, the termination shall be effective thirty (30) days after delivery of notice of such election. Tenant shall pay Rent, properly apportioned up to the date of the Casualty. After the effective date of the termination, Landlord and Tenant shall be discharged of all future obligations under this Lease, except for those provisions that, by their terms, survive the expiration or earlier termination of this Lease.

11.7 **Waiver of Statutory Provisions.** The provisions of this Lease, including this Article 11, constitute an express agreement between Landlord and Tenant with respect to any and all damage to, or destruction of, all or any part of the Premises, the Building or the Project, and any statute or regulation of the State of California, including, without limitation, Sections 1932(2) and 1933(4) of the California Civil Code, with respect to any rights or obligations concerning damage or destruction in the absence of an express agreement between the parties, and any other statute or regulation, now or hereafter in effect, shall have no application to this Lease or any damage or destruction to all or any part of the Premises, the Building or the Project.

## ARTICLE 12

### NONWAIVER

No provision of this Lease shall be deemed waived by either party hereto unless expressly waived in a writing signed thereby. The waiver by either party hereto of any breach of any term, covenant or condition herein contained shall not be deemed to be a waiver of any subsequent breach of same or any other term, covenant or condition herein contained. The subsequent acceptance of Rent hereunder by Landlord shall not be deemed to be a waiver of any preceding breach by Tenant of any term, covenant or condition of this Lease, other than the failure of Tenant to pay the particular Rent so accepted, regardless of Landlord's knowledge of such preceding breach at the time of acceptance of such Rent. No acceptance of a lesser amount than the Rent herein stipulated shall be deemed a waiver of Landlord's right to receive the full amount due, nor shall any endorsement or statement on any check or payment or any letter accompanying such check or payment be deemed an accord and satisfaction, and Landlord may accept such check or payment without prejudice to Landlord's right to recover the full amount due. No receipt of monies by Landlord from Tenant after the termination of this Lease shall in any way alter the length of the Lease Term or of Tenant's right of possession hereunder, or after the giving of any notice shall reinstate, continue or extend the Lease Term or affect any notice given Tenant prior to the receipt of such monies, it being agreed that after the service of notice or the commencement of a suit, or after final judgment for possession of the Premises, Landlord may receive and collect any Rent due, and the payment of said Rent shall not waive or affect said notice, suit or judgment.

## ARTICLE 13

### CONDEMNATION

13.1 **In General.** If the whole or any part of the Premises, Building or Project shall be taken by power of eminent domain or condemned by any competent authority for any public or quasi-public use or purpose, or if any adjacent property or street shall be so taken or condemned, or reconfigured or vacated by such authority in such manner as to require the use, reconstruction or remodeling of any part of the Premises, Building or Project, or if Landlord shall grant a deed or other instrument in lieu of such taking by eminent domain or condemnation (any of the foregoing, a "**Condemnation**"), Landlord shall have the option to terminate this Lease effective as of the date possession is required to be surrendered to the authority, Landlord shall notify Tenant in writing of any Condemnation within thirty (30) days after the later of (a) the filing of a complaint by Condemnor or (b) the final agreement and determination by Landlord and Condemnor of the extent of the taking ("**Condemnation Notice**"). If any Condemnation results in a taking of a material part of the Premises, Tenant shall have the right to terminate this Lease. Tenant shall not because of such taking assert any claim against Landlord or the authority for any compensation because of such taking and Landlord shall be entitled to the entire award or payment in connection therewith. All Rent shall be apportioned as of the date of such termination. If any part of the Premises shall be taken, and this Lease shall not be so terminated, the Rent shall be proportionately abated commencing on the effective date of such

Condemnation. Tenant hereby waives any and all rights it might otherwise have pursuant to Section 1265.130 of The California Code of Civil Procedure. Notwithstanding anything to the contrary contained in this Article 13, in the event of a temporary taking of all or any portion of the Premises for a period of one hundred and eighty (180) days or less, then this Lease shall not terminate but the Base Rent and the Additional Rent shall be abated for the period of such taking in proportion to the ratio that the amount of RSF of the Premises taken bears to the total RSF of the Premises for the period of time commencing on the effective date of the Condemnation and continuing until Tenant's access to, and use of, the Premises has been restored. Landlord shall be entitled to receive the entire award made in connection with any such temporary taking.

13.2 **Tenant's Right to Make a Separate Claim.** Notwithstanding anything in this Article 13, Tenant shall have the right to make a separate claim in the Condemnation proceeding for: (1) the taking of the unamortized or undepreciated value of any leasehold improvements owned by Tenant that Tenant has the right to remove at the end of the Lease Term and that Tenant elects not to remove; (2) reasonable removal and relocation costs for any leasehold improvements that Tenant has the right to remove and elects to remove (if Condemnor approves of the removal); (3) loss of goodwill; (4) relocation costs under California Government Code 7262, the claim for which Tenant may pursue by separate action independent of this Lease; and (5) any other amount in addition to the foregoing that does not reduce the amount of the Award payable to Landlord. Tenant shall have the right to negotiate directly with Condemnor for the recovery of the portion of the Award that Tenant is entitled to under this subsection. Additionally, Landlord and Tenant shall each be entitled to receive fifty percent (50%) of the "bonus value" of the leasehold estate in connection therewith, which bonus value shall be equal to the difference between the Rent payable under this Lease and the sum established by the condemning authority as the award for compensation.

## ARTICLE 14

### ASSIGNMENT AND SUBLETTING

14.1 **Transfers.** Except as otherwise set forth in Section 14.8 below, Tenant shall not, without the prior written consent of Landlord, assign, mortgage, pledge, hypothecate, encumber, or permit any lien to attach to, or otherwise transfer, this Lease or any interest hereunder, permit any assignment, or other transfer of this Lease or any interest hereunder by operation of law, sublet the Premises or any part thereof, or enter into any license or concession agreements or otherwise permit the occupancy or use of the Premises or any part thereof by any persons other than Tenant and its employees and contractors (all of the foregoing are hereinafter sometimes referred to collectively as "**Transfers**" and any person to whom any Transfer is made or sought to be made is hereinafter sometimes referred to as a "**Transferee**"). If Tenant desires Landlord's consent to any Transfer requiring Landlord's consent pursuant to this Article 14, Tenant shall notify Landlord in writing, which notice (the "**Transfer Notice**") shall include (i) the proposed effective date of the Transfer, which shall not be less than twenty (20) days nor more than one hundred eighty (180) days after the date of delivery of the Transfer Notice, (ii) a description of the portion of the Premises to be transferred (the "**Subject Space**"), (iii) all of the material terms of the proposed Transfer and the consideration therefor, including calculation of the "Transfer Premium", as that term is defined in Section 14.3 below, in connection with such Transfer, the name and address of the proposed Transferee, and a copy of all existing executed and/or proposed documentation pertaining to the proposed Transfer, including all existing operative documents to be executed to evidence such Transfer or the agreements incidental or related to such Transfer, provided that Landlord shall have the right to require Tenant to utilize Landlord's standard consent to Transfer documents in connection with the documentation of Landlord's consent to such Transfer, which standard consent must be on commercially reasonable terms, (iv) current financial statements of the proposed Transferee certified by an officer, partner or owner thereof, business credit and personal references and history of the proposed Transferee and any other information reasonably required by Landlord which will enable Landlord to determine the financial responsibility, character, and reputation of the proposed Transferee, nature of such Transferee's business and proposed use of the Subject Space, and (v) an executed estoppel certificate from Tenant in the form attached hereto as Exhibit E. Any Transfer made without Landlord's prior written consent shall, at Landlord's option, be null, void and of no effect, and shall, at Landlord's option, constitute a default by Tenant under this Lease. Whether or not Landlord consents to any proposed Transfer, and whether or not Landlord is required to consent to such Transfer, Tenant shall pay Landlord's reasonable review and processing fees, as well as any reasonable professional fees (including, without limitation, attorneys', accountants', architects', engineers' and consultants' fees) incurred by Landlord in connection with such Transfer, within thirty (30) days after written request by Landlord ("**Transfer Fee**"), provided, Tenant shall not be required to pay more than Two Thousand Five Hundred Dollars (\$2,500.00) as a Transfer Fee in connection with any one Transfer and (b) Landlord shall provide supporting documentation for the Transfer Fee. The foregoing Transfer Fee cap shall increase by ten percent (10%) after each five (5) year period during the Lease Term.

14.2 **Landlord's Consent.** Landlord shall not unreasonably withhold or delay its consent to any proposed Transfer of the Subject Space to the Transferee on the terms specified in the Transfer Notice. Within ten (10) business days after receiving the completed Transfer Notice, Landlord shall approve or disapprove the proposed Transfer in writing. If Landlord disapproves the Transfer, Landlord shall provide a reasonably detailed, written explanation. If Landlord fails to respond within the required time, Tenant may send a written "reminder notice". If Landlord fails to respond within three (3) business days after receipt of such reminder notice, then Landlord shall, at Tenant's option, be considered to have consented to the Transfer. Without limitation as to other reasonable grounds for withholding consent, the parties hereby agree that it shall be reasonable under this Lease and under any Applicable Law for Landlord to withhold consent to any proposed Transfer where one or more of the following apply:

14.2.1 The Transferee is of a character or reputation or engaged in a business which is not consistent with the quality of the Building or the Project;

14.2.2 The Transferee intends to use the Subject Space for purposes which are not permitted under this Lease;

14.2.3 The Transferee is either a governmental agency or instrumentality thereof;

14.2.4 During the first three (3) years of the Lease Term only (or such earlier period as all of the office space in Building 2 is ninety percent (90%) leased), the rent charged by Tenant to such Transferee during the term of such Transfer, calculated using a present value analysis, is less than ninety-five percent (95%) of the rent being quoted by Landlord at the time of such Transfer for comparable space in the Project for a comparable term, calculated using a present value analysis;

14.2.5 The Transferee is not a party of reasonable financial worth and/or financial stability in light of the responsibilities to be undertaken in connection with the Transfer on the date consent is requested;

14.2.6 The terms of the proposed Transfer will allow the Transferee to exercise a right of renewal, right of expansion, right of first offer, or other similar right (not including the termination right set forth in Section 2.3, above, which right may be exercised by a Transferee) held by Tenant (or will allow the Transferee to occupy space leased by Tenant pursuant to any such right);

14.2.7 The proposed Transfer would cause a violation of another lease for space in the Project granted by Landlord in good faith in another lease for space in the Project, or would give an occupant of the Project a right to cancel its lease as a result of the proposed use to be made of the space by the sublessee or assignee, provided that upon request from Tenant, Landlord shall provide Notice of all applicable exclusive rights;

14.2.8 Either the proposed Transferee, or any person or entity which directly or indirectly, controls, is controlled by, or is under common control with, the proposed Transferee, (i) occupies space in the Project at the time of the request for consent, or (ii) is negotiating with Landlord or has negotiated with Landlord during the six (6) month period immediately preceding the date Landlord receives the Transfer Notice, to lease space in the Project.

If Landlord consents to any Transfer pursuant to the terms of this Section 14.2 (and does not exercise any recapture rights Landlord may have under Section 14.4 of this Lease), Tenant may within six (6) months after Landlord's consent, but not later than the expiration of said six-month period, enter into such Transfer of the Premises or portion thereof, upon substantially the same terms and conditions as are set forth in the Transfer Notice furnished by Tenant to Landlord pursuant to Section 14.1 of this Lease, provided that if there are any changes in the terms and conditions from those specified in the Transfer Notice (i) such that Landlord would initially have been entitled to refuse its consent to such Transfer under this Section 14.2, or (ii) which would cause the proposed Transfer to be more favorable to the Transferee than the terms set forth in Tenant's original Transfer Notice, Tenant shall again submit the Transfer to Landlord for its approval and other action under this Article 14 (including Landlord's right of recapture, if any, under Section 14.4 of this Lease). Notwithstanding anything to the contrary in this Lease, if Tenant or any proposed Transferee claims that Landlord has unreasonably withheld or delayed its consent under Section 14.2 or otherwise has breached or acted unreasonably under this Article 14, their sole remedies shall be a suit for contract damages (other than damages for injury to, or interference with, Tenant's business including, without limitation, loss of profits, however occurring) or declaratory judgment and an injunction for the relief sought, and Tenant hereby waives all other remedies, including, without limitation, any right at law or equity to terminate this Lease, on its own behalf and, to the extent permitted under all Applicable Laws, on behalf of the proposed Transferee.

14.3 **Transfer Premium.** If Landlord consents to a Transfer, as a condition thereto which the parties hereby agree is reasonable, Tenant shall pay to Landlord fifty percent (50%) of any Transfer Premium received by Tenant from such Transferee. "**Transfer Premium**" shall mean all rent, additional rent or other consideration payable by such Transferee in connection with the Transfer in excess of the Rent and Additional Rent payable by Tenant under this Lease during the term of the Transfer on a per RSF basis if less than all of the Premises is transferred. The Transfer Premium shall be calculated after deducting the reasonable expenses incurred by Tenant for (i) the Rent and Additional Rent actually received by Tenant under this Lease during the term of the Transfer on a per RSF basis if less than all of the Premises is transferred, (ii) any free base rent reasonably provided to the Transferee, (iii) any brokerage commissions in connection with the Transfer, (iv) other reasonable out of pocket costs paid by Tenant (including attorney fees, advertising costs, and expenses of readying the space for occupancy by the Transferee), and (v) any reasonable consideration paid to the Transferee to induce the Transferee to consummate the Transfer (including, but not limited to, all leasehold concessions granted in connection with the Transfer and any tenant improvement allowance provided to the Transferee) (items (i) through (v), "**Transfer Costs**"). "**Transfer Premium**" shall also include, but not be limited to, key money, bonus money or other cash consideration paid by Transferee to Tenant in connection with such Transfer, and any payment in excess of fair market value for services rendered by Tenant to Transferee or for assets, fixtures, inventory, equipment, or furniture transferred by Tenant to Transferee in connection with such Transfer. The determination of the amount of Landlord's applicable share of the Transfer Premium shall be made on a monthly basis as rent or other consideration is received by Tenant under the Transfer. For purposes of calculating any such effective rent all such concessions shall be amortized on a straight-line basis over the relevant term. Tenant shall pay the Transfer Premium on a monthly basis, together with its payment of Additional Rent. In calculating the Transfer Premium, Tenant shall first deduct all the Transfer Costs from any Transferee Rent received.

14.4 **Landlord's Option as to Contemplated Transfer Space.** Notwithstanding anything to the contrary contained in this Article 14, in the event Tenant contemplates a Transfer (A) for all or substantially all of the remaining Lease Term, and (B) all or substantially all of the Premises (or in the event of any other Transfer or Transfers entered into by Tenant as a subterfuge in order to avoid the terms of this Section 14.4), Tenant shall give Landlord notice (the "**Intention to Transfer Notice**") of such contemplated Transfer (whether or not the contemplated Transferee or the terms of such contemplated Transfer have been determined). The Intention to Transfer Notice shall specify the contemplated date of commencement of the contemplated Transfer (the "**Contemplated Effective Date**"),

and shall specify that such Intention to Transfer Notice is delivered to Landlord pursuant to this [Section 14.4](#) in order to allow Landlord to elect to terminate this Lease and recapture the Premises. Thereafter, Landlord shall have the option, by giving written notice to Tenant within twenty (20) days after receipt of any Intention to Transfer Notice, to terminate this Lease and recapture the Premises as of the Contemplated Effective Date. If Landlord declines, or fails to elect in a timely manner to recapture the Premises under this [Section 14.4](#), then, provided Landlord has consented to the proposed Transfer, Tenant shall be entitled to proceed to enter into the Transfer contemplated in the Intention to Transfer Notice, subject to provisions of the last paragraph of [Section 14.2](#) of this Lease. Subject to the other terms of this [Article 14](#), for a period of nine (9) months (the "**Nine Month Period**") commencing on the last day of such twenty (20) day period, Landlord shall not have any right to terminate this Lease and recapture the Premises with respect to any Transfer made during the Nine Month Period, provided that any such Transfer is substantially on the terms set forth in the Intention to Transfer Notice, and provided further that any such Transfer shall be subject to the remaining terms of this [Article 14](#). If such a Transfer is not so consummated within the Nine Month Period (or if a Transfer is so consummated, then upon the expiration of the term of any Transfer of such Contemplated Transfer Space consummated within such Nine Month Period), Tenant shall again be required to submit a new Intention to Transfer Notice to Landlord with respect any contemplated Transfer, as provided above in this [Section 14.4](#). The terms of this [Section 14.4](#), and Landlord's recapture rights shall not apply to a Transfer pursuant to [Section 14.8](#) below.

**14.5 Effect of Transfer.** If Landlord consents to a Transfer, (i) the terms and conditions of this Lease shall in no way be deemed to have been waived or modified, (ii) such consent shall not be deemed consent to any further Transfer by either Tenant or a Transferee, (iii) Tenant shall deliver to Landlord, promptly after execution, an original executed copy of all documentation pertaining to the Transfer in form reasonably acceptable to Landlord, (iv) Tenant shall furnish upon Landlord's request a complete statement, certified by an independent certified public accountant, or Tenant's chief financial officer, setting forth in detail the computation of any Transfer Premium Tenant has derived and shall derive from such Transfer, and (v) no Transfer relating to this Lease or agreement entered into with respect thereto, whether with or without Landlord's consent, shall relieve Tenant or any guarantor of the Lease from any liability under this Lease, including, without limitation, in connection with the Subject Space. Landlord or its authorized representatives shall have the right at all reasonable times to audit the books, records and papers of Tenant relating to any Transfer, and shall have the right to make copies thereof. If the Transfer Premium respecting any Transfer shall be found understated, Tenant shall, within thirty (30) days after demand, pay the deficiency, and if understated by more than five percent (5%), Tenant shall pay Landlord's costs of such audit.

**14.6 Additional Transfers.** For purposes of this Lease, the term "**Transfer**" shall also include (i) if Tenant is a partnership, the withdrawal or change, voluntary, involuntary or by operation of law, of fifty percent (50%) or more of the partners, or transfer of fifty percent (50%) or more of partnership interests, within a twelve (12)-month period, or the dissolution of the partnership without immediate reconstitution thereof, and (ii) if Tenant is a closely held corporation (*i.e.*, whose stock is not publicly held and not traded through an exchange or over the counter), (A) the dissolution, merger, consolidation or other reorganization of Tenant or (B) the sale or other transfer of an aggregate of fifty percent (50%) or more of the voting shares of Tenant (other than to immediate family members by reason of gift or death), within a twelve (12)-month period, or (C) the sale, mortgage, hypothecation or pledge of an aggregate of fifty percent (50%) or more of the value of the unencumbered assets of Tenant within a twelve (12)-month period.

**14.7 Occurrence of Material Default.** Any Transfer hereunder shall be subordinate and subject to the provisions of this Lease, and if this Lease shall be terminated during the term of any Transfer, Landlord shall have the right to: (i) treat such Transfer as cancelled and repossess the Subject Space by any lawful means, or (ii) require that such Transferee attorn to and recognize Landlord as its landlord under any such Transfer. If Tenant shall be in monetary or material non-monetary default under this Lease beyond any applicable notice and cure period, Landlord is hereby irrevocably authorized, as Tenant's agent and attorney-in-fact, to direct any Transferee to make all payments under or in connection with the Transfer directly to Landlord (which Landlord shall apply towards Tenant's obligations under this Lease) until such monetary or material non-monetary default is cured. Such Transferee shall rely on any representation by Landlord that Tenant is in monetary or material non-monetary default hereunder, without any need for confirmation thereof by Tenant. Upon any assignment, the assignee shall assume in writing all obligations and covenants of Tenant thereafter to be performed or observed under this Lease. No collection or acceptance of rent by Landlord from any Transferee shall be deemed a waiver of any provision of this [Article 14](#) or the approval of any Transferee or a release of Tenant from any obligation under this Lease, whether theretofore or thereafter accruing. In no event shall Landlord's enforcement of any provision of this Lease against any Transferee be deemed a waiver of Landlord's right to enforce any term of this Lease against Tenant or any other person. If Tenant's obligations hereunder have been guaranteed, Landlord's consent to any Transfer shall not be effective unless the guarantor also consents to such Transfer.

**14.8 Deemed Consent Transfers.** Notwithstanding anything to the contrary contained in this Lease, (A) an assignment or subletting of all or a portion of the Premises to an affiliate of Tenant (an entity which is controlled by, controls, or is under common control with, Tenant as of the date of this Lease), (B) a sale of corporate shares of capital stock in Tenant in connection with an initial public offering of Tenant's stock on a nationally-recognized stock exchange, (C) an assignment of the Lease to an entity which acquires all or substantially all of the stock or assets of Tenant, or (D) an assignment of the Lease to an entity which is the resulting entity of a merger or consolidation of Tenant during the Lease Term, shall not be deemed a Transfer requiring Landlord's consent under this [Article 14](#) (any such assignee or sublessee described in items (A) through (D) of this [Section 14.8](#) is hereinafter referred to as a "**Permitted Transferee**"), provided that (i) Tenant notifies Landlord at least fifteen (15) days prior to the effective date of any such assignment or sublease and promptly supplies Landlord with any documents or information reasonably requested by Landlord regarding such Transfer or Permitted Transferee as set forth above, (ii) Tenant is not in default, beyond the applicable notice and cure period, and such assignment or sublease is not a subterfuge by Tenant to avoid its obligations under this Lease, (iii) such Permitted Transferee shall be of a character and reputation consistent with the quality of the Building, (iv) such Permitted Transferee shall have a Tangible Net Book Value (defined below) at least equal to Two Hundred Seventy-Five Million Dollars (\$275,000,000), (v) no assignment or

sublease relating to this Lease, whether with or without Landlord's consent, shall relieve Tenant from any liability under this Lease, and (vi) the liability of such Permitted Transferee under either an assignment or sublease shall be joint and several with Tenant. **Tangible Net Book Value**" shall mean the number obtained by subtracting Tenant's liabilities, and intangible assets (including goodwill) from Tenant's total assets. An assignee of Tenant's entire interest in this Lease who qualifies as a Permitted Transferee may also be referred to herein as a "**Permitted Transferee Assignee.**" "**Control,**" as used in this Section 14.8, shall mean the ownership, directly or indirectly, of at least fifty percent (50%) of the voting securities of, or possession of the right to vote, in the ordinary direction of its affairs, of at least fifty percent (50%) of the voting interest in, any person or entity.

14.9 **Occupancy by Others.** Notwithstanding any contrary provision of this Article 14, Tenant shall have the right without the payment of a Transfer Premium and without the receipt of Landlord's consent, to permit the occupancy of portions of the Premises to any individual(s) or entities with a business relationship with Tenant ("**Tenant's Occupants**") subject to the following conditions: (i) all such individuals or entities shall be of a character and reputation consistent with the types of people generally rendering similar types of services in the applicable profession; (ii) such occupancy shall not be a subterfuge by Tenant to avoid its obligation under this Lease or the restrictions on Transfers pursuant to this Article 14, (iii) in the aggregate, such Tenant's Occupants do not occupy more than ten percent (10%) of the Premises; and (iv) such Tenant's Occupants do not have a separately demised space or separate exclusive entrance to their space. Tenant shall promptly supply Landlord with any document or information reasonably requested by Landlord regarding any such individuals or entities. Any occupancy permitted under this Section 14.9 shall not be deemed a Transfer requiring Landlord's consent under this Article 14. Notwithstanding the foregoing, no such occupancy shall relieve Tenant from any liability under this Lease.

14.10 **Tenant's Lenders.** Notwithstanding anything in this Article 14 (or anywhere else in this Lease) to the contrary, Tenant may, from time to time as requested by its or its parent's lenders or creditors (collectively, "**Tenant's Lenders**"), pledge, hypothecate, encumber, or permit liens to attach to, furniture, fixtures, equipment and other personal property located in the Premises (but not Tenant's leasehold interest in the Premises and not any improvements constructed using funds provided by Landlord) as part of securitizing any credit or debt agreements, but no such Tenant's Lenders may at any time occupy or take physical possession of the Premises (unless approved by Landlord as a Transferee in accordance with the terms of this Article 14).

## ARTICLE 15

### SURRENDER OF PREMISES; OWNERSHIP AND REMOVAL OF TRADE FIXTURES

15.1 **Surrender of Premises.** No act or thing done by Landlord or any agent or employee of Landlord during the Lease Term shall be deemed to constitute an acceptance by Landlord of a surrender of the Premises unless such intent is specifically acknowledged in writing by Landlord. The delivery of keys to the Premises to Landlord or any agent or employee of Landlord shall not constitute a surrender of the Premises or effect a termination of this Lease, whether or not the keys are thereafter retained by Landlord, and notwithstanding such delivery Tenant shall be entitled to the return of such keys at any reasonable time upon request until this Lease shall have been properly terminated. The voluntary or other surrender of this Lease by Tenant, whether accepted by Landlord or not, or a mutual termination hereof, shall not work a merger, and at the option of Landlord shall operate as an assignment to Landlord of all subleases or subtenancies affecting the Premises or terminate any or all such sublessees or subtenancies.

15.2 **Removal of Tenant Property by Tenant.** Upon the expiration of the Lease Term, or upon any earlier termination of this Lease, Tenant shall, subject to the provisions of this Article 15, quit and surrender possession of the Premises to Landlord in as good order and condition as when Tenant took possession and as thereafter improved by Landlord and/or Tenant, reasonable wear and tear, Casualty, Condemnation and repairs which are specifically made the responsibility of Landlord hereunder excepted. Upon such expiration or termination, Tenant shall, without expense to Landlord, remove or cause to be removed from the Premises all debris and rubbish, and such items of furniture, equipment, business and trade fixtures, free-standing cabinet work, movable partitions and other articles of personal property owned by Tenant or installed or placed by Tenant at its expense in the Premises, including cables, conduits and floor monuments (unless otherwise agreed by Landlord), and such similar articles of any other persons claiming under Tenant, as Landlord may, in its sole discretion, require to be removed, and Tenant shall repair at its own expense all damage to the Premises and Building resulting from such removal.

15.3 **End of Term Walk-Through.** At least forty-five (45) days prior to the expiration of this Lease, Tenant may provide Landlord with a notice (the "**Walk-Through Notice**") requesting a walk-through of the Premises to confirm the condition thereof and any removal or restoration obligations. Within thirty (30) days after Landlord's receipt of such Walk-Through Notice, Landlord and Tenant shall conduct an exit walk-through of the Premises. The exit walk-through is to be conducted on a date and time mutually acceptable to Landlord and Tenant; however, if the parties are unable to agree on a time and date, such walk-through shall be conducted at 10:00 a.m. on the thirtieth (30th) day after such Walk-Through Notice; except if such day falls on a Holiday, Saturday or Sunday in which case such walk-through shall be conducted on the next business day. Within five (5) business days after such walk-through, Landlord will provide Tenant with a list of items, if any, that are Tenant's responsibility to remove or restore pursuant to Section 15.2 or Section 8.5 of this Lease. If Tenant concurs with such list, Tenant shall proceed to comply with same (and all such work shall be completed prior to the Lease Expiration Date). If Tenant disagrees with Landlord, Landlord and Tenant shall attempt to agree and modify the list in accordance with such agreement, but no such disagreement shall excuse Tenant from any failure to comply with its restoration and removal obligations under this Lease.

## ARTICLE 16

### HOLDING OVER

If Tenant holds over after the expiration of the Lease Term with the express written consent of Landlord, such tenancy shall be from month-to-month only, and shall not constitute a renewal hereof or an extension for any further term, and in such case Base Rent shall be payable at a monthly rate of one hundred fifty percent (150%) of the Base Rent applicable during the last rental period of the Lease Term under this Lease. Such month-to-month tenancy shall be subject to every other applicable term, covenant and agreement contained herein. If Tenant holds over after the expiration of the Lease Term without the express written consent of Landlord, such tenancy shall be a tenancy at sufferance, and shall not constitute a renewal hereof or an extension for any further term, and in such case daily damages in any action to recover possession of the Premises shall be calculated at a daily rate equal to the greater of (i) one hundred fifty percent (150%) of the Base Rent applicable during the last rental period of the Lease Term under this Lease (calculated on a per diem basis) or (ii) the fair market rental rate for the Premises as of the commencement of such holdover period. Nothing contained in this Article 16 shall be construed as consent by Landlord to any holding over by Tenant, and Landlord expressly reserves the right to require Tenant to vacate and deliver possession of the Premises to Landlord as provided in this Lease upon the expiration or other termination of this Lease. The provisions of this Article 16 shall not be deemed to limit or constitute a waiver of any other rights or remedies of Landlord provided herein or at law. If Tenant holds over without Landlord's express written consent, and tenders payment of rent for any period beyond the expiration of the Lease Term by way of check (whether directly to Landlord, its agents, or to a lock box) or wire transfer, Tenant acknowledges and agrees that the cashing of such check or acceptance of such wire shall be considered inadvertent and not be construed as creating a month-to-month tenancy, provided Landlord refunds such payment to Tenant promptly upon learning that such check has been cashed or wire transfer received. Tenant acknowledges that any holding over without Landlord's express written consent may compromise or otherwise affect Landlord's ability to enter into new leases with prospective tenants regarding the Premises. Therefore, if Tenant fails to vacate and deliver the Premises prior to the date that is the later of (i) thirty (30) days after the termination or expiration of this Lease, and (ii) thirty (30) days after Landlord's notification to Tenant that Landlord has reached agreement with a third-party for occupancy of the Premises or any portion thereof, then, in addition to any other liabilities to Landlord accruing therefrom, Tenant shall protect, defend, indemnify and hold Landlord harmless from and against all claims made by any succeeding tenant founded upon such failure to vacate and deliver, and any losses suffered by Landlord, including lost profits, resulting from such failure to vacate and deliver. Tenant agrees that any proceedings necessary to recover possession of the Premises, whether before or after expiration of the Lease Term, shall be considered an action to enforce the terms of this Lease for purposes of the awarding of any attorney's fees in connection therewith.

## ARTICLE 17

### ESTOPPEL CERTIFICATES

Within ten (10) business days following a request in writing by Landlord or Tenant, the other party (the "**Responding Party**") shall execute, acknowledge and deliver to the requesting party an estoppel certificate, which, as submitted by Landlord, shall be substantially in the form of Exhibit E, attached hereto (or such other form as may be reasonably required by any prospective mortgagee or purchaser of the Project, or any portion thereof) and as submitted by Tenant shall be appropriately and reasonably modified, indicating therein any exceptions thereto that may exist at that time, and shall also contain any other information reasonably requested by Landlord or Tenant, as applicable, or Landlord's mortgagee or prospective mortgagee or Tenant's prospective subtenant or assignee. Any such certificate may be relied upon by any prospective mortgagee or purchaser of all or any portion of the Project. Tenant shall execute and deliver whatever other instruments may be reasonably required for such purposes. At any time during the Lease Term (but not more than once per year, except in connection with a sale or refinance of the Project, if Tenant is in monetary default under this Lease, or if Tenant has identified a proposed Transferee under Article 14 above), Landlord may require Tenant to provide Landlord with a current financial statement and financial statements of the two (2) years prior to the current financial statement year. Such statements shall be prepared in accordance with generally accepted accounting principles and, if such is the normal practice of Tenant, shall be audited by an independent certified public accountant. Notwithstanding the foregoing, in the event that (i) stock in the entity which constitutes Tenant under this Lease (as opposed to an entity that controls Tenant or is otherwise an affiliate of Tenant) is publicly traded on NASDAQ or a national stock exchange, and (ii) Tenant has its own, separate and distinct 10K and 10Q filing requirements (as opposed joint or cumulative filings with an entity that controls Tenant or with entities which are otherwise affiliates of Tenant), then Tenant's obligation to provide Landlord with a copy of its most recent current financial statement shall be deemed satisfied.

## ARTICLE 18

### SUBORDINATION

This Lease shall be subject and subordinate to all present and future ground or underlying leases of the Building or Project and to the lien of any mortgage, trust deed or other encumbrances now or hereafter in force against the Building or Project or any part thereof, if any, and to all renewals, extensions, modifications, consolidations and replacements thereof, and to all advances made or hereafter to be made upon the security of such mortgages or trust deeds, unless the holders of such mortgages, trust deeds or other encumbrances, or the lessors under such ground lease or underlying leases, require in writing that this Lease be superior thereto. With respect to any mortgage or deed of trust which encumbers the Real Property, Landlord shall cause the landlord under such ground lease or the holder of such mortgage or deed of trust to deliver to Tenant a nondisturbance agreement in a commercially reasonable form (a "**Nondisturbance Agreement**") which provides that such lender or ground lessor will not disturb Tenant's right of possession under this Lease if Tenant is not then or thereafter in breach of any covenant or provision of this Lease.

Tenant covenants and agrees in the event any proceedings are brought for the foreclosure of any such mortgage or deed in lieu thereof (or if any ground lease is terminated), to attorn, without any deductions or set-offs whatsoever, to the lienholder or purchaser or any successors thereto upon any such foreclosure sale or deed in lieu thereof (or to the ground lessor), if so requested to do so by such purchaser or lienholder or ground lessor, and to recognize such purchaser or lienholder or ground lessor as the lessor under this Lease, provided such lienholder or purchaser or ground lessor has executed a Nondisturbance Agreement. If Tenant has received the nondisturbance agreement referred to in this Section, Tenant shall, within ten (10) days of request by Landlord, execute such further instruments or assurances as Landlord may reasonably deem necessary to evidence or confirm the subordination or superiority of this Lease to any such mortgages, trust deeds, ground leases or underlying leases. Tenant waives the provisions of any current or future statute, rule or law which may give or purport to give Tenant any right or election to terminate or otherwise adversely affect this Lease and the obligations of the Tenant hereunder in the event of any foreclosure proceeding or sale. Within sixty (60) days following the execution of this Lease by Tenant and Landlord, Landlord shall provide to Tenant a Subordination, Non-Disturbance and Attornment Agreement in sum and substance comparable to the form of **Exhibit H** attached hereto (the "SNDA"), and otherwise subject to commercially reasonable modifications and written approval of the existing mortgagee for the Building and executed by the existing mortgagee for the Building.

## ARTICLE 19

### DEFAULTS; REMEDIES

19.1 **Events of Default.** The occurrence of any of the following shall constitute a default of this Lease by Tenant:

19.1.1 Any failure by Tenant to pay any Rent or any other charge required to be paid under this Lease, or any part thereof, when due unless such failure is cured within five (5) business days after receipt of written notice from Landlord; or

19.1.2 Except where a specific time period is otherwise set forth for Tenant's performance in this Lease, in which event the failure to perform by Tenant within such time period shall be a default by Tenant under this Section 19.1.2, any failure by Tenant to observe or perform any other provision, covenant or condition of this Lease to be observed or performed by Tenant where such failure continues for thirty (30) days after written notice thereof from Landlord to Tenant; provided that if the nature of such default is such that the same cannot reasonably be cured within a thirty (30) day period, Tenant shall not be deemed to be in default if it diligently commences such cure within such period and thereafter diligently proceeds to rectify and cure such default; or

19.1.3 The failure by Tenant to observe or perform according to the provisions of Articles 5, 14, 17 or 18 of this Lease or the Tenant Work Letter, where such failure continues for more than two (2) business days after notice from Landlord; or

The notice periods provided herein are in lieu of, and not in addition to, any notice periods provided by law.

19.2 **Remedies Upon Default.** Upon the occurrence of any event of default by Tenant, which remains uncured following the expiration of any applicable notice or cure period, Landlord shall have, in addition to any other remedies available to Landlord at law or in equity (all of which remedies shall be distinct, separate and cumulative), the option to pursue any one or more of the following remedies, each and all of which shall be cumulative and nonexclusive, without any notice or demand whatsoever.

19.2.1 Terminate this Lease, in which event Tenant shall immediately surrender the Premises to Landlord, and if Tenant fails to do so, Landlord may, without prejudice to any other remedy which it may have for possession or arrearages in rent, enter upon and take possession of the Premises and expel or remove Tenant and any other person who may be occupying the Premises or any part thereof, without being liable for prosecution or any claim or damages therefor; and Landlord may recover from Tenant the following:

- i. The worth at the time of award of the unpaid rent which has been earned at the time of such termination; plus
- ii. The worth at the time of award of the amount by which the unpaid rent which would have been earned after termination until the time of award exceeds the amount of such rental loss that Tenant proves could have been reasonably avoided; plus
- iii. The worth at the time of award of the amount by which the unpaid rent for the balance of the Lease Term after the time of award exceeds the amount of such rental loss that Tenant proves could have been reasonably avoided; plus
- iv. Any other amount necessary to compensate Landlord for all the detriment proximately caused by Tenant's failure to perform its obligations under this Lease or which in the ordinary course of things would be likely to result therefrom, specifically including but not limited to, brokerage commissions and advertising expenses incurred, expenses of remodeling the Premises or any portion thereof for a new tenant, whether for the same or a different use, and any special concessions made to obtain a new tenant; and
- v. At Landlord's election, such other amounts in addition to or in lieu of the foregoing as may be permitted from time to time by Applicable Law.

The term "**rent**" as used in this Section 19.2 shall be deemed to be and to mean all sums of every nature required to be paid by Tenant pursuant to the terms of this Lease, whether to Landlord or to others. As used in Sections 19.2.1(i) and (ii), above, the "worth at the time of award" shall be computed by allowing interest at the rate set forth in Article 25 of this Lease, but in no case greater than the maximum amount of such interest permitted by law. As used in Section 19.2.1(iii) above, the "**worth at the time of award**" shall be computed by discounting such amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of award plus one percent (1%).

19.2.2 Landlord shall have the remedy described in California Civil Code Section 1951.4 (lessor may continue lease in effect after lessee's breach and abandonment and recover rent as it becomes due, if lessee has the right to sublet or assign, subject only to reasonable limitations). Accordingly, if Landlord does not elect to terminate this Lease on account of any default by Tenant, Landlord may, from time to time, without terminating this Lease, enforce all of its rights and remedies under this Lease, including the right to recover all rent as it becomes due.

19.2.3 Landlord shall at all times have the rights and remedies (which shall be cumulative with each other and cumulative and in addition to those rights and remedies available under Sections 19.2.1 and 19.2.2, above, or any law or other provision of this Lease), without prior demand or notice except as required by Applicable Law, to seek any declaratory, injunctive or other equitable relief, and specifically enforce this Lease, or restrain or enjoin a violation or breach of any provision hereof.

19.3 **Subleases of Tenant.** Whether or not Landlord elects to terminate this Lease on account of any default by Tenant, as set forth in this Article 19, Landlord shall have the right to terminate any and all subleases, licenses, concessions or other consensual arrangements for possession entered into by Tenant and affecting the Premises or may, in Landlord's sole discretion, succeed to Tenant's interest in such subleases, licenses, concessions or arrangements. In the event of Landlord's election to succeed to Tenant's interest in any such subleases, licenses, concessions or arrangements, Tenant shall, as of the date of notice by Landlord of such election, have no further right to or interest in the rent or other consideration receivable thereunder.

19.4 **Efforts to Relet.** No re-entry or repossession, repairs, maintenance, changes, alterations and additions, reletting, appointment of a receiver to protect Landlord's interests hereunder, or any other action or omission by Landlord shall be construed as an election by Landlord to terminate this Lease or Tenant's right to possession, or to accept a surrender of the Premises, nor shall same operate to release Tenant in whole or in part from any of Tenant's obligations hereunder, unless express written notice of such intention is sent by Landlord to Tenant. Any entry by Landlord pursuant to this Section 19.4 shall be subject to the terms of Article 27 below.

#### 19.5 **Landlord Default.**

19.5.1 **General.** Notwithstanding anything to the contrary set forth in this Lease, Landlord shall not be in default in the performance of any obligation required to be performed by Landlord pursuant to this Lease unless Landlord fails to perform such obligation within thirty (30) days after the receipt of notice from Tenant specifying in detail Landlord's failure to perform; provided, however, if the nature of Landlord's obligation is such that more than thirty (30) days are required for its performance, then Landlord shall not be in default under this Lease if it shall commence such performance within such thirty (30) day period and thereafter diligently pursue the same to completion. Upon any such default by Landlord under this Lease, Tenant may, except as otherwise specifically provided in this Lease to the contrary, exercise any of its rights provided at law or in equity.

19.5.2 **Abatement of Rent.** In the event that Tenant is prevented from using, and does not use, the Premises or any portion thereof, as a result of (i) any repair, maintenance or alteration performed by Landlord, or which Landlord failed to perform, after the Lease Commencement Date applicable to the Premises and required by this Lease, which substantially interferes with Tenant's use of or ingress to or egress from the Building or Tenant's Parking Areas; (ii) any failure by Landlord to provide services, utilities or ingress to and egress from the Building or Premises as required by this Lease; or (iii) the presence of Hazardous Materials not brought on the Premises by Tenant Parties (any such set of circumstances as set forth in items (i) through (iii), above, to be known as an "**Abatement Event**"), then Tenant shall give Landlord Notice of such Abatement Event, and if such Abatement Event continues for three (3) consecutive business days after Landlord's receipt of any such notice, or occurs for ten (10) non- consecutive business days in a twelve (12) month period (provided Landlord is sent a notice for each such Abatement Event) (in either of such events, the "**Eligibility Period**"), then the Base Rent and Tenant's Share of Direct Expenses shall be abated or reduced, as the case may be, after expiration of the Eligibility Period for such time that Tenant continues to be so prevented from using, and does not use, the Premises, or a portion thereof, in the proportion that the rentable area of the portion of the Premises that Tenant is prevented from using, and does not use ("**Unusable Area**"), bears to the total rentable area of the Premises; provided, however, in the event that Tenant is prevented from using, and does not use, the Unusable Area for a period of time in excess of the Eligibility Period and the remaining portion of the Premises is not sufficient to allow Tenant to effectively conduct its business therein, and if Tenant does not conduct its business from such remaining portion, then for such time after expiration of the Eligibility Period during which Tenant is so prevented from effectively conducting its business therein (in Tenant's reasonable judgment), the Base Rent and Tenant's Share of Direct Expenses for the entire Premises shall be abated for such time as Tenant continues to be so prevented from using, and does not use, the Premises. If, however, Tenant reoccupies any portion of the Premises during such period, the Rent allocable to such reoccupied portion, based on the proportion that the rentable area of such reoccupied portion of the Premises bears to the total rentable area of the Premises, shall be payable by Tenant from the date Tenant reoccupies such portion of the Premises. Such right to abate Base Rent and Tenant's Share of Direct Expenses shall be Tenant's sole and exclusive remedy at law or in equity to abate Rent for an Abatement Event; provided, however, that (a) nothing in this Section 19.5.2, shall impair Tenant's rights under Section 19.5.1, above, and (b) if Landlord has not cured such Abatement Event within two hundred ten (210) days after receipt of notice from Tenant, Tenant shall have the right to terminate this Lease during the first five (5) business days of each calendar month following the end of such 210-day period until such time as Landlord has cured the



Abatement Event, which right may be exercised only by delivery of notice to Landlord (the "**Abatement Event Termination Notice**") during such five (5) business-day period, and shall be effective as of a date set forth in the Abatement Event Termination Notice (the "**Abatement Event Termination Date**"), which Abatement Event Termination Date shall not be less than thirty (30) days, and not more than one (1) year, following the delivery of the Abatement Event Termination Notice. Notwithstanding anything contained in this Section 19.5.2 to the contrary, Tenant's Abatement Event Termination Notice shall be null and void (but only in connection with the first notice sent by Tenant with respect to each separate Abatement Event) if Landlord cures such Abatement Event within such thirty (30) day period following receipt of the Abatement Event Termination Notice. To the extent Tenant is entitled to abatement because of an event covered by Articles 11 or 13 of this Lease, then the Eligibility Period shall not be applicable, and the date of the expiration of Tenant's abatement rights shall be as set forth in Articles 11 and 13 above. If Tenant's right to abatement occurs during any period of Base Rent Abatement, Tenant's period of Base Rent Abatement shall be extended for the number of days that the abatement period overlapped the free Base Rent period ("**Overlap Period**"). Except as provided in this Section 19.5.2 or elsewhere in this Lease, nothing contained herein shall be interpreted to mean that Tenant is excused from paying Rent due hereunder. Nothing stated in this Section 19.5.2 shall cause the Lease Term to continue if, according to other provisions of the Lease, this Lease is to be terminated or ended.

## ARTICLE 20

### COVENANT OF QUIET ENJOYMENT

Landlord covenants that Tenant, on paying the Rent, charges for services and other payments herein reserved and on keeping, observing and performing all the other terms, covenants, conditions, provisions and agreements herein contained on the part of Tenant to be kept, observed and performed, shall, during the Lease Term, peaceably and quietly have, hold and enjoy the Premises subject to the terms, covenants, conditions, provisions and agreements hereof without interference by any persons lawfully claiming by or through Landlord. The foregoing covenant is in lieu of any other covenant express or implied.

## ARTICLE 21

### LETTER OF CREDIT

21.1 **Delivery of Letter of Credit.** Tenant shall cause the Bank (as that term is defined below) to deliver to Landlord, concurrently with Tenant's execution of this Lease, a letter of credit (the "**L-C**") that complies in all respects with the requirements of this Article 21 in the amount set forth in Section 8 of the Summary (the "**L-C Amount**"). The L-C shall: (i) be issued by a Bank; (ii) be substantially and materially in the form attached hereto as Exhibit J, but the initial L-C shall be in the form of Exhibit J-1 attached hereto; (iii) be irrevocable, unconditional, and payable upon demand; (iv) be maintained in effect, whether through renewal or extension, for the period commencing on the date of this Lease and continuing until the date (the "**L-C Expiration Date**") that is no less than one hundred twenty (120) days following the expiration of the Lease Term, as the same may be extended; (v) contain a provision that provides that the L-C shall be automatically renewed on an annual basis without amendment of the L-C unless the Bank delivers a written notice of cancellation to Landlord and Tenant at least sixty (60) days prior to the expiration of the L-C, without any action whatsoever on the part of Landlord; (vi) be fully assignable by Landlord, its successors and assigns; (vii) permit partial draws and multiple presentations and drawings, and (viii) be otherwise subject to the International Standby Practices-ISP 98, International Chamber of Commerce Publication #590. Tenant shall pay all expenses, points, and/or fees incurred by Tenant in obtaining the L-C. The term "**Bank**" referred to herein shall mean any of the following banks: (a) Wells Fargo Bank, N.A., (b) JP Morgan Chase Bank, N.A., (c) Bank of America, N.A. or (d) US Bank, which (I) accepts deposits and maintains accounts; (II) that is chartered under the laws of the United States, any State thereof, or the District of Columbia, and which is insured by the Federal Deposit Insurance Corporation; (III) whose long-term, unsecured, and unsubordinated debt obligations are rated no less than "A" by Fitch Ratings Ltd. ("**Fitch**") and whose short term deposit rating is rated no less than "F1" by Fitch (or in the event such applicable Fitch ratings are no longer available, comparable ratings from Standard and Poor's Professional Rating Service or Moody's Professional Rating Service) (collectively, the "**Bank's Credit Rating Threshold**").

21.2 **Landlord's Rights to Draw.** Landlord, or its then authorized representatives, shall have the right to draw down an amount up to the face amount of the L-C if any of the following shall have occurred or be applicable: (i) such amount is due to Landlord under the terms and conditions of this Lease; (ii) the Lease has terminated prior to the expiration of the Lease Term as a result of Tenant's breach or default of any term or provision of the Lease; (iii) Tenant has filed a voluntary petition under the U. S. Bankruptcy Code or any state bankruptcy code (collectively, "**Bankruptcy Code**"); (iv) an involuntary petition has been filed against Tenant under the Bankruptcy Code; (v) the Lease has been rejected, or is deemed rejected, under Section 365 of the U.S. Bankruptcy Code, following the filing of a voluntary petition by Tenant under the Bankruptcy Code, or the filing of an involuntary petition against Tenant under the Bankruptcy Code; (vi) the Bank has notified Landlord that the L-C will not be renewed or extended through the L-C Expiration Date; (vii) the Bank has failed to notify Landlord that the L-C will be renewed or extended on or before the date that is sixty (60) days before the applicable L-C expiration date; (viii) Tenant is placed into receivership or conservatorship, or becomes subject to similar proceedings under Federal or State law; (ix) Tenant executes an assignment for the benefit of creditors; or (x) if (1) any of the Bank's Fitch ratings (or other comparable ratings to the extent the Fitch ratings are no longer available) have been reduced below the Bank's Credit Rating Threshold; or (2) there is otherwise a material adverse change in the financial condition of the Bank (in either instance, a "**Bank Credit Threat**"), and Tenant has failed to provide Landlord with a replacement letter of credit, conforming in all respects to the requirements of this Article 21 (including, but not limited to, the requirements placed on the issuing Bank more particularly set forth in this Section 21.1 above), in the amount of the applicable L-C Amount, within ten (10) days 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) (each of the foregoing being an "**L-C Draw Event**"). The L-C

shall be honored by the Bank regardless of whether Tenant disputes Landlord's right to draw upon the L-C. In addition, in the event the Bank is placed into receivership or conservatorship by the Federal Deposit Insurance Corporation, any state regulator, or any successor or similar entity, then, effective as of the date such receivership or conservatorship occurs, said L-C shall be deemed to fail to meet the requirements of this Article 21, and, within ten (10) days following Landlord's notice to Tenant of such receivership or conservatorship (the "**L-C FDIC Replacement Notice**"), Tenant shall replace such L-C with a substitute letter of credit from a different commercial bank (which commercial bank shall meet or exceed the Bank's Credit Rating Threshold and shall otherwise be acceptable to Landlord) and that complies in all respects with the requirements of this Article 21. If Tenant fails to replace such L-C with such conforming, substitute letter of credit pursuant to the terms and conditions of Section 21.1, hereof, then, notwithstanding anything in this Lease to the contrary, Landlord shall have the right to declare Tenant in default of this Lease for which there shall be no notice or grace or cure periods being applicable thereto (other than the aforesaid ten (10) day period). Tenant shall have no right to voluntarily replace the L-C without Landlord's prior written approval, in Landlord's sole and absolute discretion. Tenant shall be responsible for the payment of any and all costs incurred by Landlord relating to the review of any replacement L-C (including, without limitation, Landlord's reasonable attorneys' fees), which replacement is required pursuant to this Section or is otherwise requested by Tenant, and such attorneys' fees shall be payable by Tenant to Landlord within ten (10) days of billing. In the event of an assignment by Tenant of its interest in the Lease (and irrespective of whether Landlord's consent is required for such assignment), the acceptance of any replacement or substitute letter of credit by Landlord from the assignee shall be subject to Landlord's prior written approval, in Landlord's sole and absolute discretion, and the attorney's fees incurred by Landlord in connection with such determination shall be payable by Tenant to Landlord within ten (10) days of billing. Within two (2) business days following Tenant's receipt of a written notice from Landlord, Tenant shall cause the Bank to deliver written confirmation to Landlord of the renewal or extension of the L-C (unless the Bank has previously notified Landlord in writing that it shall not be renewing or extending the L-C), or if so requested by Landlord, Tenant shall facilitate Landlord's direct communication with the Bank in order that Landlord may immediately confirm such renewal or extension directly with the Bank.

**21.3 Application of L-C Proceeds.** Tenant hereby acknowledges and agrees that Landlord is entering into this Lease in material reliance upon the ability of Landlord to draw upon the L-C upon the occurrence of any L-C Draw Event and apply the proceeds of the L-C in accordance with this Article 21. In the event of any L-C Draw Event, Landlord may, but without obligation to do so, and without notice to Tenant (except in connection with an L-C Draw Event under Section 21.2(x) above), draw upon the L-C, in part or in whole, and apply the proceeds of the L-C to cure any such L-C Draw Event and/or to compensate Landlord for any and all damages or losses of any kind or nature sustained or which Landlord reasonably estimates that it will sustain resulting from Tenant's breach or default of the Lease or other L-C Draw Event and/or to compensate Landlord for any and all damages or losses arising out of, or incurred in connection with, the termination of this Lease, including, without limitation, those specifically identified in Section 1951.2 of the California Civil Code. The use, application, or retention of the L-C proceeds, or any portion thereof, by Landlord shall not prevent Landlord from exercising any other right or remedy provided by this Lease or by any applicable Law, it being intended that Landlord shall not first be required to proceed against the L-C, and such L-C or the proceeds thereof shall not operate as a limitation on any recovery to which Landlord may otherwise be entitled. No condition or term of this Lease shall be deemed to render the L-C conditional to justify the issuer of the L-C in failing to honor a drawing upon such L-C in a timely manner. Tenant agrees and acknowledges that: (i) the L-C constitutes a separate and independent contract between Landlord and the Bank; (ii) Tenant is not a third party beneficiary of such contract; (iii) Tenant has no property interest whatsoever in the L-C or the proceeds thereof; (iv) Tenant has no right to assign or encumber the L-C or any part thereof and neither Landlord nor its successors or assigns will be bound by any such assignment, encumbrance, attempted assignment or attempted encumbrance; and (v) in the event Tenant becomes a debtor under any chapter of the Bankruptcy Code, Tenant is placed into receivership or conservatorship, there is an event of a receivership, conservatorship, bankruptcy filing by, or on behalf of, Tenant, or Tenant executes an assignment for the benefit of creditors, neither Tenant, any trustee, receiver, conservator, assignee, nor Tenant's bankruptcy estate shall have any right to restrict or limit Landlord's claim or rights to the L-C or the proceeds thereof by application of Section 502(b)(6) of the U. S. Bankruptcy Code, any similar State or federal law, or otherwise.

**21.3.1 Maintenance of L-C by Tenant.** If, as a result of any drawing by Landlord of all or any portion of the L-C, the amount of the L-C shall be less than the L-C Amount, Tenant shall, within five (5) days thereafter, provide Landlord with additional letter(s) of credit in an amount equal to the deficiency, and any such additional letter(s) of credit shall comply with all of the provisions of this Article 21, and if Tenant fails to comply with the foregoing, the same shall be subject to the terms of Section 21.4.2 below. If Tenant exercises its option to extend the Lease Term pursuant to Section 2.2 of this Lease then, not later than one hundred twenty (120) days prior to the commencement of the Option Term, Tenant shall deliver to Landlord a new L-C or certificate of renewal or extension evidencing the L-C Expiration Date as one hundred twenty (120) days after the expiration of the Option Term. If the L-C is not timely renewed, or if Tenant fails to maintain the L-C in the amount and in accordance with the terms set forth in this Article 21, Landlord shall have the right to present the L-C to the Bank in accordance with the terms of this Article 21, and the proceeds of the L-C may be applied by Landlord against any Rent payable by Tenant under this Lease that is not paid when due and/or to pay for all losses and damages that Landlord has suffered or that Landlord reasonably estimates that it will suffer as a result of any breach or default by Tenant under this Lease. In the event Landlord elects to exercise its foregoing rights, (I) any unused proceeds shall constitute the property of Landlord (and not Tenant's property or, in the event of a receivership, conservatorship, or bankruptcy filing by, or on behalf of, Tenant, property of such receivership, conservatorship or Tenant's bankruptcy estate) and need not be segregated from Landlord's other assets, and (II) Landlord agrees to pay to Tenant within thirty (30) days after the L-C Expiration Date the amount of any proceeds of the L-C received by Landlord and not applied against any Rent payable by Tenant under this Lease that was not paid when due or used to pay for any losses and/or damages suffered by Landlord (or reasonably estimated by Landlord that it will suffer) as a result of any breach or default by Tenant under this Lease; provided, however, that if prior to the L-C Expiration Date a voluntary petition is filed by Tenant, or an involuntary petition is filed against Tenant by any of Tenant's creditors, under the Bankruptcy Code, then Landlord shall not be obligated to make such payment in the amount of the unused L-C proceeds until either all

preference issues relating to payments under this Lease have been resolved in such bankruptcy or reorganization case or such bankruptcy or reorganization case has been dismissed.

21.4 **Transfer and Encumbrance.** The L-C shall also provide that Landlord may, at any time and without notice to Tenant and without first obtaining Tenant's consent thereto, transfer (one or more times) all or any portion of its interest in and to the L-C to another party, person or entity, regardless of whether or not such transfer is from or as a part of the assignment by Landlord of its rights and interests in and to this Lease. In the event of a transfer of Landlord's interest in this Lease, Landlord shall transfer the L-C, in whole or in part, to the transferee and thereupon Landlord shall, without any further agreement between the parties, be released by Tenant from all liability therefor, and it is agreed that the provisions hereof shall apply to every transfer or assignment of the whole of said L-C to a new landlord. In connection with any such transfer of the L-C by Landlord, Tenant shall, at Tenant's sole cost and expense, execute and submit to the Bank such applications, documents and instruments as may be necessary to effectuate such transfer, and Landlord shall be responsible for paying the Bank's transfer and processing fees in connection therewith, not to exceed Two Thousand Dollars (\$2,000), provided that Tenant shall be responsible for any fees in excess of such amount and Landlord shall have the right (in its sole discretion), but not the obligation, to pay such excess fees on behalf of Tenant, in which case Tenant shall reimburse Landlord within ten (10) days after Tenant's receipt of an invoice from Landlord therefor.

21.5 **L-C Not a Security Deposit.** Landlord and Tenant: (i) acknowledge and agree that in no event or circumstance shall the L-C, any renewal or substitute therefor or any proceeds thereof be deemed to be or treated as a "security deposit" under any law applicable to security deposits in the commercial context, including, but not limited to, Section 1950.7 of the California Civil Code, as such Section now exists or as it may be hereafter amended or succeeded (the "Security Deposit Laws"); (ii) acknowledge and agree that the L-C (including any renewal thereof or substitute therefor or any proceeds thereof) is not intended to serve as a security deposit, and the Security Deposit Laws shall have no applicability or relevancy thereto; and (iii) waive any and all rights, duties and obligations that any such party may now, or in the future will, have relating to or arising from the Security Deposit Laws. Tenant hereby *irrevocably waives and relinquishes* the provisions of Section 1950.7 of the California Civil Code and any successor statute, and all other provisions of law, now or hereafter in effect, which (x) establish the time frame by which a landlord must refund a security deposit under a lease, and/or (y) provide that a landlord may claim from a security deposit only those sums reasonably necessary to remedy defaults in the payment of rent, to repair damage caused by a tenant or to clean the premises, it being agreed that Landlord may, in addition, claim those sums specified in this Article 21 and/or those sums reasonably necessary to (a) compensate Landlord for any loss or damage caused by Tenant's breach of this Lease, including any damages Landlord suffers following termination of this Lease, and/or (b) compensate Landlord for any and all damages arising out of, or incurred in connection with, the termination of this Lease, including, without limitation, those specifically identified in Section 1951.2 of the California Civil Code. The parties agree that the foregoing waivers shall apply if, pursuant to Section 21.8, Landlord draws upon the L-C and deposits the same in a Security Deposit Bank as a Security Deposit (as those terms are described in Section 21.10 below).

21.6 **Non-Interference By Tenant.** Tenant agrees not to interfere in any way with any payment to Landlord of the proceeds of the L-C, either prior to or following a "draw" by Landlord of all or any portion of the L-C, regardless of whether any dispute exists between Tenant and Landlord as to Landlord's right to draw down all or any portion of the L-C. No condition or term of this Lease shall be deemed to render the L-C conditional and thereby afford the Bank a justification for failing to honor a drawing upon such L-C in a timely manner. Tenant shall not request or instruct the Bank to refrain from paying sight draft(s) drawn under such L-C.

21.7 **Waiver of Certain Relief.** Tenant unconditionally and irrevocably waives (and as an independent covenant hereunder, covenants not to assert) any right to claim or obtain any of the following relief in connection with the L-C:

21.7.1 A temporary restraining order, temporary injunction, permanent injunction, or other order that would prevent, restrain or restrict the presentment of sight drafts drawn under the L-C or the Bank's honoring or payment of sight draft(s); or

21.7.2 Any attachment, garnishment, or levy in any manner upon either the proceeds of the L-C or the obligations of the Bank (either before or after the presentment to the Bank of sight drafts drawn under such L-C) based on any theory whatever.

21.8 **Remedy for Improper Drafts.** Tenant's sole and exclusive remedy in connection with Landlord's improper draw against the L-C or Landlord's improper application or retention of any proceeds of the L-C shall be the right to obtain from Landlord a refund of the amount of any sight draft(s) that were improperly presented or the proceeds of which were misapplied or wrongfully held, together with interest at the Default Rate and reasonable actual out-of-pocket attorneys' fees, provided that at the time of such refund, Tenant increases the amount of such L-C to the amount (if any) then required under the applicable provisions of this Lease. Tenant acknowledges that Landlord's draw against the L-C, application or retention of any proceeds thereof, or the Bank's payment under such L-C, could not, under any circumstances, cause Tenant injury that could not be remedied by an award of money damages, and that the recovery of money damages would be an adequate remedy therefor. In the event Tenant shall be entitled to a refund as aforesaid and Landlord shall fail to make such payment within ten (10) business days after demand, Tenant shall have the right to deduct the amount thereof together with interest thereon at the Default Rate from the next installment(s) of Base Rent.

21.9 **Reduction of L-C Amount.** Subject to the terms of this Section 21.9, and Tenant satisfaction of the L-C Reduction Condition, the L-C Amount shall be reduced on the first day of the thirty-seventh (37th) full calendar month of the Lease Term (the "**First Reduction Date**"), by Tenant's delivery to Landlord of an amendment to the

existing L-C, conforming in all respects to the requirements of this Article 21, but in the amount of fifty percent (50%) of the original L-C Amount. If Tenant is not satisfying the First L-C Reduction Condition as of the First Reduction Date, then Tenant may reduce the L-C Amount as of such later date that Tenant is then satisfying the First L-C Reduction Condition. Subject to the terms of this Section 21.9, and Tenant satisfaction of the Second L-C Reduction Condition, the L-C Amount shall be further reduced on the first day of the ninety-first (91st) full calendar month of the Lease Term (the "**Second Reduction Date**"), by Tenant's delivery to Landlord of an amendment to the existing L-C, conforming in all respects to the requirements of this Article 21, but in the amount of twenty-five percent (25%) of the original L-C Amount. If Tenant is not satisfying the Second L-C Reduction Condition as of the Second Reduction Date, then Tenant may reduce the L-C Amount as of such later date that Tenant is then satisfying the Second L-C Reduction Condition. If Tenant is allowed to reduce the L-C Amount pursuant to the terms and conditions of this Section 21.9, then Landlord shall reasonably cooperate with Tenant in order to effectuate such reduction. For purposes of this Section 21.9, (i) the "**First L-C Reduction Condition**" shall mean that Tenant is not then in default under this Lease, and Tenant then has an "equity market capitalization" on a national public exchange of greater than Two Billion Four Hundred Million Dollars (\$2,400,000,000) and (ii) the "**Second L-C Reduction Condition**" shall mean that Tenant is not then in default under this Lease, and Tenant then has an "equity market capitalization" on a national public exchange of greater than Three Billion Six Hundred Million Dollars (\$3,600,000,000).

#### 21.10 Construction Period.

21.10.1 **Costs for Replacement or Re-Issuance of L-C.** Notwithstanding anything to the contrary in this Article 21 or elsewhere in this Lease, during the Construction Period, Landlord shall, upon five (5) business days following receipt of notice from Tenant, along with an invoice therefor, pay all fees and costs incurred in connection with the replacement or reissuance of the L-C as a consequence of Landlord's transfer of its interest in the L-C (subject to Section 21.4), or a Bank Credit Threat, and Tenant shall have no obligation to pay any such fees or costs; provided, however, that to the extent that Landlord has paid any such fees or costs or otherwise incurred any expense as a consequence of the replacement or reissuance of the L-C during the Construction Period, then at any time after the Construction Period, Landlord may submit a statement to Tenant of the amount of any such fees, costs or expenses incurred by Landlord during the Construction Period, and Tenant shall be obligated to pay such amount as Additional Rent hereunder within ten (10) days after Tenant's receipt of such statement from Landlord; and further, provided, however, in no event shall Landlord's payment of any of the foregoing fees or costs include the obligation to supply any collateral in connection with the replacement or reissuance of the L-C.

21.10.2 **L-C Expiration, Bank Credit Threat, Receivership or Replacement of Initial L-Cs During Construction Period.** Notwithstanding any contrary provisions of this Article 21 or elsewhere in this Lease, if, during the Construction Period, Tenant fails to provide a replacement L-C meeting the requirements of this Article 21 within thirty (30) days prior to the then L-C Expiration Date, or a Bank Credit Threat occurs, then, (i) Tenant shall replace the L-C with a substitute L-C from a different issuer reasonably acceptable to Landlord and that complies in all respects with the requirements of this Article 21 (and it shall be deemed reasonable for Landlord to require such issuer to then be in satisfaction of the Bank's Credit Rating Threshold), or (ii) in the event Tenant demonstrates to Landlord that Tenant is reasonably unable to timely obtain a substitute L-C from a different issuer reasonably acceptable to Landlord and that complies in all respects with the requirements of this Article 21, Landlord shall not draw on the L-C and instead Landlord and Tenant shall promptly enter into a commercially reasonable controlled account agreement (the "**Controlled Account Agreement**") with the trust division of a national bank, selected by Landlord (the "**Controlled Bank**") to set up a controlled account for the benefit of Landlord (the "**Controlled Account**"). Tenant shall use commercially reasonable efforts to cooperate with Landlord to set up the Controlled Account within ten (10) business days following the full execution and delivery of this Lease. The Controlled Account Agreement shall (A) require Landlord to instruct the Bank to deposit the entire L-C Amount into the Controlled Account, which proceeds (the "**Controlled Account Deposit**") shall be held in the Controlled Account until receipt of a replacement L-C, (B) provide for any interest, if applicable, earned on the Controlled Account balance to be for the benefit of Tenant and only allow Landlord to make draws from the Controlled Account by presentation of similar documentation required by the Bank to draw on the L-C and for the same reasons as Landlord may draw on the L-C pursuant to the TCCs of this Article 21, and (C) provide Landlord with a security interest (with a UCC-1 filing) in the ownership interests, if any, that Tenant may have in the Controlled Account. In the event Landlord is unable to cause the Bank to deposit the L-C proceeds into the Controlled Account, then Tenant shall fund the Controlled Account with cash proceeds in an amount equal to the L-C Amount, in which case, Landlord shall promptly return the L-C to Tenant thereafter, and if Tenant fails to do so within the time periods specified above for issuance of a substitute L-C, then Landlord may draw on the L-C and promptly thereafter deposit the proceeds in the Controlled Account. If a Controlled Account is created, upon the termination of the Construction Period, Tenant shall, at Landlord's request, replace the Controlled Account with the appropriate L-C, in which case, promptly thereafter the funds in the Controlled Account shall be returned to Tenant by Controlled Bank. In the event the Controlled Account remains in place at the expiration or earlier termination of this Lease, and Tenant is in compliance with the covenants and obligations set forth in this Lease at the time of such expiration or termination, then Controlled Bank shall return to Tenant the Controlled Account Deposit, less any amounts necessary to reimburse Landlord for any sums to which Landlord is entitled under the terms and conditions of this Lease, within one hundred twenty (120) days following both such expiration or termination and Tenant's vacation and surrender of the Premises. In the event of a transfer of Landlord's interest in the Building, Landlord shall transfer Landlord's interest, in whole or in part, in the Controlled Account to the transferee and thereupon Landlord shall, without any further agreement between the parties, be released by Tenant from all liability therefor, and it is agreed that the provisions hereof shall apply to every transfer or assignment of the whole or any portion of the Controlled Account Deposit to a new landlord.

ARTICLE 22

INTENTIONALLY OMITTED

ARTICLE 23

SIGNS

23.1 **Full Floors.** Subject to Landlord's prior written approval, in its reasonable discretion, and provided all signs are in keeping with the quality, design and style of the Building and Project, Tenant, if the Premises comprise an entire floor of the Building, at its sole cost and expense, may install identification signage anywhere in the Premises including in the elevator lobby of the Premises, provided that such signs must not be visible from the exterior of the Building.

23.2 **Multi-Tenant Floors.** If other tenants occupy space on the floor on which the Premises is located, Tenant's identifying signage shall be provided by Landlord, at Tenant's cost, and such signage shall be comparable to that used by Landlord for other similar floors in the Building and shall comply with Landlord's then-current Building standard signage program.

23.3 **Prohibited Signage and Other Items.** Any signs, notices, logos, pictures, names or advertisements which are installed and that have not been separately and reasonably approved by Landlord may be removed without notice by Landlord at the sole expense of Tenant. Tenant may not install any signs on the exterior or roof of the Building or the Common Areas. Any signs, window coverings, or blinds (even if the same are located behind the Landlord-approved window coverings for the Building), or other items visible from the exterior of the Premises or Building, shall be subject to the prior approval of Landlord, in its sole discretion.

23.4 **Tenant's Signage.** In addition to the signage rights expressly set forth above in this Article 23, Tenant, at Tenant's sole cost and expense, shall be entitled to install (collectively, the "**Tenant's Signage**"): (i) two (2) signs on the exterior of the Building in locations reasonably determined by Landlord, and reasonably approved by Tenant, and (ii) one (1) panel on each of the monument signs pertaining to the Building (in the locations more particularly identified on Exhibit I attached hereto) identifying Tenant's name or logo in connection with Tenant's lease of the Premises.

23.4.1 **Specifications and Permits.** Tenant's Signage shall set forth Tenant's name and/or logo as determined by Tenant in its sole discretion, but subject to Landlord's reasonable approval, and in no event shall the Tenant's Signage include an "Objectionable Name," as that term is defined in Section 23.4.2, below. The graphics, materials, color, design, lettering, lighting, size, illumination, specifications and exact locations of Tenant's Signage shall be subject to the prior written approval of Landlord, which approval shall not be unreasonably withheld, conditioned or delayed, and shall be consistent and compatible with the quality and nature of the Project and Landlord's Building standard signage specifications. In addition, the Tenant's Signage shall be subject to Tenant's receipt of all necessary governmental or quasi-governmental approvals and permits (collectively, "**Governmental Approvals**") and shall be subject to all Applicable Laws and the Underlying Documents. Tenant hereby acknowledges that Landlord has made no representation or warranty to Tenant with respect to the probability of obtaining all necessary Governmental Approvals for the Tenant's Signage. In the event Tenant does not receive the necessary Governmental Approvals for the Tenant's Signage, Tenant's and Landlord's rights and obligations under this Lease shall be unaffected.

23.4.2 **Objectionable Name.** To the extent Tenant desires to change the name and/or logo set forth on the Tenant's Signage, such name and/or logo shall not have a name which relates to an entity which is of a character or reputation, or is associated with a political faction or orientation, which is inconsistent with the quality of the Project, or which would otherwise reasonably offend a landlord of the Comparable Buildings (an "**Objectionable Name**"). The parties hereby agree that the name "8x8" or any reasonable derivation thereof, shall not be deemed an Objectionable Name.

23.4.3 **Termination of Right to Tenant's Signage.** The rights contained in this Section 23.4 shall be personal to the Original Tenant or a Permitted Transferee Assignee, and may only be exercised and maintained by the Original Tenant or such Permitted Transferee Assignee (and not any other assignee, sublessee or other transferee of either of the Original Tenant's interest in the Lease) if the Original Tenant or such Permitted Transferee Assignee has not subleased more than twenty-five percent (25%) of the initial Premises and any other space leased by Tenant in the Project, and a default by Tenant under this Lease is not then occurring. In the event Tenant fails to comply with any of the requirements set forth hereinabove, the signage rights provided in this Section 23.4 shall automatically terminate.

23.4.4 **Cost and Maintenance; Change and Replacement.** The actual costs of the Tenant's Signage and the installation, design, construction and any and all other costs associated with the Tenant's Signage, including, without limitation, utility charges and hook-up fees, permits, and maintenance and repairs, shall be the sole responsibility of Tenant. Should the Tenant's Signage require repairs and/or maintenance, as determined in Landlord's reasonable judgment, Landlord shall have the right to provide notice thereof to Tenant and Tenant (except as set forth below) shall cause such repairs and/or maintenance to be performed within thirty (30) days after receipt of such notice from Landlord, at Tenant's sole cost and expense; provided, however, if such repairs and/or maintenance are reasonably expected to require longer than thirty (30) days to perform, Tenant shall commence such repairs and/or maintenance within such thirty (30) day period and shall diligently prosecute such repairs and maintenance to completion. Should Tenant fail to perform such repairs and/or maintenance within the periods described in the immediately preceding sentence, Landlord shall, upon the delivery of an additional five (5) business days' prior written

notice, have the right to cause such work to be performed and to charge Tenant as Additional Rent for the actual cost of such work. Subject to Tenant's agreement to comply with the terms of this Section 23.4, Tenant shall be permitted to change and/or replace the Tenant's Signage periodically in Tenant's reasonable discretion. Upon the expiration or earlier termination of this Lease or upon any earlier termination of Tenant's rights to the Tenant's Signage as set forth herein, Tenant shall, at Tenant's sole cost and expense, cause the Tenant's Signage to be removed and shall cause the areas in which such Tenant's Signage was located to be restored to the condition existing immediately prior to the placement of such Tenant's Signage except for (x) reasonable wear and tear, (y) damage by Casualty that is not Tenant's obligation to repair hereunder, or (z) repairs which are specifically made the responsibility of Landlord hereunder. If Tenant fails to timely remove the Tenant's Signage or to restore the areas in which such the Tenant's Signage was located, as provided in the immediately preceding sentence, then Landlord may perform such work, and all actual costs incurred by Landlord in so performing shall be reimbursed by Tenant to Landlord within thirty (30) days after Tenant's receipt of an invoice therefor. The terms and conditions of this Section 23.4.4 shall survive the expiration or earlier termination of the Lease.

## ARTICLE 24

### COMPLIANCE WITH LAW

24.1 **Tenant's Obligations.** Tenant shall not do anything or suffer anything to be done in or about the Premises or the Project which will in any way conflict with any law, statute, ordinance or other governmental rule, regulation or requirement now in force or which may hereafter be enacted or promulgated (collectively, "**Applicable Laws**"). At its sole cost and expense, Tenant shall promptly comply with all such Applicable Laws. Should any standard or regulation now or hereafter be imposed on Landlord or Tenant by a state, federal or local governmental body charged with the establishment, regulation and enforcement of occupational, health or safety standards for employers, employees, landlords or tenants, then Tenant agrees, at its sole cost and expense, to comply promptly with such standards or regulations. Tenant shall be responsible, at its sole cost and expense, to make all alterations to the Premises as are required to comply with Applicable Laws. Notwithstanding anything to the contrary within this Lease, Tenant shall not be obligated to incur any cost under this Article 24 during the Construction Period except to the extent that such cost may be related to Tenant's construction of the initial Tenant Improvements to the Premises subject to the terms and conditions of the Tenant Work Letter. The judgment of any court of competent jurisdiction or the admission of Tenant in any judicial action, regardless of whether Landlord is a party thereto, that Tenant has violated any of said governmental measures, shall be conclusive of that fact as between Landlord and Tenant.

24.2 **Landlord's Obligations.** Landlord shall comply with all Applicable Laws (including Environmental Laws, as that term is defined in Exhibit G) relating to the Base Building and Project Common Areas (which compliance work may include the remediation, removal or abatement of Hazardous Materials) to the extent such compliance is required by a governmental authority, provided that compliance with such Applicable Laws is not the responsibility of Tenant under this Lease. Landlord shall be permitted to include in Operating Expenses any costs or expenses incurred by Landlord under this Article 24 to the extent not prohibited by the terms of Section 4.2.4 above.

24.3 **Certified Access Specialist.** Tenant hereby waives any and all rights under and benefits of California Civil Code Section 1938 and acknowledges that neither the Project nor the Premises has undergone inspection by a Certified Access Specialist (CASp) (defined in California Civil Code Section 55.52). As required by Section 1938(e) of the California Civil Code, Landlord hereby states as follows: "A Certified Access Specialist (CASp) can inspect the subject premises and determine whether the subject premises comply with all of the applicable construction-related accessibility standards under state law. Although state law does not require a CASp inspection of the subject premises, the commercial property owner or lessor may not prohibit the lessee or tenant from obtaining a CASp inspection of the subject premises for the occupancy or potential occupancy of the lessee or tenant, if requested by the lessee or tenant. The parties shall mutually agree on the arrangements for the time and manner of the CASp inspection, the payment of the fee for the CASp inspection, and the cost of making any repairs necessary to correct violations of construction-related accessibility standards within the premises." In furtherance of the foregoing, Landlord and Tenant hereby agree as follows: (a) any CASp inspection requested by Tenant shall be conducted, at Tenant's sole cost and expense, by a CASp designated by Landlord; and (b) pursuant to Article 24 above, Tenant, at its sole cost and expense, shall be responsible for making any improvements or repairs within the Premises to correct violations of construction-related accessibility standards; and, if anything done by or for Tenant in its use or occupancy of the Premises shall require any improvements or repairs to the Project (outside the Premises) to correct violations of construction-related accessibility standards, then Tenant shall, at Landlord's option, either (i) perform such improvements or repairs at Tenant's sole cost and expense, or (ii) reimburse Landlord upon demand, as Additional Rent, for the cost to Landlord of performing such improvements or repairs.

## ARTICLE 25

### LATE CHARGES

If any installment of Rent or any other sum due from Tenant shall not be received by Landlord or Landlord's designee within five (5) business days after receipt of written notice from Landlord that said amount was not paid when due, then Tenant shall pay to Landlord a late charge equal to five percent (5%) of the overdue amount. The late charge shall be deemed Additional Rent and the right to require it shall be in addition to all of Landlord's other rights and remedies hereunder or at law and shall not be construed as liquidated damages or as limiting Landlord's remedies in any manner. In addition to the late charge described above, any Rent or other amounts owing hereunder which are not paid within ten (10) days after the date they are due shall bear interest from the date when due until paid at a rate per annum (the "**Default Rate**") equal to the lesser of (i) the annual "**Bank Prime Loan**" rate cited in the Federal Reserve Statistical Release Publication G.13(415), published on the first Tuesday of each calendar month (or such

other comparable index as Landlord and Tenant shall reasonably agree upon if such rate ceases to be published) plus two (2) percentage points, and (ii) the highest rate permitted by Applicable Law.

## ARTICLE 26

### LANDLORD'S RIGHT TO CURE DEFAULT; PAYMENTS BY TENANT

26.1 **Landlord's Cure.** All covenants and agreements to be kept or performed by Tenant under this Lease shall be performed by Tenant at Tenant's sole cost and expense and without any reduction of Rent, except to the extent, if any, otherwise expressly provided herein. If Tenant shall fail to perform any obligation under this Lease, and such failure shall continue in excess of the time allowed under Section 19.1.2, above, then upon three (3) additional days' Notice from Landlord, Landlord may, but shall not be obligated to, make any such payment or perform any such act on Tenant's part without waiving its rights based upon any default of Tenant and without releasing Tenant from any obligations hereunder.

26.2 **Tenant's Reimbursement.** Except as may be specifically provided to the contrary in this Lease, Tenant shall pay to Landlord, within thirty (30) days after delivery by Landlord to Tenant of statements therefor: (i) sums equal to expenditures reasonably made and obligations incurred by Landlord in connection with the remedying by Landlord of Tenant's defaults pursuant to the provisions of Section 26.1; (ii) sums equal to all losses, costs, liabilities, damages and expenses referred to in Article 10 of this Lease; and (iii) sums equal to all expenditures made and obligations incurred by Landlord in collecting or attempting to collect the Rent or in enforcing or attempting to enforce any rights of Landlord under this Lease or pursuant to law, including, without limitation, all reasonable legal fees and other amounts so expended. Tenant's obligations under this Section 26.2 shall survive the expiration or sooner termination of the Lease Term.

## ARTICLE 27

### ENTRY BY LANDLORD

Landlord reserves the right at all reasonable times and upon reasonable prior notice to Tenant (except in the case of an emergency) to enter the Premises to (i) inspect them; (ii) show the Premises to prospective purchasers, or to current or prospective mortgagees, ground or underlying lessors or insurers or, during the last twelve (12) months of the Lease Term, to prospective tenants; (iii) post notices of nonresponsibility; or (iv) alter, improve or repair the Premises or the Building, or for structural alterations, repairs or improvements to the Building or the Building's systems and equipment. Notwithstanding anything to the contrary contained in this Article 27, Landlord may enter the Premises at any time to (A) perform services required of Landlord; (B) take possession due to any breach of this Lease in the manner provided herein; and (C) perform any covenants of Tenant which Tenant fails to perform. Landlord may make any such entries without the abatement of Rent, except as expressly provided in this Lease, and may take such reasonable steps as required to accomplish the stated purposes; provided, however, except for emergencies, any such entry shall be performed in a manner so as not to unreasonably interfere with Tenant's use of the Premises or ability to conduct business therein. Except as otherwise set forth in Section 19.5, Tenant hereby waives any claims for damages or for any injuries or inconvenience to or interference with Tenant's business, lost profits, any loss of occupancy or quiet enjoyment of the Premises, and any other loss occasioned thereby. For each of the above purposes, Landlord shall at all times have a key with which to unlock all the doors in the Premises, excluding Tenant's vaults, safes and special security areas designated in advance by Tenant. In an emergency, Landlord shall have the right to use any means that Landlord may deem proper to open the doors in and to the Premises. Notwithstanding anything to the contrary set forth in this Article 27, Tenant may designate certain limited areas of the Premises as "Secured Areas" should Tenant require such areas for the purpose of securing certain valuable property or confidential information. In connection with the foregoing, Landlord shall not enter such Secured Areas except in the event of an emergency. Landlord need not clean any area designated by Tenant as a Secured Area and shall only maintain or repair such Secured Areas to the extent (i) such repair or maintenance is required in order to maintain and repair the Building Structure and/or the Building Systems; (ii) as required by Applicable Law, or (iii) in response to specific requests by Tenant and in accordance with a schedule reasonably designated by Tenant, subject to Landlord's reasonable approval. Any entry into the Premises by Landlord in the manner hereinbefore described shall not be deemed to be a forcible or unlawful entry into, or a detainer of, the Premises, or an actual or constructive eviction of Tenant from any portion of the Premises. No provision of this Lease shall be construed as obligating Landlord to perform any repairs, alterations or decorations except as otherwise expressly agreed to be performed by Landlord herein. For purposes of this Article, an emergency situation is one that poses a threat of imminent bodily harm or property damage. If Landlord makes an emergency entry onto the Premises when no authorized representative of Tenant is present, Landlord shall use commercially reasonable efforts to provide telephone notice to Tenant as soon as reasonably possible within twenty-four (24) hours after that entry and shall take reasonable steps to secure the Premises until a representative of Tenant arrives at the Premises.

## ARTICLE 28

### TENANT PARKING

28.1 **Tenant's Use of Project Parking Facilities.** Tenant shall be entitled to use, commencing on the Lease Commencement Date, the amount of parking passes set forth in Section 8 of the Summary, on a monthly basis throughout the Lease Term, which parking passes shall pertain to the areas of the Project parking facility designated by Landlord (as designated, "**Tenant's Parking Areas**"). During the initial Lease Term, Tenant shall not be obligated to pay to Landlord for automobile parking passes on a monthly basis; provided, however, Tenant shall be responsible for the full amount of any taxes imposed by any governmental authority in connection with the renting of any additional parking passes by Tenant as contemplated by the immediately following sentence. Subject to availability,

upon thirty (30) days' prior written notice to Landlord, Tenant shall have the right to use additional parking passes pertaining to the Project parking facilities, provided that, upon thirty (30) days' prior written notice to Tenant, Landlord shall have the right to terminate Tenant's right to particular additional parking passes, if Landlord is required to provide such parking to another tenant of the Project (but such parking rights granted to another tenant of the Project shall not be parking rights in excess of the parking rights granted to Tenant under this Lease, determined based on the number of parking passes allocated to Tenant and the size of the Premises, as compared to the number of parking passes allocated to such other tenant and the size of such tenant's premises). In addition, Tenant shall have the right on a daily basis, subject to availability, to use areas designated by Landlord for overflow parking at the Project, if any. Tenant's continued right to use the parking passes is conditioned upon Tenant abiding by all reasonable rules and regulations which are prescribed from time to time for the orderly operation and use of Tenant's Parking Areas (including any sticker or other identification system established by Landlord and the prohibition of vehicle repair and maintenance activities in Tenant's Parking Areas), Tenant's cooperation in seeing that Tenant's employees and visitors also comply with such reasonable rules and regulations. Tenant's use of Tenant's Parking Areas shall be at Tenant's sole risk and Tenant acknowledges and agrees that Landlord shall have no liability whatsoever for damage to the vehicles of Tenant, its employees and/or visitors, or for other personal injury or property damage or theft relating to or connected with the parking rights granted herein or any of Tenant's, its employees' and/or visitors' use of the Project parking facilities. Tenant's rights hereunder are subject to the terms of any Underlying Documents, which include, without limitation, certain rights for use of the Project parking facilities in connection with events at the stadium located adjacent to the Project. Landlord specifically reserves the right to change the size, configuration, design, layout and all other aspects of the Project parking facilities at any time and Tenant acknowledges and agrees that Landlord may, without incurring any liability to Tenant and without any abatement of Rent under this Lease, from time to time, temporarily close-off or restrict access to the Project parking facilities for purposes of permitting or facilitating any such construction, alteration or improvements. Landlord may delegate its responsibilities hereunder to a parking operator in which case such parking operator shall have all the rights of control attributed hereby to the Landlord. The parking passes used by Tenant pursuant to this Article 28 are provided to Tenant solely for use by Tenant's own personnel and such passes may not be transferred, assigned, subleased or otherwise alienated by Tenant without Landlord's prior approval.

28.2 **Electrical Vehicle Charging Stations.** Landlord shall install, at Landlord's sole cost and expense, at least sixteen (16) electrical vehicle charging stations ("EV Stations") within Tenant's Parking Area, which shall be available for Tenant's exclusive use. Tenant shall have the right, prior to Landlord's purchase of the EV Stations, to cause Landlord to purchase an alternative brand or type of EV Stations; provided that any increased costs of such alternative EV Stations shall be deducted from the Tenant Improvement Allowance.

## ARTICLE 29

### MISCELLANEOUS PROVISIONS

29.1 **Terms; Captions.** The words "**Landlord**" and "**Tenant**" as used herein shall include the plural as well as the singular. The necessary grammatical changes required to make the provisions hereof apply either to corporations or partnerships or individuals, men or women, as the case may require, shall in all cases be assumed as though in each case fully expressed. The captions of Articles and Sections are for convenience only and shall not be deemed to limit, construe, affect or alter the meaning of such Articles and Sections.

29.2 **Binding Effect.** Subject to all other provisions of this Lease, each of the covenants, conditions and provisions of this Lease shall extend to and shall, as the case may require, bind or inure to the benefit not only of Landlord and of Tenant, but also of their respective heirs, personal representatives, successors or assigns, provided this clause shall not permit any assignment by Tenant contrary to the provisions of Article 14 of this Lease.

29.3 **No Air Rights.** No rights to any view or to light or air over any property, whether belonging to Landlord or any other person, are granted to Tenant by this Lease. If at any time any windows of the Premises are temporarily darkened or the light or view therefrom is obstructed by reason of any repairs, improvements, maintenance or cleaning in or about the Project, the same shall be without liability to Landlord and without any reduction or diminution of Tenant's obligations under this Lease.

29.4 **Intentionally Deleted.**

29.5 **Transfer of Landlord's Interest.** Tenant acknowledges that Landlord has the right to transfer all or any portion of its interest in the Project or Building and in this Lease, and Tenant agrees that in the event of any such transfer, Landlord shall automatically be released from all future liability under this Lease and Tenant agrees to look solely to such transferee for the performance of Landlord's obligations hereunder first arising after the date of transfer and such transferee shall be deemed to have fully assumed and be liable for all obligations of this Lease to be performed by Landlord, including the return of any Security Deposit, and Tenant shall attorn to such transferee. This section does not release the transferring Landlord from its obligations or liabilities under this Lease that accrue before the date of transfer.

29.6 **Recording.** Tenant shall have the right to record against the Project a memorandum providing record notice of the Lease, which shall be in the form of Exhibit K attached hereto (the "**Memorandum**"). The parties shall sign the Memorandum concurrently with the execution of this Lease. In addition, within thirty (30) days after Landlord's written request following the expiration or earlier termination of this Lease, Tenant shall execute and deliver to Landlord in recordable form, termination of the Memorandum. Tenant's obligation to execute and deliver such termination of the Memorandum shall survive the expiration or earlier termination of this Lease. Tenant shall be solely responsible for all costs incurred under this Section 29.6.



29.7 **Landlord's Title.** Landlord's title is and always shall be paramount to the title of Tenant. Nothing herein contained shall empower Tenant to do any act which can, shall or may encumber the title of Landlord.

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

29.9 **Application of Payments.** Landlord shall have the right to apply payments received from Tenant pursuant to this Lease, regardless of Tenant's designation of such payments, to satisfy any obligations of Tenant hereunder, in such order and amounts as Landlord, in its sole discretion, may elect.

29.10 **Time of Essence.** Time is of the essence with respect to the performance of every provision of this Lease in which time of performance is a factor.

29.11 **Partial Invalidity.** If any term, provision or condition contained in this Lease shall, to any extent, be invalid or unenforceable, the remainder of this Lease, or the application of such term, provision or condition to persons or circumstances other than those with respect to which it is invalid or unenforceable, shall not be affected thereby, and each and every other term, provision and condition of this Lease shall be valid and enforceable to the fullest extent possible permitted by law.

29.12 **No Warranty.** In executing and delivering this Lease, Tenant has not relied on any representations, including, but not limited to, any representation as to the amount of any item comprising Additional Rent or the amount of the Additional Rent in the aggregate or that Landlord is furnishing the same services to other tenants, at all, on the same level or on the same basis, or any warranty or any statement of Landlord which is not set forth herein or in one or more of the exhibits attached hereto.

29.13 **Exculpation.** The liability of Landlord or the Landlord Parties to Tenant for any default by Landlord under this Lease or arising in connection herewith or with Landlord's operation, management, leasing, repair, renovation, alteration or any other matter relating to the Project or the Premises shall be limited solely and exclusively to an amount which is equal to the the interest of Landlord in the Building, including sales or insurance proceeds received by Landlord or the Landlord Parties in connection with the Project, Building or Premises and including any rents, issues or profits from the Building. Neither Landlord, nor any of the Landlord Parties shall have any personal liability therefor, and Tenant hereby expressly waives and releases such personal liability on behalf of itself and all persons claiming by, through or under Tenant; provided that nothing in this Section shall operate to limit or permit Tenant from seeking injunctive or equitable relief. The limitations of liability contained in this Section 29.13 shall inure to the benefit of Landlord's and the Landlord Parties' present and future partners, beneficiaries, officers, directors, trustees, shareholders, agents and employees, and their respective partners, heirs, successors and assigns. Under no circumstances shall any present or future partner of Landlord (if Landlord is a partnership), or trustee or beneficiary (if Landlord or any partner of Landlord is a trust), have any liability for the performance of Landlord's obligations under this Lease. Notwithstanding any contrary provision herein, neither Landlord nor the Landlord Parties, nor Tenant nor the Tenant Parties, shall be liable under any circumstances for injury or damage to, or interference with, the other party's business, including but not limited to, loss of profits, loss of rents or other revenues, loss of business opportunity, loss of goodwill or loss of use, in each case, however occurring, except in connection with a holdover by Tenant pursuant to the terms of Article 16 of this Lease.

29.14 **Entire Agreement.** It is understood and acknowledged that there are no oral agreements between the parties hereto affecting this Lease and this Lease constitutes the parties' entire agreement with respect to the leasing of the Premises and supersedes and cancels any and all previous negotiations, arrangements, brochures, agreements and understandings, if any, between the parties hereto or displayed by Landlord to Tenant with respect to the subject matter thereof, and none thereof shall be used to interpret or construe this Lease. None of the terms, covenants, conditions or provisions of this Lease can be modified, deleted or added to except in writing signed by the parties hereto.

29.15 **Right to Lease.** Landlord reserves the absolute right to effect such other tenancies in the Project as Landlord in the exercise of its sole business judgment shall determine to best promote the interests of the Building or Project. Tenant does not rely on the fact, nor does Landlord represent, that any specific tenant or type or number of tenants shall, during the Lease Term, occupy any space in the Building or Project.

29.16 **Force Majeure.** Any prevention, delay or stoppage due to strikes, lockouts, labor disputes, acts of God, acts of war, terrorist acts, inability to obtain services, labor, or materials or reasonable substitutes therefor, governmental actions, civil commotions, fire or other casualty, and other causes beyond the reasonable control of the party obligated to perform, except with respect to the obligations imposed with regard to Rent and other charges to be paid by Tenant pursuant to this Lease and except as to Tenant's obligations under Articles 5 and 24 of this Lease (collectively, a "**Force Majeure**"), notwithstanding anything to the contrary contained in this Lease, shall excuse the performance of such party for a period equal to any such prevention, delay or stoppage and, therefore, if this Lease specifies a time period for performance of an obligation of either party, that time period shall be extended by the period of any delay in such party's performance caused by a Force Majeure.

29.17 **Waiver of Redemption by Tenant.** Tenant hereby waives, for Tenant and for all those claiming under Tenant, any and all rights now or hereafter existing to redeem by order or judgment of any court or by any legal process or writ, Tenant's right of occupancy of the Premises after any termination of this Lease.

29.18 **Notices.** All notices, demands, statements, designations, approvals or other communications (collectively, "**Notices**") given or required to be given by either party to the other hereunder or by law shall be in

writing, shall be (A) sent by United States certified or registered mail, postage prepaid, return receipt requested ("**Mail**"), (B) transmitted by telecopy, if such telecopy is promptly followed by a Notice sent by Mail, (C) delivered by a nationally recognized overnight courier, or (D) delivered personally. Any Notice shall be sent, transmitted, or delivered, as the case may be, to Tenant at the appropriate address set forth in Section 9 of the Summary, or to such other place as Tenant may from time to time designate in a Notice to Landlord, or to Landlord at the addresses set forth below, or to such other places as Landlord may from time to time designate in a Notice to Tenant. Any Notice will be deemed given (i) three (3) days after the date it is posted if sent by Mail, (ii) the date the telecopy is transmitted,

(iii) the date the overnight courier delivery is made, or (iv) the date personal delivery is made. As of the date of this Lease, any Notices to Landlord must be sent, transmitted, or delivered, as the case may be, to the following addresses:

CAP Phase I, LLC  
c/o Hunter Properties Inc.  
10121 Miller Avenue, Suite 200  
Cupertino, California 95014-3469  
Attention: Deke Hunter and Sherri Prieb

and

Allen Matkins Leck Gamble Mallory & Natsis LLP  
1901 Avenue of the Stars

Suite 1800

Los Angeles, California 90067  
Attention: Anton N. Natsis, Esq.

29.19 **Joint and Several.** If there is more than one Tenant, the obligations imposed upon Tenant under this Lease shall be joint and several.

29.20 **Authority.** If Tenant is a corporation, trust or partnership, each individual executing this Lease on behalf of Tenant hereby represents and warrants that Tenant is a duly formed and existing entity qualified to do business in California and that Tenant has full right and authority to execute and deliver this Lease and that each person signing on behalf of Tenant is authorized to do so. In such event, Tenant shall, within ten (10) days after execution of this Lease, deliver to Landlord satisfactory evidence of such authority and, if a corporation, upon demand by Landlord, also deliver to Landlord satisfactory evidence of (i) good standing in Tenant's state of incorporation and

(ii) qualification to do business in California.

29.21 **Attorneys' Fees.** In the event that either Landlord or Tenant should bring suit for the possession of the Premises, for the recovery of any sum due under this Lease, or because of the breach of any provision of this Lease or for any other relief against the other, then all costs and expenses, including reasonable attorneys' fees, incurred by the prevailing party therein shall be paid by the other party, which obligation on the part of the other party shall be deemed to have accrued on the date of the commencement of such action and shall be enforceable whether or not the action is prosecuted to judgment.

29.22 **Governing Law.** This Lease shall be construed and enforced in accordance with the laws of the State of California.

29.23 **Submission of Lease.** Submission of this instrument for examination or signature by Tenant does not constitute a reservation of, option for or option to lease, and it is not effective as a lease or otherwise until execution and delivery by both Landlord and Tenant.

29.24 **Brokers.** Landlord and Tenant hereby warrant to each other that they have had no dealings with any real estate broker or agent in connection with the negotiation of this Lease, excepting only the real estate brokers or agents specified in Section 11 of the Summary (the "**Brokers**"), and that they know of no other real estate broker or agent who is entitled to a commission in connection with this Lease. Each party agrees to indemnify and defend the other party against and hold the other party harmless from any and all claims, demands, losses, liabilities, lawsuits, judgments, costs and expenses (including without limitation reasonable attorneys' fees) with respect to any leasing commission or equivalent compensation alleged to be owing on account of any dealings with any real estate broker or agent, other than the Brokers, occurring by, through, or under the indemnifying party. Landlord shall be responsible for payment of a commission to Tenant's Broker in connection with this Lease pursuant to a separate written agreement between Landlord and Tenant's Broker.

29.25 **Independent Covenants.** This Lease shall be construed as though the covenants herein between Landlord and Tenant are independent and not dependent and Tenant hereby expressly waives the benefit of any statute to the contrary and agrees that if Landlord fails to perform its obligations set forth herein, Tenant shall not be entitled to make any repairs or perform any acts hereunder at Landlord's expense or to any setoff of the Rent or other amounts owing hereunder against Landlord, except as specifically provided in this Lease.

29.26 **Project or Building Name and Signage.** Subject to Article 23 above, Landlord shall have the right at any time to change the name of the Project or Building and to install, affix and maintain any and all signs on the exterior and on the interior of the Project or Building as Landlord may, in Landlord's sole discretion, desire. Tenant shall not use the name of the Project or Building or use pictures or illustrations of the Project or Building in advertising or other publicity or for any purpose other than as the address of the business to be conducted by Tenant in the Premises, without the prior written consent of Landlord.

29.27 **Counterparts.** This Lease may be executed in counterparts with the same effect as if both parties hereto had executed the same document. Both counterparts shall be construed together and shall constitute a single lease.

29.28 **Confidentiality.** Tenant acknowledges that the content of this Lease and any related documents are confidential information. Tenant shall keep such confidential information strictly confidential and shall not disclose such confidential information to any person or entity other than Tenant's financial, legal, and space planning consultants. Landlord acknowledges that the content of this Lease and any related documents are confidential information. Landlord shall keep such confidential information strictly confidential and shall not disclose such confidential information to any person or entity other than Landlord's financial, legal and space planning consultants, or its directors, officers, employees, attorneys, accountants, prospective lenders, prospective purchasers, and current and potential partners. To the extent Landlord (or any Landlord Party) or Tenant is a publicly traded corporation, such party may be obligated to regularly provide financial information concerning Landlord, Tenant and/or its affiliates to the shareholders of its affiliates, to the Federal Securities and Exchange Commission and other regulatory agencies, and to auditors and underwriters, which information may include summaries of financial information concerning leases, rents, costs and results of operations of its business, including any financial obligations set forth in this Lease, and such required disclosures shall be permitted pursuant to the terms of this Section 29.28. This provision shall survive the expiration or earlier termination of this Lease for one (1) year.

29.29 **Project Renovations.** It is specifically understood and agreed that Landlord has no obligation and has made no promises to alter, remodel, improve, renovate, repair or decorate the Premises, Building, Project or any part thereof and that no representations respecting the condition of the Premises, the Building or the Project have been made by Landlord to Tenant except as specifically set forth herein or in the Tenant Work Letter. However, Tenant hereby acknowledges that Landlord is currently renovating or may during the Lease Term renovate, improve, alter, or modify (collectively, the "**Renovations**") the Project, the Building and/or the Premises. Except as expressly set forth in Section 19.5.2, above, Tenant hereby agrees that such Renovations and Landlord's actions in connection with such Renovations shall in no way constitute a constructive eviction of Tenant nor entitle Tenant to any abatement of Rent. Landlord shall have no responsibility or for any reason be liable to Tenant for any direct or indirect injury to or interference with Tenant's business arising from the Renovations, nor shall Tenant be entitled to any compensation or damages from Landlord for loss of the use of the whole or any part of the Premises or of Tenant's personal property or improvements resulting from the Renovations or Landlord's actions in connection with such Renovations, or for any inconvenience or annoyance occasioned by such Renovations. Landlord shall use commercially reasonable efforts to have all Renovations, once started, be completed reasonably expeditiously, with such work being organized and conducted in a manner which will minimize any interference to Tenant's business operations in the Premises.

29.30 **No Violation.** Tenant hereby warrants and represents that neither its execution of nor performance under this Lease shall cause Tenant to be in violation of any agreement, instrument, contract, law, rule or regulation by which Tenant is bound, and Tenant shall protect, defend, indemnify and hold Landlord harmless against any claims, demands, losses, damages, liabilities, costs and expenses, including, without limitation, reasonable attorneys' fees and costs, arising from Tenant's breach of this warranty and representation.

29.31 **Communications and Computer Lines.** Tenant may install, maintain, replace, remove or use any communications or computer wires and cables serving the Premises (collectively, the "**Lines**"), provided that (i) Tenant shall obtain Landlord's prior written consent, use an experienced and qualified contractor approved in writing by Landlord, and comply with all of the other provisions of Articles 7 and 8 of this Lease, (ii) an acceptable number of spare Lines and space for additional Lines shall be maintained for existing and future occupants of the Project, as determined in Landlord's reasonable opinion, (iii) the Lines therefor (including riser cables) shall be appropriately insulated to prevent excessive electromagnetic fields or radiation, shall be surrounded by a protective conduit reasonably acceptable to Landlord, and shall be identified in accordance with the "Identification Requirements," as that term is set forth hereinbelow, (iv) any new or existing Lines servicing the Premises shall comply with all applicable governmental laws and regulations, (v) as a condition to permitting the installation of new Lines, Landlord may require that Tenant remove existing Lines located in or serving the Premises and repair any damage in connection with such removal, and (vi) Tenant shall pay all costs in connection therewith. All Lines shall be clearly marked with adhesive plastic labels (or plastic tags attached to such Lines with wire) to show Tenant's name, suite number, telephone number and the name of the person to contact in the case of an emergency (A) every four feet (4') outside the Premises (specifically including, but not limited to, the electrical room risers and other Common Areas), and (B) at the Lines' termination point(s) (collectively, the "**Identification Requirements**"). Landlord reserves the right, upon notice to Tenant at any time prior to the expiration or earlier termination of this Lease, to require that Tenant remove any Lines located in or serving the Premises prior to the expiration or earlier termination of this Lease.

29.32 **Transportation Management.** Tenant shall fully comply with all present or future programs intended to manage parking, transportation or traffic in and around the Project and/or the Building, and in connection therewith, Tenant shall take responsible action for the transportation planning and management of all employees located at the Premises by working directly with Landlord, any governmental transportation management organization or any other transportation-related committees or entities. Such programs may include, without limitation: (i) restrictions on the number of peak-hour vehicle trips generated by Tenant; (ii) increased vehicle occupancy; (iii) implementation of an in-house ridesharing program and an employee transportation coordinator; (iv) working with employees and any Project, Building or area-wide ridesharing program manager; (v) instituting employer-sponsored incentives (financial or in-kind) to encourage employees to rideshare; and (vi) utilizing flexible work shifts for employees.

29.33 **Development of the Project.**

29.33.1 **Subdivision.** Landlord reserves the right to further subdivide all or a portion of the Project; provided that such subdivisions will not materially and adversely affect Tenant's use of, access to, the Premises and Building or Tenant's Parking Areas, or materially increase Tenant's monetary obligations under this Lease. Tenant agrees to execute and deliver, upon demand by Landlord and in the form requested by Landlord, any additional documents needed to conform this Lease to the circumstances resulting from such subdivision.

29.33.2 **The Other Improvements.** If portions of the Project or property adjacent to the Project (collectively, the "**Other Improvements**") are owned by an entity other than Landlord, Landlord, at its option, may enter into an agreement with the owner or owners of any or all of the Other Improvements to provide (i) for reciprocal rights of access and/or use of the Project and the Other Improvements, (ii) for the common management, operation, maintenance, improvement and/or repair of all or any portion of the Project and the Other Improvements, (iii) for the allocation of a portion of the Direct Expenses to the Other Improvements and the operating expenses and taxes for the Other Improvements to the Project, and (iv) for the use or improvement of the Other Improvements and/or the Project in connection with the improvement, construction, and/or excavation of the Other Improvements and/or the Project; provided that such agreements will not materially and adversely affect Tenant's use of, access to, the Premises and Building or Tenant's Parking Areas, or materially increase Tenant's monetary obligations under this Lease. Nothing contained herein shall be deemed or construed to limit or otherwise affect Landlord's right to convey all or any portion of the Project or any other of Landlord's rights described in this Lease.

29.34 **Office of Foreign Assets Control.** Tenant certifies to Landlord that Tenant is not entering into this Lease, nor acting, for or on behalf of any person or entity named as a terrorist or other banned or blocked person or entity pursuant to any law, order, rule or regulation of the United States Treasury Department or the Office of Foreign Assets Control. Tenant hereby agrees to indemnify, defend and hold Landlord and the Landlord Parties harmless from any and all Claims arising from or related to any breach of the foregoing certification.

[signatures follow on next page]

LANDLORD:

CAP Phase 1, LLC,  
a Delaware limited liability company

By: Coleman Airport Partners, LLC,  
a California limited liability company  
Its: Sole Member

By: HS Airport, LLC,  
a California limited liability company  
Its: Manager

By: /s/ Derek K. Hunter, Jr.  
Name: Derek K. Hunter, Jr.  
Its: Member

By: /s/ Edward D. Storm  
Name: Edward D. Storm  
Its: Member

TENANT:

8X8, INC.  
a Delaware corporation

By: /s/ Vikram Verma  
Name: Vikram Verma  
Title: Chief Executive Officer

COLEMAN HIGHLINE

SITE PLAN

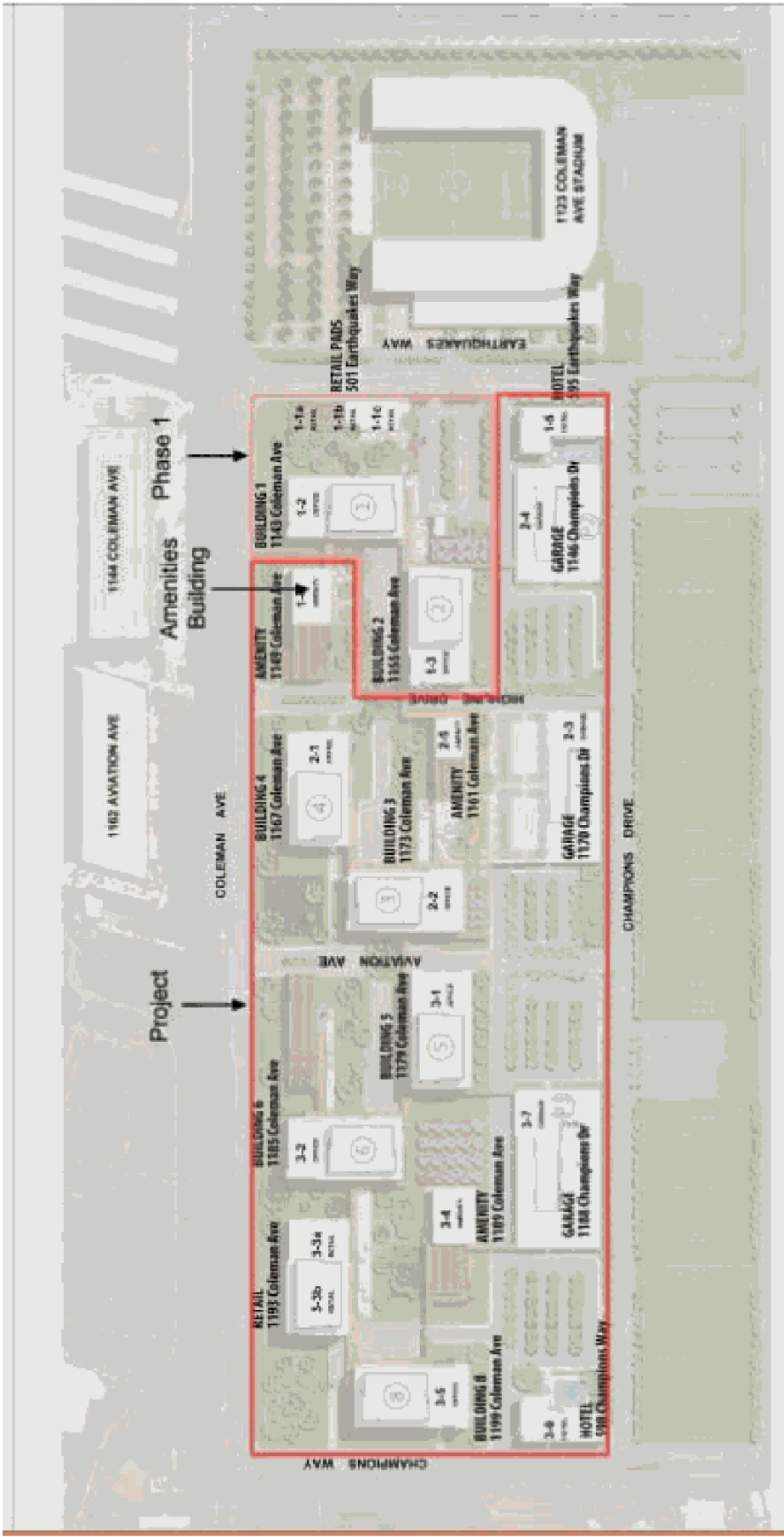


EXHIBIT A-2

COLEMAN HIGHLINE

OUTLINE OF PREMISES

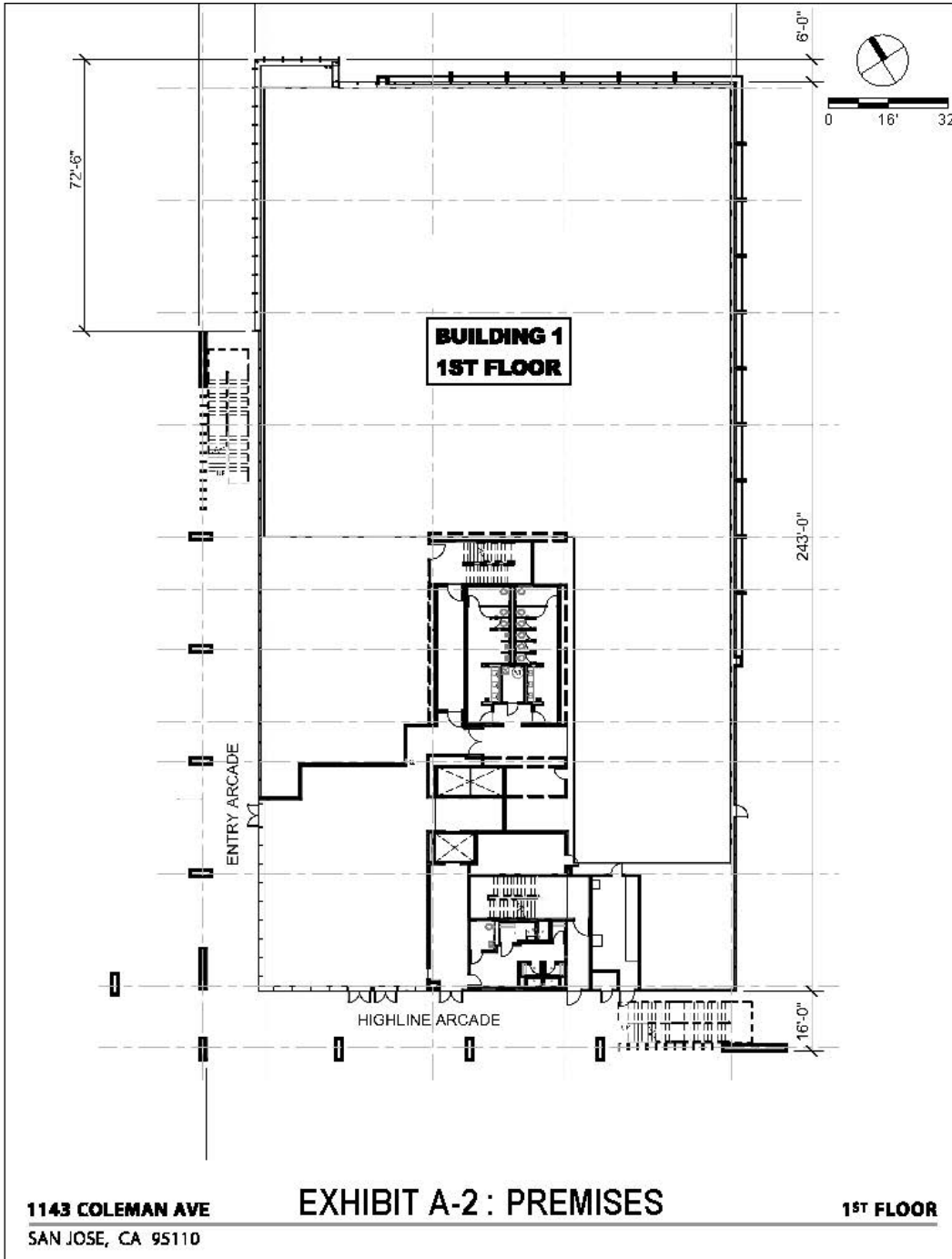
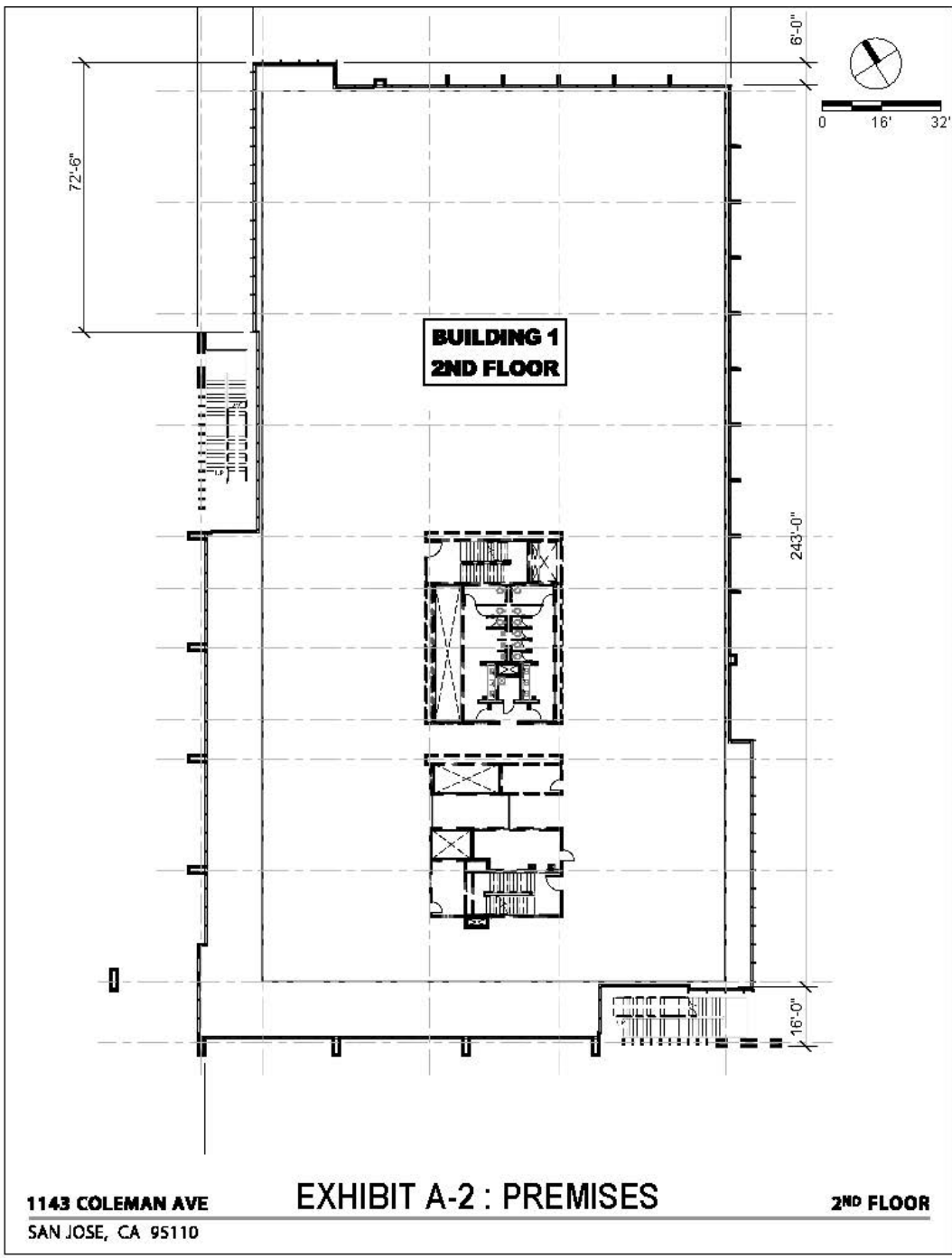
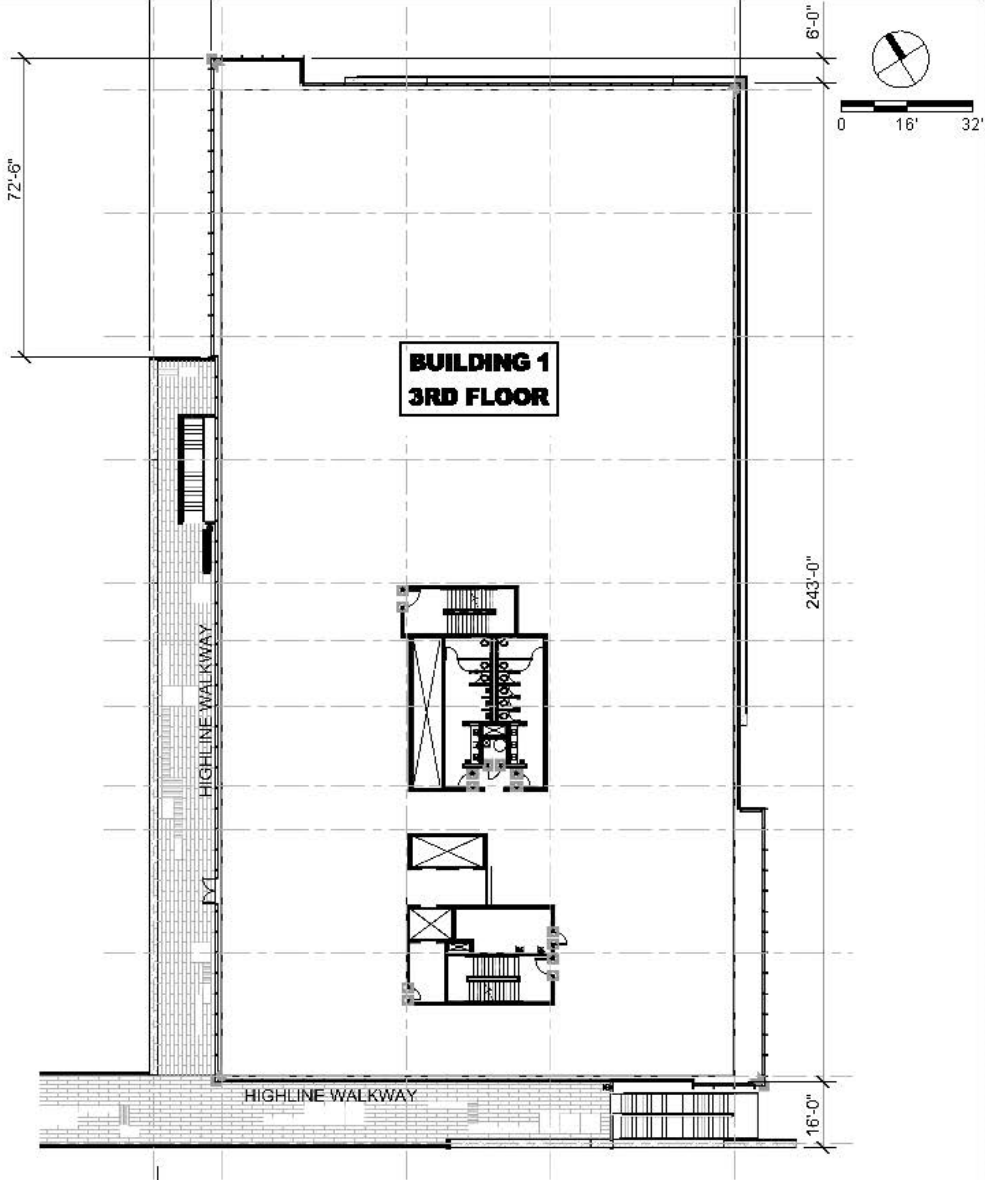


EXHIBIT A-1



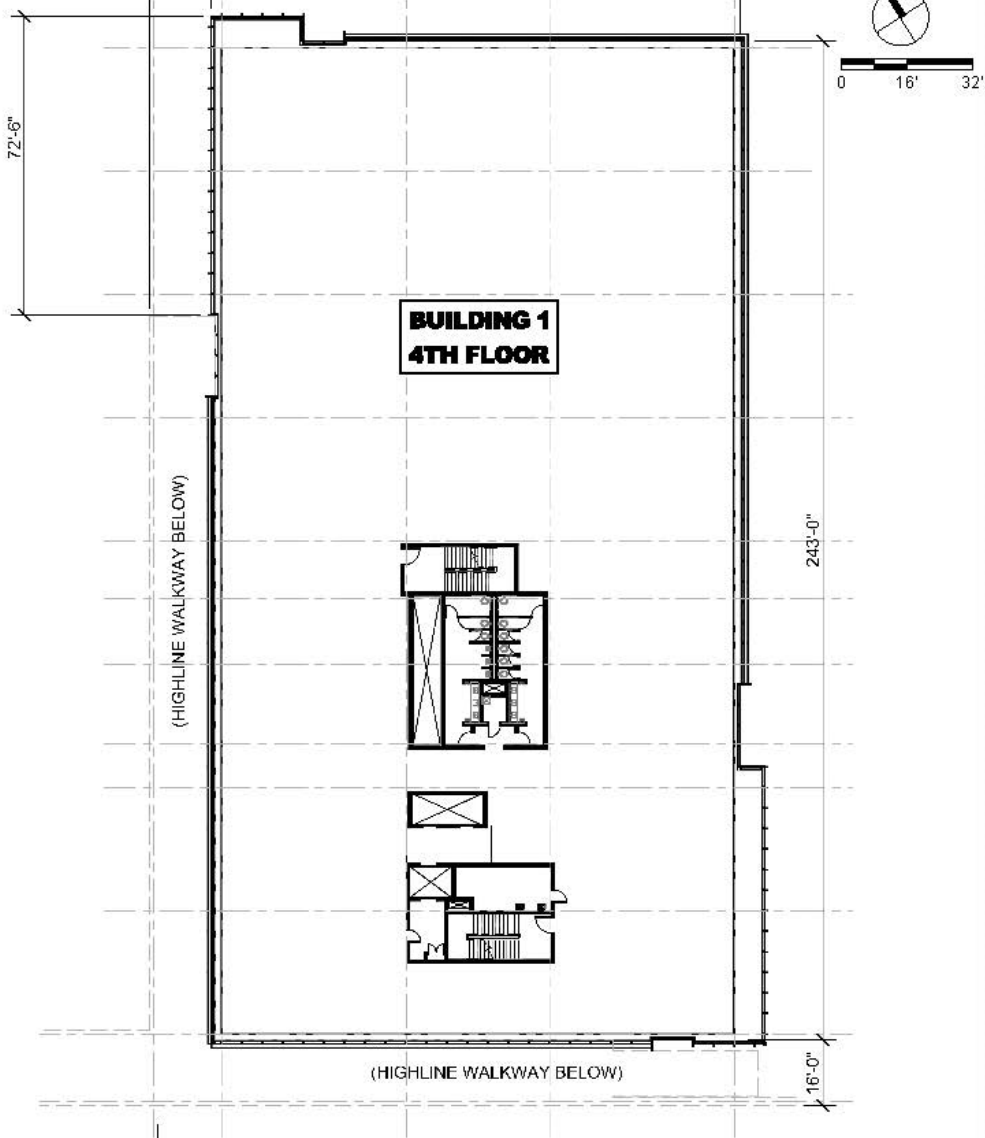




1143 COLEMAN AVE  
SAN JOSE, CA 95110

**EXHIBIT A-2 : PREMISES**

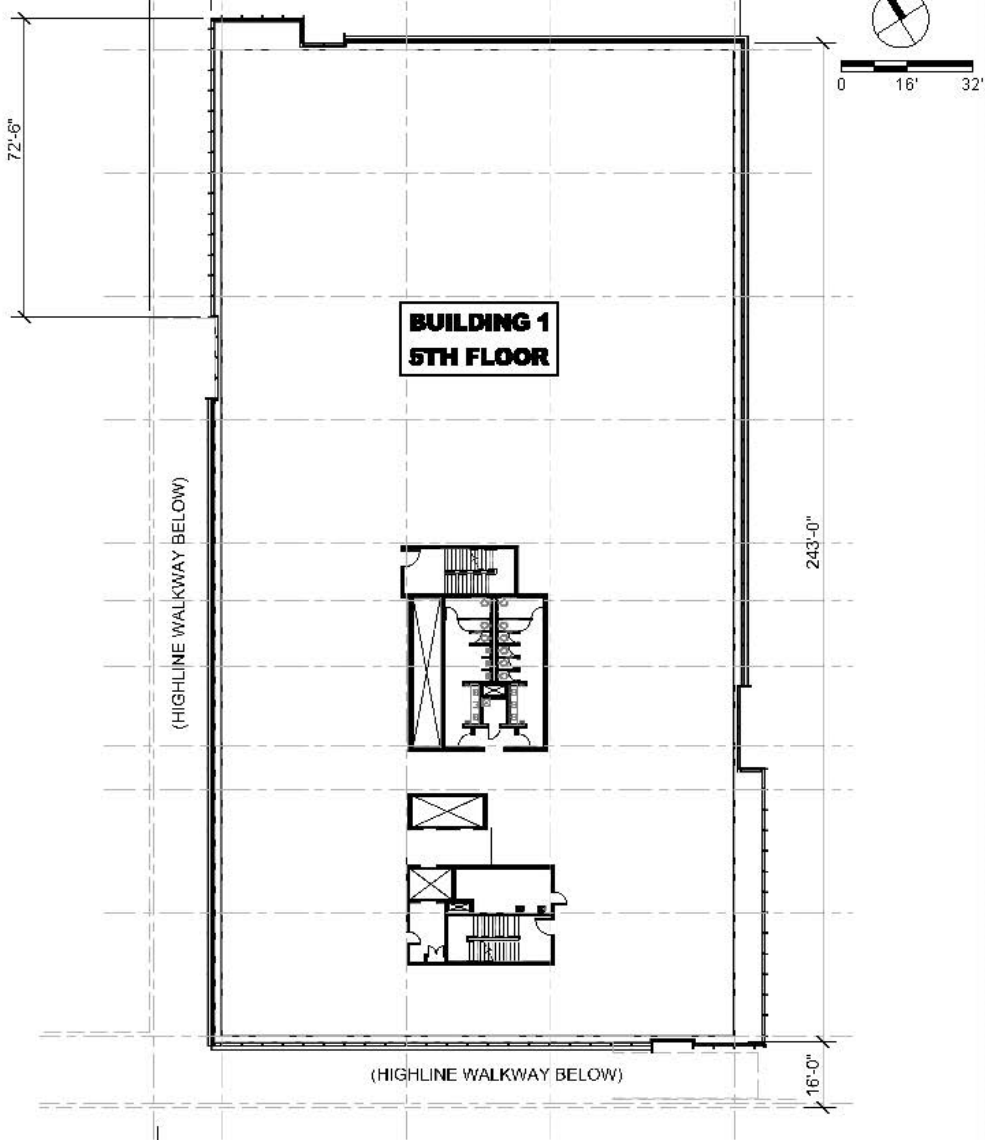
**3RD FLOOR**



**1143 COLEMAN AVE**  
SAN JOSE, CA 95110

**EXHIBIT A-2: PREMISES**

**4TH FLOOR**



**1143 COLEMAN AVE**  
SAN JOSE, CA 95110

**EXHIBIT A-2 : PREMISES**

**5TH FLOOR**

EXHIBIT B

COLEMAN HIGHLINE

TENANT WORK LETTER

This Tenant Work Letter shall set forth the terms and conditions relating to the construction of the improvements in the Premises. This Tenant Work Letter is essentially organized chronologically and addresses the issues of the construction of the Premises, in sequence, as such issues will arise during the actual construction of the Premises. All references in this Tenant Work Letter to Sections of "this Tenant Work Letter" shall mean the relevant portion of Sections 1 through 6 of this Tenant Work Letter.

SECTION 1

LANDLORD'S CONSTRUCTION OF THE BASE BUILDING

1.1 **Construction of Base Building.** Landlord shall construct, at its sole cost and expense, in a good workmanlike manner and without deduction from the Tenant Improvement Allowance, the base, shell, and core of the Building, which base, shell and core shall be in compliance with Applicable Laws (to the extent necessary for Tenant to obtain and retain a certificate of occupancy or temporary certificate of occupancy, or legal equivalent (each, a "**CofO**") for the Premises for the Permitted Use) (collectively, the "**Base, Shell and Core**" and/or "**Base Building**"), in accordance with the Base Building Description attached hereto as **Schedule 1A** (the "**Base Building Description**"), subject to Landlord Minor Changes, as that term is defined herein below and Tenant Minor Changes, as that term is defined in Section 1.4 below. Landlord hereby reserves the right to modify the Base Building Description, provided that such modifications (A) are required to comply with Applicable Laws, (B) will not (i) materially and adversely affect Tenant's permitted use of the Premises and the Project, or (ii) result in the use of materials, systems or components which are not of a materially equivalent or better quality than the materials, systems and components set forth in the Base Building Description, or in the Lease, or (C) pertain to portions of the Project located outside of the Building (collectively, "**Landlord Minor Changes**").

1.2 **Delivery of the Premises.** Tenant shall have the right to access the Premises from time-to-time, commencing upon full execution and delivery of this Lease. On or after April 1, 2018, at Tenant's election, and upon notice to Landlord, Tenant shall accept formal delivery of the Premises from Landlord. In any event, Tenant shall be deemed to have accepted formal delivery of the Premises from Landlord as of the Lease Commencement Date. The parties acknowledge and agree that following delivery of the Premises to Tenant, Landlord shall continue to perform additional construction of the Building and Project. From and after the date Landlord delivers the Premises to Tenant, neither party shall unreasonably interfere with or delay the work of the other party and/or its contractors or consultants, and both parties shall mutually coordinate and cooperate with each other, and shall cause their respective employees, vendors, contractors, and consultants to work in harmony with and to mutually coordinate and cooperate with the other's employees, vendors, contractors and consultants, respectively, to minimize any interference or delay by either party with respect to the other party's work. Notwithstanding the foregoing, in the event of any irreconcilable conflict between the work of Landlord's workers, mechanics and contractors and the work of Tenant's workers, mechanics and contractors, Landlord and Tenant shall resolve such conflict or interference by a reasonable resequencing or rescheduling of Landlord's remaining work as necessary to avoid the conflict or interference.

1.3 **Tenant Minor Changes.** Tenant shall have the right to request additional changes to the Base Building plans in writing and, subject to the Deduction Cap (defined below), Landlord shall not unreasonably withhold its consent to such changes provided that, (i) such modifications are minor and do not adversely affect the quality of the Base, Shell and Core, (ii) such modifications are consistent with the Comparable Buildings, (iii) such changes only affect the Building, (iv) such changes shall not be permitted or implemented until Landlord has obtained a CofO for the Base, Shell and Core, and (v) all such changes are substantially completed prior to the Substantial Completion of the Tenant Improvements ("**Tenant Minor Changes**"). Any Tenant Minor Changes that are approved by Landlord shall be constructed by Tenant, at Tenant's sole cost and expense (or as a deduction from the Tenant Improvement Allowance), as part of the construction of the Tenant Improvements. The aggregate cost estimate of all Tenant Minor Changes deducted from the Tenant Improvement Allowance shall not exceed a total of Fifteen and 00/100 Dollars (\$15.00) per rentable square foot of the Premises (the "**Deduction Cap**"), and Landlord shall disapprove any proposed Tenant Minor Change in excess of such Deduction Cap.

SECTION 2

TENANT IMPROVEMENTS

2.1 **Tenant Improvement Allowance.** Tenant shall be entitled to a one-time Tenant improvement allowance (the "**Tenant Improvement Allowance**") in the amount set forth in Section 13 of the Summary for the costs relating to the initial design and construction of the improvements, which are permanently affixed to the Premises (the "**Tenant Improvements**"). In no event shall Landlord be obligated to pay a total amount which exceeds the Tenant Improvement Allowance. Notwithstanding the foregoing or any contrary provision of this Lease, all Tenant Improvements in the Premises shall immediately become Landlord's property under the terms of this Lease. Any unused portion of the Tenant Improvement Allowance remaining as of the first anniversary of the Lease Commencement Date, shall remain with Landlord and Tenant shall have no further right thereto.

EXHIBIT B

## 2.2 Disbursement of the Tenant Improvement Allowance.

2.2.1 **Tenant Improvement Allowance Items.** Except as otherwise set forth in this Tenant Work Letter, the Tenant Improvement Allowance shall be disbursed by Landlord (each of which disbursements shall be made pursuant to Landlord's disbursement process, including, without limitation, Landlord's receipt of invoices for all costs and fees described herein) only for the following items and costs (collectively the "**Tenant Improvement Allowance Items**"):

2.2.1.1 Payment of the fees of the "Architect", the "Engineers" as those terms are defined in Section 3.1 of this Tenant Work Letter, and any project manager retained by Tenant, which fees shall, notwithstanding anything to the contrary contained in this Tenant Work Letter, not exceed an aggregate amount equal to Five and 00/100 Dollars (\$5.00) per rentable square foot of the Premises, and payment of the fees incurred by, and the cost of documents and materials supplied by, Landlord and Landlord's consultants in connection with the preparation and review of the "Construction Drawings" as that term is defined in Section 3.1 of this Tenant Work Letter;

2.2.1.2 The payment of plan check, permit and license fees relating to construction of the Tenant Improvements;

2.2.1.3 The cost of construction of the Tenant Improvements, including, without limitation, testing and inspection costs, freight elevator usage, hoisting and trash removal costs, and contractors' fees and general conditions;

2.2.1.4 The cost of any changes in the Base Building when such changes are required by the Construction Drawings, the cost of any upgrades to the EV Stations, Tenant's Signage, and the cost of Tenant Minor Changes, such cost to include all direct architectural and/or engineering fees and expenses incurred in connection therewith, Letter, which costs shall, notwithstanding anything to the contrary contained in this Tenant Work Letter, not exceed an aggregate amount equal to Ten and 00/100 Dollars (\$10.00) per rentable square foot of the Premises;

2.2.1.5 The cost of any changes to the Construction Drawings or Tenant Improvements required by all applicable building codes (the "**Code**");

2.2.1.6 Sales and use taxes and Title 24 fees;

2.2.1.7 Tenant Minor Changes;

2.2.1.8 The cost of installation of submetering equipment and any Tenant HVAC System; and

2.2.1.9 All other costs to be expended by Landlord in connection with the construction of the Tenant Improvements.

2.1.2 **Disbursement of Tenant Improvement Allowance.** During the construction of the Tenant Improvements, Landlord shall make monthly disbursements of the Tenant Improvement Allowance for Tenant Improvement Allowance Items and shall authorize the release of monies as follows. Notwithstanding anything set forth in any other provision of this Lease or this Tenant Work Letter to the contrary, all costs of Tenant Minor Changes and all other items the cost of which is identified in this Lease or Tenant Work Letter to be deducted from the Tenant Improvement Allowance, shall be deducted solely from the Tenant Improvement Allowance and such costs in the aggregate shall not exceed the amount of the Tenant Improvement Allowance and/or the Deduction Cap, to the extent applicable.

2.2.2.1 **Monthly Disbursements.** No more than once during each calendar month, during the construction of the Tenant Improvements, Tenant shall deliver to Landlord: (i) a request for payment of the "Contractor," as that term is defined in Section 4.1.1 of this Tenant Work Letter, approved by Tenant, in a form to be provided by Landlord, showing the schedule, by trade, of percentage of completion of the Tenant Improvements in the Premises, detailing the portion of the work completed and the portion not completed; (ii) invoices from all of "Tenant's Agents," as that term is defined in Section 4.1.2 of this Tenant Work Letter, for labor rendered and materials delivered to the Premises; (iii) mechanic's lien releases from all of Tenant's Agents which shall be executed, acknowledged and in recordable form and comply with the appropriate provisions, as reasonably determined by Landlord, of California Civil Code Sections 8132, 8134, 8136 and 8138; and (iv) all other information reasonably requested by Landlord. Tenant's request for payment shall be deemed Tenant's acceptance and approval of the work furnished and/or the materials supplied as set forth in Tenant's payment request. Thereafter, within thirty (30) days of Landlord's receipt of the request for payment (or, if the request for payment is deficient with respect to clauses (i)-(iv) above, within thirty (30) days of a corrected request for payment), Landlord shall deliver a check made payable to Contractor (or other service provider if for non-hard construction costs) in payment of the lesser of: (A) the amounts so requested by Tenant, as set forth in this Section 2.2.2.1, above, less a ten percent (10%) retention (the aggregate amount of such retentions to be known as the "**Final Retention**"), and (B) the balance of any remaining available portion of the Tenant Improvement Allowance (not including the Final Retention), provided that Landlord does not dispute any request for payment based on non-compliance of any work with the "Approved Working Drawings," as that term is defined in Section 3.4 below, or due to any substandard work, or for any other reason. Landlord's payment of such amounts shall not be deemed Landlord's approval or acceptance of the work furnished or materials supplied as set forth in Tenant's payment request.

EXHIBIT B

2.2.2.2 **Final Retention.** Subject to the provisions of this Tenant Work Letter, a check for the Final Retention payable directly to Contractor shall be delivered by Landlord within thirty (30) days following the completion of construction of the Tenant Improvements, provided that (i) Tenant delivers to Landlord (a) invoices for all Tenant Improvements and related costs for which the Tenant Improvement Allowance is to be disbursed, (b) signed permits for all Tenant Improvements completed within the Premises, (c) final unconditional mechanics lien releases, properly executed, acknowledged and in recordable form and in compliance with both California Civil Code Section 8134 and either Section 8136 or Section 8138, from Tenant's Contractor, subcontractors and material suppliers and any other party which has lien rights in connection with the construction of the Tenant Improvements, (ii) Landlord has determined that no substandard work exists which adversely affects the mechanical, electrical, plumbing, heating, ventilating and air conditioning, life-safety or other systems of the Building, the curtain wall of the Building, the structure or exterior appearance of the Building, or any other tenant's use of such other tenant's leased premises in the Building, (iii) Architect delivers to Landlord a "**Certificate of Substantial Completion**", in a form reasonably acceptable to Landlord, certifying that the construction of the Tenant Improvements in the Premises has been substantially completed, (iv) Tenant delivers to Landlord a "close-out package" in both paper and electronic forms (including, as-built drawings, and final record CADD files for the associated plans, warranties and guarantees from all contractors, subcontractors and material suppliers, and an independent air balance report); and (v) a certificate of occupancy, a temporary certificate of occupancy or its equivalent is issued to Tenant for the Premises.

2.2.2.3 **Other Terms.** Landlord shall only be obligated to make disbursements from the Tenant Improvement Allowance to the extent costs are incurred by Tenant for Tenant Improvement Allowance Items. All Tenant Improvement Allowance Items for which the Tenant Improvement Allowance has been made available shall be deemed Landlord's property under the terms of this Lease. Notwithstanding anything to the contrary contained in this Exhibit, Landlord shall not be obligated to make any disbursement of the Tenant Improvement Allowance during the pendency of any of the following: (i) Landlord has received written notice of any unpaid claims relating to any portion of the work or materials in connection therewith, other than claims which will be paid in full from such disbursement, (ii) there is an unbonded lien outstanding against the Project or the Premises or Tenant's interest therein by reason of work done, or claimed to have been done, or materials supplied or specifically fabricated, claimed to have been supplied or specifically fabricated, to or for Tenant or the Premises, (iii) the conditions to the advance of the Tenant Improvement Allowance are not satisfied, or (iv) an event of default by Tenant exists. The Tenant Improvement Allowance must be used (that is, the work must be fully complete and the Tenant Improvement Allowance disbursed) within six months following the Lease Commencement Date or shall be deemed forfeited with no further obligation by Landlord with respect thereto, time being of the essence with respect thereto.

2.3 **Building Standards.** Landlord has established or may establish specifications for certain Building standard components to be used in the construction of the Tenant Improvements in the Premises. The quality of Tenant Improvements shall be equal to or of greater quality than the quality of such Building standards, provided that Landlord may, at Landlord's option, require the Tenant Improvements to comply with certain Building standards. Landlord may make changes to said specifications for Building standards from time to time. Removal requirements regarding the Tenant Improvements are addressed in Article 8 of this Lease.

### **SECTION 3**

#### **CONSTRUCTION DRAWINGS**

3.1 **Selection of Architect/Construction Drawings.** Tenant shall retain the architect/space planner designated by Tenant and reasonably approved by Landlord (the "**Architect**") to prepare the "Construction Drawings," as that term is defined in this Section 3.1. Tenant shall retain the engineering consultants designated by Landlord (the "**Engineers**") to prepare all plans and engineering working drawings relating to the structural, mechanical, electrical, plumbing, HVAC, lifesafety, and sprinkler work in the Premises, which work is not part of the Base Building. The plans and drawings to be prepared by Architect and the Engineers hereunder shall be known collectively as the "**Construction Drawings**." All Construction Drawings shall comply with the drawing format and specifications determined by Landlord, and shall be subject to Landlord's approval, which approval shall not be unreasonably withheld, delayed or condition, unless a Design Problem exists, in which case Landlord's approval may be granted or withheld in Landlord's sole discretion ("**Landlord's Consent Standard**"). A "**Design Problem**" is defined as, and will be deemed to exist if the Tenant Improvement will (i) be visible from the exterior of the Premises or Building; (ii) materially affect the Building Structure; (iii) materially affect the Building Systems; or (iv) fail to comply with Applicable Laws. Tenant and Architect shall verify, in the field, the dimensions and conditions as shown on the relevant portions of the Base Building plans, and Tenant and Architect shall be solely responsible for the same, and Landlord shall have no responsibility in connection therewith. Landlord's review of the Construction Drawings as set forth in this Section 3, shall be for its sole purpose and shall not imply Landlord's review of the same, or obligate Landlord to review the same, for quality, design, Code compliance or other like matters. Accordingly, notwithstanding that any Construction Drawings are reviewed by Landlord or its space planner, architect, engineers and consultants, and notwithstanding any advice or assistance which may be rendered to Tenant by Landlord or Landlord's space planner, architect, engineers, and consultants, Landlord shall have no liability whatsoever in connection therewith and shall not be responsible for any omissions or errors contained in the Construction Drawings, and Tenant's waiver and indemnity set forth in this Lease shall specifically apply to the Construction Drawings.

3.2 **Final Space Plan.** Tenant shall supply Landlord with four (4) hard copies signed by Tenant of its final space plan, along with other renderings or illustrations reasonably required by Landlord, to allow Landlord to understand Tenant's design intent, for the Premises before any architectural working drawings or engineering drawings have been commenced, and concurrently with Tenant's delivery of such hard copies, Tenant shall send to Landlord via electronic mail one (1) .pdf electronic copy of such final space plan. The final space plan (the "**Final Space Plan**") shall include a layout and designation of all offices, rooms and other partitioning, their intended use, and equipment to be contained therein. Landlord may request clarification or more specific drawings for special use items not

included in the Final Space Plan. Landlord shall advise Tenant within five (5) business days after Landlord's receipt of the Final Space Plan for the Premises if the same is unsatisfactory or incomplete in any respect. If Tenant is so advised, Tenant shall promptly cause the Final Space Plan to be revised to correct any deficiencies or other matters Landlord may reasonably require.

3.3 **Final Working Drawings.** After the Final Space Plan has been approved by Landlord, Tenant shall supply the Engineers with a complete listing of standard and non-standard equipment and specifications, including, without limitation, B.T.U. calculations, electrical requirements and special electrical receptacle requirements for the Premises, to enable the Engineers and the Architect to complete the "Final Working Drawings" (as that term is defined below) in the manner as set forth below. Upon the approval of the Final Space Plan by Landlord and Tenant, Tenant shall promptly cause the Architect and the Engineers to complete the architectural and engineering drawings for the Premises, and Architect shall compile a fully coordinated set of architectural, structural, mechanical, electrical and plumbing working drawings in a form which is complete to allow subcontractors to bid on the work and to obtain all applicable permits (collectively, the "Final Working Drawings") and shall submit the same to Landlord for Landlord's approval. Tenant shall supply Landlord with four (4) hard copies signed by Tenant of the Final Working Drawings, and concurrently with Tenant's delivery of such hard copies, Tenant shall send to Landlord via electronic mail one (1) .pdf electronic copy of such Final Working Drawings. Landlord shall advise Tenant within ten (10) business days after Landlord's receipt of the Final Working Drawings for the Premises if the same is unsatisfactory or incomplete in any respect. If Tenant is so advised, Tenant shall immediately revise the Final Working Drawings in accordance with such review and any disapproval of Landlord in connection therewith. In addition, if the Final Working Drawings or any amendment thereof or supplement thereto shall require alterations in the Base Building (as contrasted with the Tenant Improvements), and if Landlord in its sole and exclusive discretion agrees to any such alterations, and notifies Tenant of the need and cost for such alterations, then Tenant shall pay the cost of such required changes in advance upon receipt of notice thereof. Tenant shall pay all direct architectural and/or engineering fees in connection therewith.

3.4 **Approved Working Drawings.** The Final Working Drawings shall be approved by Landlord (the "Approved Working Drawings") prior to the commencement of construction of the Premises by Tenant. After approval by Landlord of the Final Working Drawings, Tenant may submit the same to the appropriate municipal authorities for all applicable building permits. Tenant hereby agrees that neither Landlord nor Landlord's consultants shall be responsible for obtaining any building permit or certificate of occupancy for the Premises and that obtaining the same shall be Tenant's responsibility; provided, however, that Landlord shall cooperate with Tenant in executing permit applications and performing other ministerial acts reasonably necessary to enable Tenant to obtain any such permit or certificate of occupancy. No changes, modifications or alterations in the Approved Working Drawings may be made without the prior written consent of Landlord, which consent may not be unreasonably withheld.

3.5 **Electronic Approvals.** Notwithstanding any provision to the contrary contained in the Lease or this Tenant Work Letter, Landlord may, in Landlord's sole and absolute discretion, transmit or otherwise deliver any of the approvals required under this Tenant Work Letter via electronic mail to Tenant's representative identified in Section 5.1 of this Tenant Work Letter, or by any of the other means identified in Section 29.18 of this Lease.

**SECTION 4**

**CONSTRUCTION OF THE TENANT IMPROVEMENTS**

**4.1 Tenant's Selection of Contractors.**

4.1.1 **The Contractor.** A general contractor shall be retained by Tenant to construct the Tenant Improvements. Such general contractor ("**Contractor**") shall be selected by Tenant from a list of general contractors supplied by Landlord, and Tenant shall deliver to Landlord notice of its selection of the Contractor upon such selection.

4.1.2 **Tenant's Agents.** All subcontractors, laborers, materialmen, and suppliers used by Tenant (such subcontractors, laborers, materialmen, and suppliers, and the Contractor to be known collectively as "**Tenant's Agents**") must be approved in writing by Landlord, which approval shall not be unreasonably withheld or delayed. If Landlord does not approve any of Tenant's proposed subcontractors, laborers, materialmen or suppliers, Tenant shall submit other proposed subcontractors, laborers, materialmen or suppliers for Landlord's written approval. All of Tenant's Agents retained directly by Tenant shall all be union labor in compliance with the then existing master labor agreements.

**4.2 Construction of Tenant Improvements by Tenant's Agents.**

4.2.1 **Construction Contract; Cost Budget.** Prior to Tenant's execution of the construction contract and general conditions with Contractor (the "**Contract**"), Tenant shall submit the Contract (including Contractor's proposal and all exhibits and back-up documentation associated with such Contract) to Landlord for its approval, which approval shall not be unreasonably withheld, conditioned or delayed. Prior to the commencement of the construction of the Tenant Improvements, Tenant shall provide Landlord with a detailed breakdown, by trade, of the anticipated costs to be incurred or which have been incurred, as set forth more particularly in Sections 2.2.1.1 through 2.2.1.9, above, in connection with the design and construction of such Tenant Improvements to be performed by or at the direction of Tenant or the Contractor (the "**Anticipated Costs**"). Prior to the commencement of construction of such Tenant Improvements, Tenant shall identify the amount equal to the difference between the amount of the Anticipated Costs and the amount of the Tenant Improvement Allowance (less any portion thereof already disbursed by Landlord, or in the process of being disbursed by Landlord, on or before the commencement of construction of the Tenant Improvements). In the event that the Anticipated Costs are greater than the amount of the Tenant Improvement Allowance (the "**Anticipated Over-Allowance Amount**"), then, Tenant shall pay a percentage

of each amount requested by the Contractor or otherwise to be disbursed under this Tenant Work Letter, which percentage (the "**Percentage**") shall be equal to the Anticipated Over-Allowance Amount divided by the amount of the Anticipated Costs (after deducting from the Anticipated Costs any amounts expended in connection with the preparation of the Construction Drawings, and the cost of all other Tenant Improvement Allowance Items incurred prior to the commencement of construction of the Tenant Improvements), and such payments by Tenant (the "**Over-Allowance Payments**") shall be a condition to Landlord's obligation to pay any amounts from the Tenant Improvement Allowance (the "**Tenant Improvement Allowance Payments**"). After Tenant's initial determination of the Anticipated Costs, Tenant shall advise Landlord from time to time as such Anticipated Costs are further refined or determined or the costs relating to the design and construction of the Tenant Improvements otherwise change and the Anticipated Over-Allowance Amount, and the Over-Allowance Payments shall be adjusted such that the Tenant Improvement Allowance Payments by Landlord and the Over-Allowance Payments by Tenant shall accurately reflect the then-current amount of Anticipated Costs. In connection with any Over-Allowance Payments made by Tenant pursuant to this Section 4.2.1, Tenant shall provide Landlord with the documents described in Sections 2.2.2.1(i), (ii), and (iii) of this Tenant Work Letter, above, for Landlord's approval, prior to Tenant paying such costs. Notwithstanding anything set forth in this Tenant Work Letter to the contrary, but subject to the last sentence of Section 3.4 above, construction of the Tenant Improvements shall not commence until (a) Landlord has approved the Contract, and (b) Tenant has procured and delivered to Landlord a copy of all Permits for the applicable Tenant Improvements.

#### 4.2.2 **Tenant's Agents.**

4.2.2.1 **Landlord's General Conditions for Tenant's Agents and Tenant Improvement Work.** Tenant's and Tenant's Agent's construction of the Tenant Improvements shall comply with the following: (i) the Tenant Improvements shall be constructed in strict accordance with the Approved Working Drawings; (ii) Tenant's Agents shall submit schedules of all work relating to the Tenant Improvements to Contractor and Contractor shall, within five (5) business days of receipt thereof, inform Tenant's Agents of any changes which are necessary thereto, and Tenant's Agents shall adhere to such corrected schedule; and (iii) Tenant shall abide by all rules made by Landlord's Building manager with respect to the use of freight, loading areas and service elevators, storage of materials, coordination of work with the contractors of other tenants, and any other matter in connection with this Tenant Work Letter, including, without limitation, the construction of the Tenant Improvements.

4.2.2.2 **Indemnity.** Tenant's indemnity of Landlord as set forth in Section 10.1 of this Lease, including as modified by Section 10.1.2 of this Lease, shall also apply with respect to any and all costs, losses, damages, injuries and liabilities related in any way to any act or omission of Tenant or Tenant's Agents, or anyone directly or indirectly employed by any of them. Such indemnity by Tenant, as set forth in Section 10.1 of this Lease, including as modified by Section 10.1.2 of this Lease, shall also apply with respect to any and all costs, losses, damages, injuries and liabilities related in any way to Landlord's performance of any ministerial acts, requested by Tenant that are reasonably necessary (i) to permit Tenant to complete the Tenant Improvements, and (ii) to enable Tenant to obtain any building permit or certificate of occupancy for the Premises.

4.2.2.3 **Requirements of Tenant's Agents.** Each of Tenant's Agents shall guarantee to Tenant and for the benefit of Landlord that the portion of the Tenant Improvements for which it is responsible shall be free from any defects in workmanship and materials for a period of not less than one (1) year from the date of completion thereof. Each of Tenant's Agents shall be responsible for the replacement or repair, without additional charge, of all work done or furnished in accordance with its contract that shall become defective within one (1) year after the later to occur of (i) completion of the work performed by such contractor or subcontractors and (ii) the Lease Commencement Date. The correction of such work shall include, without additional charge, all additional expenses and damages incurred in connection with such removal or replacement of all or any part of the Tenant Improvements, and/or the Building and/or common areas that may be damaged or disturbed thereby. All such warranties or guarantees as to materials or workmanship of or with respect to the Tenant Improvements shall be contained in the Contract or subcontract and shall be written such that such guarantees or warranties shall inure to the benefit of both Landlord and Tenant, as their respective interests may appear, and can be directly enforced by either. Tenant covenants to give to Landlord any assignment or other assurances which may be necessary to effect such right of direct enforcement.

4.2.2.4 **Insurance Requirements.** The insurance requirements set forth in this Section 4.2.2.4 shall apply during the Construction Period, in lieu of the insurance requirements set forth in Article 10 of this Lease (other than as incorporated by reference herein), except that the terms and conditions of Section 10.3.4 shall continue to apply during the Construction Period.

4.2.2.4.1 **General Coverages.** Tenant shall require all of Tenant's Agents to carry (i) worker's compensation insurance covering all of their respective employees, (ii) commercial general liability insurance of not less than a combined single limit of \$5,000,000, and (iii) Commercial Automobile Liability Insurance covering all Owned (if any), Hired, or Non-owned vehicles, all with limits, in form and with companies as are required to be carried by Tenant as set forth in this Lease.

4.2.2.4.2 **Special Coverages.** Tenant shall also require its Contractor to carry "Builder's All Risk" insurance in an amount approved by Landlord covering the construction of the Tenant Improvements, and such other insurance as Landlord may require, it being understood and agreed that the Tenant Improvements shall be insured by Tenant pursuant to this Lease immediately upon completion thereof and expiration of the Construction Period. Such insurance shall be in amounts and shall include such extended coverage endorsements as may be reasonably required by Landlord including, but not limited to, the requirement that all of Tenant's Agents shall carry excess liability and Products and Completed Operation Coverage insurance, each in amounts not less than \$5,000,000 per incident, \$5,000,000 in aggregate, and in form and with companies as are required to be carried by Tenant as set forth in this Lease.



4.2.2.4.3 **General Terms.** Certificates for all insurance carried pursuant to this Section 4.2.2.4 shall be delivered to Landlord before the commencement of construction of the Tenant Improvements and before the Contractor's equipment is moved onto the site. In the event that the Tenant Improvements are damaged by any cause during the course of the construction thereof, then Tenant's Agents shall be required, to the extent applicable, to apply any insurance proceeds received by Tenant's Agents towards the reconstruction of the Tenant Improvements, and if the costs of reconstruction exceed the insurance proceeds, then (i) if damage was caused by an act or omission of Tenant, any Tenant Party or Tenant's Agents, then Tenant shall be obligated to pay the excess costs and (ii) if the damage was caused by an act or omission of Landlord or any Landlord Party, or by any other cause (except as specified under item (i)), then Tenant shall not be obligated to pay the excess costs. Tenant's Agents shall maintain all of the foregoing insurance coverage in force until the Tenant Improvements are fully completed and accepted by Landlord, except for any Products and Completed Operation Coverage insurance required by Landlord, which is to be maintained for ten (10) years following completion of the work and acceptance by Landlord and Tenant. All policies carried under this Section 4.2.2.4 shall insure Landlord, Landlord's property management company, Landlord's asset management company, any Landlord's Mortgagees, and Tenant, as their interests may appear, as well as Contractor and Tenant's Agents. All insurance, except Workers' Compensation, maintained by Tenant's Agents shall preclude subrogation claims by the insurer against anyone insured thereunder. Such insurance shall provide that it is primary insurance as respects the owner and that any other insurance maintained by owner is excess and noncontributing with the insurance required hereunder. The requirements for the foregoing insurance shall not derogate from the provisions for indemnification of Landlord by Tenant under Section 4.2.2.2 of this Tenant Work Letter. Landlord may, in its discretion, require Tenant's Agents to obtain a lien and completion bond or some alternate form of security satisfactory to Landlord in an amount sufficient to ensure the lien-free completion of the Tenant Improvements and naming Landlord as a co-obligee.

4.2.3 **Governmental Compliance.** The Tenant Improvements shall comply in all respects with the following: (i) the Code and other state, federal, city or quasi-governmental laws, codes, ordinances and regulations, as each may apply according to the rulings of the controlling public official, agent or other person; (ii) applicable standards of the American Insurance Association (formerly, the National Board of Fire Underwriters) and the National Electrical Code; and (iii) building material manufacturer's specifications.

4.2.4 **Inspection by Landlord.** Landlord shall have the right to inspect the Tenant Improvements at all times, provided however, that Landlord's failure to inspect the Tenant Improvements shall in no event constitute a waiver of any of Landlord's rights hereunder nor shall Landlord's inspection of the Tenant Improvements constitute Landlord's approval of the same. Should Landlord disapprove any portion of the Tenant Improvements, Landlord shall notify Tenant in writing of such disapproval and shall specify the items disapproved. Any defects or deviations in, and/or disapproval by Landlord of, the Tenant Improvements shall be rectified by Tenant at no expense to Landlord, provided however, that in the event Landlord determines that a defect or deviation exists or disapproves of any matter in connection with any portion of the Tenant Improvements and such defect, deviation or matter might adversely affect the mechanical, electrical, plumbing, heating, ventilating and air conditioning or life- safety systems of the Building, the structure or exterior appearance of the Building or any other tenant's use of such other tenant's leased premises, Landlord may, take such action as Landlord deems necessary, at Tenant's expense and without incurring any liability on Landlord's part, to correct any such defect, deviation and/or matter, including, without limitation, causing the cessation of performance of the construction of the Tenant Improvements until such time as the defect, deviation and/or matter is corrected to Landlord's satisfaction.

4.2.5 **Meetings.** Commencing upon the execution of this Lease, Tenant shall hold weekly meetings at a reasonable time, with the Architect and the Contractor regarding the progress of the preparation of Construction Drawings and the construction of the Tenant Improvements, which meetings shall be held at a location designated by Landlord, and Landlord and/or its agents shall receive prior notice of, and shall have the right to attend, all such meetings, and, upon Landlord's request, certain of Tenant's Agents shall attend such meetings. In addition, minutes shall be taken at all such meetings, a copy of which minutes shall be promptly delivered to Landlord. One such meeting each month shall include the review of Contractor's current request for payment.

4.3 **Notice of Completion; Copy of Record Set of Plans.** Within fifteen (15) days after completion of construction of the Tenant Improvements, Tenant shall cause a Notice of Completion to be recorded in the office of the Recorder of the county in which the Building is located in accordance with Section 8182 of the Civil Code of the State of California or any successor statute, and shall furnish a copy thereof to Landlord upon such recordation. If Tenant fails to do so, Landlord may execute and file the same as Tenant's agent for such purpose, at Tenant's sole cost and expense. At the conclusion of construction, (i) Tenant shall cause the Architect and Contractor (A) to update the Approved Working Drawings as necessary to reflect all changes made to the Approved Working Drawings during the course of construction, (B) to certify to the best of their knowledge that the "record-set" of as-built drawings are true and correct, which certification shall survive the expiration or termination of this Lease, and (C) to deliver to Landlord two (2) sets of copies of such record set of drawings within ninety (90) days following issuance of a certificate of occupancy for the Premises, and (ii) Tenant shall deliver to Landlord a copy of all warranties, guaranties, and operating manuals and information relating to the improvements, equipment, and systems in the Premises.

## SECTION 5

### DELAYS OF LEASE COMMENCEMENT DATE

5.1 **Lease Commencement Date Delays.** The Lease Commencement Date shall occur as provided in Section 2.1 of this Lease, provided that the Lease Commencement Date shall be extended by the number of days of delay of the Substantial Completion of the Tenant Improvements to the extent caused by a Lease Commencement Date Delay, as that term is defined below, but only to the extent such Lease Commencement Date Delay causes the Substantial Completion of the Tenant Improvements to occur after January 1, 2019. As used herein, the term "**Lease**

EXHIBIT B

**Commencement Date Delay**" shall mean actual delays to the extent resulting from (i) the failure of Landlord to timely approve or disapprove any Construction Drawings; (ii) interference (when judged in accordance with industry custom and practice) by Landlord, its agents or Landlord Parties with the Substantial Completion of the Tenant Improvements and which objectively preclude or delay the construction of improvements in the Building by any person, which interference relates to access by Tenant, or Tenant's Agents to the Building; or (iii) delays due to the acts or failures to act of Landlord or Landlord Parties with respect to payment of the Tenant Improvement Allowance (except as otherwise allowed under this Tenant Work Letter), but Tenant shall have a right to suspend its design and construction of its Tenant Improvements if Landlord fails to reimburse Tenant all or any part of the Tenant Improvement Allowance when due.

5.2 **Determination of Lease Commencement Date Delay.** If Tenant contends that a Lease Commencement Date Delay has occurred, Tenant shall notify Landlord in writing of (i) the event which constitutes such Lease Commencement Date Delay and (ii) the date upon which such Lease Commencement Date Delay is anticipated to end. If such actions, inaction or circumstance described in the Notice set forth in (i) above of this Section 5.2 of this Tenant Work Letter (the "**Delay Notice**") are not cured by Landlord within one (1) business day of Landlord's receipt of the Delay Notice and if such action, inaction or circumstance otherwise qualify as a Lease Commencement Date Delay, then a Lease Commencement Date Delay shall be deemed to have occurred commencing as of the date of Landlord's receipt of the Delay Notice and ending as of the date such delay ends.

5.3 **Definition of Substantial Completion of the Tenant Improvements.** For purposes of this Section 5, "**Substantial Completion of the Tenant Improvements**" shall mean completion of construction of the Tenant Improvements in the Premises pursuant to the Approved Working Drawings, with the exception of any punch list items.

## SECTION 6

### MISCELLANEOUS

6.1 **Tenant's Representative.** Prior to accepting delivery of the Premises, Tenant shall designate its sole representative with respect to the matters set forth in this Tenant Work Letter, who shall have full authority and responsibility to act on behalf of the Tenant as required in this Tenant Work Letter.

6.2 **Landlord's Representative.** Landlord has designated Curtis Leigh (whose e-mail address for the purposes of this Tenant Work Letter is [curtis@hunterproperties.com](mailto:curtis@hunterproperties.com) as its sole representative with respect to the matters set forth in this Tenant Work Letter, who, until further notice to Tenant, shall have full authority and responsibility to act on behalf of the Landlord as required in this Tenant Work Letter.

6.3 **Time of the Essence in This Tenant Work Letter.** Unless otherwise indicated, all references herein to a "**number of days**" shall mean and refer to calendar days. If any item requiring approval is timely disapproved by Landlord, the procedure for preparation of the document and approval thereof shall be repeated until the document is approved by Landlord.

6.4 **Tenant's Lease Default.** Tenant entry into the Premises to perform work pursuant to this Tenant Work Letter shall be on the terms of this Lease, but no Base Rent or Direct Expenses shall accrue during the period that Tenant so enters the Premises prior to the Lease Commencement Date. Notwithstanding any provision to the contrary contained in the Lease or this Tenant Work Letter, if any monetary or material non-monetary default beyond applicable notice and cure periods by Tenant under the Lease or this Tenant Work Letter occurs at any time on or before the Substantial Completion of the Tenant Improvements, then (i) in addition to all other rights and remedies granted to Landlord pursuant to the Lease, Landlord shall have the right to withhold payment of all or any portion of the Tenant Improvement Allowance and/or Landlord may, without any liability whatsoever, cause the cessation of construction of the Tenant Improvements (in which case, Tenant shall be responsible for any delay in the Substantial Completion of the Tenant Improvements and any costs occasioned thereby), and (ii) all other obligations of Landlord under the terms of the Lease and this Tenant Work Letter shall be forgiven until such time as such default is cured pursuant to the terms of the Lease.

6.5 **Miscellaneous Items.** Prior to the Lease Commencement Date, during the construction of the Tenant Improvements, and subject to compliance with Landlord's reasonable and customary construction rules and regulations applicable to the Project (as the same are in effect on the date of this Lease), and if and to the extent reasonably available, Tenant may use the following items, on a nonexclusive basis, and in a manner and to the extent reasonably necessary to perform the Tenant Improvements: freight elevators, loading areas, non-potable water, temporary electrical services, and HVAC; provided, however, that Tenant shall be responsible, at Tenant's cost, for providing any security services required to facilitate operation of the foregoing after-hours, which security services shall be subject to Landlord's reasonable approval.

6.6 **Labor Harmony.** Tenant shall not use (and upon notice from Landlord shall cease using) contractors, services, workmen, labor, materials or equipment that, in Landlord's reasonable judgment, would disturb labor harmony with the workforce or trades engaged in performing other work, labor or services in or about the Building or the Common Areas. In addition, Tenant shall retain any union trades to the extent designated by Landlord, or as required by the Underlying Documents.

## EXHIBIT B

**SCHEDULE 1A TO EXHIBIT B**

**COLEMAN HIGHLINE**

**BASE BUILDING DESCRIPTION**

**1. Site and Shell:**

All landscape, site work, lighting, paving, striping, Code related signage, and utilities (sewer, water, gas). Includes infrastructure for future communication and cable TV requirements. Work includes all vaults, fees, backflow and monitoring devices.

**2. Shell:**

All work required to obtain a shell permit final inspection (not a temporary certificate for occupancy). All work shall conform to local Code for the shell. Weather tight (air and water infiltration) shell complete with rain water distribution system. Exterior doors with manual exit panic hardware. 2 sets of standard pre-engineered stairs for access and egress with one set to access the roof. Fire riser and complete shell system, including "up heads" with capped tees for Tenant Improvements at all floors and roof monitors and PIV (monitoring system by Tenant). Floor of the Building designed for 80 PSF uniform live load. Steel framework shall be designed to accommodate shaft and elevator openings. Includes roof screen. Insulation at underside of roof deck provided, furring and drywall at perimeter walls and all columns are excluded. 10' high ceiling for most open office space. The Building is classified as Type 2A.

**3. Electrical:**

All primary and secondary electrical services from the street to a location in the Building, including transformer pads, and house meter section.

**4. Core:**

All work related to construction of core bathrooms, stairs shafts, HVAC shafts, electrical and phone rooms, janitor closets, elevators and shafts. Work related to construction of main lobby and upper elevator lobbies are excluded.

- a. Core bathrooms (one set for men and women per floor) shall include multiple stalls with one (1) handicap stall per floor and provide +2 plumbing fixtures over code requirement for occupancy load. Includes showers for men and women on first floor only. Bathroom will receive tile flooring and wall tiles up to wainscot height at wet walls only (6' above finished floor). All other bathroom interior walls and gypsum board ceilings will be taped, finished, and painted. All plumbing fixtures including water closets, urinals, lavatory sinks and faucets will be battery operated and will help to achieve 10% in overall water use reduction. Toilet accessories including soap dispensers, toilet paper dispensers, toilet seat dispensers, trash receptacles, paper towel dispensers, napkin dispensers, and handicap grab bars are included. Plastic laminate toilet partitions are included. Granite countertops with under mount sinks are included. All associated lighting, fire sprinklers, power receptacles, ventilation, venting, sewer piping, water piping and floor drains are included. All associated lighting and fire sprinklers are included.
- b. Stair shafts will be constructed with metal stud framing and drywall assembly with fire rating in compliance to construction type. Stairs to be 1' wider than Code required. All interior walls facing the egress stairs will be taped, finished, and painted. Gypsum board ceiling will be constructed at the top level. No soffit on the underside of stairs. Stair rails and stringers will be painted. All associated lighting and fire sprinklers are included.
- c. Electrical and telephone rooms will receive seal concrete with plywood backing on walls. Electrical scope will include power distribution including transformer, conduit risers and electrical panels. Conduit risers will be provided for phone service distribution.
- d. PG&E transformer pad for each Building. Main switchboard to be per CEC, PG&E and City of San Jose requirements. Meter main per PG&E requirements, with utility metering section with CAT5E station cable to MPOE. Provide a vertical 480/277V 3PH bus riser complete with bus plugs capable of supply full floor power, lighting and miscellaneous loads at electrical room on each floor for future tenant distribution.
- e. Fully operational main electric service for the Building including main switchboard rated at 14 Watts per SF, 2500 AMP 480/277V 3PH, serving Tenant lighting, power and miscellaneous loads, as well as Base Building electrical and mechanical equipment loads. Space sized for Tenant panels and transformers not included. Includes bus duct for lighting and power for Core only. Includes conduits and wire feeders for Mechanical.
- f. HVAC shall be air-cooled package rooftop VAV unit(s). Units will be side discharge to a shaft location where ducts will extend down shaft and connect to fire smoke dampers at ceiling level for each floor. Rooftop ductwork will be internally lined and ductwork inside shaft will be wrapped. Duct loops at each floor are not included (risers and stubs on each floor only). Design shall be for

an indoor temperature of 74 F, and outdoor temperatures corresponding to the 0.4% ASHRAE design day: a winter temperature of 36 F, and a summer temperature of 92 F dry bulb and 67 F wet bulb. Additionally, HVAC design shall comply with ASHRAE Standard 90.1, 62.1, and 55. Mechanical HVAC pads on roof for shell provided HVAC equipment is included, all other pads by tenant.

- g. DDC controls for Base Building system (rooftop heating and cooling) with the availability of for the addition of DDC controls should the future tenant require. Electrical monitoring is not included.

General Office Areas:

Lighting load (including task lighting): Cooling system designed for 1.2 watts/RSF; Lighting designed to be restricted to .95 watts/RSF to conform to potential LEED goals

Non Core miscellaneous office equipment cooling loads 3.0 watts/RSF (highly populated floor plates need more watts/SF)

Designated dry lab space: Increased loads are a tenant expense Occupancy: 150 SF/person

- h. Hot water boiler system, including hot water pump(s), water treatment and all necessary piping specialties, serving one riser extending from the roof to the lower floor. Supply and return valves to be located on each floor for future connection to hot water piping loop if required. Piping loops on each floor are not included.
- i. Auxiliary cooling is not included.
- j. Domestic cold water main branch piping to each floor near the stair for future break rooms.
- k. Fire alarm system: Building is fully sprinklered and monitored including the PIV as required by Code. Life safety system distribution (smoke detectors, annunciators, strobes, etc) as required by Code for core and common areas. Each floor is designated as one smoke zone. Fire alarm to be expandable.
- l. Building telephone MPOE shall be separate from Main Electrical Room. Roof pad to allow for future 24hr cooling tenant requirement and stacked IDF closets shall be included per Code. Phone systems, switching equipment, connections etc., are not included.
- m. Elevators (quantity and size to meet code) shall be machine room less elevators with call buttons to meet ADA and fire code requirements. Pit ladder(s), separation screens, sill angles, guide rails and separation beams will be installed, if required, in shaft. Elevator vestibule walls will be fire taped for tenant improvement. Flooring on upper level vestibule to be provided by T.I. Excludes build out of main lobby and upper elevator lobbies. Standard elevator cab finish will be provided. Upgrades if required by Tenant.
- n. Emergency power; An inverter will be provided for the Building to power exterior egress lighting. All interior egress lights to be powered by self-contained emergency battery packs.
- o. Tenant generator provisions; Provisions will be made at exterior utility enclosure for a 500kW generator for the Building. Provisions to include underground conduits for power, control and parasitic connections. Balance of work to be NIC.
- p. All core walls will be constructed with metal stud framing and drywall assembly with fire rating in compliance to construction type. Wall facing Tenant space will be fire taped.

SCHEDULE 1A TO  
EXHIBIT B

**EXHIBIT C**

**COLEMAN HIGHLINE**

**NOTICE OF LEASE TERM DATES**

To: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Re: Office Lease dated \_\_\_\_\_, 20\_\_ between \_\_\_\_\_, a \_\_\_\_\_ ("Landlord"), and \_\_\_\_\_ a \_\_\_\_\_ ("Tenant") concerning Suite \_\_\_\_\_ on floor(s) \_\_\_\_\_ of the office building located at

Gentlemen:

In accordance with the Office Lease (the "Lease"), we wish to advise you and/or confirm as follows:

1. The Lease Term shall commence on or has commenced on \_\_\_\_\_ for a term of \_\_\_\_\_ ending on \_\_\_\_\_.
2. Rent commenced to accrue on \_\_\_\_\_, in the amount of \_\_\_\_\_.
3. If the Lease Commencement Date is other than the first day of the month, the first billing will contain a pro rata adjustment. Each billing thereafter, with the exception of the final billing, shall be for the full amount of the monthly installment as provided for in the Lease.
4. Your rent checks should be made payable to \_\_\_\_\_ at \_\_\_\_\_.

**"Landlord":**

\_\_\_\_\_  
a \_\_\_\_\_

By: \_\_\_\_\_  
Its: \_\_\_\_\_

Agreed to and Accepted as  
of \_\_\_\_\_, 20\_\_.

**"Tenant":**

\_\_\_\_\_  
a \_\_\_\_\_

By: \_\_\_\_\_  
Its: \_\_\_\_\_

EXHIBIT D

COLEMAN HIGHLINE

RULES AND REGULATIONS

Tenant shall faithfully observe and comply with the following Rules and Regulations. Landlord shall not be responsible to Tenant for the nonperformance of any of said Rules and Regulations by or otherwise with respect to the acts or omissions of any other tenants or occupants of the Project. In the event of any conflict between the Rules and Regulations and the other provisions of this Lease, the latter shall control.

1. Tenant shall not alter any lock or install any new or additional locks or bolts on any doors or windows of the Premises without obtaining Landlord's prior written consent. Tenant shall bear the cost of any lock changes or repairs required by Tenant.
2. Tenant, its employees and agents must be sure that the doors to the Premises are securely closed and locked when leaving the Premises if it is after the normal hours of business for the Premises. The Landlord and his agents shall in no case be liable for damages for any error with regard to the admission to or exclusion from the Building of any person. In case of invasion, mob, riot, public excitement, or other commotion, Landlord reserves the right to prevent access to the Building or the Project during the continuance thereof by any means it deems appropriate for the safety and protection of life and property.
3. The requirements of Tenant will be attended to only upon application at the management office for the Project or at such office location designated by Landlord. Employees of Landlord shall not perform any work or do anything outside their regular duties unless under special instructions from Landlord.
4. No sign, advertisement, notice or handbill shall be exhibited, distributed, painted or affixed by Tenant on any part of the Premises or the Building without the prior written consent of the Landlord. Tenant shall not disturb, solicit, peddle, or canvass any occupant of the Project and shall cooperate with Landlord and its agents of Landlord to prevent same.
5. The toilet rooms, urinals, wash bowls and other apparatus shall not be used for any purpose other than that for which they were constructed, and no foreign substance of any kind whatsoever shall be thrown therein. The expense of any breakage, stoppage or damage resulting from the violation of this rule shall be borne by the tenant who, or whose servants, employees, agents, visitors or licensees shall have caused same.
6. Tenant shall not overload the floor of the Premises, nor mark, drive nails or screws, or drill into the partitions, woodwork or drywall or in any way deface the Premises or any part thereof without Landlord's prior written consent.
7. Tenant shall not use or keep in or on the Premises, the Building, or the Project any kerosene, gasoline, explosive material, corrosive material, material capable of emitting toxic fumes, or other inflammable or combustible fluid chemical, substitute or material. Tenant shall provide material safety data sheets for any hazardous material or substance used or kept on the Premises.
8. Tenant shall not bring into or keep within the Project, the Building or the Premises any firearms, animals, birds, aquariums, or, except in areas designated by Landlord, bicycles or other vehicles.
9. Tenant shall not occupy or permit any portion of the Premises to be occupied as an office for a messenger-type operation or dispatch office, public stenographer or typist, or for the manufacture or sale of narcotics, or tobacco in any form, or as a medical office, or as a barber or manicure shop, or as an employment bureau without the express prior written consent of Landlord. Tenant shall not engage or pay any employees on the Premises except those actually working for such tenant on the Premises nor advertise for laborers giving an address at the Premises.
10. Landlord reserves the right to exclude or expel from the Project any person who, in the judgment of Landlord, is intoxicated or under the influence of liquor or drugs, or who shall in any manner do any act in violation of any of these Rules and Regulations.
11. Tenant shall not waste electricity, water or air conditioning and agrees to cooperate fully with Landlord to ensure the most effective operation of the Building's heating and air conditioning system, and shall refrain from attempting to adjust any controls. Tenant shall participate in recycling programs undertaken by Landlord.
12. Tenant shall comply with all safety, fire protection and evacuation procedures and regulations established by Landlord or any governmental agency.
13. Tenant must comply with requests by the Landlord concerning the informing of their employees of items of importance to the Landlord.
14. Tenant must comply with applicable "**NO-SMOKING**" ordinances and all related, similar or successor ordinances, rules, regulations or codes. If Tenant is required under the ordinance to adopt a written smoking policy, a copy of said policy shall be on file in the office of the Building. In addition, no smoking of any substance shall be permitted within the Project except in specifically designated outdoor areas. Within such designated outdoor areas, all remnants of consumed cigarettes and related paraphernalia shall be deposited in ash trays and/or waste receptacles. No cigarettes shall be extinguished and/or left on the ground or any other surface of the Project. Cigarettes

shall be extinguished only in ashtrays. Furthermore, in no event shall Tenant, its employees or agents smoke tobacco products or other substances (x) within any interior areas of the Project, or (y) within two hundred feet (200') of the main entrance of the Building or the main entrance of any of the adjacent buildings, or (z) within seventy-five feet (75') of any other entryways into the Building.

15. Tenant hereby acknowledges that Landlord shall have no obligation to provide guard service or other security measures for the benefit of the Premises, the Building or the Project. Tenant hereby assumes all responsibility for the protection of Tenant and its agents, employees, contractors, invitees and guests, and the property thereof, from acts of third parties, including keeping doors locked and other means of entry to the Premises closed, whether or not Landlord, at its option, elects to provide security protection for the Project or any portion thereof. Tenant further assumes the risk that any safety and security devices, services and programs which Landlord elects, in its sole discretion, to provide may not be effective, or may malfunction or be circumvented by an unauthorized third party, and Tenant shall, in addition to its other insurance obligations under this Lease, obtain its own insurance coverage to the extent Tenant desires protection against losses related to such occurrences. Tenant shall cooperate in any reasonable safety or security program developed by Landlord or required by law.
16. No auction, liquidation, fire sale, going-out-of-business or bankruptcy sale shall be conducted in the Premises without the prior written consent of Landlord.
17. No tenant shall use or permit the use of any portion of the Premises for living quarters, sleeping apartments or lodging rooms.
18. Tenant shall install and maintain, at Tenant's sole cost and expense, an adequate, visibly marked and properly operational fire extinguisher next to any heat producing equipment, and any equipment which uses flammable materials or gases in the Premises.

Landlord reserves the right at any time to change or rescind any one or more of these Rules and Regulations, or to make such other and further reasonable Rules and Regulations as in Landlord's judgment may from time to time be necessary for the management, safety, care and cleanliness of the Premises, Building, the Common Areas and the Project, and for the preservation of good order therein, as well as for the convenience of other occupants and tenants therein. Landlord may waive any one or more of these Rules and Regulations for the benefit of any particular tenants, but no such waiver by Landlord shall be construed as a waiver of such Rules and Regulations in favor of any other tenant, nor prevent Landlord from thereafter enforcing any such Rules or Regulations against any or all tenants of the Project. Tenant shall be deemed to have read these Rules and Regulations and to have agreed to abide by them as a condition of its occupancy of the Premises.

EXHIBIT D

**EXHIBIT E**

**COLEMAN HIGHLINE**

**FORM OF TENANT'S ESTOPPEL CERTIFICATE**

The undersigned as Tenant under that certain Office Lease (the "**Lease**") made and entered into as of \_\_\_\_\_, 20\_\_ by and between \_\_\_\_\_ as Landlord, and the undersigned as Tenant, for Premises on the \_\_\_\_\_ floor(s) of the office building located at \_\_\_\_\_, certifies as follows:

1. Attached hereto as **Exhibit A** is a true and correct copy of the Lease and all amendments and modifications thereto. The documents contained in **Exhibit A** represent the entire agreement between the parties as to the Premises.
2. The undersigned currently occupies the Premises described in the Lease, the Lease Term commenced on \_\_\_\_\_, and the Lease Term expires on \_\_\_\_\_, and the undersigned has no option to terminate or cancel the Lease or to purchase all or any part of the Premises, the Building and/or the Project.
3. Base Rent became payable on \_\_\_\_\_.
4. The Lease is in full force and effect and has not been modified, supplemented or amended in any way except as provided in **Exhibit A**.
5. Tenant has not transferred, assigned, or sublet any portion of the Premises nor entered into any license or concession agreements with respect thereto except as follows:
6. Tenant shall not modify the documents contained in **Exhibit A** without the prior written consent of Landlord's mortgagee.
7. All monthly installments of Base Rent, all Additional Rent and all monthly installments of estimated Additional Rent have been paid when due through \_\_\_\_\_. The current monthly installment of Base Rent is \$\_\_\_\_\_.
8. To the undersigned's actual current knowledge, all conditions of the Lease to be performed by Landlord necessary to the enforceability of the Lease have been satisfied and Landlord is not in default thereunder. In addition, Tenant has not delivered any notice to Landlord regarding a default by Landlord thereunder.
9. No rental has been paid more than thirty (30) days in advance and no security has been deposited with Landlord except as provided in the Lease.
10. As of the date hereof, to the undersigned's knowledge, there are no existing defenses or offsets, or, to the undersigned's knowledge, claims or any basis for a claim, that Tenant has against Landlord.
11. If Tenant is a corporation or partnership, each individual executing this Estoppel Certificate on behalf of Tenant hereby represents and warrants that Tenant is a duly formed and existing entity qualified to do business in California and that Tenant has full right and authority to execute and deliver this Estoppel Certificate and that each person signing on behalf of Tenant is authorized to do so.
12. There are no actions pending against Tenant under the bankruptcy or similar laws of the United States or any state.
13. Other than in compliance with all Applicable Laws and as identified in the Environmental Questionnaire, to the actual current knowledge of the undersigned, Tenant has not used or stored any Hazardous Materials in the Premises.
14. To the undersigned's actual current knowledge, all tenant improvement work to be performed by Landlord under the Lease has been completed in accordance with the Lease and has been accepted by Tenant and all reimbursements and allowances due to Tenant under the Lease in connection with any tenant improvement work have been paid in full.

Tenant acknowledges that this Estoppel Certificate may be delivered to Landlord or to a prospective mortgagee or prospective purchaser, and acknowledges that said prospective mortgagee or prospective purchaser will be relying upon the statements contained herein in making the loan or acquiring the property of which the Premises are a part and that receipt by it of this certificate is a condition of making such loan or acquiring such property.

Executed at \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_, 200\_.

EXHIBIT E



**"Tenant":**

\_\_\_\_\_

a \_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_

EXHIBIT E

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COLEMAN HIGHLINEMARKET RENT DETERMINATION

When determining Market Rent, the following rules and instructions shall be followed.

1. **RELEVANT FACTORS.** The "Market Rent," as used in this Lease, shall be equal to the annual rent per rentable square foot, at which tenants, are, pursuant to transactions consummated within twelve (12) months prior to the commencement of the Option Term, provided that timing adjustments shall be made to reflect any changes in the Market Rent following the date of any particular Comparable Transaction up to the date of the commencement of the applicable Option Term, leasing non-sublease, non-encumbered space comparable in location and quality to the Premises containing a square footage comparable to that of the Premises for a term of five (5) years, in an arm's-length transaction, which comparable space is located in "Comparable Buildings" (transactions satisfying the foregoing criteria shall be known as the "**Comparable Transactions**"). The terms of the Comparable Transactions shall be calculated as a "Net Equivalent Lease Rate" pursuant to the terms of this Exhibit E, and shall take into consideration only the following terms and concessions: (i) the rental rate and escalations for the Comparable Transactions, (ii) the amount of parking rent per parking permit paid in the Comparable Transactions, if any, (iii) operating expense and tax protection granted in such Comparable Transactions such as a base year or expense stop (although for each such Comparable Transaction the base rent shall be adjusted to a triple net base rent using reasonable estimates of operating expenses and taxes as determined by Landlord for each such Comparable Transaction); (iv) rental abatement concessions, if any, being granted such tenants in connection with such comparable space, (v) any "Renewal Allowance," as defined herein below, to be provided by Landlord in connection with the Option Term as compared to the improvements or allowances provided or to be provided in the Comparable Transactions, taking into account the contributory value of the existing improvements in the Premises, such value to be based upon the age, design, quality of finishes, and layout of the existing improvements, and (vi) all other monetary concessions (including the value of any signage), if any, being granted such tenants in connection with such Comparable Transactions. Notwithstanding any contrary provision hereof, in determining the Market Rent, no consideration shall be given to (A) any period of rental abatement, if any, granted to tenants in Comparable Transactions in connection with the design, permitting and construction of improvements, or (B) any commission paid or not paid in connection with such Comparable Transaction. The Market Rent shall include adjustment of the stated size of the Premises based upon the standards of measurement utilized in the Comparable Transactions; provided, however, the size of the Premises shall, notwithstanding the foregoing, be at least equal to the greater of: (i) the square footages set forth in this Lease, and (ii) the square footage of the Premises determined pursuant to the standards of space measurement used in the Comparable Transactions.
2. **TENANT SECURITY.** The Market Rent shall additionally include a determination as to whether, and if so to what extent, Tenant must provide Landlord with financial security, such as an enhanced security deposit, a letter of credit or guaranty, for Tenant's Rent obligations during the Option Term. Such determination shall be made by reviewing the extent of financial security then generally being imposed in Comparable Transactions from tenants of comparable financial condition and credit history to the then existing financial condition and credit history of Tenant (with appropriate adjustments to account for differences in the then-existing financial condition of Tenant and such other tenants, and giving reasonable consideration to Tenant's prior performance history during the Lease Term).
3. **RENEWAL IMPROVEMENT ALLOWANCE.** Notwithstanding anything to the contrary set forth in this Exhibit F, once the Market Rent for the Option Term is determined as a Net Equivalent Lease Rate, if, in connection with such determination, it is deemed that Tenant is entitled to an improvement or comparable allowance for the improvement of the Premises, (the total dollar value of such allowance shall be referred to herein as the "**Renewal Allowance**"), Landlord shall pay the Renewal Allowance to Tenant pursuant to a commercially reasonable disbursement procedure determined by Landlord and the terms of Article 8 of this Lease, and, as set forth in Section 5, below, of this Exhibit E, the rental rate component of the Market Rent shall be increased to be a rental rate which takes into consideration that Tenant will receive payment of such Renewal Allowance and, accordingly, such payment with interest shall be factored into the base rent component of the Market Rent.
4. **COMPARABLE BUILDINGS.** For purposes of this Lease, the term "**Comparable Buildings**" shall mean the other buildings in the Project and other first-class office buildings which are comparable to the Building in terms of age (based upon the date of completion of construction), quality of construction, level of services and amenities, size and appearance, with similar access to public transit, and are located in downtown San Jose, the West Valley area of San Jose and the City of Santa Clara.
5. **METHODOLOGY FOR REVIEWING AND COMPARING THE COMPARABLE TRANSACTIONS.** For purposes of this Section 5, the term "Comparable Transactions" shall include any proposed transactions with third parties for the First Offer Space (pursuant to Section 1.2 of this Lease). In order to analyze the Comparable Transactions based on the factors to be considered in calculating Market Rent and in order to evaluate the value of the Economic Terms (pursuant to Section 1.2 of this Lease), and given that the Comparable Transactions may vary in terms of length of term, rental rate, concessions, etc., the following steps shall be taken into consideration to "adjust" the objective data from each of the Comparable Transactions. By taking this approach, a "**Net Equivalent Lease Rate**" for each of the Comparable Transactions shall be determined using the following steps to adjust the Comparable Transactions, which will allow for an "apples to apples" comparison of the Comparable Transactions.

5.1 The contractual rent payments for each of the Comparable Transactions should be arrayed monthly or annually over the lease term. All Comparable Transactions should be adjusted to simulate a net rent structure, wherein the tenant is responsible for the payment of all property operating expenses in a manner consistent

with this Lease. This results in the estimate of Net Equivalent Rent received by each landlord for each Comparable Transaction being expressed as a periodic net rent payment.

5.2 Any free rent or similar inducements received over time should be deducted in the time period in which they occur, resulting in the net cash flow arrayed over the lease term.

5.3 The resultant net cash flow from the lease should then be discounted (using an 8% annual discount rate) to the lease commencement date, resulting in a net present value estimate.

5.4 From the net present value, up front inducements (improvements allowances and other concessions) should be deducted. These items should be deducted directly, on a "dollar for dollar" basis, without discounting since they are typically incurred at lease commencement, while rent (which is discounted) is a future receipt.

5.5 The net present value should then be amortized back over the lease term as a level monthly or annual net rent payment using the same annual discount rate of 8.0% used in the present value analysis. This calculation will result in a hypothetical level or even payment over the option period, termed the "Net Equivalent Lease Rate" (or constant equivalent in general financial terms).

6. **USE OF NET EQUIVALENT LEASE RATES FOR COMPARABLE TRANSACTIONS.** The Net Equivalent Lease Rates for the Comparable Transactions shall then be used to reconcile, in a manner usual and customary for a real estate appraisal process, to a conclusion of Market Rent which shall be stated as a "NNN" lease rate applicable to each year of the Option Term.

EXHIBIT F

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EXHIBIT G

COLEMAN HIGHLINE

HAZARDOUS MATERIALS

1. **Prohibitions.** Tenant hereby represents, warrants and covenants that except for those chemicals or materials, and their respective quantities, specifically listed on the Environmental Questionnaire, neither Tenant nor Tenant's employees, contractors and subcontractors of any tier, entities with a contractual relationship with Tenant (other than Landlord), or any entity acting as an agent or sub-agent of Tenant (collectively, "**Tenant's HazMat Agents**") will produce, use, store or generate any Hazardous Materials, on, under or about the Premises, nor cause or permit any Hazardous Material to be brought upon, placed, stored, manufactured, generated, blended, handled, recycled, used or "Released," as that term is defined below, on, in, under or about the Premises. If any information provided to Landlord by Tenant on the Environmental Questionnaire, or otherwise relating to information concerning Hazardous Materials is false, incomplete, or misleading in any material respect, the same shall be deemed a default by Tenant under this Lease. Tenant shall deliver to Landlord an updated Environmental Questionnaire upon request. Landlord's prior written consent shall be required to any Hazardous Materials use for the Premises not described on the initial Environmental Questionnaire, such consent to be withheld in Landlord's sole discretion. Tenant shall not install or permit any underground storage tank on the Premises. In addition, Tenant agrees that it: (i) shall not cause or suffer to occur, the Release of any Hazardous Materials at, upon, under or within the Premises or any contiguous or adjacent premises; and (ii) shall not engage in activities at the Premises that could result in, give rise to, or lead to the imposition of liability upon Tenant or Landlord or the creation of an environmental lien or use restriction upon the Premises. For purposes of this Lease, "**Hazardous Materials**" means all flammable explosives, petroleum and petroleum products, waste oil, radon, radioactive materials, toxic pollutants, asbestos, polychlorinated biphenyls ("**PCBs**"), medical waste, chemicals known to cause cancer or reproductive toxicity, pollutants, contaminants, hazardous wastes, toxic substances or related materials, including without limitation any chemical, element, compound, mixture, solution, substance, object, waste or any combination thereof, which is or may be hazardous to human health, safety or to the environment due to its radioactivity, ignitability, corrosiveness, reactivity, explosiveness, toxicity, carcinogenicity, infectiousness or other harmful or potentially harmful properties or effects, or defined as, regulated as or included in, the definition of "hazardous substances," "hazardous wastes," "hazardous materials," or "toxic substances" under any Environmental Laws. The term "Hazardous Materials" for purposes of this Lease shall also include any mold, fungus or spores, whether or not the same is defined, listed, or otherwise classified as a "hazardous material" under any Environmental Laws, if such mold, fungus or spores may pose a risk to human health or the environment or negatively impact the value of the Premises. For purposes of this Lease, "**Release**" or "**Released**" or "**Releases**" shall mean any release, deposit, discharge, emission, leaking, spilling, seeping, migrating, injecting, pumping, pouring, emptying, escaping, dumping, disposing, or other movement of Hazardous Materials into the environment.

2. **Notices.** Unless Tenant is required by Applicable Laws to give earlier notice to Landlord, Tenant shall notify Landlord in writing as soon as possible, but in no event later than five (5) days after (i) the occurrence of any actual, alleged or threatened Release of any Hazardous Material in, on, under, from, about or in the vicinity of the Premises (whether past or present), regardless of the source or quantity of any such Release, or (ii) Tenant becomes aware of any regulatory actions, inquiries, inspections, investigations, directives, or any cleanup, compliance, enforcement or abatement proceedings (including any threatened or contemplated investigations or proceedings) relating to or potentially affecting the Premises, or (iii) Tenant becomes aware of any claims by any person or entity relating to any Hazardous Materials in, on, under, from, about or in the vicinity of the Premises, whether relating to damage, contribution, cost recovery, compensation, loss or injury. Collectively, the matters set forth in clauses (i), (ii) and (iii) above are hereinafter referred to as "**Hazardous Materials Claims**". Tenant shall promptly forward to Landlord copies of all orders, notices, permits, applications and other communications and reports in connection with any Hazardous Materials Claims. Additionally, Tenant shall promptly advise Landlord in writing of Tenant's discovery of any occurrence or condition on, in, under or about the Premises that could subject Tenant or Landlord to any liability, or restrictions on ownership, occupancy, transferability or use of the Premises under any Environmental Laws. Tenant shall not enter into any legal proceeding or other action, settlement, consent decree or other compromise with respect to any Hazardous Materials Claims without first notifying Landlord of Tenant's intention to do so and affording Landlord the opportunity to join and participate, as a party if Landlord so elects, in such proceedings and in no event shall Tenant enter into any agreements which are binding on Landlord or the Premises without Landlord's prior written consent. Landlord shall have the right to appear at and participate in, any and all legal or other administrative proceedings concerning any Hazardous Materials Claim. For purposes of this Lease, "**Environmental Laws**" means all applicable present and future laws relating to the protection of human health, safety, wildlife or the environment, including, without limitation, (A) all requirements pertaining to reporting, licensing, permitting, investigation and/or remediation of emissions, discharges, Releases, or threatened Releases of Hazardous Materials, whether solid, liquid, or gaseous in nature, into the air, surface water, groundwater, or land, or relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport, or handling of Hazardous Materials; and (B) all requirements pertaining to the health and safety of employees or the public. Environmental Laws include, but are not limited to, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 USC § 9601, et seq., the Hazardous Materials Transportation Authorization Act of 1994, 49 USC § 5101, et seq., the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, and Hazardous and Solid Waste Amendments of 1984, 42 USC § 6901, et seq., the Federal Water Pollution Control Act, as amended by the Clean Water Act of 1977, 33 USC § 1251, et seq., the Clean Air Act of 1966, 42 USC § 7401, et seq., the Toxic Substances Control Act of 1976, 15 USC § 2601, et seq., the Safe Drinking Water Act of 1974, 42 USC § 300f through 300j, the Occupational Safety and Health Act of 1970, as amended, 29 USC § 651 et seq., the Oil Pollution Act of 1990, 33 USC § 2701 et seq., the Emergency Planning and Community Right-To-Know Act of 1986, 42 USC § 11001 et seq., the National Environmental Policy Act of 1969, 42 USC § 4321 et seq., the Federal Insecticide, Fungicide and Rodenticide Act of 1947, 7 USC § 136 et seq., California Carpenter-Presley-Tanner Hazardous

EXHIBIT G

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Substance Account Act, California Health & Safety Code 25300 et seq., Hazardous Materials Release Response Plans and Inventory Act, California Health & Safety Code, 25500 et seq., Underground Storage of Hazardous Substances provisions, California Health & Safety Code, 25280 et seq., California Hazardous Waste Control Law, California Health & Safety Code, 25100 et seq., and any other state or local law counterparts, as amended, as such applicable laws, are in effect as of the Lease Commencement Date, or thereafter adopted, published, or promulgated. "**Environmental Permits**" means all permits, approvals, identification numbers, licenses and other authorizations required under any applicable Environmental Laws.

3. **Releases of Hazardous Materials.** If any Release of any Hazardous Material in, on, under, from or about the Premises shall occur at any time during the Lease Term and/or if any other Hazardous Material condition exists at the Premises that requires response actions of any kind, in addition to notifying Landlord as specified above, Tenant, at its own sole cost and expense, shall (i) immediately comply with any and all reporting requirements imposed pursuant to any and all Environmental Laws, (ii) provide a written certification to Landlord indicating that Tenant has complied with all applicable reporting requirements, (iii) take any and all necessary investigation, corrective and remedial action in accordance with any and all applicable Environmental Laws, utilizing an environmental consultant approved by Landlord, all in accordance with the provisions and requirements of this **Exhibit G**, and (iv) take any such additional investigative, remedial and corrective actions as Landlord shall in its reasonable discretion deem necessary such that the Premises is remediated to the condition existing prior to such Release, all in accordance with the provisions and requirements of this **Section 3**. Landlord may, as required by any and all Environmental Laws, report the Release of any Hazardous Material to the appropriate governmental authority, identifying Tenant as the responsible party. Tenant shall deliver to Landlord copies of all administrative orders, notices, demands, directives or other communications directed to Tenant from any governmental authority with respect to any Release of Hazardous Materials in, on, under, from, or about the Premises, together with copies of all investigation, assessment, and remediation plans and reports prepared by or on behalf of Tenant in response to any such regulatory order or directive. Tenant's obligations under this Section 3 shall not apply to Existing Hazardous Materials and any Landlord Hazardous Materials (as those terms are defined in **Section 4.2** below).

4. **Indemnification.**

4.1 **In General.** Without limiting in any way Tenant's obligations under any other provision of this Lease, but subject to **Section 4.2** below, Tenant shall be solely responsible for and shall protect, defend, indemnify and hold the Landlord Parties harmless from and against any and all claims, judgments, losses, damages, costs, expenses, penalties, enforcement actions, taxes, fines, remedial actions, liabilities (including, without limitation, actual attorneys' fees, litigation, arbitration and administrative proceeding costs, expert and consultant fees and laboratory costs) including, without limitation, consequential damages and sums paid in settlement of claims, which arise before, during or after the Lease Term in whole or in part, foreseeable or unforeseeable, directly or indirectly arising out of or attributable to the presence, use, generation, manufacture, treatment, handling, refining, production, processing, storage, Release or presence of Hazardous Materials in, on, under or about the Premises by Tenant or Tenant's HazMat Agents. The foregoing obligations of Tenant shall include, including without limitation: (i) the costs of any required or necessary removal, repair, cleanup or remediation of the Premises, and the preparation and implementation of any closure, removal, remedial or other required plans; (ii) judgments for personal injury or property damages; and (iii) all costs and expenses incurred by Landlord in connection therewith. It is the express intention of the parties to this Lease that Tenant assumes all such liabilities, and holds Landlord harmless from all such liabilities, associated with the environmental condition of the Premises, whether arising before or after the Lease Commencement Date.

4.2 **Limitations.** Notwithstanding anything in **Section 4.1**, above, to the contrary, Tenant's indemnity of Landlord as set forth in **Section 4.1**, above, shall not be applicable to claims based upon Hazardous Materials which (i) may exist in, on or about the Premises as of the date of this Lease ("**Existing Hazardous Materials**") or (ii) were brought onto the site by Landlord or any other Landlord Parties ("**Landlord Hazardous Materials**"), except, in each instance, to the extent that Tenant's construction activities and/or Tenant's other acts or omissions (including Tenant's failure to remove, remediate or otherwise treat or "Clean-up," as that term is defined in **Section 9**, below, the subject Existing Hazardous Materials during the tenancy of the Premises) caused or exacerbated the subject claim.

5. **Pollution Legal Liability Environmental Insurance.** Tenant shall obtain and maintain Pollution Legal Liability Environmental Insurance (i) from an insurance carrier with a rating of no less than A-X in Best's Insurance Guide, and (ii) providing commercially reasonable coverage and deductibles (to the extent available) with respect to (A) known and unknown pre-existing conditions; (B) unknown and later discovered conditions; (C) on-site and off-site third-party claims for bodily injury or property damage; and (D) legal defense expenses. The form of the Pollution Legal Liability Environmental Insurance policy shall be reasonably acceptable to Landlord. Landlord shall be named as an additional named insured on the Pollution Legal Liability Environmental Insurance policy by endorsement, and an endorsement shall be issued to the Pollution Legal Liability Environmental Insurance policy that provides the policy cannot be amended, modified, terminated or cancelled by the insured without the prior written consent of Landlord. Any new Pollution Legal Liability Environmental Insurance policy that Tenant obtains shall provide coverage for pollution conditions and unknown claims arising prior to the date such policy was issued (e.g., pre-existing conditions shall be covered).

6. **Compliance with Environmental Laws.** Without limiting the generality of Tenant's obligation to comply with Applicable Laws as otherwise provided in this Lease, Tenant shall, at its sole cost and expense, comply with all Environmental Laws. Tenant shall obtain and maintain any and all necessary permits, licenses, certifications and approvals appropriate or required for the use, handling, storage, and disposal of any Hazardous Materials used, stored, generated, transported, handled, blended, or recycled by Tenant on the Premises. Landlord shall have a continuing right, without obligation, to require Tenant to obtain, and to review and inspect any and all such permits,

licenses, certifications and approvals, together with copies of any and all Hazardous Materials management plans and programs, any and all Hazardous Materials risk management and pollution prevention programs, and any and all Hazardous Materials emergency response and employee training programs respecting Tenant's use of Hazardous Materials. Upon request of Landlord, Tenant shall deliver to Landlord a narrative description explaining the nature and scope of Tenant's activities involving Hazardous Materials and showing to Landlord's satisfaction compliance with all Environmental Laws and the terms of this Lease.

## 7. **Assurance of Performance.**

7.1 **Environmental Assessments In General.** Landlord may, but shall not be required to, engage from time to time such contractors as Landlord determines to be appropriate to perform "Environmental Assessments," as that term is defined below, to ensure Tenant's compliance with the requirements of this Lease with respect to Hazardous Materials. For purposes of this Lease, "Environmental Assessment" means an assessment including, without limitation: (i) an environmental site assessment conducted in accordance with the then-current standards of the American Society for Testing and Materials and meeting the requirements for satisfying the "all appropriate inquiries" requirements; and (ii) sampling and testing of the Premises based upon potential recognized environmental conditions or areas of concern or inquiry identified by the environmental site assessment, including, without limitation: (A) an asbestos survey conducted according to the standards of the Asbestos Hazard Emergency Response Act protocol; (B) testing of any transformers on the Premises for PCBs; (C) testing for lead-based paints; (D) soil and groundwater sampling to measure the effect of any actual or suspected release or discharge of Hazardous Materials on the Premises; and (E) such other sampling and testing reasonably necessary to determine the environmental condition of the Premises.

7.2 **Costs of Environmental Assessments.** All costs and expenses incurred by Landlord in connection with any such Environmental Assessment initially shall be paid by Landlord; provided that if any such Environmental Assessment shows that Tenant has failed to comply with the provisions of this **Exhibit G**, then all of the costs and expenses of such Environmental Assessment directly related to Tenant's failure shall be reimbursed by Tenant as Additional Rent within thirty (30) days after receipt of written demand therefor.

7.3 **Other Matters.** Each Environmental Assessment conducted by Landlord shall be conducted: (i) only after Landlord has provided to Tenant notice reasonably detailing the extent of Landlord's access requirement at least ten (10) days prior to the date of such Environmental Assessment; and (ii) in a manner reasonably designed to minimize the interruption of Tenant's use of the Premises. Tenant shall have the right to reasonably approve the timing of Landlord's entry onto the Premises in order to minimize the interruption of Tenant's use of the Premises. Landlord shall repair any damage caused by the performance of the Environmental Assessment, and shall restore the Premises to the condition existing immediately prior to the Environmental Assessment, unless response actions are required of Tenant pursuant to the provisions of this Lease based on the findings of the Environmental Assessment.

8. **Tenant's Obligations upon Surrender.** In connection with its surrender of the Premises, Tenant shall submit to Landlord, at least thirty (30) days prior to the expiration date of this Lease (or in the event of an earlier termination of this Lease, as soon as reasonably possible following such termination), an Environmental Assessment of the Premises, which (i) evidences that the Premises are in a clean and safe condition and free and clear of any Hazardous Materials; and (ii) includes a review of the Premises by an environmental consultant for asbestos, mold, fungus, spores, and other moisture conditions, on-site chemical use, and lead-based paint.

## 9. **Clean-up.**

9.1 **Environmental Reports; Clean-Up.** If any written report, including any report containing results of any Environmental Assessment (an "Environmental Report") shall indicate (i) the presence of any Hazardous Materials as to which Tenant has a removal or remediation obligation under this **Exhibit G**, and (ii) that as a result of same, the investigation, characterization, monitoring, assessment, repair, closure, remediation, removal, or other clean-up (the "Clean-up") of any Hazardous Materials is required, Tenant shall immediately prepare and submit to Landlord within thirty (30) days after receipt of the Environmental Report a comprehensive plan, subject to Landlord's written approval, specifying the actions to be taken by Tenant to perform the Clean-up so that the Premises is restored to the conditions required by this Lease. Upon Landlord's approval of the Clean-up plan, Tenant shall, at Tenant's sole cost and expense, without limitation on any rights and remedies of Landlord under this Lease, immediately implement such plan with a consultant reasonably acceptable to Landlord and proceed to Clean-up Hazardous Materials in accordance with all Applicable Laws and as required by such plan and this Lease. If, within thirty (30) days after receiving a copy of such Environmental Report, Tenant fails either (a) to complete such Clean-up, or (b) with respect to any Clean-up that cannot be completed within such thirty-day period, fails to proceed with diligence to prepare the Clean-up plan and complete the Clean-up as promptly as practicable, then Landlord shall have the right, but not the obligation, and without waiving any other rights under this Lease, to carry out any Clean-up recommended by the Environmental Report or required by any governmental authority having jurisdiction over the Premises, and recover all of the costs and expenses thereof from Tenant as Additional Rent, payable within ten (10) days after receipt of written demand therefor.

9.2 **No Rent Abatement.** Tenant shall continue to pay all Rent due or accruing under this Lease during any Clean-up, and shall not be entitled to any reduction, offset or deferral of any Base Rent or Additional Rent due or accruing under this Lease during any such Clean-up.

9.3 **Surrender of Premises.** Tenant shall complete any Clean-up prior to surrender of the Premises upon the expiration or earlier termination of this Lease, and shall fully comply with all Environmental Laws and requirements of any governmental authority with respect to such completion, including, without limitation, fully

comply with any requirement to file a risk assessment, mitigation plan or other information with any such governmental authority in conjunction with the Clean-up prior to such surrender. Tenant shall obtain and deliver to Landlord a letter or other written determination from the overseeing governmental authority confirming that the Clean-up has been completed in accordance with all requirements of such governmental authority and that no further response action of any kind is required for the unrestricted use of the Premises ("**Closure Letter**"). Upon the expiration or earlier termination of this Lease, Tenant shall also be obligated to close all permits obtained in connection with Hazardous Materials in accordance with Applicable Laws.

9.4 **Failure to Timely Clean-Up.** Should any Clean-up for which Tenant is responsible not be completed, or should Tenant not receive the Closure Letter and any governmental approvals required under Environmental Laws in conjunction with such Clean-up prior to the expiration or earlier termination of this Lease, then Tenant shall be liable to Landlord as a holdover tenant (as more particularly provided in Article 16) until Tenant has fully complied with its obligations under this Exhibit G.

10. **Confidentiality.** Unless compelled to do so by Applicable Laws, Tenant agrees that Tenant shall not disclose, discuss, disseminate or copy any information, data, findings, communications, conclusions and reports regarding the environmental condition of the Premises to any person or entity (other than Tenant's consultants, attorneys, property managers and employees that have a need to know such information), including any governmental authority, without the prior written consent of Landlord. In the event Tenant reasonably believes that disclosure is compelled by Applicable Laws, it shall provide Landlord ten (10) days' advance notice of disclosure of confidential information so that Landlord may attempt to obtain a protective order. Tenant may additionally release such information to bona fide prospective purchasers or lenders, subject to any such parties' written agreement to be bound by the terms of this Exhibit G.

11. **Copies of Environmental Reports.** Within thirty (30) days of receipt thereof, Tenant shall provide Landlord with a copy of any and all environmental assessments, audits, studies and reports regarding Tenant's activities with respect to the Premises, or ground water beneath the Land, or the environmental condition or Clean-up thereof. Tenant shall be obligated to provide Landlord with a copy of such materials without regard to whether such materials are generated by Tenant or prepared for Tenant, or how Tenant comes into possession of such materials.

12. **Signs, Response Plans, Etc.** Tenant shall be responsible for posting on the Premises any signs required under applicable Environmental Laws. Tenant shall also complete and file any business response plans or inventories required by any applicable laws. Tenant shall concurrently file a copy of any such business response plan or inventory with Landlord.

13 **Survival.** Each covenant, agreement, representation, warranty and indemnification made by Tenant set forth in this Exhibit G shall survive the expiration or earlier termination of this Lease and shall remain effective until all of Tenant's obligations under this Exhibit G have been completely performed and satisfied.

EXHIBIT G

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**SCHEDULE 1 TO EXHIBIT G**

**COLEMAN HIGHLINE**

**ENVIRONMENTAL QUESTIONNAIRE**

**ENVIRONMENTAL QUESTIONNAIRE  
FOR COMMERCIAL AND INDUSTRIAL PROPERTIES**

**Property Name:** \_\_\_\_\_

**Property Address:** \_\_\_\_\_

**Instructions:** The following questionnaire is to be completed by the Lessee representative with knowledge of the planned operations for the specified building/location. Please print clearly and attach additional sheets as necessary.

**1.0 PROCESS INFORMATION**

Describe planned use, and include brief description of manufacturing processes employed.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**2.0 HAZARDOUS MATERIALS**

Are hazardous materials used or stored? If so, continue with the next question. If not, go to Section 3.0.

2.1 Are any of the following materials handled on the Property?    Yes    No  

(A material is handled if it is used, generated, processed, produced, packaged, treated, stored, emitted, discharged, or disposed.) If so, complete this section. If this question is not applicable, skip this section and go on to Section 5.0.

- Explosives                       Fuels                               Oils
- Solvents                           Oxidizers                         Organics/Inorganics
- Acids                                 Bases                               Pesticides
- Gases                                 PCBs                               Radioactive Materials
- Other (please specify)

2-2. If any of the groups of materials checked in Section 2.1, please list the specific material(s), use(s), and quantity of each chemical used or stored on the site in the Table below. If convenient, you may substitute a chemical inventory and list the uses of each of the chemicals in each category separately.

Material	Physical State (Solid, Liquid, or Gas)	Usage	Container Size	Number of Containers	Total Quantity

2-3. Describe the planned storage area location(s) for these materials. Please include site maps and drawings as appropriate.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**3.0 HAZARDOUS WASTES**

Are hazardous wastes generated?    Yes    No  

If yes, continue with the next question. If not, skip this section and go to section 4.0.

3.1 Are any of the following wastes generated, handled, or disposed of (where applicable) on the Property?

- Hazardous wastes                       Industrial Wastewater
- Waste oils                                 PCBs
- Air emissions                             Sludges
- Regulated Wastes                       Other (please specify)



3-2. List and quantify the materials identified in Question 3-1 of this section.

WASTE GENERATED	RCRA listed Waste?	SOURCE	APPROXIMATE MONTHLY QUANTITY	WASTE CHARACTERIZATION	DISPOSITION

3-3. Please include name, location, and permit number (e.g. EPA ID No.) for transporter and disposal facility, if applicable. Attach separate pages as necessary.

Transporter/Disposal Facility Name	Facility Location	Transporter (T) or Disposal (D) Facility	Permit Number

3-4. Are pollution controls or monitoring employed in the process to prevent or minimize the release of wastes into the environment?    Yes  No

3-5. If so, please describe.

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**4.0 USTS/ASTS**

4.1 Are underground storage tanks (USTs), aboveground storage tanks (ASTs), or associated pipelines used for the storage of petroleum products, chemicals, or liquid wastes present on site (lease renewals) or required for planned operations (new tenants)? &    Yes \_\_\_\_\_ No \_\_\_\_\_

If not, continue with section 5.0. If yes, please describe capacity, contents, age, type of the USTs or ASTs, as well any associated leak detection/spill prevention measures. Please attach additional pages if necessary.

Capacity	Contents	Year Installed	Type (Steel, Fiberglass, etc)	Associated Leak Detection / Spill Prevention Measures*

\*Note: The following are examples of leak detection / spill prevention measures: Integrity testing Inventory reconciliation Leak detection system Overfill spill protection Secondary containment Cathodic protection

4-2. Please provide copies of written tank integrity test results and/or monitoring documentation, if available.

4-3. Is the UST/AST registered and permitted with the appropriate regulatory agencies?    Yes  No

If so, please attach a copy of the required permits.

4-4. If this Questionnaire is being completed for a lease renewal, and if any of the USTs/ASTs have leaked, please state the substance released, the media(s) impacted (e.g., soil, water, asphalt, etc.), the actions taken, and all remedial responses to the incident.

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

4-5. If this Questionnaire is being completed for a lease renewal, have USTs/ASTs been removed from the Property?    Yes  No

If yes, please provide any official closure letters or reports and supporting documentation (e.g., analytical test results, remediation report results, etc.).

4-6. For Lease renewals, are there any above or below ground pipelines on site used to transfer chemicals or wastes?    Yes  No

For new tenants, are installations of this type required for the planned operations?    Yes  No

If yes to either question, please describe.

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_



**5.0 ASBESTOS CONTAINING BUILDING MATERIALS**

Please be advised that an asbestos survey may have been performed at the Property. If provided, please review the information that identifies the locations of known asbestos containing material or presumed asbestos containing material. All personnel and appropriate subcontractors should be notified of the presence of these materials, and informed not to disturb these materials. Any activity that involves the disturbance or removal of these materials must be done by an appropriately trained individual/contractor.

**6.0 REGULATORY**

6-1. Does the operation have or require a National Pollutant Discharge Elimination System (NPDES) or equivalent permit?      Yes    No     
If so, please attach a copy of this permit.

6-2. Has a Hazardous Materials Business Plan been developed for the site?      Yes    No     
If so, please attach a copy.

**CERTIFICATION**

I am familiar with the real property described in this questionnaire. By signing below, I represent and warrant that the answers to the above questions are complete and accurate to the best of my knowledge. I also understand that Lessor will rely on the completeness and accuracy of my answers in assessing any environmental liability risks associated with the property.

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Telephone: \_\_\_\_\_

SCHEDULE 1 TO  
EXHIBIT G

**EXHIBIT H**

**COLEMAN HIGHLINE**

**FORM OF SNDA**

(See following pages)

EXHIBIT H

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**RECORDING REQUESTED BY  
AND WHEN RECORDED MAIL TO:**

Wells Fargo Bank, National Association  
Commercial Real Estate (AU #2961)  
1512 Eureka Road, 3rd Floor  
Roseville, CA 95661

Attn: Jackie DeSimone  
Loan No. 1015366

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(Space Above For Recorder's Use)

**SUBORDINATION AGREEMENT, ACKNOWLEDGMENT OF LEASE ASSIGNMENT, ESTOPPEL,  
ATTORNMEN T AND NON-DISTURBANCE AGREEMENT  
(Lease to Security Instrument)**

**THIS SUBORDINATION AGREEMENT RESULTS IN YOUR SECURITY INTEREST IN THE PROPERTY BECOMING SUBJECT TO AND OF LOWER PRIORITY THAN THE LIEN OF SOME OTHER OR LATER SECURITY INSTRUMENT.**

THIS SUBORDINATION AGREEMENT, ACKNOWLEDGMENT OF LEASE ASSIGNMENT, ESTOPPEL,

ATTORNMEN T AND NON-DISTURBANCE AGREEMENT ("**Agreement**") is made January 23, 2018 by and between Cap Phase I, LLC, a Delaware limited liability company, owner(s) of the real property hereinafter described ("**Borrower**" or "**Landlord**"), 8X8, INC., a Delaware corporation ("**Tenant**") and Wells Fargo Bank, National Association (collectively with its successors or assigns, "**Lender**").

**R E C I T A L S**

- A. Pursuant to the terms and provisions of an Office Lease dated January 23, 2018 ("**Lease**"), Borrower granted to Tenant a leasehold estate in and to a portion of the property described on Exhibit A attached hereto and incorporated herein by this reference (which property, together with all improvements now or hereafter located on the property, is defined as the "**Property**").
- B. Borrower has executed that certain Construction Deed of Trust with Assignment of Leases and Rents, Security Agreement and Fixture Filing dated December 29, 2015 and recorded on December 29, 2015 as Document Number 23183228 in the County of Santa Clara, California ("**Security Instrument**") securing, among other things, that certain Promissory Note Secured by Deed of Trust dated December 29, 2015 ("**Note**") in the principal sum of Ninety Seven Million Three Hundred Fifty Thousand and No/100ths Dollars (\$97,350,000.00), in favor of Lender ("**Loan**").
- C. As a condition to Lender making the Loan secured by the Security Instrument, Lender requires that the Security Instrument be unconditionally and at all times remain a lien on the Property, prior and superior to all the rights of Tenant under the Lease and that the Tenant specifically and unconditionally subordinate the Lease to the lien of the Security Instrument.
- D. Borrower and Tenant have agreed to the subordination, attornment and other agreements herein in favor of Lender.

NOW THEREFORE, for valuable consideration and to induce Lender to make the Loan, Borrower and Tenant hereby agree for the benefit of Lender as follows:

1 **SUBORDINATION.** Borrower and Tenant hereby agree that:

1.1 **Prior Lien.** The Security Instrument securing the Note in favor of Lender, and any modifications, renewals or extensions thereof (including, without limitation, any modifications, renewals or extensions with respect to any additional advances made subject to the Security Instrument), shall unconditionally be and at all times remain a lien on the Property prior and superior to the Lease;

1.2 **Subordination.** Lender would not make the Loan without this agreement to subordinate; and

1.4 **Whole Agreement.** This Agreement shall be the whole agreement and only agreement with regard to the subordination of the Lease to the lien of the Security Instrument and shall supersede and cancel, but only insofar as would affect the priority between the Security Instrument and the Lease, any prior agreements as to such subordination, including, without limitation, those provisions, if any, contained in the Lease which provide for the subordination of the Lease to a deed or deeds of trust or to a mortgage or mortgages.

AND FURTHER, Tenant individually declares, agrees and acknowledges for the benefit of Lender, that:

1.4 **Use of Proceeds.** Lender, in making disbursements pursuant to the Note, the Security Instrument or any loan agreements with respect to the Property, is under no obligation or duty to, nor has Lender represented that it will, see to the application of such proceeds by the person or persons to whom

EXHIBIT H

Lender disburses such proceeds, and any application or use of such proceeds for purposes other than those provided for in such agreement or agreements shall not defeat this agreement to subordinate in whole or in part; and

1.5 **Waiver, Relinquishment and Subordination.** Subject to the terms of this Agreement, including Tenant's non-disturbance rights set forth in Section 6 below, Tenant intentionally and unconditionally waives, relinquishes and subordinates all of Tenant's right, title and interest in and to the Property to the lien of the Security Instrument and understands that in reliance upon, and in consideration of, this waiver, relinquishment and subordination, specific loans and advances are being and will be made by Lender and, as part and parcel thereof, specific monetary and other obligations are being and will be entered into which would not be made or entered into but for said reliance upon this waiver, relinquishment and subordination.

2 **ASSIGNMENT.** Tenant acknowledges and consents to the assignment of the Lease by Borrower in favor of Lender.

3 **ESTOPPEL.** Tenant acknowledges and represents that:

3.1 **Entire Agreement.** The Lease constitutes the entire agreement between Borrower and Tenant with respect to the Property and Tenant claims no rights with respect to the Property other than as set forth in the Lease;

3.2 **No Prepaid Rent.** No deposits or prepayments of rent have been made in connection with the Lease, except as follows: Tenant has prepaid the first monthly installment of Base Rent in the amount of \$512,054.55;

3.3 **No Default.** To the best of Tenant's knowledge, as of the date hereof: (i) there exists no breach, default, or event or condition which, with the giving of notice or the passage of time or both, would constitute a breach or default under the Lease; and (ii) there are no existing claims, defenses or offsets against rental due or to become due under the Lease;

3.4 **Lease Effective.** The Lease has been duly executed and delivered by Tenant and, subject to the terms and conditions thereof, the Lease is in full force and effect, the obligations of Tenant thereunder are valid and binding and there have been no amendments, modifications or additions to the Lease, written or oral; and

3.5 **No Broker Liens.** Neither Tenant nor Borrower has incurred any fee or commission with any real estate broker which would give rise to any lien right under state or local law, except as follows: In connection with the execution of the Lease, Borrower's broker, CBRE, Inc., is entitled to a commission in the amount of \$6.00 per rentable square foot of the Premises, and Tenant's broker, CBRE, Inc., is entitled to a commission in the amount of \$15.00 per rentable square foot of the Premises, subject to certain terms and conditions as agreed by Borrower and Borrower's broker and by Tenant and Tenant's broker, respectively.

4 **ADDITIONAL AGREEMENTS.** Borrower and Tenant each covenants and agrees that, during all such times as Lender is the Beneficiary under the Security Instrument:

4.1 **Modification, Termination and Cancellation.** Neither Tenant nor Landlord will consent to any modification, amendment, termination or cancellation of the Lease (in whole or in part) without Lender's prior written consent and will not make any payment to Borrower in consideration of any modification, termination or cancellation of the Lease (in whole or in part) without Lender's prior written consent;

4.2 **Notice of Default.** Tenant will notify Lender in writing concurrently with any notice given to Borrower of any default by Borrower under the Lease, and Tenant agrees that Lender has the right (but not the obligation) to cure any breach or default specified in such notice within the time periods set forth below and Tenant will not declare a default of the Lease, as to Lender, if Lender cures such default within fifteen (15) days from and after the expiration of the time period provided in the Lease for the cure thereof by Borrower ; provided, however, that if such default cannot with diligence be cured by Lender within such fifteen (15) day period, the commencement of action by Lender within such fifteen (15) day period to remedy the same shall be deemed sufficient so long as Lender pursues such cure with diligence (but in no event more than ninety (90) days following the time that Landlord has under the Lease to cure or remedy the same);

4.3 **No Advance Rents.** Tenant will make no payments or prepayments of rent more than one (1) month in advance of the time when the same become due under the Lease;

4.4 **Assignment of Rents.** Upon receipt by Tenant of written notice from Lender that Lender has elected to terminate the license granted to Borrower to collect rents, as provided in the Security Instrument, and directing the payment of rents by Tenant to Lender, Tenant shall comply with such direction to pay and shall not be required to determine whether Borrower is in default under the Loan and/or the Security Instrument.

EXHIBIT H

5 **ATTORNMEN**. In the event of a foreclosure under the Security Instrument, Tenant agrees for the benefit of Lender (including for this purpose any transferee of Lender or any transferee of Borrower's title in and to the Property by Lender's exercise of the remedy of sale by foreclosure under the Security Instrument) as follows:

5.1 **Payment of Rent**. Tenant shall pay to Lender all rental payments required to be made by Tenant pursuant to the terms of the Lease for the duration of the term of the Lease;

5.2 **Continuation of Performance**. Tenant shall be bound to Lender in accordance with all of the provisions of the Lease for the balance of the term thereof, and Tenant hereby attorns to Lender as its landlord, such attornment to be effective and self-operative without the execution of any further instrument immediately upon Lender succeeding to Borrower's interest in the Lease and giving written notice thereof to Tenant;

5.3 **No Offset**. Lender shall not be liable for, nor subject to, any offsets or defenses which Tenant may have by reason of any act or omission of Borrower under the Lease, nor for the return of any sums which Tenant may have paid to Borrower under the Lease as and for security deposits, advance rentals or otherwise, except to the extent that such sums are actually delivered by Borrower to Lender; and

5.4 **Subsequent Transfer**. If Lender, by succeeding to the interest of Borrower under the Lease, should become obligated to perform the covenants of Borrower thereunder, then, upon any further transfer of Borrower's interest by Lender, all of such obligations shall terminate as to Lender.

5.5 **Limitation on Lender's Liability**. Tenant agrees to look solely to Lender's interest in the Property and the rent, income or proceeds derived therefrom for the recovery of any judgment against Lender, and in no event shall Lender or any of its affiliates, officers, directors, shareholders, partners, agents, representatives or employees ever be personally liable for any such obligation, liability or judgment.

5.6 **No Representation, Warranties or Indemnities**. Lender shall not be liable with respect to any representations, warranties or indemnities from Borrower, whether pursuant to the Lease or otherwise, including, but not limited to, any representation, warranty or indemnity related to the use of the Property, compliance with zoning, landlord's title, landlord's authority, habitability or fitness for purposes or commercial suitability, or hazardous wastes, hazardous substances, toxic materials or similar phraseology relating to the environmental condition of the Property or any portion thereof.

6 **NON-DISTURBANCE**. In the event of a foreclosure under the Security Instrument, so long as there shall then exist no breach, default, or event of default on the part of Tenant under the Lease, Lender agrees for itself and its successors and assigns that the leasehold interest of Tenant under the Lease shall not be extinguished or terminated by reason of such foreclosure, but rather the Lease shall continue in full force and effect and Lender shall recognize and accept Tenant as tenant under the Lease subject to the terms and provisions of the Lease except as modified by this Agreement; provided, however, that Tenant acknowledges and agrees that a foreclosing Lender shall not have any liability for failure to comply with any construction- related obligations of Landlord, including, without limitation, any obligations under Exhibit B to the Lease, and Tenant's only recourse for a failure by such Lender to comply with construction-related obligations shall be lease termination or other remedies expressly provided for in the Lease. Notwithstanding the foregoing, in all events, Borrower shall remain liable to Tenant for any undisbursed Tenant Improvement Allowance (as defined in the Lease).

Tenant would not enter into the Lease without the non-disturbance rights set forth in this Section and its other rights under this Agreement.

## 7 **MISCELLANEOUS**.

7.1 **Remedies Cumulative**. All rights of Lender herein to collect rents on behalf of Borrower under the Lease are cumulative and shall be in addition to any and all other rights and remedies provided by law and by other agreements between Lender and Borrower or others.

7.2 **NOTICES**. All notices, demands, or other communications under this Agreement and the other Loan Documents shall be in writing and shall be delivered to the appropriate party at the address set forth below (subject to change from time to time by written notice to all other parties to this Agreement). All notices, demands or other communications shall be considered as properly given if delivered personally or sent by first class United States Postal Service mail, postage prepaid, or by Overnight Express Mail or by overnight commercial courier service, charges prepaid, except that notice of Default may be sent by certified mail, return receipt requested, charges prepaid. Notices so sent shall be effective three (3) Business Days after mailing, if mailed by first class mail, and otherwise upon delivery or refusal; provided, however, that non-receipt of any communication as the result of any change of address of which the sending party was not notified or as the result of a refusal to accept delivery shall be deemed receipt of such communication. For purposes of notice, the address of the parties shall be:

EXHIBIT H

Borrower:	Cap Phase I, LLC c/o Hunter Properties, Inc. 10121 Miller Avenue, Suite 200 Cupertino, CA 95014  Attention: Robert McMaster
Tenant:	If prior to Lease Commencement Date (as defined in the Lease):  8x8, Inc. 2125 O'Nel Drive San Jose, CA 95131  Attention: Chief Financial Officer  If after Lease Commencement Date:  8x8, Inc. 1143 Coleman Avenue, Building 1 San Jose, CA 95110  Attention: Chief Financial Officer
With a copy to:	Pillsbury Winthrop Shaw Pittman LLP 725 South Figueroa Street, Suite 2800 Los Angeles, CA 90017-5406  Attention: James M. Rishwain, Jr.
Lender:	Wells Fargo Bank, National Association Commercial Real Estate (AU #2961) 420 Montgomery Street, 6th Floor San Francisco, CA 94104  Attention: Sarah Spector Carroll  Loan #: 1015366
With a copy to:	Wells Fargo Bank, National Association Minneapolis Loan Center 600 South 4th Street, 9th Floor MAC: N9300-091 Minneapolis, MN 55415  Attention: Disbursement Administrator

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 party in the manner set forth hereinabove.

7.3 **Heirs, Successors and Assigns.** Except as otherwise expressly provided under the terms and conditions herein, the terms of this Agreement shall bind and inure to the benefit of the heirs, executors, administrators, nominees, successors and assigns of the parties hereto.

7.4 **Headings.** All article, section or other headings appearing in this Agreement are for convenience of reference only and shall be disregarded in construing this Agreement.

7.5 **Counterparts.** To facilitate execution, this document may be executed in as many counterparts as may be convenient or required. It shall not be necessary that the signature of, or on behalf of, each party, or that the signature of all persons required to bind any party, appear on each counterpart. All counterparts shall collectively constitute a single document. It shall not be necessary in making proof of this document to produce or account for more than a single counterpart containing the respective signatures of, or on behalf of, each of the parties hereto. Any signature page to any counterpart may be detached from such counterpart without impairing the legal effect of the signatures thereon and thereafter attached to another counterpart identical thereto except having attached to it additional signature pages.

7.6 **Exhibits, Schedules and Riders.** All exhibits, schedules, riders and other items attached hereto are incorporated into this Agreement by such attachment for all purposes.

**IT IS RECOMMENDED THAT, PRIOR TO THE EXECUTION OF THIS AGREEMENT, THE PARTIES CONSULT WITH THEIR ATTORNEYS WITH RESPECT HERETO.**

[Remainder of page intentionally left blank]

EXHIBIT H



IN WITNESS WHEREOF, the parties hereto have duly executed and delivered this Agreement as of the day and year first above written.

"BORROWER"

**CAP PHASE I, LLC,**  
**a Delaware limited liability company**

By: \_\_\_\_\_  
**Derek K. Hunter, Jr., President**

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State \_\_\_\_\_ )  
of \_\_\_\_\_ )  
County \_\_\_\_\_ )  
of \_\_\_\_\_ )

On \_\_\_\_\_ before me, \_\_\_\_\_, Notary Public, personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person(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 authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of \_\_\_\_\_ that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_ (Seal)  
Signature of Notary Public

EXHIBIT H

"TENANT"

**8X8, INC.,**  
**a Delaware corporation**

By: \_\_\_\_\_

**Name:**

**Title:**

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State \_\_\_\_\_ )  
of \_\_\_\_\_ )  
\_\_\_\_\_ )

County  
of

On \_\_\_\_\_ before me, \_\_\_\_\_, Notary Public, personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person(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 authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of \_\_\_\_\_ that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_

(Seal)

Signature of Notary Public

EXHIBIT H

"LENDER"

**WELLS FARGO BANK, NATIONAL ASSOCIATION**

By: \_\_\_\_\_

**Sarah Spector Carroll**  
**Vice President**

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State \_\_\_\_\_ )  
of \_\_\_\_\_ )  
County \_\_\_\_\_ )  
of \_\_\_\_\_ )

On \_\_\_\_\_ before me, \_\_\_\_\_, Notary Public, personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person(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 authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of \_\_\_\_\_ that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_ (Seal)  
Signature of Notary Public

EXHIBIT H

EXHIBIT A - DESCRIPTION OF PROPERTY

Exhibit A to Construction Deed of Trust with Absolute Assignment of Leases and Rents, Security Agreement and Fixture Filing by CAP PHASE 1, LLC, a Delaware limited liability company ("Trustor"), in favor of AMERICAN SECURITIES COMPANY, a California corporation ("Trustee"), for the benefit of WELLS FARGO BANK, NATIONAL ASSOCIATION (collectively with its successors or assigns, "Beneficiary") dated as of December 29, 2015.

All that certain real property located in the County of Santa Clara, City of San Jose, State of California, described as follows:

Real property in the City of San Jose, County of Santa Clara, State of California, described as follows:

PARCEL ONE: (Lot 1)

All that certain real property situate in the City of San Jose, County of Santa Clara, State of California, being a portion of Adjusted Parcel B as described in the Lot Line Adjustment Permit recorded on June 22, 1999 as Document No. 14867793, Official Records of Santa Clara County, said property being more particularly described as follows:

Commencing at the most easterly corner of said Adjusted Parcel B, said corner being on the Southwesterly line of Coleman Avenue, shown as "Proposed Coleman Ave." on the Record of Survey recorded on January 25, 1960 in Book 116 of Maps, at Page 18, Records of Santa Clara County;

Thence along the Northeasterly line of said Adjusted Parcel B, also being said Southwesterly line of Coleman Avenue, North 57° 34' 50" West 613.02 feet to the most Northerly corner of the property described in the Grant Deed recorded on November 14, 2012 as Document No. 21950036, Official Records of Santa Clara County;

Thence along the general Northwesterly line of said Grant Deed, South 32° 25' 10" West 12.46 feet to the Point of Beginning;

Thence continuing along said general Northwesterly line of said Grant Deed the following four courses:

South 32° 25' 10" West 914.47 feet to the beginning of a non-tangent curve to the right, concave Southwesterly, having a radius of 790.00 feet, a radial line to said curve bears North 46° 30' 54" East;

Along said curve through a central angle of 8° 56' 30", an arc length of 123.29 feet;

South 34° 32' 36" East 137.61 feet to the beginning of a tangent curve to the left, concave Northeasterly, having a radius of 810.00 feet;

Along said curve through a central angle of 19° 32' 12", an arc length of 276.19 feet to the Southwesterly line of said Adjusted Parcel B;

Thence along said Southwesterly line of Adjusted Parcel B, North 57° 34' 50" West 830.92 feet to the most Westerly corner of said Adjusted Parcel B;

Thence along the Northwesterly line of said Adjusted Parcel B, North 32° 25' 10" East 265.72 feet to a point being 817.36 feet distant southwesterly, measured at a right angle, from said Southwesterly line of Coleman Avenue;

*Exhibit A to Construction Deed of Trust*

EXHIBIT H

Thence parallel with said Southwesterly line of Coleman Avenue, South 57° 34' 50" East 255.23 feet to the beginning of a tangent curve to the left, concave Northerly, having a radius of 40.00 feet;

Thence along said curve through a central angle of 90° 00' 00", an arc length of 62.83 feet to a point being 637.79 feet distant northwesterly, measured at a right angle, from the Southeasterly line of said Adjusted Parcel B;

Thence parallel with said Southeasterly line of Adjusted Parcel B, North 32° 25' 10" East 735.36 feet to the beginning of a tangent curve to the right, concave Southerly, having a radius of 30.00 feet;

Thence along said curve through a central angle of 79° 57' 34", an arc length of 41.87 feet to the Point of Beginning.

PARCEL TWO: (Lot 2)

All that certain real property situate in the City of San Jose, County of Santa Clara, State of California, being a portion of Adjusted Parcel B as described in the Lot Line Adjustment Permit recorded on June 22, 1999 as Document No. 14867793, Official Records of Santa Clara County, said property being more particularly described as follows:

Commencing at the most easterly corner of said Adjusted Parcel B, said corner being on the Southwesterly line of Coleman Avenue, shown as "Proposed Coleman Ave." on the Record of Survey recorded on January 25, 1960 in Book 116 of Maps, at Page 18, Records of Santa Clara County;

Thence along the Northeasterly line of said Adjusted Parcel B, also being said Southwesterly line of Coleman Avenue, North 57° 34' 50" West 613.02 feet to the most Northerly corner of the property described in the Grant Deed recorded on November 14, 2012 as Document No. 21950036, Official Records of Santa Clara County;

Thence along the general Northwesterly line of said Grant Deed, South 32° 25' 10" West 12.00 feet to a point being 12.00 feet distant southwesterly, measured at a right angle, from said Southwesterly line of Coleman Avenue;

Thence parallel with said Southwesterly line of Coleman Avenue, North 57° 34' 50" West 144.77 feet to the Point of Beginning, said point being a point of cusp, said point also being the beginning of a tangent curve to the right, concave westerly, having a radius of 30.00 feet;

Thence along said curve through a central angle of 90° 00' 00", an arc length of 47.12 feet to a point being 727.79 feet distant northwesterly, measured at a right angle, from the southeasterly line of said Adjusted Parcel B;

Thence parallel with said southeasterly line of Adjusted Parcel B, South 32° 25' 10" West 319.94 feet to a point being 361.94 feet distant southwesterly, measured at a right angle, from said southwesterly line of Coleman Avenue;

Thence parallel with said southwesterly line of Coleman Avenue, North 57° 34' 50" West 92.13 feet to a point being 819.92 feet distant northwesterly, measured at a right angle, from said southeasterly line of Adjusted Parcel B;

Thence parallel with said southeasterly line of Adjusted Parcel B, North 32° 25' 10" East 349.94 feet to a point being 12.00 feet distant southwesterly, measured at a right angle, from said southwesterly line of Coleman Avenue;

Thence parallel with said Southwesterly line of Coleman Avenue, South 57° 34' 50" East 62.13 feet to the Point of Beginning.

EXHIBIT H

PARCEL THREE: (Lot 3)

All that certain real property situate in the City of San Jose, County of Santa Clara, State of California, being a portion of Adjusted Parcel B as described in the Lot Line Adjustment Permit recorded on June 22, 1999 as Document No. 14867793, Official Records of Santa Clara County and a portion of Parcel One as described in the Grant Deed recorded on January 19, 2011 as Document No. 21052358, Official Records of Santa Clara County, said property being more particularly described as follows:

Commencing at the most easterly corner of said Adjusted Parcel B, said corner being on the Southwesterly line of Coleman Avenue, shown as "Proposed Coleman Ave." on the Record of Survey recorded on January 25, 1960 in Book 116 of Maps, at Page 18, Records of Santa Clara County;

Thence along the Northeasterly line of said Adjusted Parcel B, also being said Southwesterly line of Coleman Avenue, North 57° 34' 50" West 613.02 feet to the most Northerly corner of the property described in the Grant Deed recorded on November 14, 2012 as Document No. 21950036, Official Records of Santa Clara County;

Thence along the general Northwesterly line of said Grant Deed, South 32° 25' 10" West 12.00 feet to a point being 12.00 feet distant southwesterly, measured at a right angle, from said Southwesterly line of Coleman Avenue;

Thence parallel with said Southwesterly line of Coleman Avenue, North 57° 34' 50" West 144.77 feet to a point of cusp, said point being also the beginning of a tangent curve to the right, concave westerly, having a radius of 30.00 feet;

Thence along said curve through a central angle of 90° 00' 00", an arc length of 47.12 feet to a point being 727.79 feet distant northwesterly, measured at a right angle, from the southeasterly line of said Adjusted Parcel B;

Thence parallel with said southeasterly line of Adjusted Parcel B, South 32° 25' 10" West 319.94 feet to the Point of Beginning, said point being 361.94 feet distant southwesterly, measured at a right angle, from said southwesterly line of Coleman Avenue;

Thence parallel with said southwesterly line of Coleman Avenue, North 57° 34' 50" West 309.42 feet to a point being 1,037.21 feet distant northwesterly, measured at a right angle, from said southeasterly line of Adjusted Parcel B;

Thence parallel with said southeasterly line of Adjusted Parcel B, South 32° 25' 10" West 163.92 feet to a point being 525.86 feet distant southwesterly, measured at a right angle, from said southwesterly line of Coleman Avenue;

Thence parallel with said southwesterly line of Coleman Avenue, South 57° 34' 50" East 309.42 feet to a point being 727.79 feet distant northwesterly, measured at a right angle, from said southeasterly line of Adjusted Parcel B;

Thence parallel with said southeasterly line of Adjusted Parcel B, North 32° 25' 10" East 163.92 feet to the Point of Beginning.

PARCEL FOUR: (Lot 4)

All that certain real property situate in the City of San Jose, County of Santa Clara, State of California, being a portion of Adjusted Parcel B as described in the Lot Line Adjustment Permit recorded on June 22, 1999 as Document No. 14867793, Official Records of Santa Clara County and a portion of Parcel One as described in the Grant Deed recorded on January 19, 2011 as Document No. 21052358, Official Records of Santa Clara County, said property being more particularly described as follows:

EXHIBIT H

Commencing at the most easterly corner of said Adjusted Parcel B, said corner being on the Southwesterly line of Coleman Avenue, shown as "Proposed Coleman Ave." on the Record of Survey recorded on January 25, 1960 in Book 116 of Maps, at Page 18, Records of Santa Clara County;

Thence along the Northeasterly line of said Adjusted Parcel B, also being said Southwesterly line of Coleman Avenue, North 57° 34' 50" West 613.02 feet to the most Northerly corner of the property described in the Grant Deed recorded on November 14, 2012 as Document No. 21950036, Official Records of Santa Clara County;

Thence along the general Northwesterly line of said Grant Deed, South 32° 25' 10" West 12.00 feet to a point being 12.00 feet distant southwesterly, measured at a right angle, from said Southwesterly line of Coleman Avenue;

Thence parallel with said Southwesterly line of Coleman Avenue, North 57° 34' 50" West 144.77 feet to a point of cusp, said point being also the beginning of a tangent curve to the right, concave westerly, having a radius of 30.00 feet;

Thence along said curve through a central angle of 90° 00' 00", an arc length of 47.12 feet to a point being 727.79 feet distant northwesterly, measured at a right angle, from the southeasterly line of said Adjusted Parcel B;

Thence parallel with said southeasterly line of Adjusted Parcel B, South 32° 25' 10" West 483.86 feet to the Point of Beginning, said point being 525.86 feet distant southwesterly, measured at a right angle, from said southwesterly line of Coleman Avenue;

Thence parallel with said southwesterly line of Coleman Avenue, North 57° 34' 50" West 309.42 feet to a point being 1,037.21 feet distant northwesterly, measured at a right angle, from said southeasterly line of Adjusted Parcel B;

Thence parallel with said southeasterly line of Adjusted Parcel B, South 32° 25' 10" West 230.50 feet to a point being 756.36 feet distant southwesterly, measured at a right angle, from said southwesterly line of Coleman Avenue;

Thence parallel with said southwesterly line of Coleman Avenue, South 57° 34' 50" East 289.42 feet to the beginning of a tangent curve to the left, concave northerly, having a radius of 20.00 feet;

Thence along said curve through a central angle of 90° 00' 00", an arc length of 31.42 feet to a point being 727.79 feet distant northwesterly, measured at a right angle, from said southeasterly line of Adjusted Parcel B;

Thence parallel with said Southeasterly line of Adjusted Parcel B, North 32° 25' 10" East 210.50 feet to the Point of Beginning.

#### PARCEL FIVE: (Lot 5)

All that certain real property situate in the City of San Jose, County of Santa Clara, State of California, being a portion of Adjusted Parcel B as described in the Lot Line Adjustment Permit recorded on June 22, 1999 as Document No. 14867793, Official Records of Santa Clara County and a portion of Parcel One as described in the Grant Deed recorded on January 19, 2011 as Document No. 21052358, Official Records of Santa Clara County, said property being more particularly described as follows:

Commencing at the most easterly corner of said Adjusted Parcel B, said corner being on the Southwesterly line of Coleman Avenue, shown as "Proposed Coleman Ave." on the Record of Survey recorded on January 25, 1960 in Book 116 of Maps, at Page 18, Records of Santa Clara County;

EXHIBIT H

Thence along the Northeasterly line of said Adjusted Parcel B, also being said Southwesterly line of Coleman Avenue, North 57° 34' 50" West 613.02 feet to the most Northerly corner of the property described in the Grant Deed recorded on November 14, 2012 as Document No. 21950036, Official Records of Santa Clara County;

Thence along the general Northwesterly line of said Grant Deed, South 32° 25' 10" West 12.00 feet to a point being 12.00 feet distant southwesterly, measured at a right angle, from said Southwesterly line of Coleman Avenue;

Thence parallel with said Southwesterly line of Coleman Avenue, North 57° 34' 50" West 206.90 feet to the Point of Beginning, said point being 1,037.21 feet distant northwesterly, measured at a right angle, from the southeasterly line of said Adjusted Parcel B;

Thence continuing parallel with said southwesterly line of Coleman Avenue, North 57° 34' 50" West 217.29 feet, said point being 1,254.50 feet distant northwesterly, measured at a right angle, from said southeasterly line of Adjusted Parcel B;

Thence parallel with said southeasterly line of Adjusted Parcel B, South 32° 25' 10" West 349.94 feet to a point being 361.94 feet distant southwesterly, measured at a right angle, from said southwesterly line of Coleman Avenue;

Thence parallel with said southwesterly line of Coleman Avenue, South 57° 34' 50" East 217.29 feet to a point being 819.92 feet distant northwesterly, measured at a right angle, from said southeasterly line of Adjusted Parcel B;

Thence parallel with said southeasterly line of Adjusted Parcel B, North 32° 25' 10" East 349.94 feet to the Point of Beginning.

PARCEL SIX: (Lot 6)

All that certain real property situate in the City of San Jose, County of Santa Clara, State of California, being a portion of Parcel One as described in the Grant Deed recorded on January 19, 2011 as Document No. 21052358, Official Records of Santa Clara County, said property being more particularly described as follows:

Commencing at the most easterly corner of Adjusted Parcel B as described in the Lot Line Adjustment Permit recorded on June 22, 1999 as Document No. 14867793, Official Records of Santa Clara County, said corner being on the southwesterly line of Coleman Avenue, shown as "Proposed Coleman Ave." on the Record of Survey recorded on January 25, 1960 in Book 116 of Maps, at Page 18, Records of Santa Clara County;

Thence along the Northeasterly line of said Adjusted Parcel B, also being said Southwesterly line of Coleman Avenue, North 57° 34' 50" West 613.02 feet to the most Northerly corner of the property described in the Grant Deed recorded on November 14, 2012 as Document No. 21950036, Official Records of Santa Clara County;

Thence along the general Northwesterly line of said Grant Deed, South 32° 25' 10" West 12.00 feet to a point being 12.00 feet distant southwesterly, measured at a right angle, from said Southwesterly line of Coleman Avenue;

Thence parallel with said Southwesterly line of Coleman Avenue, North 57° 34' 50" West 424.19 feet to the Point of Beginning, said point being 1,037.21 feet distant northwesterly, measured at a right angle, from the southeasterly line of said Adjusted Parcel B;



Thence continuing parallel with said southwesterly line of Coleman Avenue, North 57° 34' 50" West 328.5 feet, said point being 1,365.71 feet distant northwesterly, measured at a right angle, from said southeasterly line of Adjusted Parcel B;

Thence parallel with the southeasterly line of said Adjusted Parcel B, South 32° 25' 10" West 513.86 feet to a point being 525.86 feet distant southwesterly, measured at a right angle, from said southwesterly line of Coleman Avenue;

Thence parallel with said southwesterly line of Coleman Avenue, South 57° 34' 50" East 328.50 feet to a point being 1,037.21 feet distant northwesterly, measured at a right angle, from said southeasterly line of Adjusted Parcel B;

Thence parallel with the southeasterly line of said Adjusted Parcel B, North 32° 25' 10" East 513.86 feet to the Point of Beginning.

**PARCEL SEVEN: (Lot 7)**

All that certain real property situate in the City of San Jose, County of Santa Clara, State of California, being a portion of Parcel One as described in the Grant Deed recorded on January 19, 2011 as Document No. 21052358, Official Records of Santa Clara County, said property being more particularly described as follows:

Commencing at the most easterly corner of Adjusted Parcel B as described in the Lot Line Adjustment Permit recorded on June 22, 1999 as Document No. 14867793, Official Records of Santa Clara County, said corner being on the southwesterly line of Coleman Avenue, shown as "Proposed Coleman Ave." on the Record of Survey recorded on January 25, 1960 in Book 116 of Maps, at Page 18, Records of Santa Clara County;

Thence along the Northeasterly line of said Adjusted Parcel B, also being said Southwesterly line of Coleman Avenue, North 57° 34' 50" West 613.02 feet to the most Northerly corner of the property described in the Grant Deed recorded on November 14, 2012 as Document No. 21950036, Official Records of Santa Clara County;

Thence along the general Northwesterly line of said Grant Deed, South 32° 25' 10" West 12.00 feet to a point being 12.00 feet distant southwesterly, measured at a right angle, from said Southwesterly line of Coleman Avenue;

Thence parallel with said Southwesterly line of Coleman Avenue, North 57° 34' 50" West 424.19 feet to the Point of Beginning, said point being 1,037.21 feet distant northwesterly, measured at a right angle, from the southeasterly line of said Adjusted Parcel B;

Thence parallel with the southeasterly line of said Adjusted Parcel B, South 32° 25' 10" West 513.86 feet to the Point of Beginning, said point being 525.86 feet distant southwesterly, measured at a right angle, from said southwesterly line of Coleman Avenue.

Thence parallel with said southwesterly line of Coleman Avenue, North 57° 34' 50" West 328.50 feet to a point being 1,365.71 feet distant northwesterly, measured at a right angle, from said southeasterly line of Adjusted Parcel B;

Thence parallel with said southeasterly line of Adjusted Parcel B, South 32° 25' 10" West 230.50 feet to a point being distant 756.36 feet southwesterly, measured at a right angle, from said southwesterly line of Coleman Avenue;

Thence parallel with said southwesterly line of Coleman Avenue, South 57° 34' 50" East 328.50 feet to a point being 1,037.21 feet distant northwesterly, measured at a right angle, from said southeasterly line of Adjusted Parcel B;

Thence parallel with said southeasterly line of Adjusted Parcel B, North 32° 25' 10" East 230.50 feet to the Point of Beginning.

**PARCEL EIGHT: (Lot 8)**

All that certain real property situate in the City of San Jose, County of Santa Clara, State of California, being a portion of Parcel One as described in the Grant Deed recorded on January 19, 2011 as Document No. 21052358, Official Records of Santa Clara County, said property being more particularly described as follows:

Commencing at the most easterly corner of Adjusted Parcel B as described in the Lot Line Adjustment Permit recorded on June 22, 1999 as Document No. 14867793, Official Records of Santa Clara County, said corner being on the southwesterly line of Coleman Avenue, shown as "Proposed Coleman Ave." on the Record of Survey recorded on January 25, 1960 in Book 116 of Maps, at Page 18, Records of Santa Clara County;

Thence along the Northeasterly line of said Adjusted Parcel B, also being said Southwesterly line of Coleman Avenue, North 57° 34' 50" West 613.02 feet to the most Northerly corner of the property described in the Grant Deed recorded on November 14, 2012 as Document No. 21950036, Official Records of Santa Clara County;

Thence along the general Northwesterly line of said Grant Deed, South 32° 25' 10" West 12.00 feet to a point being 12.00 feet distant southwesterly, measured at a right angle, from said Southwesterly line of Coleman Avenue;

Thence parallel with said Southwesterly line of Coleman Avenue, North 57° 34' 50" West 752.69 feet to the Point of Beginning, said point being 1,365.71 feet distant northwesterly, measured at a right angle, from the southeasterly line of said Adjusted Parcel B;

Thence parallel with said Southeasterly line of Adjusted Parcel B South 32° 25' 10" West 513.86 feet to a point being 525.86 feet distant southwesterly, measured at a right angle, from said southwesterly line of Coleman Avenue;

Thence parallel with said southwesterly line of Coleman Avenue, North 57° 34' 50" West 513.68 feet to a point being 1,879.39 feet distant northwesterly, measured at a right angle, from said southeasterly line of Adjusted Parcel B;

Thence parallel with said Southeasterly line of Adjusted Parcel B, North 32° 25' 10" East 483.86 feet to the beginning of a tangent curve to the right, concave southerly, having a radius of 30.00 feet;

Thence along said curve through a central angle of 90° 00' 00", an arc distance of 47.12 feet to a point being 12.00 feet distant southwesterly, measured at a right angle, from said southwesterly line of Coleman Avenue;

Thence parallel with said southwesterly line of Coleman Avenue, South 57° 34' 50" East 483.68 feet to the Point of Beginning.

**PARCEL NINE: (Lot 9)**

All that certain real property situate in the City of San Jose, County of Santa Clara, State of California, being a portion of Parcel One as described in the Grant Deed recorded on January 19, 2011 as Document No. 21052358, Official Records of Santa Clara County, said property being more particularly described as follows:

EXHIBIT H

Commencing at the most easterly corner of Adjusted Parcel B as described in the Lot Line Adjustment Permit recorded on June 22, 1999 as Document No. 14867793, Official Records of Santa Clara County, said corner being on the southwesterly line of Coleman Avenue, shown as "Proposed Coleman Ave." on the Record of Survey recorded on January 25, 1960 in Book 116 of Maps, at Page 18, Records of Santa Clara County;

Thence along the Northeasterly line of said Adjusted Parcel B, also being said Southwesterly line of Coleman Avenue, North 57° 34' 50" West 613.02 feet to the most Northerly corner of the property described in the Grant Deed recorded on November 14, 2012 as Document No. 21950036, Official Records of Santa Clara County;

Thence along the general Northwesterly line of said Grant Deed, South 32° 25' 10" West 12.00 feet to a point being 12.00 feet distant southwesterly, measured at a right angle, from said Southwesterly line of Coleman Avenue;

Thence parallel with said Southwesterly line of Coleman Avenue, North 57° 34' 50" West 752.69 feet to a point being 1,365.71 feet distant northwesterly, measured at a right angle, from the southeasterly line of said Adjusted Parcel B;

Thence parallel with the Southeasterly line of said Adjusted Parcel B, South 32° 25' 10" West 513.86 feet to the Point of Beginning, said point being 525.86 feet distant southwesterly, measured at a right angle, from said southwesterly line of Coleman Avenue;

Thence parallel with said southeasterly line of Adjusted Parcel B, South 32° 25' 10" West 230.50 feet to a point being 756.36 feet distant southwesterly, measured at a right angle, from said southwesterly line of Coleman Avenue;

Thence parallel with said southwesterly line of Coleman Avenue, North 57°34' 50" West 493.68 feet to the beginning of a tangent curve to the right, concave easterly, having a radius of 20.00 feet;

Thence along said curve, through a central angle of 90° 00' 00", an arc length of 31.42 feet to a point being 1,879.39 feet distant northwesterly, measured at a right angle, from the southeasterly line of said Adjusted Parcel B;

Thence parallel with said southeasterly line of Adjusted Parcel B, North 32° 25' 10" East 210.50 feet to a point being 525.86 feet distant southwesterly, measured at a right angle, from said southwesterly line of Coleman Avenue;

Thence parallel with said southwesterly line of Coleman Avenue, South 57°34' 50" East 513.68 feet to the Point of Beginning.

**PARCEL TEN:**

Non-exclusive easements as contained in that certain "Amended and Restated Reciprocal Easement Agreement" recorded March 5, 2015 as Instrument No. 22873580 of Official Records.

APN: 230-46-062 (portion) and 230-46-074 (portion)

EXHIBIT H

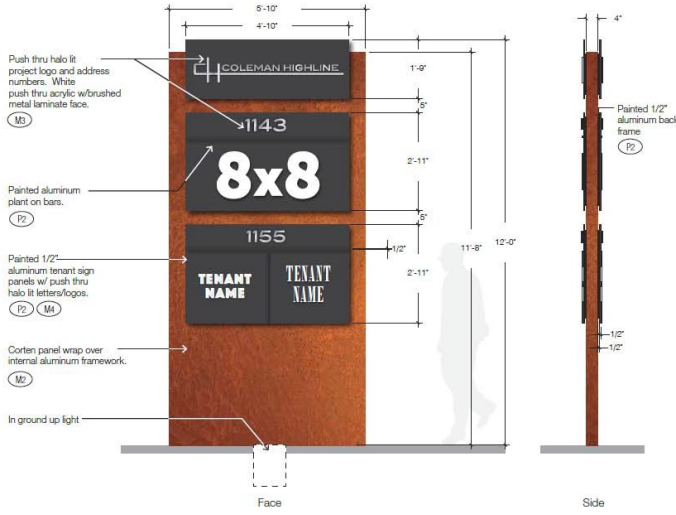
**EXHIBIT I**

**COLEMAN HIGHLINE**

**LOCATIONS OF TENANT'S SIGNAGE**



3D View



Face

Side

ROSS+LUTHINCREATIVE

707.673.7369  
creative@rossluthin.com  
848 Third Street, Studio B  
Santa Rosa CA 95404



PROJECT



Exterior Signage

PHASE  
 Planning  
 Conceptual Design  
 Design Devel. 90%  
 City Submittal

DATE  
 01/22/18

SCALE  
 1/2"=1'-0"

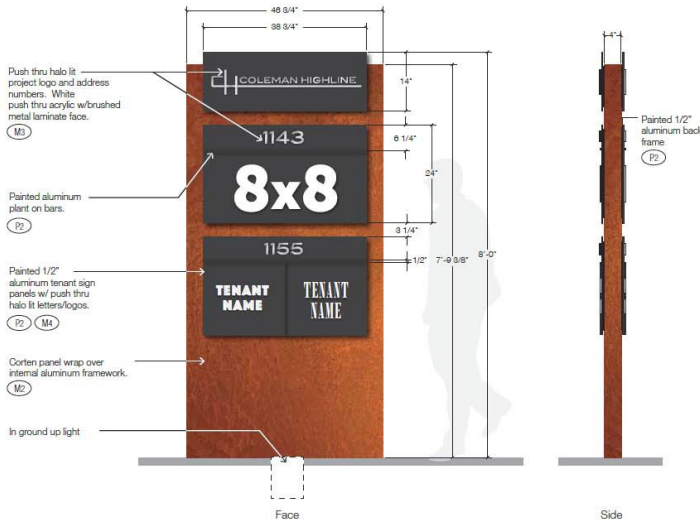
TITLE  
**MID-1**  
 Project Monument  
 w/ Tenant Names

PAGE

**1.0**



3D View



Face

Side

ROSS+LUTHINCREATIVE

707.673.7369  
creative@rossluthin.com  
848 Third Street, Studio B  
Santa Rosa CA 95404



PROJECT



Exterior Signage

PHASE  
 Planning  
 Conceptual Design  
 Design Devel. 90%  
 City Submittal

DATE  
 01.22.18

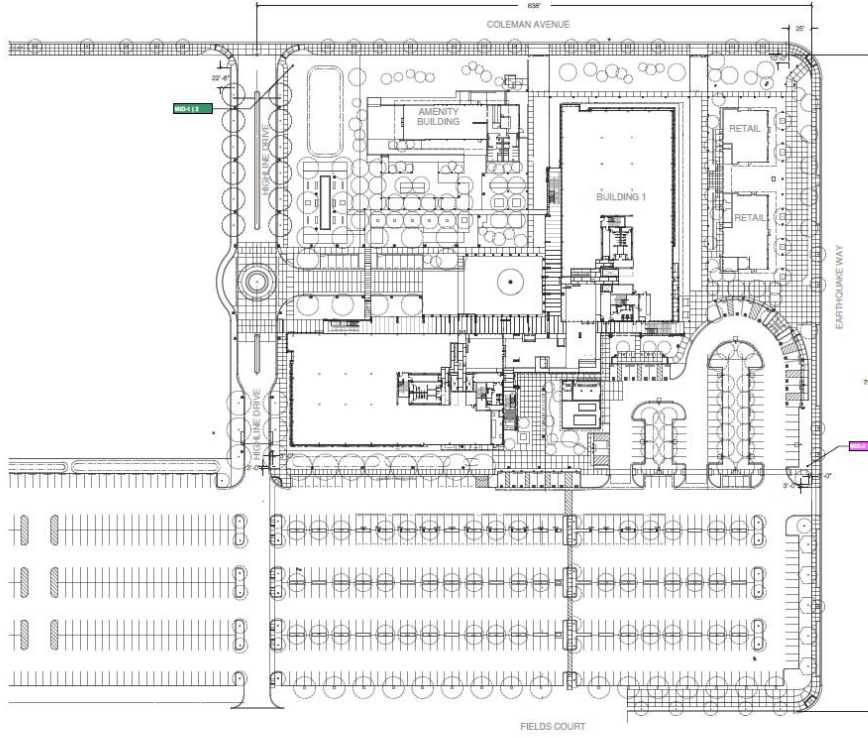
SCALE  
 3/4"=1'-0"

TITLE  
**MID-2**  
 Secondary Monument  
 w/ Tenant Names

PAGE

**2.0**

**EXHIBIT I**



ROSS LUTHER CREATIVE  
 107 212 2259  
 2201 17th Street, Suite 100  
 San Francisco, CA 94116



COLEMAN HIGHLINE  
 1143 Coleman Avenue

- Planning
  - Conceptual Design
  - Design Development
  - City Submittal
- 01.20.18 11-40'
- Sign Locations**  
 Site



SL.1

EXHIBIT I  
 -2-

**EXHIBIT J**

**COLEMAN HIGHLINE**

**FORM OF LETTER OF CREDIT**

**(Letterhead of a money center bank  
acceptable to the Landlord)**

FAX NO. [( ) - ]  
SWIFT: [Insert No., if any]

[Insert Bank Name And Address]

DATE OF ISSUE: \_\_\_\_\_

EXPIRATION DATE:  
\_\_\_\_\_ AT OUR COUNTERS

AMOUNT AVAILABLE:  
USD[Insert Dollar Amount] (U.S. DOLLARS [Insert Dollar Amount])

LADIES AND GENTLEMEN:

WE HEREBY ESTABLISH OUR IRREVOCABLE STANDBY LETTER OF CREDIT NO. IN YOUR

FAVOR FOR THE ACCOUNT OF [Insert Tenant's Name], A [Insert Entity Type], UP TO THE AGGREGATE AMOUNT OF USD[Insert Dollar Amount] ([Insert Dollar Amount] U.S. DOLLARS) EFFECTIVE IMMEDIATELY AND EXPIRING ON (Expiration Date) AVAILABLE BY PAYMENT UPON PRESENTATION OF YOUR DRAFT AT SIGHT DRAWN ON [Insert Bank Name] WHEN ACCOMPANIED BY THE FOLLOWING DOCUMENT(S):

- 1. THE ORIGINAL OF THIS IRREVOCABLE STANDBY LETTER OF CREDIT AND AMENDMENT(S), IF ANY.**
- 2. BENEFICIARY'S SIGNED STATEMENT PURPORTEDLY SIGNED BY AN AUTHORIZED REPRESENTATIVE OF [Insert Landlord's Name], A [Insert Entity Type] ("LANDLORD") STATING THE FOLLOWING:**

"THE UNDERSIGNED HEREBY CERTIFIES THAT THE LANDLORD, EITHER (A) UNDER THE LEASE (DEFINED BELOW), OR (B) AS A RESULT OF THE TERMINATION OF SUCH LEASE, HAS THE RIGHT TO DRAW DOWN THE AMOUNT OF USD IN ACCORDANCE WITH THE TERMS OF THAT CERTAIN OFFICE LEASE DATED [Insert Lease Date], AS THE SAME MAY HAVE BEEN AMENDED (COLLECTIVELY, THE "LEASE"), OR SUCH AMOUNT CONSTITUTES DAMAGES OWING BY THE TENANT TO BENEFICIARY RESULTING FROM THE BREACH OF SUCH LEASE BY THE TENANT THEREUNDER, OR THE TERMINATION OF SUCH LEASE, AND SUCH AMOUNT REMAINS UNPAID AT THE TIME OF THIS DRAWING."

OR

"THE UNDERSIGNED HEREBY CERTIFIES THAT WE HAVE RECEIVED A WRITTEN NOTICE OF [Insert Bank Name]'S ELECTION NOT TO EXTEND ITS STANDBY LETTER OF CREDIT NO. AND HAVE NOT RECEIVED A REPLACEMENT LETTER OF CREDIT WITHIN AT LEAST SIXTY (60) DAYS PRIOR TO THE PRESENT EXPIRATION DATE."

OR

"THE UNDERSIGNED HEREBY CERTIFIES THAT BENEFICIARY IS ENTITLED TO DRAW DOWN THE FULL AMOUNT OF LETTER OF CREDIT NO. AS THE RESULT OF THE FILING OF A VOLUNTARY PETITION UNDER THE U.S. BANKRUPTCY CODE OR A STATE BANKRUPTCY CODE BY THE TENANT UNDER THAT CERTAIN OFFICE LEASE DATED [Insert Lease Date], AS THE SAME MAY HAVE BEEN AMENDED (COLLECTIVELY, THE "LEASE"), WHICH FILING HAS NOT BEEN DISMISSED AT THE TIME OF THIS DRAWING."

OR

"THE UNDERSIGNED HEREBY CERTIFIES THAT BENEFICIARY IS ENTITLED TO DRAW DOWN THE FULL AMOUNT OF LETTER OF CREDIT NO. AS THE RESULT OF AN INVOLUNTARY PETITION HAVING BEEN FILED UNDER THE U.S.

EXHIBIT J

BANKRUPTCY CODE OR A STATE BANKRUPTCY CODE AGAINST THE TENANT UNDER THAT CERTAIN OFFICE LEASE DATED [Insert Lease Date], AS THE SAME MAY HAVE BEEN AMENDED (COLLECTIVELY, THE "LEASE"), WHICH FILING HAS NOT BEEN DISMISSED AT THE TIME OF THIS DRAWING."

OR

"THE UNDERSIGNED HEREBY CERTIFIES THAT BENEFICIARY IS ENTITLED TO DRAW DOWN THE FULL AMOUNT OF LETTER OF CREDIT NO. AS THE RESULT OF THE REJECTION, OR DEEMED REJECTION, OF THAT CERTAIN OFFICE LEASE DATED [Insert Lease Date], AS THE SAME MAY HAVE BEEN AMENDED, UNDER SECTION 365 OF THE U.S. BANKRUPTCY CODE."

SPECIAL CONDITIONS:

PARTIAL DRAWINGS AND MULTIPLE PRESENTATIONS MAY BE MADE UNDER THIS STANDBY LETTER OF CREDIT, PROVIDED, HOWEVER, THAT EACH SUCH DEMAND THAT IS PAID BY US SHALL REDUCE THE AMOUNT AVAILABLE UNDER THIS STANDBY LETTER OF CREDIT.

ALL INFORMATION REQUIRED WHETHER INDICATED BY BLANKS, BRACKETS OR OTHERWISE,

MUST BE COMPLETED AT THE TIME OF DRAWING. [Please Provide The Required Forms For Review, And Attach As Schedules To The Letter Of Credit.]

ALL SIGNATURES MUST BE MANUALLY EXECUTED IN ORIGINALS. ALL BANKING CHARGES ARE FOR THE APPLICANT'S ACCOUNT.

IT IS A CONDITION OF THIS STANDBY LETTER OF CREDIT THAT IT SHALL BE DEEMED AUTOMATICALLY EXTENDED WITHOUT AMENDMENT FOR A PERIOD OF ONE YEAR FROM THE PRESENT OR ANY FUTURE EXPIRATION DATE, UNLESS AT LEAST SIXTY (60) DAYS PRIOR TO THE EXPIRATION DATE WE SEND YOU NOTICE BY NATIONALLY RECOGNIZED OVERNIGHT COURIER SERVICE THAT WE ELECT NOT TO EXTEND THIS LETTER OF CREDIT FOR ANY SUCH ADDITIONAL PERIOD. SAID NOTICE WILL BE SENT TO THE ADDRESS INDICATED ABOVE, UNLESS A CHANGE OF ADDRESS IS OTHERWISE NOTIFIED BY YOU TO US IN WRITING BY RECEIPTED MAIL OR COURIER. ANY NOTICE TO US WILL BE DEEMED EFFECTIVE ONLY UPON ACTUAL RECEIPT BY US AT OUR DESIGNATED OFFICE. IN NO EVENT, AND WITHOUT FURTHER NOTICE FROM OURSELVES, SHALL THE EXPIRATION DATE BE EXTENDED BEYOND A FINAL EXPIRATION DATE OF (120 days from the

Lease Expiration Date).

THIS LETTER OF CREDIT MAY BE TRANSFERRED SUCCESSIVELY IN WHOLE OR IN PART ONLY UP TO THE THEN AVAILABLE AMOUNT IN FAVOR OF A NOMINATED TRANSFEREE ("TRANSFEREE"), ASSUMING SUCH TRANSFER TO SUCH TRANSFEREE IS IN COMPLIANCE WITH ALL APPLICABLE U.S. LAWS AND REGULATIONS. AT THE TIME OF TRANSFER, THE ORIGINAL LETTER OF CREDIT AND ORIGINAL AMENDMENT(S) IF ANY, MUST BE SURRENDERED TO US TOGETHER WITH OUR TRANSFER FORM (AVAILABLE UPON REQUEST) AND PAYMENT OF OUR CUSTOMARY TRANSFER FEES, WHICH FEES SHALL BE PAYABLE BY APPLICANT (PROVIDED THAT BENEFICIARY MAY, BUT SHALL NOT BE OBLIGATED TO, PAY SUCH FEES TO US ON BEHALF OF APPLICANT, AND SEEK REIMBURSEMENT THEREOF FROM APPLICANT). IN CASE OF ANY TRANSFER UNDER THIS LETTER OF CREDIT, THE DRAFT AND ANY REQUIRED STATEMENT MUST BE EXECUTED BY THE TRANSFEREE AND WHERE THE BENEFICIARY'S NAME APPEARS WITHIN THIS STANDBY LETTER OF CREDIT, THE TRANSFEREE'S NAME IS AUTOMATICALLY SUBSTITUTED THEREFOR.

ALL DRAFTS REQUIRED UNDER THIS STANDBY LETTER OF CREDIT MUST BE MARKED: "DRAWN UNDER [Insert Bank Name] STANDBY LETTER OF CREDIT NO.,"

WE HEREBY AGREE WITH YOU THAT IF DRAFTS ARE PRESENTED TO [Insert Bank Name] UNDER THIS LETTER OF CREDIT AT OR PRIOR TO [Insert Time - (e.g., 11:00 AM)], ON A BUSINESS DAY, AND PROVIDED THAT SUCH DRAFTS PRESENTED CONFORM TO THE TERMS AND CONDITIONS OF THIS LETTER OF CREDIT, PAYMENT SHALL BE INITIATED BY US IN IMMEDIATELY AVAILABLE FUNDS BY OUR CLOSE OF BUSINESS ON THE SUCCEEDING BUSINESS DAY. IF DRAFTS ARE PRESENTED TO [Insert Bank Name] UNDER THIS LETTER OF CREDIT AFTER [Insert Time - (e.g., 11:00 AM)], ON A BUSINESS DAY, AND PROVIDED THAT SUCH DRAFTS CONFORM WITH THE TERMS AND CONDITIONS OF THIS LETTER OF CREDIT, PAYMENT SHALL BE INITIATED BY US IN IMMEDIATELY AVAILABLE FUNDS BY OUR CLOSE OF BUSINESS ON THE SECOND SUCCEEDING BUSINESS DAY. AS USED IN THIS LETTER OF CREDIT, "BUSINESS DAY" SHALL MEAN ANY DAY OTHER THAN A SATURDAY, SUNDAY OR A DAY ON WHICH BANKING INSTITUTIONS IN THE STATE OF CALIFORNIA ARE AUTHORIZED OR REQUIRED BY LAW TO CLOSE. IF THE EXPIRATION DATE FOR THIS LETTER OF CREDIT SHALL EVER FALL ON A DAY WHICH IS NOT A BUSINESS DAY THEN SUCH EXPIRATION DATE SHALL AUTOMATICALLY BE EXTENDED TO THE DATE WHICH IS THE NEXT BUSINESS DAY.

PRESENTATION OF A DRAWING UNDER THIS LETTER OF CREDIT MAY BE MADE ON OR PRIOR TO THE THEN CURRENT EXPIRATION DATE HEREOF BY HAND DELIVERY, COURIER SERVICE, OVERNIGHT MAIL, OR FACSIMILE. PRESENTATION BY FACSIMILE TRANSMISSION SHALL BE BY TRANSMISSION OF THE ABOVE REQUIRED SIGHT DRAFT DRAWN ON US TOGETHER WITH THIS

EXHIBIT J

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LETTER OF CREDIT TO OUR FACSIMILE NUMBER, [Insert Fax Number - (.)-], ATTENTION:

[Insert Appropriate Recipient], WITH TELEPHONIC CONFIRMATION OF OUR RECEIPT OF SUCH FACSIMILE TRANSMISSION AT OUR TELEPHONE NUMBER [Insert Telephone Number - (.)-] OR TO SUCH OTHER FACSIMILE OR TELEPHONE NUMBERS, AS TO WHICH YOU HAVE RECEIVED WRITTEN NOTICE FROM US AS BEING THE APPLICABLE SUCH NUMBER. WE AGREE TO NOTIFY YOU IN WRITING, BY NATIONALLY RECOGNIZED OVERNIGHT COURIER SERVICE, OF ANY CHANGE IN SUCH DIRECTION. ANY FACSIMILE PRESENTATION PURSUANT TO THIS PARAGRAPH SHALL ALSO STATE THEREON THAT THE ORIGINAL OF SUCH SIGHT DRAFT AND LETTER OF CREDIT ARE BEING REMITTED, FOR DELIVERY ON THE NEXT BUSINESS DAY, TO [Insert Bank Name] AT THE APPLICABLE ADDRESS FOR PRESENTMENT PURSUANT TO THE PARAGRAPH FOLLOWING THIS ONE.

WE HEREBY ENGAGE WITH YOU THAT ALL DOCUMENT(S) DRAWN UNDER AND IN COMPLIANCE WITH THE TERMS OF THIS STANDBY LETTER OF CREDIT WILL BE DULY HONORED IF DRAWN AND

PRESENTED FOR PAYMENT AT OUR OFFICE LOCATED AT [Insert Bank Name], [Insert Bank Address], ATTN: [Insert Appropriate Recipient], ON OR BEFORE THE EXPIRATION DATE OF THIS CREDIT,

(Expiration Date).

IN THE EVENT THAT THE ORIGINAL OF THIS STANDBY LETTER OF CREDIT IS LOST, STOLEN, MUTILATED, OR OTHERWISE DESTROYED, WE HEREBY AGREE TO ISSUE A DUPLICATE ORIGINAL HEREOF UPON RECEIPT OF A WRITTEN REQUEST FROM YOU AND A CERTIFICATION BY YOU (PURPORTEDLY SIGNED BY YOUR AUTHORIZED REPRESENTATIVE) OF THE LOSS, THEFT, MUTILATION, OR OTHER DESTRUCTION OF THE ORIGINAL HEREOF.

EXCEPT SO FAR AS OTHERWISE EXPRESSLY STATED HEREIN, THIS STANDBY LETTER OF CREDIT IS SUBJECT TO THE "INTERNATIONAL STANDBY PRACTICES" (ISP 98) INTERNATIONAL CHAMBER OF COMMERCE (PUBLICATION NO. 590).

**Very truly yours,  
(Name of Issuing Bank)**

By: \_\_\_\_\_

EXHIBIT J



**COLEMAN HIGHLINE**

**FORM OF INITIAL LETTER OF CREDIT**

Wells Fargo Bank, N.A.  
U.S. Trade Services  
Standby Letters of Credit  
794 Davis Street, 2nd Floor  
MAC 00283 023,  
San Leandro, CA 94577-6922  
Phone: (800) 776-3862 Option 2  
E-Mail: sbles-new@wellsfargo.com

THIS SAMPLE WORDING IS PRESENTED WITHOUT ANY RESPONSIBILITY ON OUR PART. THIS PROFORMA IS PROVIDED TO YOU AT YOUR REQUEST ONLY AS SUGGESTED WORDING FOR THE LETTER OF CREDIT. PLEASE NOTE THAT THE LETTER OF CREDIT IS IN DRAFT FORM ONLY AND REMAINS UNISSUED AND IS NOT AN ENFORCEABLE INSTRUMENT.

APPLICANT(S) HEREBY AGREE WITH THE FORM AND WORDING OF THE FOLLOWING PROFORMA LETTER OF CREDIT, AND REQUEST THAT WELLS FARGO BANK, N.A. ISSUE THE LETTER OF CREDIT WITH SUCH FORM AND WORDING. IF THERE ARE MULTIPLE APPLICANTS FOR THE LETTER OF CREDIT, THE SIGNATURE OF ONE APPLICANT DENOTES APPROVAL BY ALL APPLICANTS AND BINDS ALL APPLICANTS.

BY: \_\_\_\_\_  
NAME AND TITLE:

THIS PROFORMA LETTER OF CREDIT IS AN INTEGRAL PART OF THE APPLICATION AND AGREEMENT FOR THE ISSUANCE OF THE LETTER OF CREDIT. THE LETTER OF CREDIT CANNOT BE ISSUED UNTIL THE PROFORMA LETTER OF CREDIT IS RETURNED TO US WITH THE APPLICANT'S SIGNATURE ABOVE.

**Irrevocable Standby Letter Of Credit**

**Number :** IS000028148U  
**Issue Date :** January 22, 2018  
**Proforma**

BENEFICIARY	APPLICANT
CAP PHASE I, LLC C/O HUNTER PROPERTIES, INC 1012 MILLER AVENUE, SUITE 200 ATTN: ROBERT MCMASTER CUPERTINO, CALIFORNIA 95014	8X8, INC. 2125 ONEL DRIVE SAN JOSE, CALIFORNIA 95131

LETTER OF CREDIT ISSUE AMOUNT USD 8,100,000.00 EXPIRY DATE JANUARY 22, 2019

LADIES AND GENTLEMEN:  
AT THE REQUEST AND FOR THE ACCOUNT OF THE ABOVE REFERENCED APPLICANT, WE HEREBY ISSUE OUR IRREVOCABLE STANDBY LETTER OF CREDIT IN YOUR FAVOR IN THE AMOUNT OF USD EIGHT MILLION ONE HUNDRED THOUSAND AND NO/100 (USD8100000.00) AVAILABLE WITH US AT OUR ABOVE OFFICE BY PAYMENT AGAINST PRESENTATION OF THE FOLLOWING DOCUMENTS:  
1. A DRAFT DRAWN ON US AT SIGHT MARKED "DRAWN UNDER WELLS FARGO BANK, N.A. STANDBY LETTER

2. THE ORIGINAL OF THIS STANDBY LETTER OF CREDIT AND ANY AMENDMENTS THERETO.

3. BENEFICIARY'S SIGNED AND DATED STATEMENT WORDED AS ONE OF THE FOLLOWING:

"THE UNDERSIGNED, AN AUTHORIZED REPRESENTATIVE OF THE BENEFICIARY OF WELLS FARGO BANK, N.A. LETTER OF CREDIT NO. IS000028148U CERTIFIES THAT THE AMOUNT OF THE DRAFT ACCOMPANYING THIS STATEMENT REPRESENTS THE AMOUNT DUE TO BENEFICIARY EITHER (1) PURSUANT TO AND IN CONNECTION WITH THAT CERTAIN LEASE DATED (INSERT DATE) BETWEEN BENEFICIARY, AS LANDLORD, AND APPLICANT, AS TENANT (AS SUCH LEASE MAY BE AMENDED, RESTATED OR REPLACED, THE "LEASE"), OR (2) AS A RESULT OF THE TERMINATION OF SUCH LEASE."

OR

"THE UNDERSIGNED, AN AUTHORIZED REPRESENTATIVE OF THE BENEFICIARY OF WELLS FARGO BANK, N.A. LETTER OF CREDIT NO. IS000028148U, HEREBY CERTIFIES THAT BENEFICIARY IS ENTITLED TO DRAW DOWN THE FULL AMOUNT OF STANDBY LETTER OF CREDIT NO. IS000028148U AS THE RESULT OF THE FILING OF A VOLUNTARY PETITION UNDER THE U.S. BANKRUPTCY CODE OR A STATE BANKRUPTCY CODE BY THE TENANT UNDER THAT CERTAIN LEASE DATED (INSERT LEASE DATE) (AS SUCH LEASE MAY BE AMENDED, RESTATED OR REPLACED, THE "LEASE"), WHICH FILING HAS NOT BEEN DISMISSED AT THE TIME OF THIS DRAWING."

OR

"THE UNDERSIGNED, AN AUTHORIZED REPRESENTATIVE OF THE BENEFICIARY OF WELLS FARGO BANK, N.A. LETTER OF CREDIT NO. IS000028148U, HEREBY CERTIFIES THAT BENEFICIARY IS ENTITLED TO DRAW DOWN THE FULL AMOUNT OF LETTER OF CREDIT NO. IS000028148U AS THE RESULT OF AN INVOLUNTARY PETITION HAVING BEEN FILED UNDER THE U.S. BANKRUPTCY CODE OR A STATE BANKRUPTCY CODE AGAINST THE TENANT UNDER THAT CERTAIN LEASE DATED (INSERT LEASE DATE) (AS SUCH LEASE MAY BE AMENDED, RESTATED OR REPLACED, THE "LEASE"), WHICH FILING HAS NOT BEEN DISMISSED AT THE TIME OF THIS DRAWING."

OR

"THE UNDERSIGNED, AN AUTHORIZED REPRESENTATIVE OF THE BENEFICIARY OF WELLS FARGO BANK, N.A. LETTER OF CREDIT NO. IS000028148U, HEREBY CERTIFIES THAT BENEFICIARY IS ENTITLED TO DRAW DOWN THE FULL AMOUNT OF LETTER OF CREDIT NO. IS000028148U AS THE RESULT OF THE REJECTION, OR DEEMED REJECTION, OF THAT CERTAIN LEASE DATED (INSERT LEASE DATE) (AS SUCH LEASE MAY BE AMENDED, RESTATED OR REPLACED, THE "LEASE") UNDER SECTION 365 OF THE U.S. BANKRUPTCY CODE."

THIS LETTER OF CREDIT EXPIRES AT OUR ABOVE OFFICE ON 01/22/2019. IT IS A CONDITION OF THIS LETTER OF CREDIT THAT SUCH EXPIRATION DATE SHALL BE DEEMED AUTOMATICALLY EXTENDED, WITHOUT WRITTEN AMENDMENT, FOR ONE YEAR PERIODS TO JANUARY 22 IN EACH SUCCEEDING CALENDAR YEAR, UNLESS AT LEAST 60 CALENDAR DAYS PRIOR TO SUCH EXPIRATION DATE WE SEND WRITTEN NOTICE TO YOU AT YOUR ADDRESS ABOVE BY OVERNIGHT COURIER OR REGISTERED MAIL THAT WE ELECT NOT TO EXTEND THE EXPIRATION DATE OF THIS LETTER OF CREDIT BEYOND THE DATE SPECIFIED IN SUCH NOTICE. IN NO EVENT SHALL THIS LETTER OF CREDIT BE EXTENDED BEYOND 04/30/2030 WHICH WILL BE CONSIDERED THE FINAL EXPIRATION DATE. ANY REFERENCE TO A FINAL EXPIRATION DATE DOES NOT IMPLY THAT WE ARE OBLIGATED TO EXTEND THE EXPIRATION DATE BEYOND THE INITIAL OR ANY EXTENDED DATE THEREOF.

UPON OUR SENDING YOU SUCH NOTICE OF THE NON-EXTENSION OF THE EXPIRATION DATE OF THIS

LETTER OF CREDIT, YOU MAY ALSO DRAW UNDER THIS LETTER OF CREDIT, ON OR BEFORE THE EXPIRATION DATE SPECIFIED IN SUCH NOTICE, BY PRESENTATION OF THE FOLLOWING DOCUMENTS TO US AT OUR ABOVE ADDRESS:

1. A DRAFT DRAWN ON US AT SIGHT MARKED "DRAWN UNDER WELLS FARGO BANK, N.A. STANDBY LETTER OF CREDIT NO. 15000028148U."
2. THE ORIGINAL OF THIS STANDBY LETTER OF CREDIT AND ANY AMENDMENTS THERETO.
3. YOUR SIGNED AND DATED STATEMENT WORDED AS FOLLOWS:

"THE UNDERSIGNED, AN AUTHORIZED REPRESENTATIVE OF THE BENEFICIARY OF WELLS FARGO BANK, N.A. LETTER OF CREDIT NO. 15000028148U, HEREBY CERTIFIES THAT BENEFICIARY HAS RECEIVED NOTIFICATION FROM WELLS FARGO BANK, N.A. THAT THIS LETTER OF CREDIT WILL NOT BE EXTENDED PAST ITS CURRENT EXPIRATION DATE. THE UNDERSIGNED FURTHER CERTIFIES THAT (I) AS OF THE DATE OF THIS STATEMENT, BENEFICIARY HAS NOT RECEIVED A LETTER OF CREDIT OR OTHER INSTRUMENT ACCEPTABLE TO BENEFICIARY AS A REPLACEMENT; AND (II) APPLICANT HAS NOT BEEN RELEASED FROM ITS OBLIGATIONS."

MULTIPLE AND PARTIAL DRAWING(S) ARE PERMITTED UNDER THIS LETTER OF CREDIT; PROVIDED, HOWEVER, THAT THE TOTAL AMOUNT OF ANY PAYMENT(S) MADE UNDER THIS LETTER OF CREDIT WILL NOT EXCEED THE TOTAL AMOUNT AVAILABLE UNDER THIS LETTER OF CREDIT.

THIS LETTER OF CREDIT IS TRANSFERABLE ONE OR MORE TIMES, BUT IN EACH INSTANCE ONLY TO A SINGLE TRANSFEREE AND ONLY IN THE FULL AMOUNT AVAILABLE TO BE DRAWN UNDER THE LETTER OF CREDIT AT THE TIME OF SUCH TRANSFER. ANY SUCH TRANSFER MAY BE EFFECTED ONLY THROUGH WELLS FARGO BANK, N.A. AND ONLY UPON PRESENTATION TO US AT OUR PRESENTATION OFFICE SPECIFIED HEREIN OF A DULY EXECUTED TRANSFER REQUEST IN THE FORM ATTACHED HERETO AS EXHIBIT A, WITH INSTRUCTIONS THEREIN IN BRACKETS COMPLIED WITH, TOGETHER WITH THE ORIGINAL OF THIS LETTER OF CREDIT AND ANY AMENDMENTS THERETO. EACH TRANSFER SHALL BE EVIDENCED BY OUR ENDORSEMENT ON THE REVERSE OF THE ORIGINAL OF THIS LETTER OF CREDIT, AND WE SHALL DELIVER SUCH ORIGINAL TO THE TRANSFEREE. THE TRANSFEREE'S NAME SHALL AUTOMATICALLY BE SUBSTITUTED FOR THAT OF THE BENEFICIARY WHEREVER SUCH BENEFICIARY'S NAME APPEARS WITHIN THIS STANDBY LETTER OF CREDIT. ALL CHARGES IN CONNECTION WITH ANY TRANSFER OF THIS LETTER OF CREDIT ARE FOR THE APPLICANT'S ACCOUNT.

WE ARE SUBJECT TO VARIOUS LAWS, REGULATIONS AND EXECUTIVE AND JUDICIAL ORDERS (INCLUDING ECONOMIC SANCTIONS, EMBARGOES, ANTI-BOYCOTT, ANTI-MONEY LAUNDERING, ANTI-TERRORISM, AND ANTI-DRUG TRAFFICKING LAWS AND REGULATIONS) OF THE U.S. AND OTHER COUNTRIES THAT ARE ENFORCEABLE UNDER APPLICABLE LAW. WE WILL NOT BE LIABLE FOR OUR FAILURE TO MAKE, OR OUR DELAY IN MAKING, PAYMENT UNDER THIS LETTER OF CREDIT OR FOR ANY OTHER ACTION WE TAKE OR DO NOT TAKE, OR ANY DISCLOSURE WE MAKE, UNDER OR IN CONNECTION WITH THIS LETTER OF CREDIT [(INCLUDING, WITHOUT LIMITATION, ANY REFUSAL TO TRANSFER THIS LETTER OF CREDIT)] THAT IS REQUIRED BY SUCH LAWS, REGULATIONS, OR ORDERS.

WE HEREBY ENGAGE WITH YOU THAT EACH DRAFT DRAWN UNDER AND IN COMPLIANCE WITH THE TERMS AND CONDITIONS OF THIS LETTER OF CREDIT WILL BE DULY HONORED IF PRESENTED TOGETHER WITH THE DOCUMENTS SPECIFIED IN THIS LETTER OF CREDIT AT OUR OFFICE LOCATED AT 794 DAVIS STREET, 2ND FLOOR, SAN LEANDRO, CALIFORNIA 94577-6922, ATTENTION: US TRADE SERVICES - STANDBY LETTERS OF CREDIT ON OR BEFORE THE ABOVE STATED EXPIRY DATE, OR ANY EXTENDED EXPIRY DATE IF APPLICABLE.

DRAWINGS MAY ALSO BE PRESENTED TO US BY FACSIMILE TRANSMISSION TO FACSIMILE NUMBER 844-879-5593 (EACH SUCH DRAWING, A "FAX DRAWING"); PROVIDED, HOWEVER, THAT A FAX DRAWING WILL NOT BE EFFECTIVELY PRESENTED UNTIL YOU CONFIRM BY TELEPHONE OUR RECEIPT OF SUCH FAX

DRAWING BY CALLING US AT TELEPHONE NUMBER 1-800-776-3862, OPTION 2. IF YOU PRESENT A FAX DRAWING UNDER THIS LETTER OF CREDIT YOU DO NOT NEED TO PRESENT THE ORIGINAL OF ANY DRAWING DOCUMENTS, AND IF WE RECEIVE ANY SUCH ORIGINAL DRAWING DOCUMENTS THEY WILL NOT BE EXAMINED BY US. IN THE EVENT OF A FULL OR FINAL DRAWING THE ORIGINAL STANDBY LETTER OF CREDIT MUST BE RETURNED TO US BY OVERNIGHT COURIER.

THIS IRREVOCABLE STANDBY LETTER OF CREDIT SETS FORTH IN FULL THE TERMS OF OUR UNDERTAKING. THIS UNDERTAKING IS INDEPENDENT OF AND SHALL NOT IN ANY WAY BE MODIFIED, AMENDED, AMPLIFIED OR INCORPORATED BY REFERENCE TO ANY DOCUMENT, CONTRACT OR AGREEMENT REFERENCED HEREIN OTHER THAN THE STIPULATED ICC RULES AND GOVERNING LAWS.

CANCELLATION PRIOR TO EXPIRATION: YOU MAY RETURN THIS LETTER OF CREDIT TO US FOR CANCELLATION PRIOR TO ITS EXPIRATION PROVIDED THAT THIS LETTER OF CREDIT IS ACCOMPANIED BY YOUR WRITTEN AGREEMENT TO ITS CANCELLATION. SUCH WRITTEN AGREEMENT TO CANCELLATION SHOULD SPECIFICALLY REFERENCE THIS LETTER OF CREDIT BY NUMBER, CLEARLY INDICATE THAT IT IS BEING RETURNED FOR CANCELLATION AND BE SIGNED BY A PERSON IDENTIFYING THEMSELVES AS AUTHORIZED TO SIGN FOR YOU.

IN THE EVENT THIS LETTER OF CREDIT IS STOLEN, LOST, MUTILATED OR DESTROYED, WE WILL ISSUE A REPLACEMENT LETTER OF CREDIT (MARKED AS SUCH) PROVIDED WE HAVE RECEIVED INDEMNITIES AND ASSURANCES FROM BENEFICIARY SATISFACTORY TO US WITH RESPECT TO THE ORIGINAL LETTER OF CREDIT AND OUR CUSTOMARY FEE.

EXCEPT AS OTHERWISE EXPRESSLY STATED HEREIN, THIS STANDBY LETTER OF CREDIT IS SUBJECT TO THE INTERNATIONAL STANDBY PRACTICE 1998, INTERNATIONAL CHAMBER OF COMMERCE PUBLICATION NO. 590.

Very Truly Yours,

**WELLS FARGO BANK, N.A.**

By: \_\_\_\_\_  
*Authorized Signature*

**The original of the Letter of Credit contains an embossed seal over the Authorized Signature.**

Please direct any written correspondence or inquiries regarding this Letter of Credit, always quoting our reference number, to **Wells Fargo Bank, National Association**, Attn: U.S. Standby Trade Services

**either** 794 Davis Street, 2nd Floor  
MACA0283-023,  
San Leandro, CA 94577-6922

**or** 401 N. Research Pkwy, 1st Floor  
MACD4004-017,  
WINSTON-SALEM, NC 27101-4157

Phone inquiries regarding this credit should be directed to our Standby Customer Connection Professionals  
1-800-776-3862 Option 2 (Hours of Operation: 8:00 a.m. PT to 5:00 p.m. PT)  
1-800-776-3862 Option 2 (Hours of Operation: 8:00 a.m. EST to 5:00 p.m. EST)

EXHIBIT A  
TRANSFER REQUEST OF WELLS FARGO BANK, N.A. IRREVOCABLE STANDBY  
LETTER OF CREDIT NUMBER: IS000028148U

TO: WELLS FARGO BANK, N.A.

DATE: \_\_\_\_\_

U.S. TRADE SERVICES  
STANDBY LETTER OF CREDIT DEPARTMENT  
794 DAVIS STREET, 2ND FLOOR, MAC A0283-023  
SAN LEANDRO, CALIFORNIA 94577-6922

U.S. TRADE SERVICES  
STANDBY LETTER OF CREDIT DEPARTMENT  
401 N. RESEARCH PKWY, MAC-D4004-017  
WINSTON-SALEM, NORTH CAROLINA 27101

FOR VALUE RECEIVED, THE UNDERSIGNED BENEFICIARY OF THE ABOVE DESCRIBED LETTER OF CREDIT (THE "TRANSFEROR") HEREBY IRREVOCABLY TRANSFERS ALL ITS RIGHTS UNDER THE LETTER OF CREDIT AS AMENDED TO THIS DATE (THE "CREDIT") TO THE FOLLOWING TRANSFEREE (THE "TRANSFEREE"):

NAME OF TRANSFEREE

ADDRESS

BY THIS TRANSFER, ALL RIGHTS OF TRANSFEROR IN THE LETTER OF CREDIT ARE TRANSFERRED TO THE TRANSFEREE, AND THE TRANSFEREE SHALL BE THE SOLE BENEFICIARY OF THE LETTER OF CREDIT, POSSESSING ALL RIGHTS PERTAINING THERETO, INCLUDING, BUT NOT LIMITED TO, SOLE RIGHTS RELATING TO THE APPROVAL OF ANY AMENDMENTS, WHETHER INCREASES OR EXTENSIONS OR OTHER AMENDMENTS, AND WHETHER NOW EXISTING OR HEREAFTER MADE. YOU ARE HEREBY IRREVOCABLY INSTRUCTED TO ADVISE FUTURE AMENDMENT(S) OF THE LETTER OF CREDIT TO THE TRANSFEREE WITHOUT THE TRANSFEROR'S CONSENT OR NOTICE TO THE TRANSFEROR.

ENCLOSED ARE THE ORIGINAL LETTER OF CREDIT AND THE ORIGINAL(S) OF ALL AMENDMENTS TO DATE.

THE TRANSFEROR WARRANTS TO YOU THAT THIS TRANSFER AND THE TRANSACTION(S) HEREUNDER WILL NOT CONTRAVENE ANY FEDERAL LAWS OR REGULATIONS OF THE UNITED STATES NOR THE LAWS OR REGULATIONS OF ANY STATE THEREOF. PLEASE NOTIFY THE TRANSFEREE OF THIS TRANSFER AND OF THE TERMS AND CONDITIONS OF THE LETTER OF CREDIT AS TRANSFERRED. THIS TRANSFER WILL BECOME EFFECTIVE UPON WELLS FARGO BANK, N.A.'S WRITTEN NOTIFICATION TO THE TRANSFEREE THAT SUCH TRANSFER WAS EFFECTED.

(TRANSFEROR'S NAME)

BY: \_\_\_\_\_

PRINTED NAME: \_\_\_\_\_

TITLE: \_\_\_\_\_

PHONE NUMBER: \_\_\_\_\_

Page 5 of 6

Each page of this multipage document is an integral part  
of this Irrevocable Standby Letter of Credit Number **IS000028148U**

EXHIBIT J-1

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THE BANK SIGNING BELOW GUARANTEES THAT THE TRANSFEROR'S SIGNATURE IS GENUINE AND THAT THE INDIVIDUAL SIGNING THIS TRANSFER REQUEST HAS THE AUTHORITY TO DO SO:

\_\_\_\_\_  
(BANK'S NAME)

BY: \_\_\_\_\_

PRINTED NAME: \_\_\_\_\_

TITLE: \_\_\_\_\_

[A CORPORATE NOTARY ACKNOWLEDGMENT OR A CERTIFICATE OF AUTHORITY WITH CORPORATE SEAL IS ACCEPTABLE IN LIEU OF A BANK GUARANTEE]

ProForma

**EXHIBIT K**

**FORM OF MEMORANDUM OF LEASE**

RECORDING REQUESTED BY AND  
WHEN RECORDED RETURN TO:

Pillsbury Winthrop Shaw Pittman LLP  
725 South Figueroa Street, Suite 2800  
Los Angeles, California 90017-5406  
Attention: James M. Rishwain, Jr.

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(SPACE ABOVE THIS LINE FOR RECORDER'S USE)

**MEMORANDUM OF LEASE**

This Memorandum of Lease ("**Memorandum**") is made and entered into as of January 23, 2018, for the purpose of recording, by and between CAP Phase 1, LLC, a Delaware limited liability company ("**Landlord**"), and 8X8, INC. a Delaware corporation ("**Tenant**").

1. **Defined Terms; Exhibits.** All capitalized terms used in this Memorandum and not otherwise defined herein shall have the meanings ascribed to such terms in the Lease (as defined below). All Exhibits referenced herein are attached hereto, and are incorporated herein by this reference.
2. **Premises; Building; Project.** Landlord hereby leases to Tenant and Tenant hereby leases from Landlord, pursuant to the terms and conditions of that certain Office Lease dated as of January 23, 2018 (as amended, the "**Lease**"), those certain premises described in the Lease, consisting of a total of 162,557 rentable square feet of space (the "**Premises**"), depicted on **Exhibit A** attached to the Lease. The Premises consists of the entirety of that certain building located at 1143 Coleman Avenue, San Jose, California (the "**Building**"). The Building is located on the land legally described on **Exhibit A** to this Memorandum.
3. **Lease Term.** The term of the Lease ("**Lease Term**") is for a period of approximately one hundred thirty-two (132) calendar months, starting on the Lease Commencement Date and ending one hundred thirty-two (132) calendar months thereafter, subject to adjustment as provided in the Lease. The Lease Commencement Date is expected to occur on or about January 1, 2019, subject to adjustment as provided in the Lease.
4. **Extension Options.** Pursuant to the Lease, Landlord grants to Tenant one (1) option to extend the Lease Term for a period of five (5) years.
5. **Lease Incorporated.** All the other terms, conditions and covenants of the Lease are incorporated herein by this reference. In the event of a conflict between the provisions of this Memorandum and the provisions of the Lease, the provisions of the Lease shall govern.
6. **Counterparts.** This Memorandum may be executed in counterparts, each of which shall be an original but all of which together shall constitute one and the same agreement. This Memorandum is solely for notice and recording purposes and shall not be construed to alter, modify, expand, diminish or supplement the provisions of the Lease.
7. **Successors and Assigns.** The terms, covenants and provisions of the Lease, the terms of which are hereby incorporated by reference into this Memorandum, shall extend to and be binding upon the respective executors, administrators, heirs, successors and assigns of Tenant and Landlord.

[SIGNATURES APPEAR ON FOLLOWING PAGE]

EXHIBIT K

IN WITNESS WHEREOF, Landlord and Tenant have caused this Memorandum to be executed the day and date first above written.

"LANDLORD"

CAP Phase 1, LLC,  
a Delaware limited liability company

By: Coleman Airport Partners, LLC,  
California limited liability company Its: Sole Member

By: HS Airport, LLC,  
California limited liability company  
Its: Manager

By: /s/ Derek K. Hunter, Jr.  
Name: Derek K. Hunter, Jr.  
Its: Member

By: /s/ Edward D. Storm  
Name: Edward D. Storm  
Its: Member

"TENANT"

8X8, INC.  
a Delaware corporation

By: /s/ Vikram Verma  
Name: Vikram Verma  
Its: Chief Executive Officer

By: /s/ Mary Ellen Genovese  
Name: Mary Ellen Genovese  
Its: Chief Executive Officer

EXHIBIT K

-2-

---



**ACKNOWLEDGMENT**

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State \_\_\_\_\_ )  
of \_\_\_\_\_ )  
County \_\_\_\_\_ )  
of \_\_\_\_\_ )

On, before me, \_\_\_\_\_,

Notary Public, personally appeared \_\_\_\_\_ (insert name of notary) \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person(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 authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_ (Seal)

**ACKNOWLEDGMENT**

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State \_\_\_\_\_ )  
of \_\_\_\_\_ )  
County \_\_\_\_\_ )  
of \_\_\_\_\_ )

On, before me, \_\_\_\_\_,

Notary Public, personally appeared \_\_\_\_\_ (insert name of notary) \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person(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 authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_ (Seal)

EXHIBIT K

Exhibit A

Description of Real Property

[See Exhibit A to Lease]

EXHIBIT K

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**OFFICE LEASE**

COLEMAN HIGHLINE

CAP PHASE 1, LLC,  
a Delaware limited liability company, as Landlord,

and

8X8, INC.,  
a Delaware corporation

as Tenant.

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## Consent of Independent Registered Public Accounting Firm

We consent to the incorporation by reference in the Registration Statements (Form S-3 No. 333-187421, and Form S-8 Nos. 333-30943, 333-15627, 333-50519, 333-49410, 333-66296, 333-90172, 333-108290, 333-118642, 333-126337, 333-137599, 333-176895, 333-183597, 333-189452, 333-191080, 333-196275, 333-198012, 333-199795, 333-204583, 333-206029, 333-212163, 333-213032, 333-218472 and 333-221290) of our report dated May 30, 2018, relating to the consolidated financial statements of 8x8, Inc., and the effectiveness of internal control over financial reporting of 8x8, Inc., appearing in this Annual Report (Form 10-K) for the year ended March 31, 2018.

/s/ Moss Adams LLP

San Francisco, California  
May 30, 2018

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**CERTIFICATION PURSUANT TO****RULES 13a-14(a) AND 15d-14(a) UNDER THE SECURITIES EXCHANGE ACT OF 1934  
AS ADOPTED PURSUANT TO  
SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002**

I, Vikram Verma, certify that:

1. I have reviewed this annual report on Form 10-K of 8x8, 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)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - a. Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - b. Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - c. Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures as of the end of the period covered by this report based on such evaluation; and
  - d. Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer 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.

May 30, 2018

/s/ VIKRAM VERMA

Vikram Verma

Chief Executive Officer

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**CERTIFICATION PURSUANT TO****RULES 13a-14(a) AND 15d-14(a) UNDER THE SECURITIES EXCHANGE ACT OF 1934  
AS ADOPTED PURSUANT TO  
SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002**

I, MaryEllen Genovese, certify that:

1. I have reviewed this annual report on Form 10-K of 8x8, 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)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - a. Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - b. Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - c. Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures as of the end of the period covered by this report based on such evaluation; and
  - d. Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer 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.

May 30, 2018

/s/ MARYELLEN GENOVESE

MaryEllen Genovese

Chief Financial Officer and Secretary

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**CERTIFICATION PURSUANT TO**

18 U.S. C. SECTION 1350,  
AS ADOPTED PURSUANT TO  
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

In connection with the Annual Report on Form 10-K of 8x8, Inc. (the "Company") for the year ended March 31, 2018, as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Vikram Verma, Chief Executive Officer of the Company, hereby certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that:

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

/s/ VIKRAM VERMA

Vikram Verma  
Chief Executive Officer

May 30, 2018

This certification accompanies this Report pursuant to § 906 of the Sarbanes-Oxley Act of 2002 and shall not, except to the extent required by the Sarbanes-Oxley Act of 2002, or otherwise required, be deemed filed by the Company for purposes of § 18 of the Securities Exchange Act of 1934, as amended.

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**CERTIFICATION PURSUANT TO**

18 U.S. C. SECTION 1350,  
AS ADOPTED PURSUANT TO  
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

In connection with the Annual Report on Form 10-K of 8x8, Inc. (the "Company") for the year ended March 31, 2018, as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, MaryEllen Genovese, Chief Financial Officer and Secretary of the Company, hereby certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that:

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

/s/ MARYELLEN GENOVESE

MaryEllen Genovese

Chief Financial Officer and Secretary

May 30, 2018

This certification accompanies this Report pursuant to §906 of the Sarbanes-Oxley Act of 2002 and shall not, except to the extent required by the Sarbanes-Oxley Act of 2002, or otherwise required, be deemed filed by the Company for purposes of §18 of the Securities Exchange Act of 1934, as amended.

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